

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

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ABSTRACT

In the context of Indian society, the Transgender community has long been an integral part despite facing persistent exclusion from society. The societal stigma and systemic discrimination tends to continue their marginalization which restricts their access to essential services and opportunities like education, healthcare, employment, etc. Following the Supreme Court judgment in National Legal Services Authority V Union of India (2014), parliament has enacted The Transgender Persons (protection of Rights) Act, 2019 with an objective to protect the transgender community and to ensure the effective realization of their fundamental rights.

But, despite this enactment the significant challenges relating to their socio- legal empowerment continued to persist. Thus this paper critically examines the 2019 act with reference to the key provisions relating to legal recognition, protection of the transgender community and further explores the challenges involved in institutionalizing their rights.

The paper concludes that legislative measure alone is insufficient to secure their rights as it requires effective implementation, strong enforcement mechanism, greater institutional support and societal acceptance to achieve substantial equality.

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KEYWORDS: Transgender community, Social empowerment, Act, Institutionalizing, Lived reality.

INTRODUCTION

The term transgender community reflects a large group of individuals who were marked with continuous discrimination and exclusion. Their sufferings were out of our known reality. The legal recognition of transgender community has evolved gradually which reflects a shift from traditional marginalisation to statutory protection. The recognition and protection of this community have emerged as a major concern within contemporary human rights discourse. The reality is that they have long been subjected to discrimination with lack of access to basic services and opportunities and also exclusion from the very society. It is not only a concern in India but also among various foreign nations. Although International humanitarian laws assure equal rights and protection the transgender community still faces exclusion and violation. Despite the Supreme Court recognition of transgender rights they still face discrimination from public and social exclusion. This raises a question: why is there a gap between legal recognition and lived reality? And in furtherance of the Supreme Court judgment the Parliament has enacted, The Transgender Persons (Protection of Rights) Act, 2019 and Transgender Persons (Protection of Rights) Rules, 2020 to protect the marginalised transgender community. The primary objective of this act is to protect the transgender persons and to facilitate access to welfare measures and other social security benefits. But the act does not entirely resolve the problems as the concerns relating to education, healthcare and identity still persist. These issues can correlate with the inadequate implementation of the act and welfare schemes and the social prejudice continues which causes a substantial gap between statutory protection and practical realities. The Indian Constitution under Article 21 guarantees right to life and personal liberty and it was expanded through various judicial pronouncements by which it compasses the right to dignity and personal identity. The Supreme Court on *Supriya @ Supriya Chakraborty V Union of India*, 2023 reaffirmed the dignity and privacy of queer people. By analysing this nexus the paper argues that state and private actors have a positive obligation to facilitate the full social and professional inclusion of transgender persons which is the main problem now.

Ultimately this study assesses whether the current statutory framework is sufficient? Does it really provide meaningful equality? Will the Constitutional promise of dignity remain merely an aspirational idea? Will the legal recognition be turned into substantial equality?

HYPOTHESIS

Null Hypothesis

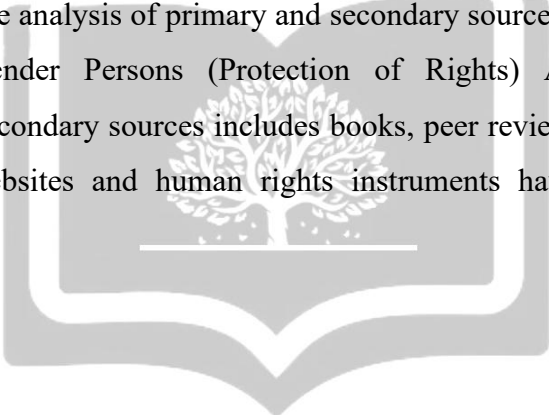
The existing legal frameworks in India governing transgender persons rights, including the Transgender Persons (Protection of Rights) Act, 2019 and its associated 2020 rules is sufficient to ensure substantive equality and protection of the transgender persons.

Alternative Hypothesis

The current framework and its associated rules governing the transgender persons protection of rights and dignity is insufficient and it doesn't ensure substantive equality due to its implementation gaps and continued social discrimination.

