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Transgender Persons In India: Problems & Policies

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Abstract

Transgender people in India, often referred to as hijras, kinnars, or aravanis in different regions, have been a part of Indian society for centuries, with historical references in Hindu mythology, religious texts, and Mughal courts. Despite their cultural presence, they have long faced discrimination, social ostracization, and economic hardships. Traditionally, many transgender individuals in India have been associated with the hijra community, which has its own social structure, rituals, and traditions. However, not all transgender people identify as hijras; some live independently, while others undergo gender-affirming procedures and integrate into mainstream society. In recent years, there have been significant legal and social advancements for transgender rights in India. The landmark 2014 Supreme Court ruling in *National Legal Services Authority (NALSA) v. Union of India* recognized transgender individuals as a third gender and affirmed their fundamental rights, including access to education, employment, and healthcare. Following this, the Transgender Persons (Protection of Rights) Act, 2019, was enacted to prohibit discrimination and promote inclusion, although it has faced criticism from the transgender community for not adequately addressing their concerns.

Despite these legal strides, transgender individuals in India still encounter societal stigma, lack of employment opportunities, and barriers in accessing healthcare and education. Many are forced into begging, sex work, or other informal sectors due to discrimination. Advocacy groups and NGOs continue to push for better policies, gender-affirming healthcare, and awareness campaigns to foster greater acceptance. Increasing representation in media, politics, and corporate spaces is slowly challenging stereotypes, but true equality remains an ongoing struggle for India's transgender community.

The article below brings into discussion the significant challenges faced by the transgender population that further fuel their inability to uplift themselves in Indian society.

Keywords : Trans Gender, Education, Employment, Reservation

Introduction

Transgender people are individuals of any age or sex whose physical appearance, personal features, or behaviours differ from stereotypes about how men and women are 'supposed' to be. Transgender people have existed in every culture, race, and class since the story of human life has been recorded. Transgender persons in India form a diverse and historically significant community that has faced centuries of marginalization and exclusion. Despite their recognition in ancient Indian texts and mythology, societal attitudes have relegated them to the fringes of society, particularly during colonial rule. Transgender people in India face significant challenges despite legal recognition as the "third gender." The Indian Supreme Court granted them equal rights in 2014, including access to education, employment, and healthcare. However, they often experience discrimination, abuse, and limited access to resources. The Transgender Persons (Protection of Rights) Act, 2019, aims to protect their rights and provide welfare benefits. The community is prominent in states like Uttar Pradesh and Andhra Pradesh. Efforts to improve their social status include initiatives like the SMILE scheme and shelters for young transgender individuals. This paper explores the historical context, contemporary challenges, and policies aimed at addressing the issues faced by transgender persons in India.

Historical Context

Ancient Recognition : In ancient India, transgender individuals were recognized and respected within society, often referred to as tritiyaprakriti (third gender) or napunsaka. They held cultural significance in Hindu mythology and religious texts, such as the Ramayana and Mahabharata. For example, Lord Shiva's form as Ardhanarishvara symbolized the union of masculine and feminine energies, while the hijras were blessed by Lord Rama for their devotion during his exile. Transgender figures like Shikhandini in the Mahabharata and Mohini, the female avatar of Vishnu, were pivotal in mythological narratives. The Kamasutra described their existence and even categorized them under non-binary genders. Communities of hijras were organized under gurus and played roles in auspicious ceremonies like weddings and childbirths. These individuals were integrated into social and spiritual practices, reflecting a society that acknowledged diverse gender identities. However, colonialism and later societal changes led to a decline in their status over generations.

Medieval Period : During the medieval period in India, the status of transgender individuals underwent significant changes due to socio-political shifts. Under Islamic rule, particularly during the Mughal era, hijras were integrated into royal courts and held positions of influence as political advisors, administrators, and caretakers of harems. They were trusted figures in proximity to kings and queens, highlighting their importance within elite circles. However, the arrival of Islam introduced stricter binary gender norms, which conflicted with India's historical recognition of the third gender. Homophobia became more pronounced in certain regions influenced by Islamic and Zoroastrian ideologies. Despite this, Mughal rulers often tolerated non-Muslim cultural practices, allowing some continuity of transgender roles. The decline in their status began with British colonization. The hijra community was criminalized under laws like the Criminal Tribes Act (1871), stripping them of civil

rights and reducing their societal standing. This marked a shift from their respected roles to marginalization and stigma that persisted into modern times.

