



## Economic, political, social and legal issues impacting transgender community in India: A study

Geetika Sood<sup>1</sup>, Ajay Kumar<sup>2</sup>

<sup>1</sup> Assistant Professor, Department of Laws, Himachal Pradesh University, Summer Hill, Shimla, Himachal Pradesh, India

<sup>2</sup> Research Scholar, Department of Laws, Himachal Pradesh University, Summer Hill, Shimla, Himachal Pradesh, India

### Abstract

India's transgender community has faced exclusion, marginalization, and discrimination in all spheres of life. Despite the legal recognition of transgender people's rights, they still face significant challenges in accessing education, employment, healthcare, and civil rights. This study aims to examine the economic, political, social, and legal issues impacting the transgender community in India through a comprehensive literature review and case studies. The findings indicate that economic instability, political apathy, social stigma, and legal discrimination have adversely affected the transgender community's growth, development, and progress. The study concludes by proposing policy recommendations to promote the inclusion and integration of the transgender community in Indian society. The transgender community in India has been facing various economic, political, social, and legal issues that have resulted in their marginalization and exclusion from mainstream society. This study aims to comprehensively examine these issues and their impact on the transgender community in India.

**Keywords:** Transgender, community, economic, political, social, legal, education, issues, empowerment, problems, globalization

### Introduction

A male or a female, an animal or a human being, all have been given recognition in the eyes of law, protected by laws, and statutory regulations. The people belonging to the scheduled castes, scheduled tribes, and other backward classes are given reservation in the society for various opportunities in almost every aspect. Besides these, there is a group of people who are together called "transgenders" derived from the Latin word 'trans' meaning beyond or across <sup>[1]</sup>. Thus, the community is beyond the normal classification of gender or sexual orientation. In layman language, people call them 'hijras.'

Can we merely classify people as "male" or "female"? Our society is heavily influenced by gender roles. However, gender variety undermines categories of sexual orientation based on the gender binary framework. Gender variety presents numerous challenges to the gender binary paradigm, including intersex, third or other genders, gender fluidity, positions outside of gender, gender queer, etc. There are a large number of sociocultural transgender communities in India, including hijras and other transgender identities like Aradhis, Sakhi, jogtas, and jogappas. In contemporary India, all members of these subgroups face severe discrimination and harassment. They face unfair treatment like verbal abuse, physical and sexual violence, false arrests, denial of access to services and admission to educational institutions, as well as victimisation in a variety of settings like the home, places of employment, healthcare facilities, and public places. Rarely does our culture acknowledge or care to acknowledge the trauma, suffering, and anguish that transgender community members experience or understand their innate feelings. In public settings like train stations, bus stops, workplaces, malls, theatres, hospitals, etc., the transgender population is frequently made fun of and mistreated. Additionally, it is ignored and viewed with contempt. As a result, the community feels excluded from actively taking part in economic, political, and decision-making processes as well as social and cultural life. The lack of acceptance of hijras

and other transgender people's gender status is thought to be one of the main causes of exclusion.

### Objective of the study

1. Drawing attention to the economic, political, social, and legal challenges affecting the transgender community in India and raising public awareness of them.
2. To provide inclusive suggestions to raise their position.

### Methodology

The research work has been done with the help of secondary data collected from articles, publications and websites.

### Transgender in india

India's gender inequality has ancient, possibly prehistoric, origins. Hijras, eunuchs, Kothis, Aravanis, Jogappas, Shiv-Shakthis, etc. are all included in the transgender community. India's Hijra communities have a history dating back more than 4,000 years. Hijras were members of the 'Eunuch' culture, which was widespread throughout the Middle East and India and consisted of people who served as guards, advisors, and entertainers. The Ramayana and Mahabharata, two narratives from the earliest Hindu scriptures, are where the hijras claim to have originated. The concept of napunsaka is a cornerstone of Vedic literature as well. The term "psychological sex" and a thorough reference to transgender people are also included in Jain literature. Hijras also played a prominent role in the royal courts of the Islamic world, particularly in mediaeval India during the Ottoman and Mughal eras. Hijras and transgender people had historically played a vital role, but since colonial control began in the 18th century, a lot has changed. The Criminal Tribes Act, 1871, which declared the entire Hijras community to be inherently "criminal" and "addicted to the systematic commission of non-bailable offences," was passed during the British occupation. After India earned its independence in 1949, the law was removed, but discrimination towards people who identify as transgender has endured.

