

Law, Labour, and Lived Reality: Transgender Inclusion in Corporate India



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Executive Summary

India has, over the past decade, put in place a strong legal foundation for recognising the rights and self-identification of transgender persons. However, as this paper shows, corporate inclusion has not kept pace with legal progress, creating a clear implementation gap within formal employment.

Key findings

- Hiring pipelines remain structurally narrow, limiting transgender entry into corporate roles.
- The documentation paradox - mismatches between affirmed identity and legacy records - continues to disrupt recruitment and background verification.
- Employer hesitancy is primarily operational, reflecting gaps in HR readiness, infrastructure, and managerial sensitization.
- Crucially, many of these barriers are administrative and within corporate control to fix.

What this means for corporates

- Redesigning onboarding and verification workflows can significantly reduce exclusion risk.
- Identity-affirming HR systems and clear transition protocols can improve retention and workplace trust.
- Targeted hiring partnerships can expand access to underutilized talent pools.
- Integrating transgender inclusion into core DEI and ESG frameworks strengthens organisational credibility.

This showcases that the legal groundwork is largely in place. The next phase of progress will be determined by how effectively corporates translate policy into practice and those that act early stand to gain both in talent and institutional credibility.

1. Introduction

Corporates have begun to recognize and prioritize the importance of diversity and inclusion in workplaces. While this encompasses a myriad of identities, gender and sexuality are two overarching dimensions that are increasingly featured in organizational discourse. For decades, gender identity was perceived almost exclusively as a binary of male and female. However, this understanding has been progressively challenged, and gender is now acknowledged as a spectrum rather than a fixed dichotomy (Human Rights Campaign, 2021).

The LGBTQIA+ community has historically been subjected to hate crimes, social stigma, and structural discrimination across the world. Despite growing visibility, they continue to remain a vulnerable population requiring institutional safeguarding and social support (Deloitte, 2023). Transgender identity is one of the central identities within the broader LGBTQIA+ spectrum and is often among the most marginalized due to the visibility of gender non-conformity (McKinsey & Company, 2021).

Transness represents a fundamental aspect of human diversity in which an individual's deeply held internal sense of gender identity differs from the biological sex they were assigned at birth. In the Indian context, transness is uniquely heterogeneous and culturally embedded, encompassing socio-cultural identities such as Hijra, Kinnar, Aravani, and other regionally specific communities (Singh, 2022). It is essential to distinguish transness - which relates to gender identity - from sexual orientation, which describes an individual's romantic or sexual attraction to others (Nambiar & Shahani, 2018).

This paper adopts an inclusive understanding of trans identity, recognizing that in India the category includes transgender men and women, intersex persons and indigenous gender-diverse communities. While these groups have distinct lived realities, they share common experiences of social exclusion, legal vulnerability, and economic marginalization, particularly within formal employment systems.

Against this backdrop, the paper asks a central question: to what extent has the formal legal recognition of transgender persons in India translated into meaningful inclusion within corporate employment and what institutional responses are required to bridge the remaining gap? To address this, the discussion proceeds in the following manner. It first situates transgender identities within the historical and colonial context to explain how present-day marginalisation was institutionally produced. It then examines the evolution of India's legal framework to assess the promise and limits of rights-based recognition.

Building on this foundation, the paper analyses contemporary corporate realities focusing on hiring barriers, the documentation paradox and patterns of employer hesitancy to identify where implementation breaks down. Finally, it evaluates the organisational value of transgender inclusion and outlines practical pathways through which corporates can move from formal compliance toward meaningful workforce integration. Through this progression, the paper seeks to connect law, lived experience, and corporate practice in order to provide a grounded roadmap for advancing transgender inclusion in Corporate India.

