

# Transgender Persons and The Right To Employment: A Constitutional Analysis in The Indian Context.

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**Abstract:** Transgender individuals in India suffer from systemic discrimination and exclusion in areas of education, healthcare, and notably employment, despite a range of constitutional protections that uphold their equality, dignity, and autonomy. The right to employment is one of the most essential socio-economic rights of empowerment and is very closely connected to the realization of Articles 14, 15, 16, 19(1)(a), and 21 of the Indian Constitution. On one hand, the gender identity jurisprudence has been gendered by the court decisions such as NALSA v. Union of India (2014), Puttaswamy v. Union of India (2017), and Navtej Singh Johar v. Union of India (2018). On the other hand, the gap between recognition from the law and the reality of the gender identity is still huge. This paper first re-examines the constitutional framework concerning transgender employment rights. It goes on to analyze the limitations of Transgender Persons (Protection of Rights) Act, 2019 and its 2020 Rules which have not provided a proper functioning of self-identification. Besides that, the Act does not prescribe the initiation of affirmative action nor does it provide for the enforcement of penalties in case of workplace discrimination. Firstly, socio-economic marginalization; secondly, administrative obstacles in the sphere of identity documentation; and lastly, continuous corporate and institutional prejudice against which people have to battle, all these make the formal employment sector inaccessible for the transgender community. Through a comparison with Nepal, Pakistan, and the United States, it becomes evident that the prerequisites for anti-discrimination laws that can be enforced, the simplification of gender-recognition procedures, and the provision of affirmative protections are indispensable. The study has an implication that real employment equality among the marginalized groups requires the enactment of comprehensive legal reforms, establishment of robust policy mechanisms, sensitization initiatives, and above all, substantive social transformation. Providing transgender persons with access to dignified and fair employment is not only a social welfare issue but also a constitutional obligation that lies at the core of India's democratic ethos and its pursuit of substantive equality and social justice

**Keywords:** Transgender rights; Employment discrimination; Constitutional law; Gender identity; Social justice

## Introduction

Transgender individuals in India are among the most historically disadvantaged groups, and they have been socially stigmatized, ignored by the law, and excluded from the economy. In the past, these groups were culturally recognized in South Asia as Hijras, Kinnars, Jogappas, Aravanis, and Shiv-Shaktis, and they have had a variety of social functions, i.e., from being the entertainers and ritual experts in religious ceremonies to being the rejected segments of society (Nanda, 1990; Sharma, 2013). However, both colonial and postcolonial legal systems scattered the transgender identities so thoroughly that these systems are responsible for the discrimination of which the transgender persons are victims and as a consequence, the latter have difficulties in getting an education, medical care, and particularly jobs (Michelraj, 2015; Chakrapani et al., 2017). The 2011 Census was the first one to count transgender persons and recorded a figure of about 487,803 people. Nevertheless, experts claim that this number is a very low estimate of the population, and that the real number is much larger, as most of the transgender persons are not willing to disclose their identity due to the fear of being mistreated and that they are living in a society which does not accept them (Mishra & Negi, 2021; Poteat & Scheim, 2016).

Employment is a basic human right that is closely associated with human dignity, autonomy, and socio-economic security (ILO, 2016; United Nations, 1948). For the transgender community, employment is more than just a way of life; it is a means to regain their identity, lessen their exposure to risks, and experience the constitutional blessings of equality and dignity. Nevertheless, real-world research consistently reveals that the transgender community in India faces an unjustifiably high rate of unemployment, experiences harassment in the workplace, and is left out of skill development while being socially and economically marginalized (Chakrapani et al., 2015; Sineath et al., 2016). Consequently, a considerable number of transgender individuals are forced into unstable or unregulated jobs such as begging, sex work, and ritual performances, i.e., activities that not only stigmatize them more but also widen the gap between them and the society (Singh & McKleroy, 2011).

This paper is a comprehensive constitutional analysis of the right to employment of transgender individuals in India. It looks into the constitutional rights guaranteed by Articles 14, 15, 16, 19(1)(a), and 21; analyses the court decisions such as *NALSA v. Union of India* (2014), *Puttaswamy v. Union of India* (2017), and *Navtej Singh Johar v. Union of India* (2018); reviews the Transgender Persons (Protection of Rights) Act, 2019; and assesses the policy gaps that hinder the employment of the transgender people. The review takes doctrinal constitutional analysis as its primary method and also uses socio-legal frameworks, policy documents, empirical studies, international human rights instruments, and scholarly literature as its secondary data sources to reach a multidimensional understanding of the topic of transgender employment rights in the Indian context.

Worldwide, the Yogyakarta Principles (2007; 2017), ICCPR, ICESCR, and UN General Assembly resolutions are important frameworks that recognize the rights to equality, non-discrimination, and gender identity self-determination. These principles have considerably influenced Indian jurisprudence, especially in the aspects of the recognition of gender identity and the holding of anti-discrimination obligations. The constitutional courts of India have gradually been pointing out more and more that the gender identity issue is a category that is addressed by the right to equality and dignity (Khanna, 2022). In spite of these improvements, realities on the ground reveal that the gaps between legal rights and social practices still persist. Employment discrimination is mainly caused by the social stigma that permeates the society, the lack of proper policy implementation, absence of ways to enforce the laws, and institutional prejudices (Winter et al., 2016).

Although the enactment of the Transgender Persons (Protection of Rights) Act, 2019, represented progress, it has been criticized for procedural difficulties such as compulsory certification and lack of provisions for affirmative action. Academicians opine that real equality of employment would entail having in place structural reforms, sensitization initiatives, corporate inclusion frameworks, and reservation policies (Dutta, 2020; Bhattacharya et al., 2022). This paper aligns these topics with the larger constitutional pledge to social justice that finds its reflection in the Directive Principles of State Policy,

which envisage the removal of disparities and the promotion of the downtrodden's welfare. In the end, this part prepares an outline for gauging a more in-depth investigation of legal safeguards and obstacles transgender individuals encounter when trying to exercise their employment rights as shown in table.1. Employment inclusion, being more than just a legal issue, changes the very nature of society and, therefore, calls for a joint commitment by the state, judiciary, private sector, and society at large to make it happen.

