

## Socio-Legal Rights Of Transgender People In India

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### Abstract

This article sheds light on the socio-legal rights of Transgender people in India and analyses the statutory provisions that have not been adequate to protect their rights leading to the violation of their basic fundamental rights. The idea to secure to each citizen of justice equality and unity has been the primary motto of Government. The development of Legal system has been essential in preserving the rights of these communities and the Indian Government's work particularly in Tamilnadu, is greatly admired. The author also discusses the issues along with the recent developments after the Supreme Court verdict declared Third Gender Right.

**Keywords:-** Transgender, Supreme Court, Verdict, Rights,, Primary motto, Recent Development'

### Introduction

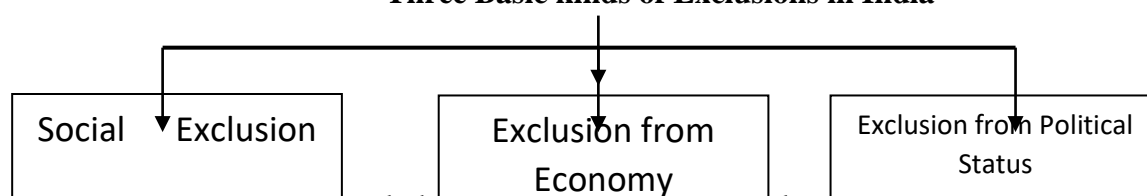
"Sex is what you are born with Gender is what you recognise and sexually is what you discover."

– A. Chettiar

Transgender is an umbrella terms for persons whose gender identity, Gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth. Gender Identity is a person's internal experience of being male, female or something other, Gender Expression is the means by which a person expresses their gender identification in addition to through conduct, clothes, hair style and other physical traits. Trans is generally used as a shorthand for transgender persons. Discrimination of the transgender has become common due to their weak economic position. Due to this situation they frequently engage in prostitution to earn their livelihood. The status of this community during Muslim era where they were respected and honored has completely changed. The British criminalized these communities and today they live as a sex-worker and beggars where they are frequently humiliated. There is not much that is done for transgender people in this country.

Transgender communities face many barriers to full acceptance in society. In present circumstances, there are three basic kinds of exclusions of Transgender in India.

#### Three Basic kinds of Exclusions in India



- The first is being excluded from social activities, excluded from family and community and not being protected from violence, and having restricted access to the education sector, health services and public spaces.
- Second exclusion from economic issues like Exclusion from economy and exclusion from

sources of income and employment opportunities.

- Thirdly Exclusion from political status – Limited entry to collectivization, Limited rights to citizenship, Limited right to participation in community decision making process.

Although the scenario has changed since the prestigious Supreme Court's 2014 ruling the perception of Indian society's thinking and behaviour towards transgender people has significantly changed.

### **Legal Rights of Transgender in India:**

National Legal Services Authority Vs. Union of India is a landmark decision by the Supreme Court of India, which declared Transgender people to be a "**Third gender**" affirmed that the fundamental rights granted under the constitution of India will be equally applicable to transgender people, and gave them the right to self-identification of their gender as male, female or third-gender. This judgement is a major step towards gender equality in India. Moreover, the court also held that because transgender people were treated as socially and economically backward classes, they will be granted reservations in admissions to educational institutions and jobs.

The Court upheld the right of all persons to self-identify their gender. It declared that hijras and eunuchs can legally identify as "Third Gender" for the purpose of safe-guarding their rights under our constitution and the Laws made by the parliament and the state legislature.

"Recognition of transgenders as a Third Gender is not a social or medical issue but human rights issue. Transgenders are also citizens of India. The spirit of the Constitution is to provide equal opportunity to every citizen to grow and attain their potential, irrespective of caste, religion or gender."

"Equality not only implies preventing discrimination... but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms it means embracing the notion of positive rights, affirmative action and reasonable accommodation."

"Gender Identification is essential. It is only with this recognition that many rights such as the right to vote, own property and marry will be meaningful."

"Non-recognition of gender identity amounts to discrimination under article 15, which prohibits discrimination on the basis of sex."

"We... conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of members of the TG (Transgender) community." Observed Honourable justice Radhakrishnan.

### **Fundamental Rights:**

The Court interpreted 'dignity' under Article 21 of the Constitution to include diversity in self-expression, which allowed a persons to lead a dignified life. It placed one's gender identity within the framework of the fundamental right to dignity under Article 21.

Further, it noted that the right to equality (Article 14 of the Constitution) and freedom of expression (Article 19 (1) (a) was framed in gender-neutral terms ("all persons"). Consequently, the right to equality and freedom of expression would extend to transgender persons.

