



CONSTITUTIONAL SAFEGUARDS, WELFARE SCHEMES AND TRANS-INCLUSIVE POLICIES IN INDIA

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RESEARCH ARTICLE



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DOI:
<https://doi.org/10.70096/tssr.240205016>

Abstract

A democratic country aims to give every member of the public equal opportunities without discriminating on the grounds of gender, race, colour, religion, or caste. However, it is noted that one subset of Indian society—transgender people—continues to lag behind the overall populace, making it impossible for the country to develop holistically. According to the Hon'ble Supreme Court of India, the "third gender" shall have access to the same fundamental rights that are expected of men and women. Finding information about different government programmes for transgender individuals in India is one of the study's primary goals in creating an inclusive society. This is a review and documents-based paper. Main objectives of this study to what are human rights of transgender people and which kind of governmental schemes encourage and making trans-inclusive society.

Keywords: Education, Human rights, Inclusiveness, Policy, Transgender

Introduction

India is a democratic country, our Constitution say that every people have to equal fundamental rights on the basis of their gender, race, caste and class, but transgender people are not equally treated on others. They faced many problems because of their prevalent heterosexuality and gender. They derive their identity from religion and mythology, undergoing emasculation and castration rights that let them to fully participate in festivals and celebrations. Legal frameworks such as section 377 of the Indian Penal Code (IPC), 1860, National Rural Employment Guarantee Act, 2005 and Hindu Succession Act, 1956 and many more acts contain specific gender provisions, that is man and women. Even the transgender Persons Act 2009 does not clarify the above laws (Bajpai, 2023). Even Trade union Act, 1926, Industrial Dispute Act, 1947, The Minimum Wages Act, 1947 and the code on wages don't have any reference for transgender at work place. Hence transgender persons face legal complications in the work place. In addition to institutional exclusion from jobs and healthcare, these populations experience violence and harassment from the police, the medical community, and other individuals (Obasi, 2023). The decriminalisation of sodomy in 2018 and the Supreme Court's recognition of the transgender population as a "third gender" in 2014 are two examples of legislative reforms in India that have enhanced the status of the transgender community. However, inconsistent definitions of transgender persons and ambiguity surrounding the operationalization of the self-identification process impede the effective implementation of policies. People must ask for legal recognition of their transgender status in order to a "Transgender Certificate," proving that they are transgender in identity. The Transgender Persons Act of 2019 specifies this necessity (Bajpai, 2018). As a result, municipal rules have changed to embrace all sexual minorities, yet, equality has not been attained since prior studies have revealed that transgender people still experience prejudice in everyday settings (Patkar, 2020). The National Legal Services Authority of India announced in 2014 that transgender individuals would have equal access to the fundamental rights enumerated in the Indian Constitution, including the ability to self-identify as male, female, or third gender (Agarwal, 2016). Since transgender persons are human, they should be treated equally, protected, and with dignity. Transgender people received the same voting rights as gender people in 1994. People who identify as transgender have experienced a number of problems, including prejudice, reject their family, work, and healthcare, not being able to lead dignified lives. In order to address these concerns for the provision of identity, education, shelter, livelihood, and skill development, the federal and state governments have passed and issued a number of welfare acts and regulations.

Objectives

- To know the constitutional safeguards for transgender persons in India.
- To find out various trans inclusive schemes in India.

Methodology: This study is a secondary data based. The researcher used Government records, Newspapers, articles, journals, books for this study. A few relevant facts were extracted from various sources.

Various Trans-inclusive Protection Act

- **National Education Policy 2020**

According to NEP, 2020, transgender children are classified as socioeconomically disadvantaged groups (SEDGs) and are entitled to a high-quality, egalitarian in education. Supporting transgender children in receiving good education. In the school curriculum, method and way of teaching method should be local context-specific (NEP,2020). Teachers, administrator's role are very important to eradicate the barriers and making a trans-inclusive environment, where all non-binary students are equally treated.

- **National Legal Services Authority (NALSA), 2014**

The Indian Constitution guarantees, transgenders have right to self-identification, equal treatment, in the workplace and in educational institutions and they recognition of their status as a member of socially and economically disadvantaged classes (Singh, 2023). According to this Act District Magistrate and the district screening committee will issue a gender certificate to an individual who has had sex reassignment surgery. A person can only be labelled as transgender and neither male or female if they have not had sex reassignment surgery.

