

Transgender And Human Rights

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Abstract

Human rights are the basic fundamental rights given to all the citizens from their birth until death. They are been provided without discrimination of people on the basis of gender, religion, race and certain other factors. On this basis, transgender people are been given with fundamental rights as they are to all the citizens. The term 'transgender' came into use in the middle-1990's. Transgender people are individuals belonging to any age whose physical appearance and behaviors differ from stereotypes about how men and women are 'supposed' to be. They are not exclusively masculine or exclusively feminine and hence they possess the characteristics of both men and women. Transgender people are sometimes called as trans sexual since the transition from one sex to another can be done with medical assistance. They have their existence in every class and culture since the evolution of human life. In India there are a groups of transgender people known as hijras and other transgender groups like Shiv Shaktis etc., However, these groups are not the only transgender people but there are those who do not belong to any of the above mentioned groups but are transgender people individually. The rights of transgender is a proposed act of the Parliament of India which aims to end discrimination based on gender and also the constitution guarantees social, justice and political equality of status to the Transgender people. The supreme court has stated that transgender people are been provided with all the fundamental rights as they are to males and females. Both state and central government provides them with various social welfare schemes for the betterment of their lives. Transgender people are recognized as third gender category. Special reservations are made for them in many of the educational

institutions. No matter what gender they belong to 'People are People'. This paper examines the socio economic, political rights given to transgender people and the status of them in the current scenario.

Keywords: Trans sexual, Third Gender, Hijras, Constitutional Rights, Equality of Status.

Introduction:

“Sex is what you are born with, gender is what you recognize and sexuality is what you discover.” – A. Chettiar

Transgender people are individuals of any age or sex whose appearance, personal characteristics, or behaviors differ from stereotypes about how men and women are 'supposed' to be. In India there are a host of socio – cultural groups of transgender people like hijras/ kinnars, and other transgender identities like – shiv-shaktis, jogtas, jogappas, Aradhis, Sakhi, etc. However, these socio-cultural groups are not the only transgender people, but there may be those who do not belong to any of the groups but are transgender persons individually. The contemporary term 'transgender' arose in the mid-1990s from the grassroots community of gender-different people. Transgender people have a gender identity or gender expression that differs from their assigned sex. Transgender people are sometimes called transsexual if they desire medical assistance to transition from one sex to another. Transgender people are sometimes called transsexual if they desire medical assistance to transition from one sex to another.

Prevalence of Transgender in India:

Indian census has never recognized the third gender, i.e., transgender while collecting census data for years. However, in the Census of 2011, data of transgender were collected in the category of “Others” under Gender with details related to their employment, literacy, and caste. The census revealed the total population of transgender to be around 4.88 lakh. The data have been

primarily linked to the males section as they are usually counted as men, but on request, they may be counted as women. Due to this, it is impossible to comment on the actual transgender population, though the census has provided an approximate estimate. The 2011 census also reported 55,000 children as transgender identified by their parents.

Current Scenario

The Supreme Court of India passed a unique judgment in April 2014 stating one's sexual orientation as the integral part of personality, dignity, and freedom and identified transgender as a third gender. In the National Legal Services Authority (NLSA) versus Union of India case, the apex court provided the transgender (Hijras and Eunuchs) a legal identity along with seven other directions. Post the NLSA judgment; various courts passed favorable orders for the transgender community. Based on the NLSA judgment, the Rajya Sabha passed the Rights of Transgender Bill, 2014. However, the government then passed another Bill, Rights for Transgender Persons Bill, 2015, modifying on the 2014 bill by removing the provisions relating to Transgender Rights Court as well as the National and State Commissions. The 2015 Bill underwent further changes and another bill was introduced in the Lok Sabha in 2016 — the transgender persons (Protection of Rights Bill), which invited criticism from the transgender and activists.

Constitutional Rights for Transgender:

Preamble to the Constitution mandates Justice - social, economic, and political equality of status. Thus the first and foremost right that they are deserving of is the right to equality under Article 14. Article 15 speaks about the prohibition of discrimination on the ground of religion, race, caste, sex or place of birth. Article 21 ensures right to privacy and personal dignity to all the citizens. Article 23 prohibits trafficking in human beings as beggars and other similar forms of forced labour and any contravention of these provisions shall be an offence punishable in accordance with law. The Constitution provides for the fundamental right to equality, and tolerates no discrimination

on the grounds of sex, caste, creed or religion. The Constitution also guarantees political rights and other benefits to every citizen. But the third community (transgenders) continues to be ostracized. The Constitution affirms equality in all spheres but the moot question is whether it is being applied. As per the Constitution most of the protections under the Fundamental Rights Chapter are available to all persons with some rights being restricted to only citizens. Beyond this categorization the Constitution makes no further distinction among rights holders. But official identity papers provide civil personhood. Among the instruments by which the Indian state defines civil personhood, sexual (gender) identity is a crucial and unavoidable category. Identification on the basis of sex within male and female is a crucial component of civil identity as required by the Indian state. The Indian state's policy of recognizing only two sexes and refusing to recognize hijras as women, or as a third sex (if a hijra wants it), has deprived them at a stroke of several rights that Indian citizens take for granted. These rights include the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's license, the right to education, employment, health so on. Such deprivation secludes hijras from the very fabric of Indian civil society.

State Laws:

The states of Tamil Nadu and Kerala were the first Indian states to introduce a transgender welfare policy. According to the transgender welfare policy, transgender people can access free sex reassignment surgery (SRS) in government hospitals (only for male-to-female); free housing program; various citizenship documents; admission in government colleges with full scholarship for higher studies; alternative sources of livelihood through formation of self-help groups (for savings) and initiating income-generation programmes (IGP). Tamil Nadu was also the first state to form a transgender welfare board with representatives from the transgender community. In 2016, Kerala started implementing free surgery in government hospitals.