2. Colonization and the Impact on Social Status for Transgender

2.1 Global Context

It is important to situate contemporary anti-LGBTQIA+ attitudes within their historical context. A substantial body of scholarship suggests that many restrictive legal and social frameworks around gender and sexuality in the past two centuries were shaped during the colonial period, when European administrative and legal systems introduced more rigid binary understandings of gender across several parts of the world. These frameworks often sat in tension with pre-existing socio-cultural practices in many indigenous societies, where gender diversity had varying degrees of social recognition. Over time, colonial legal regimes contributed to the marginalisation and delegitimation of several gender-diverse communities that had previously occupied more complex social positions (Human Rights Campaign, 2021).

More than 150 Indigenous cultures across North America historically recognized third-gender or gender-variant identities. Similar traditions existed in many parts of the world, including the Muxes of Mexico, the Bakla of the Philippines, and the Hijras of South Asia. These identities were often socially respected and integrated into community life. Colonial administrations disrupted these systems by imposing Western moral and legal frameworks that criminalized and stigmatized gender non-conformity (Human Rights Campaign, 2021). While all pre-colonial Native American communities were not pro gender fluidity, gender and sexuality were certainly more fluid in Native American societies than in European society.

2.2 Indian Context

In India, transgender persons, particularly Hijras, historically occupied respected social positions. They served as court advisors, administrators, and custodians of royal households during the Mughal period. Far from being marginalized, they were considered trustworthy and were entrusted with important political and cultural roles (Singh, 2022).

This social standing was fundamentally altered under British colonial rule. Colonial administrators, driven by Victorian notions of morality and masculinity, viewed Hijras and other gender-diverse communities as deviant and dangerous. The Criminal Tribes Act of 1871 formally classified Hijras as a “criminal tribe,” subjecting them to state surveillance, control, and persecution. This law criminalized their very existence and marked the beginning of their systemic exclusion from mainstream society (Singh, 2022).

At the same time, Section 377 of the Indian Penal Code (1860) criminalized all non-procreative sexual relations. Though not explicitly targeted at transgender persons, this law was frequently used to harass and police queer and gender-nonconforming communities, reinforcing stigma and invisibility for more than a century (Singh, 2022)

3. The Evolution of Legal Recognition and Rights in India

The legal position of transgender persons in India has undergone significant transformation over the past decade. For most of modern Indian history, transgender identities existed in a legal vacuum - neither formally recognized nor explicitly protected. Although transgender communities such as Hijras had long-standing cultural visibility, colonial and post-colonial legal frameworks systematically marginalized them, pushing them to the fringes of social and economic life (Singh, 2022).

A major turning point in this trajectory was the 2014 Supreme Court judgment in *National Legal Services Authority (NALSA) v. Union of India*. This landmark decision recognized transgender persons as a distinct “third gender” and affirmed their constitutional right to self-identify their gender without the requirement of medical or surgical intervention. The Court explicitly held that gender identity is integral to personal autonomy and dignity and directed the State to treat transgender persons as a socially and educationally backward class eligible for affirmative action in education and public employment (Singh, 2022). The NALSA judgment thus provided a foundational rights-based framework for transgender equality in India.

The Court’s reasoning in NALSA was grounded in the constitutional principles of equality, non-discrimination and human dignity. It acknowledged that transgender persons had historically been subjected to violence, social exclusion and economic deprivation and that formal legal recognition was a necessary first step toward substantive equality. Importantly, the judgment rejected the notion that gender identity must be validated by medical certification, emphasizing instead the principle of self-determination (Singh, 2022).

This rights-based approach was further strengthened by the 2018 decision in *Navej Singh Johar v. Union of India*, which read down Section 377 of the Indian Penal Code. Although Section 377 was primarily directed at criminalizing same-sex relations, it had long been used to harass and police gender-nonconforming persons as well. Its decriminalization marked an important shift in India’s constitutional landscape, signaling a broader acceptance of sexual and gender diversity (Singh, 2022). Together, the NALSA and Navej Johar judgments created a legal environment that, at least in principle, affirmed the citizenship and dignity of transgender persons.

