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## Bridging Gaps of Gender Equality for Transgender Individuals in Rural India

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*This article seeks to examine the complexities of challenges that are faced by transgender individuals in rural India with the primary objective of bridging the existing gender gap. While 21st-century India has been constantly striving for equality of the population, the same is not true concerning the transgender population. Due to the social diversity along with the immense cultural and religious influence of India, transgender individuals in rural settings face various hurdles and hindrances that curb their desire for equality in society. Thus, it is a matter of concern which this article seeks to dwell upon. Focus has been paid to the existing legal frameworks of the country to analyze the conditions of the transgender population. Through the analysis of the intersectionality of the challenges faced by the transgender community, a comprehensive understanding of the issue is presented and via the examination of socio-cultural, economic, and legal aspects; recommendations for a welfare society are provided.*

**Keywords:** *transgenders, hijras, rural India, gender equality.*

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### INTRODUCTION

“History owes an apology to the members of this community and their families for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries. The members of this community were compelled to live a life full of fear of reprisal

and persecution. This was on account of the ignorance of the majority to recognize that homosexuality is a completely natural condition, part of a range of human sexuality.”<sup>1</sup>

- J. Indu Malhotra

“Any discrimination based on sexual orientation amounts to [a] violation of fundamental rights.”<sup>2</sup>

- Chief Justice Deepak Mishra

Gender equality is a fundamental human right that ensures fairness and equal opportunities for all individuals, regardless of their gender identity.<sup>3</sup> Every individual on this planet is entitled to basic human rights with the right to live a life with dignity and respect. Since the 19<sup>th</sup> Century, it has been a global cause rallying for Women’s Rights. Despite the progress it made, various communities of the world are still marginalized and discriminated against, and one such group is the Transgender Community. The term transgender broadly refers to individuals whose gender identity does not conform to their assigned gender at birth<sup>4</sup>. Gender equality must be achieved for Sustainable Development Goals<sup>5</sup> and the creation of an inclusive society. It is important to recognize that gender equality goes beyond just addressing disparities between men and women, but also includes advocating for the rights and well-being of transgender individuals.

In societies across the world and India, the transgender community has had to face discrimination and inequality. The term ‘Hijra’ is commonly used in India to refer to trans individuals. Since Independence, the transgender community has been actively advocating for their recognition and rights. The success of their activism and community building is witnessed in the cases of the *National Legal Services Authority of India v Union of India*<sup>6</sup> and *K.S. Puttaswamy*

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<sup>1</sup> *Navtej Singh Johar v Union of India* (2018) 10 SCC 1

<sup>2</sup> *Ibid*

<sup>3</sup> Simon Murote Kang'ethe and Shylet Chivanga, ‘Exploring Gaps Associated with Gender Empowerment in Selected African Countries’ (2014) 2(57) *Mediterranean Journal of Social Sciences*

<<http://dx.doi.org/10.5901/mjss.2014.v5n27p870>> accessed 20 May 2024

<sup>4</sup> Amy Novotney, ‘Renewing the push for equality’ (2019) 50(4) *American Psychological Association*

<<https://www.apa.org/monitor/2019/04/cover-renewing-equality>> accessed 20 May 2024

<sup>5</sup> ‘The Seventeen Goals’ (*United Nations*) <<https://sdgs.un.org/goals>> accessed 20 May 2024

<sup>6</sup> *National Legal Services Authority of India v Union of India* (2014) 5 SCC 438

*and Anr v Union of India*<sup>7</sup>. In the judgement of *National Legal Services Authority of India v Union of India*<sup>8</sup>, the Supreme Court directed both the Centre and State Governments to grant legal recognition of gender identity whether it be male, female or ‘third gender’. The fundamental rights of the third gender were given recognition. Directions were given towards the Centre and State government to ensure appropriate health care accessibilities for the trans population along with operating separate HIV/Sero-surveillance measures. Furthermore, provisions were directed to install separate public toilets for this community. Instructions were directed to treat the Transgender Community as an economically backward class and reservations to be granted. For the benefit of social development, the Central and State Governments were instructed to make amends to uplift the social morality of this community and remove the idea of ‘Trans-phobia’ from society<sup>9</sup>.

