

THE EVOLVING LEGAL LANDSCAPE OF GENDER IN INDIA: BIASES, RIGHTS AND THE ROAD AHEAD

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DOI: <https://doi.org/10.34293/shanlax.9789361634130.ch016>

Abstract

India's legal and social understanding of gender has undergone transformative shifts over the past decade. With courts and legislatures increasingly recognising gender diversity, many constitutional promises have begun taking tangible form. Yet, despite these advances, the lived experiences of transgender persons and even women and sexual minorities reveal a persistent mismatch between rights guaranteed in law and realities on the ground.

This article traces the country's key legal milestones, examines continuing socio-economic disparities, and outlines the urgent reforms needed to ensure dignity, equality and genuine inclusion for all gender identities.

Introduction

A Watershed Moment: Legal Recognition of the Third Gender

The Supreme Court's landmark decision in **NALSA v. Union of India (2014)** stands as one of the most progressive and transformative judgments in the history of Indian constitutional law. Through this ruling, the Court formally acknowledged transgender persons as a distinct "**third gender**," affirming that they are entitled to the full spectrum of fundamental rights guaranteed under the Constitution including dignity, equality, personal liberty, autonomy, and freedom of expression.

Significantly, the Court recognised that gender identity is an intrinsic aspect of personhood, rooted in an individual's psychological and personal sense of self rather than biological or medical criteria. This led to a crucial affirmation: the right to self-identify one's gender. In rejecting compulsory medical procedures, surgeries, or hormonal treatments as prerequisites for gender recognition, the Supreme Court placed India among the few nations globally to adopt such a progressive rights-based approach.

The 2019 Act: Legislative Progress with Practical Contradictions

In the years following NALSA, Parliament enacted the **Transgender Persons (Protection of Rights) Act, 2019**, accompanied by the Rules notified in 2020. The Act intended to consolidate protections against discrimination across key sectors such as: education, employment, healthcare, housing and public services, access to government schemes. It also sought to promote welfare measures through skill development, social security, and grievance-redressal mechanisms.

However, despite its stated intent, the Act introduced a procedural requirement that **contradicts the very essence of the NALSA judgment**.

Under the 2019 framework, transgender individuals must obtain a **District Magistrate issued identity certificate** in order to be legally recognised. In practice, this certification process has often involved: intrusive questioning by authorities, requirements of medical documentation, and in some cases, implicit or explicit demands for proof of gender-affirming surgery.

These procedural hurdles reintroduce the very medicalisation and bureaucratic gatekeeping that the Supreme Court had expressly rejected. They undermine the constitutional principle that gender identity is a matter of **self-declaration**, not state validation.

The Continuing Challenge

This tension between judicial recognition and legislative implementation remains one of the most significant obstacles faced by transgender persons today. While NALSA provided a rights-based, dignity-centred vision, the practical realities of the 2019 Act have resulted in: delays in obtaining identity documents, denial of access to welfare schemes, continued discrimination in employment and education, inconsistent practices across districts and states, and emotional and psychological distress caused by invasive certification procedures.

As a result, many transgender individuals continue to navigate a system where legal rights exist in theory but become difficult to access in practice. The need for harmonisation between constitutional principles and administrative procedures remains urgent.

Economic Marginalisation: A Persistent Systemic Barrier

Despite legal recognition, transgender persons remain structurally excluded from the formal economy. Limited access to identity documentation, widespread workplace bias, and lack of sensitisation push many into informal and often unsafe occupations such as begging, traditional community roles, or sex work.

As activist **A. Revathi** observes, even qualified transgender persons routinely face employment rejection due to entrenched prejudice. This exclusion is compounded by the near-absence of transgender individuals in leadership roles, resulting in workplace policies that fail to reflect lived experiences or needs.

Daily Challenges: Stigma, Violence, and Social Erasure

Beyond economic hurdles, transgender persons frequently encounter rejection, bullying, harassment, and violence. Many are forced to leave home early in life, losing familial and financial support. Public spaces often remain unsafe and discriminatory.

A study revealing that **79% of gay men and 44% of bisexual men** have faced verbal or physical violence indicates the broader culture of gender- and sexuality-based aggression in India.

Government Schemes: Promise, Progress, and Pitfalls

Several welfare initiatives including the **SMILE Scheme**, **Garima Greh** shelter homes, skill development programmes, and free gender-affirming surgeries in select states – represent meaningful steps forward.

However, these schemes often suffer from limited awareness, bureaucratic delays, inconsistent implementation across states, poor rural outreach, and inadequate monitoring.

