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State Responsibility Toward the Third Gender

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Abstract: The recognition of the third gender represents a crucial shift in the understanding of gender identity and human rights within contemporary legal frameworks. Despite judicial interventions and evolving legislative measures, individuals belonging to the third gender continue to face pervasive discrimination, social exclusion, and institutional neglect. This paper explores the multifaceted responsibility of the State to safeguard the rights and dignity of third-gender persons, emphasizing both its constitutional and international human rights obligations. The study highlights the State's duty to adopt proactive measures—such as inclusive policies, anti-discrimination laws, welfare schemes, and sensitization initiatives—to ensure substantive equality rather than mere formal recognition. It further examines the need for effective implementation mechanisms, accountability structures, and social support systems to protect third-gender persons from violence, stigma, and barriers in education, employment, healthcare, and public participation. The analysis demonstrates that State responsibility extends beyond legal acknowledgment to fostering an enabling environment where third-gender individuals can live with autonomy, dignity, and equal opportunity. Ultimately, the study underscores that true social justice requires the State to bridge the gap between constitutional promises and lived realities.

Keywords: Third Gender, State Responsibility, Non-Discrimination, Human Rights, Equality.

INTRODUCTION

The recognition of gender diversity beyond the male–female binary has emerged as a significant concern within contemporary human rights discourse. Across jurisdictions, individuals who identify as belonging to the third gender—often encompassing transgender, intersex, and gender-diverse persons—have historically remained at the margins of legal protection and social acceptance. In India, despite the country's rich cultural history acknowledging non-binary gender identities, colonial legal frameworks and post-colonial administrative practices reinforced rigid gender binaries, resulting in systemic exclusion and invisibilisation of third-gender communities. This paradox between cultural presence and legal marginalisation continues to shape the lived realities

of third-gender persons in modern India. In recent years, judicial interventions and legislative developments have brought third-gender rights into the mainstream of constitutional adjudication. Landmark judicial pronouncements have affirmed the right of individuals to self-identify their gender and recognised the intrinsic link between gender identity, dignity, and personal autonomy. However, the formal recognition of third-gender identity has not translated into substantive equality. Third-gender persons continue to face structural discrimination in access to education, employment, healthcare, housing, and political participation. Social stigma, economic deprivation, and exposure to violence remain pervasive, indicating a substantial gap between constitutional ideals and social realities.

The responsibility of the State toward the third gender must therefore be understood not merely as a matter of legal recognition, but as a comprehensive obligation rooted in constitutional morality and international human rights law. Under the Indian constitutional framework, the State bears a positive duty to ensure equality, dignity, and non-discrimination for all persons, including those whose gender identities fall outside traditional binaries. These constitutional commitments are further reinforced by India's international obligations under key human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together, these instruments impose binding duties on the State to respect, protect, and fulfil the rights of third-gender persons without discrimination. In addition to binding treaty obligations, soft law instruments such as the Yogyakarta Principles provide authoritative guidance on the application of international human rights law in relation to sexual orientation and gender identity. Although not legally binding, the Yogyakarta Principles articulate clear standards regarding State responsibility, including the duty to enact anti-discrimination legislation, ensure access to healthcare and education, prevent violence, and promote social inclusion of gender-diverse persons. When read alongside constitutional guarantees and treaty obligations, these principles underscore the necessity of a proactive, rights-based approach rather than a minimalist or symbolic response by the State. Despite this evolving normative framework, the Indian State's response to third-gender rights has largely remained fragmented and implementation-deficient. Legislative measures and welfare schemes often suffer from inadequate consultation with affected communities, lack of institutional accountability, and inconsistent enforcement at the grassroots level. Moreover, policy responses frequently adopt a paternalistic welfare approach instead of recognising third-gender persons as autonomous rights-holders. This disconnect between legal commitments and practical outcomes raises critical questions regarding the nature and scope of State responsibility in advancing substantive equality for the third gender. Against this backdrop, the present study critically examines the responsibility of the Indian State toward the third gender through the combined lens of constitutional law and international human rights norms. The paper seeks to analyse how domestic constitutional guarantees, judicial interpretations, and legislative initiatives interact with India's obligations under the ICCPR, ICESCR, and the Yogyakarta Principles. By adopting a doctrinal and socio-legal methodology, the study aims to identify gaps in implementation, assess the effectiveness of existing legal and policy frameworks, and explore pathways for strengthening State

accountability.

