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Inclusion of Transgenders Life in the Society: A Pathway for Reservation.

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ABSTRACT

For a long time, transgender individuals have been a socially and educationally marginalized community. They face isolation and are often denied open-minded treatment by society due to their gender identity. Transgender people experience numerous challenges and systemic issues, as their social status fluctuates depending on societal acceptance across different regions. If social stigma is not addressed, they will continue to struggle to live dignified lives. Socio-economic equality can only be achieved through systemic inclusion in all spheres of society. Following the landmark Supreme Court judgment in *NALSA v. Union of India*, which legally recognized transgender people as a “third gender,” the legislature enacted the Transgender Persons (Protection of Rights) Act, 2019. This legislation acknowledges them as a socially and educationally backward class. Social justice for transgender individuals can be advanced through affirmative reservation policies. Horizontal reservation frameworks should be adopted to enhance their career opportunities and ensure dignified livelihoods. This study focuses on their right to reservation in education and employment as a means of societal inclusion. It also examines the current status of transgender communities, government measures needed for socio-economic empowerment, and the importance of aligning policies with the constitutional promise of preambular justice.

INTRODUCTION

Transgender individuals are those whose gender identity differs from their sex assigned at birth. In India, they are recognized as a “third gender.” Historically marginalized, transgender communities have long fought for inclusion in mainstream society. Their upliftment requires proactive legislative action and policy reforms. As a vulnerable group confined to societal peripheries, their transformation hinges on inclusive legal frameworks and empowerment initiatives. The journey toward transgender rights involves policy formulation, implementation of welfare laws, public education, and legal awareness campaigns. Despite being citizens entitled to constitutional fundamental rights, transgender people face systemic neglect due to social inequalities and discrimination. Socio-economic equity can only be secured through principles of social justice that address exclusion and unequal treatment. Reservation policies, as a form of affirmative action, are critical to empowering disadvantaged groups and fostering a just, equitable society.

HISTORICAL PERSPECTIVE

For centuries, transgender individuals have been integral to Indian society, as evidenced by their presence in history and mythology. Ancient Indian texts recognized a “third gender,” describing individuals who did not conform to male or female identities, with specific rituals and traditions linked to their roles.

Mythology in the Ramayana references transgender individuals, attributing to them the power to bless others during ceremonies like childbirth and marriages. This tradition continues today through the Hijra community, which performs celebratory songs and dances (badhai). Texts like the Kama Sutra also acknowledge transgender individuals, describing them as embodying both male and female traits.

In Islamic history, transgender individuals played significant roles as guardians of holy sites like Mecca and Medina, influencing state decisions. During the Mughal era, their loyalty and intelligence earned them positions as administrators and political advisors, contributing to the empire’s governance.

British colonial rule introduced discriminatory laws that stigmatized transgender communities, yet they retained a degree of societal respect in India. However, societal acceptance began to decline by the mid-1990s, reflecting shifting cultural attitudes. During the British colonial rule, they faced discrimination and negative impact can be seen, but remained respect in Indian societies. The acceptance of them in our society continued until the mid-1990s, till the attitudes change.

CONSTITUTIONAL PROVISIONS AND RESERVATION POLICIES

With the aim to give a back up to the disadvantaged group's socially, educationally and economically, for their empowerment affirmative action policies are enshrined in our constitution. Here, are some of the provisions relating to the affirmative action policies in our country.

Article 15 prohibits discrimination on the basis of religion, caste, sex or place of birth. Art 15(4) was added to the constitution as per the First Amendment Act, 1951 because of the decision made by the Supreme Court in *State of Madras v. Champakam Dorairajan*, a special provision for the advancement of socially and educationally backward classes of citizens or for the Scheduled caste and Scheduled tribes and 16(4) mentions that the State can make any provision for the reservation in the cases of public employment. Article 15(5) or in sub clause of 19(1)(g) permits the state from making any special arrangements by law for the enhancement of any socially and educationally backward classes or for the SC and ST in relating to their admissions in educational institutions including private institution except minority institutions under Art. 29(1) of the Constitution, inserted to the constitution by 93rd Amendment Act of 2005. Article 15(6) and 16(6) deals with 10% of reservation to the economically weaker sections (EWS) in educational institutions and in any appointment or posts, as a positive action inserted to the constitution as per the 103rd amendment act, 2019. These reservation policies are for the upliftment of the marginalized groups and to boost them for a more justice and equalitarian society.

