
A COMPREHENSIVE ANALYSIS OF RIGHTS AND OBLIGATIONS: COMBATING ABUSE OF DECRIMINALIZED TRANSGENDER RIGHTS IN INDIA

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ABSTRACT

The recognition of transgender rights in India, exemplified by landmark judicial rulings such as *NALSA v. Union of India* (2014) and *Navtej Singh Johar v. Union of India* (2018), along with the enactment of the Transgender Persons (Protection of Rights) Act, 2019, signifies a transformative milestone in the nation's socio-legal framework. These advancements affirm the fundamental rights of transgender individuals to self-identify, live with dignity, and access social justice. Nevertheless, despite these progressive developments, systemic challenges endure, including social stigma, discrimination, legislative shortcomings, and instances of rights misuse, which collectively underscore the necessity for a balanced and nuanced approach. This research critically evaluates the scope and implications of decriminalised transgender rights in India, focusing on the legal, social, and cultural challenges faced by the community in the post-decriminalisation era. It delves into key issues such as identity fraud, the inadequacies in the enforcement mechanisms of existing legislation, and the continued marginalisation of transgender individuals. Moreover, it examines the obligations of society, state institutions, and other stakeholders to ensure the effective implementation of these rights while mitigating potential misuse. By addressing the shortcomings of the Transgender Persons Act, particularly in its enforcement and grievance redressal mechanisms, the study proposes actionable reforms, including legislative amendments, enhanced institutional accountability, and the promotion of community-driven ethical frameworks. Additionally, it advocates for societal reforms through awareness campaigns, inclusive workplace policies, and the establishment of independent grievance redressal bodies. Through this analysis, the research aims to contribute to the academic discourse on safeguarding transgender rights while promoting a culture of accountability and equity. It highlights that addressing the misuse of rights is not merely a legal obligation but also a shared societal responsibility essential for achieving genuine inclusivity and social justice.

Keywords: Transgender Rights, Abuse of rights, Adverse effect, Marginalisation, Self-identification, Inclusivity, Socio-legal framework

I. INTRODUCTION

The decriminalisation of transgender rights in India marks a pivotal step toward achieving greater inclusivity and equality for a historically marginalised community. Through significant judicial decisions, such as ¹NALSA v. Union of India (2014) and ²Navtej Singh Johar v. Union of India (2018), along with the enactment of the Transgender Persons (Protection of Rights) Act, 2019, India has made substantial progress in recognising the rights and dignity of transgender individuals. These legal advancements affirm the transgender community's right to self-identify, access social justice, and live with dignity, providing a transformative shift in the socio-legal framework of the country. The NALSA judgement was particularly instrumental in granting transgender persons the legal right to self-identify their gender, thereby eliminating discriminatory practices based on gender identity. The Navtej Singh Johar case furthered the cause by decriminalising consensual same-sex relations, which indirectly impacts the transgender community by affirming the rights to personal liberty and equality. ³Moreover, the Transgender Persons (Protection of Rights) Act, 2019 is a legislative milestone that seeks to protect the rights of transgender individuals, offering provisions for their welfare, social justice, and inclusion in mainstream society. Together, these legal frameworks represent a major milestone in the journey toward an inclusive society that recognises the rights of transgender persons. Despite these advancements, the post-decriminalisation era has revealed a range of challenges and unintended consequences. One of the primary concerns is the misuse and exploitation of rights, which can manifest in identity fraud and other forms of abuse. With legal provisions for self-identification, transgender persons may face difficulties in the absence of robust mechanisms to verify and safeguard their identity. This creates opportunities for exploitation, both legally and socially.

Additionally, societal stigma continues to be a significant obstacle. Although legal recognition has been granted, the broader societal acceptance of transgender persons remains limited. They often face discrimination, harassment, and exclusion in various spheres of life, including healthcare, education, and employment. The persistence of these issues indicates that legal reforms alone are not enough to ensure the full inclusion of transgender persons. Legislative inadequacies further compound the problem, with gaps in the implementation of the

¹ National Legal Services Authority v. Union of India, 5 SCC 438 (2014) .

² Navtej Singh Johar v. Union of India, 10 SCC 1 (2018).

³ The Transgender Persons (Protection of Rights) Act, No. 40 of 2019.

