
TRANSGENDER RIGHTS IN INDIA: LEGAL PROTECTION AND SOCIAL CHALLENGES

DR. RASHA KUMARI PANDA

Abstract:

**“sex is what you are born with, gender is what you
recognise and sexuality is what you discover”¹**

This academic paper excerpt critiques the Transgender Persons (Protection of Rights) Bill in India, highlighting its deficiencies in protecting transgender rights despite constitutional safeguards. It argues for stronger self-determination and anti-discrimination measures, referencing key judgments. Record of the society recognises only two genders and due to such orthodox concept, the transgenders are being ignored by the society. Being a transgender is considered as the third gender in our nation; they need to be given their rights and such rights need be properly enforced and protected. Even though the authorities stated that the rights are equal to all but it was never practiced and many of the transgenders are of Rights Bill, 2016 deals with lot of issues relating to never benefited from it. The Transgender Persons (Protection transgenders rights). But at the same time there are flaws in the bill which dilute the rights of the transgenders and results in waiving their rights. The bill ignores numerous schemes available for the third gender and re-introduces the biological test to determine the gender identity of the transgender. Such instances may violate their rights and it is opposing to the landmark judgement in the case of National Legal Service Authorities vs Union of India¹ which paves way for the rights transgenders law in India. The landmark judgement and the Transgender Persons (Protection of Rights) Bill, 2016,2019etc. are inconsistent with each other and it challenges the rights of the transgenders preserved in the Constitution.

Keywords: - Transgender Rights, Third gender, Fundamental Rights, Transgender persons

* Ph.D Law, Berhampur University

¹ Anithachettiar problems faced by transgenders in Mumbai with special reference to their health and harassment by the police IJSH725(SEP.2015)

(Protection of Rights Bills)

I. Introduction

Article 14, 19 and 21 of Indian Constitution guarantees the fundamental rights to all the citizens of the country which includes the all the three genders viz. men, women, and the transgenders. The fundamental rights guaranteed under our constitution are just in papers but are not practised. Majority of the transgenders are illiterate and are not aware of their rights and those who are aware of the rights do not know how to approach the authorities concerned. Such confusion leads to oppression of the transgender community in our society and that must be prevented. The orthodox concept of the society ill- treat the transgenders which becomes the hurdles for them to attain benefits from the rights given. As men and women transgenders of the transgender community in our society and that must be prevented. The orthodox concept of the society ill- treat the transgenders which becomes the hurdles for them to attain benefits from the rights given. As men and women transgenders also need to give equal importance and in the present scenario there are few people of the transgender's community are becoming role models to others who are in the transgender people who are suffering in our society and respective positions in the rights, that rights for all the human category except male and female. There are a lot of rights or provisions for transgender by state for their marriage and living status and all. So, there are so many rights for transgender by our constitution and many of the bills, in this research paper author describe it very clearly with some case study and landmark judgement of high court and Supreme Court. The recognition of transgender persons as the third gender marks an important step toward equality and human dignity in India. For centuries, transgender communities such as Hijras, Kinnars, and other gender-diverse individuals have existed within Indian society, yet they have often been marginalized, excluded from mainstream education, employment, and healthcare.

The Indian Constitution guarantees fundamental rights such as equality before the law, non-discrimination, freedom of expression, and protection of life and personal liberty. These rights are applicable to every individual regardless of gender identity. Gender identity refers to a person's internal sense of being male, female, both, neither, or somewhere along the gender spectrum. Traditionally, societies recognized only two genders—male and female. However, the existence of people who do not identify strictly within these categories has been acknowledged throughout

history. In India, transgender communities such as Hijras have been part of cultural and social life for centuries.

The Indian Constitution is built on the principles of equality, justice, and dignity. These values demand that every individual, including transgender persons, should enjoy equal rights and opportunities. The recognition of the third gender within constitutional frameworks aims to correct historical injustices and promote inclusiveness in society.

I. TRANSGENDER AND CONSTITUTION

The honourable Supreme Court of India recognised transgender as the third gender along with other gender that is male and female². By giving recognition to diverse gender identities, the court had busted the dual gender structure of man and women which is recognised by the society. According to Justice K.S.Radhakrishnan transgender as a third gender is not a social or "recognition of medical issue, but it is a body disown their biological sex issue"³.

