TOWARD A JUST SOCIETY: INTERROGATING GENDER AND SEXUALITY THROUGH SOCIOLOGICAL LENSES IN INDIA

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Abstract

This essay explores the trajectory of gender and sexuality rights in India through Conflict Theory, Functionalism, and Intersectionality. It reveals the ethical challenges of gender-based violence, unequal workforce participation, and the marginalization of transgender individuals. The analysis highlights the need for a multifaceted approach encompassing legal reforms, social change initiatives, and dismantling discriminatory structures to achieve a more just and equitable society.

Keywords: society, interrogating gender, sexuality, justice, theories of conflict and functionalism.

1. Introduction

In examining the trajectory of gender and sexuality rights in India through a social change perspective, this paper employs the lenses of Conflict Theory, Functionalism, and Intersectionality to unravel the intricate dynamics shaping this journey. The Conflict Theory, rooted in the ideologies of Marx and Engels, provides a compelling framework for understanding the prevalent issue of gender-based violence in India. The infamous Nirbhaya case of 2012 serves as a stark illustration of the clash between justice and entrenched patriarchal norms, sparking nationwide protests and revealing deeply ingrained power imbalances. The Nirbhaya case involved the brutal gang rape and murder of a young woman on a bus in Delhi, highlighting the dangers women face and the need for improved safety measures. Global
research on gender-based violence underscores the pervasive nature of the problem, emphasizing the interconnectedness of gender, power, and sexuality.

Shifting focus to Functionalism, grounded in Durkheim's sociological theories, the paper delves into the increased labour-force participation of women in metropolitan India. Studies examined here emphasize the societal benefits of gender parity in the workforce, linking economic productivity and societal cohesion. The research underscores the impact of social norms, cultural values, and support networks on women's workforce decisions. Despite advancements, challenges persist, necessitating the removal of obstacles for the stability and advancement of society.

The intersectionality perspective, introduced by Kimberlé Crenshaw, sheds light on the multi-layered oppressions faced by transgender individuals in India. This section focuses on transgender rights, exploring the intersectional dynamics of gender identity, caste, and economic status. Research highlights the mental health implications of intersecting factors, advocating for holistic support. Evaluating the Transgender Persons (Protection of Rights) Act, 2019, through an intersectional lens reveals gaps and deficiencies, emphasizing the need for comprehensive legal reforms to align with inclusivity and equality principles.

The paper synthesizes insights from Conflict Theory, Functionalism, and Intersectionality to provide a comprehensive understanding of the trajectory of gender and sexuality rights in India. The struggle against gender-based violence, the pursuit of gender parity in the workforce, and the complex landscape of transgender rights exemplify the multifaceted challenges and ongoing efforts toward a more just and egalitarian society. The analysis underscores the urgency of collaborative strategies, legal reforms, and societal shifts to address these issues and foster meaningful social change.

2. Conflict Theory Perspective on Gender-Based Violence in India

The lens of Conflict Theory, rooted in the works of Marx and Engels, The Communist Manifesto (by Karl Marx & Friedrich Engels) and The Origin of the Family, Private Property and the State (by Friedrich Engels), offers a compelling framework to analyze the trajectory of gender and sexuality rights in India, particularly concerning the pervasive issue of gender-based violence. Conflict Theory perceives society as a battleground where various groups contend for
resources and power. In the Indian context, this perspective unveils the power imbalances and struggles inherent in the fight against gender-based violence.

The 2012 Nirbhaya case is a prominent example of the tension between the need for justice and deeply ingrained patriarchal norms. Nationwide demonstrations were triggered by the horrific gang rape, which exposed the profoundly ingrained power structures in Indian society. It is essential to investigate how power appears in judicial decisions, public conversations, and societal expectations to fully understand these relationships. In India, the legal responses to gender-based violence frequently mirror the existing power disparities, making it extremely difficult for victims to pursue justice. The public conversation around these cases also exposes the deeply embedded patriarchal beliefs that support stigmatization and victim-blaming. Furthermore, cultural norms frequently place the onus of stopping violence on women, which serves to further entrench power disparities and obstruct significant change.

Global gender-based violence research, such as that of Heise (2002), Russo and Pirlott (2006), and Bharti Jain (2023), gives a crucial backdrop. These studies highlight the prevalence of gender-based violence and its substantial health consequences, stressing that violence against women encompasses a wide range of harmful behaviours, from verbal and physical abuse to sexual assault. The theoretical framework in this case stresses the interconnectedness of gender, power, and sexuality, as seen by the linkages between sex and violence in media depictions. These media portrayals frequently reinforce detrimental gender norms and power inequalities, contributing to the normalization of violence against women. Furthermore, exposure to such media has been proven in studies to enhance individuals' acceptance of violence and maintain detrimental views toward women.

