
Transgender's Rights In India: A Comparative Study

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Abstract

This paper examines the complex legal, social, and cultural issues surrounding transgender individuals, focusing on the advancements and challenges in their quest for equality and recognition. The 2014 Supreme Court ruling in India, which upheld the right of citizens to select their gender identity irrespective of undergoing surgical procedures, marked a significant milestone in transgender rights. This decision, alongside the Transgender Persons (Protection of Rights) Bill of 2018, represents crucial steps toward legal recognition and protection against discrimination. However, the persistence of systemic discrimination and societal stigmatization continues to marginalize transgender individuals, particularly in areas such as healthcare, education, employment, and public spaces. The paper also explores the ongoing confusion between transgender and intersex identities, highlighting the need for clear distinctions in legal and medical frameworks to address the specific needs of each group effectively. While both communities share struggles for bodily autonomy and recognition, their distinct challenges must be acknowledged to ensure appropriate legal protections and healthcare provisions.

A comparative analysis of international examples, including Nepal, Thailand, and Australia, provides insights into progressive legal frameworks that recognize and protect transgender rights. These examples serve as valuable lessons for countries like India, suggesting the adoption of best practices tailored to local contexts. Despite the progress made, the path to true equality for transgender individuals remains long and arduous. The paper concludes that continuous legal reforms, coupled with societal change, are essential to ensure that transgender persons can live with dignity and without fear of discrimination. The way forward demands a committed effort from all sectors of society to uphold the human rights of transgender individuals and foster an inclusive environment where gender diversity is celebrated.

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I. Introduction

The Supreme Court of India upheld every single Indian citizen's right to select their gender individuality, irrespective of gender confirmation surgical procedure, in a 2014 ruling. Subsequently, this decision, states through India recognised trans-gender wellbeing panels, and the Indian régime agreed the “Transgender Persons (Protection of Rights) Bill, 2018”, which is intended to be the single legislation that will protect transgender people and will protect transgender people from discrimination of any kind. This legal acknowledgement likewise accords through several advertising advertisements depicting transgender people claiming Indian citizenship using the nationalism trope, which is often majoritarian Hindu nationalism.

As a result of these two events, it's unclear if practising “Hindu nationalism” is the unique technique to assert Indian citizenship. Latest Indian unusual educations grant cautions of the risks of unusual and trans-gender activities being incorporated into “majoritarian Hindu nationalism,” resulting in constitutive exteriors made up of non-citizens who cannot partake in such nationalism.

Legal structures frequently entrench trans-people's downgrading, reinforce injustice, and perpetuate abuse toward them. Every person is eligible to elementary human rights, which countries are obliged to deliver underneath international law, together with fortifications of non-discrimination and the freedom to well-being; yet, trans-individuals are seldom safe underneath these National responsibilities.¹ In its place, trans-individuals are frequently victimised by extortion, harassment, and brutality as a result of laws that criminalise so-called illegal sex, sodomy, buggery, gay propaganda, and cross-dressing. Furthermore, due to their gender identity, like being “lesbian, gay, or bisexual sexual orientation issues,” consciousness of trans-people's complaints around stigma, bigotry, and exploitation is also minimal.

However, because of their gender orientation, trans-people's civil rights issues are inherently distinct, necessitating their collection of interventions.² For trans-persons, the most fundamental aspect of reform would recognise their gender identity, made possible by the Act of 2019 in India.

¹ Robert Wintemute, Same-Sex Love and Indian Penal Code § 377: An Important Human Rights Issue for India, 4 NUJS L. REV. 31 (2011).

² *Id.*

Their social presence has also risen in recent years. They are, however, still the focus of discussion on morals and legal questions, and these groups are stigmatised to the point of social isolation. This has taken on a much larger, more derogatory nature, especially in recent times when the Pandemic has infected or impacted the entire planet. Every individual is already suffering from some traumatic situation like any health or mental related issues.

II. Transgender Terminology And The Controversy

What does the term Transgender mean?

Transgendered “individuals will be people of all ages or sex whose appearance, individual attributes, or practices contrast from generalizations about how people are assumed to be. Transgendered individuals have existed in each culture, race, and class since the account of human existence has been recorded”. Just the expression transsexual and the clinical innovation accessible to transgender individuals are new. It is essential to initially have a comprehension of the term sexual orientation versus sex since it shapes its extremely fundamental piece.

GENDER VS SEX

Generally, sex and gender are used interchangeably or are considered as just synonyms for each other. But, in reality, these two terms have completely different uses and meaning. For a quick preview, there is said to be two sexes - female and male aligning with two genders woman and man. Sex is more simplified and easy to understand than Gender. While sex is understood by the means of biological differences in female and male, gender is a concept of the societal role of a female or male. When an individual's assigned sex doesn't match up with the person's gender identity, then, these individuals are usually referred to as transgender, gender- non-conforming or non-binary.

SEX

Generally, there are “two types of sex - male and female” differentiated based on biological differences. The difference can be anatomical as well as physiological. For instance, both the internal and external genitalia of female and male are different. The hormones present in the female body and male body also differ from each other.

For instance, Women have 45 chromosomes having 2 Xs, the male has 46 which includes a Y and an X, Y chromosome being dominant. Usually, most people think the sex of a person is categorized as just male and female, which is not true.

According to studies, some men can be seen that “are born with 2-3 X chromosomes”, and some women with Y chromosomes. Another differentiation can be some children have a mixture of female and male genitalia. These people are called intersex, the third differentiation of sex - intersex. These people can choose their gender based on their “gender identity and gender expression”.

