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Trans Community in India: Struggles with Rights and Representation and its Impact on their Mental Health and Well-Being

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Abstract

In a diverse country like India, where disparity and inequality take many forms, it is a big challenge to attain sustainable development goals (SDGs). In this paper, we explore the social standing of the Transgender community in India, their struggle in representation and their position as autonomous beings. We have primarily focused on two SDGs- SDG 3: Good Health and Well-Being, and SDG 5: Gender Equality- and analyzed how successful implementation of these goals would help reduce inequalities. A comparative analysis of the status of the Transgender community's mental health and legal rights is included in Table 1. This paper extends recommendations to be implemented to ensure and build an inclusive future for the Transgendered people in Indian society.

Keywords: *transgender community, sustainable development goals, gender equality, well-being, mental health, legal rights*

1.0 Introduction

"Include everyone, no matter their gender, sexual orientation, race, or religion. We are all human beings and we are part of society"- Lea T, BBC Interview, 2016.

When a child is born, society labels them as female or male based on their genitalia. Females are seen as feminine and males as masculine. Any discrepancy in this is considered non-normative by social standards. These strict compartments of labelling fail to acknowledge a whole section of the society: the transgender community.

According to the World Health Organization (*WHO/Europe Brief – Transgender Health in the Context of ICD-11*, n.d.) transgender is a blanket term for people whose expression and gender identity does not conform to the traditional expectations and norms associated with the sex assigned at birth. Called 'Trans' in short or 'gender diverse', the individuals may identify themselves as the opposite gender or not identify with either. Although new to our vocabulary, the term "trans" in Latin means "on the other side" and includes transgender, transwomen, transmen, genderqueer, non-binary, agender, and others.

1.1 History of the Transgender Community in India

As one of the most diverse nations in the traditional and religious aspects, India has its own history, concerning customs and usages. The concept of ‘transgenders’ in India is not new; this Community includes Kothis, Aravanis, Shiv-Shaktis, Jogappas, and others. The different names and concepts of transgender are the following (Konduru & Hangsing, 2018; Johari, 2014):

- ❖ Aravanis: Referred to a male who has gone through traditional castration or Nirwaan, or modification of genital through sex reassignment surgery (SRS). It is believed that they are the lineage of Aravan, the son of Arjuna in Mahabharata.
- ❖ Kothis: They don't share living spaces like Aravanis, rather in same-sex relationships take up the feminine role.
- ❖ Jogappas: They are transgender men who marry a goddess to become a woman. They are engaged in the service of a particular God namely Yellamma the Hindu goddess who is also known as “Mother of the Universe” and devote themselves to the same.
- ❖ Shiv-Shaktis: Found in Andhra Pradesh (AP), these individuals are considered as married to God, Lord Shiva in particular.

Transgender people are represented in Hindu mythology and have a strong appearance in history as well as religious texts. They are seen in the Mahabharata and Ramayana. In Mahabharata, the presence of transgender can be seen through Iravat or Aravan, son of Arjuna (Agoramoorthy & Hsu, 2014); likewise in Ramayana, when Lord Ram was banished to the woods for 14 years, the Trans people stayed with him. Moved by their devotion, Rama bestows hijras the power to bless people on occasions like marriage and childbirth (Raj, 2020). Likewise, when the Hindu deity Shiva merges with Parvati, his wife, this form of Shiva is known as Ardhanari (androgynous) (Agoramoorthy & Hsu, 2014). Even during the Mughal era, transgender people held religious authority and were invited for their blessing. Moreover, Bachuchara Mata, a Hindu Goddess is a patron of the Trans community as per Hindu mythology. There are also several texts in Sanskrit that recognize Hijras/Trans in India like the Sushruta Samhita, Naradasmriti, and Charaka

Samhita (Raj, 2020).

Even though transgender people hold a prominent position in Hindu mythology, their situation has worsened since British rule in the 19th century. The colonial rule attempted to wipe off the Trans community and even criminalized it through laws. Law that criminalized the Trans community remained under section 377 of the Indian Penal Code (IPC), 1860 up until September 6, 2018, where the Supreme Court announced section 377 as unconstitutional.

1.2 Stigmas Attached to the Transgender Community

Slowly shut out from educational and religious institutions, as well as social gatherings, several transgender persons live in selected areas. Only 45 per cent or below are in the working group, whereas some are also forced to live as prostitutes (Konduru & Hangsing, 2018; Sughra & Imran, 2016). Due to the nature of their living, the community has stigmatized them as close to untouchables; the lowest caste in the Hindu caste system. They are largely recognized out of the belief of being cursed if one shuns a Transgender person. Leading a cynical life, they are pushed out of the system that protects the rights of individuals. Furthermore, the patriarchal society of India has made life much harder for them as they don't adhere to the definition of the conventional man or woman, and some don't identify as either.

Despite having constitutional safeguards such as Article 14 (equal protection of laws and quality before law), Article 15 (non-discrimination based on race, religion, caste, sex, and place of birth), Article 19 (freedom of speech and expression), Article 21 (Protection of life and liberty), and Article 23 (Prohibition of forced labour and beggary), the trans community, that includes 4.88 lakh individuals as per Census 2011 (Konduru & Hangsing, 2018), is still shunned in the society.

They are not able to enjoy the rights, liberties and freedom like the rest of the society; they are subjected to discrimination and abuse, forced out of society, compelled to work as prostitutes or beg on the streets and sometimes are even disowned by their own family. Due to the stigmas attached, unfair treatment prevails in employment opportunities, quality of life,

social and economic resources, legal recognition, and health services. Also, until recently, media representation of the Trans community was homophobic, background entertainers and as bizarre individuals.

