



LEGAL RECOGNITION V. SOCIAL ACCEPTANCE: EXAMINING THE EFFICACY OF TRANSGENDER RIGHTS IN INDIA

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ABSTRACT

The legal recognition of transgender persons as the Third Gender in India through the landmark NALSA v. Union of India (2014) judgement and through the introduction of various legislative developments has been considered very important for the inclusion of transgender persons in the legal as well as social ambit. However, the question arises whether they get social acceptance along with legal recognition. This article critically examines the incongruity between legal recognition and societal recognition and acceptance of transgender persons in India. This article also examines the social discrimination and exploitation that persist in Indian society. It analyses India's position in the global sphere by comparing India's legislation, welfare measures, the judiciary's role, and societal conditions with international standards and realities. Thus, this article seeks to highlight the need for bridging the disparities between law and living conditions, thereby ensuring equality, no discrimination, freedom, dignity and acceptance in society.

Keywords: Transgender Rights, Legal Recognition, Social Acceptance, NALSA Judgment, Gender Discrimination.

INTRODUCTION

Transgender Persons (Protection of Rights) Act 2019 defines “**transgender person**” as a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as Kinner,

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hijra, aravani and jogta.¹ The transgender community consists of Hijras, eunuchs, Kothis, Aravanis, Jogappas, Shiv-Shakthis, etc. According to the 2011 Census, the total population of transgender people in India is 4.88 lakhs.

Thus, Transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to their biological sex.²

Hijras are not men by anatomical appearance, and psychologically, they are also not women, though they are like women with no female reproductive organs and no menstruation. Since Hijras do not have reproductive capacities as either men or women, they are neither men nor women and claim to be an institutional “third gender.”³

Gender identity refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms. Gender identity, therefore, refers to an individual’s self-identification as a man, woman, transgender or other identified.⁴

Thus, the concept of gender identity is not just a personal or psychological aspect; rather, it has deep legal and social implications. Recognising a person’s gender identity ensures their dignity and acknowledges their lived realities. This understanding forms the fundamental of constitutional values of equality and dignity for all. The most fundamental essence of our Constitution is to provide every human being with equal status and opportunity, and that they should be treated equally irrespective of caste, race, sex, religion, community and social status. Article 14 of the Indian Constitution emphasises the equal treatment of everyone and protects the rights of every individual and prohibits discrimination based on race, caste, sex, religion, or place of birth.

Aristotle thought that every equal should be treated equally and every unequal should be treated unequally to provide justice. Immanuel Kant believed that every person should treat others the way they wish to be treated themselves. His theory of categorical imperatives focused on

¹ The Transgender Persons (Protection of Rights) Act 2019, s 2(k).

² M Davidson, ‘Seeking Refuge under the Umbrella: Inclusion, Exclusion, and Organizing within the Category Transgender’ (2007) 4(4) Sexuality Research & Social Policy 60

³ National Legal Services Authority v Union of India [2014] 5 SCR 124

⁴ National Legal Services Authority v Union of India [2014] 5 SCR 127

respecting each individual's dignity and autonomy. This suggests that transgender persons too must be treated equally, respectfully and with dignity.

In *NALSA v. Union of India and Others*, the 2014 Supreme Court held that “by recognising TGs as third gender, this court is not only upholding the rule of law but also advancing justice to the class, so far deprived of their legitimate natural and constitutional rights. It is, therefore, the only justice to society as well. Social justice does not mean equality before law in papers but to translate the spirit of the Constitution, enshrined in the Preamble, the Fundamental Rights and the Directive Principles of State Policy into action, whose arms are long enough to bring within its reach and embrace this right of recognition to the TGs, which legitimately belongs to them.”⁵

This judgement recognised Transgender Persons as the ‘Third Gender’ and it also emphasised the importance of implementation of law on a ground basis, not just on paper. This case paved the way for transgender persons to have the right to choose their gender identity and live life with dignity, with the right to live freely and equally.

