
Legal Rights of Transgenders

¹Rajni Gupta

¹Ph.D Scholar, University Of Jammu Department Of Law Year Of Study : 2021

Received: 25 September 2023 Accepted and Reviewed: 30 September 2023, Published : 01 Nov 2023

Abstract

In India, sexuality is a very serious problem. It has been declared that sexuality is unnatural. Life as a transgender person is very difficult. They deal with numerous issues in their daily lives. They encounter prejudice in every sphere of their lives. Due to a lack of employment opportunities, educational opportunities, and healthcare facilities, these people are at risk. Another significant problem that drives children to make unpleasant decisions, such as trying suicide, is social shame. Another major issue that encourages children to make unwelcome decisions, such as trying suicide, is social shame. They are more susceptible to experiencing sadness and anxiety episodes, and these characteristics also have a direct effect on their mental health. In this paper, I highlight the rights of transgender people in India as well as their current issues.

Keywords- sexuality, civilizations, Legal Rights of Transgenders and Violence .

Introduction

The first category that comes to mind when we discuss transgender is a different one. Their actions, preferences, and inner sentiments are the complete opposite of the sex assigned to them at birth. They typically dress in sarees. They are viewed as "sacred" by some. Depending on the region, they may be referred to as "Hijra," "Aravani," or "kinnar." The third category "E (Eunuch)" was added to Indian passport application forms in 2005. India agreed to provide them different voting identity cards and voting powers in November 2009, separating them from men and women. To acknowledge them as equal citizens, the Indian government has made numerous efforts. Furthermore, the Supreme Court acknowledged a third gender that is neither male nor female. It's difficult for transgender people to find acceptance from their own families, community, and culture. Therefore, I made an effort to comprehend their rights in this paper since I genuinely want to see social change. I'm creating this post with the simple intention that someone will read it and that it will change their perspective on transgender people. I also hope that any trans people who read it will be made aware of their rights and obligations. Even in the twenty first century, where everyone believes they are living in an open-minded culture, transgender people struggle today. However, reality frequently diverges from what we observe in the outside world. I can see social media awareness everywhere, but how many of us are able to genuinely witness transgender people living freely in the real world? Either some of us or nobody, right? You are aware that our thinking is the root of the issue. Recently, I watched a terrible Minati video on YouTube that mocked tiktokers by calling them "meetha" according on their gender. The worst thing was that the film quickly surpassed all previous records for most views for a non-musical video. Many individuals in my neighbourhood have been calling folks "chhake" and making fun of them. In support of my own experience and what I have seen around me, I am writing this. However, despite the fact that there are numerous online platforms working to uplift the transgender community and numerous articles discussing constitutional rights, transgender community leaders inspiring others, and numerous NGO working for the well-being of transgender

people, discrimination is still present. At every step of their lives, they experience physical assault, sexual assault, mental torment, abuse, employment discrimination, insecurity in the economy, homelessness, and numerous other major issues. Even the police are useless to them; they typically make fun of the complainants. Many transgender people decide not to report the offences because they don't often file complaints, and even when they do, they won't take them seriously. This is the point at which humanity perishes and human failure occurs. This study revolves around the struggle of transgender life and tries to find out practical solutions.

The Term Transgender

People that do not fit the usual gender norms are considered to be transgender. Despite having genitalia that resemble those of either a man or a woman, these persons have different bodily sensations. They experience sex differently than that which is allocated at birth. They deviate from gender norms in terms of their look, behaviour, identity, and expression. They go by the name "Hijra" throughout most of India. The well-known local word for transgender people in Tamil Nadu is "aravani." In Andhra Pradesh, there is a community of transgender people known as Shiv-Shaktis. The word "jogtas" is well-known in Maharashtra and Karnataka.

Rights of Transgender

I'm going to discuss the legal protections for transgender people in India. Each individual needs to be informed of his or her rights and obligations in order to live a more secure life

.Human Rights

Human rights, as the name implies, are fundamentally granted to every person, regardless of sex, caste, race, religion, ethnicity, language, etc. The right to equality, freedom, liberty, life, education, and expression are only a few examples of human rights. Additionally, it offers protection from discrimination, slavery, and torture (United Nations).

Rule of Law

Everyone is aware that everyone is treated equally before the law and that the rule of law is supreme. The rule of law protects our right to equality.

Article 14

Indian Constitution's Article 14 grants us the right to equality. According to Indian Kanoon, everyone has the right to equality and is exempt from discrimination on the grounds of race, religion, caste, or sexual orientation.

