
EVOLVING JURISPRUDENCE ON TRANSGENDER RIGHTS: A STUDY OF RECENT HIGH COURT JUDGMENTS IN INDIA

Anushka Srivastava, Research Scholar, Department of Law, Babasaheb Bhimrao Ambedkar University, Lucknow¹

ABSTRACT

This article looks at how Indian High Courts have developed their jurisprudence in identifying and defending the rights of transgender people, a historically neglected and vulnerable group. Transgender people experience societal stigma, structural discrimination, and exclusion from public institutions like as healthcare, education, and imprisonment, notwithstanding constitutional protections under Articles 14, 15, and 21. The judiciary has taken on a more active role in closing these gaps in the absence of adequate legislative safeguards, using constitutional principles to guarantee substantive equality, dignity, and individual liberty.

In the study, significant High Court rulings are analysed, such as *Sreeja v. Commissioner of Police* (2021, Kerala HC), which protects same-sex and transgender couples; *Arun Kumar v. Inspector General of Registration* (2019, Madras HC), which acknowledges transgender women as "brides" under marriage laws; *Zahhad & Ors. v. State of Kerala* (2023), which upholds transgender couples' right to be listed as "parents"; *Viswanathan Krishna Murthy v. State of Andhra Pradesh* (2022), which permits a transwoman to invoke Section 498A IPC; and *Kabeer C. v. State of Kerala* (2019/2025), which grants reservations to transgender individuals in educational institutions. Examined are institutional improvements like gender-neutral restrooms and hostels as well as prison rights guidelines from the Uttarakhand HC (2023).

While pointing out the shortcomings of the Transgender Persons (Protection of Rights) Act, 2019, the essay also cites progressive judicial trends. It contends that although High Courts have acted as reform catalysts, public acceptance, administrative sensitisation, and harmonised law are necessary for the long-term fulfilment of transgender rights. The paper highlights the transformative potential of judicial engagement in furthering gender justice in India by placing High Court jurisprudence within the larger constitutional framework.

¹ Research Scholar, Department of Law, Babasaheb Bhimrao Ambedkar University, Lucknow

Keywords: Transgender Rights, Gender Identity, High Court, Constitutional Law, Article 14, 15, 21

INTRODUCTION

Over the past decade, India has taken some important steps toward recognising the rights and dignity of transgender people. A key turning point was the Supreme Court's decision in *NALSA v. Union of India*, where the Court acknowledged that transgender persons have the right to choose and express their own gender identity.² The judgment affirmed that transgender people are entitled to the same constitutional protections of equality, liberty and dignity as anyone else. However, the law that followed *The Transgender Persons (Protection of Rights) Act, 2019*, has not lived up to that promise.³ The social stigma around transgender people and lack of implementation of laws are the main reason behind the backwardness of the transgender people.

High courts in India have been instrumental in defending transgender people in this case and bringing the principles outlined in *NALSA* to fruition. Instead of restricting gender to "mother" and "father," the High Court in Kerala let a transgender couple to be named as "parents" on their child's birth certificate⁴. In another instance, the Court acknowledged the extent of transgender people's exclusion from opportunities and ordered the government to grant them reservations in higher education⁵. As an example of how the law needs to change to accommodate different gender identities, the High Court in Andhra Pradesh permitted a transgender woman to file a case under Section 498A of the IPC, which is normally used to protect women from cruelty in marriage⁶.

These cases expand on strong principles that the Supreme Court has articulated in earlier significant decisions. The Court stated in *Justice K.S. Puttaswamy v. Union of India* that our right to privacy encompasses our identity, our body, and our choices⁷. The Court ruled in *Navtej Singh Johar v. Union of India* that our Constitution guarantees individual dignity, even when society may not always agree, and overturned legislation that criminalised same-sex

²*National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

³ArvindNarain, *Gender Justice and the Transgender Persons (Protection of Rights) Act, 2019: A Critique*, Indian Journal of Law and Society, Vol. 10 (2020), p. 125

⁴ *Zahhad&Ors. v. State of Kerala*, WP(C) No. 23763 of 2023 (Ker HC)

⁵ *Kabeer C. v. State of Kerala*, WP(C) No. 29247 of 2019, 2025 LiveLaw (Ker) 30.

⁶ *Viswanathan Krishnamurthy v. State of Andhra Pradesh*, Criminal Petition No. 6783 of 2022 (AP HC).

⁷ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

partnership⁸.

