



# Transgender Inclusivity in Democracy: The Power of Transgender Advocacy, Civic Engagement and Political Participation in India

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**Abstract:** This article delves into the intricacies of political participation among transgender individuals in India. The Transgender Persons (Protection of Rights) Act (2019), influenced by the pivotal NALSA judgment, has significantly shaped the trajectory of the transgender community. Grounded in a robust theoretical framework, the study investigates constitutional rights, equal opportunities, and the role of democracy in facilitating transgender political engagement. Despite constitutional mandates advocating for equality, empirical evidence underscores a notable dearth of transgender representation in local self-government, resulting in diminished electoral participation. Issues pertaining to citizenship, human rights, and cultural identity, have emerged as central themes in Indian politics. Despite efforts towards inclusivity, transgender individuals persistently encounter political marginalization, exacerbated by heteronormative legal perspectives. The research culminates in an examination of significant legal milestones, encompassing the decriminalization of Section 377, the formal recognition of transgender identity, and the intricate complexities surrounding legal provisions to the third gender.

**Keywords:** Transgender, Political Participation, Inclusion, Democracy, Indian Constitution

## I. INTRODUCTION

In Indian society, sexual minorities often find themselves marginalized, considered as something of an oddity. The entrenched notion of a binary system of sex and gender, with rigid categories of male and female, masculine and feminine, has become so deeply ingrained that any identities falling outside the boundaries of heteronormativity have been met with fear, ignorance, and discrimination. Transgender individuals, who do not align with the sex assigned to them at birth, are a significant part of this marginalized group. According to the 2011 Indian census, the population included around 623,724,248 males, 586,469,174 females, and approximately 19 lakhs (1.9 million) transgender individuals. Despite their substantial numbers, transgender people in India continue to face alienation, humiliation, and the denial of basic and fundamental rights that they are entitled to as Indian citizens. They remain passive participants in various sectors of society, including politics, where gender plays a significant role in determining the level of political participation. Sadly, transgender individuals encounter substantial challenges when it comes to political participation in India, a country deeply influenced by heteronormative traditions. While transgender communities have faced marginalization and exclusion worldwide, their identity and interests take on a unique form within Indian society. Due to the diverse history of transgender communities in different parts of India, they have emerged as distinctive cultural groups. Transgender individuals and communities encounter multiple barriers to achieving full acceptance in society.

Transgender communities, often seen as indigenous, face challenges to their indigenous status from heteronormative forces. This is a common issue faced by indigenous communities striving for political survival. However, the specific challenges faced by transgender communities are rooted in their sexuality and

self-perceived identity. Transgender politics can be seen as a dual response in terms of indigenous community. It emphasizes the importance of acknowledging transgender individuals in society, asserting that they cannot be marginalized by heteronormative constructs. Simultaneously, it aims to disrupt the perpetuation of heteronormative practices that marginalize transgender groups. The politics of transgender communities thus represents both continuity and a break from the past and present. The politics of transgender groups arises from their subordinated identity, reflecting a history of suppression and exclusion. However, this inconclusive identity presents challenges in a dynamic democracy like India. The state has undertaken the task of defining and safeguarding transgender identity. The role of the state, at times, reinforces the subordination of transgender groups.

## II. RESEARCH METHODOLOGY

This research is grounded in a theoretical framework that seeks to understand the involvement of transgender individuals in Indian politics by building upon previous studies that have addressed the challenges they face in political participation. After conducting a thorough examination, three major themes emerged, which include the constitutional rights of transgender individuals in India, equal opportunities and protection against various forms of discrimination, and the role of democracy in promoting gender equality. The data used in this study has been meticulously verified from original reports, census data, and various other sources. The paper provides a theoretical foundation for discussing transgender political participation and their legal rights. Despite the introduction of a new Constitutional Act in 2019 aimed at addressing transgender issues, there have been limited studies focusing on transgender participation in politics in India. The research also considers various factors, such as the economic, social, political, and cultural backgrounds of transgender individuals, but it notes that the political aspect has been somewhat neglected, primarily due to the dominance of heteronormativity in the political parties at the national and state level. Consequently, transgender political participation has not received significant attention. In line with the study's objectives, the article explores new experiences and government initiatives aimed at challenging the prevailing social inequalities. Therefore, this study is designed to enhance understanding of the political status of transgender individuals in Indian politics and shed light on the experiences of gender inequality in Indian democratic systems.

