

# **Redefining Women in Indian Law in 2025: Constitutional Inclusion of Trans Women in Workplace Protections, Welfare Schemes and Criminal Law**

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## **Abstract**

Over many centuries, gender has been categorized and recognized by society into two, male and female, while marginalizing transgender persons. In the recent era of modernization and progression in our society has significantly expanded the concept of gender. Although, our Indian constitution in many cases such as *NALSA v. Union of India* (2014), *Puttuswamy v. Union of India* (2017) and *Navtej Singh Johar v. Union of India* (2018) have upheld and affirmed the rights of persons who identify themselves as another gender and their autonomy regarding their personal choices and rights, trans women still face discrimination in many other areas. The lack of a proper uniform legal definition of a “Woman” creates significant gaps in the protection of rights and implementation across various statutes. This paper utilizes doctrinal and comparative legal research by analyzing constitutional provisions, statutes, judicial decisions to construe an inclusive pathway for the definition of “woman”. This paper investigates how these inconsistencies cause hindrance in selected domains where the gendered legal classification has direct consequences: workplace protection under the POSH Act, women-specific welfare schemes, protection against violence and gender-linked provisions in criminal law. This paper explores the need for a unified constitutional framework as per Articles 14, 15, and 21 of the Constitution to ensure equality and dignity and the failure of existing frameworks like Transgender Persons (Protection of Rights) Act, 2019. This paper analyzes recent court judgments, statutory ambiguities and international standards such as Yogyakarta principles, in order to incorporate self-identification with statutory purpose and proportionality review. Also, the paper covers comparison with other countries for taking it as a model for inclusive legal drafting. This paper seeks to redefine and analyze the statutory definition of “woman” and suggest some practical reforms to elevate the welfare of trans women.

**Keywords:** Trans Women, Gender Identity, Self-Identification, Article 14, Article 15, Article 21, POSH Act, Welfare Schemes, Transgender Persons (Protection of Rights) Act, 2019.

## **1. Introduction**

In a world where divisions are the only way to identity historically, particularly gender classified into male and female. The characteristics of each gender are divided and functionality is set by the society over the years. If anything contrary to these two classifications emerge, it is viewed with disgust and uneasiness. The view shaped by the society of what each gender should be is laid down and if anyone falls outside these norms, they are abnormal. Trans women, over the years, are labelled under various names like “chakka, hijira, etc.”. But the society fails to recognize that at this 21<sup>st</sup> century, where the world is moving towards the debate of gender being fluid, the law as well as the society should be able to adapt to the dynamic world and bring about progress in laws when it comes to gender, especially trans women. There is no uniform definition of a woman in Indian law. In order to find that we need an important distinction between sex and gender. According to the Canada Institutes of Health Research, Sex refers to a set of biological attributes in humans and animals. Gender refers to the socially constructed roles, behaviors, expressions and identities of humans. Does our law view gender and sex as one? According to Section 2(k) of the Transgender Persons (Protection of Rights) Act, 2019, it defines transgender persons as “a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta”. This question and the aim of our paper seeks to address the definition of the term woman and its implications when considering Indian laws, shedding light on trans women.

## **2. Constitutional Framework & Its Implication on Trans Women**

### **2.1 Article 14: Right to Equality**

Equality is the core part of democracy. The main part of Article 14 is that it ensures to treat both citizens and non- citizens equally and outlines the general rules to prevent discrimination while article 15-18 provide more specific provisions. It was held in *M. Nagaraj v. Union of India* (2006) case is that equality is the most important part of democracy and forms a part of constitutional basic structure. Article 14 has two exceptions that is “Equality before the law” and “Equal protection of law”. The concept of “Equality before the law” states that no one is above the law. Everyone must follow the same legal rules regardless of their statues, position or rank. Denying the right to any group without valid justification violates Article 14. This also includes fair treatment of all individuals including transgender people. This provides a foundation for challenging laws that excludes trans-women from women specific provisions. The concept of “Equal protection of law” states that similar individuals in similar situation should be treated equally. It allows for reasonable classification where different treatment is allowed only when there is a valid reason. It also prevents unfair exclusion of trans women in areas such as electoral reservations, welfare programs, workplace protections (POSH Act), protection against violence etc. This urges the state to update laws to match social and economic changes ensuring protection for marginalised group.

The state cannot deny any individual equality before the law or equal protection of law. This is the most crucial right to those who earn it under article 14. Despite its celebrated parts and various initiatives from

the government to improve the conditions of transpeople in India, the reality is that transgender community remains most vulnerable group in the country. They frequently face harassment, assault, humiliation across all sectors of society. Police department also create the unfriendly atmosphere as transgender face bullying and abuse. These issues include extortion of money, forced oral and anal sex, false charges, physical violence, threats etc.

In the case of NALSA Vs Union of India(2014) it was held that transgender person must be legally recognised as third gender, individuals can choose to identify them as male , female and third gender, article 14,15,16,19 and 21 equally protect transgender individuals, discrimination based on gender identity is unconstitutional. The center and state must treat transgender individuals as socially and educationally backward for reservations. They should create welfare programs in education, health, jobs and housing. Denying recognition violates the right to life and dignity under article 21. But in practice transgender still face discrimination. Even though the constitution protects them, the issue is that these rights are not often properly enforced.

The constitution grants many rights to everyone but few important ones only apply to the citizens. But it doesn't mention that transgender people are excluded from being entitled to these rights. The society recognises only male and female as primary genders. It has historically refused to recognise transgender people including Hijras as either women or separate "third gender". The exclusions pushes hijras and transgender individuals to the margins of the society. It makes them socially and legally vulnerable.

## **2.2 Article 15: Right Against Discrimination**

Article 15 of our constitution preaches that state shall not discriminate against any citizen on grounds of race, caste, sex, religion or place of birth under Article 15(1). It also prevents discrimination by denying access of public places and institutions, under Article 15(2). It contains an important enabling provision under Article 15(3). It enables the state to make special provisions for women and children. This clause is based on the concept of protective discrimination. It permits the state to provide unequal treatment to bring about progress in the positions of disadvantaged people with a view of achieving equity. This concept distorts the formal idea of equality enshrined under the constitution. But it has view to bring about progress in the historically oppressed sections of the society, in order to create a balance.