Rule of law is the basic principle which is followed in India where law is supreme and each person in the country will be treated equally before the eyes of law in India. But these rights are constantly enjoyed by the all the people in the society except the transgender community, they constantly fight for their rights against discrimination, suppression and criticised and discriminated by the people in the society.

CONSTITUTIONAL PROVISIONS

The Indian Constitution provides several fundamental rights that protect the dignity and equality of transgender persons.

Article 14 guarantees equality before the law and equal protection of the laws to all persons. This provision ensures that transgender individuals are entitled to the same legal protections as other citizens⁴.

² Supreme court recognizes transgender as 'Third gender' Times of India, Apr 15, 2014

³ National legal services Authority v. Union of India, AIR 2014 SC 1863 at 1868.

⁴ The Constitution of India, 1950, Art. 14

Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. The Supreme Court interpreted the term “sex” to include gender identity, thereby extending constitutional protection to transgender persons⁵.

Article 19 ensures freedom of speech and expression, which includes the right to express one’s gender identity through appearance, dress, or behavior⁶.

Article 21 guarantees the right to life and personal liberty, which the courts have interpreted to include the right to live with dignity and self-respect⁷.

These constitutional provisions form the foundation for the protection of transgender rights in India. They emphasize that every individual, regardless of gender identity, deserves equal treatment and respect under the law.

JUDICIAL RECOGNITION

The Supreme Court of India played a crucial role in recognizing the rights of transgender persons through the landmark NALSA judgment in 2014.⁸ The Court held that transgender persons have the right to identify themselves as male, female, or third gender. It also declared that gender identity is a fundamental aspect of personal autonomy and dignity.

The Court directed the government to take several steps to protect transgender rights, including providing reservations in education and public employment, ensuring access to healthcare, and implementing social welfare schemes. It also emphasized the importance of public awareness programs to reduce discrimination and stigma.

The judgment marked a historic turning point in the struggle for transgender rights in India. It recognized that the Constitution protects not only binary gender identities but also diverse gender expressions.

⁵ The Constitution of India, 1950, Art.15

⁶ The Constitution of India, 1950, Art.19 (1) (a)

⁷ The Constitution of India, 1950, Art.21

⁸ The Universal Declaration of Human Rights (UDHR), 1948

The Act provides for the recognition of transgender identity and establishes mechanisms for obtaining identity certificates. It also mandates the creation of welfare schemes and rehabilitation programs to support transgender communities.

Although the Act represents progress in recognizing transgender rights, it has also been criticized by activists for certain limitations, including bureaucratic procedures and insufficient provisions for reservations in education and employment. Nevertheless, it remains an important legislative step toward inclusion and equality.

RIGHT TO EQUALITY

India is a democratic country, where the Constitution is the Supreme law of land. In other words, Constitution is supreme and others people are below the constitution. The concept of right to equality is guaranteed under Article 14 of the Indian Constitution which says that "The state shall not deny any person equality before law or equal protection of laws within the territory of India" that all the citizens of the country will be treated equally before law and no person shall be discriminated based on caste gender, race, religion, place of birth. This right is available for all the person which includes male, female as well as transgender or the third gender. Even though the provision is present to stop discrimination against the Third gender under the constitution but the discrimination cannot be abolished. The third gender or the transgender community still face discrimination which can be eradicated only through

SOCIAL CHALLENGES

Despite legal recognition, transgender persons continue to face numerous social challenges. Many experience rejection by their families and communities, which often forces them to leave their homes at a young age. Lack of education and employment opportunities further limits their chances of achieving economic independence.

Healthcare access is another major issue. Transgender individuals often encounter discrimination or lack of awareness among medical professionals. Mental health problems, including depression and anxiety, are also prevalent due to social stigma and marginalization. Violence and harassment are common experiences for many transgender persons. Ensuring their safety and dignity requires

both legal protection and broader social change. bringing up a change in the society. The Hon'ble Supreme Court of India declared that Hijras, eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.

