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Transgender Persons and Structural Barriers in Criminal Justice: A Comparative Study of India and Indonesia

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Abstract

This article critically examines the structural and legal barriers faced by transgender (TG) persons within the criminal justice systems (CJS) of India and Indonesia. It systematically inquires into the gaps in substantive criminal laws, procedural safeguards, policing practices, trial process, and prison administration that exclude TG persons in India and Indonesia from access to justice. It focuses on three offence clusters: sexual violence, police violence/custodial abuse, and criminalisation through public order/morality laws. The paper argues that CJS of both the jurisdictions fail to protect TG persons not only because of social stigma or lack of recognition, but because the substantive criminal laws and procedural safeguards are designed around gender-binary notion and are implemented through hostile law-enforcement institutions. his research employs a doctrinal and comparative legal

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methodology to analyse the treatment of TG persons across three stages of the CJS: pre-trial reporting and investigation, trial, and post-trial prison administration. It contrasts India's recognition framework- grounded in the landmark *NALSA* judgement and the Transgender Persons (Protection of Rights) Act of 2019-alongside its criminal law scheme under the Bharatiya Nyaya Sanhita, 2023, and the Bharatiya Nagarik Suraksha Sanhita, 2023 with Indonesia's constitutional guarantees, recent KUHP reforms, Law No. 12 of 2022 on Sexual Violence Crimes, and morality-based regional enforcement. The research concludes that India and Indonesia differ in formal recognition but converge in structural obstacles such as gender-binary penal laws, police violence, and data invisibility. It recommends for substantive legislative reform, stronger implementation mechanisms, and greater institutional accountability to secure meaningful criminal justice protection for TG persons in both the jurisdictions.

KEYWORDS *Criminal Justice System, Gender-Neutral, Structural Barriers, Transgender, Waria*

Introduction

Transgender persons in India and Indonesia face persistent discrimination, abuse, social and cultural exclusion, and denial of basic constitutional and legal protections. In India, although the *NALSA* judgement legally recognized third gender and affirmed right to equality, education, healthcare, and self-identified gender, it did not catalyze the development of gender-neutral criminal law. The Transgender Persons (*Protection of Rights*) Act, 2019 also provides only weak penal protection against serious offences like sexual abuse. Likewise, the Bhartiya Nyaya Sanhita, 2023 broadly remains gender-binary and does not adequately protect TG individuals from sexual violence. Further, it omits a provision like the former Section 377, Indian Penal Code, 1860 which could have served as a safeguard where gender-specific rape laws fail. In Indonesia, the legal position is more restrictive as it recognizes only two sexes.[1] There is no specific law that addresses issues related to transgender community, rather, they are extended common protection

[1] Jon Ingvar Kjaran and Mohammad Naeimi, "*Transpuan* Communities in Indonesia", *Anthropology of the Middle East* 20, no. 1 (2025): 59-74, https://doi.org/10.3167/ame.2025.200104.

under Section 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Article 3 para (2) and Article 29 paragraph (2) of Law Number 19 of 1999 concerning Human Rights. Although constitutional and human rights provisions provide general guarantees, the wider legal and social environment remains hostile, reinforced by gender-binary laws[2], religious and moral regulation[3], targeted police action[4], and rising prejudice against queer communities.[5]

The failures set out above show that the problem is not merely that of formal recognition, but of how criminal justice institutions fail to translate recognition into protection. Bearing this in mind, this article focuses on criminal justice rather than transgender rights in general. It examines the gaps in substantive criminal laws and breach of procedural rights of TG persons across different stages of the criminal justice system.This article also addresses a gap in the existing literature on transgender rights which is either skewed towards healthcare access and sexual well-being like the study by Apurva Kumar Pandya and Alex Redcay (2021)[6]or a combination of health and socio legal barriers like the study by Alessandra Diehl et. al. (2017).[7] These studies highlight marginalization, stigmatization, discrimination, socio-economic and educational exclusion faced by the TG community. These also reveal that the community has poor physical and mental health and are often harassed when accessing healthcare services. Some latest studies focus on the legal barriers but then it is limited to a specific identity. An article by Gnana Sanga Mithra S (2026) has meticulously analyzed the intersection between trans status,

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[2] Article 1 para (1) of Law Number 1 of 1974 on Marriage, and Article 34 para (1) of Law Number 23 of 2006.

[3] Perwitiningsih, "Legal Status of Transgender Individuals After Changing Gender on Identity Card", in *Proceedings of the International Conference on Law Reform (5th Inclar 2024)*, Atlantis Press, 2025, 194-197, accessed January 23, 2026, https://www.atlantis-press.com/proceedings/inclar-24/126008735.

[4] U.S. Department of State, *2023 Country Reports on Human Rights Practices: Indonesia*, accessed January 15, 2026, https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/indonesia/.

[5] Novrida Masli, "Being LGBT in Indonesia, why attacks on the community are growing", accessed January 21, 2026, https://www.lifegate.com/lgbt-in-indonesia-attacks-increasing.

[6] Apurva kumar Pandya and Alex Redcay, "Access to Health Services: Barriers Faced by the Transgender Population in India", *Journal of Gay & Lesbian Mental Health* 25, Issue 2(2021): 132-54.

[7] Alessandra Diehl et. al. "Social Stigma, Legal and Public Health Barriers faced by the Third Gender phenomenon in Brazil, India and Mexico: *Travestis, hijras* and *muxes*", *International Journal of Social Psychiatry* 63, Issue 5 (2017):389-399.

gender, culture, and access to justice but has confined the research to trans men.[8] There are some studies that are jurisdiction specific like Alamgir Alamgir (2024) talks about the struggles faced by TG persons in Pakistan in their quest to criminal justice.[9] An article by Sri Wiyanti Eddyono et. al. (2023) evaluates the limits of Indonesian legal system when it comes to the recognition of rights of the TG persons.[10] Dipika Jain and Kimberly M. Rohten (2020) talk about the approach of courts specifically the epistemic injustice faced by gender diverse litigants in Indian courts. Jain and Rohten argue for incorporating temporal pluralism into the law so that courts can better hear and understand accounts grounded in contemporary gender diversity.[11] Accordingly, the present research attempts to systematically examine the barriers faced by TG persons through a comparative criminal justice lens between India and Indonesia which has not been done by previous studies.

It addresses the gap that exists in understanding how legal recognition, institutional practices, and data systems interact to produce exclusion even where formal rights exist. For example, in India, the National Crime Report Bureau's (NCRB) report *Crimes in India:2022*[12] recorded very few TG victims of murder and kidnapping. It recorded no cases of rape, sexual or physical assault, or mob lynching in which transgender persons were victims. This underreporting indicates deeper issues such as distrust in police, insensitive attitude of police towards TGs and fear of dismissal/ridicule by them. Further, it was not until *Karan Tripathi v. NCRB*[13], that state and union territories were notified to include TG persons in prison statistics, thereby exposing how

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[8] Gnana Sanga Mithra S, "Trans Men in India and the Quest for Justice: Legal Barriers and Social Recognition", *Human Arenas* (2026), https://doi.org/10.1007/s42087-026-00574-6.

[9] Alamgir Alamgir, "We Are Struggling to Seek Justice': A Study of the Criminal Justice System and Transgender Experiences in Pakistan." *International Journal of Transgender Health* 25, Issue 2(2024): 199-214.

[10] Sri Wiyanti Eddyono et. al., "Recognising the Rights of transgender People: The Limits of the Indonesian Legal System", *Australian Journal of Asian Law* 24, No. 2(2023):39-56.

[11] Dipika Jain and Kimberly M. Rohten, "Epistemic Injustice and Judicial Discourse on Transgender Rights in India: Uncovering Temporal Pluralism", *Journal of Human Values* 26, Issue 1 (2020):30-49.

[12] National Crime Reports Bureau, *Crimes in India, 2022*, accessed on January 26, 2026, https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf.

[13] Case No: W.P. (C) No. 9596 of 2020, decided on December 7, 2020.

data invisibility itself operates as a structural barrier. In Indonesia, the absence of comparable official disaggregated data, despite reported violence and discrimination, makes the problem even harder to assess. This reveals a research gap not only in comparative scholarship, but also in analyzing how underreporting, weak implementation, and institutional exclusion together frustrate access to justice.

Against this backdrop, this paper aims to examine the nature and operation of structural barriers that prevent transgender persons from accessing criminal justice in India and Indonesia. It analyses constitutional provisions, statutory frameworks, judicial responses, and institutional practices in both the countries to assess whether legal recognition is matched by effective protection. It investigates how violence, policing, and custodial vulnerability are shaped by broader social and legal structures. In doing so, it situates India's recognition-based framework alongside Indonesia's denial-based framework, where TG persons remain legally invisible despite evident stigma. To establish this statement, a reference to the survey conducted by the Wahid Foundation and Lembaga Survey Indonesia during March-April 2016 can be made which shows that out of 1520 respondents, 26.1% disliked LGBT group.[14] Data collected by LBH Masyarakat (Community Legal Aid) also show that throughout 2017, 973 individuals faced discrimination and violence based on their sexual orientation, gender identity, and expressions.

This research is significant because it moves beyond formal rights discourse to show how criminal justice institutions themselves are responsible for exclusion. It demonstrates that legal reform alone is insufficient to ensure equal access to justice. The study is especially relevant for contemporary legal scholarship because both India and Indonesia[15] have recently transformed major parts of their criminal law, yet neither has adequately addressed transgender vulnerability. By addressing the gap between recognition and protection in India, and between constitutional promise and legislative reality in Indonesia, the paper contributes to scholarship on gender justice, comparative constitutionalism, and institutional accountability. It also provides a basis for evidence-based recommendations on prison policy, police

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[14] Australian Human Rights Institute, *Epidemic of Violence against Transgender Women in Indonesia: When the Government Fails to Protect its Vulnerable Citizens*, accessed January 17, 2026, https://www.humanrights.unsw.edu.au/news/epidemic-violence-against-transgender-women-indonesia-when-government-fails-protect-its-vulnerable-citizens.