**Table 1: Key Challenges Affecting Transgender Persons' Access to Employment in India**

Category of Barrier	Description	Impact on Employment
<b>Social Stigma</b>	Prejudice, ridicule, family rejection	Limits job opportunities; discourages formal sector participation
<b>Educational Exclusion</b>	Bullying, dropouts, lack of inclusive schools	Reduces access to skill development; limits employability
<b>Workplace Discrimination</b>	Bias in hiring, harassment, lack of policies	High unemployment; hostile work environments
<b>Legal and Administrative Barriers</b>	Certification hurdles, ID mismatches	Prevents access to government schemes and formal jobs
<b>Economic Marginalization</b>	Poverty, lack of resources	Forces individuals into informal or unsafe occupations

## UNDERSTANDING GENDER IDENTITY IN THE INDIAN LEGAL FRAMEWORK

The idea of gender identity in laws and jurisprudence of India has changed and adapted a lot after being influenced by the very old Indian cultural roots, the colonial period, the post-colonial international human rights scenario, and the recent judicial interventions. Indian society in its very ancient past used to consider the genders to be beyond human male or female and had words for them such as tritiya prakriti (third nature), Hijras, Jogappas, Aravanis, and Shiv-Shaktis each of which represented a different gender identity (Nanda, 1990; Sharma, 2013). Furthermore, Indian Ancient texts such as the Kamasutra and epics like the Mahabharata and Ramayana not only acknowledged gender variance but also incorporated them deeply into the societal fabric (Michelraj, 2015). Nevertheless, the colonial administrations imposed strict gender norms, declared the transgender identities as pathological, and legalized the discriminations against them by laws, for example, the Criminal Tribes Act, which made the Hijra communities criminal and deprived them of their traditional socio-economic roles (Aggarwal, 2020). Now, several different terms are used to define different gender issues that eventually lead to the transgender rights being considered under the law and the constitution.

Sex is the term that defines the biological aspects of the body such as chromosomes and reproductive organs, whereas gender is the set of social roles, behavior, and identity of the person. Gender identity is an individual's absolute or inner idea of being male, female, both or neither, and sometimes it can be a divergence from the assigned sex at birth. Gender Expression refers to the external features like the dress, speech, and behavior. Knowing these differences is a must for legal safeguards because they are discriminated against as a result of the society which regulates gender expression but

not the sexual behavior (Winter et al., 2016). Transgender are people and these include but are not limited to Hijras, trans men, trans women, intersex individuals, and those who identify as non-binary or genderqueer (Khanna, 2022). Such a wide range calls for a legal measure that is comprehensive in recognizing gender identification as a person's own choice rather than a set of categories.'

The change of the law to recognize the existences of transgender people in India moved forward at the beginning of the twenty-first century. Before the intervention of the judiciary, transgender people were in a legal vacuum, meaning that they were not explicitly mentioned, protected, or recognized. A landmark occasion was the *NALSA v. Union of India* (2014) decision, where the Supreme Court declared the self-identification of gender as one of the basic rights under the rights to dignity, equality, and freedom of expression. The Court found gender identity to be the core of individual freedom, writing, "The recognition of one's gender identity is most closely related to the fundamental right to dignity." Consequently, the court identified transgender people as "a socially and educationally backward class," thereby urging the government to provide quotas, welfare, and schemes. This verdict brought Indian law in line with international human rights norms and became one of the most groundbreaking rulings regarding gender identity in the world.

India's reconsidered stand on gender issue from a legal point of view, has been largely determined by worldwide human rights norms and principles. The Yogyakarta Principles (2007) and Yogyakarta Principles plus 10 (2017) make it clear that every human is entitled to the same universal rights regardless of gender identity or gender expression. Principle 3 stresses that legal recognition should not be contingent upon medical or surgical interventions, whereas Principle 12 highlights the right to work without facing discrimination. Equally, the UN resolutions on sexual orientation and gender identity (2011, 2016) call for the elimination of any kind of violence, discrimination against, and in general, the marginalization of LGBTQ+ individuals in all aspects of public life in all countries. India's constitutional courts have recognized these international norms as the basis for interpreting and understanding fundamental rights (Knight, 2016; Marks, 2006).

The secrets to the eradication of poverty in the transgender community are uncovered by UN agencies through their various studies. This community also suffers from low literacy rates, fewer job opportunities, is more vulnerable to violence, and has poor access to healthcare (UNDP, 2010; UNESCO, 2014). These discoveries call for the introduction of laws that guarantee rights that are based on the principles of dignity, equality, and the absence of discrimination. Take for instance the case of UNESCO (2014), which reported that the dropout rates among transgender students in South Asia were very high due to offensive language and gender-related violence at school, which in turn drastically limits their future chances of getting a job. In a contrastive manner, UNDP reports draw attention to the fact that the discrimination that occurs in identity documentation, workplace policies, and housing leads to the perpetuation of the cycle of marginalization.

Although there is a progressive gender-related law interpretation, still some gaps remain. For instance, the Transgender Persons (Protection of Rights) Act, 2019, which was passed to give practical effect to the rights, has been condemned for stipulating that certification has to be mandatory by the district authorities, thus going against the self-identification principle of *NALSA*. This requirement for an administrative procedure may lead to the reinforcement of gender identity as something that is medical and bureaucratic by nature, thereby permitting the state to be more intrusive (Bhattacharya et al., 2022). Further, the absence of clear reservation policy and of implementation measures makes the Act's effect on employment rights severely limited. Consequently, the issue of legal acknowledgment of gender in India is still in a state of flux giving constitutional interpretation advances but statutory implementation setbacks.

In brief, the conception of gender as a legal issue in the Indian context is a multi-layered affair that invokes historical recognition, doctrinal clarity, international influence, and judicial activism. Indian constitutionalism is on the right path to recognizing gender as a diversity issue and thus an integral part of human dignity. However, legislative gaps and societal mindset still lurk in the shadows and continue to affect the employment of transgender persons. To really include them, there has to be a move from just acknowledging them to giving them real equal rights and making the necessary structural changes.

