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A STUDY OF TRANSGENDER COMMUNITY IN INDIA

Vels Institute of Science, Technology and Advanced Studies (VISTAS)

In partial fulfilment for the award of the Degree of

Bachelor of Law (LL.B)

AUTHORED BY - T. MUTHU PRABHA

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I, **T. MUTHU PRABHA**, Register No. **23122148**, hereby declare that the dissertation entitled “**A STUDY OF TRANSGENDER COMMUNITY IN INDIA**” is an original work carried out by me under the guidance of **A. Bhuvanewari, Assistant Professor, School of Law, VISTAS**.

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LIST OF ABBREVIATIONS

| Abbreviation | Full Form |
|---------------------|--|
| TPPRA | Transgender Persons (Protection of Rights) Act 2019 |
| NALSA | National Authorities of Legal Services Act |
| PIL | Public Interest Litigation |
| SMILE | Support for Marginalised Individuals for Livelihood and Enterprise |
| HIV | Human Immunodeficiency Virus |
| FTM | Female to Male |
| MTF | Male to Female |
| Cis GENDER | A person whose gender identity matches the sex assigned at birth |
| LNLST | Legal Network for Law and Social Transformation |
| MTP ACT | Medical Termination of Pregnancy Act, 1971 |
| COVID | Coronavirus Disease |
| CSO | Civil Society Organization |
| AIDS | Acquired Immunodeficiency Syndrome |
| STIS | Sexually Transmitted Infections |
| LGBTQI+ | Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, and others |
| NCT | National Capital Territory (commonly refers to Delhi) |
| NHRC | National Human Rights Commission |

CHAPTER

1

1.1 Introduction:

INTRODUCT

ION

The term "transgender" refers to a variety of gender expression that differs from what an individual was assigned at birth. The presence of individuals who do not conform to their assigned gender has been acknowledged throughout the history of India, from the existence of hijras in the scriptures to their recognition in the courts of the Mughal emperors. However, colonization and the influence of post-colonial social norms have forced transgendered people to the margins of society. Today in India, there is a paradox: there is constitutional recognition of the rights of transgender people, but there is also a high rate of social exclusion. This paper will examine how transgendered individuals in contemporary India form their identity, participate in the community, experience discrimination and demonstrate resilience. The transgender community in India has been historically present and yet is currently subject to systemic discrimination in the modern world. Through this examination, the multifaceted experiences of transgender people will be reviewed, including how they experience legal reform, health services and societal attitudes that impact their identity and overall health and well-being. Although there are both historical records from ancient texts and modern scholarship that recognize the existence of diverse ways of expressing gender through the Hijra, Jogappa and Aravani communities, the existence of transgender individuals in contemporary India is marked by the fact that they exist in between two worlds—two worlds that are both visible and marginalized. While the existence of the third gender has been affirmed by religious scriptures and local folklore, post-colonial socio-legal systems have made the majority of these individuals invisible from the perspective of public policy and social acceptance.

1.2 Scope of Study:

The study of transgender people in India is a large and interdisciplinary area. It examines many aspects of transgender identity (e.g., how do we define "transgender"?) through looking at a wide range of groups, including Hijras, Aravanis and Kothis. The study goes beyond the traditional

male-female binary to include more diverse views about what it means to be transgender. The study will also look at the history and culture of transgender groups living in India, their place in



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religion and mythology and how colonialism has impacted their marginalization. In examining the socio-economic conditions experienced by transgender people in India, common issues that limit their quality of life will also be analyzed (e.g., discrimination, employment, education, housing). The legal aspect will focus on the Indian constitution and landmark judicial decisions (e.g., *NALSA v. Union of India*) related to transgender rights, including the *Transgender Persons (Protection of Rights) Act 2019*. In addition, health-related issues will be discussed and will focus on mental health, access to healthcare and gender-affirmation treatments. The geographical scope of this study is only within India but will consider regional differences of initiatives (e.g. supportive initiatives in Tamil Nadu). There are some limitations as well; nearly all data will be secondary data therefore there may be difficulties in adequately representing the varied experiences of transgender people. A person's sense of self, self-esteem and self-worth are all closely connected to the identity one has as they relate to themselves. All parts of your identity will include a variety of identifying characteristics, such as race, gender, social class, nationality/ethnicity, occupation, and language; these characteristics intersect and work together to formulate an entire individual's identity. The most important of these is probably gender because it fairly dictates a person's social role within their society in relation to everyone else. Gender identity starts at birth, when an individual is placed into his or her "gender" category based on how they look. The physical/genitalia that you are born with will be the most crucial aspect of deciding whether you are recognized as a "male" or "female" by others.

1.3 Objectives of Study

1. To get familiar with the concept of Transgender Identity in India and groups referring to this concept, e.g., Hijras, Aravanis, Kothis.
2. To review the historical and cultural background of the situation of transgender persons in Indian society, including their roles in mythology, literature and cultural practices.
3. To conduct an analysis of the socio-economic conditions of transgender persons, including their experiences of discrimination, unemployment, lack of education, and housing.
4. To investigate the legal framework and human rights protections based upon the ruling in *NALSA v. Union of India and the Transgender Persons (Protection of Rights) Act 2019*.

5. To examine the health & psychosocial challenges faced by transgender persons, including but not limited to, access to healthcare, mental health, & concerns related to HIV.
2. To develop recommendations related to social inclusion, & policy reform, towards enhancing the quality of life and achieving equality and dignity for transgender persons

1.4 Research Problem:

People who identify as transgender (or those whose gender identity does not correspond with the sex assigned to them at birth) are subject to comprehensive problems in India. Socially excluded from social (including cultural), economic, and political life, transgendered individuals often experience discrimination, unemployment, limited access to education, and are also without stable housing. Transgendered individuals experience limited medical access, including HIV care; hygiene; as well as problems that arise from the use of hormones, prescription drugs, tobacco, and alcohol. Additionally, there are legal issues preventing transgendered persons from marrying and adopting children. Various lawsuits have been filed against various governments (PIL WP No 400 of 2012 and PIL WP No 604 of 2013) which address issues raised by members of this community involving the denial or deprivation of basic human/transgender rights, including discrimination and/or lack of access to services that are available to all other citizens. According to both of these lawsuits, the transgender community in India is regarded as an ineligible entity under the Constitution of India for the following reasons: Limited social and cultural participation by family and community; restricted access to services, including education, health, and public area; and limited access to rights established under the Constitution of India, including the right to marry and the right to run for office; and consequently, the transgender community is treated as a non-entity in violation of Articles 14, 15, 16, and 21 of the Constitution of India.

1.5 Research Questions :

1. What has changed for Transgender persons living in India since *NALSA v. Union of India and the Transgender Persons (Protection of Rights) Act*, especially through the legal developments that have come about as a result of these cases?

2. Identify some of the main socio-economic issues that transgender individuals face, such as discrimination, unemployment, and education, and how they impact their overall quality of life.
3. Discuss how family rejection, stigma, and other social factors are related to mental health and wellbeing for transgender individuals.
4. Explore how intersectional issues caste, religion, and geography affect the experiences and marginalization of transgender individuals in India.

1.5 Hypothesis :

The paper outlines the research questions for this study. How do the legal recognition and protections afforded to transgender persons in India by landmark cases like *NALSA v. Union of India* and legislation such as the *Transgender Persons (Protection of Rights) Act, 2019*, translate into a real-life impact for transgender individuals? To what extent do social stigma, lack of public awareness, a socially entrenched culture of ‘othering’ [i.e., discrimination against the ‘other’], and lack of public understanding continue to lead to marginalization of transgender individuals? What role do bureaucratic procedures, particularly identity certifications, play in stymying the effective realization of rights for transgender persons? How does the limited access to education and employment opportunities render transgender persons economically vulnerable? What impact do family rejection and social exclusion have on the mental health and well-being of transgender persons? What effect do intersectional factors (such as caste, religion, region) have in compounding the challenges and discrimination that transgender persons face?

1.6 Research Methodology:

This research employs a doctrinal research methodology based upon the legal principles, statutes, constitutional provisions and judicial decisions regarding transgender rights in India. It provides an in-depth review of key developments in law affecting this topic, focusing on the landmark ruling in the case of *NALSA v. Union of India, the Transgender Persons (Protection of Rights) Act 2019*, and similar legislation. Research in this area is conducted almost exclusively using secondary sources, including books, peer-reviewed articles, government reports, law

journals, and online databases to develop an understanding of the socio-legal status of transgender persons. In addition to utilizing doctrinal research, we will make limited use of non-doctrinal sources, such as surveys, reports and existing empirical studies, in order to provide insight into the lived experiences and socio-economic conditions of the Hijra and Aravani communities. Thus, this methodology consists primarily of doctrinal research supplemented by some empirical sources, with the goal of creating a complete picture of each legal provision and its impact in practice.

1.7 Limitations of Study:

The study involves several shortcomings regarding its limitations with respect to its methodology. The data sources analysed for this investigation include secondary data, which could include, but are not limited to, books, journal articles, reports, legal documents etc. There is no guarantee that the use of secondary sources will result in a complete factual or accurate representation of the lived experience and contemporary reality of transgender individuals. Time and resources prevented the researcher from conducting extensive fieldwork and interacting with diverse transgender populations, e.g. Hijra and Aravani, to capture some of the generalised empirical depth of the investigation. Given the diversity of the transgender population, the findings may not encompass all geographical/transgender identities, variations, and/or intersectionality of the identities and cultures of the individuals being studied. The availability and veracity of the information compiled for this study may also be significantly impacted as a result of social stigmas and lack of acceptability. Additionally, there are also numerous evolving legal determinations pertaining to transgender rights made after the case of *NALSA v. Union of India* which may or may not have a bearing on the overall applicability of the findings in the long term. This study utilised a primarily doctrinal methodological approach, as it consisted largely of an examination of the legal principles, constitutional provisions, statutes, and case law related to transgender rights. Additionally, this study was not based on primary data collection, but rather consisted of a critical analysis of judicial determinations and legislative frameworks based upon secondary research material, e.g. reports and studies. However, secondary empirical references can be used in support of some of this study's findings.

1.8 Scheme Of Study :

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1.9 Review of Literature:

Since the term transgender was first created by psychiatrist John F. Oliven (Columbia University) in 1965, there have been many changes in how the concept of transgender as well as a transgender community is perceived. By 1984, the term "transgender" was an umbrella term that described many different things, including but not limited to "transsexuals, transgenderists, cross-dressers," and anyone who identifies as transitioning. By the time Leslie Feinberg's pamphlet "Transgender Liberation: A Movement Whose Time Has Come" was published in 1992, the term "transgender" was perceived as a way of bringing together all people

who do not conform to gender norms. As a result, by the early 2000s, the main terms that were being used under the umbrella of transgender were "female-to-male" (FIM) for men who transitioned from female to male and "male-to-female" (MTF) for women who transitioned from male to female. However, today these terms have largely been replaced by "trans man" and "trans woman," respectively, and "transmasculine" and "transfeminine" have become increasingly common as well. The shift in terminology of transgender from 1965 to the present can be traced back almost all the way to when the first conversations regarding gender non-conformity took place.



