



Rights of Transgender in Jammu and Kashmir: Discrimination and Institutional Safeguards.

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ABSTRACT

Once worshipped now lost, after a long struggle to establish their identity, this marginalized transgender community received recognition of their rights by the Supreme Court of India in 2014 (Nalsa v. U.O.I). Currently, transgender persons are now an officially recognized gender, third gender in the country and now not forced to fit into the category of male or female. After this landmark judgement, the community slowly started breaking down stereotypes set by society to come into the mainstream, but the dream of equality has not yet been fulfilled. This study based on primary data collected from 362 transgender persons in the union territory of Jammu and Kashmir. This study depicts the legal unawareness, unlimited differential treatment inaccessibility to institutional mechanism and level of education among transgenders. This study comes into a conclusion that transgender expectation in UT of j&k doesn't met as mentioned in Transgender persons protection of rights act 2019, and need urgent reforms, trained official persons and institutional sensitization.

Key words: transgender, discrimination, safeguards, institutions.

INTRODUCTION

EQUALITY in a welfare state is not only confined to right but a fundamental expectation set by every individual regardless of category of male, female. Everyone desires and expect the law of land treats every individual with fairness and respect and make it possible that all stand equal before the law equally on equal footing. As everyone is born with human rights, then on equal footing no one is superior to any other by virtue of birth & gender. This concept of equality is embedded in the preamble of Indian Constitution which guarantees justices social economic and political, equality of opportunity to all. This is further strengthened by the Article 14, 19 & 21 which uphold the freedom, equality and dignified life without making any discrimination.

Section 2 (k)¹ of the Act defines “transgender person” as 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, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta. The Transgender person protection of rights Act used term transgender as a wide term to include every sex except male and female so that a person can create their own legal identity regardless sex what they have been assigned at birth. However, applying this in reality is not so easy. As they have been neglected and discriminated in every aspect of life moreover violence and hatred against them can be observed globally.

On April 15, 2014, a landmark judgment was delivered by Justice K.S. Radhakrishnan and Justice A.K. Sikri in the case of National Legal Services Authority (NALSA) v. Union of India. This historic decision recognized transgender persons as the “third gender” and directed that the category “Others” be included in all official forms and documents.

The most progressive and humane aspect of this judgment lies in its emphasis on psychological sex rather than biological sex as the basis for gender identity. By doing so, the Supreme Court acknowledged that gender is not determined solely by anatomy but by a deeply felt sense of self. The judgment thus affirmed the right of transgender persons to self-identify their gender, ensuring them constitutional protection, dignity, and personal integrity under Articles 14, 19, and 21 of the Indian Constitutions

A person who fell outside the set norms for gender in Indian society is usually labelled by several names one among them is hijra in most states and laanch (powerless or impotency) particularly in j&k. Often abused, discriminated etc. for the reason on which they have no control. In early times transgender are respected and considered main part of mainstream society perform numerous religious and cultural function their blessing is considered auspicious, but unfortunately societal attitude abruptly changes and started violence and hatred against them without having any harm from them. They became easy prey of violence and hatred as nobody takes stand for them as if they have no existence at all their suffering hardship their emotion found no place for acknowledgement. The major cause of their suffering is ‘we’ the people who are socially acceptable because we fit in the strait jacket of gender norm. our social unacceptance for transgender leads them for social exclusion including the material deprivation of everything that leads their life towards a dignified life.

According to India’s last 2011 Census approximately 4,87,803 lakhs have been considered to be the transgenders. Hijras are considered to be the most marginalized sections of the society. They are not given equal status and opportunities.² The population of transgender in j&k exist in minority same as throughout India as they mainly remain cut from the mainstream society, due to their limited access to education they are forced in Jammu & Kashmir to take up traditional roles like matchmaking or singing and dancing at

¹ THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

² TRANSGENDER: A SOCIO LEGAL PERSPECTIVE AUTHORED BY - RADHA RANJAN Doctoral Research scholar Department of Law and Governance Central University of South Bihar

weddings. The deep-rooted stereotype attached to their personality limit their ability to take up respectable jobs their safety, dignity and respect is still at stake

An empirical study was conducted in the state of Jammu and Kashmir from 7-01-2026 to 20th April 2026 around 362 transgender people among them 268 transgender women and 94 transgender men asked open and close ended question about the law, efficacy of law, protection, institutional treatment and behaviour of official employees towards them between the age group of below 35 and not above 56 to show actively engaged transgender population The data collected was systematically analysed using statistical tools such as frequency distribution, percentages mean and standard deviation. Various finding of study is as under:

Educational levels remain low, with over 60% not progressing beyond middle school. Limited education became a major cause of economic instability and unemployment.

Major source of legal awareness reveals minimal government effort to disseminated legal awareness among masses as NGOs (38.4%) and media (40.1%) serve as primary sources of information, while government outreach remains minimal (3.3%).

When it comes to accessibility to institutional mechanism the figures show serious disappointment. Police institutions are perceived as the most inaccessible (64.6%), followed by courts as education emerges weakest cause of legal unawareness the same stands for as Only 11.3% have filed complaints against violence against them 62.2% received no benefits from existing laws.it raises serious concern for their protection.

Experience of Discrimination and Protection: Only in year 2025 75.7% of respondents experienced discrimination. The most affected areas include employment (27.1%), healthcare (23.2%), and education (17.4%). Despite this, 70.2% did not report discrimination due to Lack of trust (21.5%), Lack of awareness (17.7%) Fear (16.9%). law on paper must come into life to boost confidence and repose trust in law. Majority of respondents rated legal protection as poor Very Poor: 37% and Poor: 46.7%. All respondents (100%) supported the establishment of special transgender commissions or courts.

The study reveals that legal recognition is there but lived realities of transgender people in UT of j&k is different. As current system including judiciary and legislature recognise transgender rights but implementation needs more further steps. A clear demarcation needs between law in books and law in actions.so that this marginalized section of people who cry for their basic needs at least get dignified life and feel secure and confident about justice delivery system. Recently on 30 march 2026 a meeting was arranged by the leading political party PDD with transgender community of Kashmir in which they put forth their socio-economic challenges demand and urges the authorities that their basic facilities like electricity and water bill must be made free highlighting their very few livelihood opportunity and concern for their old age security. This interaction on one side reflects the growing political recognition of transgender rights in Jammu and Kashmir and on the other side raises important questions about state responsibility for their protection and welfare.

After this study I want to suggest that Capacity building initiatives and welfare schemes must be made hazard free and conveniently. Age old pension must be there to provide support in old age when they have no one to take care of, the ration etc must be made available on subsidized rates. community awareness, powerful instrument of justice social sensitization effort can transform a toothless Act in a powerful weapon