The verdict of the Supreme Court in the *Kesavananda Bharati Case*, 1973 developed the Doctrine of Basic Structure concomitantly influenced reservation policies on the basis of equality and the social justice. Quota system was established in *M. R. Balaji's* case in 1951, upheld the reservation limit to 50% in the Indira Sawhney case in 1992. Through different landmark judgments Supreme Court shaped reservation policies highlighted to create a stability in promoting social justice and prevent discrimination. (Goyal & Vidyapeeth, 2023)

The term 'reservation', is a process to deliver facilities to the weaker sections of the societies in the spheres of education, public employment and other services. It can be stated as a way of reserving or holding something for others. Historically some sections were oppressed on the basis of caste system and equal opportunities were denied in our society, this led the enactment of reservation policies in the constitution. Hence, reservation system has been implemented in order to uplift the socially and economically backward people such as Other backward classes, Scheduled Caste and Scheduled Tribes. Our constitution provides three types of reservation, in the political, education, and employment fields. To achieve social justice, it is a positive affirmative action by the state whereby providing a reserved seats in the educational institutions, central and state services, parliament and state legislative assembly except in the minority and religious educational institutions. Hence, the importance of providing reservation is to achieve social justice and gender equality. (Aarti, 2019)

Historical incidence of transgenders evidences their acceptance, recognition and strength of such members in the society. But later they faced discrimination and excluded in the contemporary era. Trans persons are marginalized and have been facing social and economic discriminations in different fields like education, health, and employment. They are not accepted in the society, hence faced physical, mental and sexual abuse due to social stigma. (Kuriakose & Vinshi, n.d.). To improve the quality of life and inclusion of their lives in the society, need empowerment and social acceptance. In the journey to achieve equality in all levels, efforts and initiatives from the part of the government is necessary and it is a constitutional obligation of the legislatures to ensure their right to live with human dignity.

Reservation can be categorized into two types: one is horizontal and the second one is vertical.

Horizontal reservation: Art.15(3) of the constitution contemplates horizontal reservation. Equal opportunities to other beneficial categories such as women, transgender community, and the persons with disabilities. It aims to distribute benefits to the sub groups within the specified category. Seats are allotted on the basis of criteria which interconnect with vertical reservation This type of reservation include gender, disability or economic status of the groups.

Vertical reservation: On the basis of social and economic backwardness, seat is reserved for the backward class group. Reservation for Scheduled caste, Scheduled Tribes, other backward classes and economically weaker sections are applied under Art.16(4) of the constitution, irrespective of other factors like gender or disabilities. Certain percentages are fixed for their seats in the education and employment, to promote social justice.

TRANSGENDER RIGHTS AND RESERVATION SYSTEM

Transgender persons have long been part of the society, but their presence has been neglected by the communities at different societal levels. As marginalised sections, persistently they subjected to social stigma, prejudicial treatment and excluded from different categories of people in the society. Rejection in the employment and education, such evil practices against the trans people, affects their physical and mental health unreasonably. Due to their socio-economic discrimination and the loss of job opportunities force them to involve in illegal activities and to knock other inhuman works. (Kumar, 2023)

Transgender's inclusion in the society and application of the facets of the principle of equality will be a pivotal path to their development. Hence, some progresses have been made through the landmark moment by the Supreme Court in the case *NALSA v. Union of India*, recognized transgender people as 'third gender' ensured their fundamental rights under the constitution. (National Legal Service Authority v. Union of India, 2014). It was an initial step for the inclusion of the transgender into the mainstream of the society. The honourable court accepted that if there is any discrimination on the reason of sexual orientation or gender identity, it will impair the Article 14 which states the equality before law and equal protection of laws, a concept enshrined

in the preamble of the constitution. Recognition of their gender identity as a third gender will enable them to enjoy their human rights. (Tanweer & Sunny, n.d.)

Through the medium of this judgment, legislative action was taken by the legislatures as a second step, an act was enacted in December 2019 as Transgender Persons (Protection of Rights) Act, 2019, with the object to protect the rights of the trans people and to ensure equality. In the year 2020, rules were framed and the 12th rule mentions about the equal opportunities in employment and to create a safe working environment without any kind of discrimination. But, remained silent for the reservation of the transgenders in the employment and education.

STATUS OF RESERVATION FOR THE TRANSGENDERS IN DIFFERENT STATES

To safeguard the interest of the backward community, need of reservation hour. Horizontal reservation is demanded by the trans communities. They are considered as the marginalized sections of the society and deserves the benefit of reservation. In extending all kinds of reservation, transgenders are considered as socially and educationally backward classes of people in cases of admission in educational institutions and public employment. There is a necessity for reservation policies for the transgender, aiming to achieve socio-economic status. In this view, several states have implemented reservation policies in the education and employment.

