

# MARGINS TO MAINSTREAM: THE STATUS OF TRANSGENDER PERSONS' RIGHT TO EDUCATION IN INDIA

*Pramod Tiwari\**  
*Shubham Pandey\*\**

## I. INTRODUCTION

Education is a key milestone in shaping an individual's life. It brings about significant change and marks a phase of personal growth, enabling a person to evolve into a better version of themselves. As a system, it equips individuals with knowledge, skills, and methods, empowering them to understand their rights and responsibilities toward their family, society, and nation. Education also broadens one's vision and perspective, allowing them to view the world differently. Moreover, it strengthens a person's ability to stand up against injustice, violence, and other negative elements in society.

India, the second most populous nation in the world, is home to approximately 1.38 billion people (as per 2020 statistics). This vast population encompasses individuals of various genders, religions, and languages, yet they are all governed under a single Constitution. Within this immense demographic, a small but significant group known as transgender individuals continues to face societal exclusion. This is largely due to persistent stereotypes and a limited societal understanding of gender, which often only recognizes binary identities – male and female.

### *A. Who Are the Transgender Individuals?*

Although the terms 'gender' and 'sex' are frequently used as synonyms, they actually have different meanings. 'Sex' relates to the biological characteristics of humans and animals, such as physical features, chromosomes, gene activity, hormones, and anatomy. On the other hand, 'gender' pertains to the social and cultural roles, behaviors, expressions, and identities associated with males, females, and those who identify outside the traditional binary<sup>1</sup>. Although society generally recognizes only two genders—male and female—transgender people have been a part of Indian society for centuries. The term 'transgender' broadly refers to those whose gender identity, expression, or behavior differs from the sex assigned to them at birth.

### *B. The Historical Evolution of the Transgender Community in India*

Transgender individuals have historically held a significant place in Indian society, recognized in ancient texts as *tritiyaprakriti* or *napumsaka*, referring to those outside the male-female binary.<sup>2</sup> Hindu epics like the *Ramayana* and *Mahabharata* feature transgender figures such as Mohini, Shikhandi, and Aravan, reflecting early gender diversity.

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\* Assistant Professor (Senior Scale), Law Centre-II, Faculty of Law, University of Delhi, Delhi, India.

\*\* LL.M., Faculty of Law, University of Delhi, Delhi, India.

<sup>1</sup> A. Balu, "Confront Issues on Education of Transgenders in India" 9 *Global Journal for Research Analysis* 12 (2020), available at: <https://www.worldwidejournals.com/global-journal-for-research-analysis-GJRA/article/confront-issues-on-education-of-transgenders-in-india/MTQyNjc=/?is=1&b1=5&k=2> (last visited on Apr. 20, 2024).

<sup>2</sup> M. Michelraj, "Historical Evolution of Transgender Community in India" 4 *Asian Review of Social Sciences* 17 (2015), available at: <https://arssjournal.org/index.php/arss/article/view/1304> (last visited on Apr. 20, 2024).

During the Mughal era, they held respected roles as advisors and administrators, enjoying power and privilege. However, British colonial rule introduced rigid moral codes and criminalized non-heteronormative behavior, leading to the marginalization of the transgender community and a decline in their societal status, erasing centuries of inclusion and cultural reverence.<sup>3</sup>

Transgender people have played a significant role in Indian society throughout its history. Historical and religious texts acknowledged a ‘third gender’ through terms like *tritiyaprakriti* and *napumsaka*, referring to those who did not conform to the binary notions of male and female. These identities were embedded in early Vedic, Puranic, and mythological literature. For instance, Hindu epics such as the *Ramayana* and *Mahabharata* feature characters like Mohini, the female avatar of Vishnu, Aravan, and Shikhandi, all of whom reflect gender fluidity and the recognition of transgender existence. In one account from the *Ramayana*, transgender individuals remained in the forest awaiting Lord Rama's return, as his instructions had only been directed to men and women, thus positioning them as a distinct group.

