

The Transgender Persons (Protection Of Rights) Act,2019: A Critical Analysis Of Indian Legal Framework For Transgender Rights

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ABSTRACT

The transgender people have been indispensable in Indian society. Old British-era laws in India have limited the rights of transgender people. Sexual minorities have waited for extended acceptance of their identity and rights since the India Constitution were adopted. They have been considered as second-class citizens, suffered prejudice and persecution. The Supreme Court decided in *NALSA v. Union of India* that transgender people constitute a "third gender." Furthermore, some of Section 377 of the Indian Penal Code 1860 was decriminalized, which had limited consenting sexual relationships between homosexual couples as proven in *Navtej Singh Johar v. Union of India*. Established to uphold the rights and dignity of transgender people in India, the Transgender Persons (Protection of Rights) Act, 2019 this act aims to address important issues including discrimination, education, employment, and healthcare; nonetheless, it has been attacked for its seeming flaws and disparities in fulfilling community needs. Emphasizing the Act's provisions, implementation challenges, and shortcomings compromising its effectiveness, this paper meticulously investigates the Act. The study makes specific recommendations based on legal analyses, case studies, and comments from the transgender community that guarantee the Act more closely aligns with the values of fairness and social justice, so addressing current gaps.

Keywords: Transgender, Discrimination, Harassment, legal rights, Community.

1. INTRODUCTION

Among other eunuchs, Aravanis, Jogappas, Shiv-Shakti, Hijras, the transgender community includes. For millennia, they have been fundamental in Indian society. Early on in ancient Indian writings, the society was labelled as "third gender," according to historical records¹. The society's roots are Hindu mythology, more especially the Ramayana, which describes how the people of Lord Rama's country pursued him when he was ready to start his 14-year exile. He turned to guide them back. Among them, the hijras decided to stick by his side. Impressed by their loyalty, Lord Rama gave them the power to grant blessings for occasions including marriage, childbirth, and inaugurations. These festivals have therefore constantly given hijras a stage on which to perform songs and dances².

The term 'transgender' continues to create confusion among Indians, as our society has traditionally acknowledged only two genders: male and female. Inquiring with individuals on the street regarding the definition of a transgender person may elicit laughter and responses utilizing colloquial terms such as 'hijras.' In actuality, no one truly understands the concept of a transgender individual³. They resemble us: our classmates, colleagues, neighbours, and friends. Transgender individuals are those who initially identify with one gender but thereafter recognize themselves as belonging to another gender. For example, a male subsequently identifies as female and vice versa. Indian legislation regarding transgender individuals starkly contrasts with International Human Rights Law, which is founded on the ideals of universality, equality, and non-discrimination⁴.

The Hijra population is compelled to engage in begging, sex work, and soliciting funds from families during marriage rituals or upon the birth of a child. Gender inequality has consistently been a significant concern in Indian society. The ramifications of gender inequity are not confined to binary genders (male/female) but also encompass transgender individuals. Indian

¹ Alina Bradford 'What does transgender mean' <<https://www.livescience.com/54949-transgender-definition.html>> accessed 25 November 2024.

² 'Third sex – Transgender wants to be treated as a citizen in India Is this too much to ask for?' Economic and political weekly (India, 26 October 2013) 9.

³ Garg Dr. Seema, Mittal Kunjana, Transgender in India: New developments and enactments, 2(11),

International Journal of Multidisciplinary Research and Development. 402, 403- 405(2015).

⁴ 'Third sex – Transgender wants to be treated as a citizen in India Is this too much to ask for?' Economic and political weekly (India, 26 October 2013) 9.

history demonstrates that society has progressively evolved since Independence, while the government has implemented many measures through the enactment of laws and regulations that ensure equal rights for weaker and marginalized segments of society⁵. Regrettably, the transgender community is among the most marginalized groups, and it has taken over six decades since Independence for the government to acknowledge their identity and ensure their human rights⁶.

A major step toward India's goal of equality and respect for transgender people came with the Transgender Persons (Protection of Rights) Act, 2019. Inspired by the Supreme Court's seminal decision in *National Legal Services Authority v. Union of India* (2014)⁷, which recognized transgender people as a third gender, the Act sought to translate court orders into legislative actions. Notwithstanding its goals, the Act has drawn criticism from activists, legal academics, and transgender people for failing to adequately address systematic issues, stigmatizing policies, and socioeconomic situations of transgender people.

The legal path towards recognizing transgender rights started in India with the 2009 Supreme Court ruling in *NALSA v. Union of India*, which declared transgender people to be entitled to fundamental rights and labelled them as a "third gender." Before the expected Transgender Persons (Protection of Rights) Act, 2019, which aimed to solve issues of the transgender population and offer legal protections for employment, education, healthcare, and social security, this important verdict preceded. The Yogyakarta Principles and other international human rights frameworks have helped to shape the conversation on transgender rights in India; nonetheless, the Transgender Persons Act differs in many important areas from international norms. The goal of this comparative study is to investigate how the Transgender Persons (Protection of Rights) Act, 2019's shortcomings and omissions affect the transgender population in India⁸.

