

## AN ANALYSIS OF RIGHTS OF TRANSGENDER IN THE LIGHT OF LEGISLATIVE PROVISIONS IN INDIA

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### **Abstract-:**

Transgender persons reside in almost all parts of the world. They have their own customs, culture, rituals. Generally person is recognised by his sex, whether person is male or female. But there are some persons, who are not coming either of category, and the Transgender community is amongst them. This community is facing different types of problem. These problems include social, economic, political, health, education and so on. The sole aim of this research article is to find out these problems and solution for them. The researcher believed that lots of improvement should be done in social system to accept these Transgender people as part of social system.

### **Introduction-:**

*We got stared at a lot. People asked out loudly- some out of curiosity, other out of malice- whether we were men or women or 'number nines' or devadasis. Several men made bold to touch us, on our backs, on our shoulders. Some attempted to grab our breasts. 'Original or duplicate?' they shouted and hooted.*

A. Revathi (Transgender, writer by Profession)

Transgender people are people who have gender identity or gender expression that differs from their assigned sex. Transgender people are sometimes called transsexual if they desire medical assistance to transition from one sex to another. Transgender is also includes people who are not exclusively masculine or feminine. They are persons whose sense of personal identity and gender does not correspond with their birth sex. These transgender communities are neither man nor woman. They are also called intersexed persons. The term intersexed' refer to the somatic condition in which the Transgenders have both masculine and feminine symptoms. Since long ago we have history of Gender Variant males - Presently known as "Transgender Women". Kamasutra (an old ancient epic in India) also describes the Sexual Life of People with Third Nature.

Transgenders trace their origin from Epics like Mahabharata and Ramayana. According to Ramayana, when Rama, was leaving for forest after being banished from the Kingdom for 14 years, he asked all men and women to return back. But the Transgender persons thought that they were not bound by this direction. They decided to stay with Rama. Impressed with their devotion, Rama gave them power of blessings on auspicious occasions like childbirth and marriage

The Transgenders are considered outsiders in our society. Our society recognises only two sexes, male and female. But they are not fall in to any of those categories. They are not able to mix up with other people of society. Often these people considered degraded and unworthy to live.

### ***Problems faced by Transgender people***

The problem of transgender are very serious. The transgender is not only facing social identity crises but there are so many other problems like education, health, job, political representation and so on. The researcher is looking for generic answer or solution for it.

Human Rights are basic rights which are guaranteed to a human by virtue of him being a human. It includes the right to life, liberty, equality, dignity and freedom of thought and expression.

Being human, Transgenders are not able to get equal treatment. On so many occasions Basic human rights are denied to them.

The transgender community of India is considered a much-misunderstood community. They are often denied human treatment by the state machinery and also denied some basic rights which are enjoyed by other citizen. Traditionally eunuchs earn money by singing and dancing at wedding and births. They are not able to take education or do job.

Transgenders are consuming alcohol and substance to forget stress and depression that they face in their daily life. There is no family support or no one cares about them, so to forget stress, tension, grief, they are more and more vulnerable towards alcohol. They are not getting equal treatment in public. They are not getting entry at some public places like Hospitals, Shopping complexes. They are raped and abused orally and physically. They are forced to leave Parental Home, generally they are associated with child nabbing and prostitution. Other problem is, because of gender issue these people cannot use public toilets, as there are only provision for male and female bathrooms. There are so many laws to protect the dignity of transgenders but irony is that these laws are only on paper. There is lack of proper implementation.

## **Indian Laws to protect Transgender Rights:-**

### ***Constitutional provision of India***

1. Article 14 right to equality
2. Article 15 prohibition of discrimination on the ground of religion, race, caste, sex
3. Article 21 ensures right to life and personal liberty

All above rights are guaranteed Indian citizens. And Indian transgenders are also Indian citizens.

The Transgender community daily struggling for their real identity. In India under Article 21 all person have right to life and personal liberty.

