

International Journal of Law Research, Education and Social Sciences

Open Access Journal – Copyright © 2025 – ISSN 3048-7501
Editor-in-Chief – Prof. (Dr.) Vageshwari Deswal; Publisher – Sakshi Batham



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Gender Justice and Equality: A Contemporary Overview

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Received 12 June 2025; Accepted 10 July 2025; Published 14 July 2025

Gender justice and equality are foundational to a fair and inclusive society, ensuring all individuals, regardless of gender, identity, or orientation, enjoy equal rights, opportunities, and protections. In contemporary India, these ideals face complex challenges and debates, particularly concerning the Uniform Civil Code (UCC), marital rape, and transgender justice. The UCC, envisioned under Article 44 of the Indian Constitution, seeks to replace religiously based personal laws with a standardised civil code governing marriage, divorce, inheritance, and adoption. Advocates argue that the UCC can eliminate gender-based discrimination present in current personal laws, which often disadvantage women in matters like inheritance, divorce, and maintenance. However, its implementation remains contentious, entangled in political and religious disputes, and may not address deeper issues such as marital rape or the specific rights of marginalised groups. Critics caution that uniformity does not guarantee equality, and a UCC could replicate existing patriarchal norms if not carefully designed to uphold gender justice. Marital rape remains unpunished by the Indian Penal Code, perpetuating inequality and violating women's constitutional rights to dignity and bodily autonomy. This legal gap highlights the need for urgent reform to align India with international standards, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India has ratified but not fully implemented domestically. Transgender rights, though advanced by the Transgender Persons (Protection of Rights) Act, 2019, face ongoing challenges. The Act is criticised for its top-down approach, weak self-identification provisions, and inadequate enforcement, leaving transgender individuals vulnerable in healthcare, education, employment, and justice systems. This analysis advocates for a rights-based, intersectional approach to gender justice, emphasising substantive equality over tokenistic inclusion. It calls for legal reforms

that are both legally robust and socially sensitive, and underscores the crucial roles of the judiciary, civil society, and political leadership in realising the Constitution's promise of dignity, autonomy, and justice for all.

Keywords: *gender justice, equality, ucc, marital rape, transgender rights.*

INTRODUCTION

Gender equality is the notion that all people, regardless of gender identity—female, male, transgender, or non-binary—have equal rights, responsibilities, and opportunities in all aspects of life. It aspires to remove gender discrimination and enable everyone to follow their dreams freely. Gender equality helps society by fostering economic growth, alleviating poverty, saving lives, and minimising the danger of human trafficking. Articles 14, 15, and 16 of India's constitution protect gender equality by outlawing discrimination and giving equal opportunity in the courts and public sector. Gender justice, on the other hand, goes beyond equality by addressing historical and structural inequities, acknowledging the special obstacles that disadvantaged genders experience, and advocating for personalised solutions to achieve real fairness and dignity for all people.

Contemporary problems, such as the Uniform Civil Code (UCC), aim to integrate personal laws across religions to eradicate gender-biased behaviours and advance gender justice and equality. Landmark cases like *Shah Bano* and *Sarla Mudgal* demonstrate the legal difficulties and need for reforms to defend women's rights. Marital rape is a difficult subject in India, with continual legal battles calling for its prosecution to protect bodily autonomy and dignity. Transgender rights have been recognised by key rulings such as *NALSA v Union of India* and statutes such as the Transgender Persons (Protection of Rights) Act 2019, which affirm legal recognition, protection from discrimination, and social inclusion. Gender justice and equality remain challenging due to deep-rooted societal norms, political underrepresentation, and economic inequality. Comprehensive legal changes, awareness initiatives, and inclusive policies are needed.

UNDERSTANDING GENDER EQUALITY

Gender equality is a fundamental human right and a cornerstone for creating fair and equitable societies. While progress has been made over the years, gender disparities persist in various forms around the world. Achieving gender equality is essential not only for individuals but also for communities and nations as a whole.

Gender Equality: A Definition: Gender equality means that all genders are free to pursue whatever career, lifestyle choice, and abilities that they want without discrimination. It refers to a state in which individuals of all genders have equal rights, responsibilities, and opportunities in all areas of life. It means that the rights and dignity of people are not determined by their gender, and everyone, regardless of being female, male, non-binary, or transgender, can equally access their rights and benefits from resources, decision-making and life opportunities. This, in turn, impacts children and families, and people of all ages and backgrounds. Equality in gender does not mean that women and men will have or need the same resources, but that women's, men's, trans people's, and gender diverse people's rights, responsibilities and opportunities will not depend on their assigned gender at birth.¹

Why is Gender Equality Important? Gender equality serves as the cornerstone of a flourishing society and goes beyond simple justice. Stronger economies, better communities, and a more secure world are all made possible but empowering everyone, regardless of gender. Regardless of what society expects, gender equality enables people to reject damaging prejudices and follow their ambitions. Everyone feels comfortable, appreciated, and respected in this setting, and a variety of viewpoints and skills are encouraged to spur creativity and advancement. Generations to come will have a better future if we embrace gender equality.