RESEARCH METHODOLOGY

This study is based on the analysis of primary and secondary sources such as the Constitution of India, The Transgender Persons (Protection of Rights) Act, 2019 and Judicial pronouncements. The Secondary sources includes books, peer reviewed journal articles, Law commission reports, websites and human rights instruments have also been taken into account.



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1. TRANSGENDER IN INDIA: EVOLUTION AND RECOGNITION OF RIGHTS

1.1 Historical Background

The concept of Transgender is not a new one to Indian society. Their presence is mentioned in our ancient history. Comparing the entire world India stands as a most religious and traditionally diverse nation. It has its own profound history which reflects in the form of customs and usages. The concept of transgender (Hijras) has been rooted in Indian society. It comprises Jogappas, Shakthis, etc. The Vedic texts such as Manusmriti, Kama Sutra have mentions about transgender persons. It was also mentioned in Hindu epics such as Ramayana and Mahabharata.

1.2 Mughal Period

During the Mughal regime, the hijras played an important role. They held prominent positions and were seen as trustworthy persons.

1.3 Colonial Shift

After the colonisation in the 18th century the status of transgender persons has shifted dramatically. The position of this community has been even criminalised by the British and was treated as a separate caste.

The Criminal Tribes Act, 1871 specifically targeted the hijra community by classifying eunuchs as a distinct criminal category subject to mandatory police registration and surveillance. Colonial authorities prohibited hijras from wearing women's clothing, engaging in public performances, and practising traditional rituals, with violations attracting fines and imprisonment. The policy, initially applied in northern India, was progressively extended to cover nearly the entire subcontinent by the mid-1920s, effectively criminalising the cultural identity and public presence of the transgender community across colonial India.⁴

1.4 After Independence

The position of transgender persons have remained the same even after independence. They were treated ill and were seen as a distinct category which is lowest in the society. They were deprived of their liberty and were denied the right to education and employment

⁴ A K Singh, 'From Colonial Castaways to Current Tribulation: Tragedy of Indian Hijra' (2022) 40(2) Unisia 297, 300; Jessica Hinchy, 'Obscenity, Moral Contagion and Masculinity: Hijras in Public Space in Colonial North India' (2014) 38(2) Asian Studies Review 172.

opportunities. The 2011 census estimates the transgender community population to about 4.88 lakhs in India. With these numbers and judicial protection through judgments the transgender persons continue to face human rights violations in education, housing and access to public spaces⁵. And the historical descriptions demonstrate that this exclusion is not originally rooted in Indian society rather it was developed by colonial policies.

2. CONSTITUTIONAL FRAMEWORK

The Constitution of India is the supreme legislation which guarantees its citizens the right to equality, dignity, liberty and justice.

2.1 ARTICLE - 14

2.1.1 Constitutional Mandate

It guarantees equality before law and equal protection of law to every person including the transgender persons. By virtue of this, it is the duty of the state to ensure the equal treatment and non discrimination of the transgender persons in society⁶.

2.1.2 Practical Reality

Despite this assurance, the community still faces discrimination in every section including education, healthcare and employment. The NHRC observed that they tend to face systematic barriers despite constitutional recognition⁷.

2.1.3. Reason for Gap

It is because of the inadequate implementation of the schemes, lack of awareness by the general public and authorities. Hence the social stigma continues to exist.

2.1.4. Analytical Observation

Whereas the Article 14 guarantees formal equality the substantive equality in society remains questionable. Guarantees alone cannot destruct the barriers laid before this vulnerable section.

⁵ National Human Rights Commission, *Study on Human Rights of Transgender as a Third Gender* (NHRC 2017) ch 3.

⁶ The Constitution of India 1950, art 14.

⁷ National Human Rights Commission: *Revamping Spaces, Reclaiming Voices - Insights from Garima Greh Shelters and Beyond* (NHRC 2025) 4.

2.2 ARTICLE - 15

2.2.1 Constitutional Obligation

It prohibits the discrimination on the basis of religion, race, caste, sex or place of birth. By this it mandates that no person shall be subjected to discrimination on the basis of their sex⁸. The Judiciary has interpreted the term sex to include the transgender community and provides for their gender identity.

