

# Exploring Vedic Traditions and Law: Creating a Holistic Education System for Transgender Inclusivity in India

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## **Abstract:**

This article explores the historical and contemporary recognition of transgender identities in India, emphasizing the deep-rooted acknowledgment of non-binary genders in ancient Indian scriptures and the modern legal frameworks aimed at protecting transgender rights. The study draws from various secondary sources to analyze the evolution of transgender recognition from the Vedic concept of 'Tritiya Prakriti' to the landmark 2014 NALSA judgment and the Transgender Persons (Protection of Rights) Act, 2019. Despite legal advancements, significant challenges persist, including societal stigma and limited access to essential services. The article argues for a holistic approach that integrates ancient cultural inclusivity with modern human rights principles to foster a supportive environment for transgender individuals. The methodology includes both qualitative and quantitative analysis of published and unpublished literature, legal documents, and educational reforms.

**Keywords:** Gender, transgender, heterosexual, homosexuals, bisexual, asexual

## **Introduction:**

At birth, individuals are assigned a gender identity based on their biological sex, which becomes a foundational aspect of their social and legal identity. However, for transgender individuals, their deeply felt gender identity may differ from this assigned sex, leading to profound personal and societal challenges. In India, the transgender community, encompassing diverse groups historically known as hijras and including identities such as kinnars, kothis, aravani, jogtas, and others, has a rich cultural presence dating back over 4000 years. These groups have historically occupied unique social roles and faced distinct challenges within Indian society, contributing to ongoing discussions and debates about gender identity and inclusivity.

The Vedas are the fundamental scriptures of Hinduism and were penned in Sanskrit. They cover a wide range of topics, including religious rituals, the structure of the universe, and spiritual teachings. According to the Vedas, the third gender, individuals who do not identify exclusively as male or female, are regarded as having a divine connection and have always been an integral part of the natural world. In Hindu belief, the supreme male deity, God or Bhagwan, is complemented by a female counterpart known as Shakti. When combined, they represent the third gender, also referred to as Ardhanarishwar, Tritiya Shakti, or Hermaphrodites. In Hindu mythology, it is common for gods to change genders, and every god is associated with a female Shakti. For example, Vinayaka has Vinayaki, and Varaha has

Varahi. Shiva transforms into Ardhanareeswara, symbolizing half female, in order to bring joy to the Goddess.

People have been grouped into three different types of gender categories, namely Pumsa Prakriti (male essence), Stri Prakriti (female essence), and Tritiya Prakriti (third gender), which offers a detailed insight into the physical and mental aspects of individuals. The third gender, commonly known as Napumsaka, holds a unique and essential position in Vedic culture. These individuals, often described as having a neutral gender identity, have never felt constrained by societal norms regarding traditional gender roles. Instead, they have made significant contributions and have maintained a balance between the natural world and human society. Third gender members typically practice celibacy and have played a crucial role in fostering community harmony.

Despite the widespread misconception that they were marginalized, the third gender enjoyed specific rights and benefits within the Vedic community. They were allowed to seek education, form marriages, and take part in different professions while maintaining their dignity. They served in the royal courts, caring for the queens. They took part in various arts like singing, dancing, acting, and hairstyling. They were greatly respected and were warmly welcomed into the refined culture of Vedic India. Their presence was seen as fortunate, leading to their inclusion in special events and rituals. This demonstrates the acknowledgment of their distinct and beneficial role within the community.

### **Review of Literature:**

The study is based on doctrinal research. In this study researcher presents a brief review of literature related to different aspects of transgender which are as **below**.