Despite the implementation of these laws, the transgender community of rural India is subjected to various kinds of discrimination and inequalities. Due to the unique socio-cultural and economic setting of rural India, the challenges faced by these individuals are extreme and amplified. The existence of a traditional patriarchal mindset has subjected transgender individuals to physical and sexual abuse, and harassment. The major gap in gender equality that the transgender community faces in rural areas is the lack of legal recognition and this thus acts as a hindrance in granting them equal opportunities like the other two ‘socially accepted’ genders. Moreover, they are forced to take up low-paying occupations where they are subjected to severe mental health issues and economic instability. The lack of awareness and sex education in rural settings has further enhanced the gap in gender equality in the community. It is thus essential to address the specific challenges faced by this community to reduce the widening gap of gender equality.

The purpose of this paper is to examine and analyze the gaps in gender equality for the transgender community in rural India and recommend strategies to bridge them.

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<sup>7</sup> *K.S. Puttaswamy and Anr v Union of India* (2017) 10 SCC 1

<sup>8</sup> *National Legal Services Authority of India v Union of India* (2014) 5 SCC 438

<sup>9</sup> Ministry of Social Justice and Empowerment, *Report of the Expert Committee on the Issues relating to Transgender Persons* (2013)

## HISTORICAL CONTEXT

Hijra were once a revered and accepted group in Indian culture. The Vedas, ancient Hindu texts, include eunuchs and characters with both male and female characteristics. They were believed to bring luck and provide special fertility powers.<sup>10</sup> The Mahabharata (from 2–3000 years ago) tells of a trans man, Shikhandi.<sup>11</sup> In the Ramayana (from roughly 2000 years ago), when Rama asks ‘men and women’ not to follow him, hijras remain and he blesses them<sup>12</sup>. During the Mughal period, eunuchs played an important role in the court administration as royal guards. For centuries, they have performed ‘badhai’ or ‘blessings’ at weddings and births.<sup>13</sup> Their sanctioned place in Indian culture changed during the British colonial period<sup>14</sup>. Introduced in 1861, section 377 of the then Indian Penal Code outlawed ‘carnal intercourse against the order of nature’.<sup>15</sup> This law banned Homosexuality and Transsexuality in India. Colonialism from Europe brought with it centralized legal codes to impose Christian European morals in the Indian Society. It is believed that the current mindset of conservativeness was a colonial influence in the minds of the Indian population. However, in 2018, part of Section 377 of the Indian Penal Code, 1860<sup>16</sup> was decriminalized and homosexuality was legalized in India.

## CONSTITUTIONALITY AND LEGALITY

In various instances since independence, it has been observed by watchdogs that policies and laws that came into force have been discriminatory in nature and have violated several of the fundamental rights of the Constitution of India. Laws were also implemented in place to curb the freedom of these individuals. Passing the Transgender Persons (Protection of Rights) Act, 2019<sup>17</sup> set up a two-step process for individuals. While step one is just the need for applying for a ‘transgender certificate’ under the District Magistrate, step two gives the liberty to the

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<sup>10</sup> S. K. Sharma, *HIJRAS: The Labeled Deviants* (Gian Publishing House 1989) pg 1-23

<sup>11</sup> Tomás Prower, *Queer Magic: LGBT+ Spirituality and Culture from Around the World* (Llewellyn Worldwide 2018) pg 150

<sup>12</sup> Stephen Hunt, *Religions of the East* (1st edn, Routledge 2010)

<sup>13</sup> Michael Edison Hayden and Sami Siva, ‘India's Third Gender’ (*Pulitzer Center*, 02 July 2014)

<<https://pulitzercenter.org/projects/indias-third-gender>> accessed 20 May 2024

<sup>14</sup> Hunt (n 12)

<sup>15</sup> *Navtej Singh Johar v Union of India* (2018) 10 SCC 1

<sup>16</sup> Indian Penal Code 1860

<sup>17</sup> Transgender Persons (Protection of Rights) Act 2019

certificate holders to apply for a ‘change in gender certificate’. However, this second step requires the person to provide proof of surgery, issued by a hospital official, to the District Magistrate for a second evaluation, and the official must be ‘satisfied with the correctness of such certificate.’ This sets an extraordinary amount of power with one government office to arbitrate which trans people ‘qualify’ to be recognized as who they are. It also coerces people into medical procedures they might not want – a fundamental rights violation that Indian and international jurisprudence condemns. Several of the policies initiated for the welfare of the transgender community had loopholes in them that subjected the individuals to more challenges and violations.<sup>18</sup>

