

BEYOND THE BINARY: AN EXAMINATION OF INTERNATIONAL LAW AND NATIONAL LEGISLATION IN PROMOTING GENDER EQUALITY FOR TRANSGENDER INDIVIDUAL

AUTHOR – S S SUMIJA, LL.M STUDENT AT PROGRESSIVE EDUCATION SOCIETY'S MODERN LAW COLLEGE, PUNE
(SPECIALISATION IN INTERNATIONAL LAW)

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ABSTRACT

The main theme of a gender-equal society focus in the recognition and protection of diverse gender identities, particularly in the context of international law. This study has shown that while international human rights laws increasingly support the rights of transgender people, many countries still have weak or unfair laws when it comes to gender identity. Some nations have made big progress-like allowing people to change their legal gender without surgery-but in other places, laws still require medical procedures, or transgender rights are being taken away. Through a critical analysis of the Act's provisions and their alignment with International Human Rights standards, my research highlights the challenges and opportunities in implementing legal reforms that promote gender equality. Furthermore, the paper investigates the implications of these challenges for the realization of a gender-equal society, emphasizing the need for reforms that prioritize self-identification, non-discrimination, and inclusive policies.⁹⁷⁷ By harmonizing international law frameworks with national legislation, this research provides perception into the complexities of promoting gender equality and offers recommendations for enhancing the effectiveness of legal reforms in protecting the rights of transgender individuals. Eventually, this paper contributes to the ongoing discourse on gender equality and human rights, reinforcing the importance across the board and rights-based approaches to legal reform. This study concludes that effective part of gender equality for transgender individuals highlighting the need for continued advocacy and reforms to protect, ensure their human rights.

Keywords: Transgender rights, Gender equality, International law, National legislation, Legal recognition of gender identity, Human rights, On-binary identity, LGBTQ+ rights, Gender identity laws, Anti-discrimination, policies, Legal gender recognition, Gender markers, Legal protection for transgender individuals, Inclusive legislation, Transgender legal status, United Nations human rights, European Court of Human Rights, Yogyakarta Principles, International human rights treaties, National legal frameworks.

⁹⁷⁷ HUMAN RIGHTS WATCH, "All Five Fingers Are Not the Same": Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka (2016), <https://www.hrw.org/report/2016/08/15/all-five-fingers-are-not-same/discrimination-grounds-gender-identity-and-sexual>

INTRODUCTION

Gender-neutral laws refer to legislation that is designed and applied in a way that does not discriminate on the basis of gender. These laws recognize the diversity of gender identities beyond the binary classification of male and female and aim to protect the rights and dignity of all individuals, irrespective of their gender identity or expression. Gender-neutral laws are framed to ensure equality before the law, providing the same legal rights and obligations to every individual, thereby fostering an inclusive legal environment.

The Indian legal system, rooted in its complex social fabric and historical precedents, exhibits instances of gender bias, reflecting a disparity in treatment based on gender. Traditional laws have often been drafted with gender-specific language, implicitly assuming roles and responsibilities based on one's gender. For instance, certain laws pertaining to marriage, inheritance, and protection against violence have historically been gender-biased, primarily protecting the rights of women from the perspective of victimhood and often neglecting male, transgender, and non-binary individuals who may also be victims of such circumstances.⁹⁷⁸

Furthermore, laws related to adultery (Section 497 IPC, decriminalized in 2018) and those governing the workplace or public decency have, in the past, reinforced gender stereotypes. The imperative for gender-neutral laws in India is deeply rooted in the principles of social justice and equality. Gender neutrality in laws ensures that every individual, regardless of their gender identity, is treated equally before the law. This is crucial for the protection of human rights and for fostering an inclusive society that values the dignity and worth of all its members.