Now, what is the term sex under Article 15(1) refer to? Generally, it is the sex assigned to a person at the time of their birth. In the case of NALSA v. Union of India, 2014, the transgender community filed a writ petition before the Supreme Court seeking a legal declaration of their gender identity, not the one assigned to them at the time of their birth. The Court adopted an expansive interpretation of the word "sex" under Article 15(1) to include gender identity. This provided them with constitutional protection against discrimination on grounds of sex. The Court also held the right to self -identification as it is principal to dignity, identity and personal autonomy. Therefore, the need to force individuals to undergo medical surgery to fit into the condition of their recognition is a blatant violation of their rights under Article 15 and other fundamental rights.

Trans women persons face discrimination in various places like education, workplace and suffer from social exclusion. The Court recognized that the denial of their recognition would leave them vulnerable

without any existing remedy. The Court also recognized the need to include the concept of “third gender”, other than the existing binary male and female, as gender is not strictly biological but a social construct, an inner feeling, self-identification and self-perception that cannot be caged up in the name of order of nature. Subsequent cases grew strongly upon this foundation. In cases like in the case of *K S Puttuswamy v. Union of India*(2017), upheld the right to privacy to include the right to decisional autonomy in terms of identity. Furthermore, in the case of *Navtej Singh Johar v. Union of India*(2018), the Supreme Court upheld a crucial decision when decriminalizing same-sex consensual relationships. These cases exhibit transformative constitutionalism, where the constitution is a dynamic tool to for social and political transformation with the needs and adaptability of the ever-changing society.

Article 15(3) requires critical analysis of its framework. This provision allows the state to create any special provisions for women and children. This is an exception to Article 15(1) of the constitution. The reason behind the creation of Article 15(3) of the constitution is protective discrimination for the vulnerable sections of the society. The most vulnerable section of our society includes women. Formal equality is not enough to address historical oppression faced by the marginalized section of the society and affirmative actions are necessary to ensure substantive equality. The main question arises here, Does women under Article 15(3) include trans women? If it does not extend to trans women then they are not entitled to the benefits accrued under Article 15(3). It depends on the interpretation of sex. One of the arguments in support of trans women is that through textual interpretation, the word “sex” in Article 15(1) is broad enough to extend to gender identification, similarly, the word “women” should be read in a broad approach in order to include all persons who identify themselves as woman whether cisgender or transgender. If we read this provision through a narrow approach, it would lead to injustice and ultimately lose the purpose of the provision.

Another argument is put forth through a purposive interpretation. Article 15(3) exists in our constitution as a remedy for the disadvantage faced by women in general. Trans women and cisgender women, both face discrimination in employment, healthcare, education and abuse which does not directly arise from gender identities, but from socio-economic marginalization combined with historical oppression. If trans women are excluded from the remedy of Article 15(3), then they are denied the protection from the discrimination which the constitution seeks to abolish.

It appears that the inclusion of trans women into the term “women” under Article 15(3) is crucial for them to accrue the benefits derived from special provisions created for women such as POSH Act, 2013 and other welfare schemes directed for the protection of women. The amount of discrimination faced by trans women and cisgender women are the same, as anybody who identifies themselves as a woman in the Indian society will be subjected to the same amount of discrimination. Thus, Article 15 should be interpreted to provide protection for all persons who identify themselves as women under Article 15(3), in order for it to attain the constitutional vision that was embedded in the makers of the constitution. If they are excluded, it would led to indirect discrimination under Article 15(1) of the Constitution. Thus, there needs to be harmony established between Article 15(1) and Article 15(3) of constitution, thereby the inclusion of trans women under the term of “women” of Article 15(3) of the constitution.

### **2.3 Article 21: Right To Life and Personal Liberty**

Article 21 of the Indian constitution guarantees that no person shall be deprived of their life or personal liberty except according to procedure established by law. This article serves as the foundation of human autonomy and personal dignity. Initially, it was enacted to serve the purpose of imprisonment and death penalty. Over the years, its ambit has been expanded to include not mere physical preservation of life, but broader aspects like liberty, self-identification, dignity and personal autonomy.

Article 21 includes the right to self-identification of gender as held in *NALSA v. Union of India*(2014). The right of trans women to identify themselves as women is intertwined with personal autonomy and bodily integrity. Right to life and personal liberty cannot attain its legislative intent if individuals are denied the right to live in harmony with what they identify themselves to be. Right to life and personal liberty does not limit to mere state protection but the creation of a society where such identities can flourish. The overlap of gender identity with social stigma, economic marginalization leads to systemic discrimination in various areas like education, employment, healthcare and the society as a whole. Article 21, thereby creates a positive obligation on the part of the state to destruct the social barriers and create a society where trans women can live with such dignity and exercise such personal autonomy.

While judicial cases have upheld the right of trans women to self-identification, there has not been adequate realization of this right due to administrative and social barriers. Thereby, the protection under Article 21 to be operative, it also requires administrative action on the part of the state. It is not sufficient for Article 21 to be a mere safeguard, but should function as a transformative provision where trans women can be guaranteed their right to exist and exercise their personal autonomy to which all people are entitled. It is also the obligation of the state to create conditions for the facilitation of personal autonomy and dignity.

Article 21 needs to have an expansive interpretation consisting self-identification, bodily integrity and ensuring substantive equality. These elements are crucial for constitutional guarantee of life and personal liberty. But, the reality of trans women in Indian society must not be overlooked as formal acknowledgment of their rights does not essentially give the effect of substantive rights. The gap needs to be filled in order to achieve the transformative potential of Article 21 of the Constitution through the creation of enabling social and institutional frameworks that is operative in our society not a vague framework without a basis of facilitation.