Ultimately, the paper argues that true realisation of third-gender rights requires the State to move beyond formal recognition toward transformative action. This entails adopting inclusive laws, effective enforcement mechanisms, and sensitisation measures that address structural discrimination and enable third-gender persons to live with dignity, autonomy, and equal opportunity. The study contributes to ongoing scholarly discourse by situating third-gender rights within a broader framework of State responsibility, social justice, and human rights, thereby emphasising the imperative of bridging the gap between constitutional promises and lived realities.

Understanding the “Third Gender”

The concept of the “third gender” challenges the traditional binary understanding of gender as exclusively male or female. Gender, as distinguished from biological sex, is a socially and culturally constructed identity that encompasses an individual's deeply felt sense of self, expression, and social role. While biological sex is often assigned at birth based on physical characteristics, gender identity reflects a person's internal experience, which may or may not correspond with that assignment. The recognition of the third gender therefore represents an acknowledgment of gender diversity and the lived realities of individuals whose identities fall outside conventional binaries. From a sociological perspective, third-gender identities are neither novel nor aberrational. Anthropological studies have documented the presence of non-binary gender roles across diverse cultures and historical periods. In the Indian subcontinent, communities such as hijras, kinnars, and aravanis have existed for centuries and have occupied distinct social and cultural spaces. Despite this historical presence, colonial legal systems imposed rigid gender classifications, criminalised non-normative gender expressions, and erased indigenous understandings of gender plurality. These colonial legacies continue to influence contemporary legal and administrative practices, contributing to the marginalisation of third-gender persons in post-colonial India.

In contemporary discourse, the term “third gender” is often used as an umbrella expression encompassing transgender persons, intersex individuals, and other gender-diverse identities. However, international human rights frameworks increasingly emphasise the importance of self-identification rather than externally imposed labels. The Yogyakarta Principles affirm that each person's self-defined sexual orientation and gender identity are integral to their dignity and humanity, and that no one should be forced to conform to medical, legal, or social norms as

a precondition for recognition. This shift from categorisation to self-determination marks a significant evolution in the conceptual understanding of gender within human rights law. Within the Indian constitutional context, the conceptualisation of gender has similarly evolved through judicial interpretation. Courts have increasingly recognised that gender identity is an intrinsic component of personal autonomy, dignity, and self-expression. This understanding aligns with broader constitutional values of liberty and equality, which reject arbitrary classifications and mandate respect for individual choice. Nevertheless, the persistence of administrative requirements—such as medical certification or bureaucratic scrutiny—reveals an ongoing tension between the ideal of self-identification and the reality of state control over gender recognition.

At the international level, instruments such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights do not explicitly use the term “third gender.” However, their expansive guarantees of equality, non-discrimination, and dignity have been interpreted to include protection against discrimination based on gender identity. United Nations treaty bodies and special rapporteurs have consistently affirmed that discrimination against gender-diverse persons constitutes a violation of core human rights obligations. These interpretations reinforce the understanding that third-gender identities are not exceptions requiring special treatment, but integral components of the broader human rights framework. Importantly, the conceptual framework of the third gender must also account for intersectionality. Third-gender persons often experience multiple and overlapping forms of discrimination based on caste, class, religion, disability, and socio-economic status. This intersectional vulnerability exacerbates exclusion and limits access to education, employment, healthcare, and justice. A narrow or homogenised understanding of the third gender risks obscuring these layered realities and undermining effective policy responses. Thus, understanding the third gender requires moving beyond symbolic recognition toward a nuanced appreciation of gender as a fluid, self-determined, and socially embedded identity. This conceptual clarity is essential for defining the scope of State responsibility, as legal and policy interventions must be grounded in respect for autonomy, dignity, and diversity. Without a robust conceptual foundation, State responses risk reinforcing stereotypes or perpetuating exclusion rather than advancing substantive equality.

