



RIGHTS OF TRANSGENDERS: AMBIGUITIES AND OPPORTUNITIES IN ENSURING THEIR HUMAN DIGNITY

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ABSTRACT

This research study examines the historical treatment, legal frameworks, and issues of India's transgender community. The study emphasises the need to discuss transgender rights because they are entitled to basic human rights such as life, safety, and freedom from discrimination. The paper's objectives include a literature analysis, an examination of legal frameworks, and understanding ways to promote human dignity among transgender people. Although recent legal achievements have recognised the rights of transgender individuals as a third gender, transgender people in India have historically been subjected to marginalisation and exclusion. The purpose of this qualitative research is to investigate the intricate relationship between legal frameworks, social realities, and the lived experiences of transgender people as they strive to achieve human dignity and social inclusion from their perspective.

Method AND Results: The methodology consisted of doing a qualitative content analysis, which involved reading academic literature, policy documents, and news pieces which were related to transgender rights in India. In order to have a better understanding of the interdependence of transgender rights and human dignity, key themes were identified and analyses were performed. Following the completion of the investigation, it was discovered that transgender people continue to suffer a variety of obstacles, such as social marginalisation, discrimination, and restricted access to healthcare, education, and career opportunities. Legislative frameworks such as the NALSA judgement and the Transgender Persons Act are examples of progress; yet, there are still implementation gaps and societal stigmas that create obstacles. In order to preserve human dignity, it is necessary to handle these difficulties in a variety of different areas, such as housing, healthcare,



employment, legal recognition, and marriage. Conclusion: As a conclusion: In order to guarantee human dignity for transgender people in India, it is necessary to take a multifaceted approach that includes the following: (1) awareness campaigns to combat societal stigma; (2) sensitising healthcare professionals and educators; (3) facilitating access to employment opportunities; (4) strengthening legal recognition and protections; and (5) promoting family environments that are inclusive. To create sustainable progress towards a society that is equal and dignified for everyone, it is essential for communities, non-governmental organisations (NGOs), and the government to work together.

Keywords: *Transgender rights, historical context, legal frameworks, discrimination, societal challenges, human dignity.*

INTRODUCTION

Some sects of people are born different, some having different sexual orientations, they are inclined differently naturally. They are the marginalized section of our society; suffer a lot of discrimination and abuse and many times it is forgotten that they are part of humankind. Transgender people have gender identities that differ from their attributed sex at birth. They are either born male or female, but they feel opposite to their body structure. They are so strong in the connection to the gender not assigned to them than their birth sex, that they risk it all to be disconnected culturally and socially. The term 'transgender' comprises individuals whose gender identity, expression, or conduct deviates from the conventional expectations associated with their biological sex. There are numerous classifications of transgender identities, including transgender male, transgender female, male-to-female, and female-to-male. (Gardner and Mishra, 2022).

IMPORTANCE OF DISCUSSING THE RIGHTS OF TRANSGENDERS

Discussing the rights of transgender individuals is of paramount significance for several reasons. Transgenders, like all people, are entitled to fundamental human rights. These rights consist of the right to life, safety, and freedom from discrimination, abuse, and arbitrary arrest. Transgenders have historically faced discrimination and marginalization in numerous aspects of existence, together with employment, housing, healthcare, and education. Discussing their rights is vital to promoting equality and challenging discrimination based on gender identity or expression. Laws and policies directly affect the lives of transgenders. Advocating for and discussing their rights can lead to developing and implementing legal protections that safeguard their rights in areas such as employment,



healthcare, education, and housing. Discussing their rights is not just a matter of human rights and equality but also a way to foster a more inclusive, empathetic, and understanding society that honours and respects its individuals' rights and dignity, irrespective of gender identity or appearance.

PURPOSE AND OBJECTIVES OF THIS PAPER

The following are the objectives of this short research paper:

- 1) To conduct a literature review to explore and understand the historical overview of the issues related to the Transgender community.
- 2) To explore the legal frameworks that supports the well-being of the transgenders in India.
- 3) To study the various avenues to foster Human Dignity among transgenders.

