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**BEYOND THE BINARY: LEGAL RECOGNITION AND
CONSTITUTIONAL PROTECTION OF THIRD-GENDER PERSONS IN
INDIA**- Tanish Garg¹

“Gender is not merely a biological classification but a deeply personal identity, and the recognition of third gender and LGBTQ+ rights marks a crucial step toward substantive equality in a constitutional democracy.”

Abstract

This paper critically examines People usually think of gender as male and female.. This way of thinking does not consider the experiences of people who do not fit into these two categories. These people are often called the gender or transgender people.

In India there has always been a lot of variation in how people express their gender. You can even find examples of this in stories and legends like the story of Shikhandi in the Mahabharata. Gender diversity has been a part of culture for a very long time. The gender and transgender people have been around for thousands of years, in India. People who are gender have been recognized for a long time. However third-gender persons still face a lot of problems. They are treated unfairly and third-gender persons are not given the rights as everyone else. This has been going on for a long time especially since the colonial period and even, after that. Third-gender persons have been excluded from society and third-gender persons are not treated equally.

This paper looks at the status of the third gender in India. It does this by looking at the constitution, social rules and international human rights. The paper sees how the law in India has changed over time. It used to be that the third gender was treated badly and ignored. Now the law says they are a group. This change happened a lot after a court decision in National

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Legal Services Authority v. Union of India in 2014². This decision said that transgender persons are a gender and they have basic rights like everyone else. The third gender, in India is now recognized by the law and the third gender has rights that are protected. The paper also looks at the Transgender Persons Act of 2019³ carefully. It talks about what the Transgender Persons Act does and what it does not do well. The Transgender Persons Act has some problems with how it's put into action and how people get certified. The paper also points out some issues, with how the Transgender Persons Act's enforced.

The study looks at how third-gender persons doing in India right now. It checks how they are treated in areas like going to school getting care finding a job having a place to live and taking part in politics. The study also sees how India is doing compared to what other countries doing. This includes following rules like the Yogyakarta Principles. It also looks at what the UN Human Rights Council says about treating people and the Sustainable Development Goals that are important for everyone. The study wants to know how third-gender persons, in India are doing in all these areas. The paper concludes by suggesting a way forward through legal reforms, policy changes, and social sensitization to ensure dignity, equality, and meaningful inclusion of third-gender persons in Indian society.

Keywords: Third Gender; Transgender Rights; Gender Identity; Indian Constitution; NALSA Judgment; Transgender Persons Act, 2019; Human Dignity; Equality.

Introduction

India has a lot of people who do not identify as male or female like transgender people and non-binary people. These people live in a country where the law says everyone is equal. This does not always happen. The law of India says that every person is treated equally and has the rights. This means that everyone has the right to be treated fairly to say what they think and to live their life freely. The Indian Constitution says that every person has these rights, including the right to be treated under the law the right to not be treated unfairly the right to express themselves and the right to live their life. Indias law says that transgender people and non-binary people have the rights, as everyone else and they should be treated the same. The Supreme Court made it very clear that transgender people have rights in the National Legal

²(2014) 5 SCC 438.

³ACT NO. 40 OF 2019

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Services Authority v. Union of India case⁴. Transgender people were officially seen as a group, known as the third gender and they were given all the basic rights that everyone else has⁵. The court said that transgender people are fully entitled to these rights just like everyone else and that is a very important thing, for transgender people. The rights of third-gender persons are supported by human rights standards as well as domestic constitutional protection. International human rights standards, like the ones from the UN Human Rights Council are important. The UN Human Rights Council has resolutions and the Yogyakarta Principles that say sexual orientation and gender identity are important for dignity and equality. These are important because they say that treating people unfairly because of their gender identity is wrong and goes against rights. The Yogyakarta Principles and the UN Human Rights Council resolutions obligate states to make third-gender persons, including transgender persons are recognized and protected by the law. International human rights standards, including the ones from the UN Human Rights Council require states to include third-gender persons, like transgender persons in all aspects of life. This means international human rights standards support the rights of third-gender persons and transgender persons. The life of third-gender persons in India is still tough. They face a lot of problems because people do not accept them. This is because of deeply held beliefs that people have. As a result third-gender persons in India have a time getting an education seeing a doctor getting a job finding a place to live and taking part in public life. Even though the law says they have rights people do not always treat them fairly. The law has not changed the way people think about third-gender persons, in India. They still have to fight for their rights to be respected. Against this backdrop, this paper examines key concepts and terminology, explores historical perceptions of gender diversity from ancient India to the colonial era, analyses constitutional and legal developments including the Transgender Persons (Protection of Rights) Act, 2019, evaluates the present socio-legal status of third-gender persons, and situates Indian law within global human rights frameworks. The paper ultimately proposes legal and social reforms aimed at achieving real equality and dignity for third-gender persons in India.