The study aims to offer concepts for improving the legal system and guaranteeing more efficient application of protection of transgender rights. The experiences of Indian transgender people show a complex junction of legal challenges, social stigma, and gender identification. Notwithstanding legislative progress, some transgender people still face major discrimination in many spheres, including housing, education, employment, and healthcare⁹.

This hard reality emphasizes the need of thorough legal reforms and a more inclusive approach of policy-making. This paper will look at the shortcomings in the current legislation, contrast it with international standards, and look at ways to build a more all-encompassing and strong legal system for the defense of transgender rights in India¹⁰. Emphasizing the need of tackling present shortcomings and offering doable suggestions for enhancing the legal rights of the transgender population, this introduction lays the groundwork for a thorough investigation of the transgender protection system in India. Examining the Act's text, the historical background of transgender rights in India, and the social challenges faced by transgender people helps this study to improve the argument on transgender rights and legislative improvements¹¹.

2. HISTORICAL AND LEGAL EVOLUTION OF TRANSGENDER RIGHTS IN INDIA

Many old Indian texts, religions, artwork, and poetry point to the transgender population. Based on their fundamental character, the Vedas classify people into one of three different groupings. Six: The ancient Sanskrit book *Kamasutra* makes mention of the idea of *gandharva vivah*, which acknowledges cohabitation and homosexual marriage free from parental approval. Other writing has described the transgender population as *tritya-prakrti* (third-nature) and *pumsprakrti* (female-nature)¹².

The *Manu Smriti* clarifies the biological bases of the three sexes. Tamil grammar *Tolkappiyam* notes hermaphrodites as a third "neuter" gender. Jain writings underline the psychological perspective of the individual as distinct from their sexual attributes and refer to the idea of "psychological sex."¹³ Hindu epics such the *Ramayana* and *Mahabharata* have included transgender somewhat extensively but after his 14-year exile, Lord Rama set forth for the wilderness and spoke to his people, telling all the men and women to go back to the city. Among his supporters, hijras were the only group free from his rules and decided to travel with him. Inspired by their loyalty, Lord Rama gave them the power to bless important occasions such as marriage and birth. Offered as a sacrifice to the goddess Kali in the *Mahabharata*, Aravan, the son of the great warrior Arjun and the Nagkanya, was meant to ensure the Pandavas' triumph in the Kurukshetra war. But his one condition before the sacrifice was to spend the last night in wedlock. Krishna changed himself into the last wish of a beautiful woman called MohAravan when none of the women showed a readiness to marry him¹⁴.

⁵ Dutta A. Contradictory tendencies: the Supreme Court's NALSA judgement on transgender recognition and rights. *J Indian Law Soc.* 2014;5: 225–236.

⁶ Gautham Bhatia, The Constitutional Challenge to the Transgender Act, *LIVE LAW*, (access on 10 December 2024) <https://www.livelaw.in/columns/the-constitutional-challenge-to-the-transgender-act-152297>

⁷ *National Legal Services Authority and Ors v. Union of India*, (2014) 5 SCC 438

⁸ The Yogyakarta Principles on the Application of International Human Rights Law

⁹ Sawant, N. S. (2017). Transgender: Status in India. *Ann Indian Psychiatry*, 1,59-61.

¹⁰ Sawant, N. S. (2017). Transgender: Status in India. *Ann Indian Psychiatry*, 1,59-61.

¹¹ Srivastava, A., M. Sivasubramanian, and J. T. Goldbach. 2020. Mental Health and Gender Transitioning among Hijra Individuals: A Qualitative Approach Using the Minority Stress Model. *Culture, Health and Sexuality* 17(3)

¹² Bonaut Mary L. „Goodridge in Context“ (2005) 40 *Harv. C. R. - C. L. L. Rev.*1.

¹³ Padhi, M., & Mohanty, P. A. (2019). Securing transgender rights through capability development. *Economic and Political Weekly*, the 54.

¹⁴ Misra, Anjali. *Human Rights for LGBTQ+ Individuals in India*. Bloomsbury Publishing, 2020.

The Hijra community in the Aravan area names Aravan as their origin and goes as Aravainis. Especially in religious celebrations and rites, they were often revered and occupied important roles in society¹⁵. Hindu mythology and culture have included the hijra population into their stories; some customs hold that they have special power to bless newborns or married couples. Royal palaces, where hijras were often included into the courts of Mughal emperors as dancers and singers, clearly displayed the cultural value. The arrival of British colonial rule in India saw a change in the standing of transgender people¹⁶.

