

The Spectrum of Struggle: Transgender Rights in India's Tapestry

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Abstract

In the earliest stages of life, gender distinctions are absent, but societal expectations and norms impose identities upon individuals as male, female, or transgender. Gender roles traditionally assigned responsibilities based on these distinctions, with girls often limited to domestic duties, while boys received education and employment opportunities. Transgender individuals, whose gender identity does not align with their assigned sex at birth, face pervasive discrimination, exclusion from education, healthcare, and employment, and lack familial support. These challenges have led to global transgender movements advocating for equal rights and legal reforms. India's transgender rights movement has made significant strides, with landmark legal cases such as *NALSA v. Union of India* (2014), which recognized the "third gender" and upheld the right to self-identification, as well as the *Transgender Persons (Protection of Rights) Act* (2019), which prohibits discrimination and ensures access to education, employment, and healthcare. However, transgender individuals continue to face violence and discrimination. Social movements like those led by activists such as Anjali Gopalan and Kalki Subramaniam have been pivotal in addressing these issues through legal battles and grassroots efforts. Religious inclusion, exemplified by Kinnar Akhara's participation in the 2019 Kumbh Mela, signifies growing acceptance of transgender individuals in Indian society.

This ongoing movement emphasizes the need for continued legal, social, and cultural reforms to ensure dignity, equality, and full participation for transgender and gender-diverse individuals. The establishment of Transgender Welfare Boards in various Indian states is a positive step towards safeguarding rights and advancing the holistic well-being of this marginalized community.

Keyword: gender, identity, violence, Transgender, equal, movement

INTRODUCTION

"Transgender" is a broad term for individuals whose gender identity, expression, or behavior differs from the sex assigned to them at birth. This term includes a variety of identities that challenge traditional ideas of male and female. In India, there are several transgender communities, each with distinct roles and identities. Some of the main groups include *Kothis*, who identify as male but express femininity; *Hijras*, who are biological males rejecting masculine identities; *Aravanis*, who identify as women in male bodies; *Jogappas*, who serve the goddess Renukha Devi; and *Shiv-shaktis*, males with feminine expressions.

Around 25 million people worldwide identify as transgender. India included transgender people in its census for the first time in 2011, estimating the population at about 488,000, with the largest numbers found in Uttar Pradesh, where approximately 137,000 reside. In 2014, the Supreme Court of India officially

recognized transgender individuals as a "Third Gender," a significant development in the country's legal and social landscape.

Despite their long history in Indian culture, transgender individuals have often faced exclusion from education, healthcare, and jobs. Their existence has been acknowledged in religious contexts, yet they are frequently marginalized in contemporary society. The fight for legal recognition and social acceptance has gained strength over recent decades, leading to important legal decisions and reforms aimed at securing rights for transgender individuals.

Key cases like *NALSA v. Union of India* (2014) and the *Transgender Persons (Protection of Rights) Act, 2019* represent major milestones in the struggle for transgender rights in India. However, many still deal with significant challenges, including discrimination, violence, and poverty. Activists and organizations such as Anjali Gopalan's Naz Foundation and Kalki

Subramaniam's Sahodari Foundation have played vital roles in advocating for equality and justice.

This chapter will examine the development of the transgender rights movement in India, highlighting the transition from cultural acceptance to modern battles for legal recognition and social inclusion. It will explore key legal cases, the contributions of activists, and the broader global context of transgender advocacy. By addressing both the progress made and the ongoing issues, this chapter underscores the urgent need for reforms that ensure all gender-diverse individuals in India can live with dignity and equal rights.

The Legacy of Transgender Identities in India: A Historical Overview.

The existence of transgender individuals is far from a modern phenomenon; it stretches back thousands of years, deeply woven into the fabric of society. For over 4,000 years, various cultures in India have recognized and engaged with a diverse spectrum of gender identities. In ancient times, transgender individuals played significant roles in society, often occupying positions of influence and power.

During the Mughal era, for instance, transgender individuals were not only present but held esteemed positions as political advisors and administrators within the empire. Their insights and contributions were valued, reflecting a more inclusive understanding of gender diversity at that time. However, the arrival of British colonial rule marked a shift. While some legal protections existed, the colonial administration gradually marginalized transgender communities, stripping them of their rights and reducing their status.

