

Transgender Community: Historical Perspectives, Legal Progress, and Ongoing Marginalization

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Abstract

As per conventional norms, Gender has been categorized primarily as male and female, purely based on biological anatomy. Individuals who do not conform to this conventional norm of a biological binary, are referred to as ‘transgender’. This term encompasses all individuals whose gender identity does not comply with the societal expectations associated with their birth-assigned sex. Transgender individuals, often stereotyped as performers in local bars or beggars knocking on car windows, are part of one of the most marginalized groups in society.

Despite the constitutional provisions stated in Articles 14(equality before the law and equal protection of laws), 15(protection against discrimination), and 21(right to live with dignity), these rights remain largely unfulfilled for transgender individuals, who continue to face marginalization and social exclusion in critical aspects of life such as family, education, employment, and healthcare. This makes them vulnerable to injustice and discrimination.

Landmark judgments like *Navtej Singh Johar v. Union of India*, which decriminalized consensual same-sex relationships, and *NALSA v. Union of India*, which recognized transgender individuals rights, marked significant progress in recognizing transgender rights. However, the fact remains that the practical impact of these landmark judgements falls short due to ineffective implementation. Poor enforcement of rights compounded by deep-seated biases and lack of awareness, contribute to the exclusion and marginalization of the transgender community.

This paper highlights the daily struggles and discrimination faced by transgender individuals in their pursuit for equality and dignity. Despite the progress made in raising awareness about the sad state of transgender individuals, significant hardships continue to afflict this marginalized group. This paper explores how landmark judgments have sought to address these issues and examines the socio-legal barriers that hinder their effective implementation.

Chapter:1

Introduction:

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Landmark judgments like *Navtej Singh Johar v. Union of India*¹, which decriminalized consensual same-sex relationships, and *NALSA v. Union of India*², which recognized transgender individuals rights, marked significant progress in recognizing transgender rights. However, the fact remains that the practical impact of these landmark judgements falls short due to ineffective implementation. Poor enforcement of rights compounded by deep-seated biases and lack of awareness, contribute to the exclusion and marginalization of the transgender community.

This paper highlights the daily struggles and discrimination faced by transgender individuals in their pursuit for equality and dignity. Despite the progress made in raising awareness about the sad state of transgender individuals, significant hardships continue to afflict this marginalized group. This paper explores how landmark judgments have sought to address these issues and examines the socio-legal barriers that hinder their effective implementation.³⁴⁵

Statement of the Problem

Transgender individuals in India continue to face social exclusion and marginalization, leaving them vulnerable to mistreatment, prejudice and injustice, despite provisions in the Indian Constitution that ensure equality (Article 14), safeguard against discrimination (Article 15), and protect the right to dignity (Article 21).

The practical impact of landmark judgments such as *Navtej Singh Johar v. Union of India* and *NALSA v. Union of India* remains limited due to ineffective implementation, deep-seated societal biases, and a lack of societal awareness. Transgender individuals remain marginalized in critical areas of life such as family, education, employment, and healthcare.

Research Objectives

1. To highlight some of the key problems faced by transgender individuals in India.
2. To analyze the gap between the rights guaranteed to transgender individuals under the provisions of the Indian Constitution and their practical realization in society.
3. To analyze landmark judgments and Acts related to transgender community.

Research Questions

1. What are the primary challenges faced by transgender individuals in different spheres of life?
2. Whether transgender individuals truly enjoy the rights guaranteed by Article 14, 15 and 21 of the Indian Constitution.

¹ <https://indiankanoon.org/doc/168671544/>

² <https://indiankanoon.org/doc/193543132/>

³ <https://core.ac.uk/download/pdf/236436832.pdf>

⁴ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4400044

⁵ <https://ijcrt.org/papers/IJCRT1705102.pdf>

Hypothesis

Despite progressive judicial interventions and constitutional provisions under Articles 14, 15, and 21, transgender individuals in India remain marginalized due to societal prejudices and systemic legal barriers that prevent the effective realization of their fundamental rights and leave them vulnerable to mistreatment, prejudice and injustice.

Research Methodology

This research will use doctrinal methodology.

Doctrinal Research

A comprehensive analysis of the literature on transgenders, their struggles, and the effects of marginalization on their fundamental rights and overall quality of life.