Ancient Indian scriptures, such as the Vedas, acknowledge a continuum of gender identities. The notion of 'Tritiya Prakriti' (third nature) is frequently referenced as a foundational recognition of non-binary gender identities. **(Jain, 2021)**.<sup>1</sup>

Hindu texts like Manusmriti mention people not following strict male or female gender roles, showing ancient India's complex view of gender. **(Nanda, 1999)**.<sup>2</sup>

The landmark NALSA v. Union of India (2014) judgment by the Supreme Court of India legally recognized transgender individuals as a third gender, ensuring their fundamental rights under the Constitution **(Kothari 2020)**.<sup>3</sup>

The Transgender Persons (Protection of Rights) Act, 2019, seeks to establish a framework for safeguarding the rights of transgender individuals. However, it has been subject to critique due to several shortcomings **(G B Reddy and Baglekar Akash Kumar, 2022)**.<sup>4</sup>

Some important recommendations that emerged from this research include the necessity to inform and raise awareness among the general public and various stakeholders about issues related to minority groups to reduce societal prejudice and encourage acceptance. Additionally, providing counseling to groups of individuals with minority sexual orientations to foster acceptance and enhance self-esteem through education and economic empowerment is the need of the hour.

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<sup>1</sup>Ashi, Dr.Neha Jain Understanding Queer:Analysis of QueerWritings in Indian literature , available at [https://www.ijmra.us/project%20doc/2021/IJRSS\\_JANUARY2021/IJRSSJan21AshiKam.pdf](https://www.ijmra.us/project%20doc/2021/IJRSS_JANUARY2021/IJRSSJan21AshiKam.pdf) last accessed on 23.6.24

<sup>2</sup> Nanda, S. (1999). *Neither Man nor Woman: The Hijras of India*. Wadsworth Publishing.

<sup>3</sup>J. Kothari.,Trans Equality in India: Affirmation of the Right to Self-Determination of Gender available at <https://nujlawreview.org/wp-content/uploads/2020/09/13-3-Kothari-Trans-Equality-in-India.pdf> last accessed on 24.6.24

<sup>4</sup> G B Reddy and Baglekar Akash Kumar.(2022) Transgender Persons and The Law: A Commentary, Eastern Book Company ISBN: 9789390715916

## Research Question

How can the integration of ancient Indian cultural inclusivity and modern legal frameworks create a holistic approach to support and protect the rights of transgender individuals in India?

**Methodology:** The present article is of analytical and descriptive nature. The research paper is a doctrinal one which mainly focuses on secondary sources. The researcher conducted an in-depth study using qualitative method. Various published and unpublished papers, internet, newspapers and various books have been used to complete this research paper.

## Ancient Hindu Scriptures

Transgender individuals do not align with their assigned biological sex, challenging conventional gender norms. They encounter a shared range of obstacles within society due to their gender identities, including limitations in civil, social, political, and human rights.

Ancient Hindu texts emphasize the deep belief in Hinduism's philosophy that every aspect of the universe has a purpose. This belief extends to the recognition of the third gender, who are seen as an important yet unique element of society. In ancient Vedic culture, while there were specific penalties for certain women's behaviors, the third gender were valued for their contributions, playing a significant role in the complex fabric of Vedic traditions.

The Ramayana is a very important and sacred Hindu text that shows the culture of Hindus. It talks about the good and bad in life, and the importance of being good and loyal. It is a great example of literature, art, and religious ideas that is loved in South and Southeast Asia. In one part, Lord Ram talks to a crow named Kakabhusundi about how he likes all living things, even those who are mean, showing that he values kindness and forgiveness.<sup>5</sup>

Ram had prepared for his 14-year exile, and at this pivotal moment, all creatures in the kingdom had gathered to bid him a tearful farewell. Witnessing their profound attachment and desire to accompany him, Ram instructed every man, woman, animal, and bird in his kingdom to return home. Remarkably, he overlooked mentioning the kinnars, the transgender individuals. Undeterred by their unique identity, which placed them neither fully male nor female, the kinnars chose to remain in the forest, steadfast in their commitment to accompany Ram. They patiently waited for his return from exile. Over the course of 14 years, Ram was profoundly moved by the unwavering faith of the kinnars who had waited for him. Deeply touched by their devotion, he bestowed upon them special blessings—the ability to bring good fortune and wield curses. This blessing played a significant role in recognizing and empowering the kinnars, marking the beginning of a new distinctive role for them within Hindu traditions.<sup>6</sup>

The Kinnars are held in high regard as guests at significant life events, including weddings and childbirths, where their attendance is considered to bring forth good fortune in contemporary society. This story from the Ramayana provides the transgender community with a sacred lineage, while also highlighting the importance of acceptance and inclusivity in the divine's perspective.