This article examines how rulings from the High Court after 2020 are assisting in the realisation of these constitutional ideals, creating room for transgender individuals in the legal system, in institutions, and in daily life.

LEGAL PROVISION AND HISTORICAL BACKGROUND

Despite without specifically mentioning "gender identity" or "transgender" people, the Indian Constitution offers a robust and inclusive framework for defending the rights of transgender people. Based on the principles of equality, dignity, nondiscrimination, and personal liberty, the fundamental rights guaranteed in Part III of the Constitution have been expanded to include safeguards for transgender individuals through judicial interpretation.

In the historic ruling in *NALSA v. Union of India*, the Supreme Court of India affirmed all of the transgender community's fundamental rights. For the first time, the Court placed gender identification at the centre of fundamental rights safeguards by explicitly recognising transgender people's constitutional rights. In addition to giving the transgender community legal visibility, the ruling set the stage for later judicial and legislative actions.

The Supreme Court recognized that gender identity is integral to one's personality and dignity and affirmed that individuals have the right to self-identify as male, female, or third gender. Importantly, it stated that **self-identification**, rather than medical or biological tests, should be the basis for recognizing one's gender⁹

The Court observed:

*"Recognition of one's gender identity lies at the heart of the fundamental right to dignity. Gender, as a concept, is far more complex than biological sex and includes self-perception and presentation."*¹⁰

This principle of **self-determination** was a progressive step in asserting bodily autonomy of a transgender person.

⁸ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁹ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, para 75

¹⁰ *Ibid.*, para 69

The judgment interpreted several fundamental rights expansively:

- **Article 14 (Equality Before the Law):** The Court held that the term "person" in Article 14 is inclusive of transgender individuals and that denying them equal protection under the law was unconstitutional.
- **Article 15 & 16 (Non-discrimination):** The Court ruled that the term "sex" in these Articles includes **gender identity**, thus protecting transgender persons from discrimination in access to public spaces, education, and employment.
- **Article 19(1)(a) (Freedom of Expression):** Expressing one's gender through appearance, clothing, speech, and behavior was held to fall under the ambit of this Article.
- **Article 21 (Right to Life and Personal Liberty):** The Court recognized the right to dignity, privacy, and autonomy of transgender persons as fundamental to Article 21.

The judgment was not just declaratory—it issued several directions to the Central and State governments, including:

- Legal recognition of transgender persons as a **"third gender."**
- Provision of **reservations** in educational institutions and public employment.
- Creation of **social welfare schemes** specifically targeting the transgender community.
- Public awareness campaigns to counter **stigma and discrimination**.

Although these directions lacked strict timelines or enforcement mechanisms, they provided a clear constitutional mandate for inclusion and policy action.

Two landmark Supreme Court rulings—*Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) and *Navtej Singh Johar v. Union of India* (2018)—have had a significant impact on the expansion of transgender rights in India. These rulings expanded the constitutional understanding of equality, privacy, and dignity. A nine-judge panel unanimously ruled in *Puttaswamy* that, in accordance with Article 21 of the Constitution, the right to privacy is a

basic right that includes one's identity and sense of autonomy¹¹. The Court underlined that choices on gender identity and sexual orientation are within the purview of individual freedom and physical integrity. This stance strengthened the constitutional foundation for opposing institutional or medical gatekeeping of transgender identity and upheld the NALSA ruling's self-identification principle. The Supreme Court ruled in *Navtej Singh Johar* that discrimination on the basis of sexual orientation or gender identity is illegal under Articles 14, 15, 19, and 21 and decriminalised consensual same-sex partnerships by reading down Section 377 IPC¹².

CONTEMPORARY VERDICTS OF HIGH COURT

Viswanathan Krishnamurthy v. State of Andhra Pradesh: Reinterpreting Section 498A IPC Through a Gender-Inclusive Lens

In this case the Andhra Pradesh High Court addressed whether a trans-woman can seek legal remedy under Section 498A IPC, which traditionally protects a 'wife' from cruelty by her husband or in-laws.¹³ The petitioner, a self-identified trans-woman, alleged abuse by her male partner and sought to invoke the section.

The Court held that gender identity is self-determined, relying on *NALSA v. Union of India*, where the Supreme Court recognised the right to self-identify one's gender as fundamental under Article 21.¹⁴ Therefore, a trans-woman cohabiting in a marriage-like relationship falls within the protective scope of Section 498A. This inclusive reading ensures that the law does not exclude individuals based on non-binary identities and affirms the constitutional values of dignity and equality under Articles 14 and 15.

