

## PRINCIPLE OF SOCIAL JUSTICE AND RIGHT TO RESERVATION FOR TRANSGENDER PEOPLE IN INDIA

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**Abstract:** The issue of social justice and reservation policies has been a matter of extensive discourse in India pertaining to marginalised and disadvantaged communities. Among these communities, transgender individuals have historically endured discrimination, exclusion, and economic hardships. This research paper delves into the concept of social justice and its application to the rights of transgender people in India, with a specific focus on their right to reservation in educational institutions and public employment. Through a multidisciplinary approach, this study examines the historical background, legal framework, and societal implications of this issue. By exploring the constitutional and ethical dimensions of social justice, this paper aims to provide insight into the struggle for transgender inclusion and the potential impact of reservation policies on their socio-economic advancement. The research concludes by addressing the challenges and potential solutions for a more inclusive and equitable India.

Keywords: Transgender, Social Justice, Reservation, Constitution

### **I. Introduction**

Social justice, as a fundamental principle enshrined in the Indian Constitution, seeks to ensure equitable opportunities and outcomes for all citizens, irrespective of their social, economic, or

cultural backgrounds. The pursuit of social justice includes addressing systemic inequalities, discrimination, and exclusion. In the context of transgender rights in India, the principle of social justice plays a pivotal role in securing equal rights and opportunities for transgender individuals.

In India, social justice and reservation are intertwined concepts that demonstrate the nation's dedication to rectifying past wrongs and promoting equality. The Indian Constitution, specifically Articles 15(4) and 16(4), permits the reservation of seats in educational institutions and public employment for socially and economically disadvantaged communities, including Scheduled Castes, Scheduled Tribes, and Other Backward Classes. This affirmative action policy aims to uplift marginalized groups and foster a more just society. The Supreme Court of India has played a crucial role in shaping reservation policies through landmark judgments. The M.R. Balaji case in 1951 established the quota system, while the Indra Sawhney case in 1992 upheld the government's right to provide reservations while limiting it to 50%. The Keshavananda Bharti case, 1973, primarily dealt with the basic structure doctrine, indirectly influencing reservations by emphasizing the importance of equality and social justice in the Indian Constitution. These decisions highlight the delicate balance between promoting social justice and preventing discrimination, making them essential in the ongoing conversation around affirmative action in India.

In recent years, there has been a growing recognition of the rights of transgender individuals in India. The landmark Supreme Court judgment in 2014 (*Nalsa v. Union of India*) marked a turning point, affirming the rights of transgender people to self-identify their gender and access social and economic opportunities without discrimination. However, despite these legal advancements, the practical realization of these rights has been slow and challenging. One of the pressing issues within the broader context of transgender rights in India is their access to reservations in education and public employment. Reservation policies in India have historically aimed to uplift historically marginalized groups, such as Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). The question now arises: should transgender individuals be included under these reservation policies to facilitate their socio-economic advancement and integration into mainstream society?

This research paper seeks to address this question by exploring the principles of social justice and their applicability to the rights of transgender individuals in India. It investigates the historical context of the transgender rights movement, the legal framework supporting their rights, and the challenges they continue to face. It also delves into social, economic, and cultural barriers that transgender individuals encounter and the potential impact of reservation policies in addressing these challenges.

### **RESERVATION: VERTICAL AND HORIZONTAL**

Reservation in India is a complex and highly debated topic that has its roots in the country's historical and social inequalities. It is a system of affirmative action designed to uplift and provide opportunities to marginalized and disadvantaged sections of society. It is a mechanism that provides preferential treatment or quotas in education, government jobs, and other areas for specific groups. However, it is important to understand that reservation in India is not a uniform concept; it comprises various categories and types, the two primary ones being horizontal and vertical reservations.

**Horizontal Reservation:** Horizontal reservation is a policy that ensures equal access to opportunities within a reserved category. It primarily focuses on ensuring that various sub-groups within a specific category receive a fair share of the reserved seats or positions. For example, within the Scheduled Caste (SC) category, there may be sub-groups like the "Dalit Christians" or "Dalit Muslims." Horizontal reservation aims to distribute the benefits of reservation equally among these sub-groups, preventing any single group from monopolizing the opportunities reserved for SCs.