The British passed laws criminalizing same-sex partnerships, most famously Section 377 of the Indian Penal Code (IPC), which particularly targeted gay behaviour and stigmatized the whole LGBTQ+ community including transgender people. Hijras experienced increasing marginalization and social rejection throughout the colonial era. Declared "deviant," they were forced to live on the outside of society, usually dependent on charity or survival via means of begging, prostitution, and wedding performance¹⁷. After India gained its freedom in 1947, the legal system built by the British Raj stayed in place and laws restricting transgender people's rights continued¹⁸.

Transgender people continued to be excluded from mainstream society and experienced societal humiliation, hence their situation stayed essentially fixed. Even with post-independence India's developments, transgender people remained primarily excluded with little legal safeguards or rights. Mostly focusing on the hijra group rather than the larger transgender population, the Indian government started first steps to recognize the needs of transgender people throughout the 1970s and 1980s¹⁹. Among the government actions taken were giving hijras in particular states pensions. Still, these initiatives were limited in scope and insufficiently addressed the systematic obstacles transgender people in India face. Rising numbers of individuals and groups supporting the recognition of transgender rights define the LGBTQ+ rights movement that first emerged in India throughout the 1990s²⁰.

Though there were no legislative changes during this time, the community's prominence grew and public conversation on transgender issues gained more often. Early in the 2000s, Hijra Kalyan Samiti in Uttar Pradesh and Sahodaran in Tamil Nadu were among the civil society groups supporting the rights of transgender people founded. These organizations greatly helped to raise awareness of the problems faced by transgender people and support of their rights²¹.

3. HISTORIC JUDGMENTS

2009 saw a turning point in the history of transgender rights in India when the Supreme Court started the National Legal Services Authority (NALSA) case. Legal group NALSA, which represents underprivileged groups, filed a petition asking that transgender people be recognized as a "third gender" and that basic rights and legal protections be established. The lawsuit started since transgender people still face ongoing discrimination in the spheres of employment, education, and healthcare.

Transgender rights in India reached a turning point when the Supreme Court of India decided in the NALSA v. Union of India case in 2014²². Recognizing transgender people as a third gender, the Court decided they are entitled to all rights and protections guaranteed by the Indian Constitution. Celebrated as a major victory for the LGBTQ+ community, this ruling was the first legislative acknowledgment of transgender people under Indian law²³.

The decision compelled the government to carry out policies aiming at correcting the discrimination experienced by transgender people and defending their social, financial, and educational rights. The NALSA decision laid the groundwork for national legal reforms; nonetheless, the Supreme Court's orders were executed sloppily and inconsistently. While some states including Tamil Nadu, Kerala, and Karnataka have launched programs for the welfare of transgender people, others have lagged behind²⁴.

The main argument was that Suresh Kumar Koushal reversed the Delhi HC's decision on this case²⁵, therefore denying the third gender in the fullest sense. Filed for declaring right to sexuality, right to sexual autonomy and right to choice of a sexual partner to be part of the right to life guaranteed under Article 21 of the Constitution of India and further to declare Section 377 of the Indian Penal Code to be unconstitutional, Writ Petition (Criminal) No. 76 of 2016. Justice Chandrachud's reference to case to, stating that sexual orientation is a necessary component of the Indian Constitution, also included²⁶.

The case of Mosley v. News Group Newspapers Ltd.²⁷ was also cited stressing the point that every person in this country

¹⁵ Kulkarni, Arun. Human Rights and the Marginalized: A Focus on Transgender Persons. Sage Publications, 2019.

¹⁶ M.Michelraj, Historical Evolution of Transgender Community in India, 4(1) ASIAN REVIEW OF SOCIAL SCIENCES 17 (2015).

¹⁷ Panda, A. (2018). Panel to Formulate Transgender Policy.Tribune,

¹⁸ Narrain, Arvind, and Gupta, Alok. Law Like Love: Queer Perspectives on Law. Yoda Press, 2011

¹⁹“Nanda, Serena”. Neither Man nor Woman: The Hijras of India. Wadsworth Publishing, 1999.

²⁰ Gupta R, Surgical Care-Surgical management of Gender Incongruence in the book: ISOC1 Indian Standards of Care for persons with Gender Incongruence and people with differences in Sexual Development/Orientation(2020)

²¹ Joshi, Meera. The Legal Landscape of LGBTQ+ Rights in India. Eastern Book Company, 2020.

²² National Legal Services Authority and Ors v. Union of India, (2014) 5 SCC 438

²³ Id

²⁴ Id

²⁵ Naz foundation govt. v. NCT OF Delhi (Delhi High Court 2009).

²⁶ Justice K.S.Puttaswamy(Retd) v. Union of India 2019 (1) SCC 1.