Regardless of the legal recognition by the Supreme Court of the third gender in 2014 (National Legal Services Authority vs. Union of India) and the order of inclusive treatment of people identified as the same, the government failed to act promptly. Even after the decriminalization of section 377 in IPC, the oppression of the Trans community continues. Likewise, the Transgender Bill passed in 2019 that aimed at protecting their rights requires a screening test. This bill of 2019 clearly breaches the right to life, dignity, and privacy and is further discussed in later sections of the paper.

1.3 Present Image and the Lack of Inclusivity in the SDGs

Although the Supreme Court of India officially recognized transgenders as the third gender in 2014, the present image of the third gender among the general public has shown little to no shift from the desolate state in which it was before. Most of the credit to this misconception can be placed on the rampant misrepresentation of transgenders in media and on centuries of discrimination and prejudiced oppression of the community.

In the present day, the occupations typically associated with the transgender community includes undignified jobs such as begging at busy joints and on trains, performing at social functions and even selling sexual services. In fact, 96% of the transgender population is forced to engage and earn sustenance through these odd jobs (Chauhan, 2018). The mockery of the community continues due to their stereotypical and offensive portrayal in media such as movies and songs, which are also available for mass public consumption. The misrepresentation of the community is further exacerbated by the only two disturbing polarities in which they are portrayed in most Bollywood movies: a horrifying villain or the worst kind of shallow comic relief (Nigam, 2021). The option for marking one's gender as 'others' in the Indian Census was provided in 2011 for

the first time. However, the then obtained data regarding the transgender population is considered to be unreliable, for many believe that the novelty of the option and stigma attached to coming out as transgender among other factors may have resulted in the undercounting of the actual transgender population (Badgett, 2015). The lack of sensitivity, consideration and awareness normalizes the ostracization of transgenders in social circles and the general public.

Government agenda and policies seem to be one of the most prudent ways to deal with such widespread unawareness. SDGs or Sustainable Development Goals are a set of 17 goals set to be achieved in their maximum capacity by participating nations' governments by 2030. The goals altogether envision a better standard of living for people in all respects. However, the response to the aforementioned goals in terms of its set targets fails to take into account the struggles faced by the transgenders, or the LGBTQIA+ community in general.

In the case of SDG-1, the third target is to implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable. However, even today the transgender community continues to be an ostracised and marginalized community of our society. 89% of transgender researchers said that there were no jobs even for those who adequately qualified (Chauhan, 2018).

For instance, under SDG-3, achieving universal health coverage, including financial risk protection, access to quality essential healthcare services and access to safe, effective, quality and affordable essential medicines and vaccines for all is one of the many targets. Given the fact that the risk of STIs is higher in transgenders (van Gerwen et al., 2020), who have also been identified as a high-risk group for HIV by India's National AIDS Control Organization (NACO) 2016 report, the biased, inexperienced and oftentimes hostile medical services provided to transgenders is an alarming red flag (Pandya & Redcay, 2020). The absence of a well-structured set of guidelines for transgender health at a national level also adds to the confusion surrounding the lack of experience with transgender anatomy and surgical procedures among medical professionals.

Similarly, SDG-5 lists ending all forms of discrimination against women and girls everywhere as one of its targets. But, given the confusion and in most cases, bigoted mindsets lead the general population to consider being a cis-woman to be the norm. Consequently, trans-women also have to deal with the issue of convincing people and authorities to count them as a part of the female population, which in itself is a form of discrimination. Ending all violence and exploitation of women and girls is another target under SDG-5. However, due to lack of information among the masses about the distinction between sexual orientation and gender identity, especially in the case of transwomen, often leads to undue violence and vile measures being used against them, including conversion therapy, to cure them of their affliction. Moreover, many trans women tend to resort to unsafe sexual practices as a form of maintaining a steady livelihood in the light of the dearth of dignified employment avenues. Both of these situations are forms of exploitation that ought to be addressed under SDG-5.

2.0 Literature Review

Huanga, Chen, Hud, Koe, Yen (2020), tried to study the relationship between mental health and views on same-sex marriage in Taiwan. They gathered data from 3,235 participants, aged 20 and above, through Facebook “news feed” advertisements. The analyzed results indicated that sexual orientation and age moderate the association between support for same-sex marriage and mental health. Likewise, the relationship between poor mental health and low support for such marriage is found only in the heterosexual sample of the study. People who reported positive mental health were accepting of same-sex marriage. It was also identified that men are more likely to oppose than women and that the link between poor mental health and low support for same-sex marriage is more among people of old age. The limitations of this research are that not many people click on ads on Facebook or are motivated to answer questions that pop up on their news feed. Likewise, the researchers did not get enough samples from particular age groups to have a proper comparison of data. They were also not able to undertake the religious and political beliefs participants had that could affect viewing same-sex marriages.

The report by K. (2020) is a four-part series of reports. The fourth (final) research report is used as a reference in our research paper. In the fourth report, digital welfare and the challenges of access for the transgender community are discussed. The report points out evidence of the non-inclusion of the transgender community within the scope of the digital world. The report also talks about the private and big data and challenges of being counted of the already undercounted transgender population in India. The data collection method for this particular report is through detailed questionnaires and references from previously published reports and surveys. Limitations of the report include the possibility of subjective error in data collection as it is done through questionnaires and interviews.

