

PECULIAR POSITION OF THE THIRD GENDER IN INDIA

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INTRODUCTION:

Society is comprised of men and women and we see both the sexes in light. In any case, hidden is the third gender, the transgender, who are called as the "Special Children of God"ⁱ. They are in the middle of the masculism and feminism. These transgenders are not acknowledged by our typical society. They consider them dirt or loophole of the general public. Nevertheless, in reality, they also are the creation of god simply like men and women. Our Indian Constitution had offered a right to each resident of our nation regardless of male, female or transgender. These people are given stink eyes whenever they made a step in the field of education or employment. Rather than supporting and providing education to the third gender, mistreated and thrown out of their own families and society. On account of these results, some of them shroud their sentiments to themselves thinking on the off chance that somebody came to think about them, they will be repudiated openly. Majority of transgenders are in prostitutionⁱⁱ and some even beg for food and money in order to survive. This is a separate community in itself just like other communities of our country. Back in a few years only, transgenders have come across in public to fight for their rights in society. After a long term of the court case, finally, they too are considered as a part of our society. In jobs likewise, a new column of gender has been mentioned. Our constitution gives chances to each and every individual who is the resident of India under Part III coordinating the Fundamental Rights (Article 14 to 30).

The entire world is filled with delightful things, places, men and women making up a general public, however somewhere with these two genders, there comes those who roam around in streets, villages, trains and bless people. They are the Transgender, the third sexual orientation of our general public, accepted to be neither women nor men. Transgenders are the individuals who contrast from others in their attributes, appearances, or conduct. streets, villages, trains and bless people. Amidst 1990's the term 'Transgender' was utilized to address such individuals. In India, they are usually called as Hijras/Kinnarsⁱⁱⁱ or in like manner language 'Eunuch'. The

word 'Trans' isolates them from our general public. There are trans-men (not simply masculine) and trans-women (not purely feminine).

Transgender are not accepted in our society easily. It is believed that the child is born with a curse being like that. The family itself doesn't accept their own child to be a part of their family. Then comes the society, if family accepts their children as transgender without any hesitation, then the society will let that happen. In reality, the life of transgender is way too much difficult than others as they are not much socialized. They face physical violence from society^{iv}, not getting jobs, education is not provided to them, no rights are made for them, no voting right is given to them as there was no option for them in the voting form, only male and female option, and is not even considered a part of our society.

Earlier only two genders were there i.e. male and female but now there is a third gender too, "The Transgender" and it is also a part of society. Only acceptance from people and from society will make a change for them. Proper education is necessary to be given to people only than acceptance of transgender in society will be to its fullest and will be accepted as normal human beings. They too have the equal place in society like males and females.

Society doesn't count the deformity of a person to a part of it. Transgender are one of those persons who come on top of this. They are rejected, abused sexually and physically, beaten up by the authorities and face many problems. Many rights are made for the betterment of transgender people and to protect them from such physical and mental torture. Transgender are being pushed into prostitution. To abolish or to stop all wrong activities, our constitution has made articles for transgender people^v. Earlier, the transgenders were given a specific place in our society. They used to give blessing for people's family, children, business etc. and their situation was quite well. But now, in today's scenario they are not considered a part of our society and are treated very badly. They are life just only for the sake of blessing and for own selfish work. But in reality, these people are far better than other society people in terms of behaviour, conversation, etiquettes, etc. being a separate community doesn't mean they are not a part of society. They have their equal opportunities just like other male and female community.

Even the Article under Universal Declaration of Human Rights says itself that, “All Human Beings are born free and equal in dignity and rights”^{vi}. For this purpose, the LGBT community or the Gay community was made and rights were set up order to protect the dignity and rights of the lesbian/gay/bisexual/transgender people. The transgenders have been further classified as^{vii}:

1. MtF transgender - Male by birth and gender identity as female
2. FtM transgender - Female at birth and gender identity as male
3. Agender - Neither male nor female
4. Bigender - Both male and female identity
5. Pangender - May be more male today and female tomorrow or may be in between
6. Genderfluid - May be more female today and male tomorrow or may be in between and the list goes on.

INDIA VS. OTHER COUNTRIES:

Not only India comprises of transgender people, but other continental countries too have transgender people. Some countries had provided them with laws and some are on verge of acceptance of laws for the rights of transgender people. The places where law has not been yet accepted or implemented doesn't give authority or right to people to ignore these people, in fact a way should be made out of all the controversies going around in regards of transgender people. According to a report by Jack Harrison-Quintana^{viii}, Task Force Policy Analyst, “Argentina becomes the world's most transgender friendly country.” Including Argentina, there are 7 other countries which gave transgender people their fundamental rights. Those countries are Nepal, India, Pakistan, Bangladesh, Germany, New Zealand and Australia. Nepal became the world's 1st country which mentions the third gender as an option in the census form in 2011.

