

THE GENDER BIAS IN THE FALLACY OF APATHY AND MYTH OF IMPARTIAL LAW

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Abstract

Traditional legal theory often claims that the law is neutral and fair, equating justice with the absence of emotion. This supposed impartiality hides biases and allows social inequalities to continue under the guise of objectivity. Gender, race, and class are frequently ignored in legal reasoning, which perpetuates rather than corrects injustice. This paper critiques legal indifference, showing how the law's appearance of neutrality sustains inequality. It argues for a legal approach that considers human experience as central to achieving real equality. Using a critical theoretical method, the study focuses on gender as a disadvantaged group. Legal doctrines, case law, and scholarly writings are analyzed to show how dispassionate reasoning masks power relations and structural disparities. Findings indicate that legal indifference does not remove bias; it hides it, turning equality into a formal promise rather than reality. Emotional detachment in law reinforces existing hierarchies and harms marginalized groups. The paper concludes that the idea of impartial law is a fallacy. To achieve substantive equality, legal reasoning must recognize lived experience and social context. A critical, empathetic perspective can break the illusion of neutrality and support fairer outcomes for all.

Keywords: *Legal Indifference, Gender Inequality, Impartiality, Structural Bias, Human Experience and Substantive Equality*

1. Introduction

The law often presents itself as a neutral and impartial institution, aiming to treat all individuals equally. In courtrooms, judges don robes to conceal their identities, Lady Justice is depicted blindfolded to signify the absence of bias, and legal procedures are designed to exclude emotion from decision-making. This portrayal suggests that law is logical, objective, and free from personal influence. However, this narrative is misleading. Neutrality does not equate to fairness. What appears as impartiality is, in truth, a form of detachment that conceals social and structural inequalities. Philosophers have long critiqued the notion of law as detached and emotionless. Martha Nussbaum argues that emotions are integral to moral reasoning and should not be excluded from legal considerations. She posits that emotions like compassion and empathy can

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guide just legal decisions, while emotions such as disgust can lead to unjust outcomes, particularly when they underpin discriminatory laws. Nussbaum's work emphasizes the importance of acknowledging human emotions in the pursuit of justice.¹ Lon Fuller, in his seminal work *The Morality of Law*, contends that law is inherently connected to morality. He introduces the concept of the "internal morality of law," which comprises principles that ensure laws are made and applied in ways that respect human dignity. Fuller criticizes legal systems that claim neutrality while failing to uphold these moral standards, arguing that such systems perpetuate injustice.² H.L.A. Hart, a prominent legal positivist, maintains that law and morality are separate domains. In *The Concept of Law*, he asserts that the validity of a law is not dependent on its moral content. However, Hart acknowledges that laws often reflect societal values and that legal systems must consider moral principles to function effectively.³ When the law disregards the lived experiences of individuals, especially those marginalized by gender, it creates an illusion of equality while maintaining existing power structures. This paper contends that the law's claim to be impartial is a myth. What appears as neutrality is, in fact, shaped by gendered perspectives. The "universal person" envisioned by the law is often based on a male model of life, neglecting women's realities such as pregnancy, childcare, vulnerability to sexual violence, and the unequal burden of care. These issues are frequently sidelined or treated as "special cases," rendering women's needs invisible within the legal framework. Law's apathy is presented as fairness, but in practice it is a way of keeping women's needs invisible.

2. Neutrality as a Male Mask

The law likes to present itself as fair to everyone, standing above politics, gender, or emotion. Judges wear black robes, speak in formal language, and rely on rules that appear abstract and universal. At first sight, this gives the impression that law belongs to no one group, that it treats all citizens the same. But this image of neutrality is misleading. What looks neutral often hides a gendered reality: the law has been shaped historically around male experiences, while women's lives have been pushed to the margins or even made invisible. Neutrality, in this sense, acts as a mask. It disguises male dominance by pretending that the law is simply about reason and logic. The idea that neutrality is the same as fairness has deep cultural roots. For centuries, reason has been described as masculine and emotion as feminine. To be rational is to be calm, detached, and controlled. To be emotional is to be biased, unstable, and unreliable. When law says it is rational and neutral, it is also saying it values traits historically linked to men while dismissing those associated with women. Catharine MacKinnon puts this bluntly: "the law sees and treats women the way men see and treat women."³ This means that law's version of neutrality is already tilted in a masculine direction.

The so-called "universal subject" of law is in fact a man: someone who is not expected to give birth, who is not burdened by care work, and who is not systematically vulnerable to sexual or domestic violence. Women's experiences do not fit this model, so they are treated as exceptions, not as part of the norm. Carol Smart takes this further. She explains that law is not just a collection of neutral rules but a powerful way of shaping meaning.⁴ When the law says certain things don't matter such as a woman's emotions in a rape trial or her dependency in family law it

¹ Martha Nussbaum, *Hiding from Humanity: Disgust, Shame, and the Law* (Princeton University Press 2004).

² Lon L. Fuller, *The Morality of Law* (Yale University Press 1964).

³ H.L.A. Hart, *The Concept of Law* (2nd edn, Oxford University Press 1994).

⁴ Carol Smart, *Feminism and the Power of Law* (Routledge 1989) 11.

isn't being neutral. It is quietly deciding what *does* matter, and in doing so, it builds in bias. The result is predictable: men's lives are treated as the standard, while women's lives are treated as exceptions. This is the fallacy of apathy: the belief that ignoring feelings or human realities somehow makes the law fair. In truth, this coldness protects male privilege.

Neutrality here is not about fairness but about silence: the silence of refusing to take women's experiences seriously. That silence is not empty. As Hilary Dowling reminds us, "indifference in law is rarely absence it is a presence that protects existing hierarchies while pretending to withdraw from them."⁵ In practice, apathy is not neutrality but an active decision to privilege men's realities while dismissing women's. Sexual violence provides a stark example. For centuries, rape laws demanded extra proof of a woman's testimony, because women were seen as too emotional to be trusted.⁶ Courts often judged victims not by the violence they suffered but by how they behaved: did she cry or stay calm? Did she fight back "enough"? Did she report right away? The decision to ignore women's feelings and experiences made it harder to hold men accountable and easier to dismiss women's suffering. Neutrality in these cases worked as a shield for male credibility and as a weapon against women's voices.