Definitions and Terminology

⁴ Supra note 1

⁵<https://www.hrw.org/news/2018/06/06/south-asias-third-gender-court-judgments-set-example#:~:text=In%20India%20in%202014%2C%20the%20A0Supreme,other%20than%20male%20and%20female>

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2.1 Definition of LGBTQ+

The term is globally recognized as referring collectively to sexual and gender minorities, meaning:

L - Lesbian:(women who are attracted to other women)

G - Gay - refers to men who are attracted to other men - and has now become a widely

B - Bisexual (attracted to two or more sexes)

T -Transgender (gender identity differs from sex assigned at birth)

Q – Queer or Questioning (queer as an inclusive political identity; questioning for those exploring identity)

+ — Includes additional identities (intersex, asexual, pansexual, non-binary, gender fluid, etc

LGBTQ+ groups include differences in sexual orientation-who one loves-and gender identity/expression-who one is and how one presents oneself. The third gender generally refers to people whose gender identity does not remain within the binary male/female categories, and it may include transgender, non-binary, gender-fluid, and some culturally specific identities, such as Hijra, Kinnar, Aravani.⁶

2.2 Third Gender / Transgender — Working Definition

For the purpose of this paper, third gender refers to individuals who self-identify outside the binary categories of male/female. The category includes:

- ❖ Transgender men and women (people whose gender differs from the sex assigned at birth)
- ❖ Non-binary or gender-nonconforming persons
- ❖ Intersex persons (where biological sex characteristics do not fit typical male/female categories) noting that intersex concerns are distinct, though often conflated in policy and law

⁶<https://nyaaya.org/resource/guide-on-the-rights-of-transgender-persons-in-india/#:~:text=As%20per%20the%20law%2C%20a,time%20of%20birth%2C%20and%20includes>

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- ❖ South Asian cultural identities (Hijra, Kinnar, Aravani, Jogappa) with their own social structures and lived realities⁷

Historical and Cultural Context

Indian mythology is really interesting because it has people in it who did not think of themselves as male or female. The Mahabharata has a character named Shikhandi who was born as a female named Amba and later became a male. This story is often talked about as one of the stories about someone changing their gender. The stories show that Indian mythology included people who were transgender or non-binary which means that ancient Indian society probably recognized that people can be different genders. The fact that these people are in the stories suggests that ancient Indians accepted people who were not just male or female.⁸

Indian mythology is full of examples like Shikhandi which show Ancient Recognition of people, with gender identities. The old Hindu stories do not really match the way we think about identity today. They do show that people who were different in terms of gender were already a part of the culture. When the British came to rule India they completely changed the way people thought about this.

In the year 1860 the Indian British government made a law called Section 377 in IPC(criminal law) that said people could not have kinds of sex because it went against what the British thought was natural. The British people who made the laws did not care about what the people who already lived in India were doing they just wanted to impose their values on everyone, which were based on the Christian way of thinking about right and wrong.