The decision is consistent with *Navtej Singh Johar v. Union of India*, which decriminalised same-sex relations and emphasised that laws must evolve to uphold dignity and personal autonomy. By aligning criminal law with constitutional morality, the Court has paved the way for a more inclusive legal interpretation of gendered statutes.¹⁵

¹¹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1

¹² *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

¹³ *Viswanathan Krishnamurthy v. State of Andhra Pradesh*, Criminal Petition No. 6783 of 2022 (AP HC).

¹⁴ *NALSA v. Union of India*, (2014) 5 SCC 438.

¹⁵ *Kabeer C. v. State of Kerala*, WP(C) No. 29247 of 2019, 2025 LiveLaw (Ker) 30.

Kabeer C. v. State of Kerala: Recognising the Right to Reservation for Transgender Persons

In this case Kerala High Court addressed the right of transgender persons to reservation in educational institutions under the State's affirmative action policies.¹⁶ The petitioner, a transgender individual, was denied admission benefits that were extended to other socially and educationally backward categories. This denial was challenged as discriminatory and violative of constitutional equality.

The Court examined the absence of clear reservation policy for transgender persons and held that the State had a constitutional obligation to frame inclusive policies. It observed that transgender persons, due to persistent stigma and social exclusion, form a distinct class requiring targeted affirmative measures. The denial of educational support, especially through reservation, amounted to systemic exclusion and undermined the principle of equal opportunity. Consequently, the Court directed the State of Kerala to ensure that appropriate reservation policies were formulated and implemented to facilitate the inclusion of transgender persons in educational spaces.¹⁷ The judgment is significant as it translates the principle of equality into concrete institutional reform, recognising that formal non-discrimination is insufficient without enabling measures to address historic marginalisation.

Arun Kumar v. Inspector General of Registration: Inclusive Interpretation of 'Bride'

In *Arun Kumar v. Inspector General of Registration*, the Madras High Court considered whether the term "bride" under the Hindu Marriage Act, 1955, could include a transgender woman¹⁸. The case arose when a marriage registrar refused to register a marriage between a cisgender man and a transgender woman on the ground that the latter was not a "bride" under the statutory definition.

The Court held that the term "bride" must be interpreted in light of evolving constitutional values and social realities. It ruled that a transgender woman who identifies as female falls within the ambit of the word "bride" for the purposes of marriage under Hindu law. The judgment emphasised that statutes must be interpreted purposively to include all individuals whose gender identity aligns with the role defined in the statute.

¹⁷ Ibid

¹⁸ *Arun Kumar v. Inspector General of Registration*, (2019) 5 Mad LJ 436 (Madras HC)

This interpretation affirms the right of transgender persons to marry and be recognised in accordance with their self-identified gender. By doing so, the Court upheld the principle of dignity and autonomy in personal relationships and ensured that statutory language does not become a tool of exclusion. The ruling represents a progressive and inclusive approach to personal law jurisprudence.

Zahhad & Ors. v. State of Kerala: Right to Be Recognised as ‘Parents’

The Kerala High Court addressed a crucial issue of gender identity and parental recognition¹⁹. The petitioners, a transgender couple, approached the Court seeking the right to be recorded as “parents” instead of the traditional labels “father” and “mother” on their child’s birth certificate. The State authorities had insisted on assigning fixed gendered roles, which the couple contended violated their identity and autonomy.

The Court held that the insistence on binary gender markers in official documents was inconsistent with the constitutional rights to privacy, dignity, and personal autonomy. Recognising the lived reality of the petitioners as a family, the Court directed that the term “parents” be used in place of “father” and “mother” in the child’s birth certificate.

This judgment is significant for affirming the right of individuals, regardless of gender identity, to define familial roles on their own terms. It acknowledged that the structure of modern families is evolving and must be respected within administrative and legal frameworks. The decision marks an important move towards inclusive legal recognition of non-normative family forms.

Gender Right and Prison Rights

In a significant 2023 decision, the Uttarakhand High Court addressed the rights of transgender persons in the prison system. The case involved a transgender woman who had been placed in a male prison facility, despite her self-identified gender. She sought protection of her fundamental rights and appropriate accommodation aligned with her gender identity.

The Court recognised that the misplacement of transgender persons in prison environments inconsistent with their gender identity exposes them to risk, humiliation, and systemic violence.

