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E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

# **CRITICAL ANALYSIS OF TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019**

AUTHORED BY - SIMRAN JAISWAL

2<sup>nd</sup> Semester law student of LL.M.at

School of Law, Justice and Governance Gautam Buddha University, Greater Noida.

CO- AUTHOR - ABHINAV SAXENA

(LL. B- University of Lucknow)

(LL.M- Himachal Pradesh National Law University Shimla).

## **ABSTRACT**

Transgender individuals have been an integral part of Indian society for centuries. However, their rights were gradually undermined by the oppressive and antiquated laws introduced during British colonial rule. Despite the adoption of the Indian Constitution, sexual minorities have continued to endure systemic marginalization, with their identities and rights largely overlooked. This persistent neglect has subjected them to widespread discrimination, harassment, and social exclusion, often relegating them to a marginalized status within society.

A significant milestone in the fight for transgender rights was the Supreme Court's landmark decision in *NALSA v. Union of India*,<sup>1</sup> which granted formal recognition to transgender persons as the "third gender." Another landmark ruling, *Navtej Singh Johar v. Union of India*<sup>2</sup> struck down portions of *Section 377 of the Indian Penal Code* that had previously criminalized consensual same-sex relationships. These progressive judgments laid the groundwork for the drafting and eventual enactment of the *Transgender Persons (Protection of Rights) Act, 2019*,<sup>3</sup> which later received presidential assent.

This article offers a critical analysis of the *Transgender Persons (Protection of Rights) Act, 2019* highlighting its limitations in addressing the complex and diverse challenges faced by the transgender community. Using a doctrinal methodology, it draws upon various

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<sup>1</sup> AIR 2014 SC 1863.

<sup>2</sup> AIR 2018 SC 4321.

<sup>3</sup> Transgender Persons (Protection of Rights) Act, 2019, (Act No. 40 of 2019).



resources, including books and online materials, to provide an in-depth examination.

**Keywords** – Transgender, Discrimination, Harassment, consensual, prohibited.

## **INTRODUCTION**

India's transgender community encompasses diverse identities, including *Eunuchs, Aravanis, Jogappas, Shiv-Shaktis, and Hijras etc.*<sup>4</sup> This vibrant group has been an integral part of Indian society for centuries, with historical records demonstrating that the concept of a "third gender" was recognized in ancient Indian literature. The significance of the transgender community is also deeply intertwined with Hindu mythology. In the *Ramayana*, it is said that when Lord Rama embarked on his 14-year exile, he instructed his followers to return to their homes. However, the hijras chose to stay behind, displaying their unwavering devotion. Touched by their loyalty, Lord Rama granted them the special ability to bless auspicious occasions, including childbirths, weddings, and inaugurations. This tradition continues today, with hijras performing songs and dances during such celebrations.<sup>5</sup>

During the Mughal era,<sup>6</sup> transgender individuals enjoyed notable influence and were often entrusted with key positions in royal courts. Revered for their loyalty, intelligence, and discretion, they played significant roles in governance and administration. However, the arrival of British colonial rule in the 18th century marked a turning point, as colonial laws and prejudices led to the systematic marginalization and disenfranchisement of the transgender community, stripping them of their historical status and rights.

## **THE EROSION OF TRANSGENDER RIGHTS DURING THE COLONIAL ERA**

The British colonial authorities viewed the actions of transgender individuals as a form of sexual solicitation. In the 19th century, they passed Section 377 of the Indian Penal Code, 1860,<sup>7</sup> which criminalized all sexual acts outside of penile-vaginal intercourse. To erase the transgender

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<sup>4</sup> Alina Bradford, *What Does Transgender Mean*, available at: <https://www.livescience.com/54949-transgender-definition.html> (last visited Mar. 10, 2025).

<sup>5</sup> Michel Raj, *Historical Evolution of Transgender Community in India* (2015) 4(1) *Advances in Research in Social Sciences* (ARSS) 17, available at: <https://www.trp.org.in/wp-content/uploads/2015/10/ARSS-Vol.4-No.1-Jan-June-2015-pp.17-19.pdf> (last visited Mar. 10, 2025).

<sup>6</sup> Fokus Menschenrechte, *Living a Life of Exclusion: Being a Transgender in India*, available at: <https://fnst.org/sites/default/files/uploads/2017/11/20/focuahumanrights-rightsoftransgenderinindia-donajohn.pdf> (last visited Mar. 11, 2025).