[15] Law of the Republic of Indonesia, Number 1 of 2023 on Criminal Code, accessed on January 11, 2026, https://the-world-is-watching.org/wp-content/uploads/2023/02/2023-Indonesia-Penal-Code.pdf.

reform, and gender-responsive criminal law reform. The research offers a South-South comparative approach and brings together two nations with post-colonial criminal law foundations and shared constitutional commitments to equality and human dignity. India has a formal legal framework recognizing TG persons, whereas Indonesia does not; yet both produce similar patterns of violence, underreporting, police abuse, and institutional neglect. By foregrounding this recognition-protection paradox, the paper offers a distinct contribution and open a more grounded framework for comparative transgender rights research.

This article adopts doctrinal research as its primary legal methodology, supplemented by comparative legal analysis. It draws upon the scope of transgender rights, particularly in relation to criminal justice and protection from violence. It proceeds on comparative analysis of constitutional provisions, penal provisions, and refers to the special legislation for welfare of transgender individuals in India. Reference to primary sources include the Constitution of India, Constitution of Republic of Indonesia, Transgender Persons (Protection of Rights) Act, 2019, Human Rights Law No. 39/1999, Bhartiya Nyaya Sanhita, 2023, KUHP (new criminal code of Indonesia), 2023/2026, and other relevant substantive and procedural laws. It also provides analysis of significant judicial decisions to throw light on the lived realities of transgenders. Secondary sources such as reports from Human Rights Watch, Transgender Europe (Trans Murder Monitoring), Amnesty International, NGO reports such as Centre for Law & Policy Research were also referred.[16]

[16] In addition, the present study contributes to the broader discourse on comparative criminal justice, human rights, and legal protection by examining how structural, institutional, and sociocultural barriers affect transgender persons in India and Indonesia. Its interdisciplinary approach is informed by scholarship on integrative jurisprudence and the relationship between legal principles and their practical implementation (Mun'im et al., 2026), comparative criminal law and justice (Utari et al., 2026), and the protection of vulnerable groups through comparative legal frameworks (Ezzerouali et al., 2025; Nugroho et al., 2025). It also recognises the relevance of inclusive legal and policy approaches to addressing social diversity and institutional inequality (Zaenuri et al., 2025). While these studies address different legal subjects and populations, they provide broader conceptual perspectives for understanding the limitations of formal legal protections when implementation, institutional accountability, and access to justice remain inadequate. Building on these interdisciplinary perspectives, this paper examines the gap between legal recognition and effective protection for transgender persons, focusing on criminal law, policing practices, judicial responses, custodial safeguards, and the visibility of violence in official data. These references provide contextual and conceptual support rather than direct empirical

The Landscape of Violence: Empirical Context

A. Brief Overview

Transgender persons in India are subjected to violence across various domains, beginning with family rejection in childhood and extending to systemic abuse by both state and non-state actors in adulthood. A 2018 study commissioned by the National Human Rights Commission (NHRC) and conducted by the Kerala Development Society reported that 92% of transgender individuals had experienced either physical or verbal abuse.[17] This statistic reflects a persistent pattern of violence that affects nearly every aspect of transgender individuals' lives.

The cause of violence against transgender persons in India is deeply rooted in its social, cultural and institutional structures. Social stigma, transphobia, and widespread lack of awareness regarding transgender rights in the public and state authorities facilitates ongoing violence. Many police officers, healthcare providers, and judicial personnel lack fundamental sensitization to transgender identities and rights. Similarly in Indonesia, Komisi Nasional Hak Asasi Manusia (Komnas HAM) reported in 2016 that transgenders face a lot of violence rooted across "acts of expulsion, persecution, torture, arbitrary detention, prohibition conducting seminars and bullying against LGBT"[18]. In

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evidence of transgender persons' experiences in India and Indonesia. *See*, Abdul Mun'im et al. "Contemporary Law, Justice, and Integrative Jurisprudence: Reconstructing Usul al-Fiqh Towards an Integrated Philosophy of Law." *MILRev: Metro Islamic Law Review* 5, no. 2 (2026): 1979-2014; Indah Sri Utari, et al. "Rethinking Filicide through Freudian Psychoanalysis: A Comparative Perspective on Indonesian and Spanish Criminal Cases." *Jurnal IUS Kajian Hukum dan Keadilan* 14, no. 2 (2026): 587-620; Souad Ezzerouali, Mashaallah Alzwae, Muwaffiq Jufri, and Abdelrazek Wahba Sayed. "Legal Protection for Children Without Family Care: A Comparative Study of Oman, UAE, and Morocco". *Justicia Islamica* 22, no. 1 (2025): 93-114; Zaenuri Zaenuri, Heri Yanto, Fathur Rokhman, Abdul Rajagukguk, and Souad Ezzerouali. "The Role of Interfaith Law and Policy in Managing Human Resources: Addressing Religious Diversity in the Workplace". *Contemporary Issues on Interfaith Law and Society* 4, no. 1 (2025): 1-44; Harry Nugroho, Indah Sri Utari, Irawaty Irawaty, Satrio Sakti Nugroho, Souad Ezzerouali, and Tajudeen Sanni. "Who will advocate? The impact of decision 93/PUU-XX/2022 on article 433 Civil Code amendments for disability rights and legal protection". *Indonesian Journal of Advocacy and Legal Services* 7, no. 1 (2025): 95-120.

[17] Kerala Development Society, *Study on Human Rights of Transgender as a Third Gender* (New Delhi: National Human Rights Commission, 2017), accessed on January 22, 2026,https://nhrc.nic.in/assets/uploads/training_projects/Study_HR_transgender_03082018.pdf.

[18] The Indonesian National Human Rights Commission, *Submission to the United Nations, 3rd Universal Periodic Review, 27h Session of the Working Group on the UPR, Human*

2018, a Joint Statement of Regional Organizations on Increasing Violence against LGBTIQ persons in Indonesia reported gross violence such as shaving of hair, stripping clothes, and verbal harassment. There were even instances of forcing transgenders to undergo physical and mental "therapies" to conform with masculine norms.[19] Komnas HAM urged the Committee on Economic, Social and Cultural Rights (CESCR) to examine Indonesian government's compliance with its obligation to protect and promote human rights of all persons regardless of their gender and sexual orientation.[20] These recommendations has been suggested based on the discriminatory regulation in Aceh.

In Further, sexual assault is one of the most pervasive and underreported forms of violence against transgender persons. Research indicate that approximately 80% of transgender persons have experienced some form of sexual assault, with 37% reporting repeated victimization during both childhood and adulthood.[21] A comprehensive study of transgender women in India found that 84% had experienced physical and/or sexual violence at some point in their lives.[22] The National AIDS Control Organization's (NACO) 2016 survey documented that 31.5% of transgender women reported being forced to have sex.[23] These data indicate that transgender communities face a

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Rights Council (2016), accessed January 23, 2026, https://www.komnasham.go.id/files/20160929-submission-to-the-united-nations-$F7UF4R.pdf.

19 "Joint Statement of Regional Organizations on Increasing Violence against LGBTIQ persons in Indonesia", ASEAN SOGIE Caucus News, accessed on January 23, 2026, https://aseansogiecaucus.org/latest/asc-news/115-joint-statement-of-regional-organizations-on-increasing-violence-against-lgbtiq-persons-in-indonesia.

20 The Indonesian National Commission on Human Rights, *List of Issues Prior to Reporting (LOIPR) on Indonesia's anticipated 2nd periodic report under the ICESCR*, accessed on January 23, 2026, https://crm-consortium.org/wp-content/uploads/2022/04/Komnas-HAM-RI-Submission-Draft-To-ICESCR_Eng-Vers.pdf.

21 Kapil and Md. Iftekhar Khan, "Sexual Assault Against Transgender: The Definitional Void and the Absurdity of Indian Penal Provisions", *LiveLaw*, accessed on January 27, 2026, https://www.livelaw.in/lawschool/articles/sexual-assault-against-transgenders-and-indian-criminal-laws-285326.

22 Venkatesan Chakrapani et al., "Syndemic violence victimization, alcohol and drug use, and HIV transmission risk behavior among HIV-negative transgender women in India: A cross-sectional, population-based study", *PLOS Glob Public Health* 2, no. 10 (2022):1-19, https://doi.org/10.1371/journal.pgph.0000437.

23 "Mapping Gender-Based Violence in India: Trends, determinants, and institutional frameworks", *Citizens for Justice and Peace*, August 28, 2025,

persistent threat of sexual violence. However, the NCRB's reporting of zero rape cases involving transgender persons in 2022 highlights a significant failure of the criminal justice system to provide adequate recourse.

On the other hand, in Indonesia, identical attributes of sexual violence have been highlighted and reported. 62.7% of *waria* has been reported facing stigma and 72.4% of *waria* has been reported facing discrimination.[24] This stigma and discrimination is often based on the sexual identity or sexual orientation of the *waria* community, which exposes the roots of sexual violence including abuse and harassment. Similarly, *transpuan* (transwomen) have been identified as the most vulnerable group amongst the whole LGBTQIA++ community experiencing sexual assault, expulsions, and discrimination.[25] The gravity of this violence is evident in the moral panic and persecution directed at sexual minorities in Indonesia, which some scholars have even analysed through the framework of crimes against humanity.[26]

B. Police violence and custodial abuse

Compounding this pattern of sexual violence is the role of law enforcement itself as an institutional source of harm, a dimension examined in structural depth in the policing and institutional practice section of this article. There is an apparent contradiction in how violence against transgender people in India is understood. While this community faces widespread violence, official crime statistics reflect inadequate reporting. When the institutions responsible for protection become sources of harm, reporting crimes becomes impossible for transgender persons. The chronic underreporting of violence against transgender persons in both countries is thus a direct consequence of this

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https://cjp.org.in/mapping-gender-based-violence-in-india-trends-determinants-and-institutional-frameworks/.

[24] Ni Wayan Septarini, et. al., "Prevalence of Stigma and Discrimination Amongst Men Who have Sex with Men (MSM) and Transgender Women (Waria) in Bali, Indonesia", *Journal of Homosexuality* 71, Issue 6 (2024): 1419-1441, https://doi.org/10.1080/00918369.2023.2174470.

[25] Rindrasari, "Pekan Kesadaran Transgender di Indonesia: Mengenang Kehilangan, Memperjuangkan Martabat", Yayasan Keadilan Dan Perdamaian Indonesia, accessed on January 24, 2026, https://ykpindonesia.org/id/pekan-kesadaran-transgender-di-indonesia-mengenang-kehilangan-memperjuangkan-martabat/. Note: Google translation was used to convert the text in English.