The British wanted India to follow their moral rules, which were very different from what people, in India were used to. The alien legacy made acts against the law and did not think about what local people actually thought. On the Criminal Tribes Act of 1871 said that Hijras, who were called eunuchs were a criminal tribe. This law made it so that people thought badly of a group of people by saying they were born to be criminals. Even though the

⁷<https://lawschoolpolicyreview.com/2023/05/24/realising-the-promise-of-legal-inclusion-of-transgender-persons-in-nalsa/#:~:text=The%20Supreme%20Court%20used%20the,persons%20are%20in%20the%20lowermost>

⁸<https://ijrar.org/papers/IJRAR21C1932.pdf#:~:text=For%20example%2C%20Shikhandi%20was%20born,to%20a%20transgender%2C%20Shikhandi%20makes>

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rules that targeted Hijras were changed in 1911 scholars say that the way the Criminal Tribes Act was written and the ideas it promoted still affected the laws and police work that came after it. The Criminal Tribes Act still had an impact, on how people thought about Hijras. So when countries were ruled by countries, the people who did not fit into the usual ideas of male and female were treated like they were doing something wrong. This was very unfair. It still affects the people who are different from what society thinks is normal like the gender-variant cultures. The bad feelings about gender-variant cultures are still, with us today.

Thus, India's history reveals a contrast: pre-modern texts show gender fluidity in respected roles, whereas colonial laws criminalized those identities. This legacy necessitates conscious corrective legal reforms in the postcolonial era.

Legal Developments in India

Constitutional Provisions

- **Article 14 — Equality before the law and equal protection of the laws.** Guarantees that the State must treat all persons equally under the law and offers scope for protection against arbitrary discrimination.
- ❖ **Article 15 — Prohibition of discrimination.** Prohibits discrimination by the State on grounds including sex; modern interpretations consider the scope to include gender identity.
- ❖ **Article 16 — Equality of opportunity in public employment.** Entitles all citizens to equal opportunity in government employment.
- ❖ **Article 19 — Protection of certain rights regarding freedom of speech and expression.** Protects expressive freedoms which extend to personal expression, including dress and gender expression.
- ❖ **Article 21 — Protection of life and personal liberty.** Guarantees the right to life and personal liberty, including dignity, bodily autonomy, and privacy.
- ❖ **Article 23 — Prohibition of traffic in human beings and forced labour.** Relevant due to exploitation risks faced by marginalized third-gender persons.

Directive Principles (Part IV):

- ❖ **Article 38** (social order for welfare of the people),
- ❖ **Article 39** (right to adequate means of livelihood),

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- ❖ **Article 41** (right to work, education, public assistance in certain cases),
- ❖ **Article 46** (promotion of educational and economic interests of weaker sections) provide policy guidance for state action to protect vulnerable groups.⁹

International Frameworks and Global Norms

International and regional policies & instruments have had a huge impact on how people think about transgender rights around the world - the kind of impact you might expect from something that affects so many lives:¹⁰

5.1 Yogyakarta Principles

- These are some principles that a group of top human rights experts came up with that boil down to using existing human rights law to address the issues surrounding sexual orientation & gender identity (SOGI).
- It basically comes down to the idea that **people should get to decide how they want to be recognized legally**, that they should not be discriminated against, that they should be safe from violence, and that they should have access to healthcare and all the normal documents that everyone else gets to have without jumping through hoops.

5.2 United Nations Human Rights Council Resolutions

- Since 2011 the UNHRC has been moving things forward with resolutions that basically amount to 'don't beat the crap out of people because of who they are or who they love', setting up independent experts to keep an eye on things and encouraging countries to make laws & policies that will protect transgender people.

5.3 World Health Organization (WHO)

- The WHO made some pretty big changes to the way they categorize things in the latest edition of the ICD (International Classification of Diseases) - basically they've taken 'gender incongruence' out of the mental health section which is a huge deal for getting rid of stigma and getting people the right kind of care.

⁹THE CONSTITUTION OF INDIA 1950

¹⁰https://data.unaids.org/pub/manual/2007/070517_yogyakarta_principles_en.pdf#:~:text=The%20Yogyakarta%20Principles%20address%20a.Additional%20recommendations%20are

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5.4 Sustainable Development Goals (SDGs)

- The SDGs have all these core commitments which are pretty much saying 'we're going to make the world a better place for everybody' - you can think of SDG 3 (health), SDG 4 (education), SDG 5 (gender equality), SDG 10 (less inequality), and SDG 16 (fair justice) specifically. This means that in order to 'leave no one behind' (words that are actually used in the SDGs) we HAVE to make sure we're not forgetting about people who are transgender.