Throughout the Mughal period, transgender people occupied prominent roles as royal *advisors*, *administrators*, and *guardians* of harems. They enjoyed considerable respect, wealth, and social status, with figures like Itimad Khan trusted with significant responsibilities in Akbar's court. European travellers also documented their privileged lifestyles. However, with the advent of British colonialism, Victorian moral codes and discriminatory laws were imposed, leading to the criminalization of non-heteronormative identities. This drastically reduced the societal standing of transgender individuals and marked the beginning of their systemic marginalization in modern India.

The community should be actively included in the nations' overall development initiatives and protected from all forms of abuse and exploitation. One of the fundamental issues to address is the education of transgender children. Within the framework of inclusive development, they are entitled to receive an education while preserving their true identities and without experiencing societal discrimination. Furthermore, it is essential to provide them with a supportive social and psychological environment that is free of barriers, allowing them to fully exercise their rights like any other child. This paper aims to explore the educational and rehabilitation requirements of transgender children in the context of a progressively inclusive society.<sup>4</sup>

## II. EDUCATIONAL RIGHT OF TRANSGENDERS

### A. Rights under Indian Constitution

The Preamble to the Indian Constitution guarantees justice, liberty, equality, and fraternity, ensuring the dignity of every individual. Despite these assurances, the transgender community remains one of the most marginalized and underprivileged groups in society.

<sup>3</sup> Ariba, “Explained: A brief history of India’s transgender community” *The Indian Express*, July 10, 2023, available at: <https://indianexpress.com/article/explained/explained-culture/starbucks-history-transgender-community-india8616767/> (last visited on Apr. 25, 2024).

<sup>4</sup> A.A. Singh and Joseph G. Kosciw, “Introduction to the Special Issue: School Counselors Transforming Schools for Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Students” 20 *Professional School Counseling* 1096 (2017).

Many among them are unaware of their fundamental rights protected under articles 14, 15, 16, 19, and 21 of the Constitution. This widespread lack of awareness can be attributed to a range of factors, including limited access to education, unemployment, inadequate healthcare, homelessness, social stigma, hormonal misuse, substance abuse involving alcohol and tobacco, and various other challenges.

Article 14 of the Indian Constitution ensures that each individual living inside and outside India is entitled to equality under law and equal protection of the laws. Article 14 of the Constitution of India mandates that state action must not be arbitrary and discriminatory. It must also not be guided by any extraneous considerations which are antithetical to equality.<sup>5</sup>

Article 15 of the Indian Constitution manages the forbiddance of separation on the ground of religion, race, position, spot of birth, and sex; here sex incorporates male, female and transsexual. In a landmark judgment, the Supreme Court ruled that the term *sex* should be interpreted more broadly and not be confined to the traditional binary understanding of male and female.<sup>6</sup>

In the case of *Mx. Alia SK v. The State of West Bengal and Ors.*<sup>7</sup>, the court held that:

*“Transgender persons have the right to seek admission into universities. The judgement is important because it signified the role of courts in ensuring that special accommodations and adjustments are made to include transgender people in the process of public university applications and admission process where none exist”.*

Article 21 of the Constitution of India manages the protection of life and individual freedom, further expresses that no individual will be denied his life or personal freedom besides as indicated by the strategy set up by law.

In the Indian Constitution, education was initially classified as a state subject. However, with the 42nd Amendment in 1976, five subjects, including education, were moved from the State List to the Concurrent List. This shift allowed both the Central and State governments to have the authority to legislate on matters related to education. The rationale behind placing education in the Concurrent List was to enable coordinated efforts between both levels of government, covering all aspects from early childhood education to higher education. This change also empowered the Central government to directly implement educational policies across all States.

The Eighty-Sixth Constitutional Amendment Act of 2002 introduced article 21A into the Indian Constitution. This provision made the right to free and compulsory education a fundamental right for all children aged six to fourteen. Article 21A obligates the State to ensure that children within this age group receive free and mandatory education. The core objective of this article is to prevent any child from being deprived of education due to financial constraints, the high cost of schooling, or social marginalization.

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<sup>5</sup> *Senior Divisional Commercial Manager v. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association*, (2016) 3 SCC 582.