The transgender group, also known as "Hijras" in this country, is a subset of Indian individuals who are seen by society as "unnatural and generally as objects of derision and even dread on account of superstition," according to a Supreme Court decision from 2014. Additionally, everyone, including transsexuals, transgender people, and hijras, must have the freedom to choose their gender expression and identity. They ought to be given the freedom to express their gender identification and recognised as third sex [2].” As a result, transgender persons are now referred to as "third gender" in India. There are Hijras all over India. While collecting census data for years, the Indian Census has never acknowledged the third gender, or transgender people. But in 2011, information on transgender people, including information about their employment, literacy level, and caste, was gathered. According to the 2011 census, there are around 4.88 lakh transgender people living in India [3].

Hijras are distinctive because they have a vibrant traditional and ritualistic social structure. They either engage in prostitution or traditional ceremonies like naming ceremonies to make a living. This is a baptismal service held at the new baby's home with music, singing, and dancing. However, it should be mentioned that not everyone appreciates this event. The Transgender Persons (Protection of Rights) Bill 2019 has been approved by the Parliament. On August 5, 2019, the 17th Lok Sabha had already accepted it, and on November 26, 2019, the Rajya Sabha had also approved it [4]. The Transgender Persons (Protection of Rights) Act of 2019 [5] aims to acknowledge the identity of transgender people and outlaw discrimination in a number of contexts, including education, employment, healthcare, property ownership or disposal, holding public or private office, and accessing and utilising public services and benefits.

### **Issues that impact the transgender community**

There are many difficulties faced by transgender individuals in India. In addition to denying transgender persons equitable access to essential social services like employment, health care, education, and housing, this prejudice also marginalises them in society and places them among the weaker groups that run the risk of social exclusion. Despite this supposedly accepted position in Indian culture, transgender people still experience severe discrimination and harassment in the country today. They are victimised in a variety of contexts, including families, schools, workplaces, healthcare facilities, and public places. They are also subjected to verbal, physical, and sexual abuse, false arrests, denial of access to services and ancestral property, denial of admission to educational institution. The perpetrators of violence and discrimination against transgender people include their own parents, siblings, friends, neighbours, and community members. These actions are motivated by their effeminate behaviour, outward appearance, trans status, actual or perceived involvement in sex work, actual or perceived HIV status, dress code, and other factors.

### **Economic issues that impact transgender community**

The career and income options for the transgender community are further constrained by low literacy rates and social isolation. Their economic hardships are caused by a number of issues, including exclusion from family and society, stigma and discrimination at work, a lack of

information and training in the development of occupational skills, a lack of opportunities, and employers' lack of confidence in hiring them.

Economic marginalisation exacerbates discrimination and violence against transgender and gender nonconforming children in households and educational systems. The limited formal education many have had, the stigma and discrimination in many employers' hiring practises, the hostility in most workplaces, the lack of gender appropriate restrooms, etc., all limit the employment opportunities for transgender people who manage to survive the hostility they experience as children and youth. This leaves many transgender persons with no choice but to beg and do sex work, especially those from working class backgrounds. Sexual harassment in the workplace affects transgender people in both the formal and informal sectors. [6]

The majority of transsexual people lack a high school diploma. Similar prejudice and stigma are experienced by gays and bisexuals in schools, particularly after voluntarily or involuntarily disclosing their sexual orientation. They are forced into sex work and begging due to a lack of employment prospects and proper education. While some transgender people are able to keep their careers despite stigma and prejudice at work, the majority of them quit their positions rather than put up with it. Male-born sexual minorities are at risk of getting HIV due to a range of multi level issues, including inadequate education, a lack of employment prospects, and a lack of familial support. Similarly, needs related to sexual and reproductive health are frequently not sufficiently met. In instance, the majority of transgender people do not receive enough public funding for sex change surgeries including hormone therapy, emasculation, and breast augmentation.

