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Rights of Transgender: The New Emerging Field of Law

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ABSTRACT

The term "Transgender" is multi-faceted and complex, especially where consensual and precise definitions have not yet been reached. While often the best way to find out how people identify themselves is to ask them, not all persons who might be thought of as falling under the transgender 'umbrella' identify as such. Transgender can also be distinguished from intersex, a term for people born with physical sex characteristics "that do not fit typical binary notions of male or female bodies. Transgender persons are people whose identities are different from the stereotypical gender norms, which identify genders only as male or female. Society has failed to accept their gender identity due to which they have suffered from discrimination, social oppression and physical violence. There are certain socio-cultural groups of transgender people who are identified as Hijras, jogappas, Sakhi, Aradhis etc. and there are people who do not belong to any of the groups but are referred to as transgender person individually. Looking back, the history of recognition of the preferred transgender persons has been, and remains, a battle against discrimination, stigmatisation, social exclusion, anxiety, pain and suffering, violation of dignity and physical integrity, and sometimes even prosecution and persecution.

While the legal and social situation of transgender persons has improved greatly in many jurisdictions, that certainly is not the case globally. This article aims to make a contribution to the ongoing scholarly and political debates concerning the legal status of transgender persons, both inside and outside of potential legislative reform processes. It is also meant to function as a resource for judicial and administrative decisions. It is hoped that a better legal standard of recognition and protection for the Transgender persons can be achieved at the outset. In order to achieve this, the article will make recommendations on the criteria for legal recognition of preferred gender which are based on the general policy and human rights considerations.

Keywords: *Transgender, Legal Recognition, Fundamental Rights, Human Rights, Constitutional Rights, Penal Provision, International Conventions, State laws*

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I. INTRODUCTION

When discussing the term “Transgender,” it is useful to begin by examining the concept of gender. We begin by separating sex from gender. Sex refers to biological and physical characteristics that are linked with being labeled male or female. Sex is labeled at birth, usually on the basis of genitalia and/or chromosomes. Gender refers to the combination of characteristics, expectations, and roles usually associated with biological sex – often placed on a spectrum between masculine and feminine. A central aspect of gender is gender identity. Gender identity is the self-image that one has about one’s own gender as masculine, feminine, or otherwise. Often, people assume that gender identity is congruent with biological sex; they believe that a female will identify as feminine, and a male will identify as masculine. However, this is not true for everyone, since some people with male biology feel strongly feminine, and some with female biology feel themselves to be masculine. Others do not consider their gender to be either feminine or masculine, but a blend of both; still others feel that they are neither masculine nor feminine, but some other third gender.

The term "transgender" is multi-faceted and complex, especially where consensual and precise definitions have not yet been reached. While often the best way to find out how people identify themselves is to ask them, not all persons who might be thought of as falling under the transgender 'umbrella' identify as such. Transgender can also be distinguished from intersex, a term for people born with physical sex characteristics "that do not fit typical binary notions of male or female bodies". Transgender people are basically people whose identities are different from that of stereotypical gender norms, i.e. generally either male or female. Generally they are considered as persons whose gender identity is different from the gender they were thought to be at birth. A person whose gender does not matches with the gender that was assigned to him at birth but is a person with intersex variation. They are person who are born with either male or female anatomy but they do not feel the same as their body structure, expression or behavior differs from their birth sex. Transgender express them as they feel suitable by wearing dresses, different behavior and their way of living. They generally reject the traditional understanding of gender, which is male and female so they identify themselves as transgender or gender queer.³

Transgender are often considered as one of most marginalized group within the country. Since their origins are mostly associated with ancient Hindu text, they had close affinity with mother goddess through which Transgender considered themselves as an ambivalent figure of lord

³ Rajpurohit, Govind S.; Singh, Abhimanyu (2021, May 5). “Transgender Rights in India”.