In regions like **Kashmir**, social stigma, limited institutional infrastructure, and heightened vulnerabilities further restrict access to these benefits.

The Gender Paradox: Perceptions vs. Experience

A gap persists between public perception and actual lived experiences. While **23% of Indians** acknowledge discrimination against women, only **16% of women** report experiencing it firsthand revealing normalisation of gender-based inequality.

Even though a majority express support for gender equality, employment surveys show lingering patriarchal norms, especially during economic scarcity, where preference for male employees persists. Regional disparities remain stark, with southern states exhibiting more progressive gender attitudes compared to northern parts of India.

Human Voices: Lived Realities Demand Structural Change

Personal narratives from transgender individuals highlight urgent, systemic failures. Many recount humiliating encounters in hospitals, with one individual noting, *“Doctors need to be educated... we face humiliation even for basic care.”* In schools and colleges, bullying forces many to drop out, reflecting the lack of safe learning environments.

The demand for inclusive governance is captured in the powerful assertion: **“Nothing about us without us.”** Without meaningful representation, policies risk remaining detached from lived realities.

These voices underscore a crucial truth: legal recognition alone cannot eliminate structural discrimination. Genuine inclusion requires deep social transformation and institutional accountability.

Recent Legal Milestones & Judicial Directions

1. Jane Kaushik v. Union of India (2023–2025) – Supreme Court

In *Jane Kaushik* (judgment delivered October 17, 2025), the Supreme Court issued one of its strongest rebukes yet against governmental inaction. The Court held that reaffirmed NALSA’s self-identification principle, condemned bureaucratic hurdles that reduce rights to “paper guarantees, directed the Union and States to adopt time-bound, concrete policies based on reasonable accommodation, mandated expert committees to draft equal-opportunity frameworks, emphasised the urgent need to simplify access to identity documents, and granted compensation to the petitioner. This ruling marks a major shift from declaratory rights to enforceable policy mandates.

2. V. Vasanta Mogli v. State of Telangana (2023) – Telangana High Court

The Court struck down the draconian colonial **Telangana Eunuchs Act**, recognizing its criminalizing impact on gender-diverse communities. It also directed the state to expand welfare measures. This case reflects the judiciary's role in dismantling archaic laws and advancing affirmative inclusion.

3. Interconnected LGBTQ+ Jurisprudence

The Supreme Court's 2018 decision in **Navtej Singh Johar**, which decriminalized consensual same-sex relations, continues to shape gender and sexuality jurisprudence. By affirming dignity, equality, and privacy, the judgment laid strong constitutional foundations for subsequent gender-diversity protections.

What These Developments Mean in Practice

Together, these legal developments mark a significant shift from mere recognition to active enforcement of transgender rights in India. Courts are no longer satisfied with symbolic declarations and now demand that governments implement concrete, time-bound policies to operationalise these rights. A crucial aspect of this enforcement involves streamlining identity and documentation procedures to align with the constitutional principle of self-identification, ensuring that transgender persons are not subjected to intrusive medical requirements or bureaucratic gatekeeping practices repeatedly criticised by the judiciary for violating NALSA. Alongside this, the dismantling of archaic colonial-era laws, such as those recently struck down in Telangana, enhances the safety, dignity, and civic participation of gender-diverse communities by removing discriminatory legal barriers. Equally important is the need for inclusive workplaces, which must update recruitment forms, grievance mechanisms, and accommodation policies to reflect gender diversity and guarantee equal opportunity. Finally, as legal reforms impact traditional or community-based means of livelihood, governments bear a responsibility to safeguard economic security by providing alternative income-generating opportunities, skill development programmes, and targeted welfare support to prevent further marginalisation.

Conclusion: Bridging the Gap between Law and Life

India has undoubtedly made significant strides in recognising gender diversity, yet achieving true equality requires far more than legal reform; it demands sustained societal transformation and accountable implementation. A just and inclusive future depends on comprehensive awareness and sensitisation initiatives, strict enforcement of anti-discrimination laws, and the simplification of identity-documentation processes to uphold the right to self-identification. Equally essential are inclusive hiring practices, workplace policies that acknowledge gender diversity, economic empowerment measures that also protect traditional livelihoods, and healthcare and education systems that are both accessible and sensitised to the needs of transgender persons. Ensuring safe and affirming public spaces is also vital for enabling full participation in society.

Only when legal rights are matched by genuine social acceptance and when transgender individuals can exercise equal citizenship without fear will India truly advance toward meaningful and transformative gender justice.

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