

# Equality: A Dynamic Concept

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## Abstract

India presents a uniquely rich and often tragic theatre for the study of legal equality. On one hand, the Indian Constitution, drafted under the visionary stewardship of Dr. B.R. Ambedkar, contains one of the most comprehensive equality codes ever inscribed into fundamental law. On the other hand, the lived realities of millions of Indian women, gender minorities, transgender individuals, and other marginalised communities reveal a vast and persistent chasm between constitutional promise and social reality.

This paper traces that chasm. It explores the evolution of equality as a legal concept in India, from the founding constitutional provisions to contemporary judicial interpretation. It examines the specific ways in which law has enabled, ignored, or obstructed equality for women, for transgender persons, for LGBTQ+ communities, and for those who suffer overlapping disadvantages on account of caste, religion, gender, and disability. It also looks forward at the challenges posed by the digital age, and at the possibilities for more transformative legal reform

## 1. Introduction

Equality commands near-universal moral agreement, yet its practical meaning is deeply contested. The central question, whether equality requires identical treatment or differential treatment based on need, remains unresolved. Aristotle's formulation that justice requires treating like cases alike highlights the difficulty: determining what counts as "alike" is inherently contested.

In societies marked by entrenched structural inequality, formal equal treatment may perpetuate injustice. A society historically shaped by caste exclusion, gender hierarchy, and economic disparity cannot achieve equality merely by declaring uniform rules. Treating unequals equally reinforces disadvantage<sup>1</sup>.

The Indian Constitution was drafted with this reality in mind. Its framers recognised that formal equality would be insufficient in a deeply hierarchical society. Accordingly, the Constitution incorporates both guarantees of equal treatment and mechanisms such as affirmative action, protective discrimination, and the abolition of untouchability. Equality was conceived not as a static principle but as a transformative project.

This paper argues that equality under Indian constitutional law is inherently **dynamic**, evolving through judicial interpretation, legislative reform, and social change. Its development over seven decades reflects both progress and persistent gaps between constitutional promise and lived reality.

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<sup>1</sup> Aristotle, *Nicomachean Ethics*, Book V, Ch. 3

The central tension in equality law lies between **formal equality** and **substantive equality**.

Formal equality requires identical treatment irrespective of background. It protects against explicit discrimination and ensures neutrality in legal rules. However, it fails to account for structural disadvantage. A formally neutral law may produce unequal outcomes when applied to unequal social conditions<sup>2</sup>.

Substantive equality addresses this limitation by focusing on outcomes and structural barriers. It recognises that disadvantaged groups may require differential treatment to achieve genuine equality. This approach is reflected in constitutional provisions permitting affirmative action for women, children, and backward classes<sup>3</sup>.

The Supreme Court affirmed this understanding in *Indra Sawhney v. Union of India*, holding that reservations are not exceptions to equality but expressions of it. Equality, therefore, requires context-sensitive intervention rather than rigid neutrality<sup>4</sup>.

## Structure of the Paper

This paper examines equality as an evolving constitutional concept across multiple domains, including gender, caste, sexuality, and emerging technological contexts. It evaluates both doctrinal developments and structural limitations, concluding that equality remains an unfinished constitutional project.

## Research Problem

Despite the Indian Constitution's explicit and ambitious commitment to equality, expressed through Articles 14 to 18 and interpreted expansively by the Supreme Court over decades, a significant and persistent gap exists between constitutional promise and substantive reality. Formal legal guarantees have not translated into meaningful equality for historically marginalised groups, including women, transgender persons, and LGBTQ+ individuals. Landmark judicial decisions such as *NALSA v. Union of India* and *Navtej Singh Johar v. Union of India* have progressively expanded the constitutional understanding of equality, yet legislative responses have either lagged behind, diluted judicial intent, or remained altogether absent as seen in the Transgender Persons (Protection of Rights) Act, 2019 and the Supreme Court's refusal to recognise same-sex marriage in *Supriyo v. Union of India*.

This raises a fundamental question: if the constitutional framework is substantive and the judiciary has repeatedly affirmed an expansive vision of equality, why does structural inequality persist and what are the limits of law as an instrument of social transformation in India?

