

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 5

2020

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A Light on the Socio-Economic Status of the Transgenders

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ABSTRACT

“Every human being is born with something known as sex and it depends upon you, how you recognize and discover it.” The golden thread that runs through the schemes of equality of the Constitution of India is that 'all citizens must enjoy their life and as human beings they must have equal opportunities to grow '. India is a land of distinguishing cultures and religion and has a gender biased society. Since ancient times the Indian society has recognized only two genders i.e. male and female and the populace which do not fall within these two categories remained the neglected part of the society. But with the passage of time there has risen a need to give such populace a separate identity. Transgenders are the ones who are hardly researched, scorned, abused and callously ignored. It is crucial to determine the gender to which one person belongs as it is intrinsic to their right to dignity and self-determination. In this paper we will come across the harassment suffered by the transgender community by the police officials and public. The sectors in which they are neglected. This paper will put a light on the socio-economic status of the transgenders. Due to ignorance the problems faced by them. The various rights recognized by the court and various directions given by it to the government. The separate gender identity given to this community.

Keywords: *Transgenders, Legal Aid, Rights, Status*

I. INTRODUCTION

The Constitution of India is a tryst with destiny and a preamble which has lucent solemnity in the words ‘justice, social, political and economic’. When India got independence, it was decided that every citizen will get life full of dignity along with equality and development in all spheres of life. A happy family is the one which is living a life filled with dignity. But for a host of the people it remained a dream. There were people belonging to the LGBTQ community. Especially those people who belong to transgender identity. Our Constitution has

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one of the most distinctive features is that it says there must not be any discrimination in any form. This assists in establishing a system where everyone will get equal opportunity to grow and in reaching the zenith of their potential. The Supreme Court has been continuously trying to bring changes in the society but still this society required many changes specially it needs to bring a change in the mindset of the people through various measures that makes the public aware about the rights of transgenders. The beginning of these changes was done in the cases of NALSA judgement³ and NavtejSingh Johar⁴. But there are still many changes that need to be brought in society.

II. WHO ARE TRANSGENDER'S AND MISCONCEPTIONS RELATED TO THEM?

Transgenders are the persons who have different Gender identity than that they have at their birth. It means that they are the persons whose gender varies from the gender which was assigned to them during their birth. They are genderqueer person with intersex variation. The person whose genitals get intimate does not only fall within the term transgender but the persons whose gender identity, behavior or expression differs from the trait expected at their birth time. The transgender identities that falls under this category are transgender female, transgender male, male to female, female to male and cross-dressers i.e. who wear the dress of other gender.

III. ISSUES FACED BY THIS GENDER

Transgender community has been always subjected to injustice in the Indian society. Often people used to consider their name as abusive words. Even they are deprived of the basic rights which are given to the citizens of India. They have been subjected to discrimination, suppressed and ignored. But there was a turning point when this community got recognition as a 'third gender'. There was a common story among the people of the transgender community that if they start growing as male i.e. the gender, they have at their birth then they look different from the people of the same sex and if they start growing like the female counterpart as their characteristics looks like them they become the victim of sexual harassment, molestation and trafficking. In short whatever the situation maybe, they would be subjected to discrimination and suffer from various sexually transmitted diseases. In fact, this discrimination not only prevails outside the family but it is something that happens within family also. They have to suffer many problems while accessing services like health care. Many times, they are refused

³National Legal Services Authority v. Union of India, WP (Civil) No 400 of 2012 (India)

⁴Navtej Singh Johar&Ors. versus Union of India thr. Secretary Ministry of Law and Justice, W. P. (Crl.) No. 76 of 2016 (India)

from care in hospitals, they are refused to admit in hospitals. Even the doctors are not aware about the ways they can take care of transgenders⁵. In order to avail basic rights identity documents are important and as their identity didn't come to the picture then they are not able to access these rights.