GENDER

Gender consideration requires two things: Gender expression and Gender identity. While gender identity refers to the personal identification of an individual, gender expression refers to an external demonstration through behaviour and general characteristics.

GLAAD described gender identity as "One's internal, personal sense of being a man or woman. For transgender people, their own internal gender identity does not match the sex they were assigned at birth. Most people have a gender identity of man or woman (or boy or girl). For some people, their gender identity does not fit neatly into one of those two choices."³

“Gay and Lesbian Alliance Against Defamation”(GLAAD) has also given a short description of gender expression as "External manifestations of gender, expressed through one's name, pronouns, clothing, haircut, behaviour, voice, or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine and feminine changes over time and varies by culture."⁴

³ InterAct, *Understanding Intersex and Transgender Communities*, INTERACTADVOCATES.ORG, <https://interactadvocates.org/wp-content/uploads/2016/05/LavLaw-Trans-and-Intersex-Fact-Sheet.pdf> (last visited Sept. 2, 2024).

⁴ Jennifer Arm, Sharon Horne & Heidi Levitt, Negotiating Connection to GLBT Experience: Family Members' Experience of Anti-GLBT Movements and Policies, 56 J. COUNSELING PSYCHOL. 82, 82-96 (2009).

According to these researches and definitions, there are many gender identities including the most common ones man, woman, boy, girl, gender-neutral, transgender, non-binary, pangender, agender, two-spirit, third gender, genderqueer, and none of the given or gender of all these traits.

GENDER IDENTITY AND TRANSGENDER

GENDER IDENTITY

Gender identity is can be defined as a person or one's conception about oneself. People may identify themselves as female, male, neither or both. This concept is solely on the concept of gender role. It can be defined as the personal sense of one's gender. It may or may not match with the person's sex assigned by the doctor at the time of their birth.

According to a definition given by GLAAD, gender identity is referred to as "One's internal, personal sense of being a man or woman. For transgender people, their own internal gender identity does not match the sex they were assigned at birth. Most people have a gender identity of man or woman (or boy or girl). For some people, their gender identity does not fit neatly into one of those two choices."⁵

Transgender are individuals whose “gender identity or gender expression doesn't align” with the sex that was assigned to them at birth. According to the LGBTQIA Resource Centre, "a person who is identified as a male or a female by the doctor does not see the traits of a male or female is known as transgender." This is true that a person who changes their personalities with the change in time is also to be considered as a transgender. Some other genders that are transgender are non-binary, genderfluid and many more.

In a general sense, people consider transgender as people who have gone under gender-changing surgery or medical procedure, but this is not true. Some think transgender is an older term that originated in a psychological and medical community. Some might also think that people who do not possess the traits of the sex provided by the doctor is considered to be transgender.

Thus, we can conclude that Transgender is all related to a person's gender identity or a person's definition of his/her gender.

⁵ *Ibid.*

THE TERM 'TRANSGENDER'

There's a lot of misinformation about what it means to be a transgender. But recently science has begun to look more closely into the neurology, physiology and psychology behind it. Genetic sex or the chromosomes that a person have after the fertilization is to be determined, "when the sperm cell from a male which carries an X or a Y chromosome fused with the egg from a female which carries an X chromosome". "Studies have found that males generally have a larger cerebrum, cerebellum and hippocampus, while females have a higher density left frontal lobe and larger volumes in the right frontal lobes. The brain of a transgender person is both structurally and functionally more similar to their experienced gender identity than their biological sex".

According to the studies, a person's gender identity is closely related to being transgender. It is a roof term that includes the people whose gender identity doesn't match or align with the sex assigned to them at birth. The term transgender covers all the individuals who fall under the non-binary or genderqueer category including bigender, pangender, genderfluid, or agender. It also includes the third- gender.

"Even though scientific studies validate the experience of transgender people they are still suffering from more depression and anxiety than the general people. The risk of suicide is more prominent in transgender people who have been rejected by their families discriminated against at their workplace, or in healthcare. Suicide risk seems to decrease after gender transitioning"⁶. Suggesting that gender dysphoria can cause an extreme amount of emotional pain even to the point of suicide.

ARE INTERSEX AND TRANSGENDER SAME?

Intersex and transgender individuals have a common interest in self-governance - and may have particular lawful requirements while confronting covering obstructions to have suitable care. While intersex people are compelled to go through therapeutically superfluous medical procedures in the earliest stages, transgender individuals are often denied desired medical treatment in adolescence and beyond.

⁶ Robert Wintemute, Same-Sex Love and Indian Penal Code § 377: An Important Human Rights Issue for India, 4 NUJS L. REV. 31, 31-57 (2011).

Transgender individuals may on the other hand be not able to get to sexual orientation compatible documentation without going through medical procedures that are, sometimes, undesirable. The two networks wrestle with a deficiency of dynamic authority over their own bodies.

Individuals who distinguish as transsexual or transgender are normally individuals who are brought into the world with typical male or female body yet feel like they've been naturally introduced to "some unacceptable body." For instance, an individual who recognizes as transsexual or transgender may have ordinary female life anatomy yet feel like a male and try to get male by taking chemicals or choosing to have intercourse reassignment medical procedures.⁷

Individuals who have intersex conditions have anatomies that aren't viewed as regularly male or female. A great many people with intersex conditions come to clinical since specialists or guardians notice something unordinary about their bodies. Interestingly, individuals who are transgendered have an inside encounter of sex personality that is unique in relation to a great many people.

