
Gender and Identity: A Thematic Study of Transgender Rights

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Abstract

A person has the right to choose their gender identity. The Supreme Court of India upheld every Indian citizen's freedom to determine their gender identification independent of gender affirmation surgery in National Legal Services Authority v. Union of India. The Transgender Persons (Protection of Rights) Act, 2019, which was released by the Indian government in response to this judgment, aims to protect the rights of transgender people and their welfare as well as any issues related to or incidental to those goals. States throughout India have established transgender welfare boards. India has a number of problems for transgender persons. As a result of this discrimination, transgender persons are not only denied equitable access to fundamental social services like work, health care, education, and housing but they are also marginalized in society and placed among the weaker groups in danger of social exclusion. In this article, the author focuses on some of the most pressing issues transgender Indians confront. This article seeks to examine the socio-legal status and sense of self of transgender people. For the purpose of preserving their fundamental rights, which are protected by the Indian Constitution, the Hijras, eunuchs, and other members of the community should be considered as the third gender.

Keywords: Transgender, Discrimination, Marginalized, Fundamental, Eunuchs.

Introduction

Gender identity is one of the most fundamental aspects of life. The sex of a person is usually assigned at birth and becomes a social and legal fact from there on. However, a relatively small number of people experience problems with being a member of the sex recorded at birth. This can also be so for intersex persons whose bodies incorporate both or certain aspects of both male and female physiology and at times their genital anatomy. For others, problems arise because their innate perception of themselves is not in conformity with the sex assigned to them at birth. These persons are referred to as 'transgender' or 'transsexual' persons, and the current paper relates to this group of people. The human rights situation of transgender persons has long been ignored and neglected, although the problems they face are serious and often specific to this group alone. Transgender people experience a high degree of discrimination, intolerance, and outright violence. Their basic human rights are violated, including the right to life, the right to physical integrity, and the right to health. The transgender community is incredibly diverse, despite the fact that there are not many trans people in the world. It encompasses both transsexuals who have had surgery and those who have not, as well as those who prefer not to or do not have access to surgery. They may identify as transgender males or females (FTM or MTF), and they may or may not have received hormone treatment or surgery. The community also includes transvestites, cross-dressers, and other individuals who do not fall into the rigid definitions of "male" or "female." A significant portion of the population is excluded by several legislative frameworks that only appear to apply to transsexuals.

Understanding the difference between the concepts of "sex" and "gender" is crucial for comprehending the idea of gender identity. The term "gender" encompasses both the social and biological aspects of the distinction between the sexes, whereas the term "sex" primarily refers to the biological difference between men and women. The idea of "gender identity" presents the chance to comprehend the possibility that the sex given to a baby at birth may not coincide with the intrinsic gender identity the youngster eventually develops as they become older. It describes each person's strongly felt internal and unique experience of gender, which may or may not match the sex given at birth. It also relates to the individual's feeling of their own body and other gender manifestations, such as dress, voice, and mannerisms. Most persons who are officially classified as males or women will also identify as either male or female. However, transgender people do not necessarily acquire the matching gender identification and could choose to modify all or a portion of their legal, social, and physical status to reflect their gender identity. Transgender persons frequently include changes to their bodies' appearance or functionality through clothing, medicine, surgery, or other methods as part of their unique gender experiences. Grasping the issues transgender people experience with regard to their human rights requires a grasp of both the concept of gender identity and the forms of gender expression employed in daily life. Unfortunately, certain legal systems in Council of Europe member states include gender identity under the umbrella of "sexual orientation," which is incorrect because gender identity and sexual orientation are two distinct notions. An individual's ability for intense emotional, sexual attraction to, and intimate sexual encounters with, people of a different gender, the same gender, or more than one gender (heterosexuality, homosexuality, and bisexuality) is referred to as their sexual orientation. Additionally, a lot of national and international medical classifications require transgender people to be diagnosed with mental problems. In particular, when it is used to limit the legal ability or option for medical treatment, such a diagnosis may prevent transgender persons from fully exercising their basic rights. Applying a consistent human rights approach without excluding any group of people is the problem in defending the rights of everyone. It is obvious that many transgender people do not completely enjoy their fundamental rights, both in terms of legal protections and in terms of day-to-day living. We must thus examine their condition more carefully. The purpose of this issue paper is to further the conversation on transgender human rights concerns and increase awareness of the difficulties faced by transgender individuals. Gender identity is recognized as one of the illegal grounds for discrimination; for instance, people who are transgender, transsexual, or intersex frequently experience grave human rights violations, like harassment in public places like schools or the workplace. Everywhere, a person's right to legal equality under the law is guaranteed. People with various sexual preferences and gender identities must have full legal rights in all spheres of life. One of the most fundamental parts of one's ability to exercise self-determination, dignity, and independence is the way in which they identify their sexual orientation and gender identity. Nobody must be required to undertake medical treatments, such as sex reassignment surgery, sterilization, or hormone therapy, in order to have their gender identification legally recognized. Nobody may be forced to hide, repress, or deny their gender identity or sexual orientation.