However, Transgender persons have been recognised as Third Gender in April 2014 and legislations like Transgender Persons (Protection of Rights) Act 2019 has been introduced; section 377 of Indian Penal Code, 1860 was also decriminalized dismantling a discriminatory colonial law based on constitutional principles but transgender persons are still not recognised with dignity in society, they continue to face different kinds of economic blockade and social degradation. There are laws that protect them from discrimination, but they are either not aware of them or the laws are not implemented properly on the ground level. They are still deprived of education, health facilities, sanitation facilities, a better workplace environment, employment, etc.

Article 51 and Article 253 highlight the obligation of the government to enact laws in consonance with international law and to promote international peace and security. The *NALSA v. Union of India*, 2014 judgement also conformed with the rules and regulations of international bodies such as UDHR, ICCPR, etc.

⁵ National Legal Services Authority v Union of India [2014] 5 SCR 238

This Article highlights two very important questions, i.e., are transgender persons who are recognised as Third Gender truly accepted as Third Gender in society? Where does India stand in the world when it comes to the protection of the rights of the Third Gender?

LEGAL RECOGNITION OF TRANSGENDER PERSONS

The Constitution of India provides for equality, freedom and the right to life and personal liberty, where a person has the right to live with dignity. Article 14 of the Indian Constitution states that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.⁶

The word 'Person' includes all human beings residing within the Indian territory, i.e., Transgender Persons also fall under the ambit of Article 14, which imposes an obligation on the state to ensure that transgender persons are treated equally and protected against discrimination. It ensures that transgender persons are treated equally in all spheres of state activities such as education, health and sanitation facilities, employment, accommodation, a safe workplace, etc.

Article 15 of the Indian Constitution: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth- (1) The State shall not discriminate on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition concerning—

- (a) access to shops, public restaurants, hotels and places of public entertainment; or
- (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.⁷

Article 16 of the Indian Constitution: Equality of opportunity in matters of public employment - (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

⁶ Constitution of India, Art 14.

⁷ Constitution of India, Art 15.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.⁸

Thus, Article 15 and Article 16 prohibit discrimination and guarantee equal access to public places and equal employment opportunity, including on the grounds of sex. The Supreme Court in *NALSA v Union of India* (2014) interpreted “sex” to include gender identity, thereby providing these protections to transgender persons. Despite these protections, transgender persons are still deprived of access to temples, other public places.

Article 19 of the Indian Constitution: Protection of certain rights regarding freedom of speech, etc.— (1) All citizens shall have the right—

- a) to freedom of speech and expression;
- b) to assemble peaceably and without arms;
- c) to form associations or unions [or co-operative societies];
- d) to move freely throughout the territory of India;
- e) to reside and settle in any part of the territory of India;
- f) to practise any profession, or to carry on any occupation, trade or business.⁹

Article 19 has also used the expression “citizen”, which is gender neutral and refers to human beings. Gender identity, therefore, lies at the core of one's personal identity, gender expression and presentation, and, therefore, it will have to be protected under Article 19(1)(a) of the Constitution of India.¹⁰

Article 21 of the Indian Constitution: Protection of life and personal liberty —No person shall be deprived of his life or personal liberty except according to procedure established by law.¹¹

The right to dignity forms an essential part of our constitutional culture, which seeks to ensure the full development and evolution of persons and includes “expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings.”¹²

⁸ Constitution of India, Art 16.

⁹ Constitution of India, Art 19.

¹⁰ National Legal Services Authority v Union of India [2014] 5 SCR 213

¹¹ Constitution of India, Art 21.

¹² Francis Coralie Mullin v Administrator, Union Territory of Delhi (1981) 1 SCC 608

Legal recognition of gender identity is, therefore, part of the right to dignity and freedom guaranteed under our Constitution. This article, thus, guarantees the protection of the "personal autonomy" of an individual. Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India.¹³

The Transgender Persons (Protection of Rights) Act, 2019 and the Transgender Persons (Protection of Rights) Rules, 2020 prohibit discrimination against transgender persons and protect their rights provided under the Indian Constitution.