<sup>6</sup> *Suresh Kumar Koushal v. Naz Foundation* (2014) 1 SCC 1.

<sup>7</sup> *Mx. Alia SK v. The State of West Bengal*, W.P. Nos. 21587 (W) of 2019 (Cal. H.C.).

As per the 2011 health statistics, India's transgender population was estimated at around 4.9 lakh individuals. The data also revealed that this community ranks among the lowest in terms of educational attainment, with only 46% of transgender individuals being literate, compared to 74% literacy in the general population. Additionally, the amendment modified article 51A by inserting clause (k), which places the responsibility on every parent or guardian to provide education to their children or wards between the ages of 6 and 14.

Despite education being recognized as a fundamental right under Part III of the Constitution, it is unfortunate that the State has struggled to effectively implement this provision, particularly for marginalized communities.

Regarding the right to education, its content and limits can also be clarified through the Directive Principles of State Policy (DPSP) under Part IV of the Indian Constitution, including articles 41, 45, and 46, which require the state to formulate laws related to education.

### ***B. Right of Children to Free and Compulsory Education Act, (RTE) 2009***

Right of Children to Free and Compulsory Education Act, (RTE) 2009 has empowered the legislation enacted to give effect to article 21A of the Indian Constitution. This Act came into force on April 1, 2010, with the primary objective of providing free and mandatory full-time elementary schooling for all children aged 6 to 14 years. Under this law, no child or their parents are required to pay any direct or indirect fees for elementary education.

The Act places the responsibility on both the government and local authorities to cover all costs related to the provision of elementary education. It also lays down specific guidelines regarding student-teacher ratios, infrastructure standards, class capacity, and instructional hours. According to section 12(1)(c) of the RTE Act, 2009, both government and private schools are required to adhere to these standards. Additionally, the law mandates that private unaided schools reserve at least 25% of their seats for children from economically weaker sections and disadvantaged groups residing in the neighbourhood.

The Lt-Governor of Delhi, Najeeb Jung, issued a notification in 2014 stating that transgender children are identified as 'children belonging to the deprived group' under section 2(d) of the RTE Act, 2009. It further added that transgender children are included under the economically weaker section and hence are given reservation in Delhi schools under a 25 per cent quota that is meant for the disadvantaged students' category for admission, empowering them to peruse free of cost education under the RTE Act, 2009.<sup>8</sup>

### ***C. The NALSA Judgment<sup>9</sup>***

The NALSA decision should undoubtedly be commended for rejecting gender-based discrimination and for offering hope and opportunity to a group that has traditionally existed outside the legal system. The courts, with great faith and vision, have granted legal identification to all those whose bodies do not conform to recognised gender norms at birth. One ground-breaking feature of the verdict had a significant impact on present marriage, adoption, labour, and inheritance laws, which will now have to evolve away from the binary

<sup>8</sup> *Ibid.*

<sup>9</sup> *National Legal Services Authority v. Union of India* (2014) 5 SCC 438.

system of men and women in order to accommodate transgender people's legal rights. Additionally, one cannot ignore the irony that the ruling was handed only a few months after the case of *Suresh Kumar Koushal and others v. NAZ Foundation and Others*<sup>10</sup> established the legitimacy of section 377 of the Indian Penal Code, 1860. Accepting that section 377 is discriminatory against transgender people, the Court stated that "the decision leaves the *Koushal* issue unresolved, focusing solely on the legal recognition of the transgender community". One of the most novel aspects of the verdict was the incorporation of fundamental rights straight from the Constitution, particularly the application of article 19, which served as a bold motivator for recognising the rights of a transgender person.<sup>11</sup>

The solutions that the Court grants are also intriguing. As of now, three mandates have been mentioned: *hijras* are currently viewed as the third sex, trans-persons have the right to choose between being male, female, or providing a home with the third gender, and trans-persons are to be given advantages that are duly offered under government policies regarding minorities, because they would qualify as a socially disadvantaged, backward sex. The Court then goes on to issue a slew of different orders, including some specific ones (like providing user-friendly toilets and treatment for HIV-positive trans-people) and some broad ones (like directing doctors to provide them with medical care in all facilities), laying out various social welfare plans for their advancement, and finding a way to raise public awareness to ensure their safe.