**Table 2: Key International Instruments Influencing Gender Identity Protections**

<b>Instrument</b>	<b>Year</b>	<b>Relevant Principles/Articles</b>	<b>Impact on Indian Jurisprudence</b>
Universal Declaration of Human Rights	1948	Articles 1, 2, 7	Basis for equality and dignity jurisprudence
ICCPR	1966	Articles 2, 26	Expands anti-discrimination to gender identity
ICESCR	1966	Article 6 (Right to Work)	Reinforces employment rights without discrimination
Yogyakarta Principles	2007	Principles 2, 3, 12	Influenced <i>NALSA</i> on self-identification
Yogyakarta Principles +10	2017	Principles 30–32	Strengthened gender expression protections
UN SOGI Resolution	2016	Anti-violence mandates	Reinforces obligation to prevent discrimination

### 3. CONSTITUTIONAL PROVISIONS RELEVANT TO EMPLOYMENT RIGHTS

The Indian Constitution is very much conducive to the rights of transgenders, in fact, it goes even beyond the transgenders' expectations in aspects like equality, dignity, free speech, and the right to work. The Constitution was established in 1950 when the concept of gender identity was not known, but its general provisions of equal rights and non-discrimination have made it possible for the courts to interpret it progressively so that transgender persons are recognized as beneficiaries of constitutional protection. So far, the Court has recognized the Constitution as a living law that should be in accordance with new changing concepts of the individual, rights, and human dignity (Khanna, 2022; Sharma, 2013).

#### A. Equality and Non-discrimination

Article 14 is the one that ensures "equality before the law" and "equal protection of the laws" to all people, not only citizens. Because of this universality, courts have been able to interpret "persons" as including transgender individuals. Equality does not only require formal parity but also substantive measures to break down systemic disadvantage. In view of the discrimination that is deeply rooted in the society against transgender persons, substantive equality therefore requires to be given priority in employment and education. The Supreme Court in *NALSA v. Union of India* (2014) recognized that Articles 14 and 21 should be read broadly to extend protection to gender identity.

Article 15 forbids discrimination based on "religion, race, caste, sex, or place of birth." The meaning of "sex" has been interpreted by the courts to go beyond biological categories and to include gender identity. Consequently, discrimination against transgender persons is the same as discrimination on the basis of sex. Article 15(4) and Article 15(5) allow the government to make provision for certain groups of people who are socially and educationally backward and to take measures of affirmative action for the transgender community.

Article 16 is the one which guarantees the same opportunities for everyone in public employment and prohibits the occurrence of discrimination in government services. Transgender persons have had a very low participation rate in the formal workforce, this has been further aggravated by identity-document mismatches, educational exclusion, and workplace harassment. Thus, Article 16 is a constitutional provision that calls for inclusiveness in hiring, reservations, and sensitization programs within government departments. However, as a result of the lack of explicit reservation policies under the Transgender Persons (Protection of Rights) Act, 2019, the issue of neglect of the transgender community remains a significant problem.

## B. Fundamental Rights Ensuring Dignity

Article 19(1)(a) of the Indian Constitution guarantees freedom of speech and expression, which the Supreme Court has understood to mean freedom of gender expression as well. This security encompasses the changes in clothing, mannerisms, names, pronouns and any other aspects of identity. Court interference with the right of a transgender person to gender presentation is a violation of Article 19, unless it is justified by reasonable restrictions. The most significant part of the gender-identity legal system is Article 21 - the constitutional right to life and personal liberty. The Supreme Court has time and again declared that dignity, privacy, autonomy and bodily integrity are the basic features of Article 21 (*Puttaswamy v. Union of India*, 2017). Gender identity is the core of personal autonomy, thus its recognition is a must by the Constitution. Article 21 also incorporates the right to livelihood thus employment being linked with dignity. Hence, refusal to employ a person because of their gender identity is a dual violation of equality and the right to live with dignity.

## C. Directive Principles of State Policy (DPSPs)

Even though they are non-justiciable, the Directive Principles set out the commitment of the state to facilitate social justice and equality. Articles 38 and 39 require the state to reduce inequalities and provide a decent living to all the citizens. Article 41 provides that work, education, and help in the case of unemployment must be given. Article 46 is an agreement between the state and the people to encourage the educational and economic development of the socially backward classes, as demonstrated in table.3. These directives, in conjunction with the fundamental rights, empower the implementation of affirmative action programs for the transgender community. The courts have, on their part, increasingly relied on DPSPs to read fundamental rights in a way that promotes social justice.

### Constitutional Gaps and the Need for Structural Reform

Even after the implementation of the constitution, transgender people are still encountering various systemic problems that include discrimination in hiring processes and lack of harassment in workplaces and lack of affirmative action enforcement. Although the judiciary has classified transgender people as a socially and educationally backward class, the branches of the legislature and the executive have not yet institutionalized the policies of reservation. Besides that, the 2019 Transgender Act has no provisions for the enforcement of anti-discrimination, thus, giving the least utilization of the constitutional protections. An analysis of the constitution shows that the inclusion of employment in a meaningful way does not require merely declaratory rights but also operational mechanisms, structures of accountability, and intersectional approaches that deal with caste, class, religion, and disability.

**Table 3: Key Constitutional Provisions Relevant to Transgender Employment Rights**

Provision	Scope	Application to Transgender Rights
<b>Article 14</b>	Equality before law	Protects against discrimination; mandates equal treatment
<b>Article 15</b>	Prohibition of discrimination	Includes gender identity; allows affirmative action
<b>Article 16</b>	Equality in public employment	Prevents hiring bias; supports reservations
<b>Article 19(1)(a)</b>	Freedom of expression	Protects gender expression and identity
<b>Article 21</b>	Right to life and dignity	Affirms gender autonomy; includes livelihood
<b>Articles 38–46</b>	Directive Principles	Promote social justice; basis for welfare and reservations

## LANDMARK JUDICIAL DEVELOPMENTS

The changes of transgender rights in India are largely dependent on the significant judicial changes that merged the Constitution interpretation to recognize dignity, equality, and freedom of gender-diverse individuals. Indian courts have been instrumental in shaping the legal principles which acknowledge gender identity as the most basic feature of human beings. Here we look at the major Supreme Court and High Court rulings, which have been a turning point for the legal system, especially in relation to the rights at work illustrated in table.4.

### **A. *NALSA v. Union of India* (2014)**

The NALSA judgment is the landmark case that establishes the basis for transgender rights law in India. It was the Supreme Court, for the first time, which recognized transgender persons as a "third gender," thus confirming that the right to self-identification is a fundamental right of dignity and personal autonomy. The Court found the gender identity to be under the protective umbrella of Articles 14, 15, 16, 19(1)(a), and 21. It also said that non-recognition of transgender identities amounts to discrimination on the basis of sex.