Highlighted by Bharti Jain's work, sexual coercion and abuse become defining characteristics of the female experience, showing how women frequently have little choice and face dire consequences if they reject advances. This cycle of victimization is brought about by such coercion and abuse, which not only have negative effects on women's health directly but also raise their likelihood of future illness. Social norms and cultural ideas that uphold gender inequity and damaging stereotypes are responsible for this victimization cycle. It is also more difficult for victims to seek justice and protection because of the absence of comprehensive laws and enforcement procedures, which contribute to the normalization of violence against women.
Through the lens of conflict theory, it becomes clear that these violent acts are part of larger social institutions that uphold gender inequality rather than being isolated instances. According to studies on media impacts, the media plays a big part in forming societal narratives that legitimize violence against women and perpetuate gender inequality. These narratives often portray women as weak and submissive, reinforcing harmful stereotypes and justifying the mistreatment of women. Additionally, the media's portrayal of violence against women as entertainment further desensitizes society to the issue, making it even more challenging to break the victimization cycle and create meaningful change.

Ishita Sehgal's (2020) documentation of the recent protests at Delhi's Shaheen Bagh serves as another evidence of the way Indian women are fighting patriarchy. Women were protesting against violence against gendered bodies as well as divided politics, which were prompted by conflicts in politics and religion. This resistance to overlapping oppressions is a testament to women's tenacity in the face of institutionalized violence. It is critical to acknowledge that women's resilience in the face of systemic violence is not exclusive to India. Globally, women are becoming more vocal in their opposition to gender-based discrimination and in support of significant change. This worldwide movement serves as a reminder of the strength of collaborative effort and the possibility of success when individuals come together to challenge oppressive systems.

Conclusively, Conflict Theory, drawing on Marx and Engels' ideas of class conflict and power structures, offers a powerful framework to analyze gender and sexuality rights in India, especially concerning gender-based violence. This theory views society as an arena where groups compete for resources and dominance. In the Indian context, it highlights how men, often seen as the dominant class, may leverage their power to control women, potentially due to economic factors Engels explored in "The Origin of the Family." Conflict Theory suggests that movements fighting gender-based violence represent the oppressed challenging these power structures, aiming for social progress. The tension between the demand for justice and the deeply ingrained patriarchal traditions is best illustrated by the Nirbhaya case of 2012. International studies, such as those by Heise (2002), Russo and Pirlott (2006), and Bharti Jain (2023), highlight the pervasiveness of gender-based violence and its grave health implications. This lens emphasizes that violent acts are not isolated episodes, but rather profoundly ingrained in social mechanisms that perpetuate gender disparities. Ishita Sehgal's (2020) documentation...
of the recent protests at Shaheen Bagh in Delhi demonstrates women challenging systematic oppression and the strength required to fight intersecting forms of violence. When confronted with these realities, the Conflict Theory lens advocates for comprehensive strategies, legal reforms, and societal shifts toward a more just and egalitarian society, recognizing the need for a collaborative effort to transform existing power dynamics and address the multifaceted dimensions of gender-based violence.

3. Functionalism Perspective on Gender and Workforce Participation

Functionalism, which is based on Durkheim's sociological theories (Alexander, J. C., 2005), regards society as an organism in which each component contributes to its stability. This viewpoint can be used in the case study of women's increased labour force participation, notably in metropolitan India. The studies examined here provide light on numerous factors impacting female workforce participation and the barriers encountered, providing insights into functionalist dynamics. These studies emphasize the significance of social norms and cultural values in affecting women's labour-force decisions. They also show how educational options and support networks can have a favourable impact on female employment rates.

4. Economic Productivity and Societal Cohesion

According to a functionalist perspective, societal cohesiveness and economic output are enhanced by gender parity in the workforce. According to Mukherjee and Agarwal's (2023) research, over 85% of Indian urban women favour government jobs as a means of preserving a work-life balance, highlighting the significance of employment in their lives. This is consistent with functionalist ideas since steady work can provide people with a feeling of direction and order inside the social structure.

The study conducted in 2021 by Wadhwa and Retnakaran explores the factors that both facilitate and hinder women's involvement in the Indian workforce. This study draws attention to obstacles like restricted mobility and gendered labour divisions, highlighting the functionalist idea that getting past these obstacles is crucial for the stability and advancement of society. The survey also highlights how crucial it is to develop initiatives and regulations that support gender equality in the workplace. In addition to benefiting individuals by giving them chances for
personal growth and fulfilment, removing these obstacles and enabling women to fully engage in the workforce also advances society as a whole.

