

Relatable Human Rights within reach of India's Transgender population: Overcoming Obstacles and Staying the Course

Dipika Bhati,

PhD scholar, Department of law Galgotias university Greater Noida.

Dr.Sandhya Kumari

Professor Department -school of law Galgotias university Greater Noida

Abstract

Human Rights from the time of its recognition play an important part in any human's life. To be recognised as a human being is not just guided by being alive, but a string of dignity is attached with it which is granted by the Rights which must be equal for every being. This article is an effort by the researcher to bring to light the difference between Universality and Relativeness of Human Rights with special emphasis on Transgender and how every country uses their own cultural means to create differences within the transgender communities. One reason the universal legal text of human rights is not widely accepted is its perceived justifications. Human Rights were long deemed worldwide since UDHR constituted international law. The researcher also wants to throw light on the fact that Indian Constitution did adopt the UDHR principles through inclusion of Fundamental Rights under Part IV. However, by sheer reading what it offers to the Transgender community is still unclear. This paper seeks to clarify the relationship between fundamental rights, cultural relativism, and constitutional morality in India with a brief emphasis on other Nations as well considering the most recent Human Rights issues with transgender communities, that were not just ignored but legally unaddressed. The paper also puts forward few suggestions which can be taken in globally for governments and other institutions to follow for better Human Rights implementation.

Keywords: Human Rights, Transgender, UDHR, Indian Constitution, basic rights, cultural relativism, universality.

1. Introduction

A person is entitled to certain rights just by virtue of the fact that they are human. These rights are known as human rights. They are founded on fundamental human requirements that are considered to be need. For the sake of one's physical well-being and survival, some of these basic requirements are absolutely necessary. Other things are essential for the survival and well-being of the psyche. Human rights are thus capable of being recognised and enumerated. The conventional idea of natural law is connected to these rights which are related with it.¹

Due to the fact that human rights are inseparable and interrelated, it is impossible therefore, distinct categories of human rights. The significance of each and every human right is comparable, and it is innate to every single human person. It is for this reason that the Universal Declaration of Human Rights did not classify the many types of human rights.² The article only listed them in a variety of separate articles. On the other hand, the following developments that have taken place in the area of human rights within the framework of the United Nations System have made it abundantly evident that there are two distinct types of human rights:

¹ Michael Freeman, *Human Rights* (Polity Press 2022).

² Gordon Brown, *The Universal Declaration of Human Rights in the 21st Century* (Open Book Publishers 2016).

- (a) civil and political rights, and
- (b) economic, social, and cultural rights.

An individual's gender identity encompasses their subjective and subjectively experienced gender, which may or may not align with their biological sex.³ This includes their perception of their own body, which can include the voluntary alteration of one's physical appearance or function through medical, surgical, or other methods, as well as their language, dress, and behaviour patterns that are associated with their gender. A person is considered "gender-diverse" if their gender identity and expression do not conform to the prevailing gender norms in any given setting or time; the more narrowly defined term "trans" describes someone whose biological sex is different from their biologically assigned one.

People who identify as transgender are more likely to be victims of human rights abuses when government records do not accurately reflect their gender identity or expression. But most trans and gender-variant people still don't have the option to have their gender recognised by the government. A lack of protection from the law and an atmosphere that encourages implicit bias and discrimination are the results of such situation.

When people commit acts of violence or prejudice against another person, it is usually because they have rigid ideas about what it means to be male or female, or about the proper way to define the gender binary. Anger, irrational hate, and a kind of gender-based violence motivated by a desire to punish someone seen as challenging gender norms are always at the root of these crimes.⁴

1.1 A brief historical note

The notion of human rights can be traced back to the very beginning of human civilization. It is often presented in a clear and unmistakable manner, as it is inscribed in all of the major faiths of the world, whether it is a person's obligation to their neighbour. The idea of global brotherhood and fraternity of people, together with a feeling of compassion towards one's fellow humans, may be traced back to a number of different religious beliefs that existed both before and after the birth of Christ." As a result, human rights are not a notion that is representative of modern times, despite the fact that it may seem to be such. In reality, the origins of human rights can be traced back to the beginning of time.