It drew attention to the fact that transgender persons were subject to "extreme discrimination in all spheres of society which was a violation of their right to equality." Further, it included the right to express one's gender "through dress, words, action, or behaviour" under the ambit of freedom of expression.

Under Articles 15 and 16, discrimination on the ground of "sex" is explicitly prohibited. The Court held that "sex" here does not only refer to biological attributes (such as chromosomes, genitalia and secondary sexual characteristics) but also includes "gender" (based on one's self-perception.) Thus, the Court held that discrimination on the ground of "sex" included discrimination on the basis of gender identity. Thus, the Court held that transgender persons were entitled to fundamental rights under Articles 14, 15, 16, 19 (1)(a) and 21 of the Constitution. Further, the Court also referred to core International Human Rights Treaties and the Yogyakarta Principles to recognise transgender persons' human rights

The Court held that public awareness programs were required to tackle stigma against the transgender community. It also directed the Central and State Governments to take several steps for the advancement of the transgender community, including.

1. Making provisions for legal recognitions of "third gender" in all documents.
2. Recognising third gender persons as a "socially and educationally backward class of citizens", entitled to reservations in educational institutions and public employment.
3. Taking steps to frame social welfare schemes for the community.

This is a landmark decision because it is the first to legally recognise non-binary gender identities and uphold the fundamental rights of transgender persons in India. The judgement also directed Central and State governments to take proactive action in securing transgender persons' rights.

#### **Directives of the Court:**

1. The Court has directed Centre and State Governments to grant legal recognition of gender identity whether it be male, female or third-gender.
2. Legal Recognition for Third Gender. In recognizing the third gender category, the Court recognizes that fundamental rights are available to the third gender in the same manner as they are to males and females. Further, non-recognition of third gender in both criminal and civil statutes such as those relating to marriage, adoption, divorce, etc, is discriminatory to the transgender. Judge Prem Neupane.
3. Legal Recognition for Persons transitioning within male/female binary: As for how the actual procedure of recognition will happen, the Court merely states that they prefer to follow the psyche of the person and use the "Psychological Test" as opposed to "Biological Test". They also declare that insisting on Sex Reassignment Surgery (SRS) as a condition for changing one's gender is illegal.
4. Public Health and Sanitation: Centre and State Governments have been directed to take proper measures to provide medical care to Transgender people in the hospitals and also provide them separate public toilets and other facilities. Further, they have been directed to operate separate HIV/Sero-surveillance measures for transgender people.
5. Socio-Economic Rights: Centre and State Governments have been asked to provide the community various social welfare schemes and to treat the community as socially and economically backward classes. They have also been asked to extend reservation in educational institutions and for public appointments.
6. Stigma and Public Awareness: These are the broadest directions-Centre and State Governments are asked to take steps to create public awareness so that Transgender people will feel that they are also part and parcel of the social life and not be treated as untouchables; take measures to regain their respect and place in society; and seriously address the problems such as fear,

shame, gender dysphoria, social pressure, depression, suicidal tendencies and social stigma.

7. The Court notes that these declarations are to be read in light of the Ministry of Social Justice and Empowerment Expert Committee Report on Issues Relating to transgender people.

### **Transgender Persons (Protection of Rights) Bill 2019:**

The Transgender Persons (Protection of Rights) Bill, 2019, was introduced in Lok Sabha on July 19, 2019, by the Minister of Social Justice and Empowerment, Mr. Thaawarchand Gehlot.

The Bill prohibits the discrimination against a transgender persons, including denial of service or unfair treatment in relation to: (i) education; (ii) employment, (iii) healthcare; (iv) access to, or enjoyment of goods, facilities, opportunities available to the public; (v) right to movement; (vi) right to reside, rent, or otherwise occupy property; (vii) opportunity to hold public or private office; and (viii) access to a government or private establishment in whose care or custody a transgender person is.