Benefits of Gender Equality: Gender equality feels like a distant dream these days. While progress has been achieved, statistics from organisations such as UN Women paint a bleak picture. Over two billion women do not have the same career opportunities as men. At the current rate, closing the worldwide wage disparity will take around a century. Human trafficking affects both men and women, and girls account for more than 70% of all human trafficking

¹ 'What Is Gender Equality? Learn the Definition with Examples' (*United Way NCA*, 08 August 2024) <<https://unitedwaynca.org/blog/what-is-gender-equality/>> accessed 02 June 2025

victims. In light of these statistics, gender equality should be prioritised. Achieving gender equality will have a significant positive impact on the world. Here are just a few of the benefits:

It saves lives: In many locations, women and girls are at risk of death due to a lack of resources and empowerment. Natural catastrophes are one instance. Experts examined the impact of gender disparity I mortality and injury at the 2005 World Conference on Disaster Reduction. Additional research indicates that women and girls are even more at risk due to climate change, which increases the severity of natural disasters. Women can take a more active part in their safety when a gender viewpoint is introduced into conversations.²

It's Good for the economy: The effect that women have extends beyond specific businesses and groups. Research indicates that the economy benefits from a greater number of women participating in the workforce. The GDP of OECD nations would rise by \$6 trillion if female employment rates were increased to equal those of Sweden. Gender wage disparities ultimately cost the economy money.

Reduce Poverty: The highest rates of poverty are found among young females. The gender disparity in poverty widens as boys and girls grow older. This is probably because women are not given the same access to education and employment possibilities as men, and after marriage, they frequently do not work. Women and their families remain impoverished due to gender inequity. Women can flourish when they have access to improved healthcare, education, and employment possibilities. Investing in gender disparity is a long-term, very successful strategy to lower poverty.

It reduces Human Trafficking: The majority of human trafficking victims are women and girls, while men are sometimes victims. Traffickers view them as an easier target since they are more defenceless. Girls and women are less likely to become victims of human trafficking when they have access to better education and employment opportunities. By lowering poverty and instability, gender equality may also contribute to a nation's strengthening. Human trafficking is fostered by them.

² Emmaline Soken-Huberty, '10 Reasons Why Gender Equality Is Important' (*Human Rights Careers*) <<https://www.humanrightscareers.com/issues/10-reasons-why-gender-equality-is-important/>> accessed 02 June 2025

CONSTITUTIONAL PROVISIONS OF GENDER EQUALITY

Fundamental Rights and the Empowerment of Women: The fundamental rights entrenched in the Constitution serve as the foundation for women's rights in India. These rights act as the foundation for advancing gender equality and protecting women from discrimination and injustice.

Article 14: Right to Equality: Article 14 of the Indian Constitution guarantees the “right to equality” to every citizen, asserting that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.³ This provision is instrumental in ensuring that women have equal rights and opportunities as men, laying the groundwork for gender equality in the political, economic and social spheres.

Article 15(1) and Article 15(3): Prohibition of Discrimination and Special Provisions: While Article 15(1) prohibits discrimination by the state on grounds of religion, race, caste, sex or place of birth.⁴ Article 15(3) empowers the state to make special provisions for women and children.⁵ These articles collectively ensure that women are not subject to arbitrary discrimination while also allowing for affirmative actions to address historical and systemic gender imbalances.

Article 16: Equality of Opportunity in Matters of Public Employment: Article 16 extends the right to equality to the domain of employment, ensuring equal employment prospects for all citizens in terms of employment or appointment to any State position. This rule is critical for ensuring that women are treated equally in the public sector.⁶

UNDERSTANDING GENDER JUSTICE

In a world that prioritises equality of opportunity, democracy, and human rights, gender justice is a vital component of a just and forward-thinking community. By emphasising justice, righting historical wrongs, and guaranteeing that everyone, regardless of gender, can live a life of dignity and freedom, it transcends the fundamental idea of gender equality.

³ The Constitution of India 1950, art 14

⁴ The Constitution of India 1950, art 15(1)

⁵ The Constitution of India 1950, art 15(3)

⁶ The Constitution of India 1950, art 16

Gender justice refers to the fair and equitable treatment of people of all genders in social, economic, political, and legal settings. Nonetheless, women remain underrepresented in decision-making positions that have a direct impact on their lives, safety, and well-being.

Gender Justice: Gender justice is the protection and promotion of equal rights, responsibilities, and opportunities for individuals of all genders, directly addressing the social, legal, economic, and political inequalities that stem from gender-based discrimination. While gender equality focuses on treating everyone the same, gender justice goes further by recognising that different genders may face unique challenges and thus may require Tailored solutions to achieve true fairness.⁷ Ultimately, gender justice aims to ensure equal access for all genders to education, employment, healthcare and participation in the decision-making process. It acts against gender-based discrimination, which also encompasses discrimination against women, men, transgender and gender non-conforming people. Discrimination may be in the form of unequal pay, gender-based violence, and exclusion from specific roles or positions.

