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Third Gender and the Right to Education: Examining Structural Discrimination in Indian Educational Institutions

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ABSTRACT

While the Indian Constitution guarantees equality to all humans and a recent Supreme Court decision has given the transgender community the recognition of being a "third gender", India's transgender community still suffers from a severe lack of formal education. The article provides a discussion of the structural discrimination faced by transgender and third gender students in the educational institutions of India, and the legal framework that was laid by the National Legal Services Authority v. Union of India (2014) and the Transgender Persons (Protection of Rights) Act (2019). Based on the census data, government reports and secondary scholarship, the article examines some of the barriers such as binary institutional design, bullying/harassment, infrastructural exclusion, low enrolment and high dropout rates and near total invisibility in higher education. It also reviews the state and institutional interventions such as welfare schemes and reservation policies, and then draws a set of proposals for legal, pedagogical and infrastructural reforms. The argument of the article is that despite the legal recognition, the level of substantive educational inclusion has failed to follow; moreover, structural discrimination is evident because the policies are not being implemented in a coherent, funded and monitored manner.

Keywords: are third gender, transgender education, right to education, India, structural discrimination and NALSA judgment.

INTRODUCTION

Education is considered to be the main vehicle for empowerment of historically marginalised people, for economic self-sufficiency, and for civic engagement. The right to education in India has been enshrined in the Constitution and in the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act). For transgender people, however, who in 2014 were legally recognised as a third gender in India by the Supreme Court, the right to this is still largely a dream. The transgender community in India has held an uneasy social status for centuries, feared yet revered in a few religious settings and systematically debarred from mainstream institutions (National Legal Services Authority v. Union of India, 2014). The binary gender is more apparent in schools, colleges and universities than anywhere else.

The 2011 Census, the first to count the transgender population in India, reported only 46 percent (PMFIAS 2025) of transgendered respondents to be literate, while the national average was 74.04 percent. This disparity is an indicator of a structural discrimination that is not merely accidental, but systemic in the teaching and learning environment, the curriculum and social norms. While individual prejudice can be overt, there is a form of prejudice that is structural which works against a specific group without overt intent from the individual actors within the system.

The article explores the dichotomy between legal recognition and substantive inclusion of third gender in education in India. It is made up of four parts. It first provides an overview of the constitutional and statutory framework relating to transgender rights in education. Second, it maps the structural challenges that third gender students face at the primary, secondary and tertiary education levels. Third, it examines previous state and institutional responses. Lastly, it suggests some changes that can help bridge the gap between the legal and lived educational experience.

Conceptualizing the "Third Gender" in the Indian context

The term "third gender" in India is not a new term as it is based on the existing socio-cultural identities of Hijra, Kinnar, Aravani and Jogta which have existed in South Asia for centuries (Transgender Persons [Protection of Rights] Act, 2019). "Transgender" on the other hand is a more modern and medical term used in the Transgender Persons (Protection of Rights) Act, 2019, and includes trans-men, trans-women, persons with intersex variations, and gender-

queer persons, without any requirement of medical intervention. Although this expansion of the legal category has been crucial for broadening the rights protection for trans women, it also has led to a certain confusion in the field of education and administration, where trans women from the third gender have reported that workers and classmates often mix up gender identity with the older and stigmatized social categories linked with trans women begars or trans women sex workers (Yadav, 2024).

This blending is important for education policy as it drives the attitudes of school administrators, teachers and even other students towards third-gender learners. If a student's gender identity is shaped by the inherited stereotypes instead of it being a constitutional right, then the classroom is not a space for inclusion, but a "othering" space (Yadav, 2024). Thus, to achieve any real institutional change, it is essential to have a clear understanding of third gender as a legitimate identity and that is legally protected as one—rather than a social anomaly.

The Legal and Constitutional Framework

The most important piece of legislation to affect the right to transgender education in India is the Supreme Court decision in National Legal Services Authority v. Union of India (2014). It was argued by the National Legal Services Authority on behalf of the transgender community that the binary legal system of male and female was omitting transgender persons from education, employment, health care and welfare schemes and this was in violation of Articles 14, 15, 16, and 21 of the Constitution (National Legal Services Authority v. Union of India, 2014). The Court did, however, rule that there was a right to self-identify one's gender as male, female or neither (transgender) and ordered that the Union and State governments treat transgendered persons as a "third gender" for purposes of securing their rights, such as reservations in public employment and admission to educational institutions (National Legal Services Authority v. Union of India, 2014). The decision also called on governments to have separate HIV surveillance centres, give health care and carry out public education and anti-stigma campaigns.

It was a key feature of the NALSA judgment that the exclusion of transgender persons was not described as a "social or medical issue, but a human rights issue," which has been used to frame subsequent legislative and policy interventions (National Legal Services Authority v. Union of India, 2014). The judgment also categorised transgender persons as a socially and educationally backward class for the purpose of reservation, thus paving the way for affirmative action for transgender persons in admissions.