CHAPTER 2

TRANSGENDERS AND

INTERSECTIONALITY

Introduction:

Intersectionality is an essential framework for analysing the multiple and intersecting identities of transgender people in India. This concept describes how different types of identities (e.g. gender identity, caste, class, religion, regional, disability etc.) overlap and interact to create unique forms of privilege and discrimination. While all types of transgender people are marginalised because of their gender identity alone, this marginalisation is multiplied when someone has other socially stratified characteristics associated with their identity (e.g. caste) and further compounded by other social hierarchies that are deeply entrenched in Indian culture and society. For example, transgender individuals from lower castes and/or economically disadvantaged sectors of the population will likely experience more intense discrimination than those who are more privileged due to their social identities. Although certain landmark legal rulings such as the National Legal Services Authority v. Union of India have legally recognised transgender individuals through the provisions for their right to self-identify and the right to equality, transgender people's actual experiences of living [in] the world are still largely determined by their intersecting identities. Thus, an intersectional approach to studying the socio-economic conditions of transgender

individuals and to developing inclusive policy solutions based on the above will help ensure that the benefits of these protections will be available to all, rather than just to a small, privileged segment of the larger transgender community.



2.1 Definition of Transgender:

Academia and Law utilize the term “transgender” often to describe those with mismatched gender identity to their birth sex (gender identity being how one sees themselves internally and gender expression is one's externally expressed gender via behaviors, styles of clothing, voice, and/or physical appearance). It also means that those who fall under the transgender umbrella category have their own distinct identity (examples include: transgender men, transgender women, non-binary people, genderqueers, and intersex) whereas intersex pertains to one's biology and not gender identity alone.

Transgender is also culturally specific in terms of cultural identity; there are transgender cultural identities in different societies; for example: culturally specific transgender identities include but are not limited to Hijra, Aravani, Kinnar, and Jogappa (all will have distinct culture identities with different socio-religious roles) are present in Indian ethnography. In addition, in India, based on the landmark *National Legal Services Authority v. Union of India* Supreme Court ruling where transgender people were granted a new legal classification of “third gender”, their Fundamental Right to self-identification under the Constitution has become firmly established. The same judicial ruling was later put into effect by way of the *Transgender Persons (Protection of Rights) Bill*.

2.2 Identities of Transgender Persons:

This chapter provides the framework for contextually placing organizations, arrays of stakeholders, and other aspects of research that pertain to the study of gender identities within the context of India. It includes the guidelines to be followed in conducting analyses, an explanation of the types of transgender identities found in India, and the method by which analysis will occur. Transgender identities and the study of transgender identities in India have multidisciplinary applications, being studied across legal, social and human rights, and cultural spectrums. The following categories within the scope of transgender identities¹ and the study thereof will be the foci for the analysis of the data: With respect to the recognition of transgender individuals in Indian society as an identified category of individuals: Social Environment (socially excluded, discriminated against, denied access to public services, employment, education, etc), cultural

¹ Serena Nanda, *Neither Man nor Woman: The Hijras of India* (1990).

phenomena (customs and rituals) related to transgender communities², legal developments since *NALSA v. Union of India*³ (national court ruling which designated transgender persons as one of the three genders), and government programs and policies designed to support transgender individuals in their pre-existing social constructs. Additionally, the direct and indirect barriers experienced by transgender persons as a result of the lack of recognition of their identity will also be included and examined within the overall framework of proposed changes designed to create more inclusive methods for social reform.

India's transgender population⁴ is highly diverse and constantly changing. This diversity is rooted in cultural, religious, social, and legal considerations. The word "transgender" refers to a broad group of people who have been assigned a biological gender⁵ at birth that does not match the gender they see themselves as being. There have been many forms of transgender identity⁶ present in India since well before recorded history; they have long been an important part of India's social fabric. Various communities like Hijras, Kinnars, Aravanis, Jogappas, and Shiv-Shaktis have all existed for many years within Indian society. All of these identities are influenced by many factors and do not simply relate to a person's physical characteristics/factors. They are formed through various customs, rituals, and forms of community interaction. For example, Hijras often live together in formalized structures (i.e., with a guru-chela) while Aravanis (from Tamil Nadu) often are connected with various religious events (i.e., Koovagam) that connect gender to spirituality. Modern society has greatly expanded the definition of "transgender." Today's definition of "transgender" goes beyond simply male and female (i.e., trans men/trans women) and includes many more than just binary terms such as "non-binary" and "genderqueer." This reflects the growing understanding within society that people can be both male and female; therefore, gender is a continuum rather than two distinct categories.

2.3 Overview of the Identities of Transgender Persons as defined by the Cultural Norms and Customs of India:

Transgenders in India have a rich history where they form a major part of the cultural, social, and

² V. Veena, *Transgender Rights* (2015).

³ National Legal Services Authority Official Website.

⁴ "Right to Equality and Gender Identity", *Journal Article*. (Last visited March 3, 2026)

⁵ *Transgender Rights in India: A Study of NALSA Judgment*, *Journal Article*.

⁶ "Judicial Approach towards Transgender Rights in India", *Article*.

religious identity of this great country. Historically, Transgenders (Hijras, Aravanis, Kinnars, and Jogappas) played an important part in society and were an integral part of different ceremonies, receiving blessings, and acting as part of the royal court. However, during the colonial period, the importance of transgenders began to diminish after the passing of the Criminal Tribes Act, 1871, which persecuted and marginalized all communities included under the Criminal Tribes Act, including Transgenders. Transgenders continue to experience high levels of discrimination with regard to being excluded from society, discrimination, high unemployment due to a lack of educational qualifications, lack of access to medical facilities, and increased vulnerability to violence in contemporary India. However, legal protection for transgenders has progressed in family law, women's rights law, and civil rights law in recent years. One of the most significant landmarks in legal protection for all transgenders occurred in the case of National Legal Services Authority v. Union of India, when the Supreme Court stated that all transgenders have the right to identify themselves as "Third Gender" and enjoy all fundamental rights as a citizen of India, including the right to self-identify their gender identity. Most recently on December 12, 2019, the Transgender Persons (Protection of Rights) Act was enacted, aimed at prohibiting discrimination against transgenders in all aspects of life (i.e., education, employment, healthcare, public services) and providing the necessary welfare programme for all transgenders.

Transgender people's identities ⁷in India have been influenced by factors including biology and law but also by cultural, traditional, and social constraints. The society has recognized some forms of gender identity other than the male and female binary for many years. Transgender peoples' gender identities, whether they are collective or interacting with the community through cultural significance, are generally collective and community-oriented and not an expression of how someone feels about their own gender.⁸

- ✓ The hijra is one of the traditional groups that is well established in South Asia as a male determined person who takes on female characteristics (feminization) and lives in a structured community of men ruled by a guru. They are regarded as a part of the culture and play a significant role in many rituals associated with childbirth and marriage as the bringers of blessings. They are somewhat of a hybrid community ⁹of male to female identity based on their relationship to religion and myth.

⁷ "Challenges under Transgender Persons Act, 2019", *Legal Article*.

⁸ "Transgender Persons and Constitutional Rights", *Legal Study*. (last visited March 6, 2026)

⁹ "Legal Recognition of Third Gender in India", *Law Review*.

- ✓ The kinnar, in North Indian culture, is an example of the identity concept of kinnar being a traditional identity but based on a large collective of individuals. They generally use the term hijra interchangeably.
- ✓ Aravanis, in South India (particularly Tamil Nadu and Karnataka), have a different cultural aspect associated with them but are still very much associated with identity. The term of aravanis comes from the worship of Aravan, a mythical figure from the Mahabharata, and transgender women participate in annual festivals that represent marriage (the act of becoming a wife) and widowhood. Through this process of participation in a cultural event that involves the expression of gender through an act (marriage) helps explain how gender

There are numerous different identities associated with transgender persons in India. The nature and characteristics of these identities are somewhat fluid and are often defined specifically by regional and linguistic characteristics of the individual and the cultural norms associated with them. Hijra: Hijra are historically regarded as one of the most recognized and most longstanding distinct transgender groups in Indian society. Hijras are often categorized broadly as trans women, transgender men, intersex persons, and others who were assigned male at birth but identify in the feminine gender role spectrum and/or engage in an alternative gender identity behavior.

2.4 Challenges within Diversity:

The challenges that come from the trans community's diversity may include an issue of internal/external challenges associated with resources and recognition. There is diversity in sub-groups because sub-groups are defined by many different means (Caste, Class, religion, region, level of education, etc.) therefore, individuals from a trans (*Cisgender*) background will experience some degree of marginalisation depending on how it impacts their access to resources.

For example, the access that urban, educated trans individuals have to resources may be comparatively greater than that of their rural, uneducated counterparts.) Within sub-groups of the trans (or cis) population there are variations regarding representation, creating hierarchies, causing difficulties for advocacy collectively. Additionally, social stigma, discrimination, and violence towards the trans (or cis) population will ultimately inhibit their ability to access the above-mentioned resources (i.e. Healthcare, employment, and education).

Importance of Intersectionality:

The Value of Intersectional Perspective: An intersectional approach is necessary for understanding the different identities existing in the greater trans community. Intersectionality illustrates how different forms of oppression, such as gender identity, caste, class etc., intersect and compound the marginalization of a group of individuals. By understanding these intersecting identities, researchers and policymakers are able to create solutions which are specific to the different needs of the various communities within trans populations, rather than taking a "one size fits all" solution.

Aravanis, in South India (particularly Tamil Nadu and Karnataka), have a different cultural aspect associated with them but are still very much associated with identity. The term of aravanis comes from the worship of Aravan, a mythical figure from the Mahabharata, and transgender women participate in annual festivals that represent marriage (the act of becoming a wife) and widowhood. Through this process of participation in a cultural event that involves the expression of gender through an act (marriage) helps explain how gender

There are numerous different identities associated with transgender persons in India. The nature and characteristics of these identities are somewhat fluid and are often defined specifically by regional and linguistic characteristics of the individual and the cultural norms associated with them. Hijra: Hijra are historically regarded as one of the most recognized and most longstanding distinct transgender groups in Indian society. Hijras are often categorized broadly as trans women, transgender men, intersex persons, and others who were assigned male at birth but identify in the feminine gender role spectrum and/or engage in an alternative gender identity behavior.

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Conclusion:

In short, transgender individuals are a diverse group whose differences illustrate how complicated human identities are and how they transcend traditional gender categories. Teasing out, understanding and fostering this diversity will enable society to foster inclusivity of transgender individuals, legally protect them, and socially accept them. Although there has been much advancement with regards to the legal recognition and protection of those in the transgender community, there is still much work to do to resolve the multiple challenges facing the different groups within the community. To achieve these objectives, one must take a nuanced, inclusive, and intersectional approach to ensure all transgender individuals (regardless of their specific gender identity or background) can enjoy dignity, equality, and full participation in society.