CONSTITUTIONAL AND LEGAL FOUNDATIONS OF STATE

RESPONSIBILITY

The responsibility of the Indian State toward the third gender is firmly grounded in the constitutional framework, which enshrines equality, dignity, liberty, and social justice as foundational values. The Constitution of India does not merely impose negative obligations restraining State interference; it also mandates positive duties requiring the State to actively secure conditions necessary for the full realisation of fundamental rights. When read purposively and in harmony with international human rights law, the Constitution provides a robust normative basis for recognising and enforcing the rights of third-gender persons. Article 14 of the Constitution guarantees equality before the law and equal protection of the laws to “any person,” a phrase deliberately expansive in scope. Judicial interpretation has consistently held that Article 14 prohibits arbitrariness and unreasonable classification, and that equality must be substantive rather than formal. Exclusion of third-gender persons from legal recognition, welfare schemes, or public opportunities solely on the basis of gender identity constitutes an unreasonable classification lacking any rational nexus with legitimate State objectives. Consequently, Article 14 imposes a clear obligation on the State to dismantle structural barriers that perpetuate gender-based exclusion.

Article 15 further strengthens this mandate by prohibiting discrimination on specified grounds, including sex. Contemporary constitutional jurisprudence has interpreted “sex” to encompass gender identity and expression, recognising that discrimination against third-gender persons is rooted in socially constructed gender norms rather than biological differences. Article 15(2) extends this protection to access to public spaces, while Article 15(4) and 15(5) empower the State to adopt affirmative measures to address historical disadvantage. These provisions collectively authorise and, in certain circumstances, require the State to implement targeted policies, reservations, and welfare measures to ensure substantive equality for third-gender communities. The freedoms guaranteed under Article 19 are equally central to understanding State responsibility. The right to freedom of speech and expression includes the right to express one’s gender identity through dress, behaviour, and personal choices. Restrictions on gender expression—whether through policing practices, administrative regulations, or social control—implicate Article 19 and must satisfy the strict standards of reasonableness and proportionality. Similarly, the freedom to form associations and move freely has particular relevance for third-gender persons, who are often subjected to surveillance, harassment, and spatial exclusion in public life. The State bears a duty not only to refrain from unjustified

restrictions but also to create conditions enabling the meaningful exercise of these freedoms.

Article 21, which guarantees the right to life and personal liberty, has emerged as the constitutional cornerstone of third-gender rights. Judicial expansion of Article 21 has transformed it into a repository of substantive rights, including dignity, privacy, autonomy, and bodily integrity. Gender identity is now widely recognised as intrinsic to personal dignity and self-determination. Any denial of legal recognition, forced medical intervention, or coercive regulation of gender identity directly infringes Article 21. Importantly, Article 21 has been interpreted to impose positive obligations on the State to ensure access to healthcare, shelter, livelihood, and a dignified existence—areas where third-gender persons face acute deprivation. The constitutional principle of dignity operates as a unifying thread across these provisions. Dignity, as understood in Indian constitutional jurisprudence, is not limited to protection against physical harm but extends to social recognition, respect, and the ability to participate fully in public life. Systemic marginalisation of third-gender persons undermines this foundational value and renders constitutional guarantees illusory. Accordingly, State responsibility encompasses both legal recognition and the transformation of social and institutional structures that perpetuate stigma and exclusion.

These constitutional obligations align closely with India's commitments under international human rights law. The International Covenant on Civil and Political Rights obligates States to ensure equality before the law, protection against discrimination, and respect for dignity and personal liberty. Articles 2 and 26 of the ICCPR impose immediate obligations to guarantee rights without discrimination, including discrimination based on gender identity as interpreted by UN human rights bodies. Similarly, the International Covenant on Economic, Social and Cultural Rights mandates the progressive realisation of rights related to work, education, health, and social security—areas where third-gender persons remain disproportionately disadvantaged. The principle of non-discrimination under the ICESCR applies with immediate effect, requiring States to eliminate exclusionary practices even while progressively expanding resources.

Indian courts have increasingly adopted an interpretive approach that harmonises domestic constitutional norms with international human rights standards. This convergence reinforces the understanding that State responsibility toward the third gender is neither discretionary nor aspirational, but legally grounded and enforceable. International principles, including those articulated in the

Yogyakarta Principles, further clarify the scope of these obligations by emphasising self-identification, bodily autonomy, and access to justice. In sum, the constitutional and legal foundations of State responsibility toward the third gender reflect a shift from formal equality to transformative constitutionalism. The Constitution, read alongside international human rights instruments, demands proactive State action to dismantle entrenched discrimination and enable substantive equality. Failure to fulfil these obligations not only violates individual rights but also undermines the constitutional vision of an inclusive and just society.

