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## CONSTITUTIONAL RECOGNITION AND SOCIAL REALITY: A HUMAN RIGHTS STUDY OF TRANSGENDER MARGINALIZATION IN INDIA

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### Abstract

This paper analyses the persistent human rights violations faced by transgender communities in India, despite constitutional guarantees of equality and dignity. Drawing on legal frameworks, policy documents, and human rights reports, the study examines how social exclusion, legal invisibility, and institutional discrimination continue to marginalize transgender persons. Although landmark judicial interventions such as *NALSA v. Union of India* (2014) and *Navtej Singh Johar v. Union of India* (2018) have recognized gender identity and decriminalized consensual same-sex relations, everyday realities remain marked by police harassment, denial of healthcare, exclusion from education and employment, housing insecurity, and family rejection. Cultural stigma and societal prejudice further exacerbate psychological distress, leading to depression, social isolation, and heightened vulnerability. The paper argues that legal reform alone is insufficient without effective implementation, social sensitization, and inclusive public policy. It concludes by emphasizing the need for rights-based governance, inclusive education, affirmative policy measures, and protection against violence to ensure that transgender persons can enjoy fundamental human rights as equal citizens rather than as recipients of exceptional or charitable treatment.

### Keywords:

Transgender Rights; Human Rights Violations; Gender Identity; Legal Reform; Social Exclusion; Political Marginalization; India; LGBTQ+ Rights.

### INTRODUCTION

Transgender signifies the situation of someone's gender self-concept (self-recognition as female, male, neither nor both) or gender display not aligning with one's allotted gender (labeling by others as man, woman or intergender based on anatomical/genetic sex). "Transgender" occurs apart from sexual inclination; "Transgender" individuals might assert as straight, gay, bi, omni, multi, or nonsexual; several might judge established sexual inclination terms as unsatisfactory or not pertinent to themselves. The specific meaning for "Transgender" evolves but nevertheless encompasses: Pertaining to, connected to, or representing an individual whose self-concept does not adhere overtly to typical understandings of man or woman gender roles, but blends or shifts among these Individuals who were allotted a gender, typically at birth and referencing their genitalia, but who sense that it's an inaccurate or partial account of themselves. No association with, or non-display as, the gender (and presumed self-concept) one was allotted at birth.

A "Transgender" person might possess traits generally associated with a definite gender, assert elsewhere on the conventional gender spectrum, or be situated outside as another, a gender, gender diverse, or tertiary gender. "Transgender" individuals might also claim as dual-gender or span many points on both the basic "Transgender" range or broader continuums formed responding to current, much richer analysis. Moreover, many "Transgender"

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individuals encounter a phase of self-concept evolution involving increased understanding of self-image, introspection, and self-display. Specifically, the degree to which people feel legitimate, sincere, and at ease within their outward persona and embrace their authentic self-concept is called “Transgender” harmony.

### **“Transgender” Self-concepts**

Although individuals self-recognize as “Transgender”, the “Transgender” label is a group term covering sometimes-intersecting groups. These encompass transsexual; cross-dresser; gender diverse; androgynous; and dual-gender. The contemporary scopes of “Transgender” cover all transsexual folks, though some challenge this. Intergender individuals have genitalia or different anatomical sex markers that don’t fit strict notions of man or/and woman, but intergender individuals aren't strictly “Transgender”, since not all disagree with their allotted gender at birth. “Transgender” and intergender themes commonly intersect, nonetheless, for both question the notion of fixed understandings of gender and self-concept.

The word Transman denotes woman-to-man “Transgender” folks, and Transwoman refers to man-to-woman “Transgender” folks. Previously, it was believed there were more Transwomen versus Transmen. The word Cisgender exists as an antonym referring to non-“Transgender” folks; namely those who self-conceptualize with their gender allotted at birth.

### **Methodology**

This study adopts a doctrinal and qualitative research approach. It is based on secondary data collected from constitutional provisions, landmark judicial decisions, government policies, human rights reports, academic literature, and publications by national and international organizations. Content analysis is employed to examine patterns of legal discrimination, social exclusion, and institutional bias affecting transgender communities in India. The study also draws upon policy documents and documented case studies to understand the lived realities of transgender persons within social, cultural, and political contexts.

### **Cross-dresser**

A transvestite constitutes an individual who cross-dresses, or wears attire associated with another gender. The word transvestite serves as a synonym for cross-dresser, though cross-dresser generally is the favored wording. The phrase 'cross-dresser' isn't exactly defined in existing literature. A cross-dresser is a person who possesses a distinct gender self-recognition with one gender, and who was undeniably originally classified as belonging to that gender, but who dons the attire of a different gender because it belongs to a different gender. This definition excludes individuals who don garments of a different gender for alternative purposes, such as female impersonators who associate dressing exclusively with their occupation, or performers portraying characters, individuals delighting in masquerade, etc. These persons are cross dressing but not cross dressers. Drag artists might not proclaim, or intend to become the reverse gender, nor embrace the practices or customs of the reverse gender and typically do not hope to transform their physiques bodily. The bulk of drag artists consider themselves as straight. Individuals who dress as the opposite sex publicly may intend to appear as the opposite sex, to remain unnoticed as a cross-dresser, or may remain indifferent.

