Transgender Identification Documents in India : A Critical Analysis
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ABSTRACT

Identity documents are essential for membership in the polity thereby denoting political, human, gender and social aspects of development. For a transgender individual, identification documentation procedures pose a lot of challenges, for instance a form of an incongruity amongst various documents in terms of name and gender markers. This can result in difficulty for transgender persons to prove the very question of who they are and what gender they are before the state authorities or the private sector, leading to heightened chances of discrimination, violence etc (Taylor, Lewis, & Haider-Markel, 2018). An attempt of rectification was made via the easing of identification procedures for the transgenders in India by granting them the right to self-identify their gender. The purpose of this study is to analyse the introduction and implementation of identity documentation process for transgenders. Qualitative as well as empirical data have been relied on for the study, along with relevant SC judgements like the NALSA v. UOI and statutes like the Transgender Persons (Protection of Rights) Act, 2019. The study implies that, firstly, despite sufficient administrative frameworks in place, a gap in execution of the same persists. Secondly, there is a need for a specialised apparatus in place which shall be responsible for synthesising data and insights that serve as indices for "actual" development of transgenders in India.

Keywords - Transgender, Identification documents, Transgender Persons (Protection of Rights) Act, 2019, India

Prologue

Transgender is not a term limited to those with intermixed genitals, rather it is an umbrella term for the people whose gender expression, identity or behaviour differs from the norms expected from their sex at birth. This includes various categories like — transgender male, transgender female, male-to-female (MTF) and female-to-male (FTM). Cross-dressers, gender queer and transsexuals also form an integral part of Transgender.[120] The definition of "transgender" goes

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[120] Rajkumar, Education of Transgenders in India: Status and Challenges, 2 Int'l J. Res. Econ. & Soc. Sci. 34 (2016).

beyond mere biological realm, which includes mental, emotional, physiological as well as behavioural realms.

Culturally, The concept of *"tritiyaprakriti"* which refers to a third gender or people who are neither fully male nor fully female, has been an integral part of the early Vedic and Puranic literatures. Mention of transgenders in the epics of Ramayana and Mahabharata can't be ignored while gauging the historical visibility of transgenders. In Jain scriptures, there is a mention of transgenders as it discusses the concept of "psychological sex" which emphasizes the psychological make-up of an individual, distinct from their sexual characteristics.[121] From the Islamic lens, Hijras occupied some of the most reputed positions in the societies of the Ottoman empire and the Mughal empire. However, the trajectory of transgender community was altered during colonial rule when the British criminalized the Hijra community and denied them civil rights.[122] The unhealed wounds of vulnerabilities amongst the transgender community are a result of the marginalisation introduced by the British.

Investigation of the Key Concern

Contemporarily, in the realm of politics, it is largely advocated that development requires good governments that give all genders equal voices in decision making and policy implementation.[123] Taylor and Haider-Markel (2014) discuss the nature of LGBT rights by quoting Mooney and Lee (1995, 1999) and Boushey (2010) that LGBT rights are often classified as a type of morality politics, where policy networks combine with internal state political and social factors, including citizen ideology, to determine policy outcomes.[124] The transgender politics receive scanty attention from policymakers and political scientists. Interests of the trans community barely make a cut to the political manifestos. Perhaps the political ignorance of trans demands can be due to low electorate and an even lesser representation in candidature from the community. Hence, the governments, parties, leaders and other stakeholders merely owe an accountability to the community, thereby pushing an already marginalised community further onto the cliff of ignorance. Political representation and participation of the community can be assessed through the status of trans voters and

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[121] M. Michelraj, Historical Evolution of Transgender Community in India, 4(1) Asian Res. & Soc. Sci. 17, 17 (2015).

[122] Id

[123] Jane L. Parpart, Shirin M. Rai & Kathleen Staudt eds., Rethinking Empowerment: Gender and Development in a Global/Local World (Routledge 2000).