According to a popular tale from the Mahabharata, Lord Vishnu transformed into Mohini, a woman with radiant beauty, to reclaim the sacred nectar obtained during the churning of the ocean (Samudra Manthan). Nevertheless, the most legendary story is that of Shikhandi.<sup>7</sup>

<sup>5</sup>“Tripathi Narayan Laxmi ,Watch the Ram Lila Rap: Transgender Community's Hatke Tribute to Lord Ram” available at <https://www.thequint.com/videos/this-diwali-revisit-ramayana-with-ram-transgender-devotees> last accessed on 22.6.2024

<sup>6</sup> Pattanaik Devdutt, “Vedanta and LBGTIQ ”available at <https://devdutt.com/articles/vedanta-and-lgbtiq/> last accessed on 22.6..2024

<sup>7</sup> Pattanaik Devdutt , “Shikhandi: And Other Tales They Don't Tell You” Penguin Books Ltd. India ,( 2014) ISBN-13 :978-9383074846

In the Bhagavata Purana, Lord Brahma thinking in water forms semi-divine beings like Kinnpurushas and kinnars. (Galva108). The Bhagavad Gita doesn't clearly talk about a third gender, but Lord Krishna's hints show he supports all beings. In chapter 10.31 of the Bhagavad Gita, Lord Krishna calls himself a shark, showing he believes in being inclusive and not negative about other beings. He says, "just because I'm a shark, doesn't mean all other fish are bad or not useful."<sup>8</sup>

Krishna doesn't feel jealousy or favoritism and is kind to everyone. The main way to get close to the Divine, according to the text, is by being devoted and serving Krishna. It supports being generous, nice, and recognizing that all beings are connected, aiming to make peace with the Ultimate Entity, who is inside all living things.

The Bhagavad Puranas mention the third gender sometimes as normal people and at other times as victims of ridicule, showing different views on it. One part of the text suggests that being indifferent to others could lead to punishment, showing a moral belief. It reads: "Any person who is mean, ignoring others' feelings regardless of their gender, whether they are male, female, or third gender, and only focused on themselves, could be punished by the king."<sup>9</sup> Another part talks about how a person's identity can change, like thinking of themselves as male, female, or neither. This is explained by the idea that the body is just made of temporary energy. Additionally, the text states that the highest quality of God is not male, female, or animal; he is not about worldly things, activities that don't bring value, or self-emptiness.

The Manusmriti, also called the Laws of Manu, is an ancient Hindu text important for its legal and moral principles. It discusses the responsibilities of parents to provide food and clothing to their non-binary children, depending on their ability to do so. It also addresses kings' duties to ensure basic needs for those without family support, and it views insulting non-binary individuals as a punishable offense, as mentioned in the Artha Shastra, Manusmriti, and other texts. Manusmriti does not universally legalize homosexuality as a form of sexual behavior, despite recognizing it as one.

The Manusmriti discusses the third gender in a detailed way, presenting two main perspectives. First, it accepts that being a third gender is a part of a person's identity and does not punish those for it. This shows it values their identity as much as anyone else's. Second, it limits what third gender individuals can do in society, like not allowing them to inherit family property or to give Shradha offerings to ancestors. This shows the society at that time had specific roles for them, based on their gender and reproductive status. Despite this, the text also recognizes that people can be different, showing a mix of beliefs, social rules, and individual identity in ancient India.<sup>10</sup>

The Arthashastra emphasizes the importance of respecting the third gender in society, making it punishable for insulting them. This approach aims to protect their dignity and promote inclusivity. However, it also shows the complexity of society by not supporting family inheritance for the third gender, indicating a nuanced approach to societal norms. As Varshadhara, these people easily moved between roles like house workers, servants for royal queens, managers, secret spies, mysterious killers, and loyal servants to the king. A special group of Varshadhara, choosing to avoid forming deep relationships, chose to keep their true selves hidden from close ties.<sup>11</sup>

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<sup>8</sup> Gay and Lesbian Vaishnava Association <https://www.galva108.org/single-post/2014/05/12/tritiyaprakriti-people-of-the-third-sex-> last accessed On 22.6.24

<sup>9</sup> Ibid.

