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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

REFORMING RIGHTS REALITIES: POLICY INTERVENTIONS AND LEGAL REFORMS FOR TRANSGENDER PERSONS IN INDIA

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Abstract

This research paper examines the evolving legal, policy, and social frameworks governing the rights of transgender persons in India. Despite progressive judicial interpretations and the enactment of the Transgender Persons (Protection of Rights) Act, 2019, the transgender community continues to face discrimination, exclusion, and limited access to basic human rights such as healthcare, education, and employment. The paper focuses on the historical background, constitutional protection, and recent reforms implemented by the central and state governments (with a focus on Uttar Pradesh). It also highlights the critical issue of property rights and inheritance, often neglected in existing policy frameworks. Through an analytical and descriptive approach, this paper identifies gaps in the implementation of welfare measures and suggests comprehensive policy reforms to ensure equality, dignity, and social justice for transgender persons in India.

Key Words: Transgender, legal, Rights, Discriminations

Introduction

Transgender persons in India have historically been subjected to social exclusion, stigma, and discrimination. Even though communities now identified as transgender have existed in the subcontinent for centuries including in cultural and religious roles modern legal and social frameworks often failed to protect their dignity, identity, and rights. The landmark judgment of National Legal Services Authority v. Union of India (NALSA, 2014) marked a turning point by affirming that transgender persons are a “third gender” and are entitled to constitutional protections.

Yet legal recognition alone has not translated fully into substantive equality. The lived realities of many transgender persons continue to reflect systematic exclusion from education, employment, healthcare and property rights.

This paper explores the dynamic interplay between the legal reforms (legislative and judicial), policy interventions (at Centre and state levels), and the socio-economic realities faced by transgender persons in India. It examines the historical context, the constitutional and legal framework, policy interventions, socio-economic challenges, the especially neglected domain of property rights and inheritance, judicial interventions, identifies gaps and makes recommendations for comprehensive reform.

Historical Context of Transgender Rights in India

The term “transgender” (and analogous indigenous terms such as hijra, aravani, kinner) covers a wide spectrum of gender identities and expressions. In the Indian socio-cultural context, transgender and third-gender persons have had a presence: in mythological texts, folk traditions, and social rituals. For example, in ancient texts and epics like the Mahabharata the figure of Shikhandi (assigned female at birth but identifying male) appears. Cultural recognition was, however, mixed with social marginalization and ritualization of identity.

With the arrival of British colonial rule, the status of hijras/transgender persons underwent formal criminalization and marginalization through laws such as Section 377 of the Indian Penal Code, 1860 and regulatory policies that viewed them as “eunuchs,” “criminals,” or “vagrants.” This instilled structural exclusion. Post-independence, the mainstream focus on gender rights remained binary (male/female) and the transgender community was largely invisible in policy and law.

It is only in more recent decades driven by activism, community voice, and judicial intervention that the subject has moved to the centre of legal and policy discourse. Scholars identify that despite cultural recognition, real socio-economic inclusion has lagged. For example, one study notes: “the transgender population is a marginalised group of society they lack proper healthcare facilities due to social intolerance and stigmatisation.”

Thus, the historical trajectory has moved from recognition in tradition colonially imposed marginalization post-colonial invisibility recent recognition and reform. The gap between

recognition and lived reality remains large.

Constitutional and Legal Framework

Constitutional Protections

The Indian Constitution provides a robust foundation for protecting the rights of transgender persons. Key provisions include:

- **Article 14:** Equality before law and equal protection of the laws.
- **Article 15:** Prohibition of discrimination on grounds of religion, race, caste, sex, place of birth. Over time, courts have interpreted “sex” to include gender identity/expression.
- **Article 21:** Protection of life and personal liberty, interpreted to include dignity, bodily autonomy, and social security.
- **Article 19:** Freedoms of speech and expression, which include the right to self-identify one’s gender.

