

INCLUSIVE GROWTH OF TRANSGENDERS: A ROAD TO SOCIAL JUSTICE

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ABSTRACT

Transgender are also the creation of the God like the Binary. They are the part of the society and have equal rights. The presence of transgender of late is increased and call for protection. The existing literature shows that transgenders are facing numerous problems in the society such as sexual harassment, lack of medication, employment opportunities, false arrest and physical and verbal violence. Although the existing policies and legislation such as Article.14, Article 15, Article 16, Article 19, Article 21 of the Indian Constitution and Transgender Persons (Protection of Rights) Act, 2019 provides for the equal opportunities and restricts discrimination, Yet inclusiveness is lacking. The object of writing this paper is to analyze the protection of Transgender Act and to identify the challenges faced therein towards the Inclusive. This paper is divided into two parts firstly, analysis of the Act. The second part focuses on the Inclusiveness of Transgenders i.e, the Identification of the challenges faced by the Transgender community such as Racism, abused and ridiculed in public places, parents kick them out of the house, social exclusion, human trafficking, disrespect, rejection of entry. This paper concludes by offering suggestions and call for the need for inclusive of transgenders and how it leads to social justice.

Keywords: Transgender rights, Justice, challenges, Transgender Act, 2019, social justice, inclusiveness

INTRODUCTION

By Hearing to the word Transgender, Indian society starts making faces and gives Negative attitude to the phrase itself. So, this societal stereotype mindset which almost stops us to think positive about the transgenders. Moreover, the society has already decided in their mind and fixed a work for them as wearing bangles and sarees jingling around here and there. The time is the most powerful weapon to change in the society which has already succeeded in changing communal and educational status of Transgenders. The Transgender person (Protection of Rights) act, 2019 was a subsequent stride towards protection and well-being of transgenders. (act no. 40 of 2019).¹

MEANING OF TRANSGENDERS

According to section 2(k) of the Transgenders Person (Protection Of Rights) act, 2019. Transgender person means a person whose gender does not match with the gender assigned to that person at birth and includes transman and trans-woman (whether or not such person has undergone surgery or hormone therapy or such other therapy) person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani, and jogta.²

Ritwik Mehta, (2021) in his article named “Analyzing transgender rights in India”. The author examines that the gap in social and legal institutions for transgenders hamper the path to social justice. he addresses the landmark judgement NALSA V. UOI (2013) which has given right of self-determination but in the recent legislation made for the Transgenders in 2019 calls it is necessary to receive Gender Identity Certificate from district magistrate. The study also states that the author criticizes the law as it does not provide any punitive provision for discrimination and reservation for job opportunities. He also adds upon the inclusivity in educational institutions is very much necessary. so, they wants to bring that laws made by sovereign is not enough to bring social justice but there must be societal acceptance for Transgender community.³ Renner et al., (2022) conducted a research and addressed that online health services such as digital health apps are helpful to meet the needs of the transgender community.

¹Kiran Yadav, Jubilee Padmanaman & Igona Goraknath, *Socio-Cultural Problems of Transgenders in India*, 14 Int'l J. Early Childhood Special Educ. no. 2 ([year]).

²Transgender Persons (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019, ch. I, § 2(k) (India).

³Ritwik Mehta, *Analyzing Transgender Rights in India*, 2 Indian J.L. & Legal Rsch. no. 1 (2021).

Their analysis showed that these services can solve some of minor problems such as visiting doctor, or visiting clinics for health advice and the review suggest that online health service can be one of the option to make medical health care more inclusive for the transgender community.⁴ Further, Nandini and Zachariah (2023) article highlights that transgender community faces hardcore challenges at the workplace for example they has been denied to the entry of the office premises. Even though there is a legislation made for the welfare of the transgenders but the inclusivity is still in the corporate world. The study emphasis that the real inclusion is not just making rules, policies and regulations for them. So, overall the author tries to argue that workplace inclusion is a part of social justice for Transgenders.⁵ Simple explanation given by Mishra and Negi (2021) article that transgender person (protection of rights) act, 2019 provides right to employment and protection against discrimination but in the real world this is in progression. Author says that right to work is constitutionally supported but for effective implementation is still challenging. They mainly focused on right to work as a constitutional right under article 21 (Right to life and livelihood) which ensures a road to social justice. Overall, this study promotes equality among all the people. which leads to economic development in transgender community meanwhile, reduces social stigma and social exclusion.⁶ In this background the existing circumstances create a dearth for the study of inclusive growth of Transgenders and it is essential for social justice.⁷