"Numerous individuals befuddle transsexual and transgender individuals with intersex conditions since they see two gatherings of individuals who might want to pick their own sexual orientation character and here and there those decisions require hormonal medicines and additionally medical procedure. These are similitudes. It's likewise obvious, but uncommon, that a few groups who have intersex conditions additionally choose to change sexual orientations sooner or later in their life, so a few groups with intersex conditions may likewise distinguish themselves as transsexual or transgender".

Although there are similarities, transgender and intersex individuals should not be conflated. Most intersex people identify as male or female, unlike transgender individuals whose gender identity differs from their assigned sex at birth. Legislators, such as in Australia, recognize the distinct needs of each group. Both face discrimination and should collaborate on human rights issues, but their unique challenges must be acknowledged. In summary, transgender individuals have a gender identity different from their birth-assigned sex, while intersex individuals are born with atypical sexual or reproductive anatomy. A person cannot transition to become intersex because having an intersex condition is defined as a variation in reproductive anatomy present at birth."⁸

⁷ What's the Difference Between Being Transgender or Transsexual and Having an Intersex Condition?, INTERSEX SOCIETY OF N. AM., <https://isna.org/faq/transgender/> (last visited Sep. 2, 2024)

⁸ *Supra* note at 1

WHAT'S THE GLBT CONNECTION?

GLBT community refers to the grouping of "gay, lesbian, bisexual, transgender". GLBT community is also referred to as the LGBT community or even as the gay community. The government of different countries have taken various steps to limit and ease GLBT people's right at the national, state and local level. Sex, gender and gender identity seem terms with similar meaning that have very different understanding and meaning. Then comes, the acronym for Gay, Lesbian, bi-sexual and transgender, GLBT⁹. Sex refers to the biological gender that we are born with, gender, in turn, follows the concept of gender identity or personal identification of sex, which may or may not match with the sex assigned to individuals during their birth. For, all these aspects, a common acronym is used i.e. the term LGBTIQ. The first 3 letters talk about the sexual orientation of the individuals.

The meaning of the letters in the acronym can be stated as:

L-Lesbian

This gender description or identity or this term includes all the women who find other women physically and mentally attractive.

G-GAY

This term defines all those men who like other man or find other men physically or mentally appealing.

B-Bisexual

Bisexual are the people (can be both man and woman) who are attracted to both women and man. They might be attracted to man or woman depending on their personal needs.

T- Trans/Transgender

These terms include all the people whose sex and gender identity don't match.

⁹ C.E. Roselli, Neurobiology of Gender Identity and Sexual Orientation, J. NEUROENDOCRINOLOGY (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6677266/> (last visited Sep. 2, 2024).

I-Intersexual

Intersexual people are those people who don't have definitive biological sex and often have surgery at the time of their birth to have distinctive sex.

Q- Queer/ Genderqueer

This term has very wide coverage. It includes all those people who have a hard time determining their sex or can fit anywhere within the spectrum of gender identity. This term also includes people who are unsure about their identity and has no biological anatomy.

In the context of the Indian community, Homosexuality or a different gender identity other than male or female has always been questionable. People under this category would always view as third-wheel or as an embarrassment to society. The government of India to help these individuals gain a stand in the society that they deserve and so that these individuals are treated equally and not some outcast made homosexuality legal and acceptable in India. A bench of 5- judge of the Supreme court of India passed a law, invalidating a part of section 377, making homosexuality legal in all the states of India including Jammu and Kashmir.

Kolkata hosted the first Pride march. “Other legal prohibitions against private adult consensual and non-commercial same-sex conduct a real direct violation of fundamental rights provided by the Indian constitution effectively that meant that section 377 was decriminalized, but legalized”.¹⁰

OTHER TERMS ASSOCIATED WITH GENDER IDENTITY THAT MAY HELP US DIFFERENTIATE BETWEEN TRANSGENDER PERSON AND OTHER PEOPLE:

Gender fluid individuals shift between genders based on mood or circumstances, identifying as male, female, or neither at different times. Bigender people similarly identify as either male or female depending on the situation. Gender non-conforming individuals reject traditional gender roles, while third gender, such as Hijra in South Asia, and Two-Spirit in Native American cultures, represent those who do not fit the binary gender system. Genderqueer encompasses identities outside the male-female binary.

¹⁰ *Supra note at 4*

Cisgender individuals align their gender identity with their biological sex, while agender individuals do not identify with any gender. Transgender individuals' gender identity does not match their assigned sex at birth.

Intersex: "According to the UN Office of the High Commissioner for human rights intersex individuals. Do not fit the typical definitions for male or female bodies. They are born with variations and chromosomes hormones or genitalia that aren't consistent with typical gender characteristics. The previous term hermaphrodite is no longer considered appropriate controversially some intersex children are hormonal e or surgically altered to fit more socially acceptable identities".¹¹

III. Comparative Analysis Of Laws In Other Countries

The plight of transgender people in other countries is discussed in this chapter. There are rules, regulations, and schemes to identify, protect, and assist the city in its growth. Based on the work of various prestigious institutions, it can be inferred that there is only insufficient knowledge accessible on the condition of judicial acceptance of the trans-people.

This is due to the necessity to protect the parties concerned and the complicated and unique existence of each case. Only a few nations have laws protecting trans-people from bullying, recognising their self-perceived gender individuality in individual documents, and ensuring "their right to gender reassignment surgery (GRS)" or some other medicinal process required refurbishment of gender manifestation.¹²

ASIAN COUNTRIES

With the support of UNDP, the Asia Pacific Transgender Network researched nine Asian countries, evaluating rules, legislation, and strategies relative to lawful gender identification in "Bangladesh, China, India, Nepal, Pakistan, the Philippines, and Thailand; APTN has also completed similar evaluations in Indonesia and Malaysia."¹³

¹¹ Intersex People, U.N. OFF. OF THE HIGH COMMISSIONER FOR HUM. RTS., <https://www.ohchr.org/EN/Issues/LGBTI/Pages/IntersexPeople.aspx> (last visited Sep. 2, 2024).