Tentative Chapters

Chapter 1: Introduction

Chapter 2: Historical Evolution of Transgender Community in India

Chapter 3: Rights of Transgenders under the Indian Constitution

Chapter 4: NALSA v. Union of India

Chapter 5: Navtej Singh Johar v. Union of India

Chapter 6: Transgenders Persons(Protection of Rights) Act, 2019

Chapter 7: The Transgender Community: A Reflection of the Societal Reality

Chapter 8: Conclusion

Chapter 9: Recommendations

Expected Outcome

This research paper seeks to provide an understanding of the daily struggles, systemic marginalization, and mistreatment faced by transgender individuals, which leave them with limited livelihood options, thereby violating their fundamental rights to equality, non-discrimination, and a dignified existence; highlight the socio-legal barriers that impede the effective realization of their constitutional rights; and contribute to the academic discourse on the inclusion and protection of transgender individuals in India.

Chapter: 2

Historical Evolution of Transgender Community in India

Transgender community in India includes groups such as Hijras, Eunuchs, Kothis, Aravanis, Jogappas, and Shiv-Shakthis. The concept of gender-identity not being limited to the sex-assigned at birth has been in existence for several centuries. For example, existence of eunuchs dates back to 9th century BCE; ancient Indian traditions, including Hinduism, Jainism, and Buddhism, recognized three genders; the Vedas (1500 BCE–500 BCE) classified individuals into three categories based on their nature or prakriti.⁶ In the context of Indian society, historical evidence highlights the acknowledgment of a "third sex" or people who did not conform to the conventional male or female genders. Concepts such as tritiyaprakriti and napumsaka are deeply embedded in Hindu mythology and Vedic as well as Puranic literature. Early

⁶ <https://www.trp.org.in/wp-content/uploads/2015/10/ARSS-Vol.4-No.1-Jan-June-2015-pp.17-19.pdf>

texts extensively addressed issues of sexuality and included the concept of a third gender as an established notion.

During the medieval period, Hijras held significant roles in royal courts, wielded considerable influence in political affairs as political advisors, administrators, and generals. They also held prominent positions in Islamic religious institutions, such as guarding the holy sites of Mecca and Medina.

In the early British colonial period, Hijras continued to receive certain protections and benefits, such as land rights, food provisions, and financial support from agricultural communities. With the onset of colonial rule in the 18th century, perceptions of Hijras changed drastically. Early European travelers were repulsed by their presence.

By the second half of the 19th century, the British colonial administration actively criminalized the Hijra community by stripping them of civil rights and treating them as a distinct caste or tribe in various regions. The Criminal Tribes Act of 1871 specifically targeted Hijras, and laid the foundation for their vulnerable status in contemporary society by associating them with crimes such as kidnapping and castrating children, as well as cross-dressing and performing in public. Conviction under this act carried punishments of up to two years in prison, fines, or both.⁷

Although the Act was repealed in 1952, its legacy remains. Prejudicial attitudes toward Hijras have influenced local laws, such as the Karnataka Police Act of 2012, which included provisions for the registration and surveillance of Hijras accused of crimes like child abduction and "unnatural offenses." These laws mirror the discriminatory framework of the Criminal Tribes Act of 1871 and continue to perpetuate biases against the transgender community in modern India.⁸

Chapter: 3

Rights of Transgenders under the Indian Constitution

The Indian Constitution emphasizes justice, including social, economic, and political equality, as a fundamental principle outlined in its preamble.

- Article 14 guarantees equality before the law and equal protection under the law.
- Article 15 prohibits discrimination based on religion, race, nationality, gender, or place of birth.
- Article 21 ensures every citizen's right to personal dignity and privacy.

The Constitution guarantees equality and fundamental rights to all citizens and forbids discrimination based on sexual orientation, religion, or belief. However, systemic discrimination against transgender individuals continues to exist due to ineffective implementation of these rights for transgender individuals. Public identity in India is largely determined by official identity documents, with gender being a key marker of identity. Transgender individuals are denied recognition under the conventional gender of male/female or as a distinct third gender. This denial restricts their ability to vote, own property, marry, access education, hold passports and driving licenses, work, or enjoy adequate healthcare. Consequently, transgender individuals are cut off from full participation in Indian society through systemic exclusion.⁹

⁷ <https://www.trp.org.in/wp-content/uploads/2015/10/ARSS-Vol.4-No.1-Jan-June-2015-pp.17-19.pdf>

⁸ <https://www.trp.org.in/wp-content/uploads/2015/10/ARSS-Vol.4-No.1-Jan-June-2015-pp.17-19.pdf>

⁹ <https://www.lawctopus.com/academike/indian-constitution-and-the-transgender-community-history-and-legal-developments/>

Chapter: 4**NALSA v. Union of India**

The NALSA v. Union of India case was a landmark judgment in which the Supreme Court of India legally recognized transgender individuals as "third gender" for the first time. The Court affirmed their fundamental rights under the Constitution and emphasized the right to self-identify gender without being subjected to medical or biological tests.