The paper examines whether India's equality jurisprudence has genuinely moved from formal to substantive equality, or whether this shift remains more rhetorical than real in its application. It interrogates the structural disconnect between judicial pronouncements and legislative action, asking why Parliament has consistently failed to translate constitutional values into effective law. Third, it explores whether the existing legal framework even at its most progressive is equipped to address intersectional

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<sup>2</sup> Owen Fiss, 'Groups and the Equal Protection Clause

<sup>3</sup> Sandra Fredman, *Discrimination Law*

<sup>4</sup> *Indra Sawhney v. Union of India*

disadvantage, where caste, gender, sexuality, and poverty compound one another in ways that single-axis legal categories cannot capture.

The central research question is this: To what extent has Indian constitutional law realised the transformative promise of equality, and what institutional, legislative, and social reforms are necessary to bridge the gap between principle and practice?

## Research Methodology

The study adopts a doctrinal legal research methodology, supplemented by a socio-legal approach, to examine the evolution of equality jurisprudence under the Indian Constitution.

The doctrinal component involves close textual analysis of constitutional provisions, primarily Articles 14 to 18 and Article 21, alongside a systematic study of Supreme Court judgments that have shaped equality law over time. Key cases examined include *E.P. Royappa v. State of Tamil Nadu*, *Indira Sawhney v. Union of India*, *Vishaka v. State of Rajasthan*, *NALSA v. Union of India*, *Navtej Singh Johar v. Union of India*, *Vineeta Sharma v. Rakesh Sharma*, and *Supriyo v. Union of India*. Legislative instruments including the Hindu Succession (Amendment) Act 2005, the Sexual Harassment of Women at Workplace Act 2013, and the Transgender Persons (Protection of Rights) Act 2019 are analysed to assess how Parliament has responded to, or departed from, constitutional mandates.

Primary sources include constitutional text, judicial decisions, and legislation. Secondary sources include academic scholarship by scholars such as Upendra Baxi, Gautam Bhatia, Flavia Agnes, Uma Chakravarti, and Tarunabh Khaitan, as well as reports from the Law Commission of India and relevant governmental bodies.

This methodology allows the article to move between legal doctrine and social reality which is precisely where India's equality problem lives.

## CONSTITUTIONAL AND LEGISLATIVE FOUNDATIONS

The Constitution's equality provisions are not merely prohibitory; they form a layered framework combining non-discrimination, affirmative action, and social reform. This architecture enables both restraint on state power and proactive intervention.<sup>5</sup>

### Article 14: From Classification to Arbitrariness

Article 14 guarantees equality before the law and equal protection of laws. Judicial interpretation initially focused on the **reasonable classification test**, permitting differential treatment where justified by intelligible criteria and rational nexus<sup>6</sup>.

Over time, the Supreme Court expanded Article 14 beyond classification:

- In *E.P. Royappa*, equality was defined as antithetical to arbitrariness<sup>7</sup>

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<sup>5</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation*

<sup>6</sup> Constitution of India, art. 14.

<sup>7</sup> *E.P. Royappa v. State of Tamil Nadu* AIR 1974 SC 555, 583

<sup>8</sup> *Modern Dental College and Research Centre v. State of Madhya Pradesh*

- In *Modern Dental College*, proportionality was introduced<sup>8</sup>

These developments transformed Article 14 into a broader guarantee against arbitrary state action, enhancing its flexibility and scope.

## Article 15: Non-Discrimination and Affirmative Action

Article 15 prohibits discrimination on specified grounds while explicitly permitting affirmative action.

Key features:

- Article 15(3): Special provisions for women and children
- Article 15(4): Measures for socially and educationally backward classes

The insertion of Article 15(4) through the First Amendment, following *Champakam Dorairajan*<sup>9</sup>, demonstrates that affirmative action was always integral to constitutional equality, not an exception.

## Article 16: Reservations and Representation

Article 16 extends equality to public employment. The Supreme Court's decision in *Indra Sawhney* established key principles:

- Reservations capped at 50% (with exceptions)
- Exclusion of the “creamy layer”
- Reservations as part of equality, not a deviation

The more recent *Janhit Abhiyan*<sup>10</sup> judgment upheld reservations for Economically Weaker Sections, though it raised concerns about exclusion of historically disadvantaged groups.