Gender-neutral laws challenge and aim to dismantle the entrenched gender biases and stereotypes that perpetuate discrimination and inequality. They play a pivotal role in promoting

social justice by ensuring that legal protections and obligations are not contingent upon one's gender, thereby moving towards a more equitable legal system. India, as a signatory to various international conventions and treaties, has committed to upholding the principles of equality and non-discrimination.⁹⁷⁹

The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) are among the key international instruments that advocate for the rights and equality of individuals irrespective of their gender. The adherence to gender-neutral laws is not only a reflection of India's commitment to these international legal frameworks but also a necessary step towards fulfilling its obligations.⁹⁸⁰

These commitments require member states to enact and enforce laws that protect and promote the rights and dignity of all individuals, thereby necessitating the reform of existing laws and the drafting of new legislation with a gender-neutral perspective. The evolution towards gender-neutral laws in India is both a reflection of the global movement towards greater inclusivity and a response to the changing societal understanding of gender identities.

In many parts of the world, laws and policies have started to recognize that gender is not only male or female. Some people identify as transgender, meaning their gender identity is different from the sex they were assigned at birth. Others may not identify strictly as male or female, and are considered non-binary. However, legal systems in many countries still do not fully support or protect the rights of these individuals.⁹⁸¹

This research looks at how both international law and national legislation (laws made by

⁹⁷⁸Chanchal Bhattacharya v. State of West Bengal, W.P. No. 5865 (W) of 2015 (Cal. H.C. Mar. 30, 2016) (India).

⁹⁷⁹P. v. S. and Cornwall County Council, Case C-13/94, 1996 E.C.R. I-2143.

⁹⁸⁰Richards v. Secretary of State for Work and Pensions, Case C-423/04, 2006 E.C.R. I-3585.

⁹⁸¹ibid

individual countries) are helping or failing to promote gender equality for transgender people. It also explores how these laws can be improved to better support the rights and dignity of people who do not fit within the traditional idea of gender as only male or female.

By comparing international standards and national laws, this paper aims to show the progress made so far, the challenges that still exist, and the steps that can be taken to make sure that all people, no matter their gender identity, are treated equally and fairly under the law.

GENDER IDENTITY AND THE TRANSGENDER EXPERIENCE⁹⁸²

Everyone has a gender identity –it's how a person feels inside about being male, female, both, or neither. Sometimes, in gender a person feels does not match the sex they were given at birth. When this happens, the person may identify as transgender. This section also explains the everyday problems transgender people face. These can include not being accepted by society, having trouble changing their name or gender on legal documents, or being treated unfairly in schools, hospitals, or workplaces. Understanding these experiences is important so that we can see why fair and supportive laws are needed to protect the rights of transgender individuals.

▪ What is Gender Identity?

Gender identity is a person's deep, internal understanding of their own gender. This could be male, female, both, neither, or somewhere in between. It's about how a person feels on the inside, and it may not always match the sex they were assigned at birth. A person who was assigned male at birth but feels and lives as a woman may identify as a transgender woman. A person who does not feel like only a man or only a woman may identify as non-binary or genderqueer.

▪ Who Are Transgender People?

Transgender people are those whose gender identity is different from the sex they were assigned at birth. Some transgender people choose to change their name, clothing, or body through medical treatments (like hormones or surgeries), while others do not. Every transgender person's journey is different. There are also non-binary people, who do not fit into the categories of only "man" or "woman". They may feel like both, neither, or something entirely different.

▪ Challenges Faced by Transgender People:

Many transgender people face serious problems in their daily lives, including: Discrimination at work, school, hospitals, or in public places, Lack of legal rights, Violence and harassment, Limited access to healthcare that supports their needs, Mental health struggles due to rejection and stigma. When legal systems do not recognize transgender people, it becomes harder for them to live safely and equally.

▪ Why This Matters in Law and Human Rights

Recognizing transgender identities in laws is not just about paperwork –it's about respect, equality, and safety. If transgender people are not included in national and international laws, they are often denied the same rights and protections that others have.