In July 2016, the state of Odisha enacted welfare benefits for transgender people, giving them the same benefits as those living below the poverty line. This was aimed at improving their overall social and economic status, according to the Odisha Department of Social Security.

In April 2017, the Ministry of Drinking Water and Sanitation instructed states to allow transgender people to use the public toilet of their choice.

In October 2017, the Karnataka Government issued the "State Policy for Transgenders, 2017", with the aim of raising awareness of transgender people within all educational institutions in the state. Educational institutions will address issues of violence, abuse and discrimination against transgender people. It also established a monitoring committee designed with investigating reports of discrimination.

On 28 November 2017, N. Chandrababu Naidu, the Chief Minister of Andhra Pradesh, announced the enactment of pension plans for transgender people.

On 16 December 2017, the Andhra Cabinet passed the policy. According to the policy, the State Government will provide an amount of ₹1,500 per month to each transgender person above the age of 18 for social security pensions. In addition, the Government will construct special toilets in public places, like malls and cinema halls, for transgender people.

In January 2018, the Kashmiri Finance Minister introduced a proposal to the Jammu and Kashmir Legislative Assembly that would grant transgender people free life and medical insurance, and a monthly sustenance pension for those aged 60+ and registered with the Social Welfare Department. Transgender activists have criticised aspects of the bill, including its requirement to establish medical boards to issue "transgender certificates".

Problems Faced By Transgenders:

The main problems that are being faced by the transgender community are of discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities: like HIV care and hygiene, depression, hormone pill abuse, tobacco and alcohol abuse, penectomy, and problems related to marriage and adoption .In 1994, transgender persons got the voting right but the task of issuing them voter identity cards got caught up in the male or female question. Several of them were denied cards with sexual category of their choice.

The other fields where this community feels neglected are inheritance of property or adoption of a child. They are often pushed to the periphery as a social outcaste and many may end up begging and dancing. This is by all means human trafficking. Sometimes running out of all options to feed themselves, they even engage themselves as sex workers for survival.

Transgenders have very limited employment opportunities. Transgenders have no access to bathrooms/toilets and public spaces. The lack of access to bathrooms and public spaces access is illustrative of discrimination faced by transgenders in availing each facilities and amenities. They face similar problems in prisons, hospitals and schools. Most families do not accept if their male child starts behaving in ways that are considered feminine or inappropriate to the expected gender role. Consequently, family members may threaten, scold or even assault their son/sibling from behaving or dressing-up like a girl or woman. Some parents may outright disown and evict their own child for crossing the prescribed gender norms of the society and for not fulfilling the roles expected from a male child. Parents may provide several reasons for doing so: bringing disgrace and shame to the family; diminished chances of their child getting married to a woman in the future and thus end of their generation (if they have only one male child); and perceived inability on the part of their child to take care of the family. Thus, later transgender women may find it difficult even to

claim their share of the property or inherit what would be lawfully theirs. Sometimes, the child or teenager may decide to run away from the family not able to tolerate the discrimination or not wanting to bring shame to one's family. Some of them may eventually find their way to Hijra communities. This means many Hijras are not educated or uneducated and consequently find it difficult to get jobs. Moreover, it is hard to find people who employ Hijras/TG people. Some members of the society ridicule gender-variant people for being 'different' and they may even be hostile. Even from police, they face physical and verbal abuse, forced sex, extortion of money and materials; and arrests on false allegations. Absence of protection from police means ruffians find Hijras/TG people as easy targets for extorting money and as sexual objects. A 2007 study documented that in the past one year, the percentage of those MSM and Hijras who reported: forced sex is 46%; physical abuse is 44%; verbal abuse is 56%; blackmail for money is 31%; and threat to life is 24%.

Hijras face discrimination even in the healthcare settings. Types of discrimination reported by Hijras/TG communities in the healthcare settings include: deliberate use of male pronouns in addressing Hijras; registering them as 'males' and admitting them in male wards; humiliation faced in having to stand in the male queue; verbal harassment by the hospital staff and copatients; and lack of healthcare providers who are sensitive to and trained on providing treatment/care to transgender people and even denial of medical services. Discrimination could be due to transgender status, sex work status or HIV status or a combination of these.

Social welfare departments provide a variety of social welfare schemes for socially and economically disadvantaged groups. However, so far, no specific schemes are available for Hijras except some rare cases of providing land for Aravanis in Tamil Nadu. Recently, the state government of Andhra Pradesh has ordered the Minority Welfare Department to consider 'Hijras' as a minority and develop welfare schemes for them. Stringent and cumbersome

procedures and requirement of address proof, identity proof, and income certificate hinders even the deserving people from making use of available schemes. In addition, most Hijras/TG communities do not know much about social welfare schemes available for them. Only the Department of Social Welfare in the state of Tamil Nadu has recently established 'Aravanigal/Transgender Women Welfare Board' to address the social welfare issues of Aravanis/Hijras. No other state has replicated this initiative so far.

Conclusion:

The Government of India today has taken a stance and introduced several welfare policies and schemes for the transgender which would be a big step forward. These include census, documentation, issuing of the citizenship ID Cards, issuing passports along with social, economic, political transformation, housing, legal measures, police reforms, legal and constitutional safeguards to prevent human rights violations of the transgender community and institutional mechanisms to address specific concerns of transgender people.

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