

Legal Status of Third Gender In Our Society

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Abstract:

Human civilization has always aspired to establish an egalitarian society free from exploitation, violence and oppression. Despite the fact that the achievements of women are being recognized and celebrated everywhere and LGBTQs are gradually getting recognition in contemporary world, gender discrimination is still prevalent in our society. It is legitimized through our traditions, economy, religion and society. This is a kind of structural violence which thrives on the foundations of patriarchy and prejudices that are justified, sustained and passed on from one generation to the next.

Owing to gender discrimination, LGBTQs remain in a subordinate and subservient position. Consequently, societies world over have failed to fully realize their capabilities and potentialities. This paper on gender sensitization particularly shows the Legal status of Third Gender in our society

Objectives:

- 1) Gender Studies aims to comprehend the notion of patriarchy, gender and its inter-linkages with other socio-political institutions like caste, religion, class and state, among others.
- 2) Challenges faced by LGBTQs and third gender should make us reflect on the injustices inflicted upon them as a consequence of gender discrimination.

- 3) Since gender justice is not only desirable but mandatory everywhere, Gender Studies as a discourse needs to be understood by scholars from different streams of knowledge.
- 4) Emerging issues in gender studies need to be discussed among scholars in order to develop a pedagogical and epistemological perspective which is free from all sorts of gender bias.

Introduction:

“Justice Sikri” defined in his concurring judgment as follows that the term transgender is derived from two words namely, “trans” and “gender”. Former is a Latin word which means “across” or “beyond”. The grammatical meaning of transgender, therefore is across or beyond gender. The term transgender also refers to a person whose gender identity or expression does not conform to the social expectations for their sex assigned at their birth and because of which they are looked down by the society. They understand themselves as belonging to the other sex from what their genitals would suggest. According to one estimate, India has about two million transgender people. In India, a common term used to describe transgender people, transsexuals, cross-dressers, eunuchs and transvestites is hijra. Campaigners say they live on the fringes of society, often in poverty, ostracised because of their gender identity. Most make a living by singing and dancing or by begging and prostitution.

Keywords: Male ,Female,Third gender,Laws

Who is a transgender?

Transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behavior does not conform to their biological sex. TG may also takes in persons who do not identify with their sex assigned at birth, which include Hijras/Eunuchs who, in this writ petition, describe themselves as “third gender” and they do not identify as either male or female. Hijras are not men by virtue of anatomy appearance and psychologically, they are also not women, though they are like women with no female

reproduction organ and no menstruation. Since Hijras do not have reproduction capacities as either men or women, they are neither men nor women and claim to be an institutional “third gender” Transgender people are the one who feels sexually opposite according to their body structure or genitals. It means someone whose gender differentiates from the one they had when they were born, they may identify them as male or female, or they may feel that neither label fits them. Assigning someone’s sex is based on biology, chromosomes, anatomy and hormones. But a person’s gender identity the inner sense of being male, female or both, doesn’t always match their biology. Transgender people say they were assigned a sex that isn’t true to who they are.

Problems of Transgender:

Transgenders, in our society, encompass all races, ethnicity, religious and social classes, yet, they’ve never enjoyed a respectable life, because of “what they are” and “how they are”. They are subjected to confusions and anguish, resulting from the rigid, forced conformity to sexual dimorphism throughout the recorded history. They are facing disparities linked to societal stigma, discrimination, and denial of their civil and human rights. Discrimination against them have been associated with high rates of substance abuse and suicides, and they are facing rampant discrimination in the areas of family life, social life, housing, education, health etc. They’ve been continuously subjected to hear and assimilate abuses from people about them. Their lives have always been subjected to abstaining from the colors of the world, just because of the denial of social acceptance. The society views them as eccentric characters, which wouldn’t fit into the prescribed sanctimonious bounds.

LEGISLATION

The world is slowly but painfully meaning towards formal recognition of the existence of 3rd gender. On April 15, 2014 landmark decision of National legal services authority. v. Union of India, recognised the rights of transgender in the eyes of law relying on

Article 14 of Indian Constitution dealing with right to equality uses the term person which does not restrict it self to binary term.

Article 15 signifies that states shall not discriminate against any citizen on the ground of sex with regard to access to shops public restaurants , hotels & places of public entertainment.

Article 16 states that there shall be equality of opportunities for all the citizens in matters relating to employment to any office. Gender identity is at the core of one's personal identity. Therefore it will have to be protected under Article 19.

