

Original Research Article

Survey of Regulatory Landscape for School Education for Third Gender Pupils in India:With Educational Board Level Case-studies from CBSE, ICSE and UP Board

ABSTRACT

Aims: Third-gender (TG) people in India face discrimination in all aspects of life - social interaction, education, job etc. Good education can be a tool to fight against this discrimination but the educational system is usually not very inclusive when it comes to TG persons. In this paper, the researchers present an analysis from their survey of the regulatory landscape (laws, policies, guidelines, ...) of India in the context of school-level education for TG pupils. They also present a brief overview of the international standards to set the scene.

Methodology: Systematic survey of regulation, policy and guideline documents in India for School-level Education

Results: The researchers report that despite the legal recognition of TG persons in India and despite “inclusive education” being one of the central themes of all national-level policies, there is still a lack of concrete guidelines as to how to implement inclusive education, specifically for TG pupils. Furthermore, the guideline documents to schools from three big educational boards in India, namely CBSE, ICSE and UP board, also don't contain any guideline in this regard. Even the language of the guideline documents themselves was found to be non-inclusive for people of non-binary gender.

Conclusions: Based on their analysis, the researchers found the gaps in the regulatory landscape of India for inclusion of TG pupils and provided recommendations for improving the regulatory landscape in India for school-level education of TG persons and also for making the language of these (or others) regulatory documents more inclusive.

Keywords: Inclusive education, School Education, Third gender, Transgender, CBSE, ICSE, UP Board, Regulations, Policy, Guidelines

1. INTRODUCTION

1.1 Third-gender People and Education (or lack thereof)

People who don't fit into the binary definitions of gender are discriminated against in almost all human societies. Even in India, where transgenders or third-gender people (referred to as “TG” in this paper) have had a place in the culture and mythology for millennia, they are mocked, physically and sexually abused, discriminated against and are deprived of even the most fundamental human rights, one of which is school education.

As per the Census of India 2011, literacy among transgenders in India is only 56.1% as compared to the national average of 74% (SECC 2011). And these percentages do not convey the severity of the problems faced by TG persons in everyday life, especially while obtaining education. For example, Singh reports (Singh 2022) the cases of multiple *Hijras* from Varansi District, India where education was outright denied to them by school administrators and/or parents and where they faced verbal, physical and sexual abuse by classmates and/or teachers.

Hijras are a group of transgender and intersex people in the Indian subcontinent who have traditionally performed socio-religious functions of “blessing” the general population on weddings and childbirth. But due to lack of education and subsequently job opportunities, Hijras and other TG persons are forced to earn a living through socially-stigmatized jobs like prostitution. This leads to their further marginalization by the “mainstream” society.

1.2 Inclusive Education: International Regulations

Exclusion of TG persons in education or other social endeavors is not only an Indian problem but an international one. That's why there exist international regulations and guidelines in this space.

It is widely known to us humans that education is the most powerful tool for humanity to rise from the widespread problems of poverty, discrimination, diseases and such. And this tool is most effective when it is available for all humans equally, without prejudice, regardless of one's race, gender, sexuality, able-bodiedness or any other discriminatory factors. That's why inclusive and quality education for all is one of the 17 Sustainable Development Goals (SDGs) (goal number 4) as defined by the United Nations (United Nations 2015).

One part of the goal number 4 of UN SDG is to provide inclusive higher education for all young men and women. Specifically sections 4.3 and 4.5 of the goal talk about eliminating disparities in education for people from vulnerable groups - women, people with disabilities, indigenous tribes etc.

Furthermore, the Yogyakarta principles from 2006 (revised in 2017) lay down the international guidelines for applying human rights, including the right to education, in relation to gender identity and sexual orientation. UN SDG4 and Yogyakarta principles together form the international legal and policy basis for the educational rights of persons of third gender (TG).

Also in this context, UNESCO (United Nations Educational, Scientific and Cultural Organization) has created International Technical Guidance on Sexuality Education (UNESCO 2009) which includes the best principles in educating young people about gender and sexuality issues including transgender specific topics.

1.3 Scope of This Paper

This paper focuses on the Indian regulatory landscape, i.e. legal requirements, regulations and guidelines regarding school-level education of TG persons. The authors take a top-down approach for this regulatory survey. They first present an analysis of Indian national level laws, regulations and guidelines for the (educational) rights of TG persons and then move to the regulations and guidelines at educational board level.

