

# Transgender Rights, Challenges, and Social Inclusion in India

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**Abstract:** *This article examines the social, legal, and political challenges faced by transgender individuals in India. It explores the distinctions between gender identity, gender expression, and sexual orientation, highlighting the discrimination, socioeconomic inequalities, and marginalization experienced by transgender people. Despite constitutional guarantees of equality, privacy, and dignity, transgender individuals face barriers in education, employment, healthcare, and civil recognition. The article also discusses the political and legal frameworks, including international human rights perspectives, Section 377, and domestic policy gaps, that affect the community. Emphasis is placed on the importance of societal, familial, and governmental acceptance, as well as policy interventions, to ensure inclusion, protection, and equal opportunities for transgender people.*

**Keywords:** Transgender, Gender identity, Rights, Discrimination, Social inclusion, Policy

## 1. Introduction

Transgender is an umbrella term for persons whose gender identity, gender expression, or behavior does not conform to that typically associated with the sex to which they were assigned at birth. Gender identity refers to a person's internal sense of being male, female or something else. Gender expression refers to the way a person communicates gender identifies with others through behavior, clothing, hair styles, voice or body characteristics etc.

Transgender people are individuals of any age or sex whose appearance, personal characteristics, or behaviors differ from stereotypes about how men and women are "supposed" to be. Transgender people have existed in every culture, race, and class since the story of human life has been recorded. Only the term "transgender" and the medical technology available to transsexual people are new. In its broadest sense, transgender encompasses anyone whose identity or behavior falls outside of stereotypical gender norms.

### Gender Identity and Sexual Orientation

Transgender people may be straight, lesbian, gay, bisexual, or asexual, just as non-transgender people can be. As these have certain common issues they all come under the banner LGBT (Lesbian, Gay, Bisexual and Transgender) and fight for their common cause.

### Lesbian or gay woman

A transgender woman or a person who is assigned male at birth and transitions to female, who is attracted to other women would be identified as lesbian or gay woman.

### Gay Man

A transgender man or a person who is assigned female at birth and transitions to a male, who is attracted to other men would be identified as a gay man. Those who realize early, have less problem compared to those who transition later in life.

## Rights of Transgender People

The preamble to the Constitution mandates Justice - social, economic, and political equality of status. Thus the first and foremost right that they deserve is the right to equality under Article 14. Article 15 speaks about the prohibition of discrimination on the ground of religion, race, caste, sex or place of birth. Article 21 ensures right to privacy and personal dignity of all the citizens. Article 23 prohibits trafficking in human beings as beggars and other similar forms of forced labor and any contravention of these provisions shall be an offence punishable in accordance with law. The Constitution provides for the fundamental right to equality, and tolerates no discrimination on the grounds of sex, caste, creed or religion. The Constitution also guarantees political rights and other benefits to every citizen. But the third community (transgender) continues to be ostracized. The Constitution affirms equality in all spheres but the moot question is whether it is being applied. This phenomenon can be observed at the international level, principally in the form of practice related to the United Nations sponsored human rights treaties, as well as under the European Convention on Human Rights. The development of this sexual orientation and gender identity-related human rights legal doctrine can be categorized as below:

- a) Non-discrimination
- b) Protection of Privacy rights and
- c) The ensuring of other general human rights protection to all, regardless of sexual orientation of gender identity

In the light of the Constitutional guarantees provided, there is no reason why Transgender Community should not get their basic rights, which include Right to Personal Liberty, Dignity, Freedom of Expression, Right to Education and Empowerment, Right against Violence, Discrimination and exploitation. The Constitution endures persons in every generation and every generation can invoke its principles in their own search for greater freedom, therefore, it is the duty of judiciary to interpret the provisions of the Constitution in such a way so as to ensure a life of dignity for them. As per the Constitution, most of the protections under the Fundamental Rights are available to all persons with some rights being restricted to only citizens. Beyond this

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categorization the Constitution makes no further distinction among rights holders. Official identity papers provide civil personhood. Among the instruments by which the Indian state defines civil personhood, sexual (gender) identity is a crucial and unavoidable category. Identification on the basis of sex within male and female is a crucial component of civil identity as required by the Indian state. The Indian state's policy of recognizing only two sexes and refusing to recognize hijras as women, or as a third sex has deprived them at a stroke of several rights that Indian citizens take for granted. These rights include the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's license, the right to education, employment, health so on. Such deprivation secludes hijras from the very fabric of Indian civil society. The main problems that are being faced by the transgender community are of discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities like HIV care and hygiene, depression, hormone pill abuse, tobacco and alcohol abuse, appendectomy and problems related to marriage and adoption. In 1994, transgender persons got the voting right but the task of issuing them voter identity cards got caught up in the male or female question. Several of them were denied cards with sexual category of their choice.