WHY IS GENDER JUSTICE IMPORTANT?

Gender Justice is important because it upholds human dignity and rights, empowers all members of society, and promotes social balance and peace. It is a foundation for a healthy, fair, and thriving community.

Human Dignity and Rights: Gender Justice is essential because it ensures that every individual, regardless of gender, is treated with dignity and respect. It means that no one should face denial of their basic rights simply because of their gender identity or expression. Gender justice protects people from discrimination, whether at work, in public spaces, in education, or within the family and from violence, which can take many forms, including physical, emotional, and sexual abuse. By upholding gender justice, societies affirm the equal value and worth of all people.

Empowered Societies: When societies promote gender justice, they empower women, transgender people, and other marginalised genders. This empowerment is not just about fairness; it also brings significant benefits to society as a whole. Inclusive societies, where

⁷ Swathi Satish, 'Gender Justice' (*Clear IAS*, 18 October 2023) <<https://www.clearias.com/gender-justice/#gender-justice>> accessed 02 June 2025

everyone has the opportunity to contribute, tend to be more productive and stable. Research consistently shows that gender equality is linked to better economic performance, improved health, and stronger education systems. When people are not held back by gender-based barriers, everyone benefits.

Social Balance and Peace: Gender injustice can be a source of unrest and unconflicted. When certain groups are systematically denied opportunities or subjected to violence because of their gender, it creates inequality and resentment. This can lead to social tensions and even violence. On the other hand, a just approach to gender issues helps to build peaceful and cooperative communities. By addressing gender-based discrimination and violence, societies can foster understanding, trust, and collaboration among their members, leading to a more harmonious and stable environment.

CONSTITUTIONAL PROVISIONS OF GENDER JUSTICE

India has a long history of being one of the most unequal and insensitive to gender issues in the world. This is especially true for women, who suffer from a range of social issues like infanticide, foeticide, child marriage, and gender biases regarding the ownership of coparcenary property, among others. Indian women should be treated equally, and the state should protect them, according to the constitution's creators.

Right to Equality (Article 14): Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the law to all citizens, regardless of their gender. It prohibits discrimination on the grounds of sex.

Prohibition of Discrimination (Article 15): Article 15 prohibits discrimination based on sex, among other grounds. It empowers the state to make special provisions for women and children.

Equality of Opportunity (Article 16): Article 16 ensures equality of opportunity in matters of public employment. It prohibits discrimination on the grounds of sex, and the state is authorised to make reservations for women in government jobs.

Protection of Minorities (Article 29): Article 29 protects the educational and cultural rights of minorities, which includes women belonging to minority communities.

Abolition of Untouchability (Article 17): Article 17 abolishes “untouchability” in any form and prohibits its practice. While this provision doesn’t explicitly mention gender, it has a significant impact on the lives of women from marginalised communities.

CONTEMPORARY ASPECTS

Uniform Civil Code: Uniform Civil Code is a proposal in India to formulate and implement personal laws of citizens which apply to all the citizens equally, regardless of their religion. It refers to the entire set of common laws and covers personal matters like marriage, adoption, divorce and inheritance. It aims to address this by establishing a uniform framework for all citizens. Its main objective is to replace the existing diverse personal laws based on religious scriptures with a single, uniform set of laws applicable to all citizens. “The Indian Constitution’s Article 44 mandates that the State ensure that all Indian people have access to a uniform civil code.”⁸ It is a component of the State Policy Directive Principles, which serve as guidance for both the federal and state administrations. The UCC, which aims to establish a complete legal framework that integrates personal laws for all citizens, was first implemented in Uttarakhand, India.⁹

Since it aims to provide equal rights across religions by eliminating the gender-biased provisions in personal laws about marriage, divorce, inheritance, and maintenance, the Uniform Civil Code (UCC) has frequently been associated with gender justice and equality. The UCC would contribute to the development of a more equitable legal system by outlawing discriminatory practices found in certain religious traditions, such as polygamy and unequal inheritance rights. To empower women and advance gender equality, it also seeks to eliminate religious restrictions that keep them from exercising all their rights. Articles 14 and 15 of the Constitution, which guarantee equality before the law and forbid discrimination on the grounds of religion, race, caste, sex, or place of birth, would also be fulfilled in part by the UCC.

The main obstacle to India’s Uniform Civil rule (UCC) implementation is the nation’s extreme religious and cultural variety, which makes it challenging to create a single rule that all cultures can agree upon. Many communities worry that their distinctive cultural and religious identities

⁸ The Constitution of India 1950, art 44

⁹ Arshiya Gupta, 'India: Uttarakhand Becomes First State to Implement the Uniform Civil Code' (*Jurist*, 27 January 2025) <<https://www.jurist.org/news/2025/01/india-uttarakhand-becomes-first-state-to-implement-the-uniform-civil-code/>> accessed 02 June 2025

could be compromised by a unified code, which would result in the loss of customs and traditions. The issue around the UCC has been especially delicate and complicated because of the conflict between the demand for equality and the protection of religious freedom.