<sup>10</sup> Wilhem, Das, Amara, Tritiya –Prakriti People of the Third Sex Understanding Homosexuality, Transgender Identity and Intersex Conditions Through Hinduism ,(2004).available at <https://www.xilbris.com/bookstore> last accessed on 23/3/22

<sup>11</sup> Ibid.

Narada Smriti, a key book in Hindu law, contains rules about Dharma, or moral duties. It doesn't specifically ban homosexuality but accepts marriages between homosexuals and others. It also gives women power to leave abusive husbands and allows them to testify in court, with conditions on their gender. Regarding trials, it limits the speaking role for those considered intersex, letting them testify in serious cases but not in minor ones.

The ancient Ayur Shastra, a book from the Indian subcontinent, talks about the third gender in detail in the Sushruta Samhita, a medical system with a long history. It describes the third gender in different ways, using five terms like Asekya, Saugandhika, Kumbhika, Irshyaka, and Shandha, which are seen as natural.<sup>12</sup> The book says that people's gender can be figured out even before they're born. It also suggests that the third gender should not have any conflicts and should live in peace. The book supports this group, emphasizing their importance and identity in life's bigger picture. It notes that third gender people might have some physical challenges and might not have the same rights as others, like in family inheritances, but it also underlines their unique qualities.

The Ardhanarishvara is a unique Hindu deity that symbolizes Lord Shiva's half-man, half-woman form. Its name comes from the words "Ardha," which means half, "Nari," which refers to a woman, and "Ishvara," which means God. In Hindu mythology, Ardhanarishvara represents the idea that Shiva and Parvati, two powerful gods, are united as one. Shiva, shown with a third eye and a serpent, is on the right side, while Parvati, with jewelry and a flowing sari, is on the left. The middle line of the image divides them, highlighting their unity. Ardhanarishvara is important because it challenges traditional views of gender and shows that the divine can take many forms.

Lord Vishnu changes into Mohini to show how gender can change and the gods can break free from typical limits. Mohini is a fascinating, beautiful character in Hindu stories, often seen as a part-woman, part-spirit. She is known for her irresistible beauty and magic, attracting both gods and demons. The most well-known moment with Mohini is when she helps distribute a magical drink made from an epic battle, ensuring the gods get it first to stay immortal. She does this cleverly by tricking the enemies, helping to keep balance in the world.

In certain versions of the Puranas, Mohini is said to have married Shiva, giving birth to Ayyappa. This detail makes her more complex, linking her to other important gods. She is often seen as a symbol for the fleeting and illusionary aspects of the material world. Her captivating appearance highlights the temptations that can pull people from their moral and spiritual journeys. Her story has influenced art forms like dance, music, and visual arts, especially Mohiniyattam in Kerala, which shows her grace and beauty.<sup>13</sup>

The worship of Ayyappa is closely linked with the Sabarimala temple, one of India's most renowned pilgrimage destinations. Ayyappa is revered as a composite deity, believed to have originated from the union of Lord Shiva and Lord Vishnu in his Mohini avatar form. In 2018, the Supreme Court of India ended a rule that stopped women and transgender people who were menstruating from entering temples.<sup>14</sup> This decision shows a step towards making religious rituals more welcoming and accepting of different gender identities. Transgender individuals participating in the Sabarimala pilgrimage highlight the idea of equality in spiritual expression, breaking down stereotypes about gender roles in worship. It promotes a wider view of religious tolerance and inclusion. In some cases, transgender people have

<sup>12</sup> Ibid.

<sup>13</sup> "The story of Aravan, The God of Transgender" available at <https://atmanism.wordpress.com/2017/10/11/the-story-of-aravan-the-god-of-the-transgender/> last accessed on 22.2.22

<sup>14</sup> Indian Young Lawyers Association vs The State Of Kerala, AIR ONLINE 2018 SC 243



created groups like the "Ayyappa Seva Sangham" to join the Sabarimala pilgrimage and advocate for transgender rights. The "Ayyappa Seva Sangham" and other groups show that transgender individuals have been part of Lord Ayyappa's worship for a long time in South India. This highlights a long-standing recognition of various gender identities in Hinduism.