## TRANSGENDER RIGHTS IN INDIA

In the case of the *National Legal Services Authority of India v Union of India*<sup>19</sup>, the Supreme Court of India granted legal recognition and status to the transgender community of India as the ‘Third Gender’. It dictated the Government of India to treat them as an economically and socially backward class. Before the judgment, the trans individuals were forced to recognize themselves as either ‘male’ or ‘female’ individuals. It further stated that the government should make policies based on Article 15(2) and Article 16(4) of the Indian Constitution<sup>20</sup> to ensure the welfare of the community. Post this judgment, transgender individuals can change their gender without undergoing sex reassignment surgery.

In the case of *K.S. Puttaswamy and Anr v Union of India*<sup>21</sup>, the Supreme Court of India observed that the sexual orientation of an individual falls under the ambit of the ‘Right to Privacy’ of the Constitution of India and criticized the fact that due to the LGBT+ population being minimal, they cannot be denied and deprived of their basic fundamental rights. The LGBT+ community was granted the freedom to express their sexual orientation with fear which was also extended to transgender individuals.

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<sup>18</sup> Kyle Knight, ‘India’s Transgender Rights Law Isn’t Worth Celebrating’ (*Human Rights Watch*, 05 December 2019) <<https://www.hrw.org/news/2019/12/05/indias-transgender-rights-law-isnt-worth-celebrating>> accessed 20 May 2024

<sup>19</sup> *National Legal Services Authority of India v Union of India* (2014) 5 SCC 438

<sup>20</sup> Constitution of India 1949, art 15(2)

<sup>21</sup> *K.S. Puttaswamy and Anr v Union of India* (2017) 10 SCC 1

The Transgender Persons (Protection of Rights) Bill, 2019<sup>22</sup> was passed in the Parliament of India to promote their welfare and ensure their protection. This bill aimed to prevent discrimination against the community in aspects of employment, education, healthcare and other aspects of life. However, the bill was met with resentment and rejection by the transgender community as instead of protection, it exposed the community to more oppression and dehumanizing actions regarding their body and identity. The bill does not comply with the judgment of the *National Legal Services Authority of India v Union of India*<sup>23</sup>. It takes away the right to determine an individual's sexual identity because as per the bill, the change of identity in documents can only be permitted after the proof of sex reassignment surgery has been certified by a District Magistrate. This aspect of the law thus infringed the basic autonomy of human rights. The bill further promoted discrimination for punishment against gender-based violence because sexual abuse against transgenders only accounted for two years of punishment while the same accounts for seven years against women. The bill further neglected the atrocities that transgender individuals faced from their family members and prevented them from leaving their homes to join Trans-Community thus curating their rights to be part of any association.

Against the Writ Petition filed in the Supreme Court of India for Same-Sex Marriage <sup>24</sup>in India, it granted the Right to Marry to transgender individual in a relationship with another Heterosexual individual. However, the same was not extended to two transgender individuals in a relationship. Moreover, trans individuals are not allowed to adopt children nor can they become parents through surrogacy.

## **TRANSGENDER INDIVIDUALS IN RURAL INDIA**

In comparison to the Urban Transgender Population, the rural transgender individual faces more challenges and hurdles in terms of social acceptability, representation, socio-economic challenges etc. The idea of inclusivity is more prominently visible in urban Indian settings compared to rural India. The existence of gender-neutral washrooms in metropolitan cities like

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<sup>22</sup> Transgender Persons (Protection of Rights) Act 2019

<sup>23</sup> Hayden (n 13)

<sup>24</sup> *Supriya Chakraborty & Abhay Dang v Union of India* WP (C) No 1011/2022

Bengaluru, Mumbai<sup>25</sup> Hyderabad is a clear example of it. The community faces multiple forms of oppression from the police<sup>26</sup>. There have been instances where individuals were arbitrarily arrested, unnecessarily harassed and penalized for offences they have not done. A great majority of the Hijras have experienced problems caused by the police whether policemen from respective police stations, railway police or traffic policemen. There were also stories narrated by the Hijras, where they were brutally tortured, and beaten up by the policemen just for begging and congesting the signals, and also sometimes they were suspected to be thieves or robbers and without any fault, to their utter dismay their names were among the famous listed burglars in the police stations<sup>27</sup>. Moreover, the risks of HIV/AIDS are higher in the rural transgender community due to the lack of awareness of sex education and contraceptives.