IV. RIGHTS GIVEN TO THIS GENDER

The transgender community has been always subjected to harassment and violence since times immemorial. As their gender was not recognized they were discriminated against on the basis of their gender. Moreover, they were denied from accessing public services and were refused to educate and earn. In order to curb these problems, the supreme court in the case of **National Legal Services Authority v. Union of India**⁶ have recognized them as third gender and has provided them certain rights and a bill known as **the transgender person protection bill, 2019**⁷ recognizes their rights which are as follows:

- 1. Right to not get discriminated-** Under article 14, 15, 16 and 21 of the constitution the transgender has received the right to not get discriminated on the basis of their gender. Further as per article 19(1)(a), the court held that “there shall be no restriction on one’s personal appearance and the choice of dress on the basis of restriction imposed under article 19(2) of the Constitution”.
- 2. Right to educate-** Education is equally important for this third gender too as like male and female counterparts but the societal stigma faced by the transgender person break their interest and as a result a feeling of being awarded is developed among them. In fact, many a times the transgender students are not given admission in educational institution as their gender identities are not recognized so according to the transgender person protection of rights act, 2019 the government educational institution must provide facilities like education recreation and sports to Hijras without any discrimination.
- 3. Right to get employed-** The transgender persons have suffered discrimination at workplaces in the form of refusal to hire, harassment and privacy violation which resulted in unemployment and poverty in order to cover this discrimination this act states that neither government nor private entities can discriminate Hijra in matters related to employment that includes recruitment and promotions.

⁵ <https://medium.com/one-future/the-challenges-faced-by-transpersons-in-india-fa46575ca14d>

⁶ National Legal Services Authority v. Union of India, WP (Civil) No 400 of 2012 (India)

⁷ <https://www.lexology.com/library/detail.aspx?g=b49d9488-c484-4d00-882c-2c386a041a07>

4. **Right to get medical aid-** The transgenders are the people who are more prone to diseases like HIV, depression and have suffered violence & harassment. The reason behind this is that they do not get proper Health Care so according to this act the government should initiate proper measures to provide Healthcare facilities to this gender and a separate ward and toilet must be constructed for this community in hospitals. A comprehensive medical insurance should be provided to the Hijras.
5. **Right to access services which are for public use-** any accommodation facilities, goods and services which are meant for public use can be accessed by them.
6. **Right to property and movement-** the third gender has got the right to reside, purchase or can occupy property and can have the right of movement.
7. **Right to hold public offices-** Earlier due to harassment hijra community was not able to hold public offices and suffered unemployment and poverty but according to this act they can hold public offices and in case if they are denied from holding such public offices then the person refusing shall be punished with a fine or imprisonment.
8. **Recognition of identity-** it has been realized by the court that the person will not feel his dignity until he is forced to accept a gender to which they don't belong or the gender that will come in the way of their development. Through the **NALSA judgement**⁸ This gender has received separate identity from the supreme court and a certificate of identity as proof has been made compulsory to be taken from relevant state officials.
9. **Welfare measures-** They have the right to formulate and enact Various welfare schemes, measures and programs for social security, education, health care, effective participation in the society and such schemes and measures must be facilitated by appropriate state government.
10. **Right to rehabilitate and residence-** Under the relevant state government measures of rescue and rehabilitation including the right of residence can be taken and until the third gender attains the age of 18 it is mandatory for them to cohabit that with their family.
11. **Offences and penalties-** According to this act if any person commits any kind of violence or harassment of the transgender community or denies them the right to access public services then such person shall be punished with fine along with imprisonment that may vary from a period of 6 months to 2 years.

⁸National Legal Services Authority v. Union of India, WP (Civil) No 400 of 2012 (India)

V. LEGAL AID

- **Constitution of India-** The Preamble given under the constitution of India which provides justice, social, economic, political and equality of status to all its citizens. As the earlier part of the policies of the Indian state have recognized only two genders that i.e. male and the female and being the Indian citizen transgenders rights were deprived of. These rights include their right to own property, Right to Vote, the right to claim formal identity through a passport and the right to marry etc. These were not only rights which were not given to the transgenders but they were also deprived of the rights including the right to health, education and Employment so on. The basic rights given under Article 14, 15, 16 and 21 were also deprived from the 'third gender'. But through the **Nalsa judgement**⁹ These basic rights were extended to this gender also.
 - **Article 14-** This article basically deals with equality before law and equal protection before the law within the territory of India. This is the article that falls clearly within the expression 'person' so transgenders are also entitled to protection under Indian Constitution as the term persons includes male, female and transgenders in all the affairs of state activity¹⁰.
 - **Article 15-** This article deals with the prohibition of discrimination on various ground such as religion, caste, race, sex and place of birth. Under this article transgenders are also included as they fall within the category of persons so they have the right of not getting discriminated on the basis of above-mentioned grounds and possess the right to protect their gender.
 - **Article 16-** According to this article in matters related to public employment everyone must be given equal opportunity. The concept of sex including 'psychological sex' and 'gender identity' is widened through this article. So, under this article in matters related to public employment the transgenders were given equal opportunity and on the basis of their sexual orientation they should not be discriminated against.
 - **Article 21-** As per this article accept procedure established by law no one shall be deprived of their life and personal liberty. And being recognised as the 'third gender' the transgenders have full right to protect their Gender and live with full

