

---

# UNVEILING THE STRUGGLES AND TRIUMPHS: A COMPREHENSIVE EXAMINATION OF TRANSGENDER IDENTITY RECOGNITION IN INDIA

---

Tejash Tapadiya, Maharashtra National Law University, Nagpur

## ABSTRACT

Indian society is deeply driven by gender discourse. The categorization of sex in males and females are done at every level in our society. With the increase in the call of taking women's rights into consideration i.e. women's empowerment, Indian society is moving rapidly with the developed nations. Women have faced many atrocities in the Indian Subcontinent throughout the ages. Now there is a need for Indian legislators and policymakers to add their attention to gender diversity and question the longstanding gender binary system. The paper initiates with the atrocities that are faced by Transgender people in India and other countries with some citations from historical and contemporary society. The paper focuses on how gender diversity is taken as a caution as it provides a challenge to the gender binary system in a number of ways—via intersex, third or other genders, gender fluidity, positions outside of gender, genderqueer etc. Then researcher seeks to analyse the provisions in the substantive and procedural Laws related to the identification of transgender persons. The researcher focuses on the existing Indian framework related to self-identification i.e., the process, argument against and favour of self-identification and finally concludes the research with suggestions and recommendations on the self-identification process as a whole. In a nutshell, the paper deals with how gender diversity pressed the need for empowerment for the third gender too. Additionally, this examination addresses the challenges and limitations of the current legal framework and policies concerning transgender identity recognition in India. It investigates issues related to the implementation and enforcement of these laws, including the complexities of obtaining legal documentation, bureaucratic hurdles, and the persistence of discriminatory practices in various spheres of life. By shedding light on the struggles and triumphs of transgender identity recognition in India, this examination seeks to contribute to the ongoing dialogue and advocacy for a more inclusive and equitable society for transgender individuals.

## INTRODUCTION

According to Kant, a law is a “collection of conditions that let each person's decision be combined with others' choices under a general law of freedom.” The idea that we may control our existence instead of enduring them is expressed through the complex relationship between law, autonomy, and self-determination. One’s transcendental self-determination is apparent by the fundamental view of oneself as a conscious being.<sup>1</sup> Transgender person come from various diverse social classes. Society is not new to them, the transgender society has been in India for a long time, and we can see references to them in Hindu mythology texts like the Mahabharata, which had a transgender figure by the name of Shikhandi. The transgender group is also referred to in India as Hijra, Sakhi, Kinnar, and Chhakka, among other terms.<sup>2</sup> Gender Identity is an individual’s deeply felt internal feeling of being a boy, a man, or a male; a girl, a woman, or a female; or an alternative gender that may or may not coincide with a person's sex as assigned at birth or with a person's primary or secondary sex traits some facets of identity, such as sexual identity and gender identity, cannot be taken for granted.<sup>3</sup> There has always been a small minority of people who do not fit this mould, despite the fact that most people are born ready to feel at ease with their body's gender and to desire sexual intercourse with persons of the opposite sex once they reach sexual maturity. The freedom to self-identify as male, female, or third gender, according to the Supreme Court of India, is a crucial component of the constitutional right to live with dignity. In light of the Apex Court’s recognition of their right to self-perceived gender identity, there are still a number of obstacles standing in the way of receiving the “equal protection of the laws” that Article 14 guarantees. Transgender or third gender is the umbrella term which incorporates all those who didn’t fit in the stereotyped binary of male and female.<sup>4</sup> These people have been facing verbal, mental, and sexual harassment in various social institutions like education, family, workplace, their community and even in public space. People who fit in this term have been living in every part of our society across the nations and boundaries, even though historically they were not very much recognized, have

---

<sup>1</sup> Johnson, Robert and Adam Cureton, “Kant’s Moral Philosophy”, The Stanford Encyclopedia of Philosophy (Fall 2022 Edition), Edward N. Zalta & Uri Nodelman (eds.), <https://plato.stanford.edu/archives/fall2022/entries/kant-moral/>

<sup>2</sup> Srinivasan SP, Chandrasekaran S. Transsexualism in Hindu Mythology. *Indian J Endocrinol Metab.* 2020 May-Jun;24(3):235-236.

<sup>3</sup> Bhargava A, Arnold AP, Bangasser DA, Denton KM, Gupta A, Hilliard Krause LM, et al. (May 2021). "Considering Sex as a Biological Variable in Basic and Clinical Studies: An Endocrine Society Scientific Statement". *Endocrine Reviews.* **42** (3): 219–258. doi:10.1210/endrev/bnaa034. PMC 8348944. PMID 33704446.