Domestic violence offers another example. For a long time, it was treated as a private matter beyond the concern of law. The state's apathy was presented as neutrality a refusal to interfere in "family life." But this indifference meant protecting men's authority in the home, leaving women vulnerable to repeated harm. Here again, apathy was not the absence of judgment but a clear choice to protect existing hierarchies. The law claimed it was impartial, but its silence spoke volumes: it sided with the male head of household and against the safety of women. Across cultures, this link between neutrality and masculinity runs deep. In colonial Africa, administrators treated African men as the rational heads of households, while African women were positioned as dependents whose role was reproduction and caregiving. Law reinforced this view by granting rights such as property ownership, land inheritance, or political participation mainly to men. Women's "domestic" roles were not treated as legally significant, which made them invisible in the eyes of the state. Even in postcolonial reforms, the legacy remains. For example, in inheritance disputes courts often claim to be "neutrally" applying custom when granting land to male relatives. But neutrality here is an illusion: the law is not above gender bias but enforcing a system that privileges men's roles and sidelines women's.⁷

Employment law offers another illustration of how neutrality functions as a mask. The "normal worker" is imagined as someone who works full-time, without interruption. This image fits men more easily than women, who often take time out for pregnancy, childcare, or other caregiving responsibilities. Yet instead of adjusting to these realities, the law treats them as deviations. It calls the male pattern of work "normal" and the female pattern "special" or "different."⁸ Neutrality in this context does not deliver fairness. The law treats men's steady working lives as the norm and pushes aside women's caregiving roles, yet still claims to be fair to everyone. All

⁵ Hilary Dowling, 'Legal Indifference and the Politics of Neutrality' (2015) 22 Feminist Legal Studies 45, 47.

⁶ John D Kelly and Martha Kaplan, *Represented Communities: Fiji and World Decolonization* (University of Chicago Press 2001) 176–178 (on colonial evidentiary standards in rape law).

⁷ Oyeronke Oyewumi, *The Invention of Women: Making an African Sense of Western Gender Discourses* (University of Minnesota Press 1997) 123.

⁸ Joan Acker, 'Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations' (1990) 4 Gender & Society 139.

these examples show one thing in common: so-called neutrality works by leaving people out. The law says it is beyond emotion, beyond gender, beyond social roles. But when it refuses to see women's lives their caregiving, their emotions, their vulnerabilities, their bodies it creates a distorted picture of reality. That distortion protects male privilege by making it appear that men's lives are the "normal" human condition. Women are cast as deviations: emotional, unreliable, or in need of exceptions. This is why feminist legal theorists argue that law is not simply indifferent to women but actively shaped by male dominance. MacKinnon warns that neutrality is not neutral but a reflection of men's power over women.⁹ For Smart, law is not a passive record but an active force, producing social reality by giving weight to some voices and silencing others.⁸ Every time law declares women's emotions, testimony, or dependency to be irrelevant, it reshapes what counts as truth and justice. In African contexts, this reshaping is reinforced by both colonial legacies and customary practices that continue to privilege men's authority under the cover of tradition.

Seeing neutrality as a mask for male dominance is the first step in exposing the illusion of impartial law. For women in Nigeria and across Africa, the issue is not about law pretending to be more "universal" in the abstract way it already claims. The real challenge is for law to face real life and respond to the everyday struggles of women. This means recognising caregiving as proper work, not invisible labour; accepting that emotions and bodily realities are part of justice, not things to be pushed aside; and shaping the legal subject to reflect both women's and men's lives, not only the male worker or household head. As Martha Fineman argues, societies and laws must take dependency and care seriously, because these are permanent features of human life, not weaknesses to be ignored.¹⁰ Until law admits that it has never been neutral, neutrality will continue to function as a mask, protecting the same power structures it claims to rise above. Catharine MacKinnon reminds us that what law calls "neutral" has too often been the male point of view presented as if it were the whole truth.¹¹ The truth we cannot run from is that both reason and emotion are part of being human. Until our legal systems learn to value both, justice will remain more of a promise than a reality.

3. The Fallacy of Apathy in Women's Lives

The idea that law is neutral because it is indifferent has long shaped its self-image. Courts and legal systems present themselves as detached, rational, and above emotion, as if this coldness guarantees fairness. Yet in women's lives, indifference has rarely meant impartiality. Instead, it has operated as a quiet but powerful tool of silencing. The refusal to see women's experiences, or to treat them as legally relevant, has not removed bias but reinforced it. This is what may be called the fallacy of apathy: the belief that ignoring feeling or human reality makes law fair, when in fact this silence shields male privilege. Apathy is not absence. As Hilary Dowling observes, legal indifference "is rarely absence it is a presence that protects existing hierarchies while pretending to withdraw from them."¹² The very act of claiming to be neutral is therefore a political choice, one that has historically upheld male dominance while presenting itself as objective truth.

⁹ Catharine A MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press 1987) 32.

¹⁰ Carol Smart (n 4) 11.

¹¹ Sylvia Tamale, *Decolonization and Afro-Feminism* (Daraja Press 2020) 56–61.

¹² Hilary Dowling, 'Legal Indifference and the Politics of Neutrality' (2015) 22 *Feminist Legal Studies* 45, 47.

The treatment of sexual violence provides one of the clearest illustrations of this fallacy. For centuries, women's testimony in rape cases was treated as inherently unreliable, a suspicion tied to the stereotype that women are overly emotional, irrational, and prone to fabrication. Courts often required corroboration of a woman's account before it could be accepted, effectively suggesting that her word alone was not enough to establish truth.¹³ The justification was framed in the language of neutrality: judges claimed to be guarding against wrongful conviction by demanding stricter proof. But the effect was deeply gendered, making it harder to convict men while discrediting women's voices from the outset. As Catharine MacKinnon has argued, law has tended to see women through the eyes of men and to treat them in the way men treat them.¹⁴ In this context, men's perspectives on credibility became the standard, while women's lived experiences were sidelined. The supposed neutrality of evidentiary rules was in fact the codification of mistrust in women. Even when women's testimony was admitted, it was often judged not by the facts of violence but by the performance of emotion. Courts developed a narrow stereotype of the "real rape victim." She was expected to fight back, to cry, to scream, and to report the crime immediately.¹⁵ A woman who failed to meet these standards risked being dismissed as unreliable or complicit. Yet these expectations ignored the realities of trauma, fear, and the power imbalances in sexual violence. Silence, delayed reporting, or a lack of visible distress were taken as signs of dishonesty rather than normal responses to violation. The law's refusal to acknowledge the emotional and bodily realities of women meant that it actively constructed a biased standard of truth. Carol Smart reminds us that law is not a passive mirror of social meaning but an active force in producing it.¹⁶ By deciding that only certain behaviours counted as credible, law reshaped reality in a way that privileged men's accounts and cast suspicion on women's.

