

Socio- Legal Rights of Transgender

¹Smita Dubey

¹Research scholar, Department of Home Science University of Lucknow, Uttar Pradesh

Abstract

People who identify as transgender do not fit the usual conventions that only recognize male or female as genders. Due to society's rejection of their gender identification, individuals have experienced physical violence, social marginalization and discrimination. Individuals who identify as transgender but do not belong to one of the socio-cultural groups known as Hijras, Jogappas, Sakhi, Aradhis, etc. are nonetheless referred to as transgender individual individually. This paper addresses transgender people enjoy the legal right to protection and the right to be recognised as a third gender. The Indian constitution accords transgender people the same rights that it accords to all other Indian citizen in terms of justice and equality. The Transgender Person (Protection of Rights) Act, 2019, was passed by the government in order to prohibit discrimination against transgender people in the areas of employment, education and health services. Welfare measures have also been adopted to safeguard transgender people's rights.

Key Words: Transgender, Rights, Indian Constitution, Education, Hijra, Supreme Court.

Introduction

Transgender is a general word for anyone whose gender expression, identity or conduct differs from the norms expected of their biological sex and not restricted to those whose genitalia are mixed. This includes transgender male, transgender female, male-to-female (MTF) and female-to-male (FTM) identities, among others. Other persons who fall into this category are transsexuals, gender queer people and crossdressers (those who dress in attire from the opposite gender). Numerous transgender related identities exist in India including the Hijras, Aravanis, Kothis, Jogtas /Jogappas and Shiv shaktis. They used to be treated with a lot of respect. The transgender population in India refers to itself as "Hijra", which is a Persian word that can be rendered as "Eunuch".

Male- to- female transgender people who have SRS (Sex Reassignment Surgery) or who have nirwasn a conventional method of castration is referred to as "Aravani". When someone chooses to play the female role in same - sex partnerships but does not reside in an Aravanis community, they are referred to as kothi. Male to female transgender people known as Jogtas or Jogappas can be found in Maharashtra and Karnataka and dedicate their lives to serving a specific deity.

Males known as Shiv Shaktis, particularly Lord Shiva, are believed to be wedded to goats and can be found in Andhra Pradesh. They typically perform astrological or spiritual healing services.

Rights of Transgenders in India: - People who identify as transgender are those who defy gender norms and the idea that there are only two genders- Man and Woman. They exhibit diverse physical traits, personality traits and behavioural patterns. Due to the fact that society does not accept their gender identification and because they are different from the other gender, transgender people are exposed to social persecution and physical abuse. They primarily Struggle with illiteracy, unemployment, homelessness a lack of access to healthcare, depression, alcoholism and discrimination throughout their lives. The Indian Constitution has given them their own rights to preserve their rights

and and to address their issues and the Supreme Court has granted them the right to be recognised as “Third Gender” and supplied them with various welfare measures.

The struggle of India's trans community: - The transgender community in India has historically been marginalised and discriminated against socially, economically and politically. Trans individuals are viewed by many as abnormal or deviant and face physical and emotional violence and abuse, including sex assault. Many incidents go unreported due to fear of retribution or lack of legal recognition.

According to Mumbai campaigner Abhina Aher, 80% of transgender individuals in India either work in the sex industry or beg for money. Many of them also experienced gender based harassment and violence. The majority of transpersons experience rough childhoods and endure numerous difficulties as adults. They experienced discrimination on many fronts, including in education and the workplace and that obtaining identity credential like- Passports, voter IDs and driving licence can be challenging. Indian census has never recognised third gender i.e. Transgender while collecting census data for years. But in 2011, data of transgender's were collected with details related to their employment, literacy and caste. In India, total population of transgender is around 4.88 lakh as per 2011 census. The data of transgender has been cubbed inside “Males” in the primary data released by Census Department. For educational purpose, separate data of Transgender has been carved out from that.

	State	Transgenders	Child (0-6)	SC	ST	Literacy
-	India	487,803	54,854	78,811	33,293	56.07%
1	Uttar Pradesh	137,465	18,734	26,404	639	55.80%
2	Andhra Pradesh	43,769	4,082	6,226	3,225	53.33%
3	Maharashtra	40,891	4,101	4,691	3,529	67.57%
4	Bihar	40,827	5,971	6,295	506	44.35%
5	West Bengal	30,349	2,376	6,474	1,474	58.83%
6	Madhya Pradesh	29,597	3,409	4,361	5,260	53.01%
7	Tamil Nadu	22,364	1,289	4,203	180	57.78%
8	Orissa	20,332	2,125	3,236	4,553	54.35%
9	Karnataka	20,266	1,771	3,275	1,324	58.82%
10	Rajasthan	16,517	2,012	2,961	1,805	48.34%
11	Jharkhand	13,463	1,593	1,499	3,735	47.58%
12	Gujarat	11,544	1,028	664	1,238	62.82%
13	Assam	11,374	1,348	774	1,223	53.69%

