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ANALYSIS OF TRANSGENDER RIGHTS IN INDIA

ABSTRACT:

This paper provides a deep examination of the challenges faced by the transgender individuals in India. Our Indian constitutions guarantees equality and justice to the transgender. They face the significant barriers, like discrimination, social problem and lack of access to education and employment. This paper also analysis the historical and cultural aspects of transgender rights in India and also the legal framework for transgender in India. Social stigma, discrimination, boycott from the society and family, absence of supportive family, abusive environment, disowning from families and parents, no medium for education, depression amongst transgenders, no housing facilities, harassment by police and they ultimately resort to begging and sex work. This article will examine the social and economic obstacles that transgender individuals in India experience, such as societal rejection, discrimination, and limited access to jobs and education. This paper highlights the fact that transgender persons are not getting an education because they drop out of school or college due to discrimination.

KEYWORDS: Equality, Justice, Discrimination, Education, Employment, Social stigma.

INTRODUCTION:

Our society has traditionally only acknowledged two genders—male and female—the term "transgender" still causes confusion in the minds of Indians. Asking someone on the street what a transgender person is may make them chuckle and use local terms like "Hijras or Kinner," among others. But in truth, who is aware of what a transgender person is? They are similar to our friends, neighbours, students, and co workers. Transgender people are people who earlier recognize themselves as of one gender but later on identify themselves as of other gender. Articles 14 and 21 employ the term "person," whereas Articles 15, 16, and 19 use the word "citizen," indicating a gender-neutral approach to justice. The fact that no data on transgender people was obtained before to Census 2011 plainly demonstrates the amount of discrimination. Thus, according to the 2011 Census, there are 4,87,803 transgender people in India, with a literacy rate of only 56.07%, compared to 74% for the overall population.

According to the National Human Rights Commission Report (2018), 99% of transgender people endure repeated social rejection. 57% of this community wants to go for a sex reassignment surgery but can't due to lack of money. Enrolling transgender people in the electoral roll requires them to submit a legal document from the oath commissioner attesting to their qualifications, publish this information in a

minimum of two newspapers, and have their parents or guardians sign the legal documents. While the election commission is hard to cover all the eligible voters, they have made it more difficult for the transgenders to get a voter card.

TIMELINE FOR TRANSGENDER RIGHTS IN INDIA:

Mughal Empire

- Transgenders held important positions as guardians and advisors.
- They were trusted, clever, and loyal.

British Period (1858-1947)

- Protection and benefits provided by Indian States were stripped away.
- British authorities confiscated lands and stigmatized transgenders as criminals.
- The Criminal Tribes Act, 1871, Labelled hijras as inborn criminals.

Modern Period (Post-Independence)

- Transgenders now enjoy better social status and government benefits.
- Entitled to voting rights, census inclusion, and citizenship identity cards.
- Supreme Court recognized transgenders as the third gender in NLSA v. UOI case.
- Government schemes like MGNREGA provide employment opportunities.

In recent years, the transgender community in India has witnessed significant improvements in their social status and government benefits. The Supreme Court's landmark judgment in the National Legal Services Authority (NALSA) v. Union of India case (2014) recognized transgenders as the third gender, entitling them to all constitutional and legal rights. This ruling paved the way for increased inclusivity and acceptance.

The government has introduced various welfare schemes to support the transgender community. The 11th Five-Year Plan launched the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) scheme, providing employment opportunities for transgenders. Additionally, transgenders are now entitled to voting rights, inclusion in the general census, and issuance of citizenship identity cards.

Despite these advancements, the transgender community continues to face significant challenges, including social stigma, discrimination, and violence. Efforts to address these issues and ensure the effective implementation of existing laws and policies are essential to promoting the well-being and empowerment of transgender individuals in India.

HISTORICAL JUDGEMENT:

NATIONAL LEGAL SERVICE AUTHORITIES (NALSA) VS UNION OF INDIA AND OTHERS¹

The judgement have legal and constitutional protection to the eunuchs in the form of third gender and reiterated that non- recognition of their gender identity will violet article 14 and 21 of the Indian Constitution. NALSA which was constituted under the legal authority act, 1997 to provide free legal services to the marginalised sections of the society along with Pujya Mata Nasib Kaur Ji Women Welfare Society came forward for this cause. During case hearing reference was made to Ramayana and Mahabharata too.