In Nigeria and other African societies, these dynamics have often been sharpened by cultural assumptions about shame and honour. Rape survivors have been expected to prove resistance in order to demonstrate that they did not consent, reinforcing stereotypes that a "good woman" must fight to the point of injury.¹⁷ In some cases, survivors have been pressured not to report at all, for fear of stigma to their families or marriage prospects. The law's apathy towards these pressures, presented as neutrality, meant that silence continued to serve male interests. Nigerian courts until recently often required corroboration of rape testimony, citing the danger of false accusations, even though such requirements had long been abandoned in other jurisdictions.¹⁸ Again, this was framed as a protective measure for fairness, but its effect was to silence women and make prosecution far more difficult. Domestic violence offers another stark example of how apathy disguises itself as neutrality. For a long time, violence within the home was treated as a private matter, outside the concern of public law. This hands-off approach was justified as impartiality, a refusal to interfere in family life. Yet this refusal was not neutral at all. It operated as protection of male authority in the household, leaving women vulnerable to repeated harm. Susan Okin has pointed out that the family, often idealized as a private space of care, has in fact

¹³ Jennifer Temkin, *Rape and the Legal Process* (2nd edn, Oxford University Press 2002) 118–120.

¹⁴ Catharine A MacKinnon (n9) at 237.

¹⁵ Susan Estrich, *Real Rape* (Harvard University Press 1987) 6–10.

¹⁶ Carol Smart, *Feminism and the Power of Law* (Routledge 1989) 11

¹⁷ Ayo Atsenuwa, 'Rape as Violence: An Agenda for Action' in Akintola JG (ed), *Women and Children under Nigerian Law* (Federal Ministry of Justice 1997) 56.

¹⁸ See *Egbohonome v The State* [1993] 7 NWLR (Pt 306) 383 (Supreme Court, requiring corroboration in rape cases).

been a central site of women's subordination.¹⁹ By treating violence in this space as invisible to law, states effectively condoned it. Neutrality here meant siding with the abuser by refusing to intervene.

In many African contexts, this indifference was compounded by colonial and customary legal systems. Under customary law in Nigeria, for instance, men were recognized as heads of households with disciplinary authority, while women were treated as dependants.²⁰ Colonial administrators reinforced this structure, preferring to leave "domestic" matters outside the reach of formal courts. Even in the postcolonial era, appeals to neutrality have often served to defend the status quo. For example, the Violence Against Persons (Prohibition) Act 2015 was a landmark step in criminalizing domestic violence, but in practice enforcement has been weak. Police and courts often dismiss cases as "family issues" better resolved privately.²¹ Here again, the refusal to act is presented as impartiality, when in fact it sustains male dominance in the home. Dowling's insight that indifference is never truly empty but actively protective of hierarchies becomes clear in these contexts.²² When law claims not to see domestic violence, it is not stepping outside judgment but making a choice: the choice to privilege the authority of men over the safety of women. Neutrality becomes a mask, presenting this choice as though it were an absence of involvement. Yet the consequences for women are very real. They are left unprotected, their suffering unacknowledged, their humanity diminished.

The fallacy of apathy extends beyond particular cases to the very structure of legal reasoning. To claim neutrality, law often insists that emotions and dependency are irrelevant. In doing so, it elevates the male-coded traits of rationality, autonomy, and independence while dismissing the female-coded traits of care, vulnerability, and emotion. Martha Fineman has argued that this division ignores the reality of human dependency, which is universal, not exceptional.²³ By refusing to see dependency, law constructs a "universal subject" who looks suspiciously like a man: able-bodied, autonomous, unburdened by care. Women, whose lives are often shaped by caregiving roles, do not fit this model, and so they are treated as deviations requiring special rules. This is not impartiality but the normalization of men's lives as the standard. In both sexual and domestic violence, the pattern is the same. The law claims to be impartial by setting aside women's feelings and experiences. Yet this very refusal to engage is what entrenches inequality. Women are judged against standards that do not fit their realities, and when they fail to meet them, they are disbelieved or ignored. Neutrality becomes a way of masking the gendered bias built into the system. What looks like fairness is in fact a refusal to confront the unequal structures of power that shape women's lives. The fallacy of apathy is especially damaging because it disguises itself as virtue. To be cold, detached, and unfeeling is praised as objectivity, while to bring emotion or care into law is dismissed as bias. But this framing misses the truth that what counts as "neutral" is itself already gendered. Reason has historically been coded as masculine, while emotion has been coded as feminine. By aligning itself with reason, the law

¹⁹ Susan Okin, *Justice, Gender and the Family* (Basic Books 1989) 135–137.

²⁰ Oyeronke Oyewumi, *The Invention of Women: Making an African Sense of Western Gender Discourses* (University of Minnesota Press 1997) 123.

²¹ Dorothy Efem Etim, 'Domestic Violence in Nigeria: The Legal Framework' (2016) 2 *Journal of Law and Social Sciences* 88, 94.

²² Dowling (n 12) 47.

²³ Martha A Fineman, *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies* (Routledge 1995) 161.

aligns itself with masculinity. As MacKinnon bluntly states, the law treats women the way men treat women.²⁴ Neutrality is therefore not a shield against bias but the expression of it. Recognizing this fallacy is essential to building fairer legal systems. For women in Nigeria, Africa, and beyond, the demand is not for law to double down on its cold universality, but for it to take their lives seriously. This means hearing women's testimony without suspicion, recognizing domestic violence as a matter of justice not privacy, and acknowledging care and dependency as fundamental to human society. Neutrality will only stop being a mask when law admits that it has never been neutral at all. Until then, apathy will continue to serve as a quiet, insidious defence of male dominance, silencing women while pretending to protect fairness.