As India transitioned into modernity, the historical trajectory of transgender identities was marked by increasing inequality and social exclusion. Despite the rich cultural heritage surrounding them, many transgender individuals faced significant challenges, including discrimination, poverty, and lack of access to essential resources.

In recent years, there has been a notable shift towards recognizing and affirming the rights of transgender individuals in India. This change gained momentum with the landmark ruling in April 2014, when the Supreme Court of India delivered a pivotal judgment in the case of *National Legal Services Authority v. Union of India*. This ruling acknowledged the right of transgender individuals to self-identify as male, female, or 'third gender,' representing a major leap forward in the fight for equality.

Following this decision, various executive measures and policy initiatives emerged to support the

transgender community, aimed at dismantling historical prejudices and promoting social acceptance. These developments signal a growing recognition of the unique identities within the transgender spectrum, including hijras, kinnars, shiv-shaktis, jogappas, and many others who may not fit neatly into established categories.

Today, the struggle for transgender rights continues, emphasizing the need for inclusive policies that address the legal, social, and economic barriers faced by this marginalized community. The journey of transgender individuals in India reflects a complex interplay of cultural recognition and systemic challenges, highlighting the ongoing need for advocacy and reform to ensure dignity and equality for all gender-diverse people.

Different movements of Transgender in India

I. NALSA v. Union of India (2014)

The *NALSA v. Union of India (2014)* judgment is a landmark ruling in the history of transgender rights in India, marking the first legal recognition of non-binary gender identities. The Supreme Court upheld the right of individuals to self-identify their gender and declared that hijras, eunuchs, and others outside the male/female binary are entitled to fundamental rights under the Indian Constitution. By affirming protections under Articles 14, 15, 16, 19, and 21, the Court recognized that transgender persons deserve equality, non-discrimination, freedom of expression, and dignity. Furthermore, the ruling directed the government to legally recognize "third gender" status, provide reservations in education and employment, and implement social welfare schemes to support the community. This decision is a monumental step in India's transgender rights movement, significantly advancing the fight for inclusion, respect, and legal recognition.

In the context of the 21st century, this judgment is highly relevant as it represents a progressive shift towards recognizing and protecting the rights of marginalized communities in an era where issues of gender diversity and human rights are increasingly in the spotlight. The ruling sets a precedent for inclusive legal frameworks and social policies that reflect contemporary understandings of gender identity and human dignity, aligning with global movements towards equality and justice.

II. Naz Foundation Case (2001)

The *Naz Foundation v. Govt. of NCT of Delhi (2009)* case was a landmark ruling by the Delhi High Court that decriminalized consensual homosexual sex between adults, declaring it a violation of fundamental rights to treat it as a crime under Section 377 of the

Indian Penal Code. Section 377, a colonial-era law, criminalized "carnal intercourse against the order of nature," which was interpreted to include same-sex relations.

Naz Foundation, an NGO, filed the petition in 2001, challenging the constitutionality of Section 377. The Court ruled that criminalizing consensual homosexual acts violated the right to dignity, privacy, and equality under Articles 21, 14, and 15 of the Indian Constitution. The judgment was a historic victory for LGBTQ rights, although it was overturned by the Supreme Court in 2013. However, the 2018 *Navtej Singh Johar* case once again decriminalized homosexuality across India.

This legal battle was a pivotal moment in India's LGBTQ+ rights movement, galvanizing activism and leading to significant public discourse on the issue

III. Transgender Persons (Protection of Rights) Act (2019)

The *Transgender Persons (Protection of Rights) Bill, 2019* marks a significant step forward in India's transgender rights movement. The Bill defines a transgender person as anyone whose gender identity does not align with the one assigned at birth. It includes trans-men, trans-women, gender-queers, and those with socio-cultural identities like hijras and kinnars.

The Bill prohibits discrimination in key areas such as education, employment, healthcare, housing, and access to public services. It emphasizes the right to residence, ensuring that transgender individuals can reside with their families or, if needed, be placed in rehabilitation centers.

