
FROM IDENTITY TO INCLUSION: THE UNFINISHED PROMISE OF TRANSGENDER RIGHTS IN INDIA: A CRITICAL EXAMINATION OF THE 2019 ACT AND ITS IMPLEMENTATION

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“Trans people are extraordinary, strong, intelligent, persistent and resilient. We have to be. And we will not stand for the picking and choosing of rights. We still have hope.”¹

ABSTRACT

Transgender individuals often face significant societal pressure to conform to traditional gender norms. The experiences of transgender people are shaped by intersecting identities, including race, class, sexuality, and disability. This paper analyses the rights of transgender persons in the light NALSA case. The Court recognized transgender persons as a "third gender" for the first time and affirmed their fundamental rights under the Indian Constitution. The judgment not only addressed the legal invisibility of transgender persons but also laid the foundation for their socio-economic inclusion. Consequential to NALSA case, The Transgender Persons (Protection of Rights) Act, 2019, was passed. The study tries to analyse the implementation gaps in the Act. Suggestions for improvement of the implementation, is also listed in this article. It highlights that the promise of equality remains "unfinished" until the legal framework shifts from formal recognition to functional empowerment.

¹ Sage Grace Dolan-Sandrino, Teen Vogue’s first trans youth journalist, as well as a teen ambassador to the White House while Barack Obama was president. When Dolan-Sandrino was outed to her school at just 13 years old, she decided to live as her authentic self, despite the risks. Her story was chronicled in the Disney+ show “Growing Up.”

Introduction

Transgender individuals in India have historically inhabited a multifaceted and marginalized societal position. While ancient texts such as the *Kama Sutra* and *Mahabharata* attest to their presence and acceptance within pre-colonial traditions, colonial-era legislation and contemporary sociocultural attitudes have perpetuated their systemic exclusion and discrimination. The socio-legal status of transgender persons in India is shaped by a combination of cultural stigma, legal invisibility, and socio-economic deprivation. However, recent judicial interventions and legislative measures have sought to address these challenges, albeit with limited success.²

The concept of transgender is complex and multifaceted, encompassing a wide range of identities and experiences that challenge traditional notions of gender.³ To engage in a deep discussion about the definitions of transgender, it is essential to explore the historical, cultural, social, and medical dimensions of the term, as well as the lived experiences of transgender individuals. Transgender is an umbrella term used to describe individuals whose gender identity or expression differs from the sex they were assigned at birth. This can include people who identify as male, female, non-binary, gender queer, gender fluid, or any other gender identity that does not align with their assigned sex. Their identity refers to a person's deeply felt sense of their own gender, which may or may not correspond to the sex they were assigned at birth and their expression is the way a person presents their gender to the outer world, through their behaviour, voice or other forms of expression.

The socio-legal status of transgender persons in India represents a profound and often contradictory journey from historical respect, through colonial-era criminalization, to a modern legal framework seeking to affirm their constitutional rights.⁴

Historical Perspectives

The notion of transgender identities is far from a contemporary phenomenon; numerous cultures across history have acknowledged and honoured the existence of gender

² DR V Shyam Sundar, *Social Exclusion of Transgender: Achieving Sustainable Development Goals in India*, White Black Legal Law Journal, Volume 2 Issue 16 | Nov-Dec 2024.

³ Nat Throne, Andrew Kam-Tuck Yip et.al. , *The Terminology of Identities Between, Outside and Beyond the Gender Binary – A systematic review*, Int J Transgend. 20(2-3) 138-154 Jul 18, 2019.

⁴ Bhattacharya S, Ghosh D, Purkayastha B. *Transgender Persons (Protection of Rights) Act' of India: An Analysis of Substantive Access to Rights of a Transgender Community*, J Hum Rights Pract. 2022 Apr 11, 14(2),676-69.

diversity.⁵ For example, Shikhandi of Mahabharatha. The literature named Kama Shastra, the ancient Hindu text in which transgender have been referred as 'tritiyapakriti' or third gender has been an integral part of vedic and puranic literatures, it categorises men who desire other men as a 'third nature'. The word namely 'napunsaka' has been commonly used to denote the absence of procreative capability of a person. The history of transgender persons in India is marked by a paradoxical shift from acceptance to marginalization.

Lord Rama, in the epic Ramayana, was leaving for the forest upon being banished from the kingdom for 14 years, turns around to his followers and asks all the 'men and women' to return to the city. Among his followers, the hijras alone do not feel bound by this direction and decide to stay with him.⁶

Aravan, the son of Arjuna and Nagakanya in Mahabharata, offers to be sacrificed to Goddess Kali to ensure the victory of the Pandavas in the Kurukshetra war, the only condition that he made was to spend the last night of his life in matrimony. Since no woman was willing to marry one who was doomed to be killed, Krishna assumes the form of a beautiful woman called Mohini and marries him.⁷ The Hijras of Tamil Nadu consider Aravan their progenitor and call themselves Aravanis.⁸

Jain Texts also make a detailed reference to transgender which mentions the concept of 'psychological sex'.⁹ Hijras also played a prominent role in the royal courts of the Islamic world, especially in the Ottoman empires and the Mughal rule in the Medieval India.¹⁰

In ancient and medieval India, transgender individuals, often referred to as *hijras*, were considered to possess spiritual powers and were associated with blessings and rituals. The colonial administration criminalized transgender identities through laws¹¹ which labelled *hijras* as "criminals" and subjected them to surveillance and persecution.¹² This

⁵ Jessica Hinchy, *Governing Gender and Sexuality in Colonial India: The Hijra, c. 1850–1900*, 47 J. Asian Stud. 123, 125 (2018).

⁶ Nanda, Serena, *Neither man nor Woman: The Hijras of India*, Belmont, CA : Wadsworth Pub. Co., 1999, p.59.

⁷ Dr. Shabnam Bharati, *Transgender Community in India: Historical Perspective*, International Journal of Research in Economics and Social Sciences, vol 13 Issue 2 Feb 2023.

⁸ Ibid.

⁹ Zwilling, Leonard, *'Like a City Ablaze': The Third Sex and the Creation of Sexuality in Jain Religious Literature*, Journal of the History of Sexuality, 1996.

¹⁰ Md Aatif Iqbal, *Access to Justice for Rights of Transgender Persons*, Indian Journal of Integrated Research in Law, Vol. II Issue II (2022).

¹¹ The Criminal Tribes Act, 1871 (Act XXVII of 1871).