Three educational boards have been considered as case-studies for the above analysis - CBSE (Central Board for Secondary Education), CISCE (Council for the Indian School Certificate Examinations) also known as “ICSE” board and USMSP (Uttar Pradesh Madhyamik Shiksha Parishad) aka “UP Board”.

2. INDIAN NATIONAL LEVEL REGULATORY LANDSCAPE FOR INCLUSIVE EDUCATION FOR TG PERSONS

2.1 Legal Recognition and Rights

Transgenders and gender non-binary people have existed for millennia in Indian mythology and culture. But in legal terms, they weren't recognized even until very recently. Third gender was not officially recognized in the Indian law and the Census of India, until 2011, didn't count or collect any data on gender non-binary people. Then it changed in 2014 with the landmark NALSA judgment (NALSA 2014).

The judgment of the NALSA vs Union of India case in 2014 granted legal recognition for third gender, i.e. people whose gender or biological sex is not binary (neither male, nor female). The judgment also called for the treatment of TG persons as socially and educationally backward classes of citizens and for extension of all kinds of reservation for them in cases of admission in educational institutions and for public appointments.

The subsequent Transgender Act of India from 2019 (Govt. of India 2019) aimed to ensure "full and effective participation of transgender persons and their inclusion in society". This act provided equal rights to TG persons, specifically, the right to equal education - "Every educational institution funded or recognized by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others".

2.2 Educational Rights and Regulations

Apart from the Transgender Act of India 2019, two further regulations govern the *educational* rights of pupils, including TG pupils - National Education Policy (NEP) (Ministry of Education 2020) and RTE (Right to Education) Act (Govt. of India 2009).

NEP 2020 draws heavily from the UN's 4th SDG, as described above and 'Equity' (impartial and inclusive education) is one of the five pillars of NEP, the other four being Access, Quality, Affordability and Accountability.

Within the context of the UN's SDG4 as well as NEP2020, Equity or inclusion cuts through all levels of education - primary, secondary, vocational, tertiary and so on. Moreover, the RTE (Right to Education) act of India calls for an equal education for all pupils, regardless of their gender, socio-economic background, able-bodiedness, religion, caste etc.

As such, neither in NEP 2020 nor in RTE, explicit and detailed guidelines are given on *how* to implement inclusive education policies at individual schools.

2.3 National Level Educational Guidelines

2.3.1 SQAAP by Ministry of Education, India

At the national level in India, there is a SQAAP (School Quality Assessment and Accreditation Framework) that provides guidelines to schools, educational boards and other stakeholders (possibly the management and administrative entities of privately owned schools) for quality assessment of schools (Ministry of Education 2021). The purpose of this guideline document is to provide all these stakeholders a tool to improve the overall quality of school processes and educational outcomes for students. This framework has been developed on behalf of the Department of School Education & Literacy, Ministry of Education India by CBSE.

Analysis: Inclusive education is one of the key pillars of SQAAP. A whole chapter is dedicated to inclusive practices and there are guidelines for all aspects of schooling - infrastructure, staff, curriculum etc. But the scope of these inclusive provisions is severely limited - only for *Divyang* (physically handicapped) students.

DOMAIN 4: INCLUSIVE PRACTICES

DOMAIN OVERVIEW	
The school must bring about a fundamental change in its systems and processes in order to support and address the individual needs of each child. They must adopt effective model of inclusive education and create such an environment in which all students have an opportunity or opportunities to flourish. Inclusive schools value all students as equal members of the school community; engage all students irrespective of their abilities in wide range of activities - both academic and non-academic.	
SUB-DOMAINS	STANDARDS
4.1 Barrier free environment	<p>4.1.1 The school provides barrier free access in terms of physical environment to the divyang and students from all socio economic backgrounds.</p> <p>4.1.2 The school provides barrier free access in terms of curriculum to divyang.</p> <p>4.1.3 The school provides barrier free access in terms of teaching and assessment to divyang.</p>
4.2 Games, Sports and other Recreational Facilities	<p>4.2.1 Adequate and appropriate indoor and outdoor games, sports and other recreational facilities are provided to divyang.</p>
4.3 Transportation Facilities	<p>4.3.1 The school provides adequate transportation facilities to divyang.</p>
4.4 Overcoming Attitudinal Barriers	<p>4.4.1 Training and sensitization programmes are conducted for all staff members by the school with respect to divyang.</p>
4.5 Other Support Services	<p>4.5.1 The school provides support services or resources for divyang and students from all socio economic backgrounds.</p>