One of the most significant things about the Court's decision was that it ordered the government to consider transgender persons as a "socially and educationally backward class" so that they can get reservations in educational institutions and public employment. This instruction, in a very explicit way, linked constitutional equality with the socio-economic measures of a substantive kind. The Court's verdict also has provisions for welfare schemes, easy access to healthcare, making separate toilets in the public sector, and sensitization programs for employers.

NALSA has a worldwide impact because it made self-identification the most important thing and not a medical or surgical requirement, thus bringing Indian law in line with the Yogyakarta Principles. Among other things, it contested the binary gender norms and therefore issues of employment rights can be legally argued in the future.

### **B. *Justice K.S. Puttaswamy v. Union of India* (2017)**

The nine-judge bench in Puttaswamy came to a unanimous decision that the right to privacy is a fundamental right under Article 21. While the judgment did not directly deal with gender identity, the court's ruling has a major impact on the rights of transgender people. The Court held that privacy means freedom of choice, control over one's body, and personal identity. By accepting that gender and sexual orientation are matters of privacy, Puttaswamy has made it easier for NALSA to be upheld through a stronger constitutional backing for self-identification.

The Court held that the state cannot require the individual to be in conformity with gender norms. This, therefore, means that transgender persons can be better protected against the disclosure of their medical history by privacy rights if they want to look for a job in which they will be required to undergo a medical examination, and also they will not be subjected to body examinations being forcibly conducted or the issuance of identity documents in which they are required to verify themselves in an invasive way.

### **C. *Navtej Singh Johar v. Union of India* (2018)**

In the Navtej case, the Supreme Court of India invalidated Section 377 of the Indian Penal Code insofar as it made consensual same-sex relations a criminal offense. The court's decision recognized only one aspect of the sexual orientation, but the court's reasoning in the constitutional framework of dignity, equality, and non-discrimination for the LGBTQ+ community, in general, including the transgender individuals, has been extended.

The Court declared that constitutional morality should govern social morality and that the Constitution safeguards the rights of minorities even if the majorities of society show hostility. This rule is very important for employment rights of transgender people: discriminatory hiring practices, which

are "public sentiment" driven, are illegal. Moreover, Navtej reminded that gender identity and sexual orientation are biologically normal human characteristics, thus, the employment stigma exclusion has been further undermined.

#### D. High Court Contributions

Several High Courts have lowered the bar for transgender rights through various local state initiatives, most notably in the area of inclusion at the workplace.

The Madras High Court not only recognized a trans woman's right to be appointed a police constable through its multiple liberal rulings but also directed the authorities to allow gender self-identification without medical certification. The Court has laid emphasis on employer sensitization and the implementation of anti-discrimination policies without fail.

The Kerala High Court, through its rulings, *inter alia*, affirmed the right of a trans woman to study and seek a job and it also ordered educational institutes and workplaces to formulate and implement inclusion policies. After getting judicial guidance, Kerala has also emerged as one of the first states to promulgate a policy for transgender people.

The Delhi High Court, among others, has recognized employment discrimination complaints and has been instrumental in enforcing constitutional obligations aimed at the establishment of gender-neutral workspaces.

These judicial interventions in unison reinforce that the equal treatment of personnel of different sexes is not a matter of discretionary power but a constitutional requirement. They remind us that courts serve as a correctional mechanism in the event that the legislature and the executive fail to discharge their constitutional obligations.

#### Judicial Landscape and Remaining Challenges

Notwithstanding the progressive legal principles, there are quite a few gaps in the actual implementation of the provisions. The reservations prescribed in NALSA have not been fully realized. Gender certification requirements which are especially problematic in terms of bureaucratic hurdles not only obstruct the implementation of NALSA but also Puttaswamy. The reasons for the most part of discrimination against such groups as the transgender community in workplaces are due to the lack of enforcement of the law.

The judicial activism have resulted in a solid constitutional framework, however, they alone cannot bring to life the legislative compliance, the administrative reforms and the societal sensitization that are necessary for a true transformation. Without these, it is possible to argue that the landmark judgements might be just symbolic rather than being truly transformative.

**Table 4: Major Judicial Developments Shaping Transgender Employment Rights**

Case	Year	Key Contributions	Impact on Employment Rights
<i>NALSA v. Union of India</i>	2014	Recognized third gender; self-identification; reservations	Enabled affirmative action; mandated workplace inclusion
<i>Puttaswamy v. Union of India</i>	2017	Affirmed privacy and autonomy	Protected gender identity decisions; limited intrusive hiring practices
<i>Navtej Singh Johar</i>	2018	Decriminalized same-sex relations	Strengthened dignity; eliminated criminal stigma affecting hiring
Madras High Court rulings	2015–2021	Anti-discrimination directives; inclusive hiring	Improved access to state employment; sensitization mandates

Kerala High Court rulings	2016–2021	Protected education and employment rights	and Encouraged state-level inclusive policies
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## LEGISLATIVE AND POLICY FRAMEWORK

The legislative and policy framework in India that regulates the rights of transgender people has become more and more comprehensive over the last ten years. The changes have been led by court directives, conforming to international human rights standards, and the rising social awareness. However, as a result of these contradictions, there are still substantial discrepancies that are reflected in the table.5 between the enactment and the execution of these laws, mainly regarding the area of employment. The present chapter is a study of the Act, the Transgender Persons (Protection of Rights) Act, 2019, the linked 2020 Rules, and different state-level policies to weigh their advantages and disadvantages.

### A. Transgender Persons (Protection of Rights) Act, 2019

The Transgender Persons (Protection of Rights) Act, 2019 is the first legislative piece of India at the national level that is devoted to the protection of the transgender persons. The act aims to protect the community and facilitate their access to welfare opportunities. It bans discrimination in education, employment, healthcare, housing, public services, and government subsidies. Thus, employers, whether private or public, are required not to discriminate against the recruits during recruitment, promotion, and working conditions. Nevertheless, the Act is under a wide-spread criticism for weakening the self-identification notion which is one of the rights acknowledged by the NALSA judgment. The Act, in fact, mentions "self-perceived gender identity," yet it also insists on the production of a certificate of identity from the District Magistrate. This certificate can only be issued once a screening committee certifies the person - the committee includes medical officers, psychologists, and bureaucratic officials. If a transgender person wants to change the identity card to male or female (not "transgender"), the Act requires that he/she show evidence of sex-reassignment surgery.

