



## FROM MARGINS TO CENTER INDIA NEED AFFIRMATIVE ACTIONS TOWARDS TRANSGENDER

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### ABSTRACT

*This article revolves around the condition of transgender individuals in our country and how their identity is isolated to weakness and incompleteness. It deeply explores what has been happening to them throughout the centuries what they are facing is a result of long-term patriarchy. It also gives insight into how we s society can end that prolonged discrimination, how important government help and amendments are to improve their conditions in society. This article delivers this strong message that dignity is a right given by society, not a favour from society.*

**Keywords:** Transgender Rights, Social Discrimination.

### INTRODUCTION

We have all heard terms like hijra and kinnar, often used in society as slurs or in the heat of anger without truly understanding who these individuals are, what their identities mean, or what their needs are. There is a collective societal failure to educate ourselves and future generations about the transgender community. This persistent discrimination has led to an existential crisis for many transgender persons, forcing them to live on the margins of society.

As one may observe, “They are part of our society, but not accepted by our society.” When society attempts to define transgender individuals, it often resorts to crude stereotypes, labelling them as something ‘odd’, ‘neither male nor female’, or associating them with supernatural powers. Though they are sometimes revered in ritualistic contexts, they are just as often subjected to mockery, stigma, and exclusion. These socially constructed definitions increase their vulnerability and reinforce structural discrimination. To address this, the law

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stepped in to provide a more inclusive and respectful definition. According to Section 2 (k) of the Transgender Persons (Protection of Rights) Act, 2019.

Transgender person means 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 variation, gender queer and person having such socio-cultural identities as kinner, hijra, aravani, and jogta.<sup>1</sup>

This legal definition recognises transgender persons not as societal anomalies but as natural variations within the spectrum of human identity. Nature itself thrives on diversity, across the animal kingdom and plant world, where variation is celebrated, not discriminated against. It is only humans who have turned diversity into a basis for division and exclusion.

The recognition of transgender persons as full and equal citizens must not remain symbolic. Legal language must translate into lived realities, where every transgender person enjoys the same freedoms, opportunities, and respect as any other citizen. To achieve this, inclusion must be reflected not only in laws but also in schoolbooks, hiring practices, public campaigns, and budgetary allocations. Because of systematic division and social exclusion, transgender persons face persistent discrimination in accessing basic facilities such as education, healthcare, and even dignity. Multiple surveys highlight the harsh realities they endure.

According to a 2017 study by the National Human Rights Commission (NHRC), which surveyed 900 transgender persons across the National Capital Region and Uttar Pradesh, 75% in NCR and 82% in U.P. had dropped out before completing Class X. only 15% held formal employment, while 69% were engaged in informal work such as singing, dancing, or giving blessings. 53% earned less than 10,000 Rs. per month, and 52% reported facing police harassment.<sup>2</sup>

In the 2015 Kerala survey conducted by Sangama, a human rights organisation, among 3,619 transgender individuals, 60% had dropped out of school due to harassment, and only 12% were

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<sup>1</sup> Transgender Persons (Protection of Rights) Act 2019, s 2(k)

<sup>2</sup> National Human Rights Commission, Study on Human Rights of Transgender as a Third Gender (NHRC 2017)

formally employed. Over 50% earned less than 5,000 Rs. per month, 52% had experienced police harassment, and 96% did not report these incidents out of fear of victimisation.<sup>3</sup>

More recently, the 2024 LIBA-ICSSR study in Chennai surveyed 535 transgender individuals and found, 87% were unemployed, with only 8.8% in full-time jobs, and 91% had faced 1-5 job rejections due to their gender identity. More than 56% had attempted suicide, and over 60% stated they would not have turned to begging or sex work if they had access to decent employment.<sup>4</sup>

These surveys reveal a common pattern: transgender individuals are forced to compromise on education and employment, which ultimately leads to a compromise on their dignity. Financial hardship compels many to beg on the streets or dance in clubs, actions that leave them vulnerable to exploitation and harassment. The root cause of this crisis is society's refusal to accept them. In many cases, society is not only indifferent to their suffering but dehumanises them, treating them as objects, not as persons.

Indian society is well aware of the discrimination faced by transgender persons, and their rights have been recognised through both judicial decisions and legislative enactments. The landmark judgment in *National Legal Services Authority v. Union of India* (2014) was a turning point in this recognition. The Supreme Court acknowledged transgender persons as the 'third gender', affirmed their right to self-identification, and directed the Central and State Governments to treat them as Socially and Educationally Backwards Classes (SEBCs). The court further ordered the provision of reservations in education and public employment.<sup>5</sup>

This judgment was grounded in the Constitution of India, particularly Article 14, which guarantees equality before the law, Article 15, which prohibits discrimination on the grounds of sex, interpreted by the Court to include gender identity, and Article 16, which ensures equality of opportunity in public employment.<sup>6</sup>

Following this judgment, Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019, which provides for the legal recognition of transgender persons and prohibits

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<sup>3</sup> Sangama, Kerala Transgender Survey Report (2015)

<sup>4</sup> Loyola Institute of Business Administration, Transgender Livelihood Survey (ICSSR Funded Study, Chennai, 2024)

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

<sup>6</sup> Constitution of India, arts 14, 15, 16

discrimination in various spheres such as education, healthcare, housing, and employment.<sup>7</sup> However, despite this legislative framework, the Act does not include any provision for reservation, thereby falling short of fully implementing the Supreme Court's directive in NALSA. Legal recognition without affirmative action limits the community's ability to access real and substantive equality.