### **2.4 Constitutional Protections and Judicial Pronouncements**

India's Constitution, which was adopted in 1950, establishes a detailed framework of fundamental rights aimed at ensuring equality, freedom, and dignity for all citizens. For transgender individuals—who have historically endured significant social exclusion—these constitutional provisions serve as essential legal instruments. Although the Constitution does not specifically reference transgender or third gender identities, its extensive guarantees have been progressively interpreted by the judiciary to safeguard and advance the rights of transgender individuals.

Key provisions include Article 14 (Right to Equality), Article 15 (Prohibition of Discrimination), Article 19 (Freedom of Expression), and Article 21 (Right to Life and Personal Liberty). Article 14 guarantees



equality before the law and equal protection under the law. Article 15 prohibits discrimination on various grounds, including sex, which courts have broadly interpreted to encompass gender identity. Article 19 ensures freedoms such as speech and expression, which are pertinent to the right of transgender individuals to openly express their gender identity. Article 21, acknowledged as a comprehensive protection of life and personal liberty, has been pivotal in upholding dignity and autonomy.

Despite these constitutional assurances, the transgender community remained legally invisible and socially marginalized for many years. This situation began to shift through persistent litigation and activism, culminating in significant judicial rulings.

The pivotal moment occurred with the Supreme Court's ruling in *National Legal Services Authority (NALSA) v. Union of India* (2014). In this landmark case, the Supreme Court formally acknowledged transgender individuals as a "third gender," separate from the conventional binary classifications of male and female. The Court determined that transgender individuals are entitled to all constitutional rights and freedoms, including the right to self-identify their gender. Notably, the Court asserted that the fundamental rights guaranteed by the Constitution apply to transgender individuals under Articles 14, 15, 19, and 21.

The NALSA ruling underscored that gender identity is a crucial component of personal liberty and dignity, and that the denial of this identity amounts to discrimination. The Court instructed both the central and state governments to recognize transgender individuals as socially and educationally disadvantaged classes for the purposes of affirmative action and reservations. It urged the implementation of measures to guarantee access to education, healthcare, employment, and social welfare.

In the wake of NALSA, numerous High Courts have further elucidated the constitutional protections to tackle specific matters such as reservations in education and employment, as well as safeguarding against harassment and violence. For instance, the Madras High Court in the case of *Arunkumar v. The Inspector General of Police* (2016) ruled in favor of the right of transgender individuals to self-identify and to be recognized according to their gender identity in official documents.

On an international scale, the NALSA ruling is in harmony with global human rights movements, including the Yogyakarta Principles (2006), which assert that every individual has the right to legal recognition in accordance with their self-defined gender identity. Nevertheless, despite the judicial acknowledgment, the implementation of these rights remains inconsistent. A significant number of transgender individuals continue to face challenges in accessing welfare benefits, securing accurate identity documents, and living without discrimination and violence. The progressive declarations made by the judiciary have not been complemented by effective policy implementation or necessary administrative reforms. Moreover, while the constitutional framework is largely inclusive, the judiciary has not thoroughly addressed all facets of transgender rights. For instance, matters concerning marriage rights, adoption, and inheritance for transgender individuals have yet to be fully addressed.

### **3. Critical Analysis of Transgender Protection of Rights Act, 2019**

The Transgender Persons (Protection of Rights) Act, 2019, marks the first extensive legislation by the Indian Parliament designed to protect the rights of transgender individuals and to tackle the social and legal marginalization they encounter. Enacted in response to vigorous advocacy and heightened public awareness following the Supreme Court's NALSA judgment in 2014, this Act aims to implement constitutional safeguards and create a legal framework for the welfare and dignity of transgender persons.

Nevertheless, since its passage, the Act has faced significant criticism for its inadequacies in meeting the genuine needs of the transgender community, as well as for procedural and substantive limitations that have hindered its effectiveness. The objectives outlined in the Act include the prohibition of discrimination against transgender individuals in sectors such as education, employment, healthcare, and access to public services. It criminalizes acts of violence, exploitation, and the denial of rights against transgender persons, imposing penalties for offenses like forced eviction from residences, physical violence, and sexual assault. Additionally, the Act envisions the creation of transgender welfare committees at both state and district levels to enhance the welfare of transgender individuals and to execute government initiatives.

Moreover, the Act does not specifically include provisions for affirmative action, such as reservations in education or employment, which is a notable omission considering the Supreme Court's directive in NALSA to recognize transgender individuals as socially and educationally disadvantaged groups entitled to such initiatives. Although the Act prohibits discrimination, it falls short of ensuring proactive measures to achieve substantive equality. Another criticism pertains to the vagueness surrounding the definition of "transgender" individuals within the Act. The legislation defines transgender to encompass trans-men, trans-women, individuals with intersex variations, gender-queers, and others; however, the implementation of this definition, particularly regarding identity recognition and welfare programs, has proven to be challenging. Intersex individuals, in particular, have voiced concerns that their unique requirements related to bodily autonomy and medical interventions are not sufficiently addressed. The enforcement mechanisms established by the Act have also faced scrutiny. The duty to investigate offenses against transgender individuals is assigned to the police, a force that has historically been criticized for discrimination and harassment of transgender persons. There is a lack of an independent oversight body to monitor police behaviours or to ensure that cases involving transgender victims are handled with sensitivity. Additionally, many activists consider the penalties outlined in the Act for offenses to be insufficient, advocating for more stringent punitive measures to prevent violence.

### **4. Social Exclusion and Barriers Faced by Transgender Individuals:**

Despite the constitutional guarantees and legal protections in place, transgender individuals in India continue to experience significant social exclusion, especially in vital sectors such as education, employment, and healthcare. This exclusion stems not only from legal deficiencies but is also deeply entrenched in societal attitudes, cultural norms, and systemic discrimination that restrict transgender individuals' access to fundamental rights and opportunities. Grasping these aspects is crucial for understanding the everyday experiences of transgender individuals and the obstacles they encounter in their pursuit of full participation and dignity within society.