5. Functional Dynamics in Skill Development

Functionalism emphasizes the relevance of each component contributing to the overall stability. Ghosh (2004) conducts research on women's employment in export-oriented manufacturing in India, connecting economic policy and social security. According to the functionalist viewpoint, measures that encourage women's economic roles contribute to the overall stability and functioning of society.

Sandeep Singh's analysis (2023) of women's empowerment in India discusses the need for gender equality in education and economic engagement. The functionalist perspective would argue that empowering women is crucial for achieving social balance and harmony. Singh highlights the challenges, such as gender disparities in literacy rates and workplace harassment, aligning with functionalism's focus on addressing issues for societal stability. Singh also emphasizes the importance of providing equal opportunities for women in decision-making positions, as this would not only enhance their economic empowerment but also lead to more inclusive and equitable policies. This aligns with the functionalist position that a well-functioning society relies on the active participation and contribution of all its members, regardless of gender.

6. Challenges to Societal Order

Despite advancements, obstacles still stand in the way of achieving gender parity in the workforce. Disparities in the economic empowerment of Indian women living in rural and urban areas are highlighted by Biswas and Banu's (2023) study. According to the functionalist perspective, these differences represent threats to social order, and politicians should address any obstacles preventing equal participation in the economy. The functionalist viewpoint stresses how critical it is to resolve these differences to guarantee a peaceful and efficient society. Policymakers can endeavour to create a more inclusive workforce that benefits all members of society, regardless of gender, by identifying and removing the obstacles that prevent equal participation.
The functionalist perspective, rooted in Durkheim's sociological theories, offers valuable insights into the intricate relationship between gender, workforce participation, and societal stability. Examining the case of women's increasing labour-force engagement in metropolitan India through this lens reveals the multifaceted factors influencing female workforce participation and the barriers faced, shedding light on functionalist dynamics. The studies discussed underscore the impact of social norms, cultural values, education, and support networks on women's employment decisions, aligning with functionalist principles. From a functionalist standpoint, gender parity in the workforce contributes to societal cohesiveness and economic output. Mukherjee and Agarwal's (2023) research highlights the preference for government jobs among urban Indian women, emphasizing the role of employment in fostering work-life balance. Wadhwa and Retnakaran's (2021) study identifies obstacles like restricted mobility and gendered labour divisions, emphasizing the need to overcome these hindrances for societal stability. Ghosh's (2004) research connects economic policies and social security, showcasing how measures promoting women's economic roles align with functionalist ideals. Singh's (2023) analysis emphasizes the importance of gender equality in education and economic engagement, aligning with functionalism's focus on achieving social balance and harmony. Despite progress, challenges persist, as seen in Biswas and Banu's (2023) study on disparities in economic empowerment. In addressing these obstacles, the functionalist perspective advocates for creating an inclusive workforce to ensure a peaceful and efficient society. Ultimately, the functionalist lens enriches our understanding of gender dynamics in the workforce and provides a foundation for fostering societal equilibrium through gender inclusivity.

7. Intersectionality Perspective

The notion of intersectionality, which was introduced by Kimberlé Crenshaw, emphasizes the complex relationships between many social categories, including gender, racism, and class (Crenshaw, 1991). Examining gender and sexuality rights in the Indian context requires recognizing the multi-layered oppressions people experience. Using insights from significant research, this section focuses on the intersectional lens applied to transgender rights in India.
7.1. Transgender Rights in India: An Intersectional Analysis

In India, the journey toward recognizing and safeguarding transgender rights has been shaped by intersecting factors such as gender identity, caste, and economic status. Kimberlé Crenshaw's framework becomes particularly relevant in unpacking the nuanced challenges faced by transgender individuals, especially those from marginalized communities.

*Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color* by Kimberlé Crenshaw provides a foundational understanding of intersectionality. Crenshaw argues that recognizing violence against women involves understanding it as a systemic issue rather than an isolated incident. This perspective extends to various marginalized groups, including transgender individuals in India (Crenshaw, 1991).

An empirical study, "Sex work, gender transition, family rejection and depressive symptoms among transgender women in India" (Srivastava et al., 2021), explores the mental health implications of intersecting factors. Transgender women engaging in sex work and undergoing gender transition face unique stressors. The study emphasizes the importance of community-led organizations incorporating intersectional experiences in their programs for holistic support.