## III. FUNDAMENTAL RIGHTS IN THE LEGAL FRAMEWORK

The Indian Constitution, in PART III, stipulates that all individuals are equal in the eyes of the law and are entitled to equal legal protection within India's borders (Granville, 1966). The concept of Fundamental Rights was initially conceived in the American Constitution's Bill of Rights and later adopted in India. India has incorporated these fundamental rights from the American Bill of Rights, ensuring basic rights for personal development and eliminating gender biases (Bhat & Agrawal, 2019). These fundamental rights are implicitly aligned with the Universal Declaration of Human Rights, 1948. The preamble to the Indian Constitution emphasizes justice in social, economic, and political realms and equality of status. Articles 15(2) and 16(4) have been interpreted to promote social equality, particularly in public employment, allowing states to make special provisions for the upliftment of socially and educationally backward communities, including vulnerable minorities (Verma, 2015). Article 19(1)(a) of the Indian Constitution obligates the state to safeguard and acknowledge the rights of its citizens. Article 5 of the Indian Constitution identifies criteria for Indian citizenship, none of which necessitate a specific gender identity. This article recognizes the right to self-identify, a fundamental aspect of leading a dignified life. In correspondence to these provisions in the Constitution of India, the transgender communities have the right to a dignified life, a crucial facet of Article 21 of the Indian Constitution.

## IV. INCLUSION IN CENSUS, ELECTORAL DATA AND POLITICAL PARTICIPATION

Issues and dilemmas related to the transgender community are currently a focal point in Indian politics. The nation is experiencing the emergence of third-gender and sexual identity politics, leading to discussions on crucial subjects like citizenship, human rights, cultural identity, and tradition (Thomas, 2015). The 2011 census data reveals that a mere 55,000 children were identified as transgender by their parents, posing a challenge in accurately gauging the true population of transgender individuals in India. Furthermore, traditional cultural and ritual power structures have historically favoured the male hierarchy. The 2011 census lacked substantial consideration for the political status of the third gender, employing only a limited set of parameters. It is notable that the census did not encompass information about the caste of transgender individuals, despite India's

extensive history with the caste system. Moreover, there has been limited research on the involvement of transgender individuals in politics.

According to Carbone (2009), democracy leads to economic development, control of corruption, human rights respect, gender equality, increased social welfare, reduced inequality, environmental protection, and enhanced social capital.

Consequently, the electoral involvement of transgender individuals is lower compared to other demographics, with various reports indicating a lack of respect and a weak turnout, indicating a debility model in transgender political engagement. According to data from the Election Commission, 23,019 individuals have registered themselves under the 'Others' category. The transgender community grapples with a lack of privileges and encounters discouraging conditions in their political involvement. They find themselves without both social and political space to assert their identity as human beings (Khan et al., 2009; Gayathri & Karthikeyan, 2016). Factors such as limited political experience, absence of legal documentation, low literacy rates, and inadequate awareness about policy initiatives contribute to their marginalized status.

In a move towards inclusivity, the Election Commission of India allowed the registration of transgender voters under the "Others" category in 2014. In 2009, the Election Commission of India took a ground breaking step by recognizing transgender individuals as the third gender, categorized as 'Other' on ballot forms (Telegraph, 2009). This move aimed to enhance the awareness and familiarity of transgender people with the electoral system. Prior to 2009, the voting rights of transgender people in India were unclear. After 2009, the 'third gender' community gained constitutional rights to vote and contest elections (Padhi & Mohanty, 2019). In that year, 28,527 voters registered as "Others," with 1,968 participating in the general election. By 2019, the number of registered transgender voters had increased to 38,970, and 5,682 voted in the polls. During the 2019 general election, the Election Commission appointed Shree Gauri Sawant, a transgender activist, as a goodwill ambassador.