Education is a critical pathway to empowerment; however, transgender individuals often face obstacles at every phase of their educational experience. From early childhood, transgender children and adolescents frequently endure bullying, harassment, and rejection from peers, educators, and even school authorities. Many are compelled to leave school due to the absence of safe and inclusive environments. Research indicates that literacy rates among transgender individuals are significantly lower than the national averages, with dropout rates reaching as high as 70% in certain areas. The lack of gender-sensitive curricula, anti-bullying measures, and trained counsellors further intensifies these difficulties. Discrimination continues to be a barrier in higher education admissions and campus life. Numerous transgender students report challenges in accessing facilities, experiencing misgendering by staff, and being excluded from student welfare programs. This educational marginalization restricts opportunities for skill enhancement and upward mobility, thereby perpetuating cycles of poverty and exclusion.

Employment represents a significant area where transgender individuals face deep-rooted discrimination. Official data indicate that a large number of transgender people are either unemployed or are employed in the informal sector under unstable conditions. Factors such as limited educational opportunities, societal stigma, and harassment in the workplace contribute to this marginalization. Many transgender individuals are forced to resort to begging, sex work, or traditional performance arts to survive—professions that often carry social stigma and economic instability. When transgender individuals do secure formal employment, they often encounter discrimination in hiring practices, promotions, and interactions within the workplace. Incidents of harassment, denial of restroom access, and refusal of service in professional settings are prevalent. Few organizations have implemented inclusive policies or diversity training programs that effectively address issues related to gender identity. The absence of workplace anti-discrimination laws specifically targeting gender identity further exacerbates economic exclusion. In recent years, various affirmative initiatives, including skill development and entrepreneurship programs launched by government entities and NGOs, have sought to enhance employment opportunities for transgender individuals. However, the impact of these initiatives remains limited, and systemic obstacles continue to hinder the ability of transgender persons to secure dignified and sustainable livelihoods.

Healthcare discrimination represents a significant obstacle to the inclusion of transgender individuals. Transgender individuals frequently face stigma, ignorance, and outright denial of services in medical facilities. The lack of awareness among healthcare professionals results in breaches of confidentiality, refusal of care, and neglect of health needs specific to transgender individuals, including gender-affirming procedures. Mental health issues are particularly severe, with transgender persons reporting elevated levels of depression, anxiety, and suicidal thoughts due to social rejection and violence. Nevertheless, mental health services are often either inaccessible or lacking in sensitivity. The prevalence of HIV/AIDS is also disproportionately elevated within transgender communities, highlighting the need for targeted health interventions. The lack of clear guidelines or standardized protocols for gender-affirming healthcare within public health systems restricts access to hormone therapy, surgeries, and counselling. Insurance policies frequently exclude treatments specific to transgender individuals, creating additional financial obstacles. Public health initiatives often neglect transgender individuals, further isolating them from vital services such as sexual and reproductive healthcare, maternal health, and preventive screenings.



## 5. POSH Act and Workplace Protections

Workplaces should ideally serve as environments where every individual is treated with dignity, respect, and fairness. Nevertheless, for transgender employees in India, this ideal is frequently overshadowed by the harsh reality of sexual harassment. Sexual harassment represents a serious and widespread issue that not only impacts an individual's well-being but also obstructs their professional development and overall quality of life. Transgender individuals often encounter distinct challenges regarding sexual harassment in the workplace. They may face harassment not only due to their gender identity but also as a result of societal biases and misconceptions surrounding transgender individuals. Such harassment can manifest in various ways, including offensive remarks, unwanted advances, exclusion, discrimination, or even physical assault.

The repercussions of sexual harassment can be profoundly damaging for anyone. It can diminish self-esteem, induce emotional distress, and create a hostile work environment that impedes productivity and career progression. Many transgender individuals endure the anxiety of being "outed" or stigmatized, which can further alienate them and discourage them from seeking assistance. Moreover, the sexual harassment of transgender individuals in the workplace can be interpreted as a form of discrimination under Article 14 and Article 19(1)(g) of the Constitution of India. Article 14 ensures the right to equality before the law, while Article 19(1)(g) protects the right to engage in any profession, or to pursue any occupation, trade, or business. When transgender employees experience sexual harassment, their fundamental rights to equality and the pursuit of their chosen professions are infringed upon.

1. Legal Recognition of Gender Identity: The Indian judiciary has made significant strides in recognizing the right of transgender individuals to self-identify their gender through landmark rulings. In the case of *NALSA vs. Union of India*, the Supreme Court of India upheld the right to self-identification and acknowledged transgender individuals as the "third gender." This acknowledgment has facilitated the development of more inclusive policies and legal safeguards.

2. The Transgender Persons (Protection of Rights) Act, 2019: This pivotal legislation was enacted in India to acknowledge and safeguard the rights of transgender persons. It defines and affirms the rights of transgender individuals, granting them the ability to self-identify their gender, access healthcare services, and seek education and employment without facing discrimination. Furthermore, the Act prohibits discrimination against transgender individuals in employment and recruitment processes. Under Section 18(d) of the 2019 Act, any act of sexual harassment directed at a transgender individual is deemed a punishable offense. Offenders may face imprisonment for a minimum of six months, which can extend to two years, along with a monetary fine. This provision underscores the commitment to fostering safe and inclusive workplaces where transgender individuals can flourish without the threat of harassment or discrimination.

3. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013: Although this Act does not specifically target transgender individuals, it establishes a vital legal framework for combating sexual harassment in the workplace. It recognizes that all women, including transgender women, are entitled to work in environments devoid of sexual harassment. Employers are required to establish Internal Committees (ICs) to address complaints of sexual harassment, ensuring confidentiality

and protection against retaliation. It is essential to note that the POSH Act, 2013 is enacted solely for the protection of women in the workplace.