A BRIEF LITERATURE REVIEW OF THE CURRENT SITUATION AND CHALLENGES FACED BY TRANSGENDERS

While transgender people have been officially accepted as the third gender in India, and certain rights and protections have been granted to them, there are still issues with the implementation of these laws and the full realization of their rights.

Challenges regarding the Transgender Identity

Babbar (2016) studied the socio-legal exploitation of Transgenders in India. The researcher enumerates the social exclusion faced by the transgender community and how they are discriminated against by the Law. Due to the social exclusion imposed on them, they have organised themselves as a separate group in society with their own legal system. Through the Guru-Chela system, divided into seven primary gharanas (clans), the Hijras have self-governed into a cultural and social sphere. They also have their internal legal system, known as Jamaats, where senior hijras mediate conflicts among themselves and serve as judges. Ghosh (2021) studied the lifestyle of the transgender community living in a dargah situated in Narayanpura, North India. It is a holy place where devotees, both Hindus and Muslims, flock in large numbers for worship and seek the blessings of the transgenders who perform various rituals. The researcher conducted this research by interviewing the transgenders and the other



people connected to them in that holy place such as non-hijra insiders, local shopkeepers, and devotees. The findings elaborate on the respect and honour that this transgender community (hijras) earn from the people through the various rituals they perform for the devotees seeking blessings and various graces from that holy shrine. This hijra community has also been involved in various charity works which have earned the respect of the people in that locality. While many transgenders are forced to live a marginalised life, here is a community that lives in the mainstream society due to the religious and cultural traditions attached to their history.

Sociological Challenges faced by the Transgenders

Sharma and Mishra (2020) studied the numerous trials confronted by Transgenders in India through a theoretical method and enumerated the various forms of discrimination faced by them and one of them being discrimination in the workplace. Transgender people may have trouble managing a conventional occupation because of gender norms that limit the roles that are seen as mandatory for them. Transgender workers may have to deal with teasing or abuse from their coworkers, which can have an emotional impact on them. Employers sometimes pull job offers and chances because of discrimination against workers of different genders.

Health Issues of the Transgenders

Pandya and Redcay (2020) published a review article analysing the unique health requirements and hindrances to accessing healthcare amenities related to transgenders in India. The review highlights the various discriminations faced by transgenders and throws light on poor physical and mental health issues faced by them. They have difficulty receiving appropriate medical facilities that address both general health needs and gender-specific needs. Various barriers prevent them from accessing healthcare facilities: low health literacy, discrimination at healthcare centres, absence of health insurance, being shut out of welfare projects, and other system defects. The researchers recommend that research and programming take a rights-based stance that would address the barriers faced by transgenders to healthcare services.

Bhattacharya and Ghosh (2020) attempted to study the physical and mental health conditions of the hijra, Kothi, and transgenders in Kolkata. In contrast to their physical well-being (mean = 49.0), the results indicated that they had inadequate mental well-being (mean = 42.3). The results indicated the crucial necessity to include both physical and mental well-



being by giving them an awareness of their healthcare rights and further all the barriers to health programmes should be removed by intervention from the government.

Educational Status of the Transgenders and the Challenges faced at the Educational Institutions

Chandra (2017) conducted a study in Uttar Pradesh to explore the attitude of trainee teachers in relation to transgenders, and the study's findings were as follows: i) There was substantial variation in trainee instructors' attitudes towards transgenders based on their gender. ii) There was a substantial variation in trainee instructors' attitudes towards transgender people based on their educational qualifications. Balu (2020) studied the problems connected to the education of Transgenders in India and enumerated the various reasons that hinder their access to education. There are several causes why transgender students drop out of school or college. The absence of an inclusive language and attitude in educational institutions makes them feel out of place and unwelcomed. Added to this, incidents of abuse and discrimination from the teachers and the students lead them to isolation from the rest of the crowd. This is especially true for effeminate boys whom teachers accuse of violating social conventions at schools. As a result, they quit their education and eventually limit their career opportunities. Das (2019) studied the opportunities and challenges in Higher education with regard to the Transgenders in India. The researcher enumerated the obstacles faced by them in society such as social exclusion, harassment, and various forms of violence meted out to them. As a way forward, the researcher harps on the collective responsibility of the government, NGOs, and the society that will transform the lives of transgenders.