¹² InterAct, *Understanding Intersex and Transgender Communities*, INTERACTADVOCATES.ORG, <https://interactadvocates.org/wp-content/uploads/2016/05/LavLaw-Trans-and-Intersex-Fact-Sheet.pdf> (last visited Sept. 2, 2024).

¹³ Sunil Babu Pant v. Nepal Gov't, Writ No. 917 of 2064 BS (2007) (Nepal).

Thailand

Here are wide-ranging rights to pick and modify one's designation in Thailand, but it is lone lawful until the designation is licensed. Even though this is merely an administrative procedure, the registrar retains considerable discretion.¹⁴ According to community consultations conducted for the Thailand nation study, transgender people often encounter difficulties altering their designation to reflect their gender individuality. According to reports, administrators frequently refuse such requirements due to a rule in their operating guidebook that states that an individual's name must signify whether the entity is masculine or feminine. This clause is generally understood as necessitating that an individual's sexual category be defined by the gender allocated at natal. The usage of "gender-specific" designation names is required and implemented in Thailand. Presently, no commandment in Thailand requires transgender persons to alter their designation heading (Mr, Mrs, or Ms) on authorised papers. Grounded on the gender given at natal, designation name alternatives are divided hooked on two groupings: women's which men's, and appear on all official documentation. And suppose a trans-gender lady obtains a feminine designation on this woman identity papers. In that case, her name title will be identified as "Mr." The title of 'Miss' or 'Mrs' will be granted to a transgender male. There are no non-binary alternatives, such as Mx, for any of the name names. In 2007, suggested changes to name title legislation included allowing transgender people who have been diagnosed with Gender Identity Disorder who have undergone gender-affirming surgery to change their names. The legislation stalled, and transgender individuals are not included in the Persons' Name Title Act.

No legislation or regulation in Thailand allows transgender individuals to alter their name, gender, or sex on authorised brochures. The lawful instance is a "1981 Supreme Court ruling" that established that a person's legal gender is decided by the sex allocated at the time of birth. It denied a transgender woman's request to be known as female, citing a female's lexicon, meaning somebody who can offer a genetic child.¹⁵ Thailand initiated a new Gender Equality Act in 2016, which would give transgender persons legal gender recognition. However, since the draft has several stringent inclusion requirements, further meetings with the transgender people and their civil society are required in recommendations.¹⁶

¹⁴ "Person Name Act, 1962, B.E. 2505, (Thailand)".

¹⁵ "Supreme Court Judgment No. 157/2524 (Thailand), 1981".

¹⁶ UNDP, *Legal Gender Recognition in Thailand: A Legal and Policy Review*, U.N. DEV. PROGRAMME (May 1, 2018), https://www.th.undp.org/content/thailand/en/home/library/democratic_governance/legal-gender-recognition-in-thailand--a-legal-and-policy-review.html.

Substantial modifications prepared & commendations recommended-

- i. The National Social Security Promotion Commission Legislation of 2012 indicated that citizens of different races and sexualities should have more schooling options and that gender equity should be encouraged. Higher institutes encourage scholars to select their uniforms, founded on the idea that the scholar's welfare is more essential than the standards around sexual category and outfit.
- ii. Bangkok College delivered clothing requirements for scholars in the groups of "boy," "female," "tomboy," and "ladyboy" as another institutional view of this rule.
- iii. Approximately all universities and universities have now implemented lone compartment lavatories accessible to all pupils, irrespective of their sex or sexual category orientation.
- iv. Also, transgender students have successfully opposed mandatory uniform policies at a few universities, including Mahidol University. The University President's meeting passed a resolution specifying that transgender women who want to wear the feminine dress during the graduation ceremony would request such papers, together with a "medical certificate confirming a diagnosis of Gender Identity Disorder" due to a lawsuit brought by transgender women.
- v. Since the 2014 academic year, this program has been in effect. Although transgender women may now qualify to wear the formal uniform in compliance with their gender identity, there is no information about whether this procedure is available to transgender men. As a result of the passing of the "Gender Equality Act B.E. 2558 (2015)", "Mahidol University" has decided to amend its rules and regulations to comply with the Act.¹⁷

"The Prevention and Suppression of Prostitution Act" is often used in Thailand to prosecute transgender people. As a result, transgender women are disproportionately and unjustly affected by applying this Act, especially throughout the context of abuse.

¹⁷ *Ibid.*

Nepal

A Citizenship Certificate in Nepal may be altered only in terms of gender marker and in a name. The Supreme Court of Nepal asked the Nepalese government to enact legislation enabling the people belonging to the transgender community to alter their names on January 23, 2017.¹⁸ In 2007, acting on its Supreme Court's directions, Nepal became the first nation in the region to allow individuals to self-declare their identity, thereby accepting the third gender identity.¹⁹ In 2013, Nepal's Citizenship Certificate (nagarikta) was amended to reflect this third gender group's addition and was expressed in voting lists, immigration forms, and the 2011 federal census. The Nepalese Public Service Commission has even incorporated the third gender choice in the civil services test application forms under the head of 'Other.'