The National Council for Transgender Persons (NCTP) is a statutory body established in India under the Transgender Persons (Protection of Rights) Act, 2019. Its primary function is to provide the Central Government with suggestions related to policies and welfare measures for transgender persons.

Although the current legislation, such as the Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), aim to reform India's criminal justice system, they still fall short in inclusively addressing the rights and protection of transgender persons. Notably, the laws continue to use gender-specific language—particularly in provisions relating to rape and sexual violence—which primarily recognise women as victims, thereby excluding transgender persons from equal legal protection in such cases.

SOCIAL ACCEPTANCE OF TRANSGENDER PERSONS

Despite this legal progress, societal acceptance of Transgender Persons in India is still a work in progress. Seldom does our society realise or care to realise the trauma, agony and pain which the members of Transgender community undergo, nor appreciate the innate feelings of the members of the Transgender community, especially of those whose mind and body disown their biological sex. Deep-seated social norms and prejudices continue to dominate the public imagination, where transgender individuals are still not welcomed within families and the wider society. They are not even regarded as normal human beings. A significant portion of transgender people face family conflict, emotional abuse, physical violence, and social exclusion.

¹³ NALSA v Union of India [2014] 5 SCR 214–215

One of the biggest reasons behind this is that conservative beliefs and traditional values regarding gender roles, sexuality, and marriage still prevail in many sections of Indian society. Many transgender people experience bullying, harassment, and assault, both in public and private spheres, and they frequently struggle to be accepted by their families and communities. Discrimination and stigma can result in social marginalisation, mental health issues, and, in severe cases, suicidal tendencies. The socially ingrained gendered values and beliefs make transgender people feel shunned, dehumanised and worthless in comparison with the other two genders. They are often not allowed to access public places like shopping malls, office buildings, temples, etc.

Most families do not accept if their male child starts behaving in ways that are considered feminine or inappropriate to the expected gender role. Consequently, family members may threaten, scold, or even assault their son/sibling for behaving or dressing up like a girl or woman. Some parents may outright disown and evict their child for crossing the prescribed gender norms of society and for not fulfilling the roles expected of a male child.¹⁴ Transgender people are still often met with ridicule from a society that does not understand them.¹⁵ Highlighting the plight of the transgender community, Amnesty International said: “As the world comes together, India’s transgender community fights COVID-19 alone.” This structurally discriminated group has been rendered even more marginalised under the double jolt of the disease and social distancing. A study conducted by a Karnataka-based civil society organisation on a sample of 1,387 workers across and members of certain marginalised groups in the state found that an overwhelming 82% didn’t have money to buy essentials and run their houses. They are often pushed to the periphery as social outcasts, and many may end up begging and dancing. Sometimes, running out of all options to feed themselves, they even engage in sex work for survival.¹⁶ The social marginalisation of this mostly isolated minority not only perpetuates inequality and suffering in society but also puts pressure on others and breeds violence and unrest. In the truest sense of the word, overcoming “exclusion” is the most fundamental prerequisite for creating an egalitarian society.¹⁷ India has taken steps to legally recognise transgender persons, but acceptance in society is still far behind. Legal reforms alone

¹⁴ K Visweswara Rao and K Nikhita, ‘Legal Recognition and Social Acceptance of Transgender Persons in India: A Critical Analysis’ (2023) 1(1) DSNLU Journal of Social Sciences 138.

¹⁵ Visweswara Rao and Nikhita (n 14) 139

¹⁶ Visweswara Rao and Nikhita (n 14) 140

¹⁷ Chandra Shekhar Singh and Ajay Kumar, ‘Socio-Economic Conditions and Social Acceptance of Transgender Community: An Empirical Study’ (2024) 12(3) International Journal of Advanced Research 120.

cannot bring real change unless society also accepts and respects transgender individuals. For true equality, people's attitudes must change along with the laws.