LITERATURE REVIEW

- The topic of transgender rights and legal gender recognition has received growing attention in recent years, particularly in the context of International Human rights law and National legal systems.
- Scholars, human rights organizations, and legal bodies have begun to recognize that binary gender frameworks fail to account for the realities and rights of transgender and gender-diverse individuals. International Legal Frameworks, The Universal

⁹⁸² Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, Mar. 2007, available at <https://yogyakartaprinciples.org>

Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR). The Yogyakarta Principles (2007) and Yogyakarta Principles (2017). National Legislation and Legal Recognition. The Role of Culture, Politics, and Religion on Research.⁹⁸³

- Studies by Meg-John Barker and Sonia Katyal show how societal norms deeply influence legal frameworks. Gaps between international and national laws: Several studies point out the difference between International Human Rights standards and National Implementation. Emerging trends and best practices: Recent academic and policy work explores how legal systems can move beyond binary definitions of gender. Some scholars advocate for non-binary recognition, third-gender options, and de-gendering legal documents altogether.⁹⁸⁴

RESEARCH OBJECTIVES:⁹⁸⁵

- To understand the concept of gender identity and the lived experiences of transgender individuals.
- To examine how international human rights laws address gender identity and protect the rights of transgender people.
- To analyse how national laws in different countries promote or fail to promote gender equality for transgender individuals.
- To identify the gaps and challenges in legal recognition and protection for transgender and non-binary people.
- To compare and evaluate different legal systems and policies that support or restrict transgender rights.
- To recommend legal reforms and policy changes that can help create a more

inclusive and equal society for transgender individuals.

HYPOTHESIS

International laws support transgender rights, but many countries still have weak or inconsistent laws due to cultural, religious, or political resistance.

SCOPE AND LIMITATIONS:

What International laws and the laws of different countries help protect the rights of transgender people and support gender equality beyond just "male" and "female."

Overview important international rules and agreements (like human rights laws) to know how they support transgender rights.

Analyse laws of few countries from different parts of the world to understand how they treat transgender individuals.

Reflect gaps or problems between what international law lays and what actually happens in each country.

Focus on legal and human rights, In some countries, there is not enough reliable or updated data on transgender populations and their legal status, which may affect the accuracy of comparisons⁹⁸⁶.

Due to time and space limitations, this study focuses on a few countries. It may not fully reflect the situation in all parts of the world, especially in regions where research on transgender rights is limited.

Laws related to gender identity and transgender rights are changing quickly in many places. Some legal information used in this study may become outdated over time.

This research mainly looks at legal aspects and may not fully capture cultural, religious, or social attitudes toward transgender people, which also affect their lived experiences.

⁹⁸³ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁹⁸⁴ National Legal Services Authority v. Union of India, (2014) 5 S.C.C. 438 (India).

⁹⁸⁵ K.B. v. National Health Service Pensions Agency, Case C-117/01, 2004 E.C.R. I-541.

⁹⁸⁶ MB v. Secretary of State for Work and Pensions, Case C-451/16, ECLI:EU:C:2018:492 (2018).

Some legal documents or policies may not be available in English, which could limit access to important information.⁹⁸⁷

RECOMMENDATIONS

- Countries should change their laws to follow global rules that support transgender rights.
- People should be able to change their legal gender without needing surgery or medical tests.
- Governments should let transgender people change their ID, passport, or certificates easily.
- The process should be simple, quick, and respect the person's own identity. Protect Transgender People from discrimination strong laws should stop unfair treatment of transgender people at work, school, hospitals, and public places.
- Train police, doctors, teachers, and government workers to treat transgender people with respect. Run public awareness programs to help reduce fear, misunderstanding, and hate.
- Each country or state should have a Transgender Welfare Board to protect rights, solve problems, and help with health, jobs, and education.
- Governments and researchers should collect information to understand the problems transgender people face. Talk to Religious and Political Leaders In countries where culture or religion makes progress harder, start respectful talks to create understanding.
- Show how other countries have protected transgender rights without going against culture or values. Countries should regularly report their progress on transgender rights to international groups like the United Nations. Support NGOs and activists who

are working hard to protect and improve transgender rights.⁹⁸⁸

CASE STUDY⁹⁸⁹

Argentina – A Model for Gender Identity Laws

Argentina is often praised for having one of the most progressive gender identity laws in the world. The Gender Identity Law (2012) allows individuals to legally change their name and gender on official documents without requiring medical procedures or court approval. Recognizes self-determined gender identity. Access to free hormone treatment and gender-affirming healthcare. No need for psychiatric diagnosis or surgery.