Transgender Persons (Protection of Rights) Act and a lack of awareness about transgender rights within law enforcement and judicial systems. The marginalisation of transgender individuals remains a critical challenge, underscoring the need for a balanced and refined approach. Awareness campaigns, social reforms, and effective implementation mechanisms must complement legal safeguards. The law must ensure that transgender individuals have access to opportunities and protections while simultaneously preventing abuse and exploitation of legal provisions.

Also, while the decriminalisation of transgender rights in India marks a significant step forward, it is essential to continue addressing the systemic challenges that persist. A multi-pronged approach that includes legal reforms, institutional accountability, and community-driven initiatives is necessary to safeguard the rights of transgender persons and foster genuine inclusivity. This study aims to contribute to the ongoing discourse by highlighting the need for an integrated approach that balances legal empowerment with the prevention of misuse, ensuring that the transgender community can fully benefit from the protections and opportunities the law offers. By focusing on these aspects, the study seeks to contribute meaningfully to the discourse on fostering equity, accountability, and genuine inclusivity for transgender persons in India.

II. HISTORICAL DEVELOPMENT OF TRANSGENDER RIGHTS IN INDIA

Before the enactment of the Transgender Persons (Protection of Rights) Act in India, society often perceived the transgender community through a lens of prejudice and ignorance. They were frequently regarded as individuals of low social standing, presumed to be uneducated, engaged in sex work, or mentally unstable, and often associated with criminal activity. There were no comprehensive laws or protections to support their rights or safeguard their dignity within the societal framework. A transformative shift occurred with the landmark judgement in *NALSA v. Union of India* (2014), wherein the Supreme Court recognised transgender individuals as the “third gender” and prohibited derogatory terms such as “hijras.” This ruling was a watershed moment, compelling society to acknowledge transgender individuals as equal citizens deserving of respect and dignity. It fostered a broader understanding that they, like others, are born with unique sexual orientations and deserve equal opportunities and acceptance. However, the recognition of transgender rights also sparked debates among certain professionals, including medical experts, psychologists, and activists. Concerns were raised

about the potential misuse of these rights due to complexities in gender identity and sexual orientation that remain inadequately understood. Medical professionals have pointed to cases where some transgender individuals have exhibited behaviours, such as inappropriate attractions, including towards minors, which they argue require further examination and counseling. These apprehensions underscore the need for a balanced approach, ensuring the protection of transgender rights while addressing legitimate concerns through rigorous safeguards and professional interventions.

⁴The definition of a transgender person is outlined in Section 2(k) of the Transgender Persons (Protection of Rights) Act, 2019. ⁵According to this provision, a "transgender person" refers to an individual whose gender identity does not align with the gender assigned to them at birth. This definition encompasses trans men and trans women, irrespective of whether they have undergone sex reassignment surgery, hormone therapy, laser therapy, or any other medical procedures.

II.A. Pre-Transgender Rights Era

The pre-transgender rights era in India was characterised by pervasive marginalisation and systemic discrimination against transgender individuals, despite their historical significance in Indian society. Historically, transgender persons, often referred to as hijras, occupied a paradoxical position. On one hand, ancient texts, including the Kamasutra and various Hindu epics like the Mahabharata, depicted them with reverence, attributing divine roles to their existence. They were considered auspicious, invited to bless births and weddings, and revered as symbols of fertility. However, with the advent of colonial rule, societal attitudes shifted drastically.

The arrival of British colonialism in India marked a dramatic shift in the treatment of transgender persons. British colonial authorities introduced laws that explicitly criminalised the hijra community and systematically oppressed them. The *Criminal Tribes Act of 1871* was one of the most impactful laws in this regard. The Act categorised certain communities, including hijras, as "criminal tribes," branding them as habitual offenders. This legal classification reinforced the idea that transgender individuals were a deviant and undesirable

⁴ The Transgender Persons (Protection of Rights) Act, No. 40 of, s. 3 (2019).