EFFICACY OF TRANSGENDER RIGHTS: TRANSGENDER V. SOCIAL RECOGNITION

Legal recognition does not automatically translate into social acceptance or efficacy in daily life. This contrast between law and social reality creates complexities in achieving true justice and equality for transgender persons. This disconnect between law and societal reality introduces deep complexities in the journey toward achieving genuine justice, equality, and human dignity for the transgender community in India.

The efficacy of transgender rights depends on both legal recognition and social inclusion. Rights provided to transgender persons remain more theoretical than practical as they are protected through various legislations and rights provided under the Indian Constitution, but lack a real-life effect. Despite constitutional guarantees, transgender persons continue to be socially and economically marginalised as the implementation of various legislative and welfare schemes remains weak and inconsistent in India. Despite constitutional rights and welfare entitlements, transgender persons are frequently excluded from access to essential services and basic facilities, including education, healthcare, housing, sanitation, and employment, rendering these rights largely ineffective in practice.

In *National Legal Services Authority v. Union of India and Others*, 2014, the Supreme Court provided robust legal recognition. Yet, a 2021 National Human Rights Commission study found that eighty per cent of transgender persons face workplace discrimination despite laws prohibiting it. They face exclusion from modern employment and education due to a lack of integration in formal social systems.

According to a study by Kerala Development Society,¹⁸ As per this study, the pattern of employment and livelihood of transgender persons in Uttar Pradesh and Delhi, just six per cent of transgender persons are employed, and they are employed in the private or non-governmental sector. The majority of them are employed in the informal sector.

¹⁸ Kerala Development Society, Study on Human Rights of Transgender as a Third Gender (submitted to National Human Rights Commission, February 2017).

Results of the field showed that nineteen per cent of transgender persons have accommodation, and the remaining have rented accommodation as they are denied the right to adequate housing. Approximately fifteen per cent of transgender persons in Delhi and sixteen per cent in Uttar Pradesh have a Voter ID, and approximately seventeen per cent of transgender persons have an Aadhaar Card.

Approximately one per cent of transgender persons in Delhi and three per cent in Uttar Pradesh have a driving licence. Twenty-eight per cent of transgender persons covered by the field survey faced harassment at the school level. Ninety-two per cent of Transgender persons were deprived of participating in any form of economic activities. Eighteen per cent in Delhi and twenty-one per cent in Uttar Pradesh maintain a relationship with parents, even though not treated equally with other members, often marked by unequal treatment and emotional neglect. Access to justice for transgender persons is at a lower level, as they face harassment by the police. There are cases of gang rape. Some transgender persons reported that they try to be presented as male to avoid rape.

These statistics and narratives starkly reveal that transgender persons in India continue to exist on the margins of society. Their constitutional and legislative rights, while powerful on paper, are routinely denied in practice. They suffer from a combination of institutional neglect, cultural stigma, social exclusion, and administrative apathy. The absence of reliable grievance redressal mechanisms, sensitised service providers, and inclusive public infrastructure only worsens their condition.

Therefore, even as the law moves forward through landmark judgements and legislative frameworks, the gap between recognition and realisation of transgender rights remains wide. The persistence of social prejudice, the ineffectiveness of state mechanisms, and the lack of institutional accountability continue to frustrate efforts at inclusion. Unless this implementation gap is acknowledged and addressed through sustained, systemic reform, the promise of equality will remain elusive for India's transgender population.

COMPARISON WITH INTERNATIONAL STANDARDS

Article 253 of the Constitution of India states that the Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international

conference, association or other body.¹⁹ If the Indian statutory law is not in conflict with an international treaty, convention or agreement, particularly concerning human rights, to which India is a party, the domestic courts can apply those principles in the Indian context.

This approach has been used by Indian courts, especially in public interest litigations concerning LGBTQIA+ rights, to align domestic legal interpretations with international human rights obligations.

Article 51 has to be read along with Article 253 of the Constitution. The state shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another.²⁰ If the parliament has made any legislation which conflicts with international law, then Indian Courts are bound to give effect to the Indian Law, rather than international law. However, in the absence of contrary legislation, municipal courts in India would respect the rules of international law.