Transgender persons" right to decide their self-identified gender is also upheld and the Centre and State governments are directed to grant legal recognition of their gender identity such as male, female or as third gender. The Court direct the Centre and the State governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments. The Centre and State Governments are directed to operate separate HIV sero-surveillance Centre since Hijras/Transgenders face several sexual health issues.dysphoria, social pressure, The Centre and State Governments should seriously address the problems being faced by hijras/transgenders such as fear, shame, gender depression, suicidal tendencies, social stigma, etc. and any insistence for Sex Reassignment Surgery (SRS) for declaring one"s gender is immoral and illegal⁹.

The Centre and State Governments should take proper measures to provide medical care to the transgenders in the hospitals and also provide them with separate public toilets and documents like the election card, passport, driving license and ration card, and for admission in educational institutions, hospitals, amongst others Human rights are basic rights and freedom which ware guaranteed to a human by virtue of him being a human which can nether be created nor can be abrogated by any government. It in chides the right to life liberty, equality, dignity and freedom of thought and expression

II. Violation of Human Rights

They are deprived of social and cultural participation and hence they have restricted access to education, health care and public places which further deprives them of the Constitutional guarantee of equality before law and equal protection of laws It has also been noticed that the community also faces discrimination as they are not given the right to contest election, right to

⁹ United Nations Development Programme. (2010). Hijras/Transgender Women in India: HIV, human rights and social exclusion. <https://www.undp.org/publication>

vote (Article 326) employment, to get licenses, etc. and in effect, they are treated as outcast and untouchable

The transgender community faces stigma and discrimination and therefore has fewer opportunities as compared to others. They are hardly educated as they are not accepted by the society and therefore do not receive proper schooling. Even if they are enrolled in an educational institute, they face harassment and are bullied every day and are asked to leave the school or they drop out on their own. It is because of this that they take up begging and sex work. Seldom does a skilled individual from this community get into formal employment due to the policy of hiring only from either the male or female gender. Even if they do, they are ridiculed and ostracized and hence forced to leave their jobs.

They are forced into sex work which puts them at the highest risk of contracting HIV as they agree to unprotected sexual intercourse because they fear rejection or they want to affirm their gender through sex. They are viewed as 'vectors of HIV in the society. Other sexually transmitted infections such as rectal gonorrhoea, syphilis, rectal Chlamydia, etc., add to the risk of HIV. Immoral Traffic Prevention Act of 1956 which was amended in 1986 has become a gender neutral legislation. The domain of the Act now applies to both male and female sex workers along with those whose gender identity was indeterminate. With the amendment both the male and hijra sex workers became criminal subjects as this gives the police the legal basis for arrest and imitation of the transgender sex workers. Section 377 of IPC 1860¹⁰ criminalizes some sex relation among consenting adults. This is a colonial era law which makes the Transgender community vulnerable to police harassment, extortion and abuse in Jayalakhmi State of Tamil Nadu, Pandian, police. He was sexually assaulted in the police transgender, was arrested on charges of then by the station which ultimately led to his immolation. Journey Of The Transgender Rights Bill So Far. The original draft of The Transgender Persons Bill was passed in Rajya Sabha as a private member bill in 2014.

In 2015, The Central Government brought its own bill, through borrowing from the original draft. The 2015 draft did away with the provision for special commissions for transgenders and the transgender rights court proposed in 2014 bill. Later, after due consultations and public discourses,

¹⁰ The Indian penal Code, 1860, Sec.377

the final version of the draft was brought in August 2016. It is opinion by experts that this version is an even more watered down version than the 2015 draft. According to them, it is disregarding NALSA judgment, Expert committee report as well as the public comments. Concerns about the Transgender Rights Bill.

Definition of Transgender: The definition in the Clause 2(1) is inspired from Australian Sex Discrimination Act, 2013, which defines intersex. As stated above gender must be distinguished from sex. It is not done in the bill.