### **Mental Health Care**

Most psychological health specialists advise therapy for inner conflicts regarding gender identity or unease in a designated gender role, particularly if someone intends to change. Persons who sense mismatch between their gender and others’ “expectations or whose identity opposes their physical body may gain from exploring their feelings deeply; nevertheless, study on gender identity is fairly recent in psychology, and clinical knowledge of the issue and its

related matters is still advancing.

Transgender matters are modern in academic fields and concern few; many psychological health providers understand little about Transgender matters. Those who seek aid from such experts often instruct the expert without receiving support. Numerous therapists asserting awareness of “Transgender” matters suppose that moving from one sex to another, the usual transsexual framework, is the ideal or sole choice. This approach often suits transsexual persons but is not the answer for other Transgender individuals, particularly gender-fluid people lacking a purely male or female identity. Instead, counselors might guide their patients in whichever decisions they select about transitioning or uphold patients’ choice not to transition while also strengthening their sense of balance between gender identity and outward expression”.

### **The Condition of Sexuality Minorities in India**

Homosexual preference is prevalent throughout nearly every culture and society. Although sexual minorities have always been present in India—sometimes openly as in the case of hijras, and other times in concealment—their struggles have only recently been articulated. Only in contemporary times have the concerns of sexual minorities received attention from varied civic groups in India. The introduction of India’s initial gay periodical, *Bombay Dost*, in the late 1980s, along with the foundation of the lesbian organization *Sakhi* in Delhi, provided the first public platforms for lesbian, gay, and bisexual issues. Since then, the growing advocacy for sexual minority rights in India has become increasingly outspoken and coherent.

Currently, networks, helplines, newsletters, clinics, community centers, and safe spaces are accessible in metropolitan areas such as Delhi, Mumbai, Kolkata, Bengaluru, Hyderabad, Pune, Chennai, Patna, and Lucknow

### **Human Rights Violations**

Majority human rights institution base their promotion on the (UDHR). UDHR has led to an entire range of rights agreements, charters, and proclamations involving varied marginalized populations including youngsters, women, native peoples, disabled persons, detainees, faith and ethnic minorities, migrants, and more. Still, a notable omission in global human rights law has been an explicit recognition of the particular needs of sexuality minorities.

Sexuality is occasionally seen even in progressive and radical circles as a trivial, middle-class issue. In such environments, homosexuality is subtly regarded as deviant and unnatural, defended at best as a personal liberty but not viewed central to the human rights agenda. Problems of poverty, gender, social status, and caste bias are frequently considered more pressing than matters of sexuality. However, this perspective overlooks that sexuality is tightly tied to structures and mechanisms of societal control like patriarchy, capitalism, caste hierarchy, and religious fundamentalism. Therefore, the struggle for erotic rights cannot be separated from the broader human rights battles for economic, governmental, and communal justice.

Prejudice and other kinds of harm that “Transgender” individuals face demonstrate that inadequate institutions, legislations, and policies impair “Transgender” persons’ entitlements to

learning, medical care, shelter, work, and an existence with honor and esteem. Most “Transgender” individuals lack identification documents required for voter registration as many have been expelled by relatives and cannot verify their identity.

### **Discrimination by the Government**

The government is a potent apparatus through which marginalization against sexual minorities is documented, endorsed, and enforced. The primary channels through which discrimination becomes a daily reality for sexual minority communities occur via laws and law enforcement.

The Statute Judicial partiality toward sexual minorities manifests via criminal and civil statutes. The structure of injustice may be analyzed under these categories:

#### **Section 377 of the Indian Penal Code**

Section 377 of the Indian Penal Code, a colonial-era provision criminalizing consensual same-sex relations, was partially struck down by the Supreme Court of India in *Navtej Singh Johar v. Union of India* (2018). While this judgment marked a significant milestone by decriminalizing consensual same-sex relations between adults, transgender persons continue to face legal and social discrimination due to gaps in implementation, social stigma, and inconsistent policy enforcement.

In *National Legal Services Authority (NALSA) v. Union of India* (2014), the Supreme Court recognized transgender persons as a ‘third gender’ and affirmed their fundamental rights under Articles 14, 15, 19, and 21 of the Constitution. The Court directed governments to ensure legal recognition, access to education, healthcare, and affirmative action. However, the lived realities of transgender persons reveal a substantial gap between legal recognition and practical realization of rights.

#### **Extortion**

This represents one of the most usual violations. Law enforcement often halt homosexual/bisexual males in meeting spots, intimidate, collect their details, and demand money. It is difficult to approximate the incidents of blackmail, as no police logs are kept. Since FIRs are rarely filed, it seems a quick gain for the police as gay/bi men are too afraid of exposure to protest.