Shiva signifying their identity. Transgender have a record history in the Indian subcontinent from antiquity onwards as suggested by the Kama Sutra period. This history features a number of well-known roles within sub continental cultures, part gender luminal, part spiritual and part survival. Transgender were once a revered and accepted group in Indian culture. The Vedas, ancient Hindu texts, include eunuchs and characters with both male and female characteristics. They were believed to bring luck and provide special fertility powers. During the Mughals period, eunuchs played an important role in the court administration as royal guards. For centuries, they have performed badhai, or blessings at weddings and births. Their position altered during the British colonial period .But after the introduction of section 377 of Indian penal code they once again regain their recognition which enables them to fights for their rights and freedom. Apart from that the election commission also passed a provision which helps to identify them as a third gender. Due to low population and gender variants they undergo several discrimination and abuse from all the sectors which led to various social and economic factors like low literacy rate, low income and social stigmata which in turn effect the life of Transgender. Due to literacy low rate they mostly engaged in prostitution as a means of survivals which can be a great threat to disease like AIDS or HIV. Other occupation may also include collecting alms in streets, temples and receiving payments for newborn babies. Due to their gender variants people are not willing to employ them, which gave them a minimal chance to express their ideas and talents. Many times they also face social and physical abuse which may lead to some physiological and disorder problem. In addition to that they are mostly excluded from all privileges which may lead to bias and injustice to them. At the outmost they are been thrown from their own family and villages which gives them no option but to engaged themselves as a sex worker or a beggars in the street.

Over the last decade, India has seen an increasing institutional recognition of transgender persons. This is reflected both in public policy and legal decisions. In 2011, the national census for the first time allowed persons to identify as others - leading to approximately five hundred thousand individuals availing the choice. However, transgender persons continue to face discrimination. One reason for this is the lack of legal recognition. It was only in 2014 that the Supreme Court of India first directed the constitutional recognition of a third gender. The petitioners claimed deprivation of rights ordinarily available to citizens (such as the right to access healthcare and employment, and the right to own property). The court acknowledged the hurdles that transgender persons face in exercising inheritance rights. It attributed this to (i) rights based on a binary notion of gender, and (ii) difficulty in identifying successors. Although the judgment reflects a progressive understanding of gender identities, India still needs to tackle

several challenges. However, there has been some progress regarding the rights of transgender persons. In 2011, after petitions to several government bodies, the national census for the first time allowed persons to identify as others - leading to approximately five hundred thousand persons availing the choice. Two years later, the government constituted an Expert Committee to examine issues related to transgender persons. The report gave recommendations regarding increased access to education, healthcare, and employment. In 2014, in a watershed moment for transgender rights, the Supreme Court of India passed its judgment in *NALSA v Union of India*, officially recognizing a third gender and directing the government to implement welfare policies. After the judgment, several State governments passed transgender policies to secure a wide array of civil rights. Lastly, the Transgender Persons (Protection of Rights) Act was passed in 2019. It aims to protect the rights of transgender persons and encourage welfare measures.⁴ In today situation, efforts has been made to uplift this section of people so as to bring equality and improve their socio economic condition like official recognition of third gender in April 2014 which gives them to get excess in education ,health and so on. One of the greatest achievements was the freedom to franchise their vote in election which represent freedom of expression and speech in the society as Justice Radhakrishna has also rightly said that ‘transgender people should be treated consistently with other minorities under the law, enabling them to access jobs, healthcare and education’.

II. TRANSGENDER AND HUMAN RIGHTS

Human rights are rights inherent to all human beings, regardless of gender, nationality, place of residency, sex, ethnicity, religion, color or and other categorization. Thus, human rights are non-discriminatory, meaning that all human beings are entitled to them and cannot be excluded from them. Of course, while all human beings are entitled to human rights, not all human beings experience them equally throughout the world. A cursory look at the development of transgender rights indicates that the world has made significant progress in addressing the recognition of gender identity rights. These regional and domestic developments do not, however, recompense the reality that transgender persons still suffer some of the most pervasive forms of violence and discrimination. In the absence of concrete universal standards, States are free to formulate laws that grant limited or arbitrary rights to transgender persons.

