How Inclusive Is the Transgender Persons Act? Evidence From the Ground

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Abstract

The transgender community of India faces numerous challenges and is struggling hard for their survival. They generally beg at signals, impart blessings at religious ceremonies, and engage in sex work for their livelihood. A majority of the individuals of this community belong to low or lower-middle socioeconomic strata. For older adults, survival becomes very hard as they do not have any biological filial relationships or access to formal, steady employment like most of the heteronormative population. It is difficult for the younger transgender women within a gharana (adoptive family) to nourish the elderly and care for all financial needs. Despite the Transgender Persons (Protection of Rights) Act, 2019, hardly any research focuses on the needs of older adults. The authors have attempted to bring the attention of academic researchers and policymakers to one of the most vulnerable communities using a case study of an elderly transgender.

Keywords

Case study research, gender and social policy, gender and politics, gender equity

Introduction

India has around 5 lakh people who recognize themselves as transgender, according to the 2011 Census. However, transgender persons face stigma and preconceived notions about their behavior and life choices from society for being outside the “normal” paradigm. The usual Indian biological family system generally did not accept a transgender child. A part of this population, consisting of transgender women, also hold a space in the ancient Indian culture. They are known by many colloquial nomenclatures, depending on their geographical location and belief systems in India. One such identity is a hijra/kinnar, a section that lives in setups called gharanas (adoptive family), akin to a family setup, and has a rich cultural history attached to them. Their source of livelihood in India, in the face of social discrimination and no opportunities, is limited in most cases to begging at signals, imparting blessings at religious ceremonies for money, known as badhaai (blessings to maintain good fortune), and sex work.

The Distress of Transgender Elderly

Hijras in India have low formal employment avenues, which reduce as they get older. Retirement is often a planned investment for individuals with formal employment. Most people in India do not have that luxury, and old-age security seems a distant dream. Thus, with no option of informal jobs outside the traditional roles, planning carefully for retirement is amenity accorded to some. Traditionally, a gharana of transwomen provided social and financial stability through equal distribution of work and earnings within the members, controlled by the eldest of the family (guru). The gharana ensures filial relationships beyond the biological ones and provides emotional support. With the growing reality of nuclear families across the nation, the gharana system is largely dissolving, and gurus in their old age are often left alone. Thus, the complete financial care falls on either their own ability to continue traditional work or their chelas (adoptive transwomen daughters) who might have decided to stay back. The escalating number of older persons in the population, intersecting with age-old gender biases and...
stigma associated with being a transgender person, marginalizes the older adults in this population.8-10 India introduced the Transgender Persons (Protection of Rights) Act of 2019, referred to as the TG Act, targeted at the community’s upliftment, protection, and welfare. The bill, in 2018, before it was passed in the parliament, was heavily criticized by the transgender community, intellectuals, and activists.11,12 The bill, according to critics, did not achieve integration of the transgender population in the mainstream. It required medical screening, stepping on a person’s right to choose their felt gender and sexuality. The bill was also considered discriminatory as it did not have provisions (civil/criminal) that were at par with the heteronormative population. The TG Act also does not make any mention or state provisions for transgender older adults. However, with a few minor changes, the bill was passed to become an act on December 5, 2019. While the Census 2011 reports on the estimated number of transgender persons, the number of transgender older adults has not been recorded anywhere. It would be prudent to assume that with an increase in life span within the Indian population, the number of older transgender persons would also have increased.8 With that insight, this case sheds light on the condition of older transgender women and whether the new Act, aimed to visibilize and integrate the community in the mainstream, will be able to uphold the rights of this community and its older adults upon critical scrutiny (The case study presented herewith is a part of a more extensive study for an MPhil Dissertation at the School of Health Systems Studies, Tata Institute of Social Sciences, Mumbai, Maharashtra, India under the study titled, “Expanding the Edges: Transgender Women’s Voices on Gender Confirmation Therapy in Mumbai, Maharashtra”). Informed consent was taken from the participant for partaking in the study.

Objective

The objective of this case study is to underscore the condition of the transgender older adults and understand whether the TG Act, 2019 adequately protects the interest of the older persons in the community using a case.

Case Sample

Savitha (name changed) is a 66-year-old transgender woman from Chennai who left her home at the age of 16 to avoid social ridicule of her family because of her gender identity. She first moved to Bangalore and then to Mumbai, which has been her home for the past 45 years. She still talks to her family, sends money when she can afford, and owns a small flat in a chawl in one of the slums in Mumbai. She lives alone. From her gharana, her “daughters” have explored different avenues and do not follow the traditional practice of earning for the guru. She goes for badhaai as and when her health allows her to eke out a living. She has a helper who comes in three to four times a week to help around the house.

She recently had a heart attack, was discovered, and helped in time by her neighbor to get to the hospital. She has diabetes, hypertension, and joint pains. She also experiences loneliness and a sense of resignation. Having no monetary or social support, her life is hard. However, she wants to live out a life of dignity as a kinnar.

