
UNSEEN, UNHEARD: LEGAL AND SOCIAL EXCLUSION OF THE TRANSGENDER COMMUNITY IN INDIA

Dr. Gauri Bajaj, Department of Laws, Panjab University, Chandigarh

ABSTRACT

The transgender community in India, despite constitutional guarantees of equality, dignity, and non-discrimination, continues to face entrenched legal and social exclusion. This paper critically examines the historical roots, legislative framework, and judicial interventions aimed at protecting the rights of transgender persons. Drawing upon landmark rulings such as *National Legal Services Authority v. Union of India*, AIR 2014 SC 1863, *Justice K.S. Puttaswamy v. Union of India*, AIR 2017 SC 4161, and *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321, it highlights the judiciary's pivotal role in affirming gender identity and personal liberty under Articles 14, 15, 19, and 21 of the Constitution of India. The research explores persistent barriers in education, employment, healthcare, and housing, aggravated by societal prejudice and policy inadequacies. It evaluates The Transgender Persons (Protection of Rights) Act, 2019, and related welfare schemes, questioning their effectiveness in translating constitutional promises into lived realities. Comparative analysis with jurisdictions such as Nepal, Pakistan, the United States, and the United Kingdom offers insights into inclusive policy models and jurisprudential innovations. Through an interdisciplinary lens combining legal doctrine, human rights theory, and socio-legal analysis, the study underscores the need for structural reforms, sensitisation programmes, and robust enforcement mechanisms. The paper ultimately calls for a paradigm shift—from mere legal recognition to substantive equality—ensuring that transgender persons in India are not only seen and heard but empowered to participate fully in public and private life.

Keywords: Transgender Rights, Social Exclusion, Constitutional Law – India, Human Rights, Gender Identity

1. Historical and Social Context of Transgender Identity in India

The transgender community in India holds a complex and multifaceted place in the country's social and cultural history.¹ Known by various names such as hijras, kinnars, aravanis, jogtas, and more, transgender identities have long been embedded in the Indian subcontinent's cultural and religious fabric. These identities have traditionally occupied unique social roles, ranging from performers and temple servants to spiritual figures endowed with blessings and curses. However, despite this long-standing presence, transgender persons have historically experienced ambivalent societal attitudes—revered in certain contexts yet subjected to ostracism and marginalization in everyday life.²

In ancient Indian texts and traditions, there is evidence of recognition and inclusion of non-binary genders. For example, the Mahabharata mentions Shikhandi, a warrior who was transgender, and the Hijra community is believed to have connections with religious mythology³, often linked to deities like Shiva and Shiva's consort Ardhanarishvara, who represents a synthesis of male and female forms. Similarly, some ritual practices accorded hijras a semi-sacred status, particularly in blessing newborns and newlyweds for fertility and prosperity. This spiritual role translated into limited social acceptance and certain economic opportunities within the community. However, the colonial period marked a significant turning point in the social positioning of transgender persons in India. The British Raj imposed Victorian moral codes and criminalized many practices and identities. The Criminal Tribes Act of 1871 branded communities, including hijras, as "criminal tribes," essentially institutionalizing stigma and social exclusion. Additionally, Section 377 of the Indian Penal Code, introduced in 1861, criminalized consensual same-sex relations, indirectly deepening the marginalization of gender-diverse persons by associating their identities with deviance and criminality.⁴

Post-independence India inherited this colonial legacy of exclusion and discrimination. Despite

¹ Kaur, Lovepreet. "Exploring LGBTQ+ equality in India: A comprehensive examination from anthropological and legal perspectives." *Sexuality, Gender & Policy* 7.2 (2024): 220-237.

² Nirmala, T. "From Recognition to Realization: Examining the Implementation and Impact of Transgender Rights in Contemporary India." *Library of Progress-Library Science, Information Technology & Computer* 44.3 (2024).

³ Alisha, Miss O. "Tracing the Elements of Queerness in Indian Mythology with reference to the select short stories of Devdutt Pattanaik's Shikhandi and Other Tales They Don't Tell You." *International Journal of Emerging Technologies and Innovative Research*, ISSN (2018): 2349-5162.

⁴ DIGVIJAY, GANPATI. "A CRITICAL EXAMINATION OF LEGAL RECOGNITION OF NON-HETERONORMATIVE UNIONS IN INDIA." (2025).

constitutional guarantees of equality and dignity, transgender persons remained largely invisible in legal and policy frameworks. Their social exclusion intensified, reinforced by prevailing cultural norms that viewed gender strictly through a binary lens of male and female. This binary framework excluded transgender identities from public discourse, education, employment, healthcare, and political representation.

