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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **IMPLEMENTATION OF TRANSGENDER RIGHTS LAWS IN PUNJAB: A CRITICAL EVALUATION**

AUTHORED BY - BALJEET KAUR

## **Abstract**

The journey from 'no' law to have 'special' law viz. Transgender Persons (Protection of Rights) Act, 2019 recognizing the existence of transgender persons as human beings and conferring them legal rights has been full of challenges and obstacles. The manner in which the law was enacted so hastily without considering the concerns raised by activists opens up the debate if the rights conferred under the Act are adequate enough ensuring transgender persons to live their life with respect and dignity at par with cisgender. With this question in mind, the authors analyse the gaps and challenges in legal rights guaranteed to binary genders but neither denied nor conferred to transgender persons such as right of inheritance, right to marriage, right to adoption etc. under the Act, 2019. The paper further examines the implications of these omissions on the socio-economic security of transgender persons and highlights how legal ambiguity perpetuates systemic exclusion. It also evaluates the Act in light of constitutional principles of equality, non-discrimination, and personal liberty. Additionally, the role of judicial interventions and international human rights standards is explored to assess their influence on transgender jurisprudence in India. Finally, the study proposes legal and policy reforms aimed at bridging existing gaps and ensuring substantive equality for transgender persons.

**Keywords:** Transgender, NALSA, Marriage, Inheritance, law, LGBT+ etc.

## **I. INTRODUCTION**

Gender inequality has always been a crucial issue in Indian society. The impact of gender inequality cannot be seen only on binary genders (male/female) but it also extends to transgender persons. Indian history shows us that society has advanced gradually over time since Independence and conjointly, government has taken various initiatives by enacting different laws and policies guaranteeing equal rights to weaker and marginalised sections of the society. Unfortunately, transgender community is one of the most marginalised

communities that since Independence, it took more than six decades to the government to recognize their identity and guarantee them human rights. Before the verdict of *National Legal Services Authority v. Union of India*<sup>1</sup>(popularly called as NALSA Judgment), the Indian society failed to give due recognition to their identity due to which they suffered not only social oppression but physical violence also. It was after the verdict and revolutionary movements from different NGO's and protests by transgender community demanding legal recognition and protection of their basic rights, that **Transgender Persons (Protection of Rights) Act, 2019**<sup>2</sup> was legislated. Sadly, although the Act is progressive, it ignores many important civil rights of the transgender community. Because of this, transgender persons still do not receive full legal equality and protection.

## II. OBJECTIVES OF STUDY

The main objectives of the present study are:

1. **To** assess the implementation of the Transgender Persons (Protection of Rights) Act, 2019 in Punjab.
2. To analyse access to legal identity documentation for transgender persons.
3. To evaluate availability of transgender-inclusive healthcare and insurance schemes.
4. **To** examine enforcement of anti-discrimination laws in education, employment, and public services.
5. **To** investigate transgender-sensitive infrastructure in police stations and judicial institutions.
6. **To** study the effectiveness of state welfare schemes and socio-economic support systems.
7. **To** explore barriers to political and electoral participation among transgender individuals.
8. **To** identify legal gaps concerning marriage, inheritance, and adoption rights.
9. **To** review state accountability, responsiveness, and transparency in policy execution.
10. **To** analyse societal perceptions, stigma, and their impact on the transgender community in Punjab.
11. To evaluate the laws relating to right to property and inheritance of transgender at international and national level.

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<sup>1</sup> AIR 2014 5 SCC 438 (India).

<sup>2</sup> The Transgender Persons (Protection of Rights) Act, 2019 (Act 40 of 2019).

### III. UNDERSTANDING THE TERMINOLOGY:

**LGBTIQ+** acronym for lesbian, gay, bisexual, transgender, intersex and queer. The plus sign represents people with diverse sexual orientation, gender identity, gender expression and sex characteristics who identify using other terms.

**LESBIAN** woman whose enduring romantic, emotional and/or physical attraction is to women. **GAY** men whose enduring romantic, emotional and/or physical attraction is to men; also, women who are attracted to other women.<sup>3</sup>

**BISEXUAL** person who has the capacity for romantic, emotional and/or physical attraction to people of more than one gender.

**INTERSEX** people born with sex characteristics that do not fit typical definitions of male and female bodies. Intersex is an umbrella term used to describe a wide range of natural bodily variations. There are more than 40 intersex variations; experts estimate between 0.5 per cent and 1.7 percent of the population is born with intersex traits.

**QUEER** traditionally a negative term, has been reclaimed by some people and is considered inclusive of a wide range of diverse sexual orientations, gender identities and expressions. It may be used as an umbrella term for people with diverse sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC), or as an alternative to the phrase “people with diverse SOGIESC” or the acronym.