¹⁹ *Zahhad & Ors. v. State of Kerala & Anr.*, WP(C) No. 23763 of 2023 (Ker HC).

It held that the State has a constitutional duty to respect a person's gender identity, particularly in custodial settings where the individual is under complete control of the State apparatus.

Emphasizing the principles of dignity and personal autonomy, the Court directed the prison authorities to ensure that transgender inmates are housed in facilities that match their self-identified gender and that adequate safety measures and separate amenities be provided where necessary. The judgment thus underlined the need for structural reforms in the prison system to protect the rights of gender minorities. This ruling contributes to a broader understanding that gender identity must be respected and safeguarded across all public institutions, including correctional facilities.

A review of recent Court decisions reveals that while each ruling addresses distinct factual contexts, they collectively signal a deepening constitutional commitment to gender inclusivity. The Kerala High Court's recognition of same-sex/trans couples right to live together, the Madras High Court's inclusive interpretation of the term 'bride,' the Madurai Bench's directive for gender-neutral facilities, and the Uttarakhand High Court's affirmation of prison rights for transgender persons all stem from a shared reliance on the principles of dignity, autonomy, and equality under Articles 14, 15, and 21. Yet, the approaches are not identical. Southern High Courts have often adopted a more proactive interpretive stance, pushing the boundaries of statutory language to accommodate evolving understandings of gender, whereas other regions have tended to limit themselves to the facts before them. This divergence reflects the absence of consistent central guidelines capable of harmonising rights protection across jurisdictions. Moreover, while these rulings affirm individual rights, they also expose systemic gaps—such as in infrastructure, administrative policy, and enforcement—that require legislative and executive action. In this sense, the judiciary has been a catalyst, but the consolidation of transgender rights will ultimately depend on a coordinated national effort bridging these regional variations.

GAPS, CHALLENGES AND THE ROAD AHEAD

Despite commendable progress through judicial interpretation, several structural and policy gaps continue to undermine the full realisation of transgender rights in India. First, there is a conspicuous absence of comprehensive central legislation that integrates constitutional protections with practical implementation measures; the *Transgender Persons (Protection of Rights) Act, 2019* remains critiqued for procedural hurdles in identity recognition and

inadequate provisions for socio-economic empowerment.²⁰ Second, enforcement at the institutional level is inconsistent—police sensitisation, access to gender-neutral facilities, and inclusion in welfare schemes often depend on the will of local authorities, leading to uneven protection across states.²¹ Third, the rights recognised in individual judgments are frequently declaratory, lacking robust follow-up mechanisms for compliance.²²

A multifaceted approach is necessary for the road ahead. Parliament must enact laws that require inclusive infrastructure, standardise administrative procedures, and define terms. To avoid regional discrepancies, the Supreme Court and High Courts should strive for unified interpretation approaches²³. Administratively, successful enforcement requires accountability measures and capacity-building programs. Most crucially, in order for social acceptance to meet legal recognition, cultural views must change as a result of persistent awareness initiatives. The progressive jurisprudence coming out of the High Courts runs the risk of staying an idealistic promise rather than a lived reality in the absence of such concerted effort.

CONCLUSION

The court rulings under review show an increasing judicial willingness to read current legislation from an inclusive and moral perspective. By requiring institutional improvements in areas such as marriage registration, public facilities, and jail management, these verdicts not only give transgender people legal protections but also challenge long-standing social biases. However, the lack of a unified national policy framework and uneven application of these rulings continue to limit their revolutionary potential. Although a positive move, the Transgender Persons (Protection of Rights) Act, 2019 does not address systemic discrimination and does not take into account the progressive judicial interpretations coming from the High Courts.

For India to truly honour its constitutional commitment to equality, legislative action must align with these judicial advances. This includes codifying inclusive definitions, ensuring uniform application across states, and embedding sensitisation programs in public institutions.

²⁰ The Transgender Persons (Protection of Rights) Act, No. 40 of 2019

²¹ Human Rights Watch, *India: New Transgender Law Discriminates*, available at: <https://www.hrw.org/news/2019/12/06/india-new-transgender-law-discriminates> (last visited Aug. 10, 2025).

²² *Sreejav. Commissioner of Police*, 2021 SCC OnLine Ker 3095 (Ker.HC).

²³ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438

Only then can the spirit of *NALSA v. Union of India* be fully realised, ensuring that transgender rights are not merely legal abstractions but tangible guarantees.