

AN ANALYSIS OF LEGAL ACCESS, SOCIAL JUSTICE, AND ECONOMIC EMPOWERMENT IN TRANSGENDER RIGHTS IN INDIA

AUTHOR – MEGHA ROUTH, STUDENT AT AMITY UNIVERSITY UTTARPRADESH NOIDA

BEST CITATION – MEGHA ROUTH, AN ANALYSIS OF LEGAL ACCESS, SOCIAL JUSTICE, AND ECONOMIC EMPOWERMENT IN TRANSGENDER RIGHTS IN INDIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (4) OF 2026, PG. 219-224, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

The recognition of transgender rights in India marks a significant transformation in constitutional jurisprudence and human rights discourse. Historically marginalized and socially excluded, transgender persons have faced systemic discrimination in legal recognition, access to justice, and economic opportunities. The landmark judgment in National Legal Services Authority v. Union of India (2014) laid the foundation for recognizing transgender persons as the “third gender” and affirmed their fundamental rights. Subsequently, the enactment of the Transgender Persons (Protection of Rights) Act, 2019 aimed to institutionalize these rights. However, challenges persist in translating legal recognition into substantive equality. This research article critically examines the dimensions of legal access, social justice, and economic empowerment of transgender persons in India, highlighting gaps in implementation and suggesting reforms for a more inclusive legal framework.

Keywords: *Transgender Rights in India, Constitutional Jurisprudence, Legal Recognition of Third Gender, Access to Justice, Social Justice, Economic Empowerment, Anti-Discrimination Law, Transgender Persons (Protection of Rights) Act, 2019*

1. INTRODUCTION

In India, transgender people have traditionally held a paradoxical position: they are both socially and legally visible. Communities like hijras have long been acknowledged within cultural and traditional frameworks, but under colonial and post-independence legal systems, they have also experienced systematic exclusion. Transgender people were effectively excluded from mainstream social, economic, and legal structures due to colonial laws like the Criminal Tribes Act of 1871 and deeply ingrained societal stereotypes that institutionalized shame and discrimination. Transgender people have thus been denied access to fundamental human rights, such as equal protection under the law, work, healthcare, and education.

Apart from the fact that Articles 14, 15, 16, 19(1)(a), and 21 of the Indian Constitution

guarantee fundamental rights like equality before the law, the prohibition of discrimination, and the protection of life and personal liberty, transgender people's lived realities show a stark discrepancy between these promises and their actual implementation. Transgender people have historically been unable to fully exercise these rights due to systemic obstacles, social discrimination, and lack of legal recognition. As it upheld the values of autonomy, dignity, and self-identification, the 2014 recognition of transgender identity as a fundamental right was a turning point in Indian constitutional doctrine.

In addition to broadening the reach of constitutional protections, this development called into question long-standing binary conceptions of gender that are ingrained in social and legal structures. However, there are still significant gaps in the conversion of formal

legal recognition into substantive equality, even with progressive court interventions and legislative actions. Therefore, the purpose of this study is to critically analyze the ongoing obstacles to gaining meaningful legal access, social justice, and economic empowerment for transgender individuals in practice while also examining the changing legal framework governing transgender rights in India.

2. LEGAL FRAMEWORK GOVERNING TRANSGENDER RIGHTS IN INDIA

The legal framework for transgender rights in India is based on constitutional guarantees of equality, non-discrimination, and dignity³⁸⁶ under Articles 14, 15, 16, 19, and 21. A major development occurred in *National Legal Services Authority v. Union of India* (2014)³⁸⁷, where the Supreme Court recognized transgender persons as a third gender” and affirmed their right to self-identification, along with directing the State to provide affirmative measures. Nevertheless, tension is frequently felt where the laws are regulatory or even welfare-based instead of a rights-based model, and create disjunctions between constitutional principles and real-life experiences³⁸⁸. Indian courts have always maintained that fundamental rights were not fixed but had to be dynamically interpreted to accord to the present-day interpretation of dignity, equality, and liberty. By constitutional interpretation, constitutional clauses that were originally gender-neutral, e.g. the term person and the term citizen, have been interpreted as including transgender people within their scope of application³⁸⁹. The establishment of these rights by courts signifies a shift between the formal equality to substantive equality since treating people identically can maintain disadvantage in the face of structural discrimination³⁹⁰. As a result, protection of transgender persons in the

constitution is no longer considered as an issue of state charity or welfare, but rather on the issue of enforceable rights based on constitutional morality. In the case of *Navej Singh Johar v Union of India*, the Supreme Court concluded that constitutional rights do not take a back seat to the majoritarian social morality and that individual autonomy and identity are at the centre of the exercise of fundamental freedoms.³⁹¹ This argument is especially applicable to transgender individuals, whose self-presentations often disrupt the prevalent social conventions and thus are easily crushed in the name of decency or order in the society.

