

Socio-Legal Rights of Trans-Genders

¹Dr. Neha Mishra

¹Assistant Professor (Education) GGDC, Jhansi, Uttar Pradesh India

Abstract

The Indian transgender person's community shows a variety of gender identities and sexual orientations, which is unlikely from the West, forming a culturally unique gender group. In India, transgender persons were recognized as the 'third gender' in 2014. The third gender population of India is marginalized to a great extent in every sector. Often, transgender persons have been the subjects of sociology, psychology, and health issues. Transgender persons need a comprehensive population policy to enforce their constitutional rights in India. Much needs to be done to bring the transgender population to the level of well-being that meets the Millennium Development Goal. The majority of the transgender population of India has poor overall status. A lot is yet to be done to restore the overall development of the transgender population on the path of human rights, social justice, and empowerment of the transgender population of India. It is time that India realized that every individual in this country has equal rights and privileges, and follow the policy of "live and let live." Thus the first and the foremost right transgender are deserving of is the Right to Equality under Article 14. Article 15 speaks about the prohibition of discrimination on the ground of religion, caste, sex or place of birth.

Keywords:- Human rights, Role, Socio-Legal Rights and Trans-Genders.

Introduction

By 1984, the concept of a "transgender community" had developed, in which *transgender* was used as an umbrella term. In 1985, Richard Elkins established the "Trans-Gender Archive" at the University of Ulster. By 1992, the International Conference on Transgender Law and Employment Policy defined *transgender* as an expansive umbrella term including "transsexuals, transgenderists, cross dressers", and anyone transitioning. Leslie Feinberg's pamphlet, "Transgender Liberation: A Movement Whose Time has Come", circulated in 1992, identified *transgender* as a term to unify all forms of gender nonconformity; in this way *transgender* has become synonymous with *queer*. Being transgender is independent of sexual orientation: transgender people may identify as heterosexual, homosexual, bisexual, asexual, etc., or may consider conventional sexual orientation labels inadequate or inapplicable. The term *transgender* can also be distinguished from *intersex*, a term that describes people born with physical sex characteristics "that do not fit typical binary notions of male or female bodies". In 2015, the National Center for Transgender Equality conducted a National Transgender Discrimination Survey. Of the 27,715 transgender (and non-binary) people who took the survey, 21% said the term "queer" best described their sexual orientation, 18% said "pansexual", 16% said "gay", "lesbian", or "same-gender-loving", 15% said "straight", 14% said "bisexual", and 10% said "asexual".

Current Scenario of Transgender in India - The third gender in India is 4.9 lakh. Among them almost 55,000 is in the 0-6 population. This has come as a big surprise to the community as they did not expect so many parents to identify their children as belonging to the third gender. The highest proportion of the third gender population, about 28%, was identified in Uttar Pradesh followed by 9% in Andhra Pradesh, 8% each in Maharashtra and Bihar, over 6% in both Madhya Pradesh and West

Bengal and well over 4% in Tamil Nadu, Karnataka and Odisha. Rajasthan accounted for over 3% of the total transgender population and Punjab for 2%. (Census 2011) [7]. The Indian Government took bold steps to recognize transgender as a separate gender for the first time in the country and named it as Third Gender. Finally it is recognized the rights of transgender people and treating them as equal to other Indians. While this has helped in terms of their identity, Indian authorities now need to implement court directives aimed at mainstreaming the transgender community, ending discrimination against them, and addressing their social protection needs which have long been denied basic rights, including the right to vote, own property, marry, and claim a formal identity through a passport or other government identification. They have also been unable to secure government services such as food subsidies, education, employment, and health. Often, it leaves them with no option but to depend on others for their livelihood or engage in sex work, exposing them to further violence at the hands of law enforcement authorities.