Suicidal thoughts, despair, and stress associated to violence are all examples of mental health disorders. Due to their economic marginalisation, they are forced into vocations including prostitution, begging, and the predatory entertainment business. When trying to enter homes or apartments, transgender people experience overt bigotry and rejection. Additionally, individuals encounter issues as a result of discrimination when using public restrooms and a lack of gender neutral or separate restrooms for transgender people. For the transgender community, obtaining correct and consistent identifying documents has never been easy.

### **Social issues that impact transgender community**

Transgender people experience stigma and discrimination frequently because of their sexual orientation or gender identity. Social stigma involves being despised, being stigmatised, and having a broad poor opinion of things like sex work or sex solicitors. Other areas where this population feels underserved include property inheritance and child adoption. They are frequently tossed aside as social outcasts, and many end up dancing and begging. Without a doubt, this is human trafficking. The transgender community continues to be one of the most marginalized community. Transgender people are frequently targets of stigma and rejection by society due to their sexual orientation or gender identification. Because of harassment, discrimination, and sometimes violence, transgender people are unable to access fair educational opportunities.

Since Indian schools are still ill prepared to handle students with alternative sexual identities, the majority of transgender children are forced to leave school. Transgender

people are frequently the victims of rape, sexual assault, and exploitation. Family members frequently oppose transsexual people. Transgender people in families deal with a wide range of issues, such as verbal and physical abuse, exclusion and rejection, and denial of family property. When seeking medical care, transgender people are frequently subjected to prejudice, ranging from rudeness and harassment to violence and outright refusal of care. The population is still extremely susceptible to sexually transmitted illnesses like HIV and AIDS. When compared to the overall population in India, the estimated transgender HIV prevalence (8.82%) is almost 20 times higher, and it is highest in some critical demographics, including female sex workers, injectable drug users, and males who have sex with men (NACO 2014).<sup>[7]</sup>

### **Political issues that impact transgender community**

Despite the fact that there are several sexual watchdogs with sufficient knowledge of and interest in politics and governance, sexual minority do not have prominent positions in any state's positions or political parties. Although transgender people actively participated in local government elections, the public did not sufficiently recognise them. A transgender person is developing as a successful personality despite prejudice and marginalisation, demonstrating their potential. There are cases of transgender people holding influential political roles. Shabnam Mausi, a trans woman, was elected as a Madhya Pradesh state legislator for the first time in 1998. In Raigarh, Chhattisgarh, Kamla Jaan was elected mayor in 2000; another transsexual, Madhu Kinnar, won the position as an independent candidate in 2015. But as of now, no state has sent a transgender person to the Lok Sabha. In both the general elections of 2014 and 2019, six transgender candidates ran, however none were successful in winning.<sup>[8]</sup> These strange occurrences haven't given the huge community any authority. Such persons are unable to vote, get a mainstream employment, and other activities that others can. Transgender people gained the right to vote in 1994, but the process of issuing those Voter Identity Cards got bogged down in the male or female debate. Several of them were refused cards in the preferred sexual group. In India, there are many different concerns and issues related to the emergence of transgender persons. The transgender community is frequently mistreated, shunned, and ignored by society. They are not allowed to take part in political or socioeconomic activities. In India, transgender people face a variety of obstacles, including psychological prejudice, physical problems, unemployment, ignorance, access to legal services, and many others.<sup>[9]</sup>

### **Legal issues that impact transgender community**

In the case of *Navtej Singh Johar v. Union of India*<sup>[10]</sup> by the Constitutional Bench headed by then CJI Justice Dipak Mishra, the Supreme Court of India partially decriminalised Section 377 of the Indian Penal Code, 1860. Previously, Section 377 made it illegal for homosexuals to have sexual relations. The decision was a little milestone in the fight for the equality and normalisation of LGBTQ community members. The Supreme Court has addressed the issues that the LGBTQ community is facing in this case while simultaneously defending their fundamental rights. The Apex Court ruled in the *KS Puttuswamy* case that Article 21 includes the right to privacy. The Supreme Court of India

ruled in *Navtej Singh Johar's* case which was decided in line with *Puttuswamy's* case that the presence of Section 377 violates the right to privacy and is, thus, unconstitutional. Court petitions seeking same sex marriage recognition are made on the lines of the decriminalisation of Section 377 infringement of human and civil rights, particularly for transgender people.