⁴ Inheritance rights of transgender persons in India. (n.d.). Retrieved January 13, 2022, from https://nipfp.org.in/media/medialibrary/2021/08/WP_350_2021.pdf

In Nepal, transgender persons may only register under the “Others” category regardless of what gender the person identifies with, while India’s recent 2019 Transgender Persons Act denies transgender persons their fundamental right to self-identification.

The Yogyakarta Principles of 2007 & 2017 are revolutionary as the first international comprehensive enumeration of LGBTQI+ specific universal human rights standards. Endorsed by the courts of Nepal, India & Brazil, they also find routine mention regional and international human rights reports but are yet to be formally accepted by the UN.

Similarly, the United Nations has passed several resolutions that recognize that transgender persons should be guaranteed the right to recognition along with the full range of rights and freedoms by the State, that they suffer aggravated forms of violence and are targets of extrajudicial killings because of their gender identity, and require special protections against torture.

The international human rights conventions that *do* create obligations for States make no explicit mention of LGBTQI+ persons and these identities have been subsequently interpreted into the original texts by the United Nation Human rights commission (UNHRC) through General Comments. While this increases the scope of protections offered by the Conventions, the evolution of jurisprudence is extremely slow and creates limited, specific obligations

- **Article 26** of the *International Covenant on Civil and Political Rights* (ICCPR) prohibits discrimination and gives equal protection to all persons before the law has been interpreted to include transgender persons under the category of “sex”
- **Article 9** of the ICCPR has interpreted that the right to liberty is available to “everyone” which includes all persons of LGBTQ identity.
- **Article 12** of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) has been interpreted to recognize the right to health of transgender persons as a vulnerable group that requires positive State protections. Similarly, the Committee on the Anti-Torture Convention requires special measures to protect transgender persons from torture under Article 2, as well as provide effective redressed mechanisms for transgender victims of torture under Article 14 of the Convention.

Most of these interpretations were made in response to petitions made under the (optional) Individual Complaint Mechanism of the respective human rights treaties or a voluntary reference to transgender issues. The ICESCR Committee has referenced transgender rights but

consistently cites the lack of comprehensive studies and information to make any conclusive recommendations.⁵

III. TRANSGENDER AND THE INDIAN LAW

Criminal Tribes Act, 1871, which deemed the entire community of Transgender persons as innately 'criminal' and 'addicted to the systematic commission of non-bailable offences'. The Act provided for the registration, surveillance and control of certain criminal tribes and eunuchs and had penalized eunuchs, who were registered, and appeared to be dressed or ornamented like a woman, in a public street or place. Such persons also could be arrested without warrant and sentenced to imprisonment up to two years or fine of both.

Indian Penal Code 1860 Section 377 of the IPC found a place in the Indian Penal Code. 1860, prior to the enactment of Criminal Tribes Act that criminalized all penile-non-vaginal sexual acts between persons, including anal and oral sex, at a time when transgender persons were also typically associated with the prescribed sexual practices.

Challenging 377: In January 2018, the Supreme Court agreed to hear a petition to revisit the 2013 Naz Foundation judgment. On 6 September 2018, the Court ruled unanimously in *Navtej Singh Johar v. Union of India* that Section 377 was unconstitutional "in so far as it criminalizes consensual sexual conduct between adults of the same sex". The judgment was given by a five judge's bench comprising the then Chief Justice of India Dipak Mishra, Justices R F Nariman, D Y Chandrachud, A M Khanwilkar and Indu Malhotra. This decision thus overturned the 2013 ruling in *Suresh Kumar Koushal v. Naz Foundation* in which the court had upheld the law. However, that being said, other portions of Section 377 relating to sex with minors, non-consensual sexual acts, and bestiality remain in force.