2.2.2. Analytical Observation

Even though there has been an acceptance of third gender they are continued to be denied by the society as it tends to discriminate against the community. It leaves them in a constant vulnerable and left out state which hampers their mental wellbeing. The AIIMS - NHRC study finds that the non-acceptance and discrimination by family and peers continue to exist which leads to emotional distress and anxiety. Many hold dual identity due to fear of social stigma which shows that the constitutional mandate has not been translated yet to social acceptance⁹.

2.2.3. Gap and Analysis

Thus the guarantee of non-discrimination has not been put into reality. Though there is an anti-discrimination protection it is not strong enough to cover all the areas.

⁸ The Constitution of India 1950, art 15.

⁹ Susanta Kumar Padhy and others, *Substance Abuse and Mental Health Issues among the LGBT Community in India* (AIIMS - NHRC 2023) xvi.

2.3. ARTICLE 16

2.3.1. Constitutional Obligation

It guarantees equality of opportunity in public employment¹⁰. Like men and women the transgender persons should be equally treated and not be excluded in public employment on the account of different gender identity.

2.3.2. Practical Reality

Though there has been news of one or two persons of this community gaining equal employment in the public sector, still there is a major class of transgender persons who continue to await for the help of the state to improve their livelihood standard. Participants also reported workplace harassment, discrimination, exploitative working conditions¹¹.

Data from the National Human Rights Commission's 2017 study underscores the severity of this exclusion: only 6 per cent of transgender persons were employed in the private sector or NGOs, while 89 per cent of respondents reported that employment was unavailable even for qualified candidates. According to data published by UNAIDS in 2023, HIV prevalence among transgender persons in India stood at 3.8 per cent in 2021, approximately 20 times the national average, a figure directly linked to economic exclusion compelling community members into high-risk livelihood activities.¹²

2.3.3. Gap and Analysis

Although it guarantees equal opportunity it cannot be achieved without effective measures like reservation, policies, skill development measures and inclusive recruitment procedures.

2.4. ARTICLE 21

2.4.1. Constitutional Obligation

¹⁰ The Constitution of India 1950, art 16.

¹¹ Susanta Kumar Padhy and others, *Substance Abuse and Mental Health Issues among the LGBT Community in India* (AIIMS - NHRC 2023) 109 - 110.

¹² National Human Rights Commission, 'Study on Human Rights of Transgender as a Third Gender' (NHRC 2017) 36; UNAIDS, 'Beyond Transgender Visibility: India Works Toward Employment Equity' (UNAIDS, 31 March 2023) <https://www.unaids.org/en/resources/presscentre/featurestories/2023/march/20230331_beyond-transgender-visibility-india> accessed 2 September 2026.

It guarantees the right to life and personal liberty¹³. This Article has been interpreted from a literal text to a more dignitarian one by including the recognition of transgender rights to such that of privacy, dignity and personal identity.

2.4.2. Practical reality

But the real question lies with its application. Despite its protection still many transgender persons face rejection from family and suffer homelessness and are lonely without anyone to share their problems. The practical enjoyment of the conferred right is impaired by institutional discrimination.

The AIIMS - NHRC report finds that the students continue to face discrimination including psychological distress¹⁴. Also their ability to live with dignity was deeply affected as without means to daily bread they were forced to engage into sex work and ill works. Thus it increases the rate of social exclusion.

2.4.3. Gap and Analysis

The right to dignity under this provision no doubt strengthened the transgender jurisprudence. But we cannot assure dignity can be done alone through statutory recognition. Unless the constitutional mandates were effectively implemented through strong responsive institutions the loss of dignity by transgender persons can never be stopped. And the innate difference between the constitutional promise and lived reality will continue to exist. According to NHRC, The family rejection, poor mental health and limited opportunities creates a cycle of social exclusion¹⁵. Thus the Constitutional framework provides for a strong normative stand but the real effectiveness lies in its effective implementation.

3. Judicial Approach

The Indian judiciary in regards to transgender persons has done a progressive interpretation by way of constitutional interpretation, and it recognises their gender identity.

¹³ The Constitution of India 1950, art 21.