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

The Lok Sabha passed the Transgender Persons (Protection of Rights) Bill, 2019. This originates from the passage of at least three different versions of the bill through Parliament – first in 2014, then in 2016, and then eventually in 2019. Transgender individuals have historically endured widespread discrimination and unequal treatment within society. The introduction of the Transgender Persons (Protection of Rights) Bill, 2019, marks a significant step within a progressive legal framework aimed at safeguarding their rights—a long-overdue advancement.

The important Highlights of the Bill can be listed as follows:

- i The Bill defines a transgender person as one who is partly female or male, or a combination of female and male, or neither female nor male. In addition, the person's gender must not match the gender assigned at birth, and includes trans-men, trans-women, persons with intersex variations, and gender-queers.
- ii A transgender person must get a certificate of identity to establish their transgender status and to exercise their rights under the Bill. The District Magistrate, on the recommendation of a Screening Committee, would award such a certificate. A medical officer, a psychologist or psychiatrist, a district welfare officer, a government official, and a transgender person would serve on the Committee.
- iii The Bill outlaw's discrimination against transgender individuals in a variety of settings, including education, work, and healthcare. It mandates that the federal and state governments establish social programs in these areas.
- iv Offenses such as forcing a transgender person to beg, denying them entrance to a public location, and physical and sexual assault would carry a maximum sentence of two years in prison and a fine.

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<sup>10</sup> *Supra* note 6.

<sup>11</sup> *Supra* note 9.

### ***E. Gaps in the Act: Education of Transgender People***

One of the most crucial aspects addressed by the Act is education, specifically covered under section 13, at school, a trans child's first experience with society outside of the familial barrier occurs. At school, the concepts of self-identity and self-worth begin to take shape. As a result, measures must be developed to ensure that trans children are admitted to schools and feel safe and secure.<sup>12</sup> To promote inclusion, society needs to become more aware of the challenges faced by the transgender community. Section 13 of the relevant legislation requires 'all government-recognized educational institutions to offer equal opportunities for participation in sports, recreational, and leisure activities without discrimination'. However, the law does not address the complexities of gender-segregated sports or clarify whether transgender individuals can join teams that align with their gender identity.

In contrast, *the National Collegiate Athletic Association* (NCAA) in the United States allows transgender athletes to compete in gender-specific sports consistent with their gender identity, provided they undergo hormone therapy. For example, transgender women are permitted to compete on women's teams after completing at least one year of testosterone suppression treatment. As India continues to grow its presence in the world of sports, it is crucial to establish clear policies that ensure fair and inclusive participation, while also optimizing the use of existing resources.<sup>13</sup>

This marginalized group continues to lag in accessing education, as many schools either deny them admission or fail to provide a supportive environment. Even when transgender students manage to enrol, they often drop out after completing basic education due to ongoing discrimination and social exclusion. There are merely 1%-3% of transgender who can complete their higher education. Further, as they are not able to get proper education, it is really difficult for them to get employment. In most of the cases, it has been seen that these people earn by singing in trains, buses, begging at traffic lights, forcibly blessing people in public places, and a few people end up in prostitution.<sup>14</sup>

## **III. RESERVATION POLICY FOR TRANSGENDER**

Despite this strong historical presence; we somehow forgot their existence while drafting our supreme law of the land. Although, Fundamental rights were guaranteed to all persons and it can be interpreted that 'person' includes third gender as well. Article 14 of the Constitution of India states that "*the state shall not deny 'any person' equality before the law or the equal protection of laws within the territory of India*". Equality entails the full and equal access to all rights and freedoms, and it also imposes a positive obligation on the State to provide equal legal protection by carrying out essential social and economic reforms. Article 14 of the Indian Constitution does not restrict the term 'person' to just male or female individuals. Therefore, transgender individuals—who do not identify strictly as male or female—are included within the meaning of 'person' and are thus entitled to the same legal protections as any other citizen.