Economic marginalization became pronounced as many transgender persons, denied access to formal employment, turned to traditional livelihoods such as begging, performing at ceremonies, and sex work. These occupations, while culturally significant for some, also subjected transgender persons to harassment and exploitation. Poverty, low literacy rates, and lack of family support further entrenched their social exclusion.

Moreover, transgender persons have faced significant violence and discrimination within families and communities. Forced disownment, physical abuse, and social isolation often begin in childhood or adolescence when individuals assert their gender identity. This social rejection contributes to high rates of homelessness and vulnerability.

Despite these challenges, the transgender community in India has shown resilience and collective strength. Organized activism and advocacy have increased, particularly since the late 20th century, pushing for legal recognition, social acceptance, and rights-based approaches. Cultural productions, media representation, and public awareness campaigns have started to challenge stereotypes and promote inclusion.

In sum, the historical and social context of transgender identity in India reflects a dual reality: on one hand, rich cultural heritage and spiritual significance; on the other, enduring colonial and postcolonial legacies of legal invisibility, social exclusion, and economic marginalization. Understanding this background is critical to appreciating the contemporary struggles and legal battles for transgender rights and inclusion in India.

2. Constitutional Protections and Judicial Recognition

India's Constitution, adopted in 1950, lays down a comprehensive framework of fundamental rights designed to guarantee equality, freedom, and dignity to all citizens. For transgender persons⁵—who have historically faced deep social exclusion—these constitutional provisions

⁵ Ojha, Anushka. "Sexual Minorities and the Right to Family: Constitutional and Legal Rights." (2024).

are crucial legal tools. While the Constitution does not explicitly mention transgender or third gender identities, its broad guarantees have been progressively interpreted by the judiciary to protect and promote the rights of transgender individuals.

Key among these are Article 14 (Right to Equality), Article 15 (Prohibition of Discrimination), Article 19 (Freedom of Expression), and Article 21 (Right to Life and Personal Liberty). Article 14 ensures equality before the law and equal protection of the laws.⁶ Article 15 prohibits discrimination on grounds including sex, which courts have expansively interpreted to include gender identity. Article 19 guarantees freedoms such as speech and expression, which relate to the right of transgender persons to express their gender identity openly. Article 21, recognized as a broad protection of life and personal liberty, has been foundational in safeguarding dignity and autonomy.

Despite these constitutional promises, the transgender community remained legally invisible and socially marginalized for decades. This began to change through sustained litigation and activism culminating in landmark judicial pronouncements.

The watershed moment came with the Supreme Court's judgment in **National Legal Services Authority (NALSA) v. Union of India (2014)**.⁷⁸ In this case, the Supreme Court officially recognized transgender persons as a "third gender," distinct from the traditional binary genders of male and female. The Court held that transgender persons are entitled to all constitutional rights and freedoms, including the right to self-identify their gender. Importantly, the Court declared that the fundamental rights guaranteed by the Constitution extend to transgender persons under Articles 14, 15, 19, and 21.

The NALSA judgment emphasized that gender identity is an integral aspect of personal liberty and dignity, and that denial of this identity constitutes discrimination. The Court directed the central and state governments to treat transgender persons as socially and educationally backward classes for the purposes of affirmative action and reservations. It called for measures to ensure access to education, health, employment, and social welfare.

⁶ Kilpatrick, Claire, and Hanna Eklund. "Article 21—non-discrimination." *The EU Charter of Fundamental Rights*. Nomos Verlagsgesellschaft mbH & Co. KG, 2022.

⁷ (2014) 5 SCC 438

⁸ Chandrachud, Indu Malhotra. "Navtej Singh Johar vs Union Of India Ministry Of Law And... on 6 September, 2018." (2018).

The judgment was groundbreaking because it:

- Affirmed the constitutional right to self-identification of gender, empowering transgender individuals to determine their gender identity without state interference.
- Recognized the State's obligation to take positive steps to eliminate discrimination and to provide social welfare benefits.
- Directed the creation of institutional mechanisms like transgender welfare boards at the state level.
- Acknowledged the historic and ongoing discrimination faced by transgender persons, mandating legal and social inclusion.

Following NALSA, several High Courts have further interpreted the constitutional protections to address specific issues such as reservation in education and employment, and protection from harassment and violence. For example, the Madras High Court in **Arunkumar v. The Inspector General of Police**⁹(2016) ruled in favor of the right of transgender persons to self-identify and be treated according to their gender identity in official documents.¹⁰

Internationally, the NALSA judgment aligns with global human rights trends, including the Yogyakarta Principles (2006), which affirm that everyone has the right to recognition before the law according to their self-defined gender identity.

However, despite judicial recognition, implementation remains uneven. Many transgender persons continue to struggle to access welfare benefits, obtain accurate identity documents, and live free from discrimination and violence. The judiciary's progressive pronouncements have not been matched by robust policy implementation or administrative reforms.