SOCIOLOGICAL QUESTIONS RELATING TO THE THIRD GENDER:

- *Why are some people transgender?*

There's no single explanation for why a few people are transgender. The variety of transgender expression and reports argues against any easy or unitary rationalization. Many experts^{ix} believe that biological factors which include genetic influences and prenatal hormone levels,

early studies, and reviews later in adolescence or maturity may also all contribute to the improvement of transgender identities.

- *How does someone know that they are transgender?*

Transgender human beings revel in their transgender identification in a diffusion of ways and can turn out to be privy to their transgender identification at any age. Some can trace their transgender identities and emotions returned to their earliest reminiscences. They will have indistinct emotions of “no longer becoming in”^x with humans in their assigned sex or specific needs to be something apart from their assigned intercourse. Others become privy to their transgender identities or begin to explore and revel in gender-non conforming attitudes and behaviours during youth or tons later in life. A few include their transgender emotions, at the same time as others struggle with emotions of shame or confusion. Folks who transition later in existence may have struggled to healthy in competently as their assigned sex most effective to later face dissatisfaction with their lives. Some transgender humans, transsexuals, specifically, experience extreme dissatisfaction with their sex assigned at birth, bodily sex characteristics, or the gender position associated with that sex. These people often are trying to find gender-maintaining remedies.

- *Is being transgender an intellectual disease?*

A psychological country is taken into consideration an intellectual disease only if it reasons great distress or incapacity. Many transgender human beings do now not experience their gender as distressing or disabling, which implies that figuring out as transgender does no longer represent a mental sickness^{xi}. For those individuals, the good-sized hassle is finding low priced resources, inclusive of counselling, hormone therapy, medical processes and the social help essential to freely express their gender identity and reduce discrimination. Many other barriers may additionally lead to distress, together with a loss of attractiveness within society, direct or indirect stories with discrimination, or assault. These experiences might also lead many transgender human beings to go through with anxiety, despair or associated issues at higher fees than non-transgender men and women.

- *What are a few classes or forms of transgender humans?*

The time period transsexual refers to human beings whose gender identity isn't the same as their assigned intercourse. Regularly, transsexual humans adjust or wish to regulate their bodies through hormones, surgery, and another method to make their bodies as congruent as possible with their gender identities. This technique of transition through clinical intervention is regularly referred to as sex or gender reassignment, however greater recently is likewise called gender confirmation. Folks that were assigned girl, however, identify and live as male and regulate or wish to regulate their bodies through scientific intervention to extra closely resemble their gender identity are known as transsexual guys or transmen (also known as female-to-male or FTM). Conversely, individuals who had been assigned male, however, discover and live as a woman and modify or wish to alter their bodies through scientific intervention to greater closely resemble their gender identity are referred to as transsexual women or trans women (additionally called male-to-woman or MTF)^{xii}. A few those who transition from one gender to every other option to be referred to as a person or a girl, rather than as transgender.

Folks that go-dress put on garb this is traditionally or stereotypically worn by way of another gender of their subculture. They vary in how completely they go-get dressed, from one article of apparel to fully go-dressing. People who pass-get dressed are usually comfortable with their assigned sex and do not want to trade it. Cross-dressing ^{xiii}is a form of gender expression and isn't always tied to erotic interest. Cross-dressing is not indicative of sexual orientation. The diploma of societal recognition for cross-dressing varies for women and men. In a few cultures, one gender may be given greater range than any other for carrying apparel associated with a different gender.

Genderqueer^{xiv} is a term that a few humans use who identify their gender as falling outside the binary constructs of "male" and "woman." They will define their gender as falling somewhere on a continuum among male and woman, or they may outline it as fully extraordinary from these phrases. They will additionally request that pronouns be used to consult them which are neither masculine nor feminine, which include "zie" in place of "he" or "she," or "hir" rather than "his" or "her." a few gender queer people do no longer perceive as transgender.

Different categories of transgender human beings consist of androgynous, multi gendered, gender nonconforming, third gender, and two-spirit human beings. Genuine definitions of these phrases vary from individual to character and might alternate through the years, however often consist of a sense of blending or alternating genders. A few folks who use these phrases to explain themselves see conventional, binary standards of gender as restrictive.