4. The Illusion of Equality

The law often prides itself on the principle of equality before the law. It presents itself as a system where every individual, regardless of background, stands on the same footing. This promise of equal treatment is powerful: it suggests that justice is blind, impartial, and immune to the influence of power or social position. Yet for women, this promise has rarely matched reality. What law calls equality is too often nothing more than sameness, a measure that assumes men as the standard and judges women against that standard. The result is that women's distinct experiences are either erased or treated as signs of inferiority. The appearance of equality is maintained, but the substance is hollow. On paper, equality before the law looks simple: treat everyone the same. But when people start from unequal positions, treating them "the same" often produces more inequality. This is the illusion of equality. For example, in the American case *In Geduldig v. Aiello*, Aiello, a California woman, challenged the state's disability insurance program, which provided benefits to individuals unable to work due to illness or injury but excluded disabilities arising from normal pregnancy. She argued that this exclusion constituted sex discrimination, since only women could become pregnant, and denying pregnancy-related disability benefits effectively discriminated against women. The state defended the program by claiming that pregnancy was a special condition and that the law did not discriminate against women as a class because it covered many other disabilities affecting both men and women. The Supreme Court, in a 6–3 decision, ruled that the exclusion of pregnancy-related disabilities did not violate the Equal Protection Clause of the Fourteenth Amendment. The Court reasoned that the program distinguished between types of disabilities rather than between sexes, treating pregnancy as a separate condition rather than a characteristic of women. The Court effectively ignored the reality that only women experience pregnancy, demonstrating how an ostensibly equal law can institutionalize inequality in practice.²⁵ Why? Because pregnancy was seen as a "special condition," not something that men and women shared. In other words, the male body was treated as the standard. Neutrality here meant ignoring women's embodied realities and calling that equality. The decision was defended in the name of neutrality and equal treatment, but in practice it institutionalized inequality. Rosalind Dixon describes the problem sharply "if women are treated the same as men, male norms dominate; if they are treated differently, they are marked as inferior. Either way, women lose. Law promises equality but delivers only sameness with men as the model."²⁶ Dixon calls this the "double bind" of legal equality: either

²⁴ Mackinnon (n9) at 32.

²⁵ *Geduldig v. Aiello* 417 US 484 (1974).

²⁶ Rosalind Dixon, 'Anti-Feminism versus Abusive Feminism' (2025) Verfassungsblog <https://verfassungsblog.de/anti-feminism-versus-abusive-feminism/> accessed 22 September 2025.

invisibility through assimilation into male norms, or inferiority through recognition of difference.²⁷

Pregnancy and caregiving illustrate this dilemma clearly. Women who seek equal treatment in employment are expected to fit into a model built around uninterrupted male working lives. To ask for accommodation of maternity or caregiving is to risk being seen as less committed or less capable. Yet to deny those accommodations is to ignore the lived realities of women who bear children and shoulder the majority of care. The law's refusal to treat these realities as central keeps the male worker as the universal subject of employment law, while women are cast as exceptions in need of "special" treatment. Martha Fineman adds another perspective. She argues that vulnerability is a universal part of human life.²⁸ Everyone is dependent at some stage children, the elderly, the sick. Yet law is built around the image of an independent, self-sufficient individual. Because women are more often assigned the social roles of caregiver and dependent, law's refusal to recognize vulnerability works against them. Once again, apathy presents itself as neutrality, but it sustains gendered inequality. When the law ignores dependency as a shared human condition, it naturalizes male privilege while marking women's realities as secondary or exceptional. This illusion has practical consequences. Consider the employment sphere. The "equal" workplace is built around the assumption of a worker with no interruptions, no caregiving duties, and no pregnancies. Such a worker is rewarded as the ideal employee. Women who cannot conform to this model because they give birth or must balance work with care responsibilities are seen as less reliable or less productive. Equality here does not mean restructuring work to reflect real human lives. It means demanding that women adapt themselves to a male-centred ideal, or else accept marginalization. This is equality as sameness, not equality as justice.

In family law, the illusion appears in another form. Courts often claim to treat spouses equally, yet the "equal" division of assets or responsibilities may leave women worse off, because it ignores the economic value of unpaid care. By assuming neutrality, the law treats women's unpaid labour as invisible, perpetuating the myth that men and women enter and leave relationships on equal economic footing. In practice, women carry the cost of caregiving, while men retain greater economic independence. Equality here is a mirage: the law appears to treat both parties alike, but it does so by ignoring the structural differences produced by gender roles. Carole Pateman reminds us that this is not accidental. Modern legal and political systems were built on what she calls "the sexual contract."²⁹ The social contract, which supposedly created freedom and equality for citizens, excluded women from the start. Women were not seen as equal contractors but as subjects whose subordination was assumed. Law's indifference to this exclusion is not a failure but a foundation. Even today, we can see traces of this sexual contract. Employment law assumes a worker without caregiving duties. Family law claims neutrality but often leaves mothers with the heavier share of unpaid care. In each case, law's apathy toward women's lived realities keeps the sexual contract alive. The persistence of this background contract explains why equality under law so often translates into a demand that women fit into male-centred models, while their unique experiences remain marginalized.

²⁷ Ibid

²⁸ Martha A Fineman, *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies* (Routledge 1995) 161

²⁹ Carole Pateman, *The Sexual Contract* (Polity Press 1988) 6.

MacKinnon's analysis shows why this illusion persists. Because law is built through male experience, its claim to neutrality is already compromised.³⁰ Male standards are presented as universal, while female experiences are defined as particular. The effect is that women's realities are either assimilated into male norms or dismissed as irrelevant. Either way, the promise of equality is unfulfilled. What women are offered is not true equality but an illusion that leaves male privilege intact. Fineman's call for a vulnerability approach challenges this illusion at its root.³¹ If law can recognize the inherent vulnerability and dependence of all humans only then can it move beyond the false universal of the autonomous male subject. This would mean designing systems that take caregiving, bodily needs, and emotional realities seriously, not as deviations but as fundamental aspects of life. Equality would then mean building institutions around shared human conditions rather than demanding conformity to male-centred ideals.