In the NALSA judgment, the Supreme Court held that the term “sex” in Articles 15 and 16 includes transgender persons and non-binary persons, and that they cannot be denied their rights: “transgender persons have the right to self-identify their gender as male, female or third gender. The Court also directed governments to treat transgender persons as socially and educationally backward classes allowing reservations under Articles 15(4) and 16(4).

Legislative Framework – The Transgender Persons (Protection of Rights) Act, 2019

The Transgender Persons (Protection of Rights) Act, 2019 is the key legislation governing transgender rights in India. Its major features include:

- Definition of “transgender person” (though contested by activists for being narrow).
- Prohibition of discrimination: Chapter II prohibits discrimination in education, employment, healthcare, housing, etc.
- Recognition of identity: A transgender person may obtain a “certificate of identity” by application to the District Magistrate and may “change their gender” as per Section 7.
- Welfare measures: Chapter IV obliges appropriate governments to formulate programmes to ensure welfare.
- Right of residence, obligations of establishments, grievance redressal, and establishment of the National Council for Transgender Persons.
- Offences & penalties for certain wrongful acts (Chapter VIII) such as denial of residence under Section 18.

However, the Act has drawn criticism. Some of the key critiques include:

- Although the Act provides for recognition, it imposes a bureaucratic process including a “screening committee” for change of gender contrary to the principle of self-determination.
- The law does not sufficiently address property and inheritance rights of transgender persons.
- Implementation mechanisms remain weak; many welfare provisions are vaguely defined “may” instead of “shall.”
- The distinction between “transgender” and “intersex” remains confusing and conflates different identities.

Hence, while the Act is an important legislative milestone, significant gaps remain between rights on paper and rights in practice.

Other Legal and Policy Measures

Beyond the 2019 Act there are other relevant laws and policy frameworks:

- Judicial precedents: e.g., NALSA (2014), which we discussed; and other decisions such as in the education/employment domain.
- Welfare scheme notifications and state laws: Several states have adopted transgender welfare policies, issued direction for quotas, and created state transgender welfare boards.
- Private sector inclusion: Corporate diversity policies are increasingly recognising transgender identity in employment.

However, the core issue remains the conversion of legal recognition into everyday access to rights: the right to identity, dignity, education, employment, health and property.

Policy Interventions at Central and State Levels

Central Government Initiatives

The Government of India, through the Ministry of Social Justice & Empowerment and other departments, has launched several initiatives aimed at improving the condition of transgender persons. Some key initiatives include:

- **National Portal for Transgender Persons:** Launched to facilitate access to welfare measures and create data/tracking mechanisms.

- **Skill Development Programmes:** The UNDP supported report on “Skilling for Livelihood Opportunities for Transgenders in India” highlights that transgender persons are eligible under NRLM (National Rural Livelihood Mission) and other livelihood schemes.
- **Health Initiatives:** Efforts to expand inclusive healthcare, provide gender-affirming services, mental health support, and HIV prevention among transgender persons. WHO and UNAIDS have highlighted the disproportionate health risks: for example, HIV prevalence among transgender persons in India was estimated at 3.8% in 2021 almost twenty times the national average.
- **Education & Employment:** Though not always targeted exclusively at transgender persons, central schemes in education, scholarships and employment tries to include transgender persons as beneficiary groups.
These central efforts demonstrate intent, but the effectiveness depends on state implementation, monitoring, data collection, and accountability mechanisms.

State-Level Interventions Focus on Uttar Pradesh

States have a pivotal role in implementing welfare measures and social policy for transgender persons. We focus on the example of Uttar Pradesh (UP) as a high-population state and illustrative case. According to the 2011 Census, Uttar Pradesh had the largest number of self-identified “Others (Transgender)” at 1,37,465 persons.

In UP, efforts have been made such as:

- **Social welfare schemes:** Provision of monthly pensions, financial assistance to economically disadvantaged transgender persons registered under welfare boards.
- **Education support:** Scholarships and reservation in educational institutions for transgender persons, though data of uptake remains scant.
- **Skill training & employment:** The state government rolled out vocational training for transgender persons, linking them with livelihood options in tailoring, beauty services, computer training, etc. Awareness campaigns have been implemented to reduce stigma and encourage registration.

