

Equality and Identity: Examining the Socio-Legal Status of Third Gender in India

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Abstract: The socio-legal status of the third gender in India shows positive legal progress, but social acceptance remains limited. An important reform came with the Supreme Court judgment in *National Legal Services Authority v. Union of India* (2014), which officially recognized transgender people as a “third gender.” The Court stated that transgender persons have the same fundamental rights as others under Articles 14, 15, 16, 19, and 21 of the Constitution. It also clearly said that a person has the right to decide their own gender identity and that this right is closely linked to dignity, freedom, and personal choice. The Court further directed the government to introduce welfare schemes and provide reservations in education and employment, considering the long-term discrimination faced by transgender communities. In light of the Supreme Court judgement, the government enacted the Transgender Persons (Protection of Rights) Act, 2019. This law aims to prevent discrimination against transgender persons in areas such as education, jobs, healthcare, housing, and public services. It recognizes self-identified gender, provides a system for issuing identity certificates, and establishes a National Council to look after transgender welfare. However, many problems still remain. Socially, transgender communities such as hijras and kinnars have been part of Indian culture for centuries and are often linked to religious and ceremonial traditions. Yet, in everyday life, most transgender persons face rejection from their families, discrimination in society, and lack of job opportunities. Many are denied education, healthcare, and safe housing, forcing them into poverty and social isolation. Negative attitudes, lack of awareness, and insensitive behavior by institutions further worsen their situation. Although India has taken important steps to legally recognize and protect the rights of the third gender, real equality has not yet been achieved. Laws alone are not enough. There is a strong need for better implementation, public awareness, education, and acceptance so that transgender persons can live with dignity, respect, and equal opportunities in society. The present research paper undertakes a comprehensive socio-legal analysis of the status of the third gender in India by synthesizing secondary data from multiple credible sources.

Keywords: Third Gender, Gender Justice, NALSA Judgment, Constitutional Rights, Social Inclusion.

1. Introduction

Gender diversity has existed and been a part of Indian society since ancient times. In today’s India, people who do not identify themselves as male or female are often referred to as the “third gender.” This group includes transgender people, hijras, intersex individuals, and non-binary people and it also includes people from LGBTQ.

Although awareness about gender rights has increased in recent years, third gender people in India still face many difficulties. These include lack of legal recognition, social discrimination, limited access to education and healthcare, and poor employment opportunities. This study aims to examine both the legal position and social realities of third gender persons in India, highlighting the progress made and the challenges that still remain.

2. Historical and Cultural Context

India has an old history about recognizing the third gender people.

Ancient Indian scriptures such as the Vedas, the Mahabharata, and the Kama Sutra have mentioned people who did not fit into the particular male–female gender categories. These texts show us more flexible understanding of gender in early in the earlier times.

The hijra community has existed for centuries and traditionally played roles in religious rituals, celebrations, and cultural performances. However, during the colonial period, British laws and Victorian moral values led to the criminalization and social exclusion of these communities. This stigma continued even after independence.

3. Legal Recognition of Third Gender in India

A. Constitutional Framework

The Constitution of India guarantees fundamental rights to all citizens, including third gender persons. These include:

Article 14: Equality before law

Article 15: Prohibition of discrimination on the grounds of sex

Article 19: Freedom of expression

Article 21: Right to life and personal liberty

These provisions form the legal basis for protecting the rights of third gender individuals.

B. *NALSA v. Union of India* (2014)

In the landmark and historical case *National Legal Services Authority v. Union of India* (2014), the Supreme Court officially recognized transgender persons as a “third gender.” The Court held that gender identity is an essential part of personal dignity and liberty under Article 21.

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The judgment directed both central and state governments to provide legal recognition, prevent discrimination, and introduce welfare measures in areas such as education, employment, healthcare, and social security. This decision was a major step forward for third gender rights in India.

4. Transgender Persons (Protection of Rights) Act, 2019

The Transgender people (Protection of Rights) Act, 2019 aims to protect transgender persons from discrimination and promote their welfare. It provides a legal definition of transgender persons and prohibits discrimination in education, employment, healthcare, and public services.

However, the Act has been criticized for complicated procedures for legal recognition, limited punishment for discrimination, and lack of effective enforcement mechanisms.

5. Socio-Economic Challenges

A. Discrimination and Social Stigma

Third gender individuals often face discrimination and harassment in schools, workplaces, hospitals, and public spaces. Social stigma leads to mental stress, isolation, and loss of self-esteem, making it difficult for them to live with dignity and respect.

B. Healthcare Challenges

Many third gender persons do not receive proper healthcare due to lack of trained medical professionals and gender-sensitive services. They often face denial of treatment, mental health issues caused by discrimination, and limited access to gender-affirming healthcare.

C. Employment and Economic Insecurity

Due to widespread discrimination, many third gender people are denied the general and formal employment. As a result, they are often forced to depend on informal work, begging, or sex work, which increases their vulnerability and exposes them to exploitation, abuse and dangerous diseases like HIV and other STDs. Due to low literacy rates which is 46% as per the 2011 census and discrimination in hiring processes, most of the transgender people have limited employment opportunities which forces them to get indulged into a low-income jobs, such as begging or sex work.

D. Education Barriers

Bullying, discrimination, and lack of supportive environments cause many third gender students to drop out of school early. This limits their opportunities for higher education and stable employment.

6. Legal Protections and Policies

A. Anti-Discrimination Measures

The Constitution and the NALSA judgment clearly prohibited the discrimination against third gender persons. Some states have also initiated the welfare schemes, reservations, and financial assistance programs, though their implementation remains a big question.

B. Government Initiatives

The government has launched schemes related to skill development, housing, healthcare, and financial inclusion for transgender persons. However, many of these programs are very slow and poor in implementation and often fail to reach those who genuinely need those.

C. Case Law and Judicial Trends

Apart from the NALSA judgment, Indian courts have addressed issues related to changing gender identity in official documents, protection from harassment, and access to welfare benefits. Courts have consistently emphasized on the importance of their dignity, individuality, and equality for third gender persons, although effective enforcement is still lacking.

D. Assessment of the Current Situation

1) Achievements

- Legal recognition of the third gender.
- Constitution gives the rights of protection of third gender.
- Increased awareness through judicial decisions.
- Social acceptance by the younger generation is increasing, gradually.

2) Ongoing Challenges

- Slow and poor implementation of laws and policies.
- Social discrimination and violence.
- Limited access to education and healthcare facilities.
- Financial insecurity.
- Complicated administrative procedures.

E. Recommendations

To improve the socio-legal status of third gender people in our country, we should be following the steps recommended here:

- Make the legal gender recognition through self-declaration simple.
- Strengthen enforcement of anti-discrimination laws.
- Introduce gender-sensitivity/empathy education in schools and colleges.
- Improve access to inclusive and affordable healthcare for everyone.
- Generate and promote employment opportunities and skill development.
- Run public awareness campaigns to reduce the taboo and stigma.

7. Conclusion

The legal recognition of the third gender in India marks an important step toward equality and justice. However, laws alone are not enough. Real change requires effective implementation, social acceptance, and economic inclusion. An effort in solidarity by the government, judiciary, civil society, and the public is a need of an hour to ensure that the third gender people can live with all the respect, equality and respect they deserve like others.

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