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Ruptures and resurgences: Marking the spatiality of transgender identity in India since the enactment of Transgender Persons Act 2019

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Transgender groups in India constitute an indigenous community with a rich and vivid culture and history. However, it is unfortunate that under the hegemonic influence of heteronormative traditions, the democratic inclusion and accommodation of transgender groups could never take place. This exclusion and neglect have recently been challenged through the activism of several groups, which has given rise to a new chapter in the democratic unfolding in India. This article attempts to evaluate the social activism of transgender groups on two planes. One plane attempts to evaluate it in terms of the uniqueness of an indigenous social movement and the areas that distinguish it from other social movements. It is interesting to note that what started as a purely identity-based social movement has now acquired dimensions of redistributive justice. The second plane attempts to evaluate the social activism of transgender groups in terms of the achievements and advances made by the movement on the social and political fronts. This evaluation is necessary in order to appraise the trajectory of the politics of transgender groups, which could foretell the direction of the activism and help in understanding the future scope and direction. The article takes up three arguments in the context of the legal framework put in effect by the state. The first point of discussion is the effectiveness of the transgender ID provided by the Transgender Persons Act and the possible challenges and loopholes related to it. While the state provides legal recognition through the issuance of the transgender ID card, it only remains a symbolic marker as the *de facto* identity remains unchanged, unless changed by the person themselves. The second point of discussion is the emerging rift amongst transgender groups with respect to the reforms introduced recently. This rift has a tendency to pull in the opposite direction, causing tensions. The final aspect of my discussion relates to the subsequent challenges that emerge from the legal recognition of transgender persons. These challenges touch upon the various aspects of legal, political, social, and economic policymaking and are inevitable for understanding the concerns of transgender persons in India.

KEYWORDS

transgender, social activism, heteronormative, recognition, Garima Greh, exclusion, democratic

Introduction

Transgender groups in India constitute an indigenous community with a rich and vivid culture and history [AIDS Bhedbhav Virodhi Andolan, 1991; Bubb, 2009; National Legal Services Authority (NALSA) Vs. Union of India, 2014; Agarwal, 2017]. However, it is a sad reality that under the hegemonic influence of heteronormative traditions, the democratic inclusion of transgender groups could not take place in a satisfactory manner. While it is a common observation that transgender groups have been subordinated and outcasted from conventional society across the world (ILGA, 2020), the identity and interests of transgender groups take a special shape and position in Indian society. Due to the distinct history of transgender groups in different parts of India, transgender groups have emerged as distinctive cultural groups (AIDS Bhedbhav Virodhi Andolan, 1991; Srivastava Committee Report, 2014). This nuanced spatiality of transgender groups, in India, offers a perspective on the politics of indigeneity, which shares common grounds of concern for justice but becomes distinct when it comes to the expression and trajectory of activism. The politics of transgender groups showcases an instance of what could be referred to as “out of bounds” politics, wherein a group partakes in deliberative processes from outside the conventional normative framework (Gupta, 2022b). This special spatiality becomes a ground for distinction for the transgender groups and offers a scope for fresh perspectives on our understanding of the politics of indigeneity. The politics of transgender groups presents a dual response when read in terms of politics of indigeneity: first, it encapsulates the concerns of indigeneity through its omnipresent status in society, thus marking a claim that society cannot shun those who stand apart from the heteronormative constructs, and second, it envisions a break in the lineage of heteronormative practices which works to arrest the existence of transgender groups. In this manner, the politics of transgender groups marks a continuity as well as a break from the past and present.

The politics of transgender rights raises several questions to the conventional framework of understanding. For instance, while the democratic tradition, in India, declares prohibition of discrimination on the ground of “religion, race, caste, sex, or place of birth” (The Constitution of India, 1950, Art. 15), the underlying understanding of the term “sex” appears to be carved in heteronormative standards, which simply outcasts transgender identities (Agarwal, 2017). Such an instance puts the legal codes in a self-contradictory situation, which raises further questions about the effectiveness and applicability of contemporary laws. The politics of transgender groups, in this sense, acts as a litmus test for the political rationality of our democratic traditions and forces a process of deliberation over some of the foundational aspects of our polity.

The activism of transgender groups in India also adds new vistas to the political paradigm. While the conventional

issues of contestation, such as caste or class, largely ponder the concerns of redistribution and power sharing, the activism by transgender groups brings to the fore a larger picture wherein the state and civil society are brought to deliberate over the foundational aspects of political systems and procedures. This deliberation and pondering over the meaning and scope of political traditions hold the scope for the further unfolding of democratic discourses. Through their claims toward recognition and inclusion, the politics of transgender groups has initiated turbulence within the legal-political environment in India, which has started to produce several outcomes. In this manner, the political activism of transgender groups entails reimagining the democratic traditions in India by linking the rich past with a progressive present. This reimagination accords democratic societies with the characteristics of an “imagined community” that exists and continues to evolve harmoniously through the aspirations and understanding of its people (Anderson, 2006).

The status of transgender groups as an indigenous community often faces an attempt to refute their indigenous status by heteronormative forces. However, this is not a surprise as such a problem is common to all indigenous communities facing the threats of political survival. The claims of transgender groups as indigenous sections of society spring from their being equal members of the democratic polity. Like several other groups of indigenous communities, the transgender groups also share a history of subordination and neglect [National Legal Services Authority (NALSA) Vs. Union of India, 2014; Srivastava Committee Report, 2014]. However, such neglect and subordination are on account of their sexuality and self-perceived identity, rather than any tangible criteria. Thus, the parameters of discrimination and outcaste emerge from spaces that fall in the gray areas of the public–private divide (Mahajan and Reifeld, 2003; Li et al., 2017). A perusal of the politics of transgender groups could offer scope for examining the hitherto unexplored areas of political discourse, which could lead to a broadening of the field of enquiry. In this sense, the politics of transgender groups emerge as a distinct subaltern space having the potential to impact and broaden the scope of political discourse.