NALSA v Union of India:

After several reports regarding the discrimination faced by transgender persons, in 2012, the National Legal Services Authority of India (NALSA) filed a petition before the Supreme Court to address these concerns.⁶ The petitioners claimed deprivation of rights ordinarily available to citizens (such as the right to vote and participate in elections, access healthcare and employment, and own property).⁷ A two-judge bench of Justice Radhakrishnan and Justice

⁵ Need for Recognition of Trans Rights in International Human Rights Law - Centre for Law & Policy Research Centre for Law & Policy Research, <https://clpr.org.in/blog/need-for-recognition-of-trans-rights-in-international-human-rights-law>.

⁶ In particular, the judgment relied on Serena Nanda, *Neither man nor woman: The hijras of India* (Wadsworth Publication 1990); Chakrapani and others (n 11); T Laxmi, S Gauri, K Payal, and others, "Transgender-hijra strategy" [2011] India: NACO, NACP IV working groups Hijras TG 1.

⁷ NALSA v Union of India, Written Submission by Anand Grover, Sr Advocate for the intervenor, Laxmi Narayan

(Dr) Sikri pronounced its judgment in April 2014. While dealing with whether persons had the right to be recognized as per their perceived gender, it expanded the notion of sex under the Constitution.⁸ Now, any prohibited discrimination based on sex under Articles 15 and 16 would include discrimination based on gender identity.⁹ Transgender persons were to be equal citizens with full protection of all fundamental rights. It held that one's gender expression would be protected under Article 19(1) (a) of the Constitution as it reflects the innate character and identity of persons.¹⁰ Lastly, the court observed that provisions in the Constitution are gender-neutral and include transgender persons within the scope of protection.¹¹ They are not limited to strict interpretations of the male or female gender. These findings were reflected in the slew of remedies granted to the petitioners.¹² The court directed the Central and State governments to comply with specific (provide healthcare centers), broad (create public awareness to ensure social inclusion) and imprecise (address problems faced by transgender persons and ensure a respectful place in social and cultural life) orders.¹³

Transgender Persons (Protection of Rights) Act, 2019

After the decision in NALSA, the Transgender Persons (Protection of Rights) Bill was introduced in Parliament in 2016. The Parliament has passed the Transgender Persons (Protection of Rights) Bill, 2019, with Rajya Sabha approving it by a voice vote. The Lok Sabha had already passed the bill in December 2018.

Various provisions of the Bill

- **Defining Transgender:** Section 2 incorporates the following multi-identity definition:
Section 2(k) “transgender person” means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations,

Tripathi (Supreme Court of India 2013).

⁸ See the concurring opinion of Dr Sikri, J for a discussion on the questions before the court. See also, Tarunabh Khaitan, “Reading Swaraj into Article 15: a new deal for all minorities” (2009) 2 NUJS L Rev 419; Bret Boyce, “Sexuality and gender identity under the Constitution of India” (2015) 18 J Gender Race & Just 1.

⁹ Art 15 (prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) and Art 16 (equality of opportunity in matters of public employment), Constitution of India 1950.

¹⁰ Art 19 (protection of certain rights regarding freedom of speech, etc), *ibid*.

¹¹ p 85, NALSA v Union of India (n 4).

¹² pp 127-129, *ibid*.

¹³ Danish Sheikh, “A Tale of Two Judgments: The Afterlives of a Defeat and Victory for Queer Rights in India” (2018) 8 Harvard Kennedy School LGBTQ Policy Journal.

genderqueer and person having such sociocultural identities as kinner, hijra, aravani, and jogta.¹⁴

