
ADVANCEMENT OF TRANSGENDER RIGHTS AND SOCIETY: RESEARCH STUDY

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ABSTRACT

The body of a human comes in various varieties, sizes, shapes, and colours, yet society has made certain norms to perceive a certain personality of a human being. We can take the example of transgender people in the community dating back years; they might have achieved legal recognition in 2014 but still face discrimination today. For a very long time, transgender people faced discrimination in society. It was after the landmark judgement of NALSA v. Union of India in 2014 that they were legally recognised as the third gender of society. Safeguarding the fundamental rights under Article 21 of the Indian Constitution states how their rights can be protected. In 2019, the Transgender Persons (Protection of Rights) Bill was introduced that prohibits discrimination against the transgender community with regard to education, employment, and the ability to rent or buy property. The bill also safeguards individuals from public violence and police brutality. But some transgender activists were against this bill as there was less punishment for crimes against the transgender community. From ancient history, we have seen the influence of transgender people and their contribution to history. The transgender community has advanced from what was the situation in ancient times, and today their contribution is seen in several services. The transgender movement had a great impact on the advancement of trans society as it raised concerns the community was facing.

Keywords: *Transgender, Transgender Protection Bill, Advancement, Transgender movement*

1. INTRODUCTION

“Nature made a mistake, which I have corrected”

Christine Jorgensen

An individual might be identified as transgender when their sense of gender identity deviates from societal expectations or cultural norms, often challenging traditional gender roles and associated social status linked to their assigned sex at birth.

Globally, if we see, most of the legal jurisdictions recognise the two gender identities, which are man and woman, and exclude any other identity or gender expression. However, there are some countries that recognise the third gender by law. There is now a better understanding of the variation outside the typical description categories of “man” and “woman.”¹ Terms like pan-gender and polygender are also used. Medically and socially, the term “transsexualism” is being replaced with gender identity, and other terms like transgender people, trans men, and transwomen are being replaced by the category of transexual people.

But this led to many legal issues for transgender people. The main issue is part of the family law, issues related to marriage, and the question of whether a transexual person benefits from a partner’s insurance or social security. The legal recognition of transgender people varies widely all over the world. There are many countries that now legally recognise sex reassignment surgery (SRS) or hormone replacement therapy (HRT). In other countries, the doctors decide whether the person should move forward with the treatment or not.

India is considered to be the most religious and diverse nation on the entire globe. There is a vast history that reflects the customs and usages that used to prevail in ancient times, and such customs and traditions are still prevalent in modern times. This concept of transgender people is not a new one in India; in fact, it has been recognised in history as well. In Hindu mythology, the

¹ Mohmmad Rafeek, *Transgender and Human Rights – Current Situation and Potential Options of Development in India*, 1(2) THE RIGHTS (2015)

literature and religious texts tell us about their historical presence. In the literature “Kama Shastra,” the third gender is referred to as 'tritiyapakriti', which denotes the third gender².

In the epic Ramayana, Lord Rama left for the forest for 14 years, then turned around to his followers and asked all the men and women to return to the city. Among them were the hijras who decided to stay with him. Lord Rama, impressed with the devotion of his devotees, showered them with the blessings that they would have the power to confer on people on auspicious occasions like marriage, etc. Bahuchara Mata, who is a Hindu goddess, is considered to be the patroness of the transgender community in India³.

In one of the Starbucks advertisements that was in controversy, Starbucks captioned it "#ItStartsWithYourName." The concept behind the advertisement was that it was shown that a transgender woman named Arpita was going to meet her parents after a long time, and Arpita's parents were shown waiting for her at the Starbucks outlet. The father is shown as upset. When Arpita arrived, she introduced herself as Arpita and not Arpit, which was her birth name. The parents were hesitant to accept her, but, in the end, it is shown that Arpita and her parents are enjoying their cup of coffee together. Starbucks further captioned it, “We love and accept you for who you are.” The advertisement was praised for its message of acceptance. Around the world, the majority of legal systems acknowledge just the two traditional gender identities and social roles—that of man and woman—while frequently excluding any other gender identities. Nonetheless, a few nations have legal recognition of a third gender. As more people become aware of the diversity that exists outside of the conventional "man" and "woman" categories, self-descriptions such as "pan gender," "gender queer," "poly gender," and "a gender" are beginning to appear in literary works. Gender identity, or gender dysphoria, is replacing the term "transsexualism" in medical and social contexts, while the terms "transgender people," "trans men," and "trans women" are replacing the category of transsexual people. This brings up a number of legal and transgender-related concerns. The majority of these concerns are typically