### ***The Rights of Transgender Persons Bill***

The main aim of Act is, to end discrimination faced by transgender people in India. The Bill was passed by upper house on 24 April 2015. It was introduced in Lower house on 26 Feb 2016.” This bill is expected to bring social, economic empowerment to the transgender community

Some crucial additions, of this Bill are – including a right to self-identification and a provision of reservation for transgender persons under the Backward Classes category.

The Transgender persons (Protection of Rights) Bill aims at ensuring that transgender persons enjoys a life of dignity and equality as an Indian citizen, and guarantees a basic human right. A transgender person must obtain a certificate of identity as proof of recognition of identity as a transgender person and to seek rights under the Bill. 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. Offences like compelling a transgender person to beg, denial of access to a public place, physical and sexual abuse, etc. are punishable up to “two years” imprisonment and a fine.

### ***Some lacunas of this bill***

The Supreme Court of India in National legal Services Authority (NLSA) v. Union of India & others popularly known as NALSA held that Transgender should have the option of choosing to identify themselves either as a “man”, “woman” or “transgender”. The current Bill completely eliminates the option of identification as either male or female. According to the draft, a Transgender person is one who is:

- (a) Neither wholly female nor wholly male; or
- (b) A combination of female or male or

(c) Neither female nor male

This community frequently experiences stigma. They are not taking education because people are looking at them as some astonishing things. Because of this unacceptance from society, they take up begging and sex work

Transgender people face difficulties during recruitment Processes of job. They can't disclose their gender identity journeys, because of fear of reprisals from employment.

These transgender community are viewed as HIV spreader in society as they agree to unprotected sex. So many times Transgender community experiences exploitation from police.

### ***Criminal Tribes Act of 1871***

Criminal Tribes Act of 1871, which was subtitled "An Act for the Registration of Criminal Tribes and Eunuchs". Under this, Act, the local government was required to keep a register of the names and residences of all eunuchs who were "reasonably suspected of kidnapping or castrating children or coming offence under section 377 of Indian Penal Code"

The law also prohibiting eunuchs as incapable of acting as a guardian, making a gift, drawing up a will or adopting a son.

### ***Immoral traffic Prevention Act 1956 (amended in 1986)***

The Aim of this Act is to criminalise brothel-keeping, trafficking, pimping and soliciting, in reality targets the transgender sex worker population.

### ***Section 377 Of Indian Penal Code:-***

According to this section "carnal intercourse against the order of nature with any man, woman or animal "even if it is voluntary will be punishable offence.

This section criminalizes homosexuality (sexual attraction to the people belonging to the same sex)

This provision of IPC made Transgender people vulnerable to police harassment.

In Jayalakshmi v state of Tamil Nadu, Pandian, a transgender, arrested on charges of theft by the police. She was sexually assaulted in the police station which ultimately led her to immolate herself.

### ***Recent development in India with regard to section 377 of Indian penal code***

This section was decriminalised by the High Court, but judgment of the High Court was overruled by the Supreme Court. In February 2016, a curative petition was filed to reconsider criminalising homosexuality. It was decided that homosexuality is a subject that should be left to be decided by the legislature.

### ***Indian Judiciary role to protect the rights of Transgender***

The Supreme Court of India in National legal Services Authority (NLSA) v. Union of India & others recognised the third gender along with male and female. Seven other direction given by Supreme Court is as under-

1. Hijras, eunuchs should be treated as third gender for the purpose of protecting their fundamental rights
2. Recognise the persons need to identify his own gender
3. Providing reservation in public education and employment as socially and educationally backward class of citizens
4. Making special provision regarding HIV sero- surveillance for transgender persons and provide appropriate health facilities
5. Tackle their problems such as fear, gender shame, depression, suicidal tendencies, etc.
6. Measures should be taken to provide health care to transgender people in hospitals such as making separate wards and also provide them separate public toilets.
7. To create public awareness so that the transgender feels that they are part of the society and are not to be treated as untouchables.