The Court extended constitutional protections, including the right to equality (Article 14), freedom of expression (Article 19(1)(a)), and non-discrimination on the grounds of "sex" (Articles 15 and 16), interpreting "sex" to include gender identity. It noted the severe discrimination faced by transgender individuals and incorporated the right to express gender through dress, words, actions, or behavior under freedom of expression.

Referring to international human rights standards and the Yogyakarta Principles, the Court directed the government to implement measures to advance the rights of the transgender community. These included legal recognition of "third gender" in all documents, classification of transgender persons as a "socially and educationally backward class" entitled to reservations in education and public employment, the formulation of social welfare schemes for the community, and public awareness programs.¹⁰

Chapter: 5**Navtej Singh Johar v. Union of India**

The Supreme Court's judgment in the Navtej Singh Johar case marked a historic milestone by decriminalizing consensual same-sex relationships under Section 377 of the Indian Penal Code. Section 377 previously criminalized consensual sexual acts between same-sex individuals as being "against the order of nature." Overturning the Koushal decision of 2013, the Court held that Section 377 violated fundamental rights under Articles 14, 15, 19, and 21 of the Constitution.

The Court found that Section 377 arbitrarily discriminated against individuals based on sexual orientation, violating the right to equality (Article 14). It failed to distinguish between consensual and non-consensual acts and targeted LGBTQ+ individuals, reducing them to "less than humans." The Court also ruled that the provision infringed on freedom of expression (Article 19(1)(a)) by criminalizing private consensual acts, which neither harmed public decency nor order. Additionally, Section 377 was found to contravene the right to life and personal liberty (Article 21) by denying LGBTQ+ individuals the dignity, privacy, and autonomy to determine their sexual orientation.

The judgment prioritized constitutional values over societal norms and emphasized constitutional morality to create an inclusive society. It rejected the classification of sexual acts as "natural" or "unnatural" and stressed that laws must align with constitutional principles and not prejudices. The Court also recognized India's international obligations under the Yogyakarta Principles, which prohibit discrimination based on sexual orientation and gender identity.

The verdict reaffirmed the LGBTQ+ community's equal citizenship and decriminalized consensual sexual relationships between adults, while retaining Section 377 for non-consensual acts, minors, and bestiality. This landmark judgment significantly advanced the rights of the LGBTQ+ community in India.¹¹

¹⁰ <https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity/>

¹¹ <https://translaw.clpr.org.in/case-law/navtej-singh-johar-vs-union-of-india-section-377/>

Chapter: 6

Transgender Persons (Protection of Rights) Act, 2019

The Transgender Persons (Protection of Rights) Act, 2019, is a landmark legislation in India aimed at recognizing the identity and ensuring the rights of transgender individuals while combating the pervasive discrimination they face. It defines a transgender person broadly, including individuals whose gender identity does not align with their gender assigned at birth, as well as those who identify as transgender men, women, or people with intersex variations. A key feature of the Act is its provision for self-identification.

The Act prohibits discrimination in critical areas like access to public services, education, employment, healthcare, and the right to own or inherit property. Establishments are mandated to adopt an equal opportunity policy tailored to transgender individuals. Employers are also required to appoint a grievance redressal officer to address complaints related to violations of the Act.

The government is entrusted with welfare schemes sensitive to the unique needs of transgender persons including provisions for separate HIV sero-surveillance centers, free medical care, and access to procedures such as sex reassignment surgery and hormonal therapy. Medical expenses for these procedures are to be covered under a comprehensive insurance scheme.

The National Council for Transgender Persons (NCT) has been established to provide policy recommendations, review existing programs, and monitor the Act's implementation. The Act criminalizes offenses such as forced or bonded labor, physical and sexual abuse, and denial of access to public places, prescribing penalties ranging from six months to two years of imprisonment along with fines.