¹⁴ Susanta Kumar Padhy and others, *Substance Abuse and Mental Health Issues among the LGBT Community in India* (AIIMS - NHRC 2023) 108 - 109.

¹⁵ National Human Rights Commission, *Transgender Persons: Revamping Spaces, Reclaiming Voices - Insights from Garima Greh Shelters and Beyond* (NHRC 2025) 26 - 27.

3.1 NATIONAL LEGAL SERVICES AUTHORITY v UNION OF INDIA (2014) 5 SCC 438¹⁶

3.1.1 Facts

The case was filed by the National Legal Service Authority which was constituted under the Legal Services Authority Act, 1987. It was filed to advocate for the protection of rights of Transgender community.

And to provide first-hand information regarding discrimination and violations to the Court Laxmi Narayan Tripathi, a prominent transgender activist, impleaded himself in the case.

3.1.2. Issues

- I. Whether persons other than male and female to be legally recognised as third gender?
- II. Non identification of binary gender constitutes violation of rights conferred under part III of the Constitution?

3.1.3. Ruling

The Supreme Court held that Transgender persons have the right to decide their gender identity, they should be regarded as third gender and the State and Centre should make measures to treat them as socially and educationally backward. The government should also seriously address the problems faced by transgender such as shame, social exclusion and dysphoria.

3.1.4. Significance

The ruling in NALSA V UOI has led to the transformation of constitutional promise into statutory recognition by recognition of their rights and liberty. It paved the way for enactment of the Transgender Persons (Protection of Rights) Act, 2019. Although NALSA recognises the right, the transgender persons encounter barriers in every aspect as observed in NHRC report¹⁷. It is due to the implementation gap of the Act.

3.2 Factors for Disconnection between Law and Reality

¹⁶ *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

¹⁷ National Human Rights Commission, *Transgender Persons: Revamping Spaces, Reclaiming Voices - Insights from Garima Greh Shelters and Beyond* (NHRC 2025) 4.

In *Jane Kaushik v Union of India* (2025) INSC 1248¹⁸ The Supreme Court expressed its dissatisfaction with the State and Central government since despite the enactment of the 2019 Act, the lack of actual implementation of rules and complaint cells rendered the act ineffective. The Court established an ommissive discrimination concept whereby it held that the State had failed to implement the 2019 Act. The Court thus elevated the reasonable accommodation principle to a positive obligation.

Thus the lived reality continues to differ from the original legislative intent and the queer people continue to face exclusion. Despite various pronouncements relating to the recognition of their rights, equality, autonomy and healthcare the harsh reality still persist because of the continuous implementation deficits and thus it is evident that judicial pronouncements itself is not sufficient to dismantle all the prejudices and problems as it requires effective coordination measures from all the bureaucratic side, public side and private side. The NHRC in relation to this found that there are persistent deficiencies including fund distribution and institutional support¹⁹.

However the Judicial interventions also haven't resolved all the issues as its approach towards social institutions like marriage, etc was still in conflict. The Structural functionalism theory lays that institutions like family and marriage maintain the social order and stability but the exclusion of transgender persons from these institutions shows how the traditional structures may reinforce inequality rather than promoting inclusion.

This is because the legal and social debates around the recognition of same sex marriage and family still continues to exist.

Also the constitution gives the right to choose partners and on the contrary the country's customs, usages, norms and long-lasting tradition restricts to this point of choice. The judiciary between these two conflicts runs in an active state and still hasn't found a clear distinction and proper solution as the demand of transgender community for this hasn't settled yet.

¹⁸ *Jane Kaushik v Union of India* (2025) INSC 1248

¹⁹ National Human Rights Commission, *Transgender Persons: Revamping Spaces, Reclaiming Voices - Insights from Garima Greh Shelters and Beyond* (NHRC 2025) 6 - 7.