⁵ R. Sukumar, Rights of Transgenders in India: A Legal Analysis, 8 J. Indian L. & Soc'y 123, 125 (2021).

part of society, fostering an atmosphere of exclusion and prejudice. Under this Act, transgender individuals were subjected to intense surveillance, forced registration, and frequent harassment. The law portrayed them as morally corrupt and criminal by nature, further distancing them from mainstream society. Hijras were no longer seen as religious figures but as a threat to the established social order, leading to their persecution. This criminalisation deeply embedded stigma within Indian society and subjected transgender persons to extreme marginalisation. They were deprived of the ability to access education, healthcare, and employment, facing a cycle of poverty and exclusion. The legal framework reinforced by the British colonial rulers fundamentally altered the status of transgender persons in India. They went from being revered and seen as auspicious in religious contexts to being portrayed as criminals, thus radically changing how society perceived and treated them. This legacy of discrimination did not disappear with the end of colonial rule; rather, it continued to shape the lives of transgender individuals well into the post-independence era. Following India's independence in 1947, many of the colonial laws that had criminalised and marginalised transgender individuals were repealed. However, the social attitudes ingrained during the colonial period continued to linger, and the hijra community remained on the fringes of Indian society. Transgender persons were largely invisible in the legal and policy frameworks, with no formal recognition or protection under the law. This exclusion meant that even after the repeal of colonial-era laws, transgender individuals were still left to navigate societal exclusion and systemic barriers without the necessary legal tools to protect their rights.

In the years following independence, transgender individuals faced an ongoing struggle for recognition and rights. Despite the progress made in other areas of social justice, transgender persons were largely neglected. They were often forced into professions such as sex work, as other avenues of employment remained closed due to widespread discrimination. Their rights to basic social services, including healthcare, were often ignored, leaving them vulnerable to both physical and psychological harm. Furthermore, transgender children were often neglected by their families, forced into homelessness, and subjected to abuse, thus further perpetuating the cycle of exclusion. Social stigma remained pervasive in Indian society, and transgender individuals continued to experience violence, discrimination, and a lack of support from both the state and the general population. They were denied access to adequate healthcare, education, and employment, which further entrenched their marginalisation. The absence of any legal recognition meant that they were vulnerable to exploitation and abuse, and their

identities were not protected or affirmed by law. Consequently, transgender individuals had little recourse to justice when their rights were violated.

II.B. Post-Transgender Rights Era

Despite the challenges, the post-independence era also saw a gradual movement towards the recognition of transgender rights, particularly in the 21st century. However, it was not until the 2014 *NALSA v. Union of India* case that the legal framework began to change.⁶ In this landmark judgement, the Supreme Court of India recognised transgender persons as a third gender, affirming their right to self-identify. The Court also directed the government to take steps to ensure transgender individuals were provided with equal rights and opportunities, including access to education, employment, and healthcare. This ruling was a pivotal moment in Indian legal history, as it not only decriminalised transgender identities but also set the stage for broader social reforms. However, while the *NALSA* judgement marked a significant step forward, it became clear that mere legal recognition was not enough to address the deep-rooted social, cultural, and economic challenges faced by transgender individuals.⁷ It was followed by the Transgender Persons (Protection of Rights) Act, 2019, which aimed to protect the rights of transgender persons and provide them with a legal framework for accessing education, employment, healthcare, and other fundamental rights.

⁸Notwithstanding these legal advancements, the fight for full equality and social inclusion remains ongoing. The Act, though a step in the right direction, has been critiqued for its insufficient provisions related to the enforcement of transgender rights and its lack of effective measures for grievance redressal. Moreover, while there has been progress in terms of recognition, transgender individuals still face substantial barriers to accessing justice, employment, and healthcare in practice.⁹ The journey toward legal recognition and the establishment of transgender rights began with a series of landmark judicial pronouncements. The first significant breakthrough came with the *NALSA v. Union of India* judgement in 2014, wherein the Supreme Court of India recognised transgender persons as the "third gender." The Court upheld their right to self-identify and directed the government to ensure affirmative

⁶ Suresh Kumar Koushal v. Naz Foundation, 1 SCC 260 (2013).

⁷ Ministry of Social Justice and Empowerment, Report of the Expert Committee on Issues Related to Transgender Persons 17 (2014).

⁸ Universal Declaration of Human Rights, art. 1, Dec. 10, 1948, G.A. Res. 217 A (III).Ministry.

⁹ People's Union for Civil Liberties v. Union of India, AIR SC 568 (1997).

action in education, healthcare, and employment.¹⁰ This judgement marked a monumental shift, affirming the dignity and equality of transgender individuals within the constitutional framework of Articles 14, 19, and 21. Further progress was achieved in *Navtej Singh Johar v. Union of India* (2018), where the Supreme Court decriminalized consensual same-sex relationships by striking down Section 377 of the Indian Penal Code to the extent it applied to adults. This judgement was a landmark moment for the LGBTQ+ community, reinforcing the notion of personal autonomy and dignity.