<sup>7</sup> The Indian Penal Code, 1860 (Act No. 45 of 1860).



community from public view, the British enforced the *Criminal Tribes Act, 1871*,<sup>8</sup> which subjected the community to constant surveillance and control, labelling them as habitual offenders. Despite these harsh measures, the transgender community endured, managing to survive and retain their presence in society.<sup>9</sup>

## CONDITION OF TRANSGENDER AFTER INDEPENDENCE

After India gained independence, Prime Minister Jawaharlal Nehru repealed the Criminal Tribes Act of 1871, describing it as a stain on the Constitution. However, the government subsequently introduced the Habitual Offenders Act, which kept many provisions from the Criminal Tribes Act in place. Since independence, the transgender community has faced significant vulnerability due to the lack of legal recognition. This absence of official status prevented them from accessing social and economic benefits, as well as from participating in the political process, which requires valid identification. Over time, the community endured continued harassment and violence, driven by fears surrounding sexual and gender non-conformity. In 2014, the Supreme Court of India made a historical decision in *NALSA v. Union of India*,<sup>10</sup> recognizing transgender individuals as the "**third gender**" and instructing the government to implement social welfare schemes for their benefit. This ruling was widely celebrated by human rights activists globally. Furthermore, in *Navtej Singh Johar v. Union of India*,<sup>11</sup> the Supreme Court struck down parts of Section 377 of the Indian Penal Code, 1860, declaring them unconstitutional and decriminalizing consensual same-sex relationships between adults.

## **LEGISLATIONS FOR TRANSGENDERS RIGHTS IN INDIA**

The first national recognition for transgender individuals came in form of inclusion of category named as "others" during collecting of data during census of 2011. It may be said to be the first official recognition of gender aside from male and female. The 2011 census recorded 487,803 individuals who did not identify as male or female<sup>12</sup>.

## THE TRANSGENDER PERSONS BILL 2014

The first significant effort to recognize the rights of transgender individuals was made by

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<sup>8</sup> The Criminal Tribes Act, 1871 (Act No. 27 of 1871).

<sup>9</sup> Shruti Iyer, *The Third Gender and Indian Law – A Brief History*, available at: <https://blog.iplayers.in/the-third-gender-and-the-indian-law-a-brief-history/> (last visited Apr. 01, 2025).

<sup>10</sup> AIR 2014 SC 1863.

<sup>11</sup> AIR 2018 SC 4321.

<sup>12</sup> Office of the Registrar General & Census Commissioner, Census of India 2011, Ministry of Home Affairs, Government of India.

Tiruchi Siva, a Member of Parliament from the Dravida Munnetra Kazhagam party, who introduced the Transgender Persons Bill<sup>13</sup> in the Lok Sabha. Although the bill was unanimously passed by the Rajya Sabha, it was not taken up for discussion in the Lok Sabha.

#### KEY POINTS OF THE TRANSGENDER PERSONS BILL 2014

1. Offered solutions for violence and harassment;
2. Ensured rights including equality, the right to live with dignity, and freedom of expression in society.
3. Provisions for skill development and job opportunities to aid the rehabilitation and social security of transgender individuals;
4. Establishment of transgender commissions at both National and State levels, along with dedicated transgender rights courts.

#### THE TRANSGENDER PROTECTION BILL 2016

The Minister of Social Justice and Empowerment, introduced the Transgender Persons (Protection of Rights) Bill.<sup>14</sup> This Bill was introduced by Thaawarchand Gehlot. Although it encountered significant opposition and was referred to the Standing Committee for examination, the bill was ultimately passed in the Lok Sabha on December 17, 2018.

#### SALIENT FEATURES OF TRANSGENDER PROTECTION BILL 2016

1. The bill defines a transgender person as an individual who is partly male or female, neither male nor female, or whose gender identity differs from the one assigned at birth. This includes trans-women, trans-men, genderqueer individuals, and persons with intersex variations.
2. To exercise rights under this bill, transgender individuals must obtain a certificate of identity verifying their transgender status.
3. The authority to issue this certificate lies with the District Magistrate, based on the recommendations of a Screening Committee that includes a medical officer, a psychologist, the District Welfare Officer, and a representative from the transgender community.
4. The bill prohibits discrimination against transgender persons in areas such as

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<sup>13</sup> Rights of Transgender Persons Bill, 2014, Bill No. XLVII of 2014.

<sup>14</sup> Transgender Persons (Protection of Rights) Bill, 2016, Bill No. 210 of 2016.

healthcare, education, and employment. It also requires state governments to introduce welfare schemes aimed at supporting the transgender community.

