

## **“Beyond the Binary: Advancing Transgender and LGBTQ+ Representation in Panchayati Raj Institutions in India”**

**Divya Arpana**  
*Amity Law School,  
Amity University,  
Patna*

### **ABSTRACT**

This article analyzes the need to incorporate intersectional representation of transgender and LGBTQ+ people in India's Panchayati Raj Institutions, emphasizing how the existing structure is unable to represent the heterogeneity of society it purports to represent. While constitutional assurances and milestones in court judgments such as *NALSA v. Union of India*<sup>1</sup> upheld the rights of transgender individuals, their representation remains symbolic and absent of formal backing. Current reservation policies have their roots in a dualistic perception of gender and fail to account for the intersecting marginalization many face within the LGBTQ+ community. The research analyses case studies, such as Madhu Kinnar and Anjinamma's leadership odysseys, to highlight both advances and the enduring challenges. It advocates for the implementation of horizontal reservations, institutional changes to strengthen transgender welfare boards, and social sensitization on a larger scale to produce an enabling environment for involvement. Finally, the paper asserts that substantive participation in local government needs to be based not merely on legal change but also on social transformation that establishes the dignity and political autonomy of all citizens, whatever their gender or sexual orientation.

**Keywords:** transgender representation, panchayati raj institutions, gender identity, local governance.

### **INTRODUCTION**

Panchayati Raj Institutions (PRI) serve as the bedrock of local self- governance in India, a system deeply embedded in the nation's democratic framework through Part IX of the Constitution<sup>2</sup>, introduced by the 73<sup>rd</sup> Amendment Act of 1992<sup>3</sup>. A core tenet of this constitutional mandate is Article 243D<sup>4</sup>, which mandated that seats be reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) in proportion to their population, while also ensuring that at least one- third of all seats are allocated to women, including those belonging to the SC and ST Communities. This framework was designed explicitly to promote social justice and uplift historically disadvantaged groups by guaranteeing their involvement in decision- making processed at the grassroots level. Furthermore, state legislatures retain the

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<sup>1</sup> *NALSA v. Union of India* MANU/SC/0281/2014

<sup>2</sup> *Constitution of India* Part IX.

<sup>3</sup> *The Constitution of India (seventy- third amendment) Act, 1992* (India).

<sup>4</sup> *Constitution of India* art 243D.

authority to extend reservations retain the authority to extend reservations to other backward classed within Panchayats.<sup>5</sup>

Despite these foundational provisions, which were revolutionary for their time in ensuring representation for SCs, STs, and women, the existing legal and policy landscape implicitly reinforces a binary understanding of gender and a caste-centric view of marginalization. This creates a structural limitation where a law intended for inclusivity inadvertently overlooks and excluded other marginalized identities, particularly transgender and the broader LGBTQ+ communities whose struggles for recognition and rights were not as prominent when their inception, necessitate periodic re-evaluation to align with evolving societal understandings of identity and marginalization. The challenges faced by LGBTQ+ individuals at the national level, such as the absence of marriage equality, are often mirrored and even amplified at the local level where traditional norms and social stigma can be more deeply entrenched<sup>6</sup>. The fact that explicit provisions for transgender and LGBTQ+ representation are largely absent even at this foundational level of governance reflects a broader national legislative and societal lag in fully recognizing and integrating these communities into mainstream political life. Consequently, reforms at the panchayat level are not merely about enhancing local governance; they are crucial for demonstrating and driving a national commitment to comprehensive equality.

## **CONSTITUTIONAL FOUNDATIONS FOR NON-DISCRIMINATION AND EQUALITY AND JUDICIAL APPROACH**

India's Constitution, with its progressive provisions under Fundamental Rights and the Directive Principles of State Policy, lays a strong groundwork for ensuring gender equality and prohibiting discrimination. Over time, judicial interpretation and constitutional application have played a crucial role in safeguarding the rights of historically marginalized groups, including transgender persons and members of the LGBTQ+ community.

### **Articles 14, 15, 16: Guaranteeing Equality and Prohibiting Discrimination**

**Article 14(Right to Equality)<sup>7</sup>:** Article 14 of Indian constitution holds the value of equality so that all the people living in India territory are treated equally before the law and they also have the equal protection under the law. In the case of National Legal Services Authority (NALSA), the Supreme Court clarified the interpretation that the word any person means men and women as well as the transgender people. The Court was aware that not treating them equally or subjecting them to treatment based on either gender identity or sexual orientation is a violation of this fundamental right.