- **Prohibition against discrimination:** It prohibits the discrimination against a transgender person, including denial of service or unfair treatment in relation to education, employment, healthcare, access to, or enjoyment of goods, facilities, opportunities available to the public. Every transgender person shall have a right to reside and be included in his household. No government or private entity can discriminate against a transgender person in employment matters, including recruitment, and promotion.
- **HRD measures:** A transgender person may make an application to the District Magistrate for a certificate of identity, indicating the gender as 'transgender'. Educational institutions funded or recognized by the relevant government shall provide inclusive facilities for transgender persons, without discrimination. The government must provide health facilities to transgender persons including separate HIV surveillance centers, and sex reassignment surgeries.
- **Grievances redressal:** The National Council for Transgender persons (NCT) chaired by Union Minister for Social Justice, will advise the central government as well as monitor the impact of policies with respect to transgender persons. It will also redress the grievances of transgender persons.
- **Legal Protection:** The Bill imposes penalties for the offences against transgender persons like bonded labor, denial of use of public places, removal from household & village and physical, sexual, verbal, emotional or economic abuse.

Given its proximity to the Supreme Court's decision, The Act prohibits discrimination against transgender persons, including unfair treatment or denial of service concerning: (a) education; (b) employment; and the ... (g) right to reside, purchase, rent, or otherwise occupy any property.¹⁵ However, the Act is silent whether the definition clause impacts other legislation and does not have anti-discrimination provisions concerning other property right components (including inheritance). For instance, how should transgender men and women is treated under legislation that only alludes to men and women? Similarly, what is the treatment of persons who do not identify with either gender? Moreover, though individuals cannot discriminate against transgender persons concerning rent etc., there is no clarity on whether one can inherit

¹⁴ Section 2, Transgender Persons (Protection of Rights) Act.

¹⁵ Section 3, Transgender Persons (Protection of Rights) Act.

or bequeath property. The Rules under the Act are similarly silent about these concerns and only suggest welfare schemes for affordable housing.¹⁶ Moreover, the Act gives recognition to transgender identity, directs the enactment of welfare measures, and imposes obligations on various establishments.¹⁷ Individuals must apply for a transgender certificate, without which they cannot avail any protection under the Act.¹⁸ If individuals undergo medical intervention to change their gender, they require a revised certificate issued by the District Magistrate, who may examine the application's correctness. A person also has to prove residence within the Magistrate's jurisdiction, a task which may be difficult for transgender persons who may not possess identification documents and often do not have a permanent residence. The law exacerbates discretion regarding determining a person's gender and goes against the right of self-determination recognized in *NALSA v Union of India*.¹⁹

IV. RECENT JUDICIAL AND ADMINISTRATIVE TRENDS ON TRANSGENDER RIGHTS

(A) State laws:

- The states of Tamil Nadu and Kerala were the first Indian states to introduce a transgender welfare policy. According to the policy, transgender people can access free sex reassignment surgery (SRS) in government hospitals (only for male-to-female), free housing, 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 programmers (IGP). Tamil Nadu was also the first state to form a transgender welfare board with representatives from the transgender community.²⁰
- 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

¹⁶ As per the rules, the government must formulate welfare schemes that are transgender sensitive, no stigmatizing, and non-discriminatory to transgender persons. See Annexure II, paragraph 3, Transgender Persons (Protection of Rights) Rules 2020.

¹⁷ See Chapters III, IV, and V, respectively. Transgender Persons (Protection of Rights) Act.

¹⁸ See rule 3 (application for issue of certificate of identity under section 6 or section 7) Transgender Persons (Protection of Rights) Rules 2020; Gautam Bhatia, "The Rajya Sabha must amend the Transgender Persons Bill" [2019] *The Hindustan Times*.

¹⁹ The Supreme Court has issued notice in three petitions challenging the constitutional validity of the Act as being violative of the right to life, privacy and equality. The petitioners have also prayed for the court to direct implementation of the decision in *NALSA v Union of India*. *Swati Bidhan Baruah v Union of India Writ Petition (C) 51 of 2020*; *Rachana Mudraboyina v Union of India Writ Petition (C) 281 of 2020*; *Grace Banu Ganesan v Union of India Writ Petition (C) 406 of 2020*; Supreme Court Observer, *Challenge to Transgender Persons Act (2020)*