For African and Nigerian women, this critique resonates strongly. Colonial and postcolonial legal systems have often promised equality in principle, yet delivered only sameness measured against male lives. For example, in cases of inheritance such as *Mojekwu v Mojekwu*, women were denied equal property rights under customary law, a denial that was long justified as neutral application of tradition.³² Here, equality before the law meant applying rules equally to men, while women's exclusion was normalized. Similarly, in workplaces where maternity leave is minimal and support for caregivers almost non-existent, neutrality once again translates into a system designed for male workers. The illusion of equality persists, with law appearing impartial while sustaining structures that disadvantage women. The fallacy is therefore not only theoretical but lived. Women encounter it in the courtroom, in workplaces, in families, and in society at large. The law's claim to equality is hollow when it demands conformity to male norms while refusing to value women's differences. True equality would require recognizing vulnerability and dependency as universal, giving proper weight to caregiving, and treating women's biological and social realities not as deviations but as central to justice. Until then, what women receive is not equality but its illusion a mask that conceals inequality while claiming to remove it.

5. The Sexual Contract and Patriarchy in Nigerian Law

Carole Pateman's *The Sexual Contract* remains central to feminist legal thought. She argues that the foundations of modern law and citizenship often celebrated as rooted in freedom and equality are in fact grounded in a deeper "sexual contract" that entrenched the permanent subordination of women.³³ This contract is not a literal event but a theoretical foundation that shaped the very conception of law and citizenship. Thinkers like Hobbes, Locke, and Rousseau imagined a universal "individual" entering the social contract, but this individual was implicitly male. The independence promised by the contract was the independence of male household heads, whose wives and children were positioned as dependents.³⁴ In the Nigerian context, the resonance of Pateman's analysis is striking. Nigerian law draws on multiple sources: English common law

³⁰ Ngaire Naffine, *Law and the Sexes: Explorations in Feminist Jurisprudence* (Allen & Unwin 1990).

³¹ Martha A Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20 *Yale Journal of Law and Feminism* 1.

³² *Mojekwu v Mojekwu* [1997] 7 NWLR (Pt 512) 283 (Court of Appeal, Nigeria).

³³ Carole Pateman, *The Sexual Contract* (Polity Press 1988).

³⁴ Thomas Hobbes, *Leviathan* (1651); John Locke, *Two Treatises of Government* (1689); Jean-Jacques Rousseau, *The Social Contract* (1762).

imported during colonial rule, Islamic law in the North, and diverse customary systems. Each of these has been structured around male authority. The colonial legacy of coverture, under which a married woman's legal identity was subsumed under her husband's, has echoes in customary practices that continue to deny women independent rights to property and inheritance.³⁵

One landmark example is *Mojekwu v Mojekwu*, where the Nnewi custom of “oli-ekpe” excluded daughters from inheritance. The Court of Appeal condemned the practice as discriminatory.³⁶ Yet when the matter reached the Supreme Court in *Mojekwu v Iwuchukwu*, the court cautioned lower courts against striking down customs too readily, invoking respect for tradition.³⁷ This demonstrates how law in Nigeria often hesitates to dismantle patriarchal authority, using neutrality and cultural relativism as justifications. Marriage law reinforces similar hierarchies. Polygamy is legally recognized under customary and Islamic law, almost always privileging men. Custody and maintenance rules presume women's caregiving role but undervalue its economic contribution, leaving women disadvantaged after divorce.³⁸ Employment law mirrors this pattern. Nigeria's Labour Act grants just twelve weeks of maternity leave³⁹ and no statutory paternity leave, reflecting the assumption that caregiving is exclusively women's responsibility. In practice, many women face dismissal due to pregnancy, and law offers minimal redress. Thus, in Afro-Nigerian life, as Pateman predicted, women's exclusion is not incidental. It is woven into the very definition of independence and authority in law. The Nigerian state may proclaim equality, but its legal frameworks continue to preserve the male subject as the baseline.

5.1 Women's Bodies and the Fallacy of Impartiality

The “myth of impartial law” is sustained in Nigeria through what might be called the legal fallacy of apathy: the claim that by ignoring difference, law ensures equality. In reality, this apathy entrenches inequality by protecting male authority. Rape law offers one of the clearest examples. Prior to the Violence Against Persons ACT, rape under the Criminal Code was defined narrowly as penile penetration of a vagina without consent.⁴⁰ This definition excluded many forms of sexual violence, reinforcing a framework that understood women's bodies in terms of male access. The VAPP Act expanded the definition of rape to include all forms of non-consensual penetration,⁴¹ but enforcement remains weak. Survivors face disbelief, stigma, and procedural obstacles. The fallacy of apathy is also evident in employment. Nigerian law treats pregnancy as an individual issue rather than a structural reality of reproductive labour. Employers frequently dismiss or sideline women, while maternity leave provisions are limited and unevenly enforced. Neutrality here means aligning law with the male worker who is imagined as unencumbered by care responsibilities. Constitutional jurisprudence reinforces the illusion of impartiality. While section 42 of the 1999 Constitution prohibits discrimination, courts have been reluctant to dismantle patriarchal customs. In *Mojekwu*, the Court of Appeal

³⁵ Susan Staves, *Married Women's Separate Property in England, 1660–1833* (Harvard University Press 1990).

³⁶ *Mojekwu v Mojekwu* [1997] 7 NWLR (Pt 512) 283 (Court of Appeal, Nigeria).

³⁷ *Mojekwu v Iwuchukwu* [2004] 4 S.C. (Pt II) 1 (Supreme Court, Nigeria).

³⁸ Emmanuel S. Ayooluwa, *Legal Pluralism: An Examination of Conflicting Standards in Statutory, Customary and Islamic Law Marriage in Nigeria* (2021) 4(1) *Ajayi Crowther University Law Journal* 1.