The Transgender Persons (Protection of Rights) Act, 2019.

After the NALSA verdict and many years of deliberations in Parliament, the Transgender Persons (Protection of Rights) Act was passed in 2019, and it was implemented in January of 2020. Inclusive education and sports and recreational facilities for transgender persons without discrimination is specifically mandated in section 13 of the Act (Transgender Persons [Protection of Rights] Act, 2019) for all of the educational institution funded or recognised by the appropriate Government. The Act also bars discrimination against transgenders in the areas of education, employment, health and public goods and services provision and mandates that every educational institution appoint a complaints officer to handle complaints filed by transgenders (Transgender Persons [Protection of Rights] Act, 2019).

The Act is a significant piece of legislation that explicitly acknowledges the educational rights of transgender students, but does not require specific quotas or budget allocations for transgender students, rather it uses generalized, largely unwritten nondiscrimination language (PRS Legislative Research, 2019). The lack of obligation and enforcement of the law is a common feature of structural discrimination described in this article.

The National Education Policy, 2020 and Ancillary Schemes

The definition of transgender children in the National Education Policy (NEP), 2020, is considered a Socio-Economically Disadvantaged Group (SEDG) and the policy calls for providing equitable and inclusive education to all SEDGs (Ministry of Education, 2023). The Samagra Shiksha framework had allocated training to teachers and school heads under the National Initiative for School Heads' and Teachers' Holistic Advancement (NISHTHA) to include the module on ‘Gender Sensitive Classroom Practices' and the National Council of Educational Research and Training (NCERT) had prepared teachers' training material on ‘Gender Inclusion' (Ministry of Education, 2023).

In this regard, the Ministry of Social Justice and Empowerment has introduced a scheme called SMILE (Support for Marginalised Individuals for Livelihood and Enterprise) to ensure scholarship to transgender girls from Class 9th onwards and to provide financial assistance to welfare boards at the state level (Ministry of Social Justice and Empowerment, 2023, Yadav, 2024). Also, the transgender children are included in the transcategorisation of "disadvantaged group" under the RTE act, which makes them eligible for the 25 per cent reservation in private unaided schools.

All combined, these instruments form a fairly complete legal framework. But the structural challenges faced by third-gender students are not completely eradicated by the legal framework as shown below, through low enrolment, high dropout rates, and the absence of third gender students from higher education.

Structural Barriers to Education

Binary Institutional Design

Binary Institutional Design

Indian schools are almost entirely structured in binary male/female: male dress, male seating, male restrooms, etc. This binary view is not simply a matter of administrative convenience, but an active process of exclusion where transgender students are urged to align themselves with one of two types of identity that might not match their lived reality, as noted by Yadav (2024). The use of binary pronouns and gendered forms of address occurs very frequently in the classroom and may further decenter students whose identities do not fit into the binary system (Yadav, 2024). As gender-binary norms are embedded within the design of the institutions children enter from an early age, schools can act as spaces for the reproduction and reinforcement of gender-binary norms as well as their challenge (Yadav, 2024).

The impact of bullying on mental health and on children who are bullied.

There is a structural exclusion which is compounded by direct interpersonal discrimination. A 2019 survey carried out by a UN related group of 371 transgender people and men who have sex with men has found that 60 per cent experienced bullying in the middle and high education system, and 43 per cent had been sexually harassed in primary school; only 18 per cent of those who were harassed reported it, largely because of stigma and a lack of trust in school authorities to respond appropriately (Yadav, 2024). Other estimates nationally estimate that about 60 percent of transgender students experience harm from bullying and have dropped out of school (PMFIAS, 2025). Such incidents of harassment are not exceptional, but are to be expected in an institution that does not have explicit anti-discrimination policies, sensitisation training for staff, and safe reporting systems. Loneliness, anxiety, and reduced sense of belonging are documented to be associated with poorer academic performance and increased attrition in transgender students (Yadav, 2024), and have been tied to the overall psychological burden.

Infrastructural Exclusion

One of the many barriers that is often overlooked, but has a significant impact, is the lack of gender neutral infrastructure, such as restrooms. For most Indian schools, washroom facilities are binary, meaning there are no provisions for transgender people, and even in those few schools with inclusive washrooms at the higher education level, it is rare at the school level (Yadav, 2024). Lack of safe facilities compels transgender student to use restrooms that are contrary to their gender identity and/or to refrain from using school facilities and may result in health issues and absenteeism. This is a clear illustration of the negative impact of structural design, not individual discriminatory actors in it.