In employment, both government and private sectors are required to prevent discrimination, and every organization must designate a complaint officer to handle related issues. Educational institutions must provide inclusive education, and healthcare facilities should cater to the specific needs of transgender individuals, including access to sex reassignment surgeries and HIV treatment.

The Bill also outlines the procedure for obtaining a certificate of identity for transgender persons, with provisions for gender changes post-surgery. It introduces welfare measures such as vocational training, rehabilitation, and participation in cultural activities.

Offences such as physical or sexual abuse, denial of public facilities, or forced labor against transgender persons are punishable by law, with penalties ranging from six months to two years in prison.

Finally, the Bill establishes a National Council for Transgender Persons (NCT), which will advise the government, monitor policies, and address grievances.

This legislative move is a critical milestone in India's transgender rights movement, aimed at ensuring dignity, equality, and protection for the community.

IV. Anjali Gopalan and Her Role in Transgender and LGBTQIA Movements

Anjali Gopalan, founder of the Naz Foundation (India) Trust, is a prominent advocate for the rights of marginalized communities, especially the LGBTQIA population. Her work has been instrumental in advancing transgender rights and sexual health in India. With a background in political science and international development, Anjali returned to India in the early 1990s to address the growing HIV/AIDS crisis. Frustrated by the lack of government response, she launched the Naz Foundation, focusing on stigmatized communities.

Anjali's most notable contribution was leading the 17-year legal fight to decriminalize homosexuality under Section 377 of the Indian Penal Code, a law used to harass and discriminate against LGBTQIA individuals. Her persistent advocacy led to the filing of a Public Interest Litigation (PIL) in 2001, which ultimately resulted in the historic 2018 Supreme Court ruling that decriminalized homosexuality in India.

Recognized internationally for her efforts, Anjali has received numerous awards, including the Commonwealth Award, and was shortlisted for the Nobel Peace Prize in 2005. She was also named one of TIME magazine's 100 most influential people in 2012 and was awarded the Chevalier de la Legion d'Honneur by the French Government in 2013.

Anjali Gopalan's work represents a crucial part of the broader transgender and LGBTQIA social movements in India, aiming to secure dignity, equality, and rights for marginalized individuals. Her activism underscores the importance of legal reforms and societal change for transgender and queer communities.

V. Kalki Subramaniam's Sahodari Foundation (2008)

The Sahodari Foundation, founded in 2008 by transgender activist and artist Kalki Subramaniam, is a pivotal organization in the social and economic empowerment of underprivileged transgender women in India. Based in Tamil Nadu, the foundation focuses on providing education support, scholarships, entrepreneurship opportunities, and livelihood development through creative skills training. It also uses art, literature, film, and theatre to advocate for transgender and gender-nonconforming individuals, challenging stereotypes and pushing for social, political, and economic justice.

Kalki Subramaniam's activism began during her postgraduate studies when she launched *Sahodari*, a Tamil magazine addressing key issues in the transgender community, such as health, employment, and education. The foundation's mission centers on promoting equity and advocating for civil and legal rights for transgender people.

Among its key achievements, Sahodari Foundation received the Kokilavani Memorial Award in 2010 for its contributions to transgender rights. The organization's *Project Kalki*, which trained transgender individuals as community video journalists, allowed many transgender women to share their stories through visual media. This initiative earned international recognition for its innovative use of technology in activism.

The Sahodari Foundation stands as a vital force in India's transgender movement, using creative approaches to break societal prejudices, raise awareness, and fight for equality and justice.

VI. Indian Transgender Day of Remembrance:

The transgender community in India, like in many other parts of the world, faces significant health challenges, particularly in the context of HIV/AIDS. According to WHO, transgender individuals are 13 times more likely to be HIV-positive than other adults. In India, as per the National HIV Sentinel Surveillance 2016-17, HIV prevalence among transgender people is around 3.14%. Despite their visibility in Indian society, data about transgender individuals have historically been underreported and often categorized under the male category in censuses. As of the 2011 Census, India had about 4.88 lakh transgender individuals. The community is often viewed primarily through the lens of transwomen (male-to-female), while transmen (female-to-male) and other non-conforming identities are frequently overlooked. This lack of attention extends to HIV/AIDS intervention programs, which were initially designed for transwomen and clubbed with the MSM (men who have sex with men) category. Eventually, the National AIDS Control Organization (NACO) began transgender-specific Targeted Interventions (TIs) to address the unique health and social needs of transgender individuals beyond just sexual health.

