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Transgender Representation in Indian Politics: Constitutional Provisions and Social Realities

Pooja

Assistant professor, Department of Political Science

Maharani Kishori jaat Kanya Mahavidyalaya, Rohtak, Haryana, India

Abstract:

The Indian Constitution guarantees equality, liberty, and dignity to all citizens. However, the transgender community remains marginalized in political representation. This research paper analyzes the participation of the transgender community in Indian politics, the constitutional provisions, and prevailing social realities. It examines legal milestones such as the NALSA v. Union of India (2014) judgment and the Transgender Persons (Protection of Rights) Act, 2019, along with examples like Madhu Kinnar and Shabnam Mausi. The study finds that political apathy, social stigma, and structural discrimination restrict the community's political inclusion. It concludes with policy recommendations such as reservation in local bodies, awareness campaigns, and inclusive party policies.

Keywords:

Transgender, Political Representation, Indian Constitution, Social Justice, NALSA Judgment, Third Gender, Inclusive Democracy, Transgender Act 2019, Political Parties, Social Discrimination

Introduction:

India is a democratic republic founded on principles of equality, liberty, social justice, and dignity. The Constitution grants equal rights to all citizens regardless of gender, caste, religion, region, or language. Yet, for the transgender community, these rights often remain only theoretical.

The transgender community has been part of Indian society for centuries, with representation in cultural and religious texts. However, colonial-era and modern societal structures have pushed them to the margins, especially in political participation. Their lack of representation questions the inclusiveness of democracy and deepens socio-political inequality.

The Supreme Court's NALSA v. Union of India (2014) judgment granted legal recognition to transgender persons as the 'Third Gender'. While the judgment offered identity and rights, real political participation remains limited. The Transgender Persons (Protection of Rights) Act, 2019, provided some legal safeguards but lacks concrete provisions for representation.

This paper explores how a gap between constitutional promises and social realities limits political presence for trans persons. It also suggests reforms to bridge this gap and mainstream them into democratic politics.

Literature Review:

1. Legal and Constitutional Literature:

- NALSA v. Union of India (2014):

Granted constitutional recognition to the third gender under Articles 14, 15, 16, and 21.

- Transgender Persons (Protection of Rights) Act, 2019:

Secures rights in education, healthcare, and employment but lacks enforceable provisions for political representation.

2. Socio-Scientific Studies:

- Arvind Narrain (2016), "Transgender in India: Rights and Realities":

Analyzes identity, rights, and struggles of trans persons, stressing political participation as a demand for dignity.

- Raj Rao (2018), "The Third Gender and Politics":

Highlights how societal rejection and political indifference hinder trans political engagement.

3. Government and NGO Reports:

- Election Commission of India (2014–2024):

Provides voter data for third gender but no clear statistics for candidates.

- Reports by NGOs like SAATHII, Naz Foundation:

Discuss trans exclusion in education, employment, and politics; some focus on participation in panchayat elections.

4. Case Studies and Media Articles:

- Madhu Kinnar (Mayor, Raigarh) and Shabnam Mausi (MLA, Madhya Pradesh):

Their electoral victories show trans leaders can succeed when given opportunity.

- Media outlets (The Hindu, Indian Express, Down to Earth) highlight electoral challenges and the social journey of transgender politicians.

5. Comparative International Literature:

- Bangladesh (2013) and Pakistan (2018) recognize trans identity and have initiated political inclusion.
- Nepal offers voter ID and constitutional third-gender recognition.
- Thailand and the USA show higher political participation and legal protection for LGBTQ+ individuals.

Despite legal recognition, India lacks the concrete political inclusion that neighbors like Nepal and Pakistan have begun to address.

Theoretical Framework:

Three theoretical approaches were used:

1. Theory of Representation – Hanna Pitkin:

Pitkin defines four forms of representation:

- Formal
- Descriptive
- Substantive
- Symbolic

India has limited descriptive representation for transgender persons, but substantive (issue-based) representation is largely absent.

2. Theory of Justice – John Rawls:

Rawls advocates:

Equal liberty for all individuals

Social and economic inequalities should benefit the most disadvantaged

This justifies the need for affirmative action and political opportunities for transgender people.

3. Human Rights Perspective:

Political participation is not just a constitutional right but a fundamental human right.

Inclusion restores dignity and social acceptance.

These frameworks collectively argue that political representation must be effective, just, and dignified — not merely symbolic.

Research Methodology:

1. Nature of Research:

Qualitative, descriptive, and analytical — aimed at assessing constitutional status and real-world representation.

2. Area of Study:

Focus on transgender political participation in India at national, state, and local levels (panchayat, municipality, assembly).

