



Socio-Cultural and Political Status of Third Gender through the Ages of Indian History: The Journey from Ancient to Post-Independent India

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ABSTRACT

The societies of Ancient, Medieval and Modern India have an intricate interconnection among the sexual majority and the transgender population. Ancient Indian scriptures included transgender individuals and provided them a dignified space. The ancient Indian social structure has been an inclusive society where sexual differentiation from fixed norms of sexuality (Male and Female) was accepted and cherished. Ancient Indian texts like the Kamasutra, Arthashastra, Manusmriti, and Ayurveda have deep discussion about the definitions, condition, criteria, social role, and status of third gender or transgender persons. During the medieval period of Turks and Mughals, transgender individuals had a highly dignified socio-economic status. Eunuchs were castrated males working as royal slaves, harem attendants, security guards, keepers, and wardens for concubines and the harem. The colonial masters brought a draconian law, The Criminal Tribes Act of 1871. The CTA, alongside IPC Section 377, acted as a serious blow for the community. Third-gender individuals were explicitly barred from public performance and begging on the road. This act systematically excluded and marginalized the population from mainstream society. In the landmark National Legal Services Authority vs. Union of India (2014) case, the Supreme Court of India gave legal identity and recognition to transgender people.

1. INTRODUCTION

The Homo sapiens society has always accepted and rejoiced sexual identities in two binaries masculine and feminine only. Sexual orientations beyond this set criterion were rejected or were considered not normal. With such established framework of laws and morals, sexually deviant transgender individuals having non alignment with sexual and societal behavior were excluded. Their identity has been diminished and their roles as member of society have been completely neglected and eliminated. In Ancient India third gender as sexual orientation were embraced and accepted. Vedic literature mentioned tritiyaprakriti as thirdgender. Mythological characters and even divine figurines have mobility in sexual orientations i.e., they could change their pre assigned sexual orientation and gender roles. Vedic literature consists of three types sexual orientation- Purush (male), Stri (female) and Titiya prakriti (neither male nor female).

During the medieval period, being a eunuch meant being a castrated man, which eliminated the threat of any act of sexual violation with the women of the harem. Not only seraglio, they were also guards for the private space of the emperor, employed at the audience hall, acted as messengers in court, and accessed extremely private chambers of rulers like the dining table and Ghusal-khana (Bath-space). They were patronized and employed by the state for various services provided in return. The colonial regime, with a self-proclaimed moral responsibility to do away with social sins prevalent among colonial subjects, enacted the Criminal Tribes Act of 1871, amended in 1897 with an additional provision defining “eunuch”

as “male members who acknowledge their self or on medical inspection are found to be impotent.” This act was the result of a poor understanding of the socio-cultural and religious customs of India. Despite contemporary legal paths to recognition, institutional prejudices and severe social stigma continue to linger, particularly hindering the community's structural integration into public systems like healthcare [1].

2. METHODOLOGY

This research is a based upon historical research method that aims to systematically recapture, recall and find the meanings of the complex issues and past events of the people, community and society. It involves interpretation of events and ideas of the past that have influenced and shaped the present. The study proceeds through four sequential stages such as source identification, periodization, textual and archival analysis and synthesis. It has been summarized in Figure 1.

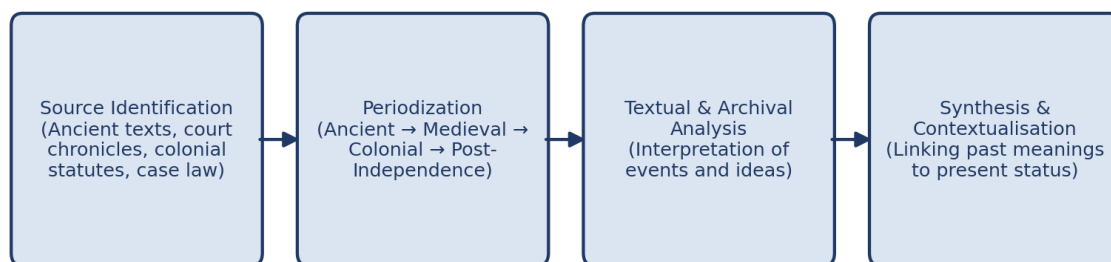


Figure 1. Methodology flowchart showing the four-stage historical research process followed in this study.

3. ANCIENT INDIAN SOCIETY AND THIRD GENDER POPULATION

The ancient Indian structure was an inclusive society where sexual deviation from fixed norms of sexuality (Male and Female) was accepted and cherished [2, 3]. This civilizational fluidity challenges the rigid global binary models by illustrating how traditional societies historically looked beyond a strict gender dichotomy to integrate gender-diverse cultures [4]. Ancient Indian texts like the Kamasutra, Arthashastra, Manusmriti, and Ayurveda present extensive discussions about the definitions, conditions, criteria, social roles, and status of third gender or transgender persons [5, 6].

Mythological characters and even divine figurines possessed fluidity in sexual orientations, demonstrating an ability to change their pre-assigned sexual orientations and gender roles [7, 8]. Vedic literature consists of three types of sexual orientation: Purush (male), Stri (female), and Tritiya prakriti (neither male nor female) [9].

