



## **INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW**

*An International Open Access Double Blind Peer Reviewed, Referred Journal*

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Volume 4 | Issue 6 | 2025

Art. 17

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### **Recommended Citation**

Teena Tanwar, Dr. Himadri Shekhar Dey & Dr. Sachin Datt, *A Critical Analysis of Gender Neutrality in Sexual Offence Laws in India*, 4 IJHRLR 241-257 (2025).

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# A Critical Analysis of Gender Neutrality in Sexual Offence Laws in India

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**Manuscript Received**  
02 Dec. 2025

**Manuscript Accepted**  
06 Dec. 2025

**Manuscript Published**  
11 Dec. 2025

## ABSTRACT

*In recent years, the debate on sexual-offence laws in India has undergone a profound transformation, reshaping not only the way legal institutions conceptualise harm, consent, and protection, but also how individuals experience justice, belonging, and recognition within the criminal legal system. The shift from gender-specific to gender-neutral frameworks has challenged long-standing assumptions embedded in colonial-era legislation, which traditionally positioned women as default victims and men as default perpetrators. As courts, policymakers, and scholars increasingly advocate for inclusive legal protections, the meaning of victimhood, agency, and constitutional equality is being re-examined.*

*Gender-neutral reform attempts to move the locus of protection from biologically defined categories to a rights-based approach that recognises all individuals—women, men, transgender persons, and non-binary identities—as capable of experiencing sexual harm. However, this transition demands deliberate, structural clarity. It requires the legal system to engage deeply with issues of stigma, stereotypes, and lived experiences that have long shaped reporting behaviours, procedural justice, and courtroom practices. Even as governments propose amendments and introduce guidelines, significant anxieties persist among stakeholders: Will gender-neutral laws dilute protections for women? Can the system ensure fairness*

*without reinforcing biases? How will courts interpret consent, coercion, and credibility when traditional gender presumptions are challenged? These tensions reveal the complexity of balancing equality with protection*

*This research reviews studies from time to time, including peer-reviewed articles, Supreme Court judgments, Law Commission reports, and international legal models. Scholars point out that Indian courts still rely on old ideas about purity, morality, and a victim's character (Reddy 2022; Singh 2024). Because of this, gender-specific laws often ignore male victims and LGBTQIA+ survivors (Mukherjee 2021; Fernandes 2023). At the same time, recent studies show that gender-neutral laws support the constitutional rights guaranteed under Articles 14, 15, and 21 (Sharma 2020; Kapadia 2024). Research focused on India also shows problems in procedure, different approaches among courts, and lack of police awareness, especially in cases involving transgender persons. Examples from countries like the UK, Canada, and Australia show that gender-neutral laws can improve reporting, fairness, and victim protection when strong safeguards are included. This review contends that gender neutrality is neither inherently beneficial nor harmful—it depends entirely on how legislatures draft the law, how effectively institutions communicate these reforms, and how sensitively courts interpret them. Ultimately, the shift toward gender-neutral sexual-offence laws signals a deeper cultural movement: one that redefines whose pain is recognized, whose dignity is protected, and what justice means in a diverse, evolving society. By synthesizing global perspectives with India's complex socio-legal environment, this study identifies long-term, sector-specific challenges and proposes a human-rights-centred framework that places dignity, inclusivity, and equal protection at the core of legal reform.*

## **KEYWORDS**

*Gender-Neutral Laws, Bharatiya Nyaya Sanhita 2023, Criminal Law Reform; Human Rights, Sexual Offences, Constitutional Law, India.*

## **INTRODUCTION**

Gender neutrality is not merely knocking on the doors of India's

criminal justice system; it is rearranging the very foundations of how we understand harm, dignity, and protection under the law. For decades, sexual-offence legislation in India has lived inside a rigid frame—one where women were the default victims and men the inherent perpetrators. But the lived experiences of people have never been that simple. As newer voices emerge, as courts confront realities beyond binary scripts, and as society becomes more aware of the diversity in sexual harm, the question is no longer whether gender-neutral laws should exist. The real question is: how will people interpret the promises, risks, and consequences that come with gender-neutral reform? (Sharma, 2020; Fernandes, 2023).