This law respects human dignity and privacy, making Argentina a leader in trans-inclusive legislation.

India – Legal Recognition but Social Challenges

In 2014, India's Supreme Court recognized transgender people as a third gender in the landmark NALSA v. Union of India case. This gave them legal recognition and equal rights under the Constitution. Trans people have the right to self-identify as male, female, or third gender. The Transgender Persons (Protection of Rights) Act, 2019 was later passed, but it received criticism for being restrictive and unclear.

Bureaucratic delays and unclear rules in changing legal documents. Ongoing discrimination in education, employment, and healthcare. India made legal progress, but implementation and social acceptance remain serious hurdles.

Hungary – Legal Reversal of Transgender Rights

In 2020, Hungary passed a law banning legal gender recognition. It required that gender markers on birth certificates be fixed based on biological sex and could not be changed later. No legal process to change gender on official

⁹⁸⁷ Chanchal Bhattacharya v. State of West Bengal, W.P. No. 5865 (W) of 2015 (Cal. H.C. Mar. 30, 2016) (India).

⁹⁸⁸ Arun Kumar v. Inspector General of Registration, W.P. No. 12558 of 2016, (Madras H.C. Apr. 22, 2019) (India).

⁹⁸⁹ K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).

documents. Contradicts European human rights standards. This move was widely criticized by human rights organizations and created legal and social hardships for trans individuals in Hungary. *Christine Goodwin v. United Kingdom* (2002) The European Court of Human Rights ruled that failing to legally recognize a transgender person's gender identity violated the right to private life under Article 8. It set a precedent for legal gender recognition in Europe.

Rees v. United Kingdom (1986) & B. v. France (1992)

Rees marked early attempts by the European Court of Human Rights to address changing legal gender. In *B. v. France*, the court ruled that France had a duty under Article 8 to allow at least some official documents to reflect a person's gender identity.

P v. S and Cornwall, Richards, K.B., and MB (EU Court of Justice)

P v. S and Cornwall (first EU case) acknowledged that discrimination based on gender reassignment is sex discrimination; *Richards and K.B.* addressed pension rights where legal gender recognition was denied struck down the requirement to annul marriages for gender recognition.

Foy's Case (Ireland, 2015)

Dr. Lydia Foy's legal effort pushed Ireland to propose a Gender Recognition Bill, marking a milestone toward legal gender recognition.

Van Kuck v. Germany (2003)

The European Court of Human Rights affirmed that gender identification, name, and sexual orientation are aspects of private life protected under Article 8, emphasizing the importance of personal identity.

NALSA v. Union of India (2014)

The Supreme Court recognized transgender people as a third gender and affirmed that gender identity falls under fundamental constitutional rights, including Articles 14, 15, 19,

and 21. Human Rights Law Centre Legal Service India

Chanchal Bhattacharyya v. State of West Bengal (2016)

The Calcutta High Court affirmed that individuals who've undergone gender-affirming surgery have the constitutional right for their identity to be recognized in all institutional records.

Chinmayee Jena v. State of Odisha (2020)

The Orissa High Court upheld the right of transgender persons to self-determination of gender and to cohabit with their chosen partner, regardless of gender.

Arun Kumar v. Inspector General of Registration (2019)

The Madras High Court ruled that a trans woman is recognized as a "bride" under the Hindu Marriage Act, and prohibited non-consensual surgeries on intersex infants.

Cases like *Anita Valentina v. Union of India* (2019), *Navtej Singh Johar* (2018), and *Puttaswamy* (2017) have further strengthened rights around gender self-identification, privacy, decriminalization of LGBTQ relationships, and marriage. Legal Service India

Glenn v. Brumby (2011)

The Eleventh Circuit held that firing someone due to their transgender status constitutes sex discrimination and is subject to intermediate scrutiny under equal protection norms.