3.1 Vedic Literature

Vedic literature consists of 4 vedas: Rigveda, Yajurveda, Samaveda, Atharvaveda, and associated Brahmanical texts written in Sanskrit. The time period of the Vedas being written and compiled is dated around 1500 BCE-500 BCE. Vedas being “apauruseya” (i.e., something that is not created by human but by a divine or supreme power) were the foundation of ancient Indian society. In ancient Sanskrit literature, the discussion about the origin and evolution of the third sex refers to the idea that the third gender evolved out of the shadow of Lord Brahma and they were called kinnar [10]. They were considered a group of skilled singers. In the Vayu Purana, the origin of transgender individuals is traced from Arishta (one who behaves like a human but has the singing skill of demons) and Kashyap.

In the Amarakosha, written during the fourth century by Amar Sinha, who was one of the Nine Nauratnas (9 jewels) in the court of Chandragupta II, the words Shashtha, Kleebs, Panda, and Napunsak were the synonymous words used to denote the third sex. The word Kleebs is used in the Atharvaveda for the castration of oxen and bulls. Kleebs during the Vedic period were dancers and performers along with women, as males did not participate in dancing during the Vedic period. Thus, kleebs were viewed as sexually impotent men having a deviation from social gender role norms. It is clear from the literary

sources of the ancient period that society and gender roles were not confined to a strict binary of male and female [11]. Ancient Indian society of the Vedic age had an understanding and acceptance of the third sex, operating as a gender-inclusive society where social exclusion was not the default result of an individual's sexual deviation.

Manusmriti is considered to be the first codification of laws, conducts, obligations, morals, and duties for the Vedic society. Manusmriti is also known as Manavdharmashastra, written and compiled during 2nd century BCE to 3rd century CE by Manu, a character considered to be the first ancestor of the Hindu race in Hindu literature [5, 7]. Manusmriti discusses three sexes in humans and their genesis. As per the text, the sex of the human fetus is determined by the balance of the male seed (sperm) and female seed (ovum) during the course of fertilization. A greater quantity of male seed results in a male child, a greater amount of female seed results in a female child, and an equal amount of male and female seed leads to a third-sex child, known as napunsak.

The Manusmriti outlines rules of conduct and inheritance for the third sex. Third-sex individuals were forbidden from standard family inheritance; however, if a third-sex individual married and had progeny, his children were entitled to the inheritance. The maintenance and responsibility of a transgender individual fell on the family in which they were born, and failing to maintain a transgender child was a punishable offense for the family, carrying the serious consequence of being outcasted. The transgender individual was forbidden from offering Shraddha (a religious custom of offerings to deceased ancestors to liberate them from the cycle of birth and death) to their ancestors. Brahmins were restricted from accepting daan (offerings), bhoj (meals), and attending a yajna (fire sacrifice) organized by a transgender individual. This restriction existed because, as per Manusmriti, vivah (marriage) and santan-utpatti (progeny generation) were prerequisites for an individual to be eligible to please their ancestors and gods. Thus, it is evident that the Manusmriti, as a foundation of post-Vedic society, was non-discriminatory for the third sex except for specific family rituals and ancestral inheritances.

Deviation from the gender binary of male and female was taken to be an inborn character occurring naturally. Vedic society remained inclusive and tolerant toward the third gender. This stands in stark contrast to historical Western perspectives, which frequently classified deviations from a fixed gender binary as psychological disorders, holding individuals accountable for such conditions through strict punishments and structural exclusion.

3.2 Kamasutra

“Bhinnatvāt tṛtīyā prakṛtiḥ paścimīty eke.

Tṛtīyā prakṛtir napuṃsakaḥ strītvapuṃstvābhāvādibhyate”

Explanation: According to Kamasutra there exist third gender (tritiya prakriti) individuals who are different from male and female individuals. They are considered to be a fifth type of women with whom relations are legitimate.

The Kamasutra is a Sanskrit text compiled by Vatsayana, a sage and philosopher, during the 2nd-3rd century CE. The Kamasutra, as its name suggests, is composed of two Sanskrit words: Kama + Sutra, where kama means desire and sutra means principles; thus, the book is a compilation of principles to fulfill one's desires [12]. Kama is one of the four endeavors (Purusharthas) to be attained by an individual, the other three being Dharma, Artha, and Moksha. Broadly considered a book on erotic lovemaking and sexual positions, the Kamasutra serves as a philosophical guide to achieving life's sensory goals. Kama is defined as the enjoyment of appropriate objects by the five senses of hearing, feeling, seeing, tasting, and smelling, assisted by the mind, body, and soul.

The Kamasutra provides a code of conduct and regulations for socio-cultural life, consisting of the duties of kings, courtesans, wives, and husbands, alongside punishments for violations. It also depicts the clear conditions of contemporary Indian society. As illustrated by classical commentaries, individuals of tritiya prakriti were understood to be distinct from standard male and female natures, recognized textually as a fifth type of companion with whom intimate relations could be formed. According to the Kamasutra, some third-gender individuals provided specialized sexual services as a means of making their living. Thus, while the society explicitly recognized the third gender within its social manual, their position frequently lacked broader institutional dignity.