Article 15

Everyone in India is protected from discrimination on the basis of sex, caste, and religion by Article 15 of the Indian Constitution. Anyone who feels they are the victim of discrimination has the right to file a lawsuit.

Article 16

Article 16 provides us with opportunity equality. No citizen shall be subjected to employment discrimination based on their religion, race, caste, or sex. Transgender people are entitled to the same

rights to equality as everyone else. Their rights are supported and secured by Articles 14, 15, 16, and 21.

Article 21

Indian Constitution's Article 21 grants us security and freedom.

Article 23

Human trafficking is forbidden by Article 23 and the victims are free.

Rights of Transgender Persons act, 2014

To secure their equality and respect in society, transgender people now have a number of rights thanks to this legislation. No one may be denied the fundamental right to personal liberty because they identify as transgender. 2014 saw the legal recognition of "third gender" by the government, which also ensures equal educational rights, an inclusive workplace, social security benefits, and health rights for their complete development. TRANSGENDER PERSONS BILL, 2014 The court has also given instructions to the federal and state governments on how to defend their fundamental rights.

Rights of Transgender persons bill, 2015

Bill of Rights for Transgender People, 2015 'Identification of transgender persons' is a topic covered by this bill. Transgender people are free to select any gender they want. Transgender people fall under the SC/ST category and are eligible for reservation services for underprivileged groups. 2015's (TRANSGENDER PERSONS BILL) The transgender bill (Protection of rights) was introduced by the government in 2016.

Section 377

Section 377 was unlawful in that it made consenting to same-sex relationships illegal. Laws dating back to the colonial era were the first to label transsexual people as criminals. The supreme court of India repealed section 377 and decriminalized homosexuality in 2018. The verdict was the greatest success for LGBTQ people. The battle to decriminalize homosexuality since Section 377's repeal.

Present situation of Transgender

We've discussed the constitutional rights of transgender people, but the real questions are: Can they actually exercise those rights to the fullest extent possible? And what is the current state of transgender people in India? So, we know that the court gave equal rights to the "Third gender" and recognised it officially. Despite having access to all of these constitutional rights, individuals yet feel forgotten by society. Their community is still largely considered inappropriate in society today. They are not included in social and cultural activities, and they only have limited access to public services including job, education, and health care. People make people feel out of the ordinary by making fun of their diverse gender identities. Their daily struggles are battles, and they constantly have new obstacles to overcome. Everyone, even their own family and friends, forced them to behave in accordance with the sex assigned at the time of birth instead of recognising their gender. The current state of affairs is not good since transgender people have several health issues. These people engage in sex work and put their own lives at danger due to a lack of employment options. They are at a

significant risk of contracting HIV. Violence, harassment, abuse of the mind and body, and mental and physical health issues are all quite prevalent today. They deal with numerous difficulties every day. The Protection of Transgender Persons Act was passed last year amidst protests and condemnation from activists. According to the community, the government is not responding to their requests. A trans activist from Mumbai claims that Section 18 is incoherent in and of itself because it imposes a maximum sentence of two years for transgender sexual harassment yet rape carries a seven-year sentence. They claimed that we shouldn't assume that following the rules will change our circumstances when the rules are imperfect. They continue to struggle for self-identification. The statute that was passed in 2019 states that they must go see DM to be certified and that DM has the right to deny the application. Prior to this act, they could easily file an application stating their own identity, but today the process is more difficult and time-consuming for them. Their major goal is to allow them to self-identify and only require this certificate when they wish to receive government assistance. Some of them are prosperous and do not require the advantages. They require respect, love, and a sense of self.

INDIA'S LEGAL RECOGNITION OF TRANSGENDER RIGHTS

Despite being protected by several articles of the Constitution, the transgender population in India was a marginalised group that endured severe and pervasive discrimination. The Supreme Court recognised a number of civil and political rights for the transgender population in its historic decision in *NALSA v. Union of India* (hereafter the *NALSA* judgement) in April 2014. This acknowledgement has its roots in the acceptance of each person's inherent value and the unalienable right to free choice that is a fundamental component of human rights. K.S. Radhakrishnan and Dr. A.K. Sikri, two judges on a division bench of the Supreme Court of India, rendered the decision. On behalf of the transgender community, the National Legal Services Authority (NALSA) filed a writ petition with the court. Their main contention was that only binary genders male and female were recognised by Indian law and that hetero-normativity was enforced by the state. The petitioners demanded legal action to address transgender issues in accordance with numerous constitutional rights. The court emphasised the suffering endured by members of this community while highlighting the historical and cultural significance of transgender communities. The court made a distinction between the idea of sex and gender identity, which is a person's self-identification as a man, woman, transgender, or other designated category. The Yogyakarta principles and section III of the Indian Constitution, as well as other international initiatives, were cited by the court to uphold transgender people's rights. According to the court, third gender should also comprise hijra, eunuchs, aravanis, and thirunangi, kothi, jogtas/jogappas, shiv-shakthis, etc. in addition to binary. The court recognised that transgender people had a right to self-determination. Among other significant directions, the court directed the state to treat transgender individuals as members of the SEBCs (socially and educationally backward groups) and to provide them with access to all forms of reservation.

