

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 2

2026

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Bridging the Divide: Constitutional Mandates and the Socio-Economic Integration of Transgender Identities

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ABSTRACT

The holistic advancement of a nation is fundamentally tethered to the collective progress of its citizens, yet India's deeply stratified social hierarchy continues to obstruct the path toward universal prosperity. While post-independence development has successfully elevated many segments of the population, the persistence of systemic inequality has necessitated the creation of targeted welfare frameworks for marginalized cohorts. Traditionally, the state has identified and supported groups such as Scheduled Castes, women, and the disabled; however, the transgender community remains an outlier—widely acknowledged in presence but systematically excluded from the socio-economic mainstream. This community faces an arduous landscape of pervasive discrimination, particularly within the critical pillars of education, healthcare, and the professional workforce. Such exclusion not only stifles individual potential but also hinders the nation's broader upliftment by maintaining a vast disparity in opportunities.

This paper examines the urgent transition from mere social recognition to active institutional integration. It argues that the current "natural resources ecosystem" is insufficient for the advancement of gender-diverse individuals without robust, specialized state intervention. Achieving true equity requires a fundamental shift in institutional "cultural competence," demanding that professionals in schools and medical facilities move beyond passive tolerance toward the active protection of transgender youth's rights and personal choices. The study asserts that the normalization of gender diversity is a prerequisite for constitutional morality and national success. Ultimately, the authors intend to advocate for the formal inclusion of transgender persons within India's welfare state while challenging professionals to dismantle the systemic biases that perpetuate their marginalization. By bridging the gap between legal theory and cultural practice, the nation can finally dismantle the barriers that prevent this vulnerable segment from contributing to and benefiting from the national narrative.

Keywords: Rights, Transgender persons, Discrimination, Gender Equality, Justice

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I. INTRODUCTION

In independent India, this community has a history of persecution and neglect, which actually began during British control. People in the transgender community were denied opportunities for growth as a result of their marginalization, including of welfare, employment, health, education, etc. Lack of access to these opportunities further drove members of the transgender community away from the pinnacle of mainstream societal development and increased their discrimination, trapping them in a never-ending cycle of discrimination and suffering.

The transgender population has been left behind since, as was already mentioned at the outset, a country's prosperity depends on the prosperity of every individual without discrimination. To integrate the transgender community into the mainstream of society, attention must be paid to the country's development story. The concept of transgender identity has deep cultural roots in India. The most powerful representation of gender diversity is the deity "Ardhnareshvara" that symbolizes the unity of male and female energies in one body. This concept supports the idea that Gender diversity is natural and non-binary identities have historical recognition.

The term "transgender" refers to individuals who do not identify as either gender. The debate over the acceptance and categorization of transgender individuals in society has been a never-ending battle. The fight between males and females has left them exhausted and overwhelmed.

II. LAWS AND RIGHTS OF TRANSGENDER

The term "transgender" today encompasses a broad range of identities and experiences, such as those of homosexuals, cisgender and transgender men and women (sometimes referred to as "transvestites" and "drag queens"), people of the opposite sex, and people who identify as neither male nor female. The term "transgender" also refers to those who do not identify as transgender but who experience the same social pressures and physical abuse as those who do because their identity or character deviates from conventional sexual practices. When referring to transgender individuals, the terms "gender variety" and "gender non-conforming" are frequently used interchangeably.

In India, there are numerous transgender groups, such as Shiv Shaktis, jogats, jogappas, Arachis, Sakhis, and Hijras/Kinnars. Additionally, there might be non-groups made up solely of transgender people who just so happen to be passing by concurrently with these social and cultural groups.

A. Rights enshrined in the Constitution of India

Article 14³ The Indian Constitution guarantees both the right to equality and protection of the laws. In order to further and defend the right to equality, Chapter III of the Constitution includes provisions that particularly address discrimination and its prevention. Furthermore, some forms of discrimination are specifically prohibited in Article 15⁴. It has a clause requiring the government to protect citizens from discrimination based on their gender, nationality, ethnicity, or religion. Articles 14 and 15 ensure everyone the right to be treated equally and to be protected against discrimination under the law.