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<sup>5</sup> *Reservation of Seats in Gram Panchayats- Indian Polity Note*. Available at: <https://prepp.in/news/e-492-reservation-of-seats-in-gram-panchayats-indian-polity-notes> (Last Accessed: 18<sup>th</sup> June 2025)

<sup>6</sup> Ankush Kumar, "Indian Supreme Court Rejects Marriage Equality Ruling Appeals" *Washington Blade* (14 Januray 2025) Available at: <https://www.washingtonblade.com/2025/01/14/indian-supreme-court-rejects-marriage-equality-ruling-appeals/>

<sup>7</sup> *Constitution of India* art.14.

**Article 15 (Prohibition of Discrimination)<sup>8</sup>:** In this article, the discrimination by the State on grounds of religion, caste, race, sex or the place of birth has been explicitly prohibited. It was the NALSA judgment that played a critical condition in interpreting the term sex to define gender identity and by clear and explicit language made it unacceptable to discriminate based on a person self- defining his/her gender identity. Such an enlargement implies that any discrimination implies that any discrimination or ill-treatment that is extended to the transgender people is violating their fundamental rights.<sup>9</sup>

**Article 16 (Equal Opportunity in Public Employment)<sup>10</sup>:** Article 16 gave equality of opportunity to every Indian citizen to any government employment in the public sector and it forbids discrimination on basis of factors such as sex. Transgender persons were declared as SEBC under the NALSA judgment and hence have reservation in government jobs. This classification further solidifies their rights under this article, and by extension, strengthens the argument for their inclusion in public office, including elected position in Panchayats.

The judicial expansion of the term “sex” in articles 15 & 16 to encompass “gender identity” and “sexual orientation” represents a paradigm shift in Indian constitutional jurisprudence. This re- interpretation fundamentally broadens the constitutional mandate for non-discrimination beyond biological attributes, creating a robust legal foundation for affirmative action for transgender and LGBTQ+ persons in all public spheres, including political representation, as holding political office is inherently a form of public opportunity. If discrimination based on gender identity is constitutionally prohibited in employment and education, then denying political representation on the same grounds would also be a constitutional violation, thereby establishing a strong legal basis for advocating reservations in Panchayati Raj Institutions.<sup>11</sup>

**Article 243D of the Constitution<sup>12</sup>** mandates reservation of seats for women in Panchayats, including leadership roles, ensuring that no less than one- third, extending to 50%, in some states, of the seats are reserved. This provision played a major role in enhancing women involvement in local governance and decision making.<sup>13</sup>

However, the provision, enacted in 1992, predates the NALSA judgment, which legally recognized the third gender. As a result, the article does not account for transgender or LGBTQ+ individuals, inadvertently excluding them from formal political representation at

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<sup>8</sup> Constitution of India art. 15.

<sup>9</sup> Guide on the rights of transgenders in India (2024) Nyaaya. Availabe at: <https://nyaaya.org/resource/guide-on-the-rights-of-transgender-persons-in-india/>

<sup>10</sup> Constitution of India, art.16.

<sup>11</sup> Sakshi Parashar, ‘Inclusion of Transgender Community within Socially and Educationally Backward Classes: Examining the Deeper Concerns’ (2017) 2 ILI Law Review (Winter Issue) 105.

<sup>12</sup> Constitution of India, art. 243D.

<sup>13</sup> Raghavendra Chattopadhyay and Esther Duflo, “The Impact of Reservation in the Panchayati Raj: Evidence from a Nationwide Randomized Experiment” (November 2003).

the grassroots level.<sup>14</sup> This omission reflects a structural gap in the constitutional and statutory framework, undermining the broader goal of inclusive governance.

Despite being a progressive tool for women's empowerment, the current legal framework does not extend similar affirmative measures to other marginalized gender identities. The absence of similar explicit provisions for transgender and LGBTQ+ persons in the Panchayati Raj laws across states constitutes a major policy gap, necessitating legislative reform to extend the spirit of affirmative action to these communities.<sup>15</sup> A viable remedy lies in the application of horizontal reservation, which has been recognized in Indian legal discourse to recognize and respond to the overlapping layers of disadvantaged experience by marginalized groups.

More so the judiciary is significant to open the doors and take the initiative of demonstrating transgender rights. The High Court of Kerala's judgment in *Kabeer C. v. State of Kerala & Ors. (2024)*<sup>16</sup>, represents a significant step by directly mandating the State Government to implement measures for reservation for trans genders in public and educational institutes within six months. The Court critically noted the government's continued inaction despite clear legal and constitutional obligations stemming from the judgement of NALSA and the resulting Transgender Persons (Protection of Rights) Act, 2019, this critical approach creates a powerful precedent for judicial intervention in other sphere including political representation, where similar legislative and executive inertia persists.