In 2019, the enactment of the Transgender Persons (Protection of Rights) Act represented the first comprehensive legislative framework for the transgender community.¹¹ The Act recognised their right to self-perceived gender identity and prohibited discrimination in various domains such as education, employment, and healthcare. It mandated the establishment of welfare boards, grievance redressal mechanisms, and inclusive policies, paving the way for their formal inclusion in mainstream society.

III. POST-DECRIMINALIZATION CHALLENGES IN TRANSGENDER RIGHTS

An important turning point was reached when transgender rights were decriminalised in India, guaranteeing equality and nondiscrimination. However, exploitation, false identity claims, and social resistance are just a few of the socio-legal issues that have arisen as a result of its implementation. Although the new legal status is a step in the right direction, it has also created opportunities for unintended abuse, which has resulted in problems with the law and policy. These challenges faced after the decriminalisation of transgender rights are as follows:

III.a Fraudulent Identity Claims

One of the significant challenges that emerged after the decriminalisation of transgender rights is the increase in fraudulent claims of transgender identity.¹² With legal recognition, transgender individuals became eligible for various affirmative action benefits, such as reservations in education and employment. These policies were intended to provide equal opportunities for transgender individuals, who have historically been marginalised. However,

¹⁰K.S. Puttaswamy v. Union of India, 10 SCC 1, 4 (2017).

¹¹ S. Mukherjee, Legal Framework of Transgender Rights: An Indian Perspective, 13 Asian J. Legal Stud. 45, 50 (2022).

¹² R. S. Deshpande, Economic and Social Dimensions of Transgender Discrimination in India, 45 Econ. & Pol. Wkly. 21, 24 (2020).

the implementation of such policies has raised concerns that some individuals may falsely claim to be transgender to exploit these benefits.

Reports from various regions in India indicate that several individuals are misrepresenting their gender identity to gain access to affirmative action advantages. This undermines the fundamental objectives of these policies, which are meant to support the authentic transgender community. The misuse of such provisions not only casts doubt on the legitimacy of transgender identities but also diverts resources that are intended for the welfare of genuinely marginalised transgender individuals. Consequently, there is growing concern that such fraudulent activities may prevent real transgender individuals from accessing their rightful benefits, thereby deepening the existing social and economic inequalities they face. The absence of a clear and transparent system for verifying transgender identity has compounded the issue. Although the law permits self-identification, it creates challenges in distinguishing between those with legitimate transgender identities and individuals who may exploit the system for personal gain.¹³ Therefore, legal frameworks must adapt and address these concerns, ensuring that affirmative action benefits are allocated solely to those who genuinely need them.

III.b Social Resistance and Discrimination

Despite the significant legal victories won by the transgender community, social acceptance remains a formidable barrier.¹⁴ Legal recognition does not automatically result in societal acceptance, and transgender individuals still face widespread discrimination in areas such as employment, housing, and healthcare. This discrimination is often rooted in entrenched cultural, religious, and social biases that label transgender people as "deviant" or "unnatural." In the workforce, transgender individuals are frequently relegated to informal or low-wage jobs, where they endure exploitation and marginalisation. Although legal protections are available, private employers remain hesitant to hire transgender individuals due to a lack of awareness and sensitivity toward transgender issues.¹⁵ The stigma and discomfort surrounding transgender identities in the workplace contribute to their exclusion from meaningful job opportunities. Furthermore, transgender people often experience rejection from their families and communities, leading to homelessness, poverty, and heightened vulnerability to

¹³ Justice K. Chandru, *Transgender Rights Post-377 Verdict: Challenges Ahead*, Frontline (Oct. 2, 2019).

¹⁴ National Human Rights Commission, *Report on the Status of Transgender Persons in India*, at paras 30-40 (2018).

¹⁵ Indira Jaising, *Transgender Justice in the Constitutional Framework*, 3 Indian Const. L. Rev. 46, 49 (2018).

exploitation. The reluctance of traditional institutions, including religious, educational, and governmental bodies, to embrace reform and provide equal opportunities exacerbates these challenges. The gap between legal recognition and social acceptance remains substantial, and addressing this divide requires a multifaceted approach involving legal action, public education, and active community involvement.