Several Indian states, such as Odisha, Tamil Nadu, Maharashtra, Karnataka, West Bengal, Delhi, and Kerala, have seen the election or appointment of transgender individuals as political leaders, advocating for their community's issues (2021). However, none of these representatives have succeeded in securing parliamentary seats. Despite these efforts, recent data suggests that the transgender community in India still faces political marginalization and gender-based inferiority, irrespective of their biological differences (EPW, 2013).

## V. LEGAL STATUS OF TRANSGENDER INDIVIDUALS IN VARIOUS ACTS

The Citizenship Act of 1955, which governs the acquisition and determination of Indian Citizenship, does not explicitly or implicitly require a specific sex or gender identity as a condition for acquiring citizenship. Intriguingly, the Registration of Births and Deaths Act of 1969 does not specify any criteria regarding the 'sex' or 'gender' of an individual for registration in the case of birth or death. The Act maintains a gender-neutral stance, and any such requirement may be incorporated into the certificate formats outlined in the Rules under the Act, which are determined by the States.

However, the Immoral Traffic Prevention Act of 1986 presents significant challenges for the transgender community. The Immoral Traffic Prevention Act (ITPA), 1956 (amended in 1986), primarily designed to prevent the trafficking of women and children into prostitution, underwent an amendment in 1986 that extended its applicability to both male and female sex workers, as well as those with an indeterminable gender identity. Consequently, both male and hijra sex workers became subject to criminalization under the ITPA, providing a legal basis for the arrest of the transgender sex worker population.

The challenges encountered by the transgender community within India's democratic political system are frequently disregarded, primarily due to the perception of transgender individuals as inferior and their subsequent estrangement from their families. Worldwide, transgender people often endure a distressing combination of abuse, neglect, harassment, and discrimination (Hotchandani, 2019). One notable issue arising from the recognition of transgender identity pertains to the rights related to family and inheritance laws. In this context, legal provisions concerning inheritance typically reflect a heteronormative perspective, utilizing language that does not align with the experiences of transgender groups. For instance, the Hindu Succession Act defines "heirs" as "any person, male or female, who is entitled to succeed to the property..." and offers a gender-based description of legitimate legal heirs, effectively excluding transgender individuals from the legal framework (The Hindu Succession Act, 1956). Similarly, insurance coverage for transgender groups is conditional on adhering to heteronormative criteria, mandating explicit affirmation of gender identity for eligibility. These restrictions contradict internationally recognized principles, such as the Yogyakarta principles (International Commission of Jurists, 2006, 2017). An even more pronounced form of discrimination can be observed in pension regulations, which exclusively acknowledge heterosexual families as eligible for

family pension benefits. Transgender couples are entirely absent from these pension rules, as the definition of a "family" is rigidly tailored to conform to heteronormative ideals. These pension rules and other statutes establish stringent family boundaries, leading to the rejection of any claims that extend beyond these boundaries.

## VI. KEY LEGAL MILESTONES IN THE TRANS RIGHTS MOVEMENT

In 2014, the Supreme Court of India delivered a ground breaking verdict in the case of National Legal Services Authority (NLSA) vs Union of India. This judgment explicitly acknowledged transgender individuals as the 'third gender' and bestowed upon them fundamental rights safeguarded by the Indian Constitution. The legal identity and privileges granted by this decision are now equally applicable to transgender people, significantly contributing to gender equality in India (Mishra, 2016).

The NALSA judgment acknowledged the distinction between gender and biological attributes, recognizing that gender identity transcends biological markers. It emphasized that gender identity is a profound psychological or emotional sense of sexual identity and character. Furthermore, the judgment highlighted the denial of fundamental rights to transgender groups and established that discrimination based on sexual orientation and gender identity violates fundamental rights under Article 14, Article 15, Article 19(1), and, most significantly, Article 21 of the Indian Constitution.