It is generally accepted that the fight for human rights began in the Western world at the beginning of the 13th century. This is the time when the famous English Charter known as Magna Carta was written (1215 C.E.). Magna Carta is considered to be a significant landmark in the history of human rights. The history of human rights, on the other hand, has just recently acquired momentum in recent occasions. Following the conclusion of two world wars, the League of Nations and the United Nations were established with the purpose of putting an end to the barbaric nature of man via the application of their ideas of universal brotherhood. The ideas of human rights came to be recognised and established as the basic laws of national boundaries in the form of constitutional drafts as a result of a variety of international accords and conventions with each other.

As a moral concept in the form of legal regulations, the Universal Declaration of Human Rights was eventually accepted by the United Nations in the year 1948. The United Nations Universal Declaration of Human Rights (UDHR) had a non-binding impact, which was its primary disadvantage. It is merely a signatory agreement, and the member nations are not legally

³ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press 2013).

⁴ Giacomo Chiozza and Jeffrey King, 'The State of Human Rights in a (Post) COVID-19 World' (2022) 21(3) *Journal of Human Rights* 242.

required to abide by it. As a result, taking into consideration the preliminary text of the Universal Declaration of Human Rights that was drafted by the drafting committee, the commission on Human Rights made the decision to establish a separate covenant that would be a covenant on such particular rights as would lend themselves to legally enforceable requirements. It was intended that the papers be referred to as the International Covenant on Human Rights. Therefore, in this context, the General Assembly of the United Nations enacted two covenants on December 16, 1966. These covenants were the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.⁵

After the 1950s, the development of international law concerning the protection of war victims and the conduct of war, which is now known as International Humanitarian Law, was seen. This development helped to contribute to the affirmation of the concept that everyone is entitled to the enjoyment of human rights, regardless of whether they are exercising those rights during times of peace or conflict.

As a result of the passage of the Protection of Human Rights Act in 1993 and the formation of the National Human Rights Commission, the government of India has reaffirmed its commitment to the protection and implementation of human rights. By using its writ authority in accordance with Articles 32 and 226 of the Constitution, the Supreme Court and High Courts of India are playing a significant part in the protection and promotion of human rights. In order to effectively promote and safeguard human rights, the role of the judicial system is very essential. The human rights protection goal cannot be accomplished only by the judicial system since it lacks the necessary resources. Further contributing to the advancement of respect for human rights is the National Human Rights Commission, which plays a vital role in this regard.

1.2 Methodology used for research

The technique that is used and utilised in any research activity is the primary factor that determines the reliability and dependability of the work. The current investigation is entirely theoretical, and it draws its empirical evidence from primary as well as secondary sources of information. The International Instruments of Human Rights, Human Rights Laws, and the first judgements of the Supreme Court and High Courts on a variety of human rights concerns are all examples of primary data. Articles, magazines, journals, case studies that are very recent, and books are all examples of secondary sources of information.

2. Fundamental Rights Relatable To Human Rights

The concept of Human Rights in India has its roots in ancient times. The principles of Buddhism and Jainism readily distinguish it. Hindu Holy Scriptures such as the Gita, Vedas, Arthashastra, and Dharmashastra also included provisions for human rights. Muslim monarchs such as Akbar and Jahangir were highly esteemed for their respect for rights and justice. In the early British period, the people experienced significant infringements of several rights, which subsequently gave rise to the development of current Human Rights law in India.

The Constitution of India, enacted in 1950, serves as a powerful testament to the country's unwavering dedication to human rights. It explicitly declares fundamental human rights and essential freedoms, ensuring their universal enjoyment without regard to caste, colour, sect, or religion.⁶ In addition, it has established legal institutions to uphold the essential values of liberty, equality, and social justice.