Colonial Impact : During the colonial period in India, transgender individuals, particularly the hijra community, faced severe marginalization and criminalization under British rule. The British viewed hijras as a threat to colonial authority and morality, associating their mobility and public performances with criminality. In 1871, the Criminal Tribes Act classified hijras as a “criminal caste,” prohibiting them from wearing feminine attire, performing publicly, or expressing their gender identity, which devastated their livelihoods and cultural traditions. Colonial administrators falsely accused hijras of kidnapping and castrating children, further stigmatizing them. Police surveillance and violence were common, and children living with hijras were forcibly removed. The British aimed to erase the hijra community’s public presence and ultimately extinguish their existence. This legal and social oppression marked a sharp decline from the respected roles hijras held in pre-colonial India, leaving a legacy of discrimination that persists today.

Contemporary Challenges faced by trans gender people in India

Transgender individuals in India face profound challenges rooted in societal discrimination, economic exclusion, and inadequate access to essential services. Social stigma remains a major barrier, as many transgender persons are ostracized by their families and communities. This rejection often begins early, with bullying in schools leading to a dropout rate that contributes to a literacy rate of just 56% among transgender individuals, compared to the national average of 74%. Without education, many are forced into informal sectors such as begging or sex work, perpetuating cycles of poverty and marginalization.

Economic challenges are significant due to hiring biases and workplace harassment. Transgender individuals often struggle to access government ID cards or financial services, preventing them from voting, opening bank accounts, or availing government schemes. While initiatives like microfinancing programs aim to empower transgender individuals to start small businesses, progress remains slow.

Healthcare access is another critical issue. Many transgender individuals face discrimination from medical professionals and rely on expensive private facilities for gender-affirming care. Despite schemes like Ayushman Bharat TG Plus providing insurance for transition-related healthcare, the lack of skilled professionals and substandard procedures remain concerns. Additionally, the focus on HIV/AIDS overshadows broader health needs.

Legal protections such as the Transgender Persons (Protection of Rights) Act, 2019, have provided some relief by recognizing self-identification rights and mandating access to education and healthcare. However, implementation gaps persist, with screening committees undermining self-identification and limited enforcement of anti-discrimination measures.

Grassroots organizations like Sahodari Foundation and Tweet India Foundation are working to address these issues by providing shelter homes, legal aid, and gender-affirming care. Advocacy groups like the Madras Elite Club also focus on education, identity documentation, and economic empowerment. Despite these

efforts, societal attitudes continue to typecast transgender individuals as beggars or sex workers, limiting their opportunities for inclusion and dignity

Policies Addressing Transgender Issues

1. NALSA Judgment (2014)

The National Legal Services Authority v. Union of India judgement, delivered by the Supreme Court of India on April 15, 2014, marked a significant milestone in recognizing the rights of transgender individuals. The court declared transgender people as the 'third gender', affirming their entitlement to the same fundamental rights as other citizens under the Constitution of India. This included the right to self-identify their gender as male, female, or third gender, emphasizing psychological sex over biological sex. The judgement also mandated legal recognition of transgender individuals in government documents and directed governments to provide them with access to healthcare, education, and social welfare schemes. Additionally, it recommended reservations in educational institutions and jobs to address their historical marginalization. However, despite this progress, subsequent legislation like the Transgender Persons (Protection of Rights) Act, 2019, has been criticized for undermining some of these gains by requiring a screening committee for gender identity validation

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

The Transgender Persons (Protection of Rights) Act, 2019, is a landmark legislation in India aimed at safeguarding the rights and welfare of transgender individuals. Introduced in the Lok Sabha on July 19, 2019, and passed by both houses of Parliament by November 26, 2019, it came into effect on January 10, 2020. The Act defines a transgender person as someone whose gender does not align with the gender assigned at birth, encompassing a broad range of identities including trans-men, trans-women, intersex individuals, and those with socio-cultural identities like hijras and kinnars. The Act prohibits discrimination against transgender persons in various spheres such as education, employment, healthcare, and access to public facilities. It mandates that educational institutions provide inclusive education and that establishments ensure non-discrimination in employment. Additionally, it establishes a right of residence, allowing transgender individuals to live with their families or in rehabilitation centers if needed. The Act also creates a National Council for Transgender Persons to oversee the implementation of its provisions and ensure the welfare of transgender individuals.

