



# Human Rights of Transgender People in Reference to The Transgender Persons (Protection of Rights) Act, 2019: An Analytical Study

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## ABSTRACT

*This research paper critically examines the current status of the human rights of transgender individuals in India, with a specific focus on The Transgender Persons (Protection of Rights) Act, 2019. It delves into the historical and socio-cultural marginalization faced by the transgender community, tracing their exclusion from mainstream society, denial of basic rights, and systemic discrimination across various domains including education, employment, healthcare, and political participation. The paper highlights the transformative impact of the Supreme Court's landmark judgment in National Legal Services Authority (NALSA) v. Union of India (2014), which recognized the right of individuals to self-identify their gender and affirmed the constitutional rights of transgender persons under Articles 14, 15, 19, and 21 of the Indian Constitution. Building upon the progressive foundations laid by the NALSA judgment, the study undertakes a critical analysis of the Transgender Persons Act, 2019, evaluating its legal provisions related to non-discrimination, self-identification, welfare measures, education, and healthcare. While the Act marks a significant milestone in providing statutory recognition to transgender persons and seeks to promote their inclusion, the paper identifies several shortcomings and ambiguities—particularly concerning the*



*bureaucratic process of identity certification, lack of clarity in definitions, absence of affirmative action provisions, and limited enforcement mechanisms.*

*Through doctrinal research and analysis of judicial pronouncements, policy reports, and international human rights instruments, the paper argues that the 2019 Act, though well-intentioned, falls short of ensuring full dignity, equality, and substantive justice for the transgender community. It underscores the need for comprehensive legal reforms, sensitization programs, community-led implementation mechanisms, and stronger safeguards against institutional discrimination. The paper concludes with specific recommendations for amending the Act and enhancing the practical realization of the human rights of transgender persons in India in alignment with constitutional guarantees and international standards.*

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## **1. Introduction**

Transgender individuals have historically remained among the most marginalized and vulnerable sections of Indian society. For centuries, they have faced systemic social exclusion, economic deprivation, lack of access to education and healthcare, and persistent violations of their basic human rights. Although certain transgender communities, such as the Hijras, have held a distinct place in Indian culture and religious traditions—often associated with rituals surrounding childbirth and marriage—this cultural visibility has not translated into equal treatment or recognition under the law. Instead, these communities have been relegated to the fringes of society, enduring stigma, ostracization, and institutional neglect.

The entrenched discrimination against transgender persons has denied them civil liberties, property rights, access to public spaces, and meaningful participation in democratic processes. As a result, their lives have been marked by social invisibility, economic exploitation, and heightened vulnerability to physical and sexual violence. The lack of legal identity and societal acceptance has further compounded their marginalization. A significant turning point came in 2014 with the Supreme Court's landmark judgment in *National Legal Services Authority (NALSA) v. Union of India*. In this historic decision, the Court recognized transgender individuals as a 'third gender' and held that the right to self-identify one's gender is an integral part of personal autonomy and dignity, protected under Article 21 of the Indian Constitution.

The judgment emphasized that the principles of equality and non-discrimination under Articles 14 and 15 extend to all individuals, regardless of their gender identity. It also directed both the Central and State Governments to take affirmative measures to ensure the social, economic, and political inclusion of transgender persons.

In response to this progressive judicial pronouncement and growing awareness of the challenges faced by the transgender community, the Indian Parliament enacted The Transgender Persons (Protection of Rights) Act, 2019. This legislation aimed to provide a statutory framework for the protection, welfare, and empowerment of transgender individuals. It prohibits discrimination in education, employment, healthcare, and access to public services, and mandates the establishment of welfare schemes and grievance redressal mechanisms. However, despite its intentions, the Act has been met with both appreciation and criticism, particularly concerning its implementation mechanisms and provisions related to self-identification and certification of gender identity.

