



Human Rights and Legislations for Transgender in India : A Path from Marginalization to Social Inclusion

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Abstract

India is a democratic country. Indian Constitution provides equal opportunity to every citizen to grow and attain their potential, irrespective of caste, religion, or gender. Everyone has a gender identity, Today in India there are three genders; male, female, and transgender. The transgenders are persons whose gender identity, gender expression or behavior does not conform to their biological sex. Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech, and mannerisms. Transgenders were caught up in a viciously painful cycle wherein at the one end of the tangent, the various forms of violence, such as emotional, mental, and even physical, experienced by the transgender as a part of their everyday experiences. Transgender face a high level of stigma in their daily life. They are socially, culturally, and educationally thrown out at the margin and being exploited. United Nations has been instrumental in advocating the protection and promotion of the rights of sexual minorities, including transgender persons. United Nations and other human rights bodies adopted the Yogyakarta principles on the application of international human rights law in relation to sexual orientation and gender identity. The main objectives of this paper are to throw light on

Yogyakarta principles, and the rights of transgender people in India provided by the Indian constitution and law.

Key Words: Transgender, Gender Identity, Yogyakarta Principle

Introduction

The word “transgender” is generally described as an umbrella term for persons whose gender identity, gender expression, or behavior does not conform to their biological sex. The transgender community is incredibly diverse. Some transgender people identify as Trans male or Trans female, and some identify as genderqueer, nonbinary, agender, hijra, or somewhere else on or outside of the spectrum of what we understand gender to be. Transgenders also include persons who intend to undergo Sex Re-Assignment Surgery (*SRS*) or have undergone *SRS* to align their biological sex with their gender identity in order to become male or female. They are generally called transsexual persons. People who would fit under this definition have existed in every culture throughout recorded history. Society identifies only binary gender categories i.e. male and female, but transgender deny binary gender categories of a social system. Transgenders have their own gender identity and sexual orientation which differs from social norms that creates tension between society and transgender persons. Gender identity is a person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth. Sexual orientation is the individual’s enduring physical, romantic, and emotional attraction to another person.

India has achieved significant growth and development. It has improved on crucial human development indices such as levels of literacy, education, and health. There are indications, however, that not all disadvantaged groups have shared equally the benefits of the growth process. What is appalling is that despite affirmative actions (reservation policies, Right to Education, etc.) the disparities remain substantial among the transgender community in India. The majority of the population is uneducated or undereducated thereby excluding them from participating in social, cultural, political, and economic activities. Along with teacher’s apathy towards the transgender community, exclusion from society, poverty, continued discrimination, and violence are some of the important factors which can be attributed to the poor participation of transgender persons in educational activities. As per census 2011, 4, 87,803 people belong to third gender in India. In which the number of children (0-6 year) transgender is 54,854 schedule

caste (SC) transgender is 78,811 and scheduled tribes (ST) transgender 33,293 who faces social discrimination and harassment. The literacy rate of transgenders in India is 56.07 percent (Census, 2011).

Human rights are basic rights and freedoms inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination. All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible, and interrelated. Sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse.

A distinguished group of human rights experts drafted, developed, discussed, and reformed the principles in a meeting held at Yogyakarta, Indonesia from 6 to 9 November 2006, which unanimously adopted the Yogyakarta Principles on the application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. Yogyakarta Principles address a broad range of human rights standards and their application to issues of sexual orientation and gender identity.

Yogyakarta principles:

Following an experts' meeting held in Yogyakarta, Indonesia, from 6 to 9 November 2006, hereby adopt these principles:

1. The right to the universal enjoyment of human rights
2. The rights to equality and non-discrimination
3. The right to recognition before the law
4. The right to life
5. The right to security of the person
6. The right to privacy
7. The right to freedom from arbitrary deprivation of liberty
8. The right to a fair trial
9. The right to treatment with humanity while in detention
10. The right to freedom from torture and cruel, inhuman or degrading treatment or punishment