## **POLICY GAPS IN PANCHAYATI RAJ LAWS AND STATE LEVEL FRAMEWORKS**

Despite important strides in judicial recognition, the legislative and policy framework for transgender and LGBTQ+ inclusion in Panchayati Raj institutions remain underdeveloped.

A key shortcoming is the absence of clear reservation policies for transgender and LGBTQ+ persons in Panchayati Raj legislations. While the 73<sup>rd</sup> Constitutional Amendment Act<sup>17</sup> successfully institutionalized reservation for women in local bodies, there is no equivalent mechanism in place to ensure representation of other marginalized gender identities.

Although the Transgender Act, 2019 was enacted to advance the right of transgender individuals, if it fails to operationalize the intent to advance the rights of transgender individuals, it fails to operationalize the directive issued by the Apex Court in the NALSA case which had called for comprehensive reservation benefits for transgender persons including in the political sphere. The Act of 2019 notably omits any statutory guarantee of political representation, thereby leaving a significant legislative gap between judicial intent

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<sup>14</sup> Kiruba Munusamy, "The Legal Basis for Affirmative Action in India" (WIDER Working Paper No 2022/74, UNU- WIDER 2022).

<sup>15</sup> Neha Maria Benny, "Towards Equality and Inclusivity: The Case of Transgender Horizontal Reservation" (SPRF, 9 January 2024).

<sup>16</sup> *Kabeer C v. State of Kerala (2020/KER/20613)*.

<sup>17</sup> *The Constitution of India (seventy- third amendment) Act, 1992* (India).

and statutory implementation. The ambiguity among state Panchayati Raj legislations, have resulted in an uneven landscape of gender Right and opportunities of transgender people in India.

While the Act includes non- discrimination clauses, such provision such as the right not to be discriminated against in public employment or holding office are insufficient to address the entrenched exclusion and systemic disadvantages faced by transgender communities.<sup>18</sup> In practice, the lack of affirmative measures has resulted in minimal political participation among transgender persons, despite their legal recognition.

The principle of formal equality alone is inadequate in such contexts. What is needed is substantive equality which requires targeted interventions like affirmative action and horizontal reservations to dismantle historical and structural barriers. Legal recognition must be accompanied by enabling mechanisms to facilitate real participation, especially in political institutions that shape local development and governance.

### **CASE STUDIES OF TRANSGENDER PERSONS IN LOCAL BODIES**

Despite the significant policy gaps and systematic challenges, several transgender individuals have successfully contested and won elections in local bodies, demonstrating resilience and the potential inclusive leadership. These instances, while inspiring, often highlight the reliance on individual effort and community support rather than robust systematic inclusion.

#### **Madhu Kinnar (Raigarh Mayor, Chattisgarh)**

In 2015, Madhu Bai Kinnar made history by becoming the first openly transgender person to be elected as mayor in India. She secured a victory in the municipal elections held in Raigarh, Chhattisgarh as an independent candidate with a commanding margin of 33,168 votes.<sup>19</sup> This occurred only nine months after the NALSA judgement, marking how a legal acknowledgment could rapidly bolster marginal groups politically.

Prior to venturing into politics, Madhu Bai, formerly Naresh Chauhan, had studied only through the eighth grade and made her living through singing and dancing on trains as well as public places. A Dalit herself, she is an example of an intersection of several oppressed identities. Her campaign was run on a small scale of approximately ₹60,000 to ₹70,000 and was mostly started at the insistence of local residents.

She concentrated as mayor on important civic issues like better sanitation, cleaning waterbodies such as lakes and ponds, and creating public parks. But even on the basis of her

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<sup>18</sup> Geetika Sood and Ajay Kumar, 'Economic, Political, Social and Legal Issues Impacting Transgender Community in India: A study' (2024) 10(5) International Journal of Law 16.

<sup>19</sup> Eric Krupke, 'Madhu Bai Kinnar becomes India's first openly transgender woman elected mayor' PBS NewsHour (5 January 2015) Available at: <https://www.pbs.org/newshour/world/madhu-bai-kinnar-becomes-indias-first-openly-transgender-woman-elected-mayor>

popular mandate, she could not avoid confrontation with mainstream political groups like the BJP and Congress members boycotted her first official function as mayor.