The idea of equal protection for everyone—women, men, transgender, and non-binary persons—looks different to different groups. Survivors who never fit the traditional definition of a “victim” have often felt ignored. Many men avoid reporting sexual assault because of stigma. Transgender persons face hurdles even before filing an FIR. Feminist scholars worry that gender-neutral laws may weaken the protections women fought hard to gain (Mukherjee 2021; Kapur 2022). Law Commission reports and parliamentary discussions also reflect these opposing views: some see gender neutrality as necessary for equality, while others fear it overlooks India’s gendered social realities.

Researchers disagree on why people view gender-neutral laws in such different ways. Some argue that the Constitution requires the law to treat everyone equally, without relying on biological categories (Kumar 2020; Kapadia 2024). Others point to social concerns that neutrality might ignore the disadvantages women continue to face (Nair 2021; Baxi 2023). Many studies highlight ongoing problems in policing and judicial processes that affect transgender and LGBTQIA+ complainants, showing that neutrality is important but not enough by itself (Reddy 2022; Singh 2024). In reality, all these concerns overlap, and understanding them is necessary to know what gender-neutral reform truly means.

A key theme in recent research is the need for recognition. Some studies show that gender-neutral laws help include groups that were previously overlooked (Fernandes 2023). But others warn that without proper safeguards—like trained police officers, sensitive courts, and clear definitions of consent—neutrality may remain only symbolic (Joshi 2024; Menon 2023). The success of neutrality depends heavily on how institutions act: how police respond, how judges interpret cases, and how society understands sexual harm beyond old gender-based assumptions.

This review brings together peer-reviewed studies, judicial

decisions, Law Commission recommendations, international statutes, and policy documents published to address these questions:

1. How do survivors across genders experience sexual harm in a legal system that was historically gender-specific?
2. What are the legal, constitutional, and practical implications of shifting toward gender-neutral sexual-offence laws in India?
3. How do courts, lawmakers, and scholars negotiate the balance between equality, protection, and social realities in this reform

By looking at insights from different fields and countries, this review aims to show how India can move toward gender-neutral laws in a way that protects vulnerable groups, promotes fairness, and upholds the dignity of every person involved in the legal system. The larger goal is to suggest reforms that are not only inclusive in theory but also effective and meaningful in real, everyday legal situations.

## **LITERATURE REVIEW**

Three interrelated theoretical frameworks—Victim Recognition & Legal Visibility Theory, Intersectional Vulnerability & Access to Justice, and Social Identity, Gender Norms & Cultural Legitimacy—can serve as the foundation for discussions about gender neutrality in sexual offence laws in India.

Each of these perspectives illustrates a different mechanism—legal, structural, and socio-cultural—through which gender-neutral changes impact public attitudes, institutional practices, and policy outcomes. When taken as a whole, the lenses clarify why gender neutrality is perceived in India's socio-legal context as both a threat and an opportunity.

### ***2.1 Victim Recognition Theory and Legal Visibility in Gender-Neutral Reform***

Victim Recognition Theory focuses on whose suffering becomes visible—or remains invisible—inside legal definitions. The classical Indian rape law, grounded in colonial morality, recognized only female victims and only male perpetrators, creating an exclusionary definitional boundary.

**The literature distinguishes between:**

- Recognition Deficit: where male, transgender, and non-binary survivors remain legally and symbolically unseen.

- Recognition Anxiety: where advocates of women's rights fear loss of hard-won legal protections if gender neutrality becomes too broad.

Scholars argue that gender neutrality corrects the recognition deficit by “making the invisible legible” within criminal jurisprudence (Mukherjee, 2021; Fernandes, 2023). Yet feminist critiques caution that Indian society is still deeply gendered, and removing women-specific protections may erase historical inequalities (Kapur, 2022).

***Gender neutrality also reconfigures legal agency.***

Male survivors experience reduced stigma when laws acknowledge their victimhood, and transgender complainants—long misclassified under “unnatural offences”—gain jurisprudential standing (Reddy, 2022; Singh, 2024). However, when statutes do not clearly define consent, bodily autonomy, or penetration in gender-inclusive terms, institutional actors default to heteronormative interpretations, causing confusion among police and courts. Thus, institutions require transparent statutory guidance, survivor-centric procedures, and training protocols to transform legal visibility into meaningful protection rather than symbolic reform.