Due to their gender identity, they are often ostracized and denied basic rights and services, such as healthcare, education, employment, and housing. The concept of Transphobia<sup>28</sup> and Homophobia is deeply rooted in the mindset of the rural population and it causes severe harm to the individuals of the community. Many families commit honour killing when they realize that their child is a trans person or end up creating an environment of distress in which they are forced to give their lives. Many parents give away their trans child at a young age to transgender communities due to the fear of losing their reputation in society. Transgender individuals are also often forced to leave their homes and families due to discrimination and violence, leading to increased homelessness and poverty<sup>29</sup>. They are then bound to seek refuge in cities where they are subjected to severe hardships of life and forced to take up inhumane occupations like sex work or begging. Many even become victims of sex rackets and get trafficked abroad.

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<sup>25</sup> 'Mumbai gets its first transgender toilet in Goregaon' *India Today* (05 April 2022)

<<https://www.indiatoday.in/cities/mumbai/story/mumbai-gets-its-first-transgender-toilet-in-goregaon-1933879-2022-04-05>> accessed 20 May 2024

<sup>26</sup> Dr. Subhrajit Chatterjee, 'Problems Faced by Transgender Community in India: Some Recommendations' (2018) 6(1) *International Journal of Creative Research Thoughts* <<https://ijcrt.org/papers/IJCRT1705102.pdf>> accessed 20 May 2024

<sup>27</sup> Sreoshi Sinha, 'Social Exclusion of Transgender In The Civil Society: A Case Study Of The Status Of The Transgender In Kolkata' (2016) 3(2) *International Journal of Humanities & Social Science Studies* <<https://oaji.net/articles/2016/1115-1476778363.pdf>> accessed 20 May 2024

<sup>28</sup> Mumbai gets its first transgender toilet in Goregaon (n 25)

<sup>29</sup> *Ibid*

As per the Socio-Economic and Caste Census 2011<sup>30</sup>, it was noted that rural India has over 70,000 transgenders with the highest population residing in Uttar Pradesh. But in comparison to this data, it has been noted that only a few states have opted for Transgender Welfare policies and extended it to both the rural and urban areas simultaneously. The state of Madhya Pradesh had proposed the 'State Transgender Policy, Madhya Pradesh 2020'<sup>31</sup> with the objective to strive for Transgender upliftment within the state. The most highlighting goal of this policy framework is the establishment of the district level a Transgender Welfare Committee shall be established in each district of Madhya Pradesh. The state of Kerala had implemented educational reforms from the grassroots level to promote the same within the Trans Community. Scholarships of 35 Lakhs Rupees were granted to the students at several levels of their grades.<sup>32</sup> Karnataka Government's 1% reservation for transgender persons in any service or post in all categories of employment, the governments of Chhattisgarh and Bihar decided to recruit transgender people in police force in 2021 and the government of Uttar Pradesh proposing the 'Garima Grah' for elderly trans people, establishing the country's first university for transgender students, the revision of inheritance law to include transgender people, providing basic amenities in their colonies, construction of public toilets for transgender are some of the landmark projects.<sup>33</sup> These were the only few states that worked for the upliftment of this underdeveloped community. However, at the same time, it was noted states like Manipur and Delhi yet lacked measures for this community. It was recorded that until April 2022; the state of Manipur had employed no transgender persons in the reservation of employment for this community.<sup>34</sup>

## GAP OF GENDER EQUALITY

### Barriers to Gender Equality for transgender communities in Rural India:

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<sup>30</sup> Ministry of Housing and Urban Affairs, *Socio-Economic and Caste Census* (2011)