In *NALSA v. Union of India and others* (2014), the Court made references to Article 253 and Article 51(c) of the Indian Constitution to justify its approach in aligning domestic law with international obligations.

International Conventions and norms are important for the interpretation of gender equality. Courts in India have increasingly relied upon international human rights instruments to fill legislative gaps, especially where statutory protections are silent or inadequate. Article 1 of the Universal Declaration on Human Rights, 1948, states that all human beings are born free and equal in dignity and rights. Article 3 of the Universal Declaration of Human Rights states that everyone has a right to life, liberty and security of person. Article 6 of the International Covenant on Civil and Political Rights, 1996, affirms that every human being has the inherent right to life, which right shall be protected by law, and no one shall be arbitrarily deprived of their life. Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights, 1996, provide that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights state that no one shall be subjected to “arbitrary or unlawful interference with his privacy, family, home or correspondence.”²¹ Countries like Hungary and Russia have

¹⁹ Constitution of India, Art 253.

²⁰ Constitution of India, Art 51(c).

²¹ *National Legal Services Authority v Union of India* [2014] 5 SCR 134

adopted and expanded anti-LGBT propaganda laws to further restrict freedoms of expression for gender identity minorities (Reuters [2021](#), [2022](#)).

In the United States, Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on sex (among other factors) but does not explicitly mention (trans)gender identity or expression. However, in 2020, the Supreme Court's decision in *Bostock v. Clayton County* held that "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."²²

The Yogyakarta Principles are a document about human rights in the areas of sexual orientation and gender identity that was published as the outcome of an international meeting of human rights groups in Yogyakarta, Indonesia, in November 2006. The principles were supplemented and expanded in 2017 to include new grounds of gender expression and sex characteristics, and a number of new principles. These principles have also served as soft law guidance for Indian jurists and human rights commissions when interpreting the scope of gender identity protections under Indian constitutional law.

In May 2012, collective efforts led to the enactment of a Gender Identity Law in Argentina. This is a particularly progressive law, based on human rights principles, as it is the first in the world to recognise a person's gender identity without any preconditions. After the Law's enactment, participants mostly perceived positive changes, in general, and in particular domains such as education, health care, work, security, and civil rights.²³ In 2015, the World Health Organisation cited Argentina as an exemplary country for providing transgender rights. This sets a benchmark for other democracies, including India, where transgender rights have been recognised constitutionally but not always enforced uniformly in practice.

In 2014, Amnesty International released a report titled *The state decides who I am: Lack of Legal Gender Recognition For Transgender People in Europe*.²⁴ The report criticised European countries for legal gender recognition laws that were based on stereotypical gender norms and violated rights such as the right to private and family life, recognition before the law, the highest

²² *Bostock v. Clayton County, Georgia*, 590 U.S., 140 S. Ct. 1731, 1737 (2020).

²³ Javier A. Ponce, Valeria Pavlovsky, and Juan Carlos Godoy, 'Impact of the Gender Identity Law in Argentinean transgender women' (2017) *International Journal of Transgenderism* https://www.researchgate.net/publication/316631650_Impact_of_the_Gender_Identity_Law_in_Argentinean_transgender_women accessed 15 July 2025.

²⁴ Amnesty International, *The State Decides Who I Am* (2014) <https://www.amnesty.org/en/documents/asa20/001/2014/en/> accessed 15 July 2025.

attainable standard of health, and freedom from cruel, inhuman, and degrading treatment. Amnesty argued that transgender individuals should have access to legal gender recognition through quick, accessible, and transparent procedures that align with their perceptions of gender identity. India still lacks a uniform, pan-India administrative mechanism that allows gender self-identification without medical or psychological evaluation, despite the Supreme Court's ruling in NALSA.

Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador and Uruguay have self-identification laws. Similar laws also exist in several Canadian provinces, as well as in some Mexican and U.S. states.²⁵ The Supreme Federal Court of Brazil in 2018 ruled that transgender individuals have the right to change their official name and sex based solely on self-declaration of their psychosocial identity. Canada's legal gender recognition procedures vary by province and territory. At the federal level, Canadians can change the gender on their passports through self-identification.