The verdict in the Naz Foundation case⁵ is still relevant in the context of human rights protection in India, despite being overturned by the Supreme Court of India. In the present case, petitioners argued that the ban on same-sex behaviors and activities between consenting individuals amounts to discrimination based on sexual orientation. Additionally, they maintained that one of the forbidden characteristics included in Article 15 of the Constitution should be sexual orientation. Additionally, the petitioners contended that "sex" should include "sexual orientation" as a prohibited cause of discrimination, rather than just "gender."

The main question in the legal dispute was whether or not Article 15 prohibits discrimination on the basis of sexual orientation. To understand the current legal situation, the judges consulted the Declaration of Principles of Equality, which was authored by specialists and published by the Equal Rights Fund.

The Declaration of Human Rights serves as the foundation for contemporary international equality norms. Section 2 of the Declaration addresses the right to be free from intimidation, harassment, and other forms of discrimination. prejudice based on ethnicity, race, or color The Declaration expressly prohibits discrimination based on country, religion, belief, political or other viewpoints, sex, sexual orientation, gender identity, age, disability, health concern, or any other factor associated with these factors.

The Court concluded that "sex" includes sexual orientation and gender identity as banned grounds of discrimination under Article 15 of the Constitution, agreeing with the applicants. The primary objective of the equality of sexual orientation and gender identity is to ensure that No one is discriminated against or mistreated because of socially manufactured notions of "normal" or "natural" gender roles and sexuality. A society devoid of prejudice based on an

³ INDIA CONST. art. 14.

⁴ INDIA CONST. art. 15.

⁵ *Naz Found. v. Gov't of NCT of Delhi*, 160 D.L.T. 277 (Del. H.C. 2009).

individual's gender identity or sexual orientation is necessary to uphold the ideals of justice and equality. These are some of the forbidden reasons for discrimination listed in a number of international human rights treaties and conventions.

Although discrimination based on sexual orientation and gender identity is not expressly mentioned in Article 15, legal academics and observers have noted that this type of bias violates the article because it is comparable to other forms of discrimination that are. The principle of non-discrimination protects all grounds based on an individual's freedom.

However, the Supreme Court maintained its position that Section 377 does not criminalize any specific group of people, sexual orientation, or transgenderism, but rather acknowledges the commission of acts that would constitute the offense as specified in the statute. In Suresh Kumar Koushal's case⁶, the Supreme Court overturned the ruling in the Naz Foundation case.

B. Right to Freedom of Speech and Expression

According to Article 19 of the Constitution of India, everyone has the right to free speech. According to Article III of the Constitution of India, everyone has the right to freedom of speech and expression, regardless of their gender identity or sexual orientation. In addition to the freedom to express themselves through their appearance, attire, name, behavior, and conduct, people have the right to seek out, receive, and communicate any information or ideas, including those related to human rights, sexual orientation, and gender identity issues.

C. To Protect the Right to Life, Liberty, and Privacy of Transgender Persons

The Indian Constitution's Article 21 guarantees the people's freedom from arbitrary government intrusion and the protection of their life. This right also includes the right to be treated with respect. In light of Article 21, the right to life has been interpreted broadly, implying that it includes more than just the capacity to survive. Therefore, everything required for an individual to live a dignified life and to have a fulfilling existence is included in the right to life.

According to Article 21, a negative right protected by the Constitution, no one's right to life or personal liberty may be violated by the state without due process. However, in several cases, the court has defined the right in terms of the State's affirmative obligations to provide the right to a life of dignity and the maximum enjoyment of that life. The Francis Coralie ruling by the Supreme Court expanded the interpretation of the right to life and personal liberty as well as the meaning of Article 21. According to the ruling of the highest court, all people are entitled

⁶ *Nat'l Legal Servs. Auth. v. Union of India*, (2014) 1 S.C.C. 1.

to "human dignity," which goes beyond simply having an "animal existence."⁷

The Supreme Court, India's highest court, ruled that the right to privacy is recognized as a fundamental right under the Indian Constitution. Other rights, such as the right to respect for private and family life, intimate relationships, reproduction, marriage, and sexual orientation, are also protected under the right to privacy. Furthermore, the Court reiterated its stance that the right to privacy is an unalienable right that cannot be taken away from even the smallest percentage of people in a country. It conveys the idea that a person's right to privacy extends beyond their activities at home and includes their ability to choose how they want to live their life.⁸

All Indian nationals are required by law to use gender-specific identification documents. Due to India's regulation that only permits bisexuality, hijras are deprived of many opportunities because they are unable to lawfully enter the nation as women or as third parties, if they so choose. Privileges that are taken for granted by other Indians. People have several rights, including the ability to vote, own property, get married, possess a passport or share card, obtain a driver's license, attend education, find employment, and maintain their health. The hijras are so isolated from India's broader social structure.