3.3 Sushruta Samhita, Charak Samhita and Arthashastra

The Sushruta Samhita (an Ayurvedic text dated around 600 BCE) describes how the composition of shukra (male seed) and shonita (female seed) determines the biological sex of a fetus [10]. The text asserts that third-gender progeny results from an equal concentration of seed and ovum from the father and mother.

The biological orientation of the embryo is said to confirm in the second month of pregnancy: a round embryo develops into a male child, an elongated embryo results in a female child, and an irregular shape yields a third-sex child at birth [13].

The Charak Samhita discusses the internal factors behind the *napunsak* identity, using terms like *bijabhaga* to represent chromosomal elements and *bijabhagavayava* to denote genes. Disturbances in the former were thought to lead to sterility, while afflictions in the latter resulted in intersex progeny. Such individuals were grouped under categories like: *Asthriyam Vartam*: an individual born with female characteristics but lacking a *garbhashaya* (uterus), thus not considered a complete female; *Apurusham trinaputrikam*: an individual born with masculine characteristics who is nonetheless classified outside conventional manhood.

The *Arthashastra*, written during the 4th century BCE by Kautilya (Chanakya), serves as a masterwork on state affairs, detailing social, political, economic, and military administration [14]. The text outlines fiscal frameworks, the duties of a king toward his subjects, revenue settlements, and penalties for civil violations. The *Arthashastra* mentions *kleeb* as impotent persons who cannot generate progeny, thereby restricting them from direct property inheritance. However, their wives and children-maintained inheritance rights if they married and their progeny was not impotent. The text also mandates that third-gender individuals receive a baseline maintenance sufficient for their living.

Under Kautilya's statecraft, eunuchs were frequently appointed as foreign agents and covert spies within enemy courts to gather intelligence on rival kings and officials. Notably, ridiculing or defaming a *kleeb* or a third-gender individual was recognized as an offense, penalized with an immediate fine of 12 *Pannas*, which escalated to 36 *Pannas* if the mocking occurred within the public sphere. According to Kautilya's military strategic calculations, there are fourteen types of vulnerable rulers who can be systematically defeated in conflict, among whom impotent kings (*kleeb*) are positioned in the 13th place [14].

3.4 Hinduism and Gender Fluidity

Hinduism is based on a dense body of beliefs, texts, rituals, and philosophies. Although the term "Hinduism" was first popularized by external writers, the spiritual and cultural practices underpinning it date back thousands of years to the Indus Valley and Vedic periods. Within its rich spiritual heritage, Hinduism contains a vast canon of sacred texts, including the Vedas, Upanishads, Ramayana, Mahabharata, and the Puranas, which structure theological explanations and engage with complex realities surrounding identity, morality, and gender diversity [15].

One of the most remarkable features of this tradition is its representation of gender as fluid and transformative rather than binary or fixed [16]. Narratives from the Puranas and epics offer numerous examples where deities and mortals shift gender identities. In the *Devi Bhagavata Purana*, the male deities of the Trinity, Brahma, Vishnu, and Shiva these divine figurines transform into women to visit the Supreme Goddess' world of *Manidvipa*. During their visit, the Goddess explicitly states, "I am neither man, woman, nor eunuch," representing divinity as an all-encompassing reality that transcends normative binary categories.

Similarly, Shiva frequently engages in gender-fluid identities, most notably as *Ardhanarishvara*-the half-male and half-female deity representing a fusion of masculine and feminine energies, signifying that ultimate spiritual consciousness requires the unification of both principles. In another account, Shiva assumes a female identity as *Gopeshvara* to participate in the sacred dance of devotion alongside the *gopis*. Furthermore, Krishna appears across folk traditions where he swaps clothes with Radha, a symbolic act demonstrating that physical gender identity can be transcended to recognize a divine continuity of being.

The *Mahabharata* offers several complex accounts involving transgender and gender-fluid characters [17]. One of the central heroes, Arjuna, is cursed by the celestial maiden *Urvashi* to lose his masculinity after he declines her advances. Arjuna accepts this state and assumes the identity of a transgender woman named *Brihannala* during his final year of exile, teaching dance and music within King *Virata's* court. This narrative highlights the epic's acknowledgment of diverse gender expressions. Another central figure is *Shikhandi*, who is born female but raised as a male warrior, later receiving a magical gender transformation from a *yaksha* [9–11]. *Shikhandi* becomes an essential warrior on the battlefield of *Kurukshetra*, ultimately altering the course of the war. In Tamil traditions of the epic, the figure of *Aravan* gives his life as a ritual sacrifice for the *Pandavas'* victory. Before his death, Krishna transforms into the divine female *Mohini* to marry him and subsequently mourns him as a widow [17]. This narrative holds powerful agency for India's transgender community, particularly in Tamil Nadu, where the annual

Koovagam Festival celebrates this divine union and provides a space of spiritual acceptance. In the Ramayana, another well-known tradition highlights the societal recognition of third-gender individuals:

Jathā jogu kari vinaya pranāmā, Vidā kie sab sānuja Rāmā. Nāri puruṣa laghu madhya baṛere, Sab sanmāni kṛpā nidhi phere. (Ramcharitmanas)

During Rama's departure for his fourteen-year exile, he commands the “men and women” of Ayodhya to return to their homes. A group of hijras, identifying outside the binary, remained at the edge of the forest because they took his specific words literally. Upon his return years later, Rama was deeply moved by their unyielding loyalty and granted them the distinct social role of bestowing blessings during auspicious ceremonies, such as childbirth and weddings.