In 2017, the California State Legislature passed the Gender Recognition Act (SB 179), eliminating the requirement for a physician's statement and mandatory court hearing for gender change petitions. The Act allows changes based on an affidavit and introduced a third, non-binary gender marker for California birth certificates, driver's licenses, and identity cards.²⁶

In New Zealand, gender markers on passports and drivers' licences have worked on a self-declaration basis since 2012. In November 2017, the New Zealand Parliament introduced the Births, Deaths, Marriages and Relationships Registration Bill to allow people to change the sex on their birth certificates on a self-declaration basis as well.

The United Kingdom has passed the General Recommendation Act, 2004, following the judgment in Christine Goodwin passed by the European Courts of Human Rights. The Act is all-encompassing as not only does it provide legal recognition to the acquired gender of a person, but it also lays down provisions highlighting the consequences of the newly acquired gender status on their legal rights and entitlements in various aspects such as marriage, parentage, succession, social security and pensions, etc.²⁷

²⁵ 'Countries that Allow Gender Self-Identification, and the Law in India' The Indian Express (1 July 2021) accessed 15 July 2025.

²⁶ 'Fact Sheet: California's Gender Recognition Act (SB 179)' Transgender Law Centre

²⁷ National Legal Services Authority v Union of India [2014] 5 SCR 193

Organisations like Transgender Europe (TGEU), Asia Pacific Transgender Network (APTAN), and Global Action for Trans Equality (GATE) are leading advocacy efforts focused on law reform, healthcare access, and inclusion for transgender, gender diverse, and intersex communities. They work at various levels, from grassroots organising to international policy advocacy, to address human rights violations and promote equality.

India's legal recognition of transgender persons, especially post the *NALSA v. Union of India* (2014) judgment, has drawn inspiration from international standards and conventions. The Court relied on Articles 253 and 51(c) of the Constitution to incorporate global human rights principles into Indian jurisprudence. However, the implementation of transgender rights in India still lags behind several international standards.

Countries like Argentina, New Zealand, and Canada allow gender recognition based solely on self-identification, without requiring medical or psychiatric validation. In contrast, India's Transgender Persons (Protection of Rights) Act, 2019 mandates a two-step process involving the District Magistrate and, in some cases, a medical certificate, which contradicts the spirit of self-identification upheld by *NALSA*.

Moreover, while India has constitutional safeguards, practical enforcement remains weak due to bureaucratic delays, lack of awareness, social stigma, and police apathy. In contrast, countries like Brazil and the U.S. have started integrating transgender rights into employment law and civil liberties frameworks more consistently. While India has taken commendable judicial steps to align with international human rights obligations, policy and legislative reforms must now bridge the gap between principle and practice. Learning from progressive models like Argentina's 2012 Law or California's SB 179,²⁸ India can move towards more inclusive, accessible, and human rights-compliant legal structures for its transgender community.

SUGGESTIONS

To make the rights of transgender persons more than a paper promise, India must move beyond legislative symbolism and focus on transformative implementation. The recognition of gender identity in legal and constitutional frameworks must be accompanied by mechanisms that address the day-to-day struggles faced by transgender individuals in social, institutional, and

²⁸ California Gender Recognition Act, SB 179 (California State Legislature, 2017).

economic spheres. The persistent challenges faced by transgender persons in accessing essential documents, education, employment, healthcare, and legal protection reveal an urgent need for a stronger alignment between policy and lived reality. The law, while critical in shaping norms, cannot by itself alter deep-rooted cultural prejudices, bureaucratic inertia and administrative insensitivities that marginalise transgender persons across the country.