⁵ Paul Gordon Lauren, *The Evolution of International Human Rights* (University of Pennsylvania Press 2011).

⁶ Amartya Sen, *Justice and the Capabilities Approach* (Routledge 2012).

In order to ensure that all citizens could fully exercise their human rights, the Indian Constitution was intentionally crafted to include provisions for positive discrimination and affirmative action to help those who were unable to do so on their own due to socioeconomic gaps. In an effort to solidify its dedication to human rights, India has worked since independence to establish a multi-party system, universal adult suffrage, a rule of law, a culture that values each person's inherent worth, and an open society.

India has long held the view that democracy best protects human rights and offers the best political framework for progress; however, in order to overcome the long-standing challenges of poverty, ignorance, and injustice, impoverished nations like India must undergo a tremendous social and economic upheaval. However, India maintains that fundamental reforms can only be implemented via democratic means, based on the free and voluntary decision of the people. Consolidating the norms and values of our democracy was the overarching goal of the institutions that India fashioned to support its pluralism, multi-ethnicity, multi-religion, multi-lingualism, and secularism.⁷

India became a party to the Universal Declaration of Human Rights on January 1, 1942. Included in Part III of the Constitution of India, sometimes called the Magna Carta, are the Fundamental Rights. These are the rights that, should they be infringed, may be directly enforced by suing the state. State legislation that infringes against the Fundamental Rights is expressly forbidden under Article 13(2). If any provision of a legislation is found to be in conflict with the Fundamental Rights, then that provision shall be null and invalid. The whole act could be deemed null and invalid if the invalid portion is inseparable from the main act.

“At the time of the Constitution's adoption, India's view of human rights was shaped by the Universal Declaration of Human Rights”, the Supreme Court said in the case of *Keshvanand Bharti v. State of Kerala* (Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala 1973), even though it is not a legally enforceable document.

According to the ruling in *Chairman, Railway Board & Ors. v. Chandrima Das & Ors.* (Chairman, Railway Board v Chandrima Das 2002), the United Nations General Assembly has officially recognised the UDHR as a model code of conduct. In cases involving domestic law, it may be necessary to refer to the principles (Nowak 2003).

The principles outlined in the Universal Declaration of Human Rights (UDHR) are evident in our basic rights.

The International Covenant on Political and Civil Rights, 1966 (ICCPR) and Part III of the Constitution of India share several civil and political rights. India has both signed and ratified the International Covenant on Civil and Political Rights (ICCPR).

Some of the rights that were previously not listed in the Fundamental Rights but are now accessible under the ICCPR. Several legal rulings designated them as Fundamental Rights. Some of them are the right to a fair trial, privacy, legal help, and the right to travel abroad. I will go into more depth about them later in this essay.

Apart from that, India accepted the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1979 and incorporated it into the Directive Principles of State Policy, which were inserted as an amendment to the Constitution.

At the time the Constitution was being enacted, many of the rights that were accessible in the covenant were not considered basic rights. The range of basic rights guaranteed by the Indian Constitution has been expanded by judicial interpretations. The highest court in India noted in the case of *A.D.M. Jabalpur v. Shivkant Shukla*⁸ that, with the exception of rights guaranteed

⁷ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press 2013).

⁸ *ADM Jabalpur v. Shivkant Shukla*. AIR 1976 SC 1207 (Supreme Court, 1976).

by the Indian Constitution, no other legal system recognises any rights derived from common law or natural law. J. Bhagwati later made the following observation in the case of *Maneka Gandhi v. Union of India*:⁹ "Article 21's use of the term "personal liberty" is quite broad, including many different types of rights that together make up a man's personal liberty. Under Article 19, certain of these rights have been elevated to the level of separate basic rights and granted further protection." It is not possible to deny someone the right to go abroad unless the State passes a legislation outlining the steps to do so, and then those steps are followed to the letter. The Supreme Court developed the "theory of emanation" in response to this decision so that basic rights may take on more substance and activity. It is readily apparent from a thorough examination of Parts III and IV of the Indian Constitution that these two sections encompass almost all of the rights outlined in the UDHR (Universal Declaration on Human Rights). Based on the provisions, the below table highlights the conceptual difference in actual awareness and ground level understanding:

Category	Awareness (low–high)	Recognition (law exists)
Transgender Rights Awareness (General Public)	Low	✓
Transgender Legal Identity (ID Recognition)	Medium	✓
Public Service Understanding (Police, Hospitals)	Very Low	+
Workplace Inclusion Awareness	Low	+

3. The Recent Indian Cases Of Violations With Special Emphasis On The Transgender Community

It was a legislation from the colonial era that explicitly criminalised and stigmatised transgender and non-binary persons by equating them with criminality and demanding their registration. The Telangana Eunuchs Act of 1329 Fasli was overturned by the Telangana High Court in the case of *Vyjayanti Vasanta Mogli v. State of Telangana*. The Act was declared to be in violation of basic rights by the High Court, particularly the rights to equality (Article 14) and personal liberty and dignity (Article 21). All of these rights were determined to be violated. Additionally, the decision demanded that officials actively implement protections under the modern Transgender Persons (Protection of Rights) Act and welfare schemes. These protections included access to identity certificates, pensions, and affirmative educational and employment measures. The decision was based on the Supreme Court's jurisprudence regarding transgender individuals.

The right of a transgender person to reside with their chosen partner, regardless of the gender of the partner, was recognised by the Orissa High Court in the case of *Chinmayee Jena v. State of Odisha*. In a clear and unequivocal statement, the Supreme Court acknowledged that the self-determination of gender is an integral component of human autonomy and self-expression, and that this must be respected when making judgements about partnerships and life choices. In following years, this particular case was used as an illustration in judicial sensitisation courses to illustrate how real-life issues faced by gender-diverse individuals in the legal system might be addressed.

⁹ *Maneka Gandhi v. Union of India*. (1978) 1 SCC 248 (Supreme Court, 1978).

In the landmark case of *NALSA v. Union of India*, the Supreme Court of India issued a decision that acknowledged transgender individuals as a legally different "third gender." This decision affirmed that transgender people are entitled to fundamental rights under the Constitution on the same basis as all other citizens. The Court came to the conclusion that gender identity is an essential component of human liberty and dignity, and that it is safeguarded by Articles 14 (equality), 15 (non-discrimination), 16 (equal opportunity), 19 (freedom of expression), and 21 (right to life and personal liberty). It emphasised that discrimination based on gender identity is a violation of constitutional protections and asked both the Central government and state governments to take aggressive measures to safeguard and promote the rights of transgender individuals. This encompassed affirmative action, such as reservations in education and employment, social assistance schemes, access to health care, and public awareness initiatives to combat stigma. Legal recognition of the self-identified gender was also included in this. Medical testing were not required as a requirement for this.

There have been credible reports of extrajudicial killings in India, as well as cases of torture, cruel, inhuman, or humiliating treatment or punishment by prison officials and police, political prisoners or detainees, and reporters unjustly arrested or prosecuted. Reports of persecution of religious minorities, dissidents, and journalists were among the "essential human rights issues" and abuses detailed in India's 2020 annual U.S. report on people rights practices. Concerns have been voiced by advocacy groups regarding what they perceive as a worsening of the human rights situation in India during Prime Minister Narendra Modi's tenure as head of the Hindu nationalist *Bhartiya Janata Party*.¹⁰

Some of the other important cases includes:

3.1 Abuse of security force

On 13th April, 2023, law enforcement agents in Uttar Pradesh state fatally shot an associate and the 19-year-old son of politician Atiq Ahmed, who was serving a life sentence and faced around 100 criminal accusations, including murder. The chief minister of the state, affiliated with the BJP, indicated endorsement for the matter, while other BJP leaders explicitly implied that Ahmed might be killed by the police or in an unlucky event. Merely 48 hours following the murder of his son, Ahmed and his brother were fatally shot at close range during a live broadcast while accompanied by police for a routine medical test. In June 2022, state police charged 30 troops, including a major, after a comprehensive investigation uncovered the military's intentional plan to lethally shoot the miners. The central government, however, refused to approve the prosecution, as required by the colonial-era Armed Forces Special Powers Act (AFSPA), which is essential for civilian legal proceedings to advance. India's armed forces have always benefited from legal immunity that shields them from accountability for significant human rights abuses in Jammu and Kashmir, as well as in some northeastern states.

3.2 Curbing Freedom of Expression through choice

There is no apparent relationship between gender identity and sexual orientation or sexual activity; yet, laws that criminalise same-sex behaviour are also used to arrest and otherwise persecute transgender and non-conforming gender individuals. This is regardless of the fact that there is no evident association between the two. In spite of the notion that sexual activity is not directly connected to gender identity, this is the situation that really exists. Individuals who identify as transgender are also jailed for a wide range of other reasons.¹¹

¹⁰ Arunoday Bajpai, 'BJP in 21st Century: Issues and Challenges' (2016) 1(1) *Global Multidisciplinary Research Journal* 18.

¹¹ Aoife M O'Connor, Maximillian Seunik and Blas Radi, 'Transcending the Gender Binary under International Law: Advancing Health-Related Human Rights for Trans* Populations' (2022) 50(3) *Journal of Law, Medicine and Ethics* 411.

In 2008, as part of a similar "social cleansing" programme, the police in India targeted transgender women by arresting them and forcefully evicting them from their houses. This occurred in the context of the social cleansing initiative. The Supreme Court of India made the decision in 2023 that transgender individuals who are in heterosexual unions have the right to marry in line with the existing personal laws or statutory laws. This decision was made in accordance with the present legal framework. Nevertheless, the court did not determine whether or not homosexual marriages in India should be recognised legally. In spite of this, weddings between gays are still not permitted (Knight 2019).

3.3 Right to use public toilets for transgender

The majority of public hospitals in India do not have wards that are specifically designated for transgender patients, and therefore do not allow these patients to be accommodated in wards that correspond with their gender identification. Nevertheless, the lack of bathroom amenities in homes in India is a significant contributor to the issue of bathroom accessibility. This is especially true in economically disadvantaged neighbourhoods or slum regions, where a significant number of families do not have access to their own toilet facilities. Because of this, shared facilities are the sole option available to a significant percentage of people looking for housing (Patel 2010).

An initiative known as #NoMoreHoldingMyPee has been launched by the LGBTQ+ group Drishti, which is based in the state of Assam, which is located in the eastern area of India. The objective of this campaign is to bring awareness to the difficulties that are experienced by those who identify as transgender or non-binary, more specifically, individuals who do not identify as either male or female.

Despite the fact that India decriminalised same-sex relationships five years ago, LGBTQ+ organisations claim that there are signs of progress on the subject. Within a period of eight weeks, the Delhi High Court issued a direction to the municipal government, demanding the building of public bathrooms that are explicitly allocated for transgender persons. This instruction was given in March. In response to a lawsuit that was brought forward by LGBTQ+ rights organisations, which was ultimately successful, this verdict was issued.¹²

3.4 Treatment given to Religious Minorities and Tribal Groups

The Hindu procession in Nuh district, Haryana state, was the flashpoint for the outbreak of communal violence that began on July 31 and swiftly expanded to nearby regions. The government retaliated against Muslim citizens in reaction to the assault, which is on the rise. As a result of these acts, a large number of Muslim men and youths were detained and many Muslim properties were unlawfully destroyed. Following the demolitions, the Punjab and Haryana High Court asked the government whether it was committing "ethnic cleansing."