In what follows, some of the challenges that have emerged, or are likely to emerge, in the process of democratic inclusion of transgender groups in India are discussed. It is interesting to note that although there have been several demands by different transgender groups for their rights and entitlements, the momentum of the movement has gained great force in the twenty-first century. Due to the developments such as the National Legal Services vs. Union of India case (NALSA case),¹ the claims of transgender groups have become a subject

1 NALSA (National Legal Services Authority of India) is a legal body constituted by the Indian state ‘to provide free legal services to the weaker sections of the society...’ NALSA case judgement is the popular name given to the NALSA Vs Union of India case (AIR 2014 SC 1863). It is

of deliberation for the state and civil society. This sudden pondering over the concerns of transgender groups as equal and indigenous groups in the Indian democratic kaleidoscope has added a new aspect to the already vibrant Indian democracy.

The process of reform presents itself in the form of a continuum. The history of transgender activism in India goes back several decades. However, this article's concern is not to indulge in the historiography of transgender activism in India but to assess its present and future trajectories. Thus, this discussion has intentionally avoided the historical details of transgender activism in India. Thus, the starting point of this article's enquiry is the post-NALSA period. The NALSA judgement is celebrated as a watershed in the course of transgender rights in India. It also marks the commencement of an official engagement of the Indian state with the concerns of transgender groups in India. This increasing role of the Indian state is to become a significant factor in the trajectory of transgender groups in India. The culmination of the discussions and observations of the NALSA judgement took place, to some extent, through the [Transgender Persons \(Protection of Rights\) Act \(2019\)](#), which forms a major context of this discussion. This article will also make an attempt to highlight the lapses and loopholes in the terrain built by the Indian state for the protection of the interest of transgender groups. These loopholes in the structures often challenge the purpose of the reforms and raise questions about the effectiveness of the whole process.

The reasons for choosing transgender activism as a peculiar case of politics of indigeneity in India are also discussed. Transgender groups enjoy a unique spatiality within the Indian democratic kaleidoscope. Given the regional variations in culture and practices amongst transgender groups ([Srivastava Committee Report, 2014](#)), a generalized conception of the transgender identity becomes fragile and inconclusive. This aspect becomes an interesting part of transgender groups as the uniting factor of the transgender identity is the history of neglect and suppression, rather than a cultural similarity. Thus, the politics of indigeneity of transgender groups emerge from their subordinated identity, which narrates the history of their suppression and outcaste. However, such an inconclusive identity becomes problematic for a dynamic democracy like India. Baffled by the colliding interpretations of their past and present, the state appears to have taken up the responsibility to define and safeguard the transgender identity. Interestingly, there are aspects of the role of the state that sometimes act to reinforce the subordination of transgender groups and

hailed as one of the most prominent decisions concerning the rights and entitlements of the transgender community in India. The judgement paved the way for several legal-political and socio-economic changes, which ultimately led to the enactment of the [Transgender Persons Act of 2019](#) [for more details, see [Transgender Persons \(Protection of Rights\) Act, 2019](#); [Srivastava Committee Report, 2014](#); [National Legal Services Authority, 2022](#)].

sometimes act to protect their distinct status and identity. This article attempts to discuss some of these colliding aspects related to transgender groups.

Methodology

The methodology of the article entails the analytical reading of the existing literature on transgender groups and legislative and judicial records pertaining to the social movement of transgender groups in India. A reading of the NALSA judgement, the [Transgender Persons Act, 2019](#), and the subsequent initiative of *Garima Greh*² has led to interesting insights into the dynamics of the activism and the challenges thereof. Another important source of information has been the reports published by several agencies on issues concerning transgender groups and gender identity. In this regard, reports issued by the International Lesbian and Gay Association (ILGA) and [UNDP \(2016\)](#) were found to be particularly useful as the reports helped contrast the state of affairs in India with that of the world. A reference to the framework set under the Yogyakarta Principles [[International Commission of Jurists \(ICJ\), 2006, 2017](#)] helped in understanding and contrasting the state of affairs in India with that in the international platforms.

At the local level, a report published by the National AIDS Control Organization ([NACO, 2020](#)) and another by the [AIDS Bhedbhav Virodhi Andolan \(1991\)](#) helped the understanding of how transgender groups are portrayed as a deviant group that is often tagged as “high-risk group.”

The findings of the study are based on empirical observations made during a direct engagement with the Lakshya Trust of Vadodara, which also manages the Garima Greh center in Vadodara ([National Institute of Social Defence, 2020](#); [The Lakshya Trust, 2021](#)). During 2021 and 2022, interviews and discussions were conducted with Sylvester Merchant, one of the trustees of the Lakshya Trust. The findings on the challenges pertaining to the issuance of transgender identity cards were based on two interviews with the caretaker and the in-charge of the Garima Greh center conducted from October–December 2021. A total of two rounds of interviews were also conducted with the in-house doctor at the Garima Greh center and the in-charge at the Samarth Clinic.³ The interviews were preceded by a visit to the Garima Greh center

2 *Garima Greh* (English translation: House of Dignity) is an initiative by the Indian state to provide shelter, livelihood, and social security to those transgender persons who face outcaste and want to become self-dependent. The main criterion of joining the *Garima Greh* is that a person should have a trans-identity and not indulge in sex work or beggary. Details of the *Garima Greh* project and rules are given in a complete dossier (see [National Institute of Social Defence, 2020](#); [PIB Delhi, 2020](#)).

3 Samarth Clinic is a special medical centre for creating awareness about HIV/AIDS and other issues related to sexuality. It specifically caters

on three occasions for general interaction with the residents and other visitors. An informal conversation with three of the residents further helped the understanding of the challenges faced by transgender individuals.⁴

There is also a shortcoming in this research, which otherwise could have helped in understanding the dynamics between the pro-reform groups and the ghettoized communities. This shortcoming was the inability to reach out to the traditional groups of transgender persons in India who are traditionally referred to as “*hijra*.”⁵ The field experience suggested that these groups were generally delusional toward the state programs that restrain beggary and sex work. This attitude might be due to the belief that the heteronormative bias is too strong to be broken by mere policy reforms. The information about such groups was mainly collected through the interview with the in-charge of the Garima Greh center who remained in close contact with such groups as well.