³⁹ Chidinma Blessing Nwakoby, Okoli Ifeyinwa Esther & Chinwe Patricia Iloka, ‘Rights of Women to Custody of Children in Nigeria: A Legal Appraisal’ (2025) 2(1) *Nnamdi Azikiwe University Journal of Private and Property Law* 1.

⁴⁰ Criminal Code Act Cap C38 LFN 2004, s 357.

⁴¹ Violence Against Persons (Prohibition) Act 2015, s 1.

condemned gender discrimination, but the Supreme Court later softened the stance, privileging cultural continuity.⁴² Neutrality was invoked not to protect equality but to shield patriarchal customs.

5.2 Female Genital Mutilation and Patriarchal Control

Female genital mutilation (FGM) starkly reveals how Nigerian law continues to sustain male authority over women's bodies. Nigeria has one of the world's largest populations of FGM survivors over 20 million women and girls.⁴³ Despite its prohibition under section 6 of the VAPP Act, enforcement is minimal. The Act itself only applies directly within the Federal Capital Territory and must be domesticated by individual states to take effect elsewhere.⁴⁴ The result is a patchwork of protections. Some states, like Ekiti and Osun, have domesticated the Act and criminalized FGM. Others lag behind, leaving survivors without effective remedies. Even in states where laws exist, prosecutions are rare. Reports show that nearly a decade after the VAPP Act, convictions for FGM remain negligible.⁴⁵ This gap between law and practice reflects the fallacy of apathy: state inaction is justified as respect for culture, even as women's bodily integrity is compromised. When courts do speak, they expose the patriarchal roots of the practice. In 2021, the High Court in Etinan, Akwa Ibom State, described FGM as "anachronistic, primitive and unconscionable," condemning it as incompatible with modern society.⁴⁶ Yet such rulings are isolated and symbolic. Without systematic enforcement, patriarchal authority over women's bodies persists. FGM illustrates vividly the hidden sexual contract. The practice is justified in terms of purity, morality, and marriageability all standards defined by men. Law's weak enforcement allows these standards to continue shaping women's lives. Neutrality is not neutrality but complicity in regulating women's sexuality to sustain male control.

5.3 Institutional Frameworks and Gender-Based Violence

Recent reforms attempt to challenge this pattern. Special gender-based violence courts have been established in the Federal Capital Territory to accelerate prosecution of sexual and domestic violence cases.¹⁵ Civil society groups have mobilized to push for wider domestication of the VAPP Act across Nigeria's 36 states.¹⁶ In Osun State, the police recently warned that perpetrators of FGM would face prosecution.¹⁷ Yet gaps remain wide. Between January and May 2024, over 6,100 cases of gender-based violence were reported nationwide under the VAPP Act regime, but convictions remain disproportionately low.¹⁸ Community resistance often undermines enforcement: in Oyo State, journalists documented cases where families pressured authorities to drop FGM prosecutions.¹⁹ These failures reveal how legal apathy works in practice law gestures at equality but protects patriarchal structures by avoiding confrontation with entrenched customs. Nigerian courts have occasionally advanced women's rights beyond custom. In *Ukeje v Ukeje*, the Supreme Court held that the Igbo customary law excluding female children from inheriting was unconstitutional, affirming daughters' equal rights.⁴⁷ This decision strengthened the anti-discrimination principle in section 42 of the Constitution. Similarly, in *A.G. Ondo State v A.G. Federation*, the Supreme Court upheld the validity of the VAPP Act as a

⁴² *Mojekwu v Iwuchukwu* [2004] 4 S.C. (Pt II) 1.

⁴³ World Health Organisation, *Female Genital Mutilation: Key Facts* (2023)

⁴⁴ VAPP Act 2015, s 6.

⁴⁵ TheCable, 'Two Years After Ban, FGM Still Rampant in Nigeria' (TheCable, 2017).

⁴⁶ Punch, 'Despite VAPP Act, Gender-Based Violence Rises to 6,142 Cases in Five Months' (Punch, 2024).

⁴⁷ *Ukeje v Ukeje* [2014] LPELR-22724 (SC).

federal law, reinforcing its legitimacy against challenges.⁴⁸ These rulings show the potential of law to resist patriarchy. But they remain fragile victories, as enforcement on the ground often lags, and patriarchal attitudes continue to shape practice.

5.4 Women's Bodies as the Foundation of Nigerian Authority

Taken together, these examples demonstrate that Nigerian law whether colonial, customary, or statutory has been built on the regulation of women's bodies. Patriarchal authority is preserved through customs that deny women inheritance, statutory gaps that marginalize women in the workplace, and weak enforcement of laws against gendered violence. For example, According to the Federal Ministry of Women Affairs, between 2020 and October 2023, Nigeria recorded 27,698 cases of sexual and gender-based violence (SGBV). Of these, 1,145 were fatal cases, but only 393 perpetrators were convicted: a conviction rate of roughly **1.4 percent**.⁴⁹ In the same dataset there were 9,636 "open" cases, 3,432 "new" cases, 1,741 "closed" cases, and 1,895 follow-up cases. Between 2020 and 2024, over 30,000 cases of GBV were officially reported to the Ministry. The minister noted that "one in every three Nigerian women has experienced some form of violence."⁵⁰ In a single span (September–October 2023), the minister reported 24,720 GBV cases nationwide, including about 975 fatal cases, and only 1,505 cases had been "closed" either via court/traditional resolution, or by survivors themselves due to fear/intimidation.⁵¹ According to UN Women Nigeria data: over 1 in 3 women aged 15-49 have experienced physical or sexual violence.⁵² FGM epitomizes this dynamic: formally criminalized yet socially sanctioned, it shows how neutrality and culture are used to shield male control. Catharine MacKinnon's claim that "the state is male"⁵³ applies forcefully to Nigeria. Neutrality, far from protecting women, encodes male norms into law. Martha Fineman's vulnerability theory adds further weight: law in Nigeria continues to assume an autonomous subject, mirroring the male breadwinner, while disregarding the universal reality of human dependency.⁵⁴

6. Toward a Law of Care

If the law is ever to move beyond the fallacy of apathy and the illusion of equality, it must be reimagined from its very foundations. At present, the law equates neutrality with indifference. It claims to stand above human needs, above emotion, above difference. But this indifference is not neutrality. As feminist theorists have shown, it is a mask that hides the power of patriarchy while presenting itself as fair. To challenge this mask, we need to think about law differently not as a system that strips away emotion and experience, but as one that takes seriously the realities of

⁴⁸ *Attorney-General of Ondo State v Attorney-General of the Federation* [2002] 9 NWLR (Pt 772) 222 (SC).

