

How Transgender Rights Are Reshaping Society: A Journey Towards Exploring Identity, Equality and Recognition of Transgender Community in India

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Abstract

Transgender rights have emerged as a significant issue in contemporary society, emphasizing the need for inclusivity and equality. This article explores key themes such as identity, equality, and advocacy in the context of transgender rights. The term "transgender" encompasses individuals whose gender expression differs from their sex assigned at birth. The Transgender Persons (Protection of Rights) Act, 2019, aims to reduce stigma and discrimination, promoting inclusion and productivity. However, challenges remain, including discrimination and limited access to education and employment. The Government has implemented schemes such as Garima Greh and the SMILE scheme to address these challenges. The impact of transgender rights includes changes in societal attitudes and legislation. The judiciary has played a very crucial role in advancing transgender rights, with landmark judgments recognizing the third gender and affirming the right to self-identify. Despite progress, ongoing advocacy is necessary to ensure full equality for transgender individuals.

Keywords: *Transgender Rights, Identity, Equality, Inclusivity, Advocacy*

Introduction

"Transgender Rights are not just about legal reforms; they are about social acceptance and cultural transformation."

– Judith Butler¹

¹American philosopher and gender studies scholar, whose work has significantly influenced political philosophy, ethics, third-wave feminism, queer theory, and literary theory.

Transgender rights have become a significant issue in contemporary society, emphasizing the need for greater inclusivity and equality for transgender individuals. Identity is central to discussions on transgender rights, as transgender individuals often face challenges in expressing their true selves, leading to discrimination and stigma. Embracing and understanding diverse gender identities are vital steps towards fostering a more inclusive society.

Equality is another key theme in the discourse surrounding transgender rights, as transgender individuals have been historically marginalized and discriminated against. Achieving equality for them requires challenging societal norms and advocating for policies that safeguard their rights.

The term “transgender” encompasses individuals whose gender expression, identity, or behaviour deviates from the norms associated with their assigned sex at birth. The historical journey of the transgender community in India is multifaceted, tracing back to ancient civilizations where texts such as the Vedas, Kama Sutra, and Manu Smriti acknowledged the existence of a third gender. Despite positive developments, such as the Supreme Court of India's recognition of transgender individuals as a third gender and welfare policies, challenges remain, including discrimination and limited access to education and employment opportunities.

The Government has implemented various schemes and initiatives to address these challenges, like the Garima Greh shelter homes and the SMILE scheme. The National Council for Transgender Persons advises the government on policies and projects related to transgender persons. In this article, we delve into the profound significance of transgender rights in contemporary society, with a focus on pivotal themes such as identity, equality, and advocacy. We aim to explore the challenges encountered by transgender individuals, the strides made in advancing their rights, and the ongoing endeavours to promote inclusivity and equality for all.

Meaning and Definitions

The term “transgender” encompasses individuals whose gender expression, identity, or behaviour differs from the norms associated with their sex assigned at birth. This includes various identities such as transgender female, transgender male, female to male, male to female, cross dressers (it means individuals who wear clothing typically associated with another gender), genderqueer people (who may identify as both genders or neither gender), and transsexuals.

The Act² defines a “transgender person” as someone whose gender does not align with the gender assigned to them at birth. This definition includes trans-men, trans-women, individuals with intersex variations, genderqueer individuals, and those with socio-cultural identities such as Kinner, Hijra, Aravani, and Jogta, irrespective of whether they have undergone medical treatments like Sex Reassignment Surgery, hormone therapy, laser therapy, or other forms of

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

therapy.³

Review of the Related Literature

M. Michelraj's article delves into the history of the transgender community, tracing its origins back to ancient civilizations. It discusses the concept of a third gender, or "tritiyaprakriti," in Vedic culture and the significant roles of transgender individuals in Indian mythology and folklore. The British colonial rule led to the Criminal Tribes Act, 1871, targeting the Hijra community. Post-independence, the transgender community faced marginalization and discrimination, but the Supreme Court recognized them as a third gender and implemented welfare policies. The article calls for the elimination of stigma and continued support for their social and economic development.