The reading of the literature and interviews with different stakeholders provided several observations and ideas, which should be examined for facts and accuracy. In this regard, an important tool used to access public records was the Right to Information Act (RTI),⁶ which was used extensively to gather information on different aspects of transgender issues. A total of 23 applications were lodged under the provisions of the RTI Act to various public institutions. The main questions asked were related to the specific provisions, schemes, or safeguards that were available for transgender individuals. Interestingly, 12 of 23 public institutions gave a blank reply with a comment that no such information was available. An interesting data set was shared by five public sector banks, showing the number of individual accounts opened in the name of transgender persons. The data helped observe the impact of a major judgement pertaining to transgender groups (NALSA, 2014) and the actual enactment of the law on transgender persons. The use of data from the RTI applications helped reinforce the arguments in this article and make several inferences.

to the needs of the transgender population in Vadodara and is managed by the Lakshya Trust of Vadodara (see the [The Lakshya Trust, 2021](#)).

4 Names of the Lakshya Trust officials and Garima Greh residents have been kept confidential to maintain confidentiality and respect their privacy.

5 Hijra is a slang used to refer to the traditional transgender groups who are involved in acts of begging and blessing. They live in a closed ghettoized community which is often located at the fringes of the mainstream. Different hijra groups follow different cultural practices and are generally led by a leader [see [Srivastava Committee Report, 2014](#); [National Legal Services Authority \(NALSA\) Vs. Union of India, 2014](#); [The Lakshya Trust, 2021](#)].

6 The Right to Information Act 2005 allows any resident to demand information from the state institutions and public bodies (see [The Right to Information Act 22, 2005](#)).

Major questions

The discussion in this article is spread around three broad arguments. These arguments seek to explore and identify the areas that create difficulties for the reconciliation of transgender activism with the unfolding of democratic reforms in India. The first challenge questions the logic of having a separate transgender identity card without keeping symmetry amongst all other identity documents. The field experience and interviews revealed the fact that the transgender identity card is often issued as an appendage alone, without marking a corresponding change in other documents. Thus, many transgender individuals carry a transgender identity card along with the conventional heteronormative identity document. The process of changing the gender identity in other documents is cumbersome, requiring special effort. This becomes a serious lapse in the process of gender identity change. As a result, while the Indian state provides legal recognition through the issuance of the transgender ID card, it only remains a symbolic marker as the *de facto* identity remains unchanged unless changed by the person themselves.

The second major challenge to the social movement of transgender groups emerges from a rift within the transgender community. This rift exists between the pro-reform section and the ghettoized groups,⁷ which are involved in beggary and sex work. This difference becomes a major challenge for the social movement as it pulls in opposite directions and produces counter-productive results. The field experiences revealed interesting observations showing resistance to several of the steps taken for the rehabilitation and inclusion of transgender groups. The result of this difference appears to have given wind to parallel activism by transgender groups. This internal tussle within transgender groups is important to address as it often translates into a debate over the indigeneity of the transgender identity.

The third and most urgent challenge relates to the set of claims and entitlements that society owes to transgender persons. With the progressive inclusion of transgender persons, the state and society have initiated deliberation over the concerns of redistributive justice, which has been hitherto denied to transgender groups. These sets of redistributive rights range from the right to family to laws of inheritance. Interestingly, the Indian state, which now shows a benevolent inclination toward transgender groups, is still ignorant and silent when it comes to such rights.

7 I have used the term “ghettoized transgender groups” to refer to the section of transgender groups involved in the acts of beggary. Such groups are often organized around local leaders who have pre-defined areas where they perform beggary and other ceremonial activities. These groups are often referred to by various slang, such as *hijra*. The use of the term ghettoized transgender groups is preferred as it shows their stereotyped and neglected spatiality in society, without making a normative claim on their sexuality.

Background

The issue of transgender rights and activism remains an underexplored area in Indian democracy. While there are several indigenous groups claiming their rights and dues from the state, the rise of transgender activism has remained slow and suppressed. This suppressed activism of transgender groups is largely on account of the heteronormative ideals, which often suppress any signs of alternate sexualities in society. Transgender groups occupy a position that is contrary to that taken by the heteronormative paradigm. As a result, the transgender identity is always portrayed as the deviant outgrowth of civilization, which needs to be “cured.” This portrayal of transgender groups could be understood in terms of their “coerced invisibility” (Gupta, 2022b) which is a covert but effective process of disabling their democratic inclusion. The transgender identity has remained a victim of ghettoization and general backwardness on parameters of education, employment, and socio-political inclusion [National Legal Services Authority (NALSA) Vs. Union of India, 2014; Srivastava Committee Report, 2014].

However, there has been some commotion in the political rungs by transgender groups claiming their fundamental rights and entitlements. The demand for justice and democratic inclusion of transgender groups have been raised both at the institutional level of the state and the relatively autonomous arenas of civil society. Both the democratic appeal of the demands by transgender groups and the irrefutability of their claims have resulted in a process of reform, which is gradually unfolding. While the quest for democratic justice is far from achieved, the consciousness of the Indian state and the democratic culture has certainly taken cognizance of the transgender community. This acknowledgment of the valid claims of the transgender community has resulted in a number of reforms aimed at facilitating the democratic inclusion of transgender groups.