[26] Devi Asmarani and Magdalene, "No Country for LGBT: Moral Panic and Persecution of Sexual Minority in Indonesia", Magdalene, accessed on January 25, 2026, https://magdalene.co/story/no-country-for-lgbt-moral-panic-and-persecution-of-sexual-minority-in-indonesia/.

institutional failure, examined in detail in the later section. This argument can be reinforced by referring to the NCRB data which shows a consistent pattern of underreporting. In 2020, the NCRB recorded only 10 transgender murder victims, making up just 0.03% of all crime victims in India.[27]The NCRB's 2022 report listed only nine transgender murder victims and did not report any cases of rape involving transgender people.[28] The Transgender Persons (Protection of Rights) Act, 2019, has not led to much reporting either. Seven cases in 2021, only one case in 2022 and 11 cases in 2023 were registered under the Act.[29]

In Indonesia on the other hand, there is only little data available from Komnas HAM, and other institutions including civil society organizations, but there is no government data for offences against transgender persons. This lack of visibility in the official data by the Indonesian government highlights the systemic failure in the criminal justice system. The official crime reporting remains aggregated and consolidated unlike NCRB which is fully disaggregated. A corollary can be drawn from the Indian experience, that in spite of having the disaggregated data from NCRB, the issue of under reported cases is prevalent. So, in Indonesia the situation of under-reporting of crime against transgenders could be far worse than anticipated.

C. Public order/morality-based criminalisation

Apart from targeted sexual violence and custodial abuse, the empirical evidence reveals a third pattern: TG people in both the jurisdictions are criminalised not for any specific harm caused by them but for public visibility itself. The marginalization of transgenders in India have pushed them into activities like begging, sex-work, singing and dancing for livelihood which makes them vulnerable to anti-beggary laws, laws relating to public nuisance and obscenity.

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[27] National Crime Records Bureau, *Crime in India 2020* (New Delhi: Ministry of Home Affairs, 2021), accessed on January 13, 2026, https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/post/16959885631653645869CII2020Volume1.pdf.

[28] "The Many Rapes of India's Transgender Citizens" (n 27).

[29] National Crime Records Bureau, *Crime in India 2023* (New Delhi: Ministry of Home Affairs, 2023), accessed on January 12, 2026, https://www.ncrb.gov.in/uploads/files/TABLE13.pdf.

Although many of such draconian laws like the Criminal Tribes Act,1871, Bombay Prevention of Begging Act, 1959,[30]Telangana Eunuchs Act, 1919[31], and Section 377, Indian Penal Code, 1860[32] have been repealed. But the current penal provisions like Sections 270 and 296 of BNS which deal with public nuisance, and obscene acts and songs respectively have the scope of being misused under the guise of maintaining public order or preserving morality.

It is supported by recent incidents such as, in April 2024, the Pune Police Commissioner issued an order under Section 144 of the Code of Criminal Procedure prohibiting transgender persons from congregating at traffic junctions or visiting homes to seek alms during festivities.[33] In August 2023, Hyderabad police publicised the arrest of nineteen people in a "begging racket crackdown," framed at a press conference as action against people "pretending to be transgender"; when questioned afterwards, the officer in charge conceded that only two of the nineteen had been confirmed as transgender through medical examination, with the remainder's gender identity determined by police assertion rather than self-identification.[34] Further, the Immoral Traffic (Prevention) Act, 1956, as amended in 1986 for replacing the words "female" and "girls" with the gender-neutral "person," supplies a tool, now used to raid and arrest transgender persons voluntarily engaged in sex work under the guise of "rescue", exceeding any judicial sanction.[35]

Indonesia's morality-based criminalisation of gender and sexual non-conformity extends well beyond Aceh's *Qanun Jinayat*, operating through a

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[30] *Harsh Mander and Anr. v. Union of India and Anr.,* (2009) W.P. (C) 10498 (HC) & (2010) CM APPL. 1837 (HC) and *Karnika Sawhney v. Union of India*, (2015) W.P. (C) 1630 (HC).

[31] *Vyjayanti Vasanta Mogli & Ors. v. State of Telangana*, 2020 SCC Online TS 440.

[32] *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

[33] "Cops Prohibit Transgender Individuals from Demanding Money at Pune Traffic Junctions," *Deccan Herald* (PTI), April 10, 2024, https://www.deccanherald.com/india/maharashtra/cops-prohibit-transgender-individuals-from-demanding-money-at-pune-traffic-junctions-2973106.,

[34] Lakshmi Priya, "Begging Racket Crackdown' Sheds Light on Hyd Police's Ignorance About Trans Persons," *The News Minute*, August 27, 2023, https://www.thenewsminute.com/telangana/begging-racket-crackdown-sheds-light-hyd-police-s-ignorance-about-trans-persons-181583.

[35] Mansi Singh, "Transgender Persons and Public Spaces: Lack of Protection from the Law," *Centre for Law & Policy Research*, March 25, 2023, https://clpr.org.in/blog/transgender-persons-and-public-spaces-lack-of-protection-from-the-law/.

layered architecture of national statute, administrative practice, and clerical authority. Four instances illustrate its reach. First, the new national Criminal Code (Law No. 1 of 2023), which took effect on 2 January 2026, criminalises extramarital sex under Article 411 (up to one year's imprisonment) and cohabitation under Article 412 (up to six months), marking the first nationwide expansion of morality offences to encompass consensual extramarital cohabitation alongside a broadened adultery regime.[36] Because same-sex unions enjoy no legal recognition, these ostensibly neutral provisions effectively render all same-sex conduct punishable, exposing transgender persons and *waria* to prosecution on grounds of private life rather than any public harm.[37]

Second, morality policing operates administratively as well as penally. In early 2018 the Jakarta Social Agency reclassified *waria* as persons with "social dysfunction" and conducted repeated raids, detaining transgender women in city-run "rehabilitation" centres alongside beggars and the homeless, releasing them only upon signed undertakings not to repeat their "offence."[38] Here criminalisation is achieved without a criminal charge, through the vocabulary of social welfare. Third, religious edicts supply the normative scaffolding for such enforcement. In March 2015 the Indonesian Ulema Council (Majelis Ulama Indonesia) issued a fatwa declaring same-sex acts punishable by caning and, in some formulations, death, characterising homosexuality as a curable affliction.[39] Though non-binding as positive law, the fatwa has been invoked by vigilante groups to legitimise harassment of gender-non-conforming persons.

Fourth, this administrative pathology predates 2018: in 2012 the Ministry of Social Affairs formally listed gay, lesbian, and *waria* persons among groups

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[36] Human Rights Watch, "Indonesia: New Criminal Code Disastrous for Rights", *Human Rights Watch*, December 8, 2022, https://www.hrw.org/news/2022/12/08/indonesia-new-criminal-code-disastrous-rights.

[37] Law No. 1 of 2023 on the Criminal Code (Kitab Undang-Undang Hukum Pidana), arts. 411, 412, promulgated January 2, 2023, effective January 2, 2026; see "Key Provisions of Indonesia's New Criminal Code", *SSEK Law Firm*, February 15, 2023, https://www.ssek.com/blog/key-provisions-of-indonesias-new-criminal-code/

[38] "Indonesia Is Rounding Up Trans People and Forcing Them into 'Rehabilitation'", *Star Observer*, March 12, 2018, https://www.starobserver.com.au/news/international-news-news/indonesia-trans-people-forced-rehabilitation/167134.

[39] Human Rights Watch, "Dispatches: Challenging Indonesia's Intolerant Muslim Clerics", *Human Rights Watch*, March 17, 2015, https://www.hrw.org/news/2015/03/17/dispatches-challenging-indonesias-intolerant-muslim-clerics.

with "social problems," grouping sexual minorities with street children and the destitute on the basis of "sexual deviance," thereby institutionalising their status as objects of rehabilitation rather than rights-bearers.[40] Taken together, these instances show that Indonesian morality regulation criminalises identity through statute, welfare bureaucracy, and religious authority alike, a convergence that renders transgender persons perpetually visible to enforcement yet invisible as victims. Together, these empirical realities reveal that transgender persons in both India and Indonesia exist at the intersection of multiple, mutually reinforcing forms of violence, sexual, institutional, and systemic. This violence remains largely invisible in official records is not an administrative oversight but a reflection of the deeper structural failures in criminal law, judicial practice, and institutional culture that this article examines in the sections that follow.

Gaps and Failures in Criminal Law: Definitions, Substantive Rules, and Procedure

A. India

This section examines the criminal law framework applicable to transgender persons in India, analysing how constitutional foundations, special protection legislation, and substantive and procedural criminal codes each fail independently and collectively to provide adequate protection from violence.

1. Constitution of India

Articles 14,15,16,19 and 21 of the Indian Constitution collectively provide the constitutional basis for transgender rights. Supreme Court has interpreted Article 14 and 15 to prohibit discrimination and to encompass both gender identity and biological sex respectively.[41] Article 16 takes it one step further and ensures that transgender persons are not denied government jobs based on their gender identity.[42] Article 19(1)(a) extends the right to express one's self-identified gender through dress, language, actions, or behavior. Article 21 has been expanded through judicial interpretation to include the right to live with dignity, privacy, autonomy, and self-determination of gender identity. These

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[40] Sandeep Nanwani et al., "From Margins to Centre: Who Constructed LGBT Identity in Indonesia?", *New Mandala*, November 21, 2016, https://www.newmandala.org/from-margins-to-centre/

[41] *National Legal Services Authority v. Union of India* (2014) 5 SCC 438.

[42] *Constitution of India* Article 16.

constitutional provisions were dormant in advancing transgender rights until the landmark judgment in *National Legal Services Authority v. Union of India* (2014). The judgment laid down several principles transforming the legal rights landscape for transgender people. The Court legally recognized TG people as "third gender," it affirmed the right to self-identify one's gender without medical certification, it held that discrimination based on "sex" under Articles 15 and 16 also includes discrimination based on gender identity, and it confirmed that gender identity constitutes a component of personal dignity and is protected under Article 21.