This narrative underpins the contemporary badhai tradition. Accompanying this spiritual legitimization is the worship of Shri Bahuchara Mata, a goddess closely associated with the transgender community and referenced within the Padma and Skanda Puranas. Her cult offers a sacred sanctuary and empowers individuals who face rejection from conventional society.

3.5 Buddhism and Jainism

Buddhism- Canonical Buddhist texts document the societal presence of gender-variant individuals in early India [18]. Pali texts contain specific references to groups who shifted away from binary norms, describing identities that correlate with hermaphrodites, transvestites, and homosexuals. The Vinaya Pitaka distinguishes between males, females, ubhatobyanjanaka (individuals possessing dual sexual traits), and pandaka (individuals structurally incapable of procreation). According to broader Tripitaka commentary, a transgender birth was textually framed as a predetermined karmic reflection of past life actions. Crucially, however, foundational Buddhist doctrine did not view gender, caste, or sex as an absolute barrier to achieving spiritual realization and Nirvana the ultimate liberation from the cycle of rebirth (samsara). While the Buddhist Sangha was initially restricted to males, it adaptively expanded over time to include women and other diverse populations [19].

Jainism- Jain religious philosophy utilizes a system of 14 margas (pathways) to evaluate and categorize all living organisms. The Gommatasara, a seminal text compiled in Pali by Acharya Nemichandra around the 10th century CE, treats the concepts of veda (psychological orientation) and linga (physical sex traits) with distinct nuances. In its tenth chapter, titled Ved Margana, the text identifies three distinct internal orientations: Striveda (female desire), Purushaveda (male desire), and Napunsakaveda (third-gender desire) [20]. Jain scholars split these categories into Dravyaveda (the biological sex marks present on the physical body) and Bhavaveda (the internal psychological desire and sexual identity). Under this framework, an individual could be classified as Dravyapurushavedi (physically male), Dravyastrivedi (physically female), or Dravyanapunshakavedi (physically intersex/third gender) based on anatomical traits, while concurrently holding a different Bhavaveda alignment based on their internal psychology. This reveals a highly sophisticated, non-binary understanding of human gender and sexuality within classical Jain religious thoughts [11, 16, 20].

4. MEDIEVAL INDIA AND THIRD GENDER POPULATION AS “EUNUCHS”

While several Persian and Arabic terms such as khwaja sara, hijra, or mukhanathun were traditionally used to denote third-gender individuals, British colonial writers later introduced the catch-all translation of “eunuchs” [21]. In the medieval context, eunuchs were castrated males who typically underwent emasculation either prior to or immediately following the phase of puberty. While sharing social space with modern transgender communities, medieval eunuchs were historically shaped by institutional slave systems and forced conversions, whereas modern identities focus on self-determination and psychological autonomy. Modern legal milestones, such as the Supreme Court's NALSA verdict, have formally consolidated these historical groups under the broader umbrella of the contemporary transgender identity.

4.1 Eunuch Trade in Medieval India

The trade of eunuchs as slaves was a prominent economic feature of the medieval era, with the Bengal province serving as a major hub for the slave trade [21, 22]. The Italian traveler Marco Polo documented this phenomenon in his historical travelogues, noting that wealthy nobles from various provinces frequented these specialized markets to purchase slaves and eunuchs. A significant portion of war prisoners were systematically castrated and subsequently circulated as commodities across regional and international borders.

Within the Delhi Sultanate and the Mughal Empire, eunuchs transcended their status as mere property; they were widely installed as structural guards of the royal harem, personal bodyguards to the imperial family, political advisors, diplomats, and high-ranking military commanders [23, 24]. Malik Sarvar, a prominent eunuch during the reign of Firoz Shah Tughlaq, initially served as the official custodian of the royal jewelry before being elevated to the Governor of Delhi (Shahnah-i-Sahar). He eventually moved eastward to found the independent Sharqi dynasty in Jaunpur, Uttar Pradesh, receiving the elite title of Malik-us-Sharq from Sultan Nasiruddin Mahmud Shah II. Historical records by the Persian ambassador Abdul Razzaq note that the King of Vijayanagara sent various imperial gifts, including eighteen (two tokouz) eunuchs, to foreign rulers as a means of cementing diplomatic alliances. Similarly, the Venetian traveler Niccolao Manucci noted that eunuchs were frequently exchanged as formal modes of payment to settle large trade deficits between regional monarchs and merchant guilds.

In addition to domestic markets, eunuchs of African ethnicity, known colloquially as Habshis, were heavily imported into Indian territory. Ruknuddin Barbak Shah, the ruler of Bengal, systematically integrated around eight thousand Habshi eunuchs into his direct military service. One such slave, Sultan Shahzada, launched a successful political revolt in 1487, temporarily seizing the royal throne of Bengal [24]. Abul Fazl's 16th-century imperial chronicle, the *Ain-i-Akbari*, outlines three distinct commercial categories of eunuchs traded within the markets of Bengal: Badami, Kafuri, and Sandali [25]. Categorized by their perceived levels of physiological modification, these groups were assigned corresponding administrative duties within the royal harem (Zenana-Khana). Because they controlled access to the private quarters housing the emperor's wives and concubines, these harem guards secured immense imperial trust, eventually leveraging their positions to become Khwaja Saras (chief trustees), Vakils (head ministers), and Faujdars (district military administrators) over lucrative royal jagirs (land grants).

