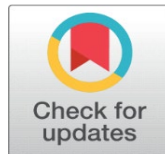
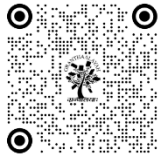


# STUDY ON PROHIBITION OF DISCRIMINATION AGAINST HUMAN RIGHTS OF THIRD GENDER: WITH SPECIAL REFERENCE OF TPPR ACT BY INDIAN PARLIAMENT IN 2019

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## ABSTRACT

Transgender is an encompassing phrase that refers to individuals whose gender identification diverges from the sex assigned to them at birth. People frequently use "trans" as an abbreviation for transgender. This study aims to analyse the prohibition and discrimination against human rights of third gender with the special references of TPPR act. This research examines the problems faced by transgender in India, International and National initiatives regarding rights of third gender and discussed the legislative and legal perspective of third gender in India through TPPR, NALSA act and case studies. This research concludes that India seeks gender justice, with transgender people seeking legislative reform to empower them. Political and public interest organisations should integrate gender sensitivity into legislative reforms, and governments should promote the "third gender" and transgender acceptance. They should also engage with NGOs to enrol transgender kids in elementary and secondary schools.

**Keywords:** Human Rights, Third Gender, Judiciary, Legislative, TPPR Etc

## 1. INTRODUCTION

Third-gender or transgender persons are those who generally see a discord between their assigned sex at birth and their intrinsic gender identity. An individual designated female at birth who identifies as male is called a trans man, whereas a person designated male at birth who identifies as female is referred to as a trans woman. Thus, this population is neither male nor female but embodies traits of both genders. Various local designations, including hijras, Kinnars, Shiv-Shaktis, and Aradhis, also denote them. Presently, the term "transgender" has broadened to include individuals whose identities and behaviours deviate from conventional gender norms [1]. The transgender population has been present in practically all nations, groups, and civilisations since antiquity; yet, they were often viewed as mere property, commonly enduring humiliation, abuse, and violence, and being denied basic human rights. The transgender community's absence of public acceptability leads to their deprivation of equality rights under Article 14 and the right to life under Article 21 of the Constitution. The nation's top court has always protected this vulnerable part of society; yet, the persistent negative mindset and societal attitudes towards this population are substantial issues that require correction.

## 2. PROBLEMS FACED BY TRANSGENDER IN INDIA

In India, third gender individuals encounter a multitude of challenges, including social ostracism, economic discrimination, unemployment, insufficient educational resources, homelessness, inadequate access to medical services such as HIV care and hygiene, mental health issues such as depression, abuse of hormone medications, and the misuse of tobacco and alcohol [2]. Additionally, they face significant obstacles pertaining to marriage and adoption. The transgender community is regarded as a legal non-entity, which constitutes a violation of Articles 14, 15, 16, and 21 of the Indian Constitution.

The third gender community faces significant challenges due to familial denial. The majority of families do not endorse behaviours exhibited by their masculine children that are perceived as feminine or inconsistent with traditional gender roles. Parents may resort to threats, reprimands, or even physical aggression toward their son or sibling for deviating from the established gender norms of society. This situation may result in social disgrace, reduced prospects for their child's future marriage to a woman, and a perceived incapacity to provide for the family. Transgender women may encounter difficulties in asserting their entitlement to property or inheriting assets that are legally rightfully theirs [3].

Harassment and stigma continue to afflict the LGBT community, rooted in more than a century of being labelled as mentally ill, socially deviant, and sexually predatory. This stigma manifests in multiple contexts, rendering individuals susceptible to lawmakers who seek to exploit anti-transgender sentiments for political gain, as well as to family members, friends, or colleagues who may reject transgender individuals upon discovering their identities. Additionally, it exposes them to harassment, bullying, and acts of severe violence perpetrated against transgender individuals [4].

Discrimination commences when individuals become aware of their gender identity, resulting in pervasive bias during employment searches, lodging opportunities, and within public environments. They do not receive recognition for adhering to societal norms, leading to the denial of the same privileges as other citizens. Individuals identifying as third-gender are prohibited from accessing formal education, often resorting to begging and prostitution for sustenance, which further entrenches societal prejudices against them. They are frequently perceived as beggars in both train stations and marriage, as they lack alternative means of livelihood [5].