Right to choose a gender: In NLSA case, SC had directed the choice to be that of an individual this has not been considered in this bill. Providing for a registration authority, in this case, a medical board opens avenues for red-tape and harassment. Transgender people in the sub-continental deification to damnation, they have been revered and feared by people who understood little about them. Also, to call the people who do not identify with the gender binary transgender in India is another set of problematics altogether cultures, or that "in India, people with a wide range of UNDP report of Transgender Issues noted transgender-related identities, experiences exist Kothis, Jogtas/Jogappas, and Shiv-Shakthis including Hijras, Aravanis, Often these people have been part of the broader culture and treated with great respect, at least in the past, although some are still accorded respect even in the present". On the 15 April, 2014, the Supreme Court of India made judicial history in India, and perhaps did something that many courts of developed countries have not been able to do till date it legalised the presence of transgender people in India, and allowed the legal creation of a "third gender" category through the National Legal Services Authority versus Union of India, nicknamed the Nalsa case.

However, the Court did not enter any discussion on one of the biggest proverbial thorns in the side for queer rights movements in India Section 377 of the Indian Penal Code a section which criminalises non-procreative sexually acts, but is almost exclusively used to harass queer men, transgender women and hijras.

RIGHT TO LIFE ARTICLE 21 OF INDIAN CONSTITUTION

The right to choose one's own identity is one of the most essential right under this article to life with dignity, and this aspect is covered and protected by this Article as it symbolizes the most important right being a human, a right to live, which the State is required to protect from violation.

The transgender communities have a right to dignified life which is one of the most important aspects of Article 21 of the Constitution of India. Recognition of gender identity provides the recognition of their right to dignity and non-recognition violates the same, they have full right to express and live their life without fear. Also, the right to reputation extends to their protection. Transgenders in our society have not been treated with respect, they are often humiliated and beaten up by the authorities in power their reputation in the society has degraded and their significance in the society has been deteriorated. transgender community falls within the purview of the Constitution of India and thereby entitled to all the rights as guaranteed same. *Puttaswamy v Union of India*, (2017) 10 SCC 1, a transgender, was arrested by the police, Sorrows of Transgenders, Judiciary, and our Study, 52(3) IBR 147 (2015) State of Tamil Nadu, A.I.R. 2007 SC 861 S in/wp-mads/2017/12/ARTICLE_ON_TG_1-1.pdf. *Puttaswamy v Union of India*, (2017) 10 SCC 1 police on charges of theft He was sexually abused in the police station which ultimately led him to immolate himself in the premises of the police station. Similarly, policemen arrested grounds of arrest or extending any opportunity to Narayana, a transgender, in Bangalore's suspicion of theft without informing him of the by the police and he was threatened with dire consequences if he did not assist in identifying him to defend himself. His diary was confiscated other transgenders he was acquainted with homosexuals have also been at the aggrieved end of financial extortion by the police in exchange for not revealing their identities to society,

III. JUDICIAL ROLE IN PROTECTION OF TRANSGENDER'S RIGHTS

In April 2014, the Supreme Court of India declared transgender to be the third gender', in Indian law. Justice KS Radhakrishnan noted in his decision that, "Seldom, our society realizes or cares to realise the trauma, agony and pain which the members of Transgender community undergo, nor appreciates the innate feelings of the members of the Transgender community, especially of those who disown their biological sex!" whose mind and In a landmark judgement this morning, the Supreme Court in the NALSA transgender rights case has said that transgenders are citizens of the country and have equal rights to education, employment and social acceptability. The recognition of the transgenders as the third gender is a massive victory and has come as a heartening news to all those who have been struggling against the SC verdict on section 377.

The Lawyers Collective had intervened in the case on behalf of Hijra activist, Laxmi Narayan Tripathi Justice Sikri says person's gender is based on right to choice which is protected by the