¹² *Id.*, Preamble.

colonial classification was not based on proven criminal conduct but on Victorian morality and prejudice.¹³ This legacy of criminalization and stigma persisted even after independence, with transgender persons continuing to face social ostracization and economic marginalization.

But they held respected positions in royal courts and religious ceremonies. However, the advent of British colonial rule marked a turning point in their social status.¹⁴

Medical and Psychological Perspectives

The medical community has historically pathologized transgender identities, classifying them as mental disorders. The Diagnostic and Statistical Manual of Mental Disorders (DSM) once included "Gender Identity Disorder," which was later replaced with "Gender Dysphoria" in the DSM-5.¹⁵ This shift reflected a growing understanding that being transgender is not inherently pathological, but the distress associated with it (dysphoria) may require medical support.

Medical interventions, such as hormone therapy and gender-affirming surgeries, are often sought by transgender individuals to align their physical bodies with their gender identity. However, not all transgender people pursue medical interventions, and their validity as transgender individuals is not contingent on such procedures.

Transgender individuals often face significant societal pressure to conform to traditional gender norms.¹⁶ This can lead to discrimination, stigma, and violence, particularly for those who do not fit neatly into binary categories of male or female.

The experiences of transgender people are shaped by intersecting identities, including race, class, sexuality, and disability.¹⁷ Increased visibility of transgender people in media,

¹³ Jessica Hinchy, (2020). *Gender, Family, and the Policing of the 'Criminal Tribes' in Nineteenth-Century North India*. *Modern Asian Studies*. 54. 1-43. 10.1017/S0026749X19000295. *Governing Gender and Sexuality in Colonial India: The Hijra, c. 1850–1900*, 47 *J. Asian Stud.* 123, 125 (2018).

¹⁴ Shabnam Bharti, *Comparative analysis of transgender identities in ancient and medieval India*, *International Journal of History* 2025; 7(3): 94-96.

¹⁵ Amber Ault and Stephanie Brzuzy, *Removing Gender Identity Disorder from the "Diagnostic and Statistical Manual of Mental Disorders: A Call for Action*, *Social Work*, Oxford University Press, Vol. 54, No. 2 (April 2009), pp. 187-189 (3 pages).

¹⁶ Pirzada, G., Diana, N., et.al *Understanding the Roles and Contributions of Transgenders towards an Inclusive Society in Pakistan: Who Is a Misfit—The Transgender Community or the Society Itself?*. *Open Journal of Social Sciences*, 10 (2022) 227-243.

¹⁷ Wesp LM, Malcoe LH, et.al., *Intersectionality Research for Transgender Health Justice: A Theory-Driven Conceptual Framework for Structural Analysis of Transgender Health Inequities*, *Transgend Health*. 2019 Oct 29;4(1):287-296.

politics, and other public spheres has contributed to greater awareness and understanding of transgender issues.¹⁸

Legal recognition of transgender identities varies widely around the world. Some countries allow individuals to change their legal gender without medical intervention, while others require extensive medical documentation or do not recognize transgender identities at all.¹⁹ Transgender individuals often face discrimination in employment, housing, healthcare, and other areas. Legal protections, such as anti-discrimination laws and policies, are crucial for ensuring the rights and dignity of transgender people.²⁰

There is ongoing debate about who should be included under the transgender umbrella. Some argue that it should be limited to those who experience gender dysphoria or seek medical transition, while others advocate for a more inclusive definition that encompasses a wide range of gender identities and expressions.²¹ Language around transgender identities is constantly evolving, and different communities may use different terms to describe their experiences. This can lead to confusion or conflict, particularly when terms are appropriated or misused.²²

As society continues to evolve, so too will the definitions and understandings of transgender identities. There is a growing recognition of the diversity of gender experiences, and future definitions may become even more inclusive and nuanced.²³ The role of technology, such as advancements in medical treatments and the impact of social media, will also shape the way transgender identities are understood and expressed.²⁴

Thus the definition of transgender is not static but shaped by many factors historical, cultural, social and individual factors. Being transgender is a deep personal experience of

¹⁸ Dhiman, B. *Evolving Media Coverage on Transgender Individuals: A Step towards Inclusivity* (2023). available at <https://nbnresolving.org/urn:nbn:de:0168-ssoar-86772-0> last visited on 10/2/2025.

¹⁹ Stefano Osella, Ruth Rubio-Marín, *Gender recognition at the crossroads: Four models and the compass of comparative law* *International Journal of Constitutional Law*, Volume 21, Issue 2, April 2023, Pages 574–602.

²⁰ Divan V, Cortez C, Smelyanskaya M, Keatley J. *Transgender social inclusion and equality: a pivotal path to development*, *J Int AIDS Soc.* 2016 19(3 Suppl 2) 20803.

²¹ Mazur M, Larionow P. *The Effects of Gender-Affirming Hormone Therapy on Quality of Life: The Importance of Research on Youth*, *Healthcare (Basel)*. 2024 12(13) 1336.

²² Thorne N, Yip AK, Bouman WP, Marshall E, Arcelus J. The terminology of identities between, outside and beyond the gender binary - A systematic review, *Int J Transgend.* 2019 Jul 18;20(2-3):138-154.

²³ Katz-Wise SL, Budge SL, Fugate *et.al*, *Transactional Pathways of Transgender Identity Development in Transgender and Gender Nonconforming Youth and Caregivers from the Trans Youth Family Study*, *Int J Transgend.* 2017;18(3):243-263.

²⁴ Avi Marciano, *Living the VirtuReal: Negotiating Transgender Identity in Cyberspace*, *Journal of Computer-Mediated Communication*, Volume 19, Issue 4, 1 July 2014, Pages 824–838.

gender identity and expression. Understanding and respecting this diversity is crucial for creating a more inclusive and equitable society.²⁵ Thus the definition of transgender is complex and evolving, reflecting the rich diversity of human experiences with gender. It is essential to approach this topic with sensitivity, openness, and a willingness to listen to the voices of transgender individuals themselves.²⁶ It is assumed that human bodies are distinctly male or female, overlooking the violence experienced by those who defy the normative notions of what it means to be a man or a woman.²⁷

The Jurisprudence of Identity: *NALSA* and the Deconstruction of the Gender Binary

Recognition of the Third Gender

The most significant aspect of the *NALSA* judgment was the recognition of transgender persons as a "third gender." The Court held that the binary understanding of gender (male and female) is inadequate and fails to account for the diversity of gender identities.²⁸ Transgender persons have the right to self-identify their gender. By affirming the right of transgender persons to self-identify their gender, the judgment challenged societal norms and legal frameworks that had historically excluded them. Transgender persons have the right to self-identify their gender.