These constitutional principles have direct implications for criminal law in the sense that if a law fails to provide adequate protection to transgender persons, it is not simply a policy problem, it may also constitute a violation of their fundamental rights. The gap between this constitutional promise and the criminal law framework examined below is the central analytical concern of this section.

2. The Transgender Persons (Protection of Rights) Act, 2019

The Transgender Persons (Protection of Rights) Act, 2019 (TP Act), marks a significant legislative step for transgender rights in India. While the Act aims to implement the Supreme Court's *NALSA* judgement, it has been criticized for several shortcomings that limit its effectiveness in protecting TG individuals from violence and discrimination. Section 2(k)[43] of the Act defines "transgender person" which appears to be comprehensive but has been assessed for conflating intersex conditions (biological in nature) with gender identity (psychological and social in nature). Further, to be officially recognized as transgender, individuals must obtain a certificate from the District Magistrate, a process seen as bureaucratic and contrary to the *NALSA* judgement's emphasis on self-identification.[44]

Section 3 of the Act prohibits discrimination against TG individuals in areas such as education, employment, healthcare, access to public facilities, freedom of movement, etc. However, the law lacks robust enforcement mechanisms and does not provide remedies for violations beyond potential prosecution under Section 18, making these protections largely theoretical. Section 18 of the Act, its primary criminal provision, is central to this analysis. It criminalizes various forms of abuse against TG persons, including physical,

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[43] *Transgender Persons (Protection of Rights) Act* 2019 (India) s 2(k).

[44] Ajay Singh Solanki, "India's New Law on the Protection of Rights of Transgender Persons", *International Bar Association*, accessed January 17, 2026, https://www.ibanet.org/article/0f3ae21b-0170-4bf7-95dd-45b07ef1caf6.

sexual, verbal, emotional, and economic abuse, with penalties ranging from six months to two years' imprisonment and fines. These penalties are notably less severe than those for similar offences under the Indian Penal Code (erstwhile) or the Bharatiya Nyaya Sanhita, where acts such as grievous hurt may attract up to seven years imprisonment. This disparity suggests that violence against transgender persons is less severe. Further, Section 18 employs vague categories such as "emotional" and "economic" abuse without clear definitions, making enforcement difficult. As a result, prosecution rates under the Act remain extremely low, with only one case registered nationwide in 2022.[45] Moreover, the law fails to address hate crime, police abuse, and sexual violence.[46]

3. Bharatiya Nyaya Sanhita (BNS), 2023

The BNS, 2023, introduces a formal acknowledgement of transgender individuals within the Indian criminal law by including 'transgender' as a recognized gender category under Section 2(10).[47] However, the practical application of this recognition is limited by the continued use of gender-specific language in key provisions. Section 63 of the BNS, which defines and penalizes rape, closely follows the language of the previous IPC. It restricts the definition of rape to acts committed by a man against a woman, thereby excluding TG women from being recognized as victims under this law.[48] Because of this, if a man sexually assaults a transgender woman, it does not legally qualify as rape. This exclusion has serious consequences as these cases are prosecuted under the TG Act,2019, which prescribes significantly lighter punishment-up to two years of imprisonment compared to the minimum ten-year sentence for rape under the BNS. It can attract life imprisonment or even

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[45] National Crime Records Bureau, *Crime in India 2022* (New Delhi: Ministry of Home Affairs, 2023).

[46] Shamayeta Bhattacharya, Debarchana Ghosh, and Bandana Purkayastha, "Transgender Persons (Protection of Rights) Act of India: An Analysis of Substantive Access to Rights of a Transgender Community", *Journal of Human Rights Practice* 14, Issue 2 (2022):676-97, https://doi.org/10.1093/jhuman/huac004.

[47] *Bharatiya Nyaya Sanhita (BNS), 2023* (India) s 2(10).

[48] "Criminal Law Bills 2023 Decoded #2: Concerns with the Proposed Landscape of Sexual Offences in BNS 2023", *P39A Criminal Law Blog*, October 11, 2023, https://p39ablog.com/2023/09/criminal-law-bills-2023-decoded-2-concerns-with-the-proposed-landscape-of-sexual-offences-in-bns-2023/.

the death penalty in cases of gang rape. This shows that sexual assault against transgender people is treated as less serious.

Despite the Justice Verma Committee's 2013 recommendation for gender-neutral rape laws, the BNS retained gender-specific definitions. As a result, the law continues to assume that only women can be victims and only men can be perpetrators of rape, leaving TG individuals without equal protection. While some offences in the BNS are now gender-neutral, the overall framework remains largely binary and does not address hate crimes based on gender identity or sexual orientation. Violent attacks on transgender persons motivated by transphobia, which constitute a significant portion of violence, cannot be prosecuted as hate crimes with enhanced penalties. The law also fails to provide specific protection to TG individuals against police violence and custodial abuse. The BNS constitutes to be a missed opportunity for substantive criminal law reform to protect transgender persons.

4. Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), replaced the Code of Criminal Procedure, 1973, and now governs criminal procedure in India. It took effect on July 1, 2024, with the BNS and sets out the procedures for enforcing criminal law. For transgender victims of violence, having clear procedures is just as important as having legal rights, but BNSS fails to incorporate procedural safeguards specific to transgender persons. The law does not mandate gender-sensitive investigation practices, provide guidance to police on respectful engagement with transgender victims, or prescribe dignity-protective medical examination protocols.

Although Section 179 exempts women, senior citizens, and seriously ill persons from mandatory appearance at police stations, no comparable protection is extended to transgender persons despite their heightened vulnerability. In the absence of procedural protections, such as correct recording of gender identity or safeguards against misgendering, transgender persons face additional harm during investigations, undermining their ability to access justice effectively.

5. Other Relevant Legislations

Multiple statutes intersect with criminal justice protections for transgender persons; however, none provide comprehensive protection. The Immoral Traffic (Prevention) Act, 1956 criminalizes the operation of brothels and profiting from prostitution. Although the ITPA does not explicitly target transgender persons, it has frequently been used against transgender sex

workers. The Protection of Children from Sexual Offences Act, 2012 protects all children regardless of their gender, but this protection ends at adulthood. After attaining the age of eighteen years, transgender persons are excluded from gender specific rape provisions of BNS. The state also places greater emphasis on welfare schemes than on measures to protect against violence.

B. Indonesia

Indonesia's legal approach to transgender rights reveals a sharp contrast between constitutional promise and lived reality. While its post-reform Constitution articulates an extensive catalogue of human rights, these guarantees have not been meaningfully interpreted or implemented for *waria* communities. This section analyses Indonesia's constitutional framework, general human rights legislation, criminal law reforms, and regional regulations to show how legal invisibility and moral regulation together undermine transgender protection.

1. Constitutional Framework

Indonesia's Constitution underwent significant amendments from 1999 to 2002, introducing Part XA on Human Rights (Articles 28A-28J), which provides a comprehensive human rights framework comparable to India's constitutional protections.[49] There are several key provisions relevant to transgender persons such as Article 28A which talks about right to life.[50] This provision establishes the foundational right to life that encompasses safety from violence and the right to exist free from persecution. While it does not explicitly mention gender identity, its universal language theoretically extends protection to *waria*. Article 28D (1)[51] is the equality provision and is functionally equivalent to India's Article 14, which establishes principles of non-discrimination and equal protection.

Article 28G(1) states: "Every person shall have the right to protection of his/herself, family, honour, dignity, and property under his/her control, and shall have the right to feel secure and to protection from the threat of fear to do or not do something that is a basic right."[52] This provision explicitly

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[49] Leli Tibaka and Rosdian, "The Protection of Human Rights in Indonesian Constitutional Law after the Amendment of the 1945 Constitution of the Republic of Indonesia", *Fiat Justisia Jurnal Ilmu Hukum* 11, no. 3(2017): 266-284, https://jurnal.fh.unila.ac.id/index.php/fiat/article/download/1141/977/3722.

[50] *The 1945 Constitution of the Republic of Indonesia* Article 28A.

[51] *The 1945 Constitution of the Republic of Indonesia* Article 28D(1).

[52] *The 1945 Constitution of the Republic of Indonesia* Article 28G(1).

protects dignity and honour, crucial for transgender persons who face systematic de-humanisation. Article 28G(2) adds: "Every person shall have the right to be free from torture or inhumane and degrading treatment."[53] Article 28H(1) guarantees: "Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care."[54] This obligates the state to provide healthcare, which theoretically includes gender-affirming care and medical services for *waria*. Article 28I(1) declares: "The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances."[55] This provision establishes non-derogable rights, including freedom from torture, applicable to documented police violence against *waria* but never invoked in actual prosecutions.

Indonesia's Constitution thus provides a robust human rights framework comparable to that of India. The key difference lies in judicial interpretation. India has NALSA and subsequent judgments explicitly applying constitutional rights to transgender persons, while Indonesia's constitutional protections remain theoretical. Article 28I (4) states expressly that "protection, advancement, upholding and fulfilment of human rights are the responsibility of the state, especially the government,"[56] yet this state obligation remains unfulfilled for *waria* communities.

2. Human Rights Law No. 39/1999

Law No. 39 of 1999 on Human Rights was enacted before the second amendment to the Constitution and provides general protections of human rights.[57] Article 3 establishes that everyone has equal rights before the law,[58]

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[53] *The 1945 Constitution of the Republic of Indonesia* Article 28G(2).

[54] *The 1945 Constitution of the Republic of Indonesia* 28H(1).

[55] *The 1945 Constitution of the Republic of Indonesia* Article 28I (1).

[56] "Indonesian Constitution Protects Human Rights of Everyone Including Foreign Nationals", *Constitutional Court of the Republic of Indonesia*, January 16, 2023, https://en.mkri.id/news/details/2023-01-16/Indonesian_Constitution_Protects_Human_Rights_of_Everyone_Including_Foreign_Nationals.

[57] Nurul Azizah Zayzda, "CILIS Factsheet 2: Human Rights in Indonesian Law," Centre for Indonesian Law, Islam ad Society, The University of Melbourne, accessed on February 3, 2026,

while Article 1(3) defines discrimination as treatment based on "differences in religion, ethnicity, race, group, faction, social status, economic status, sex, language, or political belief."[59] Critically, the definition does not include "gender identity" or "sexual orientation" as protected grounds, a significant gap compared to contemporary international human rights standards. Further, the law prohibits torture (Articles 33-34) and establishes the National Human Rights Commission (Komnas HAM), which has the mandate to investigate violations.[60] However, Komnas HAM's investigations into violence against *waria* have been limited and the commission lacks enforcement powers.