III. STATES POLICIES VIS-A-VIS TRANSGENDER RIGHTS

The first Indian states to implement transgender welfare measures were Kerala and Tamil Nadu. According to the policy, transgender individuals are eligible for free medical care, including sex reassignment surgery (SRS) at public hospitals (but only for male-to-female patients), free housing, various citizenship documents, full scholarship admission to public universities, and help starting income-generation programs (IGP) and forming self-help groups for savings. Furthermore, the first state in India to create an official transgender welfare body was Tamil Nadu. In 2016, Kerala began offering free surgery in public hospitals.⁹

A transgender welfare board was created in West Bengal in 2015 to centralize the planning of development projects and policy decisions that impact the state's transgender population. However, certain proponents of transgender rights have denounced the board as a "all-around failure". As of July 2017, the board had only met five times while being tasked with holding monthly meetings with representatives from various state government entities.

⁷ *Francis Coralie Mullin v. Adm'r, Union Territory of Delhi*, (2006) 8 S.C.C. 399 (India).

⁸ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCALE 1 (India).

⁹ Divya Karthikeyan, Tamil Nadu, Once a Pioneering State for Welfare of Transgenders, Now Shuns the Third Gender, FIRSTPOST (May 2017), <https://www.firstpost.com/india/tamil-nadu-once-a-pioneering-state-for-welfare-of-transgenders-now-shuns-the-third-gender-3476538.html>.

The state of Odisha enacted laws in July 2016 that made transgender people eligible for the same welfare benefits as low-income citizens. The Department of Social Security for the state of Odisha stated that this action was taken to improve the economic and social status of the populace.¹⁰

In an effort to raise transgender visibility in the state's educational institutions, the State of Karnataka unveiled its "State Policy for Transgenders, 2017" in October of that year. Classrooms around the nation will address concerns of harassment, bullying, and exclusion of transgender kids. Additionally, it established a watchdog panel whose responsibility it is to investigate allegations of bias.¹¹

To support transgender people, the government of Himachal Pradesh has set up state and local medical bodies. The state has also implemented several programs, such as financial aid, skill development, pensions, and scholarships, to assist the parents of transgender individuals¹². In April 2017, the Ministry of Drinking Water and Sanitation issued a regulation mandating that governments make sure transgender people have access to gender-neutral facilities¹³. On August 22, 2017, Chandigarh established a transgender board. The board's broad membership includes health professionals, law enforcement officers, educators, attorneys, social welfare advocates, and representatives from Panjab University.¹⁴

On November 28, 2017, Andhra Pradesh Chief Minister N. Chandrababu Naidu announced a pension plan for transgender people. On December 16, 2017, the Andhra Cabinet adopted the proposal. The new rule would provide a monthly social security pension of \$1,500 to any transgender adult over the age of 18. According to a recent government plan, public spaces like shopping malls and movie theaters would include restrooms specifically for transgender people. Additionally, the state established a transgender welfare board.

IV. THE TRANSGENDER PERSONS (PROTECTION OF THE RIGHTS) ACT, 2019

In the context of the Transgender Persons Act and the 2026 Amendment Bill, constitutional

¹⁰ Jatindra Dash, Odisha Becomes First State to Give Welfare to Transgender Community, INDIA TODAY (June 2, 2016), <https://www.indiatoday.in/india/story/indias-odisha-state-becomes-first-to-give-welfare-to-transgender-community-12032-2016-06-02>.

¹¹ Transgender Policy Cleared by Karnataka Cabinet, INDIAN EXPRESS (Oct. 2017), <https://indianexpress.com/article/india/transgender-policy-cleared-by-karnataka-cabinet-4909196/>.

¹² Himachal Pradesh to Bring Transgenders Under Social Security Net, INDIAN EXPRESS (Sept. 2016), <https://indianexpress.com/article/india/india-news-india/himachal-pradesh-to-bring-transgenders-under-social-security-net-3018937/>.