²⁰ Karthikeyan, Divya (25 May 2017). "Tamil Nadu, once a pioneering state for welfare of transgenders, now shuns the third gender"

Security.²¹The Government of Himachal Pradesh has set up medical boards at the district and state level for assisting transgender people. The state has also enacted various schemes providing pension, skill development, scholarship and financial support for parents of transgender people.²²²³ In April 2017, the Ministry of Drinking Water and Sanitation instructed states to allow transgender people to use the public toilet of their choice.²⁴

- A transgender board was established in Chandigarh on 22 August 2017. The board comprises members from the police department, the social welfare department, the education department and the law department, health professionals, and representatives of Panjab University, and others.²⁵ In October 2017, the Karnataka Government issued the "State Policy for Transgender, 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.²⁶
- 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 Rs.1, 500 per month to each transgender person above the age of 18 for social security pensions. The Government will also construct special toilets in public places, such as malls and cinema halls, for transgender people. In addition, the state has also established a transgender welfare board.
- 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 criticized aspects of the bill, including its requirement to establish medical boards to issue "transgender certificates".
- The Government of Delhi announced its intention in May 2018 to establish a seven-member committee to review issues surrounding the transgender community, including

²¹ Dash, Jatindra (2 June 2016). "Odisha becomes first state to give welfare to transgender community"

²² "Himachal Pradesh to bring transgenders under social security net". *The Indian Express*.

²³ "Welfare of Transgender". *himachal.nic.in*.

²⁴ Sharma, Kuheena (6 April 2017). "Sanitation ministry allows transgender people use public toilets, wants them recognized as equal citizens". *India Today*. New Delhi.

²⁵ "Chandigarh gets its first Transgender Welfare Board with 14 members". *Indian Express*.

²⁶ "Transgender policy cleared by Karnataka cabinet". *The Indian Express*. *Press Trust of India*.

concerns of sexual abuse, discrimination at work as well as other societal problems. "We will have a dedicated cell for transgender people, which will be headed by a representative from the community. The commission receives a lot of complaints of abuse against them. The cell will enable us to focus on issues faced by [transgender people] and providing members greater support and safety." said Swati Maliwal, chief of the Delhi Commission for Women.²⁷

(B) National council for transgender persons

Recently, the Ministry of Social Justice and Empowerment has constituted the National Council for Transgender Persons, under the Transgender Persons (Protection of Rights) Act, 2019.

1. Aim:

- To **mainstream the transgender community's concerns**, focusing on **livelihood issues** as well as to raise awareness about the Trans community, so that transgender persons are accepted within families and in the larger society.
- To ensure that **transgender welfare boards** are set up in all States and essential needs of the transgender community, like housing, food, healthcare and education are met.

2. Functions:

- **Advising the Central government** on the formulation of policies, programmes, legislation and projects with respect to transgender persons.
- **Monitoring and evaluating** the impact of policies and programmes designed for achieving equality and full participation of transgender persons.
- **Reviewing and coordinating** the activities of all the departments.
- **Redressing grievances** of transgender persons.
- Performing such **other functions** as prescribed by the Centre.

3. Composition:

- Its **chairperson** will be the Union **Minister of the Ministry of Social Justice and Empowerment**.
- **Representatives from five states or Union Territories** (one each from the north, south, east, west and northeast regions), on a rotational basis.

²⁷ "Delhi Commission for Women to have a dedicated transgender cell". *Hindustan Times*.

- **Five members of the transgender community** (one each from the north, south, east, west and northeast regions).
- The tenure of the community members shall be **three years**.
- **Representatives from 10 central departments**.
- The council will have joint secretary-level members from the **Ministries of Health, Home, Minority Affairs, Education, Rural Development, Labor and Law**.
- In addition, there will be a member from the **Department of Pensions (Ministry of Personnel, Public Grievances & Pensions), NITI Aayog, National Human Rights Commission and National Commission for Women**.