In contrast, the Constitution has provided affirmative action to historically marginalised groups such as SCs, STs, and OBCs, recognising that centuries of oppression cannot be undone by equal treatment alone. The same logic must apply to transgender persons, who have similarly faced systemic violence and exclusion.

Despite judicial recognition and legislative measures, there remains a significant discrepancy between the recognition of transgender rights and the actual benefits received by the community. While the Supreme Court in NALSA mandated reservations in education and public employment, and the Transgender Persons (Protection of Rights) Act, 2019, prohibits discrimination, a comprehensive reservation framework is yet to be implemented at the national level.

Only a few Indian states have taken concrete steps towards affirmative action. For instance, Karnataka introduced a 1% reservation in public employment for transgender persons in 2021, making it the first state in India to do so.<sup>8</sup> However, such efforts are isolated and lack uniformity across the country. Most transgender persons continue to face exclusion from government, welfare schemes, housing, healthcare, education, and job opportunities due to the absence of enforceable policies and targeted inclusion mechanisms.

Additionally, there is no dedicated Central ministry or national policy that addresses the multidimensional challenges faced by the transgender community. While the Social Justice and Empowerment launched the "SMILE" scheme in 2022 for transgender welfare, its implementation has been patchy and underfunded. There is also a lack of proper monitoring or grievance redressal systems for when rights are violated.

This gap between the law and its implementation reflects a failure of political will and administrative readiness. Legal identity alone cannot ensure justice if it is not supported by

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<sup>7</sup> Transgender Persons (Protection of Rights) Act 2019

<sup>8</sup> Apoorva Mandhani, 'Karnataka Becomes First Indian State to Provide 1% Reservation for Transgender Persons in Government Jobs' LiveLaw (23 July 2021) <https://www.livelaw.in>

practical measures and institutional accountability. Without a uniform national policy on reservation and inclusion, transgender persons will remain marginalised despite constitutional and statutory recognition.

If a structured and inclusive affirmative action regime is implemented for transgender persons, it can significantly uplift the community, help them establish their identity, and enable them to live a life of dignity and equality. The first step should be to establish a dedicated national-level, statutory body, similar to the National Commissions for Schedule Caste and Schedule Tribes, which would be empowered to monitor transgender rights, document instances of discrimination, and recommend policy interventions to both the Centre and the States.

Further, a separate reservation quota should be introduced for transgender persons in government employment and educational institutions, both in the public and private sectors. Financial inclusion can also be facilitated by offering tax exemptions, launching targeted healthcare schemes, and ensuring free or subsidised access to essential services.

However, legal and economic measures alone are not sufficient. One of the most powerful tools for sustainable change is social sensitisation. There is a pressing need to transform public perception. This can begin by integrating chapters in school textbooks that educate children about gender diversity, the identity and rights of transgender persons, and the value of inclusion. Public awareness campaigns, including television advertisements and digital content, should be used to highlight the discrimination faced by transgender persons and foster empathy and respect.

International best practices may also guide India in framing inclusive policies. Countries like Argentina and Uruguay have implemented gender identity laws with self-identification and access to free healthcare and gender affirming procedures. Nepal has provided a third gender option in official documents since 2007. These examples demonstrate that policy innovation is possible and essential.

Additionally, the government should support the establishment of community-based NGOs dedicated to the welfare of transgender persons, providing them with legal aid, mental health services, vocational training, and social support. By implementing these interconnected reforms, society can move from mere recognition to genuine inclusion, enabling transgender persons to move from the margins to the centre and to live with dignity.

We must recognise that diversity is not a deviation; it is the law of nature. Just as the natural world thrives on variation, human societies too must embrace difference as a source of strength, not division. Exclusion is never the solution; recognition and inclusion are. To build a just and equitable society, we must support transgender persons in their journey towards dignity, equality, and visibility. Ensuring their full participation in social, economic, and political life is not merely an act of sympathy; it is a constitutional and moral obligation.

The Indian Constitution is founded on the ideals of justice, liberty, equality, and fraternity. These are not mere words, but guiding principles that demand active implementation, especially for those who have long been denied visibility and dignity. The transgender community in India, despite gaining legal recognition, continues to battle social exclusion, economic deprivation, and systematic discrimination.

Our moral fabric has always been rooted in the idea of unity in diversity. This concept should not remain confined to cultural or religious differences, but must extend to gender identity and expression. As a society, we cannot claim to be inclusive unless we embrace all identities, including those that fall outside the traditional binary.

Recognising transgender person is not an act of charity, it is an act of justice and equality, as guaranteed by our Constitution. Reservation, therefore, is not a concession but a corrective measure. It is a tool to ensure that transgender persons are not just seen, but are also heard, represented, and empowered. Without institutional and structural support, legal recognition remains hollow.

To make real progress, we must go beyond symbolic gestures. Transgender individuals must have access to education, employment, healthcare, housing, and public services on an equal footing. Public awareness campaigns, school-level education reforms, dedicated welfare boards, and legal aid systems must all work together to build a truly inclusive society.

More importantly, we need to correct the mindset of exclusion that has been normalised for decades. Change must begin with our families, schools, and media. We must teach our younger generation that gender is not a limitation, but a spectrum, and that every individual, regardless of identity, deserves respect and dignity.

Only when we move from mere tolerance to active inclusion can we say that India truly embodies its constitutional values. It is time to bring the transgender community from the margins to the centre, not as a favour, but as a fundamental right.