



Understanding the Challenges Faced by the Transgender Community in the Indian Workforce

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Abstract

To create a more inclusive society, it is essential to study the prejudice that the transgender community experiences at work. Recognising the difficulties individuals face enables the discovery of structural impediments to their professional development. These studies provide insight into the disproportionately high rates of unemployment or unstructured labour experienced by the trans community. Policymakers can develop focused laws and policies to defend their rights and advance diversity in the workplace by looking into these concerns. Understanding how discrimination affects mental health and productivity also emphasises how urgent the creation of a workplace that promotes diversity and allows everyone, regardless of gender identity, to succeed professionally. This paper aims to discuss the unemployment rate and discrimination faced by the trans community in the Indian workforce and also to discuss state policies that have created a more conducive environment towards developing more inclusive workplaces.

Introduction

The concept of “trityaprakriti”, or third sex have been prevalent across the Indian mythos, and early Hindu scriptures. The Manusmriti (the foundational text of Hindu laws) states that “if both [female and male prevalence in a child] are equal, a third-sex child or boy and girl twin are produced (Britannica, 2023). In the Mahabharat (an epic), Shikhandi, a transgender warrior son of King Draupad, aids in bringing down his nemesis Bhishma. Because of such stories in religious texts, people of the transgender community were heralded as messengers of the gods and closer to divinity in ancient Indian society. However, over the course of Indian civilisation, the place of the transgender community has undergone several changes.

Similar to their position in ancient India, the transgender community was respected during the Mughal period. They were given positions as political advisors, administrators, and as court officials. However, the tides changed when the British Raj began in India. Initially, they were given some land, rights of food and smaller amounts of money from agricultural households, but this privilege was removed by the British legislation as the land had not been acquired through inheritance (Hunter, 2019). The British brought Christian values that saw the concept of a third sex as sinful. As they tried to impose their values on their colonies, they sought to alienate the community. The colonial government passed the Criminal Tribes Act (1871), profiling hijras as a separate caste and criminalising communities nationwide. These legislative decisions would go on to influence the post-colonial attitude towards the Hijras.

In 2019, the Indian Supreme Court passed The Transgender Persons (Protection of Rights) Act. Although this bill at the surface level appears to protect trans people from discrimination in regards to buying property, education, employment, it has been described as “murder of gender justice” by transgender activist Grace Banu (Pathak, 2019). The bill requires transgender people

to submit proof of gender confirming surgery in order to be recognised as transgender by the government. This does not take into consideration those individuals who don't have the means or access to such procedures, nor does it acknowledge the lack of gender-affirmative healthcare in India.

In 2017, the National Human Rights Commission (NHRC) conducted a study among 900 trans people in Uttar Pradesh and the National Capital Region. The study found that nearly 15% were unemployed and 69% were working in the informal sector, primarily engaged in singing, dancing, and blessing. Three in four respondents were unhappy with their career and 53% earned less than Rs 10,000 per month. In 2018, the NHRC conducted another study that showed that 96% of transgender people are denied jobs (Money Control, 2018).

A study on trans-rights concluded that 92% of transgenders are deprived of the rights to participate in economic activity in the country, regardless of qualifications. The same study reported that only 6% of transgender individuals were employed in private sectors. A survey conducted in Kerala found that only 12% of transgender persons surveyed were employed and half of them made less than Rs 5,000 per month. To put this in perspective, the average cost of living in Kerala (for a single person) is Rs. 11, 070 (Outlook Web Desk, 2022).

In order to find employment, the most basic qualification required is a school or university diploma. This creates a frontier between transgender people and the workplace. According to the 2011 census, the literacy rate among the transgender community is 56.1% for a population of 4.8 lakhs, compared to the national average of 70.04%. The disparity in literacy rate rises due to the Indian education system being ill-equipped to create a conducive and safe learning environment for trans students, leading to more students dropping out of school (Centre for Law & Policy Research, 2022).

This paper discusses the barriers faced by trans people in entering the workforce and policies implemented to aid transgender individuals in finding work and from facing discrimination.

Discussion

As per the Central Board of Secondary Education press release, the class 12 board exams saw a pass rate of 87.33%. Of the total 16.9 lakh students that registered for the exams, 7.4 lakh were female, 9.51 lakh were male, 5 students were transgender. Out of those who appeared 90.68% girls passed, 84.67% boys passed, and only 60% transgender students passed (CBSE, 2023).

There have been several "landmark" rulings surrounding trans rights, specifically to education. The National Legal Services Authority (NALSA) judgement of 2013 states that "every person has a legal right to decide their identity" and that they are "entitled to proper education." The Transgender Persons (Protection of Rights) Act, 2019 states the obligation of educational institutions to provide inclusive education to transgender persons, defining "inclusive education" as "a system of education wherein transgender students learn together with other students without the fear of discrimination, neglect, harrassment or intimidation and the system of teaching and learning is suitably adapted to meet the learning needs of such students."