4.2 Royal Patronage and Eunuchs in the Court and Administration

Eunuchs occupied highly influential, systemic positions within public administration and the military command structure, serving as the direct confidants of successive rulers [17]. The Delhi Sultan Alauddin Khilji purchased Malik Kafur as a slave during his western campaigns. Kafur rapidly ascended to become the Sultan's closest military commander and chief advisor, leading the imperial armies into the Deccan and earning the supreme title of Malik Naib (Deputy of the Empire). Under the Mughals, Itibar Khan (Ambar) served under Babur and was later appointed as the Governor of Delhi under the reign of Akbar. Similarly, Phul Malik was given control of financial offices and tasked with the structural training of the imperial armies, earning the title Itimad Khan from Akbar. During the reign of Aurangzeb, Bakhtawar Khan, a scholar and eunuch, served as a prominent Persian poet and court historian. Granted extensive royal patronage, his literary works heavily influenced the documentation of contemporary poetry and historical chronicles, while he concurrently served as a personal advisor to the emperor [26].

Foreign accounts verify the immense wealth and administrative ranks (mansabs) commanded by these individuals [27]. Niccolao Manucci's *Storia do Mogor* highlights a prominent eunuch named Shahbaz who successfully commanded an elite rank of 5,000 mansabs. Monarchs routinely deployed eunuchs as specialized couriers and intelligence spies to gather sensitive information regarding state officials; Aurangzeb deployed a eunuch named Fahim to deliver critical messages to his rival brother Dara Shikoh, and placed absolute reliance on the chief eunuch Itibar Khan to secure the internal confinement of the deposed emperor Shah Jahan. The chief eunuch of the harem, titled the Nazir, held the unique legal authority to bar any individual from entering the inner palace, save for the emperor himself. Managing massive independent budgets to maintain the palace infrastructure, these individuals exercised supreme control over the internal discipline, security, and decorum of the imperial court [27, 28].

4.3 Royal Order (Farman) to Ban Eunuch Trade

It was an established practice among families in the Sylhet region of Bengal to perform surgical emasculation on their young sons, subsequently presenting these boys to local governors as a form of official revenue payment (mal wajibi). Emperor Jahangir fiercely opposed this localized slave trade and the systematic creation of eunuchs across the eastern provinces. He issued an official imperial decree (Farman) that strictly prohibited the castration of young boys and banned the associated commercial slave networks. The entire practice was criminalized as a capital offense against the state; individuals caught operating castration rings or trading in human lives were subjected to severe corporate punishments and long-term imprisonment. This state intervention proves that while elite eunuchs within the administrative core enjoyed immense structural power, luxury, and high salaries, ranging from 2 to 1,000 rupees a month at a

time when a tola of gold cost roughly 20 rupees the wider population surviving on the state's periphery faced continuous threats of physical violence, trafficking, and severe structural vulnerability [27].

5. COLONIAL INDIA AND THIRD GENDER POPULATION: MARGINALIZATION AND EXCLUSION

Following the acquisition of the Diwani rights of Bengal, the British East India Company initiated a wholesale re-engineering of the subcontinent's legal architecture. The customary socio-cultural relationships between subjects and the state were dissolved and replaced with statutory British laws rooted in Victorian morality and Christian theological frameworks [28]. Colonial administrators systematically categorized the traditional practices of transgender communities as "barbarous customs" embedded within native society, viewing them through the same lens as Sati and female infanticide. The colonial state assumed a paternalistic "civilizing mission," organizing legislative interventions to eradicate these fluid expressions from their newly claimed territories [28, 29].

A fundamental driver of this colonial erasure was the rigid misinterpretation of native vocabulary. Operating from a strictly patriarchal, binary framework, British officials flattened complex identities like kleebs, shandha, pandaka, napunsak, and kesava into a single, homogeneous category labeled simply as "eunuchs". This statutory flattening formed the baseline for total socio-legal exclusion [30].

5.1 Transgender Population and Colonial Laws

Long before the passage of the landmark Criminal Tribes Act of 1871, regional British bodies sought to dismantle transgender economic networks. On April 27, 1796, the Nizam Adawlut enacted early statutory provisions prohibiting castration, treating it as an isolated criminal offense. The colonial administration believed that if the physical practice of castration could be entirely suppressed, the wider transgender population would naturally dissolve. Consequently, the introduction of The Indian Penal Code (IPC) of 1860 universalized the absolute criminalization of castration across all presidencies.