- *What is the relationship between gender identity and sexual orientation?*

Gender identity and sexual orientation^{xv} are not the identical. Sexual orientation refers to an individual's enduring physical, romantic, and/or emotional appeal to any other man or woman, whereas gender identity refers to one's inner experience of being male, female, or something else. Transgender human beings can be instant, lesbian, gay, bisexual, or asexual, simply as non-transgender people can be. A few current researches have shown that a trade or a brand-new exploration period in associate attraction may additionally occur at some stage in the manner of transition. But transgender humans typically continue to be as connected to loved ones after transition as they have been earlier than transition. Transgender human beings commonly label their sexual orientation using their gender as a reference. For example, a transgender girl, or a person who's assigned male at start and transitions to a girl, who's attracted to different women could be recognized as a lesbian or gay woman. Likewise, a transgender man or someone who's assigned lady at start and transitions to male, who's attracted to different guys, would be recognized as a homosexual guy.

RIGHTS OF LGBT COMMUNITY:

As in step with the Constitution, maximum of the protections under the Fundamental Rights^{xvi} chapter is available to all humans with a few rights being restrained to only citizens. Beyond this categorization, the Constitution makes no further distinction amongst rights holders. The Preamble^{xvii} of our Indian Constitution mandates Justice – social, monetary, and political equality of status.

The Constitution provides for the fundamental right to equality and tolerates no discrimination on the grounds of sex, caste, creed or religion. The Constitution additionally guarantees

political rights and other benefits to each citizen. However, the third community (transgenders) is still ostracized. The Constitution affirms equality in all spheres however the moot question is whether or not it's far being implemented.

Most of the contraptions by means of which the Indian state defines civil personhood, sexual (gender) identity is a vital and unavoidable class. Identification on the idea of sex within male and woman is a vital aspect of civil identity as required through the Indian country. The Indian nation's coverage of spotting only sexes and refusing to recognize hijras as ladies, or as a third intercourse (if a hijra desires it), has deprived them at a stroke of numerous rights that Indian residents take as a right. Those rights consist of the right to vote, the right to own property, the right to marry, the proper to claim a proper identity via a passport and a ration card, a driver's license, the right to education, employment, fitness so on. Such deprivation secludes hijras from the very material of Indian civil society^{xviii}.

Article 14^{xix} provides equality before law. Article 15^{xx} speaks about the prohibition of discrimination on the ground of faith, race, caste, sex or region of birth. Article 21 guarantees right to privacy and personal dignity to all the citizens. Article 23^{xxi} prohibits trafficking in human beings as beggars and other comparable kinds of pressured hard work and any contravention of those provisions will be an offense punishable according to with law.

The transgender community in India were an ignored segment of the society and faced deep and pervasive discrimination, despite protection under various provisions of the Constitution. In April, 2014, Supreme Court in its landmark judgment of *NALSA v. Union of India*^{xxii} ushered in the recognition of various civil and political rights of the transgender community. The genesis of this recognition lies in the acknowledgment of equal worth of every person and the right of choice given to an individual which is the inseparable part of human rights.

The court while drawing historical and cultural significance of transgender groups highlighted the trauma undergone by the members of this community. The judgment drew a distinction between the concept of sex and gender identity, which refers to an individual self-identification as a man, woman, transgender or other identified category. The court referred to various international efforts including the Yogyakarta principles^{xxiii} and the fundamental rights

provided under the part III of the Constitution of India, to afford recognition to the rights of the transgenders. The court held that *hijra*, eunuchs, *aravanis* and *thirunangi*, *kothi*, *jogtas/jogappas*, *shiv-shakthis* etc. in addition to binary be treated as third gender. The court also recognised transgenders right to self-determination^{xxiv}. Apart from other significant directions, the court directed the state to treat transgenders as socially and educationally backward classes (hereinafter SEBCs) and extend all kinds of reservation as available to members of Other Backward Classes.

Section 377^{xxv} of the IPC found a place inside the Indian Penal Code, 1860, prior to the enactment of Criminal Tribes Act that criminalized all penile-non-vaginal sexual acts between men and women, which include anal sex and oral intercourse, at a time while transgender humans had been also usually associated with the prescribed sexual walkthrough. Reference may be made to the judgment of the Allahabad High Court docket in *Queen Empress v. Khairati (1884) ILR 6 ALL 204*^{xxvi}, wherein a transgender character become arrested and prosecuted under Section 377 on the suspicion that he changed into a ‘habitual sodomite’ and become later acquitted on appeal. This judicial regulation plays in comparison to the historical instances in India in which transgender community had got a robust ancient presence in our united states in the Hindu mythology and different non secular texts. Hijras also played a prominent role in the royal courts of the Islamic international, particularly in the Ottoman empires and the Mughal rule in medieval India^{xxvii}.

But, the humble conditions of the transgender communities were redressed via a step taken by using the national prison services authority, constituted under the Legal Services Authority Act, 1997, to offer free legal offerings to the weaker and other marginalized sections of the society, has come forward to advocate their reason^{xxviii}.