Furthermore, while the constitutional framework is broadly inclusive, the judiciary has not comprehensively addressed all aspects of transgender rights. For example, issues relating to marriage rights, adoption, and inheritance for transgender persons have yet to receive full

⁹ W.P. (MD) No. 13267 of 2015

¹⁰ Waggy, Mohmad Maqbool, and Danish Bashir. "Transgender Rights in India's Legal System: A Critical Analysis." *Sexuality Research and Social Policy* 22.1 (2025): 101-107.

judicial clarity.¹¹

In conclusion, constitutional protections and judicial recognition have established a robust legal foundation for transgender rights in India. The NALSA judgment, in particular, is a milestone that legally validates transgender identities and mandates State responsibility for inclusion. Yet, these legal victories remain aspirational for many transgender persons whose lived experiences continue to be shaped by social exclusion, discrimination, and legal barriers.

For the transgender community, constitutional and judicial recognition provides critical tools to claim rights and dignity. The challenge ahead lies in translating these legal norms into practical realities through legislative reform, policy implementation, and societal transformation.

3. Analysis of the Transgender Persons (Protection of Rights) Act, 2019

The Transgender Persons (Protection of Rights) Act, 2019, represents the first comprehensive legislation by the Indian Parliament aimed at safeguarding the rights of transgender persons and addressing the social and legal exclusion they face.¹² Enacted amidst strong advocacy and public attention following the Supreme Court's NALSA judgment in 2014, the Act seeks to operationalize constitutional protections and provide a statutory framework for the welfare and dignity of transgender individuals. However, since its enactment, the Act has attracted considerable criticism for its shortcomings in addressing the actual needs of the transgender community and for procedural and substantive limitations that have impacted its effectiveness.

The Act's stated objectives include the prohibition of discrimination against transgender persons in areas such as education, employment, healthcare, and access to public services. It criminalizes acts of violence, exploitation, and denial of rights against transgender persons, prescribing penalties for offenses such as forced eviction from homes, physical abuse, and sexual assault. The Act also envisages the establishment of transgender welfare committees at the state and district levels to promote the welfare of transgender persons and implement

¹¹ Chandrachud, D. Y. "Supreme Court of India Justice KS Puttaswamy (Retd)... vs Union Of India And Ors. on 24 August, 2017." (2017).

¹² Bhattacharya, Shamayeta, Debarchana Ghosh, and Bandana Purkayastha. "'Transgender persons (protection of rights) act' of India: an analysis of substantive access to rights of a transgender community." *Journal of Human Rights Practice* 14.2 (2022): 676-697.

government schemes.¹³

One of the Act's key provisions is the recognition of transgender identity. However, contrary to the NALSA judgment's emphasis on self-identification as a fundamental right, the 2019 Act mandates a formal process requiring individuals to apply for a certificate of identity from a designated district magistrate. This bureaucratic procedure has been criticized for infringing on the right to self-identify, creating barriers for transgender persons who may not have the means or willingness to navigate complex administrative systems. The requirement to undergo medical examinations or assessments as part of the recognition process has also raised concerns about invasive state control over personal identity.

Further, the Act does not explicitly provide for affirmative action such as reservations in education or employment, a gap given the Supreme Court's direction in NALSA to treat transgender persons as socially and educationally backward classes deserving of such measures. While the Act prohibits discrimination, it stops short of guaranteeing proactive steps to ensure substantive equality.

Another point of criticism is the ambiguity surrounding the definition of "transgender" persons in the Act. The law defines transgender to include trans-men, trans-women, persons with intersex variations, gender-queers, and others, but the operationalization of this definition, especially in identity recognition and welfare schemes, has been problematic. Intersex persons, in particular, have expressed that their specific needs related to bodily autonomy and medical interventions are not adequately addressed.

The enforcement mechanisms under the Act have also been questioned. The responsibility to investigate offenses against transgender persons is placed on the police, a force historically accused of discrimination and harassment of transgender individuals. There is no independent monitoring body to oversee police conduct or ensure sensitive handling of cases involving transgender victims. Furthermore, penalties prescribed in the Act for offenses are considered inadequate by many activists, who demand stronger punitive measures to deter violence.

Healthcare rights constitute a vital area where the Act's provisions have fallen short. While it states that transgender persons have the right to healthcare and gender-affirming procedures, it

¹³ Gulati, Devika. "Legislative Effectiveness from a Legislative Drafter's Perspective: Analysing the Transgender Persons (Protection of Rights) Act, 2019." *Eur. JL Reform* 23 (2021): 378.

lacks specific guidelines or standards for medical institutions, insurance coverage, or training of healthcare professionals. This results in uneven access to medical care and persistent stigma in healthcare settings.¹⁴

The Act also provides for the right to reside in their households and prohibits discrimination in housing. However, the lived reality of transgender persons facing eviction or family rejection is rarely mitigated by effective legal remedies or social support, given the lack of robust implementation frameworks.