However, despite these interventions, the implementation remains patchy: many transgender persons remain unaware of their rights, registries are incomplete, benefit disbursements delayed, and access to forms remain bureaucratically difficult.

Comparative State Initiatives

Other states such as Karnataka (which introduced a 1% horizontal reservation for transgender persons in 2021) and Tamil Nadu (which categorised transgender persons under OBC in 2015) also show the trend of state-level policy.

These policies reflect the diversity of approaches: reservation quotas, welfare boards, dedicated schemes, and inclusion in mainstream social security programmes. Nonetheless, across states the core issues remain: data gaps, lack of tracking, low awareness, intersectional discrimination (on caste, class, disability) and weak grievance redressal mechanisms.

Socio-Economic Challenges

Despite legal recognition and policy initiatives, transgender persons in India continue to face multiple socio-economic challenges which hinder their full inclusion. These challenges are multi-dimensional, intersecting, and structural.

Educational Disadvantages

According to Census 2011, India's transgender population of around 4.87 lakh (0.038% of total population) had a literacy rate much lower than the general population. (One study found that only 43% of transgender persons were literate compared to 74% nationwide.

Reasons for this include: family rejection, bullying and harassment in schools, lack of inclusive curricula and teacher sensitisation, and absence of mechanisms for identity recognition in education. A paper on "Transgender Community and Higher Education in India" highlights that many educational institutions lack policy to accommodate name/gender change, safe spaces, harassment redressal, and inclusive facilities.

The cumulative effect is that many transgender persons are forced to drop out of school early, limiting their employment opportunities and perpetuating socio-economic marginalisation.

Employment and Livelihoods

Employment is one of the most pressing domains of exclusion. A report noted that in 2017 only about 6% of transgender persons were formally employed in the private or NGO sector; many were forced into informal sectors, begging, or sex work.

One activist noted:

“Around 80% of transgender people in India are either engaged in sex work or begging ...”

Reasons for employment exclusion include: discrimination in recruitment, absence of recognition of gender identity, lack of skill-certification pathways, and hostile work environments.

Moreover, livelihood skilling programmes have had limited reach because of poor outreach, limited adaptation to needs of transgender community, and lack of follow-up support. The UNDP “Skilling for Livelihood Opportunities” report points to the systemic barriers.

Healthcare and Health Disparities

Transgender persons face distinct and heightened health risks: lack of gender-affirming care, discrimination in healthcare settings, difficulties obtaining identity documents, and high prevalence of HIV and other infections. For example, HIV prevalence among transgender persons in India was 3.8% in 2021, far above the national adult average. A systematic study found transgender persons experience discrimination in access to health services, difficulties obtaining IDs, travelling rejections, homelessness, constraints in bank loans all of which have implications on mental and physical health.

The structural stigma means many transgender persons avoid accessing health services until crisis arises, leading to poor health outcomes, higher mental-health burdens and economic vulnerability.

Social Exclusion, Violence and Discrimination

Social exclusion is pervasive. Reports suggest that up to 92% of transgender individuals have faced physical or verbal abuse. They also frequently face family rejection, forced migrations into “hijra” communities or sex work, homelessness, lack of safe housing, and harassment from law enforcement. A study summarised:

“Transgenders face discrimination and stigma in various settings including education, employment, healthcare, and various public settings ... difficulties in getting government identity cards (ID)... homelessness, travelling rejections...”

Such exclusion has direct consequences: mental health issues, substance abuse, lack of safe housing, multiple marginalities (caste, class, disability). It also undermines the effectiveness of legal or welfare programmes if persons do not feel safe to access them.

Data and Documentation Challenges

One key underlying challenge is the paucity of reliable data. While Census 2011 enumerated about 4.87 lakh “others (transgender)” persons, scholars note that the real number is likely much higher due to under-reporting, stigma, invisibility and the binary framing of gender in many official records. Without robust data, planning, resource allocation, monitoring and evaluation of welfare programmes remains weak.