Non-binary genders need more visibility in India's Census 2021- In literal terms, transgender refers to someone who does not identify with their sex assigned at birth. Some people who are non-binary identify as transgender, but others may still identify with their sex assigned at birth to a degree. Hence it should be clear that transgender and non-binary are different sets of identities but can also coincide for some people. There are not enough dedicated or gender-neutral toilets. In 2017, the Centre issued guidelines under the Swachh Bharat Mission (Gramin), making it mandatory for transgender people to be allowed into public toilets designated for both men and women, depending on their choice. According to a 2020, report by the Centre for Internet and Society (CIS), India for the Big Data for Development Network. It mentioned: Gender-disaggregated data does not reflect the reality of all gender minorities and cannot be used to make development decisions, especially for the inclusion of transgender and intersex persons, who are often misrepresented or absent in this data. Denied visibility in official data, millions of transgender Indians can't access social benefits. Hence, collecting gender-based information correctly can help better inclusion of marginalized genders and identities in society.

Social and Legal Law and Rights for Transgender in India- In April 2014, the Supreme Court of India declared transgender to be a 'third gender' in Indian law. The transgender community in India (made up of *Hijras* and others) has a long history in India and in Hindu mythology. Justice KS Radhakrishnan noted in his decision that, "Seldom, our society realizes or cares to realize the trauma, agony and pain which the members of Transgender community undergo, nor appreciates the innate feelings of the members of the Transgender community, especially of those whose mind and body disown their biological sex", adding:

Non-recognition of the identity of *Hijras*/transgender persons denies them equal protection of law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail, also by the police. Sexual assault, including molestation, rape, forced anal and oral sex, gang rape and stripping is being committed with impunity and there are reliable statistics and materials to support such activities. Further, non-recognition of identity of *Hijras* /transgender person's results in them is facing extreme discrimination in all spheres of society, especially in the field of employment, education, healthcare etc. *Hijras*/transgender persons face huge discrimination in access to public spaces like restaurants, cinemas, shops, malls etc. Further, access to public toilets is also a serious problem they face quite often. Since, there are no separate toilet facilities for *Hijras*/transgender persons; they have to use male toilets where they are prone to sexual assault and

harassment. Discrimination on the ground of sexual orientation or gender identity, therefore, impairs equality before law and equal protection of law and violates Article 14 of the Constitution of India.

International Transgender Day of Visibility is an annual holiday occurring on March 31 dedicated to celebrating transgender people and raising awareness of discrimination faced by transgender people worldwide. The holiday was founded by Michigan-based transgender activist Rachel Crandall in 2009 as a reaction to the lack of LGBT holidays celebrating transgender people, citing the frustration that the only well-known transgender-centered holiday was the Transgender Day of Remembrance which mourned the loss of transgender people to hate crimes, but did not acknowledge and celebrate living members of the transgender community.

Transgender Awareness Week, which is typically observed the first two full weeks of November, is a two-week-long celebration generally leading up to Transgender Day of Remembrance. The purpose of Transgender Awareness Week is to educate about transgender and gender non-conforming people and the issues associated with their transition or identity.

Transgender Day of Remembrance (TDOR) is held every year on November 20 in honor of Rita Hester, who was killed on November 28, 1998, in an anti-transgender hate crime. TDOR serves a number of purposes:

- it memorializes all of those who have been victims of hate crimes and prejudice,
- it raises awareness about hate crimes towards the transgender community,
- and it honors the dead and their relatives

Trans March describes annual marches, protests or gatherings that take place around the world, often taking place during the time of the local pride week. These events are frequently organized by transgender communities to build community, address human rights struggles, and create visibility.

The Transgender persons (Protection of Rights) Bill, 2016- Highlights of the bill

- The Bill defines a transgender person as one who is partly female or male; or a combination of female and male; or neither female nor male. In addition, the person's gender must not match the gender assigned at birth, and includes trans-men, trans-women, persons with intersex variations and gender-queers.
- A transgender person must obtain a certificate of identity as proof of recognition of identity as a transgender person and to invoke rights under the Bill.
- Such a certificate would be granted by the District Magistrate on the recommendation of a Screening Committee. The Committee would comprise a medical officer, a psychologist or psychiatrist, a district welfare officer, a government official, and a transgender person.
- The Bill prohibits discrimination against a transgender person in areas such as education, employment, and healthcare. It directs the central and state governments to provide welfare schemes in these areas.

(All educational institutions funded or recognized by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities without discrimination on an equal basis with others.)

- Offences like compelling a transgender person to beg, denial of access to a public place, physical and sexual abuse, etc. would attract up to two years' imprisonment and a fine.