India celebrated a major milestone in the form of the enactment of the *Transgender Persons (Protection of Rights) Act (2019)*. Through this act, India became one of the countries that legally recognize transgender identity and provide a legal framework for a change in gender identity (ILGA, 2020, p. 74). However, such recognition also raises the question of whether legal recognition of the transgender identity makes it contra-distinct to conventional identities such as caste and class. The political recognition granted by the Indian state to transgender individuals is an advanced step in securing the interest of transgender groups in India. Through this proactive approach, the Indian state becomes an important stakeholder in the social activism of transgender groups.

In what follows, this article to discusses and evaluates the social activism of transgender groups in India, which has seen a sharp rise in the last decade. There are two major planes on which this article evaluates the social activism of transgender

groups: one plane attempts to evaluate the dynamics of identity politics, which has come into effect after the *Transgender Persons Act of 2019*. The deliberations over the issues of transgender identity have raised several issues pertaining to the nature and scope of identity politics and politics of recognition (Fraser, 1997) in India. The involvement of the state as a major stakeholder in defining the social identity gives this social movement a unique angle. The second plane explored in this article relates to the challenges and roadblocks faced by transgender groups in terms of internal tussles. These conflicts often translate into a confrontation between the democratically progressive groups and the conventional and ghettoized groups. A major challenge to transgender activism emerges from amongst transgender groups in the form of resistance to the process of change. An evaluation of such confrontation and resistance becomes all the more important in order to appraise the trajectory of the movement and its impact on the dynamics of democracy in India.

The democratic unfolding of the Indian political system is indeed leading to a matured understanding of issues of rights and justice (Gupta, 2022a). The judicial pronouncements on the issue of transgender rights have been instrumental in paving a better understanding of such issues. Beginning with the celebrated *NALSA Judgement (2014)*, there has been an awakening of individuality and self-expression. The NALSA judgement clearly recognized the fact that transgender groups have been denied their fundamental rights and that the discrimination on the basis of sexual orientation and gender identity accounts for an infringement of fundamental rights under Article 14, Article 15, Article 19(1), and, most importantly, Article 21 of the Indian Constitution⁸ [National Legal Services Authority (NALSA) Vs. Union of India, 2014, pp. 70–76]. The judiciary also accepted the fact that transgender groups are an indigenous part of society and have been suppressed and dominated by the heteronormative traditions of society.

The NALSA judgement also highlighted the distinction between gender and biological attributes and accepted that gender identity has more to it than just biological markers. It recognized the fact that gender identity is more a function of “one’s self image and deep psychological or emotional sense of sexual identity and character” (p. 74). This distinction between biological features and gender identity has been ignored and sidelined by the heteronormative tradition, which has led to several stereotypes against transgender persons (Butler, 2011). The court even recognized that transgender groups have been stereotyped as a “criminal tribe” ever since the

⁸ Article 14—Equality before Law and Equal Protection of Law; Article 15—Discrimination on the grounds of religion, race, caste, sex, or place of birth; Article 19(1)—Right to Freedom of speech and expression; Article 21—Right to Life and Personal Freedom (see *The Constitution of India, 1950*).

colonial period, and this has led to a general backwardness amongst the transgender communities in India [National Legal Services Authority (NALSA) Vs. Union of India, 2014, p. 13–14]. Such portrayal of the transgender community reminds one of the discrimination practiced against other indigenous communities. For instance, the tribal groups in India and the indigenous population in America were often stereotyped and subjugated due to their indigeneity and differences from the “mainstream” culture.

The insights of the NALSA judgement were further broadened in the *Navtej Singh Johar vs. Union of India* (2018), wherein the Supreme Court dwelled upon concepts such as “constitutional morality” to propose a correction to the otherwise heteronormative society (p. 74). These debates over the interpretation of constitutional morality and democratic rights open up new chapters of democratic reforms when studied in the context of groups, such as transgender.

The culmination of these judicial pronouncements took place in the form of the *Transgender Persons (Protection of Rights) Act* (2019), which states its goal as “to provide for protection of rights of transgender persons and their welfare...” (p. 1). The act officially accepts the diversity and variations within transgender groups and allows some degree of fluidity in the definition of who is transgender [Chapter (1)(2)(k)]. In terms of institutional arrangements, the act provides for a National Council for Transgender Persons to look after the matters concerning transgender groups [Chapter 7(17)].

The Transgender Persons Act, 2019 provides a framework for allowing transgender persons to officially acquire a transgender identity card.⁹ It also provides for a set of rights for such persons to eliminate institutional harassment and stereotypes [Chapter 3(4–7)]. The state has further taken initiatives under the *Garima Greh* project to facilitate positive rehabilitation and empowerment of transgender individuals (National Institute of Social Defence, 2020; PIB Delhi, 2020). The strategic planning of the *Garima Greh* project aims to dismantle the stereotype of the transgender community and ensure their economic and socio-political inclusion. Such projects also become the linkage between institutional politics and civil society activism and ensure that the democratic processes remain deliberative and inclusive of all groups and individuals.

The pilot project of the *Garima Greh* center is being implemented by the Lakshya Trust of Vadodara with support from the state and represents a one-of-a-kind arrangement for addressing the issues of transgender persons (PIB Delhi, 2020). The trajectory taken by the collaborative effort of the state and the civil society is expected to proceed positively, given the

⁹ Interestingly, no such special gender identity document is to be an issue for any cis-male or cis-female. The conception of a distinct transgender identity certificate might have been done as a bridge between the trans identity and the conventional identity but its purpose is often confusing.

affirmative stance of both the civil society organizations like the Lakshya Trust and the state. This trajectory has already begun to show a positive move through an inclination toward a further extension of such projects of rehabilitation and inclusion of other groups of alternate sexualities (The Hindu, 2021).

