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# **RETHINKING VICTIMHOOD: A CRITICAL REVIEW OF IS INDIA READY FOR GENDER NEUTRAL LEGISLATIONS?**

AUTHORED BY - GEETIKA NIRVAN

## **Purpose & Scope:**

\*Is India Ready for Gender Neutral Legislations? \* offers a new contribution to the discipline of Indian law scholarship by critically examining the gendered model behind law against sexual violence and domestic violence. Raghuvanshi and Malik have systematically conducted a critical evaluation of the existing legal environment that, while does seem to gear towards women empowerment, however, is ending up to marginalize other identities, namely men and transgender individuals. This is owing to the laws being exclusionary in its approach and overtly focused on females as victims, ending up ignoring more heterogeneous experience of other genders.

On the strength of stringent analysis based on constitutional jurisprudence, i.e., articles 14 and 15, along with sociological research and judicial dicta in the past, the authors of the book put forward a strong case for the necessity of a more gender-neutral and inclusive legislative paradigm. According to the authors, in order to efficiently serve justice and equality, the law must look beyond its gendered dualities and acknowledge the needs and rights of all victims of violence irrespective of gender identity.

The aspect of novelty in this book, relative to previous scholarship on the topics, is its double commitment to doctrinal correctness and the attainment of normative justice. Where legal critiques supporting feminism have succeeded in identifying that patriarchy is embedded while shaping and interpreting law, this book advances the debate further by underlining the often ignored male and transgender victims of violence within the legal system. By doing so, it is able to disrupt the dominant construction of victimhood and calls for a legal system that pays attention to the nuance of gender and the disparity in experience which comes before various survivors of violence.

## Chapter Analysis and Key Aspects:

### 1. Chapter 1- Historical Roots of Gender based Legislation

The introductory chapter follows the development of Indian criminal codes from their colonial British origins to post-independence codification. The authors assert that Victorian morality shaped colonial-era Indian Penal code of 1860, that entailed a dualistic view of gender roles, representing men as perpetrators and women as passive victims.

By studying laws like section 375 IPC<sup>1</sup> and the Domestic Violence Act, 2005<sup>2</sup>, the authors showcase how legal safeguards were originally framed to comport with the paradigm of female vulnerability. Instead of rejecting such safeguards, the book suggests to expand these safeguards to all genders- showing a just critique.

Key contribution: The chapter enables to put into context the gender-specific legislation of India, highlighting that efforts for reformation must go beyond simple alterations and must confront more profound structural beliefs.

### 2. Chapter 2- Constitutional Mandates and Judicial Activism

The authors turn to constitutional jurisprudence to advance gender neutrality, paving the evolution of judicial perception of article 14 and 15. Impactful judgements such as NALSA v. Union of India<sup>3</sup>, Navtej Singh Johar v. Union of India<sup>4</sup> and Joseph Shine v. Union of India<sup>5</sup> are critically evaluated to demonstrate how courts are progressively adopting inclusive and progressive notions of gender and sexuality.

The chapter brings to the fore the Supreme Court as an enforcer of social reform, particularly in the situation of legislative stalemate. Such foregrounding of judicial creativity is the core of the book, highlighting the judiciary as a prime evolutionary force of legal regimes.

The combination of constitutional morality with transformative theory of adjudication enhances the legal investigation, which is especially crucial for comparative constitutional scholars.

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<sup>2</sup> Protection of Women from Domestic Violence Act, No. 43 of 2005

<sup>3</sup> **National Legal Services Authority v. Union of India**, (2014) 5 SCC 438 (India)

<sup>4</sup> Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India)

<sup>5</sup> Joseph Shine v. Union of India, (2019) 3 S.C.C. 39 (India).

### 3. Chapter 3- Shortcomings of Prevalent Legal Protections

The following chapter acknowledges areas where the existing laws do not acknowledge and address the rights of 1<sup>st</sup> and 3<sup>rd</sup> gender victims of sexual and domestic violence. The authors critically examine the gendered articulation of section 375 IPC and compare it with gender-neutral Protection of Children from Sexual Offences (POCSO) Act<sup>6</sup>, in order to establish uniformity on the grounds of age and gender.