Third gender individuals encounter considerable obstacles in their daily existence, encompassing restricted employment prospects, inadequate access to restrooms and public facilities, as well as discrimination within correctional institutions, healthcare facilities, and educational environments. Numerous employers reject qualified and competent transgender individuals, resulting in many opting for or persisting in sex work. Third-gender individuals frequently experience psychological distress as a result of stigmatization, discrimination, and harassment. The majority of individuals manage this by seeking support from family and friends, engaging with transgender organizations, and becoming involved in social networks. Nevertheless, numerous younger transgender individuals confront these challenges in the absence of support, resulting in elevated instances of homophobic abuse within educational institutions, as well as both physical and verbal assaults. This adversely affects their mental health, resulting in considerable levels of psychological distress, self-harm, and suicidal ideation [6].

Third-gender adolescents may experience significant isolation while navigating their sexual orientation or gender identity in the absence of adequate support. Individuals who identify as transgender often encounter greater challenges in rural areas when it comes to being open about their identity. This is because open expression in any context increases the likelihood that their community, family, and friends will learn about their status. This may result in profound feelings of sorrow, anxiety, loneliness, unease in social contexts, and a sense of being overwhelmed [7].

Mental disorders should not be regarded as manifestations of sexual orientation; rather, they are indicative of discrimination and the apprehension associated with such discrimination. The TG community experiences higher rates of anxiety, mood and substance use disorders, and suicidal ideation among individuals aged 15 to 54. Factors that may adversely affect mental health encompass hostility from family members or religious organizations, bullying within educational institutions, harassment by neighbours, casual homophobic and trans phobic remarks, prejudiced or dismissive reactions from professionals, insufficient safeguards against discrimination in employment, housing, and pensions, as well as experiences of childhood sexual abuse and verbal harassment [8].

Third-gender individuals in India encounter a multitude of challenges, including social discrimination, harassment, and violence. As per the 2011 census, around 4.9 lakh third genders in the country encounter such issues. Violence and

discrimination, often at the hands of law enforcement officials, disproportionately affect the TG community. In recent years, police brutality has been documented toward TG persons in India, with many police departments accused of insensitivity. A study conducted in Mumbai revealed that the majority of hijras encounter various health issues, experience harassment, face unlawful penalties, endure sexual abuse, suffer from violence, and are subjected to the deprivation of their human rights. Law enforcement personnel, encompassing both traffic and railway police, have been designated as perpetrators of violence and misconduct [9].

A survey conducted by the Swati Health Resource Centre revealed that instances of sexual violence may commence as early as the age of five, with individuals between the ages of 11 and 15 identified as the most susceptible demographic. The most common forms of violence were emotional, followed by physical assault and sexual violence. A study conducted by the National Institute of Epidemiology, which surveyed 60,000 transgender individuals across 17 states, revealed that the primary perpetrators of violence against transgender people were police and law enforcement authorities. Third-gender individuals frequently encounter oppression at the hands of law enforcement, which may resort to intimidation, extortion, and the refusal to register First Information Reports (FIRs). They also perpetrate acts of verbal abuse against men, employing obscene language, physically assaulting them, and subjecting them to sexual exploitation. These issues emphasize the imperative need for improved policies and practices to address the disproportionate impact of violence on the TG community [10].

### 3. INTERNATIONAL RIGHTS ON THIRD GENDER

India has ratified both the UN Declaration of Human Rights and the International Covenant on Civil and Political Rights, 1966 [11]. Both accords provide equitable treatment for all individuals, including transgender persons.

Article 1[12] of the Universal Declaration of Human Rights (UDHR) states, "All human beings are born free and equal in dignity and rights."

Article 6 of the Declaration, in conjunction with Article 16 of the International Covenant on Civil and Political Rights, grants every individual the right to legal recognition as a person.