Violence and Transphobia Against Transgender People- People who identify as transgender must constantly deal with violence and terror. This violence includes everything from verbal abuse to murderous hate crimes, as well as harassment, bullying, physical violence, and sexual assault. One of the primary reasons why many transgender individuals experience violence and intolerance is transphobia, which is defined as the irrational fear of and or animosity towards people who are

transgender or who otherwise defy established gender standards. Some individuals appear to have an issue with the very presence of persons whose gender identification on the outside differs from their gender on the inside. However, violence against transgender individuals cannot be justified by unknowledge or illiteracy. 72% of respondents reported having been the target of harassment in public, according to the Engendered Penalties research. 21% of respondents said they avoid going outside, and 46% said they have encountered harassment in their communities. In the Indian research, 79% of the participants reported having been subjected to verbal abuse, threatening behavior, or physical or sexual abuse while in public. Transgender children and young adults frequently experience bullying at school and in the home, as well as possible expulsion from the family. These situations create a hazardous atmosphere for them both at home and at school. Teenagers who are female to male or male to female were severely insulted by their families in 41% of cases and in 16% of cases, to the point where 20% of female-to-male individuals were completely cut off from their families. There is very little appropriate counseling and few support networks accessible for these transgender adolescents and their parents when people recognize at a young age that they connect more strongly with the opposite gender and express the desire to become a girl or boy.

Therefore, it might be difficult for transgender children and young people to find information, support, or therapy. Receiving such knowledge and help is in the child's best interests because, for transgender adolescents, remaining silent and ignoring their concerns only results in marginalization, bullying, self-hatred, academic failure, and very high suicide rates. According to studies, 34% of transgender kids in India tried suicide before receiving knowledge and care. Children who identify as transgender have the right to essential protection, assistance, and information under international human rights law. The likelihood that a transgender man or woman may be the victim of a hate crime or other incident motivated by hatred is quite high. Homophobic hate crimes and occurrences frequently display a high level of brutality and cruelty. They frequently entail brutal beatings, torture, mutilation, castration, and even sexual abuse. Additionally, it is quite likely that they will cause death. People who identify as transgender seem to be much more at risk in this group. Despite these findings, the statute does not specifically include gender identification as a potential discriminatory basis for hate crimes. In reality, law enforcement officers frequently provide minimal protection for transgender persons in the case of a transphobic hate crime or incident. Transgender persons who seek protection from law enforcement authorities may experience mockery, harassment, or just plain indifference.

India's Transgender Community and Its Identity- The term "transgender" refers to persons whose gender identification differs from the gender they were assigned at birth. "A person whose gender does not match with the gender that was assigned to them at their birth but who is the person with intersex variation and genderqueer" is referred to as a transgender person. These people have either male or female anatomy at birth, but their gender expression, identity, or behavior are different from their natal sex, therefore they feel different from their bodily structure. Transgender is a phrase that encompasses those whose gender expression, identity, or behavior deviates from the standards expected of their natal sex and is not just used to refer to those whose genitalia are mixed. This group includes individuals who identify as transgender male, transgender female, male-to-female (MTF), and female-to-male (FTM). Additionally, it covers transsexuals, genderqueer persons, and crossdressers (those who dress in attire from the opposite gender).

There are several identities associated with transgender people in India, including the Hijras, Aravanis, Kothis, Jogtas/Jogappas, and Shiv Sakthis. They used to be treated with a lot of respect. The transgender population in India refers to itself as "Hijra," which is a Persian term that may also be rendered as "eunuch." Male-to-female transgender people who have SRS (Sex Reassignment Surgery) or who have Nirwaan, a conventional method of castration, are referred to as "Aravani". The term "Kothi" refers to people who live separately from Aravanis yet take on a feminine role in same-sex partnerships. Male-to-female transgender people known as Jogtas/Jogappas live in Maharashtra and Karnataka and dedicate their lives to serving a certain deity. Males known as Shiv Shakti, who are believed to be wed to gods, notably Lord Shiva, may be seen in Andhra Pradesh. They often provide astrological or spiritual healing services.

India's Legal Protections for Transgender People- Persons who identify as transgender do not fit the gender binary or the idea that there are only two genders—men and women. Transgender persons exhibit various physical traits, personalities, and behaviors. Due to the fact that society does not recognize their gender identification and because they are different from the other gender, transgender persons experience social discrimination. Additionally, they are the targets of physical abuse. Lack of education, unemployment, homelessness, a lack of access to health care, depression, alcoholism, and prejudice are their primary issues. The Indian Constitution has given them their own rights to protect them and help them with their issues, and the Supreme Court has granted them the right to be recognized as "Third Gender" and given them some social benefits.