CHAPTER 2

CULTURAL AND HISTORICAL VIEWS OF TRANSGENDER PEOPLE IN INDIA ¹⁰

Introduction:

The understanding of transformatively gendered populations within India's rich culture and history is multilayered, comprising various elements that include traditional customs, mythology, and social behaviours. Unlike our current view of gender being a binary construct, the ancient societies of India relied upon multiple gender classifications based on their understanding of masculinity, femininity, and many more. As such, transgender individuals were acknowledged as belonging to different gender classifications; however, they filled a variety of roles across cultural, spiritual, and social contexts. Unfortunately, as time passed, these populations experienced increases in violence and marginalisation due to colonialism and other forms of oppression. Therefore, the evolution of gender identity in India has gone through various stages ranging from acceptance of diverse genders to exclusion from mainstream society. Fortunately, the last stage of this evolution is to advocate for recognition and rights for transgender individuals.

3.1 Mythological and Religious Perspectives:

Myths and Religion: The Many Genders in Holiness Indian epics and ancient scriptures allude frequently to the possibility, acceptance and awareness of gender fluidity before it became an accepted norm. In 'The Mahabharata', Shikhandi, who is born female but later chooses to identify as male, plays an essential role in the battle of Kurukshetra and greatly influences the outcome of that battle. Arjuna also transformed into a female transgender woman named Brihannala while in exile for fighting on behalf of Dharma (righteousness) at Mahābharata. In 'The Ramayana', we see references to individuals who do not conform to male/female roles and who are blessed by God Rama for their devotion. The concept of Ardhanarishvara (God), which combines the male and female deities of both Shiva and Parvati, is a cornerstone of Hindu beliefs, where philosophical acceptance of gender fluidity existed in ancient India. This paragraph focuses on the views towards gender diversity/gender fluidity based upon the "myth"

¹⁰ *Indian Journal of Gender Studies.*

of how these genders will eventually be reconciled within religion.

3.2 The Traditional Roles and Social Structure of Transgender People in India:

Transgender persons have traditionally held important positions in the cultural history of India as members of recognized groups like Hijras, Kinnars, and Jogappas. Transgender people were frequently viewed as being associated with aspects of religious life, particularly the performance of blessings at both childbirth and marriage. Additionally, they were seen to possess some type of spiritual power or connection. During the Mughal era, transgender individuals were employed as advisors in the courts and had many management roles as well as being the protectors of harems; thus, they had a perception of being held with respect and were viewed with authority. As a result, their presence in the arts and cultural lives of society was considered both important and significant.

3.3 History of Transgender in India :

The history of transgender people in India has been a complicated path: starting from being a part of society, going on to being marginalized, and then re-emerging again in more recent times. Transgender identities were recognized not only socially, but also (in many cases) within the cultural and spiritual realm during ancient India. Within Hindu mythology and classical texts you will find numerous references to gender diversity. Characters such as Ardhanarishvara represent the fusion of male and female energies, while Shikhandi and Brihannala demonstrate the willingness to accept nonconventional gender roles. Ancient texts such as Kama Sutra reference “tritiya prakriti” (third nature) which further indicates the social acceptance of those considered to be outside of the two-gendered system. Historically, this period also saw an association between Hijras (the historic transgender community of India) and most ceremonies that were considered auspicious (such as births and weddings). This association allowed Hijras to have a specific, yet at times marginalized, position in society. During the Mughal period, many eunuchs, or transgender individuals to us today, were given high-level roles within the governmental and administrative structure of India. They worked in the royal courts as advisors, guards of harems (i.e., areas reserved for a ruler's concubines), and custodians of sensitive matters because they were trusted by their employers. The eunuch's presence in politics and government signified the degree to which they were accepted in the establishment. With the arrival of the British, this acceptance

and respect for eunuchs and transgender people eventually declined. The turning point came with the passage of the Criminal Tribes Act; specific communities within India were designated as "criminal" and were monitored, restricted, and treated with social stigma.

The Criminal Tribes Act perpetuated discrimination, leading to widespread marginalisation of transgender individuals and eunuchs, as well as the loss of their traditional roles and the stripping away of their dignity. The Criminal Tribes Act was repealed after independence, but the stigma associated with transgender communities persisted among the general population. For many years, they were socially and economically excluded and had very few opportunities, resulting in many resorting to begging or engaging in sex work. Activism and the discussion of human rights began to raise awareness of the discrimination experienced by transgender people only in the late 20th and early 21st centuries. This culminated with a landmark Supreme Court of India decision in *National Legal Services Authority v. Union of India*, which recognised the transgender community as a "third gender" and affirmed their rights as fundamental. At this point, the trajectory of transgender individuals began to shift from that of historical discrimination to one of legal recognition as a "third gender," thereby restoring dignity and equality for transgender individuals.

3.4 Post Independence and Modern Legal Social Developments:

Changes after Independence, While the Indian Constitution provides equal fundamental rights to everyone, transgender individuals continued to be treated as outsiders under India's laws and regulations after the new country was founded. Negative perceptions about transgender individuals and their significant discrimination against them, as well as their lack of recognition and acceptance, have led to continued marginalization of the transgender community. Nonetheless, there has been greater activism and advocacy to advance transgender rights organizations beginning in the late 20th through early 21st centuries, thereby spurring greater development in terms of recognizing both legal and social rights of transgender people. Legal and Social Recognition Today, *The National Legal Services Authority v. Union of India (2014)* Supreme Court of India decision was a pivotal decision that declared that transgender persons would now be recognized as a third gender and confirmed that they possess the legal right to identify themselves and enjoy respect, dignity, and equality under the Constitution. The *Transgender Persons (Protection of Rights) Act of 2019* was then passed to provide a comprehensive framework to prohibit discrimination and to promote welfare for transgender persons. However, society is still evolving, and transgender persons continue to experience issues accessing education, healthcare, and employment. The presence of transgender people in India predates modern history and is

deeply rooted in culture, society, and religion. Their identity has undergone a transformation throughout various periods of time; once receiving acknowledgement and respect - particularly during ancient times, to ultimately facing marginalization under British colonial rule. Since independence in India, members of this community have slowly been able to reclaim their rights as citizens of this country. In Ancient Indian society, non-binary identities¹¹ were not only identified but were sometimes even celebrated by society; there were many examples throughout various civilizations across India during its history where people acknowledged the existence of more than two genders. For instance, Hindu philosophy¹² referred to more than just male and female genders; people whose identities did not conform to either gender could be accepted within this culture. In ancient Indian texts, the word 'tritiya prakriti' was used to describe all individuals who did not fall within the two traditional gender categories. Additionally, many of these folks played significant roles in royal courts, religious rituals, and social events.

3.5 Inheritance Rights of Transgender:

Historically, transgender people have been present in India. There are many historical scholars and judges who have written about the acceptance and inclusion of transgender individuals in ancient India, which changed dramatically with the advent of colonialism. *The Criminal Tribes Act of 1871* made transgenders criminals by requiring them to be registered as such, and also made it illegal for them to have property outside their own home. This criminalisation was the result of British ideologies, and of the complex intersections of local values and practices, including those of elite Indians. *The 2011 amendment to the Karnataka Police Act* also attempted to criminalise transgender individuals by requiring registration of transgender persons to control their alleged undesirable activities - this law is now also repealed due to the same reasons stated above, in addition to the LNLST decision by *The Supreme Court on April 24, 2014*. As a result of the Supreme Court ruling (*NALSA v Union of India*), transgender rights are fully protected under all the constitutional protections. The Court found that all the constitutional provisions are gender-neutral, and that transgender persons are included in the protection of all the fundamental rights. However, because the issues before the Supreme Court did not define inheritance and property rights, the Court specifically called out the issues faced by transgender persons trying to exercise their rights to inherit property. The Court stated that the lack of definition of transgender persons in relation to their ability to inherit property can be attributed to: The existence of gender-specific

¹¹ *Journal of Constitutional Law and Policy*.

¹² *International Journal of Law Research and Policy*.

laws governing property rights; The identification of transgender persons. This is the only national-level acknowledgement of the lack of property rights for transgender persons.

3.6 Gender Representation Within Mythology and Religious Texts:

Indian mythology contains many examples of the acceptance of Gender¹³ fluidity and inclusiveness.

- ✓ Ardhanarishvara - A combination of male and female (Shiva and Parvati). The unity of both genders is symbolized in this myth.
- ✓ Shikhandi - A transgender individual within the epic of the Mahabharata, whose role within the story ultimately leads to the defeat of Bhishma.
- ✓ Brihannala - A character in the Mahabharata, who assumed a female identity during his exile.
- ✓ Mohini - The avatar assumed by Vishnu that removes the issue of discrimination against transgenders and shows divine transformation between genders.

3.7 Gender and Identification:

Transgender people may face difficulties with identification and succeeding to an inheritance due to lack of documentation, valid marriage or evidence of adoption. Additionally, the inability to provide identity documents will also affect the transgender individual's right to inherit by denying them the usual assurances available to other citizen inheritors. According to a 2015 survey in Kerala, 76% of transgender individuals did not have the ability to register for their perceived gender identity and 81% of transgender persons would like to alter their gender identity but have no means of support. Additionally, only 8% of transgender persons possess an Aadhar Card or Voter ID that indicates their transgender identity; therefore, an individual cannot prove their identity, familial relation and residency, all of which are necessary to qualify for inheritance, without legal proof of gender identity through governmental identification..

The lack of a binary classification of male and female results in transgender individuals being unable to legally prove their transgender identity and therefore cannot be legally considered. Likewise, without the means of evidence supporting marriage or adoption, a transgender individual will not be able to inherit due to their inability to prove their relationship via legal means. Example:

¹³ *Economic and Political Weekly*.(last visited March 8, 2026)

A person, born female, elects to undergo sex reassignment surgery and identifies herself as female. That person cares for a female child and desires to legal. A compilation of all court orders from 1950 onwards that included reference to the term transgender produced a total of 129 decisions i.e. 8 Supreme Court of India made by the Supreme Court, 116 High Court decisions and 5 decisions from other courts & tribunals. All of these cases could be classified into four categories:

- (i) institutional cases e.g. *NALSA v Union of India or Navtej Singh Johar v Union of India*,
- (ii) specific cases concerning inheritance rights for trans persons,
- (iii) construction of gendered laws, and
- (iv) claims regarding identification documents. The two opportunities that courts have had to interpret inheritance rights have occurred in two cases, both being in the state of Madhya Pradesh. The first was *re Ilyas v Badshah Alias Kamla [1990]* case.

In this case the appellant asserted that Munilal (a transgender guru) made a will in favour of the appellant. The respondent also made the same assertion but he had an additional assertion: the respondent was Munilal's chela while the appellant was not. Ultimately the High Court found that the will purportedly made by Munilal in favour of the appellant was a forgery however even if the will was not a forgery the High Court made a finding that because Munilal was a Muslim, the deceased Muslim could only leave more than 1/3 of their property as a result of the customs of their community.