## Article 17: Abolition of Untouchability

Article 17 uniquely targets a specific social practice and applies to private individuals. It is operationalised through legislation such as:

- Protection of Civil Rights Act, 1955
- SC/ST (Prevention of Atrocities) Act, 1989

Despite its constitutional significance, implementation remains weak. Caste-based discrimination persists, highlighting a substantial gap between law and social reality.

## Equality Legislation

Key legislative developments include:

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<sup>9</sup> *State of Madras v. Champakam Dorairajan* AIR 1951 SC 226

<sup>10</sup> *Janhit Abhiyan v. Union of India* (2022)

- Hindu Succession (Amendment) Act, 2005
- Sexual Harassment of Women at Workplace Act, 2013
- Rights of Persons with Disabilities Act, 2016
- Transgender Persons Act, 2019

However, India lacks a comprehensive anti-discrimination statute. Existing protections are fragmented, and enforcement mechanisms remain under-resourced.

## **Directive Principles and Substantive Equality**

Directive Principles expand the equality vision:

- Article 38: Reduction of inequality
- Article 39(d): Equal pay
- Article 46: Promotion of SC/ST interests

Though non-justiciable, these principles inform judicial interpretation and have contributed to the expansion of socio-economic rights under Article 21.

## **WOMEN'S RIGHTS IN INDIA: FROM REFORM TO RECOGNITION**

The trajectory of women's rights in India reflects both substantial legal progress and persistent structural inequality. While constitutional guarantees and legislative reforms have expanded rights, outcomes remain uneven, as reflected in India's low ranking in global gender indices. The gap between formal rights and lived reality remains significant<sup>11</sup>.

### **Pre-Constitutional development**

Before 1950, women's rights were shaped by personal laws, colonial legislation, and reform movements. Key interventions included:

- Legalisation of widow remarriage (1856)
- Abolition of sati (1829)
- Limited property rights under the 1937 Act

These reforms challenged extreme practices but did not establish substantive equality. Women's property rights, in particular, remained restricted through concepts such as the "limited estate."

### **Constitutional framework**

The Constitution marked a decisive shift by recognising women as equal citizens with enforceable fundamental rights. Provisions on equality and non-discrimination created a legal foundation for gender justice<sup>12</sup>.

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<sup>11</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India*

<sup>12</sup> Constitution of India, arts. 14, 15(1), 15(3), 16(1)

Women members of the Constituent Assembly played a critical role in shaping these guarantees, ensuring that equality provisions were substantive rather than symbolic<sup>13</sup>.

### **Hindu code reforms**

The post-independence reform of Hindu personal law represented a major attempt to restructure gender relations within the family. Ambedkar's original proposals sought to establish equality in marriage, inheritance, and property rights<sup>14</sup>.

Political resistance diluted these reforms. The resulting legislation (1955–56) advanced women's rights but retained significant inequalities, particularly in property inheritance.

### **Property rights and 2005 amendment**

The Hindu Succession (Amendment) Act, 2005 granted daughters equal coparcenary rights in joint family property. The Supreme Court in *Vineeta Sharma* clarified that these rights apply irrespective of the father's survival at the time of amendment<sup>15</sup>.

However, this reform is limited to Hindus. Under Muslim personal law, daughters continue to receive half the share of sons, reflecting ongoing disparities across personal law systems.

### **Workplace rights and Sexual harassment**

The Supreme Court's decision in *Vishaka v. State of Rajasthan* (1997) established binding guidelines on workplace sexual harassment in the absence of legislation<sup>16</sup>. These were later codified in the Sexual Harassment of Women at Workplace Act, 2013.

The law mandates institutional mechanisms for redress, but implementation remains inconsistent, particularly in the informal sector.

### **Domestic Violence Laws**

The Protection of Women from Domestic Violence Act, 2005 introduced a civil framework focused on protection, residence, and economic relief. It recognises multiple forms of abuse beyond physical violence and extends protection to women in non-formal relationships<sup>17</sup>.

Despite its progressive design, enforcement remains limited due to institutional constraints and social barriers.

### **Triple Talaq and personal laws reform**

The Supreme Court's decision in *Shayara Bano* (2017) invalidated instantaneous triple talaq as arbitrary<sup>18</sup>. Subsequent legislation criminalised the practice<sup>19</sup>.