HOW DOES UCC ADVANCE GENDER JUSTICE AND EQUALITY?

The Uniform Civil Code (UCC) is closely linked to the principles of gender justice and equality because it aims to create a common set of personal laws for all citizens, irrespective of their religion, which can help eliminate discriminatory practices prevalent in some religious personal laws.

Discrimination is outlawed: Many religious personal laws have rules that treat men and women differently, such as limited maintenance rights for women, polygamy permitted solely for men, and uneven inheritance rights. Equal rights for men and women in marriage, divorce, inheritance, adoption, and maintenance are the goals of the UCC.¹⁰

Women's Empowerment: By giving them consistent, unambiguous rights and remedies, a UCC might lessen the vulnerability that inconsistent or discriminatory religious laws cause for women.¹¹

Clarity and Simplicity in the Law: A uniform civil code eliminates uncertainty and misunderstanding about women's rights, facilitating improved legal enforcement and simpler access to justice.¹²

CASE STUDIES

Shah Bano Case (1985) –

Facts: In the landmark Shah Bano case (1985), Shah Bano Begum, an elderly Muslim woman, was married to Mohammad Ahmed Khan for over 40 years. In 1978, Khan divorced her through triple talaq and ceased providing her maintenance. Shah Bano, left without financial support, filed a petition under Section 125 of the Criminal Procedure Code (CrPC), 1973, a secular law that provides for the maintenance of wives, children, and parents who are unable to maintain

¹⁰ Flavia Agnes, *Marriage, Divorce and Matrimonial Litigation* (1st edn, OUP 2011)

¹¹ *Ibid*

¹² *Sarla Mudgal v Union of India* (1995) 3 SCC 635

themselves. This case raised significant questions about the conflict between personal laws and secular law in India.

Issues: The fundamental question was whether a Muslim lady who was divorced could obtain support under the secular law (CrPC) or if, according to Muslim personal law, she could only receive maintenance for the iddat period, which is around three months following the divorce.

Judgment: In its decision, the Supreme Court upheld Shah Bano's right to maintenance under Section 125 of the Criminal Procedure Code (CrPC), which applies to all citizens regardless of their religion, thereby affirming that a Muslim woman can claim maintenance even after the iddat period if she cannot maintain herself. The Court highlighted that Section 125 CrPC is a secular law designed to prevent vagrancy and ensure social justice. In a landmark observation, the Supreme Court also underscored the necessity of implementing a Uniform Civil Code (UCC) to promote national integration and gender justice. Justice Y.V. Chandrachud stated that "a common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies."¹³

Sarla Mudgal Case (1995) –

Facts: The Sarla Mudgal case (1995) involved Sarla Mudgal and others challenging the practice of Hindu men converting to Islam to contract a second marriage under Muslim personal law while still married under Hindu law. This was done to circumvent the Hindu law's prohibition on bigamy. The petitioner argued that this practice violated the law, undermined the sanctity of marriage, and harmed women's rights.

Issues:

1. Can a Hindu man convert to Islam solely to contract a second marriage without divorcing his first wife?
2. Does this practice violate the bigamy prohibition under the Hindu Marriage Act?
3. What is the State's responsibility regarding this practice and the need for a Uniform Civil Code?

¹³ *Mohd Ahmed Khan v Shah Bano Begum* (1985) 3 SCR 844

Judgment: The Supreme Court decided that it is unlawful to convert to Islam merely to get married again without divorcing the first wife. This cannot be utilised to get around the Hindu Marriage Act's prohibition on bigamy. To protect women's rights and stop the abuse of personal laws, the Court also emphasised the necessity for the State to take into consideration a Uniform Civil Code (UCC). The case demonstrated how persons might circumvent legal limits by assuming different religious identities according to parallel personal laws. The Court underlined that a Uniform Civil Code would guarantee consistent marriage rules throughout communities, close these gaps, and advance gender justice.¹⁴

MARITAL RAPE

Marital Rape is also known as spousal rape. It is the act of sexual intercourse with one's spouse without the consent of the spouse. The essential element is a lack of consent, and there is no need that to have physical violence. It is considered domestic violence, cruelty and sexual abuse.¹⁵ In India, Marital Rape is not criminalised under the IPC. Section 375 defines rape, but it has some exceptions that sexual intercourse by a man with his wife if she is under 15 years of age is not considered rape. This exception has been heavily criticised till today. The constitutionality of the marital rape exception has been constantly challenged in the courts. Many legal reforms have also taken place regarding marital rape. Many legal activists argue that marital rape violates women's fundamental rights to bodily integrity, dignity and equality, and it contradicts international human rights. In countries like the UK, USA, Australia, and Canada, Marital Rape and they considered an act of violence and a crime like rape by strangers. These countries typically stated that marriage does not imply perpetual consent.