III.d Crimes Committed by Transgender Individuals

Another challenge that has arisen following the decriminalisation of transgender identities is the reported involvement of certain transgender individuals in criminal activities such as extortion, financial fraud, and organised begging syndicates.¹⁶ Historically, systemic marginalisation has deprived transgender persons of mainstream economic opportunities, compelling some to resort to actions that may be classified as illegal. However, in the post-decriminalisation era, certain criminal networks have capitalised on the legal protections granted to transgender individuals to engage in unlawful activities. Instances of extortion and financial fraud, where transgender identity has allegedly been misused as a means to evade accountability have raised serious concerns.¹⁷ Additionally, some organised begging syndicates have exploited the marginalised status of the transgender community to operate under the pretext of advocating for their rights, making law enforcement intervention more complex. Although such cases remain relatively infrequent, they have disproportionately influenced public perception, fostering skepticism and reinforcing negative stereotypes about transgender rights. The misuse of legal protections for criminal purposes not only undermines the genuine struggles of transgender individuals but also complicates the larger discourse on their rights and social inclusion.¹⁸ Therefore, it is imperative that legal frameworks address such instances of exploitation while safeguarding the fundamental rights of transgender persons. Achieving this requires a balanced approach that ensures robust legal mechanisms to prevent misuse without eroding the protections and dignity accorded to the transgender community.

Even though the Transgender Persons (Protection of Rights) Act, 2019, has been enacted, its implementation remains largely incomplete. As a result, the transgender community continues

¹⁶ Human Rights Watch, "Breaking the Silence: Rights of Transgender People in India", paras 20-35(2020).

¹⁷ Justice K. Chandru, Transgender Rights Post-377 Verdict: Challenges Ahead, Frontline (Oct. 2, 2019),

¹⁸ R. S. Deshpande, Economic and Social Dimensions of Transgender Discrimination in India, 45 Econ. & Pol. Wkly. 21, 24 (2020).

to struggle to secure stable employment opportunities.¹⁹ It is essential to recognise that the actions of a few individuals should not be used to stigmatise the entire community. In metropolitan cities, transgender individuals engaged in begging have become increasingly visible at traffic signals. However, some members of the public have expressed fear and discomfort due to instances where transgender persons engage in intrusive behaviours such as touching or cursing individuals and their families while soliciting money. Historically, there was a prevalent belief that giving money to transgender persons would bring blessings, but this practice has now, in some cases, been exploited, leading to discomfort among the general public. The persistent marginalisation of transgender individuals—manifested in family rejection, lack of access to quality employment, and inadequate recognition of their dignity and rights—often results in frustration and aggression. Due to limited avenues for survival, many transgender persons are forced into begging, theft, or sex work.²⁰ To address these challenges, it is crucial to ensure the effective implementation of rights, including job reservations, access to education, and social welfare schemes, to facilitate their integration into mainstream society and provide them with opportunities for a dignified life.

the existence of legal provisions prohibiting employment discrimination, transgender individuals continue to encounter substantial obstacles in securing meaningful job opportunities. The private sector, in particular, remains hesitant to employ transgender persons due to deep-rooted societal biases and workplace discomfort.²¹ While certain public sector initiatives have been implemented to promote employment for transgender individuals, their impact has been significantly limited by the lack of effective enforcement and monitoring mechanisms. The economic marginalisation of transgender persons further entrenches cycles of poverty and social exclusion. Due to limited job opportunities, many are compelled to take up low-paying, informal work or engage in survival sex work to sustain themselves. The disconnect between legal protections and economic realities remains a persistent issue in the post-decriminalisation era, necessitating continuous and targeted efforts to bridge this gap and ensure equitable access to employment.

¹⁹ Priya R. Pillai, Intersectionality and Transgender Rights in India: A Critical Appraisal, 12 Indian J. Gender Stud. 23, 29 (2020).

²⁰ Hamsa Vijayaraghavan, The Role of NGOs in Transgender Advocacy in India, 7 Indian J. Soc. L. 15, 18 (2021).

²¹ Transgender Persons (Protection of Rights) Rules, 2020, r. 5.