International frameworks think that **self-determination** (people getting to choose how their identity is recognized without having to have surgery or a doctor's note) and not discriminating against people because of who they are are two pretty fundamental values, and that we should be working to make sure that transgender people are included in all sorts of things - healthcare, education, work policy etc.

Socio-Legal Status of Third-Gender Persons in India

1. Social Exclusion and Persistent Stigma

In India people who are transgender still face a lot of problems. Even though the law says they have rights people do not always accept them. Many people in India think that you can only be a man or a woman. They do not understand that some people are transgender. Because of this many transgender people have to leave their homes when they're young. They do not have a family to support them. They feel very alone. Transgender people also have a time in public places like when they go to church or try to be part of their community. This makes them feel like they do not belong. It hurts their feelings. Transgender people, in India experience this kind of exclusion every day.

2. Educational Disadvantage and High Dropout Rates

Education is really hard for third-gender persons to get because they get bullied and harassed a lot. They also do not get help from schools and universities. For example schools and universities often do not have toilets that third-gender persons can use. They also do not do much to stop students and teachers from being mean to them. This makes it very tough for third-gender persons to stay in school and learn much as they can. Even though the law says everyone should be treated equally it does not always work out that way for third-gender persons because the rules are not enforced well. So third-gender persons can not take

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advantage of education like they should be able to. Education is very important, for third-gender persons. They face a lot of problems.¹¹

3. Employment Discrimination and Economic Marginalization

The third-gender people have a tough time because they do not get to study much and they face a lot of problems at work. The third-gender persons are often not given jobs they get paid less and they are treated badly at work. Many people who give jobs do not want to hire the transgender people because they do not like them and they do not know much about them. So a lot of the third-gender people have to do jobs like begging or sex work but they do not want to do these jobs they have to do them because they are not allowed to work in jobs. The third-gender people are kept out of the economy and they have to work in bad conditions. This is very unfair, to the third-gender people.

4. Barriers to Healthcare and Mental Well-Being

Healthcare for third-gender persons is a problem. They often get treated unfairly. Healthcare people do not know how to help them. Many third-gender persons are turned away when they need help. They also get treated badly by doctors and nurses who do not understand their needs. Third-gender persons have a lot of health issues like depression and anxiety because people are mean, to them and they get hurt. This happens a lot. It is very sad. Even though the law says third-gender persons have the right to get healthcare it is still very hard for them to get the help they need. Healthcare systems are not set up to help third-gender persons. That is a big problem.¹²

5. Vulnerability to Violence and Limited Access to Justice

People who are gender are often treated very badly. They are hurt physically abused sexually harassed and forced to give money to others. The police are not always helpful. Sometimes they even misuse their power. This makes it hard for third-gender persons to report crimes. When third-gender persons do report crimes, the system that is supposed to give them justice does not always work well. This is because the police and the courts do not always

¹¹https://nhrc.nic.in/assets/uploads/publication/1762169482_24daba17658746356d3a.pdf#:~:text=A%202020%20survey%20conducted%20by,perpetuating%20a%20cycle%20of%20exclusion

¹²<https://journals.plos.org/globalpublichealth/article?id=10.1371/journal.pgph.0002933#:~:text=With%20respect%20to%20healthcare%2C%20The,excluded%20in%20health%20facilities%20that>

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understand the needs of third-gender persons. As a result many crimes against third-gender persons are not. They do not get the help they need. This makes third-gender persons more vulnerable, to bad things happening to them. The thing is, third-gender persons need to be treated and protected by the law but this is not always what happens.

6. Gaps Between Legal Recognition and Real-World Implementation

While landmark judicial decisions and legislation have formally recognized the rights of third-gender persons, a significant gap exists between law and lived reality. Welfare schemes, identity documentation processes, and anti-discrimination measures are often inconsistently implemented across states. Bureaucratic hurdles and lack of awareness among authorities hinder effective enforcement. Consequently, legal recognition has yet to translate into substantive equality, highlighting the need for stronger institutional commitment and community-based monitoring.

