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A SOCIO-LEGAL EXAMINATION OF TRANSGENDER RIGHTS AND LIVED REALITIES IN CONTEMPORARY INDIA

Jaganath.R

Post-doctoral Degree Scholar, D.Litt- Political Science, Manipur International University, India.

ARTICLE INFO	ABSTRACT
Received 14 th January, 2025 Received in revised form 25 th January, 2025 Accepted 18 th February, 2026 Published online 28 th February, 2026	The Transgender people in India, particularly Male-to-Female transgenders commonly known as Hijras, constitute one of the most marginalized and under-researched communities in the country. Despite their historical presence in Indian society, they continue to face widespread discrimination, social exclusion, violence, and denial of basic human rights. This paper examines the social, legal, educational, and political challenges encountered by transgender people in India. It highlights issues such as harassment, unlawful penalties, sexual abuse, police violence, and deprivation of civil and constitutional rights, many of which are rooted in colonial-era laws and persistent social stigma. The paper critically analyses the impact of legal provisions such as Section 377 of the Indian Penal Code and discusses landmark judicial interventions that recognize transgender persons as a third gender. Further, it explores access to education, political participation, welfare initiatives, and the role of state policies in addressing transgender concerns. The study argues that while legal recognition and policy measures mark significant progress, effective implementation and societal acceptance remain limited. It concludes by emphasizing the need for inclusive governance, social awareness, and rights-based approaches to ensure dignity, equality, and justice for transgender people in India.
Key words: Transgender Rights, Hijras in India, Gender Identity, Social Exclusion, Constitutional Equality, Legal Recognition, Transgender Welfare Policies, Political Participation	
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INTRODUCTION

Transgender people are individuals of any age or sex whose appearance, personal characteristics, or behaviours 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 behaviour falls outside of stereotypical gender norms. Sex refers to biological status as male or female. It includes physical attributes such as sex chromosomes, gonads, sex hormones, internal reproductive structures, and external genitalia. Gender is a term that is often used to refer to ways that people act, interact, or feel about themselves, which are associated with boys/men and girls/women. While aspects of biological sex are the same across different cultures, aspects of gender may not be. “Gender identity” refers to a person’s internal, deeply felt sense of being either man or woman, or something other or in between. Because gender identity is internal and personally defined, it is

*Corresponding author: **Jaganath.R**

Post-doctoral Degree Scholar, D.Litt- Political Science, Manipur International University, India.

not visible to others. In contrast, a person’s “gender expression” is external and socially perceived. Gender expression refers to all of the external characteristics and behaviours that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns and social interactions.

Who are Transgender People

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Difference between Sex and Gender

Sex refers to biological status as male or female. It includes physical attributes such as sex chromosomes, gonads, sex hormones internal reproductive structures, and external genitalia. Gender is a term that is often used to refer to ways that people act, interact, or feel about themselves, which are associated with boys/men girl’s women. While aspects of biological sex are the same across different cultures, aspects of

gender may not be.

Indian Census counts transgender people for the first time, finds half a million

The first ever count of India's transgender population has found nearly 500,000 who were prepared to say they were transgender in filling out census papers – though activists say the real number may be far higher- 490,000 people listed themselves as 'third gender' or transgender in India's most recent census – the first time the Indian Government has sought to ask how many people identify as such.

55,000 of those were under six and were thus recorded by their parents as being transgender.

66% of the people who chose the third gender box lived in rural areas – close to the 69% of the Indian population in rural areas.

However, the census found that transgender Indians were more likely to be disadvantaged in education with only 46% being literate – compared to 74% in the general population.

Transgender Indians were also more likely to be out of work than the general population with only 38% working compared to 48% of Indians in general – though that figure includes children and stay at home parents.

Transgender activists in India welcomed the figures but believe there are many more transgender Indians who do not yet feel comfortable identifying as such in the census.

'After the disappointment of the election commission's efforts, this is fantastic news for the transgender community,' Sahodari Foundation founder Kalki Subramaniam India, referring to India's recent national election.

'We were extremely disappointed because during the voter registration process only 28,341 people registered as belonging to the third gender.

'This is a beginning and we are proud that the census could draw out part of the truth and establish that the transgender community exists and that their literacy rate is very low. They have also established that transgender children exist. It is now up to the government to bring in policy to ensure that they are not discriminated against and that they enjoy equal rights like any other children.'