<sup>4</sup> National Legal Services Authority v. Union of India (2014) 5 SCC 438

faced atrocities. However, with the advent of the modern state system in the 20<sup>th</sup> century, many nations start recognizing their identity and giving them special treatment to uplift them to the level of male and female binary.<sup>5</sup> One of the most marginalised communities in India, transgender people have gone through a series of injustices throughout their lives. They didn't have a pleasing environment in all geographical locations in India. Notwithstanding their pretence of sophistication, our culture does not consider diverse sexual identities and manifestations. Transgender people have difficulty as they are indisposed to encompass change or anything that is diverse.<sup>6</sup> These people are still recognized by society. The ideals on which fundamental human rights are built, respect and honour, are what transgender people demand of the public the most.

### **THE CONCEPT OF SEXUAL ORIENTATION AND GENDER IDENTITY**

Despite being used interchangeably, gender and sex are two totally different conceptions. A person's biologically determined sexual or reproductive organ, which is either male or female, is referred to as their sex. Physical differences exist between individuals who identify as male, female, or intersex. Sex is what we call this. When determining a person's sex at birth, physiological variables including the person's genitalia and chromosome composition are frequently employed. This imputed idea of sex is referred to as "natal sex." In contrast, how a person identifies determines their gender. Like natal sex, gender does not have binary components. Instead, there is a broad range of gender. A person may identify anywhere along this spectrum, or even entirely outside of it. Gender, on the other hand, is primarily socially constructed and may deviate from the biologically determined position. This social construct often relates to the duties and actions that each gender identity has been allocated.<sup>7</sup> The World Health Organization differentiated the definition of Sex and Gender in the following ways- Sex refers to "the different biological and physiological characteristics of males and females, such as reproductive organs, chromosomes, hormones, etc." Gender refers "to the socially constructed characteristics of women and men – such as norms, roles and relationships of and between groups of women and men. It varies from society to society and can be changed. The concept of gender includes five important elements: relational, hierarchical, historical,

---

<sup>5</sup> Transgender, Third Gender, No Gender: Part II by Neela Ghoshal  
<https://www.hrw.org/news/2020/09/08/transgender-third-gender-no-gender-part-ii>

<sup>6</sup> Maddux, James E.; Winstead, Barbara A. (11 July 2019). *Psychopathology: Foundations for a Contemporary Understanding*. Routledge.

<sup>7</sup> Sexual orientation and gender identity: review of concepts, controversies and their relation to psychopathology classification systems by Moleiro Carla, Pinto Nuno *Frontiers in Psychology* VOLUME, 6, 2015

contextual and institutional. While most people are born either male or female, they are taught appropriate norms and behaviours – including how they should interact with others of the same or opposite sex within households, communities and workplaces. When individuals or groups do not fit established gender norms they often face stigma, discriminatory practices or social exclusion – all of which adversely affect health.”<sup>8</sup> A individual’s gender identification may not always be evident to others because it is an innate encounter of psychological behaviour. In all, a person’s gender is recognized at birth, but an individual conception determines whether they identify as male, female, both, or neither.<sup>9</sup>

## **THE ARGUMENTS FOR AND AGAINST GENDER SELF-IDENTIFICATION**

### *Arguments in Favour of Self-Identification*

The existing procedures for stating one's preferred gender are cumbersome, costly, and humiliating. About self-identification, Rich a legal analyst and transgender right activist said: “Within the institution exist, of course, qualitative differences of experience; but the absence of choice remains the great unacknowledged reality, and in the absence of choice, women still remain dependent upon the chance or luck of particular relationships and will have no collective power to determine the meaning and place of sexuality in their lives.”

It is crucial to take action to combat discrimination and offer the resources and support that these people need because trans persons experience discrimination on a frequent basis..<sup>10</sup>

Gender identity is viewed as an innate aspect of the individual that may or may not require medical intervention, hormonal therapy, or other forms of treatment. All people must have the freedom to make decisions that influence their own psychological autonomy and physical autonomy.<sup>11</sup>

Transgender identity may offer a special opportunity for a meaningful personality.<sup>12</sup> Many people connected their transgender identification with feeling “more self-confident,”

---

<sup>8</sup> World Health Organization - Gender, equity and human rights: Glossary of terms and tools.

<sup>9</sup> Gorton, R. N., & Grubb, H. M. (2014). “General, sexual, and reproductive health. In L. Erickson-Schroth (Ed.), *Trans bodies, trans selves: A resource for the transgender community*” (pp. 215–240). New York, NY: Oxford University Press.

