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The Pursuit of Justice: Transgender Rights and Gender Justice in India

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ABSTRACT

This article examines the socio-legal status of transgender persons in India, following the evolution of their rights from historical recognition to colonial criminalization and eventual constitutional acknowledgement. Despite progressive judicial pronouncements such as NALSA v. Union of India and legislative enactments like the Transgender Persons (Protection of Rights) Act, 2019, the transgender community continues to face systemic discrimination, social exclusion, and intra-community abuse. Through a multidisciplinary approach, the article highlights not only the external challenges—such as barriers in education, employment, and healthcare—but also the internal hierarchies within transgender collectives, notably the Guru-Chela system. It critiques the inconsistencies and limitations of existing legal frameworks, particularly the paradoxes within the 2019 Act, and underscores the need for empathetic, inclusive policymaking. It advocates for reforms grounded in lived realities, legal empowerment, and intersectional awareness to truly realize gender justice for all identities in India.

I. INTRODUCTION

Gender equality, and equality in itself, in context to education, economic opportunities, decision-making, political representation, and every other aspect of life is the most basic necessity, and a birthright of every individual. The principle of equality in international human rights instruments is expressed in very general and open-textured terms. Thus, Article 2 of the Universal Declaration of Human Rights (UDHR) provides that every human being is entitled to all the rights and freedoms within the Declaration 'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'[2] The definition of equality as under Article 14 of The Indian Constitution is:

14. Equality before law

"The State shall not deny to any person equality before the law or the equal protection of the

[1] Author is a student at Navrachana University, India.

[2] Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810 (Dec. 10, 1948), art. 2.

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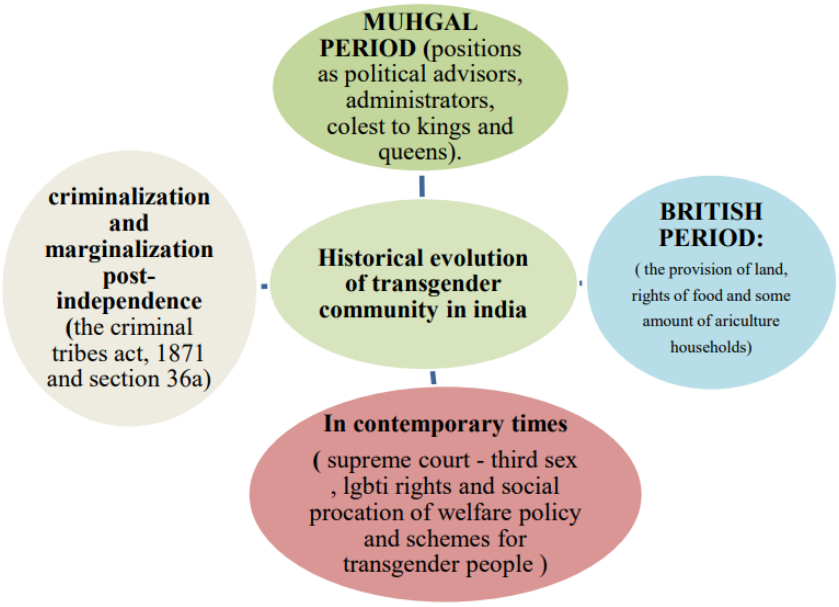
laws within the territory of India."

"Article 14 rejects any type of discrimination based on caste, race, and religion, place of birth or sex. This Article is having a wide ambit and applicability to safeguard the rights of people residing in India"

Notwithstanding the content of the article mentioned, India still remains one of the most unequal countries regarding a plethora of different matters, including gender. On the Gender Inequality Index (GII) 2022, India stands at rank 108 out of 193 countries with a score of 0.437.[3]

II. HISTORY OF TRANSGENDER INDIVIDUALS IN INDIA

'Transgender' is an umbrella term for individuals whose gender identity or gender expression do not conform to that typically associated with the sex to which they were assigned at birth. Transgender people, or *'Hijras'*, as they were called during the **Mughal period** played an important role in the royal courts of the Islamic world, particularly in the Ottoman empires and the Mughal rule in the Medieval India. They rose to well-known positions as political advisors, administrators, generals as well as guardians of the harems.[4] They were hence considered as significant assets in the politics of empire building and were high status individuals.