Sahodaran and UNESCO (2018) talk about experiences of bullying of sexual orientation and gender identity in schools and the response by schools and competent authorities to such bullying. The findings presented in the brief are concluded from the mixed-method research study. Data were collected from eight focus groups and eight detailed interviews apart from 20 informant interviews with teachers, headteachers and officials. Key findings include explicit quantitative data regarding the prevalence of bullying on the basis of sexual orientation and gender identity in primary, middle and high schools. The brief also highlights the inaction of school authorities against bullying in the majority of the cases. Another key finding of the brief is the effect of the said bullying on students with some resulting in lower academic performance to even discontinuation of going to schools. The limitation of this research brief is that given the fact that most of the data is collected via surveys, it is more than likely for the data to be non-uniform and highly subjective which might, to some extent, distort the explicit findings of the research brief. Moreover, since the data collected also includes data that the surveyors filled using recollections of bullying at school, it is probable that the data isn't quantifiable.

Skilling and Livelihoods for Transgender Community | UNDP in India. (2017, February 13). UNDP is a study by UNDP India that aims to understand and assess the reasons and obstacles that transgenders in India face in order to be gainfully and get dignified employment. The report

also studies measures and initiatives taken by the government and private entities to address the issue. The report's approach for data collection is a mix of primary and secondary methods. For secondary research, detailed document reviews were done in order to get information about livelihood programmes undertaken by the central and state governments. For primary research, Focus Group Discussions and Key Informant Interviews were conducted. To ensure a balance of opinions, both urban and rural transgender population was included when forming the sampling frame. The study found a lack of opportunities for livelihoods, limited options for formal employment and increased disposition to risky and illegal occupations as factors that increase livelihood vulnerability of transgender people. The report also finds that the lack of consolidated large-scale efforts to augment the livelihood opportunities available to the transgender population is another reason which leads to dismal living standards but the report also recounts various success stories where transgender people were able to find significantly gainful and dignified forms of employment. Limitations of this study are the small sample size of 111 individuals which could provide distorted and subjective results. Moreover, the lack of data available in the public domain regarding transgender welfare can cause the findings and therefore their interpretation to be a bit skewed.

In the context of South Korea, *Cho & Sohn (2016)* attempted to explore the status of depression, suicidal ideation and attempt, and stress, as well as how "coming out" and sexual identity affect mental health. As the Trans community is stigmatized, collecting data from them is difficult as they cannot be located easily. The researchers collected data from 873 participants aged 20 to 59 and observed that coming out negatively affects depression, stress, and suicidal ideation. Though they feel a sense of integration with themselves, "coming out" to others is distressing. Researchers have pointed out the importance of social support that acts as a buffer to mitigate the negative impact of stigma. Furthermore, "coming out" at one's discretion is seen to increase the risk of suicidal ideation in participants. Also, the risk of attempting suicide and even considering one is seen higher than the heterosexuals by 5 to 8 times. Though their survey provides rich data, it has limitations. As the survey was conducted through the Internet, chances are, the data is not

genuine in totality. There are gaps in the manner questions were asked. Participants were not asked the reasons for suicide attempts, or their household environment which could only have been possible through interviews, focused group discussion and other qualitative research methods.

Sanyal & Majumder, 2016 conducted their study by gathering data from 73 individuals diagnosed with gender identity disorder (GID) and referred for endocrine referral between 2010 to 2015 in Kolkata. Their study aimed to understand the personality attributes, family support, biochemical and clinical profile of these participants. Findings demonstrate the age of presentation of GID to be 25-31 years, which is delayed, provided that the first appearance of GID was at the age of 9. The research also found family members' reluctance to support the family member with GID and a widespread stigma that is vastly responsible for delayed medical consultation. Likewise, those who received early surgery (Mastectomy or castration), were most often done by unqualified medical persons or nonmedical people. The research set forth that only 10.96 per cent of subjects were supported by their families, while only 11.11 per cent of the participants practised cross-dressing: Female to males preferred cross-dressing more than male to female subjects. All subjects in the study had normal testosterone, thyroid-stimulating hormone (TSH), karyotype and estradiol. The researchers further indicate the need for awareness programs to address healthcare needs on a community level.

Virupaksha, Muralidhar, & Ramakrishna, 2016, critically analyzed and reviewed papers written on health needs and barriers to health services to the Transgender Community. They also proposed interventions to make services accessible to them. Through a detailed study from 21 pieces of research and reports, the researchers observed that suicide attempts are significantly reported before 20 years of age among the transgender population. Likewise, across the country, the rates of attempted suicides are higher than the heterosexual population: 50% attempted suicide, though the data is not officially documented. Cases of self-harm: burning oneself, breaking glasses, cutting on wrists, excessive drinking, drug use and the like are also higher in

this population. Discrimination, lack of support from society and family members, rejection and gender dysphoria leads to an extreme experience of stress. Transgender people are financially and sexually exploited, abused as a child, face an absence of employment opportunities and housing facilities, are refused sex reassignment surgery (SRS), are deprived of legal protection, and are forced to discontinue education as well. The constant harassment, hatred, targeted violence, physical and verbal abuse, belittling labels by healthcare professionals leads to psychological distress and triggers suicidal attempts/ideations.

The researchers have also observed that transgender people are resilient and overcome the aforementioned stigma and obstacles through coping mechanisms such as integrity, self-advocacy, independence, avoidance, honesty, determination, etc. Similarly, the researchers proposed that the inclusion of suicide awareness curriculum in schools, screen of the same in health service and crisis centres, education focusing on the reduction of risk in a community setting, hotlines, counselling, peer outreach programs, family interventions, reduction of victimization addressing HIV infection, etc. will reduce the risk of suicide in Trans community and also promote mental health and well-being.

Badgett (2015) in her paper tries to link exclusion of the LGBTQ community to the potential cost of the stigma to economies. Her report details the legal and social context to the perpetual stigma faced by the members of the LGBTQ community and understanding its impact in the workplace and educational settings. She also analyses health disparities while also trying to connect such disparities to the economic costs they might incur. Evidence of HIV infection, depression and suicide are also reviewed within the report. The inferences in the report majorly rely on data provided by surveys and individual reports.