Indian culture has recognized transgender women, or Hijras in Hindi, as a third gender for thousands of years and they have traditionally performed blessings and been dancers – though today they are often marginalized and forced to seek out a living in the sex industry.

Transgender Rights in India

In mid-April, India's Supreme Court recognized transgender people as a legal third gender. Grounding its decision on rights guaranteed by the nation's Constitution as well as international law, the court determined gender identity and sexual orientation to be fundamental to the rights to self-determination, dignity and freedom.

This decision is particularly welcome after another group of justices in December reinstated a colonial-era law that bans gay sex: Section 377 of the Indian Penal Code, which bars "carnal intercourse against the order of nature." The two contradictory

decisions — issued by separate panels of judges — are the result of a quirk of the system. The Supreme Court consists of a chief justice and 30 other justices, with cases often being decided by panels of just two or three judges.

In the transgender case, Section 377 was cited as an instrument of discrimination against transgender people. The court properly recognized the historical and diverse presence of transgender people in Indian society, referring to ancient Hindu and Jain texts and to the place of transgender people in India's Mughal courts. It listed the different traditional categories of transgender people in India, including hijras, Aravanis, Kothis, Jogtas and Shiv-Shakthis. The court was wise to make this point, since anti-gay-rights groups in India have tried to paint the decriminalization of gay sex and transgender identities as degenerate Western ideas alien to India's cultural traditions.

The court has directed national and state governments to redress entrenched discrimination suffered by transgender people by recognizing them as an official minority, according them quotas for public jobs and admission to educational institutions, and making sure they are not discriminated against when seeking medical care. Official identity documents are now to include a third gender box.

On Tuesday, the court also agreed to hear oral arguments for a petition challenging the December ruling that leaves Section 377 in force. As Justices K.S. Radhakrishnan and A.K. Sikri of the Supreme Court argued in their opinion in the transgender case: Self-determined gender identity and sexual orientation are central to human rights. It is time to abolish Section 377.

Constitutional Rights of Transgender People

Preamble to the Constitution mandates Justice - social, economic, and political equality of status. Thus the first and foremost right that they are deserving of 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 to 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 (transgenders) continues to be ostracized. The Constitution affirms equality in all spheres but the moot question is whether it is being applied.

As per the Constitution most of the protections under the Fundamental Rights Chapter are available to all persons with some rights being restricted to only citizens. Beyond this categorization the Constitution makes no further distinction among rights holders

But 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 (if a hijra wants it), 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.

Transgender Education

“Vaadamalli” by novelist Su.Samuthiram is the first Tamil novel about Aravaani community in Tamil Nadu published in the year 1994. Later Transgender activist A. Revathi is the first Hijra to write about Transgender issues and Gender politics in Tamil, her works have been translated in more than 8 languages and acting as a primary resources on Gender Studies in Asia. Her book is part of research project for more than 100 universities. She is the author of *UnarvumUruvum* (Feelings of the Entire Body); is the first of its kind in English from a member of the hijra community. She also acted and directed several stage plays on Gender and Sexuality issues in Tamil and Kannada.”The Truth about Me: A Hijra Life Story” by Transgender A. Revathi is part of the syllabus for Final Year students of The American College in Madurai. The American College is the first college in India to introduce Third Gender literature and studies with research oriented seminar and the Tamil terms for Genderqueer people was coined in this college by gender activist Gopi Shankar. Later Naan SaravananAlla” (2007) and Vaidya’s “I am Vidya” (2008) became first trans woman autobiography.

Transgender in Politics

The All India HijraKalyan Sabha fought for over a decade to get voting rights, which they finally got in 1994. In 1996 Kali stood for elections in Patna under the then Judicial Reform Party and gave the Janata Dal and the BJP a bit of a fight. Munni ran for the elections as well from South Bombay that year. They both lost, more than 13 years Hijras are participating in the politics in India.