The landscape of enrolment and drop out patterns.Enrolment and Dropout Patterns

However, the scale of the exclusion is hard to quantify as most of the administrative datasets in India still do not disaggregate enrolment and examination data by transgender status. But the little data that exists is stark, however. There is a lack of data on the number of transgender students taking the board exams at Class 12 and 10 level across the country.The exact numbers of transgender students appearing for the Class 12 and 10 board exams nationwide are not available (Yadav, 2024). This mismatch between the projected and actual numbers of candidates for the exams is indicative of the extent of institutional attrition: as more than 54,000 transgender children aged 0-6 years were recorded in the 2011 Census, they would now be in their secondary school, if not college, years (Yadav, 2024). The completion of educational levels has also been found to be extremely low among transgender adults, with approximately 27 percent finishing basic education, and even fewer reaching the middle and upper-secondary levels or undergraduates or postgraduates (Social Science Dialogue, 2023).

Invisibility in Higher Education

The feeling of exclusion is even more marked at the tertiary level. In 2019, the Indira Gandhi National Open University was the only central university in India to report enrolment of transgender students (about 814 over 5 years), whereas none of the other central universities reported any figure of transgender students or staff (Yadav, 2024). Even in the All India Survey on Higher Education 2018–19, the enrolment figures of transgender students were not disaggregated at all, hence making the community invisible in the Indian higher education system (Yadav, 2024). This lack of data is

also a structural issue because it makes it hard for planners, funders, and policymakers to design, fund, and assess targeted interventions, and transgender students' needs are not particularly addressed in the planning process.

State and Institutional Responses.

A few governments and institutions have adopted selective measures that provide limited – yet uneven – examples of reform. Tamil Nadu was one of the first states to set up a separate Transgender Welfare Board and helpline, paving the way for educational support as a community-based intervention through the Social Science Dialogue programme (2023). Transgender people have been given limited reservations in public employment in Karnataka (Yadav, 2024), which is not uniformly being implemented for the economically and socially multiply-marginalised transgender persons, particularly, Dalit and Bahujan transgender persons (Centre for Development Policy and Practice, cited in Yadav, 2024). The SMILE scheme offers scholarships at the national level, from Class 9 onwards; however, while there are some universities which offer some flexibility in terms of the categories of enrollee, this is an isolated case and not a norm (Ministry of Social Justice and Empowerment, 2023).

Although there is a patchwork of schemes, the absence of consistently inclusive and welcoming school and university environments is, in itself, unaddressed, the Centre for Law and Policy Research (2022) has said. Financial support, that is, the absence of institutional culture change, remedies only one dimension of a multi dimensional barrier.

RECOMMENDATIONS

For structural discrimination to be addressed, actions must take place beyond the formal legal recognition of third gender students and beyond isolated welfare schemes. The above analysis identifies several priority areas.

First of all, mandatory and continuing gender-sensitization training should be expanded from the current NISHTHA framework to include all teaching and non-teaching staff, rather than just newly recruited teachers, while making sure that there are accountability mechanisms linked to school inspections and accreditation (Ministry of Education, 2023). Second, in keeping with the self-identification principle laid out in the NALSA judgement (National Legal Services Authority v. Union of India, 2014), schools and colleges must be required to have gender neutral toilet facilities, and admission documentation that enables them to identify as gender without needing medical certification.

Third, there should be a statutory obligation on all board examination authorities and higher education regulators to gather and report disaggregated data on transgender pupils and students' enrolment, retention and completion rates, with reference to the data invisibility highlighted in Section 4.5. Fourth, the complaints-officer system prescribed in Section 13 of Transgender Persons (Protection of Rights) Act, 2019, and associated sections of the Act should be strengthened by establishing independent complaints officers, as only a handful of complaints, if any, about harassment are being reported (Yadav, 2024).

Fifth, the scholarship/reservation initiatives of disadvantaged groups, like SMILE and RTE, should be complemented by outreach programs to actively reach out to and support transgender children who are at risk of dropping out, as the potential to access existing benefits is frequently denied to eligible children due to their lack of documentation and stigma (Centre for Law and Policy Research, 2022).

Last but not least, there is a need to create state-level welfare boards, similar to the model that was piloted in Tamil Nadu, where there is a dedicated education liaison to facilitate linkages between the family, school and welfare schemes, and ensure that legal rights are translated to real attendance and retention rates (Social Science Dialogue, 2023).

CONCLUSION

The legal landscape for transgender education rights in India, which is based on the NALSA judgment and the Transgender Persons (Protection of Rights) Act, 2019, is one of the more progressive in South Asia, on paper. However, the evidence outlined in this article highlights an enduring and concerning disparity between legal recognition and access to education. Structural discrimination against third gender students in India takes place not explicitly via exclusionary rules, but rather through institutional design, inadequate infrastructure, the avoidance of confronting bullying, and the near absence of disaggregated data to identify the scale of the issue, and therefore its solution. This is

not just about declaratory rights and welfare schemes, it is about the need for enforceable, monitored, and well-funded institutional reform so that constitutional guarantees expressed in NALSA are being realised—be it in classroom settings, campus, or examination halls across the country.

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