3. Criminal Code (KUHP) 2022

Indonesia's Criminal Code, initially enacted in 1918 during Dutch colonial rule, was comprehensively reformed in 2022 (Law No. 1/2023), with provisions taking effect in 2026.[61] The timing parallels India's BNS 2023 reform-both countries modernised their colonial-era criminal codes simultaneously, yet both failed to protect transgender persons adequately.

Article 285 of the KUHP defines rape in gender-specific terms[62] and excludes transgender women as potential rape victims, similar to India's BNS Section 63 exclusion. This legal gap leaves the transgender rape victims to resort to generic assault laws with lesser penalties. Articles 289-290 on "offences against decency" remain vague and have historically been used to enforce moral standards rather than to protect victims.[63]

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https://law.unimelb.edu.au/__data/assets/pdf_file/0004/4965808/Nurul-42.-CILIS-Factsheet-2.pdf.

[58] *Law No. 39 Year 1999 Concerning Human Rights, Republic of Indonesia*, Article 3.

[59] *Law No. 39 Year 1999 Concerning Human Rights, Republic of Indonesia* Article 1(3).

[60] *Law No. 39 Year 1999 Concerning Human Rights, Republic of Indonesia* Article 75.

[61] Kelly Buchanan, "Indonesia: New Criminal Code Passed by Parliament", *Law Library of Congress*, December 12, 2022, https://www.loc.gov/item/global-legal-monitor/2022-12-11/indonesia-new-criminal-code-passed-by-parliament/.

[62] Ermina Dwi Lestari, Achmad Adi Surya G S, and Rico Septian Noor, "Sexual Violence Crimes And Legal Protection For Victims: Law Number 12 Of 2022 On Sexual Violence Crimes And The Reality Of Handling Sexual Violence Cases In Indonesia", *Journal of Law, Politic, and Humanities* 5, no. 6(2025):4683-92, accessed on 4 February, 2026, https://dinastires.org/JLPH/article/download/2196/1729/15755.

[63] Jessica Vincentia Marpaung, "Sexual Violence Eradication in Indonesia: The Road Ahead", *Jakarta Globe*, February 3, 2022, https://jakartaglobe.id/opinion/sexual-violence-eradication-in-indonesia-the-road-ahead. In further, this study also engages with broader scholarship on gender equality, women's rights, and the legal protection of gender minorities to situate transgender persons' experiences within the wider framework of gender justice and human rights. Research on the legal challenges and

4. Discriminatory Regional Regulations

Indonesia's most significant barrier to transgender rights lies in regional Sharia bylaws, particularly in Aceh Province. The Qanun Jinayat (Aceh Criminal Code), enacted in 2014 and effective from 2015, criminalises consensual same-sex sexual acts with penalties up to 100 lashes or 100 months imprisonment.[64] Although the Qanun does not explicitly prohibit transgender identity, *waria* have been systematically targeted.

Aceh Criminal Code has been discussed to emphasize on the subnational criminalization that alters TG persons' encounters with law enforcement. The Qanun Jinayat and the accompanying Sharia policing framework convert gender non-conformity and suspected same-sex conduct into grounds for

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social exclusion experienced by transgender Indonesians highlights the barriers that gender minorities encounter in accessing judicial protection (Sidabutar, 2025), while studies of LGBTQ+ rights in Indonesia provide a broader perspective on the limitations and opportunities of existing legal safeguards (Adiguna and Bagaskara, 2025). These issues are further connected to the administration of criminal justice, particularly the potential for discriminatory treatment in judicial decision-making (Barrett et al., 2024). In addition, scholarship on Indonesia's international commitments to women's rights and the challenges of protecting women against gender-based violence underscores the importance of effective legal implementation, institutional accountability, and accessible remedies for victims (Nugroho, 2025; Wulandari and Winarsih, 2024). Although transgender rights and women's protection involve distinct legal and social experiences, both are relevant to examining how gender-based discrimination, institutional practices, and structural inequalities may undermine equal access to justice. By bringing these perspectives together, the present paper situates the experiences of transgender persons in India and Indonesia within a broader discussion of gender-responsive justice, while recognising the specific legal vulnerabilities of transgender communities and the need for inclusive criminal justice institutions that protect the rights, dignity, and safety of all individuals. *See also* Andre Sidabutar, "The Plight of Transgender Indonesians: Legal Challenges and Social Exclusion in the Courts". *Indonesian Minority Justice Review* 2, no. 2 (2025); Surya Adiguna, and Shella Putri Bagaskara "Gender Minority Rights and Legal Protection of the LGBTQ+ Community in Indonesia: Challenges and Opportunities". *Indonesian Minority Justice Review* 2, no. 4 (2025); Lachlan Barrett, Jirawat Nopchai, and Adira Kartika "Justice for All? An Empirical Study on Discrimination in Criminal Court Rulings". *Indonesian Court and Justice Review* 1, no. 1 (2024); Malik Akbar Nugroho, "Gender, Justice, and International Law: Rethinking Indonesia's Commitments to Women's Rights". *Indonesian Studies in International Law and Justice* 2, no. 1 (2025); Cahya Wulandari, and Winarsih Winarsih "Women's Rights in Indonesia: Gender-Based Violence and the Challenge of Legal Protection". *Contemporary Issues on Indonesian Human Rights Law and Policy* 1, no. 4 (2024).

64 "Indonesia: Aceh's New Islamic Laws Violate Rights", *Human Rights Watch*, October 2, 2014, https://www.hrw.org/news/2014/10/02/indonesia-acehs-new-islamic-laws-violate-rights.

surveillance, raids, detention, and public punishment, and its relevance here lies in showing how criminal procedure and policing practice can transform TG persons from victims of violence into targets of enforcement.

Further, the Anti-Pornography Law No. 44/2008, though national in scope, has been misused to harass *waria* communities. Its broad definition of "pornography" allows police to justify raids on transgender persons under morality policing.[65] This creates an additional layer of criminalisation beyond what exists in India, where the ITPA (Immoral Traffic Prevention Act) criminalises sex work but not gender expression itself.

TABLE 1. Comparative Protection Gaps in Substantive Criminal Law

Offence cluster	India	Indonesia	Comparative protection gap
Sexual offences	The BNS recognizes TG persons, but the rape provision remains framed around a male perpetrator and female victim. TG victims therefore are excluded from the core rape framework and are left at the mercy of weaker provisions such as Section 18 of the Transgender Persons (Protection of Rights) Act, 2019.	Law No. 12 of 2022 provides a broader, victim-centered framework for sexual violence, but Indonesian criminal law does not expressly recognize TG status. The KUHP framework is also vulnerable to gender-binary interpretation.	Both systems fail to guarantee equal recognition to TG victims of sexual violence. While India's failure is a recognition-protection gap, Indonesia's failure is rooted in legal visibility.
Police violence and custodial abuse	The existing legal framework under Section 18 of the 2019 Act criminalises sexual, verbal, emotional, and economic abuse but does not specifically address	Indonesia relies on general constitutional, human rights, and criminal law protections, but lacks TG-specific safeguards, disaggregated	Both jurisdictions fail to treat institutional violence as a distinct criminal justice failure requiring specific safeguards and accountability mechanism.

[65] "Criminalisation of LGBT people in Indonesia", *Human Dignity Trust*, December 11, 2025, https://www.humandignitytrust.org/country-profile/indonesia/.

Offence cluster	India	Indonesia	Comparative protection gap
	police abuse or custodial violence.	custodial data, and enforceable procedures addressing police raids or custodial vulnerability of *waria* and *transpuan*.	
Public order and morality-based criminalization	India does not criminalize TG identity per se, but public order, trafficking, and sex-work related provisions may indirectly expose TG persons to surveillance, harassment, and criminalization.	Indonesia presents a sharper morality-enforcement problem through laws like the Anti-Pornography Law and other regional regulations, under which gender non-conformity and suspected same-sex conduct may instigate raids, detention, public humiliation, and punishment.	The morality-based criminalisation is largely indirect in India, while in Indonesia, it is more explicit and regionally entrenched. In both jurisdictions, criminal law shifts TG persons from rights-bearing victims to suspected offenders.

Source: *Various sources, edited and analyzed by the Authors*

Table 1 illustrates the relationship between caste discrimination and human rights in India. The caste system has historically created social inequalities that affect individuals' access to education, employment, healthcare, and other essential services. People from marginalized castes, particularly Dalits, have often experienced social exclusion, untouchability, and unequal treatment. These practices contradict the fundamental principles of human rights, including equality, freedom, justice, and human dignity. Dr. B. R. Ambedkar emphasized the importance of liberty, equality, and fraternity as essential foundations for a just society.

Furthermore, Table 1 highlights the importance of protecting human rights and promoting social justice to overcome caste-based discrimination in India. Although the Indian Constitution prohibits discrimination on the grounds of caste and abolishes untouchability, challenges remain in implementing these protections in everyday life. Addressing these issues requires effective law enforcement, equal access to opportunities, public

education, and greater awareness of human rights. Therefore, the ideas of Dr. B. R. Ambedkar remain relevant in emphasizing that every individual deserves equal treatment, respect, and dignity, regardless of caste or social background.

The Mechanics of Erasure: From State Violence to Systematic Impunity

A. Pre-Trial Stage: Police Reporting, Investigation, and Morality Enforcement

1. Policing and Institutional Practice

The empirical context established in the preceding section makes it clear that law enforcement institutions in both India and Indonesia function not merely as passive bystanders to violence against transgender persons, but as active agents of it. This section examines the institutional dimensions of police violence, state-sanctioned enforcement, and the structural barrier that police hostility creates at the critical moment of crime reporting.

