
LEGAL RECOGNITION VS SOCIAL REALITY : The Struggle of Transgender Individuals

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ABSTRACT:

Is the determination of sexual orientation in our hands? Can we control the sexual orientation of any person? In India, and in various parts of the world, the orientation of the third gender, which includes transgender, non-binary etc are always in a substantially vulnerable state. As the birth of a male or a female brings an atmosphere of happiness, joy and blessings within the family and society, but if that same family, that same society comes to know about a third sexual orientation, the situation turns drastically to sorrow, mourning, and an awful moment. And even if out of hundreds of families, if one of the families tries to keep their child with them out of love the society starts acting like a villain to that same family and forces them to such an extent that they have to abandon their child.¹ Anti-trans stigma has also contributed to the historical erasure of trans people in health research, policy, and practice, leading to limited availability of data on trans people's health. The article that follows examines the several obstacles that transgender individuals face and assesses the steps that need to be taken in order to attain complete equality. It also looks at institutional changes, public policy initiatives, and legislative developments to ensure social participation and human dignity. In addition to legal recognition, the study argues that welfare-oriented governance, social consciousness, and effective implementation strategies are essential.

Keywords: Transgender rights, gender identity, equality, social justice, inclusion, human dignity, public policy.

Introduction:

The idea of gender has fundamentally changed traditional binary concepts of male and female identity. A person's gender identity may reflect their deeply held sense of self rather than the biological sex they were assigned at birth, according to contemporary legal and social discourse. Transgender persons have lived and been accepted in numerous communities throughout human history. Transgender communities have long existed in India through identities such as Hijras and other gender-diverse social groups. However, transgender people have long been ignored due to institutional discrimination, social shame, and restrictive legal frameworks. Transgender rights

¹ [Health status of transgender people globally: A systematic review of research on disease burden and correlates - PMC](https://www.drishtiias.com/daily-updates/daily-news-analysis/challenges-to-transgenders-in-india)

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now involve broader discussions about social justice, citizenship, constitutional equality, and opportunity in addition to identity recognition.

Historical Background:

Transgender communities have a long and rich history that extends far beyond the current discussions about human rights and gender identity. Although the term "transgender" is relatively recent, historical records reveal that individuals who did not conform to traditional male or female roles have existed in many parts of the world throughout history. Across different time periods and cultural settings, people have recognised and accepted a variety of gender expressions in their own unique ways. Ancient cultures would see and experience both female and male in all different types of ways, sort of outside today's very specific male-female binary box thinking. Yet lots of people who did not conform to those nice, neat, hardware notions of man and woman, nonetheless were perceived to hold prominent positions in social, cultural, religious or ceremonial life. Evidence of this shows that it has always been the case that gender diversity is and always was simply a normal human variation, not something new or different to discover. Even before the word "gender" was being debated according to today's conceptions, transgender individuals appeared in historical, cultural and religious texts from India for centuries. Old Indian literature and scripture have a lot of references to persons with various gender identity features, outward expressions of those identities, and additional genders; furthermore, the architecture that changed over time in ancient India, as well in the description of the Hijra community.

Historical evidence seems to suggest that throughout Indian history, the gender diversity spectrum, including bisexuality and the cross-dressing phenomenon, has been accepted and incorporated as an integral part of Indian life in various instances. Historically, and this is somewhat the key here, there were a few communities of transgender people that existed in the medieval period and amongst themselves their roles were even respected. Gender diversity was also visible in royal courts and other ceremonial/cultural/administrative spaces, where some non-binary persons were present. But the treatment of transgender individuals was geographic and political, so access to public life did not just consist of denying it to them. Seen from this perspective, the history of trans people becomes less inscrutable because it suggests that at least some groups and or individuals were not explicitly marginalised for at least portions of time, out of all time always. Throughout the colonial period, there were radical shifts in how rules were enforced, and also in how Cabinets were run, which kind of fed into a more restrictive, tight view of gender, in general. In this particular time period, the colonial government had relatively clear and stable definitions for virtue, character and identity. These definitions functioned as a way to control people by regulating them as they fell into the different categories of virtue, character and identity. For example, someone who expressed their gender in a way

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that deviated from the "norm" would be closely monitored; however, it did not stop with "wrong" expressions of gender, but extended to groups outside of what a typical observer might think. Once those individuals left their traditional social interactions due to colonisation, they were targeted for further regulation, management and control.