Furthermore, the court instructed the governments to regard transgender individuals as socially and educationally disadvantaged citizens, extending reservations for their admission to educational institutions and public appointments. Specific measures were mandated, including the establishment of separate HIV sero-surveillance centers to address the sexual health issues faced by *hijras*/transgenders. The court underscored the significance of addressing challenges such as fear, shame, gender dysphoria, and social stigma, while discouraging the requirement for Sex Reassignment Surgery (SRS) as a precondition for declaring one's gender. Additionally, the judgment advocated for providing medical care to transgender individuals in hospitals, constructing separate public toilets, and implementing social welfare schemes for their improvement. The governments were urged to create public awareness to integrate transgender individuals into social life and restore their respect and standing in society. The judiciary's role was crucial in safeguarding the rights of transgenders in India, as exemplified by the NALSA judgment. The transgender community was expressly included within the term 'any person,' ensuring equal status to cis-genders and protection against arbitrary discrimination.

This sequence of judicial pronouncements led to the enactment of the Transgender Persons (Protection of Rights) Act in 2019, officially recognizing the diversity and variations within transgender groups and allowing some flexibility in defining who is a transgender. The expert group on transgender persons, as detailed in the Srivastava Committee Report of 2014, played a pivotal role in ensuring the consideration and respect of indigenous aspects related to transgender groups. Consequently, the resulting legislation linking transgender identity to self-perceived gender identity, rather than an ethnicity or interest-based group, reflects the insights from the Srivastava Committee [Transgender Persons (Protection of Rights) Act, 2019]. This proactive stance positions the Indian state as a significant participant in the social activism of transgender groups. The adoption of the Transgender Persons (Protection of Rights) Act in 2019 marked a significant achievement for India, placing it among the countries that officially recognize transgender identity and provide a legal framework for gender identity changes.

## VII. LEGAL TRIUMPHS IN TRANSGENDER RIGHTS

Established in 2014, the Inter-Ministerial Committee on issues pertaining to Transgender Persons recommended an inclusive definition covering diverse gender identities and expressions. The term 'transgender' now encompasses individuals whose sense of gender does not align with the gender assigned at birth, encompassing trans-men, trans-women, gender queers, and various socio-cultural identities.

Transgender individuals can avail themselves of benefits under the Other Backward Class (OBC) list, irrespective of their community background.

The milestone achievement of decriminalizing Section 377 of the Indian Penal Code in 2018 marked a crucial turning point for the LGBT community (Philip & Raju, 2020). Several Indian states have taken strides toward gender equality by introducing a dedicated column for the third gender in educational and public institutions (Basu, 2015). Assam and Karnataka were trailblazers in this initiative, with Assam introducing a transgender option in civil services applications in 2020 and Karnataka providing 1% reservation for the third gender in

government services. Subsequent states, including Kerala, West Bengal, Odisha, Madhya Pradesh, and Tamil Nadu, followed suit, officially recognizing transgender individuals as a distinct category (Kalita, 2022).

The Ministry of Social Justice and Empowerment of India launched the 'Support for Marginalized Individuals for Livelihood and Enterprise' (SMILE) scheme, a government portal also serving as the 'National Portal for Transgender Persons.' This comprehensive initiative focuses on education, food, rehabilitation, medical facilities, skill development, and economic linkages for transgender people and those engaged in activities like begging, with support from governments and non-government organizations.

The Department of Personnel and Training (DoPT) introduced a 'third gender' field on the RTI portal, allowing transgender individuals to specify their identity when filing online applications. While not mandatory, this field facilitates the collection of data on various categories of people submitting queries under the transparency law. The banking sector, responding to the Reserve Bank of India's directive in 2015, began incorporating the category of "third gender" in all forms and documents requiring gender classification. Data from public sector banks under the RTI revealed a significant increase in accounts opened in the name of transgender persons, indicating their growing visibility in society.

In a landmark decision, the Allahabad High Court ruled that transgenders are entitled to the head of a household status, allowing them to access food security benefits through ration cards. The court emphasized the necessity for the law to surpass mere non-discrimination, recognizing a positive obligation of the state to provide access to social security, particularly in terms of food security, aiming to address the historical impoverishment and marginalization faced by the transgender population.