Sri Bahuchara Devi<sup>15</sup> is a goddess important to the transgender community, especially hijras, who often worship her during the castration ritual, symbolizing their sexual identity change. She's also known as "Murgawali Mata," linked to her belief that she rides a cock on certain days, a belief important to hijras and transsexuals. Her stories, including one about being forced into marriage with a homosexual man and later castration, reflect the struggles of the transgender and LGBTQ community. Lord Brahma, seen as the creator in Hinduism, is believed to have come from a male parent, adding a unique aspect to Hindu mythology's diverse stories.

Sri Durga Devi is a widely admired figure in Indian culture, especially during the festival of Navaratri. She is seen as a motherly figure, loved by all. During Navaratri, boys in some areas dress up as girls, showing their connection to Durga Devi, who is often considered to favor those who don't identify as strictly male or female. Lord Ganesha, an elephant-headed god, is also very popular.<sup>16</sup> He is believed to have come into existence from Parvati's wish to have a son to protect her, reflecting the belief that anything is achievable. Lord Ganesha is seen as a symbol of the diversity and acceptance of different identities, similar to the concepts found in Hinduism and the natural world.

Sri Jagannatha, a Krishna-related deity in Orissa, is famous for having boy dancers cross-dress as girls in his temple, known as "Gotipuas." This activity, where males perform female roles in rituals, has attracted the third gender community, making Sri Jagannatha seen as kind towards those often overlooked.<sup>17</sup> The depiction of homosexuality in ancient Tamil literature, from the Sangam period, has been studied by scholars<sup>18</sup>. These texts, while not openly about it, sometimes suggest same-sex relationships, often using metaphors to cover their meaning. The analysis of these mentions and the view of homosexuality in that time continue to be topics of discussion.

Some Buddhist texts and scriptures acknowledge that not all people fall into the categories of male or female. The Vinaya Pitaka and Tripitaka, ancient Buddhist texts from the 4th century BCE, talk about people with gender-fluid or nonexistent gender characteristics. Buddhists believe in compassion and inclusivity, focusing on supporting all individuals, regardless of their gender.<sup>19</sup>

## International Sphere

**Yogyakarta Principles:** The second principle of the Yogyakarta Principles states that everyone has the right to "equal treatment and protection under the law," irrespective of their sexual orientation or gender identity. The law is obligated to prohibit unfair treatment and to ensure that all individuals receive equal and effective protection against discrimination.<sup>20</sup>

<sup>15</sup> <https://transreads.org/hinduism-and-tribal-religions-bahuchara-mata-deity-of-transgenders-encyclopedia-of-indian-religions/> last accessed on 23.6.24

<sup>16</sup> Gay and Lesbian Vaishnava Association <https://www.galva108.org/single-post/2014/05/12/tritiyaprakriti-people-of-the-third-sex-2> last accessed on 21.6.24

<sup>17</sup> <https://magazines.odisha.gov.in> last accessed on 21.6.24

<sup>18</sup> Ibid.

<sup>19</sup> <https://www.dharmawheel.net/memberlist.php?mode=viewprofile&u=839&sid=c101e634a8537247cc2d55cfc56e3ef0> last accessed on 21.6.24

<sup>20</sup> Violet Lhant, "LGBT Rights on the International Stage: An Analysis of Diplomatic Practice," MAY 22, 2019 available at <https://studentreview.hks.harvard.edu/lgbt-rights-on-the-international-stage-an-analysis-of-diplomatic-practice/> last accessed on 22.6.24

**Universal Declaration of Human Rights 1948:** In violation of Article 12, it is unlawful for anyone to face threats to their personal safety, family, residence, or correspondence, or to suffer defamation of character. Every individual has the right to be protected from any form of assault or interference by government entities.<sup>21</sup>

**International Convention on Civil Political Rights 1966:** Article 17 says that “ 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honor and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks”.<sup>22</sup>

Transgender people often face hardship, often being seen as outcasts, either begging or performing in public places like weddings. The strict gender norms in society lead them to take low-paying jobs, making it unlikely for them to have stable jobs in the formal economy. Protecting human rights is essential for a country's success and well-being. These rights belong to all people, regardless of where they come from, what they believe, or how they are different. The Protection of Human Rights Act, 1993, and India's Constitution both guarantee important rights like freedom, equality, and respect.