Drishti IAS Article, The National Council for Transgender Persons, established under the Transgender Persons (Protection of Rights) Act, 2019, is a significant step in India's fight against discrimination against transgender individuals. The Act defines transgender individuals as individuals with various gender identities and allows them to obtain a certificate of identity. It also prohibits discrimination in education, employment, and healthcare. The council advises the central government on policies and projects related to transgender persons, ensuring their full participation in society. However, its effectiveness depends on addressing specific issues and broader societal sensitization.

A study by Shalini Lakshmiopathy and Dr. S. Thenmozhi examines the quality of life of male-to-female transgenders in Chennai. The researchers highlight the societal attribution of gender and the challenges faced by transgender individuals, including accessing quality of life. The study uses quantitative methods and a descriptive research design, using in-depth interviews and the WHOQOL-BREF standardized tool for data collection. The research highlights the importance of understanding transgender identity and the evolution of transgender rights movements globally. The study found a low quality of life among transgender participants, with age and education not significantly correlated with their quality of life.

The author provides a comprehensive overview of the status and rights of transgender persons in India. It discusses the historical marginalization of the community and highlights recent legal and policy developments aimed at improving their welfare. The review also acknowledges the challenges faced by transgender individuals, such as discrimination and lack of access to education and employment. Furthermore, it emphasizes the importance of advocacy and activism in promoting transgender rights and equality. Overall, the review underscores the need for continued efforts to address social exclusion and promote the inclusion of transgender

³*Id.* Sec. 2(K).

persons in Indian society.⁴

Historical Evolution of Transgender Community in India

The history of the transgender community in India is a complex tapestry of acceptance, recognition, and marginalization. Ancient Indian writings, such as Hindu mythology, folklore, epics, and Vedic and Puranic literature, mention the existence of a "third sex" or individuals who do not conform to traditional male or female gender roles. The concept of "tritiyaprakriti" or "napumsaka" denotes a gender identity distinct from masculine and feminine markers.⁵

Transgender individuals, such as the hijras, are depicted as integral parts of society in texts like the Ramayana and Mahabharata. During the Mughal period, hijras held important positions in the royal courts, serving as political advisors, administrators, generals, and guardians of the harems. However, with the advent of British colonial rule, the status of hijras changed, leading to their eventual criminalization. Early European travellers expressed disdain for hijras, reflecting a shift in societal attitudes.⁶

Despite these challenges, the transgender community in India has continued to persevere. In contemporary times, the Government of India has implemented new policies and schemes for the social protection and welfare of transgender individuals, marking a significant step towards recognition and inclusivity.⁷

In 2013, the government established an expert committee to examine the challenges faced by transgender individuals and propose remedies.⁸

In the case of *National Legal Services Authority v. Union of India*⁹ in 2014, the Supreme Court of India recognized transgender individuals as a 'third gender.' The court affirmed that transgender people are entitled to the same fundamental rights guaranteed by the Constitution of India as any other citizen, including the right to self-identify their gender as male, female, or third-gender.¹⁰

In 2014, a private member Bill, the Rights of Transgendered Persons, was introduced in the Rajya Sabha, focusing on their entitlements in health, education, skill development, employment, and protection from abuse and torture. Likewise, in 2016: The Government

⁴Monojit Garai, *Empowering the Transgender Community in India: A situation analysis of initiatives of Govt. of India*, 6 NSOU-OPEN J. 27 (2023), <http://www.wbnsou.ac.in/openjournals/index.shtml>.

⁵M. Michelraj, *Historical Evolution of Transgender Community in India*, Asian Review of Social Sciences, 17-18, (2015). (15/04/2024), <https://arssjournal.org/index.php/arss/article/view/1304/6665>.

⁶*Id.*

⁷*Id.*

⁸*National Council for Transgender Persons*, Drishti IAS, (16 Apr. 24), <https://www.drishtiias.com/daily-news-analysis/national-council-for-transgender-persons>.

⁹AIR 2014 SC 1863

¹⁰*The National Legal Services Authority (NALSA) v. Union of India*, AIR 2014 SC 1863.

introduced its own Bill in the Lok Sabha and it was referred to a Standing Committee.