5. Additionally, the bill imposes penalties of up to two years imprisonment and fines for offenses like forcing transgender individuals to beg or denying them access to public spaces.

The Transgender Persons (Protection of Rights) Bill, 2016, was widely opposed by the transgender community for violating their constitutional right to self-identification.

### THE TRANSGENDER PERSON (PROTECTION OF RIGHTS) ACT, 2019

On January 10, 2019, the Social Justice Ministry issued a notification bringing the *Transgender Persons (Protection of Rights) Act, 2019*<sup>15</sup> into effect. The Act was passed by Parliament on November 26, 2019, and received Presidential assent on December 5, 2019.<sup>16</sup> The Act aims to safeguard transgender individuals from discrimination by ensuring equitable access to essential services and fair treatment in various spheres, including healthcare, education, employment, public goods and facilities, freedom of movement, housing, participation in public and private office, and entry into government or private establishments.

### THE MAIN FEATURES OF THIS ACT

The Act defines transgender persons as individuals whose gender identity differs from the one assigned at birth, including trans-men, trans-women, genderqueer individuals, and persons with intersex variations.

1. It empowers the District Magistrate to issue a certificate of identity officially recognizing an individual as transgender.
2. The Act prohibits discrimination against transgender persons, ensuring equitable access to healthcare, education, employment, and public facilities.
3. It guarantees the right of transgender individuals to reside in a place of their choice.
4. The Act mandates the government to implement welfare schemes, such as vocational training programs and self-employment initiatives, to enhance their social and economic inclusion.
5. It requires the establishment of healthcare services for transgender persons, including HIV surveillance centre and facilities for sex reassignment surgeries.

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<sup>15</sup> The Transgender Persons (Protection of Rights), (Act No. 40 of 2019).

<sup>16</sup> Damini Nath, "Transgender Persons Act comes into effect," *The Hindu*, (January 11, 2020).



6. Offenses such as bonded labour and physical or sexual abuse against transgender individuals are criminalized, with penalties ranging from six months to two years imprisonment, along with fines.
7. Furthermore, the Act establishes the National Council for Transgender Persons to oversee the implementation of policies and legislation concerning the transgender community.

The Act, designed to address the needs of the transgender community, has left several issues unaddressed, leading to widespread criticism and protests from the community<sup>17</sup>.

### **LOOPHOLES OF THE TRANSGENDER PERSON (PROTECTION OF RIGHTS) ACT, 2019**

The legislation has several issues that need government attention. A major concern is that the Act was passed in the Rajya Sabha after just three days of debate, with no amendments or additions. Furthermore, it fails to respect the right to self-determination of identity, as upheld in the NALSA judgment<sup>18</sup>, which affirms that individuals have the right to self-identify as transgender. Instead, the Act grants the District Magistrate the authority to issue a Certificate of Identification, necessary to access benefits, which goes against the principles established by the judgment. If the District Magistrate refuses to issue the certificate, the Act lacks any provisions for a redress mechanism. The Transgender Bill, 2016 had included a provision for a screening committee to advise the District Magistrate to prevent misuse, but this provision was omitted in the Transgender Bill, 2019.

#### **RECOGNITION OF TRANSGENDER INDIVIDUALS UNDER CURRENT LAW**

Indian civil and criminal laws acknowledge only two genders: male and female. The Act does not specify whether transgender individuals would be classified under these categories<sup>19</sup>.

#### **NO PROVISION FOR RESERVATION FOR TRANSGENDER PERSONS**

The Act does not provide for reservations for transgender persons. The Transgender Persons Bill, 2014, proposed a 2% reservation for transgender individuals in government and

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<sup>17</sup> Rohan Venkata Ramakrishnan, 'Why India's Transgender People are Protesting Against a Bill that Claims to Protect Their Rights' (Scroll.in, 27 Nov. 2019) <https://scroll.in/article/944882/why-indias-transgender-people-are-protesting-against-a-bill-that-claims-to-protect-their-rights> (last visited Apr. 05, 2025).

<sup>18</sup> NALSA v. Union of India, AIR 2014 SC 1863.