The findings of the report provide substantial qualitative evidence and inferences regarding the stigmatization of the community. Her report concludes that exclusion, marginalization and ostracization of the LGBTQ community will more likely lead to the economy suffering from low productivity and loss of potential human capital.

3.0 Comparative Analysis

In the table below, we have made a comparative analysis of the following nations due to the reasons mentioned below.

- *Republic of Ireland:* It is an independent nation and not a part of Great Britain, England, or the United Kingdom. The reason for taking this country for analysis is because it is one of the friendliest countries for transgender people and has rights set forth for their protection.
- *Britain:* The United Kingdom of Great Britain consists of England, Wales, Scotland, and Northern Ireland. The reason for choosing Britain was also because it is one of the best countries for Transgender people to live in and also because of its long history with India.
- *South Korea:* We took this country as it is one of the developed nations in Asia and with it is popular among youth for its pop culture: K-pop, Korean movies, and K-drama. Though the nation is inclined towards pop culture, it still has roots in its age-old culture and tradition
- *Taiwan:* Taiwan, too, is one of the developed nations in Asia, with legal provisions in place for its Transgender community. Moreover, it is also considered one of the favourable nations in the world for Transgendered people.
- *China:* We took this nation for comparison because it is a superpower nation. It is also one of the biggest developing nations. Taking this into account, China is still a traditional country upholding its religious values and beliefs.

Table 1: Comparative analysis of legal rights and mental health of trans community in Republic of Ireland, Britain, South Korea, Taiwan, and China

Countries	Mental Health and Well-being	Decriminalization of Homosexuality	Legal Gender Change	Discrimination Protection	Military service
Republic of Ireland	Discrimination highest in people identifying as LGBTI: 33.2 per cent (<i>Press Statement Equality and Discrimination Q1 2019</i> , 2019).	In 1993, homosexuality was decriminalized and same-sex marriage was legalized on November 16, 2015 (Bohan, 2013)	Ireland Passed the Gender Recognition Act in 2015 and therefore legally permits its citizens to change their gender on legal documents without undergoing surgery (<i>Gender Recognition</i> , n.d.-a).	Irish employment law does not deal with the question of gender identity specifically – there is no piece of legislation, for example, addressing the rights of individuals in transition. However, remedies are still available for a transgender employee who is the subject of adverse treatment in the	Transgender people are allowed to serve as military personnel. (Brady, 2021)

				workplace as a consequence of a change in gender identity. Most importantly, equality law allows an employee to seek redress from the Workplace Relations Commission in circumstances where they are the subject of discrimination under one of the protected grounds. (Walshe, 2018)	
Britain	52 per cent of the trans people experienced depression in the year 2017 (<i>LGBT in Britain-Health,</i>	Decriminalization of homosexuality in 1967 by passing the Sexual Offences Act, 1967. Same-sex	As per the Gender Recognition Act in 2004, British citizens can change their legal	The Equality Act, 2010 protects people from being harassed and discriminated	Transgender people are openly been allowed to serve in the military since

	<p>2018)</p>	<p>marriage recognized in England and Wales since March 2014. <i>(Decriminalisation of Homosexual Acts – England and Wales – Voices and Visibility, 2019 ;UK Diversity Timeline Decriminalisation of Male Homosexual Acts, 2021)</i></p>	<p>gender <i>(Gender Recognition, n.d.-b).</i></p>	<p>against on the basis of sexual orientation and gender identity. <i>(Gender Reassignment Discrimination, n.d.).</i> The lives of many trans people at work remain difficult, with many facing bullying and discrimination, including an alarming number of trans employees who have been physically attacked at work. Trans employees often deliberately hide their identity</p>	<p>1999 (Paige, 2019).</p>
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				because they fear being discriminated against at work (Bachmann & Gooch, 2018).	
South Korea	The prevalence rate of depression is higher than heterosexuals by 6.44 to 9.71 times. High rates of drinking and poor physical health. (Lee et.al., 2020)	Homosexuality is not illegal, however is seen as taboo. Same-sex marriage is not legalized (NQAPIA Fact sheet, 2018)	Transgender people can change their legal gender on identification documents with a court decision, which is issued if individuals meet strict requirements including undergoing gender-affirming surgery, sterilization, being 19 years old or older, not being married, parental consent, and having no minor	Though the National Human Rights Commission Act and the Constitution of South Korea protect transgender people from being discriminated against, however, there are no legal remedies available to the victims of discrimination (NQAPIA,	While the military has no specific regulations banning transgender service members or concerning their transition, it considers the removal of genitals a disability necessitating the discharge decision. (Kim, 2020)

			children. South Korea is the only country to require parental consent for adults to change their gender and South Korea and Japan are the only countries that require proof of nonmarital status (Tari, 2014).	2018).	
Taiwan	Higher levels of depressive symptoms, mental distress, suicidal ideation, and suicidal attempts, low self-esteem in comparison to the heterosexual public. Traditional families show low support for same-sex marriages. (Wu &	After the fall of the Qing Dynasty in 1912, homosexuality was decriminalized. (The Diplomat, 2017) First Asian Country to legalize same-sex marriage on May 24, 2019. (Amnesty International,	Since 2008, only transgender people who have undergone gender-affirming surgery are allowed to change their gender accordingly on legal documents. However, on 23rd September 2021, The Taipei High Administrative	Under the Acts of Gender Equity Education Act and Employment Service Act, discrimination on the basis of gender identity and sexual orientation getting admission in schools, being	Transgender people are not allowed to serve in the military. (Wikipedia Contributors, 2021)