### **Poor Economic Condition and Discrimination in the Workplace:**

In addition to homophobia, lesbian, gay, bisexual and transgender people confront racism and poverty on a daily basis. Discrimination of LGBT persons in the workplace is a significant factor in the differences in socioeconomic status of LGBT persons. Gay and transgender individuals suffer from socioeconomic inequalities in large part due to pervasive discrimination in the workplace. Discrimination directly causes job instability and high turnover, resulting in greater unemployment and poverty rates for gay and transgender people, as well as the wage gap between gay and straight. In her 1998 report, *Income Inflation: The Myth of Affluence Among Gay, Lesbian, and Bisexual Americans*, economist Lee Badgett<sup>12</sup> notes that LGBT people do not earn more than heterosexual people. Budget points to the diversity of economic life among LGBT populations, observing that in many cases, LGBT people earn less than their heterosexual counterparts.

### **Legal Status:**

Disowned by their families in their childhood and ridiculed and abused by everyone as third sex, eunuchs earn their livelihood by dancing at the beat of drums and often resort to obscene postures but their pain and agony is not generally noticed and this demand is just a reminder of how helpless and neglected this section of society is thousands of welfare schemes have been launched by the government but these are only for men and women and third sex do not figure anywhere and this demand only showed mirror to society.

The Constitution gives rights on the basis of citizenship and on the grounds of gender but the gross discrimination on the part of our legislature is evident. The Constitution, while it contains certain prohibited grounds of discrimination such as race, caste, creed, sex, etc., does not specifically include sexual orientation. A reading of Section 13 of General

Clauses Act, 1897 which talks about gender and number makes the discrimination more apparent.

Jobs are denied to eunuchs due to their gender and they are ridiculed in the society. Time Magazine once interviewed a eunuch who complained that the application form for the job has only two sexes mentioned and makes it blatant how unwanted they are. Even if they apply, they are not allowed to enter the offices. The main cause for discrimination against eunuchs is the mindset of the society at large. Owing to the fact that these people are different in matters of their sexual preferences and are strong enough to show it, the society sees it as a violation of a norm and thus subjects them to isolation. Family and popular psychology play a predominant role in perpetuating the present dilemma law needs to step in to ensure that a relatively small but deeply aggrieved humiliate section of the civil society is given its rights guaranteed by the Constitution of the land.

### **No Legal Rights and rehabilitation measures**

Lack of sufficient Rehabilitation Measures at every stage, starting from getting gender identify as Transgender to Education or employment or property right, trans-genders are to struggle. As most of them do not have a fixed home, they are not in the electoral list. Legally they have the right to all the basic requirements. But in practice they suffer exclusion in every sphere of human activities such as family, relation, education, employment, worship etc.

### **Transgender Identity Politics**

The growth of new social movements, organized around the salient experiences of oppression of different identity groups, has engendered a corresponding intellectual study of identities, of how we come to acquire an identity, of what an identity means, and of how identities become socially recognized, defined, and politicized. Each identity-based social movement has made unique contributions to these debates. The transgender political movement has only recently gained public recognition. Alongside this newfound political status, new ways of conceptualizing and defining what transgender means are also emerging. And, as with other identity-based movements, transgender politics is providing singular challenges to how we think about identities and their politicization. In what follows, I argue that what transgender identity specifically problematic is identity itself. Transgender identity is about identity experienced as problematic; the experience of being transgender problematizes the relationship of the self to the body, and the self to others. In doing so, it also problematizes issues of identity boundaries, stability and coherence. I also intend that, as with the study of other identity groups, the insights that can be gained from an exploration of transgender identity do not apply only to transgendered people, but can be extended to other identities as well.