⁴⁹ Gazette Nigeria, 'Nigeria Recorded 27,698 Sexual, Gender-Based Violence Cases in Three Years – Official' (Abuja, 26 July 2024) <https://gazettengr.com/nigeria-recorded-27698-sexual-gender-based-violence-cases-in-three-years-official/> accessed 3 November 2025.

⁵⁰ TDPel Media, 'Nigeria Records 27,698 SGBV Cases in 3 Years – Official' (Abuja, 26 July 2024) <https://tdpelmedia.com/nigeria-records-27698-sgbv-cases-in-3-years-official/> accessed 3 November 2025.

⁵¹ *Daily Post (Nigeria)*, 'Over 30,000 Cases of Gender-Based Violence Reported in 4 Years – Women Affairs Minister' (1 July 2025) <https://dailypost.ng/2025/07/01/over-30000-cases-of-gender-based-violence-reported-in-4-years-women-affairs-minister/> accessed 3 November 2025.

⁵² *Gazette Nigeria*, '24,720 Gender-Based Violence Cases Reported Nationwide in One Month – Minister' (Abuja, 26 October 2023) <https://gazettengr.com/24720-gender-based-violence-cases-reported-nationwide-in-one-month-minister/> accessed 3 November 2025.

⁵³ Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989) 161.

⁵⁴ Martha A Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20 *Yale Journal of Law and Feminism* 1

care, vulnerability, and human interdependence. In short, we need a law of care. The idea that emotion has no place in law is deeply ingrained in legal tradition. Neutrality is imagined as detachment, a refusal to “take sides,” a belief that only by suppressing feeling can law be fair. But as Patricia Williams reminds us, “without emotion, the law is just words on paper.”⁵⁵ Law that ignores emotion does not become more impartial it becomes disconnected from the people it claims to serve. This is why rape laws that dismiss women’s testimony as unreliable, or family laws that ignore the economic value of caregiving, are not failures of neutrality but examples of how neutrality can become a weapon. By excluding women’s emotions and lived realities, law entrenches inequality while pretending to rise above it.

A feminist law of care would reject this apathy and replace it with attentiveness. Care is not weakness, nor is it a distraction from reason. It is part of what makes us human. Every person, regardless of gender, is born dependent on others and will rely on others again through illness, old age, or vulnerability.⁵⁶ To build legal systems that treat care as irrelevant is to build on a fiction: the fiction of the autonomous, self-sufficient man who has no needs and no ties. This figure may reflect the male breadwinner of the sexual contract, but it does not reflect human life. Law organized around this fiction inevitably disadvantages women, because women are more often tasked with providing care and are more directly affected by embodied realities like pregnancy. A law of care would begin by admitting this truth: dependency and care are not exceptions but universals. This shift would transform the way we think about equality. At present, equality before the law means sameness. Everyone is measured against the same abstract standard, which is silently modelled on the male body and male life. But as Catharine MacKinnon argued, this “equal” treatment is a double bind.⁵⁷ If women are treated the same as men, they are forced to adapt to male norms; if they are treated differently, their difference is seen as inferiority. Either way, women lose. A law of care would reframe neutrality, not as blindness to difference but as attentiveness to inequality. The question would no longer be whether women can fit into male models, but how law can respond to the real conditions of people’s lives. Take the example of pregnancy. Under the illusion of neutrality, pregnancy is treated as a “special” condition, separate from ordinary human experience, as in *Geduldig v Aiello*.⁵⁸ The male body is the standard; pregnancy is an exception. But under a law of care, pregnancy would not be marginalized it would be recognized as part of the cycle of life. Protections for pregnancy would not be seen as “special treatment” but as acknowledgement of a universal reality: every human being comes into the world through the vulnerability of birth. Such recognition would make the workplace less hostile to women and more humane for all.

Domestic violence offers another illustration. For centuries, it was treated as a private matter, beyond the concern of law. This supposed neutrality left countless women without protection, while men’s authority in the home went unchallenged.⁵⁹ A law of care would not accept indifference as impartiality. It would recognize that violence within the family is a social problem with deep roots in patriarchy, not a private matter to be ignored. Care in this context means valuing safety, dignity, and human flourishing over the pretence of state neutrality. In

⁵⁵ Patricia J Williams, *The Alchemy of Race and Rights* (Harvard University Press 1991) 226.

⁵⁶ Eva Feder Kittay, *Love’s Labor: Essays on Women, Equality, and Dependency* (Routledge 1999) 54.

⁵⁷ Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989) 215.

⁵⁸ *Geduldig v Aiello* 417 US 484 (1974).

⁵⁹ Elizabeth Schneider, *Battered Women and Feminist Lawmaking* (Yale University Press 2000) 23.

Nigeria, the importance of a law of care is especially visible in the area of inheritance and family property. In *Mojekwu v Mojekwu*, the Court of Appeal upheld a customary rule that denied daughters inheritance rights, a decision that treated exclusion as neutral tradition.⁶⁰ Only later was this approach challenged, as in *Ukeje v Ukeje*, where the Supreme Court finally held that disinheriting women was unconstitutional.⁶¹ The slow movement of the courts shows how legal apathy here disguised as respect for culture protected male privilege while leaving women vulnerable. A law of care would not be content with such indifference. It would start from the reality of women's economic dependence and seek to prevent exclusion, not defend it in the name of neutrality. The same applies to labour law in Africa and beyond. Workplaces continue to be structured around uninterrupted male working lives. Maternity leave is often short, and childcare support minimal. Neutrality here means ignoring the needs of caregivers, almost always women. A law of care would reorganize labour standards to reflect real life: providing adequate maternity and paternity leave, valuing part-time work, and ensuring that caregiving does not become a penalty. This would not only support women but create fairer conditions for all workers, since caregiving is a universal human responsibility.