An interesting instance of the inclusion of transgender groups could also be found through an enquiry with the banking sector, which showed some quantifiable data. On 23 April 2015, the Reserve Bank of India (RBI) had directed, pursuant to the NALSA judgement, that all banks and financial institutions are required to include the category of “third gender” in all forms and documents requiring gender classification (*Rights of Transgender Persons—Changes in Bank Forms/Applications etc*, 2015). Due to this decision, the category of transgender persons suddenly became visible and acceptable to the Indian banking sector. It is interesting to observe, from the data shared by five public sector banks (PSBs) under provisions of the RTI, that while only 47,312 accounts were opened in the name of transgender persons by four PSBs during 2015–2016, the number increased by 2.38 times in 2019–2020 to 112,892 accounts of transgender persons in five PSBs.¹⁰ The contrast between 2015–2016 and 2019–2020 shows the impact of major developments in areas concerning transgender groups. While the NALSA judgement of 2014 and the subsequent decision by the RBI in 2015 welcomed the separate identity of transgender individuals and groups, the Transgender Persons Act, 2019 gave legal recognition and protection to the transgender identity. This partly explains the manifold increase in the number of transgender persons having accounts. Although data on bank accounts of transgender persons are not reflective of the whole community, the data still indicate the increasing visibility of transgender groups in society.

Major hurdles

A major problem with regard to the question of transgender identity and politics of indigeneity relates to the tendency to identify transgender identity with certain parameters, which are largely a heteronormative construct and made to demean transgender persons. This presumptive framework of a heteronormative view of the transgender identity made it difficult to excavate the transgender identity from the stereotypes of shame and outcaste. This was a major challenge put before the Indian state, which was, fortunately, handled with a fair degree of caution. The expert group on transgender persons (*Srivastava Committee Report*, 2014) ensured that the indigenous aspects of transgender groups were given due respect and consideration while deliberating upon the concerns of transgender groups.

¹⁰ Data based on different RTI replies received from Public Sector Banks vide letter Ref ID: OCPIO/CO/535/969/2020; PBBU/OPS/RTI/55; CANBK/R/T/20/00136; AX1/CPPIO/RTI/2020-21/20348; HO/LEGAL/112/RTI/337/312.

As a result, the resultant statute on transgender persons ensured to link the basis of the transgender identity to a self-perceived gender identity, rather than an ethnic or interest-based group [Transgender Persons (Protection of Rights) Act, 2019]. However, there are still some areas of concern that need to be addressed. Being accustomed to the presumed framework of heteronormativity, it is a daunting task to reform and adapt to the changing spatiality of transgender groups. These challenges permeate through the system as well as the subject and often create “riddles” in the task of restitution of the concerns of transgender groups in India (Gupta, 2022a). It is a riddled exercise because every step on this trajectory is perplexed by the framework of heteronormative assumptions. Thus, the task of addressing the concerns of transgender groups would entail a continuous engagement with the foundational principles of the democratic order.

It is interesting to note that the Indian state, even after the enactment of the Transgender Persons (Protection of Rights) Act (2019), appears to be struggling to ensure adequate recognition and inclusion of transgender groups. Transgender groups are still “out of bounds” (Gupta, 2022b) when it comes to their inclusion in the formal economy. This invisible or suppressed status was confirmed through official replies received from several public institutions under the provisions of the Right to Information Act (RTI). A number of public institutions related to the economic and social empowerment sector were asked about the special provision for transgender groups and individuals and about the availability of data on the number of transgender beneficiaries of the services imparted by these public institutions. The most common reply received in this regard was “no such data available” and “the information sought does not fall under the purview of this office.”¹¹

The trajectory of reform pursued by the Indian state might have several unintended consequences, which might result in the suppressed status of transgender groups. The major hurdles explored here focus upon three main areas, each of which touches a different aspect of the social movement of transgender groups.

Effectiveness of the transgender ID

A mere legal recognition does not make sense unless it is widely recognized and accepted. The Transgender Persons Act, 2019 attempts to recognize and safeguard a separate

transgender identity to the persons willing to obtain the same. An elaborate framework has been put into effect in this regard.¹² However, the Act does not provide for any mechanism for a symmetrical change in all other identity documents, such as Aadhar, Passport, Voter ID, and other officially valid documents (OVDs). This becomes a problematic issue. During the interviews with the residents of the Garima Greh center,¹³ maintained by the Lakshya Trust, it was realized that the transgender identity document is issued, after all due diligence and formalities, in the form of a certificate-cum-identity card without marking the necessary changes in the other identity documents of the person. As a result, several of the transgender persons informed that they carry their transgender identity card in parallel with the conventional heteronormative identity documents. This parallel gender identity allows the individuals to play different roles in different contexts. Thus, the practice of parallel gender identities actualizes the idea of gender identity as “a performative act” (Foucault, 1978; Butler, 2004). Such arrangement also raises a question whether the Act actually marks a disturbance or continuity in the spatiality of transgender groups. Apparently, the Act attempts to broaden the understanding of the transgender identity by breaking the stereotypes of beggary and prostitution.

The purpose behind the legal reforms is to facilitate a change in the spatiality of transgender persons by making the transgender identity a self-perceived identity, rather than a stereotyped group [National Legal Services Authority (NALSA) Vs. Union of India, 2014; Transgender Persons (Protection of Rights) Act, 2019]. However, the process of gender identity reformation remains only a formality, unless it translates into a comprehensive acceptance of the person. By leaving unchanged the other identity documents of a transgender person, the existing legal framework not only creates confusion but also defeats the purpose of issuing such transgender identity documents. Several of the interviewees also stated that while it is legally possible to update other identity documents on the basis of the transgender ID, it would require significant time and effort. As a result, many individuals do not bother to effect a change in other documents. While most of the persons view this contradictory situation as a trivial matter, it creates a major issue when viewed through its multifarious repercussions.

Due to the variation in the gender identity documents, one's gender identity becomes dependent on what identity document is produced in a given moment. This gives a false impression

11 RTI applications filed to various public offices online and reply thereof received through official letter bearing reference number: IIFCL/RTI/2020-21/31/10898; F.No.25/25/181/2020-IF-II of DoFS; IFCI/RTI/2020/861-200918003; EXIM/RTI/2020/673; National Skill Development Corporation letter dated 15.09.2020; No. 7-28/2020-JSS(MSDE); No. SD-22/9/2019-IC (MSDE); No.18016/1/2020-Estt. (L) (DoPT); IRDAI/R/E/20/00067/1.