RESEARCH OBJECTIVE:

To have analytical study of the transgender person (protection of rights) act, 2019 and highlighting the challenges faced by the transgenders in the society and suggest some measure in this regard.

This paper is divided into two sets : Firstly, Analytical study of the Transgender Persons (Protection of Rights) act, 2019 and secondly, about the challenges faced by the transgender community in society.

⁴Renner et al., *Need for Inclusive Consideration of Transgender and Gender Diverse People in E-Health Services: A Systematic Review*, 11 J. Clinical Med. 1090 (2022), <https://doi.org/10.3390/jcm11041090>.

⁵M. Zachariah & A.S. Nandini, *Workplace Transformation in India: Creating a Trans-Inclusive Environment, in Managing for Social Justice* (L. Poonamalle, A.D. Howard & S. Joy eds., Palgrave Macmillan 2023).

⁶N. Mishra & Uthkarsh, *Transgender and the Right to Employment in India: Analyzing the Trajectories of Discrimination*, 9 Bestuur no. 1 (2021), <https://doi.org/10.20961/bestuur.v9i1.51997>.

⁷*Id.*

PART 1:

In this part the author attempt to analyse and explain the Transgender Persons (Protection Of Rights) act, 2019. It had declared in the year 2014 judgment that self-determination of gender is the fundamental right under Constitution of India. The decision was a breaking point in Indian jurisprudence and decision has a positive effect to transgenders by protecting their socio-economic rights. It has directed the appropriate government to make such regulations for the well-being of the transgenders and for the protection of fundamental rights enshrined under part 3 of the constitution.⁸ Pandey and sivakami, (2021) gave a opinion on the legislation as although the law guaranteed legal recognition to transgender persons, it even falls short to address the needs of the people. the Author of this article mainly focused on older transgender person. The act says the person to get a medical checkup and receive a gender identity certification I,e proof of being transgender. the older transgenders often face disparities In hospitals, temples or at workplace due to lack of social support. So, they address that law must remove these barriers and make sure that transgender people are equally treated respected in society.⁹

The criminalization of transgender under section 377 of the IPC addressed by khotari(2019). He says transgenders were vulnerable, facing exclusion from legal protection. Khotari mentioned two important supreme court judgement such NALSA (2014) and Navtej singh johar(2018), which gave legal recognition to transgenders and decriminalization of section 377. Jayna Kothari (2019) is a lawyer who has worked in rights of transgender in India. focused on section 377 of IPC. that the law has made unfair criminalization to transgender persons sexual relationship even if they were accordant.¹⁰ The live law article called “sexual assault against transgender” by kapil & md. Iftekhar Addresses that transgender are not fully been protected under criminal laws in India. The definition clause of the word sexual assault in BNS is still only use women excluding trans people out. As there are no provisions with respect to transgender victims of rape and sexual assault which creates a legal gap and they cannot get

⁸Nitesh Mahech, *Transgender Persons (Protection of Rights) Act & Rules: A Critical Analysis* (2020) (unpublished student paper, Univ. Sch. of L. & Legal Stud., Guru Gobind Singh Indraprastha Univ.).

⁹Deeksha Pandey & S. Muthuswamy, *How Inclusive Is the Transgender Persons Act? Evidence from the Ground*, vol. 4, no. 1 (2021), <https://doi.org/10.1177/26310318211064132>.