² Mr. Habin., *Transgender Community in India: A Study on the Religious and Cultural history*, 10 INT'L J. MULTI DISCIPLINARY EDUC. RSCH. (2020)

³ Akshay Tiwari & Dr. Kusum Pal , *Journey of Gender Identity in India From Mythology To The Third Gender*, 17(16) PALARCH'S J. ARCHAEOLOGY EGYPT/EGYPTOLOGY (2020)

regarded as belonging to the field of family law, particularly the marriage-related concerns and the issue of a transsexual person receiving social security or insurance benefits from a partner.

People who identify as transgender often have a personality or sex articulation that is different from their actual sex⁴. When seeking clinical assistance to transition from one sex to the next, some transgender people identify as transsexual. The term "transgender," often shortened to "trans," also refers to a broad category of people that includes those whose sexual orientation is not in line with their typical sexual orientation (trans men and trans women). It can also refer to people who are neither exclusively manly nor feminine, but rather gender queer or non-double (bi gender, pan gender, gender fluid, or a gender). Many interpretations of the term "transgender" also include people who identify as belonging to a third sexual orientation, or, most likely, transgender people are thought of as belonging to a third sex. Inconsistently, cross-dressers are included in the broad definition of transgender, regardless of their sexual orientation or personality type.

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2. ADVANCEMENT OF TRANSGENDER SOCIETY

Pro John F. Oliven of Columbia University coined the term transgender in his 1965 reference work *Sexual Hygiene and Pathology*. The term transgender was then pushed with fluctuating definitions by various transgender, transsexual, and transvestite people, including Virginia Prince, who used it in the December 1969 issue of *Transvestia*, a national magazine for cross-dressers she set up. By the mid-1970s, both trans-sexual direction and trans people were being utilised as umbrella terms, and 'trans genderist' was used to depict people who expected to live cross-sex without sex reassignment clinical system (SRS). Between the mid-1990s and the mid-2000s, the fundamental terms used under the transgender umbrella were "female to male" for men who advanced from female to male and "male to female" for women who changed from male to female.

⁴ Devashish, *Socio-Legal Future of Transgender Persons in India*, 4(5) INT'L J. MGMT. & HUMAN. (2021)

These terms have now been displaced by "trans man" and "trans woman" independently, and the articulations "trans-masculine" or "trans-female" are continuously being utilized. This move in tendency from terms including natural sex ("transsexual") to terms highlighting sex character and verbalization ("transgender," "trans woman") reflects an increasingly broad move in the appreciation of transgender people's inclination of self and the extending affirmation of the people who rot clinical reassignment as a significant part of the transgender system. According to the reports of the National Human Rights Commission, nearly 29 percent of trans people in Delhi and 33 percent of trans people in Uttar Pradesh have never gotten a chance to attend school. Now that trans people are visible in public life, like in Delhi with the first transgender councillor, Bobby Kinnar, who was elected in December 2022, there are many trans judges. In 2019, the Transgender Persons (Protection of Rights) Act was passed with certain rules that prohibit discrimination against transgender people in education and employment⁵. NPTP was introduced so that they could apply for the transgender ID. Narthaki Nataraj, the first Bharatnatyam dancer who hails from Tamil Nadu, was the first transgender person to receive the prestigious Padma Shri Award (2019). She runs a Velliambalam Trust School of Dance in Chennai. Another renowned person is Dr. Aqsa, who is the only trans person in the medical community. She is one of the senior faculty members in HIMSAR. She suffered from depression due to gender identity issues and social pressure. But she never stopped dreaming about her motivation to pursue MBBS, and this helped her overcome her mental health issues. She was also the head of the COVID-19 vaccination centre.