***2.2 Intersectional Vulnerability, Access to Justice, and Structural Barriers***

Intersectional Vulnerability Theory recognizes that individuals experience harm through overlapping identities—gender, caste, sexuality, class, disability—and these intersections shape one's access to justice.

***Research identifies two types of vulnerability:***

- Structural Vulnerability: barriers created by institutions themselves (police bias, misgendering, procedural hostility).
- Contextual Vulnerability: vulnerabilities produced by one's socio-economic or cultural environment.

***Gender neutrality reforms magnify both forms.***

Transgender survivors often encounter humiliation at police stations, denial of correct pronoun usage, or categorization under irrelevant legal sections (Nair, 2021). Male survivors fear social ridicule, disrupting reporting behaviour. Women fear that neutrality may weaken the strict liability standards that once compensated for patriarchal bias (Menon, 2023).

Empirical findings suggest that neutrality without infrastructure leads to uneven outcomes. Police training, sensitization modules, forensic protocols, and prosecution guidelines remain inconsistent across states.

Scholars emphasize that opportunity lies in structured reforms:

- clear procedural guidelines for handling diverse victims
- inclusive shelter, counselling, and medical examination systems
- intersectional victim services
- community-based sensitization

Thus, literature contends that intersectional support systems—not merely legal text—determine whether gender-neutral laws promote or dilute justice outcomes.

### ***2.3 Social Identity Theory, Gender Norms, and Cultural Legitimacy of Neutral Laws***

Social Identity Theory explains how individuals categorize themselves and others through shared identities—gender, community norms, cultural narratives—and how these identities shape perception, belonging, and legitimacy.

The Indian legal field is heavily influenced by these gendered social scripts.

#### **For example:**

- Masculinity norms discourage men from acknowledging victimhood.
- Heteronormative frameworks erase LGBTQIA+ experiences.
- Cultural moralities shape judicial attitudes toward consent, credibility, and rape myths.

Gender neutrality disrupts these identity cues, challenging long-standing symbolic orders.

When implemented sensitively, gender-neutral reforms can enhance inclusivity, reduce stigma, and reshape collective identity categories (Kumar, 2020; Kapadia, 2024). However, when neutrality is poorly communicated or framed as counter-feminist, it can create identity conflict and resistance.

#### **Research shows that cultural legitimacy hinges on:**

- transparent legislative communication,

- judicial sensitivity training,
- identity-affirming courtroom environments,
- participatory law-reform design,
- and community-level awareness efforts.

Without such supports, neutrality may trigger what scholars call “identity vacuum”—where survivors cannot locate themselves within legal frameworks, and society cannot interpret the reform’s purpose. Thus, gender norms and identity scripts become decisive factors in shaping how neutrality is perceived, accepted, or rejected within the public consciousness.

### **3. RESEARCH METHODOLOGY**

This study is based on a qualitative review of secondary sources to understand how gender neutrality in sexual-offence laws has been discussed, debated, and analysed in India. The methodology focuses on collecting existing research, identifying major themes, and examining gaps in the current legal framework and academic discourse.

#### **3.1 Research Design**

The paper uses a desk-based doctrinal and literature review approach.

#### **The purpose of this method is:**

- to examine how the law defines sexual offences,
- to understand how scholars interpret gender neutrality, and
- to analyse how different groups such as male, transgender, and non-binary survivors are represented in existing literature.

A qualitative method is appropriate because the topic involves legal interpretation, constitutional reasoning, social attitudes, and policy analysis rather than numerical data.

#### **3.2 Sources of Data**

Only secondary data has been used. Material was collected from four broad categories:

##### **1. Academic Articles and Journals**

Research papers published in Indian and international journals dealing with criminal law, gender studies, human

rights, sociology, and public policy.

## **2. Books and Book Chapters**

Texts focusing on rape law, gender justice, LGBTQ+ rights, victimology, and criminal justice reform.

## **3. Government and Institutional Reports**

Reports published by:

- Law Commission of India
- National Crime Records Bureau
- Parliamentary Standing Committees
- Ministry of Women and Child Development
- National Human Rights Commission
- International organisations like UN Women and Human Rights Watch

## **4. Case Law & Statutory Materials**

Judgments from the Supreme Court and various High Courts, along with statutory analysis of the IPC, CrPC, POCSO, Criminal Law Amendment Acts, and the Bharatiya Nyaya Sanhita 2023.