4. CRITICAL ANALYSIS OF THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019²⁰

4.1 Legislative Background

The legislation was enacted as the result of a Supreme Court judgment which was popularly known as NALSA. The Bill was introduced in the Lok Sabha on 19 July 2019 by the then Minister for Social Justice and Empowerment, Mr. Thaawarchand Gehlot. Prior to this, Rajya Sabha MP Mr. Tiruchi Siva had introduced the Rights of Transgender Persons Bill, 2014 as a Private Members' Bill, which was passed by the Rajya Sabha but subsequently lapsed in the Lok Sabha. The 2019 Bill was passed by the Lok Sabha on 5 August 2019 and by the Rajya Sabha on 26 November 2019, the latter amid significant opposition and a failed motion to refer the Bill to a Select Committee.²¹

4.2. PROVISIONS

4.2.1 SECTION 2 - Definition Clause

The Section 2 (k) of the act defines the term transgender persons²². The Section includes

1. Transmen
2. Transwomen
3. Person with intersex variations
4. Gender queer persons
5. Socio - Cultural identities.

The Section tries to intersect different categories into one umbrella but by mentioning socio - cultural identities it may exclude the persons who do not fit with the specific cultural labels or the binary transmen or women category.

²⁰ The Transgender Persons (Protection of Rights) Act 2019.

²¹ PRS Legislative Research, 'The Transgender Persons (Protection of Rights) Bill, 2019' (PRS India, 2019) <<https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2019>> accessed 2 September 2026; Centre for Law and Policy Research, 'Rajya Sabha Debates on the Transgender Persons (Protection of Rights) Bill 2019' (CLPR, 28 November 2019) <<https://clpr.org.in/blog/rajya-sabha-debates-on-the-transgender-persons-protection-of-rights-bill-2019-day-1/>> accessed 2 September 2026.

²² The Transgender Persons (Protection of Rights) Act 2019, s 2 (k).

4.2.2 SECTION 3 PROHIBITION OF DISCRIMINATION CLAUSE

The section provides that there shall no discrimination in relation to education, employment, and healthcare, access to public good and private establishments²³.

Legislative Intent

The intent is to prevent discrimination, provide protection and implement the constitutional guarantees.

Analysis

But it does not really provide what it intends. The provision does not provide for an independent grievous redressal mechanism and it does not provide for civil remedies or compensation. The AIIMS - NHRC study finds that the transgender persons continue to face sexualized remarks and boundary violations. These findings indicate that statutory protection has not been effectively implemented²⁴.

Also the NHRC field study reveals that they face discrimination beyond recruitment in day to day life. Hence this provision should be supported by strong mechanisms²⁵.

MAXIM: Ubi Jus Ibi Remedium - Where there is a right, there is remedy. A right cannot be exercised without remedy. The Act merely says do not discriminate but it fails to make a mechanism. It only focuses on negative obligations rather than positive ones. It also doesn't provide for base remedies such as gender neutral toilets, sensitisation policies, institutional protection by which this discrimination can actually be prevented.

A related structural gap concerns the disparity in criminal protection afforded to transgender persons under the Act. Section 18 of the 2019 Act prescribes a maximum imprisonment of two years for all offences against transgender persons, including sexual abuse and physical violence. In contrast, the Bharatiya Nyaya Sanhita, 2023 prescribes a minimum sentence of seven years for analogous sexual offences against cisgender women. This sentencing

²³ The Transgender Persons (Protection of Rights) Act 2019, s 3.

²⁴ Susanta Kumar Padhy and others, *Substance Abuse and Mental Health Issues among the LGBT Community in India* (AIIMS - NHRC 2023) 109 - 110.

²⁵ National Human Rights Commission, *Transgender Persons: Revamping Spaces, Reclaiming Voices - Insights from Garima Greh Shelters and Beyond* (NHRC 2025) 36 - 38.

disparity has been identified by legal commentators as encoding a differential and lesser value in statute for the bodily integrity of transgender persons.²⁶

4.2.3. SECTION 4 to 7 RECOGNITION OF IDENTITY OF TRANSGENDER²⁷

Section 4 (2) provides for self-perceived gender identity. But the 2026 proposed amendment omits this provision which constitutes a departure from self-identification right. The Section 5 & 6 provides for the procedure to obtain a certificate of identity. It can be obtained through making an application before the District Magistrate. The Section 7 provides for a revised edition of certificate after undergoing the surgery to change the gender. It can be obtained by application to the Chief Medical Officer of the institution where the person underwent the surgery. Finally the District Magistrate can issue the revised certificate of identity with the certificate of the medical officer.