Critical Analysis of the Transgender Persons (Protection of Rights) Act, 2019¹³

1. Certification Process and Violation of Self-Determination¹⁴

The Transgender Persons Act of 2019 has been criticized for things, especially the way it deals with gender certification. To be recognized transgender persons have to get a certificate from the District Magistrate. This means the government gets to decide if a person is really the gender they say they are. The problem is that this goes against what the Supreme Court said in the NALSA versus Union of India case, which's that people should be able to say what their own gender is. The Transgender Persons Act of 2019 is taking away the freedom and respect that people deserve especially when it comes to something personal, as their own gender identity and the Transgender Persons Act of 2019 is the one that is causing this problem. Gender identity, being an intrinsic and deeply personal aspect of one's personality, should not be subject to administrative approval or scrutiny.

¹³ SUPRA NOTE 2

¹⁴<https://www.livelaw.in/articles/key-issues-with-transgender-persons-protection-of-rights-act-298597#:~:text=Section%204%20of%20the%20Act,states%20that>

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2. Medicalization of Gender Identity

The Act says it is about giving people rights. It actually makes being a man or a woman about what doctors say especially for people who want to be known as male or female after they have had gender-affirming surgery. This makes some peoples gender identities more important than others. It means that people need to have surgery to be legally who they are. The Act does not follow what the rest of the world says about rights like the Yogyakarta Principles, which say that people should not have to have medical procedures to be legally recognized as the gender they know they are. The Yogyakarta Principles are very clear about this. The Act is not following these principles. That is a problem, for people who want to be recognized as the gender they know they are whether that is male or female.

3. Weak Penal Provisions and Inadequate Protection

The law has rules that say people who hurt transgender persons will get punishment than people who hurt women. This is not fair because it makes it seem like hurting transgender persons not a big deal. It also tells people that the safety and well being of transgender persons is not important. The law does not have enough punishment, for people who hurt transgender persons and that means it does not stop people from doing bad things to them. The law is supposed to protect transgender persons. It is not doing a good job.¹⁵

4. Absence of Reservation and Affirmative Action Measures

The law knows that transgender people have been treated unfairly for a time.. It does not help them get into schools or get jobs in the government. This is not what the Supreme Court suggested. The Court said that transgender people should get help because they are behind everyone else. Without this help saying that everyone is equal does not really mean much to transgender people. The transgender people are still not getting the chances, as others.

¹⁵<https://www.scobserver.in/journal/beyond-the-binary-supreme-court-reclaims-the-promise-of-transgender-equality/#:~:text=The%20Court%20reasoned%20that%20reasonable,faced%20by%20transgender%20persons%20in>

5. Overemphasis on Welfare Without Enforceable Rights

The Act mostly sees transgender people as people who get help from welfare programs not as people who have rights. Welfare is important. The Act does not have strong rules to stop people from being treated unfairly in areas, like housing, healthcare and jobs. This makes the Act weaker. There are not ways to make sure that government officials or private companies are held responsible when they treat transgender people unfairly. Because of this the rules are not followed well. Transgender people do not get the help they need. Transgender people face problems because the Act does not do enough to protect them from treatment. The Act needs to be stronger to help transgender people.

6. Limited Representation and Participation of Transgender Communities

The National Council for Transgender Persons is supposed to be set up because of the Act.. The National Council for Transgender Persons can only give advice. The National Council for Transgender Persons does not have the power to make decisions. Transgender persons are not really part of the process when policies are being made. They are also not involved enough when these policies are being checked. The problem is that there are no systems in place for communities to make their decisions. This means transgender persons have no say, in the policies that affect the lives of transgender persons.

7. Gap Between Judicial Vision and Legislative Execution

A major shortcoming of the Act lies in its failure to fully reflect the progressive constitutional vision articulated by the judiciary, particularly in NALSA. Instead of strengthening autonomy, equality, and dignity, several provisions of the Act dilute these principles through bureaucratic control and weak enforcement. This disconnect between constitutional jurisprudence and legislative action highlights the need for substantial amendments to align the Act with constitutional morality and international human rights obligations.