<sup>31</sup> State Transgender Policy of Madhya Pradesh 2020

<sup>32</sup> Poornima R. 'Through the Cracks of the Gendered World: A Critical Analysis of Kerala's Transgender Policy' (2022) 14(2) *Journal of Polity and Society* <<https://journalspoliticalscience.com/index.php/i/article/view/175/62>> accessed 20 May 2024

<sup>33</sup> *Ibid*

<sup>34</sup> Thomas Ngangom, 'RTI reveals non-implementation of policy for transgender community in Manipur' *Imphal Free Press* (05 July 2022) <<https://www.ifp.co.in/ifp-breaking-point/rti-reveals-non-implementation-of-policy-for-transgender-community-in-manipur>> accessed 10 July 2024



**1. Lack of Legal Protection:** Transgender individuals are not recognized in various legal documentation that caters to the legal protection of individuals and human rights<sup>35</sup>. Thus, when they are subjected to discrimination and violence, they are unable to seek legal protection. Despite the *National Legal Services Authority of India v Union of India*'s<sup>36</sup> judgment, the rural setting lacks proper implementations and awareness making these individuals subjected to various atrocities.

**2. Limited Access to Education:** Transgender population of rural India face critical barriers in accessing education, especially those from lower socio-economic backgrounds<sup>37</sup>. Discrimination and public humiliation by fellow mates and school authorities have led to higher dropout rates which has further marginalized the community. The lack of inclusivity in these institutions has deprived the trans students of various opportunities and personality development.

**3. Employment Opportunities and Work Benefits:** Due to the lack of education and skill training opportunities, transgender individuals in rural settings are forced to take up low-paying occupations. Many, despite possessing the necessary skills, are not hired due to their sexual orientation. This in turn leads to economic instability and vulnerability to exploitation by their employers. Many face discrimination in the workplace and social exclusion<sup>38</sup>. Moreover, benefits like paid leave, access to washrooms, and bonuses are granted to these employees.

**4. Social Stigma and Discrimination:** Due to their gender identity, transgender individuals face severe social stigma and discrimination. It is often the conservative mindset of the families that affects them the most. They are subject to physical abuse, neglect and at times homelessness and lack of financial support. Families prefer to disown the trans member of the family than to accept them for who they are. Society too perceives the trans community as 'alien' and maintains social

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<sup>35</sup> Chatterjee (n 26)

<sup>36</sup> The Seventeen Goals (n 5)

<sup>37</sup> Nolina Minj, Trans people's fight for their right to work (*Scroll.in*, 19 July 2023)

<<https://scroll.in/article/1052730/trans-peoples-fight-for-their-right-to-work>> accessed 20 May 2024

<sup>38</sup> Snehal Mutha, 'Employed but not accepted - Being trans in a workplace' (*Indie Journal*, 25 June 2022)

<<https://www.indiejournal.in/article/employed-but-not-accepted-being-trans-in-a-workplace>> accessed 20 May 2024

distances from such individuals. This, in turn, limits an individual's access to public space and participation in society along with hampering their mental and emotional wellbeing.

**5. Lack of Healthcare Access:** In general, the rural setting of India lacks accessibility to healthcare. But the condition becomes much worse for the transgender community. They often have to face crucial barriers in accessing basic healthcare facilities and gender-affirming care. A lack of trained healthcare professionals is faced by these individuals who would understand their specific needs. It led to inadequate support and mistreatment subjecting the trans individuals to severe health outcomes and issues. Moreover, these individuals at times are denied healthcare treatments by hospital authorities and healthcare professionals and are subjected to discrimination and humiliation<sup>39</sup>. The lack of inclusive healthcare facilities and trained professionals hamper their need for medical facilities and support. In addition to this, there is a lack of space for these individuals to access mental health support and counselling which in turn affects their wellbeing.

**6. Absence of Social Support Systems:** Due to the stereotypes, discrimination and stigma that they face, the transgender community lacks a social support system. Thus, access to basic humanitarian needs such as housing, food, and healthcare becomes challenging for them. Therefore, they are forced to sex work, begging, or other forms of survival tactics, further limiting their opportunities for socio-economic and personal development.