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<sup>13</sup> Constituent Assembly Debates, Vol. VIII

<sup>14</sup> B.R. Ambedkar, 'Statement on the Hindu Code Bill' Constituent Assembly (Legislative) Debates

<sup>15</sup> <sup>1</sup> *Vineeta Sharma v. Rakesh Sharma* (2020) 9 SCC 1

<sup>16</sup> *Vishaka v. State of Rajasthan* (1997)

<sup>17</sup> Protection of Women from Domestic Violence Act 2005

<sup>18</sup> *Shayara Bano v. Union of India* (2017) 9 SCC 1

<sup>19</sup> Muslim Women (Protection of Rights on Marriage) Act 2019 (Act 20 of 2019)

While this addressed a specific issue, broader inequalities within personal law systems, such as polygamy and unequal inheritance, remain unresolved.

## **STRUCTURAL GENDER INEQUALITY IN INDIA**

Legal reform alone cannot address gender inequality in India, which is rooted in structural factors including caste, patriarchy, economic dependency, and social norms. These factors shape outcomes despite formal legal protections<sup>20</sup>.

### **Patriarchy and Social Structure**

Patriarchy operates differently across caste and class contexts. The concept of “Brahmanical patriarchy<sup>21</sup>” highlights how caste hierarchy regulates women’s sexuality and mobility.

Gender inequality must therefore be analysed alongside caste, religion, and class. Uniform legal solutions often fail to address these intersecting realities.

### **Personal laws and Structural Inequality**

India’s plural personal law system remains a major source of gender inequality. While Hindu law has undergone reform, other personal law systems retain discriminatory provisions relating to marriage, divorce, and inheritance<sup>22</sup>.

Judicial reluctance to intervene in religious matters has allowed these inequalities to persist. The debate over a Uniform Civil Code reflects tensions between equality and cultural autonomy.

### **Gender Pay Gap**

Despite legal guarantees of equal pay<sup>23</sup>, a substantial wage gap persists. This is driven by structural factors:

- Occupational segregation
- Unequal distribution of unpaid care work
- Barriers to workforce participation
- Discrimination in hiring and promotion

Addressing the gap requires broader socio-economic reforms beyond formal legal equality.

### **Violence Against Women**

High rates of gender-based violence and low conviction rates indicate systemic failure in enforcement<sup>24</sup>. Structural issues include:

- Ineffective policing
- Judicial delays

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<sup>20</sup> Martha Nussbaum, *Women and Human Development: The Capabilities Approach*

<sup>21</sup> Uma Chakravarti, 'Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class and State'

<sup>22</sup> Flavia Agnes, *Family Law Volume I: Family Laws and Constitutional Claims*

<sup>23</sup> Equal Remuneration Act 1976 (Act 25 of 1976)

<sup>24</sup> National Crime Records Bureau, *Crime in India 2022*

- Social stigma and under-reporting

Legal reforms have improved definitions and penalties, but institutional weaknesses continue to undermine outcomes.

### **Intersectionality: Dalit Women**

Dalit women experience compounded disadvantage due to caste and gender. Violence against them often reflects caste dominance as well as gender oppression<sup>25</sup>.

Although specific legal protections exist under the Atrocities Act, implementation is weak. Cases frequently suffer from under-reporting, poor investigation, and social pressure<sup>26</sup>.

## **TRANSGENDER RIGHTS IN INDIA: LAW, IDENTITY, AND DIGNITY**

The development of transgender rights in India reflects a sharp divergence between constitutional recognition and legislative implementation<sup>27</sup>. Judicial decisions have affirmed dignity and self-identification, while statutory law has imposed procedural barriers that undermine these principles.

Transgender communities, including the Hijra community, have long existed within the Indian subcontinent with varying degrees of social recognition<sup>28</sup>. Colonial legislation, particularly the Criminal Tribes Act, 1871 and Section 377 of the Indian Penal Code, criminalised and stigmatised these identities. Post-independence, this marginalisation persisted through social exclusion, lack of legal recognition, and systemic denial of access to education, employment, and healthcare.