Landmark Judicial Pronouncements on Third-Gender Rights in India

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1. National Legal Services Authority v. Union of India (2014)¹⁶

The judgment in this case marks a constitutional watershed in the recognition of third-gender rights in India. The Supreme Court held that transgender persons constitute a distinct “third gender” and are entitled to full protection of fundamental rights under Articles 14, 15, 19, and 21 of the Constitution. The Court explicitly recognized self-identification of gender as integral to personal autonomy and human dignity, rejecting biological determinism as the sole basis of gender identity. It further directed governments to frame welfare policies and extend reservations by treating transgender persons as socially and educationally backward classes, thereby laying the foundation for substantive equality.

2. Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)

¹⁷The Supreme Court affirmed the right to privacy as a fundamental right under Article 21. The judgment has far-reaching implications for third-gender persons, as the Court held that privacy includes decisional autonomy over personal matters such as bodily integrity, sexual orientation, and gender identity. The Court acknowledged that gender identity lies at the core of individual dignity and warned against state intrusion into intimate personal choices. This ruling constitutionally reinforced the principle of self-determination earlier recognized in *NALSA*.

3. Navtej Singh Johar v. Union of India (2018)¹⁸

The Supreme Court in this case decriminalized consensual same-sex relations by partially striking down Section 377 of the Indian Penal Code. While the case primarily concerned sexual orientation, the Court made significant observations regarding gender identity and LGBTQ+ dignity. It emphasized that constitutional morality must prevail over social morality and reaffirmed that LGBTQ+ persons, including transgender individuals, are entitled to equality, dignity, and non-discrimination. The judgment relied heavily on

¹⁶ (2014) 5 SCC 438,

¹⁷(2017) 10 SCC 1

¹⁸(2018) 10 SCC 1,

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NALSA to underscore that gender identity is inseparable from constitutional guarantees of liberty and dignity.

4. Shafin Jahan v. Asokan K.M. (2018)¹⁹

The Supreme Court underscored the supremacy of individual autonomy in matters of identity and personal choice. Although the case concerned the right to choose a marital partner, the Court's reasoning has direct relevance to third-gender jurisprudence. It held that the Constitution protects the decisional autonomy of adults against both state and societal interference. This principle strengthens the constitutional protection of gender identity under Article 21 by affirming that personal identity choices fall within the realm of protected liberty.

5. Arun Kumar v. Inspector General of Registration (2019)²⁰

The Madras High Court in this case, adopted a progressive interpretation of personal law by holding that the term "bride" under the Hindu Marriage Act includes transgender women. The Court recognized self-identified gender identity as legally valid and relied upon *NALSA*, the Yogyakarta Principles, and international human rights norms. It concluded that denial of marital rights to transgender persons violates Articles 14 and 21 of the Constitution, thereby extending constitutional protection into the sphere of family and personal laws.

CONCLUSION

India has done some things for its third-gender citizens. For example *NALSA* said that transgender people are a part of our society. The government also made some laws to help them. This shows that people are starting to understand that everyone should be treated equally and have the rights. The Constitution says that everyone is equal and should be treated with dignity and freedom. There is still a big difference between what the law says and what really happens. Transgender people still face a lot of problems in their lives.

¹⁹(2018) 16 SCC 368

²⁰2019 SCC OnLine Mad 8779

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They are not treated well in schools, hospitals, workplaces. Even in their own families. This is why transgender people are still not part of the mainstream. To make things better we need to change the law and the way people think about transgender people. India needs to do more to help its transgender citizens. Transgender people in India should have the rights, as everyone else. This means we need to make some changes so that people can say who they are without fear. We have to make sure that nobody discriminates against the transgender community. We need to build places where everyone feels safe and supported, like hospitals and schools. There are some rules that can help us like the Sustainable Development Goals. The Yogyakarta Principles say that everyone should be able to be who they are, without being judged. The transgender community should be protected. If India follows the NALSA and the Transgender Rights Act and if people are more accepting then India can keep its promise to its people. The transgender community and the Transgender Rights Act are very important here so India should really focus on making the transgender community feel safe and supported by following the Transgender Rights Act. Ensuring that transgender citizens can live, work, learn, and participate without fear is not only a legal duty but essential for the nation's social justice and development. Future research and policy should monitor progress, amplify transgender voices, and innovate programs that make true inclusion a reality in India.