As opportunities for non-conventional forms of gender expression became limited with increasing high-profile critiques, people who expressed nontraditional genders were being excluded from nearly all social settings, even when it was not clear how they were being excluded. Although the impact of colonisation is not necessarily immediately visible today, the structures and practices that were formed during that time continue to influence the way we view gender today and to support the continued establishment of gender-based expectations and standards of behaviour in contemporary life as if these things are simply accepted facts. The constitution of India formally guaranteed equality for all of its residents once the country gained its independence. Nonetheless, prejudice against transgender individuals persisted in domains like public life, work, healthcare, education, and housing. Transgender identity-related concerns were not frequently discussed in legal or policy discussions for a long time. Transgender people continue to face social and economic challenges as a result of the lack of significant action taken, despite the constitution's purpose of equality and tolerance. The way transgender persons are viewed and included in society has steadily altered in recent years due to growing knowledge, campaigning, legal reforms, and human rights discussions. These conversations now place a strong emphasis on individual freedom, justice, dignity, and the freedom to establish one's own identity. The history of transgender communities shows how they went from being disregarded by society to being treated unfairly by institutions, and now they are working to be treated fairly and have a relevant role in society. Knowing this history is crucial because it demonstrates that transgender people want equal respect, decency, and a proper role in society rather than special treatment.

Problems and Challenges:

Just like during the ancient time there was discrimination based on economy and caste where the people face issues from earning their livelihood to even getting two meals a day the same type of discrimination with change in form is suffered by the trans individuals. They are subject not only to emotional distress because of being away from the family and being abandoned but also mentally, physically and economically.² As per census 2011, there were 4.87 lakhs persons in India who opted for "other" in gender category. This figure is assumed as population of non-binary persons in the country. But contradicting to this point if we analyse the reality of India, minimal to none percent of transgender are part of Parliament, out of thousands of them not even one percent of them are pursuing basic elementary studies are these

² [doc20251119698601.pdf](https://www.drishtiias.com/daily-updates/daily-news-analysis/challenges-to-transgenders-in-india)

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not only regulatory lacking but also perspective lacking, opportunity lacking and even their own thinking. Transgender people still face substantial discrimination and threats to their health and wellbeing. The transgender community is among the most marginalized and vulnerable groups in society. Transgender people experience severe exclusion and discrimination even with the constitutional provision for equality, respect, and freedom across most aspects of their lives. It is not because they are transgender people; rather, it is because there are widespread issues in society concerning systems, culture, and institutions as well as continued exclusionary behaviors. Several difficulties arise because of their status as transgender persons, and these include difficulties in social standing, economic stability, general physical and psychological well-being; thus, creating a chain of exclusions that makes it impossible for them to participate actively in society.

Social Discrimination: Besides experiencing social stigma against their condition, transgender people suffer from social discrimination against them. Social norms recognize only two genders in society, namely male and female, in what can be termed as a binary way of defining gender. Any deviation from those traditional gender norms would lead to discrimination, ridicule, exclusion, etc.

Transgender individuals are frequently excluded from everyday life because they are seen as going against societal expectations. This kind of prejudice not only limits their ability to participate fully in society but also reinforces negative attitudes that contribute to inequality. Transgender identities remain marginalized and less visible largely due to ongoing negative attitudes towards them. Transgender individuals face a lot type of discrimination starting from facing ostracization which results from facing rejection from families and communities. They are physically assaulted and also become victim of violence and sexual harassment which leads to breaking of there own belief system and courage to fight to this evil societal pressure. Because of constant pressure , bullying and several harassment the transgender commits suicide and bad mental condition including several diseases like anxiety, depression and even isolation. ³According to a report, around 31% of them commit suicide and out of which more than half of them are between age of eighteen to twenty three.

Scheme implementation gaps : Despite the 2019 Act mandating timely support for transgender persons, only 65% of ID Card applications had been processed by December 2023, with over 3,200 applications delayed beyond the 30-day legal deadline. The complex certification process hinders self-identification and fails to address issues like police harassment and family rejection. This clearly states that only implementable schemes on paper wont work until and unless they are worked upon on ground level. There are several schemes, beneficiaries for everyone but because of middlemen and non recognition of exact members the needed members are

³ [Challenges to Transgenders in India](https://www.drishtiias.com/daily-updates/daily-news-analysis/challenges-to-transgenders-in-india)

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deprived of being benefitted by those schemes . The same happens with the transgender people, even after schemes like the above mentioned acts and bills there are only a few percent of people in this community get help from the government because of being unregistered and unrecognised.