In 2019, the Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019. aims to establish a National Council for transgender individuals, defining them as those whose gender does not match their birth assigned gender. They have the right to self-perceived gender identity, residence with parents and immediate family members, and prohibit discrimination in education, employment, and healthcare. Offences against transgender individuals can result in imprisonment between six months and two years.¹¹ Consequently, in 2020, the Government established the National Council for Transgender Persons.¹²

In January 2022, The Ministry of Home Affairs recently issued an advisory to Heads of Prisons in the States/UTs, emphasizing the importance of ensuring the privacy and dignity of third-gender inmates. However, the Prisons Act of 1894 in India does not currently recognize sexual minorities based on Sexual Orientation and Gender Identity (SOGI) as a distinct class of prisoners. Instead, it categorizes prisoners into groups such as women, young offenders, undertrials, convicts, civil prisoners, detainees, and high-security prisoners. As of 2020, a report from the National Crime Records Bureau indicated that there were 70 transgender prisoners incarcerated in jails across the country.¹³

In 2022, The Ministry launched the SMILE scheme on 12.02.2022, focusing on comprehensive rehabilitation for transgender individuals, providing medical facilities, counselling, education, skill development, and economic linkages.¹⁴

Transgender Rights and Equality

Transgender individuals have historically endured discrimination and marginalization, but recent years have seen a surge in efforts to secure their rights and promote equality. Intersectionality, which considers how factors like race, class, and disability intersect with gender identity, is crucial in understanding the compounded discrimination and exclusion faced by transgender people.

Achieving equality for transgender individuals is multifaceted. While legal recognition and protection are crucial, societal attitudes and cultural norms also need to evolve. Education and awareness are key in challenging stereotypes and fostering understanding and acceptance.

Despite progress, significant challenges persist. Transgender individuals often encounter barriers

¹¹*Supra Note4.*

¹²*Supra Note10.*

¹³Recognition in Indian Prisons, (16 April 2024), <https://www.drishtias.com/to-the-points/Paper2/the-transgender-persons-protection-of-rights-act>.

¹⁴Development of Transgender's, (16 April 2024),

<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1806166#:~:text=Ministry%20of%20Social%20Justice%20and,on%2010th%20Jan%2C%202020..>

in accessing healthcare, education, and employment, and face discrimination and violence in many societies. To address these challenges, continuous efforts are essential. Governments and organizations must work to enact and enforce laws that protect transgender rights. Education campaigns should aim to increase empathy and understanding for transgender individuals. Through these collective efforts, true equality for transgender people can be achieved. It is worth noting that transgender individuals were granted equal status under Article 14 of the Indian Constitution in 2014, marking a significant step towards their rights and recognition.

Status of Transgender Persons in India

The status of transgender persons in India has undergone significant changes in recent years, reflecting a shift towards greater recognition and acceptance. The statistics available on the National Portal for Transgender Persons reveal that the following number of certificates and Identity cards has been issued to transgender persons amongst the participated 33 States.¹⁵

Total Issued Certificates and Identity Cards					
Till Date: 16 April 2024, 7.14 AM					
Total Application Received	Total Certificate Issued	Total Identity Card Issued	Not Eligible Applications	Pending Applications	UT/ States Participated
23,486	19,004	18,996	3,200	4,516	33

Table 1: TG Certificate and ID Card Received, <https://transgender.dosje.gov.in>

Education of Transgender Persons in India

Educating transgender individuals in India is a multifaceted challenge that necessitates recognizing and accepting the differences between genders. The Universal Declaration of Human Rights affirms the right to education for all, including free and compulsory elementary education, access to technical and professional education, and equal opportunity for higher education based on merit. While India has established norms and laws for the education of transgender individuals, there is a critical need for greater awareness and understanding of their rights, as well as for societal support to ensure their access to education.¹⁶

In the 2011 Census, India had 4,87,803 transgenders, with Uttar Pradesh having the highest

¹⁵Supra Note10.

¹⁶Supra Note6.

number, accounting for over 28% of the nation's transgender population. The literacy rate for transgender individuals is low, with Mizoram having the highest literacy rate at 87.14%. Kerala and Daman & Diu have lower rates at 84.61% and 75.51% respectively.¹⁷

To address issues faced by the transgender community in higher educational institutions, the University Grants Commission (UGC) issued a circular to Vice Chancellors of universities requesting the inclusion of a transgender category in application forms, academic testimonials, and other relevant documents. The Commission also directed universities to take affirmative action to ensure adequate acclimatization without fear, stigma, or shame for transgender Students.