The Garima Greh Yojana, crafted for the well-being of transgender individuals, centers on evaluating and enhancing the social aspects of their lives. Within the Garima Greh project, the government has implemented additional measures to support the positive rehabilitation and empowerment of transgender individuals. The strategic planning of this initiative aims to dismantle stereotypes linked to the transgender community and foster their economic and socio-political inclusion. However, these centers explicitly provide residential facilities for transgender persons, with the condition that they are not involved in begging or sex work (National Institute of Social Defence, 2020; PIB Delhi, 2020).

Recognizing the socio-economic disadvantages faced by transgender people, the apex court advocated for special reservations in education and government employment sectors to address this inequality (India Today, 2021). Recent constitutional amendments have guaranteed transgender individuals the same political rights as males and females in the political arena, ensuring their participation in the political process. The judiciary has acknowledged the historical discrimination faced by transgender groups, with their portrayal as a "criminal tribe" dating back to the colonial period. This stereotyping has contributed to the general backwardness experienced by the transgender community, similar to the discrimination faced by other indigenous groups. Additionally, the courts have recognized transgender groups as an integral part of Indian society, acknowledging their suppression and domination by the heteronormative traditions that have prevailed for so long.

### **VIII. ACHIEVEMENTS OF NOTABLE TRANS PERSONS**

In recent times, India has experienced significant progress in advancing the transgender community. Over the last decade, government welfare policies and initiatives have targeted a wide array of issues, including political participation, census inclusion, passport issuance, citizenship rights, and access to developmental programs fostering social and economic growth (Thomas, 2015). Despite facing societal challenges, numerous transgender individuals have achieved notable positions. Figures such as Shabnam Mausi Bano, a member of the State Legislative Assembly (SLA) and Member of Parliament (MP), Kamla Jaan, elected Mayor of Raigarh Municipal Corporation, and Asha Devi Aryanayakam, serving as the Mayor of Gorakhpur, stand as examples of this progress (Hotchandani, 2019). In 2017, Joyita Mondal made history as India's first transgender judge from Kolkata (Joshi, 2022). Notable activists like Laxmi Narayanan Tripathy and Naaz Joshi have actively fought against the abuse and stigma faced by transgender individuals, with Joshi earning the title of India's first transgender beauty queen (The Indian Express, 2021). The 2014 general election featured four independent transgender candidates, including Bharati Kannamma, Uttam Senapati, Sonam Kinnar, and Baseer Kinnar. In the 2019 general election, five transgender candidates participated, signalling an increasing trend of political engagement within the community. Transgender representation in local self-government is evident through elected members like Kamala Jaan, Mayor of Raigarh, Chhattisgarh in 2000, Asha Devi, Mayor of Gorakhpur, eastern Uttar Pradesh in 2001, and Kamala Bua, Mayor of Sagar, Madhya Pradesh in 2009. India has celebrated milestones in various fields, with K Prithika Yashini becoming the nation's first transgender woman IPS officer, Joyita Mondal securing a position as a lok adalat (civil court) judge, and Anjali Amur

making history as the first trans actress in a lead role. Nitasha Biswas gained recognition by being crowned as the trans queen in India.

## IX. PERSISTENT CHALLENGES IN ATTAINING TRANSGENDER RIGHTS

The Ministry of Skill Development and Entrepreneurship, as revealed under the RTI Act, disclosed disheartening statistics regarding the capacity-building initiatives for transgender individuals. Enrolment data from its skill development program indicated a mere four transgender persons in 2018–2019 and eight in 2019–2020, with discouraging figures on their successful placement.

The introduction of the Transgender Card, a commendable policy by the Indian Government, faced a significant hurdle due to the lack of consistency among identity documents. The issuance of transgender identity cards separately has led to individuals carrying them alongside conventional heteronormative identity documents, resulting in a complex process of changing gender identity in other documents and creating a discrepancy in the acknowledgment of gender identity.

In a unanimous decision on October 18, 2023, the Constitution bench, comprising all five judges, affirmed the marriage rights of transgender individuals in heterosexual relationships under existing laws, including personal laws governing marital unions and entitlement of transgender persons in heterosexual relationships to marry within the current legal framework.