However, the translation of judicial recognition into legislative protection has been far more contested. The enactment of the Transgender Persons (Protection of Rights) Act, 2019 was intended to provide a statutory framework for implementing the rights recognized in NALSA. The Act formally defined a transgender person as one whose gender does not match the gender assigned at birth and explicitly included trans men, trans women, intersex persons, gender-queer individuals and socio-cultural identities such as Hijra and Kinnar within its scope (Singh, 2022).

While the Act prohibited discrimination in employment, education, healthcare, and access to public services, it has been widely criticized for diluting the spirit of the NALSA judgment. Activists and policy analysts have pointed out that the Act introduced bureaucratic procedures for gender recognition that contradict the principle of self-identification (UNAIDS, 2023). Rather than allowing individuals to determine their own gender identity, the law requires certification from government authorities, thereby creating new administrative hurdles.

Moreover, although the Act mandates non-discrimination in workplaces and obligates establishments to appoint compliance officers to address grievances, it does not include enforceable mechanisms for reservations or affirmative action in employment (Singh, 2022). As a result, the legal promise of workplace inclusion remains largely symbolic rather than substantive. The gap between legal recognition and practical implementation continues to be a major challenge.

4. Conditions in Corporates: Barriers in Hiring, the Documentation Paradox & Employer Hesitation

Despite legal recognition of transgender persons in India, corporate workplaces continue to remain among the most exclusionary institutional spaces for trans individuals. The barriers faced by transgender persons in Corporate India are not isolated incidents but rather reflect structural, bureaucratic, and cultural constraints that systematically restrict their entry and advancement.

4.1 Barriers in Hiring: Systemic Exclusion at Entry Points

The first and most visible barrier to transgender inclusion in corporate India lies within recruitment and hiring systems. Evidence from Indian workplace studies indicates that transgender persons remain significantly underrepresented in formal employment due to historical educational exclusion, social stigma, and hiring barriers rather than lack of capability (Philip & Soumyaja, 2019; QueerBeat, 2022b). Organisational hiring processes are typically designed around binary gender assumptions, leaving little room for applicants who do not conform to conventional gender norms. Research on Indian workplaces notes that transgender applicants frequently face “structured exclusion” at the interview and selection stage itself (Philip & Soumyaja, 2019).

Employers often cite a “lack of qualified transgender candidates” as the reason for non-inclusion. However, when analysed closely, organisations are often unwilling to invest the time and effort required to adapt their systems and processes to accommodate transgender employees (Philip & Soumyaja, 2019). As one respondent in Philip & Soumyaja’s (2019) study observed, companies “play safe” by claiming that suitable trans candidates are unavailable, while making no effort to actively include them (Philip & Soumyaja, 2019).

Recruitment discrimination is also reinforced by implicit biases. Hiring managers frequently judge transgender applicants based on appearance, voice and mannerisms rather than on professional competence. Even when formal anti-discrimination policies exist, transgender candidates are often screened out informally due to discomfort or prejudice on the part of recruiters (Zachariah & Nandini, 2023).

Additionally, outreach efforts toward transgender communities remain minimal. The Godrej India Culture Lab manifesto emphasizes that inclusive hiring requires proactive collaboration with transgender networks and community organisations, yet very few companies invest in building such pipelines (Nambiar & Shahani, 2018). Without intentional outreach, transgender applicants rarely enter mainstream corporate talent pools.

4.2 The Documentation Paradox

A major barrier to transgender employment is the problem of mismatched identity documentation - often referred to as the documentation paradox. Formal employment in India is heavily dependent on official records such as Aadhaar cards, PAN cards, educational certificates and employment histories. For many transgender persons, these documents reflect their birth name and assigned gender rather than their affirmed identity.