11. The right to protection from all forms of exploitation, sale and trafficking of human beings
12. The right to work
13. The right to social security and to other social protection measures
14. The right to an adequate standard of living
15. The right to adequate housing
16. The right to education
17. The right to the highest attainable standard of health
18. Protection from medical abuses
19. The right to freedom of opinion and expression
20. The right to freedom of peaceful assembly and association
21. The right to freedom of thought, conscience, and religion
22. The right to freedom of movement
23. The right to seek asylum
24. The right to found a family
25. The right to participate in public life
26. The right to participate in cultural life
27. The right to promote human rights
28. The right to effective remedies and redress
29. Accountability

These principles and recommendations reflect the application of international human rights law to the lives and experiences of persons of diverse sexual orientations and gender identities, and nothing herein should be interpreted as restricting or in any way limiting the rights and freedoms of such persons as recognized in international, regional or national law or standards.

The transgender person was acknowledged by the Union of India as a *Third Gender* in addition to male and female in a groundbreaking decision by the National Legal Services Authority bench of Justices K.S. Radhakrishnan and A.K. Sikri. The dual gender framework that was imposed on transgender people by society in the shape of males and females has been debunked by the Supreme Court of India. To give them the best rights, the court recognized the variety of gender identities (The Times of India, 2015). The Centre and State governments in India have been ordered by the Supreme Court to provide transgender people with legal identification. Transgender people's legal rights and the Hijra community's Justice, Liberty, Equality, and Fraternity are requirements outlined in the Preamble of the Indian Constitution.

Rights of Transgender Persons in India-

In April 2014, the Supreme Court of India created the “third gender” status for transgender persons stating that they did form a distinct group and any discrimination towards them was a violation of their constitutional rights.

The Lok Sabha enacted the Transgender Person (Protection of Rights) Bill, 2014 on April 24, 2015, protecting their rights and combating prejudice against them. Complex gender identity (GOI) issues are covered by the bill (2014). The Transgender Persons (Protection of Rights) Act, 2016, was created two years later for the benefit of TG/Hijras (GOI, 2016). The Hijra community has been strongly opposed to the law ever since the Lok Sabha passed it on December 17, 2018. If the Rajya Sabha approves this Bill, it will continue to violate transgender and Hijra people's human rights. The current Bill will be used to oppress people and prove the wrongdoings this community has already experienced.

The Supreme Court of India ruled on September 6, 2018, in the case of Navtej Singh Johar and Others vs. Union of India, that section 377 of the Indian Penal Code, which criminalizes consenting adult sexual acts in private, violates Articles 14, 15, 19, and 21 of the Constitution. Such consent must be freely given, voluntary, and devoid of any coercion. Nonconsensual sexual actions against adults, all carnal acts against minors, and bestiality shall continue to be governed by the rules of Section 377. As a result, the Supreme Court's decision on September 6, 2018, decriminalized homosexuality under Section 377 of the IPC.

Transgender Persons (Protection of Rights) Act, 2016

The bill was named the Transgender Persons (Protection of Rights) Act, 2016, and was introduced in the Lok Sabha on 2 August 2016. This bill is applicable to the whole of India including Jammu and Kashmir. According to this bill, transgender persons have the right to be prohibited from unfair treatment and discrimination in educational institutions and services and have the right to their self-perceived gender identity. They can make an application to the District Magistrate for the issue of a certificate of identity as a transgender person. The bill also provides for welfare schemes, the right to reside, the right to education, access to health care,

and a National Council for transgender persons. The function of the National Council for Transgender Persons is to evaluate and provide appropriate advice on programs, policies, laws, etc. designed to ensure equality and full participation. Its other function is to review and coordinate the activities of all government departments and government and non-government organizations that deal with matters relating to transgender persons. The Bill provides for an Act against various crimes committed against transgender persons. These include begging, denial of entry and use of a public place, denial of the right to live in a home, endangerment of life, safety, and health through physical, sexual, verbal, emotional, and economic abuse, etc. These offenses are punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with a fine (Transgender Persons Act, 2016).

Transgender Persons (Protection of Rights) Act, 2019

The Government of India has enacted the 'Transgender Persons (Right to Protection) Act, 2019'. This is an important step towards achieving the welfare of this community. The Act deals with the most important and sensitive issue of granting of Certificate of Identity to transgender persons and provides a streamlined procedure for the same. In addition, the Act also includes provisions for non-discrimination, equal opportunity in employment, education schemes, social security, and accessible health care for transgender (Transgender Persons Act, 2019).