4. Indian Penal Code, 1860: The IPC, 1860 lacks explicit provisions that offer protection against sexual harassment experienced by transgender individuals. Nevertheless, trans women are entitled to lodge complaints with the Police regarding the sexual harassment they endure under Section 354A (Sexual harassment and its punishment) and Section 509 (Word, gesture or act intended to insult the modesty of a woman) of the IPC, 1860.

## **6. Gaps in Legal Framework and Implementation Challenges for Transgender Rights**

Despite notable advancements through judicial interpretation, various structural and policy deficiencies persist, hindering the complete realization of transgender rights in India. Firstly, there is a significant lack of comprehensive central legislation that combines constitutional protections with effective implementation strategies; the Transgender Persons (Protection of Rights) Act, 2019 has been criticized for its procedural obstacles in identity recognition and insufficient provisions for socio-economic empowerment. Secondly, enforcement at the institutional level is inconsistent—police training, access to gender-neutral facilities, and participation in welfare programs often rely on the discretion of local authorities, resulting in uneven protection across different states. Thirdly, the rights acknowledged in individual rulings are often merely declarative, lacking strong follow-up mechanisms to ensure compliance. A multifaceted strategy is essential for the future. Parliament must pass laws that mandate inclusive infrastructure, standardize administrative processes, and clarify definitions. To prevent regional disparities, the Supreme Court and High Courts should aim for a unified approach to interpretation. Administratively, effective enforcement necessitates accountability measures and capacity-building initiatives. Most importantly, for social acceptance to align with legal recognition, cultural attitudes must evolve through ongoing awareness campaigns. The progressive jurisprudence emerging from the High Courts risks remaining an idealistic promise rather than a tangible reality without such dedicated efforts.

## **7. Diversity and Inclusion Initiatives:**

In the ever-evolving environment of contemporary workplaces, inclusivity has moved beyond simple rhetoric to become the foundation of ethical and successful organizations. Acknowledging the significant benefits of embracing diversity, companies are increasingly making efforts to ensure that all employees, including transgender individuals, feel safe, respected, and empowered in their work settings. Below are several actions that organizations can implement to enhance inclusivity for transgender individuals:

1. Education and Awareness: Discrimination often stems from ignorance, and the initial step towards inclusivity is education. Organizations should allocate resources for workshops, training sessions, and awareness initiatives that promote a deeper understanding of transgender issues. These programs facilitate open and respectful conversations, dismantling stereotypes and biases that may marginalize transgender individuals.

2. Gender-Neutral Facilities: A tangible method to cultivate a more welcoming environment for transgender employees is to provide gender-neutral restrooms and changing areas. This simple adjustment promotes a sense of belonging and inclusion.

3. Tailored Benefits: Recognizing the distinct needs of transgender employees, organizations should contemplate offering benefits that address their specific requirements. This could encompass health insurance that covers gender-affirming procedures and mental health support, emphasizing the organization's dedication to the well-being of its transgender workforce.

4. Comprehensive Anti-Bullying and Anti-Harassment Policies: It is essential to communicate and enforce policies against bullying and harassment clearly. All employees, from senior leadership to front-line personnel, must be informed about these policies and comprehend the repercussions of any violations. The organization should consider implementing a gender-neutral POSH Policy. The adoption of such a policy can enhance the assurance of all individuals in the workplace that they are safeguarded against sexual harassment.

5. Establishing Support Networks: A highly effective method to cultivate a sense of community and support is by promoting employee resource groups (ERGs) or affinity groups that concentrate on LGBTQ+ and transgender matters. These groups serve as a platform for mutual support and advocacy within the organization.

6. Leadership Development: Leaders and managers play a crucial role in embodying company culture. They should participate in specialized training focused on LGBTQ+ and transgender inclusion to ensure they are prepared to offer the necessary support to transgender team members.

7. Inclusivity of Pronouns and Names: Acknowledging an individual's preferred name and pronouns is crucial. Implement measures to guarantee that names and pronouns are accurately utilized in all internal communications, including email signatures, ID badges, and HR systems.

## **8. Welfare Schemes and Government Initiatives for Transgender Individuals in India**

In response to the enduring social and economic marginalization experienced by transgender individuals, both the central and various state governments in India have initiated welfare programs designed to enhance their living conditions, education, employment opportunities, and healthcare access. These efforts represent a significant advancement in acknowledging the distinct challenges encountered by the transgender community and strive to establish support systems that foster their social inclusion. Nevertheless, despite the establishment of such programs, their execution has frequently been inconsistent, inadequately funded, and obstructed by a lack of awareness among both officials and potential beneficiaries. At the national level, the Ministry of Social Justice and Empowerment has introduced the 'National Action Plan for Transgender Persons', which encompasses financial support for education, skill development initiatives, and health and social security schemes. A noteworthy program is the provision of scholarships for transgender students pursuing both school and higher education, aimed at decreasing dropout rates and enhancing literacy levels. Additionally, the government has unveiled pension schemes and housing provisions to bolster economic stability. States such as Tamil Nadu and Kerala have taken the lead in implementing welfare programs specifically for transgender individuals. Tamil Nadu's 'Aravani

Welfare Board’, founded in the 1990s, offers pensions, free medical care, skill training, and legal assistance to transgender persons. Kerala has adopted a thorough transgender policy that emphasizes healthcare, education, and employment. Furthermore, these states have facilitated the issuance of identity cards for transgender individuals, thereby granting them access to a range of government benefits.

States such as Tamil Nadu and Kerala have taken the lead in initiating welfare programs specifically designed for transgender individuals. The ‘Aravani Welfare Board’ in Tamil Nadu, established during the 1990s, offers pensions, free medical care, skill development training, and legal assistance to transgender persons. Meanwhile, Kerala has enacted a thorough transgender policy that emphasizes healthcare, education, and employment opportunities. Additionally, these states have made it easier for transgender individuals to obtain identity cards, which allows them to access various government benefits.