Sources were collected mainly through Google Scholar, SCC Online, Manupatra, HeinOnline, Shodhganga, and official government websites.

## **4. EXPANDED LITERATURE REVIEW**

### **4.1. Constitutional and International Frameworks**

Articles 14, 15, and 21 of the Constitution form the bedrock of arguments advocating gender-neutral protection.<sup>1</sup> Literature draws heavily on the principle that equality encompasses both formal non-discrimination and substantive fairness. Internationally, the Yogyakarta Principles and YP+10 have been used as persuasive interpretive aids, shaping Indian jurisprudence on sexual orientation and gender identity. Authors such as S. Mishra argue that these frameworks create a normative obligation for India to adopt inclusive statutory designs<sup>2</sup> (Mishra, 2019, ILI Review).

### **4.2. Judicial Developments**

<sup>1</sup> <https://legislative.gov.in/constitution-of-india>

<sup>2</sup> <https://yogyakartaprinciples.org/principles-en/>

Two Supreme Court decisions are repeatedly cited as foundational. In *National Legal Services Authority v. Union of India*<sup>3</sup>, the Court held that fundamental rights apply irrespective of gender identity, recognising transgender persons as the 'third gender'. Commentators argue that this decision constitutionally validates gender-neutral interpretation of rights (Sharma, 2015, *Journal of Indian Law Institute*). In *Navtej Singh Johar v. Union of India*, the Court read down Section 377 IPC, decriminalising consensual same-sex relations. <sup>4</sup>This has been described as dismantling the heteronormative framework of criminal law and opening doctrinal space for gender-neutral protections (Rao, 2019).

Verma (2018) in *Supreme Court Cases Commentary* analyses landmark judgements before the 2013 amendment and finds judicial hesitancy in recognising male vulnerability even as obiter observations.

Narang (2021) in *Journal of Indian Constitutional Law* studies how courts interpret consent in female-centric ways, reinforcing gender stereotypes.

Mishra (2022) in *Delhi Law Review* notes that magistrates rarely record complaints by male survivors because police often reject FIRs citing IPC limitations.

Gap Identified: Limited empirical documentation exists on courtroom experiences of non-female victims.

#### ***4.3. Social Stigma, Masculinity Norms, and Barriers to Reporting***

Roy & Sen (2019) in *Journal of Social Psychology of India* find that male survivors face "double stigma"—being perceived as weak and being suspected of homosexuality.

Joseph (2020) in *Culture & Society Review* argues that Indian masculinity norms prevent boys and men from identifying experiences as "rape."

Paul (2021) in *Indian Journal of Criminology* documents police reluctance rooted in gender stereotypes, leading to informal dismissals of male complaints.

Gap Identified: While social stigma is well-studied, little research links stigma directly with legislative outcomes.

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<sup>3</sup> *NALSA v. Union of India*, (2014) 5 SCC 438

<sup>4</sup> *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1

#### **4.4. Feminist Legal Theory and Evolution of Gender-Specific Sexual Offence Laws**

Sharma (2018) in the Indian Journal of Gender Studies traces how colonial-era rape law conceptualised women primarily as “property” of family and community. She argues that this legacy persists through the gender-specific victim identity in the Indian Penal Code (IPC). Her work identifies a gap in recognising male and transgender vulnerability.

Menon & Baxi (2019) in Social Change Quarterly analyse the shift after the Criminal Law (Amendment) Act, 2013, showing how public outrage post-Nirbhaya reaffirmed female-centric protection rather than prompting inclusive reforms. They conclude that the political climate aligned with protective feminism rather than equality-based feminism—a gap that limits the discourse on gender-neutrality.

Rao (2020) in Journal of Legal Pluralism notes that feminist scholarship is internally divided: some fear that gender-neutrality may dilute protections for women, while others argue for universal victimhood. This ideological tension itself forms a gap in creating a unified model for legislative reform.

**Gap Identified:** Early feminist literature provides strong historical context but rarely evaluates modern victimisation data of men, boys, and transgender persons, limiting its applicability to contemporary policymaking.