[124] J.K. Taylor, D.C. Lewis & D.P. Haider-Markel, The Remarkable Rise of Transgender Rights 219-22 (Univ. of Mich. Press 2018).

candidates. Although the 2024 Lok Sabha election saw a general increase in transgender voter turnout which denotes a positive shift towards greater political engagement ; with 75% of transgender individuals not voting, systemic failures and complexities in identity verification can't be ignored. In The Lok Sabha Elections, the Election Commission introduced "other" gender category in voter registration forms. However, transgender individuals are still subjected to bureaucratic hindrance and discrimination.[125] The identity documents hold a great significance for the transgender community in helping them in being active in the political landscape. The landmark NALSA judgement of 2014 recognised third gender/trasgender and upheld their entitlement to fundamental rights. The judgment additionally also entailed guidelines for the government to act towards the inclusion of the trans community. In furtherance of the judgement, statutes like the Transgender Persons (Protection of Rights) Act, 2019 and Transgender Persons (Protection of Rights) Act 2020 granted every individual the right to self-identify and perceive their gender and gender identity.[126] Essentially, as per the provisions under The Transgender Persons (Protection of Rights) Act, 2019 and Transgender Persons (Protection of Rights) Act 2020, transgenders shall have a right to self-perceived gender identity and be issued identification documents accordingly.[127] More steps were taken in compliance with the same, the National Portal for Transgender Persons provides the facility to apply for certificate and identity card without physical interface via a smooth and comprehensive process. The Transgender certificate & identity card are nationally recognised, which are provided by the Ministry of Social Justice & Empowerment. The certificate is a mandatory document to avail the welfare schemes provided under the SMILE (Support for Marginalized Individuals for Livelihood and Enterprise) scheme. Mugloo and Rafiq (2023) recorded that Mumbai-based activist Abhina Aher said that, "Around 80% of transgender people in India are either engaged in sex work or begging, and a large number of them face gender-based abuse and violence."[128] As per the 2011 census, there are 480,000 trans people, although many believe this figure to be an underestimation , saying 1.5 million may be a more

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[125] Neelima Paswan, Inclusivity in the Electoral Process: Where Are We in Terms of Transgender Voters?, The Wire (July 13, 2024), https://thewire.in/rights/inclusivity-in-the-electoral-process-where-are-we-in-terms-of-transgender-voters (last visited Dec. 11, 2024).

[126] National Legal Services Authority v. Union of India, (2014) 5 S.C.C. 438 (India), https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity .

[127] The Transgender Persons (Protection of Rights) Act, 2019, The Gazette of India (2019), https://egazette.nic.in/.

[128] S. Mugloo & S. Rafiq, 'They Thought I Was a Curse': The Struggles of India's Trans Community, Open Democracy (Apr. 7, 2023), https://www.opendemocracy.net/en/5050/india-transgender-discrimination-health-gender-affirmation-surgery/ (last visited Dec. 12, 2024).

accurate figure.[129] Despite the introduction of the National Portal for Transgender Persons, veteran trans activist Amrita Sarkar confirmed that fewer trans individuals are registered on the portal than the actual number "because the documentation process is hard and there is a lack of knowledge among the trans community".[130] Additionally, the portal hasn't been published and advertised adequately. The portal was envisioned as a foolproof instrument to reach the masses, without considering the situation of digital literacy and internet access amongst the trans community. Essentially, the portal is available in merely five languages, adding fuel to the fire of illiteracy in the community. Nonetheless, the partial success of the portal can't be undermined since a total of 16,463 transgender identity certificates have been issued as of February of 2024. It has proved to be a crucial baby-step towards the vision of an inclusive society.

A study conducted by the NHRC in 2018 found that over 96% of trans individuals were denied jobs and forced into committing to low-paying and unsafe work.[131] Despite 80% trans people meeting the eligibility requirements, they were still denied jobs. This is indicative of lack of societal acceptability and the existing bias against transgenders which stems from transphobia and age-old stereotypes. In this aspect, The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) proved to be a stepping stone as it brought employment opportunities for transgender people.