Educational Status- No formal education for transgender is popular in Indian context. They are deprived from family and school environment, transgender discontinue their education and risk their future career opportunities. A close analysis of various reports and discussion with community and stakeholders suggest that transgender are most uneducated or undereducated, become reluctant to continue schooling. The average qualification is secondary (Matric) or senior secondary level. The enrolment is significantly low and dropout rate at the primary and secondary level is still very high. They are hardly educated as they are not accepted by the society and therefore do not receive proper schooling. Even if they are enrolled in an educational institute, they face harassment and are bullied every day and are asked to leave the school or they drop out on their own.

Challenges and Problems of Transgender Persons' in India- The life of transgender people is a daily battle as there is no acceptance anywhere and they are ostracized from the society and also ridiculed. They face high levels of stigma in almost every sphere of their life such as health, schools/colleges, employment, social schemes and entitlement. Extreme social exclusion diminishes self-esteem and sense of social responsibility. According to Indian Census 2011, there are around 4.9 lakh transgender in the country. Census data also reveals that this community has low literacy levels, just 46 per cent transgender are literate, compared to 74 per cent literacy in the general population. This community comes under the category "disadvantage group" defined by the Right to Education Act (Indian Express 2014). It means these kids will be eligible for 25 per cent reservation under the economically weaker section (EWS) and disadvantaged student's category for admission. Thus transgender people encompass those people whose identity and behavior do not adhere to the stereotypical gender norms. There are so many problems which are faced by the transgender in India are as:

- They are shunned by family and society alike.
- They have restricted access to education, health services and public spaces.
- Recently, they were excluded from effectively participating in social and cultural life.
- Politics and decision-making processes have been out of their reach.
- They do not have their fundamental right.
- Reports of harassment, violence, denial of services, and unfair treatment against transgender persons have come to light.

It is so challenging to provide equal opportunity of education to transgender because there is a problem of inclusion with male and female gender students. To persevere intentionally in the use of a prior name and other pronouns is to be deliberately disrespectful. Transgender people often have no safe access to rest and locker room facilities that conform to their gender identity. Wherever dress codes are enforced, they may create problems for transgender youth. Transgender youth may have unsupportive families and may even face violence and/or ejection from their home if their gender identity or gender expression is disclosed to the family. Transgender youth often feel alone in the world. Few programs for youth employ transgender people; few libraries offer information about biological sex and gender, gender identity, or being transgender.

Some Key Points for Rehabilitation of Transgender persons-

- Due to abnormality in genital organ and strange cross dresser attitude, the school mates, friends, relatives, community peoples try to molest them, whenever possible. Maximum cases of molestation remain when they are alone, and maximum by neighbors and school mates.
- They do not show any interest toward education, in this stage of life, they choose the way of begging in running trains, homes, red signals and in bus stops.
- From the childhood they are suffering from many obstacles. And many incidents take place in their lifespan.
- Due to unavailability of other profession, *hijras* choose the profession to collect money by begging in running trains and from the vehicles of red light signals.
- Living place of *hijras* is non-hygienic, it is the end point of the railway platforms attached with the boundary wall of the railway premises, where the garbage heaps are present.
- They are suffering from HIV/AIDS.
- Maximum *hijras* have strong faith in counseling and the treatment provided by the representatives of the NGOs, because they get strong moral support from the organizations.
- Many of them do not possess any valid voter ID card, pan card, driving license due to their typical identity. So they have no any bank account.
- *Hijras* have strong we-feeling within the community. So they maintain good cooperation within the members.
- During illness and emergency tour guru/gaddi assist the individual members by giving them economic support to overcome the problematic situation.

Duties of Educators in Schools- Creating schools that nurture academic achievement, provide physical and emotional safety and welcome all students are common goals for all educators. As educators, one can create gender-expansive environments that affirm all children by reducing gender role stereotyping and allowing them to express their interests and find confidence in their strengths. Today's teachers must employ inclusion principles throughout their day. They must have to learn to structure their lessons and differentiate materials so that all students can access age-appropriate material. This universal design of instruction allows instructors to consider the variety of ways in which information can be presented to reach all learners. In these ways, the inclusive classroom has evolved to help all students achieve regardless of their learning differences. Teachers should learn how to create lessons and activities for students at multiple ability levels. Classrooms will become learner-friendly, with centers, groups and technological tools to engage learners through instruction and materials that accommodated different learning styles, social constructs and multiple intelligences.