<sup>10</sup> *Culture, Society and Sexuality Book* by Peter Aggleton Published December 21, 2006 by Routledge

<sup>11</sup> Vlassoff C. Gender differences in determinants and consequences of health and illness. *J Health Popul Nutr.* 2007 Mar;25(1):47-61.

<sup>12</sup> Lev, 2004; Maguen, Shipherd, Harris,& Welch, 2007).

“stronger,” and “more self-aware.” For some people, The development of strong introspective skills, a thorough understanding of oneself, and the ability to advocate for oneself were all related to transgender identification. The act of self-disclosure once accomplished with consideration for the individual is enhanced effectiveness. Although it may be frightening because they run the risk of being rejected, it is likely the most crucial thing they can do is consider their mental, feelings and emotions, and physical well-being. Respondents said that after telling their partners or children about their transgender status, their interactions got better. This welcomed the chance to question gender norms, stereotypes of a male or female identity, and the significance of interpersonal interactions in the formation and assimilation of constructive identities.<sup>13</sup> Belonging to a community provides independence and a sense of autonomy. Consequently, assisting experts can aid transgender individuals in creating links to a friendly community in alongside supporting interpersonal relationships and professional duties in accordance.

### *Arguments Against Gender Self-identification*

The critiques of self-identification have pointed out various limitations of the recognition of gender self-identification as a legal right. The main problem raised is that gender self-identification goes well beyond recognizing people’s freedom to believe whatever they want, behave in whatever manner they want to, wear how they want and show their identity as they choose, however, the consequence of these are far-fetched which have more bad than good. Single-sex places of female and personal liberty are impacted by their gender self-identification, particularly in terms of their ability to autonomously organise their own resistance to misogyny and discrimination.<sup>14</sup> It may have the biggest impact on women’s ability to define themselves and in future might impact the status quo of women's empowerment.<sup>15</sup> When it is widely affirmed in the systematic social environment, if not entirely in law, that merely identifying as a woman entails having access to women’s and girls’ private, historically single-sex spaces—toilets, rape-crisis shelters, etc.—this may start to understand the worries of many women. The terms “trans man” and “trans woman,” as well as the label “transgender,” are more ambiguous ways to refer to any naturally born female who identifies as a man and

---

<sup>13</sup> Jame Agrippa Agapoff. (2022) Why society should embrace the apparent “rise” in transgender youth. *Journal of Gay & Lesbian Mental Health* 0:0, pages 1-3.

<sup>14</sup> “Debating trans inclusion in the feminist movement: A trans-positive analysis. *Journal of Lesbian Studies*” Green, E. R. (2006)., 231–248

<sup>15</sup> Gram, L., Morrison, J. & Skordis-Worrall, J. Organising Concepts of ‘Women’s Empowerment’ for Measurement: A Typology. *Soc Indic Res* 143, 1349–1376 (2019)

any naturally born male who identifies as a woman. This is a much broader category that includes, in addition to transsexuals, males who identify as women but wish to maintain their male bodies, individuals who are “gender fluid” (identifying as both men and women at the same time), and individuals who were formerly known as “cross-dressing men”, some of whom exhibit fetishist behaviour toward female’s attire and bodies. This classification can increase the problems for women and trans people as well as their might be some people who would like to fall under another category for their hidden mollified intentions however their apparent reality is something different. This political and societal demand affects everyone, but it has a particular effect on women, lesbian people, and transgender people. Owing to the early diagnosis and care of transgender people, some individuals of the trans community now also have access to vital legal recognition and transformational healthcare. The majority of psychological research on people who identify as transgender has been on issues that have adverse effects or weaknesses, like the importance of diagnosing gender dysphoria in psychotherapy. The direct correlation between a person's thoughts about their gender and society's attitudes toward transgender individuals was a significant indication. Misgendering, the discrepancy between gender identity and societal norms, and hyperarousal for transphobia were other compartments that added to the misery.<sup>16</sup> discrimination and victimisation<sup>17</sup>, trauma<sup>18</sup>, psychological distress<sup>19</sup> and suicidality and other risk behaviours.<sup>20</sup>

## STATISTICAL ANALYSIS OF THE STATUS OF TRANSGENDER IN INDIA

In India, there are 4.88 lakh transgender individuals living, according to the 2011 census. However, only a limited percentage of people are given employment opportunities. In accordance with a 2018 assessment by the National Human Rights Commission, “96 per cent transgenders are denied jobs and are forced to take low-paying or undignified work for livelihood like badhais, sex work and begging.”<sup>21</sup> It also revealed that “about 92 per cent of transgenders are deprived of the right to participate in any form of economic activity in the

---

<sup>16</sup> “Transgender issues in counselor preparation. Counselor Education and Supervision” Carroll, Lynne. (2002). Carroll, L., & Gilroy, P. (2002) 41, 233-242.