The efficient implementation of reservations depends on knowing who would benefit from them. As a result, it's critical to comprehend the meaning and definition of the term "transgender," particularly in light of the *NALSA* ruling. Transgender is a term used to describe people who do not conform to social gender stereotypes. A transgender person is typically someone whose perception of gender differs from their physical attributes or the sex assigned to them at birth.

TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT OF 2019 (SUMMARY)

The legal system in India does not recognise the Third Gender, which has led to systematic denial of the right to equal protection under the law and pervasive socioeconomic discrimination in both Indian society as a whole and at work. The Indian Parliament has passed the Transgender Persons (Protection of Rights) Act, 2019 (the "Act") in response to the Nalsa Judgement. According to the Act, the term "transgender" refers to and encompasses all people whose gender does not correspond or match with the gender assigned to them at birth. This includes transgender men and women, regardless of whether they have undergone sex reassignment surgery (SRS), as well as people who identify with sociocultural groups like "kinner," "hijra," "aravani," and "jogta." The legislature has imposed constructive obligations on all concerned Stakeholders by making a distinction between actions that require immediate implementation, like implementing social welfare programmes, and actions that require a long-term approach, like changing the general public's negative attitude. The federal government, state governments, and establishments are all considered "stakeholders" (as defined by the Companies Act of 2013).

Guarantees are used to fulfil these commitments (Chapters II through VIII). These are a few of them.

1. Discrimination against transgender people is forbidden

Discrimination includes being denied access to or enjoyment of, or being treated unfairly in: educational institutions, employment, healthcare services, any goods, accommodations, services, or facilities intended for public use, the right of movement, the right to reside in, buy, rent, or otherwise occupy property; the opportunity to run for or hold public office, and any government or private establishment in whose care or custody a person is.

2. Identity recognition

Recognition of the identification of transgender people and the grant of the right and entitlement to receive an identity certificate from the appropriate governmental authorities as evidence of recognition.

3. Welfare policies

creation and implementation of welfare schemes, programmes, and plans for healthcare, social security, and education, as well as the facilitation of access to these programmes and welfare measures by the respective state governments.

4. Rehabilitation and the right to live there

Rescue and rehabilitation measures, such as a right to stay granted by the concerned state governments.

5. Establishments' Responsibilities

The term "Establishment" refers to any entity or corporate authority created by or pursuant to a federal or state law, as well as any entity owned, controlled, or supported by the government, including any corporation, association, or group of individuals, firm, cooperative, or other society, trust, agency, or institution.

Establishments are required by Chapter V to guarantee Act compliance and offer amenities as the Act may require from time to time. Establishment shall not discriminate against transgender persons in employment-related matters, including but not limited to recruitment, promotion, and other related matters, and shall provide for an adequate grievance redressal mechanism to address complaints relating to Act violations and workplace complaints.

6. National Council for Transgender People.

The formation and constitution of the National Council for Transgender People. The National Council will carry out the duties entrusted to it by the Act, including but not limited to advising interested parties on the formulation of policies, programmes, laws, and welfare measures, monitoring and assessing the effectiveness of policies and programmes created to ensure the participation of transgender people, and ensuring the redress of transgender people's grievances.

7. Infractions and sanctions

The Act establishes fines for crimes against transgender people.

Anyone who:

- denies a transgender person the right to public passage or use of public places;
- forcibly evicts a transgender person from their home, village, or other place of residence;
- anyone harms or threatens to injure a transgender person physically, sexually, verbally, emotionally, financially, or via abuse; this offence carries a sentence of up to two years in jail and a fine.

The Act, which gives the Third Gender legal status under our legal system, is not an exhaustive piece of legislation and merely represents a first step on the part of the legislature. It will be a slow and difficult process to determine how much the relevant stakeholders will do to encourage inclusion and attempts to make transgender people useful members of society. The Act does not specify how a person's newly acquired gender designation will affect their rights and privileges in a variety of areas and facets of life, and it is mostly quiet regarding the repercussions of non-compliance and accountability for Stakeholders

GETTING THE IDENTIFICATION PROOF PROCESS

The new law in India establishes a two-step procedure.