Judicial Recognition and Its Limits

The judiciary has played a pivotal role in advancing the rights of third-gender persons in India, often acting as a catalyst for legal recognition in the absence of comprehensive legislative action. Through progressive interpretation of constitutional provisions, courts have expanded the understanding of equality, dignity, and personal liberty to include gender identity. Judicial intervention has thus been instrumental in transforming third-gender issues from matters of social marginalisation into questions of constitutional significance. However, while judicial recognition marks a significant normative shift, its impact has been constrained by limitations inherent in adjudication and persistent failures of implementation.

Judicial acknowledgement of third-gender rights reflects a broader trend of rights-based constitutionalism, wherein courts adopt an expansive interpretation of fundamental rights to respond to evolving social realities. By recognising gender identity as an integral aspect of personhood, courts have affirmed that constitutional protections are not confined to dominant social categories. This jurisprudential development aligns with international human rights norms, particularly the principle that identity-based discrimination undermines human dignity and equality before the law. Judicial recognition has thus served as a corrective to historical exclusion and has provided a constitutional vocabulary for asserting third-gender rights. One of the most significant contributions of the judiciary lies in its affirmation of self-identification as the basis of gender recognition. By rejecting biological determinism and medical gatekeeping, courts have acknowledged that gender identity is a deeply personal and subjective experience. This approach resonates with international human rights standards, including those articulated by United Nations bodies and the Yogyakarta Principles, which emphasise autonomy and self-determination. Judicial endorsement of self-identification represents a crucial departure from pathologising frameworks that have traditionally governed State responses to

gender diversity.

Despite these advances, the transformative potential of judicial decisions has been undermined by inconsistent and often inadequate implementation. Court directives requiring the State to extend legal recognition, welfare benefits, and protective measures to third-gender persons have frequently been met with bureaucratic inertia or partial compliance. In many instances, administrative authorities have imposed additional procedural requirements—such as medical certification or screening committees—that effectively dilute the principle of self-identification endorsed by the judiciary. This disconnect highlights the structural limitations of judicial intervention in the absence of coordinated legislative and executive action. Moreover, judicial recognition has largely operated within a rights-declaratory framework, offering normative guidance without establishing robust enforcement mechanisms. Courts are institutionally constrained in their capacity to monitor long-term compliance, allocate resources, or design detailed policy frameworks. As a result, judicial pronouncements often remain aspirational, with their practical impact contingent upon political will and administrative capacity. For third-gender persons, this has translated into uneven access to rights across different states and regions, reinforcing geographic and socio-economic disparities.

Another limitation of judicial engagement lies in its tendency to prioritise formal legal recognition over substantive socio-economic transformation. While recognition of gender identity is foundational, it does not automatically address entrenched inequalities in education, employment, healthcare, and housing. Judicial decisions have occasionally acknowledged the need for affirmative measures, but the absence of clear guidelines or timelines has limited their effectiveness. Consequently, third-gender persons continue to experience systemic exclusion despite favourable judicial declarations. The judiciary's reliance on constitutional morality has also generated tensions with prevailing social attitudes and political considerations. Progressive judgments often confront resistance from conservative institutions and social norms, leading to selective or symbolic compliance. Without sustained efforts to sensitise law enforcement agencies, healthcare providers, educational institutions, and employers, judicial recognition risks remaining confined to legal texts rather than reshaping lived experiences. This gap between judicial vision and social reality underscores the importance of complementary legislative and policy interventions.

Furthermore, judicial remedies are inherently reactive, addressing violations after they occur rather

than preventing discrimination proactively. Structural discrimination against third-gender persons manifests through everyday practices—such as exclusion from schools, denial of employment, and harassment in public spaces—that rarely reach constitutional courts. The adversarial nature of litigation, combined with socio-economic barriers to access to justice, further limits the reach of judicial protection for marginalised communities. In evaluating judicial recognition, it is therefore essential to adopt a balanced perspective. Courts have undeniably advanced the normative framework for third-gender rights and have aligned domestic constitutional law with international human rights principles. Yet, judicial intervention alone cannot fulfil the State's broader responsibility to ensure substantive equality. The limitations of adjudication highlight the need for comprehensive legislation, effective administrative mechanisms, and sustained political commitment to translate judicial ideals into social transformation.

Thus, while the judiciary has laid the constitutional groundwork for recognising third-gender rights, the realisation of these rights ultimately depends on the State's willingness to move beyond declaratory justice toward systemic reform. Judicial recognition, though necessary, is insufficient in isolation; it must be complemented by legislative clarity, institutional accountability, and social sensitisation to achieve meaningful and enduring change.