As much as 651 people identified themselves as transgender applying under 'Other' in 2015, the first fiscal year that this alternative was open, accounting for 1 in every 1000 applicants. The decision rendered by the Nepal Supreme Court cited international human rights norms while expressly stating that an individual's "self-feeling" was the only requirement for obtaining the legal recognition of belonging to the third gender, in documents as well as in the government records. A transgender person may alter their gender marker and title without recourse to a psychiatric diagnosis or treatment or any third-party verification.²⁰ Then, in the case "*Dilu Dibuja v. the Ministry of Foreign Affairs*", the Apex Court ruled that a suitable passport reflecting the details in the citizenship certificate of a transgender person may be issued.

In August 2015, the passport regulations were revised to include a third gender identifier in the form of the category "O." Article 12 of Nepal's 2015 Constitution pledges the "Right to a Citizenship Certificate", reflective of a transgender person's gender status. Suppose the claimant is alienated from their relatives. In that case, it is problematic to receive or change the certificate of citizenship because the procedure necessitates the "Citizenship Certificate of a parent or guardian."

¹⁸ "Sunil Babu Pant and others v. Nepal Government and others, 2013; Matter is still subjudice".

¹⁹ "Sunil Babu Pant and Others v. Nepal Government and Others, 2007; Writ No. 917 of 2064 BS, 2007".

²⁰ *Ibid.*

To receive the Citizenship Certificate, the presence of a minimum of one parent or guardian is to be ensured in the Office of the Chief District Officer. To make certain modifications to a passport or other identification papers, like a voting card, you must be listed as 'Other' on a Citizenship Certificate. Citizenship certificates are not given to Nepalese citizens until they reach the age of 16. As a result, a third gender citizen's legal status cannot be attained in Nepal until a person reaches 16. Albeit in 2013, Nepal's Citizenship Certificate (nagarikta) came to be reflective of the third gender status, it was limited to those seeking the Certificate of Citizenship for the very first time. The option of updating the gender status in the existing Certificates of Citizenship was not made available, thereby making it impossible for the transgender people who already had a Certificate of Citizenship and for those who wished to alter their gender status post obtaining the Certificate of Citizenship to get their gender status acknowledged legally.²¹ In 2015, a transgender woman hailing from the Western region of Nepal filed a petition before the Supreme Court to direct the government to enable anyone in possession of a citizenship certificate to register for a third gender status and alter their name. The Supreme Court directed the government to formulate policies to resolve each of these problems on January 23, 2017.

A 2007 Nepal Supreme Court case, "*Sunil Babu Pant and Others v. Nepal Government and Others*," dealt with gender and sexual minorities in general and reflected a progressive approach insofar as it proposed the steps to be taken on the issue of same-sex marriage and moved towards a wider acceptance of the third gender status. In 2014, a Same-Sex Marriage Committee was formed, which submitted its report to the prime minister's office and Council of Ministers (OPMC).

It advocated for the legalisation of same-sex marriage. It fell under the broader rubric of the right to equality while stating that rules governing marriages should extend pretty to all people, regardless of their gender status, even though a gender marker has been changed.²²

²¹ "UNDP & USAID, *Being LGBT in Asia: The Nepal Country report*, <https://www.usaid.gov/documents/1861/being-lgbt-asia-nepal-country-report>".

²² Nepal's Same Sex Marriage Study Committee, *Same Sex Marriage Study Report* (2014)

Philippines

In the Philippines, there are no formal ways for transgender persons to modify their designation specifics on authorised papers due to the lack of a legal gender identification statute, legislation, or rule. In the Philippines, a transgender female who had experienced sexual category supporting surgery who wanted to modify her foremost name and gender indicator on her natal documentation was denied by the Supreme Court in 2007.

The Court decided that the laws authorising birth certificate corrections would not extend to transgender people because the candidate's "gender" on the natal document was grounded "correctly" on the gender registered at natal.²³ This decision broadly described the words 'masculinity' and 'feminine, depending on a being's capacity to manufacture "spermatozoa and ova" individually. It concluded that individuals who have undergone gender-affirming surgery were not included in a common definition of the terms. In the Philippines, the Department of Education released an order in 2008 that specified that wearing a "school uniform is not required in public schools."

The successful enforcement of such a strategy may be beneficial for "transgender and gender-diverse students," as described in another directive, which specifies that "a student's dress should not become a source of discrimination." Despite this development, the Philippines' majority of schools also mandate students to wear gender-specific uniforms. To address harassment and bigotry against transgender children in school institutions, the government enacted a series of rules. This includes the Anti-Bullying Act of 2013, which forbids any act that humiliates or eliminates an individual grounded on their sexual alignment or sexual category individuality, whether perceived or actual.²⁴ However, the law has been heavily criticised because it only tackles harriving between pupils, not intimidation committed by school staff. A lawsuit may be lodged organizationally underneath the "Division of Schooling's Child Protection Policy, citing the Anti-Child Abuse Act" in situations wherever the intimidation is perpetrated by a "principal, teacher, or other school staff."

²³ Silverio v. Republic of the Philippines, G.R. No. 174689 (2007).

²⁴ Republic Act No. 10627 (Anti-Bullying Act of 2013) Implementing Rules and Regulations (Phil.)

Physical or psychological harm and cruelty based on a child's gender identity are examples of such incidents. “The Anti-Child Abuse Act's” capacity to shield gender non-conforming children, on the other hand, is primarily based on court perception of sexual category orientation and gender identity. In the “July 2016 case of *People v. Penonia in Cagayan De Oro Region*”, the trial court approved a chief's conduct in putting a penalty on a kid's sexual category identity, finding that this did not constitute “child violence.”²⁵ The “Philippine Civil Service Commission released ‘Guidelines in the Processing, Verifying, and Handling of LGBT Applicants,’” which allows “transgender and gender-diverse persons” to request a legitimate photocopy of their natal credentials to validate their identities.