### **Global Politics**

The global politics of lesbian, gay, bisexual and transgender (LGBT) human rights have emerged at the heart of global political struggles over culture and identities. The drafting and signing of two high-profile documents, the Declaration of Montreal (International Conference on LGBT Human Rights 2006) and the Yogyakarta Principles on the

Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity by global LGBT activists in 2006, derives from and symbolizes a significant acceleration and intensification of international struggles by LGBT movements. LGBT nongovernmental organizations (NGOs) are at last achieving substantial and secure representation in global forums, recently even at the United Nations (UN), and 'sexual orientation' and 'gender identity' issues are finally finding a place on international human rights, law and policy agendas. This volume offers much needed analysis of these under-explored developments. The collection draws attention to the emergence of 'human rights' as a central vehicle and framing device for LGBT political claims, particularly in international contexts. However, our emphasis on 'the global politics of LGBT human rights' crucially also problematizes the concept 'LGBT human rights', which has its own significant history and meanings. Analyzing 'LGBT human rights' requires critical examination of both the consolidation of the culturally specific identity categories 'lesbian', 'gay', 'bisexual' and 'transgender' into 'LGBT' and the conjoining of 'LGBT' with 'human rights'. The latter enacts a redefinition of human rights in a context of the historical absence of sexuality and gender nonconformity from human rights conventions and discourses. The very emergence of the concept 'LGBT human rights' is suggestive of the absence of LGBT people from previous conceptions of the human (Butler 2004). LGBT movements originating in the West have increasingly defined themselves as global, seeking to organize across borders and lobby intergovernmental organizations. Since the emergence of gay liberation movements in Western countries in the late 1960s and early 1970s, LGBT organizations have often framed their demands in terms of equality and/or liberation, but human rights discourses did not become central to national and international debates over gender and sexuality until the early 1990s. The engagement with a human rights frame has proven successful in opening the doors of powerful international organizations such as the European Union (EU) and more recently shows signs of becoming a vehicle for access to the UN. These international developments have reverberated in domestic political settings, as is illustrated by the adoption of same-sex union policies by a majority of Western democracies over the past two decades but also by controversies over the persecution of LGBT people in sub-Saharan countries. Although LGBT rights claims are increasingly influencing political discourse in many countries, the contributions in this volume seek to problematize the 'global' nature of the LGBT movement by analyzing the variable influence of international

### Political Factors

Political factors have influenced HIV vulnerability since the early days of the pandemic. In some cases, legislation, government policies, program strategies, and funding streams perpetuate discrimination against those most vulnerable to HIV, promote gender inequality, and even criminalize some sexual behaviors like homosexuality. When political factors sanction social norms and traditions that promote discrimination, gender-based vulnerability to HIV increases as does the vulnerability of those who are sexually marginalized.

### Laws and Policies

Laws and policies create the environments in which HIV prevention, treatment, care, and support services are delivered. Politics and policies that are driven by conservative and traditional ideologies have the dire consequences of the epidemic and further fuel infection rates among key vulnerable populations such as women and girls, transgender people, MSM, injecting drug users, and sex workers. National prevention policies pursued by governments have a profound impact on the way in which the HIV epidemic plays out in a country. Governments, by agreeing to the various international human rights treaties and conventions, are accountable for promoting and protecting the human rights of their people. Human rights relevant to HIV/AIDS include (but are not limited to) the right to non-discrimination and equality; to health; to the liberty and security of the person; to privacy; to seek, receive and impart information; to marry and found a family; to work; and the right to freedom of movement, association and expression.<sup>105</sup> Implementation of these rights is absolutely essential in the context of HIV to ensure that services are reachable and accessible to those infected and most affected by the epidemic.

### Discriminatory Laws

Discriminatory laws and policies enhance women's vulnerability to HIV. Laws and policies that prevent women from owning land, property, and other productive resources are examples of legislation that supports and increases gender discrimination. Other forms of gender-based and policy-supported discrimination in the areas of employment, education and access to health care services and information further exacerbate women's vulnerability to HIV. Research has shown that legal and political gender-based discrimination contributes to the feminization of poverty, promotes women's economic susceptibility to HIV, and creates significant barriers to women's ability to seek and receive care and support when they themselves are living with HIV. Legislation condoning gender-based violence through light court or prison sentences, or policies that consider intimate partner violence or marital rape as personal domestic matters not requiring state interference, are other examples of political and legal discrimination which increases women's vulnerability to HIV. International instruments have recognized that discriminatory laws and policies increases women's risk of contracting HIV and the need for governments to take corrective measures to promote the advancement of women. Sexual offences against the order of nature. It does not define what constitutes the order of nature, but the judicial pronouncements that have come over the past one and half centuries has extended the application of this section to all forms of sexual expressions that is possible between two male persons. Homosexuality in India stands criminalized because of a mid-19th century colonial law. Section 377 is rarely applied but it is an excuse that the police and other law enforcement agencies use to harass, blackmail, and extort money from MSM. It marginalizes MSM and drives their activities underground. In these circumstances it is difficult for MSM to have stable relationships, negotiate safe sex or access information and medical services without discrimination the law has also been used to disrupt the work of NGOs working on HIV/AIDS. For example, in July 2001, an NGO carrying out