Illustration. 1. Inclusion Guidelines in SQAAP that include only Divyang

Consider the summary of the chapter on Inclusive practices given in *Illustration 1*. Even though the chapter is supposed to cover inclusion for *all* kinds of diverse pupils, it only talks about *Divyang* (physically handicapped). And while the researchers appreciate the efforts of this document to make schools inclusive for *Divyang* students, within the scope of their research on TG pupils, they have to point out that no guidelines are provided for the inclusion of TG pupils. It is also to be noted that the inclusion for *Divyang* is also limited only

to pupils with locomotor disability. No guidelines have been made for pupils with other types of disability such as blindness, deafness, socio-psychological challenges etc.

At a few places, the guideline document actually excludes TG pupils. For example, in the “Mandatory Disclosure Form” given in Appendix, there are several elements that consider only binary gender. Consider the examples in Illustration 2.

1.8 Type of School (Select appropriate option) :

Boys/Girls/Co Ed

2.15 Hostel facility (Yes/No) If Yes

Mention

a) Number of girls : Number of boys:

8.1 Number of students in different classes :

Academic Session:

Class	Number of Sections	Boys	Girls	Total
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Illustration.2.Example Guidelines in SQAAC that exclude TG Pupils

Finally, the language of the SQAAC document is generally inclusive, for example, the use of the word “students” or “child”, but occasionally, the words “boys” and “girls” have been used.

2.3.2NCERT’s Training Manual (RETRACTED)

In 2021, NCERT (National Council for Educational Research & Training) published a training manual for educators to improve inclusion of transgender pupils in schools (NCERT 2021).

Analysis: The NCERT manual comprehensively talked about the problems faced by TG pupils when obtaining school education, such as fitting into the gender binary infrastructure at school, receiving abuse and violence from classmates, experiencing mental anguish for not being able to express gender as per. But more importantly, this manual provided clear and extensive guidelines about improving inclusion for TG pupils in school education through

- Use of gender-neutral pronouns, e.g. ‘they’ instead ‘he’/‘she’
- Use of inclusive language, e.g. ‘students’ instead of ‘boys’ or ‘girls’
- Gender-neutral uniforms to allow pupils to wear clothing as fits to their gender identity and expression
- Inclusion of transgender topics in the curriculum to inform and sensitize other pupils about them

Despite the importance of the NCERT manual in the goal of achieving inclusive education in India, there were concerns raised, specifically from NCPDR (National Commission for Protection of Child Rights), about the recommendations provided in it (Sharma 2021). As a result, the manual was later retracted by NCERT and removed from its website. (At present, the manual is available through the website of another agency working for inclusion - CLPR - Centre for Law Research and Policy).

The creation and publication of the above-mentioned guideline document by a committee of experts from a national educational agency is a sign that India as a country is aware of and active towards the goal of inclusive and equitable education as set by the UN. But the opposition of such an important document by another national agency, opposition that led to the shelving of the said document, shows us that Indian society in general is not yet open enough to discuss or work on issues of non-binary gender or homosexuality, issues that are still considered taboo.

3. EDUCATIONAL BOARD LEVEL REGULATORY LANDSCAPE FOR INCLUSIVE EDUCATION FOR TG PUPILS

3.1 Case-Study 1: CBSE Board

Board Overview: CBSE (Central Board for Secondary Education) is the largest educational board of India with over 30,000 affiliated schools and over 27 Million (over 2.7 crores) students (CBSE IT 2024) in all corners of the country.

Regulatory Documents Considered: CBSE affiliation bye-laws (CBSE 2018)

Analysis: There are guidelines about inclusive provisions for physically handicapped persons or users of wheelchairs, such as ramps and auditory signals, as per the RPWD (Rights of Persons With Disabilities) Act-2016 of India. And even though the document doesn't, as such, exclude TG pupils, it doesn't provide explicit guidelines on making school education inclusive for them.

The language of the documents is generally inclusive, for example, the use of the word "students" or "child", but occasionally, the words "boys" and "girls" have been used, especially in the context of washroom facilities. This indirectly implies that the admission for TG pupils is not really foreseen and the inclusiveness for them is not prescribed. Consider the excerpts given in Illustration 3 from the regulatory document (Chapter 4 Section 4.7.2).