Conclusion:

To summarize, the cultural and historical context of transgender people in India illustrates their journey, beginning with early acceptance and incorporation, colonisation leading to marginalisation (and discrimination), and present day struggles for equality and validation. Transgender people were once a valid part of Indian life; this is illustrated by ancient documents and traditions that show how ancient India accepted gender variance through various means. However, colonial governments imposed rigid laws on what could be considered gender appropriate through the exclusion of transgender individuals. Current day advancements and legal reforms, such as progressive, inclusive rulings, are returning a measure of dignity and rights to the transgender population. However, to have true inclusion of transgender people in India, both legal reforms must happen, and there needs to be a change in society's attitudes toward transgender individuals so they can reclaim their rights to be part of the social and cultural fabric of India in a

dignified manner.

CHAPTER 4

SOCIO – ECONOMIC STATUS OF TRANSGENDER PERSONS

Introduction:

Despite being legally recognized after *the NALSA case*¹⁴(*NALSA v. Union of India*) in India, transgender persons still experience socio-economic challenges. There is a high stigma placed on transgender persons in India and they are discriminated against and do not have access to institutional support.

4.1 Social Exclusion and Marginalization:

Transgender persons¹⁵ are often excluded from mainstream society. They are often abandoned by their families and placed in segregated areas or hit or discriminated against based on their gender identity. They are also often shunned from the community¹⁶ by way of social stigma and cultural beliefs that disallow transgender individuals from participating in community life. This exclusion results in many living in separate communities, thus limiting their ability to engage in societal activities.

4.2 Discrimination:

Discrimination occurs at multiple levels, including but not limited to institutional discrimination (e.g., in schools and workplaces) and verbal, physical and sexual abuse. At the same time, transgender persons are frequently unaware of their legal rights¹⁷ and protections based on the

¹⁴ *United Nations Development Programme.*

¹⁵ *From NALSA to Navtej: Evolution of LGBTQ+ Rights”, Law Review.*

¹⁶ *“Social Exclusion of Transgender Persons in India”, Research Article.*

¹⁷ *Bureaucratization of Trans Identity in India*", *LiveLaw Article*.(last visited March 10, 2026)



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Transgender Persons (Protection of Rights) Act (2019) or do not have access to legal protections based on their lack of legal counsel. After the recognition of transgender persons as a legal entity has occurred, transgender persons still experience discrimination based on societal attitudes toward transgender persons. Once an individual has found out their gender identity, the discrimination starts immediately. People who are a part of the transgender community face many forms of discrimination when they try to find jobs, rent a home or enter any of the public spaces. They do not have the same rights and do not appear to be as normal, because society does not recognize them as equal citizens to the rest of the population. The third gender does not have any access to formal education, if they face discrimination. Many third gender individuals survive solely off of begging and prostitution while their lifestyle makes them appear to be a burden to society; third gender individuals can often be found in a train or at a wedding begging (*Priti Sharma, 2014*)

4.3 Self Determination of Identity VS Verification of Eligibility for Entitlements:

In recent times in India, self-determining one's identity vs verifying one's eligibility for entitlements: What does it mean? can be understood as being a major topic of debate within the context of transgender rights law. This has changed dramatically since the landmark judgment in the case of *National Legal Services Authority v. Union of India* and subsequently the enactment of the *Transgender Persons (Protection of Rights) Act, 2019*. The main area of concern is to reconcile the right of individuals to determine their gender identity as an extension of their autonomy with the State's duty to have control over how people access certain welfare benefits. At the same-time, there exists another concern with verification of eligibility; verification would require the State to establish qualifications and methods of verifying that individuals can access and receive benefits like reservation, welfare schemes, and social security.

4.4 Lack of Livelihood Options:

Transgender people in India continue to face major barriers to access to jobs and livelihoods, making them socially and economically marginalized. Despite constitutional guarantees of equality and non-discrimination, transgender individuals often encounter systemic obstacles in accessing education, skill development, and formal employment. They face discrimination early on; many drop out of school because of bullying, stigma, and no support from institutions and

therefore have low qualifications and are unprepared for employment by the time they seek work. Discrimination and prejudice on the part of employers often lead to denial of job opportunities, workplace bullying, and exclusion from both public and private sectors for many transgender individuals. As a result, a large proportion of the transgender community is forced to rely upon traditional and/or informal means of making a living, such as begging (badhai), performing at special events, and engaging in sex work, which exposes them to violence, exploitation, and health risks. While the National Legal Services Authority v. Union of India case established transgender rights and the Transgender Persons (Protection of Rights) Act, 2019 recognizes and prohibits discrimination in employment and promotes welfare schemes through a rights-based perspective, these laws are not effectively enforced. Factors such as lack of awareness, absence of inclusive workplace policies, and lack of vocational training programs contribute to this poor implementation.

Transgenders have limited options for employment, little access to bathrooms/toilets, and have also experienced discrimination when trying to access all of the facilities and amenities. Transgenders face many of the same issues in prisons, hospitals, schools and other facilities. Many employers will not hire transgenders even if they are qualified and have previous experience. As a result of these lack of employment options, many transgenders are forced to engage in sex work in order to survive.

4.5 Unemployment and Economic Challenges:

There are very few employment opportunities available to transgender persons. Employers typically do not want to employ transgender persons because of prejudice. Additionally, many transgender persons have very limited qualifications as a result of not being able to obtain education and job training. This results in many transgender persons being forced into informal employment such as begging. Transgender unemployment in India is a significant social-economic problem resulting from discrimination, poor education and seeking social non-inclusion. Although transgender individuals have legal recognition (*NALSA v. Union of India*), many transgender persons do not have access to formal employment opportunities. The main reason for this is discrimination in the workplace, where transgender persons are frequently rejected because of employer prejudice and stereotypes. Furthermore, even when employed, many transgender individuals are harassed or forced to leave their jobs. Other significant reasons include educational disadvantage due to bullying, stigma and family rejection, leading to many transgender individuals

dropping out of school early. As a result, their foundational skills and qualifications for jobs are limited.

4.6 COVID-19 and The Vulnerability of Transgenders:

A Crisis Within a Crisis "While the world comes together to confront COVID-19, India's transgender community has been left to combat the pandemic and its devastating impact on their lives alone," Amnesty International said in a report. Members of India's transgender community suffer from structural discrimination and are now even more severely affected by the double impact of COVID-19 and socially distanced living conditions. A Civil Society Organization (CSO) in Karnataka, India conducted a study of 1,387 workers across multiple sectors and within some marginalized communities in the state. It found that 82% of all respondents did not have enough money to feed their families or pay for housing. The respondents included people living on the margins of society including sex workers, transgender people and nomadic communities. They reported that almost all of the individuals in these communities have not received any assistance from the Government during the COVID-19 outbreak. Fewer than 5% of those surveyed who have had access to medical care during this pandemic have received the services they need. Many members of India's transgender community are daily wage earners who rely on begging and other means of survival. They have been severely impacted by social distancing as most do not have any documentation such as an Aadhaar card, ration card, voter ID, or bank account in their chosen name and gender. As a result, they also do not qualify for government provided support services such as the distribution of food and pensions as part of the Government's social security system.

4.7 Interventions and Policies:

The central and state governments, since then, have taken a few small steps toward the welfare and development of the transgender community. They have conducted impediments to this population through their Ministry of Social Justice and Empowerment. They formed an 18 member committee made up of academic and bureaucratic professionals, as well as four members¹⁸ from the transgender community, to research the problems of transgender persons in the country and offer solutions by *October 22, 2013*. This committee submitted its final report to *the Ministry of*

¹⁸ Ministry of Social Justice Report on Transgender Welfare.

*Social Justice and Empowerment on January 27, 2014*¹⁹. The Supreme Court of India in its landmark ruling on April 15, 2014 recognized substantive rights for the transgender community in respect to their entitlement to take advantage of equal opportunity and equality as provided by *Articles 14, 15, and 16 of the Constitution of India*. In 2019²⁰, the Government of India promulgated a statute under the Senate to promote equality for all citizens and to prevent discrimination against citizens because of their gender identity by prohibiting discrimination based on such grounds. Innovative Policies ²¹at the State Level Some progressive states have moved beyond the national mandate and created inclusive policies. For example,

- ✓ Kerala: Became the first Indian state to enact a Transgender Policy in 2015.
- ✓ Provides free gender confirmation surgeries at government hospitals.
- ✓ Provides monthly pensions and scholarship funds for education to transgender individuals.

Conclusion:

Transgender population's socio-economic standing in India still demonstrates systemic exclusion and discrimination due to the deep-rooted nature of the adverse experiences encountered throughout the country and progressive legal recognition not providing relief. Limited access to education, employment, healthcare, and housing continues to lead to the marginalisation of many transgender individuals' livelihoods and contribute to the cycle of poverty and vulnerability. Landmark decisions, such as the *National Legal Services Authority v. Union of India and the Transgender Persons (Protection of Rights) Act 2019*, provide a strong basis for the equality and non-discrimination of transgender individuals but are hampered by poor implementation, social stigma, and lack of awareness. Real, long-term socio-economic empowerment of transgender people can only occur through a holistic approach (i.e., inclusive education; targeted skills development; employment opportunities; social security programmes; and the effective enforcement of legal protections). Additionally, changing society's attitude toward accepting and treating people with dignity is critical to creating genuine socio-economic inclusion and improving transgender people's socio-economic conditions, thus, allowing them to fully and equally participate in all aspects of life. If government and civil society organisations work together, and

¹⁹ *Legal Service India*.

²⁰ *Census of India, 2011 (Transgender Population Data)*.

²¹ "Legal Recognition of Third Gender in India", *Law Review* (last visited March 11, 2026)

community members work collaboratively in a coordinated fashion, transgender individuals can achieve true inclusion and improved socio-economic conditions.

CHAPTER - IV

HEALTH &

MARIGINALIZATION

Introduction:

Everyone has a right to access healthcare, yet in India, transgender persons face extreme barriers when trying to access even basic healthcare services due to discrimination and stigma. When accessing health services, transgender persons commonly experience insensitive treatment, being refused treatment and lack of confidentiality. There are very few trained healthcare providers who are able to provide care that meets the needs of transgender persons. Access to essential components of transgender healthcare, such as hormone treatments, mental health support and gender-affirming procedures, is often limited and/or not affordable for many transgender persons. Many resort to untrained providers, which places their health at risk. Recent legal initiatives, including the National Legal Services Authority v. Union of India case and the Transgender Persons (Protection of Rights) Act of 2019, affirm the principle of non-discrimination in healthcare access but there are still substantial gaps in implementation. The health of transgender people²² is a key part of their overall health as individuals. As a result of stigma, discrimination and lack of policies which are inclusive, the ability for transgender persons to gain access to adequate health services in India is very limited. This section will address about health and marginalization of transgenders.