While they have been treated with both fear and respect for thousands of years, much of this respect did not survive Hinduism's encounter with colonialism. The British colonized most of South Asia in the 19th and 20th centuries, and were shocked by third gender people. Based in

[3] Press Information Bureau, Ministry of Women and Child Development, Azadi Ka Amrit Mahotsav: Nari Shakti Strides Forward, India Jumps 14 Ranks on Gender Inequality Index 2022, PIB Delhi (Mar. 14, 2024)
[4] M. Michelraj, Historical Evolution of Transgender Community in India, 4 Asian Rev. Soc. Sci. 17 (2015)

Christian beliefs about gender at the time, the British named all hijras criminals in 1871, and instructed colonial authorities to arrest them on sight.[5] **The Criminal Tribes Act, 1871**, included all trans individuals who were concerned in kidnapping and castrating children and dressed like women to dance in public places. The punishment for such activities was up to two years of imprisonment or a fine or both. This pre-partition history heavily influenced, and still continues to influence the status of transgender individuals in India as they formed unnecessary beliefs and deep-rooted stigmas in the minds of the people.

Section 377 of the IPC was also a colonial-era law that criminalized consensual sexual activities between same-sex couples, it dealt with "unnatural offenses". The law was enacted in 1861, during the British colonial rule in India.

Sexual activities "*against the order of nature*" were punished by imprisonment for life under Section 377. The Indian Supreme Court, later in 2018 declared Section 377 unconstitutional. (Navtej Singh Johar v. Union of India, 2018)

III. CURRENT ISSUES FACED BY THE COMMUNITY

Even after the British rule in India, the transgender community still faces horrible discrimination socially, economically and politically, and has to deal with atrocious social stigma in innumerable settings including education, employment, healthcare, and various public settings, they face difficulties in getting government identity cards (ID), changing ID cards after transition, getting bank loans, homelessness, travelling rejections and much more. Harassment and bullying at school or university merely because of being trans leads to dropping out and results in limited education and employment opportunities. Mistreatment by healthcare providers and a lack of understanding discourage trans people from seeking medical help, which leads to improper health care and unmet medicinal requirements.

"Around 80% of transgender people in India are either engaged in sex work or begging, and a large number of them face gender-based abuse and violence," said Mumbai activist Abhina Aher. Employment should be given based on potential and skill, and should not take into consideration gender identity or how a person chooses to express themselves. In order to execute this, however, awareness about the right to free expression and education to all should be made mandatory.

The trans community not only faces discrimination by the general public but also within the community itself. Transgender individuals, often marginalized and stigmatized by broader

[5] Harvard Divinity School, The Third Gender and Hijras, Hinduism Case Study - Gender (2018), Religion and Public Life at Harvard

society, turn to the transgender communities for support. However, the centralization of power and authority in the hands of the '*Guru'* forces the '*Chela'* or followers to live a life of bonded labour (The transgender community generally found in most of the South Asian countries comprises transgender women following their rules, regulation, kinship, and *Guru–Chela system*, where the *Guru* is the supreme head of the community having power and authority over the *Chelas*.) From the several acts of abuse, verbal abuse is the most prevalent form of violence within communities.

Statement		Number (Total = 150)	Percentage (%)
Verbal harassment (mimicking, swearing, humiliating)	Always	6	4
	Often	32	21.33
	Sometimes	52	34.66
	Rarely	38	25.33
	Never	22	14.66
Physical harassment (slapping, beating, burning, kicking)	Always	4	2.66
	Often	14	9.33
	Sometimes	20	13.33
	Rarely	48	32
	Never	64	42.66
Psychological harassment (subject of joke, scapegoating, making	Always	6	4
	Often	26	17.33
	Sometimes	40	26.66
	Rarely	38	25.33

Statement		Number (Total = 150)	Percentage (%)
perform degraded acts)	Never	40	26.66
Financial harassment (snatching money, holding of all income)	Always	4	2.66
	Often	36	24
	Sometimes	40	26.66
	Rarely	34	22.66
	Never	36	24
Sexual violence (forced sex, use of any object)	Always	0	0
	Often	0	0
	Sometimes	0	0
	Rarely	0	0
	Never	150	100

Table 1. Responses Regarding Type of Abuse Experienced by Transgender Women Within Their Community.