### Indian Constitution

India's constitution, a combination of social and legal, is based on social beliefs. It has two main parts: basic principles that change with society, and the specific context. The Preamble shows India's goal of a fair, inclusive, and democratic society where people have freedom and equality. These principles guide the country's laws and policies, including making the Constitution more aligned with worldwide human rights. Over time, it has expanded fundamental rights and governance for everyone's benefit and growth. Justice Bhagwati in the Maneka Gandhi case pointed out that "personal liberty" includes many rights, some of which are fundamental rights under Article 19. The court then introduced the 'theory of emanation' to make these fundamental rights more effective and important. Additionally, the court made it easier for anyone to bring a case on behalf of others affected by changing the 'locus standi' rule.

The Indian constitution has rules called Directive Principles of State Policy, which ensure minority rights and support for the poor, to give everyone equal respect. States must follow these principles, which are important for the country's governance. The Supreme Court has said that these principles show what most lawmakers decided when making permanent laws for the nation.

The Indian Constitution's Article 14 to Article 32 and its Directive Principles emphasize non-discrimination as essential rights. These documents do not specifically address gender, hinting at a focus on non-sex discrimination rather than gender. However, considering changes in society and the Constitution's inclusive principles, it's time to broaden our understanding of gender. Basic rights like equality, freedom, and education are crucial for protecting the rights of gender and sexual minorities. Recognizing gender as more than just traditional male/female categories, and supporting all individuals, regardless of gender identity or sexual orientation, is our responsibility.

Therefore, legal adjustments are needed to guarantee equality for the LGBTQAI+ community and the broader society. Over the years, the courts have been a key in improving these rights, increasing their coverage, and making them easier for people to access. The Constitution matches global human rights norms, and by engaging in judicial activism, India has advanced in safeguarding and enforcing these rights regardless of gender identity or sexual orientation.

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

In 2014, the Supreme Court of India made a groundbreaking decision in the case *NALSA v Union of India*<sup>23</sup>, addressing the needs of the transgender community. It questioned the current laws' gender norms and argued for recognizing transgender identities as a third gender. The court emphasized the importance of equality and the right to choose one's identity, aligning its views with international standards. It acknowledged transgender people's right to self-determination and the need to protect them from discrimination, highlighting that the rights to equality and freedom should apply to everyone, regardless of their gender identity or sexual orientation.

The *Navtej Singh Johar*<sup>24</sup> case led to a significant change in India's laws by decriminalizing Section 377 of the Indian Penal Code. This meant that the law now supported equality and didn't just protect heterosexual relationships, but also acknowledged the right of everyone to choose their own sexuality and express it openly. Although there was an earlier case that had attempted to challenge this, the Supreme Court did not agree with it. The *Navtej Singh Johar* ruling stated that the rights of homosexuals, rooted in human dignity, are important for their self-determination and freedom in how they express their sexuality. Justice Dhananjay Chandrachud played a key role in this, emphasizing the importance of respecting and supporting all people's rights to love and express themselves freely.

The case of *Khairati*<sup>25</sup> shows the harassment and unfair treatment people with different gender identities face. Jayalakshmi's story is about the violence and hatred against transgender people. Kamla Jaan, a transgender woman, ran for mayor in 1999 and 2019. But, despite being elected, her election for reserved women's seats was declared illegal.

In the case of *Sushma and Seema vs. Commissioner of Police*<sup>26</sup> W.P.No.7284 of 2021, the Madras High Court reviewed a law concerning police protection for LGBTQIA+ people dealing with threats to their safety.

In the famous case of *Ashish Kumar Misra (Advocate) [P.I.L.] vs. Bharat Sarkar*<sup>27</sup>, the court pointed out that the government needs to be clear about its work to make food security better. They also emphasized that it's crucial to do certain things to help people who identify as transgender deal with the social and economic problems they face.