<sup>19</sup> PRS Legislative Research, 'Issues for Consideration' (PRS India) <https://www.prsindia.org/node/842865/chapters-at-a-glance> (last visited Apr. 05, 2025).

government-aided schools at the primary, secondary, and higher education levels, as well as a 2% reservation in government jobs. Following the NALSA judgment, which deemed the transgender community socially and economically disadvantaged and called for reservations for them, several petitions were filed in various High Courts to enforce this provision. In the *Swapna v. Chief Secretary*<sup>20</sup> case, the Madras High Court instructed the state government to create a reservation scheme for transgender individuals within six months, but this has not been implemented to date.

### DOES NOT ACKNOWLEDGE SAME-SEX MARRIAGES

Although the decriminalization of Section 377 of the Indian Penal Code, 1860,<sup>21</sup> was a crucial step, it has not eliminated discrimination against homosexual couples. The pressing need now is for the legal recognition of same-sex marriages, an issue not addressed by the Act. One of the main reasons for legalizing same-sex marriages is to ensure access to benefits such as maintenance, succession, and pension rights, which are currently exclusive to married couples. Many same-sex couples seek both legal acknowledgment and social acceptance of their relationships<sup>22</sup>.

### THE PENALTIES FOR SEXUAL ABUSE AGAINST TRANSGENDER INDIVIDUALS ARE INSUFFICIENT

A 2012 report by the National Coalition of Violence Group found that transgender individuals are twice as likely to experience harassment and abuse in intimate relationship<sup>23</sup>. However, the Act currently stipulates a minimum sentence of just six months, with a maximum of two years and a fine. In comparison, the Indian Penal Code, 1860, prescribes a minimum of three years for assault or criminal force with the intent to disrobe a woman<sup>24</sup>. Given the history of sexual abuse and hardship faced by transgender individuals, the punishment should be increased to a minimum of three years, with a maximum of seven years in prison and a fine.

The rule of law dictates that laws should not impose unnecessary cognitive or behavioural burdens on individuals. They must be stable, responsive to societal needs, and consistent in

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<sup>20</sup> W.P. No. 31091 of 2013, decided on 5 July 2016 (Ker).

<sup>21</sup> The Indian Penal Code, 1860 (Act No. 45 of 1860).

<sup>22</sup> Mary L. Bonauto, 'Goodridge in Context' (2005) 40 Harvard Civil Rights-Civil Liberties Law Review 1.

<sup>23</sup> Darrick Ing and Tiffany Woods, 'Why Talking About Domestic Violence in the Transgender Community Matters, Transgender Law Centre' (Transgender Law Centre)

<https://transgenderlawcenter.org/archives/9392> (last visited Apr.06, 2025).

<sup>24</sup> The Indian Penal Code, 1860 (Act No. 45 of 1860), s.354 B.

addressing contradictions. The law should be consistent and solve the contradiction legally which may arise<sup>25</sup>. Unfortunately, the current law aimed at protecting the rights of transgender individuals fails to meet their needs adequately, imposing unreasonable restrictions that do not align with the community's realities and demands.

## **WORLDWIDE STATUS OF TRANSGENDER RIGHTS**

In 1980, the American Psychiatric Association passed a resolution removing “*homosexuality*” from the Diagnostic and Statistical Manual of Mental Disorders, acknowledging same-sex attraction as a natural variation of human sexuality. The Association opined that attraction towards the same – sex is a natural condition<sup>26</sup>. Since then, countries like Denmark, Argentina, and the United States have implemented progressive reforms in gender recognition. The current state of transgender rights in these nations is detailed below –

### **UNITED STATE OF AMERICA**

In *Lawrence v. Texas*,<sup>27</sup> the U.S. Supreme Court acknowledged an amicus curiae statement asserting that homosexuality and heterosexuality are inherent aspects of sexual identity. Transgender individuals in the United States are guaranteed civil and fundamental constitutional rights. In the United States, employers with more than 15 employees are legally prohibited from discriminating against individuals based on sex, gender identity, or sexual orientation.<sup>28</sup> Schools are mandated to prevent gender identity- based discrimination and ensure access to sex-segregated programs and facilities aligned with a student’s gender identity. Additionally, the Federal Fair Housing Act prohibits landlords from engaging in sex-based discrimination, with courts extending these protections to cover the LGBTQ community.<sup>29</sup> Compared to India, the United States has made more substantial progress in safeguarding transgender rights and ensuring their safety.

### **DENMARK**

In 2014, Denmark revised its Population Register, enabling individuals to update their gender

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<sup>25</sup> Naomi Choi, ‘Rule of Law’ (Encyclopaedia Britannica) <https://www.britannica.com/topic/rule-of-law> (last visited Apr. 06, 2025).