III.e Pedophilia and Sexual Crimes

²²A particularly concerning issue that has surfaced in some instances following decriminalisation is the involvement of certain transgender individuals in sexual offences, including pedophilia and sexual exploitation. Although such cases are rare and represent only a small subset of the transgender community, they have garnered considerable media coverage and public scrutiny. In some situations, transgender individuals have been accused of leveraging their legal recognition to gain access to vulnerable groups, particularly in educational and childcare environments. Despite being isolated occurrences, these incidents have fuelled intense debates regarding the potential misuse of transgender rights. While it is crucial to avoid generalising the actions of a few individuals to the entire community, such cases have contributed to public apprehension and skepticism. Therefore, it is imperative to ensure that the legal framework is robust enough to prevent any potential misuse while simultaneously upholding the fundamental rights of transgender persons. This necessitates strengthening child protection laws, ensuring that transgender individuals, like all citizens, remain accountable under the law, and safeguarding their legal recognition without compromising justice and public safety.

Sexual offences against children, specifically targeting prepubescent and pubescent minors, are classified as pedophilia and hebephilia, depending on the age group of the victims. From a clinical perspective, it is essential to highlight that some individuals with pedophilic tendencies confine their desires to mere fantasies, while others may pose a risk of committing offences as their fantasies alone do not suffice to fulfil their urges. The latter group consists of potential offenders who seek therapeutic intervention to manage their overwhelming impulses. Notably, individuals can be diagnosed with Pedophilic Disorder due to significant interpersonal distress, even if they have not engaged in any criminal acts. There have been concerns about the prevalence of such offences within the transgender community, often attributed to childhood distress, including early-life trauma, emotional detachment from other sexual orientations, limited sexual experiences, and societal rejection. These factors contribute to a complex psychological framework wherein some transgender individuals develop distorted perceptions of sexuality, leading to harmful behaviours. The interplay between unmet emotional desires, mental health struggles, and social exclusion can, in certain cases, drive transgender individuals

²² Protection of Children from Sexual Offences Act, 2012, s. 4.

toward inappropriate sexual conduct. Research suggests that transgender adolescents (TGAs) experience significantly higher levels of mental health issues compared to their cisgender counterparts (CGAs). However, the psychosocial factors underlying these disparities remain insufficiently explored. A significant portion of transgender individuals involved in child abuse cases reportedly experience sexual deprivation and societal exclusion, leading to such offences. To address this issue, it is imperative for the government and policymakers to implement targeted initiatives, including awareness campaigns, comprehensive sex education, and mental health support programs tailored for the transgender community. These measures can help mitigate psychological distress, promote social inclusion, and reduce the risk of such offences.

III.f Challenges in Law Enforcement and Policy Implementation

The intricacies surrounding transgender rights present considerable challenges for law enforcement agencies. Despite notable legal advancements, many officers remain inadequately trained and lack awareness in handling transgender-related issues with the necessary sensitivity and effectiveness. Additionally, concerns about potential accusations of discrimination or human rights violations often result in hesitation when taking action against transgender individuals involved in criminal activities. Another critical issue is the absence of clear legal frameworks for verifying transgender identity and addressing instances where transgender rights are misused. This legal ambiguity makes it difficult for law enforcement to differentiate between legitimate and fraudulent claims, leading to either unjust penalisation of genuine transgender individuals or the escape of those who exploit their identity to evade accountability. These complexities highlight the urgent need for comprehensive training programs, sensitisation initiatives for law enforcement personnel, and the establishment of a more structured and transparent legal framework to ensure fair and effective enforcement of the law.

The Transgender Persons (Protection of Rights) Act, 2019 is a significant step towards ensuring the rights and dignity of transgender individuals. However, it is not without its shortcomings. One of the primary concerns is the lack of clarity in the process of self-identification. While the Act acknowledges self-identification as the fundamental criterion for recognising transgender status, it does not outline a well-defined and effective mechanism for verifying such claims. This ambiguity has created opportunities for fraudulent identity claims and potential misuse of the law. Additionally, the Act lacks sufficient legal provisions to address cases where transgender identity is exploited for criminal activities. The absence of clear legal

guidelines makes it difficult to differentiate between genuine claims and intentional misrepresentation. To bridge these gaps, judicial intervention and legislative amendments are essential. Establishing more precise legal frameworks and stricter guidelines can help prevent misuse while safeguarding the legitimate rights of transgender individuals.