This landmark judgement of Supreme Court of India is a watershed moment in the history of transgender rights in India. For the first time, the Court recognized transgender persons as a "third gender" and affirmed their fundamental rights under the Indian Constitution. The judgment not only addressed the legal invisibility of transgender persons but also laid the foundation for their socio-economic inclusion. The Court held that the binary understanding of gender (male and female) is inadequate and fails to account for the diversity of gender identities. By affirming the right of transgender persons to self-identify their gender, the judgment challenged societal norms and legal frameworks that had historically excluded them. The Court relied on international human rights principles, including the Yogyakarta Principles, which emphasize the right to self-determination of gender identity.²⁹ This recognition was a

²⁵ M. Michelraj, Historical Evolution of Transgender Community in India, Asian Review of Social Sciences, ISSN: 2249-6319 Vol. 4 No. 1, 2015, pp. 17-19.

²⁶ Thorne N, Yip AK, et.al., *The terminology of identities between, outside and beyond the gender binary - A systematic review*, Int J Transgend. 2019 Jul 18,20(2-3):138-154.

²⁷ Niveditha Menon, *Seeing Like a Feminist*, Penguin Books India Pvt. Ltd, Delhi, 2012. Pg. 35

²⁸ AIR 2014 SC 1863, para. 70.

²⁹ Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation

crucial step towards ensuring the dignity and equality of transgender persons under the law.

Equality is violated if it rests on an unreasonable basis. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to equal treatment. Classification is to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved.

The Indian Constitution envisions affirmative action as a tool for achieving substantive equality. Articles 15(4) and 16(4) empower the state to make special provisions for the advancement of socially and educationally backward classes, including reservations in education and public employment. The Supreme Court had upheld the constitutional validity of reservations but emphasized that they must be based on objective criteria, such as social and educational backwardness.³⁰

The Court analytically linked the right to express one's self-identified gender through dress, mannerisms, and behavior to the fundamental right to freedom of speech and expression. This recognized that gender expression is a form of self-expression and is therefore protected.³¹

While the full scope of the right to privacy was later elaborated in *Puttaswamy v. Union of India*³², the *NALSA* judgment implicitly laid groundwork by asserting the individual's right to control their own identity and not be subjected to invasive examinations for gender recognition.

The judgment meticulously analyzed how various fundamental rights guaranteed under Part III of the Indian Constitution apply to transgender persons. The Court underscored that Article 14 uses the phrase "any person," which is gender-neutral and thus unequivocally includes transgender persons. This meant that the State cannot deny equality or equal protection to them as provided in Art.14 of the Constitution. It analytically established that discrimination based on gender identity constitutes a violation of Article 14, as it creates an "unreasonable classification" and denies equal treatment.

and Gender Identity, Principle 3 (2007) ("Everyone has the right to self-determination of their gender identity.").

³⁰ *Indra Sawhney v. Union of India*, AIR 1993 SC 477, 1992 Supp (3) SCC 217.

³¹ Constitution of India, art. 19(1)(a).

³² 2019(1) SCC1.

The *NALSA* judgment affirmed that transgender persons are entitled to the full range of fundamental rights guaranteed under the Indian Constitution.³³ The Court held that the right to gender identity is an integral part of the right to life and personal liberty under Article 21.³⁴ It also emphasized that discrimination on the basis of gender identity violates the right to equality under Article 14 and the prohibition of discrimination under Article 15.

“A transgender's personality could be expressed by the transgender's behaviour and presentation. State cannot prohibit, restrict or interfere with a transgender's expression of such personality, which reflects that inherent personality.”

The court further acknowledge that the State and its authorities, because of ignorance or for other reasons, do not understand the essential nature and identity of such persons. Thus, privacy, self-identity, autonomy, and integrity are fundamental rights of members of the transgender community under Article 19(1)(a) of the Constitution of India, and that the State has a duty to protect and recognize such rights.

The judgment robustly interpreted Article 21 to include the right to live with dignity and the right to personal autonomy. It analytically concluded that the right to self-determination of one's gender identity is an intrinsic part of personal liberty and dignity. To deny this right would be to deny a life of dignity.³⁵

“Article 21 is the heart and soul of the Indian Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the basic fundamental rights and not even the State has the authority to violate or take away that right. Article 21 takes all those aspects of life which go to make a person's life meaningful.”³⁶

“Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India.”³⁷

³³ *Supra* 28., 438, para. 72 .

³⁴ *Ibid.*

³⁵ *Supra* note 31, art. 21.

³⁶ *Supra* 28 p. 490 (para 73).

³⁷ *Id.*, p. 491 (para 75).

The judgment not only addressed the legal invisibility of transgender persons but also laid the foundation for their socio-economic inclusion. The *NALSA* judgment directed the government to take affirmative action to address the socio-economic marginalization of transgender persons.³⁸ The Court recognized that transgender persons are a socially and educationally backward class and are entitled to reservations in education and public employment under Articles 15(4)³⁹ and 16(4)⁴⁰ of the Constitution. The Court also called for the implementation of welfare measures, including access to healthcare, housing, and social security. These directives were aimed at addressing the systemic discrimination and exclusion faced by transgender persons in India.

The judgment's direction to treat transgender persons as a "Socially and Educationally Backward Class" (SEBC) for the purpose of reservations was also analytically significant. The Court recognized the historical and systemic discrimination faced by the community, leading to severe social and educational backwardness. This analytical finding justified the need for affirmative action under Articles 15(4) and 16(4) of the Constitution, which allow for special provisions for the advancement of backward classes. This direction moved beyond formal equality (treating everyone the same) towards substantive equality, which acknowledges existing disparities and mandates positive measures to achieve true equality of opportunity.

The judgement had acknowledged that a human rights approach towards transgender persons has to be adopted. The decision has analytically profound aspect concerning. The Court held that the term 'sex' in Articles 15 and 16 must be interpreted to include 'gender identity' and 'gender expression', not just biological sex. This expansive interpretation ensured that discrimination against transgender persons in public employment, access to public places, and other spheres, on the basis of their gender identity, is constitutionally prohibited. This move brought the concept of 'gender' (as distinct from biological sex) directly into the anti-discrimination framework of the Constitution.

“..... the issue of transgender is not merely a social or medical issue but there is a need to adopt human right approach towards transgenders which may focus on functioning as an interaction between a person and their environment

³⁸ *Id.*, p. 437, para. 70. ("Transgender persons are socially and educationally backward and are entitled to reservations in education and public employment.")