- **Transgender Persons Bill 2019**

According to the bill, a person who identifies as transgender is someone whose gender identity does not match their biological sex (Chakrabarti, 2023). The bill prohibits discrimination against transgender individuals in any form, including depriving them of their right to vote, housing, transportation, healthcare, work, education, and the ability to determine their own gender identification.

- **Right to Education Act, 2009**

This act prioritises equity, access, and gender concerns while emphasising education for all without discrimination. Children who identify as transgender must have flexible options when choosing their uniform, and a common area and lavatory should be accessible to them (Balu, 2020). It is recommended that transgender children be integrated into regular classroom settings to create a welcoming and secure environment for them. It will be better if transgender youngsters had access to anti-harassment cells and mental health resources in society.

- **Marital Rights of Transgender Persons**

Like gays, transgender people frequently lack the legal ability to marry. Marriage is often the source of inheritance rights. The direct result of not recognising transgender marriage is a reduction in inheritance rights.

- **Section 377 of IPC**

Laws from the colonial era began to classify transsexual people as criminals. The IPC's Section 377, which criminalises consenting same-sex relationships and unlawful in the first place (Sen, 2023). The Indian Supreme Court repealed section 377 and decriminalised homosexuality in 2018.

- **National Youth Policy 2014 (NYP-2014)**

The National Youth Policy advocates, education systems as essential measures to end the discriminatory and stigmatising actions directed towards these young people. It lays out the steps for integrating, inclusive and encouraging initiatives to mainstream underprivileged kids, like lesbian, homosexual, bisexual, and transgender (LGBT) youth those experience prejudice due to a variety of factors, including gender and sexual orientation (Singh, 2023). NYP-2014 clears the path for the general inclusion and mainstreaming of various gender identities in the national agenda for education, livelihood, and development plans and policies for India's youth. This is because it includes transgender youth specifically under its purview.

- **National Council for Transgender Persons**

The Ministry of Social Justice and Empowerment established the National Council for Transgender Persons on August 21, 2020 to provide recommendations of all government agencies as well as non-governmental organisations, that deal with issues pertaining to transgender people and address their complaints (Narayan, 2021). This council also helps government for the creation of laws, policies, programmes, and assesses the results of activities and policies intended to promote equality and the full involvement of transgender people in various activities.

- **National Portal for Transgender Persons, 2020**

The Ministry of Social Justice and Empowerment has created a webpage to help transgender people apply digitally for an identification and gate certificate from any location in the nation (Balu, 2020). They may keep an eye on the status of their applications via the portal, which guarantees process transparency.

- **Transgender Persons (Protection of Rights) Act 2020**

By this act to assist transgender people in integrating into society at large (Bajpai, 2023). The efficient operation of the council in recognising the obstacles encountered by the community and raising awareness of the legal and law enforcement aspects of the system.

- **Reservation for the Transgender Community**

Reservations for the community under the OBC category in employment have been decided by the union government in India. A transgender person has the right to apply job public and private offices and be granted in an appropriate manner. It is illegal for the government or any private organisation to discriminate against a transgender person in any aspect of their job, including hiring and advancement (Sen, 2022). In 2016, the Ministry of Railways allowed transgender as an option in train ticket forms and added a third gender column to its reservation form.

- **National Human Rights Commission, 2018**

According to this report, 96% of transgender people are denied employment and are compelled to engage in unethical activity, such as prostitution, begging and dancing (Balu, 2020). They also lived like others if Government and nonprofit organisations must both offer opportunities for life skill education.

- **Twelfth Five Year Plan and Transgender People**

The transgender community was to be empowered through advocacy for housing, education, healthcare, job opportunities, skill development, and financial support throughout the 2012–2017 Five Year Plan (Chakrabarti, 2023). Transgender individuals will be identified in all official and non-official records by adding a third gender column in a separate column.

Various Schemes

- **National Social Assistance Programme (NSAP)**

The Ministry of Social Assistance Programme was a centrally sponsored scheme that gave social pensions, financial support for transgender, widows, old people, and people with disabilities. 3,384 transsexual people receive a monthly pension under this scheme (Swain, 2023).

- **Gender Inclusion fund**

NEP, 2020 calls for the creation of a Gender Inclusion Fund to increase the nation's ability to offer transgender kids and all girls an equal, high-quality education (Das, 2022). The funds will also allow states to support and scale up successful community-based interventions, that address local context-specific barriers to female and transgender children actively participate in education. The fund will be available to states to implement priorities determined by the federal government that are crucial for assisting female and transgender children in gaining access to education, sanitation, bicycles, and conditional cash transfers.