**Vertical Reservation:** Vertical reservation, on the other hand, is aimed at providing reserved seats for different categories based on the severity of historical disadvantage. It ensures that certain percentages of opportunities, such as educational seats or government jobs, are exclusively allocated to specific groups based on their social and economic backwardness. The most common categories benefiting from vertical reservation in India include Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC). The reservation percentages for these categories are determined by the government to address their specific needs and to promote social justice.

**II. Research Methodology:** This research paper employs a qualitative research approach, including an extensive review of academic literature, case laws, and policy documents. The analysis is structured around the principles of social justice, aiming to identify how these principles have influenced the recognition and protection of transgender rights in India.

**Research Design:** This article relies on secondary sources for information. The data was gathered through the examination of research articles, significant Supreme Court decisions, books, newspapers, journals, the 2011 census data, and governmental reports. The paper encompasses government initiatives and constitutional rights. Following the data collection process through reading, a summary and analysis were conducted.

### III. Historical Perspective:

**Pre-Colonial India:** The history of gender diversity and inclusivity in Pre-Colonial India is rich and fascinating. Ancient texts and epics frequently mention various communities and deities that exemplify the idea of gender fluidity. One such community, the Hijra community, is among the most well-known transgender communities in India and has a long history dating back thousands of years. They were often associated with religious ceremonies. The **Kama Sutra**, an ancient Indian text on human sexuality, also refers to a "third sex" known as **tritiya prakriti**, which many believe refers to the Hijra community. In Hindu mythology, the god **Ardhanarishvara** is depicted as half male and half female, symbolizing gender fluidity and the interconnectedness of genders. In addition, ancient Indian literature and epics make references to a group known as "**Kinnars**," who were considered to be of a different or third gender and were often associated with performing arts and entertainment. Several ancient legal texts, such as the **Manusmriti**, acknowledge the existence of a third gender, indicating societal recognition of individuals beyond the male-female binary. The Hijras played significant roles

in religious ceremonies, particularly in Hindu rituals where they were believed to have the power to bless or curse and were associated with various deities, including Bahuchara Mata.

**During the Colonial Era:** The colonial period, which spanned from the 17th to the mid-20th century, had a profound impact on the existence and position of transgender individuals in India. With the advent of British colonial rule in India, British officials brought their Victorian-era morals and values with them. The colonial administration imposed a binary understanding of gender that did not align with India's traditional recognition of diverse gender identities. This led to the criminalization and stigmatization of transgender individuals.

**Impact of British Colonialism:** The British colonial administration brought with it a Victorian moral code and a binary understanding of gender and sexuality that were at odds with India's traditional acceptance of diverse gender identities. The Criminal Tribes Act of 1871 and the 1897 notification targeting transgender communities led to their criminalization and marginalization.

The existence and position of transgenders in the colonial era were marred by British colonial policies that disrupted India's historical acceptance of gender diversity. The struggle for social justice and the right to reservation for transgender people in India represents a commitment to rectify historical injustices, ensuring their inclusion and equal participation in society. Understanding this historical context is crucial for framing policies and initiatives aimed at the upliftment and empowerment of transgender communities in India.

**Post-Independence Position:** The period following independence has seen notable legal progressions related to the rights of transgender individuals. A pivotal moment occurred in 2014 when the Supreme Court issued the NALSA judgment, officially acknowledging transgender people as the "third gender" and upholding their constitutional rights. Following this, the Transgender Persons (Protection of Rights) Act, 2019, was enacted by Parliament on November 26 and received Presidential assent on December 5, 2019. This legislation was designed to protect their rights, prevent discrimination, and ensure access to welfare schemes. While legal recognition is an important step, social acceptance remains an ongoing challenge for transgender individuals in India. Discrimination and violence are still prevalent, particularly in rural areas. However, urban centres have seen increased visibility and acceptance of transgender people, often through initiatives by the community itself, NGOs, and allies.

The post-independence period has also seen a rise in transgender activism and representation. Prominent transgender individuals have emerged in various fields, advocating for their rights and challenging stereotypes. Additionally, the political sphere has witnessed transgender candidates running for office, reflecting a growing awareness of their issues. However, the journey toward full equality and inclusion is ongoing, with continued challenges related to stigma, discrimination, economic disparities, and healthcare access. Ongoing efforts from government, civil society, and society at large are essential to ensure the full inclusion and dignity of transgender individuals in India.