A key concern lies in the procedural rigidity embedded in the existing Transgender Persons (Protection of Rights) Act, 2019, particularly in its approach to legal gender recognition. The requirement of certification through the District Magistrate continues to act as a gatekeeping mechanism that compromises the autonomy of transgender individuals and creates barriers to access. The process fails to uphold the spirit of self-identification and bodily autonomy enshrined in constitutional jurisprudence and international best practices. Removing these procedural encumbrances and moving toward an affirmation-based model would restore dignity to the process of legal recognition and remove layers of discrimination perpetuated by institutional scepticism and state surveillance.

Further, sensitisation of institutions remains a deeply neglected area. Despite constitutional guarantees of equality and non-discrimination, transgender persons continue to face violence and exclusion at the hands of state actors, such as police personnel and government officials, as well as in everyday public interactions. Structural discrimination persists due to widespread ignorance and social stigma, which are rarely addressed through proactive institutional engagement. There is a pressing need for systemic change through long-term public awareness campaigns, targeted training programs, and curriculum inclusion to help dismantle prejudice and educate society about gender diversity.

Another significant gap lies in the area of socio-economic entitlements. While the judiciary and legislature have recognised the need for equality, the economic precarity of transgender persons remains largely unaddressed. Most transgender individuals are excluded from formal education systems and are denied access to stable employment, forcing many into begging or sex work to survive. This economic marginalisation is compounded by the lack of access to housing, healthcare, and identity documents. Welfare schemes and government support rarely reach the community due to a lack of political will, administrative apathy, and poor outreach. Inclusion in public employment, targeted scholarship programmes, and access to gender-affirming healthcare must be made an integral part of developmental policy rather than an

afterthought. Without ensuring socio-economic security, legal rights cannot be actualised meaningfully.

There is also a broader need to reform the criminal justice system's approach to transgender rights. Current criminal laws, especially those related to sexual offences, remain gender-specific, thereby excluding transgender persons from legal remedies in cases of sexual assault and abuse. The lack of gender-neutral definitions and protections leaves transgender victims without legal recourse, contributing to further invisibilisation and denial of justice. Moreover, police violence and custodial abuse are often underreported due to fear of retaliation, mistrust in institutions, and societal apathy. In the absence of legal frameworks that respond to the specific vulnerabilities of transgender persons, their constitutional right to protection remains compromised.

Finally, meaningful inclusion cannot be achieved without involving transgender persons themselves in decision-making processes. Policy frameworks often speak about transgender welfare without ensuring the participation of the community in designing, implementing, and evaluating these measures. Representation of transgender voices at all levels of governance, from village level to national policymaking bodies, is not only a matter of inclusivity but also a democratic imperative. Only when policies are informed by lived experiences can they begin to address the nuanced challenges of the community. Transgender empowerment must move from symbolic representation to substantive participation that challenges systemic exclusion and affirms citizenship in the truest sense.

CONCLUSION

The constitutional and legal framework recognising transgender persons as equal citizens marks an important milestone in India's democratic journey. Judgments like *NALSA v. Union of India* (2014) and legislative interventions such as the Transgender Persons (Protection of Rights) Act, 2019, have laid the foundation for a rights-based approach to gender identity. However, the core challenge remains the wide gap between legal recognition and actual social acceptance. While the law acknowledges the dignity and individuality of transgender persons, social structures continue to reproduce exclusion, discrimination, and invisibilisation. This gap between the promise of the Constitution and the practice of society forms the crux of the issue.

Despite judicial and legislative progress, the lived realities of transgender persons remain fraught with systemic barriers. From being rejected by families to being excluded from schools,

hospitals, housing, and employment, transgender individuals face discrimination at every stage of life. The marginalisation they experience is not merely incidental—it is structural and embedded in the very institutions that claim to uphold equality and justice. Laws alone cannot dismantle the social hierarchies and cultural prejudices that sustain this marginalisation. The efficacy of rights, therefore, lies in their implementation, not just their articulation. Transgender persons in India continue to occupy a precarious social position marked by invisibility and vulnerability. Legal frameworks that affirm identity must be supported by social mechanisms that respect it. The lack of widespread public awareness, coupled with institutional insensitivity, ensures that most transgender persons are either unaware of their rights or unable to access them effectively. Healthcare providers often lack training on transgender issues, resulting in misgendering, inadequate care, and refusal of service. Schools lack inclusive curricula, and workplace environments are seldom accommodating of gender diversity.