Examining the legislative landscape, "'Transgender Persons (Protection of Rights) Act' of India: An Analysis of Substantive Access to Rights of a Transgender Community" (Bhattacharya et al., 2022) critically analyzes the 2019 amendments. While recognizing non-binary persons' rights, the study reveals gaps between legal changes and practical realities. It advocates for substantive access to rights, urging for improvements in education, healthcare, and representation of non-binary people.

In the socio-cultural context, "Transgender Identity, Sexual versus Gender ‘Rights’ and the Tools of the Indian State" (Loh, 2018) delves into the impact of postcolonial Hindu nationalism on queer identities. The study scrutinizes recent judicial and legislative developments, highlighting how certain transgender identities are deemed acceptable, aligning with the state's vision, while others face discrimination.

7.2. Transgender Rights Legislation: A Closer Look

The case study presented in "Trans-Rights Are Human Rights: An Evaluation of Law on the Protection of Transgender Rights in India" (Syiem & Kumar, 2022) delves into the legal
landscape. The Transgender Persons (Protection of Rights) Act, 2019 marked a pivotal moment, recognizing transgender individuals as the 'third gender.' However, the study reveals inherent limitations, including the absence of civil and political rights, problematic definitions, and gaps in welfare measures. The act's impact is analyzed through an intersectional lens, considering the varied experiences within the transgender community.

1. Absence of Civil and Political Rights: The Act is criticized for its silence on civil and political rights, such as marriage and adoption, crucial for personal development and individual choice (Syiem & Kumar, 2022). The oversight in addressing these fundamental rights poses challenges to the holistic empowerment of transgender individuals.

2. Problematic Definition of Transgender: The Act's inclusive definition creates ambiguity, encompassing terms like trans-woman, trans-man, hijras, kinner, etc., without exclusive definitions, neglecting the unique issues faced by each group (Syiem & Kumar, 2022). This lack of specificity hampers targeted policy interventions tailored to the distinct needs of different transgender identities.

3. Certification Challenges: The Act, while recognizing self-perceived gender identity, introduces complexities by requiring certification by the District Magistrate, granting broad discretion without clear guidelines (Syiem & Kumar, 2022). This bureaucratic hurdle may impede the seamless acknowledgement of gender identity, reinforcing stigmatization and administrative barriers.

4. Inadequate Welfare Measures: The Act lacks provisions for reservations in employment or education, essential for combating historical discrimination (Syiem & Kumar, 2022). Without affirmative action, transgender individuals may continue to face systemic barriers hindering their access to opportunities and upward mobility.

5. Criminalization and Penalties: The penalties outlined in the Act for offences against transgender persons are perceived as lenient compared to similar offences under the Indian Penal Code (Syiem & Kumar, 2022). Strengthening legal repercussions for crimes against transgender individuals is crucial for fostering a safer environment and deterring potential offenders.

This closer examination of the Transgender Persons (Protection of Rights) Act, 2019, underscores the importance of addressing these limitations to ensure comprehensive protection and promotion of transgender rights in India. Advocates and policymakers must work
collaboratively to refine existing legislation, incorporating a nuanced understanding of the challenges faced by transgender individuals, as highlighted through the lens of intersectionality. In doing so, the legal framework can better align with the principles of inclusivity, equality, and respect for individual autonomy.

The intersectionality perspective, pioneered by Kimberlé Crenshaw, offers a profound understanding of the complex interplay of gender, race, class, and other social categories in the context of transgender rights in India. Examining the nuanced challenges faced by transgender individuals, especially those from marginalized communities, reveals a web of intersecting factors, including gender identity, caste, and economic status. The research presented highlights the importance of recognizing violence and discrimination against transgender individuals as systemic issues, aligning with Crenshaw's foundational work. Moreover, empirical studies underscore the mental health implications of intersecting factors, emphasizing the necessity for holistic support. Analyzing legislative developments through an intersectional lens exposes the gaps and limitations of the Transgender Persons (Protection of Rights) Act, 2019, urging a more nuanced approach to address the diverse experiences within the transgender community. A closer examination of the act reveals deficiencies in civil and political rights, problematic definitions, certification challenges, inadequate welfare measures, and lenient penalties for offences. In response, advocating for comprehensive legal reforms becomes imperative to align with the principles of inclusivity, equality, and respect for individual autonomy. This synthesis emphasizes the significance of a holistic approach to transgender rights that transcends legal recognition, incorporating social welfare, mental health support, and educational equity to foster meaningful social change. Embracing intersectionality is crucial for crafting policies that genuinely address the multifaceted struggles faced by transgender individuals and ensure their comprehensive protection and promotion of rights in India.