In India, the NHRC study found that a significant portion of the physical and verbal abuse experienced by transgender individuals was committed by law enforcement personnels.[66] Police harassment such as refusal to register First Information Reports (FIRs), verbal abuse, physical assault, sexual violence, extortion, and arbitrary detention are rampant. Police refuse to register FIRs in most cases where transgender persons attempt to report violence. When transgender persons approach police as victims, they become targets of secondary victimisation, invasive questioning, misgendering, extortion, and sexual violence. This adversarial relationship with law enforcement discourages transgender persons from seeking police protection, resulting in underreporting of crimes and a lack of accountability for perpetrators.

The systematic exclusion of transgender persons from formal employment further concentrates their exposure to police violence. A study by NHRC found that nearly 96 per cent of transgender persons are denied access to regular employment, forcing many of them to do low-paid, informal, or socially stigmatised occupations such as begging, sex work or traditional

[66] "Anti-Transgender Discrimination, Violence in India Persists", *Washington Blade*, September 24, 2024, https://www.washingtonblade.com/2024/09/24/anti-transgender-discrimination-violence-in-india-persists/.

badhai-toli practices.[67] As per estimates, 80 per cent of transgender persons in India are engaged in sex work or begging, where they routinely face abuse and violence from clients, police and the general public.[68] This creates a kind of structural violence, depriving transgender persons of stable livelihoods, social security and conditions required to live with basic human dignity.

In Indonesia, police violence is even more systematic and state sanctioned. The January 27, 2018 Aceh raids exemplify this: police and Sharia police jointly raided five hair salons, arrested 12 *waria*, forced them to strip off their shirts, cut their hair in public, and detained them.[69] Following the Aceh raids, approximately 4,500 new warias fled to Jakarta over three years due to growing hostility in their home provinces.[70]

KontraS, a human rights group, submitted a report on Indonesia with the US Department of Justice in 2023.[71] It has been documented that the issues related to violence and harassment, discrimination, and coercive practices against transgender and the members of the LGBTQIA++ community have been prevalent not just at the societal front but also at the institutional front. Police officials often ignored formal complaints, instead bullied the LGBTQIA++ individuals.[72] No statistics has been provided for the LGBTQIA++ community, but in general it has been reported that 622 violent based incidents have been documented between 2022 and 2023, against the national police of Indonesia, that includes the reporting on the LGBTQIA++ individuals.[73]

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[67] National Human Rights Commission, *Study on Human Rights of Transgender as a Third Gender* (New Delhi: NHRC, 2018).

[68] "They thought I was a curse': The struggles of India's trans community", *openDemocracy*, April 7, 2023, https://www.opendemocracy.net/en/5050/india-transgender-discrimination-health-gender-affirmation-surgery/.

[69] Andreas Harsono, "Indonesian Police Arrest Transgender Women", *Human Rights Watch*, accessed January 21, 2026, https://www.hrw.org/news/2018/01/30/indonesian-police-arrest-transgender-women.

[70] Andreas Harsono, "Indonesian Police Harass Transgender Women", *Human Rights Watch*, accessed January 21, 2026, https://www.hrw.org/news/2018/11/08/indonesian-police-harass-transgender-women.

[71] "Indonesia 2023 Human Rights Report", accessed on January 26, 2026, https://www.state.gov/wp-content/uploads/2024/02/528267_INDONESIA-2023-HUMAN-RIGHTS-REPORT.pdf.

[72] *Ibid.*

[73] Alifia Sekar, "Indonesian Police most reported for torture in law enforcement: Komnas HAM", *Asia News Network*, June 28, 2024, https://asianews.network/indonesian-police-most-reported-for-torture-in-law-enforcement-komnas-ham/.

In Indonesia, attributes of structural violence rooted in discrimination, stigma, non-acceptance, rejections, expulsions, exclusions etc, convert into severe form of economic violence, wherein the individuals are finds it difficult to access formal jobs due to visible gender expressions, which leads to rejections or dismissal.[74] Particularly, *waria* individuals, even if they manage to secure some job either in formal or informal sector, they are being discriminated at the workplaces vehemently. 2016 report by ILO[75] examines the issue of economic violence and exploitation in Indonesia which highlights various attitudinal and behavioral aspects that forces LGBT individuals towards informal sectors. It also highlights that the lack of legal protection makes the situation worse and exposes the LGBT community towards further marginalization and exploitation.[76] Islamic conservatism adds a theological dimension in this institutional hostility: *waria* are viewed as violating divine law, not merely social norms. Family violence includes forced "conversion therapy," physical abuse, and complete ostracisation. Different religious/cultural contexts (Hindu-majority India vs. Muslim-majority Indonesia) produce identical exclusion patterns.

2. The Safeguard of Silence: How Hostility Breeds Data Invisibility

The cycle of police violence and institutional hostility documented in the preceding section finds its most powerful sustainer in the invisibility of transgender victims within official crime data. When violence is not recorded, it cannot be addressed. In both India and Indonesia, the mechanisms for recording violence against transgender persons are either deeply deficient or entirely absent. The Trans Murder Monitoring (TMM) project, run by Transgender Europe, recorded 102 murders of transgender people in India from 2008 to 2021.[77] In its 2024 update, TMM reported 12 murders of

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[74] M.V. Lee Badgett, Amira Hasenbush & Winston Ekaprasetia Luhur, "LGBT Exclusion in Indonesia and Its Economic Effects", The Williams Institute, UCLA School of Law, accessed on February 2, 2026, https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Exclusion-Indonesia-Apr-2017.pdf.

[75] International Labour Office, *A study on discrimination at work on the basis of sexual orientation and gender identity in Indonesia*, accessed on February 1, 2026, https://www.ilo.org/media/433176/download.

[76] *Ibid.*

[77] "Why Lives and Deaths of Trans Persons Remain Underreported, Undocumented", *BehanBox*, November 20, 2023, https://behanbox.com/2023/11/20/why-lives-and-deaths-of-trans-persons-remain-underreported-undocumented/.

transgender people in India between October 2023 and September 2024.[78] The gap between these numbers and the official NCRB statistics show that violence against transgender people often goes unreported and unrecognized by state authorities. Several structural issues keep transgender people out of official crime statistics such as requirement under the 2019 Act to legally confirm transgender identity,[79] difficulty to register as transgender on documents such as death certificates, lack of trust in police, prevailing stereotypes against the community, their marginalization, majority of them being sex workers, and lack of sensitivity displayed by police.

In contrast to India's partial and hard-won progress in crime data disaggregation, Indonesia maintains no equivalent official mechanism whatsoever for recording violence against transgender persons. The data collected by LBH Masyarakat (Community Legal Aid) as mentioned before pertaining to individuals who faced stigma, discrimination, and violence based on their sexual orientation, gender identity, and expressions can be referred in this aspect. Most of these victims were transwomen.[80] The reporting of such crimes is difficult owing to intimidation and oppression both by law enforcement officials and society at large. The Ministry of Women's Empowerment and Child Protection recorded 7,646 cases of violence against women in 2020 but provides no disaggregation by gender identity.[81]

3. The Reporting Barrier: Socio-Economic Amplifiers of the Exclusion Cycle

Structural barriers function interdependently, contributing to a progressive system of exclusion. Social stigma leads to family rejection, which in turn results in economic marginalisation by restricting access to family support for education or employment. Economic marginalisation may increase vulnerability to sex work, subsequently exposing individuals to

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[78] Transgender Europe, *Trans Murder Monitoring 2024 Update*, accessed on January 27, 2026, https://tgeu.org/files/uploads/2024/11/TGEU-TMM-TDoR2024-Table-2.pdf

[79] Vandana Bansal, "Why Only 236 Trans Person Victims of Crimes Were Recorded in India in 2020", *IndiaSpend*, June 23, 2022, https://www.indiaspend.com/gendercheck/why-only-236-trans-person-victims-of-crimes-were-recorded-in-india-in-2020-823034.

[80] "Seri Monitor Dan Dokumentasi, 2018", accessed on January 13, 2026, https://lbhmasyarakat.org/wp-content/uploads/2018/05/Seri-Monitor-dan-Dokumentasi-Bahaya-Akut-Persekusi-LGBT.pdf. (Note: document was translated in English through google translation)

[81] Parul and Luvleen, "Victimization of Women in Prisons: A comparative analysis of India and Indonesia", *Brawijaya Law Journal* 7, no. 2 (2020): 280.

criminalisation. Criminalisation often brings individuals into contact with law enforcement as "criminals" rather than victims. This dynamic can result in police violence and foster fear of reporting legitimate victimisation. Such fear contributes to data invisibility, which enables state denial of the issue. State denial inhibits policy reform, perpetuating cycles of unchecked violence.

This cycle operates identically in both India and Indonesia, despite differences in legal frameworks. The cycle is structural and systemic, embedded in the culture of criminal justice institutions, not merely in legislative gaps. The extent to which this cycle is sustained by the invisibility of transgender victims in official crime data is examined in the section that follows.

4. Why Data Invisibility Enables Criminal Justice Impunity

In India, the NCRB data discussed above shows a systematic data invisibility of violence against transgender persons in India. Police misclassify transgender persons as male/female based on documents, erasing transgender identity from official records. Both countries engage in systematic data erasure. Invisibility in statistics enables state denial of the problem. Data invisibility does not merely reflect criminal justice failure, it perpetuates it. Without disaggregated official crime data, legislative reform lacks evidence; without evidence, institutional accountability lacks justification; without accountability, police violence and underreporting continue unchecked. This self-reinforcing dynamic means that invisibility in this fourth pillar directly sustains impunity across all three preceding pillars: legislative, judicial, and institutional. Breaking the cycle requires, as a foundational step, that both India and Indonesia mandate the collection and public reporting of disaggregated crime data identifying transgender victims across all categories of offence, a reform that is both institutionally achievable and constitutionally compelled by the equality obligations each country has already formally undertaken.

Trial Stage: Judicial Response and Enforcement

A. India: Towards a Victim-Centred Criminal Jurisprudence

Indian courts have delivered landmark judgments addressing different issues pertaining to transgender rights vis a vis employment, education, marriage, gender identity, discrimination, etc. It has tried to grant relief to

transgender victims even where criminal justice system fails them. Some of the progressive judicial decisions in this regard have been discussed below.