12 The Act provides for a legal procedure through which an individual could get a transgender identity issued as per provisions given under Chapter 3(5) and (7) of the Act [for more details, see Transgender Persons (Protection of Rights) Act, 2019].

13 Names of the interviewees were kept confidential to respect the privacy of the persons. The said interviews were carried out in the Garima Greh situated at Mujmahuda, Vadodara (India).

of liquidity in identity when it is actually a suppression of transgender identity under heteronormative ideals. Given lengthy procedures and complications involved thereof, in most cases, individuals generally do not continue with modification of gender identity in other OVDs. An ILGA report on the mapping of transgender groups before the law also observed this lacunae in the Indian political system (ILGA, 2020). The lapses in the recognition of transgender identity also lead to a practice of dual lifestyle amongst transgender persons. When the transgender identity document is issued only as a solitary identity, without an affirming change in other documents, transgender individuals often have to abide by heteronormative norms in public spaces. The transgender identity, in such cases, manifests itself only in ghettos or in instances of redistributive gains like concessions and subsidies. This dual lifestyle does no good to transgender persons and only continues the heteronormative domination. An interviewee from the shelter home for transgender persons (Garima Greh) shared his views in this regard as follows:

“Once we get the transgender identity certificate, we can claim the subsidy and other benefits that are given to the transgender persons (such as subsidized railway travel). But then, why to go through the whole process of changing all other documents. The process to change the gender details in various identity documents often result in additional harassment which we want to avoid.”¹⁴

The aforementioned experience of a transgender person shows a willingness to take initiative for accepting the transgender identity in public; however, it also shows the hesitation and apprehension to attempt a wholesome change in gender identity documents. Such hesitation and apprehension might arise due to the fear of social pressure and cultural stereotypes but certainly exists due to a reluctance to engage with the lengthy bureaucratic procedures.¹⁵ Often, such confusion regarding the transgender identity creates a sense of identity crisis, discouraging transgender persons from accepting their identity. This results in suppression of identity by transgender persons. When transgender individuals suppress their identity and impose upon themselves the heteronormative ideals, doubts emerge over the validity of information available with the public institutions. This also raises some doubts over the information received under the RTI Act and becomes a key hurdle in this study.

14 Interview with Dr. Ashok (name changed) of Garima Greh, who is the resident doctor at Garima Greh, and has shared his personal experience of getting the transgender identity issued.

15 The general process of change in gender identity in the officially valid documents (OVDs) involves multiple visits to the respective offices for an updation of records and preparation of other relevant supporting documents for legal formalities. While it is easier to get a new identity document issued, the updation of an existing document is a complex task.

Nevertheless, the increase in transgender individuals in India on account of legal reforms cannot be undermined. This change in the democratic traditions in India due to this legal reform becomes evident through the data on financial inclusion of transgender persons. The sudden spurt in the number of bank accounts maintained by transgender persons post-NALSA and Transgender Persons Act was due to the acceptance facilitated by the state.¹⁶ A similar spurt in the number of transgender persons could be expected through the launch of initiatives such as the Garima Greh and the National Portal for Transgender Persons (PIB Delhi, 2020). However, an important question that remains unanswered and unresolved in this regard is how far does the issuance of transgender identity documents meet the challenges of coerced invisibility (Gupta, 2022b) and exclusion of the transgender population. It appears that without any official arrangement for synchronizing the different identity documents of a person, the statistics on transgender population would remain captive of heteronormative ideals and generalizing trends.¹⁷

The rift amongst transgender groups

A second major challenge that is emerging from the activism and deliberations over the concerns of transgender groups in India relates to the rift amongst transgender groups. This rift exists between the pro-reform sections and the ghettoized groups, which are often involved in beggary and sex work. In the context of the proactive steps taken to address the concerns of transgender groups, the fissure within the transgender community pulls in opposite directions, thus producing counter-productive results.

Interviews with the transgender health center staff revealed this situation and the challenges thereof. The health centers try to keep vigil over the status of transgender groups around them. This might also be due to the stereotype of high-risk groups (HRGs) associated with transgender and gay communities.¹⁸ Such stereotyped references could be easily observed in institutional reports published by different organizations

16 Data based on different RTI replies received from Public Sector Banks vide letter Ref ID: OCPIO/CO/535/969/2020; PBBU/OPS/RTI/55; CANBK/R/T/20/00136; AX1/CPIO/RTI/2020-21/20348; HO/LEGAL/112/RTI/337/312.

17 These generalizing trends emerge from within the heteronormative conventions, such as assuming the gender identity on the basis of conventional stereotypes relating to names or body language. Butler offers an interesting analysis of this convention of stereotypes (see Butler, 1999, 2004).

18 This high-risk group stereotype is generally due to the higher prevalence of sexually transmitted diseases (including HIV/AIDS) among the transgender groups, which are often due to their indulgence in sex work.

(AIDS Bhedbhav Virodhi Andolan, 1991; Srivastava Committee Report, 2014; Agarwal, 2017; NACO, 2020). In order to curb such stereotypes and redefine the transgender identity, the guidelines for the Garima Greh center clearly states that the facility of a care home for transgender persons is available for such transgender persons who are not involved in the act of beggary and sex work (National Institute of Social Defence, 2020; PIB Delhi, 2020). However, the inception of such care homes for transgender persons is seen as a threat and challenge by the ghettoized transgender groups. As a result, there are two trajectories of response to the initiatives taken by the government and the NGOs such as the Lakshya Trust. One group of transgender activists support and advocate in favor of the government initiatives, such as the Garima Greh center, while the other views it as an attempt to further suppress their means of livelihood.