³⁹ *Supra* note 31, art. 15(4).

⁴⁰ *Id.*, art.16(4) .

*highlighting the role of society and changing the stigma attached to them.*⁴¹

The court observed that transgender persons experience a variety of disadvantages for a number of reasons, such as gender nonconformity, which to some extent involves health problems. It also opined that transgender persons have always been treated with cruelty, pity, or charity. However, a paradigm shift has taken place, moving away from such practices and adopting a rights-based approach.⁴²

The judgement understands the societal stigma attached towards this category and observed that

*“..... there appears to be limited public knowledge and understanding of same-sex sexual orientation and people whose gender identity and expression are incongruent with their biological sex.”*⁴³

Court was of the opinion that because of this approach, transgender people are excluded from the mainstream of the society and that they are denied equal access to those fundamental rights and freedoms that other people enjoy freely.⁴⁴

While the *NALSA* judgment was a landmark decision, it has faced criticism for certain limitations. Foremost, the judgment did not provide a clear framework for the implementation of its directives, leading to delays and inconsistencies in their execution.⁴⁵ Subsequent criticism was, the judgment did not address the intersectional challenges faced by transgender persons, particularly those from marginalized communities such as Scheduled Castes and Scheduled Tribes.⁴⁶ Despite these limitations, the *NALSA* judgment remains a foundational text for transgender rights in India. It has inspired subsequent legislative, policy reforms and judicial interventions, including the enactment of the Transgender Persons (Protection of Rights) Act, 2019, which seeks to protect the rights of transgender persons and prohibit discrimination against them. The

⁴¹ *Supra* 28, para 60.

⁴² *Ibid.*,

⁴³ *Id.*, para 35.

⁴⁴ *Id.*,

⁴⁵ S. Sivakumar, *Transgender Rights in India: A Critical Analysis of the Transgender Persons (Protection of Rights) Act, 2019*, 62 J. Indian L. Inst. 123, 135 (2020).

⁴⁶ Anupama Rao, *Caste, Gender, and the Reservation System in India*, 45 Econ. & Pol. Wkly. 50, 52 (2010).

judgment also influenced policy initiatives at the state level. For example, Tamil Nadu⁴⁷ and Kerala⁴⁸ introduced reservations for transgender persons in education and public employment, in line with the Court's directives. By recognizing the right to self-identify one's gender⁴⁹ and affirming the fundamental rights of transgender persons⁵⁰, the judgment laid the foundation for their inclusion and empowerment.

The NALSA judgment exemplifies transformative constitutionalism⁵¹ and the "living tree" doctrine⁵², illustrating the Constitution's interpretation as a dynamic instrument adaptable to evolving societal needs and contemporary human rights standards. Moving beyond a strict originalist framework, the Court explicitly recognized that the Constitution's interpretation must evolve to encompass unforeseen forms of identity and discrimination. This evolving understanding ensures the protection of dignity and rights for all persons, particularly those with identities outside conventional binaries.

Analysis of the Act

The need for a comprehensive law to protect the rights of transgender persons was highlighted by the Supreme Court in the *NALSA* judgment.⁵³ The Court directed the government to take affirmative action to address the socio-economic marginalization of transgender persons and to enact legislation to safeguard their rights.

The Transgender Persons (Protection of Rights) Bill was first introduced in the Lok Sabha in 2016. However, it faced significant criticism from activists and scholars for its failure to fully implement the directives of the *NALSA* judgment. After several revisions, the Bill was passed by both houses of Parliament in 2019⁵⁴ and received presidential assent on December

⁴⁷ Government of Tamil Nadu, *Tamil Nadu Government Orders: Reservation for Transgender Persons* (2021), <https://www.tn.gov.in>. visited on 16-02-2022.

⁴⁸ Government of Kerala, *Kerala Transgender Policy* (2015), <https://www.kerala.gov.in>. visited on 18-02-2022.

⁴⁹ Ministry of Social Justice and Empowerment, *Report of the Expert Committee on the Issues Relating to Transgender Persons* 12 (2014).

⁵⁰ Human Rights Watch, *India: Transgender People Face Discrimination in Healthcare* (2016), <https://www.hrw.org/news/2016/12/12/india-transgender-people-face-discrimination-healthcare>, last visited on 15-02-2022.

⁵¹ The Supreme Court in *NALSA*, emphasized the Constitution as a living document that must be interpreted in light of current social realities and evolving human right standards.

⁵² Jayanta Boruah, *Living Tree Doctrine: Role of Indian Judiciary against Constitutional Silence in India*, *Volume-5, Issue-1, Rajiv Gandhi National University of Law Student Law Review*, 50, 50-62 (2019).

⁵³ *Supra* note 32.

⁵⁴ Ministry of Social Justice and Empowerment, *Statement of Objects and Reasons, Transgender Persons (Protection of Rights) Bill, 2019* (2019).

5, 2019.

Thus the Transgender Persons (Protection of Rights) Act, 2019, is a landmark legislation enacted by the Indian Parliament to protect the rights of transgender persons and prohibit discrimination against them.

The Act aims to protect the rights of transgender persons and prohibit discrimination against them in areas such as education, employment, healthcare, and housing. It also provides for the issuance of identity certificates to transgender persons, enabling them to access government welfare schemes and services.⁵⁵ The Act seeks to achieve this objective by providing legal recognition of transgender persons and allowing them to self-identify their gender. This is a significant step towards ensuring their dignity and equality under the law. The Act prohibits discrimination in various spheres of life, and aims to create an inclusive society where transgender persons can live with dignity and without fear of prejudice. It also mandates the government to take measures to ensure the welfare of transgender persons, including access to healthcare, education, and social security. These measures are aimed at addressing the socio-economic marginalization of transgender persons. The Act calls for awareness and sensitization programs to address stigma and discrimination against transgender persons. This is crucial for changing societal attitudes and promoting acceptance.

By requiring medical interventions, the Act perpetuates the stigma and discrimination faced by transgender persons. This approach is inconsistent with international human rights standards, which emphasize the right to self-determination of gender identity without medical or bureaucratic interference. The medicalized and bureaucratic process for legal recognition under the Act deviates significantly from international human rights standards. The Yogyakarta Principles, which are widely regarded as a benchmark for LGBTQ+ rights, emphasize the right to self-determination of gender identity without requiring medical or bureaucratic interventions.