Representation of the Transgenders in Media

Shanmugavel (2018) attempted a study on the portrayal of transwomen in Tamil cinema. The Tamil films have misrepresented transwomen in many forms and have stereotyped them for years. Transwomen farce has been one of the most common features of the Tamil cinema and mostly the roles played by them are stereotyped and fixed as characters that are abnormal and ridiculous. This stereotyped misrepresentation of transwomen has played a significant role in their social exclusion. Therefore, the filmmakers should take proper care to ensure the dignified portrayal of the transwomen characters.



Psychological Issues of the Transgenders

Balabantaray and Singh (2020) conducted a study to analyse the various laws passed in India to support transgender education. Except for the Rights of Transgender Persons Bill, 2014 nothing concrete has been done to ensure education for transgenders. The Right to Education Act and National Education Policy 2020 has not made direct provisions for the betterment of this community. Hence, they recommend more interventions from the government to ensure education for them.

Narrain (2007) studied the legal framework in India from the perspective of transgender issues and their rights. The researcher has analysed the various laws of the land which have not taken into consideration those issues which are very unique to the transgender community. The researcher points out two crucial areas, namely marriage, and family, where the transgender community is discriminated against and legally kept in exclusion. Recommendations are made to make more provisions to include the issues that are very pertinent to the transgender community and make the Indian Constitution and the Legal system more inclusive.

Discrimination and social stigma against transgender people continue to be significant challenges. They encounter unfair treatment in a variety of settings, including school, job, health care, and housing. Many are ostracized by their families and communities, leading to high rates of homelessness and poverty. Employment opportunities for transgender individuals are limited, and many are forced into sex work or begging to survive. They often face job discrimination and harassment, which contributes to their economic marginalization. It is important to recognize that transgenders in India frequently encounter intersecting forms of harassment and marginalization based on characteristics such as caste, religion, and socioeconomic status.

HISTORICAL CONTEXT AND EVOLUTION OF TRANSGENDER RIGHTS

Overview of the historical treatment and recognition of transgender individuals

Transgender communities have existed in numerous cultural contexts worldwide and have been referred to by various terms: as bakla in the Philippines, xaniths in Oman, and serrers in Kenya (Khan et al, 2009). Various local names have been used worldwide, in North



America they are called berdache, whereas in Papua New Guinea they are called Sambia boys, and in Thailand as katoey (Agoramoorthy and Hsu, 2015). In India, the Transgenders are known by different terms such as Hijras, Kinnar, Aravani, Kothi, Shiv-Shakti, and Jogtas / Jogappas and the most popular term being Hijras at the national level and in Tamil Nadu, they are known as Aravani and recently the term 'Thirunangai' has become the most popularly used term (Konduru and Hangsing, 2018, p.10). Sometimes terms such as 'transvestites', 'drag queens', or 'drag kings' are also used to denote them (Sangamithra, 2021, p.145).

During the Mughal Empire in the 16th and 17th centuries, hijras who were castrated (eunuchs) were highly respected and the emperors kept them as their close confidants. They were very often employed as royal servants and bodyguards in the palace (Thomas, 2015). However, circumstances changed after the entry of the British into India. When the British took over India in 1860, they made Section 377 of the Indian Penal Code, which said that homosexuality was a criminal offence and that transgender people were also criminals. This had a very bad effect on the transgender community. This remained till 2009 and had antagonised and ostracised the transgender community very much and the situation continues till the present time (Agoramoorthy and Hsu, 2015).

A community that had a glorious past and respect from the emperors and the public has now been ostracised and marginalised. Both the state and the society feared the non-conforming behaviour of the transgenders and this led to hostility and discrimination being meted out to them as a result, this community has become the most deprived and disempowered group in Indian society. They are considered less than human beings and are left to live on the margins of society (Anuvinda and Siva, 2016).

Legal Framework and Protection of Transgender Rights in India

Transgender people's legal status has long been a source of dispute and is constantly changing. They have always been rejected and excluded from mainstream society, and the question concerning their identity has gone unanswered and unresolved. Transgender people have faced prejudice and violations of their basic human rights. However, the situation appears to be changing, and changes are being reflected in the Indian legal system by defining transgender people's rights and enacting legislation to support them. The golden triangle, which controls the Indian Constitution's equality system (Articles 14, 19, and 21),



ensures that every individual has equal opportunity, regardless of race, caste, religion, race, socioeconomic class, or gender. The fundamental principles of equality are 'the right of choice and self-determination', i.e., determining which gender a person belongs to, which is one of the most fundamental and vital rights they are denied (Pandian, 2022).