<sup>17</sup> Clements-Nolle, Marx, & Katz, (2006)

<sup>18</sup>). “Trauma in Transgender Populations: Risk, Resilience, and Clinical Care. Journal of Emotional Abuse” Mizock, Lauren & Lewis, Thomas. (2008). 335-354.

<sup>19</sup> Sánchez, F. J., & Vilain, E. (2009). Collective self-esteem as a coping resource for male-to-female transsexuals. Journal of Counseling Psychology, 56(1), 202–209.)

<sup>20</sup> Maguen & Shipherd, 2010; Sevelius, Reznick, Hart, & Schwarcz, 2009).

<sup>21</sup> “About 96% of transgenders are denied jobs, 60% have never attended schools: Study”

<https://www.moneycontrol.com/news/india/about-96-of-transgenders-are-denied-jobs-60-have-never-attended-schools-study-2836281.html>

country, with even qualified ones refused jobs. Among the respondents, around 89 per cent of transgenders said there are no jobs for even qualified ones. 50-60 per cent never attended schools and those who did face severe discrimination, further 52 per cent transgenders were harassed by their classmates and 15 per cent by teachers, forcing them to discontinue their studies. Only 6 per cent transgenders were employed in private sectors or NGOs, back then, while the monthly income of only 1 per cent transgenders was noted to be above Rs.25,000; the majority-26.35 per cent earn between Rs. 10,000-Rs.15,000.”<sup>22</sup> The report further revealed that around “23 per cent are compelled to engage in sex work which has high health-related risks, which results in trans people being 49 times more at risk of living with HIV compare the general population.”<sup>23</sup>

### **RECOGNITION GIVEN TO TRANSGENDER UNDER INDIAN CONSTITUTION**

The Indian Constitution have inherent rights for transgender people and the Judiciary is also interpreting the Constitution as well as is also liberalising the problem more precisely against the framework of the marriage and adoption rights granted to trans people abroad. It helps transgender people in a compassionate capacity.<sup>24</sup> Our Constitution's Preamble refers to “liberty,” “equality,” “justice,” and “fraternity” for all citizens of India, “a sovereign, socialist, secular, democratic republic.” Part III of the Indian Constitution, which addresses fundamental rights such as the right to equality, the prohibition of sex discrimination, the right to life and personal dignity, the freedom of conscience, etc., has taken these same concepts into account. Although these essential rights exist, they are not recognised by laws and other social conventions.

Right to life and personal liberty (Article 21): Article 21 states that “no person shall be deprived of his life and personal liberty except according to the procedure of law.”<sup>25</sup> This implies that everyone has the right to life and to personal liberty, including transsexual people. Transgender people should have complete legal protection for their life and individual liberties because they are Indian Citizens. Article 19 grants every citizen the freedom of speech and expression. This

---

<sup>22</sup> “About 92% Of Transgenders Are Deprived Of Their Rights, Refused Jobs; Just 2% Stay With Parents” <https://www.indiatimes.com/news/india/about-92-of-transgenders-are-deprived-of-their-rights-refused-jobs-just-2-stay-with-parents-351131.html>

<sup>23</sup> “Making India Transgender Inclusive: An in-Depth Analysis of the Education Sector in India”

<sup>24</sup> “Transgender rights, the Third Gender and transforming the workplace in India” By Alope Tiwari, Shivika Upadhyay And Vishal Singh'S Blog- <https://www.lexology.com/library/detail.aspx?g=b49d9488-c484-4d00-882c-2c386a041a07>