- **Samagra Shiksha Avijan**

An integrated school education programme that spans from pre-school to class XII is the Samagra Shiksha Abhijan Scheme. On August 4, 2021, the programme was updated to better fit with the 2020 National Education Policy and the Sustainable Development Goals for education (Sen, 2023). The new programme successfully aims to address gender and social gaps in education while also promoting equity and inclusion at all educational levels, among many other important goals.

- **SMILE (Support for Marginalised Individual for Livelihood and Enterprise) Scheme for Transgender Persons**

On February 12, 2022, the Ministry of Social Justice and Empowerment introduced the SMILE programme. By the ministry allowed amounts for this scheme from 2021–2022 to 2025–2026 total Rs. 365 Crore (Swain, 2023). The programme assists for livelihood and enterprise, rehabilitation, medical facilities and intervention, counselling, education, skill development, and economic ties to transgender and marginalised groups.

- **Garima Grehs (Shelter Home for Transgender Persons)**

Garima Grehs is a central sponsored scheme for transgender people who refuse their home. The Ministry has established 12 pilot Garima Grehs and given funding to establish these shelters. Maharashtra, Gujarat, Delhi, West Bengal, Rajasthan, Bihar,

Chhattisgarh, Tamil Nadu, and Odisha are the states in where these houses are situated (Sen, 2022). This programme offers yoga, physical fitness, food, clothes, shelter, recreational possibilities, skill development, legal support, technical help for gender change and operations, and the ability to form trans-friendly organisations. At least 25 transgender people would be rehabilitated under the programme in each of the homes the ministry designates. The Garima Grehs can log in to an online monitoring system on the National Portal for Transgender Persons by using the username and password that have been assigned to them

- **Composite Medical Health under SMILE**

This program's goal is to give health insurance coverage to all transgender people residing in India so they can receive the appropriate care, including sex reassignment surgery, hormone therapy and medical assistance, including any necessary post-operative paperwork, and be redeemable at all public and private healthcare facilities to enhance their health. Under this Yojana, transgender people taken of Rs. 5 lakhs annually to health insurance through Ayushman Bharat (Balu, 2020). The Ministry of Social Justice and Empowerment has directed all States and Union Territories to make sure that transgender people receiving COVID vaccinations are treated with dignity and that their needs are met without discrimination. Additionally, a proposal had been made to the states to set up distinct mobile immunisation booths or stations for transgender individuals, similar to those established in the states of Assam and Haryana (Swain, 2023).

- **PM-DAKSH (Pradhan Mantri-Dakshta Aur Kushalta Sampann Hitgrahi for Transgender person**

A skill development programme run by the Ministry of Social Justice and Empowerment is called PM-DAKSH under SMILE scheme (Das, 2023). This project offers long-term, short-term training, upskilling, entrepreneurship development, of transgender people for skill development. The Ministry has been implementing the Pradhan Mantri Kaushal Vikas Yojana, Jan Shikshan Sansthan Scheme, and National Apprenticeship Promotion Scheme under the auspices of the skill India Mission.

- **Saphalam Scheme for Transgender Students Pursuing Professional Courses**

In Kerala state, Social Justice and Empowerment Department launched this scheme. It is the department's duty to grant specific privileges to these target groups and ensure their social rehabilitation in order to integrate them into society at large (Chakrabarti, 2023). This programme offers financial aid to transgender students enrolled in professional courses leading to a degree or diploma. It is open to transgender students with advanced technical or professional proficiency.

- **SWEEKRUTI Scheme for Transgender Person**

Odisha government launched SWEEKRUT scheme for transgender people in 2017. To establishment of a supportive atmosphere, to guarantee equal opportunity, equity, social justice, and self-employment, and access other socio-educational resources of transgender people living in the state (Sen, 2023).

- **Sakalyam Scheme for Vocational Training to Transgender Persons**

Kerala, a state, has developed a new programme for transgender people to give skill development training so they may work for themselves and make a consistent income (Swain, 2023). To boost the confidence of community members and help them become qualified for good jobs and employment prospects. Establish a workplace that welcomes transgender employees and helps them become independent.