Although these requirements are benevolent, transgender people can be disadvantaged by this additional procedural provision. Transgender individuals, for example, can be revolved away from the test if they do not have their natal credentials. Furthermore, front providers are frequently ignorant of these rules and any other laws to shield transgender people from discrimination. Any employers allow transgender males and women with more masculine gender identity to attire masculine dispensed uniforms. Any of these choices were made in reply to inscribed demands to wear a preferred uniform. Though deprived of a solid right to anti-discrimination, many transgender people are likely to be unable to make those demands for fear of being discriminated against in the workplace.

The Punitive Code's section on “offence against decency or good customs for any particularly scandalous behaviour” is used to excuse the prosecution and imprisonment of transgender people in community areas, even however the circumstances are seldom tried. Additionally, transgender females are frequently prosecuted at film settings for “indecent or unethical performances, scenes, activities, or displays,” particularly those that are “contrary to law, public order, morality, and good customs.”

²⁵ *People v. Penonia*, FC Criminal Case No. R-2013-066, Regional Trial Court of Misamis Oriental, 10th Judicial Branch 22, Cagayan De Oro City (2016)

CHINA

- In China, the law permits the person from the transgender category to change their names.²⁶ The statute's provision does not allow a person to represent his names falsely. When the regulation was enacted, it was for the change of the names, and then it did not exclusively deny the change in the gender of the persons.²⁷
- Changing one's own or personal name, on the other hand, necessitates detailed paperwork, including consents from one's family and workplace, but it eventually depends on the choice of the local household registry office where the person took birth or resided. This means that transgender people will face several practical obstacles in seeking a name change in the law.
- Before transgender people in China can change their sex information on their household registration, it is crucial for them that they must first receive a psychiatric diagnosis and undergo gender-affirming treatment. Only anyone strictly heterosexual, such as a transgender woman, would be given such a diagnosis. At this point, some more requirements need to be followed, and they include- firstly, a person can only get permission for gender-affirming procedures if they can prove they have no previous criminal record. Secondly, they have to show that their family has been informed and are unmarried and above the age of 20 years. These standards cannot always be applied consistently. Further, for altering the sex details, the transgender person must also give the certificate of gender determination verified by the hospital or the medical clinic.
- Until gender-affirming surgeries may be performed on any transgender individual above the age of 20, the Ministry of Health regulations in China needs a handwritten verification stating that the patient's family and workforce have been informed. It is also mandatory for the person who is transgender to have their household registration book, which may need to be located in their hometown or with their relatives. Close relatives must be notified. They should also attest a signature authorising the operation. If the mother and father of the transgender person are dead, the transgender person's other relatives must be informed.

²⁶ General Principles of the Civil Law of the People's Republic of China (1986), art. 9

²⁷ Regulations of the People's Republic of China on Household Registration (1958), art. 18.

Thus, if such information or written proof of such information is not provided and made available, then the procedure will not proceed forward. Although individual surgeons may be more open-minded, there is evidence that the parents of such people who want to have surgery are sometimes reluctant to have their children do that. The approval is needed again when after the surgery, the transgender person applies for the amendment of the sex details in the household registration and again, approval is needed either from the unit work or from the educational institution.²⁸

- It is feasible that an amendment can be sought in the gender marker once the gender-affirming surgery has been done. The pre-requisite that the Ministry of health requires is that the person should not be married.
- The legal statutes and Chin provisions are very comprehensive. Thus, they expressly list the boundaries on admission to gender recognition. As previously stated, a person who wants to go through gender-changing surgery must be above the age of 20 and should not have any criminal record, according to a Ministry of Health directive.
- In China, the case is such that the institutions for educational purposes usually don't possess the power to alter the gender markers of transgender. This is valid even though the transgender individual has medically transitioned and altered their authorised identity papers as a result. The Education Laws of China guarantees that citizens have the right and duty to obtain an education without discrimination. But unfortunately, no laws and statute are banning transgender students from being bullied in classrooms. Additionally, educational resources appear to be deficient in imparting correct and necessary information on gender knowledge and sexual orientation.
- The laws related to equal employment can efficiently prohibit discrimination against people who are transgender are distributed in a catena of laws and guidelines. Some use the word "sex," while others claim that job details must not include any derogatory material and that sexual discrimination is strictly prohibited. And for that matter, these are also applicable to transgender persons. More details about how protective regulations are officially interpreted are required, including how the word "gender" is described, interpreted, and used.

²⁸ *Ibid.*

There has also been a lack of clarification in interpreting specific court regulations, resulting in uncertainty in their application.

- Married people are not allowed to change their gender markers because it would lead to same-sex marriage. On the other hand, unmarried individuals who have undergone a transformation of their sexual orientation by way of “*Gender-Affirming Surgeries*” and change their gender markers are known as that gender for marriage purposes. That means a woman with transgender characteristics with a female gender marker may marry a man, and vice versa for a transgender man with a male gender marker. Those relationships are untouchable because of the person's gender identity.
- It was challenged in the “*Intermediate People’s Court of Nanjing City*” that the marriage between the same is not allowed cannot be used as a valid ground for prohibiting the married person from gender-affirming surgery. And it was held that the change of sex is a matter of the body and is not subject to whether the person is married.
- In China, if the woman who is transgender has changed her gender marker, she can be put behind bars. In China, transgender women can be punished for being sex workers. This implies that transgender women will be kept in detention like a man.

