

Understanding Gender Spectrum: Indian Experience

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Abstract: Every human being strives for a dignified life, which is a basic human right and conscious efforts have been made for so long to work towards achieving equality in Indian society. This struggle has given rise to the concept of inclusiveness which has become an integral part of the development paradigm. To date, the country is fighting for inclusive growth, where gender equality is a prerequisite. The provisions of the Indian Constitution are objective in nature and do not discriminate on the basis of sex. This paper throws light on the efforts of the Indian judiciary to bring the marginalized and excluded sections in the mainstream of Indian society. The paper further discusses the socio-legal aspects of exclusionary and discriminatory practices towards the Transgender community which is the most disadvantaged section of the society and thus makes them socially disabled.

Keywords: Social Exclusion, Social Discrimination, Gender Identity, Transgender, Social Disability

1. Introduction

The idea of gender identity signifies an individual's impression of self which may differ or corroborate with one's assigned identity at birth. The essence of gender identity presents a social construct that results in differentiation, discrimination and even the exclusion of individuals and communities. The existence of stereotypes and prejudice eliminates the idea of gender fluidity which takes into account gender expression. The role of individual and group socialization plays an important role in imprinting our consciousness with gender binaries and it often results in discrimination and social exclusion of those who do

not conform with the existing paradigm of the society. Even though the Indian judiciary and Constitution gives equal rights and privileges to all its citizens irrespective of caste, class, race, creed or sex, still the marginalization of such communities is a stark reality of Indian society. Therefore, this paper discusses social exclusion and discrimination of 'transgender' as a community, which although not supported or encouraged by the Indian legal system, still exists in our social reality.

The self as created by social actors depends a lot on their social capital and socialization. Lev (2004) mentions that all the social actors becomes mediators in the building of self. Individuals get involved in a collaborative, self-reflexive practice through which the idea of self is shaped and also sustained over time. One of the important elements in the conception and reformation of the self as an identity is the subjectivity. It is not easy to challenge the gender binary which already exists in our society as a dominant ideology. The social acceptance of the idea that biological standards for sex determines the social standards for gender as well. Hence, it is easily visible that the biological categories were formulated to support the social criteria of distinguishing between different genders, which was observed by Kessler and McKenna (1978) who tagged it as "natural attitude." The feminist scholars have given a critical evaluation of gendered behaviors which today seem to be the natural consequences of biology. The modern feminist literature was reviewed by Fausto-Sterling (1992) and Henfin (1982) and they have demystified the supposed innateness for gendered behaviors which also involves intelligence, male aggression, lesbianism and discrimination in employment.

Gender inequality varies from several different types of inequality in substantial ways. Therefore, it cannot be assumed that the gender inequality has the same course of development and existence as other forms of inequalities. Gender inequality occurs when any single gender garners an overly large segment of something which can be social, political as well as cultural. Individuals can differ in several ways from one another. The differentiation when leads to discrimination is the moment when inequalities emerge in different societies.

As observed by Connell (1987) and Schippers (2007) that the existence and continuation of inequality based on one's gender identity is quite well acknowledged within the discipline of Sociology. The gender binary in which only two genders exists is the

contribution of biology as mentioned by West and Zimmerman (1987). These binaries of gender are predominant in the form of schema in our culture and society and is deeply embedded within our consciousness. The gender schema or binary also gives rise to disproportionate power relations in the society which is stratified, hierarchical and discriminating.

1.1 Aim of the Paper

The main objective of the paper is to theoretically analyze the marginalization and discrimination of the Transgender community in India within the framework of the Gender Schema theory.

1.2 Methodology

The paper is written within the theoretical structure of the Gender Schema Theory, propounded by Sandra Bem in the year 1981 and it focuses on how individuals become gendered in almost all societies. It also discusses the gender-sex associated features which are carried and transmitted from one generation to another and ultimately becomes embedded socially and culturally. Sandra Bem's theory substantiates the aim of the research to theoretically analyze the marginalization and discrimination of the Transgender community in India. Several research articles were examined and explored concerning the topic of Gender Schema and Social exclusion and inclusion based on one's gender identity. The method of snowball text retrieval was used by utilizing the references of the selected research articles.

1.3 Theoretical Framework

The theory of Gender Schema primarily talks about how gender plays an important role in distributing identities to people. These gender identities are a result of the amalgamation of social, cultural and biological factors and are a process of recognizing and identifying oneself as male or female. However, the gender identity of an individual may not be in congruence with the assigned birth gender. The Transgender community is discriminated, marginalized and socially excluded only for the pure reason of not conforming to their assigned gender at birth.