ECONOMIC EXCLUSION:

The transgender community constituting 4.8 million of population but the literacy rate is only thirtysix percent which states only one third of the population is literate and if only this much population is literate then ultimately the chances of job access and better economic condition will be substantially low than other communities. ⁴ Out of this also only thirty eight percent of people participated in the workforce which clearly shows how they are systematically and economically excluded. For transgender people, economic exclusion continues to be a fundamental obstacle to attaining equality and full engagement in society. This phrase describes the unjust limitations on employment prospects, sources of income, financial aid, social benefits, and involvement in regular economic activities. Transgender persons face discrimination that prevents them from achieving financial security and independence, even though they frequently have comparable abilities, education, and skills to others. Therefore, increased social exclusion is both a cause and an effect of economic inequality. . Financial difficulties resulting from mistreatment in the workplace are common among many people. Transgender people encounter discrimination during the process of applying for a job because employers might decide not to give someone a job just because of their gender and not qualifications or skills related to the particular job. Workplace discrimination results in mistreatment by other people like bullying, limited chances for getting promoted, less salary compared to that of non-transgender individuals, and lack of recognition for doing the job they are tasked with. The challenges that transgender people encounter on a daily basis only worsen their financial troubles and discourage many from making formal commitments to work for long periods. Moreover, economic exclusion influences access to institutions associated with finance and other social networks. Issues such as inability to acquire identification cards, open bank accounts, get loans, receive insurance coverage, or get any kind of help from the government prevent one from participating financially. The problems related to financial exclusion make it impossible for transgender people to actively take part in the economy and be financially independent since financial institutions ignore these challenges entirely. The consequences of economic exclusion are very damaging for an individual's life. In the absence of financial security in society, there are possibilities of facing hardships in securing proper housing, healthcare, education, adequate food, and personal development opportunities.

⁴ [Transgenders in India: Challenges & Way Ahead](https://www.drishtias.com/daily-updates/daily-news-analysis/challenges-to-transgenders-in-india)

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Without being financially secure, people tend to seek informal employment, and this causes insecurity regarding housing issues, thereby causing discrimination against that particular person. Lack of emotional security in terms of financial instability might make that individual feel inferior, and he or she might not be willing to visit public places or take part in community functions.

Educational Exclusion: Discrimination and exclusion from educational institutions can be stated to be the highest level of marginalization for transgender individuals. Education is very crucial in social integration, economic progress, and personal development. However, transgender individuals are usually met with obstacles in securing proper admission into learning institutions, thereby hindering their access to proper educational institutions. Consequently, they face numerous challenges in accomplishing their academic and personal goals. This is because discrimination, prejudice, stigma, and lack of institutional support have become common problems faced by transgender individuals despite the availability of their basic rights to education.

HEALTHCARE EXCLUSION: Healthcare exclusion can be regarded as a major form of discrimination, which has a tremendous effect on the physical, psychological and social health status of transgender individuals. Although healthcare access is known as a universal human right, transgender individuals may experience several barriers preventing them from accessing proper, affordable and quality healthcare facilities due to a lack of healthcare infrastructure development, provider unawareness, prejudice and discrimination.

Transgender individuals experience discrimination when dealing with healthcare professionals and institutions. For example, lack of knowledge or understanding related to transgender patients and their specific conditions and health concerns can lead to inadequate, delayed and even refusal of care from healthcare providers. Moreover, administrative procedures can become a barrier to accessing healthcare. Thus, many transgender individuals tend to postpone their medical appointments due to the progressing nature of their conditions.

Another consequence of healthcare exclusion is the absence of proper attention paid to the mental health and preventive healthcare measures, causing an increase in emotional and psychological distress related to discrimination and social exclusion. In addition, a lack of access to welcoming and appropriate healthcare settings leads to the impossibility of engaging in positive social relationships.

LEGAL EXCLUSION:

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"Legal exclusion" means that there is not enough legal protection for people who are transgender. There are more ways to legally acknowledge that someone is transgender, but this happens less often than it could. Legal exclusion makes it harder for transgender people to participate in activities related to the society around them; including participating in political and economic societies, as well as their personal life activities. In particular, the administrative aspect of legal exclusion and the manner in which governmental and corporate institutions use documentation processes contribute substantially to legal exclusion. For example, men and women with incorrectly or poorly defined identity documentation cannot access jobs, education, health services, financial services, housing, public assistance, or government; therefore, they have limited access to socially or economically critical institutions (such as) employment - and have almost no recourse for discrimination or harm (to their person or property) because of administrative difficulties or lack of administrative or institutional support for civil laws and/or civil legal actions. Additionally, transgender men and women have difficulty reporting violations of their legal rights (such as discrimination) because they fear the consequence of reporting a violation of their rights and because they have limited access to any organization that can provide support or assistance in reporting to an appropriate administrative entity.