People who identify as transgender has experienced prejudice for a very long time since, historically, neither society nor the law recognized their gender identity. As a result, they were obliged to use the pronouns male or female to describe themselves. To remove the prejudice, they faced and protect their rights, the Indian Supreme Court recognized transgender people as the third gender. The center was ordered by the court to recognize transgender people as economically and socially disadvantaged groups and to provide them preference for employment and admittance to educational institutions based on their third gender category. The third gender was given legal recognition in the landmark case of National Legal Service Authority v. Union of India when the Hon'ble Supreme Court decided that the third gender should have access to the same fundamental rights as men and women. Under Articles 14, 15, 16, and 21, the court accords equal rights and protection to transgender people. The court emphasized the value of the right to dignity and awarded the individual's gender identity, which was based on reassigned sex following Sex Reassignment Surgery, fair respect since the person had a fundamental right to be recognized as a man or female. Therefore, transgender people have the right to legal protection under the law in all areas of governmental activity, including education and work. In India, the rule of law is supreme and everyone is treated equally. However, the transgender community is engaged in an ongoing struggle as they must contend with oppression, abuse, and prejudice from all corners of society, including their own family, friends, and the general public. Transgender persons struggle every day to find acceptance since they are shunned by society and humiliated everywhere.

The Supreme Court has issued directives for the preservation of transgender people's rights, including the inclusion of a third category in identification papers like as passports, driving licenses, ration cards, and electoral cards, as well as for entrance to hospitals, schools, and other establishments. Human rights are fundamental freedoms and rights that are inalienable to any government and are guaranteed

to every person just by virtue of that person's existence. Included in it are the rights to life, liberty, equality, dignity, and freedom of speech. The Transgender Community sought a legal declaration of their gender identity rather than the identity of male or female that was assigned to them at the time of their birth, and their prayer was that non-recognition of their gender identity was in violation of Articles 14 and 21 of the Indian constitution. The Supreme Court was concerned with their grievances and suffering. In National Legal Service Authority v., the Union of India. In its final ruling, the Supreme Court ruled that transgender people should be recognized as belonging to a "third gender" for the purposes of preserving their rights under Part III of the Indian Constitution as well as the legislation passed by the Parliament and State legislatures. The state government was further ordered by the court to officially recognize their third gender identification. The government was also instructed by the honorable highest court to eliminate societal stigma, support particular health initiatives, and provide equal protection for transgender persons.

Conclusion- Transgender persons have long faced prejudice in the areas of housing, health, education, and work. As a result of the societal shame and isolation associated with being transgender, individuals experience discrimination. The Transgender Person (Protection of Rights) Act, 2019, prohibits discrimination in key industries including work, education, and healthcare in order to protect transgender people's rights and keep them safe from prejudice. The education of transgender people is just as important as that of people of other genders, but because of the social stigma they experience, they lose interest in and focus on their studies. They also start to feel shunned and embarrassed. Transgender students are frequently refused admission to educational institutions because those institutions do not accept their gender identities. The Transgender Person (Protection of Rights) Act, 2019, establishes that educational institutions that receive government funding or recognition must allow transgender students access to sports, leisure, and education without discrimination. People who identify as transgender have experienced prejudice at work and in the hiring process. They experience discrimination mostly in the form of invasions of privacy, refusals to hire them, and harassment, which causes them to lose their jobs and fall into poverty. The transgender person protection act prohibits government or even private organizations from discriminating against transgender people in matters of employment, including recruitment and promotions. It also mandates that each establishment appoint a person to serve as a complaint officer to handle complaints pertaining to the act. The petitioner in the current case had submitted an application for the position of a female police constable in the matter of Nangai v. the Superintendent of Police. The application examinations were administered by the Tamil Nadu Uniformed Services Recruitment Board in Chennai. The petitioner's application was accepted, and the Superintendent of Police for the Karur district issued her an order of appointment. She received a medical test as part of her training at the Vellore Police Recruit School. She was deemed to be "transgender" based on her chromosomal makeup and genitalia by the examination. Her birth certificate, medical records, and academic credentials were in conflict with the medical examination's findings. Later, The Superintendent gave her the order to resign from her position as a female constable. According to the medical declaration and the impugned order of termination from service issued by the Superintendent of Police, the Hon'ble High Court upheld the petitioner's right as a transgender person to freely choose a different gender identity as a third gender in the future. The new law in India creates a two-step procedure. An individual must first apply for a "transgender certificate" from their local District Magistrate. On the basis of a person's self-declared identity, this is possible. A "change in gender certificate," which instructs authorities to change a

person's legal gender to male or female, can then be requested by a certificate holder. However, in order to go to the next stage, the patient must provide a hospital official's certificate proving they underwent surgery to the District Magistrate for a second opinion. The official must be "satisfied with the correctness of such certificate." In *NALSA v. India*, the Indian Supreme Court declared in 2014 that transgender individuals should be recognized as a third gender and have access to all basic rights in addition to special privileges in work and education. In a written opinion for the bench, Justice K.S. Radhakrishnan commanded that "Transgender persons' right to decide their self-identified gender" be recognized by state and federal authorities. The court ruled unequivocally that "any insistence on [sex reassignment surgery] for declaring one's gender is immoral and illegal." Transgender persons should be accepted by the government on their own terms, free from coercion or prejudice, according to Indian courts' longstanding rulings. A key component in reaffirming each person's value and dignity is their right to be recognized as a person before the law, which is protected by a number of international human rights accords.

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