Following this, the Transgender Persons (Protection of Rights) Act, 2019³⁹² was enacted to prohibit discrimination in areas such as education, employment, and healthcare, and to provide legal recognition to transgender persons. However, the requirement of certification under the Act has been criticized for undermining self-identification, and the absence of clear reservation provisions reflects gaps in implementation.

The Transgender Persons (Protection of Rights) Rules, 2020³⁹³ further support the Act, but challenges such as social stigma and administrative barriers continue to limit effective realization of rights. Thus, despite progressive legal developments, achieving substantive equality remains a challenge.

3. LEGAL ACCESS AND BARRIERS TO JUSTICE

Despite constitutional recognition of transgender rights, significant barriers continue to hinder effective access to justice. Legal access is not limited to formal recognition of rights but also includes the ability of individuals to meaningfully approach and utilize legal institutions such as courts, police, and administrative bodies. In practice, transgender persons often face structural challenges, including lack of legal awareness, social stigma, discrimination, and fear of harassment by law

³⁸⁶ Constitution of India, arts. 14, 15, 16, 19(1)(a), 21

³⁸⁷ *National Legal Services Authority v Union of India* (2014) 5 SCC 438

³⁸⁸ Law Commission of India, report No 271, *Human Rights of Transgender Persons* (Ministry of Law and Justice, Government of India, 2018)

³⁸⁹ *State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75

³⁹⁰ Aparna Chandra and Mrinal Satish, ‘Gender, Criminal Law and the Indian State’ (2019) 12 NUJS Law Review 1

³⁹¹ *Navej Singh Johar v Union of India* (2018) 10 SCC 1.

³⁹² Transgender Persons (Protection of Rights) Act, 2019

³⁹³ Transgender Persons (Protection of Rights) Rules, 2020

enforcement authorities. These factors discourage them from seeking legal remedies and reinforce their marginalization within the justice system. The concept of legal access forms the foundation of any rights-based constitutional system. It refers not only to the formal ability of individuals to approach courts and legal institutions but also to the substantive capacity to obtain effective remedies without facing structural or social barriers. Within the Indian constitutional framework, access to justice is closely linked with the principles of equality before law and protection of life and personal liberty under Articles 14 and 21, as well as the directive under Article 39A to ensure equal justice and free legal aid. For transgender persons, access to justice assumes particular importance due to their historical marginalisation and exclusion from mainstream legal and institutional systems³⁹⁴. In the case of transgender persons, this involves recognising the intersection of legal exclusion, economic marginalisation, and social stigma that continues to limit their full participation in society. The constitutional commitment to social justice thus demands a shift from formal equality to substantive equality, where laws and policies are designed to address real-world inequalities³⁹⁵.

One of the key barriers arises from procedural requirements under the Transgender Persons (Protection of Rights) Act, 2019, particularly the need to obtain a certificate of identity from district authorities. This process often involves bureaucratic scrutiny and delays, which undermine the principle of self-identification and compromise individual dignity and autonomy. Additionally, the absence of sensitization among public officials and law enforcement agencies further complicates the process, leading to inconsistent and sometimes discriminatory treatment.

Judicial interventions have played an important role in addressing these challenges by affirming

the rights of transgender persons. Courts have upheld the right to change name and gender in official documents and have recognized gender transition as a legitimate exercise of personal liberty. However, the need to repeatedly approach courts for basic rights highlights systemic inadequacies in administrative and institutional mechanisms.

Moreover, economic constraints and social exclusion limit the ability of transgender individuals to pursue legal action, as litigation can be expensive and time-consuming. Discrimination within institutions such as the police, judiciary, and healthcare systems further restricts access to justice. Consequently, while legal frameworks provide formal protections, the gap between law and practice persists, indicating the need for more accessible, inclusive, and sensitized justice delivery systems.

4. SOCIAL JUSTICE AND CONSTITUTIONAL MORALITY

Social justice for transgender persons extends beyond mere legal recognition and requires a fundamental transformation of societal attitudes, institutional practices, and cultural norms. While laws and judicial decisions provide a formal framework for equality, true social justice can only be achieved when transgender individuals are able to live with dignity, acceptance, and equal participation in all aspects of society. In this context, the Indian judiciary has emphasized the doctrine of constitutional morality, which prioritizes the values of justice, liberty, equality, and dignity enshrined in the Constitution over prevailing social prejudices and majoritarian attitudes.