The United Nations Human Rights Council has also called on states to ensure that legal recognition of gender identity is based on self-identification and does not require medical or bureaucratic procedures.⁵⁶ By requiring medical examinations and bureaucratic approvals, the

⁵⁵ S. Sivakumar, *Transgender Rights in India: A Critical Analysis of the Transgender Persons (Protection of Rights) Act, 2019*, 62 J. Indian L. Inst. 123, 135 (2020).

⁵⁶ United Nations Human Rights Council, *Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, A/HRC/38/43 (2018).

Act undermines these principles and perpetuates the stigmatization of transgender persons.

The Act articulates legal rights in a manner detached from the praxis, structural frameworks, and—critically—the procedural guidelines necessary for substantive access, reflecting a formalistic approach reminiscent of legal positivism. This disjunction aligns with critiques in legal theory that emphasize the gap between law as written and law as experienced, effectively reducing human rights to mere formal legal constructs and thereby circumscribing their efficacy within lived realities.

The Transgender Persons (Protection of Rights) Act, 2019, does not explicitly mandate reservations for transgender persons in education or employment. While the Act prohibits discrimination and provides for welfare measures, it does not address the structural barriers that prevent transgender persons from accessing opportunities in these domains.

Despite legal recognition, transgender persons in India continue to face significant socio-economic challenges. They are often denied access to education, healthcare, and employment, forcing many into begging or sex work. According to a study, 92% of transgender persons are excluded from participating in the formal economy.⁵⁷

Transgender persons also face discrimination and violence in their daily lives. A 2020 report by the NGO Swasti Health Resource Centre found that 52% of transgender persons experienced verbal abuse, while 25% faced physical violence. The lack of access to gender-affirming healthcare further exacerbates their marginalization, with many transgender persons unable to afford or access necessary medical procedures.⁵⁸

Challenges posed by the Act

The Act requires transgender persons to obtain certificate of identity from Dist. Magistrate,⁵⁹ after following appropriate procedure mentioned in the Rules⁶⁰. According to Section 5, a transgender person must submit an application to the District Magistrate, who will then issue a certificate based on the recommendations of a District Screening Committee.⁶¹ The

⁵⁷ National Human Rights Commission (NHRC), *Report on the Human Rights Situation of Transgender Persons in India* 15 (2017).

⁵⁸ Swasti Health Resource Centre, *Health and Well-Being of Transgender Persons in India: A Study of Access and Discrimination* 22 (2020).

⁵⁹ The Transgender Persons (Protection of rights) Act, 2019 (ACT NO. 40 OF 2019), Sec. 6.

⁶⁰ The Transgender Persons (Protection of rights) Rules, 2020.

⁶¹ *Id.*, sec.5.

certificate is required for transgender persons to access government welfare schemes and services. While the issuance of identity certificates is intended to facilitate legal recognition, the process has been criticized for several reasons. First, the requirement for a District Screening Committee's recommendation is seen as unnecessary and invasive. Second, the involvement of a District Magistrate in the process creates bureaucratic hurdles that can delay or deny access to legal recognition.

But this process undermines the principle of self-identification upheld in NALSA⁶² in which the court recognized the right to self-perceived gender identity, allowing individuals to identify themselves as male, female, or third gender without medical intervention. The requirement of certification as envisaged in the Act is invasive and stigmatizing as it pathologizes transgender identities and reinforces the idea that being transgender is a medical condition. These provisions related to self-identification and identity certificates are pivotal in promoting socio-economic inclusion for transgender persons. Legal recognition through identity certificates can facilitate access to education and employment opportunities by allowing individuals to present themselves in accordance with their gender identity. This is particularly important in a society where discrimination based on gender identity remains pervasive.

Moreover, having an official identity certificate can help protect against discrimination in various spheres of life. For instance, educational institutions and workplaces are increasingly recognizing the importance of inclusivity policies that respect individuals' gender identities. The Act's provisions aim to create a framework where transgender persons can assert their rights without fear of discrimination or harassment.

However, the process for obtaining an identity certificate raises several concerns. While the Act allows for self-identification, it also stipulates that a revised certificate indicating male or female gender can only be issued after undergoing sex reassignment surgery. This requirement can be problematic as by linking legal recognition to surgical procedures, the Act perpetuates a medicalized view of gender identity. Many transgender individuals may not wish to undergo surgery for personal, financial, or health-related reasons. Thus, tying legal recognition to medical intervention can exclude those who do not conform to this requirement. Accessing sex reassignment surgery can be prohibitively expensive and may not be covered by

⁶²*Supra* note 28.

health insurance in India. This financial barrier disproportionately affects marginalized members of the transgender community who may already face economic hardships. Then the most important hurdle is lack of awareness and accessibility. The process for applying for an identity certificate may not be well-known or accessible to all transgender individuals. There is a need for awareness campaigns and support systems to guide individuals through this process effectively. This process for applying for an identity certificate may involve bureaucratic obstacles that deter individuals from seeking recognition. Delays in processing applications or lack of clarity regarding requirements can create frustration among applicants.

Transgender individuals often face societal stigma and discrimination that can discourage them from pursuing legal recognition. Fear of backlash from families or communities may prevent many from applying for identity certificates. There is a lack of adequate support mechanisms at both governmental and non-governmental levels to assist transgender persons in navigating the application process for identity certificates. Establishing dedicated helplines or support centres could help address this gap.

The Act prohibits discrimination in education, employment and health care, but does not provide for mechanisms for enforcement of their rights.⁶³ Similarly, access to safe and affordable housing is a fundamental right,⁶⁴ yet transgender persons in India face significant barriers in this regard. The Act does not include specific provisions to address the housing needs of transgender persons, leaving them vulnerable to homelessness and exploitation.

According to a 2017 report by the National Human Rights Commission (NHRC), 52% of transgender persons in India live in rented accommodations, often facing discrimination and eviction.⁶⁵ The absence of targeted housing policies in the Act perpetuates the marginalization of transgender persons, particularly those from economically disadvantaged backgrounds.

There are no specific penalties or remedies for the discrimination provided in the Act, except as provided under sec.18,⁶⁶ making it an impotent legislation.⁶⁷ Hence the transgender

⁶³ *Supra* note 59, sec. 3.

⁶⁴ *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545, *Chameli Singh v. State of Uttar Pradesh*, (1996) 2 SCC 549, *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608, *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*, (1997) 11 SCC 121.

⁶⁵ National Human Rights Commission (NHRC), *Report on the Human Rights Situation of Transgender Persons in India* 22 (2017).

⁶⁶ *Supra* note 59., sec. 18(d) which provides “----- shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.”