Reference from Ramayana:

Everyone in Ayodhya cried and decided to follow Lord Rama, Mata Sita, and brother Lakshman when they were summoned to live in exile for 14 years. Among them were they too. And it was impressed by this act, Lord Rama blessed them that they will have the power to confer blessings on the day of childbirth and marriage or other inaugural functions.

Reference from Mahabharata:

According to the Mahabharata, Aravan, the son of Arjuna and Nagakanya, proposes to be sacrificed to Goddess Kali in order to guarantee the Pandavas' victory in the Kurukshetra battle; the only requirement is that he spend his final night in wedlock. Since no lady would marry someone who was destined to die,

¹ CLPR Transgender Law and Policy Database, CENTRE FOR LAW AND POLICY RESEARCH, <https://translaw.clpr.org.in/> (last visited Jan. 31, 2025).

Krishna takes the form of Mohini, a stunning woman, and weds him. The Hijras of Tamil Nadu refer to themselves as Aravanis and believe that Aravan is their ancestor.

Decriminalisation of IPC section 377 of Navtej Singh Johar v. Union of India

Johann Wolfgang von Goethe said, I am what I am, so take me as I am. Heen Shakespeare said, what in a name? Any other name for a rose would smell just as lovely, and it also conveyed the idea that an entity's core features and fundamental characteristics—rather than the name by which they are addressed— are what really count.

The main controversy was that IPC section 377 involved the non - recognition of the third gender in the fullest sense and Suresh Kumar Koushal and another v. Nax foundation and others overturning the judgement of the Delhi HC in Naz foundation v. Government of NCT of Delhi and others.

According to Justice Chandrachud, sexual orientation is a fundamental component of the Indian constitution, citing K.S. Puttaswamy and others v. Union of India and others. Also cited was the Mosley v. News Group Newspapers Ltd. case, which emphasises the freedom of individuals in our country to conduct their sexual lives and personal relationships as they see fit.

CHALLENGES:

Challenges Faced by Transgenders in India

Transgenders in India face numerous challenges that hinder their social, economic, and emotional well being. Despite the government's efforts to promote inclusivity, transgenders continue to experience discrimination, exclusion, and violence.

1. Discrimination in Education and Workplace

The literacy rate among transgenders is alarmingly low, with only 46% of the population being literate, compared to the national average of 74%. This lack of education leads to limited job opportunities, forcing many transgenders to take up undesirable jobs.

2. Social Exclusion and Homelessness

Transgenders are often shunned by their families and society, leading to homelessness and a lack of access to basic amenities. This exclusion erodes their self-esteem and confidence, making it difficult for them to integrate into mainstream society.

3. Transphobia and Psychological Stress

Transgenders face harassment, discrimination, and intolerance from society, leading to mental health issues such as loneliness, anxiety, and insecurities. This can result in negative coping mechanisms, including self harm and suicidal thoughts.

4. Lack of Legal Protection

Transgenders lack adequate legal protection, making them vulnerable to hate crimes and violence. Police departments often fail to register complaints, and transgenders are subjected to oppression and brutality.

5. Conclusion

The challenges faced by transgenders in India are multifaceted and require a comprehensive approach to address. The government, civil society, and individuals must work together to promote inclusivity, provide education and job opportunities, and ensure legal protection for transgenders. By doing so, we can create a more equitable and just society for all.

Legal provisions under constitution

- **Article 14** of the Indian Constitution guarantees the right to equality to "any person," meaning that transgender individuals are also entitled to equal protection under the law, as the term "person" is not restricted to only male or female, thus protecting transgender people from discrimination in all spheres of life including employment, healthcare, and education.
- **Article 15** of the Indian Constitution prohibits discrimination on the basis of "sex," which has been interpreted by the Supreme Court to include "gender identity," meaning that discrimination against transgender individuals is considered a violation of Article 15 and is therefore prohibited by law; essentially guaranteeing transgender people protection against discrimination based on their gender identity.
- **Article 16** of the Indian Constitution, Article 16 guarantees "equal opportunity in public employment" to all citizens, including transgender individuals, meaning they cannot be discriminated against based on their gender identity when applying for government jobs; this right is crucial for transgender rights in India as it protects them from being denied employment opportunities solely because of their identity.
- **Article 19** of the Constitution of India protects the freedom of speech and expression, which includes the right to express one's gender identity publicly. This right is fundamental to transgender people, who have the right to self-identify their gender without medical intervention.
- **Article 21** of the Indian Constitution protects the right to life and personal liberty of all citizens, including transgender people. It also guarantees the right to dignity and autonomy.