International Human Rights Obligations of the State

The responsibility of the State toward third-gender persons is not confined to domestic constitutional commitments but is firmly embedded within international human rights law. As a State party to major United Nations human rights instruments, India is bound by legal obligations that require the recognition, protection, and fulfilment of rights without discrimination. These international commitments provide a critical normative framework for assessing State conduct and reinforce the obligation to ensure substantive equality for gender-diverse persons. The International Covenant on Civil and Political Rights imposes immediate and enforceable obligations on States to respect and ensure civil and political rights without discrimination. Articles 2 and 26 of the ICCPR guarantee equality before the law and equal protection against discrimination, while Article 17 protects privacy and personal autonomy. Although the Covenant does not explicitly reference gender identity, authoritative interpretations by the United Nations Human Rights Committee have clarified that the term “sex” and the broader principle of non-discrimination encompass gender identity and expression. Discriminatory laws, denial of legal

recognition, and harassment of third-gender persons therefore constitute violations of ICCPR obligations. Article 6 of the ICCPR, which protects the right to life, has also been interpreted expansively to include protection against conditions that threaten life with dignity. For third-gender persons, systemic violence, exclusion from healthcare, and social marginalisation directly undermine this right. Similarly, Article 7's prohibition of cruel, inhuman, or degrading treatment is relevant in contexts where third-gender persons are subjected to forced medical procedures, custodial abuse, or degrading treatment by State authorities. These provisions collectively underscore the State's duty to prevent both direct and indirect forms of harm against gender-diverse individuals. Complementing the ICCPR, the International Covenant on Economic, Social and Cultural Rights articulates obligations central to the material conditions of equality. Articles 6, 7, 12, and 13 recognise the rights to work, just and favourable conditions of employment, health, and education. The Committee on Economic, Social and Cultural Rights has affirmed that the principle of non-discrimination under the ICESCR applies immediately and extends to discrimination based on gender identity. Consequently, exclusion of third-gender persons from employment opportunities, healthcare services, or educational institutions constitutes a breach of State obligations, regardless of resource constraints. The ICESCR also introduces the concept of progressive realisation, requiring States to take deliberate, concrete, and targeted steps toward full realisation of economic, social, and cultural rights. For third-gender communities, this translates into obligations to design inclusive policies, allocate adequate resources, and dismantle structural barriers that perpetuate marginalisation. Importantly, the Covenant emphasises participation, transparency, and accountability in policy-making—principles often absent in State responses to third-gender issues. Beyond binding treaty law, the Yogyakarta Principles play a significant role in clarifying the content of State obligations concerning sexual orientation and gender identity. Although classified as soft law, the Principles consolidate existing international human rights norms and articulate their application to gender-diverse persons. They emphasise the right to recognition before the law, self-defined gender identity, freedom from medical abuse, access to healthcare, education, employment, and protection from violence. The Principles also stress the obligation of States to adopt legislative, administrative, and educational measures to combat stigma and discrimination.

The relevance of the Yogyakarta Principles lies in their interpretive authority. Courts and human rights bodies across jurisdictions have relied on them to bridge normative gaps and operationalise abstract

human rights guarantees. In the Indian context, these principles complement constitutional values of dignity, autonomy, and equality, offering a coherent framework for aligning domestic law with international standards. They also underscore the shift from a welfare-oriented approach to a rights-based paradigm grounded in autonomy and participation. Taken together, the ICCPR, ICESCR, and Yogyakarta Principles articulate a comprehensive conception of State responsibility encompassing civil, political, economic, social, and cultural dimensions. They require States not only to refrain from discriminatory practices but also to adopt proactive measures to address structural inequality. Failure to implement these obligations exposes the State to international scrutiny and undermines its constitutional commitments.

Thus, international human rights law reinforces the imperative that third-gender rights are not peripheral or discretionary concerns but integral to the universal framework of human dignity and equality. The convergence of international norms with domestic constitutional principles strengthens the argument for transformative State action aimed at bridging the gap between legal recognition and lived reality.