MENTAL AND PSYCHOLOGICAL CHALLENGES: Transgender people find themselves facing a multitude of mental and psychological issues [or problems], which are frequently overlooked. Issues [such as] discrimination, social rejection, financial insecurity, or even institutional barriers, may significantly influence the overall mental well-being of a particular person. Mental well-being needs to be considered from the viewpoint of a collective social process of marginalization and unequal treatment, rather than being considered as an issue that belongs to only a particular individual or transgender person. As a consequence of [social] stigma, invisibility, family rejection, and exclusion from employment and educational opportunities, transgender people find themselves experiencing higher levels of emotional distress. Continuous efforts made at adapting to societal norms create a feeling of alienation, uncertainty, low self-esteem, and not belonging within society. Moreover, more psychological distress and social involvement are caused by lack of full inclusion into society, both in terms of its public life, working life, and education.

Steps Taken by Government of India for the Protection, Welfare and Inclusion of Transgender Persons:

The Government of India has now accepted that it is necessary that some legislative, institutional, administrative, and humane measures be taken to address the neglect of the rights of transgender people by the government in the past. Despite many changes to the Constitution of India and many changes in legislation since Independence, <https://www.drishtiias.com/daily-updates/daily-news-analysis/challenges-to-transgenders-in-india>

transgender individuals continue to be neglected in Federal Government policy since Independence. As a result of social activism and continuing dialogue regarding human rights, government policy towards integrating transgender individuals into society has made significant advances. The judgment in *NALSA v. Union of India* (2014) has brought about profound change with regard to transgender rights in India. The judgment changed the legal view of gender identity by ruling that transgendered people are legally entitled to equality, dignity and personal liberty under the Constitution, and thus entitled to same constitutional rights as everyone else. The judgment also encourages affirmative action through the development of public awareness campaigns; increasing access to healthcare; providing social security; affording increased employment opportunities and access to education for transgendered individuals; and facilitating other positive changes in society that will benefit transgendered individuals. This judgment marks one of the most significant milestones in transgender rights development in India to date, and will serve as a foundation for future legislative development in this area.

To protect individuals from discrimination, the government passed the Transgender Persons (Protection of Rights) Act, 2019, in response to the recognition of judges and other legal authorities. Discrimination of any type against an individual in relation to public services, housing, occupation, healthcare, education, movement, or opportunity is also now against the law. The Government of India has enacted legislation known as the Transgender Persons (Protection of Rights) Rules, 2020 to provide enforcement for this new piece of law. The Rules lay out how individuals can apply to obtain legal recognition and enforce their rights. The purpose for instituting this regulation is to eliminate barriers (many of which have historically existed) that have suppressed the rights and benefits that transgender individuals receive as a result of their service. The Creation of a National Council for Transgender Persons by the Government of India is an example of how understanding that there needs to be better coordination among all levels of institutions that serve the transgender community. Created under the Ministry of Social Justice and Empowerment, the National Council for Transgender Persons serves as an advisory body to monitor policies on behalf of the transgender community; members have been appointed from the community as well as by government organizations, and are expected to monitor the application of these policies and provide governments with recommendations regarding their welfare programs as well as problem-solving regarding issues faced by the transgender population in India.

In recent years, policy has been established that expands access to education and reduces discrimination through a number of Federal Government programs designed specifically to provide scholarship opportunities; provide equal inclusivity within educational teaching methods; educate public entities through campaigns to raise awareness and promote sensitivity towards these issues. By implementing equal

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access to educational opportunities, these programs are designed to reduce educational disparities that existed prior to implementation as well as to create future opportunities for social mobility. Currently, the Federal Government's focus continues to be on health care reform, with more individuals recognizing that there are many different health issues which occur within transgender populations, which require a more inclusive approach to healthcare. Through various Federal Government initiatives designed to increase the accessibility of healthcare and establish greater sensitivity within institutions providing healthcare, as well as establish equitable healthcare, Federal Government is demonstrating recognition of the importance of both psychological and physiological wellness. The government of India has developed many schemes to encourage participation in economic activities through Social Security, entrepreneurship, livelihoods and vocational training. The primary purpose for implementing these welfare and skill development interventions is to reduce economic exclusion and provide a pathway to future economic self-sufficiency and inclusion. To improve access to services and entitlements from government agencies by transgender people, the government also has taken steps for administrative and digital inclusion. The National Portal for Transgender Persons is an example of a government scheme developed to support transgender people by helping them verify their identity and communicate with relevant government agencies.