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²⁶ International Bar Association, 'India's New Law on the Protection of Rights of Transgender Persons' (IBA, 2020) <<https://www.ibanet.org/article/0f3ae21b-0170-4bf7-95dd-45b07ef1caf6>> accessed 2 September 2026.

²⁷ The Transgender Persons (Protection of Rights) Act 2019, ss 4 - 7.

Legislative Intent

The intent is to recognise the identity through an uniform administrative mechanism by which welfare measures can be accessed.

Analysis

Even though the provision aims for the recognition of identity through an uniform measure it attracts several descending opinions. By the recognition of identity through administrative mechanisms and vast medical procedures it undermines the core principle of self-perceived identity which is why it has been omitted in the 2026 proposed amendment. It introduces a concept of bureaucratic oversight over the self-perceived identity. The NHRC found that the delays in obtaining TG identity cards limited their access to welfare schemes. The provision also requires official documents where many transgender face practical difficulties²⁸.

The constitutional tensions within the identity recognition framework have been further crystallised by the Transgender Persons (Protection of Rights) Amendment Act, 2026, which received Presidential assent on 30 March 2026. The 2026 Amendment Act removed Section 4(2)'s self-perceived gender identity framework and replaced it with a system requiring medical board verification followed by approval by a District Magistrate. A batch of writ petitions challenging the constitutional validity of the 2026 Amendment Act, including a petition filed by prominent transgender activist and NALSA petitioner Laxmi Narayan Tripathi, is currently pending before the Supreme Court.²⁹

4.2.4 SECTION 8 WELFARE MEASURES³⁰

This provision stands as a positive obligation rather than being a negative one like Section 3. It mandates the appropriate government to make welfare measures for the upliftment of the transgender persons and ensure the effective access of services like healthcare. It proposes the promotion of activities of transgender persons in cultural and recreation.

²⁸ National Human Rights Commission, *Transgender Persons: Revamping Spaces, Reclaiming Voices - Insights from Garima Greh Shelters and Beyond* (NHRC 2025) 21 - 25.

²⁹ 'Plea in Supreme Court Challenges Transgender Persons Amendment Act 2026, Says Omitting Self-Identification Violates Art 21' LiveLaw (4 April 2026) <<https://www.livelaw.in/amp/top-stories/plea-in-supreme-court-challenges-transgender-persons-amendment-act-2026-says-omitting-self-identification-violates-art-21-528986>> accessed 2 September 2026; Amnesty International, 'India: Presidential Approval of Regressive Transgender Bill a Major Step Backward for Human Rights' (Amnesty International, 31 March 2026) <<https://www.amnesty.org/en/latest/news/2026/03/india-presidential-approval-of-regressive-transgender-bill-a-major-step-backward-for-human-rights/>> accessed 2 September 2026.

³⁰ The Transgender Persons (Protection of Rights) Act 2019, s 8.

Legislative Intent

The intent behind this is to make positive obligations and to ensure substantive equality through affirmative welfare measures.

Analysis

While the provision stands in a progressive path it lacks enforceable standards. It does not specify the scope of measures nor prescribes the accountability of authorities who fail to discharge this statutory obligation. It has no monitoring mechanism and periodic reporting. Also it does not expressly speak about the reservation measures that need to be taken.

As of mid-2026 a total of 33,533 identity cards have been issued by the government (data by Ministry of Justice and Empowerment - National Portal for Transgender Persons) while the 2011 census depicts a total of 4.88 lakh transgender persons. This shows the real disparity and in adequacy.

WELFARE MEASURES

AYUSHMAN BHARAT TG - It provides free health insurance coverage to the transgender persons

GARIMA GREH SCHEME - Aims to provide shelter, food and rehabilitation.

SMILE - It is an umbrella scheme which aims to provide rehabilitation education and skill development.