4.7 Drinking water, Toilets and other Physical Facilities

4.7.2 The School will provide clean, healthy and hygienic toilets on each floor with washing facilities for boys and girls separately in proportion to the number of students ...

Illustration.3.Example Guidelines in CBSE Bye-Laws that exclude TG Pupils

3.2Case-Study 2: CISCE ("ICSE") Board

Board Overview: CISCE (Council for the Indian School Certificate Examinations) also known as "ICSE" board is one of the most reputable educational boards in India. It has over 2,800 affiliated schools (Anshima 2024) and estimated around 340,000 students (34 lakhs) (just for classes X and XII) (The Hindu 2024).

Regulatory Documents Considered: CISCE Affiliation Guidelines (CISCE 2016)

Analysis: Similar to the CBSE Bye-Laws, the CISCE regulations don't exclude TG pupils but they also don't provide guidelines on making school education inclusive for them. The language of the regulations is generally inclusive, for example, the use of the word "pupils", but occasionally, the words "boys" and "girls" have been used, especially in the context of washroom facilities and hostel residence. This indirectly implies that the admission for TG

pupils is not really foreseen and the inclusiveness for them is not prescribed. Consider the excerpts in Illustration 4 from the regulatory document (Chapter 3 Sections 9(a) and 12(a) respectively).

“9. Washrooms

a. Ratio of washrooms to number of pupils, separately for boys and girls

12. Students

a. Number of boys and girls in each classroom (maximum 45 in a class)”

Illustration.4.Example Guidelines in CISCE Bye-Laws that exclude TG Pupils

3.3Case-Study 3: UPMSP (“UP Board”)

Board Overview: UPMSP or Uttar Pradesh Madhyamik Shiksha Parishad is the biggest state-level board in the state of Uttar Pradesh, India. UPMSP has over 22,000 affiliated schools (UPMSP 2024) and an estimated over 5.5 Million (55 Lakhs) Students (just for classes X and XII) (Indian Express 2024).

Regulatory Documents Considered: Chapter 7 (Affiliation Regulations) of USMSP's Bye-Laws (UP Gazette 2023) (published in Hindi; interpreted by the researchers themselves)

Analysis: The document includes guidelines for inclusive measures for *Divyang* (physically handicapped) pupils, for example toilets on the ground floor, handrails etc. But there are no inclusive provisions for TG pupils. Furthermore, the document uses gender binary language extensively instead of gender-neutral language, for example बालक / बालिकाओं (“boys” / “girls”) or छात्र / छात्राएं (“male students” / “female students”) instead of the gender-neutral word विद्यार्थी (“pupils” / “students”). Consider the excerpt in Illustration 5 from the document (Chapter 7, Section (24)च).

“शौचालयों की व्यवस्था -

- छात्र एवं छात्राओं हेतु प्रथक सायनेज़ सहित सुरक्षित शौचालयों की व्यवस्था की जाए । साथ ही बालिकाओं के लिए सेनेटरी पैड एवं इंसीनिरेटर की व्यवस्था किया जाना होगा ।*
- दिव्यांगों हेतु भूतल पर - प्रथक शौचालय, हैंड रेल, रैम्प रेलिंग सहित, सायनेज़ एवं अन्य निर्धारित मानक के अनुसार”*

Translation (by authors of this paper):

“Provision of toilets -

- *Separate and safe toilets with signage for male and female students should be arranged. In addition, sanitary pads and an incinerator should be provided for girls.*
- *For Divyang (physically handicapped), separate toilet on the ground floor with hand-rail, ramp and railing, signage and other established standards”*

Illustration.5.Example Guidelines in UPMSB Bye-Laws that exclude TG Pupils

4. SUMMARY

After surveying the regulatory landscape of India in the context of inclusive school-level education for TG pupils, the key findings of the researchers are the following -

- At the **Indian National level**: Inclusive education is a key topic, however
 - The detailed guidelines on how to implement inclusive education are present but are severely limited in scope and have only been considered for the inclusion of *divyang* students
 - No guidelines are present for making school education inclusive for TG pupils
 - A comprehensive NCERT Guideline document was published in 2021 to address the issues of TG inclusion but it has since been retracted
- At the **Education Board level** (for CBSE, ICSE and UP Boards):
 - There are no guidelines specific to inclusive education, in particular inclusive education for TG pupils
 - In some gender-specific guidelines, for example - toilet facilities or hostels, the guidelines exclude TG pupils
 - Furthermore, both at the national level and board level, the language of the guideline documents itself, is not entirely gender neutral or inclusive of TG persons; for example, the documents use words like “boys” and “girls” (instead of the gender-neutral “pupils” / “students”) and pronouns “he” and “she” (instead of the gender-neutral “they”)

A summary of the key regulatory documents is given in Table 1.