The Criminal Tribes Act (1871): This statute codified an inhumane administrative philosophy: the doctrine that certain marginalized communities are "criminals by birth" [31]. The colonial state asserted that these hereditary groups were biologically unreformable and could not be socialized through normal governance; therefore, they required systematic isolation and segregation from the public eye. During its introduction to the Legislative Council, T.V. Stephen famously argued that just as traditional trades are inherited under the Indian caste system, certain communities practice a profession of hereditary crime passed down from their forefathers. The application of the 1871 Act shattered the community's ancestral lifestyle [29]. Once a local group was formally notified under the Act, magistrates and police departments were granted sweeping, extrajudicial powers.

Community members were legally required to carry registration cards and report their internal movements to local police desks at fixed intervals. If an anonymous crime occurred within a district, these registered individuals were automatically rounded up as default suspects. An aggressive amendment passed in 1897 explicitly expanded Part II of the Act to target eunuchs, legally defining them as: "All persons of the male sex who admit themselves or on medical inspection clearly appear to be impotent." Local bodies were mandated to maintain public registers documenting the names, properties, and precise addresses of all local hijras. Suspected by the state of kidnapping, systemic castration, and violating public decency, registered individuals were legally barred from executing a property will, inheriting ancestral lands, or adopting children. They were strictly prohibited from cross-dressing in public spaces and forbidden from performing traditional music or dances. Any violation of these provisions carried an automatic penalty of two years in prison.

Anti-Sodomy Laws: During the mid-19th century, the British state systematically linked the transgender population with the concept of sodomy [32]. Homosexual acts and non-procreative carnal intercourse were viewed with deep "salutary horror" by Victorian lawmakers, who categorized them as direct offenses against natural law and Christian theology. Within the IPC of 1860, Section 377 formalized this intolerance, stating:

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine."

The moral anxieties of colonial legislators prevented any open debate regarding the specific language of Section 377. They feared that public discussion of homosexual acts would spread moral contagion faster

than the law could suppress it. The enforcement of Section 377 stripped the transgender community of its fundamental right to bodily autonomy. The historic case of *Queen Empress v. Khairati* (1884) demonstrates how local police forces weaponized this section, launching invasive medical inspections and criminal prosecutions based entirely on an individual's gender non-conformity, dress, and perceived social deviation.

5.2 Land and Revenue Laws

While pre-colonial states routinely recognized the economic rights of transgender communities, the British administration actively attacked their traditional means of subsistence. Viewing their income from *badhai* (ceremonial blessings) and begging as an "abominable practice of wretches" and a "form of public extortion," the colonial state passed strict vagrancy bans to criminalize their visibility [29, 32].

Historically, hijra communities received hereditary cash gifts (*varsasans*) and tax-free land grants (*inams*) directly from local rulers, which were passed down through the ancestral *guru-shishya* (master-disciple) lineage. In the Pune district of Maharashtra, a prominent hijra lineage had successfully maintained a 42-acre tax-free agricultural *inam* for six consecutive generations. The British district collectorate systematically attached this property, unilaterally canceling the community's land deeds. When a formal appeal was launched in the court of the Governor-General to honor the ancient Maratha land grant, the colonial state flatly rejected the claim, issuing a public notice stating: "Even if the land grant or *inam* was supposed to be valid, even then the conditions mentioned therein could not be observed without a scandalous breach of public decency."

6. POST-INDEPENDENCE INDIA AND TRANSGENDER LAWS

Following independence, the newly sovereign Government of India took decisive steps to dismantle colonial legislative relics, officially repealing the overreaching Criminal Tribes Act in 1952. However, achieving comprehensive structural recognition and basic civic dignity remained a long, ongoing struggle for the transgender community [33]. In 1999, a transgender candidate named Kamala Jaan made political history by winning the mayoral election in Katni, Madhya Pradesh, by a clear margin of 99 votes. Her political victory was immediately challenged in the state courts under the case *Kamala Jaan alias Hijrah v. Sadiq Ali*. The Madhya Pradesh High Court ultimately invalidated her election, ruling that because the mayoral seat was strictly reserved for a female candidate, a transgender individual could not legally qualify as a woman, forcing her immediate removal from office.

6.1 National Legal Service Authority V. Union of India Case (2014)

The long history of structural marginalization faced a watershed transformation with the Supreme Court's ruling in the landmark *NALSA v. Union of India* case [24]. The apex court officially recognized transgender individuals as the distinct "third gender," extending full fundamental and constitutional protections to them as equal citizens. The judiciary affirmed an individual's absolute right to gender self-identification, personal choice, and freedom of expression under Article 21, mandating that the state provide equal institutional opportunities without discrimination based on sex or gender identity [34].

6.2 Navtej Singh Johar V. Union of India Case (2018)

For over a century, India continued to enforce the restrictive moral frameworks of Victorian England through Section 377 of the IPC. This anti-sodomy law was first successfully dismantled by the Delhi High Court in the case *Naz Foundation v. Govt. of NCT of Delhi* (2009), which declared the criminalization of consensual adult sexual acts unconstitutional. However, this progressive ruling was temporarily overturned by the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation* (2013), which reinstated the colonial provision [34, 35]. This setback was finally resolved in the historic *Navtej Singh Johar v. Union of India* ruling, where a five-judge constitutional bench unanimously struck down Section 377 to the extent that it criminalized consensual adult intimacy [36–38]. Delivering her concurring judgment, Justice Indu Malhotra famously observed:

"History owes an apology to the members of this community (LGBTQ) and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries."