Functional Gap

Access to welfare schemes is limited to the persons holding identity certificates. And the persons with no such certificate encounter practical barriers. Thus it is evident that a large section of this marginalised community was not able to avail the welfare measures which were a big implementation gap. The Garima measure which intends to provide basic needs remains constrained due to the limited capacity of accommodation and accessibility. Also many transgender persons live in remote areas where they cannot access the welfare schemes without any formal support. The objective of rehabilitation remains only partially fulfilled with limited employment opportunities. Consequently, welfare measures stay stagnant as these measures cannot be fully achieved with this lack of awareness among the intended persons and ineffective implementation.

The budget allocation for these welfare measures further illustrates the structural inadequacy of state support. The SMILE Scheme, the principal umbrella welfare programme for transgender persons, was allocated a total of Rs 365 crore for the five-year period from 2021-22 to 2025-26. By December 2024, the scheme had been operationalised in only 81 cities and towns across the country, effectively leaving transgender persons in rural and semi-urban areas outside the reach of formal welfare support under its framework.³¹

4.2.5 SECTION 12 RIGHT TO RESIDENCE

The Section provides that transgender persons were not to be excluded or separated from family except by order of competent court. If the family is unable to take care of the person then the competent court may direct such person to be placed in a rehabilitation centre.

Legislative Intent

The intent is to protect the transgender persons from arbitrary exclusion from the family and to ensure the access to shelter and care.

Analysis

The provision makes an assumption that the family will protect and accept the transgender persons after revealing their identity. But in reality many people were expelled from their family homes as the social reality stands different. And Article 21 guarantees the right to safe shelter but a mere residence without safety and acceptance will not contribute to peaceful living. The NHRC similarly observed that many of them were left homeless and it forced them to face difficulties in securing rental accommodations³².

4.2.6. SECTION 13 - 15 EDUCATION, LIVELIHOOD AND HEALTHCARE

The Section 13 to 15 of the act recognises education, healthcare and livelihood of transgender persons³³. The provision provides for inclusive education and equal opportunities for trans genders in government funded or recognised institutions. The provision 14 provides for supporting vocal training and livelihood to the trans genders by appropriate government.

³¹ Ministry of Social Justice & Empowerment, 'Support for Marginalized Individuals for Livelihood and Enterprise (SMILE)' (Press Information Bureau, 15 March 2022)

<<https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1806161>> accessed 2 September 2026; Press Information Bureau, 'SMILE Scheme Active in 81 Cities' (PIB, December 2024)

<<https://www.pib.gov.in/PressNoteDetails.aspx?NoteId=154411&ModuleId=3>> accessed 2 September 2026.

³² National Human Rights Commission, *Transgender Persons: Revamping Spaces, Reclaiming Voices - Insights from Garima Greh Shelters and Beyond* (NHRC 2025) 3 - 4.

³³ The Transgender Persons (Protection of Rights) Act 2019, ss 13 - 15.

Section 15 further directs the government to ensure the access of healthcare and counselling to the trans genders.

Legislative Intent

The intent is to address long lasting societal exclusion. To impose affirmative obligations in order to prohibit unequal treatment and to facilitate the accessibility of opportunities & services.

Analysis

Despite the progressive character, the provisions suffer structural deficiencies. It mandates inclusive education but it does not define the standard of inclusion and required necessities to make gender sensitive infrastructure or teacher sensitization programmes. The Provision neither includes mandatory timelines nor accountability.

Ground Reality

The implementation of the Provision is best understood through the NHRC Report, 2025. The report shows that despite statutory recognition and assurance the barriers still exist.

Education - The Act insists on inclusive education but without specific measures such as monitoring committee, anti-bullying measures it will be ineffective. The NHRC recommends these measures in its report³⁴.

Livelihood

The NHRC report observes that many of the beneficiaries face discrimination in recruitment, workplace harassment and difficulties in finding rental accommodations. It also finds that many of the existing shelter guidelines provide only limited long term employment opportunities³⁵.

Health care

The report highlights that there are deficiencies such as insufficient funding for hospitalisation, limited emergency medical support and psychiatric services. The Ayushman Bharat TG plus Scheme suffers from delays in effective operationalization. According to the

³⁴ National Human Rights Commission, *Transgender Persons: Revamping Spaces, Reclaiming Voices - Insights from Garima Greh Shelters and Beyond* (NHRC 2025) 57.