IV. LEGAL ANALYSIS AND REFORMS TO PREVENT MISUSE OF TRANSGENDER RIGHTS IN INDIA

²³The affirmation of transgender rights in India represents a crucial advancement toward promoting inclusivity and equality. However, concerns about the possible misuse of these rights highlight the need for a well-balanced legal framework. It is essential to establish a structured and regulated system that safeguards the rights of transgender individuals while preventing potential exploitation. A fundamental reform in this regard is the implementation of a robust identification and verification mechanism for self-identification. A transparent process should be instituted to prevent fraudulent claims aimed at securing personal or financial advantages. Additionally, continuous monitoring of affirmative action policies in education and employment is necessary to ensure that only bona fide transgender individuals benefit from such provisions. To address false claims, strict legal consequences, akin to those imposed for fraudulent caste certificates, should be enforced. Another critical aspect is criminal accountability. Transgender individuals should be subject to the same legal provisions as other citizens under the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC). At the same time, specific legal amendments should be introduced to recognise transgender persons as victims of offences such as rape, fraud, and physical assault. Measures such as gender-sensitive policing and dedicated correctional facilities may be required to ensure fair treatment and protection. To combat social exclusion, awareness campaigns and educational initiatives should be promoted to foster societal acceptance. The government must enforce anti-discrimination laws in employment, healthcare, and housing while implementing welfare schemes and developing gender-inclusive public infrastructure. Altogether, a well-structured legal framework is imperative to uphold transgender rights while preventing their misuse. Strengthening verification mechanisms, ensuring legal accountability, and fostering social inclusion will contribute to a just and equitable society. With progressive legal reforms, India can create an environment where transgender individuals are both protected and integrated

²³ *ibid* Transgender Persons (Protection of Rights) Rules, 2020, r. 5.

without the risk of exploitation. Hence, it is imperative to implement specific initiatives within the country to foster a more progressive and inclusive society, ensuring harmony and eliminating discrimination between the transgender community and the broader population. The following measures are proposed to achieve this objective are as follows:

i. Legislative and Governmental Reforms to Prevent Exploitation

To prevent the potential misuse of transgender rights, it is essential for the government to establish stringent verification mechanisms before extending any benefits. This process may involve assessments conducted by medical boards or community-based verification systems to ensure the authenticity of transgender identity claims. Furthermore, reservations in education and employment, while crucial for the upliftment of the transgender community, must be carefully scrutinised to prevent fraudulent claims that could undermine the intended purpose of such affirmative actions. To maintain accountability and address any instances of exploitation, the government should constitute specialised task forces dedicated to investigating cases where transgender rights are misused. Additionally, public awareness campaigns play a vital role in fostering a well-informed society by educating both transgender individuals and the general public about their rights and corresponding responsibilities. Lastly, strengthening judicial oversight through the establishment of special tribunals is imperative to address cases of rights misuse effectively while simultaneously safeguarding the legitimate entitlements of transgender individuals. These measures collectively ensure that the legal framework remains balanced, preventing exploitation while upholding the dignity and rights of the transgender community.

ii. Penalization of Crimes Committed by Transgender Individuals

Transgender individuals, like all other citizens, must be held accountable for offenses under the same legal framework to ensure equality before the law. Crimes such as rape, fraud, extortion, and assault committed by transgender persons should be prosecuted under the Bharatiya Nyaya Sanhita (BNS), 2023 without any preferential treatment or exemptions. Legal provisions should be uniformly applied to maintain justice and prevent any legal ambiguity regarding their culpability. Additionally, the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 introduces a significant development in the legal framework by explicitly recognising transgender individuals as a distinct gender category. Section 2(10) of the BNS ensures that 'transgender' is legally acknowledged alongside 'men' and 'women.' This inclusion is a

progressive step towards securing the legal identity of transgender persons, reinforcing their fundamental rights, and ensuring their recognition within India's criminal justice system. By explicitly mentioning transgender individuals in legal definitions, the BNS aims to bridge the historical gap in legal recognition and provide a strong foundation for their legal protection. This legal acknowledgement is crucial for transgender persons, as it enables them to seek justice within a framework that officially recognises their identity. It also strengthens the implementation of the Transgender Persons (Protection of Rights) Act, 2019, which grants transgender individuals fundamental rights and protection against discrimination. The inclusion in BNS may also pave the way for further legal reforms in terms of representation, social justice, and equal opportunities for transgender individuals.