The theory defines how people assess information associated with their gender. Consequently, the theory also postulates that several people acquire a perspective through which experience is organized regarding their gender identity which can be seen as “sex-typed” and “non-sex typed”. The theory of gender schema works with the framework within which individuals categorizes themselves into only two binaries of being either feminine or masculine. Bem (1981) mentions about how the individuals on the basis of their gender identity decide about their personal traits and also how these traits will be allied with their concept of self. The theory focuses on how individuals assimilate into their given cultural patterns which are already categorized into binary divisions.

Gender-based identity distribution in Indian society is generally done based on schemata. Schemata can be defined as an arrangement of thought process which systematizes various types of information and the existing relationship between them. It refers to preconceived notions or simply towards the social construction of reality which influences one’s perspectives towards reality. Bem (2008) contends that there are differences of degrees, which exist at individual levels regarding what people perceive and grasp from these gender-based schemata. It becomes the precursor for the sex-typing of individuals, which directs them to act in agreement with their assigned gender. The theory explains how deeply gender stereotypes are embedded in the psychological fabric of Indian society. One of the discussion points of this theory is about the gender conformity through behaviour regulation and their social/cultural construction.

As observed by Schmitt (1988) that every culture and society have its own understanding of gender which results in development of its own connotations about the ideas of “femaleness” and “maleness”. However, it varies greatly how the individuals in any society evaluate, categorize and perceive these identities. Bem’s gender schema theory talks about the individual’s perception and the utilization of traditional binary divisions of the gender dimension as being feminine or masculine. Gender-based violence against the Transgender community is a consequence of the existing binary. The paper discusses the social exclusion and discrimination of ‘transgender’ as a community that is socially disadvantaged and has emerged as a social disability for them.

The gender analysis by Bornstein (1995) and Halberstam (2005) discusses that the acceptable set of identities cannot be considered as complete without bringing in the

transgender identity. Gender variation interprets the parameters of the existing gender binaries in our society and also the excessively deterministic part it ascribes to the sex which has been assigned to the individual which results towards possibilities for some form of social change in contradiction to prevailing philosophies and practices. The differentiation between the concepts of sex, gender and others by West and Zimmerman (1987) rightly addresses the experiences of trans people which certainly questions the prevalent gender binaries as discussed and evaluated by Jenness and Fenstermaker (2014) and Westbrook (2009).

2. Indian Legal Framework and Transgenders

The expression “transgender” gained visibility in public discourse around mid-1980s which replaced the earlier used term “trans sexual”. Today, the term “trans sexual” is particularly used to refer to people who prefer medical and surgical techniques to change their sex which would be in congruence with their gender. Transgender generally refers to entities who purposefully refuse their originally assigned gender. The term “transgender” encompasses trans sexual people along with several other groups as well.

Every individual is born free and possess equal rights and dignity. As opined by Fisher (1963) that several concerns are raised by United Nation bodies about exclusion from anti-discriminatory laws and about inadequate efforts to combat the malpractices like discrimination. As far as the Indian legal framework is concerned, non-discrimination is well established in the form of fundamental rights enshrined in Part III of the Indian Constitution. The important provisions are elaborated in Article 14, 15 and 19 of the Indian Constitution.

As Agoramoorthy and Hsu (2007) observed that the “third gender” has always been in existence and visibility when it comes to Indian culture. Transgenders were an integral part of ancient Indian communities but today they suffer discrimination in all facets of life which includes, health, education, employment etc. It was in October 2013, that the Supreme Court of India acknowledged the fact that they face discrimination and have been severely marginalized by the mainstream society. The social activists fighting for their cause argue that they cannot be discriminated just because they do not fall into the two conventional divisions of gender identity and that the transgenders should be included

within the category of socially and educationally backward group of people as enunciated in the constitution of India under Article 15 (4). Till the year 1993, the electoral ballots had only two genders-male and female. It was only in 1994, that the third category was recognized and added in the electoral ballots and henceforth, giving them recognition as citizens. In the year 2014, it was seen that some of the transgenders contested for elections as well.

2.1 Social Exclusion and Disability

The idea of social exclusion deliberated by Modi (2015) has been in existence since the times of Aristotle. It was in 1974, that the concept of social exclusion was used for the first time in sociological discussion. The term may be of recent origin but there has been no society at no times which has not seen or practiced social differentiation, stratification, discrimination or exclusion. The concept of social exclusion incorporates the elements of deprivation and domination as opposed to the idea of social inclusion. This phenomenon of social exclusion of transgenders on the basis of their gender identity has rendered them socially disabled. The discrimination and stigmatization on the basis of one's gender is also one of the forms of social exclusion which was not well acknowledged in the Western societies earlier.