6.3 Transgender Persons (Protection of Rights Act) 2019 and Emerging Healthcare Policies

To translate these judicial milestones into concrete state policy, parliament initiated a series of legislative debates [36]. In 2014, Member of Parliament Mr. Tiruchi Siva introduced a progressive private member's bill titled the Rights of Transgender Persons Bill, which successfully cleared the upper house. Building upon this momentum, the central government formulated the official Transgender Persons (Protection of Rights) Bill 2016, sending it to a parliamentary standing committee for extensive civil revision. These collective adjustments culminated in the formal passage of The Transgender Persons (Protection of Rights) Act 2019, providing a statutory framework for self-identity, non-discrimination in employment, and equal access to public resources [38, 39]. This act also established the National Council for Transgender Persons to advise the central ministry on welfare programs.

Despite these statutory protections, recent research highlights that the community continues to encounter severe structural, interpersonal, and institutional barriers, particularly within the public healthcare system [1]. Transgender individuals navigate extensive social prejudices, high rates of minority stress, and a profound trans-health knowledge gap among primary care physicians, which frequently results in inadequate or misinformed medical care [37, 39].

Furthermore, due to persistent economic marginalization and a higher-than-average unemployment rate, the vast majority cannot afford out-of-pocket expenses for gender-affirming treatments, such as hormone therapies and sex reassignment surgeries (SRS). To address these systemic disparities, the central government has initiated targeted healthcare and rehabilitation interventions under the 2019 Act and its subsequent 2020 Rules, carving out specific operational tracks to realize a self-reliant and supportive framework for a dignified livelihood [40, 41].

- **The SMILE Scheme:** The Support for Marginalized Individuals for Livelihood and Enterprise scheme mandates that state governments establish Garima Grehs (dedicated shelter homes) to provide secure housing, psychological counseling, and medical rehabilitation for homeless transgender individuals.
- **Ayushman Bharat TG Plus Cards:** In a historic collaboration, the National Health Authority signed a memorandum of understanding to issue specialized TG Plus insurance cards. This initiative provides comprehensive health insurance coverage within the National Health Protection Scheme, fully covering the costs of cosmetic procedures, laser therapies, hormone treatments, and sex reassignment surgeries at empanelled facilities.
- **Specialized Infrastructure:** To counter geographical isolation and healthcare avoidance, the state has initiated localized medical models. For example, the Sanjay Gandhi Post Graduate Institute of Medical Sciences (SGPGI) in Lucknow, Uttar Pradesh, launched the first comprehensive, multidisciplinary transgender clinical care unit in North India, operating a specialized patient ward and dedicated outpatient department (OPD).

7. RESULTS AND DISCUSSION

Read together, Sections 3 to 6 trace a single continuous trajectory rather than four unrelated episodes. Ancient scriptural and legal texts (the Vedas, Manusmriti, Kamasutra, Arthashastra and Ayurvedic corpus) treated the third gender as a recognized, if circumscribed, category within a tripartite model of sex. Medieval court society converted this scriptural recognition into concrete institutional power, with eunuchs occupying administrative, military and diplomatic offices. Colonial rule reversed this trajectory sharply: statutory instruments such as the Criminal Tribes Act of 1871 and Section 377 of the Indian Penal Code collapsed a spectrum of identities into a single criminalized category and stripped away both the economic and legal standing built up over the preceding two periods. The post-independence period reconstructs, through constitutional litigation and welfare legislation, a legal (if not fully social) parallel to the ancient and medieval position.

7.1 Comparative Findings Across Periods

Table 1 and Figure 2 summarize this comparison across the four periods discussed in the manuscript, drawing on the primary and secondary sources reviewed in Sections 3–6.

Table 1. Comparative overview of source base, institutional status and legal recognition of the third gender population across Indian historical periods.

Period	Primary Source Base	Socio-Institutional Status	Legal Recognition	Key Turning Point
Ancient India	Vedas, Manusmriti, Kamasutra, Arthashastra, Ayurvedic texts, epics & Puranas	Recognised within a tripartite sex model; some ritual restrictions	Customary / scriptural, not statutory	Codification of napunsak status in Manusmriti
Medieval India	Court chronicles (Ain-i-Akbari), traveller accounts (Marco Polo, Manucci, Abdul Razzaq)	High: eunuchs held administrative, military and diplomatic office	Patronage-based, dependent on royal favour	Institutionalisation of eunuchs in the Zenana-Khana and Mughal mansab system
Colonial India	Colonial statutes, legislative debates, court judgments	Criminalised and marginalised	Actively revoked (Criminal Tribes Act 1871; IPC §377)	Criminal Tribes Act, 1871 (amended 1897)
Post-Independence India	Constitutional judgments, parliamentary acts, government schemes	Progressively restored	Constitutionally guaranteed (NALSA 2014; Navtej Singh Johar 2018; Act of 2019)	NALSA v. Union of India, 2014

Qualitative Comparison of Source Availability, Institutional Standing and Legal Recognition Across Historical Periods