Legislative and Policy Responses: A Critical Appraisal

In response to judicial recognition and growing international human rights discourse, the Indian State has undertaken legislative and policy initiatives aimed at addressing the concerns of third-gender persons. These measures signify an important acknowledgment of State responsibility; however, their effectiveness remains contested. A critical appraisal reveals that while the legislative framework provides a formal structure for recognition and welfare, it often falls short of advancing substantive equality and compliance with international human rights standards. The principal legislative intervention addressing third-gender rights in India is the enactment of a dedicated statutory framework intended to recognise transgender persons and provide for their welfare. The law affirms the right to identity, prohibits discrimination in specified spheres, and envisages welfare measures including education, employment, healthcare, and social security. On paper, these provisions reflect alignment with constitutional principles of equality and dignity, as well as international norms under the ICCPR and ICESCR.

However, significant shortcomings emerge when the law is examined through a rights-based lens. One of the most contested aspects relates to the procedure for legal gender recognition. Although judicial pronouncements have emphasised self-identification

as the basis of gender identity, legislative and administrative practices often reintroduce medical or bureaucratic gatekeeping. Such requirements are inconsistent with international standards, particularly the Yogyakarta Principles, which reject medicalisation and insist on self-determination as the cornerstone of legal recognition. This divergence undermines autonomy and perpetuates institutional control over identity. Policy responses at the executive level, including welfare schemes and social assistance programmes, further illustrate the gap between intent and impact. While various states have introduced housing schemes, educational scholarships, skill development programmes, and healthcare initiatives for third-gender persons, these measures are frequently fragmented and unevenly implemented. Access to benefits is often constrained by documentation requirements, lack of awareness, and administrative discretion. Moreover, the absence of reliable disaggregated data on third-gender populations hampers evidence-based policy-making and resource allocation.

Another critical concern lies in the predominantly welfare-oriented framing of State interventions. Many policies conceptualise third-gender persons as beneficiaries of charity rather than as rights-holders entitled to equality and participation. This paternalistic approach risks reinforcing stereotypes of dependency and vulnerability, rather than empowering individuals to exercise agency over their lives. International human rights law, by contrast, emphasises participation, consultation, and empowerment as central to effective policy design. The limited involvement of third-gender communities in legislative and policy formulation thus represents a significant democratic deficit. Employment and education policies provide further insight into the limitations of current State responses. Although non-discrimination clauses exist, they are rarely supported by enforcement mechanisms or institutional accountability. Reservation policies and affirmative action measures remain sporadic and contested, leaving many third-gender persons excluded from formal employment and educational opportunities. This exclusion directly contravenes ICESCR obligations related to the right to work and education and perpetuates cycles of poverty and marginalisation.

Healthcare policies similarly reveal structural gaps. While some initiatives recognise the need for gender-affirming healthcare and mental health support, access remains limited by inadequate infrastructure, lack of trained professionals, and persistent stigma within medical institutions. Forced or coerced medical procedures, discriminatory treatment, and denial of services continue to be reported, highlighting failures in both regulation and oversight.

These deficiencies implicate the State's obligations under international law to ensure the highest attainable standard of health without discrimination. Finally, institutional mechanisms for monitoring and enforcement remain weak. Advisory boards and grievance redressal bodies often lack independence, resources, or clear mandates. Without effective accountability structures, statutory guarantees and policy promises risk remaining symbolic. International human rights frameworks emphasise the importance of accessible remedies and independent oversight, underscoring the need for institutional reform to ensure compliance.

In sum, India's legislative and policy responses represent an important but incomplete step toward fulfilling State responsibility to the third gender. While formal recognition and welfare initiatives signal progress, their limitations reflect a broader failure to adopt a transformative, rights-based approach. Aligning domestic legislation and policy with constitutional values and international human rights standards requires moving beyond symbolism toward substantive, participatory, and enforceable measures that address the structural roots of exclusion.

SOCIAL REALITIES AND STRUCTURAL DISCRIMINATION

Despite constitutional guarantees, judicial recognition, and legislative interventions, the lived realities of third-gender persons in India continue to be marked by pervasive discrimination and social exclusion. Structural inequalities embedded within social institutions, cultural norms, and administrative practices systematically marginalise third-gender communities, revealing a significant gap between legal commitments and everyday experiences. This disjunction underscores the limitations of formal recognition in addressing deeply entrenched patterns of exclusion. Education remains one of the earliest sites of discrimination. Third-gender children and adolescents frequently encounter bullying, harassment, and exclusion within educational institutions. Rigid gender norms, lack of sensitisation among educators, and absence of inclusive infrastructure contribute to high dropout rates. Denial of admission, segregation, and psychological abuse undermine the right to education and impede social mobility. These experiences have long-term consequences, limiting access to higher education and skilled employment, and reinforcing cycles of marginalisation. The failure of educational institutions to provide safe and inclusive environments reflects broader institutional neglect and inadequate implementation of non-discrimination norms.