<sup>25</sup> Article 21 of Indian Constitution, 1950

embraces having the right to publicly declare transgender gender identification and express in the way they deemed fit. Discrimination against anyone on any basis, including gender (Article 15): prohibits discrimination of any kind on the grounds of race, religion, caste, sex, or any combination of these. This suggests that transgender people's core constitutional rights are violated by discrimination or mistreatment. According to the court's ruling in *Mx. Alia SK v. The State of West Bengal and Others*<sup>26</sup>, transgender people have the right to apply for enrollment in colleges. The decision is significant because it clarified the role of the judiciary in guaranteeing that the court gave the judgement in light of Articles 14, 15 and 21 of the Constitution and the court in the absence of other measures, special adjustments and modifications are made to inculcate transgender individuals in the application and admissions processes of public universities. In India, the outcomes of such a hardly focused recognition of the third gender based on their self-identity become particularly troublesome. This is because third-gender identities in India have a distinct culture and are typically marginalised. In order to qualify as a “third gender,” a person must necessarily fit into one of the stereotypes that the Supreme Court has established and adhere to its norms. The Supreme Court’s nine-judge bench unanimously ruled in the *Puttaswamy* case, one of the most significant rulings of this period, that the right to privacy is a fundamental freedom that includes the freedom to express oneself and to make choices; the State has no right to intrude in such matters. Therefore, before we can address concerns about the extent and character of measures for strengthening the transgender community, there are certain ingrained systemic norms in the current framework that need to be altered and conquered.

In the case of *Suresh Kumar Koushal and another v NAZ Foundation and others*<sup>27</sup>, the Apex Court tried to interpret the Rights of Transgender as constitutional rights and made the following remarks regarding the same-

- “The right to choose one’s gender identity is integral to the right to a life with dignity and therefore falls within the scope of the right to life under the Indian Constitution (Article 21).
- The right to equality before the law under Article 14 of the Indian Constitution applies to all persons, including transgender persons, who are thereby entitled to equal

---

<sup>26</sup> *Mx. Alia SK v. The State of West Bengal and Others* (2019)

<sup>27</sup> *Suresh Kumar Koushal and another v NAZ Foundation and others*,



protection of the law in all spheres including employment, health care, education and civil rights.

- The prohibition of sex discrimination under Articles 15 and 16 of the Constitution is a prohibition against all forms of gender bias and gender-based discrimination including discrimination against transgender people.
- The state is obliged to take affirmative action to advance socially and educationally backward classes and this includes transgender people, who have faced centuries of injustice (Article 15(4)).
- Expressing one's identity through words, dress, action or behaviour is included in the right to freedom of expression (Article 19). The values of privacy, self-identity, autonomy and personal integrity are also fundamental rights under Article 19 and these rights belong to transgender people as well as others."

### **NALSA VS UNION OF INDIA - A CRITICAL ANALYSIS**

In the National Legal Services Authority v. Union of India case, generally known as the NALSA verdict, the Supreme Court issued a significant decision in 2014. The decision recognised that transgender people have the freedom to self-determine their gender without assistance from a medical professional or official confirmation.

The 2014 Apex Court decision (National Legal Services Authority v. Union of India<sup>1</sup>) upholds the fundamental rights of transgender people and guarantees legal identification, acknowledgement and concessions for transgender communities and individuals. The ruling demonstrates how the law fluctuates between wide and specific definitions of the term "transgender," as well as between gender self-determination and biological determinism (the latter of which views "biological" or physical features as the foundation for gender identity). Such opposing inclinations imply that the judgment's real constructions and application will be unequal and variable, thereby excluding people of different gender identities and limiting its promised benefits like legal identity recognition and equal opportunity. Despite its unusual and liberal interpretations of the fundamental rights to grant individuals the freedom to gender self-determination, the ruling in NALSA portrayed a very specific picture where all transgender individuals appeared to be the same. The doctrinal

framework outlined in the *National Legal Services Authority v. Union of India* has not been implemented, notwithstanding certain ambiguities. Education of legislators and implementing authorities about gender diversity and gender fluidity may be the primary and most effective way to combat this anti-transgender sentiment and enable them to introduce legislation and create laws without trivialising and misrepresenting the gender of transgender people. The Supreme Court acknowledged the suffering and discrimination the transgender minority in India endured. It established that the transgender population must be acknowledged with respect. The Court noted that one's dignity includes the ability to express one's own gender identification. It was concluded that one's fundamental right to life and freedom of speech includes the right to express one's gender identification.<sup>28</sup>

### **THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019 AND TRANSGENDER PERSONS (PROTECTION OF RIGHTS) RULES, 2020**

A bill was written in 2016 and sent to the Standing Committee of Parliament for additional recommendations.<sup>29</sup> In 2018, a new Bill was tabled in Parliament with the Standing Committee's recommendations in mind. 2019 saw a new introduction of this bill to Parliament, which later received support from both houses. The Indian Parliament passed the Transgender Persons (Protection of Rights) Act, 2019<sup>30</sup>, to ensure the rights of the transgender population. Mr Thaawarchand Gehlot presented it in the Lok Sabha on July 19, 2019. Certificate of Identity:

It guarantees a person's freedom to self-perceive their gender identity and requires the district magistrate to issue a "certificate of identification" for transgender individuals without the need for any type of physical or psychological evaluation. The following are the ways in which a transgender person can be recognized as per the said rules "A transgender person has to obtain a Certificate of Identity which will confer rights and be proof of recognition of identity as a transgender person. An application for obtaining such a Certificate should be made to the District Magistrate (DM). The DM will refer such an application to a District Screening Committee. The District Screening Committee will comprise a: (i) Chief Medical Officer; (ii) District Social Welfare Officer; (iii) psychologist or psychiatrist; (iv) representative of the transgender community; and (v) a government officer. The DM will issue a Certificate of

---

<sup>28</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438

<sup>29</sup> The Transgender Persons (Protection of Rights) Bill, 2016

<sup>30</sup> Transgender Persons (Protection of Rights) Act, 2019

Identity as ‘transgender’ based on the recommendation of this Committee. The gender of a transgender person will be recorded in all official documents, on the basis of this Certificate. If there is any change in gender, the transgender person may apply for a revised certificate by following the same process as that of obtaining a Certificate of Identity.” Section 6 (1) of the rule state that “The District Magistrate shall base on the application, the affidavit attached therewith and the report of psychologist, without any medical examination, issue the certificate of identity.”<sup>31</sup>

In light of this situation, it is crucial to develop an inter-sectionalise framework for comprehending India’s social system’s disparities. Caste, class, gender, and language must all be handled both independently and jointly. Application of Articles 14, 15, 19, and 21 of the Indian Constitution in practice consequently requires a thorough grasp of the connections between these issues.

## **CRITICISM OF THE CURRENT FRAMEWORK OF SELF-IDENTIFICATION**

Transgender people now have the freedom to express their “self-perceived gender identity” according to **The Transgender Persons (Protection of Rights) Act, 2019**. The Act and the resulting draught guidelines depict and promote a “biological/medical model” of transgender identity, despite the fact that such a move is commendable. As the legal standard for the human body, the law has chosen “binarism” “male” and “female” bodies—while ignoring the actual realities of transgender people. If a person’s current gender preference does not match the gender they were given at birth, they can medically change their gender to make up for the discrepancy. According to the World Professional Association’s (WPA) Guidelines for Transgender Health, medical therapies for gender transition should come after a “deep assessment of psychological, family, and social concerns.” However, the legal requirements for gender transition involve a very complicated mix of medical procedures (surgery psychotherapy) as well as legal documentation (affidavits and certifications).<sup>32</sup> What use is the “self-perceived gender identity” right of an individual if judges and medical professionals decide what that identity is? After all, “transgenderism” is more a matter of introspection—what and how one feels on the inside—than it is a matter of a person’s anatomy.

---

<sup>31</sup> Section 6 (i) of the Transgender Persons (Protection of Rights) Act, 2019

<sup>32</sup> Karen Humphries-Waa. (2014) THE Use of Hormone Therapy in the Male-to-Female Transgender Population: Issues for Consideration in Thailand. *International Journal of Sexual Health* 26:1, pages 41-51.

According to 2012 research by the National Coalition Against Violence, transgender people are two times as likely to experience exploitation and discrimination in comparison to people who are discriminated<sup>33</sup>. The Act only stipulates a maximum of 2 years and a minimum of six months with a penalty. According to the Indian Penal Code of 1860, the minimum sentence for assault or use of violence against a woman with the aim to cause her to remove her clothing is 3 years<sup>34</sup>. To uphold a fundamental degree of protection while keeping in mind the past of sexual exploitation and prejudice against the transgender community. The sentence should be raised to a minimum of three years in imprisonment as well as a maximum of seven years in prison in addition to penalty.

## CONCLUSION

Despite these innovative developments around the globe, Indian law has not succeeded in shielding members of the transgender community from both overt and covert forms of prejudice. The law is exceedingly limiting and discriminatory because it only lists nine types of discrimination and ignores common hardships faced by transgender people, such as abuse at the hands of the police, violence in detention facilities, and rape. Additionally, the law is ineffective in defending transgender people against subtle insults like awkward stares, unwanted gestures, and in particular, bullying and abuse of transgender children. However, the majority of transgender and gender nonconforming people today do not have access to state-level gender recognition. Because of this situation, there is a legal gap that encourages stigma and discrimination against them. The first step in empowering the transgender community is to accept them as full members of identity and personhood by granting them the same level of self-determination as cisgender people. There is still a considerable distance to travel before the third gender is given equal status, even though its acknowledgement is simply one step in that direction. Despite this the legislations and NALSA Judgement, little can be done without teaching community about the harms of such discriminatory practices and the necessity to disperse awareness of gender responsiveness, giving each person the room to recognise with their gender and recognise their growth potential. India's social and cultural background identification of this society remains exclusionary in its perspective. According to the Transgender Persons (Protection of Rights) Bill 2019 it is illegal to discriminate against transgender people in a number of circumstances, such as at work, in school, in the medical field,

