

Beyond Stereotypes: Towards a More Inclusive Representation of Transgender People in India

by

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Abstract- Gender inclusivity is not a new concept in any society. It refers to a situation where individuals must be included and be made part of society irrespective of their gender. It has evolved because of the mindset that 'gender diversity' exists in society. Earlier, this was limited to two types of diversities in terms of boys and girls; now, it has ignited a new issue in recent years: the transgender or the third gender. So, gender inclusivity has now started raising the issue of accepting transgender individuals and accepting them as a dignified part of our society. However, as it is said, a new change requires new challenges of acceptance in society. Transgender persons to whom nature gives similar air, water, food and red-coloured blood as it gives to male and female genders, albeit with few distinct physical characteristics, were discriminated against by their own country for nearly 70 years when a bouquet of rights stems out of Article 14 and 21 of the Indian Constitution. Finally, the Honourable Supreme Court of India delivered a judgment in 2014 upholding these Articles and took a positive step towards gender inclusivity. Owing to this verdict, legislation was enacted named the Transgender Persons (Protection of Rights) Act in 2019 to protect the rights of transgender persons and ensure their welfare as only then the aspiration of achieving an inclusive representation of all citizens of India irrespective of their gender can be fulfilled. It is significant to mention that the credit for raising and bringing up the issue of gender inclusivity is due to the efforts of certain NGOs, public-spirited persons and a very understanding judiciary. Transgender participation in every sphere of development is a key to gender inclusivity. However, there may be an increase in participation only if the authorities and the general public together try to think beyond stereotypes.

I. Introduction

Gender inclusivity is not a new concept in any society. It refers to a situation where individuals must be included and be part of society irrespective of gender. It has evolved because of the mindset that there exists 'gender diversity' in society. Earlier, this was limited to two types of diversities in terms of boys and girls; now, it has ignited a new issue in recent years: the transgender or the third gender. Whenever we talk about transgender, there is some whispering atmosphere around us. There is a social taboo regarding sexuality and transgender. They had their own social identities outside of our prescribed society. Transgenders are those persons whose gender expression differs from their assigned sex. Transgender is an "umbrella term", including persons who identify their gender opposite from their assigned sex. It consists of people who are not fully masculine or feminine (who are genderqueer, for example, bi-gender, pan-gender, gender fluid or gender. Different terminologies are used in India for transgender people. They are Hijra, eunuch, Kinnar, Aravali, Kith, Shiv-Shakti, Jogtas/Jogappas, Guru/Chela, etc. Gender inclusivity has now started raising the issue of accepting transgender individuals and accepting them as a dignified part of our society. However, as it is said, a new change requires new challenges of acceptance in society. Transgender persons to whom nature gives similar air, water, food and red-coloured blood as it gives to male and female genders, albeit with few distinct physical characteristics, were discriminated against by their own country for nearly 70 years when a bouquet of rights stems out of Article 14 and 21 of the Indian Constitution. Finally, the Honourable Supreme Court of India delivered a judgment in 2014 upholding these Articles and took a positive step towards gender inclusivity. Owing to this verdict, legislation was enacted named the Transgender Persons (Protection of Rights) Act in 2019 to

protect the rights of transgender persons and ensure their welfare as only then the aspiration of achieving an inclusive representation of all citizens of India irrespective of their gender can be fulfilled.

II. Historical overview of transgender persons in India

In Ancient times, Transgender people had a history of leading an inclusive life with other sects of society. There is an interesting mention of transgender in a version of Ramayana. When Lord Ram left Ayodhya for a 14-year-long exile, a massive crowd followed him into the forest because they were his devotees. Ram was concerned about his subjects' well-being, and owing to this reason, he ordered them not to be sad. He requested "all men and women" to return to Ayodhya. Fourteen years later, when Ram returned to Ayodhya after all his struggles, he was surprised to find that transgender people had not moved and were still there where he gave his speech. Their devotion effectively touched him, and since he was aware of the status of transgender persons enjoyed in society, lord Ram granted them a boon and enabled them to give blessings to people on auspicious occasions, such as childbirth and marriage. This ceremony is called *Badhai*, in which hijras dance, sing and give blessings. Another instance worth mentioning is from the texts of Mahabharata; during the last days of the exile period of the five sons of Panda, Arjuna, their best warrior, took the name of *Brihannala* and identified himself as a eunuch to avoid being caught. He would dance during weddings and perform rites during childbirth. It is this activity of Arjuna that present-day Transgender carry out; also, Brihannala was a teacher of fine arts. Another significant note is that Lord Shiva also had one of the forms of Ardhanari (half woman), where Lord Shiva merged with Parvati, resulting in the form of half Shiva-half Parvati. Ardhanari has a unique place among the community of transgender persons who are their patron. There is an exciting story regarding *Ardhanaari*: It is said that Parvati had once suspected Lord Shiva of infidelity after she saw her reflection in Lord Shiva's chest. After days of dispute and when the matter was finally resolved, Parvati wanted to stay eternally with the body of Shiva, and the couple joined to give form to *Ardhanaarishivara*.

