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Substantive Equality, Constitutional Morality, and Transgender Rights: A Doctrinal Assessment of Indian Constitutional Jurisprudence

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ABSTRACT

The issue of social inequality faced by transgender persons in India represents a critical challenge to the constitutional promise of equality, dignity, and non-discrimination. Historically marginalised and excluded from mainstream socio-economic structures, transgender individuals have been subjected to systemic discrimination in areas such as education, employment, healthcare, and public participation. This paper examines the constitutional responses to such inequalities, focusing on the evolving jurisprudence and legislative frameworks in India. This paper critically analyses the transformative role of the Supreme Court in recognising transgender rights, particularly through the landmark judgment in National Legal Services Authority v. Union of India, which affirmed the right to self-identification of gender and extended constitutional protections under Articles 14, 15, 16, 19, and 21 of the Constitution. It further evaluates the effectiveness of the Transgender Persons (Protection of Rights) Act, 2019 in addressing structural inequalities and ensuring substantive equality. While constitutional and legal developments mark significant progress, this paper argues that gaps persist in implementation, awareness, and institutional accountability. Issues such as bureaucratic barriers in gender recognition, the absence of inclusive policies, and societal stigma continue to hinder the realisation of constitutional rights. Adopting a doctrinal and analytical approach, the study highlights the tension between formal equality and substantive justice in the context of transgender rights. The paper concludes by advocating a more inclusive, rights-based approach grounded in constitutional morality, emphasising the need for stronger enforcement mechanisms, policy reforms, and sensitisation measures. It underscores that true inclusion requires not only legal recognition but also societal transformation to uphold the constitutional vision of equality and justice for all.

Keywords: *Transgender Rights, Constitutional Law, Social Inequality, Gender Identity, Equality and Non-Discrimination, Constitutional Morality, Human Rights, NALSA Judgment, Transgender Persons Act 2019, Inclusive Justice.*

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I. INTRODUCTION

This paper examines the evolving legal regime for transgender rights, with a focus on India but set in a comparative context. It traces how historical norms and colonial laws, such as the Criminal Tribes Act, 1871, stigmatised transgender (hijra) communities, and how post-independence constitutionalism and activism have advanced inclusion. Landmark judgments, especially *National Legal Services Authority v. Union of India* (NALSA, 2014), have recognised transgender persons as a legally protected “third gender,” affirming that gender identity lies at the heart of individual dignity.¹ Subsequent legislation, notably the Transgender Persons (Protection of Rights) Act, 2019, and state policies have attempted to implement these principles, though often with contested provisions, such as the requirement of surgery to change legal gender.² Recent judicial developments, from High Court rulings on reservation quotas to challenges to adoption guidelines, demonstrate both progress and gaps. Internationally, courts such as Nepal's have similarly enshrined self-identification rights without medical barriers,³ and instruments such as the 2006 Yogyakarta Principles emphasise gender self-definition as a core aspect of identity and autonomy.⁴ Despite these advances, counterarguments persist, for instance concerns about preserving binary social structures or about the interaction with women's rights, which must be addressed through careful policymaking. This paper critically analyses these issues, synthesising primary sources and authoritative commentary to chart future policy recommendations. It concludes that truly inclusive justice for transgender persons requires aligning laws with constitutional dignity, removing medical gatekeeping for gender recognition, expanding anti-discrimination enforcement, and proactively remedying historical disadvantage, including through reservation and social-welfare schemes.

Transgender persons worldwide have long faced legal and social exclusion. In India and elsewhere, they often bear unique forms of stigma and marginalisation. Historically, many pre-colonial societies in South Asia acknowledged third-gender identities, as reflected in literature and mythology, including the hijra community associated with Lord Rama's blessing in the Ramayana.⁵ Under British colonial rule, however, laws such as the Criminal Tribes Act, 1871 branded eunuchs (hijras) as a “criminal” class,⁶ embedding prejudice into law. After

¹ *National Legal Servs. Auth. v. Union of India*, (2014) 5 SCC 438 (India).

² The Transgender Persons (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019 (India).