Constitution as part of the right to autonomy. The judges reported to have cited Articles 14, 15, 19, 21 said grounds of "Supreme Court recognizes transgender as 'third gender'" Times of India, Apr 15, 2014 "National Legal Services Authority. Union of India AIR 2014 SC 1863 at 1868 da mental right, discrimination and violence is after having non-discrimination as a Constitution stipulates under Article problem for transgenders Provisions of equality where the state shall not deny to any equality before the law or the equal protection of the laws within the territory of da Equality includes the full of all rights and freedom Articles 15 and 16 of the station also prohibit discrimination against citizen on certain enumerated grounds mohibit all forms of gender bias and gender including the ground of sex. These Articles wed discrimination. Even after such protection ace discrimination, indirect violence in society bich is fundamental in nature, transgenders and are unable to compete at par with others himately they have to resort to either begging sex work .Another provision which provides for freedom of speech and expression including right to express self-identified gender, freedom to trade and mfession, freedom to move freely and reside and settle in any part of India as given under Uncle 19(1)(a) of the Constitution of India. Self identified gender can be expressed through bess, words, action or behaviour or any other form. No restriction can be placed on one's personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution. However, these transgenders are not encouraged in work setup and other employment opportunities. They are generally not hired due to their style of dressing. Thus this violates their fundamental rights and due to social stigma they are unable to enforce their fundamental rights.Despite the following international law provisions, India is still facing the problem of discrimination, violence and deprived conditions transgender. Article 6 of the UDHR and Article 16 of the ICCPR recognise that every human being has the inherent right to live and one shall be arbitrarily denied of that tight this right shall be protected by law.

IV. Judicial interpretation

It is based on a literal reading of a paper or the judgement given by the Supreme Court or any other and here there was several cases discussed under the Indian constitutional transgender rights. In 2001, **Naz Foundation Vs. Govt of NCT of Delhi**¹¹ -Naz Foundation filed public interest the constitutional validity of Section 377 of the Indian Penal Code, 1860. The Delhi High Court dismissed the Petition in 2004 holding that the question was merely academic and there did not

¹¹ Naz Foundation case (2009)PIL.

lay a cause of action. A subsequent review petition was also dismissed. Naz Foundation then filed a Special Leave Petition before the Supreme Court of India challenging the orders of the Delhi High Court, On 03.02.2006, the Supreme Court set aside the order the Delhi High Court and remanded the case back to the Delhi High Court for a decision on the merits of the case. In 2nd July 2009, the Delhi High Court as annulled the law that criminalizes adult homosexual relations, ending an eight year old legal battle for gay rights. Again On 20th July, 2009 one Mr. Suresh Kumar Koushal files a Petition in the Supreme Court against the Delhi High Court judgment which decriminalized consensual sex between adults under Section 377.

Section 377 IPC's legislative objective of penalizing "unnatural sexual acts" has no rational nexus to the classification created between procreative and non-procreative sexual acts, and is thus violation of Article 14 of the Constitution of India. It assumes that natural sexual act is that which is performed for procreation. Hence, it thereby labels all forms of non-procreative sexual act as unnatural.

National Legal Services Authority v. Union of India (NALSA Case)¹²

The petitioner sought legal recognition and protection of the rights of transgender persons who faced discrimination in education, employment, healthcare, and social life. Judgment. The Supreme Court recognized transgender persons as the "third gender." It held that the right to determine one's gender identity is part of the right to life and personal liberty under Article 21 of the Constitution. Transgender persons are entitled to fundamental rights under Articles 14, 15, 16, 19 and 21. Gender identity is part of personal autonomy and dignity. The State must provide reservation in education and public employment for transgender persons. Governments must frame social welfare schemes and provide separate public facilities.

Navtej Singh Johar v. Union of India¹³. The constitutionality of Section 377 of the Indian Penal Code (criminalizing consensual same-sex relations) was challenged. Judgment. The Supreme Court partially struck down Section 377 and decriminalized consensual sexual relations between

¹² (2014) 5 SCC 438.

¹³ (2018) 10 SCC Navtej Singh Johar v. Union of India, AIR 2018 SC 4321

adults. Sexual orientation and gender identity are protected under Article 21 (right to dignity and privacy). Discrimination based on sexual orientation violates Articles 14 and 15.

Arun Kumar v. Inspector General of Registration¹⁴. A marriage between a man and a transgender woman was refused registration under the Hindu Marriage Act, 1955. Judgment: The Madras High Court held that the term “bride” includes a transgender woman. A transgender woman has the right to marry under the Hindu Marriage Act. The court also condemned non-essential surgeries on intersex infants.

Chinmayee Jena v. State of Odisha¹⁵. The case concerned the right of a transgender person to choose a partner and live with them. Judgment: The Orissa High Court held that gender identity and choice of partner are part of personal liberty under Article 21. Transgender persons have the right to self-determination and to live with a partner of their choice.