Property Rights and Inheritance

One of the most neglected domains in transgender rights discourse is property rights and inheritance. This area reveals how legal frameworks remain structured on binary gender assumptions, thereby excluding or marginalising transgender persons.

Legal Frameworks & Gaps

Indian inheritance laws are largely structured under personal laws (Hindu Succession Act, Indian Succession Act, etc.) or codified acts but assume heirs based on male/female opposite gender binaries. Studies note that transgender persons are often invisible in succession laws.

“Inheritance laws are based on a binary notion of gender. They do not envisage transgender persons or a change in gender identity. This means that individuals must choose between conforming to their assigned gender or not availing their rights.”

Key problems:

- Lack of express mention of transgender persons as heirs or successors.
- Difficulty proving legal identity and documentation for inheritance claims.
- Family resistance and social hostility to transgender persons asserting rights.
- Courts have inconsistent jurisprudence; decisions rely on subjective discretion of judges rather than uniform legal standards

Case Law and Judicial Observations

While there is no comprehensive statutory reform to property/succession laws in favour of transgender persons, there have been some judicial observations. For instance, the NALSA judgment observed that exclusion of transgender persons from inheritance violates Articles 14 and 21. But many subsequent cases remain few and ambiguous. Research highlights that even though the Hindu Succession Act (1956) is gender-neutral on its face (Section 24, 26) it does

not address the reality of transgender persons' rights in estates and succession because of societal and administrative practices.

Social Realities & Consequences

Transgender persons often lack access to family property, inheritance dues or parental estates due to being disowned or not recognised within the family structure. The inability to inherit or hold property reinforces economic vulnerability, dependence, lack of shelter/security and perpetuates marginalisation. Blogs and articles document familial hostility, legal limbo and the practical barriers faced by transgender persons asserting property rights.

Areas for Reform

Given the large gap between legal recognition and substantive property rights, the following areas require reform:

- Explicit legislative amendment (either in succession laws or through special provisions) recognising transgender persons as heirs/successors and clarifying legal status of identity changes.
- Administrative mechanisms simplifying documentation and identity change to ensure inheritance claims are not denied on procedural grounds.
- Awareness and sensitisation among judiciary, magistrates, revenue/estate officials and families about transgender persons' rights to property.
- Monitoring and research to collect data on property ownership, succession claims and barriers for transgender persons.

Judicial Interventions and Case Law

The judiciary has played a crucial role in recognising and protecting transgender rights, though implementation remains uneven. Key landmark judgments:

NALSA v. Union of India (2014)

In this landmark judgment, the Supreme Court of India recognised the rights of transgender persons as a third gender. The Court held that the State must treat transgender persons as socially and educationally backward classes, thereby allowing for reservation; recognised right to self-identification of gender identity; held that discrimination on the basis of gender identity is prohibited under Articles 14, 15, 19, 21. This judgment laid the constitutional foundation for

subsequent policy and legislative reform.

Subsequent Legal Interpretations

Various High Courts and tribunals have interpreted gender identity, right to change legal gender, access to welfare schemes, anti-discrimination rights, and inclusion. Research points to gaps in jurisprudence relating to property/succession. E.g., studies on inheritance rights highlight that courts sometimes grant rights to transgender persons but do so inconsistently and without definitive guidelines.

Critique of Judicial Role

While the judiciary has been progressive in its pronouncements, the translation into everyday decisions remains slow. The barriers include:

- Lack of awareness and sensitisation of lower courts.
- Absence of standardised procedures for identity recognition and documentation.
- Structural limitations in the law that courts cannot fully remedy without legislative support (e.g., property rights).
- Limited access to justice for transgender persons due to financial, social, geographical constraints.

Overall, the judicial interventions are necessary but not sufficient — they must be supported by legislation, implementation mechanisms and accountability.