8. Ethical Implications of the Legal Framework for Transgender Rights in India

The Transgender Persons (Protection of Rights) Act, 2019 (TPRA) represents a significant step towards recognizing transgender rights in India. However, a closer look reveals some ethical challenges embedded within the Act's framework. Let's delve deeper into these issues:

8.1. Limitations on Civil and Political Rights
While the Act protects some rights, it fails to ensure full civil and political equality for transgender individuals. The lack of provisions for marriage and adoption restricts their right to self-determination and personal fulfillment, hindering their ability to form families and achieve social integration. This exclusion undermines their autonomy and creates a situation where they are not considered equal before the law, reinforcing social marginalization.

8.2. Bureaucratic Hurdles and Social Stigma

While the Act acknowledges self-identification of gender, the lack of clear guidelines creates confusion. This ambiguity allows authorities to make arbitrary decisions and forces individuals to jump through hoops to prove their identity. Adding another layer of complication is the requirement for a District Magistrate's certificate. This bureaucratic hurdle can be a lengthy and humiliating process, reinforcing the power imbalance between transgender people and the state. Moreover, the discretionary power given to the Magistrate leaves room for perpetuating social stigma and discrimination.

8.3. Ethical Considerations and a Rights-Based Approach

The limitations within the Transgender Persons (Protection of Rights) Act (TPRA) create a fundamental conflict. On the one hand, the TPRA restricts bodily autonomy and the right of transgender individuals to define their own gender identity. This directly contradicts the ethical principle that people should have control over their own bodies and how they express themselves. Transgender people deserve to live authentically according to their gender identity, free from state intervention. On the other hand, social justice and inclusion demand a legal framework that actively promotes the rights of transgender people. The TPRA, in its current form, fails to achieve this goal. By placing limitations on rights and creating bureaucratic hurdles, the Act actually perpetuates the marginalization of transgender individuals.

9. The Way Forward

The path ahead requires a two-pronged approach: legal reform and community support. First, comprehensive changes are needed to the TPRA, ensuring it guarantees fundamental rights like marriage and adoption for transgender people. Clear guidelines for self-identifying one's gender and streamlined procedures for official recognition are crucial. Secondly, the legal
framework should prioritize the autonomy and dignity of transgender individuals. This can be achieved by empowering them to determine their own gender identity and eliminating unnecessary bureaucratic hurdles in the recognition process. However, legal reforms alone are not enough. Building strong support systems within communities is essential to tackle the social stigma and discrimination that transgender people still face.

While the TPRA marks a positive step, it needs significant improvements to address the ethical challenges it presents. A rights-based approach that prioritizes transgender inclusion, autonomy, and dignity is essential for achieving true social justice and equality in India.

Conclusion

The multifaceted journey of gender and sexuality rights in India, illuminated by the lenses of Conflict Theory, Functionalism, and Intersectionality, underscores the need for a collaborative and multifaceted approach.

Conflict Theory highlights the deeply ingrained power imbalances that perpetuate gender-based violence. It calls for transformative strategies to dismantle these structures and empower marginalized communities. Functionalism emphasizes the societal benefits of gender parity, urging policies that promote women's workforce participation and dismantle barriers hindering their full potential.

Intersectionality adds another crucial layer, urging us to recognize the complex interplay of factors like gender identity, caste, and economic status. Through this lens, the limitations of the Transgender Persons (Protection of Rights) Act become evident, highlighting the need for comprehensive legal reforms that address the diverse experiences within the transgender community.

The way forward demands a multi-pronged approach. Legal reforms are crucial, ensuring the TPRA guarantees fundamental rights like marriage and adoption for transgender people, establishes clear guidelines for self-identification, and prioritizes their autonomy and dignity. However, legal changes alone are insufficient. Building robust community support systems is essential to dismantle social stigma and discrimination.

This necessitates collaboration between policymakers, activists, educators, and social service organizations. Policymakers must craft legislation informed by sociological perspectives and lived experiences. Activists can raise awareness and advocate for change.
Educators can challenge societal norms and promote inclusivity. Social service organizations can provide vital support to marginalized communities.

Ultimately, achieving a more just and equitable society requires a collective effort. By working together, we can dismantle oppressive structures, empower marginalized communities, and foster a society where everyone, regardless of gender or identity, can live free from discrimination, violence, and inequality. This is the vision that should guide us on this ongoing journey towards a more inclusive and just India.

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