	Lee, 2021; Huang et al., 2020)	2021)	Court ruled the requirement was unconstitutional as a result of a lawsuit filed by Xiao E. It should be noted that this ruling will only effect Xiao E. Other trans individuals looking to legally change their gender – without “proof of surgery” – will have to wait for the regulations to be revised or pursue legal action (Robledo, 2021).	assessed or in the workplace is prohibited. Violators of the acts are liable to pay heavy fines. (Wikipedia Contributors, 2021)	
China	Mental quality of life is poorer than the physical quality of life. Higher risk for depression and generalized anxiety	In 1997 homosexuality was decriminalized and in 2001 it was removed as a	China allows transgender people to change their names and gender markers on their identity	Without a comprehensive anti-discrimination law in China, there are only a few prohibitions	There is no explicit ban on transgender people joining the military,

<p>China</p>	<p>disorder. Transgender and homosexuality are considered immoral and shameful to their religious values and beliefs. Report high rates of anxiety, depressive symptoms, and suicidal ideation. (Yang <i>et.al.</i>, 2016; Chen <i>et.al.</i>, 2019)</p>	<p>mental illness. China does not recognize same-sex marriage but has granted same-sex couples with legal rights (medical, personal care, and property management under guardianship) since 2017. (Amnesty International, 2020 ; Mavraj, 2016)</p>	<p>documents, requiring complete GAS and a certificate of gender authentication from a domestic hospital, along with verification issued by a notary office or “judicial authentication institution. To access GAS in China, transgender people have to meet a number of strict and often insurmountable requirements. These include: providing a formal diagnosis of “transsexualism,” notifying</p>	<p>of discrimination based on “sex,” mainly in employment and education settings. Yet, it is unclear whether these regulations can apply to transgender people. Reports suggest that transgender people suffer discrimination in the workplace – the unemployment rate among transgender people is nearly three times that of the general population. (Luhur et al., 2021)</p>	<p>but transgender people who have undergone gender-affirming surgeries (GAS) would fail the military physical examination due to surgical history. (Luhur et al., 2021)</p>
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4.0 Status of Transgender Rights and Representation in India

4.1 Scrapping of Section 377 and its Ramifications

On 6th September 2018, the Supreme Court (SC) scrapped the controversial section 377 of the Indian Penal Code that punished same-sex relationships and ensured the protection of fundamental rights of the Trans community (lexlifeeditor, 2021). The verdict of the five-judge bench provided freedom for the community that they had been fighting for for decades. Former Chief Justice of India (CJI) Mishra and Justice Khaniwalkar quoted Goethe's "I am what I am, so take me as I am." The judgment also quoted Leonard Cohen, the Canadian poet/singer, William Shakespeare, Oscar Wilde, Alfred Douglas, John Stuart Mill, the English economist/philosopher, and others.

This momentous judgment was declared after years of legal battle. A brief timeline is illustrated below (lexlifeeditor, 2021; Lakkimsetti, 2020; Mukherjee, 2016).

- ❖ 2004- Dismissal of the petition by Naz Foundation against section 377

- ❖ 2009- Naz Foundation v. Govt. of NCT of Delhi: the criminalization of consensual homosexual sex between adults is a violation of fundamental rights; brought forward rights to equality, privacy, dignity, non-discrimination, and health
- ❖ 2013- The SC reinstates section 377 and overturns Delhi High Court's judgment
- ❖ 2014- NALSA judgment: Trans community has the right to adopt gender; SC directed the government to create provisions to ensure political, economic, and legal rights.
- ❖ 2017- SC ruled that right to privacy as a fundamental right extends to sexual orientation and any discrimination based on this is offensive.
- ❖ 2018- Navtej Singh Johar vs. Union of India: decriminalization of section 377 as it violates Articles 14, 15, 19, and 21.

Life after September 6, 2018, has changed the way society talks about Trans people. Even in conservative families, individuals have slowly started opening up. Menaka Guruswamy and Arundhati Katju opened up about their relationship after succeeding in the fight to revoke section 377. Similarly, 100-meter record holder and silver medalist sportswoman Dutee Chand stated being in a same-sex relationship. Though being open about one's gender is not easy, the law now has made identifying oneself as Trans much safer than before. Movies and television shows like 'Ek Ladki ko Dekha Toh Aisa Laga' and 'Made in Heaven' have welcomed a shift in the narrative of homosexual women and men. We can see that the excuse to declare the Trans community as 'non-citizens' is vaporizing.

However, freedom is not yet enjoyed entirely. Decriminalization has not ensured the Transgender community with equal rights as heterosexuals. Even though in 2019 Madras High Court stated that the term “bride” includes transsexuals and not just someone born as a woman, there is no legal provision of marriage or adoption of a child for the transgender community.

4.2 Transgender Persons (Protection of Rights) Act, 2019

In 2014, Tiruchi Siva an MP from Tamil Nadu introduced the Rights of Transgender Persons Bill in Rajya Sabha. The 2014 bill was the only one to provide explicit reservation to the

Transgender community in educational institutes and public employment. The Bill was passed by the Rajya Sabha but lapsed in the Lok Sabha (Abraham, 2017). The bill was reintroduced in 2016 but it was tabled and a newer version of the bill with 27 amendments was passed in 2018. The Transgender Persons Bill 2018 lapsed due to the dissolution of the Lok Sabha (Lalwani, 2019). In November 2019, the Parliament of India passed the bill named Transgender Persons (Protection of Rights) Bill, by the 17th Lok Sabha on 5th August 2019 and by the Rajya Sabha on 26th November of the same year (Press Information Bureau, Government Of India (Ministry Of Social Justice & Empowerment), 2019). The bill was passed by the President in 2019 and has been in effect since January 2020.