AUSTRALIA:

- In Australia, each state or territory is responsible for the registration of births. Except for the Australian Capital Territory (ACT), all states and territories allow trans people to get a new birth certificate. Still, only after gender reassignment surgery (GRS) (also known as a sex confirmation procedure) is restricted only for non-married people. The Australian Capital Territory is unique in that it provides for the issuance of a new birth certificate without the need for surgery. Instead, the law stipulates that the individual must have received “effective” clinical treatment for their gender change.²⁹
- According to an Australian government policy, a person must be given the choice of selecting whether he wants to be a male, female, or X (which means indeterminate or intersex or unspecified) when such data is collected and registered on gender classifications

²⁹ Births, Deaths and Marriages Registration Act 1997 (ACT) (Austl.), § 24.

in national government documents. It was reported that Sex reassignment surgery is not the necessary condition for acknowledging an alteration in gender in Australian Government documents.

- The Australian national government is in charge of passport issuance. Individuals don't need to have undergone GRS to receive a passport in a new gender. Certificates of Birth and citizenship certificates, for example, do not need to be changed. But for that matter, it is mandatory to get an authorisation from a physician corroborating that the individual has undergone or is receiving clinical care or treatment for gender change to a different gender, or that they are intersex and do not identify with the gender allocated to them at birth, is sufficient.³⁰
- It can be said that, in Australia, healthcare is unique to individual states or territories and is provided in part by each state and also in part by private medical insurance. As per the “Sexual Reassignment Act 1988 (SA)”, the Minister of Health will not authorise a hospital unless it is sure that it is an appropriate GRS location. People who choose to pay for surgery and other expenses associated with moving from one gender to another will need private medical insurance. Also, the extent of insurance coverage differs, so trans people must choose their coverage carefully.
- Further, the Queensland Civil and Administrative Tribunal in the case of “*Sinden v. the State of Queensland*” propounded that it was not prejudiced for Queensland's Department of Corrective Services to refuse to permit an inmate to begin female hormone therapy in the jail for the very first time, also when such treatment was commonly accessible to other trans people who had begun such treatment before incarceration.³¹ The housing of trans prisoners varies according to the place of residence, i.e., state or Territory. For instance, the prisoners' assignment is grounded on the fact that what is gender or sex that is authorised on the birth certificate- this is the case in northern Territory. The prisoner has gone through the surgery and has been given the original birth certificate, and they will be allocated to prison based on gender at birth.

³⁰ Austl. Gov't Guidelines on the Recognition of Sex and Gender, at 18 (July 2013).

³¹ *Sinden v. State of Queensland* (2012) QCAT 284 (Austl.).

- In *Commonwealth v. Australian Capital Territory*, the court reiterated that the Marriage Equality Act, which deals with same-sex marriage in the ACT, is against the Marriage Act, 1961 and thus is not valid.³² It was propounded in the amendment of 2004 in Marriage Act 1961 that although states and territories can pass laws and legislation concerning their states, but should not be in contradiction with the amended Act.
- Re Kevin- Validity of Marriage of Transsexual [2001] Fam CA 1074- It mandates that the affirmed sex of an individual is considered during the wedding to determine the authorisation of marriage licenses. Concludingly, it means that if an individual has finally altered their birth certificate, which states that he or she is now of a different gender to what they were at the time of birth, then they are qualified for a marriage license (and eligible to marry a person of a different gender).
- In countries such as the ACT, New South Wales, Tasmania etc., Civil Unions between same-sex couples are admissible.³³ It makes available the registration of non-related relationships between two significant adults, who can give their consent, permitting the parties to take advantage of the regulations and benefits available to those in a recognised relationship. As a result, in these states or territories, if a trans person is in a relationship with a person of the same gender or sex, they may be able to have their relationship authorised in law by the civil union or other means.
- From the pieces of evidence and data that have been collected, it is shown that the registration of relationship for same-sex couples is not required either in Northern Territory or Western Australia. Still, the fact is- in these territories, they recognise such relationships as a de-factor only for property purposes.
- The sections, rules, and laws of the relationship property provision of the family law act apply to every other person, no matter what, and does not affect whether the couple is in the same or opposite-sex relationship. The same applies to the division of property, and it also applies to everyone. Trans people are not excluded by inheritance rights to retirement in case of their partner's death because superannuation is paid to a member's 'spouse,' described

³² The Commonwealth v. Australian Capital Territory (2013) HCA 55 (Austl.)

³³ Civil Unions Act 2012 (ACT).

as counting a party to a marriage or a de facto relationship. Married, de facto, or civil union couples, whether of the same or opposite sex, are eligible for social security and widows' pensions (including veterans).³⁴

- The Sexual Reassignment Act, 1988 states that the Ministry of Health functioning in South Africa is not under the prerogative to approve a hospital unless satisfied that the premise of the same is suitable for carrying out GRS. There is a requirement for private medical insurance for people seeking surgery and other related costs in transition from one gender to another gender. There are evident variations in the insurance cover in terms of its scope.³⁵
- Section 22 of the Australia-wide Sex Discrimination Act, 1984 as amended states that:
 - (1) An individual is unlawful when he/she tries to discriminate against a person on the grounds of another's sexual orientation, sex, gender identity, intersex status, marital status, potential or pregnancy status, breastfeeding whether for payment or not, providing goods/services or facilities:
 - (a) Through avoiding or refusing to provide necessary goods/services or facilities available;
 - (b) Under the terms where the first-mentioned person provides goods/services or provide those facilities available to another person.
 - (2) This provision binds the crown of the state.
- Those who indulge in denying the access of reproductive technology to trans person fall under the category of committing unlawful activity and is thereby lawful. The accessibility of reproductive technology is restricted to certain situations. Those situations are where the professional doctor is contented that a woman cannot bear a child other by a reproductive treatment or there is a danger that woman can pass hereditary illness or irregularity of child unless treatment is offered.
- In the circumstance where the trans person's gender is male and thereby are in the union of same-sex relationships, their accessibility to fertility treatment is accessible due to certain factors. As only if they have a surrogate who is willing to bear the child in her womb and give her eggs or like eggs from some other women or female and then entrenched in the surrogate.³⁶

³⁴ Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act, 2013.