These provisions are at odds with constitutional jurisprudence which supports bodily autonomy and negates the need for medical prerequisites for gender identification. Besides, they set up administrative hurdles which make it difficult for transgender persons to obtain identity cards, indispensable for getting a job. The differences in implementation from one district to another worsen the problems of delays, discrimination, and lack of procedural justice. The legislation also omits the establishment of a reservation quota for public employment thus going against the Supreme Court verdict that transgender persons be treated as a socially and educationally backward class. The application of affirmative action is a precondition of the structural disadvantages of the community like low literacy rate, insufficient income, stigmatization, and exclusion from skill-providing platforms. They, therefore, will remain largely unaddressed.

### B. Transgender Persons (Protection of Rights) Rules, 2020

To implement the Act, the 2020 Rules were introduced and they provide procedural guidance. However, apart from the procedural guidance, the 2020 Rules also introduce new challenges. For example, they permit online applications for identity certificates, which is a step towards simplification, but still, the requirement of district-level screening is kept, thus there is still bureaucratic gatekeeping.

According to the Rules, every public or private establishment has to appoint a complaint officer to whom discrimination issues will be addressed. Employers are required to keep records of grievances and submit compliance reports. If implemented efficiently, this could be a very powerful tool, but presently, enforcement is very weak. The Rules do not provide for penalties in case of non-compliance and they do not propose independent oversight. Hence, employers may disregard their obligations without facing any consequences.

In addition, the Rules have no instruction regarding the holding of sensitization programs in the workplace, establishment of gender-neutral facilities, or recruitment outreach initiatives. Without these, employment inclusion is only a tokenistic representation of the identity rather than real. There are still many transgender persons who face various kinds of harassment, misgendering, and are excluded from the hiring process, which in turn lowers the effectiveness of the Act in the area of employment equality.

### **C. State-Level Policies and Welfare Programs**

Several Indian states have been successful in formulating transgender-friendly policies. Many of these policies were implemented even before the 2019 Act came into being. They signify the milestones accomplished by states but differ greatly in their scope, adherence to the principles of the Constitution, and efficiency of the implementation process.

#### **Kerala**

In 2015, Kerala took the lead in the Indian states by introducing a comprehensive transgender policy. As per the policy, gender-affirming surgeries in public hospitals are free of cost, the government provides housing through schemes, offers scholarships, and conducts employment training. Besides, Kerala has facilitated both a Transgender Justice Board and a Transgender Cell, the first of their kind in India. The government, however, continues to face difficulties in increasing transgender employment and stigma that has existed for a long time.

#### **Tamil Nadu**

The story of the welfare of the transgender community in Tamil Nadu goes far back, as it established the first Transgender Welfare Board in 2008. The state currently provides free sex reassignment surgeries in government hospitals, issues identity cards, and grants reservations in specific welfare schemes. The Social Welfare Department has been conducting training programs that have enabled the transgender persons to be vocationally skilled and thus employed in different sectors. On the contrary, very few private-sector companies are engaging in this.

#### **Karnataka**

Karnataka made history as the first Indian state to implement 1% horizontal reservation for transgender individuals in public employment in 2021, a milestone move in alignment with the NALSA's directive. The government has also started the housing and pension schemes; however, the bureaucratic hurdles still make it difficult for the applicants to gain access.

While these state policies signify the significant break-throughs, their implementation is inconsistent, and there is no uniformity throughout the country. A considerable number of states are devoid of any regulations that tackle issues related to work, social security, health care, and protection against discrimination. Besides, the majority of policies fail to embrace the concept of intersectionality which means that they do not consider the combined effect of factors like caste, religion, or disability that thereby affect transgender persons more than others.

**Table 5: Summary of Key Legislative and Policy Provisions**

Law/Policy	Strengths	Weaknesses	Impact on Employment
<b>Transgender Persons Act, 2019</b>	Prohibits discrimination; mandates complaint officers	Forced certification, no reservations	Limited inclusion; procedural barriers
<b>Rules, 2020</b>	Clarifies procedures; requires grievance officers	Weak enforcement; no penalties	Poor employer compliance
<b>Kerala Policy (2015)</b>	Inclusive healthcare and schemes	Limited job-placement outcomes	Moderate improvement
<b>Tamil Nadu Welfare Board</b>	Early leadership; skill development programs	Private-sector gaps	Partial enhancement
<b>Karnataka Reservation (2021)</b>	First state to mandate reservations	Implementation challenges	Significant potential impact

## RIGHT TO EMPLOYMENT: CURRENT STATUS AND CHALLENGES

Even though the constitution is being interpreted in a more progressive manner and new policy frameworks are being developed, transgender persons in India are still facing severe exclusion from the formal labor market. Job opportunities have been one of the most enduring problems in which discrimination has been experienced, and this discrimination has been influenced by social stigma, lack of proper institutional mechanisms, and structural inequalities. The section here is about the issues that have three different aspects: the ones coming from society/ economy, those coming from institutions, and finally, those at the level of the workplace.

### A. Socio-economic Barriers

Transgender individuals in India are subjected to multiple socio-economic barriers that affect them from childhood and generally spiral down further with time. Most often, the discrimination against them is within the family itself, where the gender nonconformity may result in physical abuse, being deserted, or coercion into forced conformity. This kind of repudiation makes many transgender kids to end up living on the streets or being dependent on community-based structures of kinship like the transgender families which, although they may be considered as a source of support, are still recognized as being marginalized by the mainstream society.

One of the major factors that still keep transgender persons from being employed is educational exclusion. Transgender students experience bullying, harassment, and a lack of gender-affirming environment, and these factors contribute to low education levels among them. According to reports by UNESCO, transgender students in South Asia are at risk of school-based violence more than anywhere else in the world. This schooling disadvantage limits the access to higher education and skill development, thus young people cannot compete in the formal job market.