Way Forward: Ensuring Substantive Equality for Third-Gender Persons in India

1. Adoption of Self-Identification as the Sole Basis of Legal Recognition

The Indian law for transgender people needs to change in a way. It should let people decide for themselves what gender they are without needing anyone Approval. Now the law says that local authorities have to certify people, which gives them too much power over individuals. This takes away peoples freedom to make their choices and be treated with respect. Other countries do things differently. They follow rules like the Yogyakarta Principles and the

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guidelines from the UNHRC. These rules say that what gender you are is something that only you can know for sure and it is very personal. So it should not be up to doctors, surgeons or bureaucrats to decide. The Indian transgender law needs to accept self-identified gender as the basis for recognition just like these international rules say. This would make the Indian transgender law better and more fair, for transgender people. India needs to make it easy for people to change the gender markers on their identity documents. This process should be simple and straightforward. The government of India should not require people to get psychological checks before they can make this change. India should let people change their gender markers on their identity documents without a lot of hassle. This is something that India must do to make things easier for people who want to change their gender markers. The process, in India should be easy to follow and understand. It should not be complicated by medical or psychological prerequisites.

2. Strengthening Anti-Discrimination Enforcement Mechanisms

Indian law says that it is not right to treat transgender people.. The law is not enforced properly. We need to set up systems to help transgender people who are treated unfairly. These systems should be easy to access. Should be able to help people quickly. We should have groups that look into equality issues or have special offices that deal with problems faced by transgender people. These groups and offices can help people who are treated unfairly when it comes to things like going to school getting a job finding a place to live and getting care.

The people who do things to transgender people should be punished in a way that is fair and that will stop others from doing the same thing. Transgender people are often treated badly and are more likely to be hurt. We need to recognize this and make sure that the punishments, for hurting them are strong enough.

3. Affirmative Action in Education and Employment

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The way things have been done in the past has really hurt third-gender persons. They have not had the chances to get a good education or a good job. To make things right we need to do something to help them.

We should save some spots for them in schools. When we hire people for government jobs like the Supreme Court said in the NALSA, v. Union of India case. This will really help them not make it look like we are helping.

We also need to give third-gender persons money to help them go to school teach them skills and help the people they work with understand and respect them. This will help them keep their jobs and get promoted in both government and private jobs. The government and private companies should do this to help transgender persons.

4. Inclusive and Accessible Healthcare Systems

Healthcare reform is really important for transgender people to have a life. We need to make sure that our public health system is fair to everyone no matter what gender they are. This means we need to train doctors and nurses to understand and help transgender people. We also need to have rules for giving them the care they need and make sure they can get this care through public health insurance.

Transgender people need help with mental health stopping the spread of HIV and taking care of their reproductive health. We have to make sure these services are designed for them. The important thing is that transgender people should be able to make their own decisions about their healthcare without being forced into something they do not want. Healthcare, for transgender people should be based on what they want and need not on what others think they should do.

5. Educational Reform and Sensitization from Early Stages

We need to make changes in our society and this will take a long time. The best way to do this is by teaching people things. We should teach kids about being fair to everyone and respecting each other in school and college. This should be done in a way that's suitable for their age. We also need to train

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teachers to understand and accept people who're different. This means they should learn about what it means to be a boy or a girl and how to include everyone. We have to make sure schools are safe for all students. This means we need to stop bullying and make sure everyone feels welcome. We should have restrooms and other facilities that are, for everyone, not boys or girls. Schools should also have people who can help students who are having trouble. This will help students who are transgender feel safe and stay in school. We should do all these things to help transgender students like providing support and making sure they are treated fairly. Transgender students need to feel safe and supported so they can learn and succeed.

6. Housing Security and Social Welfare Measures

Housing discrimination is a problem for third-gender persons. They have a time finding a place to live. The State needs to make sure third-gender persons have access to affordable housing. This can be done by making laws that prevent discrimination in housing. The government should also have shelters where third-gender persons can stay. Third-gender persons should be included in public housing schemes. The government has programs to help people like giving them money when they're old food when they are hungry and medical care when they are sick. These programs should help third-gender persons too. It should be easy for them to get this help without having to fill out a lot of paperwork. We should support community-led welfare models. This means that the community itself should be, in charge of helping its members. This way third-gender persons can live with dignity. Participate in the community.