¹³ Kuheena, Sanitation Ministry Allows Transgender People Use Public Toilets, Wants Them Recognised as Equal Citizens, INDIA TODAY (Apr. 6, 2017), <https://www.indiatoday.in/fyi/story/transgender-public-toilets-ministry-of-drinking-water-and-sanitation-969945-2017-04-06>

¹⁴ Chandigarh Gets Its First Transgender Welfare Board with 14 Members, TIMES OF INDIA, <https://timesofindia.indiatimes.com/city/chandigarh/chandigarh-becomes-1st-ut-to-have-transgender-board/>

protections and legislative modifications are essential. The protracted fight for transgender rights in India has been characterized by institutionalized prejudice and marginalization. Transgender identities have historically been criminalized by the legal system; this position has only lately—and sometimes hesitantly—shifted toward acknowledgment. Many see the Transgender Persons (Protection of Rights) Act, 2019 as a means of enacting progressive court rulings. President Droupadi Murmu has approved the Bill, the Union Law Ministry announced in a gazette statement on March 30, 2026¹⁵. The Bill aims to update the previous 2019 Act in order to add additional crimes, further medicalize the legal documentation procedure, and restrict the definition of a transgender person.

A. The right to self-determination removed

In *NALSA v. Union of India* (2014), the right to self-determine one's gender identity was upheld, acknowledging that anyone can identify as male, female, or transgender based on their psychological or social experiences, even in the absence of medical gender positive surgery. Under Articles 14, 19, and 21 of the Constitution, this right is found in the rights to equality, freedom of expression, and a dignified existence. Since 2014, it has solidified into Indian constitutional law, supported by multiple High Court rulings and two Constitution Benches (*Navtej and Supriyo*). Section 4(1) of the 2019 Act, which grants the right to "self-perceived gender identity," is specifically proposed to be removed by this Bill, which aims to restrict this right.

B. Narrowing the Spectrum: The Constitutional Risks of Categorical Exclusion

Additionally, the Bill narrows the definition of transgender from an inclusive one (“a person whose gender does not match with the gender assigned to that person at birth”) to just three categories:

- (i) individuals with five specific intersex variations;
- (ii) those who were "compelled" to present as transgender; and
- (iii) socio-cultural identities (such as hijra, kinner, aravani, jogta, and "eunuch").

All trans masculine and non-binary identities, as well as trans women who do not belong to those particular communities, are among the identities that are excluded by such a definition because they are not typically seen as sociocultural. Even the recognition of other sociocultural

¹⁵ The Hindu Bureau, Transgender Amendment Bill Gets President Murmu's Assent, THE HINDU (Mar. 31, 2026), <https://www.thehindu.com/news/national/transgender-amendment-bill-gets-president-murmu-assent/article70804606.ece>.

identities, such as Kothis, Nupi Maanbi, and Thirunangai, is uncertain.

Without giving any evidence to back up this assertion, the Statement of Objects and Reasons gives nebulous explanations for this omission, such as the difficulties in passing laws and delivering benefits under the Act. Article 14 of the Constitution is violated when trans populations are excluded in a way that creates a hierarchy with no discernible differences.

C. From Self-ID to Surgery: The Resurgence of the Medical Model

The Bill advances the biological or medical paradigm of gender that was overturned by NALSA. A person may identify as "transgender" under section 6 of the 2019 Act and Rules by submitting an affidavit to the District Magistrate. Following receipt of this certificate, people may submit an application under section 7 to identify as "male" or "female" with documentation of "medical intervention."

The District Magistrate must now consider the advice of a "medical board" and "any other medical experts," the latter of which is not specified, according to the Bill. Additionally, the Bill mandates that any medical facility that performs gender-reversal surgery notify the District Magistrate in order to get a section 7 certificate.

In addition to seriously violating the right to privacy recognized in *Puttaswamy v. Union of India*, these new rules significantly erode the right to self-determination. The medical board's scope and procedures are unclear, which may lead to intrusive examinations and harassment opportunities.

D. From Protection to Persecution: Analyzing the Bill's Punitive Framework

The punishment for harm or injury to a transgender person under section 18 of the present Act is six months to two years, which is significantly less than the sentence for women under the BNS. Rather than addressing this disparity, the bill creates two new felonies.