Gaps in Policy and Implementation

Despite positive legal and policy frameworks, the actual realisation of rights for transgender persons is fraught with gaps. The following summarises the major lacunae:

- 1. Limited Awareness and Outreach:** Many transgender persons are unaware of their rights under the 2019 Act, of welfare schemes, or of the process for obtaining gender identity certificates.
- 2. Bureaucratic and Administrative Hurdles:** Procedures for obtaining identity certification, accessing welfare benefits, changing documentation remain complex; many offices are not sensitised.
- 3. Inadequate Coverage of Welfare Schemes:** Welfare measures remain fragmented, vary across states, and often require registration and documentation which many transgender persons cannot access.

- 4. Weak Enforcement and Monitoring:** Non-discrimination provisions in the 2019 Act are commendable but the grievance redressal mechanisms are weak and punitive measures scant. Many violations (harassment, violence) remain under-reported.
- 5. Data and Documentation Gaps:** Inadequate enumeration, lack of disaggregated data (by gender identity, disability, caste) hinder targeted policy making and evaluation.
- 6. Property & Inheritance Rights Neglected:** As discussed above, the legal frameworks for succession and property rights do not adequately account for transgender persons; this gap perpetuates economic vulnerability.
- 7. Intersectionality Overlooked:** Many transgender persons face multiple marginalities (caste, class, disability, age) but policies often adopt a one-size-fits-all approach, without addressing intersectional vulnerabilities.
- 8. Social Attitudes and Stigma:** Legal recognition will not suffice unless social norms, family attitudes, educational institutions and workplaces change. Without cultural shift, many rights remain aspirational only.

These gaps show that while the architecture of rights may be in place, the machinery of rights realisation is still weak. Closing the gap between “on paper” and “in practice” remains the central challenge.

Recommendations for Comprehensive Reform

In order to move from rights recognition to rights realisation for transgender persons in India, the following recommendations are proposed.

Legal Reforms

- **Amend the Transgender Persons (Protection of Rights) Act, 2019** to include explicit provisions on property rights, inheritance, co-habitation, marriage and adoption recognising transgender persons.
- **Amend succession and property laws** (e.g., Hindu Succession Act, Indian Succession Act) so that transgender persons are explicitly recognised as heirs/successors, and legal identity change does not impede inheritance claims.
- **Simplify the process for gender identity recognition:** Introduce self-declaration (instead of screening committee), enable online/one-stop certification, avoid surgical requirements.

- **Strengthen enforcement mechanisms:** Make non-discrimination provisions binding, impose penal consequences for violations by public/private entities, ensure accessible grievance redressal mechanisms.
- **Mandate data collection & monitoring:** Legislate for regular mandatory data collection by gender identity in all central and state surveys, ensuring transparency and accountability.

Policy and Programme Interventions

- **Expand education inclusion:** Mandate all educational institutions (schools, colleges) to have inclusive policies (name/gender change, harassment redressal, safe spaces, scholarship quotas) for transgender persons.
- **Targeted livelihood and employment programmes:** Scale up skill development programmes designed for transgender persons (tailored to their needs), incentivise private sector to hire transgender persons (tax breaks, CSR), set reservation quotas in government employment.
- **Healthcare inclusion:** Ensure gender-affirming care, mental health services, HIV prevention & treatment, training for healthcare professionals for transgender-sensitive services, exclude discriminatory practices in health coverage.
- **Property & housing support:** Provide special-purpose housing schemes for transgender persons, ensure they are eligible for existing housing schemes (PM Awas Yojana etc), provide legal aid for inheritance/property claims.
- **Awareness and social sensitisation:** Launch nationwide campaigns reaching schools, families, workplaces, media to sensitize society about transgender rights and inclusion. Include mandatory sensitisation training for law enforcement, judiciary, revenue/estate officials.
- **Community participation and leadership:** Enable transgender persons' involvement in policy design, implementation, monitoring (for example in welfare boards, committees). Support community-led organisations and self-help groups.
- **Intersectional focus:** Design programmes with explicit attention to caste, class, disability, rural/urban differences among transgender persons.
- **State-level institutional capacity building:** Provide states with dedicated funds, capacity building for state transgender welfare boards, ensure coordination across departments (social justice, education, health, labour).

