

From Recognition to Realisation: A Critical Study of the Implementation of the Transgender Persons (Protection of Rights) Act, 2019

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Abstract

Examines the legal recognition and practical implementation of transgender rights in India. It is based on the constitutional principles of equality, dignity, liberty and non-discrimination and highlights the landmark *NALSA vs Union of India* (2014) judgement, which recognized the right of transgender persons to self identity of their gender connected to promote the welfare of transgender persons.

Introduction / Background

The Constitution guarantees equality, dignity, liberty and non-discrimination to all persons, including transgender persons. The Supreme Court in *National Legal Services Authority v. Union of India* (*NALSA*) recognised the right of transgender persons to self-identify their gender and affirmed that gender identity is integral to personal autonomy and dignity. The Transgender Persons (Protection of Rights) Act, 2019 was enacted as the principal statutory framework to protect the rights of transgender persons and to promote their welfare and inclusion.

The Act defines a transgender person broadly to include trans men, trans women, intersex variations, genderqueer persons, and persons having socio-cultural identities such as hijra and kinnar. It prohibits discrimination in education, employment, healthcare, access to public places, and access to government or private services. Sections 9 to 11 address workplace inclusion and grievance redressal, while Section 12 recognises a right of residence. The statute also creates certain penal provisions under Section 18.

At the same time, significant criticism persists regarding the Act's implementation and even its design. Scholars and activists argue that the certification framework under Sections 5 to 7 dilutes the self-identification principle recognised in *NALSA*.

Concerns are also raised about weak enforcement, limited remedies against family violence and exclusion, the absence of express recognition of domestic relationships, and the failure of the law to address marriage, adoption, and broader civil rights.

These concerns become sharper when viewed alongside *Navtej Singh Johar v. Union of India*, which decriminalised consensual same-sex relations to that extent, but did not itself create a full civil-rights framework for queer and transgender persons.

A central problem lies in the tension between constitutional recognition of self-identified gender and the administrative certification regime under the Act and Rules.

Another problem is the inadequacy of the residence and protection framework: while Section 12 recognises a right to reside with family and permits placement in a rehabilitation centre where family support is absent, it does not create a robust protective architecture comparable to residence orders,

protection orders, or recognition of domestic relationships (therefore if transgenders face any domestic violence there is no specific remedy available to them. Nor DV Act 2005 will apply to them as they are not considered as victim according to the definition) under the **Protection of Women from Domestic Violence Act, 2005**.

Section 63 of **BNS** defines Rape where the victim is woman. Last year 2025 two accused raped a kinnar and 24 transgenders attempted suicide by taking floor cleaner liquid while demanding justice. The report says they were booked under section 18 of the Act which does not provide adequate punishment for heinous offences like rape and sexual harassment.

Even the law to prohibit, prevent and redress sexual harassment at work place define its victim as woman and does not include third genders as victim.

There are guidelines in Blood Doner Selection Criteria which restricts them from donating blood on the ground that they are more prone to carry HIV and other viruses. This discrimination is based on sexual discrimination.

Further, the offences and penalties under Section 18 appear limited and may be viewed as insufficient when compared with the gravity of harms commonly suffered by transgender persons.

The problem, therefore, is not merely whether the law exists, but whether it adequately translates constitutional ideals and judicial recognition into meaningful, enforceable, everyday rights.

Transgender rights have emerged as one of the most significant human rights issues of the twenty-first century. A transgender person is an individual whose gender identity differs from the sex assigned at birth. The transgender community includes trans men, trans women, non-binary individuals, and several culturally recognized gender identities such as the Hijra community in India. Despite having a long historical and cultural presence, transgender persons have faced centuries of discrimination, exclusion, social stigma, and violence.

Human rights are universal and belong to every individual regardless of gender identity or expression. The right to equality, dignity, liberty, privacy, education, employment, healthcare, and freedom from discrimination are fundamental rights that must be available to transgender persons on an equal basis with others. Across the world, governments, courts, and international organizations have increasingly recognized that legal protection and social inclusion are essential for ensuring justice for transgender communities.

In India, significant constitutional and legislative developments have transformed the legal landscape for transgender rights. However, many challenges continue to exist in practice. This article examines the meaning of transgender rights, the legal framework governing these rights, major judicial developments, existing challenges, and the way forward.

Historically, transgender persons occupied respected positions in many civilizations. In India, the Hijra community has been mentioned in ancient scriptures such as the *Mahabharata*, *Ramayana*, and various religious traditions. They often performed ceremonial roles during births and marriages.

During British colonial rule, however, transgender persons were subjected to severe discrimination. The **Criminal Tribes Act, 1871** classified certain transgender communities as "criminal tribes," leading to social exclusion and police harassment. Although the Act was later repealed, its discriminatory legacy continued to influence societal attitudes.

Even after independence, transgender persons remained marginalized due to the absence of legal recognition and institutional protection.

Constitutional Protection in India

The Constitution of India guarantees several fundamental rights that apply equally to transgender persons.

Article 14 – Equality Before Law

Article 14 guarantees equality before the law and equal protection of the laws to all persons. The Supreme Court has clarified that the term "person" includes transgender individuals.

Articles 15 and 16 – Prohibition of Discrimination

Articles 15 and 16 prohibit discrimination on grounds of sex. The Supreme Court has interpreted "sex" broadly to include gender identity, thereby protecting transgender persons from discrimination in education and public employment.

Article 19 – Freedom of Expression

Article 19(1)(a) guarantees freedom of speech and expression. This includes the freedom to express one's gender identity through clothing, appearance, behavior, and personal choices.