Furthermore, the University Grants Commission (UGC) has announced that all universities will take affirmative action to ensure the acclimatisation of transgender students and create specific action plans for transgender persons (Rajkumar, 2016).

Despite these rulings, institutions have failed to make the necessary amendments to their systems in order to seamlessly accommodate transgender students. As a result, students continue to face harassment from their classmates and faculty members alike. In an interview with the International Commission of Jurists (ICJ), a trans man said, “It [studying] became hard for me because everyone made fun of me, they didn’t sit with me, and they didn’t even touch me as if I had some disease. The teachers also sometimes made me sit separately. I felt troubled both at home and in school, so I decided to stop school.” Another trans man from Delhi said, “I was humiliated, scolded, and punished by the teachers – I was made to stand on the bench, thrown out of class and interrogated about my gender expression. They would ask me to wear girls’ uniform and also slap me and cane me for not following the dress code.” (ICJ, 2019). These instances make the schooling experience a traumatic one for these students, and the aim of going to school shifts from learning to surviving. As such many transgender students quit school, making it difficult for them to find employment later on.

A major point of contention for trans activists is The Transgender Persons (Protection of Rights) Act of 2019. The bill gives individuals the “right to self-percieved identity” however, in order to be officially recognised as transgender they must register with the government, and this can only be done by providing confirmation of gender confirmation surgery. This rule does nothing to acknowledge individuals from low economic classes, those without access to safe healthcare, and the general lack of gender-affirming health care. This rule seems to take several steps back from the 2014 NALSA judgement that stated that self-declaration was the only proof required, yet with the new rules individuals have to now submit a psychiatrist’s report in order to obtain “proof of identity.” Furthermore, when the National Portal for Transgender persons was launched in 2020, 1915 people applied for an ID, and as of March 2021, only 277 cards have been issued, and 1418 remain pending.

The new rules mean that only after going through a copious number of expensive bureaucratic layers can a transgender individual be legally protected from discrimination in areas such as education and employment.

Employment allows individuals to access basic necessities like housing and medical services. These are things that are already difficult for transgender persons to avail due to discrimination but the lack of stable income only provides further evidence for landlords and healthcare providers to deny them these services. According to a report published by the ICJ in 2019, transgender tenants fear sexual violence, lack of secure tenure, higher rent rates, and intrusion in personal space by landlords (Hugenghally, 2021).

Jobs that have gender specific eligibility parameters exclude transgender people from the very onset, for example, with police forces. Several trans individuals have been rejected job opportunities in this sector, as the positions are restricted within the gender binary, so those who identify as transgender are forced to undergo medical examinations as part of the recruitment process. According to ICJ, these tests often cause doctors to incorrectly label individuals, and

then the medical certificates are used to halt recruitment or deny appointment letters. In the case of *Faizan Siddiqui v. Sashashtra Seema Bal*, Siddiqui challenged the decision of the medical board of the SSB which had declared her medically unfit stating that she had “pseudohermaphroditism” despite her meeting all the objective criteria for physical fitness. Such gender restriction cause problems for transgender individuals in other areas of the workforce as well. In the case of *Shanavi Ponnusamy v. Ministry of Civil Aviation*, a transwoman had been rejected as a member of the cabin crew after failing the subjective personality tests for women.

Another major barrier is the lack of identity documentation. There are several documents required in the hiring process. However, as a trans individual, identity documents pose the challenges of incorrect names and gender markers. After the introduction of the new rules of The Transgender Persons (Protection of Rights) Act, 2020 the transgender community now has to go through complicated processes in order to obtain identification that conforms to their true identity.

The barriers to entry that the transgender community faces, right from their education through identification to the hiring process make the workforce a nearly impenetrable fortress for most trans individuals, especially those without the privileged access to supportive environments and high socio-economic status.

Conclusion

The Central Government can take inspiration from the policies that have been implemented in other parts of the country. In 2008 Tamil Nadu introduced the transgender welfare policy which allows them to access free gender affirming surgery, and created housing, and education more accessible to them. The Madras High Court has banned conversion therapy and has created a mandate that the state of Tamil Nadu must provide shelter for transgender people at anganwadis and short-stay homes as well as develop awareness programs. In October of 2021, the National Medical Commission announced that undergraduate and postgraduate students should not be taught anything discriminatory towards the LGBTQ+ community, and this recommendation has been sent to all medical colleges in the country. In North India, the Chhattisgarh government has taken steps towards aiding the transpopulation through financial literacy programs (Rajkumar, 2016).

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