Most transgender persons are great worshippers of Lord Shiva and *Bahuchara Mata*. But no story is unanimously accepted about *Bahuchara Mata*, and it's a grey area in our history; one story tells that *Bahuchara Mata* once came in the avatar of a princess and emasculated her husband because he use to run around in the forest and acted like a woman instead of having sexual pleasure with her. Another story of *Bahuchara Mata* describes her to have once cursed the man who tried to rape her. She cursed him to be impotent. The man begged her forgiveness; however, she placed a condition of forgiveness that she would only take her curse back if he ran into the forest and acted like a woman. The most prominent temple of *Bahuchara Mata* is located in Gujarat. This temple is a pilgrimage place for the Hijras of India.

In *Bhagavata Purana*, Lord Vishnu took the form of Mohini to trick the demons into giving up Amrita (the elixir of life). However, in the process, Lord Shiva became attracted to Mohini, because of which his wife Parvati was deeply ashamed to see her husband's act. Lord Shiva asked Lord Vishnu to undergo the transformation process again so that Shiva could witness it.

As per the Tamil versions of *Mahabharata*, Lord Krishna also embraced the form of Mohini to marry *Aravan*. He did this to allow him to experience love before his death since *Aravan* volunteered to be sacrificed. When *Aravan* died, Krishna mourned in his Mohini form. The transgender people of India celebrate the marriage and death of *Aravan* and perform a ritual named as *Thali*, during which the transgender person takes on the role of Krishna and Mohini and marries *Aravan*, and afterwards a festival continues for 18 days. However, at the end of the festival, the "hijras"/aravanis mourn by beating their chests and breaking their bangles because at the end of the festival, *Aravan* is buried.

Later, During the Mughal era, transgender persons played a significant role. They were kept as trusted lifeguards in female areas; some even became generals in Mughal Armies. A prominent eunuch named Malik Kafur was widely known for his bravery as he concurred the entire Deccan for Delhi's Sultan Alauddin Khilji.

An inclusive approach was hindered and curtailed when the British authorities tried to abolish transgenders, whom they saw as “a breach of public decency”. Anti-transgender law, named The Criminal Tribes Act 1871, was passed by which they were labelled as a “criminal tribe”; hence, they were made to register themselves; they were strictly monitored and stigmatised for a long time. After independence, they were denitrified in 1952, but the centuries-old stigma remains. The mindset of people towards transgender people is a significant issue as the general public still treats them as the Britishers did by criminalising their activities. Therefore, it is evident that transgender persons have a history of deprivation and suppression. In spite of modernisation and empowerment in thinking, hijras are still not accepted by Indian society. It is essential to bring awareness regarding their identity rather than gazing at them with fear or loathe.

- After Independence

India is a democratic nation; the experience of the past colonial system of the Britishers in India has brought about a significant change in the attitude of the people. The notions of Justice, Equality and unity have been the prime motto of the government to secure its citizens. The democratic features of our nation can be seen from the first few lines in our preamble, “We the People of India.” It reflects that it is the people of India on whom the sovereignty lies; the government is responsible to its people, and the people are Supreme. Every individual has the fundamental right to survive and other significant rights to develop. The Indian Constitution aims at securing equality of status and opportunity for all. These objectives have been carried into effect by Articles 14-18, which provide equal rights to one and all without any discrimination. The rights guaranteed under the Constitution are the basic fundamental rights that the State protects, and infringement of these rights would amount to a violation of the Constitution; these rights include Right to Equality, Equality of Opportunity, Fundamental freedoms, Right to Life, including Right to live with Human Dignity, Right against exploitation and other rights such as minorities rights etc. Based on these fundamental rights, Apex Court, in a historic judgment named National Legal Service Authority v. Union of India.[1]