Though the bill sought to protect the Transgender community from discrimination in their daily lives, it was vehemently opposed by the transgender community, activists and allies alike. The reasons for opposition to this bill include:

1. Reservation: The 2019 Bill fails to clearly outline any strategy or policy to extend transgender individuals reservations in admission in educational institutions and public offices. This violates the NALSA judgement which required the government to consider the transgender community as socially and educationally backwards (Gera, 2019). Reservations could prove to be an instrumental tool in uplifting the community and providing them with the means to live their lives with dignity.
2. Loose Interpretation of the Term ‘Transgender’: The Bill defines a transgender person as someone who doesn’t identify with the gender that is assigned to them at birth. Such a definition is arbitrary and vague because it could be referring to intersex, genderqueer and transgender people (R, 2021). Intersex is individuals who are biologically born with a variation in sexual or reproductive anatomy whereas transgenders are individuals who don’t identify with the sex that gets assigned to them at birth based on visible genitalia, meanwhile, genderqueers are those who don’t identify exclusively as male or female. The inclusion would not have been a problem if all intersex people identified themselves as transgenders. Since that is not the case, the inclusion seems controversial and the

one-solution-fits-all approach might prove to be detrimental to the welfare of both communities.

3. Requirement of Certification by the District Magistrate: Transgenders could apply for a certification to the District Magistrate which identifies them as Transgenders. However, the certificate could be revised to say male or female once the person undergoes their surgeries. However, the Bill lacks the provision to address grievances in case an application is rejected (Gera, 2019). The fact that the community is still shunned by the society at large, having made certificates labelling a person as transgender could take a significant mental toll on a trans individual. Moreover, this clause is in direct violation of NALSA, which affirmed the right to self-determination of gender as male, female or transgender without the mandate of any medical certificate or sex-reassignment surgery (Banerjee, 2019). Such intense and undue scrutiny allowed as per the bill makes it more difficult for the transgender community to survive in society with dignity and comfort.
4. Unfair Representation on the Proposed National Council for Transgender Persons: Chapter VII of the Transgender Persons (Protection of Rights) Act, 2019 No.40 of 2019 talks about constituting a National Council for Transgender Persons. The chapter provides explicit details as to who could be a member of the council. However, the representation of transgenders on the council is limited to five (Legislative Department, Ministry of Law and Justice, India, n.d.). This sort of representation on the council is not enough to speak for the already undercounted yet significant amount of our population that identify themselves as transgenders.
5. Vague and Unjust Legal Complications: Although the Bill recognises the possibility and the reality of transgender people facing physical, sexual, verbal, emotional or economic abuse by the hands of people in authority or the general public, the punishment set for the offence is a maximum of two years. In contrast, the punishment of raping a woman is life imprisonment (Gera, 2019). Moreover, there also stands a chance of the perpetrator not meeting the set punishment because the Indian Penal Code recognises rape in strict terms of men being perpetrators and women being victims. The vague terms in which sexual

abuse is defined also makes it difficult to recognize as to what comes under sexual offences in the purview of the bill, therefore, making it complicated for a Transgender person to report such crimes (Banerjee, 2019).

6. Residential Rights: The bill in Chapter V lists out the obligation of establishments and other persons in regards to transgenders. Section 12 stated that though transgenders have the right to reside in the household where parents or immediate family members reside and have the right to be included in the household in a non-discriminatory manner, it also states that in the case if the family is unable to care for a Transgender, then they shall be directed to be placed in a rehabilitation centre by the court (Legislative Department, Ministry of Law and Justice, India, n.d.). The implications of this particular section includes that many transgender people would be deprived of making a choice to join the transgender community. Instead, it would be upto the court's decision to send the individual back to their families or to a rehabilitation centre (Mallapur, 2019). This seems to be quite discriminatory as no similar provisions, that dictate the residential rights, are set in case of an estranged cisgender person.

4.3 Lack of National Indicators

In order to stand true to its principle of universality, the SDG agenda allows different governments to formulate policies and set indicators that best reflect their ground reality conditions. This helps all the nations to work towards the set sustainable goals at a pace that can bring about the desired transformation without overburdening and exhausting the country's resources. Keeping that in mind, National Institution for Transforming India (NITI) Aayog constructed the SDG India Index which focuses on 13 out of the set 17 goals. The SDG India Index also has curated a setlist of 62 national-level indicators to track the progress of the nation and individual states on the 2030 agenda. However, the curated list isn't particularly inclusive of the Transgender community.

For instance, the fourth goal under the SDGs aims to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. The 5th target under this

SDG is to eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable. Keeping this in mind, the SDG India Index lists two indicators namely, the percentage of persons with disabilities who have completed at least secondary education and gender parity index for higher education, to keep a track of progress made on this particular target. However, the Index fails to include an indicator that might provide data for education disparity due to sexual orientation and gender identity. In a survey conducted among sexual/gender minority youth in Tamil Nadu about experiences of bullying in schools, of the respondents, 50% reported having been physically harassed in high school whereas 43% reported having experienced sexual harassment when in primary school. About one-third (33.2%) reported that bullying played a key role in discontinuing school (Sahodaran & UNESCO, New Delhi, 2018). More than three-fifths (63%) reported lowered academic performance while 53% reported having skipped classes (Sahodaran & UNESCO, New Delhi, 2018).

Similarly, SDG-8 talks about promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Achieving full and productive employment and decent work for all women and men lists itself as the 5th target under the development goal, and therefore the indicators for the target in the SDG India Index only include unemployment rate (%) and labour force participation rate (%). Given the fact, that the proportion of those working in the transgender community is much lower (38%) compared to 46% in the general population and only 65% of the transgender community find work for more than six months in the year (*Skilling and Livelihoods for Transgender Community | UNDP in India, 2017*), the lack of an indicator and the relevant data regarding the struggles of the transgender community in finding dignified, full and productive employment is disappointing and alarming at the same time.