Article 17 of the Covenant stipulates, "No individual shall be subjected to arbitrary or unlawful interference with their privacy, family, home, or correspondence, nor to unlawful assaults on their integrity and reputation." [13]

### 4. NATIONAL RIGHTS ON THIRD GENDER

The Constitution of India guarantees the rights of all citizens, including transgender individuals, to justice as well as social, economic, and political equality. Nevertheless, the Indian state has persistently denied these privileges, adhering to policies that have historically recognized only two genders: male and female. This has culminated in the infringement of various rights, including the right to vote, to marry, to own property, and to acquire formal identification via a passport. Moreover, the infringement upon essential liberties such as education, employment, and healthcare persists.

The Constitution of India encompasses Article 14, which ensures that all individuals residing within the territory of India are afforded equality before the law and equal protection under the law. Article 15 makes it clear that discrimination based on religion, race, sect, or sex is illegal. This means that people of the third gender are included in its protections. Article 16 pertains to the principle of equal opportunity in relation to public employment, while Article 21 stipulates that an individual may only be deprived of their life or personal liberty through established legal procedures.

The Immoral Traffic Prevention Act of 1956 was recently subjected to scrutiny by the Supreme Court in the case of *Navtej Singh Johar v. the Union of India*. According to this law, having voluntary sexual relations with a man, a woman, or an animal that goes against the natural order is illegal and can lead to life in prison or a prison sentence of up to ten years, along with a fine. The petitioner requested the recognition of the rights to sexuality, sexual autonomy, and the selection of a sexual partner as fundamental elements encompassed within Article 21. The denial of these rights constitutes an infringement upon the right to life, and such fundamental rights must not be denied [14].

The Transgender Rights Bill of 2014 was presented in the Rajya Sabha on December 12, 2014, and garnered unanimous approval, receiving the backing of opposition parties. The legislation will unquestionably mitigate the

challenges encountered by transgender individuals in alignment with the Constitution of India. The Honorable Supreme Court has decriminalized Section 377, affirming that discrimination predicated on sexual orientation infringes upon the rights to equality and privacy.

The Transgender Rights Bill of 2014 was introduced in the Rajya Sabha on December 12, 2014, and garnered unanimous approval, receiving the backing of opposition parties. The enactment of the measure will unquestionably mitigate the challenges encountered by transgender individuals in alignment with the Constitution of India. The government bears the responsibility of advancing social security and healthcare services, which encompass HIV clinics and the provision of free sex reassignment surgery (SRS). It also establishes provisions for the right to leisure, cultural participation, and recreational activities, in addition to fundamental rights such as access to safe drinking water and sanitation facilities.

Nevertheless, the Lok-Sabha may endorse the measure, thereby rendering it superfluous. The Transgender Persons (Protection of Rights) Bill, 2016, was introduced following a two-year hiatus; however, it was enacted without incorporating the recommendations proposed by the Standing Committee. Numerous transgender individuals contested the legislation, asserting that certain provisions were in violation of constitutional principles. They respectfully request that the Court issue a Writ of Mandamus directing both the Central and State Governments to implement provisions for transgender individuals in public educational institutions and employment, in accordance with the guidelines established by the Court in the NALSA case.

#### Legal and Legislative perspective on Third Gender in India

The Constitution of India has faced criticism for failing to recognize a gender category as 'others' or 'third sex' in its legal framework. This results from temperamental challenges and moral dilemmas, leading to the stigmatization of transsexual individuals. The Registration of Births and Deaths Act, 1969, does not mandate medical examinations to ascertain a child's sex, and legislation governing marriage, adoption, divorce, inheritance, succession, and welfare continues to acknowledge only male and female genders.

Nonetheless, the Constitution's inclusivity has deliberately encompassed all individuals, including the newly officially acknowledged 'third gender'. Article 14 guarantees equality before the law and equal protection under Indian laws for all individuals. The Apex Court upheld the principle that discrimination based on an individual's 'gender identity' amounts to 'sex'-based discrimination, thereby violating fundamental principles of equality.

The National Commission for Backward Classes (NCBC) advised states to include 'transgender' as a 'class' based on 'gender' categorization; nonetheless, this remains a contentious issue due to the conflation of class and gender notions. Article 16(4) requires the State to ensure adequate representation in public services [15].