(C) Transgender community under ambit of Covid relief scheme

The High Court of Manipur directed the state government to include members of the transgender community within the ambit of the state's Covid-19 relief scheme. The court also directed authorities to extend the date for the submission of the application beyond August 7. Under the scheme, beneficiaries, whose livelihoods has been affected by the pandemic, are provided Rs 5,000, in two installments of Rs 2,500 each.

The directive was issued in response to a PIL filed by Santa Khurai, secretary of All Manipur Nupi Maanbi Association (AMNMA), seeking inclusion of transgenders as beneficiaries of the Chief Minister Covid-19 Affected Livelihood Support Scheme. AMNMA is an apex body of the transgender community.²⁸

(D) Rajasthan constitutes Transgender welfare fund

The Rajasthan government has set up a welfare fund, among the first such in the country, dedicated to the upliftment of the transgender community, and bring its members to the mainstream. In August 2016, Rajasthan constituted a Transgender Welfare Board with three members from the community with the social justice department minister as its chairman. The welfare fund is part of 2021-22 budget announcements. Welcoming the government's decision, Member of Transgender Welfare Board, Pushpa Nai said, "Rajasthan is the first state in the country with a separate development fund for the community." She said the transgender

²⁸ Need for Recognition of Trans Rights in International Human Rights Law - Centre for Law & Policy Research Centre for Law & Policy Research, <https://clpr.org.in/blog/need-for-recognition-of-trans-rights-in-international-human-rights-law>.

development fund will focus on skills, awareness, education, and infrastructure like the setting up of community halls.

A sum of Rs. 8.82 crore as annual allocation has been made by the government for the fund. The state has made provision of financial assistance for sex change, under which Rs.2.5 lakh will be provided to the applicant. There are provisions of financial aid in one form or the other in very few states across the country. Tamil Nadu provided Rs.4000 as financial aid to transgenders in light of the pandemic to start small businesses, while Kerala also provides financial assistance for sex realignment surgeries for the members of the community.²⁹

(E) Transgender Day of Remembrance

To commemorate the transgender community, the government of Rajasthan has decided to celebrate Transgender Day of Remembrance (November 20) at the government level. Transgender festivals, sports and other activities will be organized with government funding of Rs 10 lakh at the state level and Rs 1 lakh each at the district level. The government of Rajasthan is the first state to create a fund of Rs 10 crore only for transgenders and the celebration of Transgender day is one of the activities under this fund.

There were 16,571 transgenders in the state in the 2011 census and now the number is estimated to be more than 60, 000. An identity card will be issued to the members of the community by the government. The government will allot 2 'Bighas' of land near Jaipur to build a community center and old age home for transgenders. Besides this, they will be given free sex-change surgery and treatment up to Rs 2.50 lakh. A grant of Rs 50,000 will also be given to transgender for self-employment and free skill development training will also be imparted. Some other facilities like scholarships and counseling to the students of this community are also mentioned in the guidelines made for the fund.³⁰

(F) M.P. State Legal Service Authority to provide assistance to transgenders in getting their Identity Cards/Transgender Cards

The Division Bench of Mohammad Rafiq, CJ and Vijay Kumar Shukla, J., decided in the matter of a petition which was filed in the form of Public Interest Litigation by a Transgender, who is Social Worker and Paralegal Volunteer at Indore, for the welfare of the people of Transgender Community. Counsel for the petitioner, Ms Shanno Shagufta Khan contended that

²⁹ Rajasthan constitutes transgender welfare fund Hindustan Times, <https://www.hindustantimes.com/cities/jaipur-news/rajasthan-constitutes-transgender-welfare-fund-101634050279556.html>