⁶⁷ Priyanka Shah, *Critical Analysis of Transgender Persons (Protection of Rights) Act, 2019*, IJLLR, Vol IV

persons continue to face discrimination from various spheres, as they don't have any remedy to redress such practices.

Another important challenge is the lack of gender affirming healthcare system, which are very much critical and necessary for the welfare of the transgender persons, like hormone therapy and surgeries.⁶⁸ The lack of specific healthcare system tends to marginalise transgender persons who often face denial of medical care and discrimination in medical care.⁶⁹ This compels them to take recourse to unregulated and unsafe medical practices due to lack of affordable and accessible healthcare services.

The lack of explicit provisions for reservations in the Act has significant implications for the inclusion of transgender persons in education and employment. Without affirmative action, transgender persons continue to face systemic barriers that limit their access to opportunities.⁷⁰ For example, transgender persons often face discrimination and stigma in educational institutions and workplaces, which discourages their participation. Reservations can serve as a corrective measure to address these barriers and ensure that transgender persons have equal access to opportunities. Moreover, the absence of reservations perpetuates the socio-economic marginalization of transgender persons, particularly those from marginalized communities such as Scheduled Castes (SCs) and Scheduled Tribes (STs). This intersectional disadvantage further underscores the need for explicit reservation provisions. The absence of reservation provisions in the Act has been challenged in several judicial forums.⁷¹ For example, in *Anjali Gopalan v. Union of India* (2021), the Delhi High Court directed the government to ensure the inclusion of transgender persons in welfare schemes and to consider reservations in education and employment.

At the legislative level, some states have taken proactive steps to address this gap. Tamil Nadu, for instance, has introduced 1% reservation for transgender persons in public employment. However, these measures are not uniformly implemented across the country,

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⁶⁸ Jain D. *Right to Health and Gender-Affirmative Procedure in the Transgender Persons Act 2019 in India*. Indian J Plast Surg. 2022 Jul 14;55(2):205-210.

⁶⁹ *Ibid.*, Pandya, Apurvakumar, and Alex Redcay. "Access to Health Services: Barriers Faced by the Transgender Population in India." *Journal of Gay & Lesbian Mental Health*, vol. 25, no. 2, Apr. 2021, pp. 132–154, available at <https://doi.org/10.1080/19359705.2020.1850592>.

⁷⁰ Anupama Rao, *Caste, Gender, and the Reservation System in India*, 45 Econ. & Pol. Wkly. 50, 52 (2010).

⁷¹ In *Anjali Gopalan v. Union of India* (2021), the Delhi High Court directed the government to ensure the inclusion of transgender persons in welfare schemes and to consider reservations in education and employment.

leading to disparities in access to opportunities.

Then there is the issue of lack of welfare measures, and housing facilities as envisaged in the Act.⁷² Even though provided in the Act, these provisions remain unimplemented or underfunded in the society. This showcases the approach of the Government towards the welfare of the transgender people.⁷³ There are very few schemes implemented by Govt. of India, for rehabilitation and health care (including gender affirming procedures) and shelter homes measures.⁷⁴ Many transgender individuals, especially those from low-income backgrounds, experience homelessness and may resort to begging or engaging in sex work as a means of survival.⁷⁵

Similarly, the Act mandates a maximum penalty of **two years** for sexual abuse against transgender individuals, which is considerably less severe than the punishment for comparable offenses against cisgender women. BNS provide punishment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.⁷⁶ Similarly the offences of rape, assault etc. is framed against women. This excludes transgender people. So when a sexual assault is done against a transgender person, the offences under BNS, does not attract. This is an injustice against them and hence discriminatory and inadequate as it does not provide equal protection to transgender persons.

Recommendations for the improvement of the implementation of the Act

To enhance the effectiveness of the provisions on self-identification and issuance of identity certificates under the Act, several recommendations can be made. The requirement for sex reassignment surgery as a condition for obtaining a revised identity certificate should be reconsidered. Legal recognition should be based solely on self-identification, without imposing medical prerequisites.

Simplifying the application process for obtaining identity certificates can encourage more individuals to seek legal recognition. Clear guidelines should be provided to ensure

⁷² Supra note 59 s.8(2).

⁷³ Government of India Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, No. DP-13011(7)/2/2021-DP-1, *Equal Opportunities Policy for Transgender Persons*, 14.02.24.

⁷⁴ SMILE Scheme support for marginalised individuals for lively hood and enterprise

⁷⁵ Supranote 59,s..20, *Ibid.*

⁷⁶ Bharathiya Nyaya Samhitha, 2023, Sec. 65.

transparency and efficiency in processing applications.

Conducting awareness campaigns about rights under the Act and how to apply for identity certificates is essential. Educational initiatives targeting both transgender individuals and service providers can foster understanding and acceptance.

Establishing dedicated support systems within government agencies can provide guidance and assistance to transgender persons seeking legal recognition. Training officials on sensitivity towards transgender issues will also improve interactions between applicants and bureaucrats.

Regular monitoring and evaluation of how well these provisions are being implemented will help identify gaps and areas needing improvement. Feedback from transgender communities should inform policy adjustments.

The Indian Constitution envisions affirmative action as a tool for achieving substantive equality. Articles 15(4) and 16(4) empower the state to make special provisions for the advancement of socially and educationally backward classes, including reservations in education and public employment. The Supreme Court had upheld the constitutional validity of reservations but emphasized that they must be based on objective criteria, such as social and educational backwardness.⁷⁷

In *NALSA*, the Court explicitly recognized transgender persons as a backward class entitled to reservations. However, the Transgender Persons (Protection of Rights) Act, 2019, fails to incorporate this constitutional mandate, leaving a significant gap in India's legal framework for transgender rights.⁷⁸

Similarly, the Supreme Court recognized transgender persons as a socially and educationally backward class entitled to affirmative action.⁷⁹ The Court held that reservations in education and employment are essential to address the historical and systemic discrimination faced by transgender persons.⁸⁰

⁷⁷ *Supra* note 28..

⁷⁸ Galanter, Marc, *Competing equalities : law and the backward classes in India*, Oxford University Press, Delhi, 1984, p.123.

⁷⁹ *Supra* note 28, Para. 70.

⁸⁰ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212.

The judgment emphasized that affirmative action is not merely a policy choice but a constitutional obligation to ensure substantive equality. By failing to incorporate explicit provisions for reservations, the Transgender Persons (Protection of Rights) Act, 2019, falls short of fulfilling this constitutional mandate.