Article 21 – Right to Life and Personal Liberty

Article 21 protects the right to live with dignity. The Supreme Court has repeatedly held that dignity includes the freedom to determine one's gender identity and live according to it without interference.

Landmark Judicial Development

One of the most significant milestones in transgender rights is the judgment in *National Legal Services Authority v. Union of India* (2014), commonly known as the **NALSA Case**.

The Supreme Court recognized transgender persons as the "third gender" and affirmed that self-identification of gender is a fundamental right protected by the Constitution.

The Court held that:

- Gender identity is integral to personal dignity.
- Transgender persons are entitled to equal constitutional protection.
- Governments must provide reservations in education and employment.
- Separate public toilets and healthcare facilities should be developed.
- Social welfare schemes should be introduced.
- Discrimination against transgender persons violates Articles 14, 15, 16, 19, and 21.

The judgment marked a turning point in recognizing transgender rights as fundamental human rights.

The Transgender Persons (Protection of Rights) Act, 2019

The Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019 to protect the rights of transgender persons and prohibit discrimination.

Objectives of the Act

The Act aims to:

- Recognize transgender identity.
- Prohibit discrimination.
- Promote social inclusion.
- Ensure access to education and employment.
- Protect healthcare rights.
- Establish grievance mechanisms.

Prohibition of Discrimination

The Act prohibits discrimination in:

- Education
- Employment
- Healthcare
- Housing
- Public services
- Government offices
- Access to public places

Right to Residence

Every transgender person has the right to reside with their family. If the family cannot provide care, courts may order placement in rehabilitation centers.

Welfare Measures

Governments are required to:

- Develop welfare schemes.
- Promote vocational training.
- Improve healthcare facilities.
- Conduct awareness programmes.
- Ensure social inclusion.

National Council for Transgender Persons

The Act establishes the National Council for Transgender Persons to advise the government, monitor implementation, and recommend policies for transgender welfare.

International Protection of Transgender Rights

International human rights law increasingly recognizes the rights of transgender persons.

Important international instruments include:

- United Nations **Universal Declaration of Human Rights (1948)**, which guarantees equality and dignity for all.
- United Nations **International Covenant on Civil and Political Rights (ICCPR)**.
- United Nations **International Covenant on Economic, Social and Cultural Rights (ICESCR)**.
- Yogyakarta Principles (2006), which provide guidance on applying international human rights law to sexual orientation and gender identity.

These international standards encourage States to eliminate discrimination and ensure equal rights regardless of gender identity.

Challenges Faced by Transgender Persons

Despite legal recognition, transgender persons continue to face numerous challenges.

1. **Social Stigma:** Many transgender individuals experience rejection by family and society, leading to isolation and emotional distress.
2. **Educational Barriers:** Bullying, discrimination, and lack of inclusive school environments often

force transgender students to discontinue their education.

3. **Employment Discrimination:** Many employers hesitate to recruit transgender persons, resulting in high unemployment and economic insecurity.
4. **Healthcare Challenges:** Transgender persons frequently encounter discrimination in hospitals and face limited access to gender-affirming healthcare and mental health services.
5. **Violence and Harassment:** Physical assault, sexual violence, police harassment, and hate crimes remain serious concerns.
6. **Identity Documentation:** Obtaining official documents reflecting one's self-identified gender can still involve administrative hurdles, affecting access to education, employment, banking, and government welfare schemes.

Government Initiatives

The Government of India has introduced several initiatives to improve the welfare of transgender persons, including:

- Scholarship programmes.
- Skill development and vocational training.
- Healthcare initiatives.
- Awareness campaigns.
- Establishment of the National Council for Transgender Persons.
- Implementation of welfare schemes under various ministries.

Some State Governments have also established transgender welfare boards, free medical services, housing assistance, and educational support programmes.

Importance of Protecting Transgender Rights

Protecting transgender rights benefits not only individuals but society as a whole.

- It promotes equality and social justice.
- It strengthens democracy and constitutional values.
- It reduces discrimination and violence.
- It encourages economic participation.
- It improves public health and education.
- It fosters diversity and inclusion.
- It upholds human dignity and individual freedom.

A society that respects gender diversity becomes more inclusive, compassionate, and progressive.

Suggestions for Improvement

To ensure effective realization of transgender rights, the following measures should be adopted:

1. Strict implementation of anti-discrimination laws.
2. Greater awareness through educational campaigns.
3. Reservation in education and public employment, consistent with judicial directions and policy decisions.
4. Improved access to affordable and gender-affirming healthcare.
5. Simplified procedures for changing gender markers on official documents.
6. Strong legal protection against hate crimes and violence.
7. Inclusive school curricula promoting respect for gender diversity.

8. Skill development and entrepreneurship opportunities.
9. Increased political representation and participation in decision-making.
10. Sensitization programmes for police, healthcare professionals, educators, and government officials.

Conclusion

Transgender rights are an integral part of the broader framework of human rights and constitutional democracy. Every individual, irrespective of gender identity, deserves equal respect, dignity, freedom, and opportunity. India has made significant progress through constitutional interpretation, judicial activism, and legislation, particularly following the landmark *NALSA* judgment and the enactment of the *Transgender Persons (Protection of Rights) Act, 2019*. Nevertheless, legal recognition alone is insufficient unless accompanied by meaningful social acceptance, effective implementation of laws, and institutional support.

The true measure of a democratic society lies in how it treats its most marginalized communities. Ensuring equal opportunities in education, employment, healthcare, and public life will enable transgender persons to participate fully in nation-building. A future founded on inclusion, equality, and respect for diversity will strengthen constitutional values and contribute to a more just, humane, and progressive society for all.