In conclusion, the Transgender Persons (Protection of Rights) Act, 2019, while a step forward, remains insufficient to address the systemic exclusion of transgender persons in India. Its procedural barriers, lack of affirmative action, and weak enforcement limit its transformative potential. For the Act to fulfill its promise, there must be legislative amendments, administrative reforms, and greater involvement of transgender persons in policymaking and implementation processes.¹⁵

4. Social Exclusion: Discrimination in Education, Employment, and Healthcare

Despite constitutional guarantees and statutory protections, transgender persons in India continue to face widespread social exclusion, particularly in critical areas like education, employment, and healthcare. This exclusion is not merely the result of legal gaps but deeply rooted in societal attitudes, cultural norms, and systemic discrimination that limit transgender persons' access to basic rights and opportunities. Understanding these dimensions is essential to comprehending the daily realities of transgender individuals and the challenges they face in achieving full participation and dignity in society.¹⁶

Education serves as a fundamental gateway to empowerment, yet transgender persons frequently encounter barriers at every stage of their educational journey. From early childhood, transgender children and adolescents often face bullying, harassment, and rejection by peers, teachers, and even school authorities. Many are forced to drop out due to lack of safe and

¹⁴ Chakrabarti, Ankita, and Bhaswati Das. "Recognition, citizenship and rights: the dilemma of India's gender non-conforming communities in the light of the Transgender Persons (Protection of Rights) Act." *Journal of Gender Studies* 32.7 (2023): 694-706.

¹⁵ Khanna, Aastha, and Divesh Sawhney. "Legislative review of the transgender persons (Protection of Rights) Act, 2019." *Hum. Rts. Brief* 24 (2020): 155.

¹⁶ Pradhan, Essa. "Evolution of Rights of Transgenders with Reference to the Transgender Persons (Protection of Rights) Act, 2019." *Issue 1 Indian JL & Legal Rsch.* 4 (2022): 1.

inclusive environments. Studies reveal that the literacy rates among transgender persons remain significantly lower than national averages, with dropout rates as high as 70% in some regions. The absence of gender-sensitive curricula, anti-bullying policies, and trained counselors exacerbates these challenges.

Discrimination also persists in **higher education** admissions and campus life. Many transgender students report difficulty in accessing facilities, facing misgendering by staff, and being excluded from student welfare schemes. This educational marginalization limits opportunities for skill development and upward mobility, perpetuating cycles of poverty and exclusion.

Employment is another critical sector where transgender persons experience entrenched discrimination. Official statistics show that the majority of transgender individuals are either unemployed or work in the informal sector under precarious conditions. Limited education, societal stigma, and workplace harassment contribute to this marginalization. Many transgender persons are compelled to engage in begging, sex work, or traditional performance arts for survival—occupations that often carry social stigma and economic insecurity.¹⁷

Where transgender persons do find formal employment, they frequently face discrimination in hiring, promotion, and workplace interactions. Reports of harassment, denial of restroom access, and refusal of service in workplaces are common. Few companies have inclusive policies or diversity training programs that address gender identity issues. The lack of workplace anti-discrimination laws specific to gender identity further entrenches economic exclusion.

In recent years, some affirmative initiatives, including skill development and entrepreneurship programs by government and NGOs, have aimed to improve transgender employment. Yet, their reach remains limited, and systemic barriers continue to restrict the ability of transgender persons to access dignified, sustainable livelihoods.

Healthcare discrimination poses another formidable challenge to transgender inclusion. Transgender persons often encounter stigma, ignorance, and outright denial of services in hospitals and clinics. Lack of sensitization among healthcare providers leads to breaches of

¹⁷ Whittle, Stephen, et al. "Engendered penalties: Transgender and transsexual people's experiences of inequality and discrimination." (2007).

confidentiality, refusal of treatment, and neglect of transgender-specific health needs, including gender-affirming procedures.¹⁸

Mental health concerns are particularly acute, with transgender individuals reporting high rates of depression, anxiety, and suicidal ideation stemming from social rejection and violence. However, mental health services remain inaccessible or insensitive. HIV/AIDS prevalence is also disproportionately higher in transgender communities, necessitating targeted health interventions.¹⁹

The absence of clear guidelines or standardized protocols for gender-affirming healthcare within public health systems limits access to hormone therapy, surgeries, and counseling. Insurance policies often exclude transgender-specific treatments, adding financial barriers.