Furthermore, the authors draw a comparison with the Transgender Persons (Protection of Rights) Act<sup>7</sup>, to highlight that the punishment for sexual assault against transgender individuals is far less harsh than against cisgender female victims, which truly is violative of the spirit of substantive equality.

Rather than attributing a misdirected motive to existing law, the authors elucidate that issue lies with their scope. This positive analysis increases the sanctity of the appraisal as scholarship.

### 4. Chapter 4- Barriers in Society and Institutions

This chapter provides for a sociological explanation by analyzing the stigma and systemic barriers encountered by male and transgender victims. Based on secondary data, procured from a survey conducted in 2017 by an NGO<sup>8</sup>, revealed 72% male victims of domestic violence are unwilling to report abuse. The authors enumerate how societal definitions of masculinity and binary gendered roles prevent the seeking of justice.

While the chapter is largely based on secondary sources, however it is able to effectively convey the idea that police, healthcare and court system often fail to or aren't willing to handle non-normative cases of victimhood.

### 5. Chapter 5- Roadmap for Reform

The final chapter offers a framed and step-by-step approach to legal reformation. The authors suggest starting with procedural reforms, i.e., updating criminal laws. presently, despite the new updates criminal laws, they fail to be inclusive of all genders, therefore, first step should be to make them more inclusive and comprehensive. They commend legislative efforts such as 2019 Criminal Law Amendment bill<sup>9</sup>, which sought to

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<sup>6</sup> Protection of Children from Sexual Offences Act, No. 32 of 2012

<sup>7</sup> Transgender Persons (Protection of Rights) Act, No. 40 of 2019

<sup>8</sup> Save Indian Family Foundation, *Male Victims of Domestic Violence: A Study*, at 12 (2017)

<sup>9</sup> Criminal Law (Amendment) Bill, 2019, Bill No. 165 of 2019 (India).

address not only gender-neutral language but also recognize legislative stagnation. The recommendation of public sensitization campaigns along with the police, judges and medical personnel via professional training modules demonstrate the pragmatic approach of the authors.

Keeping in mind, the publication of the book done in 2019, the current chapter provides a pervasive and applicable perspective, thereby, making it more valuable to decision-makers and institutions of legislative reform.

### **Contextual Relevance & Intended Readership**

Although the publication was done in 2019, however, the arguments put forward by the authors is certainly relevant in today's socio-legal landscape. The current debate surrounding the Bhartiya Nyaya Sanhita Act, the deliberation by the Supreme Court on the issue of same-sex marriage in *Supriyo v. Union of India*<sup>10</sup>, along with the ongoing criticism on the Transgender Persons (Protection of Rights) Act, 2019, indicate that the questions raised by the authors continue to remain unanswered. Certainly, the questions have become all the more essential to be answered in the Indian perspective that is currently grappling with the issue of gender identity, recognition and legal protection.

The book does not only criticize the prevailing norms, but also foretells the contours of future norms. Its relevance is borne out by the fact that gender neutrality in law has remained an evergreen topic of debate in legal commissions, parliamentary proceedings and judicial rulings.

### **Critical Assessment**

#### 1. Contribution to Theory and Jurisprudence:

At its most fundamental level, \*Is India ready for Gender Neutral Law? \* is a timely and theoretically well-grounded intervention in the debate on gender jurisprudence in India. The authors took a constitutional approach, one that is entrenched in article 14 and 15, in an effort to problematize the exclusivity of gendered criminal law. The authors not only intrigue academic interest, but also normative interest that compels reader to re-evaluate the status of gender as a category in the realm of legal recognition. In adopting the concept of substantive equality, as opposed to formal equality, the text

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<sup>10</sup> *Supriyo @ Supriya Chakraborty & Anr. v. Union of India*, W.P. (C) No. 1011/2022, (India, Oct. 17, 2023)

answers substantively to progressive constitutional conceptions of the Supreme court of India. It encapsulates the reasoning in NALSA and Navtej Singh Johar, whereby, the Supreme Court gave supremacy to identity, dignity, privacy and anti-stereotyping as integral components of constitutional morality. This alignment with transformative constitutionalism, as it has been driven in Indian public law since K.S. Puttaswamy v. Union of India<sup>11</sup>, is an essential strength of this text.