Perils of the Transgender Community

On the educational front, the Right of Children to Free and Compulsory Education Act, 2009, defines "disadvantaged group" which also includes the trans community which implies that trans children can not be discriminated against and prevented from pursuing and completing elementary education on any grounds.[132] However, as per the 2011 census, a meagre number of just 56.10% of transgenders have completed education.

From another lens, despite the inclusion of Healthcare Facilities in the The Transgender Persons (Protection of Rights) Act, 2019, most of the government hospitals across India still

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[129] Queerbeat, The Painful Road to Corporate Employment for India's Trans Youth, Queerbeat (Dec. 14, 2023), https://www.queerbeat.org/stories/the-painful-road-to-corporate-employment-for-indias-trans-youth (last visited Dec. 15, 2024).

[130] Id

[131] National Human Rights Commission, Group 1: Human Rights Education and Training (2021), https://nhrc.nic.in/sites/default/files/Group%201%20June.pdf.

[132] Government of India, The Right of Children to Free and Compulsory Education Act, 2009, Ministry of Law and Justice (2009),
https://www.indiacode.nic.in/bitstream/123456789/19014/1/the_right_of_children_to_free_and_compulsory_education_act_2009.pdf.

lack separate wards, sensitised hospital staff and doctors, gender neutral washrooms making accessible healthcare is still a distant dream for the marginalised group. It is essential to make Gender Reassignment Surgeries and hormonal therapies accessible for the community.

Transgenders are a socially retarded community due to lack of education, opportunities, access to basic facilities like shelter, healthcare etc. and more which is vulnerable to Gender-based Violence, harassment and maltreatment from various stakeholders.

Undeniably, the recognition of transgenders via the means of providing them identity documents which shall empower them politically, help them avail welfare and healthcare schemes, claim their Right to Education is no less than a pioneering step towards a more gender-inclusive India. Nonetheless, the incongruities in the procedures shall be examined in the upcoming section.

Literature review

The article delves into intricate webs of trans rights to understand various facets like historical, political, futuristic, legal and problematic aspects.

Transgenders and their Historical Evolution

Historical position of transgenders can be understood through Rajkumar's work that highlights the educational status of transgender community and the challenges they faced under the colonial regime. Furthermore, Michelraj's study (2015) explores the historical growth of transgender community in India. It meticulously examines the evolution of the transgender community in Mughal period, British period, post-independence and contemporary period. It concludes that the recession in social stature of the community is due to the criminalisation and discriminatory steps brought by the colonial administration. However, both the studies lack a veritable opinion on the *queerphobia* that hails from indigenous context. The current study accentuates the root and spread of *transphobia* and normalisation of trans matters ignorance by contextualising it in the Indian landscape.

Transgenders in Political landscape

Taylor and Haider-Markel (2014) analytically jot down the situation of transgenders in the political landscape. Using the tools and concepts of Political Science, they gauge the situation of trans rights in US politics and how they've been on a backseat from the past centuries but recently the situation seems to have changed with policymakers responding to demands for more equitable treatment of transgenders. Furthermore, they discuss the implementation of transgender public policy. Similarly, Taylor, Lewis, & Haider-Markel (2018) present the growth of the trans rights movement governed by the new construct of "collective political identity". The study, in chapter 8, emphasizes on identity documentation and regulation of gender. But, the studies fail to accredit the increased political attention on transgenders to the

increased electorate, sympathy and "liberal wokeness". The studies neither adequately address the legal issues surrounding identity documents, nor do they offer substantive solutions to these challenges. Nevertheless, they facilitate a valuable framework for understanding trans politics, particularly in relation to insurance, medical, adoption, and marriage documentation. However, the shortcoming is that no comprehensive and actionable policy recommendations are proposed.

Paswan's article (2024) serves as a guiding light on trans politics in India. It dissects the "inclusivity" in politics by contrasting quantitative data of voter turnout of the past few years. She finds that the voter turnout has shown improvement, however very minute one. Additionally, the article also shed light on challenges faced by the community. The article proved vital in contextualising trans contribution to electoral politics but the article fails to mention the contributory factors of the meagre turnout. The current study elucidates a direct connection between lack of political representation to the root cause i.e. improper disposal of identity documents for transgenders.