³⁵ National Human Rights Commission, *Transgender Persons: Revamping Spaces, Reclaiming Voices - Insights from Garima Greh Shelters and Beyond* (NHRC 2025) 36 - 38.

report their right is not just a legal battle but a measure for dignity and safety. It is because when transgender persons are unable to secure employment unable they resort to begging and sex work which results in increased HIV/AIDS among them³⁶.

4.2.7. SECTION 16 - 17 NATIONAL COUNCIL FOR TRANSGENDER PERSONS

The statutory framework provides for the establishment of a National Council which is mandated to work for policy formulation, coordination and monitoring³⁷. Its function includes advisory, monitory and grievance redressal in nature.

Legislative Intent

It is to create a centralised, high level mechanism to ensure the rights and welfare measures are addressed in a comprehensive manner.

Analysis

The Council is a high level body created for policy coordination and to effectively address the problems of Transgender persons. But it suffers from structural and functional deficiencies.

Flaws & Gap

The Act does not confer a binding decision making power and it does not guarantee the council statutory power to penalize the noncompliance. And there is no district level council to address the issues in those specific districts which makes transgender persons in rural areas to waive their right. The act does not require annual reports, periodic surveys and provides no compensation. There is no mechanism for victim compensation, rehabilitation, witness protection and counselling. The NHRC also found serious deficiencies including non-functional monitoring committees and overburdened staff³⁸.

5. RECOMMENDATIONS.

³⁶ National Human Rights Commission, *Transgender Persons: Revamping Spaces, Reclaiming Voices - Insights from Garima Greh Shelters and Beyond* (NHRC 2025) 29 - 30, 36.

³⁷ The Transgender Persons (Protection of Rights) Act 2019, ss 16 - 17.

³⁸ National Human Rights Commission, *Transgender Persons: Revamping Spaces, Reclaiming Voices - Insights from Garima Greh Shelters and Beyond* (NHRC 2025) 1 - 2.

5.1 Strengthening the National Council - The National Council should be given greater autonomy and it should be mandated to provide or furnish annual reports and the time bound compliance initiative should be taken.

5.2 Simplify the Gender Identification Documentation - The identity documentation process should be simplified and should be done in a more privacy protected manner. There shall be grievance redressal for delays.

5.3 To Strengthen the Impentation of Welfare Measures - There should be a statutory time limit for implementing the welfare scheme and it should be accompanied with periodic audits. Regular monitoring by the government is needed.

5.4 Awareness Creation - A regular awareness campaign should be done and it should concentrate majorly on rural areas. There should be widespread information about the welfare measures.

5.5. Independent Monitoring Committee - There should be an independent monitoring committee to evaluate the enforcement of the act and to verify the non-commission of violence against the transgender persons.

5.6 Enhancing Legal Protection - The penal provisions should be amended to provide proportionate punishment for different kinds of offences and victim support service should be established.

5.7. Digital Monitoring Dashboard - A national level digital monitoring dashboard should be created to check the implementation of the act and it should include a showcase of information regarding fund distribution and beneficiary data with privacy protection to ensure accountability.

5.8. Mandatory Social Impact Assessment - The government should make a mandatory assessment to improve the areas of defects.

6. CONCLUSION

This study concludes that the current statutory framework is insufficient and requires certain amendments to protect the intended persons. The legal recognition has not been translated into substantive equality. The implementation gaps and societal discrimination continues to hinder the realisation of Constitutional promises. The study finds that the Constitution

guarantees equal rights and dignity of the trans genders and the Courts have affirmed it. But in reality the guarantees remain normative with lack of implementation of the legislative provisions. The study further finds that limited awareness of welfare schemes among the beneficiaries and inadequate outreach have led to the reduced effectiveness of the statutory obligations. Also, there is a persistent exclusion of the trans genders by the society which in many instances compels them to engage in sex work as a means of livelihood. And the problems of inadequate fund allocation and lack of effective monitoring authorities hinders the socio - economic empowerment of transgender communities. Therefore it is evident that a meaningful equality can only be achieved through effective implementation, greater institutional support and sustained social acceptance.

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