Many activists argued for the horizontal reservation, because it will provide equitable access to reservation on the basis of gender identity across caste identities. Different states adopted different approaches to reservation for trans people:

Kerala: In the year 2015, Kerala is the first state government introduced trans policy in India for the enforcement of the constitutional rights as made compulsory through the landmark verdict. Introduced seat reservation system in nursing education for the trans students in the year 2023, it promotes diversity nature in the education framework. The honorable Kerala High Court asked the state government to implement provisions for the reservation of seats in the Public Service Commission for the transgenders within six months in the petition filed by Aneera Kabeer, a trans activist in November 2024.

Karnataka: This government is the first which provide 1% horizontal reservation for trans persons in addressing the employment openings for the trans community in that state. 1% reservation in educational institutions or trans students to improve their education.

Tamil Nadu: An important approach was done, transwomen are categorized under the Most Backward Class (MBC), only applicable to the trans woman not the entire community in the year 2015. Now, supporting this community, introduced 1% reservation in both the education and employment.

Maharashtra: In March 2024, introduced a policy for the trans community with suggestions to reform the educational measures and health care facilities, envisages equal access to the trans communities. A proposal in the policy was to establish trans protection cell to address the issue of harassment guides to the promotion of equality and inclusivity.

Madhya Pradesh: Government incorporated trans community in OBC category, referred as Kinnars and now 14% reservation permitted for OBC, can seek admission in educational institutions and apply for the jobs in the employment sector.

Jharkhand: By acknowledging the discrimination and marginalization, to enhance social security for the trans people, state added this community into Universal Pension Scheme as a progressive step. The Mukhyamantri Rajya Samajik Suraksha Pension Yojana, this social scheme will provide Rs. 1000 per month as financial aid for trans people.

IMPACT OF RESERVATION POLICIES IN THE TRANSGENDER

1. Reservation policies in educational institutions shall provide trans students with many opportunities to access their right to education which is a fundamental right under Art.21 A of the constitution without any denial due to the societal issues. This can lead to higher literacy rates and academic qualifications.
2. Transgender people have fewer job options, there is a chance of facing discriminatory practices against trans individuals in the commercial sector. Hence, reservation in government jobs enhance the trans individuals with better employment prospects. Such policies will ensue fair wages and can receive benefits, can assure equal pay for equal work which is mentioned under Art.21 of the fundamental right and Art. 39(e) of the directive principles of state policy in the constitution.
3. Reservation policies help to reduce social stigma and discrimination. Implementation of these policies foster an inclusive environment and will promote the community. Representation in politics and governance will also encourage the trans community. If political representation policies are created then definitely it will reflect the diversity of our country.
4. Health care access plays a vital role in the well-being of the trans persons. Policies related with health care policies guarantees their access to gender affirming surgeries and health care as well as other therapies. It will reduce the lack and denial of appropriate services.
5. Social welfare and government reservation policies such as benefits and pensions help them in ensuring economic stability in a community where they face poverty due to the rejection in the society.

CONCLUSION

All individuals inherently possess human rights by virtue of their birth, regardless of religion, caste, gender, or place of origin. Transgender individuals, as human beings, deserve equal dignity and treatment. Historical and scriptural evidence reveals that transgenders were once revered and held significant roles in societies. However, over time, social stigma led to their systemic exclusion, rendering them one of the most marginalized and vulnerable communities. For centuries, they have endured discrimination, inhumane treatment, and human rights violations, both physically and psychologically.

To foster an inclusive environment, societal prejudices must be dismantled and replaced with supportive cultural norms that enable transgenders to fully participate in society and exercise their rights. Implementing effective reservation policies—particularly horizontal reservations tailored to their unique needs—can ensure equitable access to education and employment. Such measures align with principles of social justice and India's constitutional framework, which safeguards fundamental rights for all.

The landmark Supreme Court judgment recognizing transgender people as the “third gender” marked a historic step toward restoring their dignity. Legislative efforts to uplift their socio-economic conditions, including reservation provisions, have begun to promote inclusion. These policies empower the transgender community, enabling them to live with dignity and autonomy. While some states have introduced welfare initiatives, sustained efforts are necessary to address systemic inequities.

Ultimately, only through unwavering commitment to social justice and egalitarian principles can transgender individuals achieve meaningful participation in society. Their inclusion must be actively prioritized to ensure their rights are upheld and their contributions valued.

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