**Lack of laws in respect of marriage:** Hindu laws have been fashioned to consistently normalise the sanctification of Hindu matrimony and its viewpoints. The main components of a legal union contracted under Section 5 of the Hindu Marriage Act, 1955, are outlined in the guardian statute governing Hindu marriages. As of right now, the legislation does not define important terms under section 5(iii)<sup>[11]</sup> of the Act, such as "bride" and "groom" or the parties who constitute a valid marriage. In contrast, marriage is described in Section 2(1)(a) of the Act as being relevant "to any individual who is a Hindu by religion in any of its structures or improvements."<sup>[12]</sup> Even while the legal definition of "marriage" as a valid union between a man and a woman as husband and wife has been established by numerous legislation and case laws, these terms have not been defined by any law.

The problem with the terms "man" and "woman," which are used as frequently as they can be in any rule or enactment, is that they are hardly defined, neither in the relevant rule nor in a pre-defining code or administrative act that would supersede all enactment in terms of the understanding and significance of the words being referred to. Due to the third gender not falling under the definition of man or woman as defined by the acts, marriage status was denied to them.

By decriminalising Section 377 of the IPC, the Delhi High Court held that discrimination on the basis of sexual orientation violates Article 15 of the Constitution because "sex" in that article included "sexual orientation."<sup>[13]</sup> The term "relationship in nature of marriage," which comprises key elements of marriage including a shared habitation, financial arrangement, sexual affinity, and so forth, was also defined by the court. As a result, the concept "marriage as relationship" does not apply to weddings between transgender people, which lead in the denial of numerous benefits that derive from the sanctity of marriage. Additionally, homosexual couples are not granted the same privileges and rights as heterosexual couples, in violation of Article 15 of the Constitution once more.

In *Suresh Kumar Kaushal v. Naz Foundation & Others*<sup>[14]</sup>, the Supreme Court reversed the judgement in the *Naz Foundation* case and reinstated Section-377 of the IPC. The protection of sexual orientation lies at the core of the fundamental rights protected by Articles 14, 15, and 21 of the Constitution, according to the Supreme Court's ruling in *K.S. Puttaswamy v. Union of India* in 2017<sup>[15]</sup>. The Supreme Court sent the case to the constitutional bench after casting doubt on the accuracy of the ruling in the *Suresh Kumar Kaushal* case. In *Navtej Singh Johar v. Union of India*, the Supreme Court's five judge panel reversed its prior ruling in the *Suresh Kumar Kaushal* case. The court in this decision decriminalised homosexual couples consensual intercourse, however rape, sex with children, and bestiality are still crimes under section 377 of the IPC.

However, the *Navtej Singh Johar* case, which set a precedent, benefitted the transgender community by decriminalising homosexual behaviour. However, the decision fails to acknowledge the status of same-sex

marriage, which prevents it from giving the transgender minority in India similar rights.

**Uncertain adoption laws:** According to the Hindu Adoptions and Maintenance Act, they may adopt a kid after meeting the requirements of Sections 7 and 8 of the Acts. Without any formal review, they are legally permitted to adopt from their parents. However, if the adoption falls outside the purview of natural guardians, evidence of eligibility to adopt under the Hindu Adoption and Maintenance Act 1956<sup>[16]</sup> must be presented to the court. Third-gender adoptions are not permitted since the only recognises adoptions made by men or women as being legal. Adoptions in Hijras based on the custom of reet have also been delegitimized by Sections 4 and 5 of the same Act, which grant overriding powers to the provisions of the Act over customs. Unmarried men and women are permitted to adopt under the Adoption Regulations as long as they are mentally, emotionally, and financially stable and do not have a life threatening condition like Hindu Adoption and Maintenance Act 1956. In addition, the Regulations permit a woman to adopt a boy child but exclude a single man from adopting a girl child.

Anyone can adopt a kid, according to the Juvenile Justice Act's secular law. Transsexuals can adopt a child because the term "person" is not gendered and so fits the criterion. Section 41(6)<sup>[17]</sup> of the Juvenile Justice Act, which states that everyone has the right to adopt and does not specifically refer to just male or female persons, states that people of the third gender will be able to adopt if they are officially recognised as a couple. Anyone who satisfies the requirements outlined by the central adoption resource agency in an affidavit submitted to the Bombay High Court is eligible to adopt.