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<sup>12</sup> Aastha Sawhney and Sanya Grover, "The Transgender Persons (Protection of Rights) Bill 2019: Divergent Interpretations & Subsequent Policy Implications" 6 *Indian Journal of Law & Public Policy* 5 (2019).

<sup>13</sup> *Ibid.*

<sup>14</sup> Anugya Mittra, "Educational Inequality in India: A Review Paper for Transgender Population" 2 *International Journal of Trend in Scientific Research and Development* 1580 (2017).

Article 15(1) of the Constitution of India prohibits discrimination on the ground of sex. But we see gender discrimination with third genders prevalent in our country. Articles 15 and 16 prohibit discrimination against any citizen on certain enumerated grounds, including the ground of 'sex'. In fact, both the Articles prohibit all forms of gender bias and gender-based discrimination.

However, it took us more than six decades to recognise that 'third gender' exists. This delay in recognition badly affected the development of the transgender community. Finally, in the year 2014, a bench comprising Hon'ble Justices K.S. Radhakrishnan and A.K. Sikri declared that *hijras*, beyond the binary notion of gender, should be recognized as the third gender to ensure the protection of their rights under Part III of the Constitution, as well as under laws enacted by Parliament and State Legislatures.<sup>15</sup> The Court *inter alia* gave the following direction:

*"We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments".<sup>16</sup>*

This is the direction which motivated Grace Banu<sup>17</sup> to file a writ petition before the Hon'ble Supreme Court to seek clarification as to horizontal reservation. The Supreme Court has dismissed this petition. Before discussing the rationale of this dismissal, it is important to understand the Indian reservation system first.

Article 14 provides "the right to equality to all Indian citizens". Reservation system constitutes an exception to this equality clause. Reservation can be categorized into two types: 'vertical' and 'horizontal'. Vertical reservation refers to the quotas allotted specifically for Scheduled Castes, Scheduled Tribes, and Other Backward Classes. In contrast, horizontal reservation spans across all vertical categories, ensuring affirmative action for disadvantaged groups within those categories. Article 15(3) of the Constitution addresses the provision of horizontal reservation.

Grace Banu, a Transgender Rights Activist, demanded horizontal reservation. Senior Advocate Jayna Kothari represented the applicant. Banu in the application noted the Supreme Court in its judgement in the *NALSA* case, directed the Central government to treat transgender persons as a socially and educationally backward class and provide them reservations in education and public employment. However, the Court did not provide specific guidelines on how the reservation should be enforced. As a result, the petitioner pointed out that several states have still not implemented these provisions.

The applicant contended that the most effective approach to granting reservations for transgender and intersex individuals is based on gender and disability, similar to the provisions made for women and persons with disabilities. The application also mentioned that in September 2021, the Ministry of Social Justice submitted a cabinet proposal to classify transgender persons under the Other Backward Classes category. Additionally, the Tamil Nadu government has decided to recognize transgender individuals within the *Most Backward Class* (MBC) category. Karnataka is the only state where they have been given

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<sup>15</sup> *Supra* note 9.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Grace Banu v. The Chief Secretary, Government of Tamil Nadu*, AIROnline 2021 Mad 1791.

horizontal reservation to the extent of 1% The applicant further prayed that reservations for transgender persons should include concessions in cut-off marks, and age. The following were the reliefs sought in the application:

- i Clarify/modify the judgement dated 15.04.2014 passed in Writ Petition (Civil) No. 400 of 2012 that the reservations meant for transgender persons are horizontal reservations;
- ii Clarify/modify the judgement dated 15.04.2014 passed in Writ Petition (Civil) No. 400 of 2012 to the effect that reservations for transgender persons should also provide for concessions in age, cutoff marks and physical criteria, as provided to other reserved categories;
- iii Clarify/modify the judgement dated 15.04.2014 passed in Writ Petition (Civil) No. 400 of 2012 to the effect that reservation should be provided for transgender persons in addition to public employment and public education also in allotment of housing sites, schemes and in local bodies.<sup>18</sup>