Reforms that need to be implemented:

Although several important strides have been made in India to constitutionally protect the rights of the transgender population, establish legislation, and develop welfare programs, many transgender individuals remain subject to numerous forms of social, economic, educational, healthcare, and institutional discrimination. While increased legal recognition helps promote awareness of transgender rights, this is not sufficient to achieve equal citizenship; thus, the central challenge in 2026 will be whether legislative promises can actually be realized. In pursuing future changes, much greater emphasis will need to be placed on structural transformation and creating opportunities for transgender individuals to participate equally in their communities rather than simply being included in them. Transgender individuals' status as equal citizens will require both rights-based (e.g., through anti-discrimination laws) and welfare-based (e.g., through access to financial resources) approaches. One of the major challenges facing transgender individuals today is whether or not anti-discrimination policy enforcement can be strengthened. The challenges faced by transgender individuals as they seek access to justice can sometimes result in barriers to justice, limiting the effectiveness of some avenues for seeking justice. At every level of government (federal, state, and local), therefore, the development of mechanisms for receiving complaints, establishing oversight bodies, holding <https://www.drishtias.com/daily-updates/daily-news-analysis/challenges-to-transgenders-in-india>

government agencies accountable, and providing individuals with easy means of filing grievances should be pursued as part of any future changes in policy and practice related to transgender rights. The introduction of comprehensive laws promoting equality will help achieve our goal of improving the level of equality in India by creating an effective and comprehensive equality system that addresses discrimination related to access to public-sector services such as employment, housing, health care, education, or the internet. While these laws are required to stop discrimination on the basis of sex, they are also required to increase the level of economic and social participation of all citizens, thereby reducing the level of discrimination and achieving equality. The need for reforms in the education sector continues to be the most fundamental area requiring reform in the long-term. Therefore, in addition to improving student access to higher education through changes in selectivity of admissions, additional areas of focus include creating and implementing a curriculum that recognizes gender as an important factor; preventing and addressing bullying and harassment; ensuring that all teachers are trained in issues of sensitivity to gender; implementing inclusive management practices in all schools; etc. To reduce disruption and optimize outcomes, additional efforts (e.g., scholarships and other incentives) must be implemented. In the future, policy will focus on economic empowerment. There will still be methods of exclusion and dependency that perpetuate employment inequality. Examples include strong social security programs, diversification of the workforce, mentoring for entrepreneurs, equal opportunity policies, equal opportunity in hiring, vocational training programs, and utilizing the institutional and legal aspects of procurement to motivate members of the transgender community to participate in the economy. The importance of economic empowerment, beyond the provision of only basic needs, cannot be understated in order to achieve citizenship. Needed reform of the health care system will entail creating a system of total inclusion from one that is currently focused on inadequate access. In this regard, future policy will ensure public health care by engaging in appropriate training, implementing inclusive operational procedures in institutions, increasing access to services, and removing administrative barriers. Among the health care services that must be provided will be prevention services, easily accessible mental health therapies, general medical care, and reproductive medical care when necessary. The guiding principles of health care facilities are equity, integrity, confidentiality, and informed consent.

Future policies must examine mental health reform for transgender individuals due to the association between mental health issues and lack of inclusion in society; thus future efforts towards mental health reform will require developments such as: mental health service structures, networks of education, counseling services at work, workplace policies that support personnel, community-based support services, etc. Therefore, mental health must be incorporated into larger efforts towards social inclusion as opposed to being seen as a separate agenda. Reforming public policy to

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incorporate evidence-based solutions is critical to our society. Current public policy does not utilize sufficient information regarding how social welfare programs impact the excluded and what exclusion trends exist. The resolution of these two issues (i.e., the absence of good evaluation systems, poor data collection methods, and lack of appropriate research procedures) will require significant improvement in the evaluation process currently used in social welfare programs. In 2026, digital inclusion will be the number one focus for reform. As governments continue to use digital governance, businesses are using e-learning, e-banking, and employment websites. Therefore, there is a need for laws that provide equal access to digital technology and prevent technological segregation. The future reforms must include digital literacy promotion, inclusive digital platforms, and accessible technology infrastructure.

Conclusion:

To conclude, the discrimination that transgender people face signifies the prominent principles of equality, dignity, and social justice noted in the Constitution. Discrimination occurs for transgender persons throughout all phases of life including education, employment, healthcare access, participation in the economy, and social participation. Discrimination against transgender persons demonstrates the gulf between the law and actual implementation. The paramount obligation for meaningful reform is to ensure both the accountability and the social transformation that result from the implementation of the law, regardless of the law. Access to welfare, jobs, healthcare, education and the law are critical to achieving equality. Ultimately, we should see the inclusion of transgender individuals as a human rights and equality issue and not just simply a health and welfare issue. In an ideal democratic society all people should be able to live with dignity and have the ability to make their own choices and participate fully in all aspects of society regardless of their gender identity.

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