To make environment of study inclusive and happy places educators should know that learning wears many hats make no distinction between age, gender, social status, color, religion or race. Maintaining a smile and sense of humor should be a part of daily pursuit. Educators must have some competencies such as emphasis on game, quality of life, ethics, love, kindness, positivity, forgiveness, trust, praise etc. Educator must be a good researcher, evaluator, manager, learner friendly, effective teacher for making schools and classrooms, inclusive and happy places and stable this life -long. The focus should now in (i) creative and innovative thinking rather than traditional (ii) using different ICT tools rather than relying only on the printed text (iii) encouraging

multiple perspectives rather than the right answer (iv) helping learners construct knowledge for themselves and most importantly (v) being the 'guide on the side' rather than 'a sage on the stage.'

Conclusion- Each being in this Universe is indeed unique, and an integral part of Nature. It is time that India realized that every individual in this country has equal rights and privileges, and follow the policy of "live and let live." Thus the first and the foremost right transgender are deserving of is the Right to Equality under Article 14. Article 15 speaks about the prohibition of discrimination on the ground of religion, caste, sex or place of birth. Article 21, ensures right to privacy and personal dignity to all the citizens and article 21 (A) ensures education is a fundamental right to every Indian. The constitution provides for the fundamental rights to the equality and tolerates no discrimination on the grounds of sex, caste, creed or religion. Despite such laws in the constitution of India, the other sex (transgender) continues to be ostracized. Transgender people faced discrimination and harassment at family, school and community forces them to move to the other places. The nature of the harassment includes verbal, physical and sexual abuse which has serious impact on the mental health as well. In a democratic country like India Transgender has no access to the social and political rights. They are not the part of any welfare scheme. Keeping in view the above findings it can be concluded that there is an immense need to intervene at individual, community and policy level to safeguard the rights of transgender.

References

1. Allana, A., Asad, N. and Sherali, Y.(2010).Gender in academic settings: Role of Teachers, International Journal of Innovation, Management and Technology, Vol. 1, No. 4, October 2010, Retrieved from <http://www.ijimt.org/papers/63-C053.pdf>
2. Diversity in the classroom, Retrieved from <http://ctl.yale.edu/teaching/ideas-teaching/diversity-classroom>
3. Mohammed Atheeqe PP and Rajathurai Nishanthi (2016). Marginalization of transgender community: A sociological analysis. Retrieved from <http://www.allresearchjournal.com/archives/2016/vol2issue9/PartI/2-9-83-424.pdf>
4. Promoting gender equity in the classroom, Retrieved from <http://www.theline.org.au/promoting-gender-equity-in-the-classroom>
5. Rajkumar (2016). Education of Transgenders in India: Status and Challenges, International Journal of Research in Economics and Social Sciences (IJRESS), Vol. 6 Issue 11, November - 2016, pp. 15-24, Retrieved from <http://euroasiapub.org/wp-content/uploads/2016/12/2ESSNov-4296.pdf>
6. Ryaprol, A. (2010). Gender equality in the classroom, Teacher Plus, Retrieved from <http://www.teacherplus.org/things-to-think-about/gender-equality-in-the-classroom>
7. Teaching To Promote Gender Equality, center for teaching excellence, Retrieved from <http://cte.virginia.edu/resources/teaching-a-diverse-student-body-practical-strategies-for-enhancing-our-students-learning/gender-dynamics-in-the-classroom/teaching-to-promote-gender-equality/>
8. The Transgender persons (Protection Of Rights) Bill, 2016 Retrieved from <http://www.prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2016-4360/>
9. Transgender, Wikipedia, the free encyclopedia, Retrieved from <https://en.wikipedia.org/wiki/Transgender>
10. Wight, C.-L., (2010). Gender inclusive practices within primary classroom, Retrieved from <https://researchbank.rmit.edu.au/eserv/rmit:9478/Wight.pdf>