Supporters of violent factions within the Hindu-majority Meitei community and accusers of drug trafficking and sheltering Myanmarese refugees have been levelled by civil society activists against BJP Chief Minister N. Biren Singh, who they say is dividing Manipur. The Supreme Court ordered the deployment of specialised teams to probe reports of violence, including sexual violence, in Manipur in August, after ruling that the state police had lost control of the situation. More than a dozen UN experts voiced concerns about the ongoing violence and human rights breaches in Manipur in September, claiming that the government's response has been slow and inadequate.

¹² Sreoshi Sinha, 'Social Exclusion of Transgender in the Civil Society: A Case Study of the Status of the Transgender in Kolkata' (2016) 2(1) International Journal of Sociology, Social Anthropology and Social Policy 61.

Since assuming office in 2014, India's position in the World Press Freedom Index, an annual ranking conducted by the non-profit organisation Reporters Without Borders, has declined from 140th to 150th place last year. This represents India's lowest ranking ever recorded.¹³ India has consistently ranked first in the world for the highest number of internet shutdowns for five consecutive years, including in 2022, according to an internet advocacy watchdog. Access Now reports that civil society organisations have expressed apprehension regarding the central government's occasional utilisation of the Unlawful Activities Prevention Act (UAPA) to apprehend human rights activists and journalists.

4. Universalism Vs Cultural Relativism: A Special Note On Concept Of Transgenders In A Global Parlance

There is a continuous discussion about whether human rights are absolute or dependent on society and culture. Multiple viewpoints are present, and there is a diversity of opinions.¹⁴

a. Absolutist View: There is a contention that human rights possess an inherent quality, are universally applicable, and are absolute in nature. According to this perspective, specific rights are considered fundamental and should be universally safeguarded, irrespective of cultural or societal differences. These rights are considered inherent to human nature and should never be infringed upon under any circumstances.

b. Relativist View: Some individuals contend that human rights are not absolute but rather influenced by societal, cultural in nature and historical circumstances. They argue that the particular substance and understanding of rights can differ among cultures, and that human rights should be comprehended within these varied contexts. This perspective recognises the significance of cultural diversity and emphasises the necessity of taking cultural viewpoints into account when applying principles of human rights.

The term "universal" in the name of the widely adopted United Nations Universal Declaration of Human Rights indicates that it is an internationally recognised legal framework that is expected to be accepted by every single country on the planet. This is problematic in and of itself. The concept of the universality of human rights merely signifies that all societies, irrespective of their fundamentally different beliefs, norms, values, and systems of governance, are required to adhere to a single set of regulations. Despite the United Nations' Universal Declaration of Human Rights purportedly serving humanitarian objectives, it fails to acknowledge the divergent understandings among individuals regarding humanitarianism, morality, dignity, and ethics. Although a universal truth exists, there is no tangible foundation upon which individuals can unite in their comprehension.¹⁵

In the Western world, public displays of affection between two individuals may be considered an expression of personal liberty. However, in India, such behaviour is strictly prohibited and morally condemned. Although both the West and India share the concept of freedom, their respective interpretations of it differ.

Legislation was enacted in Indonesia that strictly forbids any form of sexual intercourse prior to matrimony. It is a law of the nation as of this moment. The LGBT community and human rights activists were profoundly affected by this news. The human rights framework may be triggered by this specific issue due to its contradiction with the right to freedom. This legislature may appear absurd to the Western world because it directly contradicts the right to

¹³ Rogers Brubaker, 'Religion and Nationalism: Four Approaches' (2011) 18(1) Wiley.

¹⁴ Suzanne M Marks, 'Global Recognition of Human Rights for Lesbian, Gay, Bisexual, and Transgender People' (2006) 9(1) Health and Human Rights 36.