- NALSA vs. Union of India

A Division Bench delivered this judgment in which they recognised the transgender persons as a third gender. Apex Court held that, “They have the same rights and Constitutional protection as other citizens”[2]. The Apex Court established sound principles to end discrimination based on gender that is presumed to be assigned to a person at birth. It is a milestone for our country concerning gender justice and will have a long-term impact on promoting equality jurisprudence and inclusive approach. The verdict is an excellent precedent and creativity of our judiciary that determines the legal journey of the country by interpreting the Constitution and all other legislation, which will make every judicial court bound by its judgments according to Article 141 of the Constitution. The Judgment laid an exhaustive structure that considers the negative right against discrimination and the positive right to make life decisions and express themselves or choose which work to do and which not to. The court stated, “It is not a birth duty assigned to transgender persons to beg or earn by singing and dancing on roads. Transgenders are also entitled to be part of each and every public service and other job.” The court also directed, in particular, that transgender persons should be treated as “socially and educationally backwards” and be provided with educational reservations and employment. This may contribute to their all-round development. The NALSA case immensely helped the transgender persons persecuted for centuries by society. This Judgement stated, “All identity documents, including birth certificates, passports, ration cards and driving licenses, transgenders would be recognised as third gender.” Now that transgender people are seen as a third gender in the legal documents, they can move to judicial courts if anyone violates their rights, be it the State or private persons, as ensuring fundamental rights is the soul of the rule of law.

III. Stereotypes regarding transgender people in India

“A stereotype is a set idea people have about what someone or something is like, especially a wrong idea”[3]. A stereotype is a general view obtained from one incident and is used to apply to all. There are various stereotypes against transgender persons in India; below are some of the most common stereotypes faced by this community.

- Transgender people as hyper-sexual

When anyone talks about transgender sexuality, the general view is that all react to this issue with disgust. Transgender people are historically associated with sexual pathology. It is believed by many that transgender people are not sexually desirable; therefore, their sexual desires are not fulfilled. This leads to them being “hyper-sexual”. This word explains a person’s inability to control their sexual desires, impulses, and urges to such an extent that it affects their social, work life, etc. It is also termed as excessive sexual behaviour.

This phrase can be understood by referring to three theoretical models:

1. Impulsivity model: It describes the inability to delay sexual satisfaction.
2. Compulsivity model: It is an obsessive-compulsive disorder where sexual thoughts act as obsessions.
3. Addiction Model: This explains that a hyper-sexual person may have addictive symptoms when experiencing withdrawal or when such a person is deprived of sexual activities.

Transgender people are often linked with being hyper-sexual as they are known to indulge in prostitution. Unlike women, prostitution, for whom we associate poverty, helplessness, etc., owing to which they get into prostitution. For transgender persons, the general view is that they indulge in prostitution to fulfil their sexual desires. Transgender individuals are not seen as victims of prostitution; instead, they are seen as sexual beings who willingly adopt the lifestyle of prostitution because they are hyper-sexual. People view them with different type of disgust, like transgender people are ready for sexual activity. Nobody wishes to examine their financial or social conditions or other relevant things for which they might be engaged in this profession. When it comes to women, our society does understand at one level that such women must be compelled or have no other option; that’s why they got involved in this profession, but it's not the same for transgender persons. This explains that this stereotype does exist against trans people even today.

- Transgender people as mentally ill

It is evident from history that transgender people are part of the natural concept of human diversity. However, the general public has a view that being transgender is a mental issue; they hold an opinion that it is not a normal phenomenon; therefore, they associate their way of life with a mental problem. Their natural feelings are considered abnormal and directly linked with their mental health not being on par with ordinary people's. Various organisations, such as the World Health Organisation and the American Psychiatric Association, have clarified that being transgender is not a mental disorder. There is no evidence to show that they have inherent poor mental health. However, such persons may have poor mental health later in life as they are the most marginalised group in any society. They face unemployment, discrimination, physical assault, etc, daily. All this negatively affects their mental health. Transgender people should be well respected; nothing should be done which affects their dignity.

- Transgender people are criminals

There is a stereotype that transgender people are criminals and are harmful to society. A statement that transgender persons are more likely to indulge in committing crimes than cisgender is not supported by any substantive evidence. The reality is quite the opposite; numerous studies show that transgender persons are more likely to be victims of crime. A survey carried out by the National Center for Transgender Equality discovered

that 47% of transgender persons are sexually assaulted at some point in their lives, and 36% have been physically assaulted. It is significant to note that making assumptions about a specific gender is never fair or accurate. Such stereotypes against a particular gender create doubts and develop a sort of hatred for the gender.