### **NALSA v. Union of India (2014)**

In *National Legal Services Authority v. Union of India*, the Supreme Court recognised transgender persons as a “third gender” and affirmed the right to self-identification of gender as a fundamental right<sup>29</sup>.

The Court grounded its reasoning in:

- Article 14 (equality)
- Article 19(1)(a) (expression)
- Article 21 (dignity and autonomy)

It also directed the state to provide affirmative action and legal recognition in official documents. The judgment established a constitutional framework centred on dignity, autonomy, and substantive equality.

### **Navtej Singh Johar (2018)**

The decriminalisation of consensual same-sex relations in *Navtej Singh Johar v. Union of India* had direct implications for transgender persons, who had been disproportionately targeted under Section 377<sup>30</sup>.

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<sup>25</sup> Sharmila Rege, *Writing Caste/Writing Gender: Narrating Dalit Women's Testimonios*

<sup>26</sup> National Dalit Movement for Justice, *Report on Atrocities Against Dalit Women*

<sup>27</sup> Transgender Persons (Protection of Rights) Act, 2019 (Act XL of 2019)

<sup>28</sup> Aniruddha Dutta & Raina Roy, *Decolonizing Transgender in India*

<sup>29</sup> *National Legal Services Authority v. Union of India*, (2014)

<sup>30</sup> *Navtej Singh Johar v. Union of India*

The judgment affirmed constitutional morality over social prejudice and recognised the historical injustice faced by sexual and gender minorities.

## The Transgender Persons Act, 2019

The Transgender Persons (Protection of Rights) Act, 2019 introduced anti-discrimination provisions across multiple sectors<sup>31</sup>. However, it departs significantly from the *NALSA* framework.

Key issues include:

- **Certification requirement:** Legal recognition of gender requires application to a District Magistrate
- **Medical scrutiny:** Additional procedures for gender change recognition
- **Weak penal provisions:** Lower punishments for offences against transgender persons
- **Absence of reservations:** Despite explicit judicial direction

These features undermine the principle of self-identification and create barriers to legal recognition.

## Self-Identification vs State Control

The core legal conflict lies between self-identification and state certification. The constitutional model recognises gender identity as intrinsic and self-determined, while the statutory framework treats it as subject to administrative validation. This approach raises concerns under privacy and dignity jurisprudence, particularly following *K.S. Puttaswamy v. Union of India*<sup>32</sup>.

## Implementation and Ground Reality

Despite legal recognition, transgender persons continue to face:

- Exclusion from education and employment
- High levels of violence and harassment
- Lack of access to healthcare and housing

Many are forced into informal economies, including begging and sex work<sup>33</sup>.

Some state-level initiatives, such as welfare schemes and inclusive policies, demonstrate more effective approaches, but these remain uneven and limited in scope.

## INTERSECTIONALITY: MULTIPLE AXES OF DISADVANTAGE

Intersectionality explains how overlapping systems of disadvantage, such as caste, gender, religion, disability, and sexuality, produce distinct forms of inequality. Legal frameworks that treat these categories separately often fail to capture compounded harm.

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<sup>31</sup> Transgender Persons (Protection of Rights) Act, 2019

<sup>32</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017)

<sup>33</sup> National Human Rights Commission, *Report on the Status of Transgender Persons in India*

In India, where social hierarchy operates across multiple axes, intersectionality is essential to understanding inequality<sup>34</sup>. Groups located at these intersections experience forms of exclusion that cannot be addressed through single-axis legal analysis.

### **Dalit Women**

Dalit women experience both caste-based and gender-based oppression in ways that are mutually reinforcing. Violence against Dalit women often functions as a tool of caste dominance<sup>35</sup>.

While the SC/ST (Prevention of Atrocities) Act recognises caste-based offences, enforcement remains weak. Systemic issues, under-reporting, poor investigation, and social pressure, limit its effectiveness. Legal frameworks have identified the problem but have not resolved it<sup>36</sup>.

### **Muslim Women**

Muslim women face a dual challenge: constitutional guarantees of equality coexist with personal law provisions that disadvantage them<sup>37</sup>.

Judicial interventions, such as *Shah Bano* and *Daniel Latifi*, have expanded maintenance rights, and *Shayara Bano* addressed triple talaq. However, broader inequalities, polygamy, unequal divorce rights, and inheritance disparities, persist.