## 2. Policy Implications and Practical Ramifications:

The path-breaking analysis of the book is beyond abstruse theoretical polemic and enters the domain of policy reformation and institutional reorganization. The purpose of the book was to modify the IPC, especially section 375, in order to establish a gender-neutral code, while also focusing on procedural inclusivity in the CrPc, have proved to offer a blueprint for the current legislative reform.

Interestingly, while the book was published in 2019, the majority of the problems that it deals with have become more pertinent. For instance, the BNS has provisions that employ gender-neutral language while describing sexual offences- a reformist path that in consonance with the goals outlined in this book. Even though the book was unable to anticipate these developments, its contribution in anticipating policy changes justifies its pertinence to the present.

## 3. Opportunity for Growth:

Notwithstanding its many strengths, the book does have certain limitations- excusable in the context of its publication-deserve consideration-

- a. Limitations of Empirics- the book is largely dependent on secondary data, including NGO reports, NCRB reports and analysis of case law. While these are credible sources, however, qualitative interviews or ethnographic fieldwork among male and transgender survivors would have provided depth and richness. First-hand evidence would help to show how stigma works against reporting sexual violence, creating an experiential counter-narrative to doctrinal critique.
- b. Encounter with Feminist counterarguments- Although the authors acknowledged the concerns raised by feminist scholars regarding the potential erosion of women's protections through gender-neutral laws, this important tension has not been fully

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<sup>11</sup> K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India)

explored yet. Authors like Flavia Agnes<sup>12</sup> have long argued that gender-neutral laws, when implemented without ground-level safeguards, will tend to be hijacked for the benefit of powerful groups against vulnerable populations. A greater encounter with these perspectives- perhaps in the form of an added chapter, would have enriched books dialectical strength.

- c. **Comparative Analysis-** The lack of comparative analysis on an international level restricts the scope of the research. Countries like Bhutan, Canada and South Africa have introduced gender-neutral legislations without sacrificing the spirit of gender-sensitive protections. Analyzing these models can provide significant policy adjustment measures, demonstrating how to increase inclusivity without undermining feminist legal gains.
  - d. **Intersectionality-** Although the text is identifying third-gender individuals, it is segregating them in general as a homogenous group. More intersectional analysis, inclusive of variables like caste, class, religion and geography would give more depth to the argument. For instance, Dalit transwoman and Muslim male survivors have intersecting levels of marginalization that are still inadequately addressed both by law and society.
4. Significance in the Emerging Socio-legal framework:

From the perspective of 2025, the observations made in the book are extremely relevant. Modern legal controversies, as illustrated in *Supriyo v. UOI*<sup>13</sup>, case regarding marriage equality and the criticism of the Transgender Act, align with several central arguments of the book. To this degree, the book is not merely a diagnostic instrument for creating more inclusive legal systems. Additionally, the book has grown to become more relevant within academic circles, with gender neutrality now being integrated as a separate module in criminal law, human rights and public policy courses.

### Conclusion

To conclude, the book is a valuable and learned addition to the field of Indian Law, especially at the moment when gender justice debate is amidst substantial change. By exposing structural exclusions, that is deeply rooted in India's gendered legal system, the authors force to question

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<sup>12</sup> **Flavia Agnes**, *Law, Justice, and Gender: Family Law and Constitutional Provisions in India* (Oxford Univ. Press 2011).

<sup>13</sup> **Supriyo v. Union of India**, (2023) 11 S.C.C. 401 (India)

the prevailing normative presumptions and set the stage for more inclusive legislative scenario. Their constitutional methodology, especially when analyzed from the prism of equality and non-discrimination, widens our knowledge of legal principles while simultaneously expanding the ethical ambit of justice in plural society.

Although the writing could have been more empirically inclined and be slightly richer in jurisprudence, however, the study is able to connect doctrinal analysis to policy directions, and its applications are attested by subsequent events in laws, like the controversies around BNS and Supriyo case.

To summarize, the book transcends an academic critique; it is a prescriptive appeal, calling on jurists, lawmakers and scholars of law to transform the legal system into a system that is committed to the dignity and rights of people, irrespective of their gender. As India grapples to cope with the hurdles involving constitutional morality and expansive citizenship, the book is yet able to provide a glimpse and roadmap for significant reform.