5.1 Limited Access to Healthcare among Transgender Persons:

One of the greatest challenges met by transgender individuals in India today is limited access to adequate healthcare. Despite protections under the Constitution, along with recognition of the transgender identity in the case of *NALSA vs. Union of India*, transgender persons still lack access

to adequate medical treatment. Transgender persons experience discrimination and stigma when accessing healthcare, including treatment received from doctors, nurses, and hospital staff who

²²*Parliamentary Debates on Transgender Bill, 2019.*



often have a lack of sensitivity toward and insufficient awareness of transgender issues. Transgender persons experience disrespectful treatment, denial of treatment, or inadequate care in the course of receiving care and thus, avoid attempting to access hospitals²³ even when they need emergency medical assistance. Lack of access to transgender-specific healthcare²⁴ facilities also contributes to this problem. The majority of hospitals do not offer gender-affirming healthcare services (e.g., hormone therapy, counseling, sex reassignment surgery), and, where available, the services are prohibitively expensive and inaccessible. Additionally, there is a lack of medical professionals educated and trained to meet the unique healthcare needs of transgender individuals, which results in health professionals²⁵ being unable to provide appropriate diagnoses and treatment. The financial cost of accessing healthcare is a significant barrier to obtaining necessary medical care for transgender individuals. Due to their social exclusion from participation in the workforce or being employed in low income jobs, many transgender individuals are unable to afford healthcare. In addition, the health insurance programs that are available do not provide adequate coverage for transgender persons, either because they do not exist or are limited in scope.

5.2 Lack of Gender-Affirming Healthcare:

The lack of access to gender-affirming healthcare is one of the most pressing issues facing transgender people living within India, as it negatively impacts both their physical and mental health. Gender-affirming healthcare includes all medical services that are aimed at helping a person to change their body to match their gender identity, such as hormone therapy, psychological counselling, and gender-affirming surgical procedures. Despite these services being necessary for a transgender person's physical body matching his/her gender identity, there are very few locations within India where transgender persons can access gender affirming healthcare. There are numerous barriers that prevent a transgender person from accessing gender affirming healthcare including social, economic, and systemic barriers. One of the main barriers preventing transgender persons from accessing gender-affirming healthcare is the lack of available resources for hormone therapy and gender-affirming surgical procedures. Very few urban hospitals and clinics in India have the capability to provide gender-affirming medical treatment to transgender persons; therefore, most transgender individuals living in rural or semi-urban areas are unable to access many of these services. Furthermore, the smaller number of medical providers trained and experienced

²³ *Law Commission Reports on Gender Identity.*

²⁴ *PRS Legislative Research Summary on Transgender Act.*

²⁵ *International Human Rights Law Materials on Gender Identity.* (last visited March 12, 2026)

in providing transgender-related medical services (i.e. hormone therapy) means that their treatment may not be effective or adequate. The cost of gender-affirming medical procedures also represents a significant barrier to accessing these services due to their high costs. Most transgender individuals in India are economically marginalized and, as a result, cannot afford to pay for gender-affirming medical procedures. Furthermore, in many cases, gender-affirming treatments are not fully reimbursed by the various types of insurance policies available; therefore, regardless of whether the services are available and/or accessible, the costs render these medical services unavailable to many transgender persons. Many transgender persons are negatively affected by the limitations placed on their access to resources for necessary medical procedures, as these limitations also negatively affect their sense of identity and mental well-being.

5.3 Mental Health:

The mental health of transgender persons is at significant risk because: Transgender people tend to suffer from a much higher incidence of depression, anxiety and suicidal ideation due to major social rejection and discrimination; Rejection by family; bullying; and complete social isolation affect the ability of transgender persons to be mentally well; Training of mental health practitioners to provide mentally healthy services for transgender persons is lacking. The Supreme Court ruling of *NALSA v. Union of India* which recognised the dignity of transgender persons and their right to have their gender identity acknowledged under *Article 21* reflects the importance of mental health as an integral part of a person's right to life.

5.4 Sexual Health:

Many socio-economic factors contribute to the disproportionate incidence of HIV/AIDS among transgender individuals as well as the higher incidence of other STIs. While there are some transgender individuals who do not engage in sex work, many do due to lack of access to education and employment options, which forces them into these high-risk occupations. Other social and economic factors, such as ignorance (relative to safe sex, HIV testing, etc.), stigma, etc., compound the degree of sexual health vulnerability transgender persons experience (especially through lack of access to health care services). Transgender individuals may also lack access to preventive measures (regular STI testing, HIV counselling and education) due to fear of discrimination and, therefore, either do not access them or don't utilise them adequately. In order to address the sexual health influences on transgender individuals, trans-specific health programs, trans-specific awareness campaigns, and trans-inclusive health care policies are necessary to advance the sexual

health of transgender persons and improve their health outcomes. Transgender individuals face a high risk of contracting HIV, particularly among transgender women.

There is a lack of access to preventive services; Stigma discourages individuals from obtaining medical services that would be beneficial to their health; and The government and many other organisations (including the National AIDS Control Organisation) are taking steps to provide targeted services to groups at high risk (including transgender individuals). Despite this, there remain ongoing gaps in service provision to provide appropriate outreach activities and/or are inclusive of the needs of transgender individuals.

5.5 Substance Abuse:

Transgender people are at high risk for developing (substance use disorder) SUD due to the severe social stigma, discrimination, and marginalization they typically experience in society, such as being rejected by family, being denied an education or job opportunity, and being harassed in public spaces. The cumulative effects of these stressors result in emotional and physical health problems, pushing many transgender people to self-medicate with drugs, alcohol, or other addictive substances. The primary reason for substance abuse in the transgender community is poor mental health.

The trauma of living with social isolation (loneliness), discrimination, and lack of acceptance can lead to high levels of depression, anxiety, and trauma, leading individuals to use substances to escape their psychological pain. Many transgender people also experience difficulties in accessing proper mental health care or counseling services, further adding to their overall issues with mental health and substance abuse. Economic hardship is another significant factor. Many transgender individuals face limited employment opportunities and are forced to engage in unstable or dangerous forms of employment (begging or sex work) where they are more likely to be exposed to substance abuse. Furthermore, individuals working in unsafe work environments may also be influenced by their peers and may experience higher rates of addiction due to their surroundings. In addition, there is little education regarding the negative effects of substance abuse, and few rehabilitation programs targeting this population exist.

5.6 Harassment²⁶ and Stigma:

The stigma surrounding the LGBT community²⁷ and the associated harassment²⁸ continue to be an obstacle for many of its members. Horrific characterizations of LGBT individuals that have persisted for over 100 years (i.e., being viewed as "sick," "immoral," or "sexually dangerous/abnormal") have been gradually diminishing in recent years for gay men and lesbians; however, many transgender individuals continue to be ridiculed by a society that does not understand them. The stigma attached to being transgender manifests itself across a variety of contexts, which make transgender people vulnerable to the flurry of anti-transgender legislation²⁹ introduced by some legislators seeking to gain cheap political capital, and to family members, friends, or co-workers who disown them once they learn of their transgender status, or to persons who harass, bully, and physically assault transgender individuals due to their being transgender.

5.7 Marginalization:

The discrimination experienced by transgender communities in India has multiple layers, with its roots being found in discrimination of the past, social stigma, economic discrimination, and institutional neglect. While many Trans-genders were accepted within the traditional culture of India, during the colonial period there was a change in this with the Criminal Tribes Act declaring specific communities (including eunuchs) to be "criminal" causing a further institutionalised stigma and marginalisation of those groups. This stigma is evident in many areas of their lives and continues to exist today. In the case of transgender persons, the vast majority are abandoned by their families at a young age and subsequently do not receive financial and emotional support, and they are also largely excluded from formal educational systems. As a result of bullying, harassment, and lack of inclusive policies within education, many are forced to leave school at an early age, limiting their future prospects. Ultimately this results in a substantial portion of the transgender population turning to informal and insecure means of supporting themselves (e.g., begging, sex work, participating in ceremonies) reinforcing cycles of poverty and marginalization

²⁶ "From NALSA to Navtej: Evolution of LGBTQ+ Rights", *Law Review*.

²⁷ "Legal Recognition of Third Gender in India", *Law Review*.

²⁸ Flavia Agnes, *Law and Gender Inequality*.

²⁹ Amita Dhanda, *Legal Order and Mental Disorder*. (last visited March 14, 2026)

Because of discrimination against transgender individuals in society, they face many obstacles to free and stable employment while also having a difficult time developing their skills. Therefore, there are many employers who are not willing to hire transgender individuals, leading to high levels of unemployment and causing them to struggle with financial security. Additionally, transgender individuals have to deal with many obstacles when it comes to getting health care treatment—including being discriminated against by medical professionals, a lack of knowledge about how to treat transgender patients, and a lack of gender-affirming treatments. Because of this, many transgender individuals rely on unqualified practitioners for their health care, which presents a danger to their health. The rate of depression, anxiety, and suicidal thoughts is very high in the transgender community because they continue to be rejected by society and are isolated.

Although there have been some progressive steps taken towards the recognition of the rights of transgender individuals, there continues to be a significant gap between legal recognition of the rights of transgender individuals and actions taken to enforce those rights. The ruling in *NALSA vs. UOI* was a landmark ruling from India's Supreme Court, which recognized that transgender individuals are part of the “third gender” and granted them all of the fundamental rights that all human beings are entitled to, including the right to dignity, equality, and the right to define who they are. However, the enforcement of these rights is inconsistent while continuing to occur. The Transgender Persons (Protection of Rights) Act was enacted to eliminate discrimination against transgender individuals and provide them with specific welfare measures to ensure their well-being, but this law is criticized for creating procedural barriers to individuals obtaining certifications from governmental authorities and for lacking sound measures concerning reservation and effective remedies. In addition, transgender people experience violence, abuse and harassment in public places, workplaces and within their own communities, with little recourse to justice because of fear and stigma and their lack of legal knowledge. They also find that they have significant problems obtaining identity documents, housing and accessing basic public services, further alienating them from the mainstream. Therefore, the marginalisation of transgender communities in India is a structural phenomenon that carries legal, economic and cultural roots just as it is a social issue. Although recent court rulings demonstrate progress towards social equity among transgender individuals, real integration will require implementation of existing laws and establishment of awareness programs, social acceptance and targeted policies that facilitate transgender individuals' equality, dignity and empowerment in society.

CHAPTER 6

FAMILY

DENIAL

Introduction:

The rejection, neglect and/or inability to accept a transgender individual by their family. In a collectivist society like India, the family is the primary influence on an individual's emotional, social and economic health. Thus, being rejected by one's family can have a significant impact on an individual's life. The rejection of a transgender individual by their family leads to other difficulties, including social stigma, misunderstanding, and pressure to conform to the traditional polar opposite gender roles, and may ultimately result in conflict, abuse, or expulsion from the household. This type of early rejection hinders an individual's ability to develop a positive sense of identity and feel belonging; and exposes them to more pervasive forms of marginalization throughout the society around them. Family Denial: A Major Theme in the Lives of Transgender People. The experience of family denial³⁰ is one of the most common and painful experiences for transgender individuals in India. Families who are supposed to offer spirit and security are often the first place where they find rejection, abuse and exclusion by people in their families.