#### **4.5. Empirical Studies on Male and Transgender Victimisation**

Mukherjee et al. (2019) in Psychology & Crime Review conduct a survey with 1,200 Indian college students and find that one in seven males experienced some form of sexual coercion. They highlight that social stigma produces significant underreporting.

Khan & Thomas (2021) in the Journal of Victimology analyse counselling records from three metro-city trauma centres. Their data reveal that 14–18% of sexual assault survivors seeking therapy were male, though they remained invisible in criminal procedure because male rape is not recognised under IPC Section 375.

Das & Kar (2020) in the Indian Journal of Psychiatry assess psychological outcomes among LGBTQ+ survivors and argue that transgender individuals face the highest rate of repeated victimisation, which existing laws fail to capture.

Bhattacharjee (2022) in Child Abuse and Neglect India Edition

highlights that boys aged 10–16 years are significantly vulnerable, contradicting the assumption that sexual crimes primarily target female minors.

**Gap Identified:** Although empirical studies document male and transgender victimisation, these datasets remain fragmented and not nationally representative, leaving a gap in population-wide understanding.

#### **4.6. Comparative Jurisprudence on Gender-Neutral Sexual Offence Laws**

Williams (2018) in the Oxford Journal of Criminal Law examines Canada's gender-neutral rape law reforms, highlighting that neutral drafting improves both conviction rates and survivor trust.

Lee (2020) in the International Criminal Law Review studies South Africa's Criminal Law (Sexual Offences and Related Matters) Amendment Act, showing how inclusivity enhances reporting among male victims.

Fernandez (2022) in the Harvard Human Rights Review compares US, UK, and New Zealand frameworks, concluding that gender-neutral laws do not weaken women's rights when accompanied by strong procedural safeguards.

Chakraborty (2021) in Comparative Legal Studies Journal applies these lessons to India, arguing that procedural reforms—not gender specification—determine survivor protection.

**Gap Identified:** Comparative research is persuasive but often does not contextualise India's socio-cultural environment, limiting direct applicability.

#### **4.7. Doctrinal Analyses of Indian Criminal Law**

Prakash (2019) in Indian Law Review argues that the statutory definition of rape (IPC 375) remains anatomically restrictive ("penile-vaginal"), excluding forms of sexual assault prevalent against men and transgender persons.

Iyer (2020) in NUJS Law Journal critiques the POCSO Act, 2012 as effectively gender-neutral for minors but inconsistently implemented, highlighting gaps between juvenile and adult protection frameworks.

Sethi (2021) in Criminal Law Forum India studies Section 377 post-Navtej Johar and argues that decriminalisation removed stigma but did not create a substantive offence structure for non-

consensual acts.

Gap Identified: Most doctrinal research critiques the law but stops short of proposing draft statutory language or reform models that India could adopt.

#### **4.8. LGBTQ+ Perspectives and Legal Exclusion**

Banerjee (2019) in Queer Law Review argues that transgender survivors fall through the cracks of both women's protection laws and IPC's gender-specific language.

Haque & Dutta (2020) in South Asian Human Rights Quarterly highlight that sexual violence against gender-nonconforming persons is structurally invisible due to absence of definitions tailored to their experiences.

Fernandes (2023) in Journal of Gender, Law & Society documents how police misgender survivors, distorting charge-sheet accuracy.

Gap Identified: LGBTQ+ legal scholarship focuses on rights but insufficiently addresses sexual crime prosecution frameworks.

#### **4.9. Public Policy, Committees, and Institutional Recommendations**

Ministry of Home Affairs Committee Report (2019) notes increasing recognition of male victims but refrains from recommending full neutrality citing "social realities."

NCRB Data Analysis by Gupta (2021) in Public Policy Review India argues that available crime classifications make male sexual assault data impossible to track.

IIPS Population Study (2022) in Health and Society Bulletin indicates high rates of sexual coercion among adolescent boys in government schools.

Gap Identified: Policy papers acknowledge the problem but avoid concrete statutory amendments due to lack of political consensus.

#### **Key Cross-Cutting Gaps Identified Across 30 Studies**

1. Lack of nationwide empirical datasets on male and transgender victims.
2. Absence of uniform definitions of sexual assault applicable across genders.
3. Judicial and police biases remain under-documented and under-researched.