The Rights of Persons with Disabilities Act 2016 that replaced the Person with Disabilities Act, 1995 affirms according to Jeffery and Singal (2008) that there are 21 types of disabilities recognized under the act which include visual, mental, physical, speech and language and even acid attack victims within its ambit.

The idea of 'Disability' as asserted by Mehrotra (2006) can be viewed from different perspectives such as legal, physical, psychological, medical and social perspectives. Medical disability refers to bodily or physical impairment which can be treated to function properly. Yet another form of disability is the social disability, which in the present context, talks about the disability or inability created by the society for individuals or communities which are marginalized and socially excluded from the mainstream. The reasons for this kind of exclusion are majorly social which can be gender, caste, class, race, religion, etc.

The differentiation based on sex, gender, and sexuality, although distinct sources of identity, are interlinked for those who are stigmatized and marginalized. An individual's gender is an intricate interrelation between three aspects, i.e. of our body, the identity, and the expression; where body refers to our understanding with our own body and also how the society genders and interacts with us based on our bodies. Identity refers to our deeply held, inner sense of self as female, male, a blend of both, or neither of these; and expression here, refers to how we present our gender to the world and how family, culture, society and community recognize, relate with, and try to mould it. According to Staples (2011), the concept of expression is also associated with gender roles and in what way society uses it to impose conformity to current gender norms. The binary thus created, points towards the concept of "Doing gender" (which was used in the seminal article "Doing Gender" by Candace West and Don Zimmerman) and "Gender performativity" which was given by Judith Butler in *Gender Trouble: Feminism and the Subversion of Identity*, where the outdated perception of gender is criticized by Butler on the ground that dominant perception of gender is labelled as binary.

The observation by Spence (1984) reveals that the idea of "naturalness" of the existing binary division of gender is in congruence with the pragmatic understanding of the Western population and the acceptance of such divisions is neither cross-cultural nor historical in nature. As mentioned by Herdt (1994) that social scientists have acknowledged the existence of "third gender". The argument given by Chauncey (1994), Devor (1997), Elkins and King (1996) and Garber (1992) also talks about individuals who do not fall into either of these categories and transcend all these divisions. This type of transcendence as given by Blackwood (1984), Bullough and Bullough (1993) and also Callender and Kochems (1983) takes into consideration that the given binaries of gender is sometimes accepted and even given elevated status in some cultures. But in contemporary society, these individuals are at the receiving end of discrimination and have been stigmatized, marginalized and neglected largely.

We live in a patriarchal society where if a woman is infertile or unable to give birth to a male child, it becomes a ground for voidable marriage as per the law in the first case and by societal norms in the latter. One can observe that the act of giving birth is considered to be an important criterion to judge the acceptability of a female in this society. When an individual can perform all other routine and mundane activities quite well except the

function of procreation, he/she predominantly “she” is discriminated against and excluded from the family and society at large. Similar is the case of social stigma and taboo which is attached to the transgender community whereby they are differentiated, discriminated and socially excluded based on their reproductive capacity.

The transgender community has no representation in mainstream society. Before National Legal Service Authority v. Union of India judgment, they were not talked about and were hardly taken care of by the policymakers, as they do not come under their vision of their vote bank. The perception of “we” and “they” or “others” come to the fore when we analyze these gendered categories. There is a trend of “otherizing” transgender community as opined by Gagne, Tewksbury, et al. (1997) that by concentrating entirely on how their bodies may differ from other people. As observed by Schilt & Windsor (2008);

“Transgender is an umbrella term that describes many people who transcend “normative” embodiments of masculine and feminine, including transsexuals, cross-dressers, drag queens and kings, gender queers, and other gender variant people. Most misuse transgender synonymously with transsexual, which identifies people whose gender identity conflicts with their ascribed gender, and they may take hormones and/or undergo surgery” (p. 455).