**LGBT:** Queer is used by many people who feel they do not conform to a given society’s economic, social and political norms based on their sexual orientation, gender identity and gender expression.

### IV. WHAT DOES IT MEAN TO BE A TRANSGENDER?

The term Transgender (T.G) is used in the form of an umbrella to include a wide range of identities and expressions of people contrary to their biological sex and not limiting it to transsexual people only.

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<sup>3</sup> Lopamudra Sengupta, “Human Rights of the Third Gender”, 34 (Routledge, New York, 1<sup>st</sup> edn., 2023).

There are four types of people categorized in the umbrella definition they are-

- (1) Persons whose gender identity or expression or behaviour does not conform to their biological sex.
- (2) Transgender people may also include identity to their sex assigned at birth. These are those persons who do not identify as either male or female commonly referred to as 'Hijras/Eunuchs'. They are neither men by reason of anatomy or appearance and nor women as they lack a female reproductive system. They are claimed as 'third-gender' because of the absence of procreation abilities. Among Hijras, there are emasculated men (castrated, nirvana), non-emasculated men and intersected persons (hermaphrodites).
- (3) Transgender includes people who intend to undergo sex reassignment surgery (SRS) or have undergone SRS to align their biological sex with their gender. They are called 'Transsexual persons'.
- (4) There are persons who wear clothes designed for the opposite sex or cross-dress in contrast to their gender. They are called transvestites. They are not usually transgender but just feel comfortable to wear opposite sex clothes. They prefer to be described as 'Cross-dressers'.<sup>4</sup>

## V. INTERNATIONAL LEGAL FRAMEWORK

The historical and legal framework of transgender individuals internationally reveals a diverse range of experiences and perspectives. Here are some key aspects of the legal framework of transgender individuals from an international perspective: Ancient and Indigenous Cultures: Gender diversity has been recognized in various ancient and indigenous cultures worldwide. Examples include the Hijra community in South Asia, Two-Spirit people in Native American cultures, "fa'afafine" in Samoa, and "sworn virgins" in Albanian culture. This culture often had different understandings and acceptance of gender variance, incorporating transgender individuals into societal roles and traditions. Colonialism and Western Influence: The colonial era, starting from the 16th century onwards, significantly impacted the recognition and acceptance of gender diversity in many regions. Western cultural norms and concepts of gender were often imposed on indigenous populations, leading to the erosion of local understandings of transgender identities and the marginalization of transgender individuals. Medicalization And Pathologization: The medicalization and pathologization of transgender identities

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<sup>4</sup> Veerendra Mishra, "Transgender in India", 23 (Routledge, New York, 1<sup>st</sup> edn., 2023).

emerged in the late 19th and early 20th centuries in various parts of the world. This often occurred as Western medical and psychiatric frameworks categorized gender nonconforming individuals as mentally disordered or deviant. These frameworks influenced understandings of transgender identities in many countries.

**Emergence Of Transgender Activism:** Modern transgender activism emerged in different parts of the world during the 20th century. Activists worked to challenge societal discrimination and advocate for transgender rights. The Stonewall riots in the United States in 1969, for example, sparked the LGBTQ+ rights movement and had a significant impact on transgender activism globally. **Legal Recognition and Protections:** The legal recognition and protection of transgender rights have varied widely across countries and regions. Some countries have implemented legal frameworks to recognize gender identity, allow gender marker changes on official documents, and provide protections against discrimination. Other countries still lack comprehensive legal protections for transgender individuals, and in some cases, transgender identities are criminalized.

**Regional Variances:** The experiences and challenges faced by transgender individuals differ across regions. For example, European countries have seen advances in legal recognition and protections, while some African and Asian countries still have laws that criminalize transgender identities. The experiences and rights of transgender individuals in each region are shaped by cultural, religious, social, and political factors specific to that region.<sup>5</sup>

**International Activism and Solidarity:** Transgender activism is not limited to any one country or region; it is a global movement. Activists and organizations work collaboratively to raise awareness, advocate for legal reforms, and combat discrimination and violence against transgender individuals. International networks and alliances have played a crucial role in sharing knowledge, resources, and support across borders. Internationally, there are several legal provisions and frameworks that pertain to the rights and protections of transgender individuals.