In *Jayalakshmi v. State of Tamil Nadu*[82], a petition was filed by the sister of Pandian, a trans woman, who was accused in a theft case. She was granted bail on the condition that she reported to the police station daily. Her family alleged that police subjected her to physical and sexual abuse. When she or her family protested, they faced criminal intimidation, torture, and continuous harassment. Unable to endure this treatment, Pandian poured kerosene and immolated herself outside the police station and later died. Her sister then approached the Madras High Court seeking justice. The court held that the case was a clear instance of custodial violence and found that the victim's suicide was driven by physical and sexual abuse inflicted by the police. It also noted attempts by the police to suppress the victim's dying declaration and mislead the court. Accordingly, the court directed disciplinary action against the perpetrators and ordered the state Government to pay compensation of 5 lakh rupees.

The significance of *Jayalakshmi* lies not only in the finding of custodial violence but in what the case reveals about pre-trial vulnerability. The police station, which should function as the entry point to criminal justice, became the site of violence, exposing the absence of binding procedural safeguards for TG complainants and accused persons during arrest, questioning, and bail reporting.

In *Pinki Pramanik v. State of West Bengal*[83], Pinki, a national-level female athlete who had been living with a female partner, was accused of rape and sexual assault after several years of cohabitation. The complainant also alleged that Pramanik had induced her into sexual relationship on the false promise of marriage and had taken advantage of her vulnerability. Following arrest, Pramanik was subjected to multiple medical examinations to determine sex characteristics and was ultimately classified as intersex. The Court held that the charge of rape was not tenable because of the absence of the capacity of penetrative intercourse, and it rejected the allegation of inducement on the pretext of marriage since the complainant was already married. Pramanik was therefore acquitted. This case underscores the indignity, humiliation, and intrusive treatment often experienced by gender non-conforming persons and intersex persons at the hands of law enforcement and judicial authorities.

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[82] Jayalakshmi v. State of Tamil Nadu, (2007) 4 MLJ 849.

[83] Case No: CRR 2848 of 2013, decided on September 12, 2014.

Pinki Pramanik is significant at the trial stage for what it reveals about evidentiary treatment: the case shows how criminal procedure permitted repeated, intrusive medical examination as a substitute for a considered legal test of the offence, converting a criminal trial into an inquiry on the body rather than the alleged conduct.

In *Anamika v. Union of India*[84], the constitutional validity of Section 354A of Indian Penal Code was challenged on the ground that it excluded TG persons from protection against sexual harassment, thereby violating Articles 14, 15, 21 of the Constitution. The petition was dismissed after counsel for the Commissioner of Police, Delhi, submitted that where a complaint disclosed a cognizable offence under Section 354A, an FIR would be registered irrespective of the complainant's gender. The order is significant because it records an official acknowledgment that the IPC provision on sexual harassment could extend to transgender complainants.

In *Ms. X v. State of Uttarakhand*[85], a complaint was filed by a trans woman for alleged repeated rape and blackmail. Although she lodged a complaint under Section 376, IPC and self-identified as female, the investigating officer instead invoked Section 377, IPC. Relying on *NALSA,* the Uttarakhand High Court held that gender must be determined through a "psychological test", criticized the authorities for disregarding the Supreme Court's ruling, and affirmed that the petitioner must be recognised as female in all respects. The decision is notable because sexual-offence provisions are gender-specific and criminal statutes are usually construed narrowly. However, while the court accepted the relevance of *NALSA*, it only implied, rather than expressly directed, investigation under Section 376, IPC.

The procedural significance of *Ms. X* lies in what it exposes about the trial stage's reliance on gender-specific offence definition: even a court willing to apply *NALSA* stopped short of directing the correct charge, leaving the classification of the offence, and by extension the victim's access to the applicable sentencing regime, unresolved.

In *Karan Tripathi v. NCRB*[86], the petitioner challenged the omission of separate data on crimes against TG people in the annual Prison Statistics India (PSI) published by the National Crime Records Bureau (NCRB). It was argued that this exclusion violated the rights of TG persons and impeded evidence-based policymaking. The petition was closed after the NCRB directed all states and union territories to include transgender persons in the

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[84] Case No.: WP (Crl.) 2537 of 2018, decided on December 17, 2018.

[85] Ms. X v. State of Uttarakhand, (2019) W.P. (Cr) 28 (Utt. HC).

[86] Case No: W.P. (C) No. 9596 of 2020, decided on December 7, 2020.

gender classification of prisoners' forms starting with the 2020 Prison Statistics India reports. It also proposed a two-day sensitization workshop to improve their inclusion in prison records. While not directly addressing violence, the case highlights that inadequate data on violence against transgender people allows the issue to be overlooked by the state.

The judgement of *Karan Tripathi* is significant for the post-trial and custodial stage. By directing the inclusion of disaggregated data on TG prisoners in prison statistics, the case created a rare judicially mandated record of their presence in custody. At the same time, its limitation-non-creation of substantive safeguards for safety, placement, or treatment in prison-connects it directly with the custodial concerns discussed later in this article.

In *M. Srinivasan v. State*[87], the Madras High Court considered whether a trans woman was protected under the Tamil Nadu Prohibition of Harassment Act, 2002. It held that a complainant's self-identification as a woman cannot be questioned further and affirmed that TG person's rights to self-identification and self-determination must be respected. The Court therefore rejected the petitioner's challenge to the maintainability of proceedings under the Act. Cases such as this illustrate the range of harms TG persons face because of gaps in the criminal justice system, even as the judiciary has sought, within its limits, to provide relief.

B. *Indonesia: Judicial Conservatism in Criminal Matters*

Indonesia's Constitutional Court has had limited engagement with transgender rights, in stark contrast to India's transformative NALSA judgment. One of the most debated cases was the Constitutional Court case No. 46/PUU-XI/2016 where several petitioners requested the Constitutional Court to redefine adultery (Article 284), rape (Article 285), and same-sex obscenity (Article 292) in the Indonesian Criminal Code. It was argued that these definitions are outdated and do not support LGBT rights.[88] In

[87] Crl. O.P. (MD) No. 11848 of 2020, Crl. M.P. (MD) Nos. 5454 and 5457 of 2020

[88] Qurrata Ayuni Qurrata Ayuni, "Judicial Review of Criminal Code Articles on Adultery, Rape and Same-Sex Obscene in Indonesia Constitutional Court", *Advances in Social Science, Education and Humanities Research* 162, (2017):169, accessed January 17, 2026, https://www.researchgate.net/publication/323181105_Judicial_Review_of_Criminal_Code_Articles_on_Adultery_Rape_and_Same-Sex_Obscene_in_Indonesia_Constitutional_Court/fulltext/5a84df2ba6fdcc201b9efe7f/Judicial-Review-of-Criminal-Code-Articles-on-Adultery-Rape-and-Same-Sex-Obscene-in-Indonesia-Constitutional-Court.pdf.

December 2017, the Constitutional Court rejected the petition, showcasing its defensive and conservative approach by declining to protect LGBT persons even when directly presented with the opportunity. Earlier, in 2009, the Batang District Court passed a progressive judgement in decision No. 19/PDT/P/2009/PN.BTG.[89] Here the court allowed the petition of *Agus Widiyanto,* who underwent sex-reassignment surgery, to change his gender on identity documents. The first such case was of Vivian Rubiyanti Iskandar, who became the first transgender person in Indonesia to be legally recognised as female after surgery in 1973.

There is limited literature on criminal cases involving transgender victims. From the news reports, it appears that transgender persons go in Indonesian courts overwhelmingly as accused under morality laws, and not as victims of violence. In May 2017, police raided Atlantis Sauna and Gym (Jakarta), arresting 141 men at an event. Many were charged under the Anti-Pornography Law, including the director, employees and alleged prostitutes.[90] In December 2017, the North Jakarta Court sentenced eight men to two years imprisonment and fines of one billion rupiah.[91] In July 2017, police raided a gathering of transgender women in Kalimantan, arresting at least 200 people.[92] No information about prosecutions or outcomes is available, illustrating complete judicial opacity for transgender victims. In December 2017, vigilantes in Aceh targeted transgender women attending a friend's birthday party and handed them over to the Sharia police.[93] In September 2020, police forcibly broke up a party at a hotel, arresting 56 men and

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[89] Achmad Busro, "COURT DECISION ON THE CHANGE OF LEGAL STATUS AFTER TRANSSEXUAL SURGERY (AN ANALYSIS ON BATANG DISTRICT COURT NO. 19/PDT/P/2009/PN.BTG)", *South East Asia Journal of Contemporary Business, Economics and Law* 4, issue 3 (2014):47-49, accessed on January 18, 2026, https://www.seajbel.com/wp-content/uploads/2014/06/KLL4320-Achmad-Busro-COURT-DECISION-ON-THE-CHANGE.pdf.

[90] Elizabeth Shim, "Indonesia police arrest 141 men for 'gay sex party'", *UPI*, May 22, 2017, https://www.upi.com/Top_News/World-News/2017/05/22/Indonesia-police-arrest-141-men-for-gay-sex-party/4361495477092/.

[91] "North Jakarta court jails men for two years over 'gay sex party'," *The Jakarta Post*, December 18, 2017, https://www.thejakartapost.com/news/2017/12/18/north-jakarta-court-jails-men-for-two-years-over-gay-sex-party.html.

[92] "Scared in Public and Now No Privacy", *Human Rights Watch*, accessed January 19, 2026, https://www.hrw.org/report/2018/07/02/scared-public-and-now-no-privacy/human-rights-and-public-health-impacts.

[93] Kyle Knight, "Vigilantes Stalk Indonesian Transgender Women", *Human Rights Watch*, accessed on January 20, 2026, https://www.hrw.org/news/2017/12/19/vigilantes-stalk-indonesian-transgender-women.

charging nine with "facilitating obscene acts" under the Pornography Law.[94] Case outcomes are unreported.