TRANSGENDER RIGHTS & TRANSFORMING THE WORKPLACE IN INDIA:

The Indian Supreme Court’s declaration^{xxix} that transgender individuals are a Third Gender under the constitution and recent legislation has significantly furthered recognition and rights

for transgender individuals. This article looks at these developments and provides guidance for employers.

The golden thread that runs through the equality scheme of the Indian constitution (Articles 14,15,16, 19 and 21) is ‘enjoyment of life by all citizens and an equal opportunity to grow as human beings irrespective of their race, caste, religion, community, social status and gender.

One of the basic tenets of the equality scheme lies in the recognition and acknowledgement of the ‘right of choice and self-determination’. Determination of the gender to which a person belongs and relates is intrinsic to their right of self-determination and their dignity^{xxx}.

Acknowledging that Indian laws are substantially binary in nature, recognising only male and female genders, the Honourable Supreme Court of India in its order in the case of National Legal Services Authority vs. Union of India^{xxxi} (dated 15 April 2014, AIR 2014 SC 1863, the ‘NALSA Judgement’), declared transgender individuals distinct from binary genders, as the ‘Third Gender’ under the Indian constitution and for the purposes of laws enacted by the parliament and state legislatures.

Non-recognition of the Third Gender in the Indian legal framework has resulted in systematic denial of equal protection of law and widespread socio-economic discrimination in society at large as well as in Indian workplaces. In the wake of the NALSA Judgment, the Indian parliament recently enacted the Transgender Persons (Protection of Rights) Act,2019^{xxxii}.

RESERVATION OF TRANSGENDERS AS OBC: ISSUES AND CHALLENGES

In the three years that have passed since impetus was provided to the debate on transgender and their reservation in the NALSA judgment on April 15, 2014^{xxxiii}, the issue has been subject to both appreciation and criticism. The recent clarification sought by the Central Government exposes the ambiguity which prevails in the judgment and has also served as a ground for delay in further action. The issues intertwined with the reservation for transgender are itself numerous. Legislative, theoretical, legal as well as practical difficulties surround the contention of providing reservation to transgenders as OBCs.

The legislative attempt towards providing reservation to transgender has fallen short due to the absence of any provision pertaining to reservation in the Transgender Persons (Protection of Rights) Bill, 2016, introduced by Minister for Social Justice and Empowerment. The absence of provisions pertaining to reservation is despite the recommendation of NCBC for inclusion of transgenders in the central list of OBCs^{xxxiv}. The stand of the centre on the reservation aspect appears indeterminate owing to the staunch opposition from the OBC groups fearing reduction in the size of their existing piece of the metaphorical pie. It is pertinent to note that, prior to the 2016 Bill, The Rights of Transgender Persons Bill was introduced in the Rajya Sabha in 2014 which incorporated the provisions pertaining to reservation and provided for 2% horizontal reservation for transgender persons in admission and appointments. However, the 2014 Bill was never debated in the Lok Sabha^{xxxv}.

Before taking a decisive stand on the issue of reservation for transgenders as OBCs^{xxxvi}, we need to take into consideration the social and economic background that surrounds the issue. It would not be too far-fetched to raise the question that ‘what happens if a person undergoes sex reassignment surgery or cross dresses to take economic benefit of the reservation in jobs? Would such person still get the benefit of reservation? In addition, reservation for transgenders in public posts like police, army, military etc. which prohibit their appointment by policy or on medical grounds, becomes a conundrum of utmost significance. This is especially relevant in light of the recent case, where the Indian Navy terminated the services of a transgender sailor after he underwent a sex reassignment surgery^{xxxvii}.

WRAPPING UP:

The recommended inputs given by Supreme court in *Navtej Singh Johar vs. Union of India*^{xxxviii} are aimed to strengthen the Indian State’s provisions and commitments and ensure through special measures and safeguards these rights and universal entitlements for the most marginalized and vulnerable people residing within the jurisdiction of India especially Transgender.

Transgender persons are continuously facing multiple forms of social discrimination and oppression in the country^{xxxix}. Discrimination is so wide and pronounced even in basic necessities like healthcare, employment and education, that it makes their social inclusion a

daunting task. It is the need of the hour, that step be taken to remedy the deplorable situation and advance social inclusion for the members of this community through strong legal as well as social angles.

After analysing everything, transgender community should be given equal privilege, place and position in our society. Rights made for transgender community should be implemented fairly and properly, so that the inequality faced by transgender community gets abolished and they get free from crimes and offences done against them^{x1}. They are also a part of our society and complete it as much as male and females do. They should not be called by any name given to them by society but should be called them by their own names as we call our friends and family members.

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^{xl} "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status", Art. 3 of UDHR.