Transgender persons in heterosexual relationships have the right to marry under existing laws, including those regulating personal laws on marriage. While the decision on marriage rights received mixed responses, concerns were raised by some activists about practical challenges, including documentation issues, name-related complications, and the potential for violence from families and authorities. Critics argue that the court's decision exhibits a binary perspective on transgender rights, with much of the detailed information already covered in prior verdicts and legislation.

According to the Hindu Adoptions and Maintenance Act, transgender individuals can adopt a child after meeting the requirements outlined in Sections 7 and 8 of the Act, following the completion of the Sex Reassignment Surgery (SRS). The Juvenile Justice Act, being a secular legislation, allows any person, regardless of gender, to adopt a child. The term "person" is not gender-specific, making transsexual individuals fitting within the legal definition and eligible for child adoption. Concerning the recognition of the third gender, the Hindu Adoption and Maintenance Act (HAMA) only validates adoptions conducted by a man or a woman, thus prohibiting third-gender adoptions. Sections 4 and 5 of the same Act, providing overriding powers to Act provisions over customs, also invalidate adoptions in the *Hijra* community. For people of the third gender to adopt legally, they must be acknowledged as a couple under Section 41(6) of the Juvenile Justice Act. This section specifies that any person, without specific gender requirements, has the right to adopt. Legal adoption is further contingent on meeting conditions set by the central adoption resource agency, as stated in an affidavit filed in the Bombay High Court.

## X. RECOMMENDATION AND CONCLUSION

The examination of discrimination against transgender individuals signals a positive transformation in India's legal framework, acknowledging their essential rights. These encompass the right to equality, equal opportunities, fundamental freedoms, the right to a dignified life, and protection against exploitation. Despite these rights, societal exclusion persists, marginalizing *hijras* from the core of Indian civil society. However, there is optimism as India moves towards a more inclusive future, recognizing the rights of the marginalized through judicial activism.

The landmark 2014 Supreme Court ruling was a pivotal moment, officially designating transgenders as the third gender. This decision not only conferred a distinct identity upon them but also mandated government intervention, necessitating quotas for transgender individuals in employment and education. Consequently, transgenders gained the independence to pursue diverse careers, achieving their aspirations in fields such as medicine, culinary arts, law enforcement, and law. This increased visibility prompted legislative measures, exemplified by a 2016 private member bill in Parliament aiming for legal recognition and safeguarding of transgender rights.

Discrimination against the transgender community is deemed unacceptable, asserting their entitlement to a life of dignity and respect. The imperative for their complete participation in the political system is stressed as vital to dismantle the chains of marginalization. Political inclusion is positioned as the key to unlocking opportunities for the transgender community across various spheres. While some efforts have been directed towards the development of the transgender community, the alignment of Indian laws and societal norms with these principles remains an ongoing challenge.

In the current political landscape, freedom, rights, equality, and justice are recognized as indispensable elements for democratic progress. The paper, rooted in theoretical understanding, explores gender bias, with a specific focus on the transgender community. This analysis is presented as valuable for academics, scholars, policymakers, and others interested in comprehending the political participation of the transgender community in India. The potential ramifications of neglecting this community are underscored, encompassing unequal political representation, bias in various life domains, and the disinterest of transgender individuals in decision-making processes.

The research identifies gaps in existing studies, particularly a deficiency in research on the political engagement of transgender individuals in the Indian democratic process. Despite global research on the political representation of transgender individuals, the paper argues that recent political uncertainty in India warrants specific attention. The Transgender Persons (Protection of Rights) Act, 2019, is acknowledged but considered in its early stages, prompting a call for more thorough studies and investigations to comprehensively address transgender political issues.

The study concludes by advocating for a comprehensive approach to transgender research, covering social, economic, political, cultural, and physical aspects. The paper urges stakeholders, including academics, researchers, officials, and policymakers, to acknowledge and address research gaps in the Indian political process. Special emphasis is placed on protecting transgender rights and freedom, with a particular focus on their political inclusion to enhance their overall societal standing in India and globally.

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