After the defeat of Kali and Munni, three years later we saw KamlaJaan run and win the position of the mayor of Katni in MP. Then there was ShabnamMausi, who was elected to the Legislative Assembly in 2002 as well. In the huge political machinery, Heera won a seat at the city council of Jabalpur, Meera won a similar position in Sehora, and so did Gulshan in Bina. In December 2000, Asha Devi became the mayor of Gorakhpur, and KalluKinnar was elected to the city council in Varanasi. I am sure there are many more low level, inconspicuous bureaucratic positions that were held by the hijras but did not whip up any excitement for the media — not to mention the cases where they were probably threatened, bullied and killed to prevent them from running for seats. This brings us to the current elections, which has Mangesh Bharat Khandye running for the Thane Lok Sabha seat. ShabnamMausi is the first transgender Indian or *hijra* to be elected to public office. She was an elected member of the Madhya Pradesh State Legislative Assembly from 1998 to 2003. In 2000 ShabnamMausi became India’s first eunuch MP. (Hijras were granted voting rights in 1994 in India.) In 2003, Hijras in Madhya Pradesh have announced establishing their

own political party called “JeetiJitayi Politics” (JJP), which literally means ‘politics that has already been won’. The party has also released an eight-page election manifesto which it claims outlines why it is different from mainstream political parties.

KalkiSubramaniam, a transgender rights activist, writer and an actor, in the 2011 assembly elections, Kalki tried in vain to get a DMK ticket. Again on March 2014 Kalki announced in Pondicherry that she would contest in this election from Villupuram constituency in neighboring Tamil Nadu. She is likely to be among the very few contestants fighting in the national elections from the transgender community that faces discrimination and ridicule. On 4 January 2015, independent candidate Madhu Bai Kinnar was elected as the mayor of Raigarh, Chhattisgarh becoming India’s first openly transgender mayor.

Tamil Nadu Aravanigal (Transgender women) Welfare Board

A landmark initiative

In a pioneering effort to address the issues faced by transgender people, the government of Tamil Nadu (a state in South India) established a transgender welfare board in April 2008. It is the first of its kind by any state government in India. Social Welfare minister serves as the president of the board. This effort is touted to be the first in India and even in the whole Asia-pacific region. The board would potentially address a variety of concerns of transgender people that includes education, income generation and other social security measures. As a first step, the board has conducted the enumeration of Transgender populations in all 32 districts of Tamil Nadu and in some places identity cards - with the gender identity mentioned as “Aravani” - are being issued³⁴. The government has also started issuing ration cards (for buying food and other items from government-run fair-price shops) for transgender people. In addition, Tamil Nadu government issued a government order in May 2008 to enroll transgender people in government educational institutions and to explicitly include ‘other’ or ‘third gender’ category in the admission forms³⁵. Furthermore, only in the state of Tamil Nadu, in collaboration with the Tamil Nadu Aravanigal Welfare Board, free sex reassignment surgery is performed for Hijras/TG in select government hospitals

Problems faced by Transgenders

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, penectomy, 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.

The other fields where this community feels neglected are inheritance of property or adoption of a child. They are often pushed to the periphery as a social outcaste and many may end up begging and dancing. This is by all means human trafficking. Sometimes running out of all options to feed themselves, they even engage themselves as sex workers for survival.

Transgenders have very limited employment opportunities. Transgenders have no access to bathrooms/toilets and public spaces. The lack of access to bathrooms and public spaces access is illustrative of discrimination faced by transgenders in availing each. They face similar problems in prisons, hospital s and schools.

Most families do not accept if their male child starts behaving in ways that are considered feminine or inappropriate to the expected gender role. Consequently, family members may threaten, scold or even assault their son/sibling from behaving or dressing-up like a girl or woman. Some parents may outright disown and evict their own child for crossing the prescribed gender norms of the society and for not fulfilling the roles expected from a male child. Parents may provide several reasons for doing so: bringing disgrace and shame to the family; diminished chances of their child getting married to a woman in the future and thus end of their generation (if they have only one male child); and perceived inability on the part of their child to take care of the family. Thus, later transgender women may find it difficult even to claim their share of the property or inherit what would be lawfully theirs. Sometimes, the child or teenager may decide to run away from the family not able to tolerate the discrimination or not wanting to bring shame to one's family. Some of them may eventually find their way to Hijra communities. This means many Hijras are not educated or uneducated and consequently find it difficult to get jobs. Moreover, it is hard to find people who employ Hijras/TG people. Some members of the society ridicule gender-variant people for being 'different' and they may even be hostile. Even from police, they face physical and verbal abuse, forced sex, extortion of money and materials; and arrests on false allegations. Absence of protection from police means ruffians find Hijras/TG people as easy targets for extorting money and as sexual objects. A 2007 study documented that in the past one year, the percentage of those MSM and Hijras who reported: forced sex is 46%; physical abuse is 44%; verbal abuse is 56%; blackmail for money is 31%; and threat to life is 24%. Hijras face discrimination even in the healthcare settings. Types of discrimination reported by Hijras/TG communities in the healthcare settings include: deliberate use of male pronouns in addressing Hijras; registering them as 'males' and admitting them in male wards; humiliation faced in having to stand in the male queue; verbal harassment by the hospital staff and co patients; and lack of healthcare providers who are sensitive to and trained on providing treatment/care to transgender people and even denial of medical services. Discrimination could be due to transgender status, sex work status or HIV status or a combination of these.