³⁵ Sexual Reassignment Act, 1988 (SA), Section 6.

³⁶ Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 (Austl.).

CANADA³⁷

- Certain provinces fall under Canada's ambit and are willing to issue a birth certificate indicating appropriate gender. According to the various and varying rules and procedures, the option available for altering legal gender is accessible in every province and area of the respective state. An applicant's application comprises the details for change of gender for a passport herein. To substantiate the statement, the applicant is requested to submit the certificate duly acknowledged by the medical practitioner.
- The pre-operative male to female offenders having **Gender Identity Disorder** (GID) is necessitated to be held in the men's institutions. Likewise, the pre-operative female to male offenders with Gender Identity Disorder (GID) is to be kept in women's institutions. The Correctional Services Canada issues Commissioner's Directive 800 and Gender Identity Disorder, section 35.99.
- In addition to the conduct of placement and program decisions, the individual assessment shall be scheduled to ensure offenders diagnosed with Gender Identity Disorder. The accommodation shall require due diligence, keeping into consideration the vulnerabilities of their safety needs and privacy. These are directives of Commissioner's Directive 800 and under section 36 of Gender Identity Disorder issued by the Correctional Services Canada.
- On 20th July 2005, Canada passed an enacted the Civil Marriage Act legalising same-sex marriage. The Act signifies gender-neutral marriages. Section 2 of the said provision states that marriage is performed for civil purposes and is furthermore the lawful union of 2 people, excluding other factors.
- There is an existing provision that provides explicit protection for trans individuals against all kinds of discrimination. The abovementioned provision is mentioned in the legislation or says applicable in Ontario, Newfoundland, Nova Scotia, Northwest Territories, Labrador, and Prince Edward Island.
- Canada does not entail any provision for national-level coverage. At present, Quebec comes under that Canadian jurisdiction that assists public funding to support reproductive technologies (ARTs). Moreover, it comprises coverage of IUI, IVF/ICSI and fertility drugs. Ontario provides public funding for IUI AND IVF, excluding fertility drugs. Also, the coverage is limited to women when it comes to IVF, excluding ICSI. ART services are indirectly shielded, but the tax credit is offered for fertility procedures in Manitoba.

³⁷ Mr & Ms X: The Rights of Transgender Persons Globally.

- Multiple IVF-related medical procedures, for example- infertility screening tests, multiple tests, ultrasounds, MRI, and in-hospital expenses, are covered by provincial health insurance. Fertility drugs, In vitro fertilisation, ICSI, embryo cryopreservation storage costs, preimplantation genetic diagnosis, and sperm, egg, or, however, are not included in that provincial health insurance.
- Since a Canadian court should construe whether "infertility" involves trans people who are incapable of conceiving, it's uncertain how much money provinces (other than Quebec) will put into reproductive technology for trans people.

IV. CONCLUSION

The journey towards achieving equality and justice for transgender individuals has seen significant strides, yet it remains fraught with challenges that demand continuous efforts on multiple fronts. Legal frameworks, such as those introduced in India, represent critical advancements by recognizing the rights and identities of transgender persons. The Supreme Court's ruling in 2014, coupled with the Transgender Persons (Protection of Rights) Bill, 2018, symbolizes a major step forward in providing legal recognition and protection against discrimination. However, the efficacy of such legislation is often undermined by societal attitudes and the persistence of systemic discrimination, which continue to marginalize transgender individuals.

Despite the legal protections in place, transgender persons frequently face harassment, violence, and exclusion in various facets of life, including healthcare, education, employment, and public spaces. The COVID-19 pandemic has further exacerbated these vulnerabilities, highlighting the urgent need for comprehensive and inclusive policies that address the unique challenges faced by transgender communities.

A significant issue lies in the conflation of transgender and intersex identities, leading to misunderstandings and inadequate legal protection for both groups. While there are similarities in their struggles for bodily autonomy and gender recognition, it is crucial to distinguish between their specific needs to ensure that legal and medical frameworks cater effectively to each community. The inclusion of intersex rights within broader transgender rights discourse is essential but must be done with careful consideration of the distinct legal and healthcare challenges intersex individuals face.

Moving forward, it is imperative to strengthen the implementation of existing laws and introduce more nuanced policies that address the complex realities of transgender and intersex individuals. Legal reforms must go hand in hand with societal change, which requires robust educational campaigns to combat stigma and discrimination. These efforts should be aimed at fostering a more inclusive society where diversity in gender identity is not only accepted but celebrated.

Moreover, international examples from countries such as Nepal, Thailand, and Australia offer valuable lessons in progressive legal frameworks and policies that recognize and protect the rights of transgender individuals. These examples should inspire further reforms in other countries, including India, to adopt best practices and tailor them to local contexts. Collaborative efforts between governments, civil society, and transgender communities are essential in driving these changes.

In conclusion, while significant progress has been made, the road to true equality for transgender individuals is still long. Continuous legal reforms, coupled with societal transformation, are crucial in ensuring that transgender persons can live with dignity and without fear of discrimination. The way forward demands unwavering commitment from all sectors of society to uphold the human rights of transgender individuals and to create a world where everyone, regardless of their gender identity, can thrive.