Changing legal identity documents in India is administratively complex, inconsistent across states, and emotionally exhausting. Experts point out that obtaining a Gazette notification and updating records across multiple agencies is often the most difficult aspect of social transition (Nambiar & Shahani, 2018). As a result, many transgender persons remain trapped between their lived identity and official paperwork.

Corporate HR systems, designed for strict background verification, unintentionally magnify this problem. Even when companies claim to be inclusive, discrepancies in names or gender markers frequently lead to rejection at the

verification stage. Transgender employees often report that they are forced to disclose their trans history in ways that compromise privacy and dignity (Zachariah & Nandini, 2023).

Privacy concerns are particularly significant. Workplace studies emphasize that transgender employees are highly sensitive about confidentiality and fear non-consensual exposure of their identity (Philip & Soumyaja, 2019). Yet routine HR processes often make such exposure unavoidable.

The paradox therefore operates as follows:

- Without updated documents, transgender persons cannot secure formal employment.
- Without stable employment, they lack resources and institutional support to update documents.
- Without documentation, they remain excluded from corporate opportunities. (Nambiar & Shahani, 2018).

4.3 Employer Hesitancy: Cultural and Organisational Resistance

Even when qualified transgender candidates are available, many employers remain reluctant to hire them. Zachariah & Nandini (2023) identify multiple sources of organisational hesitation, including anticipated co-worker discomfort, bathroom access conflicts, insurance complications, and fear of social backlash.

Employers frequently view the workplace transition of a transgender employee as an organisational “problem” rather than a routine diversity issue, reflecting the broader gap between stated diversity commitments and operational readiness in many Indian firms (QueerBeat, 2022a). Concerns about how colleagues, clients, and vendors might react often deter managers from making inclusive hiring decisions (Zachariah & Nandini, n.d.). These anxieties translate into avoidance: organisations prefer not to hire transgender persons rather than undertake the effort required to create inclusive systems.

Another major reason for hesitancy is the absence of internal policy frameworks. Most companies in India lack:

- Clear anti-discrimination policies against gender diverse people
- Guidelines for name and pronoun changes
- Gender-neutral infrastructure
- Sensitization programs for staff
- Mechanisms for grievance redressal

Without such systems, managers perceive trans inclusion as administratively risky and socially complicated (McKinsey & Company, 2021; Nambiar & Shahani, 2018). Importantly, employer hesitation is also rooted in broader social marginalization. Many transgender persons face school dropout, family rejection and economic deprivation long before they enter the labour market. Consequently, organisations interpret structural disadvantage as a “skills deficit,” further rationalizing exclusion (Philip & Soumyaja, 2019).

4.4 Concealment and Emotional Costs

Because of hostile workplace climates, many transgender employees feel compelled to conceal their identity in order to obtain or retain employment (Philip & Soumyaja, 2019; QueerBeat, 2022a). Studies indicate that transgender workers often hide their gender identity due to fear of harassment or job loss (Philip & Soumyaja, 2019). Such concealment, however, prevents access to support systems and creates significant psychological strain.

Even after securing employment, transgender persons report discrimination in everyday interactions ranging from exclusion by colleagues to difficulties accessing restrooms and accommodation. These experiences often lead to

resignations, reinforcing employer stereotypes that transgender hires are “unstable” or “difficult to retain” (Zachariah & Nandini, 2023).

4.5 Infrastructural and Policy Deficits

Practical inclusion is further obstructed by the absence of basic workplace infrastructure. Application forms that allow only “male” and “female” options, gender-segregated restrooms, and gendered dress codes create daily obstacles for transgender employees (Zachariah & Nandini, 2023).

Even where policies exist on paper, they are rarely operationalized. The Godrej India Culture Lab manifesto notes that sensitization of staff and leadership commitment are critical to making inclusion meaningful, yet many organisations treat diversity training as optional rather than mandatory (Nambiar & Shahani, 2018).

