

Transgender Right and Status In India – A Study.

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Abstract:

Transgender An umbrella term for people whose gender identity and/or gender expression differs from their birth sex. Transgender is not treated as a normal human being in society. The person born with any sexual abnormality should be recognized as such with the entire available constitutional, legal and civil rights including the right to work. Legally the Constitution of India protects certain rights of citizens and persons. Every person has a right to life and personal liberty. Every person means male, female and any person amongst the sexual minorities. It does not mean that only males or females have such rights. They were legally granted voting rights as a third sex in 1994. Due to the alleged legal ambiguity of the procedure, Indian transgender individuals do not have access to safe medical facilities. In India, there is 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. so this paper discussed transgender rights and all.

Keyword:

Transgender, Bills In India, Transgender Right, Problems, Recommendation, Conclusion

Introduction:

A person may be considered to be a transgender person if their gender identity is inconsistent or not culturally associated with the sex they were assigned at birth, and consequently also with the gender role and social status that is typically associated with that sex. They may have or may intend to establish, a new gender status that accords with their gender identity. Transsexual is generally considered a subset of transgender, but some transsexual people reject being labeled transgender

In India, people with a wide range of transgender-related identities, cultures, or experiences exist including Hijras, Aravanis, Kothis, Jogtas/Jogappas, and Shiv- Shaktis. Often these people have been part of the broader culture and treated with great respect, at least in the past, although some are still accorded particular respect even in the present.

The LGBTQ group is referred to as the “lesbian, gay, bisexual, transgender, and queer community” which includes those with gender dysphoria and different sexual orientations. The lesbian and gay people have been accepted in many parts of the world and have also got their rights, but the transgender is still without rights.

The Transgender Persons (Protection of Rights) Bill, 2016: Highlights of The Bill:

1. The Bill defines a transgender person as one who is partly female or male; or a combination of female and male; or neither female nor male. Besides, the person’s gender must not match the gender assigned at birth and includes trans-men, trans-women, persons with intersex variations and gender-queers.
2. A transgender person must obtain a certificate of identity as proof of recognition of identity as a transgender person and invoke rights under the Bill.
3. Such a certificate would be granted by the District Magistrate on the recommendation of a Screening Committee. The committee would comprise a medical officer, a psychologist or psychiatrist, a district welfare officer, a government official, and a transgender person.
4. The Bill prohibits discrimination against a transgender person in areas such as education, employment, and healthcare. It directs the central and state governments to provide welfare schemes in these areas.
5. Offenses such as compelling a transgender person to beg, denial of access to a public place, physical and sexual abuse, etc. would attract up to 2 years’ imprisonment and a fine.

Rights Of Transgender In India.

The 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 the right to privacy and the personal dignity of all the citizens. Article 23 prohibits trafficking in human beings as beggars and other similar forms of forced labor and any contravention of these provisions shall be an offense punishable following the 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 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 based on 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 third sex 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. The rule of law is supreme and everyone is equal in the eyes of law in India. Yet, the transgender community is in a constant battle as they have to fight oppression, abuse, and discrimination from every part of the society, whether it's their own family and friends or society at large. The life of transgender people is a daily battle as there is no acceptance anywhere and they are ostracized from society and also ridiculed.

National AIDS Control Program (NACP-III) and Hijras/Transgender women:

NACP-III (2007/2012) has included "MSM and transgender" people among the 'core groups' for whom intensified HIV prevention and care programs are implemented. Interventions for transgender women are currently subsumed under 'MSM interventions'. Nevertheless, in some states (e.g., Tamil Nadu and Maharashtra) separate interventions for Hijras/TG are being implemented for some years. Some gaps that need to be addressed concerning interventions among TG include the following. In India, separate HIV sentinel sites for MSM were introduced only in 2000 and for Hijras/TG in 2005. As of 2008, there were 66 sites for MSM and one site for TG. Preventing HIV and mitigating the impact of the HIV epidemic is the primary focus of NACP-III.