Along with all the other issues, the findings indicate that the prevalence of physical abuse within the transgender community is also high. Almost half of the respondents admitted of never facing any kind of physical violence, while other half of the respondents acknowledged encountering physical violence. Thirty-two percent of respondents have faced or have been facing physical violence, while 13.33% agreed facing physical abuse sometimes. Moreover, 9.33% face physical violence often and 2.66% always face physical violence within transgender community. [6]

[6] Nibedita Dubey & Manosmita Mahapatra, Power Inequality and Conflict: Cases of Abuse and Violence Within the Transgender Community in India, 7 J. Hum. Trafficking, Enslavement & Conflict-Related Sexual Violence 1 (2024)

IV. LEGAL STRUCTURE AND POLICIES

National Legal Services Authority (NALSA) v. Union of India (2014)

The NALSA case judgement led to the recognition of transgender people as the 'third gender' by the Supreme Court of India, upholding that the fundamental rights granted under the Constitution of India will be equally applicable to them, and gave them the right to self-identification of their gender as male, female or third gender.[7] Despite the judgement being progressive, the implementation of it in rural and underdeveloped areas of our country is very minimal, people still have a hard time changing their mentality towards the LGBTQ+ community.

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

The Bill prohibits the discrimination against a transgender person, including denial of service or unfair treatment in relation to: (i) education; (ii) employment; (iii) healthcare; (iv) access to, or enjoyment of goods, facilities, opportunities available to the public; (v) right to movement; (vi) right to reside, rent, or otherwise occupy property; (vii) opportunity to hold public or private office; and (viii) access to a government or private establishment in whose care or custody a transgender person is.[8]

The transgender community, however, strongly opposes this act, stating reasons as to why the law contradicts their fundamental rights. The act claims that trans persons will have the right to a gender identity that is self-perceived, to which the activists said that gender identity cannot be changed in the official documents without an assured certificate of identity by the district magistrate (can only be acquired after evidence of sex reassignment surgery).

The act also provides the right for residence, forcing all trans persons below the age of 18 to live with their biological family, to which the activists argue that trans people often face horrific discrimination and brutality within their own families, and such a provision can lead to more harm than good.

V. CONCLUSION

Though India has taken significant measures to take into consideration the rights of transgender individuals through various schemes and acts, there is still a substantial amount of population going out of their way to discriminate against trans people. In order to move forward, it is

[7] National Legal Services Authority v. Union of India, (2014) 5 S.C.C. 438 (India)
[8] The Transgender Persons (Protection of Rights) Bill, 2019, Bill No. 210 of 2019, Ministry of Social Justice and Empowerment (India)

essential to strengthen the implementation of existing laws and policies, also, teaching children from a young age and spreading awareness about gender variety, fluidity etc. is crucial. Teaching children to respect each other and build trustable bonds is extremely important, every school must also have licensed counsellors who could help children going through tough times at school or any other setting.

The trans community should also be included in pension schemes in order to fully enjoy their rights.

Medical care should be made easier for the community, medical professionals must be empathetic towards all people in need regardless of any external factors.

Anti-discrimination policies should be mandatory at work places, universities and schools, to maintain proper and healthy workplace relationships so as to increase work efficiency while also ensuring the wellbeing of all individuals.

The voices of transgender individuals should also be heard and implemented in policy-making. This could be the key to a better India, where every individual feels like they belong and is empowered, respected and protected. India can only become truly inclusive when equality goes beyond legislation and becomes a lived reality for all.

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