#### **IV. STATUS OF TRANSGENDER EDUCATION IN INDIA**

Transgender individuals were officially recognized in the national population count for the 1st time during the 2011 Census, when the government decided to include them as a distinct category. Prior to this, the census only offered two gender options: male and female, excluding any acknowledgment of a third gender. In a landmark decision in 2014, the Supreme Court of India recognized transgender people as a third gender. While men and women continue to advance across various fields—especially in education—the transgender community still faces a gap in access and opportunities. Despite these challenges, transgender individuals strive to move forward and pursue both basic and higher education to gain general and specialized knowledge. As stated in the *Universal Declaration of Human Rights*, “Everyone has the right to education”.<sup>19</sup> At the very least, education shall be free during the primary and fundamental phases. Education at the elementary level and the fundamental phases. Primary schooling shall be mandatory. Technical and professional education must be universally accessible, and higher education must be equally available to all based on merit.

Among India’s 35 states and union territories, *Uttar Pradesh* reported the highest number of transgenders, totalling around 13,000. *Bihar* followed with 9,987, and *West Bengal* ranked third with 9,868. Educational attainment within this community shows that approximately 27% completed basic schooling, 10% reached middle school, another 10% finished higher secondary education, and 27% completed high school. Additionally, around 26% pursued undergraduate and postgraduate studies. Despite these figures, the overall literacy rate among the transgender community remains low at 46%, significantly below the national average of 74%. This disparity is largely attributed to the ongoing discrimination, social exclusion, and legal challenges faced by transgender individuals. The table provided below throws light on the same.

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<sup>18</sup> *Ibid.*

<sup>19</sup> Neha K. Vats and Manju Purohit, “Right to Education and Employment: A Step Towards Empowering Transgender Community” 5 *Kathmandu School of Law Review* 113 (2017).

**Table: State & Literacy<sup>20</sup>**

State / UT	Transgender Population	Children (0–6)	SC Transgenders	ST Transgenders	Literacy Rate (%)
<b>India (all)</b>	487,803	54,854	78,811	33,293	56.07
<b>Uttar Pradesh</b>	137,465	18,734	26,404	639	55.80
<b>Andhra Pradesh</b>	43,769	4,082	6,226	3,225	53.33
<b>Maharashtra</b>	40,891	4,101	4,691	3,529	67.57
<b>Bihar</b>	40,827	5,971	6,295	506	44.35
<b>West Bengal</b>	30,349	2,376	6,474	1,474	58.83
<b>Madhya Pradesh</b>	29,597	3,409	4,361	5,260	53.01
<b>Tamil Nadu</b>	22,364	1,289	4,203	180	57.78
<b>Odisha</b>	20,332	2,125	3,236	4,553	54.35
<b>Karnataka</b>	20,266	1,771	3,275	1,324	58.82
<b>Rajasthan</b>	16,517	2,012	2,961	1,805	48.34
<b>Jharkhand</b>	13,463	1,593	1,499	3,735	47.58
<b>Gujarat</b>	11,544	1,028	664	1,238	62.82
<b>Assam</b>	11,374	1,348	774	1,223	53.69
<b>Punjab</b>	10,243	813	3,055	0	59.75
<b>Haryana</b>	8,422	1,107	1,456	0	62.11
<b>Chhattisgarh</b>	6,591	706	742	1,963	51.35
<b>Uttarakhand</b>	4,555	512	731	95	62.65
<b>Delhi (NCT)</b>	4,213	311	490	0	62.99
<b>Jammu &amp; Kashmir</b>	4,137	487	207	385	49.29
<b>Kerala</b>	3,902	295	337	51	84.61
<b>Himachal Pradesh</b>	2,051	154	433	118	62.10
<b>Manipur</b>	1,343	177	40	378	67.50
<b>Tripura</b>	833	66	172	181	71.19
<b>Meghalaya</b>	627	134	3	540	57.40
<b>Arunachal Pradesh</b>	495	64	0	311	52.20
<b>Goa</b>	398	34	9	33	73.90
<b>Nagaland</b>	398	63	0	335	70.75
<b>Puducherry</b>	252	16	40	0	60.59
<b>Mizoram</b>	166	26	1	146	87.14
<b>Chandigarh</b>	142	16	22	0	72.22
<b>Sikkim</b>	126	14	9	37	65.18
<b>Daman &amp; Diu</b>	59	10	1	2	75.51
<b>Andaman &amp; Nicobar Is.</b>	47	5	0	3	73.81
<b>Dadra &amp; Nagar Haveli</b>	43	5	0	22	73.68
<b>Lakshadweep</b>	2	0	0	2	50.00