In a landmark decision, the court expanded state support and police protection for inter-caste and inter-religious marriages, including those involving transgender individuals. This ruling was made by Mansur Rahman, the Superintendent of Police for the Coimbatore District, against the Inspector of Police at the Pollachi Police Station in Coimbatore District.

In 2015 case of *Ram Singh & Others vs. Union of India*<sup>28</sup>, the court highlighted the importance of acknowledging the third gender as a socially and educationally disadvantaged group deserving special rights under the Constitution, as defined in the important *National Legal Services Authority Vs. Union of India* case.

Hijras, or transgender people who have had sex reassignment surgery, face challenges in having their legal documents updated. There's a need for safe and affordable surgery, which is important for the transgender community. Although castration is illegal in India, there's an exception if the surgery is done

<sup>23</sup> National Legal Services Authority (NALSA) Vs. Union Of India AIR 2014 SC 1863, (2014) 5 SCC 438

<sup>24</sup> AIR 2018 SUPREME COURT 4321

<sup>25</sup> Queen Empress v. Khairati I.L.R. 6 ALL.204

<sup>26</sup> <https://translaw.clpr.org.in/case-law/s-sushma-and-ors-v-commissioner-of-police-greater-chennai-police-and-ors/> last accessed on 22.6.24

<sup>27</sup> <https://indiankanon.org/doc/12537865/> last accessed on 23.4.23

<sup>28</sup> (2015) 4 SCC 697



voluntarily and with informed consent, understanding of serious harm. However, hospitals can legally perform these surgeries, but official rules and state guidance are lacking.

One year after making same-sex relations legal, the government introduced the Transgender Persons (Protection of Rights) Act 2019.<sup>29</sup> This law aimed to protect and support transgender rights by setting up anti-discrimination measures and welfare programs, ensuring they could fully participate in society. It also required the government to offer educational and healthcare services to transgender people to help them earn a living. However, activists from the transgender community have criticized the Act. They feel it wasn't inclusive because it didn't allow their voices to be heard during the law's creation. They also believe the law continues to enforce negative stereotypes, reflecting the views of heterosexual people.

- **Prohibition against Discrimination:** The Bill forbids treating transgender people unfairly in areas like education, jobs, healthcare, and public services.
- **Right to be recognized as Transgender:** Everyone has the right to identify as transgender.
- **Right of Residence:** Transgender people cannot be separated from their families because of their identity.
- **Health Care:** The Bill ensures transgender individuals get health services like separate HIV testing centers and sex change operations. It also calls for medical schools to better teach about transgender health and provides them with full health insurance.
- **Penal Provisions: it criminalizes:** It makes certain behaviors illegal, like begging, forced or bonded labor, not being allowed in public places, being denied housing, and various forms of abuse.

The law adds a lot of rules but doesn't cover important topics like marriage, adoption, or rights related to property, social security, and pensions. It only offers superficial support for transgender communities by including protections for jobs but not penalties for breaking labor laws. Transgender people still face more violence and harassment than heterosexual people, showing that the law needs changes to better protect them. The law also doesn't clearly define what counts as sexual abuse and only offers a two-year prison sentence for the crime. It ignores a previous court decision that recognized transgender people as deserving support and has not allowed them any special rights in education or jobs.

Transgender Persons (Protection of Rights) Rules, 2020<sup>30</sup>:

- The Rules have been made under the Transgender Persons (Protection of Rights) Act, 2019.
- The rules seek to recognise the identity of transgenders and prohibit discrimination in the fields of education, employment, healthcare, holding or disposing of property, holding public or private office and access to and use of public services and benefits.

National Portal for Transgender Persons:

- It would help transgenders in digitally applying for a certificate and identity card from anywhere in the country, thus preventing any physical interaction with officials.
- It will help them track the status of application, rejection, grievance redressal, etc. which will ensure transparency in the process.
- It has been launched in consonance with the Transgender Persons (Protection of Rights) Rules, 2020.