IV. Efforts made to promote inclusive representation of transgender people in India

It would be wrong to say that our government and constitutional courts are not making efforts toward inclusive representation of transgender people. Some of the examples of such efforts are:

- Transgender persons were legally granted the right to vote in India as a third sex in 1994. Apex Court stated that transgender persons are a Socially and Economically Backward Class entitled to reservation in education and jobs. It also directed the Union and State Governments to arrange welfare schemes for them in 2014.
- The Ministry of Drinking Water and Sanitation directed the State governments to allow transgender people to use the public toilet of their choice in April 2017.
- Tamil Nadu and Kerala were the first two states in India to develop a transgender welfare society. Tamil Nadu comes first in India to form a Transgender Welfare Board by placing representatives from transgender persons. Kerala implemented Sex Reassignment Surgery through government hospitals in 2016.
- Odisha became the first state in India to recognise transgender persons as below-poverty line (BPL) beneficiaries. They are covered under all government social welfare programmes like food grains, pension, health, education and housing.
- The Government of Tripura announced an amount of Rs. 500 per month to the transgender persons residing in the state to make them financially independent.
- The Government of Chattisgarh was preparing an action plan to empower 3,000 transgender people in the State.
- The Government of West Bengal requested the Kolkata Police to recruit transgender persons in the Civic Police Volunteer Force(CPVF).
- Some Transgender people have entered politics and other significant areas in India. Kamla Jaan was the Mayor of Katni in Madhya Pradesh. In 2002, Shabnam Mausi was elected to the Legislative Assembly.[4] Asha Devi was the Mayor of Gorakhpur in 2000. Kally Kinnar was elected to the City Council in Varanasi. In 2000, Shabnam Mausi became eunuch to become an MP in India. Mirabai was the first Transgender person from Jabalpur. Madhu Bai Kinnar was elected as the Mayor of Raigarh, Chattisgarh, in 2015.[5]
- In 2015, Manabi Bandopadhyay became India's first transgender college Principal in West Bengal.
- Two Transgender people were appointed by the Kolhapur District Legal Services Authority as panel members of Lok Adult in 2017.
- "Parliament enacted the Transgender Persons Protection of Rights Act 2019. It aimed to protect the rights of transgender persons and ensure their welfare. This legislation seeks to
 - A. *"Define the expression "transgender person."*
 - B. *Prohibit discrimination against transgender persons.*
 - C. *Confer the right of transgender persons to be recognised as such and a right to self-perceived gender identity.*
 - D. *Make provisions for the issue of certificates of identity to transgender persons.*
 - E. *Provide that no establishment shall discriminate against transgender persons in matters relating to employment, recruitment, promotion and other related issues.*
 - F. *Provide for grievance redressal mechanism in each establishment*
 - G. *Establish a National Council for Transgender Persons.*
 - H. *Provide punishment for infringements of the provisions of the proposed legislation".*[6]

V. Conclusion

Nature is the best example of inclusion and pluralism. It conveys that all human societies, communities, groups, and cultural systems must be inclusive and pluralistic. Diversity has its unique beauty and is also reflected by nature, giving us life. In an evident sense, like a coin, nature assigned humans two roles biologically in terms of sex, i.e., male and female with reproductive potential. However, Mahabhaya defined in Sanskrit three grammatical genders derived from three natural genders; napunsaka was used in ancient Indian literature to indicate the inability to procreate and Indian literature had much evidence of a third gender binary of sexuality. India is a country illustrating extensive socio-cultural and sexual differences, and the concept of sexuality has changed, and many rulers and religions influence it. Indian society has ill-treated transgender persons for centuries, and the law has done little to nothing to correct it. The law was finally brought in and is also full of potholes. It is significant to note that any legislation will not achieve its complete goals if it does not reach all the stakeholders in the government because it is the stakeholders who can ensure that the law is implemented correctly. Also, the credit for raising and bringing up the issue of gender inclusivity is due to the efforts of certain NGOs, public-spirited persons and a very understanding judiciary. Transgender participation in every sphere of development is crucial to gender inclusivity. However, there may be an increase in participation only if the authorities and the general public together try to think beyond stereotypes. Awareness campaigns must be run so that the thought process of the general public can be changed concerning the transgender community.

VI. References

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