India's legal framework has also begun addressing the needs of this marginalized community. The Transgender Persons (Protection of Rights) Act 2019 was introduced to safeguard their rights and well-being. Further, NACO's approach is evolving to be more comprehensive, integrating programs like Gender Affirming Care (GAC) alongside mental health, livelihood, and other critical services to support the holistic development of transgender individuals. In

solidarity with the community, Transgender Remembrance Day is observed annually on November 20th, to honor transgender lives lost and to raise awareness about their struggles. The movement calls for equal access to services like healthcare, education, and legal rights, while pushing for the recognition of transgender people in all aspects of society, including decision-making processes, marriage equality, and adoption rights.

This ongoing movement highlights the urgent need for inclusive, community-based approaches to social services and policy-making in India, to ensure the transgender community can live with dignity, equal rights, and full access to essential services.

VII. Kinnar Akhara Participation in Kumbh Mela (2019):

In 2019, Kinnar Akhada, led by Mahamandaleshwar Acharya Laxmi Narayan Tripathi, participated in the Kumbh Mela at Prayagraj for the first time. This historic event marked a significant step for transgender inclusion in religious and cultural spaces. The Akhada's presence symbolized mainstream society's growing acceptance of transgender individuals, transcending gender and sexuality. Their participation emphasized unity and unconditional love, showcasing the community's ongoing struggle for recognition in areas like art, culture, and religion, while receiving widespread support and respect from pilgrims and the public.

VIII. Transgender Welfare Board Initiatives (Various States):

As of 2020, twelve Indian states and union territories, including Tamil Nadu, Kerala, and Maharashtra, have established Transgender Welfare Boards. These boards are mandated under the *Transgender Persons (Protection of Rights) Rules, 2020* to protect the rights of transgender individuals and facilitate access to government schemes. The Ministry of Social Justice and Empowerment has informed all state governments to take necessary actions to implement these welfare boards in line with the provisions of the 2020 Act and Rules, promoting greater support and inclusivity for transgender persons.

Challenges Faced by Transgenders in India

Transgender individuals in this country encounter numerous challenges, including physical, mental, and verbal abuse, along with the denial of equal rights afforded to other gender identities.

I. Discrimination in Education and Employment Settings

A significant portion of the transgender community in India faces substantial barriers to education, resulting in high rates of illiteracy and limited participation in the educated segments of society. According to the 2011 census, which recorded approximately 490,000 transgender individuals, only about 46% of them were literate—a stark contrast to the national literacy rate of 74%.

Under the Right to Education Act, transgender individuals are classified as a "disadvantaged group," entitling them to a 25% reservation as part of the economically weaker sections. However, the challenges they encounter in accessing education are manifold. Factors such as poverty, familial exclusion, and mental health issues contribute to their underrepresentation in educational institutions.

The lack of educational opportunities not only hinders their academic progress but also severely limits their employment prospects. Even those who manage to attain an education often find themselves facing discrimination in the workplace, where they struggle to gain the same respect and recognition as their peers. This cycle of marginalization perpetuates their socio-economic difficulties, underscoring the urgent need for targeted interventions to support their educational and professional development.

II. Social Exclusion and Homelessness

Transgender individuals often face significant social exclusion, primarily due to their limited access to education and employment. This lack of opportunities leads society to perceive them as belonging to a lower socioeconomic class, which severely impacts their self-esteem and confidence. As a result, many find themselves forced into undesirable or stigmatized jobs to make a living.

Compounding these challenges, many transgender people are rejected by their families or are compelled to leave their homes due to abusive situations. This rejection leaves them without safe shelter or a stable environment to call home. Consequently, homelessness becomes a harsh reality for many within the transgender community, highlighting the urgent need for inclusive policies and support systems to ensure their basic rights and dignity.