Thus, understanding and accepting the differences between men and women is crucial for promoting equality and inclusivity in education.

Measures for the Protection and Welfare of the Transgender Person in India

The transgender community in India experiences discrimination, family exclusion, and limited access to health care, housing, welfare, and employment opportunities. However, Odisha stands out as the only state to have implemented a special resolution aimed at improving their social and economic status. The state has also adhered to Supreme Court directives to recognize transgender individuals as a legal third gender. Odisha has implemented various initiatives such as providing food grains, pension schemes, health care programs, educational support, and housing loan benefits to transgender individuals, including those classified as Below Poverty Line. Additionally, in 2015, the Rajya Sabha passed a bill advocating for transgender rights.

The Transgender Persons (Protection of Rights) Act 2019

The Act aims to reduce stigma, discrimination, and abuse against transgender individuals, promoting their inclusion in society and fostering greater inclusiveness, thereby fostering their productivity and productivity.

- Non-discrimination in education, employment, healthcare.
- Recognition of Transgender identity and self-perceived gender identity.
- Right of Residence with parents and immediate family members.
- Formulation of welfare schemes for education, social security, and health.
- National Council for Transgender Persons to monitor and evaluate rights protection measures.

¹⁷ Census Report, 2011.

Transgender Persons (Protection of Rights) Rules, 2020

The Transgender Persons (Protection of Rights) Rules, 2020, were published in India's Gazette on September 29, 2020, aimed at recognizing transgender identities and preventing discrimination in areas such as education, employment, healthcare, property rights, public office, and access to public services.

National Council for Transgender Persons

The Council was established by the Central Government on August 21, 2019, under Section 16 of the Transgender Persons (Protection of Rights) Act, 2019. The council's functions include advising the Central Government on policy formulation, monitoring and evaluating the impact of policies for equality and full participation of transgender persons, reviewing and coordinating activities of government departments and non-government organizations, redressing transgender persons' grievances, and performing other functions as prescribed by the Central Government. The council includes representatives from various Ministries/Departments, five transgender community representatives, representatives of the National Human Rights Commission and National Commission for Women, representatives of State Governments and UTs, and experts representing NGOs. The Union Minister of Social Justice & Empowerment serves as the Chairperson and Vice-Chairperson, respectively.¹⁸

Schemes for Transgender Persons

There are several schemes and initiatives in India aimed at improving the lives of transgender persons. Some of these include-

- **Garima Greh: A Shelter Home for Transgender Persons (2020)**

In November 2020, the Ministry of Social Justice and Empowerment launched Garima Greh, a shelter home designed specifically for transgender individuals. This initiative aims to provide a safe and inclusive space for transgender persons, addressing their various needs and facilitating their holistic development.

The Garima Greh scheme offers a range of services, including shelter, food, clothing, recreational activities, skill development opportunities, yoga, physical fitness programs, access to libraries, legal support, technical advice for gender transition and surgeries, capacity building for trans-friendly organizations, and employment assistance.

Each Garima Greh is designed to accommodate a minimum of 25 transgender persons, ensuring that a significant number of individuals can benefit from these facilities. The Ministry has identified 10 cities where a total of 12 Shelter Homes will be set up, providing widespread

¹⁸*Supra Note10.*

access to these essential services for transgender individuals across the country.¹⁹

Presently there are 12 Garima Greh in the existence in Country. Details of such Greh are the following-

Sr. No.	Name of Garima Gresh	Address	Name of Contact Person	State
1.	Mitr Trust	Mitr Trust Garima Greh B-51, B Block, SITA PURI, NEW DELHI-45 Landmark: Dabri police station 110045	Ms Rudrani Chhetri Project Director	New Delhi
2.	Sakha	Sakha plot no-335/1080 Ebaranga, In front of Champati Petrol Pump Sundarpada, Bhubaneswar, Odisha pin-751002	Mr. Saroj Kumar Hota Programme Manager	Odisha
3.	Transgender Rights Association	No. c-122/69, Karthikeyan Salai, Periyar Nagar, Kolathur, Chennai, 6000082	R. Jeeva Project Director	Tamil Nadu
4.	Dostana Safar	Gandhi High School campus, Model school building, Khagaul, Patna, 801105	Reshma Prasad Project Director	Bihar
5.	Kinnar Asmita	Tamanna Residency 3rd floor, near saibaba mandir, Hajimalang road, Dwarli pada, Kalyan east, Thane, 421306	Neeta Kene	Maharashtra
6.	Mitwa Sankalp Samiti	Chhattisgarh Mitwa Sankalp Samiti Garima Greh, Raipur Near	Ms. Vidya Rajput Project Director	Chattisgarh