²⁷ [2008] EWHC 687 (QB)

has personal freedom to engage in his sex life and personal relationships in line with his desire. Using the reference to the judgement *Shakti Vahini v. Union of India and others* and *Shafin Jahan v. Asokan K.M*²⁸ whereby it was said that an individual has freedom of choice in choosing a partner which is a feature of dignity and, thus it is protected under Articles 19 and 21 of the Indian Constitution.

It was decided in *Common Cause (A Registered Society) v. Union*²⁹ of India and another 4 that Article 21's entrenched right to life and liberty is meaningless without the right to dignity. Earlier there was a discussion on intelligible differentia or reasonable categorization linked to this topic but during the case hearing it was argued that, as long as it is consenting, there is no intelligible difference between natural and unnatural sex. Reference came from *Anuj Garg and others v. Hotel Association of India and others*³⁰ state that changing social conventions allows one to stop treating classification that would have been regarded genuine earlier. Section 377 IPC was therefore declared void in this sense. It dehumanises transgender by treating them as lesser humans which also violates their right to dignity guaranteed under Article 21 of the Constitution.

4. LEGISLATIVE JOURNEY: FROM THE 2016 BILL TO THE 2019 ACT

As per the 2011 census, 4,87,803 persons do not identify them as male or female³¹. The first move to recognize the rights of legislation was made by Tiruchi Siva, Member of Parliament from Dravida Munnetra Kazagham party when she introduced a private member bill in the Lok Sabha³². The aforesaid bill was unanimously passed by the Council of States but was never debated in the Lok Sabha.

Transgender Persons Bill 2014-

1. Offered remedies against violence and harassment;
2. Provided for right such as equality, the right to live in society and freedom of speech;
3. Provision for equipping transgender with skill development and jobs for their rehabilitation and social security; and
4. Establishment of transgender commissions at National and State levels and transgender right courts.

Following the aforementioned NALSA ruling in which the Supreme Court of India identified the transgender as the third gender, Thaawarchand Gehlot Minister of Social Justice and empowerment proposed the Transgender Person Bill (Protection & Rights). The opposition fiercely objected to the measure, which was passed in the Lok Sabha on December 17, 2018 and sent to the Standing Committee³³.

Transgender Person Bill 2016³⁴

1. The measure described transgender as someone who is neither male nor female, but half-male or female. Further, the transgender will have to obtain a certificate of proof of identity as transgender to enjoy rights under this bill;
2. The District magistrate will be conferred with the power to grant the certificate of proof of identity on recommendation of the screening Committee which consisted of a medical officer, psychologist. The person's gender should not match the gender assigned at birth; trans-women, trans-men, gender queer and person with intersex variations. district welfare officer and transgender individual.
3. The legislation forbade discrimination against transgender in workplaces, education, and healthcare among other spheres. It also guided the state administration in creating community welfare programs. For offenses like forced transsexual to beg and denying them access to public areas, it also included two years jail and fines.
4. The transgender community fiercely objected to the Transgender person Bill 2016 since it infringed their fundamental right to self-identity under the Indian Constitution.

Key provision of Transgender Persons (Protection of Rights) Act, 2019

- **Definition Transgender Persons:**

Section 2(k)³⁵ of the act specifies who transgender persons are for the aim of applying the same to them with intersex variations and person having such a socio-cultural identity as Kinner, hijra, aravani and jogta, it states that transgender person means a person whose gender does not match the gender assigned to that person at birth and includes the transman or

²⁸ [2018] 4 S.C.R. 955

²⁹ AIR 2018 SC 1665

³⁰ AIR 2008 SC 663,

³¹ Primary Census data for others (Indian States and UT's), Census 2011.

³² Abhram Rohan 'All you need to know about transgender Bill 2016' <<https://www.thehindu.com/news/national/all-you-need-to-know-about-the-transgender-persons-bill-2016/article61850371.ece> accessed on 15 January 2025.

³³ https://en.m.wikipedia.org/wiki/Rights_of_Transgender_Persons_Bill,_2014 available on 01 February 2025

³⁴ Ministry of Social Justice and Welfare, " Transgender Persons (Protection of Rights) Bill, 2016", available at accessed 06 February 2025

³⁵ Transgender Persons (Protection of Rights) Act, 2019

transwoman person, irrespective of whether such person has gone through the sex reassignment or hormone therapy.

- **Prohibition against Discrimination:**

Chapter 2 has addressed the clauses pertaining to the ban of any sort of discrimination against transgender people. It forbids anyone including any institution from discriminating against transgender people. It offers nine reasons why the people should not be subjected to discrimination. They cover the denial of any form of unfair treatment in any services or job or of educational or career possibilities. It addresses all facets of the transgender person's life like those of any other person, and should any transgressions, then the right will be safeguarded by the Court of Justice³⁶.