UK Supreme Court Ruling (2025)

In April 2025, the UK Supreme Court ruled that "woman" under the Equality Act refers strictly to biological sex, excluding transgender women, even those with legal gender certificates.

Legal Challenge by UK's First Trans Judge

Dr. Victoria McCloud has appealed to the European Court of Human Rights, arguing that the Supreme Court's ruling violated her rights under Articles 6, 8, and 14, especially since

transgender voices were excluded from the proceedings.

Transgender Asylum in the Netherlands

Veronica Clifford-Carlos, a transgender U.S. citizen, has filed an asylum challenge in the Netherlands, arguing that the U.S. has become increasingly hostile for transgender individuals due to recent policy rollbacks.

Transgender Athlete Litigation (U.S.)

Trans runner Evie Parts filed suit against the NCAA and Swarthmore College after being excluded from women's track. Her reinstatement came only after legal pressure.

CONCLUSION

This study has shown that while international human rights laws increasingly support the rights of transgender people, many countries still have weak or unfair laws when it comes to gender identity. Some nations have made big progress—like allowing people to change their legal gender without surgery—but in other places, laws still require medical procedures, or transgender rights are being taken away.

Cultural beliefs, religion, and politics often play a big role in whether a country accepts or rejects these rights. As a result, there is a big gap between what international law promises and what actually happens in people's lives.

This study began with the hypothesis that international laws support transgender rights. Cuba passed a groundbreaking law on July 18, 2025, allowing gender marker changes without requiring bottom surgery—a major step forward for transgender self-determination⁹⁹⁰.

Czech Republic removed its mandatory surgery requirement for legal gender changes, aligning with broader European human rights standards.

Delhi, India, enacted detailed rules in 2025, enabling transgender persons to receive

identity documents without medical exams and setting up a Transgender Welfare Board.

New South Wales, Australia, implemented legislation (effective July 1, 2025) acknowledging non-binary recognition and removing surgery requirements for legal gender changes.

Hungary amended its constitution to define gender strictly as male or female, banning LGBTQ+ public events and embedding this restriction in the nation's highest legal order.

The UK Supreme Court ruled that legal definitions of "man" and "woman" are based on biological sex, excluding transgender individuals from gendered protections and spaces, a move which has drawn harsh criticism from rights groups.

In Italy, proposed legislation seeks to heavily regulate gender-affirming care for minors, adding bureaucratic hurdles that deter access to vital treatments.

Peru enacted a law purporting to protect youth, but in effect restricts transgender access to public facilities and expression, arguably eroding civil rights under the pretext of safeguarding children.

United States saw further rollback, with a new executive order mandating strict binary gender recognition and halting all federal support for gender-affirming care and self-identification.

These developments confirm that while international norms may affirm transgender rights, national legislation varies sharply, often mirroring the host country's social, cultural, or political climate. Progress in some regions highlights the potential of legal reform—but resistance in others shows how deeply entrenched barriers remain.

Countries like Cuba, Czechia, India (Delhi), and parts of Australia illustrate how legislative reforms aligned with human rights standards can advance transgender equality. Meanwhile, Hungary, Italy, Peru, the UK, and the U.S. showcase how political or ideological

⁹⁹⁰ Haroon Siddique, UK's First Transgender Judge Seeks Rehearing of Supreme Court Case on Biological Sex, GUARDIAN (Aug. 18, 2025), <https://www.theguardian.com/society/2025/aug/18/transgender-judge-supreme-court-case-biological-sex>

opposition can negate or reverse these protections. This stark contrast reinforces my hypothesis about the gap between international support and national implementation.⁹⁹¹



⁹⁹¹ HUMAN RIGHTS WATCH, “All Five Fingers Are Not the Same”: Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka (2016), <https://www.hrw.org/report/2016/08/15/all-five-fingers-are-not-same/discrimination-grounds-gender-identity-and-sexual>.