However, other health-related components, which would have significant effects on HIV such as mental health counseling and counseling on sex-change operation are not part of the existing MSM/TG interventions. Thus, there is a lack of a holistic and comprehensive approach that includes health and social services for transgender people. In line with the guiding principles of NACP-III that include community involvement and greater involvement of people infected and affected by HIV/AIDS (GIPA), it is crucial to include representatives of Hijras/TG communities in HIV policy formulation and program development. National GIPA policy needs to explicitly articulate the importance and ways of including Hijras/TG representatives in decision-making processes. NACP-III envisions that 50% of TIs would be transitioned from NGOs to CBOs by the end of 2012. However, so far, there are only a countable number of CBOs of Hijras/TG communities, with various levels of capacities. The capacities of existing and emerging CBOs need to be strengthened so that they can effectively implement TI projects and other programs.

Problems Faced By Transgender.

Human rights are basic rights and freedoms which are guaranteed to a human under him being a human which can neither be created nor can be abrogated by any government. It

includes the right to life, liberty, equality, dignity, and freedom of thought and expression. They are deprived of social and cultural participation and hence they have restricted access to education, health care and public places which further deprives them of the Constitutional guarantee of equality before the law and equal protection of laws. It has also been noticed that the community also faces discrimination as they are not given the right to contest the election, right to vote employment, to get licenses, etc. and in effect, they are treated as an outcast and untouchable. The transgender community faces stigma and discrimination and therefore has fewer opportunities as compared to others. They are hardly educated as they are not accepted by society and therefore do not receive proper schooling. Even if they are admitted to an educational institute, they face harassment and are bullied every day and are asked to leave the school or they drop out on their own. It is because of this that they take up begging and sex work. Seldom does a skilled individual from this community get into formal employment due to the policy of hiring only from either the male or female gender. Even if they do, they are ridiculed and ostracized and hence forced to leave their jobs. They are forced into sex work which puts them at the highest risk of contracting HIV as they agree to unprotected sexual intercourse because they fear rejection or they want to affirm their gender through sex.

Immoral Traffic Prevention Act Of 1956:

Which was amended in 1986 has become gender-neutral legislation. The domain of the Act now applies to both male and female sex workers along with those whose gender identity was indeterminate. With the amendment both the male and hijras sex workers became criminal subjects as this gives the police the legal basis for arrest and intimidation of the transgender sex workers. Section 377 of IPC criminalizes same-sex relations among consenting adults. This is a colonial-era law that makes the Transgender community vulnerable to police harassment, extortion, and abuse.

In *Jayalakshmi v. State of Tamil Nadu*, Pandian, a transgender, was arrested on charges of theft by the police. He was sexually assaulted in the police station which ultimately led him to immolate himself. 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, appendectomy, 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 the sexual category of their choice. The other fields where this community feels neglected are the inheritance of property or the adoption of a child. Transgender has very limited employment opportunities. Transgender has no access to bathrooms/toilets and public spaces. The lack of access to bathrooms and public spaces access is illustrative of discrimination faced by transgender in availing each facility and amenities. They face similar problems in prisons, hospitals, and schools. One such law, Section 377 of Indian Penal Code, criminalizes same-sex relations among consenting adults and is used as a justification for discrimination against transgendered and homosexual people. These laws, coupled with the social stigma have proven to be difficult hurdles on the road to equality for this marginalized group in India.

Maharashtra Government Initiatives:

Maharashtra has become the second state in India to set up a welfare board and the first, to set up a cultural institution dedicated to the transgender community. The Welfare Board will provide avenues for formal education, expand employment and self-employment opportunities, run health programmes and provide legal help to the community for free. Since 2009, UNDP has supported efforts at greater recognition for the transgender community. 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.

Social Recognition

Adopting an inclusive approach in education, for felicitation of students by way of admission in educational institutions, the education department of the State of Tamil Nadu issued a government order thereby creating a third gender category. Also, the Jabalpur University in Kolkata has included a separate column for the third gender in transgender can now mention themselves as "third gender" while seeking information on governance-related matters through online RTI application through the website. The Department of Personnel and Training has introduced a field "third gender" other than male and female on the RTI portal. The Committee which was constituted following the judgment of 2014 in its recommendation makes it clear as regards the inclusive definition that has been accorded to the term transgender and will cover various gender identities and expressions. It will not be confined to any one of the socio-cultural identity groups, such as hijras, Kothis, etc. but will include all persons who fall under the generic definition of a transgender person.