In the United States, marital rape is illegal under state law rather than federal statute. Each state in the United States has its criminal code that regulates sexual assault, including marital rape, even though the federal government has addressed sexual violence generally under the Violence Against Women Act (VAWA) of 1994.¹⁶

¹⁴ *Sarla Mudgal v Union of India* (1995) 3 SCC 635

¹⁵ Indian Penal Code 1860, s 375(2)

¹⁶ Violence Against Women Act 1994

California –

Code: California Penal Code § 262

Law: Marital rape is explicitly criminalised. It defines rape as non-consensual sex, even within marriage.

New York –

Code: New York Penal Law, Article 130

Law: Marital status does not provide a defence to a charge of rape or sexual assault.

Texas –

Code: Texas Penal Code, Title 5, Chapter 22, Section 22.011

Law: Marriage is not a defence. All non-consensual sex, regardless of marital status, is criminalised.

Florida –

Code: Florida Statutes § 794.011

Law: Marital rape is criminalised. There was a limited exemption earlier, but it has been mostly repealed.

Michigan –

Code: Michigan Compiled Laws § 750.520e

Law: Marital rape is a crime. Spousal exceptions have largely been eliminated.

Colorado –

Code: Colorado Revised Statutes § 18-3-402

Law: Marriage is not a defence. Consent is the determining factor.

Washington –

Code: Revised Code of Washington (RCW) § 9A.44.060

Law: Marital status does not provide any exemption from rape prosecution.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

It is an international treaty adopted in 1979 by the UN General Assembly. It aims to eliminate discrimination against women in all forms of life, including family life. Although CEDAW does not specifically address “marital rape,” it does contain broad clauses that have been interpreted as requiring the criminalisation of marital rape.

Article 1 defines discrimination against women as any distinction, exclusion, or restriction that limits women's rights and freedoms. Article 2 directs States Parties to eliminate prejudice by legislation and other measures, including changing laws that perpetuate inequity. Article 16 stipulates the abolition of discrimination in marriage and family relations, as well as the provision of free and informed consent to marriage.

The CEDAW Committee, which oversees the Convention's implementation, has emphasised that gender-based violence, including marital rape, constitutes discrimination against women. It has declared that states have a responsibility to prevent, investigate, and punish all types of violence against women, including those committed within the home. In General Recommendation No. 19 (1992), the Committee emphasised that family violence is one of the most pernicious kinds of violence against women, expressly mentioning violence within marriage, such as marital rape. Furthermore, in General Recommendation No. 35 (2017), which amended General Recommendation No. 19, the Committee reiterated this position by specifically addressing marital rape and urging states to criminalise it.¹⁷

CASE STUDIES

Independent Thoughts v Union of India –

¹⁷ Convention on the Elimination of All Forms of Discrimination Against Women 1981

Facts: The petitioner, Independent Thought (NGO), challenged Exception 2 of Section 375 of the Indian Penal Code, which states that sexual intercourse by a man with his wife, if she is under 15 years old, is not rape. This petition focused on child marriage and sought to criminalise the sexual intercourse with a minor wife (15-18 age). As it contradicts the child protection laws, the Protection of Children from Sexual Offences Act (POCSO), which sets the age of consent is 18 years.

Issues:

1. Does Exception 2 to Section 375 of the IPC infringe upon the fundamental rights of married underage girls aged 15 to 18?
2. Is it contradictory to other child protection statutes, such as POCSO and the Prohibition of Child Marriage Act (PCMA), 2006?

Arguments by the Petitioner:

- The marital rape exception for wives aged 15 to 18 violates Articles 14, 15, and 21 of the Constitution by denying equal protection and physical autonomy.
- This exemption contradicts POCSO, which considers any sexual act with a female under 18 to be statutory rape, regardless of marital status.
- Child marriage is still widespread, and it should not be used to justify child sexual assault.

Arguments by the Respondent:

- Marriage has a sacred status in Indian society, and criminalising it might destroy family dynamics.
- Other laws already provide remedies for abuse within marriage (such as Section 498A IPC for cruelty).
- The exemption was a matter of legislative policy that should be left to Parliament to modify.

Judgment: The Supreme Court read down exception 2 of Sec 375 of the IPC as “Sexual Intercourse with a wife who is below 18 years of age is considered as Rape” regardless of marital status. The court harmonised IPC with the POCSO and PCMA, ensuring that the age of consent is 18 and Marriage does not provide immunity for sex with a minor, and the court held

that it violates Article 14,15 and 21 as it deprived the protection of minor wives and discriminated against them.¹⁸

RIT Foundation & Ors v Union of India –

Facts: The case of RIT Foundation & Ors. v Union of India is a constitutional challenge to India's marital rape exception. The petitioners—RIT Foundation (an NGO), All India Democratic Women's Association, and individual petitioners—argued that Exception 2 of Section 375 IPC, which declares that sexual intercourse between a man and his wife if she is not under the age of 15 is not rape, violates fundamental rights. They asserted that this exclusion discriminates against married women by denying them the same legal protection against sexual violence as unmarried women, as well as violating their constitutional rights to equality, non-discrimination, and dignity. The respondent, the Union of India, defended the clause, emphasising social reasons and the importance of legislative action rather than judicial involvement.