Milestones and key events in the progression of transgender equality in India

Transgender rights in India have evolved over the years, with several key milestones and events marking the progression of transgender rights in the country. Indian constitution's Preamble guarantees social justice as well as economic and political equality for all of its citizens. As per Articles 14, and 21 of the Indian constitution, every person is entitled to lead a life with happiness and dignity; depriving them of this right violates the constitutional provisions granted to the citizens (Gowry, 2022). Though the Indian constitution upheld the rights of transgenders, still they were facing harassment and discrimination in various forms. Here are some of the significant milestones and key events in the history of the Indian judiciary that protected their rights and upheld their human dignity.

The Supreme Court of India's decision in the National Legal Service Authority (NALSA) v. Union of India case, which was decided in April 2014, represented a major victory for the transgender community. The court acknowledged the "third gender" legally for the first time and had a lengthy discussion about gender identity. The court acknowledged that under both international law and the constitution, people who identify as third gender have the same rights to fundamental freedoms as people who identify as cisgender. Additionally, it instructed state governments to create policies and programmes to uplift the social status and realise the rights of transgender people across the nation (Soman and Anand, 2022).

The Supreme Court of India declared in April 2014 that the sexual orientation of an individual is a fundamental component of that individual's identity, respect and liberty and that transgender individuals constitute a third gender. The Rajya Sabha passed the 'Transgender Person (Protection Rights) Act 2014' which not only recognised their gender identity but also upheld their rights due to them. This decision marked an important advancement for the transgender rights movement in India and changed the status of the entire transgender community (Chandra, 2017). To protect transgender people's rights and improve their well-being was the primary objective of the Act. The Act came into effect on



10th January 2020. This Act contains 23 sections and some of the important provisions are the Prohibition against discrimination, Right to Residence, Right to Employment, Right to Education, Right to healthcare, and Welfare Measures (Ramya and Ramesh, 2022)

Various states also made some landmark decisions and interventions that transformed the lives of the transgender community. Much earlier, in March 2009, the Tamil Nadu government established a telephone helpline named Manasu for transgender people. This project later resulted in the establishment of India's first helpline for the Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual (LGBTIA) community in Madurai in 2011. In July 2016, the Odisha state government proposed plans to provide social welfare benefits such as pension funds, residence, and groceries. In the same year, the government of Kerala made free Sex Reassignment Surgery (SRS) available at state-run hospitals for transgender people. In November 2017, N Chandrababu Naidu, who was Chief Minister of Andhra Pradesh at the time, announced pension schemes for transgender people (Sharma and Mishra, 2020).

The government has announced several projects and policies aimed at improving the lives of transgender individuals. Nonetheless, these people's fight for daily existence and societal recognition continues. The transgender community confronts significant levels of prejudice and bias in practically every aspect of their lives. Transgender people are subjected to physical, sexual, and emotional assault, as well as neglect and discrimination, particularly throughout their childhood. They are frequently isolated and abused, and they are not permitted to socialise with their peers. Families and schools serve as torture dungeons for effeminate males, who suffer charges from teachers for breaking school and societal rules. The transgender community requires a safe space to pursue educational and professional possibilities.

ANALYSIS OF THE TRIALS CONFRONTED BY TRANSGENDERS IN PURSUING THEIR RIGHTS

As we have already discussed in this article, the government has announced several programmes aimed at improving the lives of the transgender population. But there are many unexplored areas where the transgenders remain invisible and anonymous.

Since the transgenders are not accepted in their own families, they move out of their families to live an independent life. Since they were not provided safety and security, they



began to organise themselves and started living in small communities of transgenders called Jamaats (Babbar, 2016). These Jamaats resemble our families where the transgenders adopt one another as family members addressing each other as mother, grandmother, aunt, sister etc., but this in the nuances of the society and the law is not recognised as a real family. This is because society and the law view family and marriage with a gender binary perspective only.