Public health programs frequently overlook transgender persons, further marginalizing them from essential services like sexual and reproductive healthcare, maternal health (for transgender men), and preventive screenings.

In conclusion, social exclusion in education, employment, and healthcare remains one of the greatest barriers to transgender persons' dignity and equality in India. Addressing these systemic discriminations requires comprehensive policies, inclusive institutional practices, sensitization programs, and robust enforcement of anti-discrimination laws. Only by ensuring access and equity in these fundamental areas can the promise of constitutional protections and legal reforms be fulfilled.

5. Violence, Harassment, and Policing of Transgender Persons

Violence and harassment against transgender persons in India represent severe and persistent dimensions of social exclusion²⁰, severely undermining their safety, dignity, and access to justice. Despite constitutional protections and legal reforms, transgender individuals face disproportionately high rates of physical, sexual, and psychological violence in public and private spheres. Compounding this vulnerability is the problematic role of law enforcement

¹⁸ Sharma, Rajni, Purnendu Mishra, and Rajni Sharma. "Transgender: health and rights." *Eur J Pharm Med Res* 7 (2020): 570-579.

¹⁹ Kcomt, Luisa. "Profound health-care discrimination experienced by transgender people: Rapid systematic review." *Social work in health care* 58.2 (2019): 201-219.

²⁰ Jose, Justin P., and Vinod C. V. "Sexual identity and psychosocial disabilities of transgender women in India: A social exclusion perspective." *Voice of Dalit* 7.1 (2014): 95-104.

agencies, which have often been implicated in discrimination, abuse, and denial of justice against transgender persons.²¹

Physical violence directed at transgender individuals frequently occurs in their homes, communities, workplaces, and public spaces. Many transgender persons report being subjected to assault, sexual violence, and humiliation based on their gender identity. Such violence is often motivated by transphobia, social stigma, and entrenched prejudices. Within families, transgender persons are sometimes forcibly disowned, subjected to physical punishment, or coerced into conforming to binary gender norms. These family-based abuses contribute to homelessness, economic instability, and social isolation.²²

In public spaces, transgender persons are routinely harassed and attacked. This includes verbal abuse, intimidation, sexual harassment, and physical assaults by strangers or mobs. Public transportation, markets, and places of worship can be sites of heightened vulnerability. The threat of violence severely limits transgender persons' freedom of movement and participation in civic life.

Sexual violence remains a particularly grave concern. Transgender persons, especially transgender women, face high rates of rape, sexual exploitation, and trafficking. These acts often go unreported due to fear of stigma, reprisal, or mistrust of the criminal justice system. Victims frequently encounter victim-blaming and secondary trauma in police stations and courts, further deterring reporting.

The criminal justice system's interaction with transgender persons is complicated by systemic biases and insensitivity.²³ Police officers have historically treated transgender individuals as criminals or deviants rather than victims or rights holders. Cases of arbitrary arrests, extortion, invasive searches, and physical abuse by police personnel are well-documented by human rights organizations. The Criminal Tribes Act legacy and moral policing attitudes continue to influence police behavior, despite legal prohibitions against discrimination.

²¹ Reisner, Sari L., et al. "Global health burden and needs of transgender populations: a review." *The Lancet* 388.10042 (2016): 412-436.

²² Hotchandani, Khushboo R. "Problems of transgender in India: A study from social exclusion to social inclusion." *International research journal of Human resources and social sciences* 4.4 (2017): 73-79.

²³ Reisner, Sari L., et al. "Global health burden and needs of transgender populations: a review." *The Lancet* 388.10042 (2016): 412-436.

In many instances, transgender persons are denied police protection and access to justice. Complaints filed by transgender victims of violence are often dismissed or inadequately investigated. Lack of transgender sensitization training for law enforcement exacerbates this problem, perpetuating cycles of impunity for perpetrators.

Some transgender persons have also faced harassment in judicial and prison settings. Incarceration facilities are ill-equipped to accommodate transgender inmates, exposing them to increased risks of violence, sexual assault, and denial of healthcare. Legal recognition of gender identity is frequently not respected in these contexts, causing further trauma.

In conclusion, violence and harassment remain pervasive barriers to transgender inclusion in India. Policing institutions, rather than consistently serving as protectors, have often contributed to marginalization through discrimination and abuse. To realize the constitutional promise of equality and dignity, it is imperative to overhaul law enforcement training, establish accountability mechanisms, strengthen victim support systems, and foster societal attitudinal change. Only by confronting these intersecting forms of violence can transgender persons begin to live free from fear and exclusion.²⁴

6. Legal Identity and Documentation Challenges

Legal identity is a foundational element of citizenship that enables individuals to access a wide range of rights and services. For transgender persons in India, obtaining accurate legal identity documents that reflect their self-identified gender remains a significant hurdle, leading to systemic exclusion from education, healthcare, employment, voting, and social welfare schemes.