Article 21[16] represents the fundamental and inescapable right applicable to transgender individuals, affirming that gender identification is central to the intrinsic right to dignity. The Supreme Court defines 'gender identity' as an individual's self-identification as a 'man,' 'woman,' 'third gender,' or another recognized category.

Rights guaranteed by Article 19(1) are essential and equally available to transgender individuals. The right to freedom of speech and expression includes the individual's capacity to articulate their self-identified gender; irrespective of whatever medical interventions they may have received [17]. The 2014 NALSA verdict prompted concerns over the inadequacy of legislation for the transgender population. The Transgender Persons (Protection of Rights) Act, 2019, sought to provide access to welfare policies and schemes for the transgender population, although it had difficulties in reconciling with existing legislation and processes. The Act established a "certificate of identity" for transgender persons in section 5, while simultaneously imposing self-perceived gender identity requirements in section 4. This Act guaranteed all varied citizens the right to self-determine their gender without the obligation to undergo gender affirmation surgery. Nevertheless, it established optional procedures for sex reassignment surgery (SRS) and hormone therapy while delineating "transgender individuals."

The legal terminology often reveals the community's vulnerabilities, highlighting deficiencies in the NALSA rules and governmental execution. November 2019 saw the enactment of the inaugural law of its kind, which lacked community input and relied on out-dated records and preconceived notions. Acts of oppression, sexual harassment, and indignities experienced by minority genders were insufficiently addressed in its previous iteration. Deficiencies in the existing legislation indicate a lack of commitment to an inclusive society. The issuance of a "certificate of identity" is problematic, as it infringes upon privacy and the right to self-identification. Section 7 of the Act infringes on the freedom to self-identify one's gender by imposing a requirement for medical procedures for transgender identification. It



criminalizes all forms of abuse against transgender individuals but does not define what constitutes 'sexual abuse' in relation to the third gender. Rehabilitation techniques may appear to provide solace for abandoned transgender children; yet, they are disingenuous and may prolong various types of abuse. The responsibilities and effectiveness of a 'Complaint Officer' remain undefined, and the community's access to welfare payments and civil rights remains ambiguous. The transgender community in India confronts a challenge in selecting a suitable identity that corresponds with their sexual orientation. This identity problem is a facet of the community's conflict with the predominant binary population. Nonetheless, activism and a progressive judiciary in India have sought to close the gap by acknowledging their right to a dignified existence [18].

In the case of *National Legal Services Authorities v. Union of India*, the Supreme Court acknowledged the multiplicity of sexes within the "third gender" category and instilled optimism for the realization of fundamental human rights for the transgender population [19]. Nonetheless, it permits unclear interpretations of current legal rules and planned legislation. The Court rationalized categorizing the transgender population as a 'minuscule portion' of society; yet, this implication limits minority groups from obtaining equitable access to fundamental rights alongside the dominant binary. The NALSA verdict recognized the historical importance of the 'transgender community' and its related identity within Indian mythology.

The Criminal Tribes Act of 1871 marginalized the whole hijra population by labeling them as inherently 'criminal,' diminishing their societal acceptance and dignity of existence. The Karnataka Police Act, 2011, perpetuated limitations on the community's right to life. Subsequent developments following the NALSA were ambiguous due to a pronounced disparity and inconsistency in the application of recommendations. The 2014 ruling recognized the community's civil rights as stipulated by numerous laws, encompassing the rights to marry, vote, own property, obtain ration cards, acquire driving licenses, and access education, work, and healthcare. In 2016, the Supreme Court re-evaluated its 2013 decision, overturned the Delhi High Court's order, and acknowledged the feelings of the marginalized transgender population [20].

The NALSA verdict in India has resulted in numerous historic cases, including the prosecution of the State Bank of India (SBI) for alleged discrimination against the rights of third genders to engage in open selection procedures [21].

The case underscored the restricted prospects afforded to the third gender due to cultural biases and the necessity for inclusive measures. The High Court of Calcutta decided against an accusation of bias over the exclusion of a candidate for the position of Asha Karmee (health worker), asserting that transgender individuals are ineligible for the job designated exclusively for women [22]. Multiple states, including Chhattisgarh, West Bengal, and Madhya Pradesh, have implemented measures to integrate transgender individuals, such as establishing a 2% housing quota in 2015 and recruiting 13 transgender persons as constables across four districts in 2022 [23]. Kerala has launched the Mazhavillu plan, while Gujarat has established the "Garima Greh: A Shelter Home for Transgender Persons" initiative [24]. The Madhya Pradesh government established the 'State Transgender Policy, 2020' to improve the living circumstances of the group.