Issues:

- Does the marital rape exception violate Articles 14 (Equality), 15 (Non-discrimination), and 21 (Right to life and personal liberty) of the Constitution?
- Is forced sex in marriage considered rape under the Constitution?
- Is the marital rape exception denying married women protection from sexual violence?

Arguments by Petitioners:

- Denying married women protection from rape violates their fundamental rights (Article 14).
- It reinforces gender stereotypes, implying that a wife is her husband's property.
- Violation of Bodily Autonomy: Forced sex inside marriage undermines bodily integrity and sexual autonomy, protected under Article 21

¹⁸ *Independent Thought v Union of India* AIR 2017 SC 4904

- India has signed treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which demand protection from gender-based violence.

Arguments by Respondent:

- Criminalising marital rape could destabilise marriages and lead to harassment.
- This is a complicated societal issue best addressed by Parliament.
- Existing laws, including Section 498A IPC (cruelty by spouse) and the PWDVA of 2005, already allow remedies for marital abuse.

Judgment: The High Court issued a divided verdict:

- Justice Rajiv Shaker ruled that Exception 2 under Section 375 IPC is invalid.
- It breaches fundamental human rights and denies married women equal protection as unmarried women.
- Consent was emphasised as vital, regardless of marital status.
- Justice C. Hari Shankar disagreed with removing the marital rape exception.
- It was determined that such a choice necessitates legislative involvement, and courts should not intrude on Parliament.¹⁹

TRANSGENDER RIGHTS

Transgender rights are crucial for achieving gender justice and equality. They are an integral part of the broader struggle for achieving gender justice and equality, recognising and upholding the rights of individuals whose gender identity differs from their sex assigned at birth, including legal gender recognition, freedom from discrimination, and access to necessary services. These rights are fundamental to creating a society where all individuals can live authentically and participate fully in all aspects of life.²⁰

Legal Recognition: Legal gender recognition, or LGR, is another name for legal gender recognition, which enables transgender people to have the state formally acknowledge their gender

¹⁹ *RIT Foundation v Union of India* (2022) SCC OnLine Del 1404

²⁰ 'Goal 5: Achieve gender equality and empower all women and girls' (*United Nations*)

<<https://www.un.org/sustainabledevelopment/gender-equality/>> accessed 02 June 2025

identification. To match their lived gender, they might have their name and gender marker updated on official documents such as ID cards, passports, and birth certificates. LGR helps to remove discrimination in various aspects of life like education, healthcare, employment and housing. It is a significant step towards guaranteeing their economic growth, social integration, and official recognition of their legal equality. It can significantly aid in their empowerment and serve as a recognition of their human value and dignity, altering how their family, society at large, and the police, government officials, and medical professionals they interact with regularly view them. UN treaty bodies have recognised transgender people's essential right to recognition. "Facilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights," is what the UN High Commissioner for Human Rights has advised states to do. To ensure that trans people are treated as equal human beings, it is crucial to provide them with equal access to housing, education, public facilities, and employment opportunities. Additionally, anti-discrimination laws and policies that protect trans people in these contexts, including ensuring their safety and security, must be developed and put into effect.

Legal Reforms: Frequently implementing reforms, like the 2019 Transgender Persons (Protection of Rights) Act revisions, is crucial. The importance of recognising gender identity through self-identification should be the focus of the proposed reforms, which should not require medical certification or surgical treatments. Furthermore, more thorough anti-discrimination regulations about housing, work, education, healthcare, and public services are needed to shield transgender people from prejudice and discrimination.

Transgender Persons (Protection of Rights) Act 2019: The Transgender Persons (Protection of Rights) Act, 2019 is a legislative framework enacted by the Indian government to recognise and protect the rights of transgender individuals. The Act was introduced to address the pervasive marginalisation and discrimination experienced by the transgender community and to carry out the rulings of the Supreme Court's 2014 ruling in *NALSA v Union of India*, which upheld the constitutional rights of transgender people and recognised them as a third gender. On November 26, 2019, the Rajya Sabha passed the Act, and on December 5, 2019, the president signed it into law. The Act also requires the development of regulations to direct its application, and on September 29, 2020, those regulations were published in the Indian Gazette.