Courts and legislatures have largely avoided comprehensive reform, reflecting the political sensitivity of personal law<sup>38</sup>.

### **Disability and Gender**

Women with disabilities face compounded exclusion due to both gender and disability. This includes increased vulnerability to violence, restricted access to education and employment, and limited legal support<sup>39</sup>.

The Rights of Persons with Disabilities Act, 2016 provides a framework, but implementation remains inadequate. Intersectional claims involving disability and gender are rarely fully addressed in judicial reasoning<sup>40</sup>.

### **Institutional Limitations**

Indian equality jurisprudence has not yet developed a consistent intersectional framework. Courts tend to analyse claims within single categories, limiting their ability to address complex forms of discrimination<sup>41</sup>.

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<sup>34</sup> Upendra Baxi, *The Future of Human Rights*

<sup>35</sup> National Crime Records Bureau, *Crime in India* (2022)

<sup>36</sup> National Campaign on Dalit Human Rights, *Report on Atrocities Against Dalit*

<sup>37</sup> Muslim Personal Law (Shariat) Application Act, 1937

<sup>38</sup> Tahir Mahmood, *Muslim Personal Law: Role of the State in the Indian Subcontinent*

<sup>39</sup> Convention on the Rights of Persons with Disabilities, 2006, Art. 6

<sup>40</sup> *Disability and Gender in India* (2019)

<sup>41</sup> Shreya Atray, *Intersectional Discrimination* (Oxford University Press 2019)

A comprehensive anti-discrimination law recognising intersectionality could provide a more effective framework for addressing such claims.

## JUDICIAL ACTIVISM AND EQUALITY: THE ROLE OF THE INDIAN SUPREME COURT

### Judicial Leadership

The Supreme Court has played a central role in expanding equality jurisprudence. Through constitutional interpretation, it has addressed gaps left by legislation and responded to evolving social realities<sup>42</sup>.

### Doctrinal Innovations

Key developments include:

- Expansion of Article 14 to include arbitrariness
- Integration of dignity and autonomy under Article 21
- Recognition of substantive equality in affirmative action cases

These innovations have significantly broadened the scope of constitutional rights.

### Progressive Interventions

Landmark judgments, such as *NALSA*, *Navtej Johar*, and *Vishaka*, demonstrate the Court's capacity to advance equality in the absence of legislative action.

### Limitations and Inconsistencies

Judicial progress has been uneven. Decisions such as *Koushal* and *Supriyo* illustrate the Court's reluctance in certain contexts, particularly where broader structural or legislative changes are required.

The Court's institutional limits, dependence on cases brought before it and constraints on enforcement, affect its ability to produce systemic change.

## CONCLUSION AND RECOMMENDATIONS

Equality under the Indian Constitution is not a fixed standard but an evolving principle shaped by legal interpretation, social change, and political will. Significant progress has been made, but structural inequalities persist across multiple domains.

### Key Gaps

Major gaps include:

- Incomplete implementation of existing laws
- Persistent structural inequalities (caste, gender, economic)

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<sup>42</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation*

- Fragmented anti-discrimination framework
- Lack of recognition for LGBTQ+ relationships
- Inadequate protection for transgender persons
- Limited engagement with intersectionality

## Recommendations

- 1. Comprehensive Anti-Discrimination Law**  
A unified legal framework covering multiple grounds and recognising intersectional discrimination.
- 2. Strengthened Enforcement Mechanisms**  
Improved institutional capacity, accountability, and access to justice.
- 3. Alignment of Legislation with Constitutional Principles**  
Particularly in areas such as transgender rights and personal laws.
- 4. Recognition of LGBTQ+ Relationships**  
Legal frameworks providing rights relating to family, inheritance, and social security.
- 5. Structural Interventions**  
Addressing socio-economic factors such as education, employment, and access to resources.
- 6. Digital Equality Framework**  
Regulation of algorithmic systems and measures to bridge the digital divide.

## Final Observation

The Constitution provides a robust framework for equality, but its realisation depends on sustained institutional commitment and social transformation. Equality in India remains an ongoing project, one that requires continuous adaptation to address both longstanding and emerging forms of inequality.