¹⁹Garima Gresh, (16 Apr.

24), <https://transgender.dosje.gov.in/Applicant/Registration/DisplayForm5#:~:text=The%20main%20aim%20of%20Garima,medical%20care%20and%20recreational%20facilities..>

		Krishna Public School, Sarona, Raipur, 492010		
7.	Tweet foundation	12, Road No-2, Teen Dongari, Yashwant Nagar, Goregaon (West) Mumbai, 400104	Maya Awasthy Project Director	Maharashtra
8.	Aarju Foundation	Banglow No. 17, HISSA number 26, Premnagri Road, Pali Devad, Panvel, 410206	Mansi Jani Project Director	Maharashtra
9.	Gokhale Road Bandhan	773 Purbalok Kalikapur Mukundapur, Kolkata, 700099	Ranjita Sinha Project Director	West Bengal
10.	Kolkata Rista	95/D77 Basundhara Chingrighata, Canal South Road, Lakshmimina Bhaban, Kolkata, West Bengal, 700105	Dr. Santosh kr. Giri Project Director	West Bengal
11.	Lakshya Trust	302/303/304, Shilalekh Complex, Opp. To Ford Showroom, Munjmahuda, Vadodara, Gujarat – 390020	Mr. Sylvester Merchant Project Director	Gujrat
12.	Nai Bhor Sansta	46, Marudhar Vihar, Khatipura Road, Jhotwara, Jaipur, 302012	Pushpa Maai Project Director	Rajasthan

Table 2: Garima Greh,

<https://transgender.dosje.gov.in/Applicant/Registration/DisplayForm5#:~:text=The%20main%20aim%20of%20Garima,medical%20care%20and%20recreational%20facilities.>

- **SMILE (2022):** The Ministry of Social Justice and Empowerment has launched a national scheme called “SMILE - Support for Marginalized Individuals for Livelihood and Enterprise”, which includes two sub-schemes: “Comprehensive Rehabilitation for Welfare of Transgender Persons” and “Comprehensive Rehabilitation of persons engaged in the act of Begging.” The scheme aims to provide comprehensive welfare measures for both transgender and begging individuals, including rehabilitation, medical

facilities, counselling, education, skill development, and economic linkages, with support from various organizations.²⁰

- **Skill India Mission (2022):** It is an initiative by the Ministry of Skill Development and Entrepreneurship (MSDE) to provide short-term Skill Development training and long-term Craftsman Training Scheme (CTS) to youth from all sections of society, including transgender persons, across India through various schemes.²¹

Impact of Transgender Rights on Society

Transgender rights have had a profound impact on society, leading to changes in attitudes, public policies, and legislation. The recognition and protection of transgender rights have contributed to a more inclusive and equitable society, although challenges remain.

1. Changes in Societal Attitudes

- **Greater acceptance:** Increased visibility and advocacy have led to greater acceptance of transgender individuals in society.
- **Stigma reduction:** Efforts to promote understanding and empathy have helped reduce stigma and discrimination against transgender people.
- **Cultural shift:** Society is gradually moving towards a more inclusive understanding of gender identity, challenging traditional binary concepts.

2. Influence on Public Policies and Legislation

- **Legal recognition:** Many countries have enacted laws recognizing transgender rights, including the right to change gender markers on official documents.
- **Anti-discrimination measures:** Legislation has been introduced to protect transgender individuals from discrimination in various areas, such as employment, education, and healthcare.
- **Healthcare access:** Some countries have improved access to gender-affirming healthcare for transgender individuals.

3. Future Outlook

- **Continued progress:** The momentum for transgender rights is expected to continue, with more countries adopting progressive policies and laws.