Drawing upon landmark rulings such as **National Legal Services Authority v. Union of India**²⁵, AIR 2014 SC 1863, **Justice K.S. Puttaswamy v. Union of India**²⁶, and **Navtej Singh Johar v. Union of India**²⁷, it highlights the judiciary's pivotal role in affirming gender identity and personal liberty under Articles 14, 15, 19, and 21 of the Constitution of India. These decisions have collectively established that self-identification of gender is an intrinsic aspect

²⁴ Arvind, Amrita, et al. "Social strain, distress, and gender dysphoria among transgender women and Hijra in Vadodara, India." *International Journal of Transgender Health* 23.1-2 (2022): 149-163.

²⁵ Verma, Pragati. "National Legal Services Authority vs Union of India-Position of Concept in Other Countries." *Jus Corpus LJ* 1 (2020): 123.

²⁶ AIR 2017 SC 4161

²⁷ AIR 2018 SC 4321

of personal liberty and equality, thus mandating the State to legally recognize gender identities beyond the traditional male-female binary.

Despite this strong constitutional backing, the practical reality remains challenging. The **Transgender Persons (Protection of Rights) Act, 2019**, requires transgender individuals seeking official recognition of their gender to apply for a “certificate of identity” through a district magistrate. This process involves submitting applications that may require medical or psychological assessments, which many activists criticize as invasive and contrary to the principle of self-identification.

This bureaucratic hurdle creates multiple problems. First, many transgender persons face difficulties in understanding and navigating the application process, especially those who are illiterate or economically marginalized.²⁸ Second, delays and inconsistent practices across states lead to long waiting periods and arbitrary denials. Third, the requirement of medical certification often forces transgender individuals to undergo unwanted examinations, undermining bodily autonomy and privacy.²⁹

Without proper legal identity documents, transgender persons face denial of access to essential services. For example, opening bank accounts, obtaining ration cards for food subsidies, registering for education, and accessing healthcare all require identity proof that matches the individual’s gender presentation. Mismatched or incorrect identity documents expose transgender persons to humiliation, harassment, and discrimination. They may be refused service or treated disrespectfully, further entrenching their marginalization.³⁰

To address these challenges, some states such as Tamil Nadu and Kerala have pioneered more inclusive policies, including issuing identity cards to transgender persons without requiring medical certificates. These models offer pathways for reform at the national level.

In summary, legal identity and documentation challenges remain a profound barrier to transgender inclusion in India. The disjunction between constitutional recognition and

²⁸ Prabhakar, Bharti. "FROM STIGMA TO SUPPORT: ADDRESSING THE BARRIERS AND NEEDS OF TRANSGENDER INDIVIDUALS."

²⁹ HARSHA, ANIYAN. *OPPORTUNITIES AND OBSTACLES IN TRANSGENDER*. Diss. St Teresa's College (Autonomous), Ernakulam, 2022.

³⁰ Sarkar, Swakshadip. *Dual Liminality and Violation of Rights: Transgender Asylum Seekers and Access to Institutions, Social Services and Support in Aotearoa New Zealand*. Diss. Open Access Te Herenga Waka-Victoria University of Wellington, 2025.

administrative practice excludes many transgender persons from exercising their rights fully and living with dignity. Simplifying and standardizing procedures for gender recognition, abolishing medical gatekeeping, and sensitizing officials are critical steps toward ensuring that all transgender persons can access legal identity documents that affirm their gender identity.

7. Government Welfare Schemes and Their Implementation

In response to the longstanding social and economic exclusion faced by transgender persons, both the central and various state governments in India have introduced welfare schemes aimed at improving their living conditions, education, employment, and healthcare. These initiatives mark an important step toward recognizing the unique challenges faced by the transgender community and attempt to provide support mechanisms to promote their social inclusion. However, despite the formulation of such schemes, their implementation has often been inconsistent, underfunded, and hindered by lack of awareness among both officials and beneficiaries.

At the central level, the Ministry of Social Justice and Empowerment launched the '**National Action Plan for Transgender Persons**', which includes financial assistance for education, skill development programs, and schemes for health and social security. One notable initiative is the provision of scholarships to transgender students for school and higher education, aiming to reduce dropout rates and promote literacy. The government has also announced pension schemes and housing facilities to improve economic security.³¹

States like Tamil Nadu and Kerala have been pioneers in launching transgender-specific welfare programs. Tamil Nadu's '**Aravani Welfare Board**', established in the 1990s, provides pensions, free medical treatment, skill training, and legal aid to transgender persons. Kerala has implemented a comprehensive transgender policy focusing on healthcare, education, and employment. These states have also facilitated issuance of identity cards for transgender individuals, enabling access to various government benefits.³²

Despite these positive developments, the reach of government schemes remains limited. Many transgender persons are unaware of their entitlements due to poor dissemination of information

³¹ Dhall, Pawan, and Paul Boyce. "Livelihood, exclusion and opportunity: socioeconomic welfare among gender and sexuality non-normative people in India.(Evidence Report No. 106: Sexuality, Poverty and Law)." (2015).