Moreover, the disparities in health issues make the problems of getting employment even more difficult. Transgender persons frequently have the least access to gender-affirming healthcare and are the most exposed to mental illnesses such as depression, anxiety, and post-traumatic stress disorder; besides that, they have a higher risk of contracting sexually transmitted infections. The discrimination which they face in healthcare makes the majority of them reluctant to visit public hospitals where they go only in case of emergency and so, they have to pay too much for services in private clinics thus putting themselves at risk of economic insecurity. These socio-economic challenges have resulted in the cycle of transgender communities being pushed into vulnerable forms of livelihood such as sex work, begging, and ritual performances, i.e., unprotected, stigmatized, and economically unstable sectors.

## **B. Institutional Barriers**

Discrimination in institutions in terms of identity documentation, recruitment systems, government employment schemes, and welfare programs is still prevalent. One of the most important obstacles is the mismatch of gender identity with official documents such as Aadhaar, PAN, voter ID, and educational certificates. These mismatches, in most cases, bring about rejection at recruitment, inaccessibility of government benefits, and harassment by the bureaucracy. The District Magistrate certification requirement under the 2019 Transgender Act just adds to these difficulties.

The absence of affirmative action is another very big problem. Even though the Supreme Court NALSA judgment has recognized the transgender community as socially and educationally backward and thus eligible for reservations in public employment, such reservations have not been introduced at the national level. Without structural changes, transgender persons will be on the losing side of the competition, which is already biased due to the intersections of caste, class, and gender.

Transgender persons' participation in government-funded skill development programs is very low. Most schemes are not inclusive in their outreach, lack gender-neutral facilities, and have staff that are not sensitized, all of which act as deterrents to transgender applicants. Besides that, grievance redressal mechanisms as per the Transgender Rules, 2020 are not properly implemented, hence, transgender workers in the absence of an effective remedy, continue to face discrimination in the workplace.

One more example of institutional apathy is the lack of a comprehensive anti-discrimination law. Although the Transgender Act provides for non-discrimination, it does not contain any punitive measures for violation of this provision, thereby making these rights largely theoretical rather than practical. This loophole enables employers in the public as well as private sectors to continue discriminating against workers without facing any consequences.

## **C. Workplace Policies and Corporate Inclusion**

Corporate and institutional workplaces are the most common places where transgender employees might feel that the environment is not welcoming them, maybe even hostile, exclusionary, or indifferent. Generally, this is due to the lack of the sensitization of the employees and that is why among other things, employees misgender other colleagues, they harass them, and socially isolate them. A big majority of employers lack knowledge of transgender rights and a few of them are reluctant to hire a transgender person as they think that such an employee will not be a "cultural fit," the clients will have negative reactions and there will be a lack of facilities that are inclusive.

While a handful of mostly multinational corporations and a few large Indian firms have implemented Diversity, Equity, and Inclusion (DEI) policies, the overall outcome has remained minimal. Certain industries such as retail, information technology, hospitality, and beauty have taken steps to employ transgender people, but such measures are still isolated and not enough to make a change at the systemic level.

Moreover, the lack of gender-neutral restrooms, inclusive dress codes, and health insurance policies that provide coverage for gender-affirming care are challenges that the transgender community faces. Due to the absence of institutional support, transgender employees are often in the closet, which has a negative impact on their mental health and lowers their productivity. Corporate inclusion efforts, without structural changes that normalize the presence of transgender people in the workplace, run the risk of being only superficial or tokenistic.

In order to facilitate the growth of inclusive hiring practices, quality sensitization programs, which must be mandated, leadership accountability, and industry-wide frameworks are some of the necessary conditions. The public sector enterprises, which are the largest employers, are the ones that should be in the forefront in setting the example for the creation of inclusive recruitment guidelines as the transformation in the private sector usually comes after the government's lead.

**Table 6: Major Barriers Affecting Transgender Employment in India**

<b>Barrier Category</b>	<b>Description</b>	<b>Impact on Employment Access</b>
<b>Social Stigma</b>	Family rejection, public harassment, cultural biases	Limits education, mobility, and confidence
<b>Educational Exclusion</b>	Bullying and unsafe school environments	High dropout rates; low employability
<b>Healthcare Inequities</b>	Limited gender-affirming care; discrimination	Reduces workforce participation
<b>ID Documentation Issues</b>	Mismatched gender markers; bureaucratic delays	Recruitment rejection; access barriers
<b>Lack of Reservations</b>	No affirmative action at national level	Structural inequality in job competition
<b>Weak Enforcement</b>	No penalties for discrimination	Employers remain unaccountable
<b>Workplace Bias</b>	Misgendering, harassment, lack of facilities	High turnover; psychological distress

## COMPARATIVE CONSTITUTIONAL PERSPECTIVES

Comparative constitutional analysis is instrumental in understanding the different ways the rights of transgender individuals are respected and recognized in various jurisdictions. This is especially true in the areas of employment, equality, and recognition of gender identity. The study of legal changes in the three countries - Nepal, Pakistan, and the United States - shows not only the shared problems but also the novel solutions that could guide the Indian government in drafting its policies. Although the scenarios in terms of culture, law, and institutions vary, these comparisons help to find ways to reinforce the constitutional and legislative framework of India.

### A. Nepal

Nepal is often referred to as one of the most forward-looking South Asian countries concerning transgender rights. The Supreme Court of Nepal in *Pant v. Nepal Government* (2007) made a landmark decision that the state should recognize a third gender category legally and ensure that sexual and gender minorities have the same rights as others. The Constitution of Nepal 2015, in fact, is one of the very few constitutions worldwide that explicitly ban discrimination based on gender identity and sexual orientation.

Nepal has allowed for a third-gender option in the case of identity cards, passports, and other national documents without the necessity of any medical certificate. This, in turn, makes it easier for the transgender community to gain access to the job market, education, and government welfare schemes as the number of bureaucratic hurdles is reduced. On the other hand, the labor laws of the country also stress the issue of non-discrimination in the workplace and make it mandatory that the sector be included in employment initiatives. Nevertheless, as stigma against the community is still widely present, and thus, the community is only very little actually included in the formal employment sector. However, Nepal's constitution is very clear, and the administration is very simple, offering great lessons for India, particularly concerning self-identification and documentation.

## **B. Pakistan**

Pakistan's stance on transgender rights, firstly, has been impacted by judicial activism and, secondly, by legislative innovation. The Supreme Court of Pakistan in its various rulings between 2009 and 2012 acknowledged the transgender community as a third gender, thus, extending the official recognition by the state. This recognition stressed the subjects of non-discrimination, voting rights, inheritance, and also access to welfare schemes.