After the NALSA judgment, various courts passed favourable judgement for the transgender community. Allahabad High Court on April 15, 2015 ruled that the application forms for the issuance of ration cards should “necessarily” include a transgender category along with other gender. On February 2016 the Madurai Bench of the Dindigul Municipality to accept the application of a transgender who had applied for the post of a midday meal organizer. Monal was deprived of the opportunity to interview for the role as she had applied as a ‘woman’ in the gender section.

In 2016, the Madras High Court ruled in favour of a transgender plea directing the Tamil Nadu Government to create a separate class for transgenders and provide them with 3% reservation in employment and education. Recently the Madras High Court held,

“Merely because the petitioner belongs to the third gender, he or she cannot be made to run from pillar to post on the ground that there are no rules available permitting such changes,”

### ***International Aspect***

Transgender people experiences extreme discrimination and violence all over the world. But now a days, on the humanitarian ground most of the countries are showing sympathy towards transgender community. In 2016, French National Assembly passed legislation removing the surgical requirement for people who want to change their gender on official documents. Malta was the first country in 2015 among the European Union member states to specify the right to

change gender markers by self-declaration. In 2012 Argentina passed a law ensuring that all people can request that their recorded sex be amended whenever they do not agree with the perceived gender identity. The same year New Zealand implemented a passport policy allowing applicants to self-declare their gender (M, F, or X)

In *Christine Goodwin vs. the United Kingdom* Rights of transgender people are recognised. It held that a test of biological factors could no longer be used to deny recognition legally to the change of gender that a transsexual had undergone.

Some recent development in Transgender's dignity in India.

1. Transgenders from India, will showcase their skills at a pageant. The winner will represent the country at miss International Trans Queen in Thailand.
2. Shabnam "Mausi" Bano is the first transgender Indian to be elected member of Madhya Pradesh State Legislative Assembly.
3. Dr. Manabí Bandyopadhyia is India's first third gender principal at Krishnagar Women's College in Nadia district in West Bengal on 9 June 2015. She was appointed for this post purely on merit, her message is: "Education". If we learn, all our problems will be solved."
4. Joyita Mondal in July 2017 became India's first transgender judge after suffering a lot of discrimination. She had to leave the school, she slept at a bus stand and beg on the street.

### ***Conclusion***

Transgender community is the most vulnerable community in human society. There are so many hurdles on their way to achieve full human personality. Now a day's people are looking at them very strangely. Some type of the fear is in mind regarding these people. So many times we observed them at the signals, railway station asking for alms

We are living in modern age. We have invented lots of thing in almost all parts of life, right from fertilizer to space technology but this is the irony we could not change the mind-set of people regarding transgender community. The discrimination and exploitation that is faced by the transgender community show that government should take some serious step to curb such type of discrimination.

### ***Suggestion.***

- Worldwide, there are so many laws to protect the rights of transgender community. What requires here is implementation of these laws
- Public awareness is necessary. People who are not Transgender should look at the transgender people as the part of their society

- Police harassment of the transgender people should be stopped. Police should handle these people with utmost care. They should become the friend of transgender instead of becoming exploiter of them
- In public toilets special provision should be made, so that they will have access in public toilet
- Whoever will mock or deny some basic fundamental rights to transgender community should be subject to deterrent punishment.
- Transgender people should get free access in public employment, education, public transport, public places
- Daily health check-up camp should be organised for transgender community.
- Transgender inclusion training should be given to private as well as government department
- Jail should be safe for transgender prisoners
- Same sex marriage should be recognised as legal and valid
- Section 377 of the Indian Penal Code, according to which “carnal intercourse against the order of nature with any man, woman or animal “even if it is voluntary will be punishable offence and other discriminatory legislations should be repealed.
- Civil rights under law such as the right to get a passport, ration card, make a will, inherit property and adopt children must be available to all regardless of change in gender/sex identities.