3. Methodology:

A. Secondary Sources:

- Constitutional Articles: 14, 15, 16, 19, 21
- NALSA v. Union of India (2014)
- Transgender Persons Act (2019)
- ECI reports on voters

Books and studies:

- “Transgender in India: Rights and Realities” – Arvind Narrain
- “The Third Gender and Politics” – Raj Rao

B. Case Studies:

- Madhu Kinnar (Mayor, Raigarh)

- Shabnam Mausi (Former MLA, Madhya Pradesh)

Examples from Kerala, Tamil Nadu, West Bengal

4. Data Collection Methods:

- Document analysis (laws, reports, court rulings)
- Literature review
- Secondary data (news reports, ECI, social media)

5. Limitations:

- Based only on secondary data
- Lack of comprehensive statistics on trans candidates
- Limited comparative data between states

6. Ethics:

All sources are properly cited. The study remains unbiased and aims to present analysis and solutions.

Analysis and Discussion:

1. Legal and Constitutional Analysis:

The Constitution guarantees equality and dignity. Articles 14–21 apply to transgender persons. NALSA judgment granted third-gender status. The 2019 Act outlined rights but omitted political reservation.

Neither the Act nor the Election Commission offers political inclusion or proper documentation of trans candidates.

2. Social Realities:

A. Social Stigma:

Transgender persons face rejection. Political parties avoid giving them tickets due to conservative voter sentiments and media portrayal.

B. Economic and Educational Barriers:

Lack of education, income, and social capital limits political participation. Many face expulsion from schools and homes.

C. Party Apathy:

Very few parties support trans candidates.

Shabnam Mausi (1998) and Madhu Kinnar (2014) won independently, not through parties.

This indicates that the public is sometimes more progressive than political leadership.

3. Lack of Data:

Since 2014, third-gender voters are counted, but candidate data is missing.

Example:

2019 Lok Sabha

Total voters: ~900 million

Third-gender voters: ~40,000

Candidates: 5–7

Winners: 0

4. Case Study Highlights:

Name	Position	Year	Party	Result
Shabnam Mausi	MLA (Madhya Pradesh)	1998	Independent	Elected
Madhu Kinnar	Mayor (Chhattisgarh)	2014	Independent	Elected
Apsara Reddy	Spokesperson	2019	AIADMK-INC	Appointed

These show that where given space, trans leaders performed effectively.

5.Comparative Analysis – India vs Neighbors

Country	Legal status	Election participation	Notable figures
India	NALSA(2014), Transgender Act (2019)	Very few, mostly independent	Madhu Kinnar, Shabnam Mausi
Pakistan	Transgender persons (protection of rights) Act(2018)	Multiple candidates, party support	Alia Nazir
Bangladesh	Recognised “Hijra” Identity (2013)	Few reserved seats	Some civil service presence
Nepal	Constitution recognizes third gender (2015)	Voter ID, minor political activity	Bhumika Shrestha
Thailand	Socially accepted (no specific law)	Several trans women ran for	Active trans rights groups

		office	
USA	LGBTQ+ legal rights	Multiple state-level elected representation	Sarah McBride (Senator)

India lags behind Pakistan and Nepal in providing political reservation despite legal recognition.

Findings:

- There is a stark gap between constitutional rights and political realities.
- Social and political structures must evolve to enable true representation.
- Party attitudes and public mindsets need transformation.

Major Challenges:

Area	Challenges
Social	Stigma, violence, exclusion
Economic	Unemployment, lack of education
Political	Party reluctance, no reservation
Legal	No policy for political Representation

Opportunities and Recommendations:

1. Reservation in Local Bodies:
Quotas for transgender persons in panchayats and municipalities.
2. Inclusive Party Policies:
The Election Commission should mandate inclusion norms for political parties.
3. Leadership Development Programs:
Political training, fellowships, and mentoring for trans youth.
4. Independent Data Collection:
ECI should record third-gender candidates separately.
5. Media and Education Reform:
Promote positive representation of trans leaders in media and curriculum.
6. Legal Amendments:
Revise the 2019 Act to include political representation provisions.

Conclusion:

In a democracy like India, the absence of any community's representation is a serious imbalance. While the transgender community has gained visibility and recognition through judiciary and activism, its political participation remains dismal.

The NALSA verdict established theoretical rights, but the 2019 Act fails to ensure political inclusion. Social stigma, party apathy, and systemic exclusion continue to hinder representation.

Bridging the gap between constitutional ideals and social reality requires multi-level reforms. Political representation of trans persons is essential for realizing true social justice and equal opportunity.

It is time that the transgender community is not just seen, but heard — and leads.

References:

1. NALSA v. Union of India, 2014
2. The Transgender Persons (Protection of Rights) Act, 2019
3. Election Commission of India – Statistical Reports
4. Naz Foundation, SAATHII Reports
5. Books:

Transgender in India: Rights and Realities – Arvind Narrain

The Third Gender and Politics – Raj Rao