Table 1. Summary of TG Inclusion in Key Regulatory Documents for School Education

Regulatory Guideline Document	Content on Inclusive Education	Content on Inclusive Education for TG Pupils	TG-inclusive Language in Regulatory Documents
National Level			
Ministry of Education's SQAAP	Comprehensively Present, only for <i>Divyang</i>	Absent; some guidelines even exclude TG Pupils	Mostly Yes

Regulatory Guideline Document	Content on Inclusive Education	Content on Inclusive Education for TG Pupils	TG-inclusive Language in Regulatory Documents
NCERT's Transgender Inclusion Guidelines (RETRACTED)	Present	Present	Yes

Educational Board Level

CBSE Affiliation Bye-Laws	Partially Present, only for <i>Divyang</i>	Absent; some guidelines even exclude TG Pupils	Mostly Yes
ICSE Affiliation Bye-Laws	Absent	Absent; some guidelines even exclude TG Pupils	Mostly Yes
UP Board Affiliation Bye-Laws	Partially Present, only for <i>Divyang</i>	Absent; some guidelines even exclude TG Pupils	No

5. RECOMMENDATIONS

5.1 Education-related Recommendations

Researchers recommend that there should be National-level or Board-level guidelines on making all aspects of education in a school inclusive for TG pupils. Specifically, guidelines should be provided on the following schooling aspects –

- Administration
 - Admission forms, exam registration forms etc
- Social Environment
 - Sensitization of other students on the topic
- Curriculum and Extra-curricular Activities
 - TG issues included in the curriculum
 - TG-inclusive physical education and other cultural activities
- Staff
 - Availability of Counselor or counseling services at school for pupils, staff and parents on TG-specific topics/questions
 - Staff training on sensitively and respectfully dealing with TG pupils
- Infrastructure
 - Toilets, common room etc inclusive of TG pupils
 - Hostels, if available, inclusive of TG pupils

5.2 Language-related Recommendations

Researchers also recommend that there should be Indian National-level Guidelines on Use of Gender-Inclusive Language in Education related documents (though, this recommendation applies to any and all document at any administration level), e.g.

- For documents in Hindi, guidelines could be developed by The Central Hindi Directorate (Ministry of Education) or any other relevant organization on using Hindi in a manner inclusive for people of all genders, including third-gender

- Similarly, for other Indian regional languages, the organization responsible for governing the language could provide guidelines
- For documents in English, guidelines could be developed by the organization responsible for governing the language or guidelines could be adopted from international standards, for example, the gender-inclusive language guidelines by United Nations (United Nations 2024) or by the European Union (European Parliament 2018)

6. CONCLUSIONS AND OUTLOOK

In this paper, the researchers presented a survey of the regulatory landscape of India from the perspective of the education for third-gender pupils. In this regard, not only a brief overview of the national level policies and regulations in this regard was presented but a deeper look was presented into the guidelines at school education board with three specific case studies - CBSE board, ICSE board and UP board.

Based on the above findings, the researchers have provided recommendations in this paper, both from educational guidelines perspective and from language perspective.

In future work, the researchers intend to study the social aspects of school education of TG pupils (e.g. social acceptance, attitude and behavior of others) and also the functional aspects, i.e. how equipped schools in India are to provide equitable education to third-gender pupils.

CONSENT

Not Applicable

ETHICAL APPROVAL

Not Applicable

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DEFINITIONS, ACRONYMS, ABBREVIATIONS

CBSE:Central Board for Secondary Education

Divyang: Persons with physical disabilities

CISCE or “ICSE Board”: Council for the Indian School Certificate Examinations

RPWD: Rights of Persons With Disabilities

NCERT:National Council for Educational Research & Training

SDG: Sustainable Development Goal

SQAAF: School Quality Assessment and Accreditation Framework

TG: Third-gender

USMSP or “UP Board”: Uttar Pradesh Madhyamik Shiksha Parishad

UNDER PEER REVIEW