⁹Naz Foundation v. Govt. of NCT of Delhi, 160 DelhiLaw Times 277 (India)

¹⁰ Constitutional Law of India, Narender Kumar

dignity and liberty.

As in the case **Navtej Singh Johar v. the Union of India**¹¹, section 377 of Indian penal code was decriminalized as it was held violative of article 14,15,19 and 21.

- **Immoral Traffic Prevention Act of 1956-** After getting amended in 1986, this legislation has become gender neutral. Earlier this legislation was applicable only to the male and female counterparts and they were criminally subjected for the arrest by the police but after this amendment it is applicable to the transgenders also. Now the police have been given a legal base for arresting and intimidation of hijra sex workers.
- **Right of Transgender Persons Bill, 2014-** As private member's bill this bill was introduced. In Rajya Sabha this bill was passed and includes many progressive clauses like creation of institutions such as nationals and state commissions for hijras as well as courts for transgenders rights. This bill provides remedial measures in order to prevent sexual discrimination¹².
- **The transgender person Protection Bill, 2019-** This bill was passed in order to protect the rights of the transgenders. According to this bill the hijra community could not be discriminated on the ground of education, employment, housing, healthcare and all other services. Though this bill permits the right to self-perception of gender identity but it has made it mandatory that the district magistrate will issue a certificate of identity and on its basis every person will be recognized as transgender. It has also criminalized begging and compels the minor trans person who is below 18 must cohabit with their natal family¹³.

Cases

- **Naz Foundation v. Government of NCT Delhi-** In 2009, for the first time the Delhi high court passed the judgement holding section 377 of the Indian Penal Code as unconstitutional. The reason behind this was that this article was violative of article 14,15 and 16 of the Constitution of India¹⁴.

¹¹Navtej Singh Johar&Ors. versus Union of India thr. Secretary Ministry of Law and Justice, W. P. (CrI.) No. 76 of 2016 (India)

¹²<https://www.thehindu.com/news/national/all-you-need-to-know-about-the-transgender-persons-bill-2016/article21226710.ece>

¹³ <https://www.thehindu.com/news/national/watch-all-about-the-transgender-persons-bill/article30122229.ece>

¹⁴Naz Foundation v. Govt. of NCT of Delhi, 160 DelhiLaw Times 277 (India)

- **National Legal Service Authority v. Union of India** – In this case the supreme court has passed a landmark judgement in which it has given legal recognition to the transgenders as the ‘third gender’ in the law’s eye and said they must have equal access to fundamental rights and protection under it as other genders. Equal protection in the state's activity was entitled to them including education and employment. Right to dignity was the point on which the court has laid emphasis and on the basis of reassigned sex their gender was given due recognition¹⁵. While handling this ruling, **Justice K.S. Radhakrishnan** told the Supreme Court that, ” *Recognising transgenders as third gender is a human right issue and not a social or medical issue* ”.
- **Justice KS Puttaswamy v. Union of India** - This is a very renowned judgement which is also known as an integral judgement which focused on the right to privacy. In this case article 21 of the Indian Constitution was also extended to *Right to Privacy* which earlier only included *the right to life and liberty*. It also grants autonomy and protection to the LGBTQIA community from the state government while choosing their partners. Hence this case was a precursor in the removal of section 377 of Indian penal code¹⁶.
- **Navtej Singh Johar v. Union of India** - In this case homosexuality has been decriminalized in India by the Supreme Court because of the various public interest litigations filed by distinguishing members of the LGBTQIA community. This resulted in the removal of section 377 as it criminalized two consenting adults to have sex which was violative of article 14, 15, 16 and 19(1) of the Indian Constitution. In this case the Supreme Court recognized that every person has the right to live with dignity and autonomy without any interference of the state irrespective of their genders. The provisions dealing with the criminalize non- consensual acts with animals or children were upheld by the court¹⁷.
- **Nangai v. the superintendent of police**- In this case the petitioner applied for the post of woman police constable and for the job it was necessary for her to clear a medical test report. In that report it was proved that she is transgender which was contradictory of her medical, educational and birth certificates. Due to which she was terminated from