To make it easier to issue identity cards and certifications, the government has also set up a National Portal for Transgender Persons. The Act has been a major step in resolving historical prejudice against transgender individuals in India, assuring their participation in society, and acknowledging and defending their rights.²¹

CASE STUDIES

NALSA v UOI (2014): The NALSA v Union of India (2014) judgment is a landmark decision by the Supreme Court of India that significantly advanced the rights of transgender persons in the country. In this historic case, the Court recognised transgender individuals as a distinct "third gender" and affirmed that they are entitled to the full range of fundamental rights guaranteed under the Indian Constitution. The Court emphasised the right to self-identify one's gender, stating that gender identity is an essential aspect of personal autonomy and dignity, and that no individual should be forced to undergo medical or surgical procedures to validate their gender. The judgment extended constitutional protections under Articles 14 (equality before law), 15 and 16 (prohibition of discrimination), 19(1)(a) (freedom of expression), and 21 (right to life and personal liberty) to transgender persons. Additionally, the Court directed both central and state governments to treat transgender individuals as socially and educationally backwards classes, thereby making them eligible for affirmative action in education and employment. It also called for welfare measures, including access to healthcare, education, public facilities, and public awareness initiatives to reduce stigma and discrimination. The NALSA ruling marked a turning point in Indian legal history, laying the foundation for future legislative reforms such as the Transgender Persons (Protection of Rights) Act, 2019. It was a bold and progressive step toward gender justice, recognising that the right to dignity, equality, and identity must extend to all, regardless of gender identity.²²

Navtej Singh Johar v Union of India (2018): Although the Navtej Singh Johar v Union of India (2018) case primarily focused on decriminalizing homosexuality by reading down Section 377 of the Indian Penal Code, it had significant implications for transgender rights as well. The Supreme Court's judgment, while centred on sexual orientation, extended its protection to the entire LGBTQ+ community, including transgender individuals. The Court emphasised that sexual orientation and

²¹ Transgender Persons (Protection of Rights) Act 2019

²² *National Legal Services Authority v Union of India* (2014) 5 SCC 438

gender identity are intrinsic aspects of personal identity and are protected under Articles 14, 15, and 21 of the Indian Constitution. It upheld the rights to equality, non-discrimination, privacy, dignity, and personal liberty, reinforcing the idea that all individuals, regardless of gender or sexuality, have the constitutional right to live with autonomy and without fear of criminalisation. By prioritising constitutional morality over societal prejudice, the judgment strengthened the legal foundation for recognising and respecting transgender identities. Though it did not specifically address gender identity, the reasoning in *Navtej Singh Johar* greatly supported the transgender community's struggle for dignity, inclusion, and legal protection, complementing the earlier *NALSA v Union of India* (2014) judgment.²³

CHALLENGES AND OBSTACLES

Gender justice and equality face significant challenges and obstacles rooted in social norms, political gaps, and economic disparities. Here's a concise overview:

Social Norms –

Deep-Rooted Gender Stereotypes and Traditions: Men and women are expected to play different roles according to social and cultural conventions, which frequently limit women's access to school, work, and leadership opportunities.

Harmful Practices: Particularly in some areas, customs like child marriage, female genital mutilation, and forced labour continue to exist, supported by cultural and religious convictions.

Resistance to Change: It can be challenging to confront discriminatory traditions when communities and families oppose changes in gender roles.

Political Gaps –

Underrepresentation in Leadership: Women are underrepresented in political offices and decision-making agencies, both globally and in countries such as India, where they comprise only approximately 14% of Lok Sabha members.

²³ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1

Barriers to Participation: Women encounter exclusion from political networks, restricted access to financial resources for campaigning, and harassment or violence during their participation.

Institutional Resistance: Men are usually favoured by political parties and election processes, and there is typically a lack of political will to redress these disparities even when they are present.

Proxy Representation: In some contexts, women who win political office are controlled by male family members, undermining real empowerment.

Economic Gaps –

Limited Access to Resources and Opportunities: Women are less likely to have access to work possibilities, education, and training options, which results in lower rates of economic engagement at the individual level.

Wage and Job Disparities: Workplace discrimination and salary disparities affect women disproportionately, and they are more likely to work in low-income, informal, or unpaid jobs.

Unpaid Care Work: It is not acknowledged or rewarded economically that women are disproportionately responsible for caring for others and handling household duties.

Financial Dependency: Many women lack financial independence, making it harder to run for office or start businesses.

Summary Table

Area	Main Challenges/ observation
Social Norms	Stereotypes, harmful practices, resistance to change.
Political	Underrepresentation, barriers to participation, institutional bias.
Economic	Limited opportunities, wage gaps, unpaid care work, dependency.

POTENTIAL SOLUTIONS AND STRATEGIES FOR GENDER JUSTICE AND EQUALITY

Advancing gender justice and equality is both a legal and moral imperative, as emphasised by international frameworks like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Universal Declaration of Human Rights, and key provisions of the Indian Constitution such as Articles 14, 15, 16, and 21. Achieving substantive equality requires proactive legislative action, structural reforms, and policies that promote fairness, equal access, and inclusion.