Discussion

The Transgender Persons (Protection of Rights) Act, 2019, passed by the Lok Sabha on December 5, 2019, is wrought with problematic themes that cut across the rights of transgender individuals.13 The National Legal Services Authority judgement of 2014 by the Supreme Court of India granted self-identification of gender and institutionalized transgender as the “third gender,” the TG Act calls for the state to step in for determining a person’s gender. The legislative language provides no clarity regarding solutions for distinct issues of this population like their niche health needs, limited avenues for employment, and general stigma by the binary society at large. It leaves a bitter aftertaste of institutionalizing a different brand of marginalization after almost 3 centuries of criminalization.11,12

The presented case resonates with many other older adults across the country; the differences between them and a transwoman like Savitha is that they are treated as citizens of the state; they can make a legal claim for their rights and seek redressal. Being an older transwoman, Savitha and others like her face the triple jeopardy of age, sociocultural, and gendered exclusion. It has been almost 3 years since the historical judgement on Section 377 of the Indian Penal Code, which decriminalized sexual activities that are non-normative and go against the order of nature. In essence, we as a nation promised the LGBTQ+ community to create a safer space to co-exist without making their lives a criminal offence. However, without immersive, community-centric, and sensitive policies, government measures could be counterproductive and perpetrate more systemic violence.

Research on the transgender population has primarily focused on adolescents and adults, systemic violence, and familial and societal abandonment issues.14 Moreover, the medical community and health research have fixated on HIV/AIDS (Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome), STDs (Sexually Transmitted Diseases), and mental health issues of transgender persons, ignoring all their other health needs.15 The research on geriatric health among transgender is minimal. Transgender persons are more vulnerable to substance abuse and mental health issues like depression, anxiety, and suicidal tendencies in the early years.16 This also sets the stage for poor physical and mental health as a person ages, exacerbating morbidities associated with old age.8-10 Transwomen also face a steady decline in their hormones (introduced or natural) in old age leading to mood changes and decline in mental capacities. Like anyone in old age, physical health deterioration is
presented even in transpersons with no support system like the gender binary populace.\textsuperscript{8-10}

The transgender population in India is highly underserved in their health needs, but the older adults in this community is further invisibilized. Apart from other vulnerabilities that exist for transpersons throughout their lives, old age adds to many existing issues. Some of those issues might mirror what other heterosexual older persons go through, like dementia, chronic illnesses, and overall physical/mental deterioration. There might also be other illnesses that are completely unheard of or even understood because they are not researched. It is established that as transperson ages, their issues transform as well, mainly matching a lot more to their heteronormative counterparts, which revolve around social and economic instability, health issues, and loneliness.\textsuperscript{8-10}

The TG Act, in theory, makes it plausible to integrate them within the existing policies for them to derive the maximum benefit out of the policies associated with overall health, wellness, and security for the heteronormative population. Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is a law that could assist the older transgender persons as it does the normative population. However, the societal stigma around transpersons makes it harder for them to access welfare schemes meant for all state citizens. Additionally, the systemic biases within government institutions create more hurdles for them. However, the steps being taken in the direction of transpersons rights in India do not consider the issues of older transpersons, especially in the TG Act.\textsuperscript{8-10}

**Conclusion**

India has strict laws for protecting the disempowered across all age groups, with each one distinctly designed for minors, adults, and older adults, fashioned to suit their distinct needs. The country’s increasing proportion of the ageing population is a phenomenon mirrored in the transgender community. However, there seems to exist no distinction between the subsets of minors, adults, and older adults within the TG Act. It makes no connections with the existing policies to aid marginalized groups, thus alienating transpersons from the “normative” population. The older transpersons fall through the cracks of legislative inequity in the existing laws in the country, especially the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Moreover, the TG Act does not specifically cater to older adults and their emotional, physical, and financial well-being, a concern faced by older transpersons today. The Act should be at par with the policies in place for the heteronormative older populations in India. They should be able to access health care for the older population, and be protected financially; as stated by the Government of India.

No civil liberties, no legal rights, limited agency, and lack of opportunities are the realities of a transgender person’s life in India. Additionally, with the COVID-19 pandemic, it is even more imperative to focus on the needs of this subsection of the community that is burdened by marginalization of age and gender.\textsuperscript{10} There needs to have programs and interventions focused on the needs of the ageing transgender persons outside the HIV/AIDS paradigm. The problems of Savitha and transgender older persons like her are more complex than they appear and way more widespread than we can fathom. Our laws and policies should acknowledge a deeper understanding of such complexities and commit to addressing them. The TG Act should epitomize the celebration of diversity through the integration of transpersons in society without compromising the community’s uniqueness. In its current form, the TG Act is a loosely constructed under-researched document rife with heteronormative biases.

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