¹⁰Jayna Kothari, *The Supreme Court Trans-formed*, The Hindu (2018), <https://www.thehindu.com/opinion/op-ed/the-supreme-court-trans-formed/article24949441.ece>.

proper justice. The article suggests to include equality to transgender people to bring safety and justice to them.¹¹

PART 2:

Transgenders had been facing problems persistently in relation to health due to social stigma and discrimination. Rizvana (2021) highlights that although there were government made policies but it is still lacking to fulfill the needs of the transgender persons. The authors argue about the vulnerability of transgenders to HIV, mental health, tobacco, violence and victimization yet remains neglected. The people are not aware about the schemes and policies made by the government for them due to lack of proper awareness and education. This research emphasizes that India needs to be more friendly with transgenders and access affordable healthcare to transgender community.¹² Palepu et al., (2025) discovered skin-lightening practices by hijras and Transgender women in Hyderabad, India. they found that already 29% had used the beauty products and later 67% of women were seeking for brighter skin that was practiced by injections, pills and creams etc. Transgender belief that having fairer skin is a privilege in society because Indian society has more obsession towards fair skin complexion. Palepu, (2025) highlights that how skin colour has become a social issue for transgender community. Palepu, and others (2025) suggests that to create awareness about the side effect of these products to transgender women and call for reducing mental pressure to achieve brighter skin.¹³

Laura H. Thompson et al., (2019) highlights that transgender persons faces physical and verbal abuse in their ordinary course of their life, particularly Hijra and Kothi person in Karnataka. They researched and collected data who were a part of HIV care program and researchers found that around 46% of Hijras have experienced physical and verbal violence and threats from stranger, police etc. they said that how these violence has affected their mental health. Researchers suggest for enhancing proper mental health for transgenders must incorporate powerful action against violence and discrimination. They call for protection

¹¹Kapil & Md. Iftekhar Khan, *Sexual Assault Against Transgenders: The Definitional Void and the Absurdity of Indian Penal Provisions*, LiveLaw (2025), <https://www.livelaw.in/lawschool/articles/sexual-assault-against-transgenders-and-indian-criminal-laws-285326>.

¹²Rizvana et al., *Health Care Services and Challenges Among Transgender in India*, 8 Int'l J. Cmty. Med. & Pub. Health 3143 (2021), <https://doi.org/10.18203/2394-6040.ijcmph20212027>.

¹³Palepu et al., *Insights into Skin Lightening Practices of Hijras and Transgender Communities in India* (2025), <https://doi.org/10.2196/66822>.

from violence to ensure Transgender's well-being.¹⁴ Cuesta et al (2024) social exclusion is where persons are kept away from the needful opportunities such as education, health or any form of social gathering. The research addresses that around 2.3-2.4 billion people are been excluded. Cuesta (2024) address that major minority community such as transgender persons face more chances of social exclusion in society. Cuesta suggests that estimating these hindrances helps to identify the risk. They suggest implementation of programs needed to ensure inclusivity in society in respect of transgenders.¹⁵

FINDINGS:

1. conduct sensitization program for social inclusion to reduce sexual abuse at workplace and disrespect towards transgenders.
2. Initiating housing schemes to transgender community.
3. Ensuring health insurance to have adequate access to healthcare.
4. Organize legal aid clinic for Transgenders to make complaint without any fear of biased.

CONCLUSION:

The travel to inclusive growth of transgender people is deeply connected to social justice. Although, the legislation Transgenders act, 2019 and NALSA judgment has come up with strong recognition, yet the effective implementation is lacking. The Transgenders face many challenges in society as mentioned above. The government policies and reforms are equally significant to bring drastic change in society. Transgender should be equally accessible to health, education and social acceptance then it can be called to be true inclusive in society. Thus, the phrase Road to social justice is encouraging the transgender persons to live with peace, dignity, and freedom.

¹⁴Laura H. Thompson et al., *Violence and Mental Health Among Gender Diverse Individuals Enrolled in a Human Immunodeficiency Virus Program in Karnataka, South India*, 4 Transgender Health 316 (2019), <https://doi.org/10.1089/trgh.2018.0051>.

¹⁵Jose Cuesta et al., *Social Exclusion: Concepts, Measurement, and a Global Estimate*, 19 PLOS ONE no. 2, art. e0298085 (2024), <https://doi.org/10.1371/journal.pone.0298085>.