The major breakthrough was the passage of the Transgender Persons (Protection of Rights) Act, 2018, which ranks among the world's most progressive transgender laws. The Act permits a transgender individual to identify oneself without undergoing a surgery, medical examination, or obtaining approval from the screening committees. It also assures the transgender community access to education, healthcare, and employment on an equal basis with others, and specifies that employers are not allowed to discriminate against employees.

The law also provides for safe workplaces and the government agencies are directed to take measures for economic welfare. Pakistan's approach is quite consistent with global human rights norms, especially the Yogyakarta Principles, though, the practice is still somewhat scattered. Still, Pakistan's focus on self-identification, anti-discrimination measures, and affirmative rights as a comparative advantage is uncovering the gaps in India's 2019 Transgender Act.

## **C. United States**

The USA is a good example of what a constitutional democracy with strong equality laws looks like. The laws relating to gender identity in the US are mainly based on civil rights legislation, in particular on Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment "because of sex".

In a landmark case, the Supreme Court in *Bostock v. Clayton County* (2020) decided that discrimination based on gender identity or sexual orientation is discrimination based on sex within the meaning of Title VII. As a result, transgender persons have been granted employment protections throughout the country in both the public and private sectors; hence, it is illegal that they are refused a job, fired, or harassed only because of their gender identity.

Besides the constitutional guarantees, a number of states in the USA have passed anti-discrimination laws which not only cover gender identity but also that of sexual minorities. Employers have to carry out inclusion strategies, provide the same benefits, and create safe places for work. Nevertheless, there are still problems because of non-uniform state laws, politicization, and absence of complete federal protections besides Title VII.

The example of the United States shows how court decisions can result in broadened labor rights even without explicit legislative reforms. The way this court decision stresses employer responsibility through court actions, fines, and control by authorities is very similar to the methods India could use to deepen enforcement.

## **D. Lessons for India**

When India's framework is compared with that of Nepal, Pakistan, and the United States, it reveals common issues and lessons that can be put into practice:

1. Self-identification should be at the core of the process. Nepal and Pakistan provide gender recognition without requiring medical or bureaucratic documentation. The process of India's certification goes against this norm and thus, makes it difficult for the transgender community to access the job sector.

2. The presence of clear anti-discrimination laws help in the enforcement of these laws. The U.S. Title VII model is a good example that employer accountability is the main driver of change. India's Transgender Act has no clear provisions for penalizing the perpetrators of discrimination, as a result,

the workplace remains a discriminatory environment.

3. Affirmative action is the only way to achieve real equality. Nepal's constitutional provision and Pakistan's welfare schemes are examples of the recognition of the social and economic disadvantages that come from the different backgrounds. The lack of reservation policies in India is still a very important issue.

4. The good documentation system is a very important tool in enabling different groups to realize their rights and reduce bureaucratic exclusion. The smooth administrative system like in Nepal helps the transgender community to have access to jobs, banking, and government services.

5. Understanding and acceptance of the community are still challenges for all the countries.

All the jurisdictions, irrespective of their legal progress, have to deal with social prejudices. Changes in law should go hand in hand with strategies for social transformation.

**Table 7: Comparative Overview of Transgender Employment Rights**

Country	Legal Recognition Model	Employment Protections	Strengths	Limitations
<b>Nepal</b>	Self-identification; third gender in Constitution	Anti-discrimination norms; inclusive documents	Progressive constitutional clarity	Limited enforcement capacity
<b>Pakistan</b>	Self-identification under 2018 Act	Comprehensive anti-discrimination rules	Strong legislative protection	Social stigma and uneven implementation
<b>United States</b>	Judicial interpretation (Bostock)	Title VII protections; employer accountability	Strong enforcement and penalties	Inconsistent state-level policies
<b>India</b>	Recognition with certification process	Anti-discrimination law with weak penalties	Constitutional jurisprudence is strong	Administrative barriers; lack of reservations

## RECOMMENDATIONS AND WAY FORWARD

Ensuring the right to work for transgender people in India entails a multidimensional strategy that not only conforms to the principles enshrined in the Constitution but also encompasses reforms at the structural level, amendments to the legislature, accountability of the administration, and socio-cultural changes. In spite of the favorable court decisions and the gradual policy innovations, the significant participation is still limited due to the discrimination deeply rooted in the system and the resistance of the institutions. Therefore, this part presents broad-spectrum suggestions that can be grouped into three categories: legal reforms, policy changes, and socio-cultural transformation - each of them being indispensable for the achievement of real equality.

### A. Legal Reforms

#### 1. Strengthening Anti-Discrimination Laws

The Transgender Persons (Protection of Rights) Act, 2019 aims to prohibit discrimination but lacks provisions for the imposition of penalties. It is necessary to reinforce the Act by passing amendments that introduce practicable punishable cases of discriminatory hiring, harassment, firing without cause, and denial of the use of workplace facilities. The act will become more accountable with clearer timelines for grievance redressal, employer liability, and supervision of an independent statutory authority.

## 2. Reservation Policies in Education and Employment

It is very important to establish horizontal reservations for transgender people both in education and public employment in line with the NALSA judgment. The 1% transgender reservation in Karnataka is a local initiative that can be extended to the entire country. Reservations would be a way to equalize the systemic dis-advantages that come from the stigma that has been the history, educational exclusion, and socio-economic marginalization.

## 3. Reforming the Gender Certification Process

The present certification process, requiring evaluation by district authorities, is at odds with constitutional jurisprudence and international best practices. India should adopt a gender self-identification model that is easy, accessible, and has no medical or bureaucratic requirements. The administrative entities (Aadhaar, PAN, passports, educational certificates) should provide for easy changing of gender markers.

## 4. Strengthening Judicial Oversight

The judiciary should supervise the executive branch in the implementation of NALSA instructions, especially regarding reservations, welfare, and anti-discrimination activities. High courts may create committees of transgender rights to scrutinize periodically the fulfillment of constitutional mandates.