Workplace transformation studies emphasize that successful inclusion requires not only policy change but also:

- Regular sensitization programs
- Complaint redressal mechanisms
- Confidential record-updating processes
- Pre-placement support systems
- Continuous feedback loops (Zachariah & Nandini, 2023; Philip & Soumyaja, 2019)

5. Importance of Trans Inclusion in Corporates: Organizational Value and Integration Pathways

As Corporate India deepens its engagement with diversity, equity, and inclusion (DEI), transgender inclusion is increasingly recognized as a workforce and governance issue with measurable organisational implications. Beyond compliance with statutory non-discrimination requirements, structured inclusion practices can improve talent access, employee engagement, innovation capacity, and institutional credibility. However, these outcomes materialize only when organisations translate policy commitments into operational changes within recruitment, human resource systems, and workplace culture.

5.1 Expanding Access to Underutilized Talent

One of the clearest organisational benefits of transgender inclusion is the expansion of the effective talent pool. Evidence from Indian workplace studies indicates that transgender persons remain significantly underrepresented in formal employment due to historical educational exclusion, social stigma, and hiring barriers rather than lack of capability (Philip & Soumyaja, 2019). As a result, firms that build targeted inclusion pathways can access a segment of the labour market that remains largely untapped.

Importantly, passive equal-opportunity statements have limited impact. Nambiar and Shahani (2018) document that successful corporate initiatives in India typically involve active collaboration with transgender community organisations and skilling partners to identify job-ready candidates. Firms that rely solely on conventional recruitment channels rarely reach transgender applicants at scale.

Operationally, companies can improve talent access by:

- partnering with transgender community networks for candidate sourcing;
- incorporating gender-neutral language in job advertisements and application forms; and
- designing role-specific training or apprenticeship programs where educational discontinuities exist.

These measures address pipeline constraints while preserving merit-based selection.

5.2 Resolving the Documentation Paradox Through HR Process Design

A central operational barrier in India is the mismatch between transgender employees' affirmed identity and legacy identity documents. Corporate hiring systems typically require strict alignment across educational records, identity proofs, and background verification documents. However, studies note that the legal process for updating name and gender markers remains procedurally complex and unevenly implemented across jurisdictions (Nambiar & Shahani, 2018; Philip & Soumyaja, 2019).

This creates what researchers describe as a structural exclusion loop: candidates are screened out during verification despite meeting role requirements. Importantly, the literature indicates that many of these barriers are administrative rather than legal inevitabilities. Evidence from workplace transformation initiatives suggests several high-impact corporate interventions:

1. **Flexible internal identity recognition:** Organisations can allow employees to update their chosen name and pronouns across internal systems (email IDs, ID cards, HR portals) independent of external document changes. Zachariah & Nandini (2023) emphasize that recognition of affirmed identity in day-to-day systems is a core determinant of workplace dignity.
2. **Affidavit-based onboarding exceptions:** The Godrej India Culture Lab manifesto documents emerging practice in which companies accept notarized self-declarations during onboarding while allowing time-bound alignment of statutory documents (Nambiar & Shahani, 2018). This reduces entry friction without compromising compliance.

3. **Confidential verification protocols:** Privacy risks during background checks are a major concern for transgender employees (Philip & Soumyaja, 2019). Firms can implement restricted-access HR workflows to ensure that legacy identity data are visible only to designated compliance personnel.
4. **Pre-joining documentation support:** While companies cannot substitute state processes, several Indian inclusion programs have demonstrated value in providing candidates with guidance on navigating legal name and gender updates (Nambiar & Shahani, 2018).

Taken together, these measures indicate that the documentation paradox can be substantially mitigated through deliberate HR process redesign.

5.3 Enhancing Innovation Through Psychological Safety

There is growing global evidence linking identity safety with employee contribution and innovation. McKinsey & Company (2021) report that transgender employees who feel supported at work are significantly more likely to report positive engagement and participation outcomes. Conversely, concealment of identity is associated with stress and reduced workplace effectiveness.