An interview with field activists also shows that the two factions run in a parallel manner with minimal intervention in the affairs of each other. However, there exists an unexpressed divide in the planes on which these groups operate. An activist from the outreach program shared his views on this divide as follows:

“We do not generally intervene in the working of each other... They [ghettoized transgender groups] have their own territory and we do not intervene in what they does. They think that imparting vocational training and meager jobs would do no good in a long run [due to the prevailing stereotypes against the transgender community]... We often get distress calls from trans-persons willing to start afresh. In such cases we do intervene in an amiable manner.”¹⁹

Interestingly, the support of non-government organizations (NGOs) is equally available to both the factions, though on different lines. A limitation of this research is the inability to get in touch with ghettoized transgender groups, which otherwise could have helped understand the alternate perspective to the recent initiatives for transgender groups. However, information and insights could be garnered from the secondary data and reports.

The broader framework of the policy on transgender persons appears to be working for the benefit of such groups. The issuance of the transgender identity not only helps these groups to establish their identity but also helps them to find their spatiality amidst a heteronormative world. The fissure amongst transgender groups exists due to the differences in response to the trajectory of inclusion pursued by the state. The stance of the antagonist groups raises questions over the efficacy of programs,

such as the Garima Greh, while also raising doubts over the alleged democratic inclusion of transgender groups. The main reason behind such apprehension is the deeply-rooted culture of heteronormativity, which enforces several stereotypes and an “invisible” status to transgender groups (Gupta, 2022b).

This aspect also raises another dimension of the indigenous identity of transgender groups, which shows the historical stereotype of transgender groups in India. The general conception of a transgender identity links it with specific cultural groups of transgender persons, like hijra, avani, jogappa, and kinnar (National Legal Services Authority (NALSA) Vs. Union of India, 2014; Srivastava Committee Report, 2014). This is largely due to the heteronormative domination and presumptive framework, which dominates the understanding and interpretation. In this sense, the Act and the recent steps mark a break from the stereotypical treatment and perspective of what constitutes a trans-identity.

Legal issues and challenges

The issues concerning the transgender population do not end with mere legal recognition. As Fraser (1997) would argue, every issue in the politics of recognition has some aspects of redistributive justice (p. 15). The same goes for the social activism of transgender groups. The recognition of the transgender identity is only one aspect of the social movement. The larger picture presents more complex challenges before the state and transgender groups. While the terrain of such challenges is wide, a few of such instances are discussed here.

The logic of the Indian state, as well as transgender groups in deliberating upon the concerns of the latter, appears to believe in the primacy of the recognitive aspects of politics before the redistributive ones. However, it is difficult to explore the two aspects of the concerns of transgender groups independently. The activism of transgender groups has indeed initiated the process of deliberation over the concerns of transgender persons. However, this articulation of the concerns of transgender groups also sets the ball rolling for the redistributive issues of justice. These redistributive issues have been latent until now but will soon begin to manifest themselves as the politics of recognition gains pace.

One such issue that rises to the fore with the recognition of the transgender identity is that of the right-to-family and laws of inheritance. When it comes to the laws on success and inheritance, the legal provisions, again, follow a heteronormative trajectory and talk in a language that is antagonistic to transgender groups. The Hindu Success Act, for instance, defines “heirs” as “any person, male or female, who is entitled to succeed to the property...” (The Hindu Succession Act, 1956, p. 643). Similarly, the language of

19 Interview with Mr. Jatin (name changed) of the Samarth Clinic, run by the Lakshya Trust in Vadodara. Mr. Jatin looks after the clinic and manages the office affairs of the project.

the Act gives a list of legal heirs in a separate schedule, which provides for a rigid gender-based description of legitimate legal heirs (pp. 653–654). Even a cursory glance at such provisions exposes the exclusion of transgender persons from the legal ambit of the Indian state. While the rights of the cis-male and cis-female heirs are now equally recognized by the Indian state, the recognition of the rights of inheritance of transgender persons is yet to be achieved. This is an illustrative instance of the redistributive claims emerging from the unfolding of politics of recognition (Fraser, 1997).

The Hindu Succession Act also clearly demarcates the gender distinction. The chapter on definitions and interpretations clarifies that “unless the context otherwise requires, words importing the masculine gender shall not be taken to include females” [Chapter 1 (2)]. The underlying heteronormative perspective becomes evident throughout the Act. This underlying heteronormativity leads to the outcaste and subordination of transgender persons. Interestingly, the Indian state, which now shows a positive inclination toward the concerns of transgender groups, is still ignorant and silent when it comes to such issues. The present framework of the law and practices shows an utter disregard for the concerns of transgender groups, thus affirming their invisible status.

As per the information shared by the Insurance Regulatory and Development Authority (IRDA), there are no specific provisions to cover the specific risks faced by transgender groups. The coverage of insurance facilities to transgender groups is subject to the heteronormative understanding of the law. As a result, transgender persons are required to affirm the heteronormative tests, which require them to affirm their gender identity clearly to be eligible to be insured or become a beneficiary.²⁰ Such conditional acceptance is violative of the human rights of transgender persons and tends to further suppress their sexuality. Such restrictive frameworks also go contrary to the internationally acclaimed Yogyakarta principles [International Commission of Jurists (ICJ), 2006, 2017]. The main problem with such a restrictive framework is that it forces a person to crystallize one's sexuality and gender identity, whereas the actual realization of sexuality and gender identity could be floating with time and space. The existing insurance norms use the technicality of affirmed gender identity to suppress transgender persons.

Similarly, a more severe instance of discrimination could be found in the rules of pension, which recognize only the heteronormative family as the ideal. While being wrapped in baffling language, the conventions of the pension rules suggest that only a heterosexual couple is entitled to claim the family pension in case of the death of the spouse.

²⁰ RTI reply from IRDA vide letter no. IRDAI/R/E/20/00067/1.