<sup>20</sup> Population Census, “Transgender in India”, available at: <https://www.census2011.co.in/transgender.php> (last visited on May 24, 2024).

## V. CHALLENGES OF TRANSGENDER EDUCATION IN INDIA

The transgender community in India faces significant educational challenges, reflected in a low literacy rate of 56.1% (2011 Census) compared to the national average. Discrimination, bullying, and lack of inclusive school environments lead to high dropout rates. Many faces rejection from families and society, resulting in isolation and mental distress. Even when enrolled, transgender students struggle with harassment, inadequate hostel facilities, and unclear government policies. These systemic barriers also impact their future employment opportunities, particularly in professional fields like law and medicine.<sup>21</sup>.

In 2019, Minister Ramesh Pokhriyal revealed that, aside from IGNOU enrolling 814 transgender students in five years, no other central universities reported transgender students or staff. The All-India Survey on Higher Education 2018-19 also excluded transgender data from its 37.4 million enrollees. Despite University Grants Commission (UGC) initiatives – like adding a transgender category in forms and promoting scholarship inclusion: “*transgender representation in higher education remains minimal, highlighting the ongoing gaps in accessibility, visibility, and institutional support for the community*”.<sup>22</sup>

Professor Rajesh Kumar of Delhi University’s Transgender Resource Centre highlighted that official statistics underrepresent transgender individuals due to societal stigma, which discourages self-identification. He stressed the importance of sensitization and gradual inclusion in higher education, beginning with enrolment under the transgender category. Critiquing the Transgender Persons (Protection of Rights) Bill, 2019, Kumar argued it restricts self-identification and lacks empowerment. He called for legislation that affirms transgender identities without relying on external certifications, emphasizing the need for genuine inclusion and protection against discrimination.<sup>23</sup>.

Only Savitribai Phule Pune University has enrolled 41 transgender students, while the others report none. Despite government promises to cover higher education costs for transgender students in public institutions, enrolment remains low. While initiatives like adding a ‘TG’ category in forms and exploring alternative accommodations exist, they fail to create a genuinely inclusive and supportive educational environment, demanding stronger, proactive action.<sup>24</sup>

Transgender individuals in secondary education face many of the same challenges as those in higher education, such as concerns about safety, access to appropriate bathrooms and healthcare, and having their gender accurately reflected on official documents. Facing rejection from both their families and educational institutions, many transgender individuals are forced to leave school, which significantly limits their career prospects. Studies and conversations with community members and stakeholders identify this lack of support as a major factor contributing to the high dropout rates within the transgender population. On

<sup>21</sup> Devesh Srivastava, “Trans Students in Higher Education: Low Numbers, Non-Existent Facilities in Pune’s Institutes” *The Indian Express*, Dec. 09, 2023, available at: <https://indianexpress.com/article/cities/pune/trans-students-in-higher-education-low-numbers-non-existent-facilities-9060656/> (last visited on May 19, 2024).

<sup>22</sup> Eram Agha, “No Transgender Students in India’s Central Varsities, Indicates Govt Data. But Here’s the ‘Other’ Side” *News18*, Dec. 04, 2019, available at: <https://www.news18.com/news/india/no-transgender-students-in-indias-central-universities-govt-data-indicates-but-theres-the-other-side-2410993.html> (last visited on Apr. 30, 2024).