The landmark judgment in *National Legal Services Authority v. Union of India* (2014)³⁹⁶ firmly established that discrimination against transgender persons violates fundamental rights under Articles 14, 15, and 21. The Court not only recognized their right to self-identification but also highlighted the need for affirmative

³⁹⁴ India Constitution arts. 14, 21, 39A; *Hussainara Khatun v. State of Bihar*, (1980) 1 S.C.C. 81

³⁹⁵ *Indra Sawhney v. Union of India*, 1992 Supp (3) S.C.C. 217

³⁹⁶ *National Legal Services Authority v. Union of India* (2014) 5 SCC 438

action measures to address historical and structural disadvantages. By invoking constitutional morality, the judiciary sought to challenge deeply rooted stereotypes and promote an inclusive understanding of gender identity within the legal system.

Despite these progressive developments, transgender persons in India continue to face significant social exclusion in everyday life. Discrimination persists in critical areas such as family acceptance, education, employment, housing, and healthcare. Many transgender individuals experience rejection from their families, leading to homelessness and limited access to education and livelihood opportunities. Social stigma and stereotypes further contribute to violence, harassment, and systemic marginalization, preventing their integration into mainstream society.

Recent debates surrounding amendments to transgender laws reveal an ongoing tension between progressive judicial principles and legislative or administrative practices. Concerns have been raised that certain provisions may dilute the right to self-identification and reintroduce medical or bureaucratic control over gender identity, thereby undermining individual autonomy and dignity. These developments highlight the gap between constitutional ideals and their practical realization.

5. ECONOMIC EMPOWERMENT OF TRANSGENDER PERSONS

Economic empowerment is a crucial component of substantive equality. Transgender persons in India face high levels of unemployment, poverty, and exclusion from formal economic systems. Due to discrimination in education and employment, many are forced into informal sectors such as begging or sex work. The Supreme Court has consistently interpreted Articles 14 and 21 of the Constitution to include not only formal equality but also the right to live with dignity, which necessarily encompasses access to means of livelihood. For transgender persons, economic exclusion

often translates into social marginalisation, thereby undermining the effectiveness of constitutional protections

In *National Legal Services Authority v. Union of India*, the Court explicitly recognised that the lack of access to employment and economic opportunities contributes significantly to the marginalisation of transgender communities and directed the State to take affirmative measures to promote their inclusion.

Financial independence plays a crucial role in enabling social inclusion and reducing vulnerability. Without stable sources of income, transgender persons are often forced into informal or precarious forms of livelihood, which may expose them to exploitation and social stigma. Economic empowerment, therefore, is not merely a matter of financial stability but a prerequisite for exercising autonomy, accessing essential services, and participating meaningfully in public life. The absence of economic opportunities reinforces cycles of poverty and exclusion, making it difficult for transgender individuals to benefit from legal and social reforms.³⁹⁷

The 2019 Act also mandates non-discrimination in employment and encourages vocational training and self-employment schemes. However, implementation remains weak, and there is limited evidence of effective inclusion in formal employment sectors.

Barriers such as lack of identity documents, discrimination by employers, and absence of inclusive workplace policies hinder economic participation. Additionally, exclusion from financial systems, such as banking and credit facilities, further limits economic opportunities.

True economic empowerment requires targeted policies, including reservations, skill development programs, and anti-discrimination enforcement mechanisms.

³⁹⁷ *Navej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

6. INTERSECTIONALITY AND MARGINALIZATION

Transgender persons often experience multiple forms of discrimination based on caste, class, religion, and geography. Intersectionality highlights how overlapping identities exacerbate marginalization.

For instance, transgender persons from marginalized castes or rural areas face compounded disadvantages, including limited access to education, healthcare, and legal resources. The lack of intersectional policies in the current legal framework limits the effectiveness of transgender rights protections.

A comprehensive approach must address these intersecting inequalities to ensure inclusive development and social justice.

7. CRITICAL ANALYSIS OF THE TRANSGENDER PERSONS (Protection of Rights) Act, 2019

The Transgender Persons (Protection of Rights) Act, 2019³⁹⁸ represents a significant legislative effort to safeguard the rights of transgender individuals in India; however, it has been widely criticized for several substantive and procedural shortcomings. While the Act prohibits discrimination in areas such as education, employment, healthcare, and access to public services, its effectiveness is limited by inconsistencies with the principles laid down in judicial pronouncements, particularly the *National Legal Services Authority v. Union of India* (2014)³⁹⁹ judgment.