## 2. Historical Context and Judicial Recognition

The Supreme Court's decision in *National Legal Services Authority (NALSA) v. Union of India* (2014) was a landmark moment in the legal history of India with respect to the recognition and protection of transgender rights. The judgment was rooted in a constitutional interpretation that sought to restore the dignity and identity of transgender persons, who had long been subjected to systemic discrimination and societal exclusion. In this judgment, the Court explicitly affirmed that transgender individuals are entitled to the full spectrum of fundamental rights guaranteed by the Constitution of India.

The judgment emphasized four key constitutional rights:

**Article 14** – which guarantees equality before the law and equal protection of laws to all persons, was interpreted to include transgender individuals, thereby mandating that no discrimination be practiced on the grounds of gender identity.

**Article 15** – which prohibits discrimination on grounds including sex, was expansively interpreted to cover gender identity and expression, thus extending the principle of non-discrimination to transgender persons.

**Article 19(1)(a)** – which guarantees the freedom of speech and expression, was acknowledged to include the right of individuals to express their self-identified gender without coercion or suppression.

**Article 21** – which ensures the right to life and personal liberty, was recognized as encompassing the right to live with dignity, privacy, and autonomy in matters of gender identity and personal choices.



In addition to recognizing these rights, the Court took a proactive stance in directing the Central and State Governments to treat transgender individuals as socially and educationally backward classes. This directive was intended to enable them to benefit from affirmative action policies, such as reservations in educational institutions and public employment, thereby promoting their social and economic inclusion. Furthermore, the NALSA judgment mandated the development of welfare schemes, separate public toilets, healthcare provisions, and public awareness programs to reduce stigma and discrimination against the transgender community. By legitimizing the right to self-perceived gender identity and calling for inclusive policies, the judgment laid a strong foundation for legislative action.

It is against this backdrop that The Transgender Persons (Protection of Rights) Act, 2019 was enacted. The Act represents a statutory acknowledgment of the rights articulated by the Supreme Court and aims to create a legal framework for the protection and empowerment of transgender persons. However, critics have pointed out that the Act does not fully reflect the progressive spirit of the NALSA judgment, especially in areas like gender self-identification and affirmative action. Nevertheless, the judgment served as a constitutional catalyst for bringing transgender rights into the legal and legislative mainstream in India.

### 3. Key Provisions of the Act

The Transgender Persons (Protection of Rights) Act, 2019 defines a transgender person and prohibits discrimination in education, employment, healthcare, public services, and access to property. Major provisions include:

- **Recognition of Identity:** A transgender person can apply for a certificate of identity from the District Magistrate. To be legally recognized as male or female, the person must undergo sex reassignment surgery (SRS), which contradicts the NALSA judgment's self-identification principle.
- **Prohibition of Discrimination:** The Act prohibits discrimination in employment, education, healthcare, access to public services, and residence.
- **Right to Residence:** Transgender individuals are entitled to reside with their families and not be excluded or separated.
- **Welfare Measures:** The government is required to establish schemes for healthcare, education, and vocational training for transgender persons.



- **National Council for Transgender Persons:** This advisory body is tasked with monitoring the implementation of the Act and advising on policies and legislation.

#### 4. Alignment with Human Rights Principles

The Transgender Persons (Protection of Rights) Act, 2019 reflects an important step by the Indian legislature in aligning domestic legal frameworks with international human rights standards. The Act attempts to address historical injustices and institutional discrimination by legally recognizing the identity of transgender individuals, affirming their right to equality, and mandating the formulation and implementation of welfare measures for their upliftment.

One of the core strengths of the Act lies in its recognition of gender identity beyond the traditional male-female binary, a move that resonates with the principle of inclusivity and dignity enshrined in international human rights discourse. By defining a “transgender person” broadly and including individuals with diverse gender expressions, the Act aligns itself with the global shift towards acknowledging and protecting the rights of gender-diverse populations.