8. Sensitization of Law Enforcement and Judiciary

Transgender people are still having a lot of problems with the police. They get. Treated badly when they are arrested. The police and the people who run the prisons and the courts need to learn how to treat transgender people with respect. They need to be taught about what it means to be transgender.

The police should have training so they know how to arrest people in a way that is fair to everyone. The places where people are kept when they are arrested should be safe, for transgender people. When the police are

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investigating a crime they should listen to the person who was hurt and try to help them. Transgender people need to be able to get help from lawyers without being afraid or embarrassed. We need to make sure that transgender people can get justice when they need it. Transgender people should be able to trust the police and the courts. The police and the courts should be there to help transgender people not to hurt them.

8. Community Participation and Monitoring of Policy Implementation

Effective policy reform must involve the active participation of transgender communities. Transgender persons should be meaningfully represented in decision-making bodies, welfare boards, and monitoring committees at all levels. Periodic evaluation of laws and policies, supported by reliable data collection and public reporting, is necessary to assess real-world impact. Community-led organizations must be funded and empowered to act as partners in governance rather than passive beneficiaries.

References

- ◆ Bhattacharya, S., Ghosh, D., & Purkayastha, B. (2022). *Transgender Persons (Protection of Rights) Act of India: An analysis of substantive access to rights of a transgender community*. *Journal of Human Rights Practice*, 14(2), 676–697. <https://doi.org/10.1093/jhuman/huac004>
- ◆ Hinchy, J. (2019, July 2). *The long history of criminalising Hijras*. *Himal Southasian*. Retrieved from <https://www.himalmag.com/comment/long-history-criminalising-hijras-india-jessica-hinchy-2019>
- ◆ ILGA World. (2025, March 26). *Human Rights Council renews Independent Expert on SOGI mandate*. Retrieved from <https://ilga.org>
- ◆ Johal, M. (2024, July 19). *The painful road to corporate employment for India's trans youth*. *QueerBeat*. Retrieved from <https://www.queerbeat.org/stories/the-painful-road-to-corporate-employment-for-indias-trans-youth/>

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<https://www.ijalr.in/>

- ◆ Nyaaya. (n.d.). *Do I need a gender change certificate for my passport?* Retrieved from <https://www.nyaaya.org>
- ◆ Tibrewala, M. (2023, May 24). *Realising the promise of legal inclusion of transgender persons in NALSA*. Law School Policy Review. Retrieved from <https://lawschoolpolicyreview.com/2023/05/24/realising-the-promise-of-legal-inclusion-of-transgender-persons-in-nalsa/>
- ◆ UNDP India. (2025, August 12). *Every identity counts: Breaking barriers for transgender youth in India*. Retrieved from <https://www.undp.org/india/blog/every-identity-counts-breaking-barriers-transgender-youth-india>
- ◆ UNICEF. (2023). *Creating safer spaces to support meaningful participation of LGBTIQ+ young people*. UNICEF. Retrieved from <https://www.unicef.org/youthledaction/media/761/file/UNICEF-Briefer-LGBTIQ-.pdf>
- ◆ World Health Organization. (2019). *Gender incongruence and transgender health in the ICD (ICD-11 FAQ)*. Retrieved from <https://www.who.int/standards/classifications/frequently-asked-questions/gender-incongruence-and-transgender-health-in-the-icd>

❖ Cases & Statutes

- National Legal Services Authority v. Union of India, (2014) 5 SCC 438.
- Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
- Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
- Transgender Persons (Protection of Rights) Act, No. 40 of 2019, Government of India.

❖ Books & Academic Works

- Reddy, G. (2005). *With respect to sex: Negotiating hijra identity in South India*. University of Chicago Press.
- Nanda, S. (1999). *Neither man nor woman: The hijras of India*. Wadsworth Publishing.

❖ Reports & NGO Sources

- National Human Rights Commission (NHRC). (2018). Report on the status of transgender persons in India. NHRC.
- Human Rights Watch. (2018). *"I Want to Live with Dignity": Violence and Discrimination against LGBT People in India* (and subsequent reports). Human Rights Watch.

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