### **Anjinamma (Choranur Gram Panchayat President, Karnataka)<sup>20</sup>**

The most recent instance of grass-root transgender leadership came from Karnataka in August 2023 when C. Anjinamma was elected by consensus as the president of the Choranur gram panchayat in Ballari district. A two-time panchayat member, Anjinamma attributed her election to the support and faith consistently demonstrated by the villagers and local elders, which she claimed was a symbol of a progressive mindset toward transgender leadership. The seat she took was reserved for a Scheduled Caste candidate, and the community unitedly accepted her as the best representative for the position. As president of panchayat, she intends to focus on infrastructure development like improved supply of drinking water, streetlights, and road construction, as well as promoting the well-being of the transgender community.

### **Dnyaneshwar Kamble (Tarangfal Village Sarpanch, Maharashtra)**

Dnyaneshwar Kamble, affectionately known as "Mauli" to the people of Maharashtra's Solapur district Tarangfal village, is an example of increased prominence of transgender leadership within rural politics.<sup>21</sup> Kamble was elected Sarpanch in 2017 by a margin of more than 800 votes out of 1,600, successfully defeating six of his rivals. Inspired by the philosophy of lok seva, gram seva, "service to the village is service to the people", Kamble has focused on basic services like education and sanitation. Their political journey started at age 25, after more than a decade working in traditional roles for the transgender community, which they joined at age 14 when they left their native home.

These examples of leadership straightforwardly illustrate that, despite deep-seated societal stigma and structural obstacles, transgender individuals can certainly reach political office, particularly at the local level. Their own success narratives tend to be grounded in strong local backing and a clear commitment to solving agitating issues in the community. Significantly, these wins usually come via standalone runs or through consensus decisions on the part of village councils, as opposed to formal reservation policies, highlighting again the absence of formal political inclusion processes for transgender individuals.

The stories of leaders such as Madhu Kinnar, Anjinamma, and Dnyaneshwar Kamble indicate the promise and the challenges for transgender people in politics. Although their elections are a sign of acceptance at both village and city levels, they also reflect a greater imbalance as transgender candidates have not been successful in parliamentary elections, and wider legal

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<sup>20</sup> Pavan Kumar H, 'Karnataka's gram panchayat elects transgender person as its president' Deccan Herald (Bengaluru, 7 August 2023)

<sup>21</sup> These beautiful trans women don't let their gender define them (18 July 2019) Mid- Day. Available at: <https://www.mid-day.com/news/india-news/photo/Inspiring--These-beautiful-transgender-women-haven-t-let-their-sex-define-them-16516> (Accessed: 18 June 2025).



recognition is out of reach.<sup>22</sup> This contrast implies that whereas local communities might welcome transgender leaders owing to their achievements and visibility, there remain considerable barriers at state and national levels owing to continued stigma and lack of political will towards inclusive representation.

## **CHALLENGES TO POLITICAL PARTICIPATION**

The path to fair political representation for transgender and LGBTQ+ persons in India is marked by numerous and interlinked obstacle. These include societal bias, institutional shortcomings, and inadequate enforcement of supportive measures.

### **A. Entrenched Social Prejudice and Cultural Exclusion**

Generalized cultural prejudices and social ostracism of LGBTQ+ and transgender people create the most important hindrance to their political engagement. They end up being shunned by their families and broader society, with instances of deprivation of basic rights, regular victimization by violence, and psychological trauma. These conditions create a perpetual cycle of exclusion which leads to exclusion from political participation, making these groups invisible in the public domain.

Legal recognition of rights is present but the social environment is hostile. Political participation is active in nature and needs public presence and support of the community, both of which are routinely denied because of widespread discrimination.<sup>23</sup> Furthermore, the perception that politics is a masculine domain, and instances where public figures reject or mock transgender identities, are all reflective of a deeper institutionalized resistance. Not only does this dissuade transgender individuals from presenting themselves in politics, but it also sends the message that their identities are not legitimate in the political system.

### **B. Lack of Political Inclusion and Institutional Inertia**

Besides societal stigma, institutional indifference largely curtails LGBTQ+ political participation. Political parties largely steer clear of supporting or putting up transgender candidates on the grounds of social acceptability or electoral viability. The majority of parties do not have inclusive candidate lists or leadership pipelines for LGBTQ+ individuals as well as targeted voter mobilization efforts toward these populations.<sup>24</sup> This indicates that the law can allow political participation but the political infrastructure does not enable it to happen.