4.4 Covid Struggles

Provided the fact that about 92% of the Transgender population is divested of their right to dignified and gainful employment (Chauhan, 2018), leaving them to resort to occupations such as begging, unsafe sex work etc, the social isolation due to pandemic has hit them harder. Their usual sources of income closed. Moreover, the exclusion of the Transgender community among other vulnerable groups from social protection schemes has further exacerbated their struggling situation. Cases of Transgender people being forcefully evicted from their dwellings or being asked to pay higher rent even with no source of income has been constantly reported in the media. Also due to consistent marginalisation and ostracization, transgender people have been forced to live in slums in order to have accessible and affordable housing. Living in such close quarters leaves no room for following protocols such as social distancing.

The pandemic has forced people of the Transgender community to live without any social protection or financial security. Left even worse are those trans people, who were already immunocompromised, and now are left even more vulnerable with the pandemic. In the pre-covid times, there was already a lack of proper healthcare facilities catering to the needs of the Transgender community, however, due to the pandemic healthcare of trans people has been pushed further into a corner. Hormone therapy is an important therapy that many transgender people undergo to deal with gender dysmorphia. Interruptions in receiving many such treatments can not only cause emotional turmoil but also may be a reason for severe psychological distress. The transgender population is also facing difficulties in getting vaccinated against the pandemic. Less than 6% of the already undercounted transgender population, have been vaccinated. Misinformation, lack of digital knowledge and lack of government documents are the main reasons behind the low number of inoculated trans persons (PTI, 2021). Given the fact that the world dynamic has shifted to digital settings, the digital divide experienced by transgenders is causing them to suffer adversely through the pandemic. Not more than 10-15% of the transgender population in India effectively uses any digital devices at all (K, 2020). The digital illiteracy clubbed with transphobia in officers responsible for issuing government documents has

led to a majority of transgender people in India being stranded. As a solution, the government has advised state governments to organise separate mobile vaccination centres or booths to facilitate an easier vaccination for transgender people, however, only state governments of Assam and Haryana have taken such steps as of yet (PTI, 2021).

5.0 Effect on Transgender Mental Health and Well-Being

Comparably, transgender people in India face violence, discrimination, educational and socio-economic exclusion as well. They are seen as a spreader for HIV, harassed, and victimized for the same and receive poor physical and mental health services due to denial of the right to proper healthcare. Such treatment by medical professionals is due to a lack of appropriate education, sensitization, and awareness. This cycle of unfair treatment and refusal of treatment continues at various hospitals at the national level.

Several pieces of research have focused on the mental health of Transgender people. Through these studies, we know that the crisis of mental health in the Trans community is widespread. 32 to 50 per cent of Transgender people across the nation have attempted to commit suicide (Virupaksha et.al., 2016), 59.37 per cent are substance dependent, 46.47 per cent have a history of depression, and 37.5 per cent and 9.4 per cent suffer from GAD and PTSD (Post-Traumatic Stress Disorder) respectively (YR et.al., 2018). Likewise, bullying, non-acceptance by family, harassment by an intimate partner, the public, and police are the risk factors for suicidal behaviour (Virupaksha et. al., 2016). To cope with these problems, they find an escape from self-harm and alcohol and have a low quality of life. Even though Transgender people face daily hardships, they seem to have resiliency (Virupaksha et. al., 2016). The current mental health status of the Tran Community indicates a pressing need for gender affirmative and inclusive healthcare programs and policies.

On May 25, 2019, the International Classification of Diseases (ICD-11) removed "gender identity disorder" and classified it under a chapter on sexual health. DSM-5 also removed the term "disorder" from Gender Dysphoria (GD) to avoid stigma. As per the diagnostic criteria in

DSM-5, individuals with GD notice incongruence between the way they see themselves and the gender assigned to them at birth. They also have an intense desire to have sex features (primary or secondary) of the other gender and transform into the same (American Psychiatric Association, 2013). But we should understand that GD and Transgender are not similar but are also not very distinct. Just because an individual has GD does not mean that he/she/they are a Transgender person. GD is where individuals are trying to figure out their identities and may have GD at different points in life.

A study in Eastern India showed that despite the age of onset being nine years of age for GD, the presentation of GD was only at around 25 years due to lack of information and social support. Also, only 11 per cent of individuals with GD cross-dress. Of the individuals who express their sexuality, only 10.96 per cent receive support from the family (Sanyal & Majumdar, 2016). People with GD identifying as Transgender people are subject to discrimination, stigma, and victims of stringent social norms and often undergo unplanned surgeries by an unqualified medical person. Other findings show that Transgender individuals experience psychological distress due to social strains and socio-cultural factors rather than GD and identity conflicts. Holistic approaches such as social support, psychotherapy and medical surgeries (sex reassignment surgery), as well as awareness programs and guidance to healthcare professionals, is vital to address the problems faced by individuals with GD.

6.0 Recommendations

- **Inclusion in School Curriculums:** To sensitize the general population towards the issues and struggles of people with sexual orientation and gender identity other than cisgender heterosexuality face, proper and age-appropriate content should be introduced in school curriculums. The content should endeavour to teach students acceptance, teach them about various sexual orientations and gender identities across the spectrum and the importance of using pronouns that a person identifies themselves with without any bias. Also, schools should put in place an easier process for trans student to change their names and pronouns on official documents without much of a hassle. Moreover, schools should

ensure that their students who identify as transgender are able to avoid gender dysphoria at school to a certain extent, by relaxing the current strict uniform rules and norms. Trans students should be able to dress in the assigned uniform of the gender they identify with without facing prejudice or stigma from fellow peers and the faculty.