---

<sup>33</sup> Darrick Ing & Tiffany Woods 'Why Talking About Domestic Violence in the Transgender Community Matters, Transgender Law Center' <<https://transgenderlawcenter.org/archives/9392>> accessed 23 June 2020.

<sup>34</sup> Section 354 B, Indian Penal Code, 1860.

when gaining access to public services and facilities, and more. A lot of nuances are attached to gender self-identification which need to be taken into consideration. It perfectly exemplifies by the researcher how gender identification may put the privacy of women at risk. On the other hand, why there is a need for gender identification for the protection of transgender people. Education of legislators and instituting state officials about gender diversity and gender fluidity may be the primary and most effective way to combat this anti-transgender sentiment and enable lawmakers to introduce legislation and implement policies without overstating and misrepresenting transgender people.<sup>35</sup> As described by the researcher the current legislations have many shortcomings, it is the duty of the legislature to follow the gender identification practices from different nations and draft new rules taking International and National jurisprudential developments related to self-identification. The dualistic idea that one should include certain individuals while excluding others has long been the norm for law. It can be determined, has several flaws and that there is an urgent need to recast the entire legislation after throwing light on its shortcomings and researching how transgender rights are seen around the world. Whenever it comes to providing legal protection to transgender people, this dualism is merely perpetuated and legitimised through a variety of legal frameworks and interlocutory processes.

---

<sup>35</sup> A system of gender self-identification would put women at risk By KRISTINA HARRISON Jul 3rd, 2018 Economist <https://www.economist.com/open-future/2018/07/03/a-system-of-gender-self-identification-would-put-women-at-risk>

## BIBLIOGRAPHY

### BOOKS

1. Johnson, Robert and Adam Cureton, "Kant's Moral Philosophy", The Stanford Encyclopedia of Philosophy (Fall 2022 Edition), Edward N. Zalta & Uri Nodelman (eds.)
2. Srinivasan SP, Chandrasekaran S. Transsexualism in Hindu Mythology. *Indian J Endocrinol Metab.* 2020 May-Jun;24(3):235-236.
3. Bhargava A, Arnold AP, Bangasser DA, Denton KM, Gupta A, Hilliard Krause LM, et al. (May 2021). "Considering Sex as a Biological Variable in Basic and Clinical Studies: An Endocrine Society Scientific Statement". *Endocrine Reviews.* 42 (3): 219–258
4. Sexual orientation and gender identity: a review of concepts, controversies and their relation to psychopathology classification systems by Moleiro Carla, Pinto Nuno *Frontiers in Psychology VOLUME, 6, 2015*
5. Gorton, R. N., & Grubb, H. M. (2014). General, sexual, and reproductive health. In L. Erickson-Schroth (Ed.), *Trans bodies, trans selves: A resource for the transgender community* (pp. 215–240). New York, NY: Oxford University Press.
6. "Culture, Society and Sexuality" Book by Peter Aggleton Published December 21, 2006 by Routledge
7. "Gender differences in determinants and consequences of health and illness" Vlassoff C.. *J Health Popul Nutr.* 2007 Mar;25(1):47-61.
8. "Transgender issues in counselor preparation. *Counselor Education and Supervision*" Carroll, Lynne. (2002). Carroll, L., & Gilroy, P. (2002)., 41, 233-242.
9. Gram, L., Morrison, J. & Skordis-Worrall, J. Organising Concepts of 'Women's Empowerment for Measurement: A Typology. *Soc Indic Res* 143, 1349–1376 (2019)