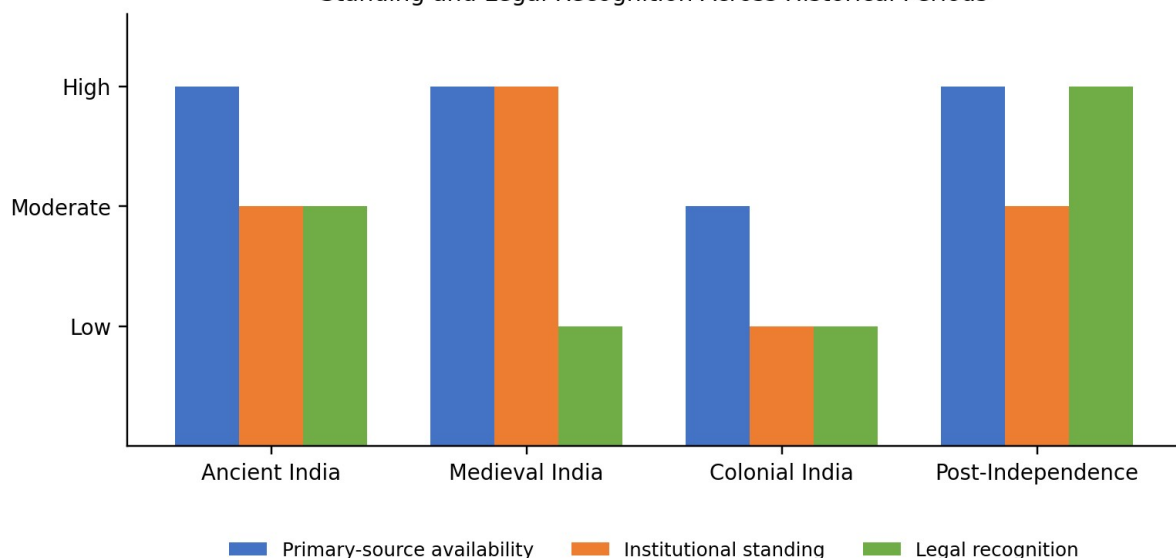


Figure 2. Qualitative comparison of primary-source availability, institutional standing and legal recognition of the third gender population by period, characterized as Low/Moderate/High based on the discussion in Sections 3–6 (a descriptive synthesis, not a measured or scored dataset).

7.2 Discussion

The comparison shows that legal recognition and social/institutional status did not move together across time. Medieval India shows high institutional status without formal legal recognition (patronage could be withdrawn at will), whereas post-independence India shows the reverse pattern: strong constitutional and statutory recognition that has yet to translate into commensurate social and economic standing, as the healthcare-access barriers discussed in Section 6.3 illustrate. The colonial period stands out as the only period in which both source base and institutional status were actively suppressed by the state rather than merely absent, which supports the paper's central argument that colonial law rather than any pre-existing indigenous tradition produced the exclusion that subsequent constitutional and legislative reform has since had to unwind. Formal recognition in law can therefore coexist with overt and covert barriers to justice in practice [42]. Measured social standing, of the kind captured by Indian socio-economic status scales, is a further dimension that this qualitative comparison does not quantify [43].

8. CONCLUSION

The contemporary 21st-century movement for third-gender recognition is a relatively recent development for Western societies, which historically treated deviations from a strict male-female binary as severe mental or psychological disorders to be suppressed through aggressive legal penalties. Conversely, the historical trajectory of the Indian subcontinent reveals a long-standing, native tradition of accepting and assimilating gender-variant identities within its classical socio-cultural, literary, and spiritual spheres. Moving beyond simple structural dichotomies allows modern governance to better reconcile these classical inclusive ideals with modern welfare protections. During the medieval era, third-gender individuals, operating under the institutional title of eunuchs, secured influential administrative, military, and diplomatic positions within the courts of the Delhi Sultanate and the Mughal Empire.

This native continuity was systematically fractured by the arrival of the British Raj. Influenced by rigid Victorian moralities, colonial administrators collapsed diverse, fluid indigenous identities into a single, flattened category of "criminal eunuchs," criminalizing their basic visibility, livelihoods, and bodily autonomy through draconian statutes like the Criminal Tribes Act of 1871 and Section 377 of the IPC.

In the post-independence era, India has undertaken a major constitutional and legislative journey to rectify these historical wrongs. The landmark NALSA (2014) and Navtej Singh Johar (2018) judgments successfully restored fundamental civil rights, privacy, and legal recognition to the community. Through the enactment of the Transgender Persons (Protection of Rights) Act 2019 and modern welfare frameworks like the SMILE Scheme and Ayushman Bharat TG Plus insurance cards, the state has begun laying the groundwork for true social equity. Modern scholarship emphasizes that expanding these initiatives, introducing gender-sensitive medical curricula, eliminating institutional transphobia, and establishing specialized district clinics are crucial steps toward building an equitable nation. By systematically dismantling remaining economic, social, and medical barriers, India is actively transitioning toward an inclusive future where every citizen, regardless of gender identity, can live with absolute dignity.

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USE OF AI AND AI-ASSISTED TECHNOLOGIES

AI tools were used only for language refinement and formatting. Specifically, Claude AI was used to review grammar, improve sentence structure and readability, and assist with general editing of the text.

CONFLICT OF INTEREST

The authors declare that there is no conflict of interest.

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