One of the major concerns is the absence of specific provisions related to non-consensual sexual offences against males and transgender individuals. While the BNS covers crimes such as sexual assault and rape, these provisions largely focus on offences committed against women, overlooking the fact that transgender individuals and men can also be victims of sexual violence. This omission raises concerns regarding the comprehensive protection of all individuals, irrespective of their gender. The absence of clear legal provisions for sexual offences against transgender individuals can lead to ambiguity in prosecuting crimes committed against them. Moreover, it may result in transgender victims being excluded from justice due to gaps in the legal framework. In comparison, several international legal systems have evolved to include gender-neutral provisions for sexual crimes, ensuring equal protection for all genders. Furthermore, specific amendments to the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 are necessary to address the procedural aspects related to transgender individuals, such as provisions for separate holding cells in detention facilities and guaranteeing their right to adequate legal representation. These measures will not only strengthen the legal system but also ensure that transgender individuals are treated fairly and equitably under the law while maintaining necessary safeguards to protect their rights.

iii. The Need for Special Laws for Transgender Offenses

While most laws can be uniformly applied, certain offences may require special legal provisions. There should be a clear definition of transgender rape victims and perpetrators within the IPC to avoid legal ambiguity. Additionally, laws should penalise fraudulent identity claims to prevent misuse of transgender status. Workplace harassment laws must be

strengthened to provide adequate protection for transgender employees. Furthermore, public order offences, such as extortion or coercion cases involving transgender individuals, should be explicitly addressed in legal provisions.

iv. Social Integration of Transgender Persons

To promote acceptance and prevent marginalization, inclusive education policies should be introduced, ensuring that schools and colleges adopt gender-inclusive curriculums and provide safe spaces for transgender students. Workforce inclusion programs must be encouraged in both government and corporate sectors to create transgender-friendly employment policies. Positive media representation of transgender individuals can help eliminate stereotypes and foster societal acceptance. Government initiatives such as housing schemes and financial assistance should be introduced to support transgender individuals. Additionally, awareness campaigns should be conducted at schools, workplaces, and public institutions to educate society about transgender rights and their significance.

v. Government Initiatives for Empowering Transgender Individuals

The government must take proactive measures to enhance the dignity and equality of transgender individuals. Establishing Transgender Welfare Boards at the state and national levels can aid in the proper implementation of policies. Skill development programs should be introduced to enhance employability among transgender individuals. Free healthcare and legal aid services should be provided to address their medical and legal needs. Social security benefits, including pensions for elderly and differently-abled transgender individuals, must be ensured. Lastly, dedicated Anti-Discrimination Cells should be established to address cases of discrimination and ensure transgender individuals receive equal opportunities and protection under the law.

V. CONCLUSION

The decriminalisation of transgender rights in India, coupled with the enactment of the Transgender Persons (Protection of Rights) Act, 2019, marked a historic milestone in recognising the dignity and equality of transgender individuals. These progressive measures aim to empower the community by ensuring equal rights, non-discrimination, and access to opportunities in education, employment, and healthcare. However, as with any legal

framework, the potential for misuse of decriminalised rights poses significant challenges. It is imperative to establish a balanced approach that safeguards genuine transgender individuals from exploitation while ensuring accountability and preventing the abuse of such rights. To counter the misuse of transgender rights, a robust verification mechanism is crucial. The government should mandate a multi-layered process, including verification by medical boards and community-based organisations, to authenticate transgender identity before granting benefits. This would prevent fraudulent claims and ensure that affirmative action policies are availed only by those genuinely eligible. Additionally, special task forces must be established to investigate cases of misuse, especially in scenarios where rights are exploited for undue benefits or criminal activity. These task forces should operate in collaboration with legal experts, activists, and law enforcement agencies to uphold justice without compromising the dignity of the transgender community.

Another critical area is the treatment of transgender individuals within the criminal justice system. Transgender persons should be held accountable for crimes under the same legal provisions as other citizens. For instance, offences such as fraud, extortion, assault, or rape committed by transgender individuals must be prosecuted under the Bharatiya Nyaya Sanhita (BNS), 2023 without disparity. The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, should be amended to include transgender individuals as both victims and perpetrators under rape laws, ensuring their inclusion in laws addressing sexual offences. Furthermore, procedural amendments to the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 are necessary to address specific concerns, such as providing separate holding cells and legal representation tailored to the needs of transgender individuals. Preventing marginalisation also requires fostering social integration. The government should launch nationwide sensitisation campaigns to educate society about transgender rights and eliminate stigma. Inclusive policies in education and employment must be implemented, ensuring equal opportunities without prejudice. Skill development programs, welfare boards, and housing schemes should be designed to uplift the community and provide financial stability. Additionally, the government should strengthen anti-discrimination cells to address grievances promptly and effectively.

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