6.1 The Nature of Family Denial:

Many transgender persons have parents and family members who do not accept their gender identity. Families often view gender non-conformity as a stigma or "dishonor" to themselves, and therefore the rejection of their child. Due to the pressure to conform to gender assigned roles, many transgender individuals experience emotional distress. Family denial is also an additional barrier, as families deny transgender individuals financial and emotional support³¹; consequently, many

transgender persons find themselves in economically vulnerable situations. Therefore, in order to

³⁰ Nivedita Menon, *Seeing Like a Feminist*.

³¹ *Research Papers on LGBTQ+ Rights Movement in India*.



survive, many transgender persons rely on informal and insecure forms of income such as begging or providing sexual services. Furthermore, the absence of strong reservation and job support policies exacerbate the problem of transgender employment. Overall, the unemployment of transgender persons³² is primarily the result of systemic discrimination and social barriers that restrict them from obtaining equitable and equal access to jobs.

6.2 Kinds of Violence Within the Family:³³

Transgender individuals often suffer many different types of abuse from their family members. Unfortunately, this type of abuse occurs often, even though it is usually hidden from others. Family members often use physical violence to hurt their transgender family members, such as beating, confining, or inflicting other bodily harm on them. The purpose of this violent act is to "correct" or to eliminate the transgender person's gender non-conforming behaviours. Many transgender individuals also encounter other forms of abuse, including emotional and psychological abuse, throughout their lives. This abuse consists of consistent humiliation, insults, threats, rejection, and lack of love from other family members causing the transgender person to suffer low self-esteem and mental health issues. Another form of family abuse that a transgender person may experience is verbal abuse by family members, which can consist of being labelled as "abnormal" and/or as being a source of shame to the family. This form of verbal abuse only serves to reinforce the internalised stigma and social isolation of transgender people. Another type of abuse that many transgender people experience from family members is economic abuse. This consists of family members refusing to provide transgender people with financial support, educational opportunities, and/or inheritance rights. This type of abuse causes many transgender people to become entirely dependent on their family MEMBERS; also, many transgender people are forced to leave home at a young age including before the age of 18. Forced conformity or coercion is another way family members will abuse transgender individuals, as many transgender individuals are forced to behave according to the gender they were born with. Family members also force transgender individuals to enter marriages they do not want and/or to engage in so-called "conversion" therapy, which attempts to change the transgender person's gender identity. Neglect and abandonment are also very degrading forms of family abuse against transgender people. Transgender individuals may experience sexual violence in their own homes, but this type of violence is not well documented. Many Transgender persons who experience sexual violence in their own homes do not report it for

³² *NGO Reports on Transgender Welfare (India).*

³³ *Parliamentary Debates on Transgender Bill, 2019. (last visited March 15, 2026)*

many reasons, including fear of reprisal, stigma, and a lack of support services. The cumulative effects of violence often result in Transgender individuals running away from home, placing them in vulnerable living situations, creating opportunities for further exploitation and violence. The Supreme Court of India's decision in National Legal Services Authority v. Union of India has recognized and protected the rights and dignity of Transgender persons and the various laws established to prohibit discrimination against transgender persons, including the Transgender Persons (Protection of Rights) Act do not provide adequate response or protection to Transgender persons who face family violence. Family violence generally is not a personal problem or an individual issue, but rather, represents a structural challenge, affecting and denying Transgender persons the right to belong and have opportunities within their families and society as a whole. Legal protections, awareness programs, and family counseling systems must be put into place urgently to ensure the safety, dignity, and well-being of Transgender persons who are victims of family violence or sexual violence within their families.

6.3 The Consequences of Family Rejection:

The repercussions of a family rejecting a person due to being transgender are deep-reaching and devastating; they can impact the psyche, well-being, social network, and economic status of transgender people throughout India. While families' and society's lack of acceptance has long-term negative consequences on the mental health of rejected persons (e.g., emotional pain, isolation from family and friends, shame, depression, and anxiety), if a person is continuously rejected by his/her family (e.g., through verbal berating, physically abusing, or expelling from the home) this can result in severe long-term mental health problems or possible suicidal ideations. Financially, losing the support of one's family means that the rejected individual loses financial stability, safe shelter, and access to education, all three of which are critical during the formative years. As a result, many transgender people who are rejected by their family have to drop out of school and leave home at a young age, thus limiting their opportunities for personal and professional success. Because they have been excluded from their families/society, many transgender people must work in the lowest levels of income (e.g., begging, sex work, or informal employment), which increases their vulnerability to abuse, violence, and health risks. Family rejection results in social isolation from the larger society and is particularly significant for transgender individuals because, in Indian culture, the primary unit of social acceptance is the family. The lack of support from family members makes it very difficult for transgender individuals to find housing, find jobs and access public services; therefore, transgender individuals

suffer discrimination at every step in the process of trying to find housing, find jobs and accessing public services. The lack of identity documents because family members support identity documents makes it even more difficult for transgender individuals to claim their legal rights and legal benefits. Even though there are rulings that provide legal recognition to transgender individuals, such as *NALSA v. UOI* and laws such as the Transgender Persons (Protection of Rights) Act, these legal protections are insufficient because they cannot provide the emotional and social support that family members provide to their children. Therefore, when a transgender individual rejects their family, they often look for a supportive community of transgender individuals; however, while this support is helpful to them, it often does not provide them with the economic or social mobility that they need. The effects of family rejection are multidimensional and create a cycle of poverty, exclusion, vulnerability and create a more urgent need for education, public awareness, and legal actions to create acceptance and inclusion into families. Homelessness: They leave their homes or are expelled from their homes. Disruption of education: They drop out of school because of lack of support from their families. Mental health problems: Increased depression, anxiety and suicide rates. Economic Vulnerability: Lack of support from their families will result in poverty and no opportunities.

6.4 Transition to Community Living:³⁴

Community living refers to allowing people—particularly those who have been marginalized, institutionalized, or excluded from society—to be able to live in the community and enjoy full participation in community. The concept of community living is closely related to the principles of dignity, autonomy, equality, and social inclusion. In years gone by, many groups of vulnerable people such as people with disabilities and other marginalized groups, including transgender individuals, seniors, and people with mental illness, lived in institutions with little freedom and were seldom able to grow and develop during their time there. Human rights legislation and social / welfare policy have dramatically changed the landscape, so that now, thanks to deinstitutionalisation and the development of many community-based support systems, an individual's transition to community living will allow them to access housing, health care, education, work, and social security, as well as support services such as counselling, skills training, and rehabilitation. To transition to community living, individuals must also have access to community supports by removing or overcoming the barriers in society created by stigma,

³⁴ UNDP Report on Transgender Inclusion in India.

discrimination and lack of awareness. In India, for example, the *Rights of Persons with Disabilities Act 2016* and the transgender policy reaffirm the country's commitment to community living through the inclusion of and support for independent living for all people, thereby increasing the quality of life of all people while creating a better society through diversity and acceptance. Despite the positive impact community living can have on individuals and communities, there are many challenges to the development of community living, some of which are infrastructure limitations and financial limitations.

Due to family rejection³⁵, transgender persons can often find their way to the traditional community³⁶ that includes them. Many families do not accept their male child when he starts exhibiting behaviours typically associated with the female gender (or deemed inappropriate for the assigned gender role). Family members often threaten, chastise or in some cases, physically assault a son/sibling for displaying behaviours³⁷ attire that would generally be considered indecent for males; parents may additionally disown and evict a child who crosses the gender role lines created by their family / society or who fails to perform the role dictated by their gender. Some of the reasons given by parents for such disavowal are that their child brings 'disgrace' or 'shame' to the family, decreases the likelihood of that child being able to marry a female in the future thus ending their bloodline (particularly when there is only a single male grandson) and a belief that the child cannot care for the family. For many transgender women this can result in significant difficulty claiming property rights or the inheritance of property that otherwise rightfully belongs to them under the law. In certain circumstances, the child may decide to run away from the family due to discrimination/prejudice or not wanting to bring shame on the family and therefore not receiving support.

Conclusion:

The issue of family rejection continues to inflict some of the most painful and foundational forms of marginalization upon transgender people in India because it disallows an individual from obtaining the emotional support, security, and sense of belonging due to family denial from the earliest stages in his or her life. This rejection will often lead to the individual becoming homeless; having their education interrupted; suffering from poor mental health; and being more susceptible

³⁵ *Indian Penal Code, Section 377 (prior to decriminalization).*

³⁶ *Ministry of Social Justice Report on Transgender Welfare.*

³⁷ *Constitution of India, Article 16. (last visited March 18, 2026)*

to exploitation, as well as unsafe ways of making a living. While obtaining legal recognition through cases such as *National Legal Services Authority v. Union of India* and through legislation such as via the *Transgender Persons (Protection of Rights) Act, 2019*, affirming the rights and dignity of transgender people; however, inclusion cannot occur without the acceptance of the individual at the family level. Family denial must be addressed by providing family members with increased education and support; through counselling and awareness programs promoting understanding of the gender identity, in addition to providing individuals with supportive environments. In order to ensure the holistic development, dignity, and social integration of transgendered persons; increased acceptance from families of individuals who are transgendered will be necessary.

CHAPTER 7

LEGAL FRAMEWORKS & HUMAN RIGHTS

Introduction:

The emergence of recognition and protection of transgender individuals' rights represents one of the most important aspects of human rights discourse in India, marking a move away from the marginalisation of these individuals, towards their inclusion in law. Transgender people have historically experienced discrimination against, exclusion from society, and have been denied many basic rights. As such, there is a growing recognition of trans individuals under both the Constitution of India and international human rights frameworks. The Constitution of India provides fundamental human rights that all people, regardless of gender identity, are entitled to enjoy; these include equality before the law, no discrimination; freedom of expression; and the right to life with dignity. The Supreme Court, in the *National Legal Services Authority v. Union of India* case, ruled that trans people are designated as being part of the "third gender" and thus entitled to self-identification; this ruling has been further bolstered by the passage of the *Transgender Persons (Protection of the Rights) Act, 2019* which prohibits discrimination based upon gender identity and provides for the establishment of welfare measures. These legal developments signify a substantial shift towards a rights-based approach and an effort to align India's domestic legal system with the tenets of international human rights law relating to the principles of equality, dignity, and no discrimination.