<sup>23</sup> *Ibid.*

<sup>24</sup> *Supra* note 21.

average, transgender people attain education only up to the secondary (matriculation) or senior secondary level. Enrolment rates among them are notably low, and dropout rates at the primary and secondary stages remain alarmingly high. Addressing the issues of gender disparity and social exclusion continues to be a significant challenge for the community.

## VI. CONCLUSION AND SUGGESTIONS

Despite various legal reforms and official support, the transgender community continues to face violence and discrimination. The social status of transgender individuals has seen little improvement through these legislative measures. While a small, informed segment of the community benefits from these changes, a large portion still suffers injustice and marginalization. To reduce the vulnerabilities faced by transgender people in India, there must be widespread collaboration across all sectors of society. Society's perception of transgender individuals needs to shift significantly. Due to limited opportunities, many are forced into begging and sex work, exposing them to abuse and social stigma. Rather than judging their means of livelihood, society should develop greater empathy and understanding toward their circumstances.

One of the major obstacles to transgender individuals securing decent employment is the lack of access to quality education. Every transgender child should be guaranteed their fundamental right to education, free from any discrimination at both primary and higher levels. The government must enforce strict penalties against institutions that deny admission based on gender identity. The following steps can be taken to improve the conditions of the transgender community:

- a) **Kinnar Vidayalaya:** This idea was recently launched by the NGO, *Shri Mahasakti Charitable Trust*. The school aims to offer free education alongside vocational training and skill development workshops in areas such as handicrafts, waste management, beauty, and interior decoration. This initiative represents a significant step toward securing the right to education for the transgender community. To expand its impact, budgetary provisions should be made to establish similar programs across multiple districts throughout India.
- b) **Transgender Cell (anti-discrimination cell):** Every educational institution and university should set up an anti-discrimination cell dedicated to addressing and preventing any form of bias or mistreatment against transgender individuals. Similar to the strict functioning of anti-ragging cells, there must be a policy of zero tolerance towards any incidents or complaints of discrimination.
- c) **Access to Restroom facilities:** Provide education to both staff and young people on the concept of gender identity to ensure awareness and acceptance of transgender youth. Where possible, establish gender-neutral restrooms and locker rooms—facilities that can be used by individuals regardless of their gender identity or expression.
- d) **Confidentiality:** Ensure that the program upholds strict confidentiality concerning the gender identity, gender expression, sexual orientation, and sexual behavior of all participating youth.
- e) **Provide Financial Assistance:** The government should offer fee waivers, reimbursements, scholarships, free textbooks, and subsidized hostel accommodations, along with other support services, to make higher and professional education more accessible for transgender students. Additionally, specialized coaching should be made available to help candidates prepare for competitive exams.

- f) **National Law and Policies to protect children in school:** Creating a supportive policy and legal framework is essential for eradicating violence in schools. This involves not only enacting appropriate laws and regulations but also implementing effective systems for their monitoring and enforcement.
- g) **Setting up a National Commission for Transgender Persons:** The current lack of comprehensive materials addressing the issues faced by the transgender community, along with insufficient surveys and evaluations of government schemes, can be addressed by establishing a dedicated statutory body focused solely on the welfare of transgender individuals. This organization could lead sensitization and awareness initiatives in educational institutions nationwide to combat stigma and discrimination against transgender people. Additionally, it could organize workshops and conferences in partnership with national and international organizations working for transgender rights, targeting both students and the general public. The body could also encourage research by providing funding and support for studies and policy development related to transgender welfare, involving civil society groups, schools, colleges, and other relevant institutions.
- h) **Education system has to adopt the holistic approach of access, equity, environment and employment:** Ensuring the accessibility of education for transgender students in schools and other institutions is crucial, which includes preventing denial of admission and upholding their right to education regardless of their financial situation. The 2014 directive by the UGC to add a category for transgender individuals to indicate their gender should be implemented across all educational institutions. Promoting equity in treatment requires raising awareness and sensitizing the public and students about adopting gender-neutral practices. A supportive environment is created by implementing measures such as addressing students by their names rather than gender, providing gender-neutral restrooms or allowing students to use the facilities they identify with, offering gender-neutral uniforms, and arranging seating without gender-based divisions, among other inclusive policies.