TAMIL NADU TRANSGENDER WELFARE BOARD:

Transgender people face rejection from their families, discrimination from society, and marginalization from the general population. They encounter a range of discriminatory actions, such as deprivation and harassment. Their transsexual identity even leads to their expulsion from schools. Because they have been subjected to discrimination for a long time, they are unable to find stable employment. Because of the situation, they are compelled to leave their families, quit school, and lead a largely nomadic lifestyle. Upon leaving their families, the majority of transgender individuals do not carry birth certificates, school certificates, community certificates, or other required identity documents such as ration cards or voter ID cards.

The government responded to the problems faced by transgender persons by establishing a Welfare Board for Transgender persons to handle their grievances through welfare programs. The largest obstacle for transgender people is finding a solid and respectable career. On April 15, 2008, Tamil Nadu became the first state in the country to create a Transgender Welfare Board to empower transgender individuals. ID cards, ration cards, house pattas, residential homes, free sewing machines, help with higher education, self help groups, free bus travel on regular city buses, free skill trainings, and grants of up to Rs. 50,000 for income-generating activities are just a few of the services that this board will offer.

Various economic activities have been adopted by Transgender Self Help Groups, including food stores, canteens, milch animal rearing, soap, napkin, and milk product production facilities, passenger and cargo cars, and businesses dealing with cloth, coir, rice, and other commodities. "Thirunangaigal" is a special mobile application designed to make it easy for transgender individuals to provide their details and receive an identity card. Listing transgender people by age, education, residence, etc. is also useful for developing support services for them.

TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT 2019.

Main Features

- An individual whose gender does not match the gender assigned to them at birth is known as a transgender person.
- No one or any institution is allowed to discriminate against a transgender person in areas such as healthcare, employment, and education, for instance.
- Transgender individuals can have their identities acknowledged by obtaining a certificate of identity from the District Magistrate; their sex must be changed in order to acquire a new certificate. Recommendations for developing welfare programs and initiatives that are non-stigmatizing, transgender-sensitive, and non-discriminatory.
- Actions to guarantee the full and effective participation and social inclusion of transgender individuals are among the responsibilities of the appropriate governments.
- The ability to live with parents and close family members is granted transgender individuals. • Provisions that protect, rescue, and rehabilitate transgender individuals in order to meet their needs. •

The need for a complaint officer to address issues pertaining to transgender people.

A provision that permits the establishment of the National Council for Transgender Persons •

Guidelines for punishment for crimes committed against transgender persons

Educational status:

In India, formal education is uncommon for transgender individuals. Transgender individuals are often excluded from family and school environments, leading to a drop in education and potential employment prospects. A thorough examination of various reports and discussions with the community and stakeholders. Research indicates that transgender individuals are often ignorant or undereducated, making them less likely to complete their education. The typical qualification is secondary (Matric) or senior secondary level. Enrolment is low, and dropout rates remain high at both primary and secondary levels. They are not educated nor accepted by society, hence they do not obtain proper education. Despite being enrolled in an educational establishment, students experience daily harassment and bullying, leading them to leave or drop out. Because of this, they engage in begging and sex work. The government must provide inclusive education for transgender pupils, including adult education.

Social Status:

Compared to other communities, the transgender population has fewer chances because of stigma and discrimination. Due to their social rejection, they obtain inadequate education and are hence hardly educated. Despite attending an educational institution, they endure daily bullying and abuse, are asked to leave school, or quit on their own. This is the reason they start begging and doing sex jobs. They are forced into sex work, which puts them at the highest risk of contracting HIV, because they want to use sex to affirm their gender or because they fear rejection. They're considered to be "vectors" of HIV in the community. The risk of HIV is increased by other STDs such as rectal chlamydia, syphilis, and rectal gonorrhoea.

Conclusion:

Transgender rights in India have seen significant progress, particularly with the recognition of the "third gender" in the landmark *National Legal Services Authority (NALSA) v. Union of India* (2014) judgment and the enactment of the *Transgender Persons (Protection of Rights) Act, 2019*. These legal advancements mark a step toward inclusivity and equality. However, challenges such as social stigma, discrimination, lack of healthcare access, and employment barriers persist.

While legal frameworks provide a foundation, true progress lies in changing societal attitudes, ensuring effective policy implementation, and promoting awareness. A holistic approach including legal reforms, education, and social inclusion—is essential to guarantee dignity, rights, and equal opportunities for transgender individuals in India. Continued advocacy and government commitment will be crucial in bridging the gap between legal recognition and real-life empowerment.

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