- **Right of residence:** Every transgender person shall have a right to reside and be included in his household. If the immediate family is unable to care for the transgender person, the person may be placed in a rehabilitation centre on the orders of a competent court.
- **Employment:** No government or private entity can discriminate against a transgender person in employment matters, including recruitment and promotion. Every establishment is required to designate a person to be a complaint officer to deal with complaints in relation to the Act.
- **Education:** Educational institutions funded or recognised by government shall provide inclusive education, sports and recreational facilities for transgender persons, without discrimination.
- **Health care:** The government must take steps to provide health facilities to transgender persons including separate HIV surveillance centres, and sex reassignment surgeries. The government shall review medical curriculum to address health issues of transgender persons, and provide comprehensive medical insurance schemes for them.
- **Certificate of identity for a transgender person:** A transgender person may make an application to the District Magistrate for a certificate of identity, indicating the gender as 'transgender'. A revised certificate may be obtained only if the individual undergoes surgery to change their gender either as a male or a female.
- **Welfare measures by the government:** The Bill states that the relevant government will take measures to ensure the full inclusion and participation of transgender persons in society. It must also take steps for their rescue and rehabilitation, vocational training and self-employment, create schemes that are transgender sensitive, and promote their participation in cultural activities.
- **Offences and penalties:** The Bill recognizes the following offences against transgender persons: (i) forced or bonded labour (excluding compulsory government service for public purposes), (ii) denial of use of public places, (iii) removal from household, and village, (iv) physical, sexual, verbal, emotional or economic abuse. Penalties for these offences vary between six months and two years, and a fine.
- **National Council for Transgender persons (NCT):** The NCT will consist of: (i) Union Minister for Social Justice (Chairperson); (ii) Minister of State for Social Justice (Vice-Chairperson); (iii) Secretary of the Ministry of Social Justice; (iv) one representative from

ministries including Health, Home Affairs, and Human Resources Development. Other members include representatives of the NITI Aayog, and the National Human Rights Commission. State governments will also be represented. The Council will also consist of five members from the transgender community and five experts from non-governmental organisations.

- The Council will advise the central government as well as monitor the impact of policies, legislation and projects with respect to transgender persons. It will also redress the grievances of transgender persons.

### **Social Recognition of Transgender in India:**

Indian Census has never recognized third gender i.e. transgender while collecting Census data for years. But in 2011, Data of Transgender's were collected with details related to their Employment, Literacy and Caste. In India, total population of transgender is around 4.88 Lakh as per 2011 Census. In U.P. State the population of transgender is highest whereas lowest in Lakshdeep.

For Social Recognition of Transgender in India, The Educational Department of the State of Tamil Nadu issued a government order thereby creating a third gender category and the Jadavpur University in Kolkata has included a separate column for the third gender in its admission form for the year 2015. Both the Institutions are adopting an inclusive approach to education.

Through an online RTI application on the website, transgender people can now identify as the Third Gender when requesting information on matters relating to governance. In addition to male and female, the department of personnel and training has added a Third Gender option on the RTI portal. The committee which was established in accordance with the 2014 judgement, makes it clear regarding the inclusive definition that has been recorded to the term "Transgender" in its amendment and will cover various gender Identities and Expressions. It will not leave anyone of the socio-cultural Identity group behind when it comes to anyone who falls under the generic definitions of transgender persons.

The Election Commission reported that 23,019 people had registered themselves under the "Other Category" and all transgender people can avail themselves of this benefit according their community background. In an important ruling for transgender people, the Allahabad High Court determined that they are entitled to the position of head of a family which will enable them to receive the ration card's food security benefit.

Transgender people bill contribute to the empowerment and protection of India's transgender community. The Government should collaborate with the transgender community to create a solid legislature framework that complies with both constitution and international law and has strong enforcement capabilities.

The transgender community is actively involved in the fight against AIDS and other health problems in today's society. About 200 people participated in a march organised by a transgender committee member Kalyan west and volunteers who are trying to rehabilitate children of commercial sex workers who present street plays in the city on **Thursdays** to celebrate mark **World AIDS Day** in December 2016.

Rarely does an advertisement pass up the chance to create a catchphrase to communicate its message over the world. Although Indian Cinema frequently portrays transgender people negatively, the industry has stepped up to address societal issues, and there is a growing awareness of them in the modern period.

Since the Supreme Court's Landmark decision in 2014 regarding equal treatment and the

establishment of the third gender category in work and education, numerous brand companies have developed products around themes of inclusion that are welcoming of the transgender community. Among these are Brooke Bond Red Label Tea, collaborated with Y Film to create the first transgender music band along with the six pack brand, and the Sari-maker Red Lotus company.

**Conclusion:-** After analysing the discrimination, it was discovered that the transgender people, like everyone else are entitled to the following rights, the right to equality, the right to equal opportunities, the right to fundamental liberties, the right to life, which includes the right to live with dignity and the right to exploitation. Hijras are not included in any aspect of Indian Civil Society due to these basic and unalienable rights and such deprivation with a bright outlook and show but steady recognition of the rights of the voiceless to the door of judicial activism, India is moving in the direction of better future of Transgender Community. In short- we can say that the transgenders can make their own choice of profession, helping many dreams come true. They can be doctors, chefs, police inspectors, lawyers. They can now be anything they want.

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