Addressing all of these challenges requires a multifaceted approach that involves awareness programs, advocating for policy changes, and promoting inclusivity and community support. Specific recognition is to be given to the unique hurdles faced only by the rural transgender population to dictate efforts towards the implementation of targeted interventions that would promote welfare for the community.

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<sup>39</sup> Shagirunisha Rizvana A. M et. al., 'Health care services and challenges among transgender in India' (2021) 8(6) International Journal of Community Medicine and Public Health <<https://dx.doi.org/10.18203/2394-6040.ijcmph20212027>> accessed 20 May 2024

## SUGGESTIONS AND RECOMMENDATIONS

To bridge the gaps in gender equality, it is necessary to address the root causes of these disparities and implement comprehensive and inclusive policies that address their unique needs. This should include initiatives to provide education and sensitivity training to healthcare providers, law enforcement and educators to create a more inclusive and supportive environment.

**Legal Reforms:** The government must amend laws that pertain only to ‘males’ and ‘females’ to ensure that the rights of transgender individuals are protected and they can avail legal protection against discrimination and gender-based violence. Harsh punishments must be implemented to prevent the occurrences of such incidents. Perpetrators must be held accountable for their actions and reformative measures should be initiated.

**Educational Reforms:** Education should be used as a crucial tool in the promotion of inclusivity and societal development. A safe and secure environment should be created to reduce the number of dropouts of transgender individuals from educational institutions. Schools and universities should also have anti-discrimination policies to protect transgender students from bullying and harassment. Reformative measures must be introduced for fellow students who are perpetrators of such actions. Awareness programs and sex education must be given in this institution to create sensitivity towards transgender identities. Provisions must be initiated for gender-neutral washrooms to promote further gender equality. Trans students must be encouraged to be comfortable with their identity.

**Employment Opportunities and Skill Development:** To increase the employment of trans individuals and assist them in acquiring high-paying occupations, affirmative policies and actions should be initiated with anti-discriminatory laws. Vocational training should be provided and self-employment opportunities must be created for economic independence. Priority should be given to practical education and skills training programs for transgender individuals to not only provide them with the necessary skills to access better employment opportunities but also help reduce the stigma and discrimination they face in society.

**Healthcare Reforms:** Government policies must be initiated to address the healthcare disparities that transgender individuals face in rural medical institutions. It should include training healthcare professionals on transgender issues and providing them with comprehensive healthcare coverage for gender-affirming treatments. They should also set up dedicated healthcare facilities for transgender individuals, Moreover, awareness and sensitivity training for healthcare providers must be initiated to ensure that transgender individuals receive equal and quality healthcare services. The government should also establish special healthcare programs for the transgender community, addressing their specific health needs.

**Awareness Programs:** There is a dire need for awareness programs in rural communities that focus on educating the population regarding transgender identities. It should also include debunking the myths and stereotypes to create sensitivity and promote inclusion and acceptance. These programs should focus on reducing the existing gender disparities and changing societal mindsets towards the transgender community.

**Strengthening Support Systems:** The rural population must be empowered and educated to initiate community-based organizations and form NGOs to grant aid to trans individuals. Efforts must be made to strengthen social support systems for transgender individuals in rural communities.

To challenge the deeply rooted stigma against transgender individuals, creating awareness and fostering a supportive community is essential. Through the promotion of deliberation and understanding, rural communities can become more accepting and inclusive which would eventually provide a safe and more supportive environment for transgender individuals.

## **CONCLUSION**

To summarise, there is a requirement for a multi-dimensional approach to bridging the gaps in gender equality faced by the rural transgender population of India within their community. This should comprise amendments and changes in existing policies, initiating new policies, awareness-building programs to promote inclusivity, and giving economic independence. Along with triggering the reduction of gaps in gender equality for the community, it would also

promote sustainable development goals. Due to the complexity of the issue, it is important to understand that the Government alone cannot promote effective changes. Thus, it becomes the responsibility of civil societies to cooperate with the Government in the promotion of a safe, inclusive and supportive environment.

In conclusion, gender equality for the rural transgender community is still a dream that they have yet to see being turned into reality. With the existing issues at hand that remain unaddressed, it only widens the gap. Therefore, only through collective efforts and change in the societal attitude, the dream of gender equality will turn into a reality.