Karnataka Sexual Minorities Forum v. State of Karnataka (2017)¹⁶ The Court removed the offensive term “eunuch” from the Karnataka Police Act, reducing implicit criminalization of transgender individuals.

Vyjayanti Vasanta Mogli v. State of Telangana (Telangana HC, 2023)¹⁷ The Court invalidated the colonial-era Telangana Eunuchs Act, citing violations of Articles 14 and 21 of the Constitution of India. It was directed that the government to implement the Transgender Persons Act, 2019; extend welfare schemes like Aasara Pension; and consider vertical reservation for transgender persons.

Kesavaraj Parthibhan v. State of Andhra Pradesh (2025)¹⁸: It was quoted that NALSA to uphold persons’ right to self-identify and reconfirmed entitlement to identity documentation and protections under the Transgender Persons (Protection of Rights) Act, 2019

V. **The transgender persons (protection of Rights)Bill-2016**¹⁹

¹⁴ (2019) SCC OnLine Mad 8779. Arun Kumar v. Inspector general of Registration, W.P. (MD) No. 4125 of 2019

¹⁵ Chinmayee Jena v. State of Odisha, W.P. (CrI.) No. 57 of 2020

¹⁶ Karnataka Sexual Minorities Forum v. State of Karnataka, W.P. 1397/2015

¹⁷ Vyjayanti Vasanta Mogli v. State of Telangana, W.P. (PIL) No. 44 of 2018

¹⁸ Kesavaraj Parthibhan v. State of Andhra Pradesh is decided on 16th June 2025

¹⁹ For more information see: International Commission of Jurists Briefing Paper, “Implementation of the NALSA Decision” available at <http://icj2.wpengine.com/wp-content/uploads/2016/04/India-QA-NALSA-Advocacy-Analysis->

In its reasoning and directions in the NALSA judgment, the Supreme Court relied on constitutional rights, as well as international human rights law as enshrined in the Yogyakarta Principles. More specifically it referred to a number of rights enshrined in international human rights law, including the rights to equality and non-discrimination, recognition before the law, life, privacy, humane treatment in detention, protection from medical abuses, and freedom of expression and opinion, as they apply to sexual orientation and gender identity. The ICJ is concerned about several provisions in the current draft Bill, as approved by the Indian Cabinet, including the definition of who is “transgender person”, the process of gender recognition it outlines, as well as the lack of adequate provisions on employment, education, anti-discrimination measures, and penalties for offences committed. According to the ICJ, the above-mentioned provisions of the Bill are at odds with the direction of the SC court in the case of NALSA vs UOI in several important ways.

The Supreme Court in the case of NALSA v UOI in several important ways. For the reasons set out in greater detail below, the ICJ considers that, while there is a need for strong and progressive legislation that fulfils the promises of the NALSA judgment and gives effect to India’s obligations under international human rights law, the government should immediately withdraw the Bill as currently drafted, and engage in meaningful and substantial public consultation with members of the transgender community, with a view to substantially revising the above-mentioned problematic provisions of the Bill before tabling it in Parliament again.

In July 2016, it was announced that Cabinet had approved the Transgender Persons (Protection of Rights) Bill 2016, which has now been introduced in the Lok Sabha. What are the Rights guaranteed under the Bill? Gender Recognition.

Chapter III of the Bill provides for a mechanism to facilitate legal gender recognition. As per the Bill, a transgender person may make an application to the District Magistrate for a certificate of identity as a transgender person. On receiving this application, the District Magistrate will refer the application to a District Screening Committee. The committee will be constituted of a medical officer, a social welfare officer, a psychologist or psychiatrist, a transgender community representative and a government officer. The Committee makes its recommendations on the application following which the Magistrate will issue the certificate of identity to the applicant.

brief-2016-ENG.pdf; India: support comprehensive and consultative Transgender Rights Bill, available at <http://www.icj.org/india-support-comprehensive-and-consultative-transgender-rights-bill/>.