- **Recognition of Identity of Transgender Persons:**

The act's Chapter 3 addresses the acceptance of Transgender people's identity Under chapter 3, section 4 of the act offers two main rights in regard to the terms of the act to transgender people³⁷. First of all, they will be entitled to be identified as such; second, any individual who has been identified as transgender under the act would have a right to self-perceived gender identity. Section 5 of the legislation lets a transgender person apply under the act for an identification certificate³⁸. In the case of a child, the parent will apply on their name. Once the applicant is made, it is upon the Magistrate of such district under section 6 of the act to identify such individual as a transgender following the procedure set up this act for this aim³⁹. It's interesting to consider why a transgender person finds this certificate to be so valuable. This is so because, per section 6(3) of the act, only through this certificate will the rights be granted to such individuals acting as proof of identity⁴⁰.

- **Welfare Measures by the Government:**

Section 8 of Chapter 4 of the law lays particular criteria regarding welfare activities for transgender people. Their main duty is to guarantee the full and effective participation of transgender people by means of policies thereby ensuring their inclusion throughout society. Apart from guaranteeing sufficient access to rights and interests, all welfare policies should give them top priority. Apart from the above mentioned, chapters 5 of the act have particular obligations for institutions and other people in sections 9 to 12. Section 9 acts as an enabling legislation meant to protect transgender people from employment discrimination and create a conducive surroundings for them⁴¹.

Together with section 9, section 10 ensures that institutions keep their word of mouth promises. Should any infractions or mishandled policies, a designated complaint officer assigned under Section 11 of the Act will handle the matter⁴².

Section 12 gives every transgender person their right of residence, including extra rights connected with residency. Should a family be unable to support or care for the transgender person, the relevant Court will step in to help the person be placed in a rehabilitation facility.

Section 16 of Chapter 7 of the Transgender Persons Act, 2019 empowers the central government to establish a National Council for Transgender Persons to execute the conferred authorities and perform the assigned tasks⁴³.

Section 17 of the legislation defines the responsibilities of the National Council; the union government will thus periodically impose more duties⁴⁴.

- **Offenses and Punishments:**

Section 18 has explain to any person who violates the stipulations or fails to fulfill the obligations mandated by the act, or who coerces, denies, or otherwise harms transgender people, shall be subject to imprisonment for a minimum of six months, which may extend to two years, together with a monetary penalty, so violating their rights and recognitions⁴⁵.

5. IMPLEMENTATION CHALLENGES AND GROUND REALITIES

- **Discrimination in Healthcare**

Though legislative protections and growing awareness help transgender people in India face less discrimination in healthcare. Their challenges include institutional, social, and systematic ones that produce negative effects on their health and limited access to essential services. This paper offers a thorough investigation of the difficulties and shortcomings in transgender

³⁶ Id

³⁷ Id

³⁸ Id

³⁹ Id

⁴⁰ Id

⁴¹ Id

⁴² Id

⁴³ Id

⁴⁴ Id

⁴⁵ Id

healthcare provided in India⁴⁶.

Transgender individuals need mental health care, gender-affirming surgeries, and hormone treatment; unfortunately, these treatments are either unaffordable or unavailable⁴⁷. These treatments are rare in government facilities, which drive patients to rely on expensive private healthcare or dangerous self-medication. Most insurance policies exclude coverage for gender-affirming surgeries, which may run from ₹2 to ₹5 lakh. Although the Ayushman Bharat TG Plus program offers ₹5 lakh coverage, awareness and application are lacking⁴⁸.

The Transgender Persons (Protection of Rights) Act, 2019 specifies healthcare access; yet, many are deprived of benefits due to delays in the issuing of identity documents, only 65% finalized by 2023. Because of their insufficient training in transgender health, healthcare professionals treat disrespectfully, mis genders, and deny treatment⁴⁹.

According to a 2018 NHRC report, 27% of transgender people were refused medical treatment because of their gender identity. With 31% of transgender people completing suicide and 50% trying it before the age of 20, these people have higher rates of despair, anxiety, and suicidal thoughts. Still, there is little mental health treatment tailored to their needs. Medical forms routinely identify only "male" or "female," therefore forcing transgender people into inappropriate classification and maybe leading to misdiagnosis or rejection of treatment⁵⁰.

The 2019 Act outlaws discrimination in the medical field for nonetheless, enforcement is lacking. Transgender people still face harassment in medical settings, usually related to intrusive questions and treatment denial⁵¹.

The rule requires proof of medical intervention such as surgery for gender change certificates, therefore contradicting the NALSA decision (2014), which validated self-identification free from medical interventions because of 92% employment discrimination transgender people suffer, many turn to sex work and become more vulnerable to HIV and violence. Just 48% of them work, therefore limiting their ability to pay for healthcare. Create gender-neutral healthcare policies; increase insurance coverage for transgender-specific treatments; and strictly enforce anti-discrimination laws. Work with NGOs led by transgender people to increase outreach and culturally competent care⁵².