From an organisational standpoint, the mechanism is straightforward: when employees do not expend cognitive and emotional energy managing stigma, they are better able to contribute to collaborative problem-solving. Indian workplace research similarly emphasizes that sensitization of immediate teams and supervisors is critical to enabling meaningful participation by transgender employees (Zachariah & Nandini, 2023.).

Companies seeking to capture these benefits typically institutionalize:

- mandatory inclusion training for managers and teams;
- normalization of pronoun usage in internal communications; and
- clear anti-harassment enforcement mechanisms.

These practices convert diversity presence into functional cognitive diversity.

5.4 Improving Retention and Workforce Stability

Workplace inclusion is strongly correlated with employee retention. The Deloitte Global 2023 LGBTQ+ Inclusion at Work Survey finds that a substantial share of LGBTQ+ employees consider leaving employers that do not provide supportive environments (Deloitte, 2023). Although the survey is global and cross-identity, its implications are particularly relevant for transgender employees, who face significantly high vulnerability.

Indian evidence indicates that organisations with formal transition policies, confidential HR processes and visible leadership commitment report stronger employee trust (Nambiar & Shahani, 2018). These measures reduce attrition risk and protect institutional knowledge.

High-impact corporate practices include:

- formal gender transition guidelines;
- inclusion of gender-affirming care in health insurance;
- functional grievance redressal systems; and
- active employee resource groups (ERGs).

These interventions strengthen retention not only among transgender employees but across the broader workforce by reinforcing perceptions of procedural fairness.

5.5 Strengthening ESG Positioning and Stakeholder Trust

Corporate diversity performance increasingly intersects with ESG evaluation frameworks. Firms that demonstrate credible commitment to gender inclusion are better positioned to meet investor, client, and regulatory expectations. Nambiar and Shahani (2018) note that visible and authentic inclusion practices enhance organisational legitimacy and brand credibility.

Operational alignment can include:

- incorporating gender identity into diversity disclosures;
- tracking inclusion metrics at leadership level;
- extending inclusive policies across supply chains; and
- linking executive accountability to DEI outcomes.

Such measures signal that inclusion is embedded in governance rather than treated as symbolic compliance.

5.6 Embedding Trans Inclusion into Workforce Transformation

Sustainable progress requires integrating transgender inclusion into mainstream HR architecture. It is important to note that episodic hiring drives are insufficient; durable inclusion depends on embedding policies into recruitment, facilities, performance management, and leadership development systems (Zachariah & Nandini, 2023).

Organisations that demonstrate sustained progress typically implement:

- structured mentorship pathways;
- periodic workplace climate assessments;
- leadership-level inclusion sponsorship; and
- continuous feedback loops with transgender employees.

These mechanisms ensure that inclusion remains operational rather than declaratory.

6. Conclusion

India's journey on transgender rights reflects a striking paradox of progress: while the legal architecture has moved decisively toward recognition and dignity, workplace realities particularly within Corporate India continue to lag behind. This paper has shown that the gap is not simply attitudinal but structural, embedded in hiring systems, documentation practices, and organisational risk perceptions. Yet the analysis also demonstrates that many of these barriers are administratively mediated and therefore within the sphere of corporate influence.

For Indian corporates, transgender inclusion is no longer a peripheral diversity concern; it is increasingly a marker of institutional maturity, workforce readiness, and ESG credibility. Firms that proactively redesign recruitment pipelines, address documentation frictions, and invest in psychologically safe workplaces stand to gain not only in equity outcomes but also in talent access, innovation capacity, and employee retention. Conversely, passive compliance risks leaving both social and business value unrealised.

The way forward lies in moving from symbolic inclusion to system-level integration. When legal intent is matched by organisational design and leadership commitment, Corporate India has the opportunity to transform transgender inclusion from an exceptional accommodation into a normalized feature of the modern workplace.

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