However, the Act has faced criticism for several provisions. It does not provide for reservations in education or employment, a key demand of many transgender activists. Furthermore, while it does away with the requirement for a district screening committee for identity validation, it still requires transgender individuals to apply for a certificate to legally change their gender identity. The Act also prescribes penalties for offenses against transgender persons, including forced labor and abuse, but these penalties are often seen as inadequate compared to those for similar crimes against cisgender individuals. Despite these limitations, the Act represents a significant step towards legal recognition and protection of transgender rights in India.

3. Section 377 Decriminalization (2018)

The decriminalization of Section 377 of the Indian Penal Code on September 6, 2018, marked a historic moment for LGBTQ+ rights in India. Section 377, introduced during British rule in 1861, criminalized “carnal intercourse against the order of nature,” which included homosexual acts. This colonial-era law was challenged over decades by activists and organizations like the Naz Foundation, culminating in the Supreme Court’s landmark verdict in *Navtej Singh Johar v. Union of India*. The Court ruled that consensual adult gay sex is not a crime, emphasizing that sexual orientation is natural and intrinsic to human identity. The judgement overturned earlier rulings, including the Delhi High Court’s progressive 2009 decision decriminalizing homosexuality, which was reversed by the Supreme Court in 2013. The 2018 verdict was grounded in constitutional principles such as equality (Article 14), non-discrimination (Article 15), and the right to life and personal liberty (Article 21). The Court also drew from its 2017 ruling on privacy as a fundamental right, recognizing sexual orientation as an essential aspect of privacy.

While Section 377 still applies to non-consensual acts, sex with minors, and bestiality, its partial striking down was celebrated as a victory for dignity, equality, and justice. The judgement also highlighted the transformative role of the Constitution in addressing societal prejudices and empowering marginalized communities. However, activists stress that legal recognition must be accompanied by broader societal acceptance and policy reforms to ensure true equality for LGBTQ+ individuals. The Supreme Court’s decision to decriminalize homosexuality widened the ambit of individual autonomy for LGBTQ+ individuals, including transgender persons. It marked a significant step toward reducing legal barriers to equality.

Objectives

1. To assess the status of transgender persons in India in historical context.
2. To examine challenges and policies in contemporary times and suggest some measures to uplift their status.

Research Methodology

This paper is mainly historical and analytical in nature. In this paper an effort has been made to analysis the empowerment of trans gender persons and challenges in India. The data used in it is purely from secondary sources.

Review of Literature

1. Veerendra Mishra (2023) “Transgenders in India”

This introductory volume studies the challenges faced by the transgender community in India. It traces the history of the representation of the community in Hindu texts to understand the evolution of their status within Indian society. The book looks at various themes such as the concept of establishing identity through the processes of 'coming out' and 'transitioning' and analyses how race, ethnicity, sexual orientation, class, nation, religion, and ability have cross-

influenced to shape the transgender experience and trans culture across and beyond the binary. Lucid and topical, the book debunks myths and critiques the stigma and discrimination surrounding the transgender community. It will be an essential read for scholars and researchers of gender studies, queer studies, exclusion and discrimination studies, political science, sociology, social anthropology, and South Asian studies.

2. Binoy Gupta (2023) “Law of Transgender Rights in India”

This book is a concise yet informative guide that addresses the legal rights and challenges faced by the transgender community in India. The book spans just 34 pages and aims to simplify complex legal topics related to sex, gender, and transgender issues, making them accessible to both legal professionals and the general public. Dr. Gupta provides an overview of the historical discrimination against transgender individuals, their legal recognition as a third gender, and the procedures for obtaining identity documents. The book further explores the rights and protections afforded to transgender persons, the legal consequences of discrimination, and various government initiatives such as shelter homes, scholarships, and reservations aimed at supporting the community. Additionally, it discusses the legal aspects of gender transition, providing readers with a clear understanding of the process.