The SC also went on to state that self-determination of gender is an integral part of personal autonomy & self-expression falling within Article 21 of the Indian Constitution. We have exhaustively referred to various articles contained in the universal declaration of human rights ,1948 the International covenant on economic, social & cultural rights ,1966, the International covenant on civil & political rights 1966 as well as the Yogyakarta principles. Reference was also made to legislation enacted in other countries dealing with rights of persons of transgender community. Third Gender - Apex court Declared :

- Hijras, Eunuchs, apart from binary gender, be treated as “third gender” for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.
- Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.
- We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.
- Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/ Transgenders face several sexual health issues.
- Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression,

suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.

□ Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.

□ Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.

□ Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.

□ Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

Transgender Persons Bill, 2016

Transgenders have been clearly accepted as a legal entity in Transgender Persons Bill, 2016 whose preamble clearly states- "A bill to provide for protection of transgender persons and their welfare and for matters concerned therewith and incidental thereto". Section 4 of the bill states about Recognition of identity of transgender person- (1). A transgender person shall have a right to be recognized as such, in accordance with the provisions of the Act,

(2). A person recognized a transgender under sub section (1) shall have a right to self-perceived identity.

After this bill and NALSA judgment there was quite an upliftment in the status of transgenders as they were recognized as an legal entity and were not deprived of any fundamental rights. Some of the recommendations that find a place in the final draft include the rescue, protection and rehabilitation of transgenders. Educational institutions have been directed to adopt an inclusive approach that is gender neutral.

DEVELOPMENT AFTER THE JUDGMENT

Under the Ministry of Social Justice & empowerment a committee called Expert Committee on issue relating to transgender has been constituted to conduct on in depth study of the problems relating to transgender persons to make appropriate recommendation to it. States have setup various welfare boards for transgender like Aravani Welfare Board in Tamil Nadu. The civilian welfare foundation, in NGO in Kolkatta studying the medical problems faced by transgender people in urban areas & healthcare they receive because in a detailed study conducted by United Nation development programme in Dec 2010 on transgenders in India, which stated that HIV is increasingly seen in transgenders population . Transgenders women have indicated a very high HIV prevalence & upto 41% are extremely vulnerable to HIV.

The LGBT rights are protected by organisations outside the UN framework like Amnesty international and American civil liberties Union. Judgement puts transgender people in a strange situation on the one hand they are now legally recognised & protected under the constitution but on the other hand they may be breaking the law if they have consensual gaysex as per section 377 of IPC which states that a same sex relationship is an unnatural offence & punishable by a 10 years jail term. The SC judgement, while wholly welcome cannot be seen in isolation though. If the court acknowledges that gender is crucial to personal identity & thus also a matter of human rights this is to obviously a court caught in 2 minds. The rights of transgender people like their own identity & access to health, education, work ,housing & other rights are being increasingly widely recognised after the court's decision to legalise third gender. The third genders are enjoying more civil rights being counted in census. Option to be displayed as 3rd gender on passports & other freedoms.

ELECTION

They are not just have right to vote but also the right to be elected. Without any kith & kin they can be a catalyst sorely needed for minimising. If not uprooting nepotism & favouritism

that breeds corruption. Eg: Sonam Kinnar filed her nomination in Amethi against Raghul Gandhi along with Kumar Vishwas & Smriti Iraani. In Varnasi Hijra named Kamala contested against BJP's Narendra Modi. Shabna Mausi as an MLA from Sohagpur (MP) Ashadani as Gorakhpur Mayor. Bijli Bai as local body chief in Kamalganj. Heera Bai contested from Jabalpur and Samajwadi party ticket. Pooja in Vishar Nagar (Durg) Mahendragarh Koring. Winning

ANCHOR

Padmini is India's first transgender TV News anchor. If you wish to hear her news tune in to Lotus New' Channel' daily 7 pm special bulletin.

EDUCATIONAL INSTITUTIONS

After SC ruling of considering third gender as OBC for admission in educational institutions, many universities introduced space for third gender in application forms. Bangalore Universities was the first one in India to allow eligible transgender people pursuing higher education to take admission and avail reservation quota of one seat in each of 60 post graduate courses offered

.The centre for environment planning & technology (CEPT) University became the first institute in Gujrat to include third gender in admission session in 2014.

Delhi University, JNU even Fergusson college in Pune have acknowledged third gender students but universities like IIMS, Symbiosis & many are yet in dilemma.

Conclusion: Many states have worked towards the upliftment of Transgenders and even Central Government has adopted various laws and measure which have helped them to be on an equal footing with others. However, there is a need to change the mindset of society and till the time this narrow mindset is not changed and it is not willing to accept them as a part of it, no laws or measures adopted by the government can be effectively implemented.

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