7.1 Post - 2011 Data:

- ✓ National Portal for Transgender Persons³⁸, launched in 2020 by the Ministry of Social and Empowerment, enabling individuals to apply for identity from these applicants; to date there are over 1,900 such persons as of March 2021 who reached the point of being registered through this program.
- ✓ SMILE Portal Data: ³⁹The Support for Marginalized Individuals for Livelihood and Enterprise (SMILE) scheme provides data on registered transgender persons that can be used to provide benefits and supports.
- ✓ Various research studies and pilot projects have been performed, and provide some but limited information by region⁴⁰ about estimates (e.g. statewide estimate of individuals 2,201) regarding the presence of transgender individuals who may be experiencing vulnerability in some way.
- ✓ Bihar Caste Census (2023), ⁴¹providing an extensive list of individuals in Bihar who have voluntarily identified themselves as transitions compared to 2011, a significant increase in voluntary self-identification.

7.2 National Policies:

National Level Strategies a. 2019 *Transgender Persons (Protection of Rights) Act* The 2019 *Transgender Persons (Protection of Rights) Act* was designed to create a comprehensive law to protect the rights of transgender persons. The Act prohibits discrimination on the basis of sex, gender identity, sexual orientation and expression in relation to employment, education, health care and access to public services. However, there has been significant criticism of the Act from various perspectives. The certificate from the District Magistrate required to obtain identity recognition violates the right of self-identification of the applicant. There is no provision in the Act for affirmative action policies, such as a reservation system for transgender persons in education or in public employment.

In addition, the lighter penalties for violence committed against transgender persons in comparison

³⁸ *Transgender Persons (Protection of Rights) Act, 2019*

³⁹ *LiveLaw*.

⁴⁰ *Ruth Vanita, Gender, Sex and the City*.

⁴¹ *Centre for Law and Policy Research*.(last visited March 19, 2026)

to those committed against cisgender women significantly diminish the level of protection afforded to transgender persons. Nevertheless, the Transgender Persons (Protection of Rights) Act was a landmark piece of national legislation as it was the first national legislation intended specifically for transgender persons in India. b. 2020 National Portal for Transgender Persons. The Ministry of Social Justice and Empowerment launched the National Portal for Transgender Persons to allow applicants to apply for a Transgender Certificate, to apply for a Transgender ID card, to track the status of their application, and to access welfare schemes / legal support. Digital access to the portal is a positive step but the effectiveness of the service is limited by the digital illiteracy of applicants in rural areas. c. 2022 SMILE Scheme The Ministry of Social Justice and Empowerment recently introduced the SMILE Scheme, an initiative to support marginalized individuals participating in livelihoods / enterprises. The Scheme contains a sub-scheme dedicated to supporting transgender persons with the following eligibility requirements.

7.3 State Policies:

State policies regarding transgender individuals in India signify a key aspect of social justice and inclusiveness and are aimed at undoing the historical exclusion and marginalization of the transgender community. The central legislation, namely the Transgender Persons (Protection of Rights) Act, 2019, provides an overarching national framework for the welfare of transgender persons. The state governments are integral to the actual implementation of welfare measures and designing region-specific policies for the effective inclusion and empowerment of transgender persons. The evolution of state policies is seen with the introduction of state-wide policies recognizing transgender persons and their socio-economic needs after the National Legal Services Authority v. Union of India, which represents a landmark court judgment expanding the rights of transgender persons. The Indian states' policies exhibit a shift from welfare-based approaches to a rights-based framework focusing on dignity, equality, and participation.

Major Initiatives Taken by States: Many of the Indian states have been pioneers in developing policies to provide access to services for transgender individuals:

Tamil Nadu: One of the first states in India to establish a comprehensive welfare policy for transgender persons is Tamil Nadu; there exists a *Transgender Welfare Board*, and it has established a process for providing identity cards for transgender individuals, Has initiated reserving seats for transgender individuals in colleges and vocational training centers.'

access to free gender-affirming surgeries in government hospitals, a housing scheme for transgender persons, and educational support.

Kerala: Introduced the *State Policy for Transgenders (2015)* focusing upon self-identification of transgender persons, access to healthcare, access to education, skills development, and protection against discrimination. In addition, the policy supports individuals who undergo gender-affirming procedures and employment initiatives.

Odisha and Karnataka:: Along with providing reservations in various sectors through a policy framework dedicated to its transgender population, provide monthly pensions to transgender people, took the initial steps to include transgender youths in education and job fairs.

7.4 Constitutional Rights:

The constitutional rights of transgender⁴² individuals in India are based on the fundamental rights provided to all individuals as outlined in the Constitution of India. The Constitution guarantees that all individuals will have equality, dignity and liberty regardless of their gender identity. A major step in this direction was taken in the case of *National Legal Services Authority (NALSA) v. Union of India*⁴³, in which the Supreme Court⁴⁴ formally acknowledged transgender individuals to be a distinct category of individuals (i.e., "third gender") and that they are entitled to the same protections available to all individuals under the Constitution.

The Constitution also provides for equal treatment of all persons through Articles 14-16⁴⁵, which prohibit discrimination between groups of individuals based on their gender identity. Therefore, based on the Supreme Court's ruling, persons who identify as transgender will also have access to the protection under law because the term "person" has been construed by the Supreme Court as including persons who identify as transgender. The provisions in Articles 14-16 ensure that transgender individuals will not face discrimination on the basis of their gender identity in areas

⁴² *Ruth Vanita, Gender, Sex and the City.*

⁴³ *Serena Nanda, Neither Man nor Woman: The Hijras of India (1990).*

⁴⁴ *Flavia Agnes, Law and Gender Inequality.*

⁴⁵ *Constitution of India, Article 14, Constitution of India, Article 15, Constitution of India, Article 16.*(last visited March 19, 2026)

such as education, employment and public services provided by the government and other entities. The Supreme Court's interpretation of "gender" as part of "sex" and concept of gender identity provides a very progressive view in terms of expanding the scope of constitutional protections. Under Article 19⁴⁶ of the Constitution, all individuals are provided with specific fundamental freedoms, including the freedom of speech and expression. This includes the right of every individual, including transgender individuals, to express their gender identity in terms of how they dress, conduct themselves and the appearance that they choose to have. Hence, for transgender individuals, the right to express their gender identity is a critical component of being able to live as an individual--and this right will effectively allow transgender individuals to participate fully in society.

Conclusion:

In summary, the development of laws regarding transgender individuals in India represents a positive chance to promote human rights and social justice. In cases like National Legal Services Authority v. Union of India and legislation such as The Transgender Persons (Protection of Rights) Act, 2019 have created a strong basis for recognizing the respect, self-determination, and equal status of transgender people; however, there are barriers to the success of these laws such as lack of implementation, knowledge, and ongoing stigma. There needs to be a solid framework for realizing human rights through not just strong legal frameworks but their effective enforcement and also through educating institutions and all of society. There is a need for a holistic, comprehensive, and inclusive approach that combines law, social acceptance, and policy support in order to ensure that transgender persons are able to practice their full rights and have respect, equality and freedom in every aspect of their lives.

RELEVANT CASE LAWS:

Justice K.S. Puttaswamy v. Union of India (Right to Privacy Case, 2017)

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The earlier precedents of Sharma (in 1956) and Kharak Singh (in 1962), stating that privacy is, indeed, guaranteed under the Constitution of India. The Constitution protects individual dignity

⁴⁶ *Shafin Jahan v. Asokan K.M.*, (2018).

⁴⁷ *Ministry of Social Justice and Empowerment.*

and personal autonomy; our ability to decide how we live our lives, including whether to reveal our identity and preserve our privacy, are fundamental rights that cannot be violated by any state action or legislation. The Court emphasized that the right to privacy is a fundamental right under the Constitution; all laws that infringe upon that right are unconstitutional.

Accordingly, the Court directed the government to protect individuals from unlawful collection of data and to prevent certain laws from infringing⁴⁸ upon the fundamentals of privacy⁴⁹. In addition, the Court stated that privacy is an extension of liberty and that there are no exceptions to the right to privacy; it cannot be limited based on the actions of others or the government's motives. The Court concluded that the Constitution recognizes, protects, and upholds the sanctity of individuality, including an individual's right to privacy, and that this right cannot be infringed by legislative, state, or municipal authority. In short, Justice K.S. Puttaswamy v. Union of India is a landmark decision that has profoundly changed how people view their rights to privacy, what constitutes a right to privacy, and how to enforce their rights to privacy in India.

Arun Kumar v. Inspector General of Registration

In the 2019 case of Arun Kumar vs. IGR, the Madras High Court ruled in favor of a trans woman being legally recognized as a bride under Hindu marriage law. This was an important victory for transgender people and their rights and had a large effect upon the legal framework related to equal rights in India. Legal issues: The validity of the marriage between cis-man and trans woman. Outcome: The marriage was valid and the trans-woman was a valid bride. The history of the case: The petitioner (Arun Kumar) married a trans-woman (Srija) under the Hindu Marriage Act⁵⁰. The local registrar refused to register this marriage based on the fact that the bride was a trans woman. The couple challenged this ruling; the question at hand was whether the term "bride" in the act included a transgender female. The Court's reasoning Justice G.R. Swaminathan determined that the term "bride"⁵¹ must be viewed in light of the principles of equality and human dignity guaranteed by the Constitution. Using the judgement in two recent

⁴⁸ *Supriyo Chakraborty v. Union of India*, (2023).

⁴⁹ *Naz Foundation v. Government of NCT of Delhi*, (2009). (last visited March 20, 2026)

⁵⁰ *Centre for Law and Policy Research*.

⁵¹ *V. Veena, Transgender Rights* (2015).

Supreme Court decisions (*NALSA vs. Union of India*⁵² and *Navtej Singh Johar vs. Union of India*),⁵³ the Court recognized that gender identity is based on self-identification.

Navtej Singh Johar v. Union of India (2018)

In the landmark judgment of *Navtej Singh Johar v. Union of India (2018)*,⁵⁴ the Supreme Court of India ruled that consensual same-sex relationships between adults will no longer be considered a crime. The Court found parts of Section 377 of the Indian Penal Code to be unconstitutional. In doing so, it recognized the equality, dignity, and privacy, as well as individual liberty, of LGBTQI+ individuals. Citation: (2018) 10 SCC 1; Writ Petition (Criminal) No. 76 of 2016 Outcome: Section 377 IPC was partially struck down as unconstitutional; same-sex consensual acts are no longer illegal. Section 377 is a colonial law dating from 1860 that made it a crime to engage in “carnal intercourse against the order of nature.” The Delhi High Court first read down section 377 in the 2009 case of *Naz Foundation v. Government of NCT of Delhi*, but the Supreme Court overturned that ruling in the 2013 Supreme Court case of *Suresh Kumar Koushal v. Naz Foundation*. Dancer and activist Navtej Singh Johar and several others requested the Supreme Court to reconsider the Koushal ruling, arguing that the Supreme Court’s decision in the 2017 case of *K.S. Puttaswamy v. Union of India* established a fundamental constitutional right to privacy, which includes the right to determine one’s sexual orientation as part of Article 21 of the Constitution. Constitutional Issues - Petitioners argued that section 377 as it pertained to same-sex consensual acts violated the following: Article 14 - Equality Before Law. (The section is vague and arbitrary).