<sup>26</sup> Elliot Kozuch, ‘Today in 1973, the APA Removed Homosexuality from List of Mental Illnesses’ (Human Rights Campaign) <https://www.hrc.org/blog/flashbackfriday-today-in-1973-the-apa-removed-homosexuality-from-list-of-me> (last visited Apr. 06, 2025).

<sup>27</sup> 539 U.S. 558 (2003).

<sup>28</sup> Civil Rights Act of 1964, Title VII, 42 USC § 2000e et seq (1964).

<sup>29</sup> *Know Your Rights* <https://www.aclu.org/know-your-rights/lgbtq-rights/> (last visited Apr. 06, 2025).



identity on official documents through a straightforward administrative process.<sup>30</sup> In contrast to many countries that still require medical and psychological evaluations for gender status changes—an outdated approach to gender identity—Denmark took a progressive step by recognizing the right to self-identification.

## ARGENTINA

Argentina stands as one of the most progressive nations regarding LGBTQ rights, with a strong history of advocating for minority rights. In 2010, it became the first country in Latin America to legalize same-sex marriage,<sup>31</sup> resulting in over 15,000 marriages that year. Furthermore, Argentina enacted a Gender Identity Law, which granted the legal right to sex-change surgery.<sup>32</sup> This law enables transgender individuals to pursue gender-affirming surgery without the stigma of being labelled with a psychological disorder.<sup>33</sup> Although transgender individuals are increasingly gaining legal protections around the world, these laws have not fully eradicated the social stigma they still endure. Human Rights Watch reports that between January 1, 2008, and September 30, 2016,<sup>34</sup> 2,264 transgender people were killed globally. Much remains to be done to ensure the safety and uphold the rights of the transgender community worldwide.

## **THE PATH AHEAD**

A comparative analysis of the Indian Transgender Persons Act, 2019, with transgender legislation in Argentina, the USA, and Denmark reveals several deficiencies in the Act. It suggests that the Indian government needs to revise the entire legal framework for transgender rights. To align with the progressive measures implemented by other countries, several new provisions should be introduced. Below are the key recommendations for the Indian government –

## JOBS AND ACCOMMODATION

Companies such as KPMG, Infosys, and Accenture have implemented new policies to help transgender individuals enter the formal workforce. Startups like Perri Ferry are also

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<sup>30</sup> *Landmark Transgender Law enforced in Denmark* <https://www.equalrightstrust.org/news/landmark-transgender-law-enforced-denmark> (last visited Apr. 06, 2025).

<sup>31</sup> *Argentina approves Gay marriage, in a first for region* <https://www.nytimes.com/2010/07/16/world/americas/16argentina.html> (last visited Apr. 06, 2025).

<sup>32</sup> *Gender Identity Law, 2018* <https://tgeu.org/argentina-gender-identity-law> (last visited Apr. 06, 2025).

<sup>33</sup> *A look at Progressive LGBTQ rights in Argentina* <https://theculturetrip.com/south-america/argentina/articles/an-lgbtq-guide-to-living-in-argentina> (last visited Apr. 06, 2025).

<sup>34</sup> *Transgender 2016 Press Release* <https://tgeu.org/tdor-2016-press-release> (last visited Apr. 06, 2025).

contributing by creating job opportunities for the community. The Chief Operating Officer of Perri Ferry has estimated that only 5% of transgender people in India are employed.<sup>35</sup> A potential solution would be to introduce reservations for transgender individuals in both government and private sectors. Ensuring financial stability for transgender people would be a vital first step toward improving their overall well-being. Transgender individuals also face discrimination from landlords, leading to their social exclusion.<sup>36</sup> If this problem persists, many will be left with no option but to live on the streets. To address this, it is crucial to introduce a provision that explicitly forbids landlords from discriminating against transgender people.

#### REVISED EDUCATIONAL CURRICULAM

The Expert Committee advised the Ministry of Social Justice and Empowerment to make gender identity and sexuality education mandatory in schools. It is crucial to sensitize students and increase their awareness of the difficulties faced by transgender individuals. This will contribute to eliminating transphobia at the grassroots level. As such, the government should push for the inclusion of gender identity education in both public and private schools.

#### RECOGNISE SAME-SEX MARRIAGE

While consensual same-sex relations were decriminalized in 2018, same-sex marriage is still not legally recognized.<sup>37</sup> This leads to discrimination against transgender couples in areas such as property inheritance, adoption, and tax planning, creating a notable disparity in the rights afforded to heterosexual and homosexual couples.