3. TRANSGENDER RIGHTS MOVEMENT

The transgender rights improvement is an advancement to lift transgender rights and to clear out isolation and fierceness against transgender people with respect to housing, business, open offices, guidance, and restorative administrations. In specific wards, transgender activism hopes to allow changes to recognising confirmation records to modify a person's current sex character without the necessity for sex reassignment clinical technique. People who identify as intersex are

⁵ Ankana Bal, *The Transgender Persons (Protection of Rights) Act, 2019: A Critical Analysis*, 3(6) INT'L J. L. MGMT. & HUMAN. (2020)

born with sex traits such as gonads, chromosomes, or genitalia. People who identify as intersex are stigmatised and discriminated against from birth, especially if their intersex variant is obvious. This may involve infanticide, desertion, and the stigmatisation of families in various nations, especially in Asia and Africa. In East Africa, mothers are frequently suspected of practicing witchcraft, and having an intersex child can be seen as a misfortune that will forever stigmatise the family. In East Africa, having an intersex child can be viewed as a curse, and mothers can be accused of witchcraft.

Children and newborns who exhibit intersex traits, such as those with ambiguous external genitalia, may undergo surgical or hormonal modifications to conform to socially acceptable standards of sex. Nonetheless, there is no concrete proof of positive results, making this problematic. Sterilisation may be part of these procedures. Adult recipients of this kind of treatment have included professional female athletes. The Australian parliament, German and Swiss ethics institutions, and UN agencies have all declared that these issues constitute violations of human rights. Throughout the years, intersex organisations have also released joint declarations; one such statement is the Malta declaration from the third International Intersex Forum.

Human rights protections have taken longer to be incorporated into laws and regulations. The first successful lawsuit against a surgeon for doing non-consensual surgery was filed by Christiane Völling in 2011. For the first time, the Council of Europe acknowledged in 2015 that intersex individuals had the right to refuse sex assignment procedures. Malta was the first nation to forbid non-consensual medical procedures intended to alter a person's sex anatomy, including those of intersex individuals, in April 2015.

The right to life, immunity from discrimination, access to justice and restitution, information access, and legal recognition are further human rights and legal concerns. Thus, few nations offer intersex individuals protection from discrimination or the opportunity to receive compensation for harmful actions. The transgender rights movement is a social and political effort that advocates for equal rights, legal recognition, and societal acceptance of transgender individuals. Its main objectives include securing legal protections against gender identity-based

discrimination, improving access to gender-affirming healthcare, simplifying gender marker changes on identification documents, increasing public awareness about transgender issues, and promoting inclusion in various aspects of society. The movement is an ongoing effort to ensure equality and acceptance for transgender people worldwide.

The Transgender Protection Rights Bill refers to a piece of legislation aimed at safeguarding and advancing the rights of transgender individuals. Such a bill includes provisions to prevent discrimination based on gender identity and expression in various areas of life like employment, housing, education, and access to public services. The bill also imposed penalties for those found in violation of anti-discrimination provisions and sometimes provided support services for transgenders. The Transgender Persons (Protection of Rights) Act 2019⁶ is a significant national law aimed at safeguarding the rights of transgender individuals. The law recognises their right to self-identify their gender and provides a legal framework for changing genders on identification documents⁷.

There has been significant progress in some areas, as many countries have enacted laws to protect transgender rights, such as anti-discrimination measures and more accessible processes for changing genders on identification documents. Transgender visibility has also increased through media representation and public figures coming out as transgender.

4. CONCLUSION

All the living and non-living are creations of God, including the third gender. They have been part of Indian society for centuries. The third gender is also discussed in many Vedic and Puranic literatures. Today, India stands at the crossroads of socio-economic enclosures for transgender people. The changes in the legal and legislative landscape and the challenges faced by transgender people in India are slowly and gradually improving. There is a need for better understanding of multiple identities that fall under the transgender umbrella. There is a need for the implementation of social programmes for transgender people who are struggling with basic

⁶ Transgender Persons (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019 (India)

⁷ Ankana Bal, *supra* note 5

services like education, health, food, shelter, etc. They should be able to participate in every walk of life, and hence it is necessary to address the societal stigma that prevents meaningful understanding of welfare measures. Under the SMILE project, which was initiated by the Ministry of Social Justice and Empowerment for the benefit of transgender people in India, This will also help in identifying gaps that exist in the programmes and the structure of the legislation. There is a need to open up more opportunities in the various fields. Transgender boards are being opened by different state authorities for the upliftment of individuals. Such a framework will ensure both immediate and long-term goals for improving the welfare of transgender people. Transgender people should live with dignity and non-discrimination and should have access to all services. Hence, before framing laws for them, the parliament should hold a direct conversation with the trans people to understand the challenges and problems that they face daily in their lives. This is not just an initiative by society; it is necessary that they accept them as any other person and, without discrimination, help them access all the other services that are enjoyed by other people.

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