¹⁵ Edna Raquel Hogemann, 'Human Rights beyond Dichotomy between Cultural Universalism and Relativism' (2020) 14 The Age of Human Rights Journal 24.

freedom, but this is not the case in Indonesia. What constitutes the conceptualization and definition of the term "freedom" is the current issue. Consequently, the applicability of the UNUDHR is rendered inconsequential, given their divergent conception of freedom. Indonesian laws and conceptions of rights, including liberty, serve as reflections of the country's culture, religion, and morals. A nation or its populace that refuses to acknowledge universal human rights and lifestyle standards is frequently labelled barbaric and regressive (Kanwal 2023).

Gender identity, defined as "a person's profoundly personal experience of gender that could be inconsistent with their sex assigned at birth," is an essential component of individual dignity and shared humanity, and several worldwide organisations have recently recognised this. The human rights community has been sluggish to acknowledge the equal dignity and needs of trans* persons, despite the increasing worldwide support for protections of gender identity accompanying sexual orientation. These populations are now vulnerable to pervasive discrimination, health neglect, and violence because to the gaps in legal safeguards. Despite progress in trans* people's rights within the UN human rights system, there are still serious violations of their rights that happen, sometimes in secret and other times due to the international legal system's failure to address the complex oppressions trans* people experience in real life. This poses a serious threat to the community's ability to achieve the best possible health.

The changing nature of society around the world is one of the main reasons why universalism and cultural relativism are still being talked about. Most people think that the idea of human rights came about in the Western Hemisphere as a reaction to the very racist, violent, and hierarchical way of life and government there. Human rights play a big part in guiding countries in the right direction. It's also likely that the modern framework for human rights is meant to change the lives of people in other societies, even if those societies are different. Because of this, cultural relativism needs to be looked at again. It is imperative to acknowledge that although human rights possess a universal foundation, their actualization and execution may differ considerably among cultures and societies. Constantly evolving, the task of reconciling the universality of human rights with regard for cultural diversity is intricate and demanding. International human rights standards permit some cultural adaptation and particularization while attempting to establish a framework for the promotion and protection of human rights.

5. How Other Nations Struggle In Ensuring Human Rights Are Given Equally To Transgender Communities

It is not appropriate for gender development to have any influence on whether or not an individual is able to enjoy basic rights, such as the capacity to be recognised by their government or to have access to health care, education, or work opportunities.¹⁶ However, it does so for transgender individuals, and it does so in a manner that is embarrassing, brutal, and even occasionally fatal. Between the years 2007 and 2014, the Trans Murder Monitoring Project, which is an organisation that collects and analyses reports of transgender killings located all over the globe, documented a total of 1,731 murders committed against transgender individuals. A significant number of them were of a startlingly horrific character, and they sometimes included mutilation and torture.

On the other hand, the lives of transgender persons are not just threatened by acts of outright violence. These individuals have a risk of contracting HIV that is up to fifty times higher than the overall population. This is due, in part, to the fact that stigma and prejudice

¹⁶ Shon Faye, *The Transgender Issue: An Argument for Justice* (n.d.).

create obstacles that prevent them from gaining access to health treatments. There is a significant percentage of suicide attempts among transgender persons, according to research conducted in the United States of America, Canada, and Europe. This is a reaction to the systematic marginalisation and humiliation that transgender people face (Schwend 2020).

Several nations, such as Malaysia, Kuwait, and Nigeria, have implemented laws that criminalise the act of presenting oneself as a different gender, thereby denying the reality of transgender individuals. Transgender individuals in several nations face arrest and prosecution due to laws that prohibit same-sex activities.

This data provides just a limited view of the appalling forms of violence and prejudice that transgender individuals encounter. Without legal acknowledgment of their self-identified gender and the corresponding rights and protections, every aspect of transgender individuals' daily lives, from document requests to appearance scrutiny, becomes filled with the possibility of violence and humiliation. Consequently, many transgender people are forced to live in secrecy and isolation.