³ *Sunil Babu Pant v. Nepal*, Writ No. 917 of 2007 (Nepal S.C.); see also Nepal Supreme Court Rules Trans Woman Is a Woman, Human Rights Watch (July 31, 2024), <https://www.hrw.org/news/2024/07/31/nepal-supreme-court-rules-trans-woman-woman>.

⁴ The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2006).

⁵ *NALSA*, supra note 1.

⁶ Criminal Tribes Act, 1871 (India).

independence, the Constitution of India guaranteed equality (Article 14), non-discrimination (Article 15), freedom of speech and expression (Article 19), and the right to life and dignity (Article 21) for all persons. Yet for decades, transgender individuals lacked legal recognition of their identities and rights. This paper examines how constitutional provisions have been interpreted to protect transgender persons, surveys relevant statutes and case law, and compares India's trajectory with international norms, concluding with policy implications and recommendations.

II. LITERATURE REVIEW AND BACKGROUND

Academic and policy literature on transgender rights in India has grown rapidly in the last decade. Many scholars frame this evolution in terms of transformative constitutionalism, the idea that the Constitution seeks not merely formal equality but positive remedies for historic inequity.⁷ Analyses note that NALSA (2014) marked a watershed by reading the word “sex” in Articles 15 and 16 to include gender identity, and by interpreting fundamental rights holistically to include the freedom to express one's gender.⁸ Commentators highlight the progressive reasoning that forcing transgender persons into binary categories violates their dignity, and that legal recognition of self-identified gender is essential.⁹ Post-NALSA, experts have examined the Transgender Persons (Protection of Rights) Act, 2019, noting its advances but criticising aspects such as its surgery requirement for legal gender change.¹⁰ Comparative studies have surveyed South Asian responses and international standards such as the Yogyakarta Principles as benchmarks.¹¹ Socio-legal research also documents widespread discrimination in education, employment, and healthcare, along with high rates of violence and suicide among transgender populations. This paper builds on this literature by systematically analysing the constitutional framework, surveying the key cases, and discussing policy measures and outstanding challenges.

III. LEGAL ANALYSIS

A. Constitutional Provisions and Core Rights

The Constitution provides multiple guarantees underpinning transgender rights. Article 14 ensures equality before the law for all persons, which courts have interpreted to forbid arbitrary

⁷ Int'l Comm'n of Jurists, *NALSA v. Union of India: Questions and Answers* (2016), <https://www.icj.org/wp-content/uploads/2016/04/India-QA-NALSA-Advocacy-Analysis-brief-2016-ENG.pdf>.

⁸ *NALSA*, supra note 1.

⁹ Int'l Comm'n of Jurists, supra note 7.

¹⁰ Ajay S. Solanki, *India's New Law on the Protection of Rights of Transgender Persons*, Int'l Bar Ass'n (2020), <https://www.ibanet.org/article/0f3ae21b-0170-4bf7-95dd-45b07ef1caf6>.

¹¹ *Pant*, supra note 3.

classifications and to demand the equal protection of laws.¹² Article 15(1) prohibits state discrimination on grounds including “sex.” In *NALSA*, the Supreme Court held that the expressions “sex” in Articles 15 and 16 are not limited to biological sex but are intended to include gender identity.¹³ Thus, any law or policy that singles out transgender persons for adverse treatment violates Article 15. Article 21 guarantees the right to life and personal liberty, which Indian jurisprudence has developed to encompass dignity, bodily autonomy, and privacy. The Supreme Court reasoned that recognition of one's self-identified gender is a core aspect of personal dignity and autonomy, observing that the recognition of one's gender identity lies at the heart of the fundamental right to dignity.¹⁴ Article 19(1)(a) protects the freedom of expression, which the Court has also read to include the freedom to express one's gender identity through appearance and behaviour.¹⁵

Thus, under the Constitution, transgender persons enjoy the same fundamental rights as others, explicitly including equality, non-discrimination, free expression, and dignity. The judiciary has emphasised that any refusal to acknowledge a transgender person's identity undermines these rights. In *NALSA*, the Court recorded that the complete non-recognition of the identity of hijras and transgender persons by the State had resulted in the violation of most of their fundamental rights.¹⁶ Similarly, the Madras High Court held in *Rakshika Raj v. State of Tamil Nadu* (2024) that treating transgender status as a caste for reservation purposes was manifestly arbitrary and violative of Articles 14, 15, and 16,¹⁷ underscoring that gender identity cannot be equated with social caste. In sum, the constitutional framework affirms that transgender rights are not special privileges but inherent entitlements of equality and dignity.