- **Employment and Livelihood Barriers**

Transgender individuals in India suffer systematic discrimination, societal shame, and institutional indifference that seriously limit their access to good work and income sources. Deep established prejudices and policy implementation issues still exist even with laws like the Transgender Persons (Protection of Rights) Act, 2019. Although 92% of transgender persons are denied access to economic activities, just 6% of them are legally employed in the private or NGO sectors, many of them thus turning to begging, prostitution, or unofficial employment⁵³. Many times barring transgender candidates completely, businesses cite inadequate workplace amenities or "no current LGBT hiring" as their excuse⁵⁴.

Transgender employees, even those who are employed earn much less than their cisgender counterparts with just 1% earning above ₹25,000 per month⁵⁵. The school dropout rate among transgender children is 50–60%; 52% of them experience peer harassment and 15% of them experience teacher harassment; largely this is due to bullying⁵⁶.

The transgender literacy rate (56.1%) is below the national norm (74.04%), therefore restricting access to official employment opportunities⁵⁷. Daily discrimination against transgender employees consists in forced use of wrong pronouns and exclusion from facilities including gender-specific bathrooms⁵⁸.

The 2019 Act mandates anti-discrimination laws even though enforcement of them is lacking. Few businesses designate compliance officers, or grievance managers. Transgender people have no reserve rights. Unlike SC/ST/OBC targets, just Karnataka has a 1% reservation in public employment; most states lack affirmative action⁵⁹. Twenty-three percent of

⁴⁶ Bahuguna, R., & Vijayan, A. (2018). The Dichotomy of Free Consent and Sexual Orientation in India: A Critical Appraisal. *International Journal of Research and Analytical Reviews*, 5 (3), 653-658.

⁴⁷ <https://bmchealthservres.biomedcentral.com/articles/10.1186/s12913-024-11010-2> available at accessed 16 February 2025

⁴⁸ <https://www.drishtiias.com/daily-updates/daily-news-analysis/challenges-to-transgenders-in-india> available at accessed 18 February 2025

⁴⁹ Id

⁵⁰ https://nhrc.nic.in/sites/default/files/Annual%20Report%202018-29_final.pdf available at accessed 20 February 2025

⁵¹ <https://www.hrw.org/news/2019/12/05/indias-transgender-rights-law-isnt-worth-celebrating> available at accessed 22 February 2025

⁵² <https://www.thehindu.com/news/national/despite-legislation-transgender-community-faces-discrimination-and-abuse/article65417482.ece> available at accessed 23 February 2025

⁵³ <https://www.indiatoday.in/education-today/featurephilia/story/transgenders-and-employment-in-india-opening-doors-of-opportunities-for-transgenders-1640493-2020-01-27> available at accessed 25 February 2025

⁵⁴ https://www.unaids.org/en/resources/presscentre/featurestories/2023/march/20230331_beyond-transgender-visibility-india available at accessed 26 February 2025

⁵⁵ <https://www.outlookindia.com/national/transgender-and-unemployment-in-india-news-182617> available at accessed 28 February 2025

⁵⁶ <https://www.orfonline.org/expert-speak/leaving-no-one-behind> available at accessed 01 March 2025

⁵⁷ Id

⁵⁸ <https://www.impriindia.com/insights/equal-opportunity-policy-trans-2024/> available at accessed 03 March 2025

⁵⁹ <https://www.orfonline.org/expert-speak/leaving-no-one-behind> available at accessed 04 March 2025

transgender people work in sex industry due to occupational discrimination; this raises their HIV risk with a frequency rate of 3.8%, twenty times the national norm. Employed transgender persons experience housing discrimination, which results in eviction; for instance, Kochi Metro employees abandoned their positions since their landlords denied them accommodation⁶⁰. The 2019 Act lets transgender people self-identify; however, bureaucratic hurdles hinder those without legal gender recognition in their employment opportunities.

- **Family and Social Exclusion**

Transgender individuals in India have significant marginalization from familial and societal frameworks, stemming from cultural stigma, legal deficiencies, and institutional discrimination. Although historically acknowledged in works like the Kama Sutra and Mahabharata, modern transgender communities including Hijras, Aravanis, and Kothis frequently experience marginalization, resulting in persistent cycles of poverty, violence, and psychological turmoil⁶¹. This is a comprehensive review of the obstacles and systemic deficiencies leading to their exclusion.

Transgender individuals are often ostracized by their families during adolescence owing to non-conformity to gender norms. Despite the NHRC Advisory⁶² advocating for inheritance rights for transgender individuals, the majority are denied ancestral property owing to binary gender standards in succession legislation.

Transgender individuals frequently lack legal avenues to contest discriminatory familial behaviors. Transgender individuals are often excluded from conventional marriage systems, compelling them to seek refuge in informal family networks (e.g., Hijra gharanas)⁶³.