14	Punjab	10,243	813	3,055	0	59.75%
15	Haryana	8,422	1,107	1,456	0	62.11%
16	Chhattisgarh	6,591	706	742	1,963	51.35%
17	Uttarakhand	4,555	512	731	95	62.65%
18	Delhi	4,213	311	490	0	62.99%
19	Jammu and Kashmir	4,137	487	207	385	49.29%
20	Kerala	3,902	295	337	51	84.61%
21	Himachal Pradesh	2,051	154	433	118	62.10%
22	Manipur	1,343	177	40	378	67.50%
23	Tripura	833	66	172	181	71.19%
24	Meghalaya	627	134	3	540	57.40%
25	Arunachal Pradesh	495	64	0	311	52.20%
26	Goa	398	34	9	33	73.90%
27	Nagaland	398	63	0	335	70.75%
28	Puducherry	252	16	40	0	60.59%
29	Mizoram	166	26	1	146	87.14%
30	Chandigarh	142	16	22	0	72.22%
31	Sikkim	126	14	9	37	65.18%
32	Daman and Diu	59	10	1	2	75.51%
33	Andaman and Nicobar Islands	47	5	0	3	73.81%
34	Dadra and Nagar Haveli	43	5	0	22	73.68%
35	Lakshadweep	2	0	0	2	50.00%

Legal rights of Transgenders in the Constitution: - In India transgender persons are legally recognised as the “Third gender” or “Other gender”. The Indian Constitution grants them the same rights, including the ability to exercise those rights.

Right to equality (Article 14) : No one has the right to deny any “person” the same treatment under the law. The word “person” indicates that there is no discrimination based on sex or gender identity.

Prohibition of discrimination on various grounds, including gender (Article 15) : Prohibits discrimination of any kind on the ground of race, religion, caste, sex or any combination of these. This suggests that transgender people’s core constitutional rights are violated by discrimination or mistreatment. According to the court’s ruling in *Mx. Alia SK v. The state of West Bengal and others* (2019), transgender people have the right to apply for admission to colleges. The decision is significant because it clarified the role of courts in ensuring that, in the absence of other measures, special accommodations and modifications are made to include transgender individuals in the application and admissions process in public universities.

Freedom of speech and expression (Article 19) : Every citizen has the freedom of speech and expression grants to this privilege. This includes having the right to publicly declare your gender identification.

Right to life and personal liberty (Article 21) : No one may be deprived of his or her life or personal liberty unless in accordance with legal procedure, according to article 21, which deals with the preservation of life and personal. According to this right to life and personal liberty, including transsexual people. Being an Indian citizen, the transgender person should have complete rights to safeguard their life and individual liberties.

The Transgender Persons (Protection of Rights) Act, 2019 and Rules: This Act was passed in the year 2020 and it provides Transgender people several rights. The rules act supplementary to the Act. The Bill prohibits the discrimination against a transgender person, including denial of service or unfair treatment in relation to- (1) Education; (2) Employment; (3) Healthcare; (4) Access to, or enjoyment of goods, facilities, opportunities available to the public; (5) Right to movement; (6) Right to reside, rent or otherwise occupy property; (7) Opportunity to hold public or private office; (8) Access to a government or private establishment in whose care or custody a transgender person is.

SC/ ST (Preservation of Atrocities) Act, 1989: This rule safeguards people from caste- or tribal-based discrimination if they are members of a scheduled caste or scheduled tribe.

NALSA Judgement: The rights of the transgender community were referred to as a “third gender” by the Supreme Court in its historic decision in *National Legal Services Authority v. Union of India and Ors.* In 2014. This lawsuit cleared the path for transgender people to have the freedom to determine their gender identification and lead dignified lives.

Puttuswamy Case: Regarding the right to privacy, the Supreme Court noted in the seminal case *Puttuswamy v. Union of India* (2017) that the constitutional rights to life, equality and fundamental freedoms all include a right to private. This covers the freedom to engage in personal relationships with others and to express one’s sexual orientation and gender identity.

Decriminalization of Section 277 of IPC: In the 2016 case of Navtej Singh Johar v. Union of India, the Supreme Court ruled that LGBTQ+ individuals in India are entitled to all fundamental rights, including the freedoms guaranteed by the Indian Constitution.

Indian Penal Code, 1860: Any crime committed by a transgender person will be punished in accordance with the Indian Penal Code's guidelines. In *Mrs X v. State of Uttarakhand* (2019), the court upheld the NALSA ruling and declared that denying someone the ability to self-identify as a gender would also violate their right to life and liberty. Being one of the earliest case to support the right to self-determination based on the "psyche" of the individual even within the confines of the penal law, it is particularly notable.

Code of criminal procedure, 1973: A Transgender person is subject to the same criminal procedural law of arrests, bail, summons, investigation etc.

Section 18 of the Transgender Persons (Protection of Rights) Act: All transgender people are protected by this law from all types of abuse including physical, verbal, emotional, sexual, mental and financial abuse, and violators will face a minimum sentence of 6 months in jail and a maximum of 2 years in prison as well as a fine .

Domestic violence Act, 2005: This Act protects all women including Transgender Women against any kind of abuse by any family member.

Conclusion: - Due to awareness and social media the condition of transgenders is currently changing. 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 neighbourhood there should be more awareness program and initiatives. They ought to be accepted everywhere, including in society, the medical community, the educational institutions, Third gender is different from male and female and this surely does not make them any less from human being. We need to remove this stereotype social stigma and give them chance to stand together.

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