Despite these advancements, the effectiveness of government schemes is still limited. A significant number of transgender individuals remain unaware of their rights and benefits due to inadequate information dissemination and the social stigma that discourages them from engaging with government agencies. The bureaucratic procedures required to access these benefits can be quite complex, often involving extensive paperwork and documentation that many find challenging to gather or complete. The challenges in implementation are further exacerbated by insufficient training of frontline officials, who often lack the necessary sensitivity towards transgender issues. This can lead to instances of discrimination or indifference when transgender individuals seek services at government offices, which in turn discourages them from pursuing further engagement.

Financial limitations and inconsistent funding allocations also hinder the effectiveness of welfare programs. Some initiatives have either been discontinued or inadequately expanded, indicating a lack of political commitment. Furthermore, data are scarce regarding the utilization of these programs, making it difficult to evaluate their impact or identify existing gaps. Healthcare continues to be a significant shortcoming in the implementation of welfare initiatives. Although some programs include provisions for gender-affirming treatments and care for HIV/AIDS, access to qualified medical professionals and affordable services remains inconsistent. Insurance coverage for transgender-specific healthcare is either minimal or absent. Civil society organizations have been crucial in enhancing government efforts by offering safe shelters, vocational training, and legal assistance.

In India, Section 8 of the Transgender Persons (Protection of Rights) Act, 2019 safeguards the full and equal participation of transgender individuals and their integration into society. In line with this, both the Central government and various state governments have initiated programs aimed at enhancing the lives of transgender persons. The comprehensive overview of all welfare schemes available from the Central Government that transgender individuals can utilize, while also briefly discussing certain limitations associated with these schemes. SMILE serves as the national umbrella scheme established by the Ministry of Social Justice and Empowerment. All initiatives under SMILE require applicants to hold a transgender certificate, as stipulated in Section 6 of the Transgender Persons Act.

Initially, the scheme offers scholarships amounting to ₹13,500 annually for transgender students ranging from Class IX to Post Graduation. Candidates are selected based on their academic achievements from the previous year. Although these scholarships are valued, their advantages are significantly restricted. Students who have already received any other type of government scholarship are disqualified, which

complicates access to all the schemes for which they may qualify. Furthermore, the number of scholarships available is exceedingly limited. The merit-based nature of the scholarships, as opposed to a need-based approach, further complicates access for transgender individuals from marginalized castes or disadvantaged backgrounds. Additionally, scholarship applications typically open only from June to August, while fees must be paid by June. Consequently, the scholarship funds are often unavailable for many during the admission process, diminishing the scheme's effectiveness.

The Samagra Shiksha scheme of the Department of School Education and Literacy does not explicitly mention the provision of scholarships for transgender children. This scheme emphasizes the necessity to tackle the educational challenges faced by transgender children, who often encounter stigma and discrimination. They experience conflicting pressures to adhere to gender normative behaviors and societal expectations, which they find difficult in order to fulfill. It is essential to establish and maintain a reliable national database concerning transgender children. Schools should foster a safe and supportive environment that respects their constitutional rights. In this regard, schools must devise a plan in collaboration with students identifying as transgender and their parents, addressing issues such as the use of their names, access to restrooms, and other facilities that align with their gender identity. Furthermore, the curriculum and textbooks should incorporate the issues and concerns relevant to transgender individuals, while teachers must receive ongoing training to enhance their understanding of these challenges.

Secondly, SMILE also offers Skill Development and Training programs aimed at enhancing the employability of transgender individuals aged 18 to 45 by equipping them with market-relevant skills. This training is provided at no cost, and candidates who maintain over 80% attendance receive support in the form of post-placement assistance. However, the effectiveness of the scheme is constrained as individuals are permitted to undergo training only once and can enroll in only one training program. Additionally, the mobilization and awareness surrounding this initiative are notably limited. The Government of India will cover the entire approved expenditure. Skill development training will be offered through the PM-DAKSH scheme or by the NSDC, for which the Ministry will allocate the necessary funds.

Thirdly, the scheme includes "Garima Grehs," or "Houses of Dignity," which serve as shelter homes for transgender individuals, offering essential amenities such as food, medical care, and recreational facilities. To qualify, applicants must be 'abandoned' transgender persons, ideally living below the poverty line, aged between 18 and 60 years, and unemployed or not engaged in any productive commercial activity. Transgender individuals involved in sex work or 'beggary' are excluded from eligibility for this scheme. Currently, there are only 12 such shelters distributed across 10 states. Consequently, the reach of Garima Greh is arbitrarily restricted and seems to overlook many transgender individuals who may be working but still require shelter due to insufficient income to afford housing. This limitation also reflects a stigmatized perception of sex work as a profession for transgender individuals, rendering such workers ineligible to reside with others. By excluding sex workers, the scheme neglects the social and economic realities that often leave transgender individuals with limited occupational choices. Despite these challenges, Garima Grehs appear to be operating effectively for those who can access them. According to a study conducted in Jaipur, respondents expressed satisfaction with the facilities offered by the Garima Greh.



The Ayushman Bharat TG Plus scheme also includes provisions for composite medical health services for transgender individuals. This scheme offers insurance coverage of ₹5,00,000 annually for each transgender person. The funds can be utilized to meet various transition-related healthcare requirements, such as hormone therapy and sex-reassignment surgery, among others. Nevertheless, members of the transgender community have reported difficulties in accessing healthcare services under this initiative. In addition to these welfare programs, the Transgender Persons (Protection of Rights) Rules 2020 mandate that States establish Transgender Protection Cells. These cells are intended to oversee incidents of offenses against transgender individuals and to guarantee prompt registration, investigation, and prosecution of such offenses. However, four years later, only 11 states have successfully established these protection cells. Upon reviewing the aforementioned schemes, it is evident that while progress has been made towards enhancing the status of transgender individuals in India, especially since the enactment of the 2019 Act, there remains a significant disparity between the policies outlined on paper and their actual implementation. Furthermore, certain measures perpetuate problematic perceptions of the transgender community, which should be addressed by the government accordingly.