The Ministry of Labor has taken steps to clear up any confusion about what employers are required to do by labor law. For example, they are now keeping worker registration and compensation records in line with the Equal Compensation Act of 1976 and related rules. The Maternity Benefit Act of 1961 defines 'woman' as an individual working, either directly or via an agency, for remuneration in any institution, resulting in complications in numerous papers and forms. The newly implemented labor codes require companies to provide distinct bathroom facilities, bathing areas, and shelters for transsexual individuals. Notwithstanding many beneficial welfare initiatives by the government and ongoing admonitions from the Supreme Court over its prior decisions on transgender rights, the state of inclusivity remains significantly unachieved within the framework of constitutional principles [25]. Despite encountering several challenges, the 'third gender' group in India has recently seen a resounding affirmation of all fundamental rights, such as survival, freedom of love, and expression, by popular opinion and judicial equity.

The case of *Navtej Singh Johar v. Union of India* affirmed "self-determination" as fundamental to identity, scrutinizing the deficiencies of categorizing offenses as 'natural' and 'unnatural' under Section 377 of the Indian Penal Code, 1860, which lacked any 'intelligible differentia' as required by the standard of reasonable classification under Article 14 of the Constitution [26]. Throughout the COVID-19 epidemic, the social marginalization of the transgender population was prominently evident, since fundamental rights to food and healthcare were mostly unattainable. Activists expressed concerns about the obligation of states to integrate and mainstream the transgender community and create job opportunities that recognize them as "real citizens" within the framework of the Constitution.

The case of *Veera Yadav v. Chief Secretary, Government of Bihar* [27], addressed several concerns regarding the susceptibility of the TG community during the epidemic. The government was required to provide a ration as requested, establish a distinct police unit, and apply the provisions of the 2019 Act to transgender individuals seeking employment in the State of Bihar.

In the matter of *Christina Lobo v. State of Karnataka & Others*, the Karnataka High Court referenced Rule 3(3) of the Transgender Persons (Protection of Rights) Rules, 2020, asserting that a transgender individual who has formally documented their gender transition prior to the Act's enactment is not obligated to seek a certificate of identity under the Rule [28].

## 5. CONCLUSION

This research concludes that India is actively pursuing gender justice, with the transgender population lobbying for legal reforms to secure their freedom and empowerment in both public and private spheres. Political and public interest groups must incorporate gender sensitisation with legislative reform, particularly for transgender individuals. The government must implement measures to prevent discrimination within governmental entities and the business sector while also ensuring access to education, career opportunities, housing initiatives, welfare benefits, pension plans, and complimentary medical services at public hospitals.

Third-genders contend that any transgender legislation is cosmetic, as numerous legal safeguards are not encompassed by the Act. The absence of inclusive legislation safeguarding and empowering transgender individuals to have dignified and tranquil lives, encompassing specific anti-discrimination statutes and same-sex marriage, exacerbates their current circumstances. The challenges faced by third genders in India arise from the stigma and discrimination encountered within families and society, resulting in their exclusion from the socio-economic and cultural-political spheres. There is an imperative necessity to integrate them and embrace an inclusive methodology across all domains of existence.

Along with government and NGO initiatives, academic and research institutions, civil society organisations, and other stakeholders must actively engage in policies and interventions aimed at the development and empowerment of transgender people in India. Individuals identifying as third-gender who transition from slavery to third-gender status have limited opportunities for equality and fundamental rights. To cultivate a progressive culture, it is imperative to educate institutions on inclusivity and the tenets of equality. Governments ought to initiate initiatives to promote knowledge of the "third gender" and foster acceptance of transgender individuals as integral members of the community. They should collaborate with NGOs and other organisations to ensure that transgender children have access to education at all levels, from elementary to secondary.

## CONFLICT OF INTERESTS

None.

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