Post-Trial: Custody and Prison Administration

A. India: Constitutional Mandate and Administrative Vacuum

Although the *NALSA* judgment recognised the right to gender self-identification across State institutions, prison law has only partially incorporated this constitutional mandate. Earlier prison legislation, particularly the Prisons Act, 1894 and the Model Prison Manual, 2016, contained no provisions governing the treatment of transgender prisoners. Subsequent reforms have addressed this legislative silence to some extent. The Ministry of Home Affairs' 2022 Advisory on the Treatment and Care of Transgender Persons in Prisons introduced administrative guidance on admission, placement, healthcare and protection[95], while the Model Prisons and Correctional Services Act, 2023, formally recognises transgender prisoners as a distinct category and devotes a separate chapter to their accommodation and welfare.[96]

However, these reforms stop short of creating enforceable rights. The Model Act neither incorporates the principle of self-identified gender nor prescribes detailed procedures governing admission, searches, placement, protection from sexual violence or review of housing decisions. Most safeguards are framed in discretionary terms ("may") and are left to be prescribed by subordinate rules. Moreover, as the Model Act has no binding force unless adopted by individual States, the protection available to transgender prisoners continues to vary across jurisdictions, leaving constitutional guarantees dependent upon administrative discretion rather than uniform statutory entitlement.

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[94] "Indonesia: Investigate Police Raid on 'Gay Party'," *Human Rights Watch*, accessed on January 20, 2026, https://www.hrw.org/news/2020/09/07/indonesia-investigate-police-raid-gay-party.

[95] Ministry of Home Affairs, *Advisory on Treatment and Care of Transgender Persons in Prisons* (New Delhi: Ministry of Home Affairs, January 10, 2022), accessed on July 21, 2026, https://www.mha.gov.in/sites/default/files/CareofTransgendersinPrisons_11012022.pdf

[96] Ministry of Home Affairs, *Model Prisons and Correctional Services Act, 2023* (New Delhi: Ministry of Home Affairs, 2024), accessed on July 21, 2026, https://www.mha.gov.in/sites/default/files/2024-12/ModelPrisonsCorrectionalServicesAct_20122024.pdf

Karan Tripathi v. NCRB, discussed above, is the only judicial intervention at this stage, but its scope was confined to statistical classification in Prison Statistics; it did not extend to admission, search, or placement standards. The litigation, therefore, resolved the data-invisibility problem, while leaving the custodial-treatment problem addressed here untouched, a distinction that itself illustrates how a technical, data-focused remedy can be mistaken for a substantive one.

B. Indonesia: Binary Classification without Gender Identity Recognition

Indonesia's Corrections Law No. 22 of 2022, which replaced the 1995 Corrections Law, restructured correctional administration around service, development, and rights-respecting custody, but continues to operate within a binary male-female correctional structure and contains no provision governing placement based on gender identity.[97]

In November 2020, an Indonesian celebrity identified only as "M," a trans woman, was placed in a men's detention facility in North Jakarta following her arrest on drug charges, solely because her identity card recorded her sex as male. The Institute for Criminal Justice Reform called the placement unlawful and warned that it exposed her to "security risks, stigma, harassment and violence."[98] An earlier case that same year followed a different path: a trans public figure was placed in a women's detention block, but only because she held a court order approving her legal gender change, a remedy that is itself procedurally difficult to obtain. In practice, absent such a court order, placement has generally followed the sex recorded on official identity documents.[99] Activist Naila Rizqi Zakiah documented that trans women held in male cells were routinely shaved and forcibly stripped, treatment she characterised as a form of sexual violence perpetrated by the authorities, in addition to the risk of assault by fellow inmates.[100] Transgender rights advocate Yulianus Rettoblaut noted that some courts have begun providing separate cells for trans women, but "only after convictions", meaning pre-trial

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[97] Law of the Republic of Indonesia No. 22 of 2022 on Corrections, replacing Law No. 12 of 1995 on Corrections.

[98] Budi Sutrisno, "Placement of Trans Woman in Men's Prison Inhumane, Unlawful: Activists," *The Jakarta Post*, November 24, 2020, https://www.thejakartapost.com/news/2020/11/24/placement-of-trans-woman-in-mens-prison-inhumane-unlawful-activists.html.

[99] *Ibid.*

[100] *Ibid.*

detainees, who are legally presumed innocent, remain entirely unprotected during the period before adjudication.[101]

Read together, the two jurisdictions arrive at the same custodial outcome by different routes. India has a binding constitutional mandate, the NALSA self-identification principle, which the prison administration simply fails to operationalise, creating a gap between formal law and lived practice. Indonesia has no equivalent mandate at all, so genitalia or document-based placement is not even formally inconsistent with domestic law. In both systems, the post-trial stage is where the recognition-protection gap identified below becomes physically coercive: the transgender person is not merely unprotected by the criminal justice system but is actively classified, searched, and confined by it in a manner that reproduces the harm the system exists to prevent. This is also the textual basis for the prison-reform recommendation in the conclusion. To summarise the above discussion, the following Table 2 can be referred.

TABLE 2. Brief overview of stage-wise violation of procedural rights of TGs

Stage of criminal process	Offence/issues examined	Procedural rights at stake
Pre-trial	Sexual violence complaints, police refusal to register FIR, misgendering, arbitrary detention, morality raids.	Access to FIR/complaint registration, fair investigation, protection from cruel treatment.
Trial	Victim classification, intrusive medical examination, evidentiary stereotyping, reliance on gender-specific offences.	Fair trial, equal protection, dignity in evidence-gathering, recognition as victim or accused.
Post-trial and custody	Prison placement, searches, sexual violence risk, healthcare, legal aid, prison data invisibility.	Safe custody, bodily autonomy, access to healthcare and other welfare measures.

***Source**: Various sources, edited and analyzed by the Authors*

Comparative Findings and Structural Insights

The comparative analysis of India and Indonesia reveals a significant gap between legal recognition and the effective protection of transgender persons within the criminal justice system. In India, despite the recognition of transgender rights through the NALSA judgment (2014), the Transgender Persons (Protection of Rights) Act (2019), and constitutional guarantees,

[101] *Ibid.*

transgender individuals continue to experience violence, discrimination, and limited access to justice. In Indonesia, the absence of comprehensive transgender-specific legislation, limited legal recognition, and the criminalisation of certain forms of gender expression under regional regulations create similar vulnerabilities for waria and other transgender individuals. These challenges demonstrate that formal legal recognition does not automatically guarantee protection from violence or ensure equal access to justice.

These differences are also reflected in the criminal law reforms introduced in both countries in 2023, namely India's Bharatiya Nyaya Sanhita and Indonesia's Law No. 1 of 2023 on the Criminal Code. Neither framework provides sufficiently comprehensive protection against violence specifically targeting transgender persons. However, the nature of the protection gap differs between the two countries. India faces a gap between formal recognition and effective implementation, whereas Indonesia faces a gap between constitutional principles and the absence of comprehensive legislative protection. Consequently, legal recognition alone is insufficient to guarantee safety, equality, and access to justice without effective enforcement, inclusive criminal law provisions, and institutional accountability.

Furthermore, regional disparities and intersecting forms of discrimination intensify the vulnerability of transgender persons in both countries. In India, caste, socioeconomic status, and geographical location can compound discrimination, particularly for Dalit transgender individuals and those living in rural areas with limited access to support networks and legal assistance. The intersection of caste and gender identity may expose individuals to multiple and overlapping forms of exclusion, making their access to justice and social protection particularly challenging. Therefore, addressing transgender rights in India requires an intersectional approach that considers how caste-based discrimination interacts with gender identity and socioeconomic inequality.

In Indonesia, regional differences create additional challenges, particularly in Aceh, where the implementation of Sharia-based regulations may expose individuals perceived as violating gender and sexuality norms to criminal penalties. Such regional variations demonstrate how local legal frameworks and enforcement practices can influence the everyday experiences of transgender persons, even when national constitutional principles recognise fundamental rights. The interaction between national legislation, regional regulations, and prevailing social and cultural norms can consequently create an environment in which transgender individuals face discrimination, social exclusion, and barriers to legal protection.

Overall, the comparison highlights the need for both countries to strengthen legal protection, improve law enforcement practices, establish accessible reporting mechanisms, and address intersecting forms of discrimination. India must strengthen the implementation of existing transgender rights protections, while Indonesia needs to develop a more comprehensive legal framework that safeguards gender identity and protects transgender persons from violence and discrimination. In both contexts, sustainable reform requires a comprehensive approach that translates constitutional principles and human rights commitments into meaningful protection, equal treatment, and effective remedies for transgender persons across different regions and social backgrounds.[102]

Conclusion

This comparative analysis demonstrates that legal recognition does not necessarily translate into effective protection from violence for transgender persons. In India, despite significant judicial and legislative developments, including the NALSA judgment (2014) and the Transgender Persons (Protection of Rights) Act (2019), substantial gaps remain between formal legal guarantees and their practical implementation. In Indonesia, the absence of comprehensive transgender-specific protection legislation, combined with discriminatory regional regulations, particularly in Aceh, creates additional barriers to the protection of transgender rights. Despite these differences in their legal frameworks, both countries exhibit persistent patterns of violence, discrimination, and institutional failure within their criminal justice systems. The findings suggest that these challenges are sustained by interconnected institutional and sociocultural barriers, particularly discriminatory policing practices, inadequate accountability mechanisms, limited access to justice, and the underreporting of violence. Accordingly, effective protection requires not only legislative reform but also institutional transformation, greater accountability among law enforcement officials, and the consistent application of human rights principles throughout the criminal justice process.

To address these shortcomings, both countries should introduce mandatory transgender-sensitisation training for law enforcement officials, establish independent police complaints mechanisms, improve access to timely judicial proceedings, and strengthen legal remedies for victims of violence. Indonesia should enact comprehensive legislation protecting transgender persons from discrimination and violence, while India should review its

[102] "Indonesia: Aceh's New Islamic Laws Violate Rights" (n 65).

criminal laws to address gaps in the protection of transgender victims and assess the adequacy of existing penalties for violence motivated by gender identity. Furthermore, discriminatory regional provisions should be reviewed in accordance with applicable human rights obligations, crime statistics should be systematically disaggregated to improve data visibility, and prison policies should ensure the safety, healthcare access, dignity, and judicial oversight of transgender detainees. Bilateral cooperation between India and Indonesia could also facilitate the exchange of good practices in legal reform, policing, and victim protection. These recommendations directly address the structural weaknesses identified in this study, from discriminatory treatment during police interactions and barriers during judicial proceedings to custodial risks and the invisibility of transgender victims in official statistics. Ultimately, meaningful progress depends on translating legal commitments into effective institutional practices that guarantee transgender persons equal protection, access to justice, and respect for their fundamental human rights.

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