These networks, albeit beneficial, lack legal acknowledgment and contribute to economic instability. Transgender individuals frequently experience abuse in public areas, including restricted access to restrooms, transportation, and shelters. Despite their revered status in ceremonies (e.g., blessing babies and marriages), Hijras are sometimes stigmatized as "beggars" or "sex workers." Media representations frequently perpetuate these stereotypes, intensifying social exclusion⁶⁴.

Transgender communities endure extortion and brutality perpetrated by police authorities, with minimal accountability. The Transgender Persons Act (2019) prohibits such misuse but is deficient in enforcement procedures. Dalit transgender activists such as Grace Banu emphasize the intersection of caste oppression and transphobia⁶⁵. Individuals identifying as hijras from marginalized castes experience increased violence and economic marginalization.

Transgender communities in rural areas experience a deficiency of access to NGOs and legal assistance, exacerbating their isolation. Conversely, metropolitan regions experience increased activism alongside heightened regulation of gender expression⁶⁶.

6. COMPARATIVE ANALYSIS WITH GLOBAL FRAMEWORKS

By a vote, the American Psychiatric Association deleted the term "homosexuality" from the Diagnostic and Statistical Manual of Mental diseases in 1980. According to the Association, attraction between the same sexes is a normal occurrence. Progressive approaches on gender recognition changes have been adopted by several nations, including Denmark, Argentina, and the United States. The following nations' respective stances on transgender rights are described here:

Argentina's Gender Identity Law (2012): Argentina is among the most progressive countries about LGBTQ rights. The people of the country have always supported minority rights. Argentina became the first nation in Latin America in 2010 to approve same-sex marriage. As a result, in 2010 Argentina saw over 15,000 marriages between couples. Argentina passed a Gender Identity law establishing legal eligibility for sex-change surgery. Pursuing sex reassignment surgery, transgender people might not be worried about being labelled as psychologically disturbed. Before laws enabling same-sex marriage were passed, Argentinean provincial courts released several decisions⁶⁷.

In the well-known case of Freyre and Di Bello in Argentina, the decision was approved and then undone. With the governor's approval in Tierra del Fuego, where same-sex marriage was allowed at the time, the pair finally married. Globally, transgender people are slowly gaining statutory protection⁶⁸.

These laws nevertheless fail to protect people against the ongoing social stigma. The defender of human rights Globally, 2,264 recorded deaths of transgender people occurred between January 1, 2008, and September 30, 2016. Still,

⁶⁰ <https://www.outlookindia.com/national/transgender-and-unemployment-in-india-news-182617> available at accessed 05 March 2025

⁶¹ <https://pmc.ncbi.nlm.nih.gov/articles/PMC10041271/> available at accessed 08 March 2025

⁶² <https://nhrc.nic.in/media/press-release/nhrc-issues-advisory-ensure-welfare-transgender-persons> available at accessed 09 March 2025

⁶³ <https://www.studyiq.com/articles/transgender-community-in-india/> available at accessed 09 March 2025

⁶⁴ <https://www.globalcitizen.org/en/content/one-of-the-worlds-oldest-trans-communities-is-trap/> available at accessed 11 March 2025

⁶⁵ <https://www.frontiersin.org/journals/political-science/articles/10.3389/fpos.2022.963033/full> available at accessed 11 March 2025

⁶⁶ <https://www.newindianexpress.com/nation/2025/Jan/05/nhrc-summons-mosje-secretary-over-transgender-rights> available at accessed 20 March 2025

⁶⁷ https://globalhealth.usc.edu/wp-content/uploads/2017/03/english-translation-of-argentina_s-gender-identity-law-as-approved-by-the-senate-of-argentina-on-may-8-2012.pdf accessed 25 March 2025

⁶⁸ https://en.m.wikipedia.org/wiki/Outline_of_LGBTQ_topics accessed 30 March 2025

much work is required to protect the liberties and rights of transgender persons everywhere.

UK's Gender Recognition Act (2004): Crucially, the Gender Recognition Act (GRA) 2004 is a UK law allowing transgender people to obtain legal acceptance of their gender identification by means of a Gender Recognition Certificate (GRC). Reacting to rulings of the European Court of Human Rights, including *Goodwin v. UK* (2002), to correct infringements of privacy (Article 8) and marital rights (Article 12) for transgender people, the Act was passed⁶⁹.

Transgender people have the ability to change their birth certificates, get married in their adopted gender, and have their confirmed gender noted in official records. Candidates must provide medical records of gender dysphoria from minimum one specialist. Turn in a statutory statement, essentially a legally binding oath. Originally required divorce for married candidates, this was changed in 2013 to allow same-sex marriage⁷⁰.

The Act only recognizes binary sexes (male and female). Although the UK government blocked it, Scotland passed a self-identification law in 2023 to remove medical prerequisites. Though not carried out, comparable policies were under debate in England and Wales. With proposals for modernization to fit self-identification systems used in other countries, the GRA 2004 represented progress yet remained divisive⁷¹.