## **9. Survey of High Court Recognition of Trans Women in Legal and Welfare Contexts**

### **9.1 Gender-Inclusion**

*Viswanathan Krishnamurthy v. State of Andhra Pradesh: Reinterpreting Section 498A IPC* In this instance, the Andhra Pradesh High Court examined whether a trans-woman is entitled to seek legal recourse under Section 498A of the IPC, which has traditionally safeguarded a ‘wife’ from mistreatment by her husband or in-laws. The petitioner, who identifies as a trans woman, claimed to have suffered abuse at the hands of her male partner and sought to invoke this section.

The Court determined that gender identity is a matter of self-determination, referencing the *NALSA v. Union of India* case, in which the Supreme Court acknowledged the fundamental right to self-identify one's gender under Article 21. Consequently, a trans woman living in a marriage-like arrangement is encompassed within the protective framework of Section 498A. This broad interpretation guarantees that the law does not exclude individuals based on non-binary identities and upholds the constitutional principles of dignity and equality as outlined in Articles 14 and 15.

This ruling aligns with the *Navtej Singh Johar v. Union of India* case, which decriminalized same-sex relationships and underscored the necessity for laws to adapt to maintain dignity and personal autonomy. By harmonizing criminal law with constitutional morality, the Court has facilitated a more inclusive legal understanding of gender-related statutes.

### **9.2 Recognition of the Right to Reservation for Trans Woman**

*Kabeer C. v. State of Kerala*: In this instance, the Kerala High Court addressed the entitlement of transgender individuals to reservation in educational institutions as part of the State's affirmative action policies. The petitioner, a transgender person, was denied the admission benefits that were available to

other socially and educationally disadvantaged groups. This denial was contested as discriminatory and a violation of constitutional equality.

The Court scrutinized the lack of a clear reservation policy for transgender individuals and determined that the State had a constitutional duty to develop inclusive policies. It noted that transgender individuals, due to ongoing stigma and social exclusion, constitute a distinct class that necessitates targeted affirmative actions. The refusal of educational support, particularly through reservation, represented systemic exclusion and undermined the principle of equal opportunity. Therefore, the Court instructed the State of Kerala to ensure that suitable reservation policies were created and executed to promote the inclusion of transgender individuals in educational environments. This ruling is significant as it translates the principle of equality into tangible institutional reform, acknowledging that mere formal non-discrimination is inadequate without proactive measures to rectify historical marginalization.

### **9.3 Interpretation of Bride Inclusive**

In the case of Arun Kumar v. Inspector General of Registration, the Madras High Court examined whether the definition of "bride" under the Hindu Marriage Act, 1955, could encompass a transgender woman. The issue arose when a marriage registrar declined to register a marriage between a cisgender man and a transgender woman, arguing that the latter did not qualify as a "bride" according to the statutory definition. The Court determined that the term "bride" should be interpreted in the context of evolving constitutional values and social realities. It concluded that a transgender woman who identifies as female is included within the scope of the term "bride" for marriage purposes under Hindu law. The judgment highlighted that statutes should be interpreted with the intent to include all individuals whose gender identity corresponds with the role defined in the statute. This interpretation supports the rights of transgender individuals to marry and be acknowledged in alignment with their self-identified gender. In doing so, the Court reinforced the principles of dignity and autonomy in personal relationships, ensuring that statutory language does not serve as a means of exclusion. The ruling signifies a progressive and inclusive perspective on personal law jurisprudence.

### **9.4 Right of Recognition as Parent:**

The Kerala High Court addressed a significant matter concerning gender identity and parental recognition. The petitioners, a transgender couple, approached the Court to request the right to be identified as "parents" rather than the conventional terms "father" and "mother" on their child's birth certificate. The State authorities had insisted on assigning rigid gender roles, which the couple argued infringed upon their identity and autonomy. The Court determined that the insistence on binary gender markers in official documents was at odds with the constitutional rights to privacy, dignity, and personal autonomy. Acknowledging the lived experience of the petitioners as a family, the Court ordered that the term "parents" be utilized instead of "father" and "mother" on the child's birth certificate. This ruling is significant as it affirms the right of individuals, irrespective of gender identity, to define familial roles according to their own preferences. It recognized that the structure of contemporary families is changing

and must be honored within administrative and legal systems. The decision represents a crucial step towards the inclusive legal acknowledgment of non-traditional family forms.

Highlighting the principles of dignity and personal autonomy, the Court instructed prison authorities to ensure that transgender inmates are accommodated in facilities corresponding to their self-identified gender, and that appropriate safety measures and separate amenities are provided when necessary. This judgment emphasized the necessity for structural reforms within the prison system to safeguard the rights of gender minorities. This ruling contributes to a wider understanding that gender identity must be acknowledged and protected across all public institutions, including correctional facilities.

Scrutinization of recent Court decisions indicates that while each ruling pertains to unique factual situations, they collectively reflect a growing constitutional commitment to gender inclusivity. The Kerala High Court's acknowledgment of the right of same-sex/trans couples to cohabit, the Madras High Court's inclusive interpretation of the term 'bride,' the Madurai Bench's directive for gender-neutral facilities, and the Uttarakhand High Court's affirmation of prison rights for transgender individuals all arise from a common reliance on the principles of dignity, autonomy, and equality as outlined in Articles 14, 15, and 21. However, the approaches are not uniform. Southern High Courts have frequently adopted a more proactive interpretive approach, extending the boundaries of statutory language to embrace evolving understandings of gender, while other regions have tended to confine themselves to the specific facts presented. This variation illustrates the lack of consistent central guidelines capable of harmonizing rights protection across different jurisdictions. Furthermore, while these rulings uphold individual rights, they also reveal systemic deficiencies—such as in infrastructure, administrative policy, and enforcement—that necessitate legislative and executive intervention.

Addressing the entrenched legal and social exclusion experienced by transgender individuals in India necessitates a comprehensive strategy that integrates legal reforms, policy innovations, administrative modifications, and societal change. Although judicial rulings and legislative actions have established foundational frameworks, the ongoing deficiencies in implementation and social acceptance demand thorough and actionable recommendations to guarantee the rights, dignity, and inclusion of transgender individuals.