³⁰ Transgender Day of Remembrance: Rajasthan government to organize festivals, activities for community on November 20 Free Press Journal, <https://www.freepressjournal.in/india/transgender-day-of-remembrance-rajasthan-government-to-organize-festivals-activities-for-community-on-november-20>

there were approximately 1000 Transgenders living in Indore and most of them did not have any source to earn their livelihood and suffer from starvation. The Court gathered that most of the transgenders face difficulty not only because they do not have transgender identity card, but even the 'Ration' Cards were also not issued in their names. It was also been demonstrated that owing to non-availability of 'Ration' Card, the transgenders community were not in a position to get their 'Aadhar' Card issued. The Court while taking in regard the situation faced by the community directed the Member Secretary, M.P. State Legal Service Authority to provide assistance to all such transgenders across the State by getting a survey conducted through Paralegal Volunteers and help them in getting their Identity Cards/Transgender Cards, 'Ration' Cards and 'Aadhar' Cards prepared. The respondents-State is directed to place on record the relevant material showing other benefits which are being provided to the transgender community in the State of Madhya Pradesh under any other scheme of the Central Government/State Government.[*Noori v. State of M.P.*, WP-10027 of 2021, decided on 16-08-2021].³¹

(G)Reservation provision to appoint Transgender Constables

The Bihar Government apprised Patna High Court that vide notification dated January 14, 2021 it has taken a decision to provide reservation in appointment to the post of Constables/Sub-Inspectors, for the persons belonging to the Transgender Community. Chief Justice Sanjay Karol and Justice Prabhat Kumar Singh further observed, "Accounting for the total population of the Transgender Community in the State of Bihar, as per 2011 census, one post for every 500 post of Constable/Sub-Inspector stands reserved."

It may be noted that in an earlier hearing on December 14, 2020, the High Court had asked the State of Bihar to allow the Transgender community to apply for the post of Constables in the Police Force. Chief Justice Karol had said, "We are hopeful that the State would adopt a sensitive approach and immediately take remedial measures and the last date to invite applications, for the members of the Transgender Community, shall be extended for such time and period, the State determines it to be feasible and appropriate."

The Bench headed by Chief Justice Sanjay Karol and Justice S Kumar had noted that the advertisement issued by the Central Selection Board of Constables only specified the sex of the applicants to be male or female. The court had remarked, "Prima facie what we find is that

³¹ MP HC | M.P. State Legal Service Authority to provide assistance to transgenders in getting their Identity Cards/Transgender Cards; State directed to ensure other benefits | SCC Blog SCC Blog, <https://www.sconline.com/blog/post/2021/08/19/mp-hc-m-p-state-legal-service-authority-to-provide-assistance-to-transgenders-in-getting-their-identity-cards-transgender-cards-state-directed-to-ensure-other-benefits>.

the persons belonging to the Transgender Community are totally precluded from the process of applying for a post of a constable, much less, agitate their right of reservation.”

V. CONCLUSION

Transgender rights are a vast and complex subject. Transgender people are individuals who differ from the stereotypes and existence of only two genders that is man and women; they have different appearance, personal characteristics and behavior. Each person in this Universe is unique in their way and is an integral part of our society. Thus, it would be erroneous to judge and discriminate against people contrasting to the stereotype. It is high time, and people must understand that every individual of India has been provided with equal rights and opportunities and follow the policy of “live and let live.” Though the transgender community was given top position in the building of the empire during Mughal times, they faced many problems during the British colonial period.

Being different from the other gender, transgender people have been subject to social oppression as society does not accept their gender identity and they suffer from the physical violence which is inflicted upon them. The main problems from which they suffer are lack of education, unemployment, homelessness, lack of health care facilities, depression, alcohol abuse and discrimination throughout their life. To protect their rights and to solve their problems, The Constitution of India has provided them with their own rights and The Supreme Court has given them the right to be recognized as “Third Gender” and provided them with some welfare measures. To ensure the safety of the Transgender Community in the country, the Government of India has taken an opportunity and introduced various welfare policies and schemes, keeping in mind the status of Transgender communities. These include census, issuing of the citizenship I.D. Cards, issuing passports, social-economic development, constitutional safeguards, housing, legal measures, police reforms to prevent the violation of human rights of the Transgender Community and institutional mechanisms to address the concerns of transgender people.

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