

Contemporary Study on Transgender Rights and Gender Justice in India: A Constitutional and Legal Analysis

Saumya Ann Joseph¹, Dr. Manan Dardi²

¹LLB106, II SEMESTER, BA.LLB (Hons)

²Assistant Professor of Law

^{1,2}vivekananda Institute Of Professional Studies

Abstract

Transgender people in India have historically faced systematic oppression, social exclusion and legal invisibility. However, recent constitutional morality-based judgments have transformed their legal status by recognizing gender identity as an integral part of dignity, liberty and equality. This paper studies the contemporary legal framework that governs transgender rights in India through a constitutional analysis of landmark judgments, particularly National Legal Services Authority v. Commissioner of Police. This paper argues that while the judicial recognition has laid a strong foundation for gender justice, major gaps remain in implementation, legislative clarity and social acceptance. This study concludes that meaningful gender justice requires not only judicial and constitutional protections but also structural reforms and societal transformation.

1. Introduction

The rights of a transgender person in recent times in India have emerged as a significant issue for constitutional morality and justice, which is deeply rooted in the objectives of the preamble, fundamental rights and the evolving trend of social norms all across the globe. In the Indian value system, a form of Shiva, the Ardhnarishwar, is worshipped as the symbol of balance, unity and the inseparable relationship between a man and a woman. Historically, in India, transgender people were confined to marginal spaces within our society, such as families and public institutions. Legal frameworks and regulations of our country excluded or generally discriminated against them. In recent times, the Indian Judiciary System has played a major transformative role in giving the people their dignity, assuring autonomy and equality for them. This research paper explores the contemporary constitutional and legal areas of transgender people and their rights within India and how justice is delivered to them with a major focus on National Legal Services Authority v. Union of India (2014), Navtej Singh Johar v. Union of India (2018) and S. Sushma v. Commissioner of Police (2021).

This research paper argues that while constitutional morality has overpowered social morality and has expanded the scope of the rights of transgender people, the practical execution of gender justice remains delayed in India. The Judiciary system has ensured that The Equality feature of the Preamble guarantees

Trans people equality of status and opportunity and deconstructs the idea of rigid binaries. Simultaneously, Public institutions and citizens' attitudes continue to pose challenges to Tran's people. Through a contemporary analysis, the selected case laws analyze the trajectory of transgender rights and their legal execution in lived reality.

2. Constitutional Foundations of Transgender Rights in India

The Constitution of India enshrines the objectives of the Preamble and puts emphasis on fundamental rights that serve as the bedrock of gender Justice in India: Article 14 (Equality before law), Article 15 (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) and Article 21 (Protection of life and personal liberty). Equality of Status and Opportunity (objective of preamble). These provisions were initially envisioned in a classical liberal framework by the makers of the constitution; yet their interpretive reach has grown to achieve substantive and constitutional justice for the marginalized including Trans gender persons.

The two broad constitutional themes that explain the scope of jurisprudential rights for transgender in India are:

1. **Equality and Non-Discrimination**-To be followed beyond formal forms of equality. This includes protection from discrimination, stigma, and denial of basic opportunities based on one's gender identity.
2. **Dignity and Autonomy**-Deeply enshrined in article 21, these values position self-identification of gender, sex and a person's bodily autonomy as central elements to human freedom and dignity.

The Indian Judiciary System has been successful in implementing these constitutional principles to generate affirmative spaces for transgender persons within the legal order.

NALSA V. Union of India (2014): Birth of Transgender Jurisprudence

NALSA v. Union of India remains the most crucial judgment concerning transgender rights in India. The Supreme Court, In an elaborate and visionary ruling recognized transgender persons as a third gender and affirmed their constitutional right and identity.

Facts

The national Legal Services Authority filed a petition in the court seeking legal recognition of transgender persons and the protection of their fundamental rights. This petition highlighted the discrimination faced by transgender persons in employment areas .education and healthcare.

Issues

The primary issues before the court were s followed:

- Whether transgender individuals have a right to legal recognition?
- Whether denial of recognition violates fundamental rights of transgender persons?

Judgement

The Hon'ble Supreme Court held that transgender persons have a fundamental right to self-identify their gender identity. The court recognized transgender persons as a "third Gender" and declared that they are entitled to fundamental rights under Articles 14, 15, 19 and 21.

Courts Observations:

"Gender Identity is integral to the dignity of an individual."

The court also directed the government to provide transgender persons certain reservations in workplace, free healthcare and social welfare measures.

Significance

This judgement was revolutionary because:

- It recognized gender Identity as a constitutional right
- It affirmed constitutional dignity and autonomy to transgender persons
- IT established transgender persons as a protected class under the constitution

Navtej Singh Johar v. Union of India (2018): Constitutional Morality and Identity

THE Hon'ble Supreme Court of India further expanded the gender justice of transgender persons in Navtej Singh Johor. Union of India

Facts

This petition challenged Section 377 on the Indian Penal Code which criminalized adult consensual same sex relationships

Judgement

The Supreme Court, in a historical judgement, struck down Section 377 in the Indian Penal Code to the extent that it criminalized adult same sex relationships.