Lapses in the Identity Document Registration System

Mugloo and Rafiq (2023) debrief the challenges that persist in the process of identification documentation despite "a seamless mechanism in place". They take account of the vulnerability of the community and discuss that the portal hasn't reached the entirety of the transgenders. The study uncovers an ideal logic, but proves to be convergent. Authors fail to consider reasons for the restricted access of the portal. The current study points out reasons like illiteracy, digital illiteracy as well as language of the portal as probable reasons.

Case Study

Born as a boy, Sarfraz always resonated with femininity. She was subjected to different treatment since she was different from others her age. She was discriminated against due to her stereotypical "feminine" demeanor. Nonetheless, she began accepting herself at the age of 14 years. Currently, she is 18 years old and pursuing her studies while working at a reputed Hotel in Jodhpur, Rajasthan. She is fearlessly embracing her true self, chasing her dreams and inspiring millions. She is a part of a vibrant LGBTQ+ community in Jodhpur and is also tirelessly managing Jodhpur's first LGBTQ+ cafe.

When asked about her experience with the identification documentation process, she shared that she recently got her gender and name changed in the Aadhar Card and the process was pretty simple and quick. However, she expressed her

concern over some complexities in the process of applying for a PAN card as well as Voter ID card. She reiterated that she filled the PAN application form, but failed to receive further updates. As far as Voter ID is concerned, she has applied for the same under the 'third gender' category. When interrogated about the user-friendliness nature of the portals, she recalled that she took assistance from NGO services from SAMBHALI Foundation, for the procedures. She personally found it difficult to navigate through the websites. She further added that at first her Voter ID application was rejected due to incongruencies with Aadhar and PAN. Many transgender applicants face this issue due to different gender and names. Since the uniformity of name and gender is not maintained in government forms and documents required for identity cards like Pan, Aadhar etc., the applications of subsequent documents like Passport, job applications etc. keep getting rejected. Lack of inclusive gender options doesn't end at merely identity documents, it extends to airline forms, immigration control etc.

Paving the way forward

The manifestations and remnants of discriminatory practices against transgenders can still be found in public policy. While such signs are not easily undone, such undoing is not completely impossible. Changing discriminatory practices requires both an understanding of how they emerged and the innate will to bring about a change.[133] Mere legal recognition of transgender identity is insufficient without a revolutionary movement of societal acceptance. Congruity and further simplification of the documentation process is the need of the hour. To conclude, identifying and weeding out the deeply ingrained bias and queerphobia is the magic potion to this spell. The aforementioned can be achieved via sensitisation in the form of providing special training vis-à-vis the unique status of trans individuals to the identification document providing staff members, policymakers, healthcare workers, law enforcement authorities, grassroots leaders among others. Unified efforts and relentless spirit are required to realise the maximised aspirations of transgenders, ensuring that their dreams go beyond AADHAR, PAN and Voter ID, and encompass Passport and other internationally recognised documents. Creating a politically and ethically inclusive society for the transgender community calls for a *multi-pronged approach* exemplified through cooperation amongst various organisational structures that can actualise objectives into achievements for instance public-private joint initiatives, CSOs, NGOs, think tanks, academicians etc. *Multi-pronged approach* ought to be coupled with *bottom-up approach* that advocates for a holistic upgradation of systems in place to ensure

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[133] G.E. Israel & D.E. Tarver, Transgender Care: Recommended Guidelines, Practical Information & Personal Accounts 215 (Temple Univ. Press 1977).

maximised inclusion and intersectional equality amongst transgenders. Foremostly, adequate disposal of identity documents and including every transgender under the purview of a proper ID database will make sure that trans rights are not overlooked. By raising expectations from politicians and policymakers, trans demands can make their way into political manifestos and remain a relevant issue in mainstream politics. Holding politicians accountable fosters a sense of responsibility toward the transgender community, compelling them to take meaningful action. Regulated registration of IDs will eventually lead to increased voter turnout among trans individuals, empowering them to actively shape the political landscape and influence policy decisions that directly impact their lives.