The case of a transgender couple does not appear in the rules of pension in India. In fact, the very definition of a ‘family’ is rigidly defined so as to avoid any deviance from heteronormative ideals. The present definition of a family in the pension rules and other statutes draws a definite boundary beyond, which any claims are refuted as illegitimate²¹ (Pension Rules 1972: Synopsis and Case Studies, 2020; Central Pension Rules, 2021). This not only translates into clear discrimination and injustice but also isolates transgender couples from the rest of society. The prevailing legal framework of the Indian state does not escape the terrain of the heteronormative family and idealizes it to the exclusion of other possibilities.

The task of democratic inclusion of transgender groups appears to have taken a setback due to these limitations and loopholes. Another information shared under the RTI Act by the Ministry of Skill Development and Entrepreneurship shows the dismal state of affairs when it comes to the capacity-building measures amongst transgender persons. The information shared on a number of transgender persons enrolled under its skill development program suggests only four transgender persons as enrolled during 2018–2019 and eight in 2019–2020. The data on successful placement of such enrolled candidates are further demeaning.²² In such circumstances, however, it is not the institutional framework that is at fault but the latent heteronormative presumptions that lead to the outcaste and suppression of transgender groups.

The social activism of transgender groups would definitely have a spill-over effect on the legal framework of the Indian state. This trajectory of reform would also have repercussions for the understanding of family and personal laws in India.²³ However, the evaluation of impact of such change would require a comprehensive study of the different walks of life. Here, my discussion only explores the issues of neglect of transgender groups in India from the periphery. A deeper

²¹ As per the Central Pension Rules (2021) Chapter 5, section 22 (5) “family, in relation to a Government servant means- (i) wife or wives including judicially separated wife or wives in the case of a male Government servant; (ii) husband, including judicially separated husband in the case of a female Government servant; (iii) sons...; (iv) unmarried daughters...; (v) widowed or divorced daughters...; (vi) father...; (vii) mother...; (viii) brothers below the age of eighteen years including stepbrothers; (ix) unmarried sisters and widowed sisters including stepsisters; (x) married daughters, (xi) children of a pre-deceased son”.

²² RTI reply received vide RTI ref ID: I-11012/06/2020.

²³ It is to be noted that “family” has been defined by the Transgender Person Act (2019) as a group of people related by blood or marriage or by adoption made in accordance with the law [Chapter 1(2)(c)]. While the Act has defined the meaning of the term family, it does not comment anything about the possibility of same-sex families.

introspection of the issue would reveal the multifarious dimensions of the issue, which are affected by the same underlying challenge of heteronormativity. However, the answer to such a challenge lies in a democratic way only. The redefinition and revision of our norms and perspectives would require the participation of the state, the civil society, and the individuals.

Evaluation of the transgender activism

So, what does the activism of transgender groups entail for the debates on the politics of indigeneity and democracy in India? Important inferences could be gained through Fraser's discussion on the "recognition–redistribution dilemma" (Fraser, 1997). This dilemma refers to the tussle between the politics of recognition and the politics of redistribution. This tussle is an important yardstick for evaluating the social movement of transgender groups as it interrogates the trajectory and externalities of reform being pursued. Such evaluation is necessary because an over-emphasis on a single trajectory of reform could prove to be counter-productive. Sen (1999) has advocated a capability approach to evaluate the impact and implications of the social movements. However, such an evaluation of the capability enhancement needs to be performed in a framework that is free from the limitations set by the heteronormative paradigm and set into the goals for human development.

The social activism of transgender groups involves a number of issues concerning the foundational understanding of democratic societies. The significance of transgender activism needs to be noted in the context of widening the scope of Indian democracy, which has been otherwise preoccupied with the concerns of caste and class (Agarwal, 2017). The politics of transgender groups opens up the new vistas of social activism and democratic inclusion in India. The issues of identity and individuality find nuanced expression in the social activism of transgender groups and, in doing so, gives new and revised meaning to the concepts, which have been taken for granted until now.

The social movement of transgender groups indeed attempts to connect the dots of multifarious concerns of the transgender community. These dots manifest themselves in terms of issues of identity and redistributive justice. The terrain on which the social activism of the transgender politics deliberates is underexplored and often misunderstood. Thus, it is bound to be a heuristic exercise. However, it could be argued with a fair conviction that the exploration of the claims of transgender groups is important to the discourse and the democratic traditions in India and abroad.

The nature of the social movement by transgender groups would further complicate matters as it begins to confront the other ethnic identities. With the democratic unfolding of the social movement of transgender groups, there would emerge more and more permutations and combinations of social groups and interests. The resultant image of the civil society and the public sphere would then be an organic and interactive space, which would remain subject to an ongoing process of deliberation. Lefort (1988) has described such public spaces as an "empty place," which characterizes the democratic societies of contemporary times. Reference to such an interactive model of democracy could also be found in the idea of "deliberative democracy" (Gutmann and Thomson, 2004) and "plural public spheres" (Fraser, 1997). Interestingly, these discussions on the nature of social movements and deliberative processes in a democracy also have a far-reaching impact on our understanding of the public sphere and civil society (Mahajan and Reifeld, 2003). This redefinition of our public spaces goes a long way in defining the relation of the individual to civil society and the state.

The question of the indigeneity of an identity does not arise from the historical presence of a group. Rather, the claims of indigeneity become more legitimate when a group is able to find space and accommodation in the democratic fabric of society. The case of transgender groups in India offers an excellent example of this argument. It is also instructive of the trajectory marked by a dialogue between the state, civil society, and other stakeholders. The issues of recognition and redistribution are bound to arise with every further step. The challenge, to both transgender groups and the state, lies in reconciling these claims in such a manner that it broadens the horizon of our understanding. Such a broadening of understanding should be aimed at expanding the limits set by the heteronormative paradigm and inculcating capability enhancement. Such a trajectory would not only secure the democratic inclusion of transgender groups but also reflect upon the taken-for-granted issues of society.

Author contributions

The author confirms being the sole contributor of this work and has approved it for publication.

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Conflict of interest

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