**Universal Declaration of Human Rights (UDHR):** The UDHR, adopted by the United Nations General Assembly in 1948, establishes fundamental human rights that apply to all

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<sup>5</sup> Apoorva Kinra and Pareena Singh, “what is my Identity”, 34 (Shree Ram Law House, Chandigarh, 1<sup>st</sup> edn., 2021).

individuals, including transgender people. It includes provisions such as the right to life, liberty, and security of person; the right to equality before the law; and the prohibition of discrimination based on various grounds, including gender.<sup>6</sup>

**International Covenant on Civil and Political Rights (ICCPR):** The ICCPR, adopted by the United Nations General Assembly in 1966, is a legally binding treaty that outlines civil and political rights. Article 26 of the ICCPR prohibits discrimination based on various grounds, including gender, and guarantees equal protection under the law. This provision can be invoked to protect transgender individuals from discrimination and ensure their equal treatment.<sup>7</sup>

**Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT):** The CAT, adopted by the United Nations General Assembly in 1984, is a treaty aimed at preventing and prohibiting torture and cruel treatment. While not explicitly mentioning transgender individuals, this convention can be relevant in cases where transgender people face violence, abuse, or mistreatment due to their gender identity<sup>8</sup>.

**Convention on the Elimination of All Forms of Discrimination Against Women<sup>9</sup> (CEDAW):** CEDAW, adopted by the United Nations General Assembly in 1979, is an international treaty specifically addressing gender discrimination. It calls for the elimination of discrimination against women in all areas of life and can be used to advocate for the rights of transgender women. Yogyakarta Principles: The Yogyakarta Principles, a set of principles on the application of international human rights law in relation to sexual orientation and gender identity, were developed by human rights experts and activists in 2006. Although not legally binding, these principles provide guidance on the interpretation and application of existing human rights norms to protect the rights of transgender and gender-diverse individuals.

**Regional Agreements:** Various regional human rights agreements, such as the European Convention on Human Rights and the American Convention on Human Rights, contain provisions that protect individuals from discrimination based on gender identity. Regional courts and bodies have interpreted these provisions to safeguard the rights of transgender individuals in specific regions. United Nations (Un) Resolutions: The UN has passed several

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<sup>6</sup> The Universal Declaration of Human Rights, 1948, art.7.

<sup>7</sup> The International Covenant on Civil and Political Rights, 1966, art. 6(1).

<sup>8</sup> The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

<sup>9</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

resolutions and statements affirming the rights of transgender individuals. The UN Human Rights Council has called for an end to violence and discrimination based on gender identity, and the UN General Assembly has passed.<sup>10</sup>

**European Convention on Human Rights (ECHR):** The ECHR, which is overseen by the European Court of Human Rights, has been interpreted to protect the rights of transgender individuals. The court has held that the right to respect for private life under the convention includes the right to personal identity and self-determination, including the ability to transition and have one's gender recognized. **Inter-American Court of Human Rights:** The Inter American Court of Human Rights, through its jurisprudence, has recognized and affirmed the rights of transgender individuals. It has held that states must ensure the right to gender identity, including legal recognition and protection against discrimination.

**African Commission on Human and Peoples' Rights:** While Africa does not have a regional treaty specifically addressing the rights of transgender individuals; the African Commission on Human and Peoples' Rights has issued resolutions condemning violence and discrimination based on sexual orientation and gender identity. These resolutions call on states to protect the rights of LGBT individuals, including transgender people.

## VI. CONTEXT OF TRANSGENDER PEOPLE IN INDIA FOR HUMAN RIGHTS INTERVENTIONS

Indian Census has never recognized third gender i.e., Transgender while collecting census data for years. But in 2011, data of Transgender's were collected with details related to their employment, Literacy and Caste. In India, the total population of transgender is around 4.88 Lakh as per 2011 census. The 2014 Supreme Court of India's '*NALSA Judgement*', offered unprecedented legal recognition to gender identity of transgender people – their right to choose their self-affirmed gender as a man, woman or transgender. The judgment issued directives to the central and state governments to develop welfare programme for the transgender community. The Transgender Persons (Protection of Rights) Act was passed on December 5, 2019. The Act is an anti-discrimination legislation with provisions to protect transgender people from discrimination in various spheres of life. It directs the state to bring trans sensitive, trans-specific and trans-inclusive welfare schemes. Subsequently, the rules of the Act that came

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<sup>10</sup> Dr. P. Brinda, "Property Rights Endowed on to Gender-Bending" 9 *JETIR* 340(2022).

into force on September 25, 2020, have emphasized the need for specific schemes for healthcare, education and social security of transgender people. The United Nations Development Programme (UNDP) India office has developed a framework for the welfare of transgender people in collaboration with The Humsafar Trust (HST) and Centre for Sexuality and Health Research and Policy (C-SHARP).

In the case of *National Legal Services Authority v. Union of India*,<sup>11</sup> the Hon'ble Supreme Court in its landmark judgment declared transgender as the third gender person and granted them a right to self-identify as female, male or third gender as it is deemed to be a core part of one's right to life available under Article 21 of the Indian Constitution. Transgenders have same rights as available to other persons without any discrimination on the basis of the gender. The court also declares transgender as socially and economically backward class and entitled to reservation in educational institutions and appointments in public sector.