Implementation, Monitoring & Accountability

- **Create an independent watchdog or ombudsman** for transgender rights at national and state levels that can monitor implementation, review grievances and publish annual reports.
- **Set measurable targets and timelines:** For example, increasing formal employment of transgender persons by X% in 5 years; reducing school dropout rates among transgender students; increasing inheritance/property registration.
- **Periodic evaluation and research:** Commission longitudinal studies on transgender persons' socio-economic outcomes; track data on property ownership, employment, education, health.
- **Strengthen data-sharing and transparency:** Public dashboards by state and central governments on welfare scheme uptake, gender identity numbers, benefit disbursements, etc.
- **Encourage public-private partnership (PPP):** In skill development and employment, in housing, in health services to scale up inclusion.

Case Study: Inclusive Higher Education Initiative

To illustrate how institutional reform can facilitate inclusion, we briefly examine an initiative by one higher education institution in Uttar Pradesh. Kushinagar University (hypothetical / illustrative) has pioneered inclusive policies for transgender students in its campus:

- Reserved seats for transgender persons in undergraduate and postgraduate programmes.
- Anti-discrimination policy and handbook ensuring safe spaces, counselling services, orientation programmes for faculty/students.
- A linkage desk assisting admitted transgender students to access government welfare schemes, skill-training modules, documentation support.
- Workshops and sensitisation campaigns in collaboration with NGOs to promote gender sensitivity among staff and students.

This case demonstrates that when higher-education institutions proactively adopt inclusive policies and support mechanisms, they can significantly enhance access for transgender persons to formal education, thereby enabling better socio-economic outcomes.

Comparative Perspective

A comparative glance at other jurisdictions helps contextualise India's progress and challenges. For instance, countries like Nepal and Bangladesh have legally recognised a third gender and provided identification options; however, like India, they continue to face implementation barriers. The point is not to idealise other systems, but to underscore that legal recognition is only the first step; realising rights in employment, education, housing, property requires systemic change. Such a comparative view strengthens the argument that India's reforms, while pioneering, must now focus on implementation, measurement and accountability.

Future Directions and Research Gaps

While this paper has examined the legal, policy and socio-economic dimensions of transgender persons' rights in India, several future directions remain:

- Longitudinal studies tracking cohorts of transgender persons across education, employment, health, property outcomes to generate evidence for targeted interventions.
- Disaggregated research: how do caste, class, rural/urban location, disability intersect with gender identity to affect outcomes?
- Impact evaluations of specific welfare schemes (state or central) for transgender persons – what works, what doesn't, why.
- Research on private sector employment inclusion: barriers, best practices, cost-benefit analyses.
- Studies on inheritance/property rights: real-world case studies of transgender persons succeeding (or failing) in claims, administrative procedures, judicial decisions.
- Social-attitude research: measuring change in societal perceptions of transgender persons, tracking sensitisation programme outcomes.

Addressing these research gaps will strengthen policy design and ensure more effective and inclusive interventions.

Conclusion

The rights of transgender persons in India have evolved significantly in recent years from near invisibility and marginalisation to legal recognition through the NALSA judgment (2014) and enactment of the Transgender Persons (Protection of Rights) Act, 2019. However, the journey from rights recognition to rights realisation is far from complete.

Persistent socio-economic exclusion, systemic discrimination, inadequate access to education, employment, healthcare, and especially property and inheritance rights reflect the considerable gap between formal recognition and lived experience. While central and state governments have introduced welfare schemes and policies, uptake remains limited due to administrative hurdles, lack of data, lack of awareness and social stigma.

Therefore, comprehensive reform is required legal, policy, administrative and social to ensure equality, dignity and social justice for transgender persons in India. In particular, the area of property and inheritance rights merits urgent attention, as economic inclusion and security are key to transforming lives. Collaborative efforts involving government, judiciary, civil society, private sector and the transgender community themselves are essential to turn the promise of recognition into the reality of inclusion. For a nation committed to justice, equality and dignity for all, reforming rights realities for transgender persons is a test of our constitutional promise and social conscience.

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