#### **IV. Legal and Policy Changes so far:**

- **Recognition of Third Gender:** In April 2014, the Supreme Court of India recognized transgender individuals as a third gender. This landmark judgment acknowledged the rights of transgender individuals and their protection under the Constitution of India.
- **Navtej Singh Johar v. Union of India (2018)** In this case, the Supreme Court decriminalized homosexuality, affirming the rights of LGBTQ+ individuals, including transgender people, to engage in consensual same-sex relationships.
- **Transgender Persons (Protection of Rights) Act, 2019:** This Act, passed in December 2019, is one of the most significant legal developments for the transgender community. It seeks to protect the rights of transgender persons and provide them with legal recognition. Key provisions of the Act include: **Self-identification:** Transgender individuals have the right to self-identify as male, female, or third gender, without the need for medical certification, **Anti-discrimination:** Discrimination against transgender persons in education, employment, healthcare, and access to public spaces is prohibited, **Welfare measures:** The Act mandates the provision of welfare measures, such as separate HIV surveillance centres, and schemes for their rehabilitation and social integration.

**Reservations:** Some Indian states have implemented reservations for transgender individuals in education and employment, aiming to improve their socio-economic status. This is in line with the principle of Social Justice in Indian Constitution.

Some of the key events in the history of reservation for transgenders in India are as follows:

- The NALSA vs Union of India case, which was decided by the Supreme Court of India in 2014, is a significant judgment. The Supreme Court acknowledged transgender persons as the "third gender," granting them the same rights as other citizens. These rights include equality, **reservation**, non-discrimination, and a dignified life.
- In 2015, the Government of Kerala became the first state to approve and introduce the State Policy for Transgender Persons. The policy aims to uphold the constitutional rights of transgender individuals, as directed by the Supreme Court in NALSA v. Union of India.
- In 2015, the Indian state of **Tamil Nadu** made a significant move by categorizing transwomen (transgender women) under the Most Backward Classes (MBC) category. This decision was a crucial step towards recognizing the rights and welfare of transgender individuals and addressing the historical discrimination they have faced in India.
- **The Karnataka government** has taken steps towards providing employment and educational opportunities to transgender individuals. In 2021, the government became the first to announce a 1% horizontal reservation for transgender persons in civil services posts, aiming to address employment opportunities for the transgender community in the state. Additionally, the government also introduced a 1% reservation for transgender students in educational institutions to facilitate greater access to education and improve opportunities for higher education.

- The government of **Madhya Pradesh** on April 19,2023, released an official notification to incorporate the transgender community into the Backward Classes (OBC) category of the state. This step aligns with a directive from the Supreme Court, which recognized the transgender community as socially, economically, and educationally disadvantaged. Consequently, transgenders, referred to as Kinnars, are now eligible to avail themselves of the 14% reservation allocated for OBCs when applying for jobs and seeking admission to educational institutions in Madhya Pradesh.
- **Jharkhand's** State Cabinet has approved a proposal to include the transgender community in its universal pension scheme, along with granting them OBC status. The move is aimed at promoting inclusivity and enhancing social security. The Mukhyamantri Rajya Samajik Suraksha Pension Yojana will now offer social assistance to transgender people, following the approval by the council of ministers.
- In July 2023, the **Kerala** government introduced a reservation system for transgender students enrolled in nursing courses. The aim of this system is to promote inclusivity and diversity in the educational framework. The Health Minister, Veena George, declared that one seat each would be dedicated to transgender individuals pursuing BSc nursing and general nursing courses. This move represents a progressive departure from traditional reservation practices and highlights the government's unwavering commitment to fostering equal opportunities in education.

## V. CONCLUSION AND SUGGESTIONS:

1. **Uniform Reservation Policy:** Transgender individuals in India face numerous challenges to accessing education and finding employment due to societal discrimination. To address this issue, it is crucial to establish a comprehensive and uniform reservation policy(preferably horizontal reservations) for transgender individuals across all states in India. The reservation policy should specify a specific percentage of seats reserved for transgender individuals in educational institutions, including primary schools, high schools, colleges, and universities. Additionally, the policy should outline a specific percentage of reservations for transgender individuals in public employment, including both state and central government jobs. The proposed reservation policy for transgender individuals should mirror the existing reservations for Scheduled Castes, Scheduled Tribes, and Other Backward Classes. This will ensure that transgender individuals receive equal opportunities in education and employment, and are not discriminated against due to their gender identity.
2. **Political Representation:** The issue of political representation for transgender individuals is crucial, and it is important to encourage their participation in politics at all levels of government. In order to achieve true inclusivity and representation, it is necessary to support transgender candidates and their campaigns for political office. Transgender individuals face unique challenges and barriers that must be addressed through policy and legislation. By electing transgender representatives, we can ensure that these issues are given the attention they deserve and that the perspectives and