- **Pre and Post-Matric Scholarship**

The main goal of this scholarship, to give financial aid of transgender students to enrolled in post-matriculation or post-secondary education and they can finish their studies (Balu, 2020). Only transgender students from Odisha may apply for these scholarships, which are granted where the candidate is enrolled in school in India.

Need of Trans-inclusive policy

All work carries emotional weight and is emotionally taxing due to gender expression. In India, stigma, prejudice, and exclusion are commonplace for transgender individuals. These individuals encounter animosity and pressure to control their identities at work (Swain, 2023). Many organisations lack the necessary tools to foster a transgender-friendly workplace atmosphere. According to psychological and sociological studies, "gender behaviour which is learned" is the primary factor contributing to prejudice and stigma (Chakrabarti, 2023). Boys and girls are discouraged from displaying "non-normative" behaviour and pushed to exhibit stereotypically gendered behaviours from an early age. Youngsters try to live according to gender norms in order to be accepted by their parents and peers. Because of this, the absence of trans-specific policies in the workplace encourages discriminatory behaviour and targets remarks that are transphobic. Though a transgender woman is an instructor, pupils are either not showing up for class or are being withdrawn. Customers are hesitant to shop at stores owned by trans women, and prejudice and antagonism can contribute to a rise in absenteeism (Williams, 2011). Thus, it is necessary to eliminate this barrier and implement trans-inclusive policies in order to create a constructive society.

Discussion

After analysis of the documents, researcher find out Following an analysis of the discrimination, it becomes clear that transgender people and other people have been granted the following rights: the right to equality, the right to equal opportunities, the right to fundamental freedoms, the right to life, which includes the right to live with human dignity, and the right to be free from exploitation (Gupta, 2023). The denial of these rights, which encompass the fundamental and unalienable rights, keeps Hijras outside the core of Indian civil society. With a hopeful outlook and a gradual recognition of the rights of the voiceless, India is moving towards a better future through the avenue of judicial activism. In a historic ruling from 2014, the Supreme Court accepted transgender people as the third gender, gave them their own identity, and ordered the government to set aside quotas for them in the workforce and in educational institutions. As a result, transgender people are free to choose their own careers, realising numerous ambitions. They may work as lawyers, physicians, chefs, or police inspectors (Das, 2023). They are now free to be whoever they choose. Because of this, the transgender community gained attention last year. A private member's bill to grant the transgender community legal recognition for its rights and status was introduced in the House of Parliament in 2016 (Swain, 2023).

Recommendations: On the basis of discussion researcher suggest some recommendations:

- It is necessary to implement fundamental trans-inclusive policies, such as maintaining gender-neutral restrooms for transgender students and staff members. Similarly, transgender personnel need to have a gender-neutral clothing code developed. The traditional binary scale is used to classify many transgender people, and terms like "he," "she," "her," and so on are used to refer to them. Many other non-binary, genderqueer, and gender fluid people use pronouns like they, them, or ze, zir, and zem, among others.
- Everyone in the workplace needs to be supportive of gender transitions. Transgender people need to use their freedom to live parallel lives and discover who they really are. People occasionally come to the notion that they are transgender after experiencing internal conflict and contradiction. Surgery for gender confirmation may be part of a transition.
- Transgender personnel should be included in training tailored to their needs, which should be organised. Employees who identify as cisgender should learn how to be accepting and kind to their transgender coworkers.

Conclusion

For millennia, transgender individuals have been a part of Indian society. Therefore, it is important to give them respect and care. The movement in India for the inclusion and acceptance, legal recognition for transgender people (Carlile, 2019). Furthermore, each person has a duty to establish a "gender inclusive" environment in their homes, places of employment, and other institutions on both a micro and macro level. We can create a nation where everyone's equally participate, express their feelings, supportive environment and raising affirmative understanding, empathetic awareness, and fostering a welcoming mindset for trans people.

Acknowledgement: No

Authors Contribution: Moumita Samanta: Data Collection, Literature Review, Methodology, Analysis, Drafting, Referencing; Dr. Kavita Singh: Data Collection, Literature Review, Methodology, Analysis, Drafting, Referencing

Funding: No funding.

Declarations/Consent for Publication: All the authors have given consent for the publication.

Competing Interest: No

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Publisher's Note

The Social Science Review A Multidisciplinary Journal remains neutral with regard to jurisdictional claims in published data, map and institutional affiliations.

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