The identity certificate then serves as official proof of the individual's gender identity, entitling people to change their details in other official identity documents, as well as serving as a tool through which to access rights and entitlements that might accrue to them as transgender individuals. The NALSA judgment was celebrated for its self-identification principle vis-à-vis legal gender recognition. The principle underlying that notion would be barrier-free process to accessing gender change. The ICJ is concerned that the proposed bureaucratic process described above which puts the decision for gender change before two different sets of authorities – is inconsistent with the self-identification principled championed by the NALSA decision. Furthermore, the organization is concerned that the recognition process set out above does not explicitly prescribe the requirements for recognition of gender change²⁰.

The Transgender Persons (Protection of Rights) Rules, 2019/2025²¹

The Transgender Persons (Protection of Rights) Act, 2019 was enacted to protect the rights of transgender persons and ensure their welfare after the landmark judgment of National Legal Services Authority v. Union of India. The Act prohibits discrimination and provides mechanisms for recognition and protection of transgender persons.

Definition of Transgender Person (Section 2(k)). The Act defines a transgender person as someone whose gender does not match the gender assigned at birth. It includes: Trans men, Trans women, Persons with intersex variations, Gender-queer persons, Persons with socio-cultural identities such as hijra, kinnar, aravani. This definition recognizes the diversity of gender identities. Prohibition of Discrimination (Section 3) The Act prohibits discrimination against transgender persons in areas such as: Education, Employment, Healthcare, Access to public services, Housing and residence, Opportunity to hold public or private office. This provision reflects the equality principles recognized in National Legal Services Authority v. Union of India.

Right to Recognition of Identity (Sections 4–7). Every transgender person has the right to self-perceived gender identity. A transgender person can apply to the District Magistrate for a certificate

²⁰ See, for example, para 70 of the Supreme Court's decision in the case of NALSA v UOI, which said "Self-identified gender can be either male or female or a third gender"

²¹ The Transgender Persons (Protection of Rights) Act, 2019 [Internet]. Available from: <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2019>. Accessed 2023 May 11.

of identity. If the person undergoes gender affirmation surgery, they may obtain a revised certificate recognizing male or female gender. These provisions are based on the constitutional recognition of gender identity in *National Legal Services Authority v. Union of India*.

Right of Residence (Section 12). A transgender person has the right to reside with their family. If the family cannot care for them, a competent court may order placement in a rehabilitation centre. The right to live with dignity and personal liberty aligns with principles recognized in *Navtej Singh Johar v. Union of India*.

Welfare Measures (Sections 8–10). The government must Provide welfare schemes for transgender persons. Ensure inclusive education and healthcare Facilitate employment opportunities and vocational training Provide medical facilities including gender-affirming procedures

National Council for Transgender Persons (Section 16) The Act establishes the National Council for Transgender Persons (NCT) to: Advise the government on policies. Monitor implementation of the Act Address grievances of transgender persons.

Offences and Penalties (Sections 18). Certain acts against transgender persons are punishable, such as: Forced labour. Denial of access to public places. Physical, emotional, or sexual abuse Economic abuse. Punishment: Imprisonment from 6 months to 2 years with fine.

To operationalize the 2019 Act, the government circulated the Draft Transgender Persons (Protection of Rights) Rules, 2020, which specify the manner and process for applying for and issuing identity certificates. These rules initially included a controversial one-year residency requirement in the District Magistrate's jurisdiction for identity certificate applications, which drew criticism. The rules also detail the procedures for changing gender and name on official documents following the issuance of a certificate.

The Central Government constituted National Council for Transgender Persons on 21st August 2020²² and was reconstituted vide notification dated 16th November, 2023. It serves as a statutory body under the Ministry of Social Justice and Empowerment to safeguard and promote the rights of transgender persons in India.

²² Transgender Persons (Protection of Rights) Rules, 2020 (India).

The Transgender Persons (Protection of Rights) Rules, 2025,²³ were notified, aiming to empower transgender individuals through inclusive governance, welfare schemes, and equal opportunity. These rules streamline the process for identity certificates based on a self-declaration affidavit without medical examination and pave the way for the formation of a Transgender Welfare Board to coordinate policy implementation and address grievances. While the 2019 Act and its rules represent a legislative step forward, there is a significant contradiction and tension between their provisions and the more progressive NALSA judgment. The Act, despite its stated purpose of protecting rights, introduces elements that dilute the spirit of judicial pronouncements. For instance, NALSA unequivocally upheld the right to self-identification without any medical precondition. This implies that legislative "progress" simultaneously introduces new limitations.