Social welfare departments provide a variety of social welfare schemes for socially and economically disadvantaged groups. However, so far, no specific schemes are available for Hijras except some rare cases of providing land for Aravanis in Tamil Nadu. Recently, the state government of Andhra Pradesh has ordered the Minority Welfare Department to consider 'Hijras' as a minority and develop welfare schemes for them. Stringent and cumbersome procedures and requirement of address proof, identity proof, and income certificate hinders even the deserving people from making use of available schemes. In addition, most Hijras/TG communities do not know much about social welfare schemes available for them. Only the

Department of Social Welfare in the state of Tamil Nadu has recently established 'Aravanigal/Transgender Women Welfare Board' to address the social welfare issues of Aravanis/Hijras. No other state has replicated this initiative so far.

The Supreme Court judgment on Transgender Rights

This judgment covers persons who want to identify with the third gender as well as persons who want to transition from one identity to another, i.e. to male to female or vice versa. The Court has directed Centre and State Governments to grant legal recognition of gender identity whether it be male, female or third gender.

Legal Recognition for Third Gender: In recognizing the third gender category, the Court ruled that fundamental rights are available to the third gender in the same manner as they are to males and females. Further, non-recognition of third gender in both criminal and civil statutes such as those relating to marriage, adoption, divorce, etc is discriminatory to the third gender.

Legal Recognition for people transitioning within male/female binary: As for how the actual procedure of recognition will happen, the Court merely states that they prefer to follow the psyche of the person and use the 'Psychological Test' as opposed to the 'Biological Test'. They also declare that insisting on Sex Reassignment Surgery (SRS) as a condition for changing one's gender is illegal.

Public Health and Sanitation: Centre and State Governments have been directed to take proper measures to provide medical care to Transgender people in the hospitals and also provide them separate public toilets and other facilities. Further, they have been directed to operate separate HIV/ Sero-surveillance measures for Transgenders.

Socio-Economic Rights: Centre and State Governments have been asked to provide the community various social welfare schemes and to treat the community as socially and economically backward classes. They have also been asked to extend reservation in educational institutions and for public appointments.

Stigma and Public Awareness: These are the broadest directions - Centre and State Governments are asked to take steps to create public awareness so that Transgender people will feel that they are also part and parcel of the social life and not be treated as untouchables; take measures to regain their respect and place in society; and seriously address the problems such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, and social stigma

CONCLUSION

The discussion on transgender rights in India reveals a complex reality where constitutional promises, judicial progress, and social practices often remain disconnected from one another. While transgender communities such as Hijras and Aravanis have existed in Indian society for centuries, they continue to face deep-rooted discrimination, exclusion, and violence in everyday life. Legal recognition as a third gender and progressive Supreme Court judgments mark significant milestones; however, legal recognition alone cannot dismantle social stigma or ensure dignity and equality.

Despite constitutional guarantees of equality, privacy, and freedom, transgender people are frequently denied basic rights such as education, employment, healthcare, housing, and political participation. The absence of proper identity documents, lack of awareness among authorities, and social prejudice continue to marginalize them. Initiatives such as the Tamil Nadu Transgender Welfare Board demonstrate that inclusive policies are possible, yet such efforts remain limited and uneven across states.

Education and political participation have shown encouraging developments, particularly through transgender literature, activism, and representation in public office. However, these successes remain largely symbolic unless accompanied by structural reforms, effective implementation of welfare schemes, and sustained public sensitization. The persistent challenges faced by transgender individuals—ranging from family rejection to police harassment and healthcare discrimination—underscore the urgent need for a more compassionate, rights-based, and inclusive approach.

In conclusion, achieving true equality for transgender people in India requires more than legal reforms. It demands societal acceptance, administrative accountability, inclusive education, economic opportunities, and strong political will. Only when transgender individuals are able to live without fear, stigma, or exclusion can the constitutional vision of justice, liberty, equality, and dignity be meaningfully realized.

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