B. Key Judicial Decisions (Landmark and Recent)

National Legal Services Authority v. Union of India (2014) is the cornerstone of transgender jurisprudence in India. The two-judge Bench recognised transgender persons as a “third gender” and affirmed their right to self-identify as male, female, or third gender. It held that non-recognition of their identity violates Articles 14, 15, 19, and 21, and directed governments to legally recognise their chosen gender.¹⁸ The Court grounded its reasoning in equality and dignity, reading “sex” in Articles 15 and 16 to include gender identity, and holding that no third-

¹² INDIA CONST. art. 14.

¹³ *NALSA*, supra note 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Rakshika Raj v. State of Tamil Nadu* (Mad. H.C. Apr. 8, 2024) (India) (Ilanthiraiyan, J.).

¹⁸ *NALSA*, supra note 1.

gender person should be subjected to a medical examination as a condition of recognition. Legal scholarship regards NALSA as an exemplar of transformative constitutionalism.¹⁹

Navtej Singh Johar v. Union of India (2018), although concerned with the decriminalisation of consensual same-sex relations under Section 377 of the Indian Penal Code, is highly relevant to transgender rights. The five-judge Bench invalidated Section 377 in so far as it criminalised consensual sexual conduct between adults, holding it unconstitutional under Articles 14, 15, 19, and 21.²⁰ The judgment affirmed that lesbian, gay, bisexual, and transgender persons possess the same human, fundamental, and constitutional rights as other citizens, reinforcing the principle that the State cannot penalise persons for an identity that departs from heteronormative norms.

K.S. Puttaswamy v. Union of India (2017), the privacy judgment, saw a nine-judge Bench declare privacy a fundamental right under Article 21, protecting an individual's autonomy and self-determination over intimate decisions.²¹ Though not specifically concerned with transgender persons, Puttaswamy laid the doctrinal groundwork: if privacy covers intimate choices, it equally covers gender identity, reinforcing NALSA's emphasis on personal autonomy in gender self-identification.

Rakshika Raj v. State of Tamil Nadu (Madras High Court, 2024) concerned a challenge to a Tamil Nadu Government Order reserving jobs and educational seats for transgender persons under the Most Backward Classes category. The High Court quashed the Order as arbitrary, ruling that treating a gender identity as a caste was contrary to NALSA and violative of Articles 14, 15, and 16.²² The Court directed the State instead to provide a one per cent horizontal reservation, akin to that for women, to remedy transgender disadvantage. The judgment illustrates that even well-meaning policies must respect constitutional categories, and reaffirmed NALSA's mandate to treat transgender persons as a protected class.

Other Indian decisions and pending matters have applied NALSA's principles. Following NALSA, courts and authorities have moved towards ensuring that identity documents reflect a person's self-identified gender without insistence on surgery, and High Courts have, in various matters, recognised the rights of transgender students and recruits. Most recently, the Madras High Court has questioned why the adoption guidelines framed by the Central Adoption Resource Authority exclude transgender persons, given the inclusion mandate of the

¹⁹ Int'l Comm'n of Jurists, *supra* note 7.

²⁰ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

²¹ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

²² *Rakshika Raj*, *supra* note 17.

Transgender Persons (Protection of Rights) Act, 2019.²³ The trend is clear: courts at all levels are actively interpreting fundamental rights to include gender minorities.