Despite its progressive intent, the Act has faced criticism for certain ambiguities and gaps in its definitions and implementation framework. Nonetheless, the Act remains a significant step forward in acknowledging and addressing the struggles faced by transgender persons in India.¹²

Chapter 7

The Transgender Community: A Reflection of the Societal Reality

Despite constitutional guarantees of equality and the right to a dignified life, along with the landmark judgments and legislations discussed above, the transgender community continues to face numerous challenges, some of which have been summarized below:

Marginalization and Social Exclusion

Marginalization denies individuals full participation in society, restricting their access to essential services such as education, healthcare, housing, and employment. Transgender individuals face compounded exclusion due to homophobia, transphobia, and sexism. Social stigma surrounding gender identity and sexual orientation isolates them further, restricting their access to family support and basic services like justice and healthcare. Familial rejection exacerbates their vulnerability and often drives them toward survival strategies like sex work which exposes them to health risks like HIV/AIDS.

Discrimination in public spaces, lack of gender-inclusive facilities, and rejection from religious communities deepen their struggles. This exclusion results in early school dropouts, challenges in securing employment, community isolation, and limited awareness of their rights and entitlements.¹³

¹² <https://www.ibanet.org/article/0f3ae21b-0170-4bf7-95dd-45b07ef1caf6>

¹³ <https://ijcrt.org/papers/IJCRT1705102.pdf>

Impact of Family Reactions on Transgender People:

Transgender individuals often face significant challenges within their families, where acceptance of gender nonconforming behavior is rare, even when it emerges as early as three to five years of age. A study spanning 17 Indian states, highlights that many transgender individuals receive minimal or no support from their biological families. Parents frequently respond with sadness, anger, disappointment, or shock upon discovering their child is transgender or gender nonconforming. While a few parents provide unconditional support, most attempt to suppress their child's identity through emotional, verbal or physical abuse.

This rejection is often rooted in fears of social disgrace or the perceived failure in fulfilling familial responsibilities. Parents may misattribute gender nonconformity to mental illness or poor upbringing. Parents often resort to bullying, abuse, or coercive medical interventions to force conformity to the assigned gender at birth. Such actions profoundly harm the self-esteem of transgender and gender nonconforming children.

Harassment of Transgender People in Educational System:

The transgender community in India remains profoundly marginalized, particularly in education, which contributes to their lower standing on the Human Development Index. Educational institutions often stigmatize gender-nonconforming and transgender students.

The 2011 Indian Census revealed that only 46% of transgender individuals are literate, compared to 74% in the general population. Although classified as a disadvantaged group under the Right to Education Act, which grants them 25% reservation under the EWS category, many transgender individuals still face significant barriers to education. A survey by the Swati Health Resource Centre found that 30% of transgender individuals surveyed had no formal education, and an equal proportion lived alone due to family rejection.¹⁴

The primary factors contributing to low education levels include social exclusion, insensitive attitudes of teachers and staff, as well as violence and sexual abuse. These systemic challenges deprive transgender individuals of equitable access to education, limiting their opportunities for social and economic advancement.

Poor Economic Conditions and Discrimination in the Workplace:

Interrupted education and social exclusion significantly restrict the employment and livelihood opportunities available to transgender individuals. Economic deprivation within the transgender community arises from various interconnected factors, including family and societal rejection, workplace stigma, and employers' reluctance to hire transgender individuals.

For many working-class transgender individuals, barriers like restricted access to employment and the absence of gender-inclusive facilities, leave begging and sex work as their primary means of survival. Additionally, transgender individuals frequently experience sexual harassment in both formal and informal workplaces which deepens their economic marginalization.

Problems of Homelessness

Transgender individuals face numerous challenges, including a lack of housing and services tailored to their specific needs which results in homelessness. Many are forced to run away to escape abusive situations or due to familial rejection and end up on the streets.

¹⁴ <https://ijcrt.org/papers/IJCRT1705102.pdf>

Family housing within the shelter system across the country is unavailable for homeless same-sex couples. Transgender individuals are not permitted to choose accommodations aligned with their gender identity within the shelter system. Abuse and harassment against transgender homeless individuals are widespread in these facilities. Additionally, most domestic violence shelters refuse to accept gay men or transgender people.¹⁵

There has also been a lack of any comprehensive plan for long-term housing for people with AIDS. Homeless transgender youth often develop mental health disorders and engage in drug use and risky sexual behaviors. Additionally, homeless transgender youth miss out on education and social support during critical formative years due to discrimination from their peers.

Transphobia

Transgender individuals often face intolerance, discrimination, harassment, and violence embedded in transphobia, which is frequently further strengthened by the moral, religious, and political beliefs of dominant groups. Transphobia fuels discrimination in various forms, including physical attacks, workplace bias, and negative portrayals in the media.

Transphobia often results in homelessness due to family rejection, as well as verbal and physical harassment. These experiences lead to isolation, heightened stress, and loneliness, further marginalizing transgender individuals in society.