Prima facie there is the social exclusion of transgender as they have remained effectively excluded from contributing in cultural and social aspects of life and therefore, remained deprived of many vocations of life. The basic reason they face a variety of issues is ambiguity in their gender status. This is due to the fact as stated by Garfinkel (1967) that state’s invariable legal construction of the term ‘gender’ is in the context of biological sex which comprises strictly male or female creating a barrier in exercising their rights in desired or third gender. States often entrench the social exclusion which takes place in the form of inequality and perpetual violence against transgender. Every human being is entitled to basic human rights and obligation lies on the nation-states under international law to check the discriminatory practices leading to the social exclusion of a particular class. Delhi High Court in the Naaz Foundation case expressed their concern regarding the deeply rooted ostracism confronted by the transgender community. In the words of Lorber (1999).

“During Colonial period in India, eunuchs (hijras) were criminalised by virtue of their identity. The Criminal Tribes Act, 1871 was enacted by the British in an effort to police those tribes and communities who 'were addicted to the systematic commission of non-bailable offences.' These communities and tribes were deemed criminal by their identity, and mere belonging to one of those communities rendered the individual criminal. In 1897, this Act was amended to include eunuchs...While this Act has been repealed, the attachment of criminality to the hijra community still continue” (p. 367).

In spite of the legal provisions in the country, they still face challenges due to discrimination and social exclusion in various fields such as education, employment, health issues, etc. The Supreme Court of India in *National Legal Service Authority v. Union of India* inter alia, directed the Central and State Governments to take various steps for the well-being of the transgender community and also to treat them as a third gender to protect their rights under Part III of the Constitution and other laws made by the Parliament and the State Legislature. The most remarkable aspect of NALSA judgment has been its vivacious attempt in understanding the term “identity.” As stated by Staples (2011).

“Gender identity refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms. Gender identity, therefore, refers to an individual’s self-identification as a man, woman, transgender or other identified category” (p. 547).

Accordingly, Union Cabinet has tried to bring social, economic and educational empowerment through the bill of Transgender Persons (Protection of Rights) 2016. This bill was perceived as a powerful measure in vanishing the discriminations transgender been facing from ages. In-depth analysis of the bill brought into the light some flaws which are detrimental to the interests of the transgender community. Provisions like setting up of screening committee to determine the genuineness of an individual’s identity puts forth the

community at harassment by the hands of state agencies. The requirements are unreasonable and are against the fundamental principle of self-identification or self-declaration as laid down in the NLSA judgment.

3. Conclusion

The social interactions play an important role in maintaining and sustaining gender distinctions. Individuals are culturally bound to “perform” their gender in a specified way. The performativity as evaluated by Connell (2009) and Rogers (1992) of one’s gender in congruence of one’s perception about self is social. The idea of undoing gender discussed and debated in the works of Deutsch (2007) and Risman (2009) is something which most of the feminist sociologists are concerned about.

No lesser controversial are some points in Transgender Persons (Protection of Rights) Bill 2016, where there are efforts by legislature and judiciary that cannot be ruled out. But the question is after all these attempts; the transgender community can be still seen struggling. They are discriminated, ostracised and become the subjects for mockery in society. In June 2014, reports brought to the notice of the public that transgender individuals died due to indecisiveness on the part of doctors to decide in which ward they are to be kept for medical treatment. A survey by Kerala State Literacy Mission in the work of Reddy (2011) throws light on how society ridiculed them, and they are made to feel ashamed about their identity. Notable figures have come to light depicting how much percentage of transgender are residing at shelter homes, many of them have no identification cards, a good number is still unemployed, etc. This community has been enduring mental and physical violence not only at the hands of society but also at the hands of the family. Law enforcement authorities and policemen can be seen as major perpetrators of violence against them. It is since times immemorial that transgender is treated as outcaste and often seen socially excluded. The reason for ostracising transgender is not just because they are disliked it is because other people want to avoid a negative halo effect. People are not letting them come into the mainstream. It is the society which is discriminating badly against them and even today the minds are blocked, and social acceptance can be called a dream. On examining the Toto effect, we can call these are made socially disable. There should be an initiative to avoid stereotyping the transgender community.

When we talk about inclusive growth as an important aspect of the overall development and growth of the nation, are we aiming for inclusiveness? If yes, then why are the marginalized community like transgender not included at the policymaking level. This community has been outcasted socially, occupationally and emotionally too as the exclusionary boundary has been set up to mark them as unacceptable and undesirable. We must strive towards increasing the cultural visibility of them and also ensure their complete inclusion within all communities. The important question remains that whether transgender people are socially disabled or we as a society are disabled who fail to recognize them as a part of Indian society. The people in our society should be more compassionate and tolerant towards other fellow citizens (transgenders) and should treat them as equal citizens so that this minority gender avails all the rights of citizenship.

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