Another societal institution where the transgenders are kept excluded is Marriage. Article 16 of the Universal Declaration of Human Rights defines the family as ‘the natural and fundamental group of a unit of society and is entitled to protection by society and state’ (Narrain, 2007). The word ‘natural’ includes primarily a male and a female which is a very strong gender binary perspective and categorically ignores the third gender This can be further understood by analysing some of the laws in India. The Workmen’s Compensation Act gives provision only a member of the heterosexual family or a relative by marriage to receive the compensation. Similarly, the Insurance Policy after the intervention of the Supreme Court in 2014 introduced the third gender option in the application. But the right to be a nominee is predominantly reserved only to relations by marriage and blood relatives.

Nevertheless, the option is given to include others too but the entire procedure is very strenuous. On the other hand, when it comes to the Criminal Law, the transgender community is treated severely. For example, section 377 of the Indian Penal Code made it a crime to engage in any sexual relations that goes against the natural order. Here transgenders are treated as sexual offenders against public morality and the law of the land (Narrain, 2007). It was only in 2018 when the Supreme Court declared this section unconstitutional and until then they were considered as criminals of sexual immorality.

Transgender Rights and Human Dignity

Transgender rights are an essential component for upholding their human dignity. International human rights law firmly establishes human dignity as a foundational tenet (United Nations, 1948). It declares that all individuals, irrespective of their identity, are entitled to equitable and respectful treatment. In India, the struggle for transgender rights is intrinsically linked to the preservation of human dignity.



Upholding transgender rights is essential for ensuring human dignity

There are various reasons for not accepting them into the mainstream society. Some of the most common notions are: i) Since they are involved in survival sex to fulfil their basic needs people look at them with contempt as moral offenders and as people with low ethical standards ii) Since some of the transgenders involved in begging sport indecent and harsh behaviour people look at them with aversion. From the observations made so far it is evident that, among the other challenges faced, the transgender community continues to face social exclusion and discrimination in crucial areas namely Housing, Healthcare, Employment, Legal Recognition and Marriage.

Since Transgenders are poor and isolated, they are denied access to all forms of health services. Several cases of Transgenders being denied housing is an everyday story. Due to a lack of proper documentation, they refused proper shelter and accommodation. There is no legal support for them to enter into marriage, having a spouse, or starting a family. They have been regularly facing workplace discrimination as well as employment discrimination (Ramya and Ramesh, 2022). Creating avenues in these areas would surely give them a place in mainstream society and ensure a dignified living. Nevertheless, to eradicate the prejudice implanted in people's minds regarding the transgender community the state and the NGOs should come forward to create and ensure Employment and Educational opportunities for them at the outset.

CONCLUSION

Transgender rights are inseparably entwined with the preservation of human dignity in India (Supreme Court of India, 2014). Before the Supreme Court's landmark 2014 verdict recognizing transgender as a third gender, this community often lived in the shadows, denied the most basic legal rights. The declaration of transgender people as a third gender in India confirms their freedom to self-identification and provide them with the same legal standing and rights as other Indian citizens. This not only empowers them but also sends a powerful message that their identities are valid and deserving of respect. Such recognition is an essential step in preserving their human dignity.



WAY FORWARD

At the end of this short study, the researcher makes the following recommendations to ensure safety, social inclusion and dignity for the transgender community:

- Awareness needs to be created of Gender diversity. Schools and colleges should address the concerns of transgenders in order to empower them through education.
- It is necessary for the media and other public platforms to highlight transgender human rights issues in order to increase public consciousness and enable transgender individuals to exercise their rights.
- Doctors and healthcare providers should be sensitive to the unique needs of transgenders. To mitigate instances of psychosocial harassment and discrimination, it is imperative to establish education programmes targeting mental health experts, including counsellors and psychotherapists.
- Parents must be educated to accept their gender non-conforming or transgender children, even if they are uncomfortable or hold traditional beliefs. The government should frame policies to continually include the transgender community in various schemes and this would normalise their presence among the mainstream society.
- The state along with the collaboration of the NGOs should make consolidated efforts to provide training for the transgender community and make them entrepreneurs / self-employed and also help them with employment opportunities. This would remove the stigma that is imposed on them as ‘sex workers.’

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