Our Constitution provides equality before law which is defined as the equal status attained by persons under the Constitution of the country.⁸¹ No person shall be discriminated on the basis of sex. Despite having legal recognition and constitutional equality,⁸² the treatment of transgender individuals in society and under the law, due to the absence of gender-neutral laws concerning sexual offenses, constituting violation of their fundamental rights.⁸³

One of the most important challenges is the lack of awareness and sensitization among stakeholders and general public, thus perpetuating stigma and discrimination against transgender persons.⁸⁴ This in turn will hinder the proper implementation of the Act as those who are to implement the provisions are ignorant of the rights and protections guaranteed by the enactment.

While analysing the Act it can be understood that it was passed without adequate consultation with the stake holders and the provisions do not address their actual issues. It reflects a top-down approach, thereby ignoring the voices of those who are to be protected.⁸⁵

Despite India's principle of equality before the law, the transgender community faces a persistent struggle against discrimination, abuse, and oppression from various societal groups, including their own families and communities, highlighting a stark contradiction between legal ideals and lived realities for this marginalized group.⁸⁶ This question was first examined by the Supreme Court in 2014, where Justice K. S. Radhakrishnan and Justice A. K. Sikri recognized the rights of the transgender community. In their recognition of gender identity as the essence of personal selfhood, they clearly stated that gender identity is determined by self-identification

⁸¹ *Supra* 31, art. 14.

⁸² *Id.*, arts. 14, 15 and 21.

⁸³ Niveditha Menon, *Seeing Like a Feminist*, Penguin Books India Pvt. Ltd, Delhi, 2012. P.218.

⁸⁴ Dr. Shaikh Hajimalang Akbar, *The Role of Gender Dysphoria, Stigma, Rejection and Discrimination in The Mental Health of Transgender Individuals: A Meta-Analysis*, The International Journal of Indian Psychology, Volume 13, Issue 1, January- March, 2025.

⁸⁵ Jain D, *Right to Health and Gender-Affirmative Procedure in the Transgender Persons Act 2019 in India*, Indian J Plast Surg. 2022 Jul 14;55(2):205-210; Jayna Kothari, *Trans Equality in India: Affirmation of the Right to Self Determination of Gender*, NUJS L.Rev. 3 (2020) p. 550.

⁸⁶ Dubey N, Mahapatra M. Power Inequality and Conflict: Cases of Abuse and Violence within the Transgender Community in India. *Journal of Psychosexual Health*. 2025;7(1) p55-61.

and not by surgical or medical procedure, thereby acknowledging the right of self-determination of gender identity. In acknowledging gender identity, the Supreme Court also challenged the binary concept of "man" and "woman" as constructed by society.

The right to choose one's gender identity is an essential part to lead a life with dignity which again falls under the ambit of Article 21. Determining the right to personal freedom and self-determination, the Court observed that "the gender to which a person belongs is to be determined by the person concerned." The Court has held that there is a right for individuals to gender identity in India. Further, discrimination on the basis of gender is not permissible as it is a violation of Articles 14, 15, 16, and 21 of the Constitution. The Court has also protected gender expression under Article 19(1)(a) and held that there cannot be any restriction on personal appearance and choice of dress, except as provided under Article 19(2) of the Constitution. The Court reinforced the right of an individual to autonomously decide on personal conduct in private, as well as the protection of personhood and the innate free thought processes of an individual, which is important for the development of personality. Moreover, the Court noted that an individual cannot reach full dignity if they have to develop in a gender that they do not belong to and cannot identify with, as it will hinder development. The Supreme Court has issued guidelines for the protection of the rights of transgender individuals by recognizing a third gender option in official documents such as the election card, passport, driving license, and ration card, as well as facilitating their admission into educational institutions and hospitals, among other spheres. Human rights are the basic rights and freedoms to which all individuals are entitled solely because they are human beings. These are inalienable and cannot be granted by any government. These rights include the right to life, liberty, equality, dignity, and freedom of thought and expression. Section 377 of the Indian Penal Code, states that any kind of sexual relation between adults is a crime, which makes the transgender community an easy target for police harassment and exploitation. In *Jayalakshmi v. State of Tamil Nadu*⁸⁷, Pandian, a transgender, was arrested on charges of theft by the police. He was sexually assaulted in the police station which ultimately led him to immolate himself.

Judicial Recognition of the Third Gender: Reconciling Legal Ideals with Lived Realities

In 2017, SC discussed the relevance of transgender jurisprudence.⁸⁸ It observed that

⁸⁷ W.A.No.1130/2006 and WP.No. 24160/2006.

⁸⁸ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

sexual orientation and gender identity are essential attributes of privacy and dignity and that autonomy over identity is constitutionally protected. This strengthened *NALSA decision* by embedding gender identity within **informational and decisional autonomy**. This case laid groundwork for decriminalisation and later equality claims. It converted NALSA's dignity reasoning into a broader **privacy-autonomy framework**.

In another case, Section 377 was held unconstitutional insofar as it criminalised consensual adult same-sex conduct.⁸⁹ Reaffirmed gender identity and sexual orientation as protected under Articles 14, 15, 19, 21. The case emphasised **constitutional morality** and recognised intersection of identity and dignity. Navtej case expanded NALSA from recognition of "third gender" to broader LGBTQIA+ equality.

The judiciary has played a proactive role in addressing the gaps in housing, healthcare, and social security for marginalized communities. The Delhi High Court directed the government to ensure the inclusion of transgender persons in welfare schemes and to provide access to healthcare and housing.⁹⁰

However, these judicial interventions have not been adequately reflected in the Act.⁹¹ The lack of specific provisions and monitoring mechanisms undermines the effectiveness of the Act in addressing the socio-economic marginalization of transgender persons. While primarily focused on the right to marriage for queer couples, the Supreme Court in this case affirmed that transgender persons in heterosexual relationships have the right to marry under existing laws or personal laws⁹²

The Calcutta High Court held that individuals who have undergone gender-affirming surgery have a constitutional right to recognition of their affirmed gender.⁹³ The Karnataka High Court recognized the rights of a transgender person to change their gender identity and emphasized the need for legal recognition in various civil matters.⁹⁴ The Kerala High Court addressed issues related to the rights of transgender individuals in accessing public services

⁸⁹ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

⁹⁰ *Anjali Gopalan v. Union of India*, W.P. (C) No. 1011/2021 of Delhi High Court.

⁹¹ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, *Naz Foundation v. Government of NCT of Delhi*, (2009). 160 DLT 277, *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

⁹² *Supriyo @ Supriya Chakraborty & Another v. Union of India* (2023) SCC Online SC 1348.

⁹³ *Chanchal Bhattacharya v. State of West Bengal*, 2016 SCC ONLINE CAL 2124.