3. Ashima Sahni & Gurdeep Singh (2021) “Gender Equality : Transgender Rights in India Society”

This book is a comprehensive examination of the multifaceted issues surrounding gender equality and the rights of transgender individuals in India. The book delves into various critical topics, including women’s rights, the civil rights of sexual minorities, and the broader concept of equality within the Indian context. It also addresses the challenges faced by transgender individuals and the legal frameworks that impact their lives. The editors aim to provide readers with a nuanced understanding of these issues, supported by scholarly research and analysis. Also, this book offers an in-depth exploration of pertinent issues related to gender and transgender rights in India. Its scholarly approach, combined with a commitment to social causes, makes it a valuable addition to the discourse on gender equality and human rights in the Indian context.

4. Upasana Borah (2021) “Recognition to the rights of transgenders : The Need of the hour”

This is a concise publication that addresses the legal and social challenges faced by transgender individuals in India. The book aims to provide readers with information on law, social issues, and contemporary topics related to transgender rights. However, specific details about the content are limited based on the available sources. The description suggests that the book includes articles and stories to engage readers on these subjects. It appears to be a brief introduction to the topic, readers seeking a more comprehensive analysis may need to consult additional resources. The book’s brevity suggests it may serve as a starting point for those new to the subject rather than an exhaustive examination.

5. Susan Stryker (2017) “Transgender History”

This is a foundational work that provides a comprehensive overview of the history of transgender identities, activism, and cultural shifts, primarily in the United States. The book is widely regarded as an essential text in transgender studies. The book is divided into thematic and chronological sections, beginning with an introduction to fundamental transgender concepts, including definitions and terminologies, to ensure accessibility for readers unfamiliar with the subject. Stryker then examines transgender histories in different eras, from the early medical pathologization of gender variance to the emergence of grassroots activism in the 20th century. The book pays particular attention to pivotal moments such as the Stonewall riots, the Compton’s Cafeteria riot, and the role of transgender individuals in the broader LGBTQ+ rights movement. Additionally, it covers the influence of media, popular culture, and legal changes, including the impact of policies like the repeal of “Don’t Ask, Don’t Tell” and shifting healthcare rights for transgender individuals. One of the book’s greatest strengths is its intersectional approach. Stryker does not just focus on white, Western transgender experiences but also highlights the struggles of transgender people of color, low-income individuals, and those outside the binary spectrum. This nuanced perspective challenges mainstream narratives that often overlook marginalized voices within the transgender community. Her writing style is both scholarly and engaging, making the book accessible to academics, students, and general readers interested in gender studies.

The revised edition of Transgender History expands upon contemporary issues such as the role of social media in trans activism, the increasing visibility of transgender celebrities and politicians, and the backlash from conservative groups against transgender rights. While the book primarily focuses on the U.S., its themes resonate globally, especially in discussions about gender identity, human rights, and legal recognition of transgender individuals.

Conclusion and Suggestions

India has made significant strides toward recognizing transgender rights through legislation like the NALSA judgment and Transgender Persons Act. However, societal attitudes and systemic barriers continue to hinder progress. A holistic approach involving legal reforms, societal awareness, and community support is essential for ensuring dignity and equality for transgender persons. The following are some of the suggestion made :

Education and Skill Development: To provide financial assistance for education, such as scholarships from class 9 to post-graduation. Also, to offer skill development training through programs like PM-DAKSH.

Healthcare and Wellbeing: To Ensure access to gender-affirmative therapies and general healthcare. Also, Provide composite medical health facilities for gender reaffirmation surgeries.

Economic Empowerment: To Create employment opportunities in the public sector and promote entrepreneurship. Additionally, implement anti-discrimination policies at workplaces.

Social Inclusion and Protection: There should be established shelter homes like Garima Greh for those in need. To strengthen legal protections through laws like the Transgender Persons (Protection of Rights) Act, 2019.

Awareness and Sensitization: There should be conduct of sensitization programs for stakeholders, including law enforcement and judicial officials. Also, promote inclusive media reporting on transgender issues.

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