Financial exclusion adds to this problem. The expenses of election campaigns, such as nomination fees, advertising, and canvassing, present a daunting barrier for most transgender candidates who tend to have unstable income. With minimal institutional or

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<sup>22</sup> Sayantika Sen and Vani Narula, 'Transgender Inclusivity in Democracy: The Power of Transgender Advocacy, Civic Engagement and Political Participation in India' (2024) 11(5) *Journal of Emerging Technologies and Innovative Research*.

<sup>23</sup> National Human Rights Commission, *Socio- Cultural and Economic Inclusion of LFBT People: Submission by the National Human Rights Commission of India* (OHCHR)

<sup>24</sup> Phares Stuart, R Arun Kumar and M Manonmani, 'An Empirical Study on Involvement of Transgender in Politics in India' (2025) 6 (5) *International Journal of Research Publication and Reviews* 14877-14885.

private funding, most of them depend on crowdfunding to run for elections. For those already driven into vulnerable work based on discrimination—such as street begging or sex work—these monetary requirements are particularly daunting, making political ambitions close to impossibilities.

### **C. Administrative Failures and Resource Constraints**

In spite of legal instruments advocating for transgender rights, there are severe gaps in implementation. Procedures for recognizing identity differ between districts, and uneven interpretations by local authorities typically result in the withholding of necessary documents. This disconnection between provisions and grassroots implementation creates de facto impediments to registration as a voter and running for office.

In addition, widespread poverty and low levels of education within transgender populations restrict awareness and access to political processes. Many are systematically excluded from economic and educational opportunities, and thus do not have the tools necessary to engage in democratic governance.<sup>25</sup> As long as these foundational problems continue, political inclusion becomes inaccessible to much of the community.

## **CONCLUSION AND WAY FORWARD**

Securing inclusive and representative local government in India calls for more than court acknowledgment of transgender and LGBTQ+ rights; it necessitates substantive legislative, policy, and societal changes that instill these rights into the fabric of Panchayati Raj Institutions. Although historic judgments like *NALSA v. Union of India* have established a solid legal base in declaring transgender individuals Socially and educationally disadvantaged population groups who have affirmative action entitlement, the lack of corresponding state-level amendments in Panchayati Raj Acts continues to deny these groups access to formal political arenas. Implementing horizontal reservations for LGBTQ+ and transgender people would be legally prudent and socially equitable means to include them in current quota systems without displacing other oppressed communities. In the absence of such a law, nominating LGBTQ+ candidates to a limited number of seats could also be an effective stopgap measure, providing immediate representation while laying the groundwork for long-term structural inclusion.

Yet, legislative change does not necessarily affect true inclusivity. Empowerment of state transgender welfare boards with defined commissions, sufficient resources, and holding-institutions is imperative to translate legal entitlements into lived experiences. Such institutions can bring about the means to access documentation of identity, legal aid, education, and vocational training, all of which are essential to facilitate political enfranchisement. Meanwhile, thorough sensitization measures must be undertaken to overcome ingrained social biases that normally keep LGBTQ+ persons from joining or being welcomed into the political space. Public enlightenment campaigns that combat injurious

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<sup>25</sup> Vishy PK, 'The Political Participation of Transgender Community in Kerala: Rights, Accessibility and Activism' (2023) 2(1-2) *Bulletin of Applied Transgender Studies* 95-106.



stereotypes and dispense empathy are central to establishing an electorate that embraces inclusive leadership.<sup>26</sup> The judiciary's role must also remain forceful, especially where legislative and executive action is sluggish. Judicial intervention has long made headway on marginalized rights in India and is an important force to ensure follow-through and accountability.

In the end, organizing LGBTQ+ communities from within is most important for making political inclusion sustainable and meaningful. Grassroots groups need to be funded and assisted in building leadership, propagating political consciousness, and creating solidarities that train possible candidates to engage actively in local politics. The political careers of path breaking transgender leaders such as Madhu Kinnar, Shabnam Mausi, and others demonstrate both the life-altering possibility of representation and the persistent threats presented by social stigma and institutional disregard. Their wins underscore the necessity to overcome tokenism in order to build systemic avenues for LGBTQ+ members of society to engage on an equal level with dignity in democratic representation. Realizing this vision calls for more than legal change, but a profound alteration of attitudes in society, an inclusive democracy must be constructed from the grassroots, where all identities have a place at the table and all voices are empowered to determine the course of the future.

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<sup>26</sup> Mirza Shaina Beg, 'Queering the Vote: Fighting for visibility in India's Election' (14 May 2024) Available at: <https://www.fairplanet.org/story/queering-the-vote-fighting-for-visibility-in-indias-election/>