The entitlement to be acknowledged as an individual under the jurisdiction is ensured in many international agreements on human rights, and is a crucial element in expressing the inherent value and respectability of every individual. Nevertheless, even in nations that let individuals to be acknowledged in their self-identified gender, the necessary protocols may expose applicants to degrading and detrimental experiences.

To illustrate the process, transgender individuals in Ukraine seeking legal recognition are subjected to a series of oppressive measures, such as a 45-day mandatory in-patient psychiatric evaluation to confirm or deny a diagnosis of "transsexualism," forced sterilisation, a battery of medical tests that are unrelated to the gender recognition process and demand significant time, money, and travel, and finally, a humiliating in-person evaluation by a government commission to confirm the diagnosis of "transsexualism" and authorise the change in legal documents. Transgender persons may be subjected to illegal, cruel, or humiliating treatment as a result of these operations, which violates their right to health.¹⁷

Many nations are enacting policies to guarantee equal rights for all citizens. In the 2019 U.S. periodic review for compliance with the ICCPR, this Committee asked for details about "legal safeguards and opportunities for redress for those who identify as homosexual, gay, bisexual, or transgender who have experienced discrimination."

In the absence of gender recognition services, a person's identity is so watered down that it causes a basic breach of the State's responsibilities. Legally denying a person's gender has far-reaching consequences; it affects their health, housing, social security, freedom of movement, and residence, as well as their ability to live and work without fear of discrimination or violence. The time has come to ensure that all communities be granted human rights in addition to equality.

6. Conclusion And Suggestions

In order to ensure individuals' capacity to seek legal remedy for misconduct, it is imperative to establish official organisations that foster and uphold human rights. When human rights commissioners encounter opposition from other government entities, it is crucial for the global community to support them and motivate them to challenge the limits. Sustained domestic and global attention is required to successfully conclude this protracted procedure.

¹⁷ Jack Donnelly and Daniel J Whelan, *International Human Rights* (Routledge 2020).

Some of the suggestions include:

1. **Synchronise Administrative Procedures with Judicial Directives:** The principles established in *NALSA v. Union of India* (2014) concerning self-identified gender must be rigorously adhered to in the execution of the Transgender Persons (Protection of Rights) Act, 2019. Identity verification and access to assistance programs should be streamlined and consistently implemented throughout jurisdictions.
2. **Repeal Obsolete and Discriminatory Legislation:** As noted in *Vyjayanti Vasanta Mogli v. State of Telangana* (2023), colonial-era laws that stigmatise transgender individuals must be abolished or revised to guarantee genuine equality and dignity.
3. **Broaden Rights Beyond Legal Identity:** Judicial acknowledgement of autonomy in instances like *Chinmayee Jena v. State of Odisha* (2020) underscores the necessity for policies that encompass housing, familial life, interpersonal connections, and protection from abuse, extending beyond basic identity recognition.
4. **Enhance Welfare Programs via Efficient Execution:** Welfare initiatives under the Transgender Persons Act, 2019, and programs such as SMILE should undergo outcome-based assessments to guarantee genuine accessibility and advantages for transgender populations.
5. **Compulsory Sensitisation of Institutions:** Regular sensitisation and training programs must be mandated for police, healthcare professionals, educators, and public officials to mitigate discrimination and guarantee respectful service delivery.
6. **Augment Legal and Public Awareness:** Awareness campaigns must communicate information on transgender rights, significant judicial rulings, and accessible welfare programs via legal services authorities, educational institutions, and community outreach initiatives.
7. **Advance Substantive Equality and Inclusion:** Consistent with *NALSA*, the State should implement affirmative actions in education, employment, and skill development to rectify past marginalisation and foster enduring socio-economic inclusion.

Judicial rulings, legislative frameworks, and welfare measures indicate a steady transformation in India's stance on transgender rights. The ongoing existence of implementation gaps and social stigma highlights the necessity for coordinated policy execution, legislative change, and continuous public awareness to convert constitutional promises into tangible realities.