National Legal Services Authority v. Union of India (NALSA Case, 2014)⁵⁵

Indian Supreme court's ruling in *National Legal Services Authority v. Union of India (2014)* recognized Transgender individuals as a third gender under Indian Law. Delivered on April 15, 2014, the court held that transgender individuals have equal constitutional rights,⁵⁶ upholding

⁵² “From NALSA to Navtej: Evolution of LGBTQ+ Rights”, *Law Review*.

⁵³ *National Human Rights Commission*. (last visited March 22, 2026)

⁵⁴ *Judicial Approach towards Transgender Rights in India*, Article.

⁵⁵ *Bar Council of India*. (last visited March 25, 2026)

⁵⁶ *Shafin Jahan v. Asokan K.M.*, (2018).

their dignity, and must be recognized and protected under the law from discrimination. Citation for the ruling: (2014) 5 SCC 438. Legal issues⁵⁷ surrounding the case: Recognition under law of Transgender individuals and their human rights.

This case was brought by the *National Legal Services Authority (NALSA)* seeking legal recognition for the broader class of individuals known as Transgender individuals, including Hijras and others who identify beyond the binary of male and female, who suffer from the pervasive discrimination faced by these populations and are denied legal status. The court found that Transgender individuals are entitled to the Fundamental Rights includes

Articles 14 (equality before the law), 15 and 16 (non-discrimination), 19(1)(a) (freedom of expression), and 21 (the right to life), which the court interpreted correctly in an inclusive manner as an inherent component of personal liberty and autonomy.

The supreme court stated that transgender individuals will be recognized as a "third gender" and ordered that both state and federal governments create laws to legally recognize this group of individuals; there should be an establishment of a separate gender category (third gender) for transgender individuals in all state and federal documents (i.e. Passports, driver's licenses, and other official documents).

Anuj Garg v. Hotel Association of India

The *Excise Act* (the "Act") prohibits women from working at places that serve liquor or Intoxicating substances. The State claims that these prohibitions "protect" women and keep mores from degenerating. The Hotel Association of India supports this position; the Petitioner claims these restrictions violate women's fundamental rights. The case presents two issues: Section 30's prohibitions against women working in places serving liquor violative of Articles 14, 15, and 19(1)(g) of the Constitution of India? Should Section 30 be stricken down as unconstitutional? The court struck down Section 30 as unconstitutional. The Supreme Court determined that the legal system's exaggerated notions of "protection" for women when placing restrictions on women have long since passed, and as such, an amendment to Section 30 "could maintain protection even against male/female discrimination." Three principles, established by the Supreme Court, were:

1. An outdated conception of morality/gender should not restrict the State from providing protective, empathetic treatment to one of its citizens, simply because that citizen is the victim of societal norms that have arrived at some arbitrary decision regarding the moral character of a given gender.
2. Protective discrimination must be reasonable and cannot lead to the exclusion or deprivation of an opportunity.
3. Where the law guarantees to all citizens, "the right to work in any lawful profession" under Article 19(1)(g), the State cannot create or preserve a profession that excludes or deprives women of such rights.

Though not directly about transgender persons, it emphasized gender equality and anti-stereotyping. Useful in transgender jurisprudence for promoting substantive equality.

National Human Rights Commission v. State of Arunachal Pradesh

The Supreme Court of India decided upon the case of the National Human Rights Commission (i.e. NHRC) versus the State of Arunachal Pradesh (i.e. State) in the year 1996. This was an important judgement, and is seen as a way of affirming the rights of Chakma refugees to equality and protection, as broken down by the legal system of India.

The case arose from an application to the Supreme Court of India by NHRC under Article 32 of the Constitution of India for the protection of Chakma Refugees, who were initially refugees from erstwhile East Pakistan (present day Bangladesh), and have the right not to be forcibly evicted and also to obtain basic human rights as per fundamental human rights of the State. The case was brought before the Supreme Court of India by the NHRC claiming a violation of Articles 14 and 21 of the Constitution of India. (Right to Life)

The Supreme Court of India did and held the view that the Chakma Refugees, in relation to citizenship of India, were not citizens of India, but were entitled to the benefit of Article 21 of the Constitution and included all persons within the borders of India. The Court found that the State had the responsibility to uphold the fundamental human rights of the Chakma Refugees. The case established that the State had an obligation to uphold and protect the fundamental human rights of the Chakma Refugees, as well as that of all persons that lived within the borders of India.

S. Sushma v. Commissioner of Police

Justice N. Anand Venkatesh of the Madras High Court's decision in *S. Sushma v. Commissioner of Police* (2021) represents a pivotal ruling in favor of affirming the rights and dignity of LGBTQ+ persons in India. It provides a critically important cornerstone toward both institutional sensitisation and protection of queer persons at risk of family-based opposition to their same-sex relationships. Central issue: Protection from police and familial harassment for a lesbian couple. Decision/direction: Directives for state measures to further the protection of and increase awareness of LGBTQ+ persons. The two petitioners were a lesbian couple who eloped together. Once they did so, both of their families filed reports for them as missing persons, therefore leading to police action and harassment of the couple. The couple applied to the Madras High Court under Article 226 of the Constitution for the protection of their liberty and their privacy. In adjudicating the case, Justice Anand Venkatesh placed a strong emphasis on having empathy and understanding towards the victims, and to this end, stated that he was undertaking counselling sessions with LGBTQ+ persons to gain a more intimate understanding of their experience. In addition to being of the opinion that the decriminalisation of homosexuality (as occurred in the *Navtej Singh Johar v. Union of India*) demonstrates that all people should be able to enjoy personal autonomy through their same-sex relationships, the court accepted same-sex relationships as legitimate expressions of personal autonomy.

X. V. Principal Secretary, Health and Family Welfare Department

The Supreme Court of India ruled that all women, no matter what their marital status is, have the right to have a safe and legal abortion in accordance with Indian law in the case known as *X. V. Principal Secretary, Health and Family Welfare Department*. Laws Involved: *The Medical Termination of Pregnancy Act, 1971 (and amendments from 2021)* Central Issue: The right of unmarried women to terminate their pregnancy within a period of 24 weeks. The case involved a young woman, X, who wanted to terminate her pregnancy for 22 weeks due to her relationship with the father of the child ending before she was able to terminate her pregnancy. The Delhi High Court rejected X's application on grounds that the 2021 amendment to the Medical Termination of Pregnancy Rules only allows married women to have access to abortion, and X appealed the decision to the Supreme Court on the basis that the interpretation was both discriminatory and contrary to constitutional rights. In this ruling, the Supreme Court held that the MTP protects all women (including unmarried and single women) under the MTP Act, emphasizing that women have the right to equal treatment and have control over their bodies, with reference to Articles 14

and 21 of the Constitution of India, and that the right of women to choose to exercise their reproductive rights is part of the right to personal liberty.

CONCLUSION

8.1 Conclusion:

The conclusion offers suggestions for helping achieve full social inclusion of transgender persons within society and changing their socio-legal status in India. There have been some positive developments in the law, however there are still continued gaps with respect to implementation of laws, awareness and acceptance of transgender persons within Indian society. Strengthening existing laws: Effective implementation of the Transgender Persons (*Protection of Rights*) Act, 2019 is vital to achieving full inclusion of transgender persons within Indian society. Simplifying the process for obtaining identity certificates: Remove barriers to obtaining identity certificates and promote respect for self-identification, as stated in *NALSA v. Union of India*. Reservations for transgender persons: In order to recognize transgender people as socially and educationally backward classes, there should be provisions in law for affirmative action in both education and employment. Stronger anti-discrimination laws: Increase penalties for any form of discrimination against transgender persons in employment, health care, housing, or education. Awareness and Sensitization Campaigns: Public Awareness Campaigns: Develop and execute educational public awareness campaigns, To increase acceptance of gender diversity in Indian society, Educational Reform: Develop curricula for schools and colleges that educate about gender diversity and the rights of transgender persons. Training of officials: Train police, members of the judiciary, members of the health care system, and educators to treat persons with respect, Media Responsibility: Encourage the media to fairly and accurately portray transgender persons. Economic Empowerment and Affirmative Action, Affirmative action through quotas: Create quotas for transgender persons to access government services and jobs. Vocational training and entrepreneurship development: Develop vocational training programs to promote entrepreneurship and provide vocational training.

8.2 Suggestions:

Researchers on LGBT rights in India recommend improving the balance between legal recognition

and the socio-legal reality through the following five areas of improvement:



1. Strengthening the enforcement of laws already in place to observe rights awarded under *NALSA v Union of India* and act for transgender people against discrimination through the Transgender Persons (*Protection of Rights*) Act among others should carry the serious consequences of the violations of collective rights unless otherwise stated.
2. The government should streamline the process of obtaining recognition of one's gender identity from that obtained through civil law procedures, including removing any bureaucratic barriers between the process of gender identity selection.
3. Affirmative action and reservation policies should be implemented regarding education and employment for transgender people, including those classified as belonging to socially and educationally disadvantaged groups, to aid in reducing the high level of unemployment among transgender people; additionally, to reduce the economic vulnerability often associated with transgender people.
4. Implementing education and awareness programs to sensitise people toward transgender people and their civil rights, reducing the level of prejudice and discrimination, and ultimately, creating a more peaceful society.
5. Promoting programs to develop transferable skills through integration into mainstream education and development, including those which promote the WHO's global recommendation for creating a safe and supportive environment for the purpose of preventing dropout rates (long school years) and achieving higher levels of post-secondary education.

8.3 Recommendations:

According to the research, a variety of suggestions have been made to improve the lives of transgender people in India. One of these suggestions is that there is an urgent need to reform legal protections for transgender people that are already in place. These protections are identified in a ruling from the Supreme Court called *NALSA v. the Union of India* and the Transgender Persons (*Protection of Rights*) Act (TPA), 2019. Therefore, enforcement mechanisms need to be strengthened to ensure that these legal protections are effectively implemented. A new way to legislate needs to be adopted to reduce bureaucratic and administrative hurdles to the recognition

of legal identity through self-identification. In addition to this, other recommendations include the establishment of a reservation policy or quota for transgender individuals in education and employment, to create economic empowerment as well as reduce the high levels of unemployment among transgender individuals in India. Implementation of awareness and sensitisation programmes at all societal levels, including police, health care providers, teachers, and government representatives will also help address stigma and discrimination against transgender individuals. Transgender individuals also need access to inclusive educational and skills development opportunities, with a focus on providing a supportive and safe learning environment for transgender students. The health care system in India must be strengthened to provide affordable and accessible health care services for all transgender individuals and include access to mental health services and gender-affirming treatments. Support and counselling programs should also be implemented to assist with family rejection, while providing emergency shelter and safety for those transgender individuals in high-risk situations. Finally, there is a need for policies that employ an intersectional perspective on the needs of transgender individuals.



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