Considering of the difficulties faced by transgender people in securing their legal right to live with dignity, NALSA has taken steps to provide legal services to such persons by way of an innovative and diversified programme. NALSA felt that the first step in this regard is to create awareness amongst the other people about the rights of transgenders to live with dignity as human beings and citizens. As a first step in this direction a Conference was organised in Chennai on 14th August, 2010. Honble Executive Chairman, NALSA has directed the State Authorities to organize similar awareness programmers throughout the country. The State of Haryana and many others have included transgender people as persons eligible for free legal services, in their Rules.²⁴

The Transgender Persons (Protection of Rights) Act, 2019, together with subsequent amendments and targeted schemes such as SMILE and Garima Greh, have laid robust foundations for affirmative action, legal recognition, and social protection of transgender persons²⁵. In 2025, the Ministry of Social Justice and Empowerment-continued to organise capacity building programmer, national campaigns, and conferences to promote awareness, address stigma, and ensure the effective inclusion of transgender individuals in policy frameworks and public life²⁶.

VI. NEED FOR REFORMS

²³ Wikipedia. (2025). Transgender Persons (Protection of Rights) Act, 2019. [https://en.wikipedia.org/wiki/Transgender_Persons_\(Protection_of_Rights\)_Act,_2019](https://en.wikipedia.org/wiki/Transgender_Persons_(Protection_of_Rights)_Act,_2019)

²⁴ Http: [:// nalsa.gov.in/](http://nalsa.gov.in/) ; NALSA newsletter Vol1, April-November 2010.

²⁵ The Transgender Persons (Protection of Rights) Act, 2019

²⁶ Legal Service India. (2025). The Transgender Persons (Protection of Rights) Act, 2019: A comprehensive legal analysis. <https://www.legalserviceindia.com/legal/article-18727-thetransgender-persons-protection-of-rights-act-2019-a-comprehensive-legal-analysis.html>

Although progress has been made, further reforms are necessary to achieve full equality for transgender persons. There is a need for stronger anti-discrimination laws and effective implementation of existing policies. Reservations in education and employment could help improve economic opportunities for transgender individuals.

Healthcare systems must provide accessible and affordable gender-affirming medical services. Training programs for teachers, healthcare professionals, and law enforcement officials can help reduce discrimination and promote understanding.

Social attitudes also need to change through education and awareness. Acceptance within families, schools, and workplaces is essential for the empowerment of transgender persons.

The Government of India has introduced various initiatives to improve the welfare of transgender persons. These include skill development programs, healthcare schemes, and housing assistance. Some states have established transgender welfare boards to address community-specific needs.

Efforts have also been made to include transgender persons in official documents such as Aadhaar cards, passports, and voter identity cards. These measures help ensure access to public services and legal recognition.

Educational institutions and workplaces are gradually adopting policies that promote inclusiveness and prevent discrimination. Public awareness campaigns are also being conducted to encourage acceptance and respect for gender diversity.

VII. Conclusion

The recognition of the third gender within the constitutional framework represents a significant step toward social justice and equality in India. The NALSA judgment and subsequent legislation have laid the foundation for protecting the rights and dignity of transgender persons.

However, legal recognition alone is not enough. True equality requires social acceptance, economic opportunities, and access to education and healthcare. Governments, civil society organizations, and individuals must work together to create an inclusive society where every person can live with dignity and respect.

By upholding the constitutional values of equality, liberty, and fraternity, India can ensure that transgender persons are no longer marginalized but are recognized as equal participants in the nation's social, economic, and political life.

The transgender community are of discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities like HIV care and hygiene, depression, hormone pill abuse, tobacco and alcohol abuse, and problems related to marriage and adoption. Discrimination in the workplace is not only unfair and unjust to the gay and trans- gender workers; it is also unfair to taxpayers.

State and local administrations should put into place policies and practices that treat all workers the same, regardless of sexual orientation or gender identity. These policies are good for gay and transgender workers. They are good for efficient and effective government. All the laws of the land should be applied to them like any other person. They should not be discriminated against in training their right to apply for a job, access to a public place, right to property or their right to access to justice.