⁹⁴ *Mrs. X v. State of Karnataka* (2024) 2 KCCR 1230.

and highlighted the need for inclusive policies.⁹⁵

A case involving a challenge to the Transgender Persons (Protection of Rights) Act, 2019, with petitioners arguing that several sections of the Act are unconstitutional. The case is pending before the Supreme Court.⁹⁶ The Madras High Court recognized that a trans woman is a 'bride' under the Hindu Marriage Act, 1955, thereby validating marriages between cisgender men and transgender women.⁹⁷ The Orissa High Court upheld the right of transgender individuals to cohabit with partners of their choice, emphasizing the right to self-determination of gender as an integral part of personal autonomy.⁹⁸

The Madras High Court prohibited the practice of 'conversion therapy' by medical professionals and directed measures to sensitize society and government branches to eliminate prejudices against the queer community.⁹⁹ The Telangana High Court invalidated the Telangana Eunuchs Act, recognizing it as unconstitutional, and directed the state to implement welfare measures for the transgender community.¹⁰⁰ The Rajasthan High Court had directed the District Magistrate of appropriate jurisdiction to issue the required certificate after verification of gender reassignment within 60 days, and the authorities concerned to take immediate steps within a month to change the petitioner's name and gender in the service record based on the certificate.¹⁰¹

Suggestions

The process for obtaining an identity certificate should be simplified and based solely on self-identification, without the need for a District Screening Committee's recommendation. The process for issuing identity certificates should be made more accessible, particularly for transgender persons in rural areas. Simplifying the application process for obtaining identity certificates can encourage more individuals to seek legal recognition. Clear guidelines should be provided to ensure transparency and efficiency in processing applications. A clear

⁹⁵ *Kabeer C v. State of Kerala* (2021) 3 KLT 495.

⁹⁶ *Swati Bidhan Baruah v Union of India*, WP(C) 51/2020 pending before SC.

⁹⁷ *Arun Kumar v. Inspector General of Registration*, AIR 2019 MADRAS 265.

⁹⁸ *Chinmayee Jena v. State of Odisha*, Writ Petition (Criminal) No. 57 of 2020, decided on August 24, 2020.

⁹⁹ *S. Sushma and Anr. v. Commissioner of Police, Greater Chennai Police and Ors.*, W.P. No. 7284 of 2021 (Madras High Court, 2021).

¹⁰⁰ *Vyjayanti Vasanta Mogli v. State of Telangana*, Writ Petition (PIL) Nos. 44, 355 of 2018 and 74 of 2020, High Court of Telangana.

¹⁰¹ *Chinder Pal Singh v. State of Rajasthan*, 4 RLW 3280, 25-05-2023, S.B. Civil Writ Petition No. 14044/2021 Rajasthan High Court.

mechanism for grievances and appeals should also be established. The Act should be amended to fully align with international human rights standards, such as the Yogyakarta Principles, which emphasize the right to self-determination of gender identity. The requirement for sex reassignment surgery as a condition for obtaining a revised identity certificate should be reconsidered. Legal recognition should be based solely on self-identification, without imposing medical prerequisites.

Conducting awareness campaigns about rights under the Act and how to apply for identity certificates is essential. Educational initiatives targeting both transgender individuals and service providers can foster understanding and acceptance.

Establishing dedicated support systems within government agencies can provide guidance and assistance to transgender persons seeking legal recognition. Training officials on sensitivity towards transgender issues will also improve interactions between applicants and bureaucrats.

The Transgender Persons (Protection of Rights) Act, 2019, falls short of addressing the housing, healthcare, and social security needs of transgender persons. By incorporating specific provisions and adopting a rights-based approach, India can create a more inclusive and equitable framework for transgender rights.

The full realization of these rights requires sustained efforts from the government, judiciary, and civil society. By addressing the gaps in the Act, India can ensure the dignity and well-being of all transgender persons, regardless of their caste or social background. The full realization of these rights requires sustained efforts from the government, judiciary, and civil society. By learning from global best practices and addressing the gaps in the Act, India can ensure the dignity and well-being of transgender persons.

Recently the on March 13, 2026, Govt has introduced The Transgender Persons (Protection of Rights) Amendment Bill, 2026 in Loksabha and passed on 24 March 2026 and passed the same in Rajya Sabha on 25 March 2026, which provides the rights and welfare of transgender community. The Bill changed the definition provided in the Act and framed one in which it is stated as what all categories are to be included and removed persons with different sexual orientations and self-perceived sexual identities. This exclusion of certain categories from the purview of the bill had narrowed the scope of the Bill. The Bill requires transgender

persons to change the first name in the birth certificate and other official documents based on the certificate of identity. The Bill also requires a transgender person to obtain a revised certificate in case of gender change surgery and furnish information regarding the surgery to District Magistrate. The Bill requires the medical board to certify the gender and removed the right to self-perceived gender identity of the transgender person. The Bill included a retrospective clause which may invalidate legal recognition previously granted to many individuals. On analysis it is clear that the privacy rights and integrity of transgender persons will be at stake if the Bill is made an Act.

Conclusion

The journey of transgender rights in India is a profound narrative of transformative constitutionalism—a transition from the colonial shadow of criminalization to a modern, albeit flawed, framework of rights. While the *NALSA* judgment provided the "Constitutional Soul" for identity, the subsequent 2019 Act has provided a bureaucratic body that often constricts the very spirit of self-determination it was meant to protect.

The "unfinished promise" of transgender rights remains caught between the soaring ideals of the judiciary and the harsh realities of implementation. Judicial impact is not a one-time event but a continuous process of corrective interpretation. As the community continues to demonstrate extraordinary resilience, the legal system must ensure that hope is met with justice. Until the most marginalized citizen can walk with dignity without a certificate to prove who they are, the promise of equality remains an aspiration rather than a lived reality. In the absence of robust legislative enforcement, the High Courts of India have become the true vanguards of *NALSA*. From the Delhi High Court's push for reservations¹⁰² to the Kerala High Court's¹⁰³ protection of child's dignity and privacy, the judiciary is currently engaged in a process of "continuous correction." These interventions demonstrate that the Constitution is indeed a "Living Tree," capable of growing to shelter those whom the legislature has partially left in the cold.

¹⁰² *Praveen Singh v. Govt of NCT and Anr.* WP(C)14880/2025. 2025 LiveLaw (Del) 1297,

¹⁰³ *Sreerudra v. State of Kerala* 2023:KER:35617 (Neutral Citation)