7. RECOMMENDATIONS FOR REFORM

Makes it rather evident that the Act is silent on many matters and that this marginalised sector still suffers discrimination in the spheres of marriage, adoption, property, job, education, etc. Following recommendations for the revision in current law and the uplifting of transgender people, one must try to bring them back from margin to mainstream.

1. The fundamental legislation of the land that is, the Constitution should be changed to empower the State to create particular clauses for the advancement of the transgender population. Every person has a right to marriage; this is one of the universal rights that cut across gender lines.
2. Laws should so be changed in line to grant them right to marry. Laws pertaining to adoption have to be changed to incorporate transgender person or couple granting them right to adopt a kid.
3. Transgender people have rights related to inheritance. In this regard, the clauses of Pakistan Act help one to determine their inherited rights. The latter says that someone assigned female gender at birth but who later identifies as male is entitled to inherit property as male and vice versa. It also outlines inheritance rights with regard to non-binary genders, noting that average of two independent distributions of man and woman can be handed on in inheritance to non-binary gender.
4. Most transsexual people participate in flesh trading or begging among other things. Should a transgender find a reputable job or launch a business, he runs the risk of being harassed or discriminated against at work. In 2018, a Tamil Nadu police constable transsexual tried suicide claiming harassment at the workplace.
5. Therefore, efficient training programs for sensitizing towards gender equality should be set up at companies for staff members and managers to embrace transgender people both in the workplace and in the society. The Act, 2019 ought to be changed to grant them employment and educational rights. For transgender people entering educational institutions, there should be facilities like separate washrooms and hostel lodging.

8. CONCLUSION

Although a good legislative attempt, the Transgender Persons (Protection of Rights) Act, 2019 has important flaws that restrict its influence. Realizing its goals requires a more inclusive strategy emphasizing affirmative action, clear procedural standards, and strong implementation mechanisms. From the ancient cultural roots of the hijra community to the modern legal scene, transgender people's fight for rights in India is a story of endurance, advocacy, and changing acknowledgment. Although the Transgender Persons (Protection of Rights) Act, 2019 has been passed following the historic *NALSA v. Union of India* ruling in 2014 and marks great progress toward the full realization of equality and justice for transgender people in India. Still, there are many legal gaps that impede this process. Since the Transgender Persons Act, 2019 was the first law passed in India expressly aimed at safeguarding the rights of transgender people, it represented a historic event. Considered as positive steps in defending the interests of the transgender population, the law's clauses on forbidding discrimination in education, employment, healthcare, and public services were considered as Additionally significant validation of their freedom to self-identify and live as equal citizens of the nation was the acceptance of transgender individuals as a third gender. For many transgender people who had long been cast to the edges of society, these events represented progression and optimism. But as this study has shown, the Transgender Persons Act has many flaws that compromise its ability to handle the several difficulties transgender people in India encounter. The way transgender people may get legal recognition of their gender identification is among the most divisive features of the law. Requiring a medical certificate to alter gender

⁶⁹<https://www.legislation.gov.uk/ukpga/2004/7/notes> available at accessed 05 April 2025

⁷⁰ https://en.m.wikipedia.org/wiki/Gender_Recognition_Act_2004 available at accessed 15 April 2025

⁷¹ <https://www.gov.scot/publications/review-of-gender-recognition-act-2004/> available at accessed 18 April 2025

status is intrusive, discriminatory, and against the fundamental ideas of autonomy and dignity that define human rights.

The procedure causes needless hardship for transgender people, especially those who live in rural or underfunded locations, and could cause needless delays or denials in getting a gender recognition certificate. The law's shortcomings also include its inability to sufficiently address the daily systematic violence and socioeconomic discrimination transgender persons endure. Although the Act forbids discrimination, it lacks strong means of guaranteeing the application of these rights. It does not sufficiently address transgender people's problems of social exclusion, healthcare, or homelessness or offer complete help for their economic empowerment. Moreover, the legislation does not offer enough protection against exploitation, hate crimes, and violence all of which are still major issues for the transgender population. Lack of social security clauses and access to a support network aggravates transgender persons' vulnerability in India even further. Though the Act requires welfare boards to be established, their implementation has been slow and uneven, and knowledge of and access to these resources is poor.

The law also falls short in tackling intersectionality, whereby transgender people—especially transgender women from lower castes or those from oppressed groups face compounded discrimination and exploitation. Legal frameworks for transgender rights in India have evolved under influence of international standards and frameworks such as the Yogyakarta Principles. But especially in terms of the process of gender recognition, protection from assault, and social inclusion, the Indian legislation, in its present form does not entirely conform with these worldwide standards. Although the law's emphasis on an individual's capacity to self-identify and receive legal recognition is significant, it must be complemented by a more general.

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