All transgender can avail of the benefits under the Other Backward Class (OBC) list, irrespective of their community background. The data of the Election Commission stated that 23,019 people have registered themselves under the „Others“ category. The insignificant decision for transgender, the Allahabad High Court has ruled that they are entitled to the status of head of a household which will allow them to avail food security benefit through ration card. A few months after the judgment of the Hon'ble Supreme Court of India, the Madhya Pradesh government came up with a pilot project involving transgender in the cleanliness campaign. The impact is now visible. In Nandini village, each of the 131 homes now has a toilet. In the remaining 11 villages, toilets have been built in 80 percent of the houses.

Recommendations:

Multiple problems are faced by Hijras/TG, which necessitate a variety of solutions and actions. While some actions require immediate implementation such as introducing Hijras/TG-specific social welfare schemes, some actions need to be taken on a long-term basis changing the negative attitude of the general public and increasing accurate knowledge about Hijras/TG communities. The required changes need to be reflected in policies and laws; the attitude of the government, general public and health care providers; and health care systems and practice. Key recommendations include the following.

1. Address the gaps in NACP-III: establish HIV sentinel surveillance sites for Hijras/TG at strategic locations; conduct operations research to design and fine-tune culturally-relevant package of HIV prevention and care interventions for Hijras/TG; provide financial support for the formation of CBOs run by Hijras/TG, and build the capacity of CBOs to implement effective programmes.

2. Move beyond focusing on individual-level HIV prevention activities to address the structural determinants of risks and mitigate the impact of risks. For example, mental health counseling, crisis intervention (crisis concerning suicidal tendencies, police harassment and arrests, support following sexual and physical violence), addressing alcohol and drug abuse, and connecting to livelihood programs all need to be part of the HIV interventions.

3. Train health care providers to be competent and sensitive in providing health care services (including STI and HIV-related services) to Hijras/TG as well as develop and monitor implementation of guidelines related to gender transition and sex reassignment surgery (SRS).

4. Clarify the ambiguous legal status of sex reassignment surgery and provide gender transition and SRS services (with proper pre- and post-operation/transition counseling) for free in public hospitals in various parts of India.

5. Implement stigma and discrimination reduction measures in various settings through a variety of ways: mass media awareness for the general public to focused training and sensitization for police and health care providers.

6. Develop action steps toward taking a position on legal recognition of the gender identity of Hijras/TG need to be taken in consultation with Hijras/TG and other key stakeholders. Getting legal recognition and avoiding ambiguities in the current procedures that issue identity documents to Hijras/TG are required as they are connected to basic civil rights such as access to health and public services, right to vote, right to contest elections, right to education, inheritance rights, and marriage and child adoption.

7. Open up the existing Social Welfare Schemes for needy Hijras/TG and create specific welfare schemes to address the basic needs of Hijras/TG including housing and employment needs.

8. Ensure greater involvement of vulnerable communities including Hijras/TG women in policy formulation and program development. Hijras/Transgender women require understanding and support of the government, health care professionals, the general public as well as their family members. We need to understand and accept that humans are diverse. People have the right to be what they are and what they want to be. For transgender people, the same holds.

Conclusion:

Here we conclude The Supreme Court's landmark 2014 judgment recognized transgender as the third gender, assigning them their own identity and directing the government to provide them with quotas in jobs and education. Thus, the transgender can make their own choices of profession, helping many dreams come true. They can be doctors, chefs, police inspectors, lawyers. They can now be anything they want. The transgender community has come into the limelight as a result of which last year in 2016, a private member bill was placed in the House of Parliament for giving legal recognition to the rights and status of the transgender community.

The Government of India today has taken a stance and introduced several welfare policies and schemes for 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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