### B. Policy Measures

#### 1. Essential Inclusion Policies for Employers

**It must be a requirement for all public and private employers to have transgender-inclusive policies that at least address:**

**Non-discrimination in hiring and promotion**

**Use of gender-neutral facilities (restrooms, dress codes)**

**Confidential handling of personal data**

**Insurance that covers all staff (gender-affirming care)**

**Staff mandatory sensitization training**

**The adherence to such policies should be overseen by the departments of labor, and it should be provided that breaches attract sanctions.**

#### 2. Skill Development and Economic Empowerment

Government ministries, especially the Ministry of Skill Development & Entrepreneurship, should create skill training programs that are transgender-focused in various sectors like IT, retail, beauty, hospitality, arts, and entrepreneurship. Transgender entrepreneurs should be given scholarships, start-up grants, and subsidized loans to help them grow their business.

Vocational training centers need to adopt gender-inclusive practices in order to prevent discrimination and thus, ensure that transgender persons have access to capacity-building initiatives to enhance their skills.

#### 3. Public Sector Hiring Mandates

Along with the public sector undertakings (PSUs), central and state governments should implement hiring policies that target the inclusion of the transgender community. These are similar to diversity quotas used in other jurisdictions. Transparent reporting mechanisms can track the progress

of inclusion initiatives.

#### 4. Housing, Social Security, and Welfare Linkages

Employment inclusion cannot be separated from the housing stability and access to welfare. Governments should:

- Develop housing projects for the transgender community
- Coordinate the transgender-specific social security pensions
- Launch universal healthcare that includes gender-affirming surgery
- Provide shelters where transgender youth can be safe

Welfare linkages would be instrumental in lessening the vulnerability of the transgender community and therefore, would be a great support in the long-term workforce engagement.

### C. Socio-cultural Transformation

#### 1. Nationwide Awareness Campaigns

Coherent campaigns against stereotypes and fake news regarding gender identity must be a joint work of government agencies, academic institutions, the media, and the civil society. Besides urban areas, these activities should go to rural communities, where, because of the lack of contact and information, stigmatization is even more present.

#### 2. Role of Media and Civil Society

The media has great influence over what people think. One of the most significant steps in this respect is the respectful and accurate representation of transgender persons in the media (movies, TV, and news). In addition, civil society organizations through outreach, legal literacy, and discrimination reporting can be the main forces driving this change.

#### 3. Educational Reform

Educational institutions both at the school and university levels have to make gender sensitization programs, anti-bullying policies, and inclusive curricula a part of their system. The creation of secure educational spaces will lead to the reduction of dropout rates as well as the better employability of learners in the long run.

#### 4. Community Participation in Policymaking

At the levels of national, state, and local government transgender persons should be the members of decision-making bodies. Their experiences are the main source of information for the formulation of laws that are not only tokens of inclusion but also a real change in power structure.

**Table 8: Key Recommendations for Strengthening Transgender Employment Inclusion**

Area of Reform	Recommendation	Expected Impact
<b>Legal Reforms</b>	Penalize discrimination; adopt self-identification; implement reservations	Stronger accountability; reduced barriers
<b>Employment Policies</b>	Inclusive hiring policies; gender-neutral facilities	Improved workplace safety and retention
<b>Skill Development</b>	Targeted training programs; financial support	Enhanced employability and entrepreneurship
<b>Public Sector Mandates</b>	Hiring goals; transparent monitoring	Increased representation in government jobs
<b>Social Transformation</b>	Awareness campaigns; inclusive media	Reduced stigma and stronger societal acceptance

## CONCLUSION:

The constitutional ideals of equality, dignity, and liberty require that transgender individuals in India have full and real access to employment. Still, the communal living of this group shows a continued systemic exclusion.

Regardless of the Supreme Court's landmark rulings in *NALSA v. Union of India* (2014), *Puttaswamy v. Union of India* (2017) and *Navtej Singh Johar v. Union of India* (2018), which, when taken together, recognized gender identity as the core of one's freedom and personhood, the discrimination against transgender individuals in employment is so dominant that it has been there for a long time. The right to work is not only an economic necessity but also a constitutional implication of the rights to dignity (Article 21), equality (Articles 14–16), and freedom of expression (Article 19). When transgender people are deprived of job opportunities or are pushed into unstable forms of work, the constitutional dream of a society that is both inclusive and egalitarian is, in essence, destroyed. The ongoing disparities depict a glaring gap between legal recognition and social implementation.

The passage of the Transgender Persons (Protection of Rights) Act, 2019 represented India's first legislative endeavor to tackle discrimination that is deeply ingrained in the system; however, the Act is not enough to fully put into effect the constitutional mandate. The district authorities' certification requirement is against the identification by the person himself and sets up procedural obstacles that, disproportionately, affect the access to employment and welfare. A lack of provision for explicit affirmative measures further lowers the Act's potential to be a revolutionary one. Without the introduction of reservation in public employment, transgender persons, the group that faces social, historical, and educational disadvantages, will continue to be at a structural disadvantage and will have limited access to the labor market. Besides that, the weak enforcement of the rules allows employers to escape from being held responsible for unfair practices, and this is why the constitutional provisions are barely put into practice.

The social and economic exclusion of transgender persons only makes the legal drawbacks more significant. Rejection by the family, going through education but being left out, discrimination in accessing healthcare, and lack of social security are all factors that lead to a vicious cycle of disadvantages that limit the employability of transgender persons. The truth is that most workplaces are either not ready or do not want to implement inclusive policies, and as a result, the environment may be hostile, unsafe, or the employees might be ignored. These circumstances serve as proof that the inclusion which is talked about in the courts or through giving visibility to the issue is not enough but rather a system reform across all the branches is needed.

Looking comparatively, it can be concluded that places like Nepal, Pakistan, and the United States have developed more sound and enforceable protective measures especially in regards to self-identification and anti-discrimination enforcement. These foreign models show that having a clear law, easy administration, and the accountability of the employer are the main ingredients of real equality. India can learn a lot from these structures to improve her own way.

In the end, the transgender persons' right to work ought to be seen as one of the fundamental mechanisms of human rights and democratic participation. To guarantee equality in the workplace is not only a welfare issue but a crucial constitutional duty which stems from social justice. The presence of factors such as inclusive legal reforms, institutional accountability, affirmative action, workplace sensitization, and societal transformation is what makes it possible to go from the gap between constitutional ideals and lived experiences. When transgender people have the possibility to work freely, safely, and equally in each and every area, India will be commemorating her constitutional vision of justice, equality, and dignity for all

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