This absence of legal protection frequently results in transgender people losing their jobs. People who identify as transgender experience a legal system that frequently does not shield us from prejudice due to our gender identity. If we encounter discrimination while looking for housing or eating at a restaurant, transgender persons may still be without legal remedy. Additionally, state legislatures all over the country are debating and, in some cases, passing legislation that is specifically intended to prevent transgender people from using public restrooms that are gender congruent with our gender identity or to create exceptions based on religious beliefs that would allow discrimination against LGBTQ people.<sup>[18]</sup>

### **Suggestion for betterment of transgender community**

Support of civil society organization to advocate for their cause and efforts like advocate for land/shelter, creation of separate public toilets, hospital wards, recognition of their right to vote as citizens, reservation of seats in employment and elections, etc. Support of Media both print and electronic, to highlight their status and plight rather than portraying them in poor light. Extend financial support for Community Based Organizations run by transgender communities. Avoiding of verbal abuses against the transgender in Cinemas and Television Serials.

1. It's essential to raise awareness of gender diversity and the necessity to shield transgender teenagers from unfriendly learning environments. Addressing transgender issues and concerns must take addressed in schools and teacher education initiatives. The following policies and practises can be used by schools to improve the health and safety of transgender pupils:-

- A. Free education from kindergarten through grade twelve should be implemented, along with the creation of a separate school for transgender pupils.
  - B. Initiate rigorous measures against bullying, harassment, and violence while also promoting respect among kids.
  - C. Determine "safe areas," such as counsellors' offices, special classrooms, or student groups, where transgender students can get assistance from administrators, teachers, or other school staff.
  - D. Support school organisations run by and for students who work to create a welcoming, safe, and accepting environment in the classroom.
2. The locals have a distinctive folk music, art, and dance tradition. The community gains a strong sense of identity and strength as a result. In order to encourage greater community engagement, it is necessary to connect these creative and cultural expressions with daily activities. In order to establish a connection between financial support and job chances, efforts should be undertaken. For the community to gain from pension systems, they must be included in them.
  3. Make the general public aware of their issues. Conscience's driving force is crucial. Education about how to accept children with gender differences, treat people of different genders and gender identities fairly, and implement policies and plans in a way needs to be provided to local authorities, policy-makers, schools, and families. "friendly" as opposed to "hostile."
  4. To increase public knowledge and strengthen transgender people's ability to exercise their rights, transgender human rights concerns should be emphasised in the media and other public forums. It must stop being said that media reports are bad.
  5. All transgender patients must have their unique needs met by physicians and other healthcare professionals. To stop psychosocial harassment and discrimination, advocacy work should be done for counsellors, psychiatrists, and other mental health practitioners.
  6. Despite their discomfort and deeply ingrained normative beliefs, parents must be aware of and educated about gender nonconforming and transgender children in order to support them. Parents must be aware of the likelihood that their child will experience violence away from the home or at school, in the extended family, on the playground, etc. and offer the necessary support. They must also be aware of the added stress that a gender heteronormative or transgender child feels as they approach puberty and suffer dysphoria when their sense of gendered identity conflicts with the characteristics of their sexual organs.
  7. Workplaces in the public and commercial sectors should raise the sensitivity of employers and employees to transgender concerns after engaging with community organisations and human resources specialists with knowledge in the field of diversity and inclusion. Recruitment, retention, promotion, and employee benefits procedures should all be subject to anti discrimination policies that are designed and effectively implemented. Transgender individuals should be covered under workplace sexual harassment rules.
  8. Institutional and regulatory changes that open up access to social security programmes for the underprivileged and other vulnerable populations must include transgender inclusion.

9. Recruitment preferences or restrictions: Just with other historically underrepresented groups like women, transgender people who are suitably qualified and meet the employer's basic requirements will be given preference over other workers. A percentage of employment reservations for sexual minorities are also a good idea.
10. Anti-sexual harassment policy: Sexual violence against members of sexual minorities at the workplace must be addressed by having a distinct anti-sexual harassment policy or, in cases where such a policy already exists in organisations for women, by including specifics regarding sexual minorities.
11. Medical leave: Pre-operative transsexuals undergoing sex reassignment surgery (SRS) are entitled to a significant amount of leave, which varies based on the SRS procedure being performed (e.g., breast augmentation or emasculation).