1. According to the Act, a person must apply for a "transgender certificate" from the District Magistrate in their neighbourhood. On the basis of a person's self-declared identity, this is possible. A "change in gender certificate," which instructs authorities to change a person's legal gender to male or female, can then be requested by a certificate holder.

2. According to the Act, the person must provide a hospital official's certificate of operation to the District Magistrate for a second opinion and the official must be "satisfied with the correctness of such certificate."

Conclusion- As a result of social media and awareness tools, the situation is currently changing. Online connections between transgender people and others who share the same gender are strengthening their community. They are now conscious of their obligations and rights. They should be treated equally as fellow citizens since they are also people, and everyone should respect them for that. The state and federal governments should strictly enforce the law and punish individuals who

violate someone else's rights with harsh consequences. For their community, there should be more awareness programmes and initiatives. They ought to be accepted everywhere, including in society, the medical community, and educational institutions. We should all work together to eliminate discrimination, improve their lot, and establish a secure atmosphere for them.

People should be aware of their emotions and remember that they are just a third gender, not a problem. The third gender is distinct from the male and female, yet this does not lessen their status as human beings. We must get rid of this societal stigma and give them an opportunity to stand as a group. Let's spread kindness and love to everyone to make our India happy.

References and Bibliography-

- 1- Transgender Persons Bill, 2014 . (N.D.). Retrieved From The Rights Of Transgender Persons Bill, 2014 : [Http://164.100.47.4/Billstexts/Rsbilltexts/Asintroduced/Trangder-E.Pdf](http://164.100.47.4/Billstexts/Rsbilltexts/Asintroduced/Trangder-E.Pdf)
- 2- . Retrieved From India At Glance - Population Census 2011: [Https://Www.Census2011.Co.In/P/Glance.Php](https://www.census2011.co.in/p/glance.php) (2012)
- 3- Hsu, G. A. (August 2015). Govindasamy Agoramoorthy And Minna J. Hsu. Journal Of Religion And Health, Vol. 54, 3-4.
- 4- Indian Kanoon. (N.D.). Retrieved From [Indiankanoon.Org](http://indiankanoon.org): [Https://Indiankanoon.Org/Doc/367586/](https://indiankanoon.org/doc/367586/)
- 5- Johari, A. (2014). Fcroll.In. Retrieved From Hijra, Kothi, Aravani: A Quick Guide To Transgender Terminology:
- 6- [Https://Scroll.In/Article/662023/Hijra-Kothi-Aravani-A-Quick-Guide-To-Transgender-Terminology](https://scroll.in/article/662023/hijra-kothi-aravani-a-quick-guide-to-transgender-terminology)
- 7- Sujitasethi, & Madhusmitabarwa. (2018). Transgender Health And Their Rights In India. International Journal Of Research In Social Sciences, 2-3.
- 8- The Fight To Decriminalize Homosexuality Since The Repeal Of Section 377. (N.D.). Retrieved From [Https://Outrightinternational.Org/](https://outrightinternational.org/): [Https://Outrightinternational.Org/Content/Fight-Decriminalize-Homosexuality-Repeal-Section-377](https://outrightinternational.org/content/fight-decriminalize-homosexuality-repeal-section-377)
- 9- Transgender Persons Bill, 2015. (N.D.). Retrieved From The Rights Of Transgender Persons Bill,
- 10- 2015: [Https://Www.Prsindia.Org/Uploads/Media/Draft/Draft%20rights%20of%20transgender%20persons%20bill%202015.Pdf](https://www.prsindia.org/uploads/media/Draft/Draft%20rights%20of%20transgender%20persons%20bill%202015.pdf)
- 11- United Nations. (N.D.). Retrieved From [Https://Www.Un.Org/En/Sections/Issues-Depth/Human-Rights/](https://www.un.org/en/sections/issues-depth/human-rights/)
- 12- [Https://Blog.Ipleaders.In/Legal-Rights-Of-Transgender-India/](https://blog.ipleaders.in/legal-rights-of-transgender-india/)
- 13- [Https://Timesofindia.Indiatimes.Com/India/Supreme-Court-Recognizes-Transgenders-As-Third](https://timesofindia.indiatimes.com/India/Supreme-Court-Recognizes-Transgenders-As-Third-Gender/ArticleShow/33767900.cms)
- 14- Gender/Articleshow/33767900.Cms
- 15- Transgender Health And Rights In India By Sujita Sethi And Madhusmitabarwa
rajnigupta25.rg@gmail.com