III. Confronting Transphobia and Psychological Challenges

Members of the transgender community encounter significantly higher levels of harassment, discrimination, and societal intolerance compared to their heterosexual counterparts. Many individuals harbor transphobic attitudes rooted in moral, religious, and cultural beliefs, which can manifest in various

forms of aggression, negative treatment, and workplace hostility.

As a consequence of this pervasive discrimination, transgender individuals often experience serious mental health challenges. The stress stemming from societal rejection can lead to feelings of isolation, anxiety, and insecurity. In extreme cases, this psychological burden may drive individuals to consider self-harm or experience suicidal thoughts. The emotional toll of navigating a world rife with prejudice underscores the urgent need for supportive interventions and inclusive environments that promote mental well-being for transgender individuals.

IV. Lack of Legal Protections and Vulnerability to Hate Crimes

The transgender community often lacks the same legal protections afforded to other groups, making them particularly vulnerable to victimization for crimes they did not commit. This absence of safeguards leaves them exposed to various forms of violence and hate crimes. Tragically, many individuals within this community endure significant abuse and discrimination.

Furthermore, law enforcement agencies frequently demonstrate insensitivity towards transgender individuals, resulting in the dismissal or failure to register their complaints. This neglect not only exacerbates their victimization but also highlights systemic inefficiencies within our society. The oppression faced by transgender individuals at the hands of law enforcement underscores the urgent need for comprehensive legal reforms and training to ensure that all citizens can seek justice without fear of discrimination.

A Global Perspective on Transgender Rights: Lessons for India

In India, transgender individuals face significant challenges in education, economic status, employment opportunities, and social inclusion. Educationally, the situation is dire; a 2011 census revealed that only 46% of transgender people were literate, far below the national average of 74%. Discrimination and bullying in schools lead to high dropout rates, severely limiting educational attainment. In contrast, countries like Canada and Argentina have implemented inclusive education policies that promote access and support for transgender students, fostering a more welcoming learning environment.

Economically, transgender individuals in India often find themselves marginalized and excluded from traditional job markets. This exclusion results in high rates of poverty, as many are forced into informal and

low-paying work. In comparison, nations such as Sweden and the Netherlands have robust economic policies that protect against discrimination in employment, coupled with support programs that facilitate the integration of transgender individuals into the workforce, improving their economic independence.

Employment opportunities for transgender people in India are bleak due to widespread discrimination in hiring practices. Many face barriers that prevent them from securing stable jobs, perpetuating cycles of exclusion. In contrast, countries like the United States and Canada have enacted legislation prohibiting discrimination based on gender identity, promoting more equitable job opportunities through initiatives like affirmative action and diversity hiring programs. Social acceptance of transgender individuals in India is often hindered by cultural stigma and ostracism, leading to social isolation. Conversely, countries with progressive social policies, such as Argentina and Canada, have made significant strides in promoting LGBTQ+ visibility and acceptance through public awareness campaigns, pride events, and representation in media.

Overall, while India has made some progress in recognizing transgender rights, significant disparities remain in education, economic status, employment opportunities, and social inclusion. Comparatively, other nations have established more comprehensive frameworks to support transgender individuals, resulting in better outcomes in these areas. Addressing these challenges is crucial for advancing the rights and well-being of transgender communities in India and fostering a more inclusive society.

Conclusion

The transgender rights movement in India reflects a complex interplay of historical significance and contemporary challenges. Despite landmark legal achievements like the NALSA judgment and the Transgender Persons (Protection of Rights) Act, systemic issues such as discrimination in education and employment, social exclusion, and inadequate legal protections persist. Activists and organizations have played vital roles in advancing rights, yet substantial gaps remain in achieving true equality. Learning from global best practices can guide India in fostering inclusive policies and social acceptance. Moving forward, continuous advocacy and legislative reforms are essential to empower transgender individuals, ensuring they can live with dignity and fully participate in society. A commitment to justice and inclusivity is crucial for building a fair and equitable future.

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