### JOURNALS

1. Mizock, Lauren & Lewis, Thomas. (2008). Trauma in Transgender Populations: Risk,

- Resilience, and Clinical Care. *Journal of Emotional Abuse*. 8. 335-354.
2. Sánchez, F. J., & Vilain, E. (2009). Collective self-esteem as a coping resource for male-to-female transsexuals. *Journal of Counseling Psychology*, 56(1), 202–209.)
  3. Karen Humphries-Waa. (2014) THE Use of Hormone Therapy in the Male-to-Female Transgender Population: Issues for Consideration in Thailand. *International Journal of Sexual Health* 26:1, pages 41-51.
  4. Transgender, Third Gender, No Gender: Part II by Neela Ghoshal
  5. Maddux, James E.; Winstead, Barbara A. (11 July 2019). *Psychopathology: Foundations for a Contemporary Understanding*. Routledge.
  6. Jame Agrippa Agapoff. (2022) Why society should embrace the apparent “rise” in transgender youth. *Journal of Gay & Lesbian Mental Health* 0:0, pages 1-3.
  7. Green, E. R. (2006). Debating trans inclusion in the feminist movement: A trans-positive analysis. *Journal of Lesbian Studies*, 10(1/2), 231–248.
  8. McDermott, E., Hughes, E. and Rawlings, V. (2017). “The social determinants of lesbian, gay, bisexual and transgender youth suicidality in England: a mixed methods study.” *Journal of Public Health*

## **ARTICLE AND WEBSITES**

1. World Health Organization - Gender, equity and human rights: Glossary of terms and tools. <https://www.unicef.org/rosa/media/1761/file/Gender%20glossary%20of%20terms%20and%20concepts%20.pdf>
2. About 96% of transgenders are denied jobs, 60% have never attended schools: Study <https://www.moneycontrol.com/news/india/about-96-of-transgenders-are-denied-jobs-60-have-never-attended-schools-study-2836281.html>
3. About 92% Of Transgenders Are Deprived Of Their Rights, Refused Jobs; Just 2% Stay With Parents <https://www.indiatimes.com/news/india/about-92-of-transgenders-are-deprived-of-their-rights-refused-jobs-just-2-stay-with-parents-351131.html>

4. Transgender rights, the 'Third Gender' and transforming the workplace in India By Alope Tiwari, Shivika Upadhyay And Vishal Singh'S Blog-  
<https://www.lexology.com/library/detail.aspx?g=b49d9488-c484-4d00-882c-2c386a041a07>
5. Making India Transgender Inclusive: An in-Depth Analysis of the Education Sector in India
6. Darrick Ing & Tiffany Woods '*Why Talking About Domestic Violence in the Transgender Community Matters*, Transgender Law Center' <<https://transgenderlawcenter.org/archives/9392>>
7. A system of gender self-identification would put women at risk, The Economist  
<https://www.economist.com/open-future/2018/07/03/a-system-of-gender-self-identification-would-put-women-at-risk>

<b>TABLE OF CASES</b>
National Legal Services Authority v. Union of India, (2014) 5 SCC 438
Suresh Kumar Koushal and another v NAZ Foundation and others [(2014) 1 SCC 1]
National Legal Services Authority v. Union of India (2014) 5 SCC 438
K.S. Puttaswamy and Anr. vs. Union of India ((2017) 10 SCC 1
ECtHR, Hämäläinen v. Finland No. 37359/09 (2014); See also Parry v. the United Kingdom No. 42971/05 and R. and F. v. the United Kingdom No. 35748/05.
G v Australia (CCPR/C/119/D/2172/2012).
Anuj Garg v. Hotel Assn, of India, (2008) 3 SCC 1
Christina Lobo v. State of Karnataka, 2020 SCC OnLine Kar 1634
Malta Gender identity, gender expression and sex characteristic Act of 14 April 2015



Queen Empress v. Khairati (1884) ILR 6 All 204
Corbett v. Corbett (1970) 2 All ER 33
R v. Tan (1983) QB 1053, 1063-1064
Attorney-General v. Otahuhu Family Court (1995) 1 NZLR 603
A.B. v. Western Australia (2011) HCA 42
House of Lords in Bellinger v. Bellinger (2003) 2 All ER 593
Kuala Lumpur in Re JG, JG v. Pengarah Jabatan Pendaftaran Negara (2006) 1 MLJ 90,

**STATUTORY REFERENCES**

The Transgender Persons (Protection of Rights) Bill, 2016
Transgender Persons (Protection of Rights) Act, 2019
Transgender Persons(Protection of Rights) Rules, 2020
Constitution of India
The Indian Penal Code, 1860
Equality Act 2010
<i>Gender Equality Act B.E. 2558</i> Thailand 2015
UNDP Strategic Plan 2018—2021
Gender Identity, Gender Expression and Sex Characteristics Act, 2015.
Gender Recognition Act, July 2015.

Gender Recognition Act Belgium, 25 June 2017.