First, it creates the crime of kidnapping and causing serious harm to the body or bodily functions, such as by hormonal procedures, emasculation, etc., which carries a 10-year to life sentence. Second, using coercion or undue influence to persuade someone to identify as transgender and hiring them for forced labor, begging, or solicitation is punished by five to ten years in prison.

If the victim is a minor, the punishment will be either 10 to 14 years in prison or life in prison. The wording is reminiscent of the Criminal Tribes Act of 1871, a colonial statute that attempted to "eradicate" gender non-conforming individuals and was among the first to be repealed by the Constituent Assembly upon independence.

The Telangana High Court ruled in *Vyjayanti Vasanta Mogli v. State of Telangana* that similar criminalization restrictions stifled the right to privacy and freedom of expression and promoted negative stereotypes about the transgender population. This bill may make it illegal for transgender familial networks, supportive parents, medical professionals who provide care that is gender affirming, social organizations, and workers that assist transgender people.

Based on the critical gaps identified regarding definitions, medicalization, and penal disparities, here are specific suggestions and a conclusion to align the legislation with constitutional mandates.

V. PROPOSED SUGGESTIONS FOR REFORM

A. Reverting to an Inclusive Definition

To align with the NALSA (2014) verdict, the Bill must discard the restrictive list-based definition and restore a functional, self-identification-based framework. The legislation should explicitly include all gender-diverse identities—such as trans-masculine, non-binary, and gender-queer individuals—regardless of their affiliation with traditional socio-cultural groups like the *Hijra* or *Kinner* communities. By removing the requirement to prove "compulsion" or specific "intersex variations," the law can ensure that it does not create an internal hierarchy, thereby fulfilling the mandate of Article 14 which forbids arbitrary classification.

B. Decoupling Legal Recognition from Medical Intervention

The certification process must be strictly administrative rather than clinical. The requirement for a "medical board" or "medical experts" to verify gender should be abolished in favor of a simple affidavit system. Legal recognition of gender—whether as male, female, or transgender—is a matter of personhood, not a medical condition. Furthermore, the mandatory reporting of surgeries by hospitals to District Magistrates should be scrapped to protect the fundamental right to privacy established in *Puttaswamy*. Genuine reform would prioritize bodily autonomy over bureaucratic surveillance.

C. Equalizing Penalties and Protecting Kinship

The government must address the "sentencing deficit" by ensuring that crimes against transgender persons carry the same weight as those under the *Bharatiya Nyaya Sanhita* (BNS) for cisgender women. At the same time, the language of the Bill needs to be scrubbed of colonial-era biases that pathologize transgender community structures. Instead of broad clauses that could criminalize kinship networks or medical practitioners, the law should focus on specific protections against discrimination in employment, housing, and healthcare, ensuring

that the legal system acts as a shield rather than a tool for harassment.

VI. CONCLUSION

The path toward a truly inclusive national prosperity requires more than the passive acknowledgment of marginalized groups; it demands a rigorous dismantling of the systemic barriers that keep the transgender community in a state of socio-economic limbo. While India's welfare architecture has historically evolved to protect various vulnerable segments, the continued exclusion of transgender individuals—exacerbated by narrow legal definitions and the over-medicalization of identity—remains a significant democratic deficit. To move forward, the state must transition from a model of begrudging tolerance to one of substantive empowerment. This shift necessitates a reimagining of institutional frameworks where cultural competence is prioritized over bureaucratic surveillance, ensuring that every citizen, regardless of gender identity, has access to the "natural resources ecosystem" required for personal and professional flourishing.

In the final analysis, the integration of the transgender community into the mainstream social construct is not merely a matter of administrative policy, but a foundational requirement of constitutional morality. By bridging the chasm between progressive legal theory and regressive social practice, India can honor the transformative spirit of its founding documents. Realizing this vision requires a collective commitment from educators, healthcare professionals, and lawmakers to reject colonial-era biases in favor of a framework rooted in human dignity and self-determination. Only by validating the diverse identities of its youth and providing them with an equal platform can the nation truly claim to have achieved a cohesive and prosperous society, ensuring that the national narrative is written by and for all its citizens.