#### STREAMLIND PROCEDURE FOR MODIFYING GENDER ON OFFICIAL RECORDS

Transgender individuals frequently encounter substantial harassment,<sup>38</sup> when trying to update their gender on official documents. The requirement to provide proof of sex reassignment surgery violates their right to self-identify. The government should implement a clear and

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<sup>35</sup> *India Inc opens door to transgender employees*

<https://economictimes.indiatimes.com/news/company/corporate-trends/india-inc-opens-doors-to-transgender-employees/articleshow/73237262.cms> (last visited Apr. 08, 2025).

<sup>36</sup> *Hunting for a home is not easy for transgender* <https://www.hindustantimes.com/real-estate/hunting-for-a-home-not-easy-for-transgenders/story-eKnNNU4ZYdlbCkPt0ZCtRM.html> (last visited Apr. 08, 2025).

<sup>37</sup> Shamyita Chakraborty, *Despite social marriage, gay couples still yearn for legal rights* <https://timesofindia.indiatimes.com/life-style/spotlight/is-gay-marriage-a-reality-in-india/articleshow/69928813.cms> (last visited Apr. 08, 2025).

<sup>38</sup> Nikhila Henry, *Gender change on paper turns nightmare for Transgender*

<https://www.thehindu.com/news/cities/Hyderabad/Gender-change-on-paper-turns-nightmare-for-transgenders/article13981945.ece> (last visited Apr. 11, 2025).

simple process for gender changes on official documents, free from unnecessary bureaucracy and delays.

### ENABLING TRANSGENDER PEOPLE TO LIVE TRUE TO THEIR IDENTITY

Studies demonstrate that social stigma related to gender nonconformity negatively impacts the health and well-being of transgender individuals.<sup>39</sup> Continuous social support and affirmation are essential for their mental and emotional well-being. Transgender individuals should have the freedom to make choices regarding their clothing, activities, and interests without fear of societal judgment or limitations.

### STATE FUNDING FOR SURGERIES INVOLVING SEX-REASSIGNMENT

Sex reassignment surgeries, especially in private hospitals,<sup>40</sup> are often prohibitively expensive, running into lakhs, and remain out of reach for many transgender individuals. As a result, many are forced to live constrained lives, unable to transition to the gender they identify with. The government should provide financial subsidies for these surgeries, enabling transgender people to achieve self-actualization and lead more fulfilling lives.

### STRICT PENALTIES FOR NEGLECTING TRANSGENDER PEOPLE

There is an urgent need for legislation that enforces stricter penalties for discrimination against transgender individuals. The severity of these penalties should act as a deterrent and establish a clear precedent. After more than a century of discrimination, the transgender community in India deserves this crucial step to ensure their protection and well-being.

In addition to these recommendations, the government must implement further measures, including ensuring fair treatment of transgender individuals in prisons and providing proper training to law enforcement on handling transgender issues with care and respect. The state has a heightened responsibility to recognize and safeguard the rights and identities of transgender people. Although these recommendations may not fully guarantee their rights and freedoms, they are vital first steps toward eradicating the social stigma faced by the transgender community.

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<sup>39</sup> *Adult development and Quality of life of Transgender and Gender Nonconformity People*  
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## **CONCLUSION**

After examining the shortcomings of the Transgender Persons Act, 2019, and evaluating the global perspective on transgender rights, it is clear that the Act contains significant flaws, highlighting the need for an urgent and thorough revision of the legislation. The Constitution of India guarantees equal rights for all individuals, regardless of sex or identity. The only people who are not happy with the Constitution are people who believe in outdated ideologies which leads to levelling down of entire nation.<sup>41</sup> Opposition to this principle comes only from those who cling to outdated ideologies that hinder the nation's advancement. India must adopt a more progressive approach toward transgender individuals and protect their constitutional rights as interpreted by the judiciary. The core purpose of legislation is to recognize and address the needs of the people.

As *Kelsen's Pure Theory of Law* posits, the validity of any legal norm is derived from a higher, overarching norm. In *Indra Nehru Gandhi v. Raj Narayan*,<sup>42</sup> the judiciary affirmed that all laws in India gain their legitimacy from the Constitution. Thus, it is crucial to uphold the Constitution's core values. The Transgender Persons Act, 2019, fails to align with these fundamental principles. The transgender community has long fought for their rights, and if the State does not meet its responsibilities to them, their struggle will persist for many more years. This will represent a serious violation of the right to freedom and life, as guaranteed by the Constitution.

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