sexual health awareness programs with the MSM population was raided and its workers were arrested. The Naz Foundation (India), in its attempt to sensitize government on HIV/AIDS issues, filed a Public Interest Litigation challenging the Constitutional validity of Section 377 IPC. The validity of the Law was challenged on the ground that it violates Article 21 (right to life), Article 14 (right to equality), Article 15 (right against sex based discrimination), and Article 19 (right to freedom of speech and association) of the Constitution of India. It was also argued that by criminalizing homosexual behavior.

Section 377 drives same sex relations underground, and creates social conditions that significantly impede HIV/AIDS prevention efforts among MSM. The matter is pending in the court. However, the challenge has generated media and public interest, and created awareness among the people and the government about the abuse of law by police and the impediments it creates in HIV prevention efforts. Due to the advocacy efforts of civil society organizations, the National AIDS Control Organization has included prevention programs for MSM into its National AIDS Control Plan III and has also recommended to the Law Ministry that Section 377 be repealed as it impedes HIV outreach work. Lack of Implementation of Policies By ratifying various international treaties, resolutions, and declarations governments are committed to implementing them. However, studies have indicated that adopted policies often remain on paper and are seldom implemented. Political leadership to implement new policies is still lacking in most countries and there are significant gaps between what is promised and what is delivered. Governments have done little to implement international human rights agreements that they have ratified for the advancement of women and more equitable gender relations. Political Instability Political instability, particularly conflict situations, creates conditions that disproportionately increase women's and girls' vulnerability to HIV. Where governments are weak and conflict is prevalent, women and girls are at increased risk of physical and sexual violence and harassment, even subjected to rape including gang rape, forced marriages with enemy soldiers, sexual slavery and other forms of violence. Such physical violence against women and girls has been a feature of all recent conflicts, including Sudan, Democratic Republic of Congo, Rwanda, Sierra Leone, Liberia, northern Uganda and Chechnya.

## 2. Conclusion and Suggestions

States have committed to promote, protect and fulfil the rights of all people to receive the highest standard of sexual and reproductive health this includes transgender people. Hence, States are required to create and implement laws, policies and programs that facilitate transgender people's access to education, health, housing, work and an adequate standard of living, and eliminate discrimination and other forms of violence faced by transgender people at the hands of society, police and the judiciary. Transgender people need government acceptance, societal acceptance and family acceptance. We do not need special treatment in the form of free housing or reservations in jobs or education. We need basic rights. We need to be treated with dignity, to be treated as all other people are and to not be ridiculed, abused, beaten

or cast out of homes and society. Then we will be able to access health care and education as all others do, and contribute to society the same as others.

The effect of these challenges and of these distinctive aspects of transgendered identity is to emphasize the need for alternative bases for social movement politics. Transgender politics is not based on identities that are experienced as solid, permanent, exclusionary, whole rather it is in the nature of the identity itself to be problematic, contested, and transgressive and luminal. It is in the capacity of the identity to indicate spaces of luminal and difference within itself that presents new challenges to previous theoretical paradigms of identity formation. If transgendered identity is experienced in this way, it serves also to problematize and contest other identity categories, and the politics that stem from them.

## Suggestions

The Government as well as Non-Government organizations should involve in raising awareness of the rights of the transgender and draw effective policies to include them in all development measures. There should be reservation in employment as there is reservation in employment for persons with disabilities and for SC/STs. These Trans people also are disabled in many ways. Once they get and earn a living the members of the family or community will not exclude them. There should be an awareness program on their rights to not only the common men, but also to the politicians and policy makers. Every Trans should be enrolled in the electoral list once they attain the age of 18 to get attention from the Government as potential voters. There should be separate column for Trans-genders as where ever we have for male and for female to recognize them as a separate gender.

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