



Beyond Binaries

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(This editorial is based on the article “Beyond Binaries” which appears in Indian Express on 4th December.)

Numbering approximately 4,90,000 as per the last count (2011), transgender people (TG) in India are perhaps one of the most visibly invisible population in the country. They have cultural and social significance across the country in various avatars where they have been portrayed with dignity and respect. **However, transgender people have been increasingly recognized as one of the most socio-economically marginalized communities in the country.** To attain inclusive development goals, these special marginalized communities should be taken care of.

Who is a Transgender Person?

- As per international standards, ‘transgender’ is an umbrella term that includes persons whose sense of gender does not match with the gender assigned to them at birth. For example, a person born as a man may identify with the opposite gender, i.e., as a woman.
- The Supreme Court, the Expert Committee of the Ministry of Social Justice and Welfare, and a Standing Committee report, all define ‘transgender persons’ based on the mismatch only.
- In the Transgender Persons (Protection of Rights) Bill 2016, transgender person means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man (whether or not such person has undergone sex reassignment surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, gender-queer and person having such socio-cultural identities as kinnar, hijra, aravani and jogta.

Issues Related with Transgenders

- More often, transgender children or young individuals begin their journey alone and in search of individuals of their kind, a journey that is marred by unspeakable hardships and abuse.
- School education of most transgender people either remains incomplete or non-existent. **The lack of basic schooling is a direct result of bullying** and, hence, transgender persons are forced to leave schools (most of our schools remain unequipped to handle children with alternate sexual identities).
- Since the late 19th century, transgenders have been pushed to the margins of society, and have lost the social-cultural position they once enjoyed.
- **They are subject to extreme forms of social ostracisation and exclusion from basic dignity and human rights.**
- Often ignored as a menace to society, they are now only visible on the streets and localities where they are found begging, never as a part of the mainstream.
- **They remain highly vulnerable to gender-based violence.** As a direct result of their acute mistreatment, vilification, ostracisation, and dehumanization, they also remain highly vulnerable to fatal communicable diseases like HIV-AIDS. According to a recent United Nations Programme on HIV/AIDS (UNAIDS), the HIV prevalence among transgenders is 3.1 percent (2017), which is the second highest amongst all communities in the country. But, only about 68% of the affected are even aware that they are infected, which is worrying. High instances of substance abuse and low levels of literacy only complicate matters.
- **Despite laws, policies and their implementation, the community continues to remain quite marginalized and highly vulnerable.** There are examples of higher education institutions providing quota and giving special consideration to transgender people, but the takers remain few and far between.

Timeline of Reforms

- In 2009, appropriate directions were issued by the Election Commission to all provinces to amend the format of the registration forms to include an option of “others”. This enabled transsexual people to tick the column if they didn’t want to be identified as either male or female.
- The Supreme Court in National Legal Services Authority Vs. Union of India (2014) recognized them as the “Third Gender”. In the landmark ruling, Justice K.S Radhakrishnan observed that “recognition of transgenders as a third gender is not a social or medical issue, but a human rights issue”.
- Only a year after this verdict, India’s first transgender mayor of Raigarh, Chhattisgarh, Madhu Kinnar, elected to office, in 2015.
- According to a report in April 2018, the number of registered transgender voters nearly doubled in the Karnataka polls. Over 5,000 transgender people cast their ballots in the Karnataka assembly polls, which is historic. The number has doubled from the 2013 figures.

- **There are more encouraging trends.** HIV services for the community are rapidly improving in a targeted manner after the SC verdict. For example, the National Aids Control Organisation (NACO) reported that 2,40,000 hijras were provided with HIV prevention and treatment services in 2015, compared to 1,80,000 the previous year.
- **At the present, Lok Sabha has passed the Transgender Persons (Protection of Rights) Bill 2016. The bill will now be placed in Rajya Sabha.**

Status of transgender persons under existing laws

- Currently, several criminal and civil laws recognize only two categories of gender i.e. man and woman.
- These include laws such as Indian Penal Code (IPC), 1860, National Rural Employment Guarantee Act, 2005 (NREGA) and Hindu Succession Act, 1956. Now, the Bill(which bill?) seeks to recognize a third gender i.e. ‘transgender’. However, the Bill does not clarify how transgender persons will be treated under certain existing laws.
- In addition, the penalties for similar offenses may also vary because of the application of different laws based on gender identity. For example, under the IPC, sexual offenses related to women attract a maximum penalty of life imprisonment, which is higher than that specified for sexual abuse against a transgender person under the Bill (up to two years).

Way Forward

- **An ever-increasing number of activists who have continued to work** at the grassroots level for the welfare of the community has managed to bring society's attention to its socio-economic deprivation.
- **A multi-pronged approach is needed** on a war footing in the form of mass awareness campaigns, generating avenues for dignified employment, gender sensitization and affirmative action. Only then can the efforts of the Election Commission and the judiciary for ensuring inclusive elections in the world's largest democracy also result in a meaningful and inclusive democracy.

For example, Kerala's move to secure places in higher education for transgenders is among the first initiatives in the country to help support their progress.

- **The government should also move beyond focusing on individual-level HIV prevention activities** and address the structural determinants of HIV risks and mitigate the impact of such risks. For example, mental health counseling, crisis intervention (crisis in relation to suicidal tendencies, police harassment and arrests, support following sexual and physical violence), addressing alcohol and drug abuse, and connecting to livelihood programs - all need to be part of the HIV interventions.
- **Implement stigma and discrimination reduction measures at various levels through a variety of ways:** mass media awareness for the general public to focused training and sensitization for police and health care providers.
- **Ensure greater involvement of vulnerable communities including Hijras/TG women in policy formulation and program development.**
- **For thousands in the transgender community, hope hinges on the changes that they hope the Transgender Persons (Protection of Rights) Bill 2016 will bring.**