Teachers and other members of the school staff should also be trained appropriately to deal with incidents regarding bullying of trans students and general gender dysphoria. Firm punishments should be set for the students or faculty who are caught bullying students based on their gender identity or/and sexual orientation. Help Boxes and counsellors who are trained in dealing with issues regarding the LGBTQIA+ community should be a part of the school to ensure that the students have a safe space to talk about themselves.

- Representation on Policy Drafting Panels: Not only do we need more policies and laws that specifically cater to trans needs but it is absolutely necessary to have transgender people and representatives as a majority of the drafting panel of these said policies. Having transgender people on the drafting policy will actually help the policies to be drafted in a manner that targets issues and ground realities that transgender people in India have to face. Moreover, instead of clubbing various issues into one policy, separate policies should be made for them so as to properly address each individual issue. Feedbacks regarding transgender policies from the trans community, activists and allies should be duly taken into account and debated upon properly.

The policy drafting process should be transparent and the authorities responsible for drafting them should be accountable and liable to answer queries raised by the community and general population in regards to the policies in a timely manner.

- Fast-Track Courts to Deal with Transgressions of Transgender Rights: Transgressions of transgender rights ought to be dealt with swiftly and with appropriate severity. However, one of the main concerns about transgender crimes is that not only are transgender crimes underreported in the fear of facing the stigma of being transgender but also because when reported, more often than not the authorities don't take the crimes seriously. Adding fuel

to the fire are the lax and vague laws that are meant to deal with crimes against transgenders. Therefore, there is an urgent need to have fast track courts that primarily focus on violation of transgender rights and on cases that deal with petitions filed against transgender bills, policies and laws.

- Better National Indicators: SDGs indeed envision prosperity and peace for the global population by 2030, however, there is still scope for them to be more inclusive to the LGBTQIA+ community. There is a dire need for India's competent authorities to include indicators that are primarily focused on the trans community and their well-being. Indicators that measure levels of poverty among the transgender population, percentage of seats held by transgenders in legislative assemblies, suicide rates among the transgender population, percentage of transgenders living below the poverty line are a few examples.

However, the priority must be to conduct a pan-India census that is safe and reliable to account for the actual transgender population in India. Having an accurate estimate will help in not only designing indicators for transgender-inclusive for tracking the progress of various SDGs in India but also in drafting policies at multiple tiers of the government that cater to the overall welfare of the trans community.

- Inclusion of Proper Teachings about Trans Medical Care in Medical Curriculum: Presently, quite a few medical institutions provide the option of sex reassignment surgeries at an affordable price range and not a lot of medical practitioners are comfortable or experienced performing the said surgery. Therefore, it is required by the government and private educational bodies to include proper teaching and training of gender-affirming surgeries in the medical curriculum. Also, there is a need for setting up a well-structured protocol for hospitals and other medical institutions in dealing with transgender patients. The medical staff should be sensitive to the needs and care required by a transgender patient, including the use of new names and pronouns as chosen by the patient. The authorities should take care that the patients are not a victim of prejudice or bias while receiving treatment at their facilities.

Recommendations for future research priorities include a proper census of transgender individuals in India as well as assessing the progress of policies implemented for the welfare of the transgender community by the Central and State government. Also, in-depth research can be undertaken on the treatment of transgenders in non-traditional fields of employment and the legal remedies a transgender individual can use when harassed, discriminated against in a workplace setting.

7.0 Conclusion

India is a country rich in culture, religion and has a long history of the presence of transgender people in its Vedic scripts and texts. Given the fact the Indian society takes its culture with pride, the transgender community is arguably the most marginalized in the society living on the fringes.

It is right to mention that the stigma attached to transgender people is widespread, and their rights get violated daily. Society sees transgender persons suffering from a disorder called 'Gender Dysphoria'. Bigotry extends to employment, better physical and mental health services, housing facilities, vaccines and the like. The lack of representation of transgender individuals in positions of authority, of inclusivity of transgender-specific indicators in SDG targets, and of policies specifically catering to transgender welfare and needs drive the already marginalized community further into a corner.

Achievement of SDG-3 and SDG-5 is a long way for the Trans community in India. The bias that persists in the medical sphere towards transgender people due to the absence of sensitization and awareness, often makes medical services hostile. Healthcare professionals are not trained to be equipped with cultural competence to better address the needs of Transgender persons. The paucity of awareness and information on gender equality, transphobic violence, gender identities, and sexual orientation leads to multiple forms of discrimination and prejudice against this community. Such difference in treatment is related to heightened anxiety, post-traumatic stress, depression, low self-esteem, suicidality, self-harm, and adjustment issues in transgender people.

To address the needs of the Transgender community, sensitization on the issues and struggles should be coordinated. Likewise, healthcare professionals need to be well-informed about the derogatory labels and non-acceptance of confidentiality breaches. Regardless of their sexual orientation or HIV status, provision of medical facilities must be made available. Only by building up the capacity of the Trans community can we counter the violence towards them. The nation should take responsibility to protect the dignity, respect, equitable development, safety, and prevention of social exclusion of Transgender people.

The UN has set 2030 as the year to meet all the SDG agendas. Advocates of the Transgender community are provided with an opportunity with the comprehensive layout of SDGs to vision improved lives and living conditions. The recommendations, if implemented by the nation in their entirety, will enable the Trans community to express their identity and enjoy freedom without any sanctions. The provided frameworks advocated at various levels in society will ensure a better future for not just the Transgender community, but also the general public. People can further articulate a structure and advise their concerns seeking development policies for the assist Transgender people.

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