³² Sonune, Manoj, and Allen Ugargol. "The need for age-inclusive and gender-sensitive social policies for India's longevity society." *Ageing and longevity* 6.1 (2025): 73-97.

and social stigma that discourages interaction with government agencies. The bureaucratic process to access benefits is often cumbersome, involving complex paperwork and documentation that many find difficult to obtain or complete.³³

Implementation challenges are compounded by inadequate training of frontline officials who frequently lack sensitivity to transgender issues. This sometimes results in discrimination or apathy when transgender persons approach government offices for services, discouraging continued engagement.

Financial constraints and inconsistent funding allocations further hamper the efficacy of welfare programs. Some schemes have been discontinued or inadequately expanded, reflecting a lack of political priority. Moreover, there is limited data on the utilization of these programs, making it difficult to assess impact or identify gaps.

Healthcare remains a critical gap in welfare implementation. Though some schemes include provisions for gender-affirming treatments and HIV/AIDS care, access to competent medical professionals and affordable services is inconsistent. Insurance coverage for transgender-specific healthcare is minimal or nonexistent.

Civil society organizations have played an instrumental role in supplementing government efforts by providing safe shelters, vocational training, and legal aid. Partnerships between NGOs and government bodies have shown promising results in increasing outreach and delivering services effectively.

In conclusion, while government welfare schemes for transgender persons in India signify progress towards inclusion, significant barriers remain in their implementation. To realize their full potential, there is a need for increased funding, streamlined processes, comprehensive awareness campaigns, and sustained capacity building among officials. Engaging transgender persons in policy design and delivery will ensure that welfare programs are responsive to their diverse needs, moving beyond symbolic gestures to meaningful empowerment.

8. Recommendations for Legal Reform and Social Inclusion

Addressing the deep-rooted legal and social exclusion faced by transgender persons in India

³³ Anwar, Nazish, and Soheli Ghose. "Addressing the Exclusion of Transgender Individuals from the Legal Financial System: Towards Financial Inclusion, Autonomy, and Gender Equality." *Prajñān* 52.4 (2024).

requires a multi-pronged approach that combines legal reforms, policy innovations, administrative changes, and societal transformation. While judicial pronouncements and legislative measures have laid foundational frameworks, the persistent gaps in implementation and social acceptance necessitate comprehensive and actionable recommendations to ensure the rights, dignity, and inclusion of transgender persons.

First and foremost, legal reform should prioritize the right to self-identification of gender without bureaucratic hurdles. The current requirement under the Transgender Persons (Protection of Rights) Act, 2019, for a certificate of identity issued by government authorities restricts the constitutional guarantee upheld by the Supreme Court in NALSA. Laws should be amended to recognize self-declaration as sufficient for gender recognition, abolishing invasive medical examinations and complex approval processes. This will empower transgender persons to access identity documents, essential services, and legal recognition on their own terms.

Second, affirmative action policies must be explicitly integrated into legal frameworks and administrative policies. The NALSA judgment called for reservation in education, employment, and welfare schemes, yet the 2019 Act remains silent on this critical issue. To dismantle systemic exclusion, transgender persons—especially those from marginalized castes and economically disadvantaged backgrounds—must be granted reservations and preferential access in public sector jobs, educational institutions, and social welfare programs. This inclusion would address historic discrimination and promote substantive equality.

Third, the enforcement of anti-discrimination laws needs strengthening through sensitization and accountability mechanisms. Government officials, police personnel, healthcare providers, educators, and employers require mandatory training to understand transgender issues and to prevent discriminatory practices. Independent oversight bodies and grievance redressal mechanisms must be established to hold violators accountable and to provide accessible justice for transgender victims of violence and discrimination.

Fourth, healthcare policies must be made inclusive and comprehensive. The government should establish standardized guidelines for gender-affirming healthcare services, including hormone therapy, surgeries, and mental health support, within public health systems. Insurance schemes must cover transgender-specific treatments, and healthcare providers should be

trained to offer respectful, confidential, and competent care. Accessible healthcare is vital to improving the physical and mental well-being of transgender persons.