Employment discrimination further entrenches

socio-economic vulnerability. Third-gender persons are routinely excluded from formal employment due to prejudice, lack of educational qualifications, and absence of affirmative measures. Even where anti-discrimination provisions exist, enforcement remains weak, and workplace harassment often goes unreported due to fear of retaliation or lack of effective grievance mechanisms. As a result, many third-gender individuals are compelled to rely on informal economies, including begging or precarious forms of labour, which offer little security or protection. This exclusion directly contravenes the right to work with dignity and perpetuates economic dependency. Healthcare access presents another critical area of structural discrimination. Third-gender persons frequently face stigma, refusal of treatment, or inadequate care within public and private healthcare systems. Lack of trained medical professionals, absence of gender-affirming services, and discriminatory attitudes undermine both physical and mental health outcomes. Mental health concerns, including depression, anxiety, and trauma, are exacerbated by social isolation and persistent discrimination. These systemic failures highlight the State's inability to fulfil its obligation to ensure equitable access to healthcare without discrimination.

Violence and harassment constitute a pervasive threat to the safety and dignity of third-gender persons. Many experience physical, sexual, and psychological violence in both public and private spaces, often with impunity. Law enforcement agencies are frequently perceived as sources of harassment rather than protection, deterring victims from seeking justice. The lack of effective investigation, prosecution, and victim support mechanisms reinforces a culture of impunity and normalises violence against gender-diverse individuals. This environment of insecurity directly undermines the right to life, liberty, and personal security. Social stigma and familial rejection further compound these vulnerabilities. Many third-gender persons face exclusion from their families and communities, leading to homelessness, loss of social support, and heightened exposure to exploitation. Social ostracism restricts participation in civic life and reinforces invisibility within public discourse. The cumulative impact of these experiences illustrates how discrimination operates not as isolated incidents but as an interconnected system shaping every aspect of life.

The persistence of these social realities reflects structural deficiencies in State response. Legal recognition, in the absence of effective implementation and social transformation, offers limited relief. International human rights frameworks emphasise that equality must be

experienced in practice, not merely proclaimed in law. Addressing structural discrimination therefore requires comprehensive strategies encompassing legal reform, institutional accountability, social sensitisation, and community participation. In essence, the lived experiences of third-gender persons reveal that discrimination is deeply embedded within social and institutional structures. Bridging the gap between law and reality necessitates a shift from symbolic inclusion to transformative action aimed at dismantling systemic barriers and enabling full and equal participation in society.

Strengthening State Accountability and the Way Forward

The persistence of structural discrimination against third-gender persons underscores the need to reconceptualise State responsibility as an ongoing and enforceable obligation rather than a symbolic commitment. Strengthening accountability requires a comprehensive approach that integrates legal reform, institutional capacity-building, participatory governance, and social transformation. Without such an integrated strategy, constitutional guarantees and international human rights commitments risk remaining aspirational. A foundational step toward accountability lies in the enactment and effective enforcement of comprehensive anti-discrimination legislation. Existing legal provisions addressing discrimination are fragmented and often lack explicit recognition of gender identity as a protected ground. A unified legal framework prohibiting discrimination across education, employment, healthcare, housing, and access to public services would provide clarity, consistency, and enforceability. Such legislation should incorporate clear definitions, accessible remedies, and deterrent sanctions, aligning domestic law with obligations under the ICCPR and ICESCR.

Institutional mechanisms play a critical role in translating rights into practice. Independent oversight bodies with statutory authority to monitor compliance, investigate complaints, and recommend corrective action are essential. These bodies must be adequately resourced and empowered to function autonomously. Additionally, grievance redressal mechanisms should be accessible, confidential, and responsive to the specific vulnerabilities of third-gender persons. Effective accountability requires moving beyond advisory structures toward institutions capable of enforcing rights and ensuring compliance. Capacity-building and sensitisation within State institutions are equally crucial. Law enforcement agencies, healthcare providers, educators, and public officials often lack awareness and training on gender diversity and human rights norms. Mandatory sensitisation programmes, developed in consultation with third-gender communities, can reduce prejudice, improve service

delivery, and foster trust in public institutions. Such initiatives align with international human rights guidance emphasising education and awareness as key tools for combating discrimination.