These omissions not only restrict opportunities but reinforce the notion that transgender persons are less deserving of societal participation. The role of constitutional morality becomes pivotal in this context. While public morality may continue to marginalise and stigmatise, constitutional morality calls upon institutions to uphold the values of justice, dignity, and equality, even in the face of societal resistance. As articulated by the Supreme Court in the NALSA judgment and reaffirmed in *Navtej Singh Johar*²⁹ and *Joseph Shine*,³⁰ the Constitution is not a passive document but a transformative one, meant to challenge societal biases and elevate the status of marginalised groups. The commitment to constitutional morality must extend beyond courts and be embedded in every organ of the state and every layer of civil society. International experiences show that a rights-affirming environment for transgender persons is achievable through inclusive policies and community-led reforms. Argentina's Gender Identity Law, New Zealand's self-identification framework, and Canada's gender-inclusive documentation model are not merely examples of legal reform but of societal willingness to embrace gender diversity. These jurisdictions demonstrate how legal recognition and social acceptance can progress simultaneously when backed by political will and inclusive public discourse. In India, while courts have played a proactive role in interpreting rights expansively, legislative and administrative frameworks have lagged. The absence of uniform, accessible mechanisms for legal gender change, the continued use of binary language in

²⁹ *Navtej Singh Johar v Union of India* (2018) 10 SCC

³⁰ *Joseph Shine v Union of India* (2019) 3 SCC 39

criminal law, and the lack of representation of transgender persons in policymaking bodies hinder the advancement of equality.

Data collected by the Kerala Development Society and the National Human Rights Commission underscores the severity of the situation. The overwhelming lack of access to basic documents, the disproportionate exclusion from formal employment, and the widespread experience of harassment—particularly by law enforcement—highlight the chasm between policy and practice. The institutional neglect and bureaucratic indifference compound the already marginal position of transgender persons, rendering legal safeguards ineffective on the ground. What emerges is a stark contradiction: a community recognised by the Constitution and yet denied by society.

Furthermore, the discourse around transgender rights must move beyond binary frameworks and tokenistic representation. Transgender persons are not a monolithic group, and their experiences intersect with other axes of marginalisation such as caste, religion, class, and disability. Effective inclusion requires recognising and addressing this diversity. Community-led leadership and participation in governance, education, health, and employment sectors are crucial. Inclusion cannot be achieved without the active involvement of those most affected by exclusion. Representation must be substantive, not symbolic.

There is also a need to reframe the narrative surrounding transgender persons, from one of victimhood to one of agency and empowerment. While acknowledging the oppression and challenges they face, it is equally important to celebrate the resilience, leadership, and contributions of transgender communities. Their visibility in the arts, politics, activism, and academia should be acknowledged and amplified. Public narratives that humanise and dignify transgender lives can play a transformative role in shifting societal attitudes and dismantling stigma.

In conclusion, the efficacy of transgender rights in India hinges not only on legal and constitutional mandates but on a broader cultural and institutional transformation. It requires a recalibration of societal values to make space for dignity, diversity, and inclusion. Legal recognition must be accompanied by proactive measures to ensure access to healthcare, education, housing, employment, and justice. Social acceptance must evolve from tolerance to the celebration of difference. Only then can the constitutional promise of equality be truly fulfilled.

The vision of the Constitution is not merely to prevent discrimination but to cultivate a society where every individual, regardless of gender identity, can live with dignity and purpose. Transgender persons are not seeking special treatment—they are demanding what is rightfully theirs: equality, recognition, respect, and freedom. Until these demands are met not only in legal texts but in lived experiences, the struggle for justice remains incomplete. The time has come not just to acknowledge the third gender, but to walk with them as equals in the journey toward an inclusive and humane India.