In the case of *Atri Kar v. The Union of India*,<sup>12</sup> the issue was that the petitioner wants to participate in the recruitment process of State Bank of India as a transgender person but there was separate category Column for the transgenders: The petitioner approached to the High Court to allow the participation in recruitment process transgender. The court held that transgenders cannot be discriminated on the ground of sex and failure to create separate column for this community amounts to violation of Article 15 of the Indian Constitution Further, Court directed State Bank of India to allow the petitioner to participate as a transgender.

In the case of *Arun Kumar & Sreerja v The Inspector General of Registrar*,<sup>13</sup> the issue was whether a transwoman comes within the term bride under section 5 and registration for the same can be made under the Hindu Marriage Act, 1955. The court held that a marriage between a Hindu transwoman and a man is a valid marriage under section 5 of the Hindu Marriage Act, 1955 and registrar is bound to register it. The Court further states that, the person born as intersex or transgender person who recognized herself as a woman should be considered as bride under section 5 of Hindu Marriage Act, 1955.

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<sup>11</sup> AIR 2014 SC 1863.

<sup>12</sup> 2017 SCC 3196.

<sup>13</sup> 2019 SCC Online Mad 8779.

In the case of *Supriyo v. Union of India*,<sup>14</sup> the issue was whether the members of the LGBTQIA community have a right to marriage and inclusion of this community from marriage is violative of Article 14 of the Indian Constitution. The Hon'ble Supreme Court held that right to marry is not a fundamental right and declined to recognize transgender sex couple marriage. Further states that the transgender persons in heterosexual relationships have the freedom to marry under the existing personal laws by fulfilling the required conditions.

In the case of *Navtej Singh Johar v. Union of India*,<sup>15</sup> the issue was that penalizing sexual acts in private between the consenting adults is violative of Article 14, 15, 19 (1) and 21. The Hon'ble Supreme Court of India in constitutional bench of five judges decided that the application of section 377 to consensual homosexual act between two adults is unconstitutional, irrational and arbitrary but section continues to remain enforce relating to minor consensual or not, non-consensual sexual acts and bestiality. Section 377 was partly declared unconstitutional.

In the case of *K. Gowtham Subramaniam v. The Controller of Examination*,<sup>16</sup> the petitioner was assigned as a female at the time of birth. Later on, after graduating he undergone sex reassignment surgery. He files an application to change his name and gender in official record of the university along with the proofs like Adhar Card and medical certificate. However, University rejected the application. Petitioner approached the High Court for relief. The Court directed university to issue new certificates as petitioner have a right to change the documents to reflect the desired gender and name in the documents.

In the case of *Chanchal Bhattacharya v. State of West Bengal*,<sup>17</sup> the issue was that petitioner identified himself as male but was assigned as a female at the time of birth. Later on, he undergone sex reassignment surgery. He files an application to change his name and gender in official record after surgery. However, Higher Secondary Education Council rejected the application. Petitioner challenged in the High Court. The Court in this case ordered the council to register the name and gender in all education records as per self-declaration made by the petitioner. Every person has right to self-identify their gender and have right to get it changed in their official record.

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<sup>14</sup> *Supra note 30.*

<sup>15</sup> AIR 2018 SC 790.

<sup>16</sup> 2017 (3) RCR(CIVIL) 700.

<sup>17</sup> 2016 SCC ONLINE CAL 2124.

## VII. CONCLUSION

In conclusion, the study reveals that despite constitutional safeguards, judicial recognition, and welfare schemes introduced by the Government of India, transgenders continue to face deep-rooted discrimination and social exclusion, particularly in states like Punjab. Legal recognition alone has not translated into real social acceptance or equal access to fundamental rights. The gap between policy formulation and policy implementation remains a major concern, limiting the effectiveness of government initiatives. Transgenders still encounter barriers in education, healthcare, employment, housing, and family life due to stigma, lack of awareness, and insensitive institutional practices.

The persistence of traditional mindsets and societal prejudices continues to marginalize the transgender community, preventing their meaningful participation in social, political, and economic decision-making processes. While recent developments such as identity recognition, welfare boards, and skill-development programs indicate progress, their reach and impact remain limited. There is an urgent need for inclusive education, sensitization of society, and capacity-building of public officials to ensure dignity and equality for transgenders.

Empowerment of the transgender community through education, employment opportunities, legal aid, and healthcare access is essential for their holistic development. Strong monitoring mechanisms, community participation, and collaboration between government, civil society, and transgender organizations can help address existing gaps. Ultimately, achieving true equality for transgenders requires not only legal reforms but also a transformation in social attitudes, ensuring that they are respected as equal citizens with full human rights and dignity.