### Conclusion

Each person is absolutely special and required by nature. Therefore, it is wrong to condemn and discriminate against those who don't fit the stereotype, which is likewise a product of human ingenuity. In this nation, everyone is treated equally and is encouraged to "live and let live." Therefore, the right to equality in Article 14 which forbids discrimination based on religion, caste, sexual orientation, or place of birth is the most crucial right that transgender individuals merit. While Article 21A declares that education is a fundamental right for all Indians, Article 21 asserts that all citizens have the right to privacy and personal dignity. The constitution forbids discrimination based on gender, caste, creed, or religion and protects fundamental rights to equality. Additionally, it ensures that everyone has access to political rights and other benefits. The transgender still faces discrimination in India despite these constitutional rights. At home, school, and in the neighbourhood, leading them to frequently relocate in an effort to fit in. A person's mental health may be adversely affected by harassment in the form of verbal, physical, or sexual abuse.

In 2023, this oppressed class has no recourse to any type of social support in a democratic nation like India. Given the aforementioned suggestions, it is obvious that transgender people's rights must be strongly protected. It is now our responsibility to recognise the true ramifications of their neglect and prioritise their application as a crucial step in eradicating third-gender stigma. It is recommended that comprehensive pre-service and in-service teacher training programmes be offered across the nation for the teaching of transgender students. Human rights violations against transgender people violate families, educational institutions, workplaces, law enforcement agencies, healthcare institutions, the media, and society as a whole. Affirmative action is needed to eliminate stigma and discrimination associated with the community.

### References

1. Vocabulary.com. Transgender [Internet]. Available from: <https://www.vocabulary.com/dictionary/transgender>. Accessed 2023 May 10.
2. AIR 2014 SC 1863.
3. Census 2011. Transgender [Internet]. Available from: <https://www.census2011.co.in/transgender.php>. Accessed 2023 May 10.
4. The Transgender Persons (Protection of Rights) Act, 2019 [Internet]. Available from: <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2019>. Accessed 2023 May 11.
5. The Transgender Persons (Protection of Rights) Act, 2019.
6. Problems associated with Transgender persons in India [Internet]. Available from: <https://www.insightsonindia.com/social-justice/issues-related-to-third-gender-lgbtqia/transgender/problems-associated-with-transgender-persons-in-india/>. Accessed 2023 May 11.
7. Stigma, violence and HIV vulnerability among transgender persons in sex work in Maharashtra, India [Internet]. Available from: [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6176758/#:~:text=In%20India%2C%20the%20estimated%20transgender,with%20men%20\(NACO%202014a\)](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6176758/#:~:text=In%20India%2C%20the%20estimated%20transgender,with%20men%20(NACO%202014a).). Accessed 2023 May 12.
8. Why Indian Parliament Should Have A Transgender MP [Internet]. Available from: <https://www.outlookindia.com/website/story/india-news-why-must-indian-parliament-reserve-seats-for-transgenders/363008>. Accessed 2023 May 13.
9. Exclusion of The Transgender: An Assessment of The Political Participation of The Transgender in India [Internet]. Available from: [https://www.academia.edu/50889521/EXCLUSION\\_OF\\_THE\\_TRANSGENDER\\_AN\\_ASSESSMENT\\_OF\\_THE\\_POLITICAL\\_PARTICIPATION\\_OF\\_THE\\_TRANSGENDER\\_IN\\_INDIA](https://www.academia.edu/50889521/EXCLUSION_OF_THE_TRANSGENDER_AN_ASSESSMENT_OF_THE_POLITICAL_PARTICIPATION_OF_THE_TRANSGENDER_IN_INDIA). Accessed 2023 May 14.
10. AIR 2018 SC 4321.
11. Hindu Marriage Act, 1955. Section 5.
12. Hindu Marriage Act, 1955. Section 2 (1) (a).
13. 160 Delhi Law Times 277.
14. Civil Appeal No. 10972 of 2013.
15. (2017) 10 SCC 1.
16. The Hindu Adoptions and Maintenance Act, 1956.
17. Juvenile Justice (Care and Protection of Children) Act, 2015.
18. Understanding the transgender community [Internet]. Available from: <https://www.hrc.org/resources/understanding-the-transgender-community>. Accessed 2023 May 15.