The court held:

- Sexual orientation and gender identity of an individual are protected under Article 21 of the Indian constitution
- Discrimination against transgender persons or homosexuals violated article 14
- Constitutional morality must prevail over social morality

Significance

This judgment strengthened transgender rights by recognizing the identity and autonomy of queer people. It reinforced the principles established in NALSA

S Sushma v. Commissioner of Police (2021): Protection against Discrimination

The Madras High Court in 2021 addressed police harassment towards transgender persons in S Sushma v Commissioner of police

Facts

The petitioner faced harassment and discrimination by the police due to their gender identity.

Judgement

The court directed the police force to

- Respect the gender identity of every individual
- Protect and avoid harassment of queer people
- Provide them protection as they are a minority

The court also ordered mandatory sensitization programs

Significance

This case ensured the enforcement of constitutional rights of transgender persons

Role of Judiciary in Advancing Gender Justice

The Indian judiciary has played a crucial role in protecting transgene persons and their rights. Courts have interpreted the constitutional provisions very progressively. Judicial activism has helped achieve recognition of gender identity, protect their dignity, and prevent workplace and societal discrimination. The Indian judiciary has transformed transgender rights from invisible in the eyes of society to constitutional recognition.

Through expansive readings of Articles 14, 15, and 21 of the Constitution, courts have moved beyond formal equality to promote substantive equality and dignity for marginalized genders. In *National Legal Services Authority v. Union of India*, the Supreme Court recognized transgender persons as a third gender and affirmed the right to self-identify one's gender, grounding it in dignity and personal autonomy. This approach was reinforced in *Navtej Singh Johar v. Union of India*, where the Court emphasized constitutional morality over social prejudice and protected sexual orientation and gender identity under fundamental rights. High Courts have further ensured implementation at the grassroots level, as seen in *S. Sushma v. Commissioner of Police*, which directed authorities to prevent harassment and promote sensitisation. Together, these decisions show how the judiciary has acted not merely as an interpreter of law but as a catalyst for social change, steadily expanding the meaning of equality and dignity in the Indian constitutional framework.

Legislative Framework: Transgender Persons Act, 2019

The transgender persons (protection of Rights) Act, 2019 was enacted and implemented to protect transgender persons and their rights. The act prohibits discrimination towards transgender persons in receiving education. Workplace areas and healthcare institutions. However. It has been criticized for requiring formal clarification and certification of a person's gender identity. This contradicts the principle of self-identification established in *NALSA*

Despite the recently achieved legal recognition, transgender persons continue to face social, employment issues, violence, harassment and issues regarding implementation.

The Transgender Persons (Protection of Rights) Act, 2019 seeks to advance gender justice by formally prohibiting discrimination against transgender persons in key areas such as education, employment, healthcare, housing, and access to public services. It recognizes the right of transgender individuals to be treated with dignity and mandates governments to take welfare measures, including vocational training, rehabilitation, and social security support. The Act also requires establishments to designate complaint officers to address grievances, creating an institutional mechanism for accountability. By legally affirming the identity and rights of transgender persons and placing obligations on both the State and private bodies, the Act moves gender justice from constitutional theory into statutory protection. Although concerns remain about certain procedural requirements, the legislation represents an important step toward embedding equality, inclusion, and protection within India's legal framework.

Importance of Gender Justice

Gender justice ensures equality, dignity and freedom to transgender persons. It promotes social inclusivity and acceptance in society. The Constitution of India guarantees equality to all citizens of India.

Gender justice is essential for building a society where every individual can live with dignity, equality, and freedom, regardless of gender identity. It goes beyond treating everyone the same; it seeks to remove structural disadvantages, discrimination, and social barriers that prevent equal participation in public and private life. In a constitutional democracy like India, gender justice strengthens the promise of equality under Articles 14 and 15 and protects personal liberty under Article 21. It ensures access to education, employment, healthcare, and safety without prejudice. More importantly, gender justice promotes social harmony and inclusive development by recognising that true progress is impossible when half the population or marginalised gender identities remain excluded. It is not only a legal principle but also a moral and social commitment to fairness and human dignity.

Need for legal and social reform

India must improve the implementation of these laws and ensure they are enforced. Awareness regarding transgender rights should be sensitized to not just public officials but the general society as well. Inclusivity in workspace and households as well as education institutions need to be increased.

The need for legal and social reforms in the field of gender justice and equality arises from the gap between constitutional promises and lived realities. While the Constitution guarantees equality and non-discrimination, many individuals, especially women and transgender persons, continue to face structural barriers, violence, economic exclusion, and social stigma. Legal reforms are necessary to remove discriminatory provisions, strengthen implementation mechanisms, and ensure access to remedies that are fast, affordable, and sensitive to gender concerns. At the same time, law alone cannot transform society. Social reforms are equally important to challenge deep-rooted patriarchy, stereotypes, and cultural biases that perpetuate inequality. Awareness programs, gender sensitization, inclusive education, and institutional accountability are essential to create lasting change. True gender justice requires a combined effort of strong laws backed by meaningful enforcement and a society willing to embrace equality, not just in theory, but in everyday life.

Conclusion

The recognition of transgender rights marks a significant constitutional achievement in India. Landmark judgments such as *NALSA*, *Navtej Singh Johar*, and *S. Sushma* have transformed the legal status of transgender persons by recognising their dignity, autonomy, and equality.

However, legal recognition alone is insufficient. Effective implementation, legislative reform, and social acceptance are essential to achieve meaningful gender justice.

The Constitution provides a powerful framework for protecting transgender rights, and continued judicial and legislative efforts are necessary to ensure equality for all.

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