Fifth, educational curricula should incorporate gender diversity and inclusivity. Sensitizing young people about transgender identities through school and university curricula can reduce stigma and foster acceptance. Anti-bullying policies and support services should be implemented to create safe educational environments where transgender students can thrive.

Sixth, welfare schemes must be adequately funded, effectively implemented, and tailored to the diverse needs within the transgender community. Transparent mechanisms to disseminate information, simplify application procedures, and monitor the impact of these schemes will enhance accessibility. Special focus should be given to intersectional vulnerabilities related to caste, class, religion, and regional disparities.

Seventh, community participation is indispensable. Transgender persons must be actively involved in policymaking, implementation, and monitoring processes. Their lived experiences and expertise can guide responsive and culturally sensitive interventions. Empowering community-led organizations through funding and legal recognition will strengthen advocacy and support systems.

Eighth, legal recognition of relationships, marriage, adoption, and inheritance rights for transgender persons should be clarified and codified. This legal clarity will protect family rights and social security, fostering greater acceptance and stability.

Finally, societal attitudes must change through sustained awareness campaigns, media representation, and public dialogues. Combating stereotypes and myths about transgender persons will reduce social ostracism and violence, paving the way for their fuller participation in all spheres of life.

In conclusion, moving beyond symbolic recognition toward substantive equality requires coordinated reforms across legal, administrative, and social domains. The goal must be to create an inclusive society where transgender persons can live with dignity, free from discrimination and exclusion. Only through sustained commitment and intersectional approaches can India fulfill its constitutional promise of justice and equality for all its citizens.

References

Statutes

- The Constitution of India, 1950.
- The Criminal Tribes Act, 1871 (repealed).
- The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.
- The Equal Remuneration Act, 1976.
- The HIV and AIDS (Prevention and Control) Act, 2017.
- The Indian Penal Code, 1860 – Section 377 (as read down in *Navtej Singh Johar v. Union of India*).
- The Juvenile Justice (Care and Protection of Children) Act, 2015.
- The Protection of Human Rights Act, 1993.
- The Rights of Persons with Disabilities Act, 2016.
- The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- The Transgender Persons (Protection of Rights) Act, 2019.

Articles and Journals

- Banerjee, Poulami. "Recognition of Gender Identity: The NALSA Judgment and Beyond." *National Law School Journal*, vol. 27, 2015, pp. 45–64.
- Budhiraja, Seema, et al. "Negotiating Sex Work, Transgender Identity, and Rights in India." *Culture, Health & Sexuality*, vol. 18, no. 10, 2016, pp. 1207–1221.
- Choudhury, Saptarshi Mandal. "Right to Privacy for the Transgender Community in India." *NUJS Law Review*, vol. 10, no. 2, 2017, pp. 253–278.
- Human Rights Watch. "All We Want is Equality: Health and Human Rights Concerns

of Transgender People in India." HRW Report, 2016.

- Khan, S. "Gender Diversity and Human Rights: The Case of Transgender Persons in India." *International Journal of Law and Policy Review*, vol. 8, no. 1, 2019, pp. 85–100.
- Misra, Gita, and Chandrika Krishnamurthy. "Understanding Violence Against Transgender Persons in India." *Economic and Political Weekly*, vol. 55, no. 44, 2020, pp. 42–50.
- Narrain, Arvind. "Queer Rights and the Law in India." *Socio-Legal Review*, vol. 3, 2007, pp. 1–20.
- Puri, Jyoti. "Transgender and Intersex in South Asia: Rights and Recognition." *Annual Review of Anthropology*, vol. 49, 2020, pp. 411–427.
- Sharma, Kritika. "Transgender Rights in India: A Critical Analysis of the 2019 Act." *Indian Journal of Gender Studies*, vol. 27, no. 2, 2020, pp. 165–190.
- Winter, Sam, et al. "Transgender People: Health at the Margins of Society." *The Lancet*, vol. 388, no. 10042, 2016, pp. 390–400.

Case Laws

- *Anjali Guru Sanjana Jaan v. State of Maharashtra*, 2021 SCC OnLine Bom 404.
- *Arunkumar v. The Inspector General of Registration*, 2019 SCC OnLine Mad 8779.
- *Jayalakshmi v. State of Tamil Nadu*, 2007 (4) MLJ 849 (Madras High Court).
- *Justice K.S. Puttaswamy v. Union of India*, AIR 2017 SC 4161.
- *National Legal Services Authority v. Union of India*, AIR 2014 SC 1863.
- *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.
- *S. Swapna v. State of Tamil Nadu*, 2019 SCC OnLine Mad 1449.

- *Swapna v. State of Tamil Nadu*, 2022 SCC OnLine Mad 1449.
- *Transgender Education and Welfare Society v. State of Karnataka*, 2020 SCC OnLine Kar 1225.