Critics sometimes fear that bringing care into law would make it “subjective” or “emotional,” undermining the certainty of rules. But this critique rests on a false division between reason and emotion. As Carol Smart reminds us, law already produces meaning.⁶² It decides whose experiences matter, whose voices are credible, and what counts as reality. To call women's emotions irrelevant is not neutrality it is a decision to privilege male perspectives. A law of care would not abandon reason; it would broaden it, recognizing that human reason is always embedded in emotion, relationships, and context. This is also the strength of Fineman's vulnerability theory. She insists that because all human beings are vulnerable, the law must start from that fact rather than hide from it.⁶³ By recognizing universal dependency, law can shift from protecting only those who fit the male model of independence to supporting everyone. Care in this sense is not charity or “special treatment,” but the foundation of justice itself. Moving toward a law of care would mean rethinking neutrality at its core. Neutrality cannot mean apathy or blindness. Instead, it should mean attentiveness to inequality and willingness to act where structures of power silence or exclude. Neutrality, properly understood, would not erase difference but confront the inequalities that difference exposes. For women, this means that their experiences of pregnancy, caregiving, violence, and exclusion must be treated as central, not marginal. For society as a whole, it means building legal systems that reflect the truth of human interdependence rather than clinging to the fiction of independence.

This vision is not utopian. Traces of it already exist. In some jurisdictions, laws against domestic violence explicitly recognize the social harm of abuse, moving beyond the private/public divide. In constitutional cases, courts have sometimes acknowledged the reality of women's exclusion and acted to correct it. In Nigeria, the Supreme Court in *Ukeje v Ukeje* did more than strike down discriminatory inheritance rules it affirmed the constitutional promise of equality as a living

⁶⁰ *Mojekwu v Mojekwu* [1997] 7 NWLR (Pt 512) 283 (Court of Appeal, Nigeria).

⁶¹ *Ukeje v Ukeje* [2014] 11 NWLR (Pt 1418) 384 (Supreme Court of Nigeria).

⁶² Carol Smart, *Feminism and the Power of Law* (Routledge 1989) 11.

⁶³ Martha A Fineman, ‘The Vulnerable Subject: Anchoring Equality in the Human Condition’ (2008) 20 *Yale Journal of Law and Feminism* 1.

principle.⁶⁴ Each of these steps points toward a law that is less indifferent, more humane, and closer to justice. The challenge is to make these steps consistent rather than exceptional. As Williams reminds us, words on paper are not enough.⁶⁵ A law of care must be lived in practice, not just proclaimed in theory. It requires judges, lawmakers, and societies to reject the comfort of apathy and the illusion of neutrality. It demands that law become attentive: attentive to inequality, to the realities of care, and to the dignity of all human beings. Only then can law move beyond the mask of neutrality and become what it claims to be: an instrument of justice.

7. Recommendations

First, we need to rethink what “neutrality” means in law. Being neutral should not mean pretending that everyone’s situation is the same. True fairness means seeing and addressing inequality where it exists. When courts or lawmakers ignore the realities women face in sexual violence, discrimination, or inheritance they are not being fair; they are choosing to overlook injustice. The law should be built on care and understanding, not cold detachment.

Second, gender protection laws must actually work in practice.

The Violence Against Persons (Prohibition) Act 2015 should be enforced in every state, not just on paper. Police stations should have well-funded gender desks, and special courts should handle sexual and gender-based violence (SGBV) cases quickly and sensitively. Victims need real support trained prosecutors, social workers, and counsellors who understand trauma. Women’s testimony must be treated as trustworthy on its own, without outdated demands for “extra proof.” Domestic and sexual violence must be treated as crimes against society, not private family issues. Harmful practices like female genital mutilation (FGM) should bring automatic legal action, backed by strong community education campaigns.

Third, real change must start with education and the justice system. Law schools should teach Gender, Law, and Justice as a required subject so future lawyers understand how bias and inequality show up in real cases. Students should also work with victims and communities through legal clinics to learn hands-on. Judges and court officials should go through yearly gender-awareness and trauma-informed training. This should cover fair treatment of survivors, how bias affects decisions, and how to apply gender laws correctly. Professional bodies like the Nigerian Bar Association should make gender competence a key part of career development and judicial promotion.

Lastly, labour and family laws must change to reflect real life. Workplaces should support both women and men in raising children and caring for family not treat it as a “woman’s duty.” Family and inheritance laws should recognize caregiving as valuable work that deserves legal and financial support. The government could give tax breaks or benefits to families providing unpaid care. When we build fairness around care, equality, and real human experience, the law stops being a tool of exclusion and starts serving everyone. Real justice means more than words it means changing how people are treated, from the classroom to the courtroom.

8. Conclusion

⁶⁴ *Ukeje v Ukeje* [2014] 11 NWLR (Pt 1418) 384 (Supreme Court of Nigeria).

⁶⁵ Williams (n 51) 226.

The central claim of this study is that the supposed neutrality of law is neither impartial nor universal. Instead, it operates as a mask that conceals patriarchal foundations while presenting them as objective standards. By equating fairness with indifference, the law silences the lived realities of women and marginalized groups. This apathy does not remove bias but reinforces it, transforming the promise of equality into a hollow formality that measures all lives against male norms. Across different contexts sexual violence, domestic abuse, employment, inheritance, and even practices like female genital mutilation law's indifference has been shown to function as complicity. Women's experiences are dismissed as "special" or irrelevant, while men's experiences are elevated as the universal standard. The illusion of equality is maintained by treating sameness as fairness, even though starting points are unequal. This double bind ensures that women either assimilate into male-defined norms or are marked as inferior when their realities differ. The Nigerian context underscores these patterns. Customary and statutory laws, colonial legacies, and weak enforcement all reveal how law protects male authority while claiming neutrality. Court rulings like *Mojekwu v Mojekwu* and *Ukeje v Ukeje* show both the persistence of patriarchy and the potential for reform. Yet without a structural shift, these gains remain fragile. The law continues to privilege male perspectives, entrench hierarchies, and sustain what Pateman calls the "sexual contract." Thus, the illusion of impartiality remains one of the greatest obstacles to genuine equality.