

# Study on the Present Legal and Social Framework for Transgender Rights in India

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**Abstract:** *The trajectory of transgender rights in India presents a profound socio-legal paradox, characterized by a stark divergence between constitutional emancipation and legislative containment. This dissertation, titled "A Critical Review of the Present Legal and Social Framework for Transgender Rights in India: Issues and Challenges," critically examines the contemporary landscape of transgender rights, navigating the chasm between de jure (legal) recognition and de facto (lived) equality.*

**Keywords:** Transgender Rights, NALSA Judgment, Transgender Persons Act 2019, Constitutional Morality, Horizontal Reservations, Self-Determination, Socio-Legal Marginalization, Indian Constitution

## I. INTRODUCTION

The conceptualization of gender has fundamentally evolved over the centuries, transitioning from rigid, biologically deterministic binaries to a more nuanced understanding of gender as a socially constructed and fluid spectrum. In India, the discourse surrounding transgender rights is uniquely complex, caught between a rich, ancient history of cultural acceptance and a deeply entrenched modern reality of systemic marginalization, legal ambiguity, and social stigma.

The Indian subcontinent possesses a long, documented history of gender non-conformity. Historically, diverse regional identities—including the *Hijras* in North India, *Aravanis* in Tamil Nadu, and *Kinnars*—held specific socio-religious roles and enjoyed a degree of social integration. However, this indigenous tolerance was violently disrupted by the advent of British colonialism. The imposition of Victorian morality and European heteronormativity drastically altered the social fabric. This prejudice was institutionalized through draconian laws such as the Criminal Tribes Act of 1871, which classified the entire *Hijra* community as "innately criminal," and Section 377 of the Indian Penal Code (IPC) in 1860, which criminalized "carnal intercourse against the order of nature."

Although the Criminal Tribes Act was repealed post-independence, the enduring legacy of colonial prejudice pushed the transgender community to the absolute margins of society, transforming them into a vulnerable underclass often forced to rely on begging, sex work, and the tight-knit *Guru-Chela* (teacher-disciple) system for basic survival.

Historically, the Indian subcontinent exhibited profound reverence for gender fluidity, with transgender communities like *Hijras* and *Kinnars* holding distinct, often sacred, socio-cultural roles in ancient texts and royal courts. However, this indigenous acceptance was violently disrupted by British colonialism. The imposition of Victorian morality institutionalized transphobia through draconian laws, notably the Criminal Tribes Act of 1871, which labeled the community as "innately criminal," and Section 377 of the IPC, which criminalized their existence. This colonial legacy persisted long after independence, stripping transgender individuals of their dignity and relegating them to the severe socio-economic margins of modern Indian society.

## CONSTITUTIONAL PROVISIONS AND THE JURISPRUDENCE OF TRANSGENDER RIGHTS IN INDIA

### Introduction: Transformative Constitutionalism and the Transgender Community

The Constitution of India is not merely a legal rulebook; it is a charter for social transformation. The concept of "transformative constitutionalism" dictates that the Constitution must continually adapt and respond to the evolving needs of society to dismantle entrenched social hierarchies and systemic inequalities. For over six decades post-independence, the constitutional guarantees of justice, liberty, equality, and fraternity remained tragically elusive for



the transgender community. The legal and social framework operated on a strict, biologically deterministic binary (male/female), rendering transgender, intersex, and gender-nonconforming individuals constitutionally invisible.

This invisibility was shattered by the Supreme Court of India in the landmark *National Legal Services Authority (NALSA) v. Union of India (2014)* judgment. The Court fundamentally expanded the interpretation of Part III of the Constitution (Fundamental Rights), declaring that transgender persons are fully entitled to all constitutional protections. This chapter critically examines the specific constitutional provisions—primarily the "Golden Triangle" of Articles 14, 19, and 21, alongside Articles 15 and 16—and analyzes how their modern judicial interpretation forms the bedrock of transgender rights in India.

### **THE JURISPRUDENCE OF EQUALITY AND LIBERTY: THE MANEKA GANDHI PARADIGM AND ITS NEXUS TO TRANSGENDER RIGHTS**

To critically review the present legal framework for transgender rights in India, one must trace the jurisprudential roots of "Equality" and "Personal Liberty" under the Indian Constitution. The contemporary judicial understanding that transgender individuals are entitled to a life of dignity, bodily autonomy, and equal protection is not a sudden constitutional revelation; it is the culmination of decades of judicial interpretation.

At the absolute center of this evolutionary arc is the landmark seven-judge bench decision in *Maneka Gandhi v. Union of India (AIR 1978 SC 597)*. Prior to this case, the interpretation of Fundamental Rights in India was highly compartmentalized and rigid. *Maneka Gandhi* revolutionized Indian constitutional law by breaking down the silos between Article 14 (Right to Equality), Article 19 (Fundamental Freedoms), and Article 21 (Right to Life and Personal Liberty), establishing the "Golden Triangle" of the Constitution. This chapter dissects the *Maneka Gandhi* case in detail and analyzes how its expansive interpretation of "procedure established by law" created the very constitutional architecture necessary for the eventual recognition of transgender rights.