Participatory governance constitutes another essential dimension of State accountability. Policies and laws affecting third-gender persons must be formulated and implemented with meaningful participation from the communities concerned. Inclusion of third-gender representatives in decision-making bodies, advisory committees, and monitoring mechanisms ensures that policies reflect lived realities and respond to actual needs. Participation also enhances legitimacy and accountability, shifting State responses from paternalism to partnership. Data collection and research are critical for informed policy-making. The absence of reliable, disaggregated data on third-gender populations obscures the scale and nature of discrimination, hindering effective intervention. Ethical data collection practices, grounded in consent and privacy, can support evidence-based policy design while respecting autonomy and dignity. International human rights frameworks recognise data as a tool for accountability, enabling States to assess progress and identify gaps.

Finally, accountability must extend beyond legal and institutional measures to encompass broader social transformation. Public awareness campaigns, inclusive educational curricula, and media engagement can challenge stereotypes and foster social acceptance. While the State cannot unilaterally change social attitudes, it plays a pivotal role in shaping norms through law, policy, and public discourse. Promoting respect for gender diversity is integral to creating an enabling environment where rights can be meaningfully exercised. In sum, strengthening State accountability requires a shift from fragmented and reactive responses to a coherent, proactive, and rights-based strategy. By aligning domestic reforms with constitutional values and international human rights standards, the State can move toward fulfilling its obligation to ensure dignity, equality, and autonomy for third-gender persons. The path forward lies in bridging the gap between recognition and realisation, transforming legal commitments into lived equality.

CONCLUSION

The recognition of the third gender marks a significant moment in the evolution of constitutionalism and human rights in India. Judicial pronouncements, legislative initiatives, and policy measures have collectively contributed to bringing gender diversity within the ambit of legal protection. However, as this study has demonstrated, recognition alone is insufficient to secure meaningful equality for

third-gender persons. Persistent discrimination, social exclusion, and institutional neglect reveal a substantial gap between constitutional promises and lived realities. This paper has examined State responsibility toward the third gender through the combined lens of Indian constitutional law and international human rights obligations. The analysis underscores that State responsibility is not limited to negative duties of non-interference but extends to positive obligations to respect, protect, and fulfil rights. Constitutional guarantees of equality, dignity, liberty, and autonomy—read in harmony with India's commitments under the ICCPR, ICESCR, and the interpretive guidance of the Yogyakarta Principles—establish a robust normative framework demanding proactive and transformative State action.

Judicial interventions have played a crucial role in affirming gender identity as an intrinsic aspect of personhood and in aligning domestic jurisprudence with international human rights standards. Yet, the limitations of adjudication highlight the need for complementary legislative clarity, institutional accountability, and administrative commitment. Without effective implementation mechanisms and sustained political will, judicial recognition risks remaining declaratory rather than transformative. The critical appraisal of legislative and policy responses reveals a pattern of symbolic compliance and fragmented implementation. Welfare-oriented approaches, bureaucratic gatekeeping, and inadequate consultation with affected communities undermine the autonomy and agency of third-gender persons. Similarly, structural discrimination in education, employment, healthcare, and access to justice demonstrates that legal recognition has yet to translate into substantive equality. These realities call for a shift from paternalistic models toward a rights-based paradigm grounded in participation, empowerment, and accountability.

The way forward lies in reimagining State responsibility as a dynamic and enforceable obligation. Comprehensive anti-discrimination legislation, independent oversight mechanisms, institutional sensitisation, and participatory governance are essential to bridging the gap between law and social practice. Equally important is the State's role in fostering social transformation through education, awareness, and inclusive public discourse. True equality cannot be achieved through legal reform alone; it requires a sustained commitment to dismantling the structural and cultural foundations of exclusion. In conclusion, the pursuit of justice for the third gender is a test of the State's commitment to constitutional morality and human dignity. Ensuring that third-gender persons can live with autonomy, security, and equal opportunity is not a matter of

benevolence but a constitutional and international legal imperative. By translating recognition into realisation, the State can move closer to fulfilling the transformative promise of equality embedded in both domestic and international human rights frameworks.

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