National Portal for Transgender Persons

The Union Ministry of Social Justice and Empowerment launched a national portal in November 2020, where a transgender person can apply for a certificate of identity from the concerned district authority. For this, the portal does not demand the need for any kind of physical presence.

National Council for Transgender Persons

In the exercise of the powers conferred by Section 16 of the Transgender Persons (Right to Protection) Act, 2019 (40 of 2019), the Central Government has constituted the National Transgender Persons Council for transgender persons. This council is a platform for

representatives of this community to bring forward the issues they face in their day-to-day lives. This council will serve as an apex body to address the concerns of the transgender community. This council will be chaired by the Minister of Social Justice and Empowerment. Apart from this, officials from the Ministry of Health and Family Welfare, Ministry of Home Affairs, Ministry of Housing and Urban Affairs, Ministry of Education, Ministry of Rural Development, Ministry of Labor and Employment, and NITI Aayog etc. will also participate in it.

National Education Policy 2020

The objective of this policy is to prepare such productive people who will contribute in a better way in building an inclusive, and pluralistic society as envisaged by its constitution. Provide appropriate resources in schools so that teachers and students in schools, including students of all genders and children with disabilities, have a safe, inclusive, and effective learning environment and feel comfortable and motivated to teach and learn in their schools. To create a positive learning environment in schools, principals and teachers will be expected to create a sensitive and inclusive culture in their schools for effective learning and for the benefit of all students. The policy clarifies that the Indian education system and successive government policies have made steady progress in bridging gender and social category gaps at all levels of the school education system, but there are socio-economically disadvantaged groups in which inequality in the field of education can be seen even today, in these groups women and transgender persons are especially deprived socio-economically. The policy states that the Government of India will set up a 'Gender Inclusive Fund' to develop the country's capacity to provide quality and equitable education to all girls as well as transgender students. (NEP, 2020).

Problems faced by transgender in India:

- Various social problems of a transgender community like- boycotts, unemployment, lack of educational and medical facilities, problems of marriage and child adoption, etc.
- Transgender people got the right to vote in 1994, but the task of issuing voter ID cards to them got entangled on the issue of male and female.
- They are also denied some legal rights like the right to property and adoption of a child.

- They are often shunned by society, making them easy prey for human trafficking.
- They are also treated humiliatingly in hospitals and police stations.
- Transgender are socially ostracized in India. The main reason for this is that they can neither be placed in the category of men nor women, which is part of the ancient system of division on the basis of gender.
- As a result of this, they are not able to get an education, and remain unemployed. They are not even able to take advantage of the medical facilities available to the general public.
- Apart from this, they are also deprived of many facilities.

Conclusion:

The Yogyakarta concept, which stands for the civic acknowledgment of gender transition, represents a significant shift in attitudes towards gender generally and transgender people particularly, and aspires to remove social marginalization. However, while some transgender people may have their rights and claims to citizenship facilitated remain unprotected by human rights law and are marginalized from citizenship (Hines, 2006). Research shows that transgender citizenship is both an uneven and contested territory since it is both framed by and formed through human rights rhetoric. The challenges of obtaining citizenship and rights for individuals of marginalized groups are avoided by a universal discourse on human rights. Points made in this passage link not only gender diversity but also variation in racialization, ethnicity, class, and sexual orientation, among other things. It is crucial that discussions of human rights and the law take into account ongoing social and cultural changes regarding the definitions and expressions of gender and sexuality, as well as the right to self-determination. There is undoubtedly a growing demand for self-determined gendered and sexual practices that are formed outside of gender (man/woman) and sexual (homo/hetero) binaries. From here, the Supreme Court ruling can be viewed as a first step towards a future with diversified gender recognition.

In India, being transgender is considered a societal stigma. For them, a lot needs to be done. Also, a step in that direction is this measure. With the help of this bill, attempts are being made to help eunuchs join the mainstream, something they have long been after. For transgender

people, effective action must be taken in all areas, including education, health, livelihood, and obtaining legal rights.

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