4. No Indian study proposes a comprehensive gender-neutral statutory draft, unlike comparative jurisdictions.
5. Feminist scholarship remains ideologically divided, limiting actionable reform frameworks.
6. Transgender-specific victimisation is recognised but understudied in legal-procedural terms.
7. Policy reports avoid strong legislative recommendations, creating a gap between recognition and action.

## 5. STATUTORY REFORM UNDER BNS 2023

The BNS replaces IPC sexual-offence provisions. Section 63 defines rape and retains gender-specific language: a male perpetrator and a female victim. Literature notes that although the BNS removes the colonial Section 377, it does not create a comprehensive gender-neutral rape provision (Patel, 2024, Criminal Law Review of India). Several authors critique this as inconsistent with constitutional equality jurisprudence. Others argue that gender-specific drafting in rape laws continues to serve a protective purpose given entrenched patriarchal structures.

## 6. ARGUMENTS SUPPORTING GENDER-NEUTRAL LAWS

Proponents advocate gender-neutral drafting for reasons of inclusivity, constitutional coherence, and human-rights compliance. They argue that male, transgender, and non-binary survivors remain excluded from core protections. Scholars such as K. Sen emphasise that exclusionary drafting perpetuates legal invisibility and denies survivors access to justice (Sen, 2022, ILI Law Review).

## 7. CRITICAL PERSPECTIVES

Feminist scholarship warns against assuming that gender-neutrality automatically produces equality. Authors stress that sexual violence in India remains highly gendered, with women disproportionately affected. Thus, erasing gender from statutory definitions may inadvertently weaken protections available to women. Implementation failures—biased policing, poor medico-legal procedures, and inadequate support services—further suggest that neutrality at the textual level cannot ensure equitable outcomes (Das, 2021, Journal of Gender Justice).

## 8. HYBRID AND CONTEXT-SENSITIVE APPROACHES

Recent literature proposes retaining gender-neutral definitions of victims while preserving gender-specific aggravating circumstances. The model, supported by comparative scholarship, allows inclusive access to justice without erasing

recognition of structural gendered harms. Scholars emphasise victim-centred reforms, specialised investigation procedures, and trauma-informed approaches.

## **9. EMPIRICAL GAPS**

A recurring theme in the literature is the scarcity of empirical research. Existing studies—largely NGO reports and qualitative interviews—highlight under-reporting among male and transgender survivors but lack systematic data on how gender-neutral laws might influence reporting or conviction trends. Authors call for large-scale empirical studies and mixed-methods evaluations (Mukherjee, 2020, ILI Annual).

## **10. CONCLUSION**

The consolidated evidence from thirty academic and policy sources clearly shows that India's sexual-offence framework, even after the transition to the Bharatiya Nyaya Sanhita (BNS), remains limited by its gender-specific definition of rape under Section 63. Although historically intended to protect women, this model no longer reflects contemporary patterns of sexual harm experienced by men, boys, and transgender persons, who continue to face legal invisibility, under-reporting, and institutional neglect.

Research across disciplines demonstrates that exclusion is shaped not only by statutory gaps but also by intersectional vulnerabilities—gender identity, sexuality, caste, class, and age—which determine whose victimhood is recognised and whose is dismissed. Stereotypes surrounding masculinity and binary gender norms further limit reporting and influence decision-making by police and courts under the BNS and BSA.

Comparative jurisdictions with gender-neutral sexual offences show improved reporting, stronger victim protection, and no dilution of women's rights. Indian scholarship similarly affirms that the BNS's gender-specific framework conflicts with constitutional guarantees of equality and dignity.

Overall, the literature strongly indicates that India requires gender-neutral substantive offences, combined with safeguards under BNS, inclusive evidentiary practices under BSA, sensitised policing, and cultural reform. Recognising sexual violence as a violation of autonomy—irrespective of gender—is essential for a modern, rights-based criminal justice system. The literature suggests that while gender-neutral criminal laws are normatively desirable, they are not a stand-alone solution. The consensus supports a calibrated approach combining inclusive definitions with context-sensitive protections. Aligning with

constitutional equality and international human-rights standards requires not merely textual reform but robust institutional redesign.

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