#### **Illegal Detention**

Another routine by police is holding individuals illegally. Police pick up people for questioning and detain them for various periods, from overnight to days. They do not file an FIR nor create paperwork of the detention. With no proof, these cases rarely reach public attention.

#### **Mistreatment**

Members describe police abuse as another form of oppression. Police often harass with language, berate, or even sexually abuse men. When this happens there is no help due to the hidden nature of the population, as any report would risk exposure.

#### **Families**

Indian parents socialize kids toward certain marriage and the demand to wed comes gradually but firmly. Both men and women face this, but it's often stronger on women, who have less freedom. There is no room for alternate sexualities. In this strict context, some sexuality minorities come out to their families. The response ranges from open arms to hostility. However, some families slowly adjust, passing through denial and anger before accepting.

#### **Housing**

“Transgender” individuals often face pressure and/or harm from family or society. Some run away; others are driven out. With little financial aid or skills, “Transgender” people often live in poverty. Affordable or no-cost housing for those in need could offer essential backing so they can focus on gaining skills and jobs.

**Public Areas**

Sexual harassment at the hijra workplace is echoed in public spaces, where “Transgender” people often meet abuse, violence, by police, criminals, and the public.

**Bias in Jobs/Education**

“Transgender” people find it hard to find suitable employment. Due to bias, most are forced into sex work. (For some, marriage is the only path out of sex work and offers social respect.) “Transgender” Groups Inside the “Transgender” community, there's bias by social group, job, and femininity; e.g., sex workers are looked down on. “Among India's kinnar population, those in sex work are at the bottom. In the kinnar group, those not castrated are marginalized. Transgender persons might identify as females, tertiary gender, Transgender, kathoeyes (Thailand), kinnars (India), or mak nyahs (Malaysia). Among those who perceive themselves as females”, not everyone desires sexual reassignment. In sex, some enjoy being active, challenging the belief that transwomen are always passive.

This matters for HIV prevention. More workshops with “Transgender” folks, especially leaders and trainers, are needed, plus sexual minority activists, on gender and sexuality to support peers without bias.

Effect of Bias on the Self Societal forces often create a mindset in which individuals see themselves as dirty, undeserving, and vulgar. The invisibility and quiet surrounding sexuality minority lives makes new levels of hardship, giving many the idea that only they feel such things.

This can lead to shame, depression, and even suicide, especially for young gay/lesbian/bi individuals confused about orientation. Many in hearings recounted contemplating suicide at least once.

**Conclusion**

States have pledged to promote, defend and uphold everyone’s right to the highest sexual and reproductive health, including “Transgender” people. Thus, nations must create and enforce policy, laws, and programs to make sure “Transgender” people have access to learning, health, shelter, jobs, and an adequate living, and end violence and bias faced by “Transgender” people from community, police, or courts.

States must recognize sexual rights as distinct yet related to reproductive rights. Full realization of reproductive rights is impossible without full sexual rights, and vice-versa. It's important not to split sexual rights from reproductive rights, nor to segment them just for LGBTI or women, but for all, no matter gender, orientation, class, age, ability, ethnicity, or faith. So sexuality is for everyone and all struggles. Sexuality movements must tackle root oppression, not merely its results. Within the rights arena, advocates aim for legal reform. Laws and legal codes do not work in a vacuum, but are shaped by social, cultural, and political context and history.

In such a climate, where key institutions present homosexuality as distortion or refuse to acknowledge it and there is limited space for positive portrayals, it is inevitable that mindsets are created in which sexual minorities feel isolated, distracted, and even hopeless. The impacts of dominant heterosexual culture on those who deem themselves different need deeper study.

“Transgender” people require legal, social and family acceptance—not special quotas or shelters, but fundamental rights. They need dignity, to be treated as anyone else, and not be mocked, mistreated, hurt, or rejected. Only then can they access health and education like anyone and contribute to society equally.

**Recommendations**

- ✓ Change all laws including faith-based laws that criminalise or target LGBTI people, including marriage and family laws.

- ✓ Develop policy for identification, citizenship, cards, official data for gender.
- ✓ Develop affirmative action for “Transgender” people with jobs, loans, housing.
- ✓ Update school curriculum for gender diversity and non-biased sexuality instruction and institutional help for “Transgender” students.
- ✓ Support studies of “Transgender” health to improve messaging and care.
- ✓ Laws must be clear so they don't reinforce bias, e.g., regarding indecency, so-called unnatural sex, and decency.
- ✓ Section 377 of IPC and other rules punishing consensual same-sex acts must be removed.
- ✓ Every person must have the right to pick their gender self-concept, including “Transgender”, cross-dressers and hijras.
- ✓ Law agencies must practice openness with sexuality minorities, and all details about police procedures must be accessible.
- ✓ Media councils and watchdogs must guide for fair, sensitive treatment of these topics in media.

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