Comparative and international decisions reflect a similar trajectory. In Nepal, the Supreme Court granted recognition and citizenship to gender minorities in 2007, and in 2024 ruled that a transgender woman must be recognised as female on official documents without any medical examination.²⁴ In Bangladesh, the Government recognised hijras as a distinct gender by a 2014 notification.²⁵ In the United States, the Supreme Court in *Bostock v. Clayton County* (2020) held that the prohibition of sex discrimination in Title VII covers gender identity.²⁶ The European Court of Human Rights, in *Goodwin v. United Kingdom* (2002), required legal recognition of an acquired gender without insistence on surgery.²⁷

C. Statutes and Regulatory Framework

In response to NALSA, Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019, which came into force in January 2020. The Act defines “transgender person” broadly, prohibits discrimination in education, employment, healthcare, housing, public services, and property,²⁸ and provides for welfare measures such as social security and skill training. It enables a transgender person to obtain a certificate of identity as transgender from a District Magistrate without a medical examination; after sex-reassignment surgery, the person may apply for a revised certificate reflecting the acquired gender.²⁹ The Act establishes a National Council for Transgender Persons and penalises harassment and exploitation.

Although the Act codifies many protections, it has drawn criticism. By tying a change of gender marker to surgery, it arguably contradicts NALSA, which held that neither surgery nor hormonal therapy should be mandatory for legal recognition.³⁰ In practice, this requirement perpetuates medical gatekeeping. The Act is also silent on substantive questions such as marriage, inheritance, and adoption, and its implementation depends on the subordinate Transgender Persons (Protection of Rights) Rules, 2020, which leave practical hurdles.³¹ Recent regulatory

²³ *B. Shama v. Union of India* (Mad. H.C.) (pending); see Why No Adoption Guidelines for Transpeople, HC Asks Union Govt, Times of India (Dec. 12, 2025), <https://timesofindia.indiatimes.com/city/chennai/why-no-adoption-guidelines-for-transpeople-hc-asks-union-govt/articleshow/125920163.cms>.

²⁴ *Pant*, supra note 3.

²⁵ Human Rights Watch, “I Want to Live With My Head Held High”: Abuses in Bangladesh's Legal Recognition of Hijras (2016), <https://www.hrw.org/report/2016/12/23/i-want-live-my-head-held-high/abuses-bangladeshs-legal-recognition-hijras>.

²⁶ *Bostock v. Clayton County*, 590 U.S. 644 (2020).

²⁷ *Goodwin v. United Kingdom*, 2002-VI Eur. Ct. H.R. (App. No. 28957/95).

²⁸ Solanki, supra note 10.

²⁹ Transgender Persons Act, 2019, supra note 2.

³⁰ NALSA, supra note 1.

³¹ The Transgender Persons (Protection of Rights) Rules, 2020 (India).

debate, including the Madras High Court's query on adoption, indicates that the Act's promise of inclusion has yet to be fully realised.

Several other laws intersect with transgender rights. The Juvenile Justice (Care and Protection of Children) Act, 2015 governs adoption but does not expressly include transgender persons among eligible adopters; courts are now urging that the “male” and “female” categories be read inclusively in the spirit of the Transgender Act.³² Some State Governments have enacted quotas for transgender persons, and the Madras High Court in *Rakshika Raj* directed a properly structured horizontal reservation rather than a vertical Most Backward Classes quota.³³ In international law, instruments such as the Yogyakarta Principles (2006) and resolutions of United Nations human rights bodies call on States to recognise gender identity and prohibit discrimination, informing India's obligations under treaties such as the International Covenant on Civil and Political Rights.³⁴

D. Comparative Perspectives

A comparative overview reveals common themes and divergences. In South Asia, NALSA was among the first decisions of its kind; Nepal's 2007 judgment similarly mandated identity documents and citizenship for third-gender persons, and Nepal recognised a third gender constitutionally in 2015.³⁵ Bangladesh's 2014 order recognised hijras as a separate gender, though its implementation has been criticised.³⁶ Pakistan's Transgender Persons (Protection of Rights) Act, 2018 likewise provides for legal recognition by self-perception and prohibits harassment, reflecting regional convergence.

In Western jurisdictions, legal systems often classify gender identity under existing sex-discrimination law. In *Bostock v. Clayton County* (2020), the United States Supreme Court held that Title VII's prohibition of sex discrimination covers both sexual orientation and gender identity.³⁷ The European Court of Human Rights, in *Goodwin v. United Kingdom* (2002), held that the refusal to recognise an acquired gender breached the Convention.³⁸ International norms, including United Nations Human Rights Council resolutions, call on States to protect transgender persons from violence and discrimination. These comparators underline a consistent policy lesson: legal recognition of gender identity should not be made contingent on

³² *B. Shama*, supra note 23.