¹⁵National Legal Services Authority v. Union of India, WP (Civil) No 400 of 2012 (India)

¹⁶Justice K.S. Puttaswamy (Retd.) V. Union of India, Civil Writ Petition No. 494 of 2012 (India)

¹⁷Navtej Singh Johar&Ors. versus Union of India thr. Secretary Ministry of Law and Justice, W. P. (CrI.) No. 76 of 2016 (India)

this post. The High Court held that in future the petitioner can opt for third gender and in order to protect her transgender's right, the termination of her was kept aside¹⁸.

- ***Arun Kumar v. Inspector General of Registration-*** According to the Hindu marriage act, 1955 marriage only includes men and women but this case included transwoman in the word woman and hence transwoman will be included in brides. Now the person without any verification of their identity from the state can present himself with any gender identity and gives them a constitutional right to represent themselves as trans women if they wish. Thus, the right to marry was broadened within the LGBTQIA community¹⁹.

VI. GOVERNMENTAL MEASURES

In order to protect the rights of 'third gender' the court has given certain directions to the central and the state of government. It includes measures such as²⁰:

- This community must be treated as the third gender so that their fundamental rights can be safeguarded.
- The person needs to identify his gender must be recognized.
- Reservations must be provided in matters related to public education and employment in the form of socially and economically backward class of citizens.
- Special provisions must be made in accordance to HIV zero- surveillance for Hijra and appropriate health services must be provided to them.
- In case if the hijra suffers problems like fear, gender dysphoria, shame, depression, suicidal tendencies, etc. Then the government must tackle their problems.
- In order to provide medical facilities to the hijras in the hospitals measures such as building of separate toilets and wards must be taken.
- For their all-around development government must develop special welfare schemes.
- Public awareness must be created so that the transgender may not be treated as untouchables and they feel themselves as the part of the society.

VII. SUGGESTIONS

There are various measures through which we can make the third gender feel that they are equal

¹⁸Nangai v. the superintendent of police, (2014) 4 MLJ 12 (India)

¹⁹Arun Kumar v. Inspector General of Registration, W.P. (MD) NO. 4125 OF 2019 AND W.M.P. (MD) NO. 3220 OF 2019 (India)

²⁰ <https://blog.ipleaders.in/legal-rights-of-transgender-india/>

to other counterparts. These measures are following²¹:

- There must be books in the library that positively deal with transgenders.
- There must be anti- racism training and that training must be brought into practice.
- Works done by trans people must be presented in art shows.
- Meetings must be held in towns to spread awareness about third gender.
- A local events calendar must be prepared and every person must be encouraged to attend these events.
- Changing the policies of different organizations.
- Money must be donated in the organizations that are working for the third gender community.
- Holding workshops which aware the public about the health aid that can be given to transgenders. Trans themed movies can be presented in local theaters.
- Trans pride event should be held in the community.

The above mentioned are few of the ways through which we can bring transgender equality.

VIII. CONCLUSIONS

We have been living in a society where a larger section of people who are living amongst us has been deprived of the basic rights. Equal treatment has been denied to them. Many injustices have been performed by us towards them. But the change started when the people recognized their fight. When their rights are well recognized by the courts and the government. The changed things were the initial step now further we need to look forward to the future changes. There is still a long path to travel. It can be seen that a lot of the people seem to be satisfied with the striking off Section 377. Many of them have opined that transgenders have received all their rights but in reality, a lot of work skill needs to be done in order to bring equality. Depriving a happy life with the reason that it is hurting religious sentiments of orthodox groups, is unfair on behalf of such people who do so. It can be seen trans persons have played a vital role in saving girls' children. They have protected the girls from trafficking then why can't we protect them by giving them equal rights and a lifefull of dignity. If they are serving their nation then the nation too must serve them by recognizing their rights as well as identity.

²¹ <https://transequality.org/issues/resources/52-things-you-can-do-transgender-equality>