The legislation also echoes India's commitments under various international treaties and conventions. Notably, it reflects the values articulated in the Universal Declaration of Human Rights (UDHR)—particularly Article 1 (which states that all human beings are born free and equal in dignity and rights), Article 2 (which prohibits discrimination), and Article 7 (which guarantees equal protection before the law). Similarly, it seeks to fulfill obligations under the International Covenant on Civil and Political Rights (ICCPR), to which India is a State Party. The ICCPR, through Articles 2, 17, and 26, obligates signatories to protect individuals from discrimination, respect their privacy, and ensure equality before the law—principles that are echoed in the Indian Constitution and partially embodied in the 2019 Act. Moreover, India's support for the Yogyakarta Principles—a set of international principles relating to sexual orientation and gender identity—further guides the normative framework for transgender rights. The Act attempts to comply with these principles by providing protection from discrimination in various sectors including education, healthcare, employment, and access to public services. It mandates the creation of welfare schemes, protection from abuse, and the formulation of grievance redressal mechanisms.

However, while the intent of aligning with international norms is evident, several provisions of the Act have been criticized for falling short of fully honoring these obligations—particularly the requirement of a district magistrate-issued certificate for gender identity recognition, which undermines the right to self-identification as upheld by the NALSA judgment and international human rights jurisprudence. In essence,

the 2019 Act is a significant legislative attempt to bring India's legal system in closer harmony with global human rights standards. Yet, its successful realization requires not only statutory recognition but also robust institutional mechanisms, sensitization efforts, and a commitment to transformative justice that genuinely uplifts and empowers the transgender community.

## 5. Critical Analysis and Shortcomings

While the Act is a landmark, it has attracted significant criticism:

- **Violation of Self-Identification:** The requirement for SRS and certification by authorities contradicts the NALSA judgment and global human rights norms.
- **Lack of Penal Provisions:** Offenses against transgender persons are treated less seriously than similar offenses against cisgender individuals, reflecting unequal protection under law.
- **Absence of Affirmative Action:** Despite the NALSA directive, the Act does not provide for reservations in education and public employment.
- **Weak Implementation Mechanisms:** There is a lack of clarity and enforceability in several provisions, with little accountability for public and private actors.
- **Inadequate Community Representation:** The formulation of the law lacked sufficient consultation with transgender communities, leading to several provisions that do not reflect their lived realities.

## 6. Community Response and Societal Impact

The Act has had a mixed reception. While the formal recognition is seen as a positive step, protests and public statements from the transgender community reveal widespread dissatisfaction. Many activists have petitioned the government for amendments, citing the law's paternalistic tone and lack of autonomy. Transgender individuals continue to face societal stigma and institutional bias, limiting the practical effectiveness of the law.

## 7. Recommendations for Reform

Despite its progressive intentions, The Transgender Persons (Protection of Rights) Act, 2019 has drawn considerable criticism for certain limitations in both substance and implementation. To ensure that the Act becomes a truly transformative tool for social justice and inclusion, the following reforms are proposed:

### 7.1. Amend the Act to Allow Self-Identification Without Medical or Bureaucratic Approval:



One of the most contested provisions of the Act is the requirement for transgender individuals to obtain a certificate of identity from a District Magistrate, with additional medical scrutiny if one seeks recognition as male or female. This process undermines the autonomy and dignity of transgender persons, contradicting the spirit of the NALSA v. Union of India judgment, which affirmed the right to gender self-identification without external validation. The Act should be amended to allow individuals to self-identify their gender without needing approval from medical or administrative authorities, thereby aligning with international best practices and human rights principles, including the Yogyakarta Principles.

### **7.2. Introduce Affirmative Action in Education and Employment:**

Transgender individuals have historically been excluded from mainstream educational and employment opportunities due to pervasive discrimination and marginalization. To rectify this, the government should introduce reservations and targeted quotas in educational institutions and public employment, as recommended in the NALSA judgment. Such affirmative action measures are necessary not merely as welfare provisions but as instruments of substantive equality and social justice that recognize and correct historical disadvantages.