### **THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK AND GLOBAL CONVENTIONS**

A critical review of the legal and social framework for transgender rights in India remains incomplete without situating it within the broader landscape of international human rights law. While India follows a "dualist" system—meaning international treaties do not automatically become domestic law unless expressly enacted by Parliament—the Supreme Court of India has progressively diluted this rigid boundary.

Relying on Article 51(c) of the Constitution, which directs the State to "foster respect for international law and treaty obligations," the Indian judiciary has consistently held that international conventions must be read into domestic fundamental rights (specifically Article 21) to enlarge their scope, provided they are not inconsistent with domestic law. This jurisprudential principle, solidified in *Vishaka v. State of Rajasthan (1997)*, became the driving force in the *National Legal Services Authority (NALSA) v. Union of India (2014)* judgment. The *NALSA* bench relied heavily on international covenants to define "gender identity" and mandate the protection of transgender persons. This chapter critically examines the core international conventions, treaties, and principles that dictate global standards for transgender rights and evaluates India's compliance with them.

### **THE ROLE OF THE JUDICIARY: JUDICIAL ACTIVISM, CONSTITUTIONAL MORALITY, AND ITS LIMITATIONS**

In the landscape of Indian democratic institutions, the legislature and the executive have historically functioned as majoritarian bodies, often ignoring or actively suppressing the rights of numerical minorities. Consequently, the burden of protecting the transgender community has disproportionately fallen upon the judiciary. In India, judicial review is not merely a mechanical exercise of testing statutes against the Constitution; it is a dynamic process driven by the concept of "transformative constitutionalism."

For the transgender community, the courts have served as the only accessible arena for asserting human dignity against a hostile state apparatus. This chapter critically analyzes the exercise of judicial review regarding transgender rights in



India. It evaluates the era of progressive judicial activism led by the Supreme Court, examines the crucial, ground-level interventions by various High Courts, and critically assesses the institutional limitations of the judiciary when its mandates are met with legislative resistance and executive paralysis.

### **THE SOCIAL FRAMEWORK: SYSTEMIC MARGINALIZATION AND CONTEMPORARY ISSUES FACED BY THE TRANSGENDER COMMUNITY**

The preceding chapters of this review have established that the Indian legal framework, heavily propelled by progressive judicial activism, has theoretically dismantled the criminalization of transgender identities. However, a critical socio-legal analysis reveals a profound and tragic dichotomy: constitutional triumphs in the Supreme Court have not successfully translated into social emancipation on the ground.

The transgender community in India remains suspended in a state of structural violence and systemic marginalization. The law, acting in a vacuum, cannot instantly erase centuries of deeply entrenched patriarchal conditioning, heteronormativity, and transphobia. This chapter critically examines the compounding, intersectional issues faced by transgender individuals in contemporary Indian society, categorizing them into familial ostracization, educational exclusion, economic disenfranchisement, healthcare disparities, and systemic violence.

### **II. CONCLUSION**

The trajectory of transgender rights in India represents a profound paradox. This critical review of the legal and social framework reveals that while the Indian state has achieved globally celebrated *de jure* (legal) recognition of transgender identities, it has systematically and structurally failed to secure *de facto* (lived) equality. The transgender community today remains suspended in a precarious space—caught between the emancipatory promises of the higher judiciary and the paternalistic containment enacted by the legislature, all while navigating a deeply hostile socio-cultural landscape.

Ultimately, the struggle for transgender rights in India stands at a critical historical crossroad. The supreme judicial authority of the land has unequivocally declared that transgender individuals are full, equal citizens entitled to the entire spectrum of constitutional liberties. The ghost of colonial criminalization has been formally exorcised from the statute books. However, as this critical review has demonstrated, the removal of a discriminatory law is merely the beginning of justice, not its realization. The present legal and social framework is incomplete. It acknowledges the existence of the transgender community but refuses to equip them with the structural tools necessary for a dignified existence. So long as identity is held hostage by bureaucratic magistrates, so long as physical safety is legislatively devalued, and so long as economic survival relies on the dangerous margins of the informal economy, the constitutional promise of equality will remain unfulfilled. True justice for the transgender community in India will not be found in the mere, grudging tolerance of their existence by the state, but in the unapologetic celebration of their identity, protected by a legal framework that is as compassionate as it is undeniably just.

### **SUGGESTION**

The Parliament must urgently amend the Transgender Persons (Protection of Rights) Act, 2019, to repeal Section 7, which unconstitutionally mandates medical intervention for binary gender recognition.

Legal recognition of self-identified gender must be an administrative process devoid of medical, psychiatric, or bureaucratic gatekeeping, fully aligning with the international Yogyakarta Principles.

The state must immediately implement horizontal reservations for transgender persons across all caste categories in public employment and education, as explicitly directed by the Supreme Court in the *NALSA* judgment.

Without this affirmative action, statutory anti-discrimination clauses remain hollow promises for a community historically denied access to formal schooling and social capital.

Section 18 of the 2019 Act must be overhauled to ensure that penalties for physical and sexual violence against transgender individuals are strictly on par with those prescribed for cisgender women under the Indian Penal Code.



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