## **10. Recommendations for Legal Reform and Social Inclusion**

1. Legal reform must emphasize the right to self-identification of gender without bureaucratic obstacles. The existing requirement under the Transgender Persons (Protection of Rights) Act, 2019, for a certificate of identity issued by government entities limits the constitutional guarantee upheld by the Supreme Court in NALSA. Legislation should be revised to acknowledge self-declaration as adequate for gender recognition, eliminating invasive medical assessments and complicated approval procedures. This will enable transgender individuals to obtain identity documents, essential services, and legal recognition on their own terms.
2. The affirmative action policies need to be explicitly incorporated into legal frameworks and administrative policies. The NALSA judgment advocated for reservations in education, employment, and welfare schemes; however, the 2019 Act does not address this crucial matter. To

dismantle systemic exclusion, transgender individuals—particularly those from marginalized castes and economically disadvantaged backgrounds—should be afforded reservations and preferential access in public sector employment, educational institutions, and social welfare programs. This inclusion would rectify historical discrimination and foster substantive equality.

3. The enforcement of anti-discrimination laws requires enhancement through sensitization and accountability mechanisms. Government officials, police officers, healthcare providers, educators, and employers must undergo mandatory training to comprehend transgender issues and to avert discriminatory practices. Independent oversight bodies and grievance redressal mechanisms should be established to ensure that violators are held accountable and to provide accessible justice for transgender victims of violence and discrimination.
4. Healthcare policies must be inclusive and comprehensive. The government ought to create standardized guidelines for gender-affirming healthcare services, which include hormone therapy, surgeries, and mental health support, within public health systems. Insurance schemes should encompass transgender-specific treatments, and healthcare providers must be trained to deliver respectful, confidential, and competent care. Accessible healthcare is essential for enhancing the physical and mental well-being of transgender individuals.
5. Educational curricula ought to integrate gender diversity and inclusivity. Raising awareness among young individuals regarding transgender identities through school and university programs can diminish stigma and promote acceptance. It is essential to implement anti-bullying policies and support services to establish safe educational environments where transgender students can flourish.
6. Welfare programs must receive sufficient funding, be effectively executed, and be customized to meet the varied needs of the transgender community. Establishing transparent methods for disseminating information, streamlining application processes, and assessing the impact of these programs will improve accessibility. Particular attention should be directed towards intersectional vulnerabilities associated with caste, class, religion, and regional inequalities.
7. Community involvement is crucial. Transgender individuals should be actively engaged in the processes of policymaking, implementation, and monitoring. Their lived experiences and expertise can inform responsive and culturally sensitive interventions. Strengthening advocacy and support systems can be achieved by empowering community-led organizations through funding and legal recognition.
8. The legal recognition of relationships, marriage, adoption, and inheritance rights for transgender individuals should be clearly defined and codified. This legal clarity will safeguard family rights and social security, thereby fostering greater acceptance and stability.

## **11. Comparative Analysis of International Transgender Legal Protection**

Comparative legal frameworks showcase that recognition of transgender rights is embedded in equality, dignity and self-identification, ideals which constitute India's constitutional vision. The United States has expanded the term "sex discrimination" to include discrimination against trans women under Title VII of the Civil Rights Act of 1964, in the case of *Bostock v. Clayton County*(2020). Though, the absence of an operative legislation has left such protection insufficient, which showcases judicial pronouncements should be coupled with administrative actions to realize the effect of such decisions, which is same in the case of India.

European jurisdictions have encompassed gender identity with human rights. In *Christine Godwin v. United Kingdom*(2002), the European Court of Human Rights recognized legal gender identity to be integral part of personal autonomy under Article 8 of ECHR. Many EU states like Belgium, Denmark, Iceland and Ireland allow self-identification without any medical procedure, which is mostly through an application or a certificate. It reflects an approach oriented with rights that India could essentially emulsify in the fragmented recognition mechanisms.

Latin American countries, especially Argentina through its Gender Identity Law, 2012 provides a legislative model with a proper operative framework including self-identification with access to healthcare and other public services. South Africa and Canada reflect the need of intersectional interpretation where provisions concerning equality and dignity are read through purposive interpretation to offer protection to all marginalized societies. This reflects how India can adopt a similar approach when it comes to reading constitutional provisions, particularly Article 15(3) of the constitution.

Across these jurisdictions around the world in comparison with India reflect the need of trans women inclusion in gender specific laws, the adoption of self-identification procedures without medical intervention thereby granting bodily autonomy as per Article 21 of the constitution, the creation of social and institutional frameworks with operative mechanisms ensuring protection and access to flourish as an individual in the society equal to the others. These comparative insights ground the need for inclusion of trans women under the term "woman" within Indian law, which is consistent for the universal movement of self-identification with substantive equality.

## **12. Conclusion**

An important transition from invisibility to inclusion has occurred with India's acknowledgment of transgender rights. Through landmark rulings such as *NALSA v. Union of India*, the judiciary has confirmed that transgender people are fully entitled to equality, dignity, and liberty under Articles 14, 15, 19, and 21. But even with these constitutional advancements, the community's lived reality continue to be difficult. Although a significant advancement, the Transgender Persons (Protection of Rights) Act, 2019 has drawn criticism for its lack of affirmative action provisions as required by NALSA, its complex procedures, and its lack of enforcement. In domains including healthcare, work, and education, social exclusion continues because of deep- rooted stigma and prejudice. The government's intentions are demonstrated by welfare programs like SMILE and Garima Greh, although they are not effectively implemented. Therefore, societal acceptability, administrative accountability, and consistent policy



execution are all necessary for true empowerment in addition to legal acknowledgment. Transgender rights are essentially about achieving the Constitution's goal of equality and dignity for all people, not only about changing the law. The principles of justice and humanity that the Constitution's framers intended are closer to being realized in a society that values gender diversity and guarantees equal opportunity for all.

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