³³ *Rakshika Raj*, supra note 17.

³⁴ Yogyakarta Principles, supra note 4.

³⁵ *Pant*, supra note 3.

³⁶ Human Rights Watch, Bangladesh Report, supra note 25.

³⁷ *Bostock*, supra note 26.

³⁸ *Goodwin*, supra note 27.

medical procedures, and States should actively include transgender persons within welfare and anti-discrimination frameworks.

E. Policy Implications and Recommendations

Building on this analysis, several policy implications emerge. First, legal alignment with constitutional standards is urgent. The Transgender Act should be amended to remove the surgical requirement for a change of gender, making certificates fully self-declaratory as NALSA intended.³⁹ Adoption and family laws require the explicit inclusion of transgender persons; the guidelines of the Central Adoption Resource Authority should be revised to read “male, female, or transgender” in the eligibility criteria.⁴⁰ Judicial directions such as those in *Rakshika Raj* should be implemented nationally, with States designing reservation policies that treat gender identity as a separate horizontal category.⁴¹

Second, anti-discrimination mechanisms must be robust. Enforcement authorities, including Human Rights Commissions and dedicated ombudsmen, should be empowered to address violations under the Act. Government and private employers should frame equal-opportunity policies for transgender employees, and educational institutions should include gender-diversity sensitisation and strictly enforce the prohibition on exclusion. Third, health and social-welfare programmes should address transgender needs specifically, including gender-affirming healthcare, specialised health centres, and transgender-sensitive welfare schemes, with mental-health outreach given the high reported rates of suicide. Fourth, public awareness and capacity-building are key: sensitisation programmes for the police, the judiciary, doctors, and social workers will reduce harassment, and the National Council for Transgender Persons constituted under the Act should function with meaningful community representation.⁴² The constitutional promise of equality extends to all citizens, and affirmative measures for transgender persons enhance, rather than diminish, constitutional ideals.

IV. CONCLUSION

The constitutional architecture in India mandates equal dignity and protection for transgender persons. Courts have interpreted Articles 14, 15, 19, and 21 expansively to include gender identity, breaking the historical binary and advancing equality beyond the binary. While NALSA laid a transformative foundation, and the Transgender Act codified many protections, gaps remain in alignment and implementation. Recent judicial rulings on reservation, adoption, and

³⁹ *NALSA*, supra note 1.

⁴⁰ *B. Shama*, supra note 23.

⁴¹ *Rakshika Raj*, supra note 17.

⁴² Transgender Persons Act, 2019, supra note 2.

identity documents continue to refine the law's scope. For a truly inclusive justice system, policymakers and society must uphold the constitutional vision: respecting the self-identified gender of every individual, removing unnecessary barriers, and proactively remedying disadvantage. In doing so, India can demonstrate how a constitutional democracy fulfils its promise of equality for all, irrespective of gender identity.

V. BIBLIOGRAPHY

1. *Bostock v. Clayton County*, 590 U.S. 644 (2020).
2. *Goodwin v. United Kingdom*, 2002-VI Eur. Ct. H.R. (App. No. 28957/95).
3. *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).
4. *National Legal Servs. Auth. v. Union of India*, (2014) 5 SCC 438 (India).
5. *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).
6. *Rakshika Raj v. State of Tamil Nadu* (Mad. H.C. Apr. 8, 2024) (India).
7. *Sunil Babu Pant v. Nepal*, Writ No. 917 of 2007 (Nepal S.C.).
8. INDIA CONST. arts. 14, 15, 16, 19, 21.
9. The Transgender Persons (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019 (India).
10. The Transgender Persons (Protection of Rights) Rules, 2020 (India).
11. The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2006).
12. Ajay S. Solanki, India's New Law on the Protection of Rights of Transgender Persons, Int'l Bar Ass'n (2020).
13. Human Rights Watch, "I Want to Live With My Head Held High": Abuses in Bangladesh's Legal Recognition of Hijras (2016).
14. Int'l Comm'n of Jurists, *NALSA v. Union of India: Questions and Answers* (2016).