One of the most contested aspects of the Act is the requirement for transgender persons to obtain a certificate of identity from a District Magistrate. This provision undermines the principle of self-identification recognized by the Supreme Court, as it subjects individuals to bureaucratic scrutiny and potential misuse of authority. Critics argue that this approach reflects a paternalistic and medicalized understanding of gender identity, thereby infringing upon personal autonomy and dignity.

Another major limitation is the absence of explicit provisions for reservations in education and public employment, despite clear directions in the NALSA judgment to treat transgender persons as socially and educationally backward classes. This omission weakens the framework for achieving substantive equality and fails to address the historical disadvantages faced by the community.

Additionally, the Act has been criticized for its inadequate penal provisions. The punishments prescribed for offenses against transgender persons are comparatively lenient, raising concerns about insufficient deterrence and lack of effective protection against violence and abuse. Furthermore, the Act does not comprehensively address issues such as marriage rights, adoption, inheritance, and property rights, leaving significant gaps in legal recognition.

Implementation challenges also persist, including lack of awareness, insufficient sensitization of authorities, and weak enforcement mechanisms. The establishment of the National Council for Transgender Persons is a positive step; however, its advisory role limits its effectiveness in ensuring accountability.

8. CONCLUSION

The recognition of transgender rights in India represents a significant step towards inclusive constitutionalism and the realization of fundamental human rights⁴⁰⁰. Judicial pronouncements have played a transformative role in affirming the dignity, autonomy, and equality of transgender persons, particularly by recognizing gender identity as an integral aspect of personal liberty. These developments have laid a strong constitutional foundation for advancing the rights of transgender individuals and challenging traditional, binary notions of gender.

³⁹⁸ Transgender Persons (Protection of Rights) Act, 2019

³⁹⁹ *National Legal Services Authority v. Union of India* (2014) 5 SCC 438

⁴⁰⁰ *National Legal Services Authority v. Union of India* (2014) 5 SCC 438

However, the transition from formal legal recognition to substantive equality remains incomplete⁴⁰¹. While progressive judgments have articulated inclusive principles, legislative and administrative frameworks have not fully translated these ideals into effective implementation⁴⁰². Persistent challenges such as social stigma, discrimination, lack of awareness, and institutional barriers continue to hinder the realization of rights in everyday life. The gaps in enforcement, absence of comprehensive welfare measures, and limited economic opportunities further exacerbate the marginalization of transgender persons.

Addressing these challenges requires a holistic and multi-dimensional approach that goes beyond legal reforms. It must include social transformation through education and sensitization, stronger institutional mechanisms for enforcement, and targeted policies aimed at economic empowerment and inclusion. Greater emphasis on affirmative action, access to healthcare, education, and employment opportunities is essential to ensure meaningful participation of transgender persons in society.

In conclusion, achieving true equality for transgender persons in India demands not only progressive laws but also a commitment to their effective implementation and societal acceptance⁴⁰³. Only through a coordinated effort involving the State, judiciary, civil society, and the community itself can the constitutional promise of dignity, equality, and justice be fully realized.

3. *State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75
4. *Indra Sawhney & Ors. v. Union of India* 1992 Supp 2 SCR 454
5. *Hussainara Khatoon v. State of Bihar*, (1980) 1 S.C.C 81
6. *Supriyo Chakraborty v. Union of India*, SCC OnLine SC (2023)

REPORTS

1. Law Commission of India, report No 271, *Human Rights of Transgender Persons* (Ministry of Law and Justice, Government of India, 2018)

BOOKS

1. Lopamudra Sengupta, *Human Rights of the Third Gender in India*, (Routledge India, 2024)
2. Veerendra Mishra, *Transgender in India*, (Routledge India, 2023)
3. Binoy Gupta, *Law of Transgender Rights in India*, (Ukiyoto Publishing, 2023)
4. Reena Devi, *Transgender: Their Rights and Conditions in India*, (Taneesha Publishers, 2024)

REFERENCES

CASE LAWS

1. *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438
2. *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

⁴⁰¹ The Transgender Persons (Protection of Rights) Act, 2019 (Act No. 40 of 2019)

⁴⁰² The Transgender Persons (Protection of Rights) Rules, 2020

⁴⁰³ *Supriyo Chakraborty v. Union of India*, SCC OnLine SC (2023)