### **7.3. Strengthen Penal Provisions for Crimes Against Transgender Persons:**

Although the Act prohibits discrimination and violence against transgender persons, it lacks strong penal provisions to deter crimes such as physical assault, sexual violence, and harassment. The existing provisions are vague and inadequate to ensure legal protection and accountability. There is an urgent need to introduce specific and stringent penalties in the Indian Penal Code for hate crimes and targeted violence against transgender individuals, along with fast-track mechanisms for investigation and trial.

### **7.4. Ensure Greater Representation of Transgender Individuals in Policymaking Bodies:**

Inclusive governance requires the active participation of marginalized communities in decision-making processes. Transgender persons must be given meaningful representation in local, state, and national policymaking bodies, advisory boards, and statutory commissions. Such representation will not only ensure that their voices are heard but will also contribute to more responsive, informed, and empathetic policy frameworks. Representation can also play a vital role in reshaping public perceptions and dismantling stereotypes.

### **7.5. Launch Comprehensive Awareness Campaigns to Combat Societal Stigma:**

Legal reforms alone cannot dismantle deep-rooted societal prejudices. Therefore, the government, in collaboration with civil society, educational institutions, and media, must launch sustained and inclusive





awareness campaigns aimed at sensitizing the public about transgender rights, identities, and contributions. These campaigns should challenge stereotypes, promote gender diversity, and encourage acceptance in schools, workplaces, and communities. Training for police, healthcare professionals, and public officials is also crucial to address institutional bias and improve service delivery.

These reforms, if implemented in letter and spirit, would not only strengthen the legal protections offered to transgender persons but also pave the way for a more inclusive, equitable, and humane society. They reaffirm the constitutional values of dignity, equality, and non-discrimination, and move India closer to fulfilling its national and international commitments to human rights.

## 8. Conclusion

The Transgender Persons (Protection of Rights) Act, 2019 represents a landmark in India's legislative landscape, marking the State's formal acknowledgment of the rights, identity, and dignity of transgender individuals. It is a progressive step in a country where transgender communities have long faced systemic oppression, social exclusion, and institutional invisibility. The Act's enactment symbolized a long-awaited recognition of gender diversity and was intended to provide a robust legal framework for equality and protection. However, despite its symbolic value and certain positive provisions—such as the prohibition of discrimination and mandates for welfare schemes—the Act falls short in several critical areas. Its potential for transformative change is weakened by procedural hurdles, including the requirement for official certification to validate gender identity, which undermines the principle of self-identification upheld in the *NALSA v. Union of India* judgment. Moreover, the absence of enforceable affirmative action measures, inadequate grievance redressal mechanisms, and vague penal provisions dilute the Act's ability to offer real protection and empowerment to transgender persons.

In many respects, the law retains a paternalistic tone, placing control over identity and rights in the hands of state authorities rather than affirming the autonomy and lived experiences of transgender individuals. Furthermore, it lacks a rights-based approach rooted in the constitutional values of liberty, dignity, and equality. Without mechanisms for accountability and implementation, the rights enshrined in the law risk remaining aspirational rather than actionable. A reimagined and reformed legal framework is urgently needed—one that is rooted in the principles of dignity, autonomy, inclusivity, and substantive equality. Such a framework must move beyond mere formal equality and address the deeply embedded structural barriers that transgender individuals face in every sphere of life—be it education, employment, healthcare, housing, or political participation. It must also be accompanied by institutional reforms, social



sensitization, and community participation to truly shift the paradigm from recognition to realization of rights.

Only through such a holistic and rights-centered approach can India fulfill its constitutional promise of justice for all and affirm its commitment to global human rights norms. The path to true inclusivity lies not just in legislative intent but in implementation, empathy, and empowerment.

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