### Education as a Key to Social Transformation

The cornerstone of societal progress lies in education. However, the present educational framework in

<sup>29</sup> <https://www.undp.org/sites/g/files/zskgke326/files/migration/in/> last accessed on 23.6.24

<sup>30</sup> *ibid.*

India frequently falls short in embracing transgender issues. The curriculum often overlooks content that reflects the variety of gender identities. It's imperative that educational reforms prioritize the inclusion of transgender viewpoints in textbooks and learning resources. This could mean updating the content to highlight the historical contributions, struggles, and accomplishments of transgender individuals. Moreover, incorporating courses on gender studies and sexuality education can lead to a more knowledgeable and inclusive society.

**Training Programs for Educators** Teachers are instrumental in shaping the attitudes and perceptions of students. Therefore, it's essential to have comprehensive training programs for educators. These programs should not just provide information on transgender issues but also offer advice on creating welcoming and safe environments for all students. **Courses, Workshops, and Training Sessions** Various educational levels can host courses, workshops, and training sessions to equip educators with the necessary knowledge and skills to address the diversity of gender identities in the classroom. These efforts are crucial in creating an environment where transgender students feel acknowledged and supported. **Incorporating Intersectionality in Education**

**Affirmative Action as a Tool for Equality** Educational institutions should adopt affirmative action policies to ensure fair access to education for transgender students. This could include scholarships, designated seats, and mentorship programs to assist transgender individuals in achieving their educational goals. The implementation of affirmative action policies in educational settings guarantees fair access and support for transgender students, encouraging their academic success, reducing dropout rates, and fostering a sense of belonging.

**Addressing Intersectionality in Educational Reforms** The need for educational reforms to recognize and tackle the multiple forms of discrimination faced by transgender individuals is evident. This includes integrating policies and affirmative actions that are inclusive. **Teacher Training: Focusing on the Specific Challenges of Transgender Students** Training teachers to understand the unique challenges transgender students encounter is vital in creating a more empathetic educational setting.

**Initiatives** Peer-led initiatives, such as LGBTQ+ clubs and support groups, offer opportunities for students to learn from each other and challenge stereotypes. **Counseling Services for Transgender Students, Teachers, and Families** The establishment of dedicated counseling and guidance services is crucial for providing support to transgender students, teachers, and their families.

**Organizing awareness campaigns** within teachers' and parents' associations is important to increase understanding of transgender issues. **Student Clubs for Guidance on Health and Other Challenges Faced by Transgender Students** Creating student clubs focused on offering guidance on health issues and other specific challenges transgender students face.

**The Integration of Comprehensive Sex Education in the Curriculum** including comprehensive sex education in the school curriculum can promote understanding and inclusivity.

**Employment and Training Programs** Launching programs aimed at employment and vocational training, complemented by voluntary yoga and meditation classes to alleviate mental stress.

**A research and Documentation of Transgender issue** is mandatory. This includes supporting both academic and non-governmental organizations in conducting studies that provide insights into the evolving challenges faced by the transgender community. Regular reports can inform policymakers and the general public, driving forward social progress.

## **Conclusion:**

The intersection of Vedic traditions, contemporary legal frameworks, and educational reforms offers a promising path toward transgender inclusivity in India. By drawing on the inclusive aspects of ancient Indian culture and integrating them with modern principles of human rights and equality, a holistic education system can be developed. This approach not only honors India's rich cultural heritage but also addresses the pressing needs of transgender individuals in today's society.

Vedic traditions provide a deep and forward-looking view on law and education, which can guide us toward a more well-rounded educational system. By combining teachings like Dharma, Rta, and Vidya with current education, we can encourage growth in many areas, including ethics, fairness, and caring for the environment. This method is especially useful in protecting the rights and inclusion of transgender people. A system based on ancient knowledge can help build a society that is fair, open, and prepared for future challenges. Although there has been progress in supporting transgender rights in India, like legal recognition and laws against discrimination, there are still issues like social stigma and limited access to healthcare and economic opportunities. It's important to keep pushing for change through advocacy, education, and better policies. To truly make a difference, everyone needs to work together. We, as people responsible for shaping society, need to take a forward-thinking stance. This includes incorporating transgender education in schools and creating welcoming environments for them in educational settings.