experiences of transgender people are represented in political decision-making. In addition, promoting political representation for transgender individuals is important for setting an example and inspiring other members of this community to get involved in politics. When transgender individuals see themselves represented in positions of power, it can encourage them to pursue their own political aspirations and contribute to the betterment of their communities. Therefore, it is crucial to support and encourage transgender individuals to participate in politics and to promote their campaigns for political office. By doing so, we can work towards a more inclusive and representative government that truly reflects the diversity of our society.

3. **Awareness and Sensitization Programs:** The implementation of awareness and sensitization programs plays a crucial role in promoting the understanding and acceptance of transgender individuals at various levels, such as schools, colleges, and workplaces. These programs are designed to educate people about the challenges faced by transgender individuals in society, their rights, and the importance of creating a safe and inclusive environment for them. The programs can cover a wide range of topics, such as the social, emotional, and psychological aspects of being transgender, the differences between gender identity and sexual orientation, and the need to respect and acknowledge gender diversity. They can also provide information on the legal protections available to transgender individuals, such as anti-discrimination laws and policies, and the resources available to them in case of any violation of their rights. By raising awareness and sensitizing people to the needs and realities of transgender individuals, these programs can help reduce discrimination and prejudice against them. They can also promote inclusivity and diversity in society, creating a more accepting and respectful environment for all individuals, regardless of their gender identity or expression.
4. **Access to Education:** Transgender students face numerous barriers when it comes to accessing education. These barriers include discriminatory policies, lack of understanding and support from school officials, and financial difficulties. To address these issues, it is important to provide transgender students with targeted support services, such as counselling and mentorship programs. Additionally, scholarships and financial aid can help alleviate the financial burden of pursuing higher education. By creating an inclusive and supportive environment for transgender students, we can ensure that they have the resources and opportunities necessary to succeed academically and achieve their full potential.
5. **Healthcare Access:** It is imperative to analyse the healthcare obstacles encountered by transgender individuals and make policies that guarantee their access to gender-affirming healthcare, encompassing hormone therapy and gender-affirming surgeries. Launching awareness initiatives on transgender health concerns and endorsing mental health support services is crucial. The provision of these healthcare services is vital for fostering the overall well-being and inclusion of transgender individuals.

6. **CENSUS:** Accurate data collection is crucial for developing effective policies and guidelines to address the unique needs and challenges faced by the transgender community. Therefore, it is imperative that an independent census is conducted to gather comprehensive information on the demographics, socio-economic status, healthcare needs, and other relevant factors affecting the well-being of transgender individuals. This data can help policymakers, healthcare providers, and other stakeholders to design and implement programs that promote equality, protect rights, and improve the quality of life for the transgender community.

In conclusion, the principle of social justice is a guiding force in the fight for transgender rights in India. Although the country has made significant strides in this area, there is still much work to be done to eradicate gender discrimination and create a society that is inclusive and accepting of transgender individuals. This research paper highlights the importance of sustained efforts in education, advocacy, and legal reforms to ensure that the principles of social justice are fully realized for the transgender community in India. The judiciary, governmental and non-governmental organizations, and transgender activists are all playing a significant role in addressing these issues and promoting social inclusion. However, changing societal attitudes and creating an environment in which transgender people can enjoy their full rights and participate in society equally is an ongoing challenge that requires continuous efforts. To address the current situation, one effective strategy is the provision of reservations (preferably horizontal reservations) to ensure that transgender individuals have equal opportunities for education and public employment. It is crucial for the legislature to take an active role in providing these reservations, which will help guarantee social justice and equality of opportunity for the transgender community in India. While some states have already taken steps to improve the position of the transgender community, there is still a long way to go. To create a more inclusive society, there must be a concerted effort to provide adequate reservations in educational institutions and public employment. This will help create a more welcoming environment for transgender individuals and enable them to participate in society on an equal footing. Only through sustained, collaborative efforts can we ensure that the transgender community in India enjoys their full rights and lives with dignity.

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