Psychological Distress

Transgender individuals face widespread stigmatization which often results in psychological distress, self-harm, and suicides. While support from family, friends, and transgender networks can provide relief, many lack such support especially during formative years and endure additional challenges like homophobic bullying in schools and physical or verbal attacks. This isolation during critical developmental years deepens their vulnerability and severely impacts their mental health.

Rural transgender individuals face even greater challenges due to stricter scrutiny imposed by small communities, making selective disclosure of their identity more difficult. Many are forced to leave their hometowns in search of more accepting urban environments. The distress they experience arises from societal factors such as family rejection, discrimination, and fear of violence, all of which are exacerbated by homophobic norms.

These hardships contribute to disproportionately high rates of anxiety and suicidal thoughts among transgender individuals aged 15–54. Research highlights that childhood gender nonconformity strongly foreshadows depressive symptoms in adolescence. Other harmful experiences include rejection by loved ones and persistent fears of violence and discrimination. These cumulative stressors create significant barriers to well-being, leaving many transgender individuals struggling to achieve mental health and social stability.

Victims of Hate Crimes, Violence and Legal Injustice

Transgender individuals in India face extensive stigma and discrimination throughout their lives. This includes sexual and physical assaults, often perpetrated by law enforcement officials. Certain groups, such as Hijras, are particularly vulnerable to violence and abuse.

Studies reveal extensive police brutality against transgender individuals, including unlawful penalties, extortion, physical and sexual abuse, and other human rights violations. In Mumbai, 87.5% of Hijras reported harassment by police officers, including traffic and railway personnel. A survey by the Swati

¹⁵ <https://ijcrt.org/papers/IJCRT1705102.pdf>

Health Resource Centre involving 2,169 transgender individuals across three states revealed alarmingly high levels of violence starting as early as five years old, with those aged 11–15 being most at risk. Reported cases included 1,228 instances of emotional violence, 802 of physical abuse, and 781 of sexual violence.¹⁶

A nationwide study conducted across 17 states by the National Institute of Epidemiology identified law enforcement officials as primary perpetrators of violence against transgender individuals. Approximately 60% of respondents reported harassment or abuse by police, involving threats, extortion, illegal detentions without filing FIRs, and physical or sexual violence. This systemic oppression by law enforcement remains one of the most significant and pervasive challenges faced by the transgender community in India.¹⁷

Chapter:8

Conclusion

The observations above make it evident that transgender individuals with diverse sexual orientations continue to face intolerance, discrimination, and exclusion in society. This isolation is caused by a range of factors, from private biases to widespread social misconceptions.

Although the judiciary has taken significant steps to address the stigma surrounding the third gender, it is now our responsibility to understand the true implications of these judgments and ensure their effective implementation. By throwing money at transgenders to dismiss their presence, we are not only demeaning these individuals but also undermining the fundamental human rights.

In a country that finds numerous justifications for granting reservations, it is disheartening that a community which is one of the most marginalized groups in India, is often overlooked. Therefore, it is imperative to enact laws and effectively enforce them.¹⁸

Chapter:9

Recommendations

Despite India's pre-colonial heritage that celebrated gender diversity in its mythology, temple sculptures, and religious texts, transgender individuals today face widespread stigma, discrimination, and violence. Human rights violations against them persist across families, schools, workplaces, healthcare systems, law enforcement, media, and society at large.

Addressing this systemic marginalization requires affirmative actions that dismantle stigma and foster inclusivity. Key measures include creating awareness of gender diversity, ensuring safe school environments, and implementing inclusive policies. Establishing special schools, offering scholarships, and integrating transgender issues into the curriculum can provide educational equity.

Pensions and social protection schemes should include transgender persons, while police and local authorities need sensitization to combat bias. The media should highlight transgender human rights issues responsibly. Healthcare providers must address the specific needs of transgender individuals, with reforms to medical curricula and clear guidelines for procedures such as sex reassignment surgery.

¹⁶ <https://ijcrt.org/papers/IJCRT1705102.pdf>

¹⁷ <https://ijcrt.org/papers/IJCRT1705102.pdf>

¹⁸ <https://core.ac.uk/download/pdf/236436832.pdf>

Workplaces must adopt anti-discrimination policies and practices that ensure equitable hiring and benefits for transgender employees. Policy reforms should include transgender individuals in social welfare programs. Comprehensive efforts across all aspects of society are essential for the holistic inclusion and empowerment of transgender individuals in India.¹⁹

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¹⁹ <https://ijcrt.org/papers/IJCRT1705102.pdf>