Tackling Gender-Based Violence and Discrimination: Gender-based violence (GBV) remains one of the most pervasive human rights violations globally. It undermines constitutional rights to dignity, equality, and life. Legal systems must prioritise:

- Strict enforcement of laws addressing domestic violence, sexual harassment, and assault.
 - Establishment of fast-track courts and survivor protection mechanisms.
 - Provision of legal aid, shelters, and rehabilitative services.
- Community awareness programs that engage men and boys in challenging patriarchal norms.

Criminalising marital rape is an urgent legal reform needed to uphold bodily autonomy and personal liberty under Article 21 of the Indian Constitution.

Sexual and Reproductive Health and Rights (SRHR): Women's SRHR are central to gender justice. Legal frameworks must guarantee:

- Access to contraception, safe abortion (where legal), and comprehensive reproductive healthcare.
- Informed consent and decision-making autonomy regarding one's body.
- Legal recognition of bodily autonomy is aligned with international human rights standards and national health laws.²⁴

²⁴ Convention on the Elimination of All Forms of Discrimination Against Women 1981

Economic Justice and Unpaid Care Work: Traditional gender roles often burden women with unpaid care work, impacting their right to equal employment (Article 39(d), Indian Constitution). To address this:

- Laws must recognise and value unpaid care as an economic contribution.
- Policies should promote shared parental responsibilities, including paid paternity leave.
- Investment in gender-responsive public infrastructure and social security systems is crucial.²⁵

Leadership and Political Representation: Ensuring women's participation in decision-making processes is vital.

- Enact gender quotas in political bodies and public institutions.
- Implement affirmative action policies in the public and private sectors.
- Remove legal and systemic barriers to women's leadership roles.

Such measures promote fairness and reflect constitutional values of equality and non-discrimination.²⁶

Gender and Climate Justice: There is a growing recognition of the intersection between gender justice and climate action:

- Countries with higher female political participation often adopt more effective environmental policies.
- Indigenous and rural women contribute critical traditional knowledge in resource management.
- Legal frameworks must ensure women's participation in environmental governance and uphold their land rights through FPIC (Free, Prior and Informed Consent).

Supporting women-led grassroots environmental organisations strengthens climate resilience.

²⁵ Constitution of India 1950, art 39(d)

²⁶ Constitution (One Hundred and Eighth Amendment) Bill 2008

Digital Empowerment and Technology Access: Technology is pivotal in achieving gender equality:

- Enact cyber laws addressing online abuse and ensuring digital safety.
- Promote digital literacy programs, especially for rural and marginalised women.
- Ensure affordable and equitable access to digital infrastructure and online services.

Bridging the digital divide is essential for full participation in the digital economy.

Legal Rights and Protections for Informal Workers: Informal workers, especially women, form a substantial segment of the workforce in developing economies. Legal reforms must:

- Grant legal recognition to own-account workers and informal economic units.
- Simplify registration processes and mandate standard employment contracts.
- Enable participation in public procurement.
- Extend labour rights, including minimum wage guarantees and social protections.
- Legally ensure representation in unions and grievance redressal mechanisms.

These reforms align with ILO Conventions and SDGs, particularly Goals 1.3 and 8.

Enforcement, Accountability, and Institutional Mechanisms: To institutionalise gender justice:

- Establish and strengthen legal aid systems, equal opportunity cells, and gender commissions.²⁷
- Enforce anti-discrimination laws that address both direct and indirect discrimination.
- Prohibit harmful practices like FGM, child marriage, and trafficking through comprehensive child protection and penal legislation.²⁸
- Allocate adequate budgets and resources for effective implementation and monitoring.

²⁷ Legal Services Authorities Act 1987

²⁸ Protection of Children from Sexual Offences Act 2012

CONCLUSION: THE WAY FORWARD

Due to changing legal discussions and social movements, India's quest for gender equality and justice is at a turning point. The adoption of a Uniform Civil Code (UCC), the punishment of marital rape, and the acceptance of transgender rights are examples of current topics that demonstrate both advancements and enduring difficulties. The UCC, which aims to give all people, regardless of faith, a common legal framework, has the ability to promote gender equity by doing away with personal laws that discriminate. For its implementation to genuinely advance gender equality, it must be considerate of India's heterogeneous cultural and religious context. An important legal loophole in India is the lack of explicit laws that make marital rape a crime. The protection and justice that survivors, mostly women, are entitled to are denied by this omission, which also maintains gender inequity. In addition to legislative reform, a change in social perceptions of consent and physical autonomy is necessary to close this gap. Transgender rights represent another critical frontier. Existing laws and social attitudes often exclude transgender individuals from legal protections against sexual violence, underscoring the urgent need for gender-neutral rape laws. True gender justice requires recognising that all individuals, regardless of gender identity, deserve equal protection, dignity, and access to justice.

In summary, achieving gender equality and justice in India today demands more than piecemeal reforms. It requires a holistic approach: enacting gender-neutral laws, criminalising marital rape, ensuring the UCC upholds substantive equality, and affirming the rights of transgender persons. Only through such comprehensive legal and societal transformation can India fulfil its constitutional promise of dignity, autonomy, and justice for all.