

4. Rights Of Transgender - Polity

Rights of Transgender Persons in India. India has progressively recognized LGBTQIA+ rights through landmark judicial interventions like decriminalizing homosexuality and recognizing the "Third Gender," alongside welfare initiatives like the SMILE scheme. However, the community continues to face systemic challenges regarding social acceptance, same-sex marriage recognition, and effective implementation of anti-discrimination laws.

1. Context and Definition

India has moved significantly towards correcting historical injustices against the transgender community through a mix of legal reforms, welfare schemes, and digital inclusion.

LGBTQIA+ as an Umbrella Term -

Acronym Breakdown - It stands for **L**esbian, **G**ay, **B**isexual, **T**ransgender, **Q**ueer, **I**ntersex, and **A**sexual persons.

Inclusivity - The '+' symbol denotes all other identities and spectrums of gender and sexuality not explicitly covered by the initial letters.

Nature of Identity -

Non-Conformity - Individuals in this community generally do not conform to traditional, rigid gender roles or societal expectations.

Physical Characteristics - They may possess sex characteristics that do not fit the standard binary definitions of male or female.

Gender Identity - Their internal sense of gender often differs from the sex assigned to them at birth.

2. India's Legal and Constitutional Position on LGBTQIA+ Rights

This section outlines the demographic data and the legal framework established to protect the community.

A. Demographic Data

Census 2011 - Official data recorded 4.87 lakh individuals who opted for the "Other" category under gender, highlighting the visible presence of the community over a decade ago.

B. Key Judicial Judgments and Legislation

Decriminalisation of Homosexuality (2018) -

Case - Navtej Singh Johar v. Union of India.

Verdict - The Supreme Court partially struck down Section 377 of the IPC, effectively decriminalizing consensual homosexual acts between adults.

Recognition of Transgender Rights (2014) -

Case - NALSA v. Union of India.

Verdict - The Court recognized the right to self-identify gender. It officially recognized transgender persons as the "Third Gender," granting them fundamental rights protections.

Legislative Protection (2019) -

Act - The Transgender Persons (Protection of Rights) Act, 2019.

Purpose - This act provided statutory backing to the legal recognition of transgender identities and prohibits discrimination.

Current Status of Marriage & Adoption -

Status - Same-sex marriage is not yet legal.

2023 Ruling - The Supreme Court refused to legalize same-sex marriage directly but urged the legislature (Parliament) to deliberate on the matter.

C. Constitutional Safeguards (Differentiation of Articles)

The following table differentiates how specific Constitutional Articles apply to the protection of the community -

Constitutional Article	Scope of Right	Application to LGBTQIA+ / Transgender Community
Article 14	Right to Equality	Ensures equal protection before the law, preventing arbitrary classification based on gender identity.

Article 15	Prohibition of Discrimination	Specifically prohibits the state from discriminating against any citizen on grounds including sex, which extends to gender identity.
Article 21	Right to Life & Personal Liberty	Guarantees the right to live with dignity, privacy, and autonomy over one's own body and identity.

3. Challenges Faced by the Transgender Community

Despite legal victories, the community faces severe systemic and social hurdles.

Societal Ostracisation -

Deep-rooted Prejudice - Trans persons often face rejection from their own families and immediate communities.

Social Exclusion - This leads to homelessness and a lack of social support systems.

Public Discrimination -

Accessibility - They face harassment and discrimination in public spaces, public transport, and government offices.

Educational Barriers -

High Dropout Rates - Bullying, harassment, and gender-based violence in schools force many young trans persons to abandon their education, limiting their future prospects.

barriers in Employment -

Hiring Bias - Widespread discrimination exists in formal hiring processes.

Forced Informal Work - Due to a lack of professional opportunities, many are forced into exploitative sectors such as begging or sex work for survival.

Healthcare Exclusion -

Lack of Affirmative Care - There is a scarcity of gender-affirmative healthcare services.

Provider Bias - Discrimination by medical staff is common.

Service Unavailability - Essential services like hormonal therapy and surgical interventions are often unavailable in public hospitals.

Mental Health - Social isolation and rejection contribute to a high mental health burden.

Violence and Abuse -

Vulnerability - Trans persons are highly prone to verbal, physical, and sexual violence in both private and public spheres.

Custodial Violence - Incidents of police harassment and custodial violence are frequent, often with little hope for legal redress.

Political Underrepresentation -

Lack of Voice - There is very low visibility in mainstream political parties.

Policy Gaps - The lack of participation in policy-making means their specific needs are often unarticulated in governance.

4. Government Initiatives and Welfare Measures

The government has launched specific schemes to address livelihood, identity, and health.

Digital Identity Infrastructure -

National Portal for Transgender Persons (2020) - A digital platform enabling transgender persons to apply for identity certificates online, facilitating easier access to government benefits without physical harassment.

Comprehensive Welfare (SMILE Scheme) -

Launched - 2022.

Full Form - Support for Marginalised Individuals for Livelihood and Enterprise.

Livelihood - Provides skill training and livelihood support.

Shelter - Establishment of 'Garima Greh' (shelter homes) for destitute transgender persons.

Health - Provision of Ayushman Bharat TG Plus health coverage specifically for the community.

Institutional Mechanisms -

National Council for Transgender Persons (NCTP) – A statutory body under the Ministry of Social Justice and Empowerment.

Mandate – To safeguard rights and promote welfare.

Composition – Includes representatives from the Transgender community (5 members), NHRC, National Commission for Women (NCW), State Governments, and NGO experts.

Equal Opportunities Policy – Issued by the Department of Social Justice & Empowerment to ensure equal access to employment and prevent workplace discrimination.

Law Enforcement & Protection –

Transgender Protection Cells – Established under District Magistrates.

Functions – These cells monitor offenses, ensure timely registration of FIRs, and conduct sensitization programs to enforce legal protections strictly.

5. Conclusion

Progress – Recent years have marked a definitive shift in India's approach to transgender rights through significant legal and policy reforms.

The Path Ahead – As India strives for a more equitable future, the core focus must remain on ensuring that transgender persons can live with dignity, autonomy, and equal opportunity, fulfilling the nation's democratic and human rights commitments.

Source – <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2191532>