²⁰ SMILE, (16 Apr. 24), <https://transgender.dosje.gov.in/Applicant/HomeN>.

²¹ Skill India Mission, (16 Apr. 24), <https://www.msde.gov.in/>.

- **Challenges:** Despite progress, challenges remain, including resistance from conservative groups, lack of awareness, and gaps in implementation of laws.
- **Intersectionality:** Recognizing the intersectionality of transgender identity with race, class, and other factors will be crucial in addressing the unique challenges faced by transgender individuals.

Hence, transgender rights have led to significant positive changes in society, including greater acceptance and legal protections. However, ongoing advocacy and activism are needed to address remaining challenges and ensure full equality for transgender individuals.

Judicial Recognition: Embracing Transgender Rights

The judiciary plays a crucial role in advancing the rights of transgender individuals. Through landmark judgments and progressive interpretations of the law, the judiciary can shape policies and practices that promote equality, dignity, and inclusion for transgender people

The Supreme Court has recognized the third gender alongside male and female in the case of *National Legal Services Authority v. Union of India & Ors.*²² This decision dismantled the societal norm of a dual gender structure limited to 'man' and 'woman'. Justice K.S. Radhakrishnan emphasized that the recognition of Transgenders as a third gender is a fundamental human rights issue, highlighting the right to equality before the law and equal protection of the law, enshrined in Articles 14 and 21 of the Constitution. The right to choose one's gender identity is intrinsic to living a life with dignity, falling within the purview of Article 21. The Court also asserted the right to personal freedom and self-determination, affirming the right to gender identity for all individuals in India. The right to behave in private according to one's gender identity, personhood, and free thought process is crucial for the fullest development of an individual's personality. The Supreme Court's directions included the inclusion of a third gender category in documents such as election cards, passports, driving licenses, ration cards, and admissions to educational institutions and hospitals.²³ Apart from this in the case of *The National Legal Services Authority v. Union of India*²⁴ case, decided by the Supreme Court of India in 2014, is a significant landmark in India's recognition and protection of transgender rights. The court recognized transgender individuals as a "third gender" and affirmed their right to self-identify their gender. It deemed them a socially and economically backward class, entitled to reservations in education and employment. The court directed the government to provide transgender individuals with rights and entitlements, including access to healthcare, education, and employment opportunities. The NALSA case has influenced subsequent legal

²²AIR 2014 SC 1863

²³National Legal Services Authority v. Union of India & Ors., AIR 2014, SC 1863.

²⁴AIR 2014 SC 1863

developments, including the Transgender Persons (Protection of Rights) Act, 2019, which seeks to protect transgender rights and prohibit discrimination.²⁵

In *G. Nagalakshmi v. State of Tamilnadu*²⁶, a trans woman from Tamil Nadu was forced to resign after being coerced into undergoing medical tests that claimed she was not a woman. The court rejected this finding, stating that the petitioner had the right to her gender identity as a woman, relying on the NALSA judgement. The court even declared her gender to be female. While setting aside the medical examination findings, the court held that the petitioner had the liberty to choose a different sexual/gender identity as a third gender in the future based on a medical declaration. This case highlights the need for medical reassignment to change one's gender identity.²⁷ The court upheld the Madras High Court's 2019 decision in *Arun Kumar v. Inspector General of Registration*²⁸, which deemed a Hindu male and a transwoman's marriage valid.²⁹

Conclusion

In conclusion, the evolution of transgender rights in India signifies a monumental shift towards inclusivity, dignity, and recognition for a marginalized community. As society continues to navigate this journey towards understanding and embracing transgender identity, it is imperative that we prioritize equal rights, access to healthcare, education, and employment opportunities for all individuals regardless of gender identity. By championing the cause of transgender rights, we not only foster a more equitable society but also uphold the fundamental principles of human rights and dignity for all.

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²⁵ *Supra Note 12.*

²⁶ 2014 SCC Online Mad 2536

²⁷ *G. Nagalakshmi v. State of T.N.*, 2014 SCC Online Mad 2536.

²⁸ AIR 2019 MADRAS 265

²⁹ *Arun Kumar v. Inspector General of Registration*, AIR 2019 MADRAS 265.

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