

“Human Rights for The Transgenders in India: A Reality or A Myth”

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In spite, plethora of national and international protective laws, still there is a big question in the life of transgender people about their existence. They bear the pain of discrimination due to various social and economic marginalization on the basis of gender. Before the NAZ foundation case these transgenders were being humiliated, tortured and even unnoticed by the society. Even though every basic rights are provided to us by our Constitution but where these rights are taken into consideration from a transgender perspective, it feels like a myth. This is the irony of our legal system.

The concept of human rights is a mirage for the transgender community. Everything is just confined in pen and paper and far away from practical implementation.

I OBJECTIVE

1. To understand the term transgender.
2. To discuss the human rights practically enjoyed by transgender.
3. To understand the challenges faced by the transgender relating to human rights in India.

II RESEARCH METHODOLOGY

The researcher completely followed doctrinal method and data are being collected from secondary sources like – books, newspaper, journals and acts etc.

III CONCEPT OF TRANSGENDER

From the very ancient. In India the existence of transgenders was given importance like in the Mahabharat, the Ramayana and Kamasutra etc. But

their situation got worst day by day from the period of introduction of section 377 in Indian Penal Code, 1860 in various parts in India transgender people are known as Hijra. They are the people who are not fall under the characteristic of gender norms. Their body structure and genitals are different from a normal male or female person in the world. The term transgender is an umbrella term that includes people who identify outside of the gender binary of male or female. This term famous in different area in different name like hijra aravani in Tamil Nadu Shiv sakthis in Andhra Pradesh jagatas in Maharashtra and Karnataka kinnar in Odisha etc.

IV RIGHTS OF TRANSGENDERS

In a democratic country like India everyone freely enjoy their rights without any discrimination on the basis of gender sex, caste, colours, creed, language etc which also gives protection against any form of torture, exploitation, harassment, injustice, inhuman and degrading treatment. Our Constitution is safeguarding all the citizens of India against the violation of human rights by providing the fundamental rights to the citizen such as right to equality under article 14, protection against discrimination under article 15, Equal opportunity in public employment under article 16, Protection of life and liberty under article 21, Protection against exploitation and trafficking under article 23 Etc. So far, these rights are concerned the transgenders are not discriminated to enjoy but when we focused on the practical aspect the reality is very shocking. Because the transgenders from their very birth They are just facing different form of discrimination exploitation harassment inequality torture etc in every field. For this reason only in 2014 our legislature gifted The Rights of Transgender Bill, 2014 and further The Transgender person (protection of rights) Act, 2019 after the historical judgment in NALSA vs Union of

India 2014 which directed the central government and state government to take various steps and initiatives for the welfare of the transgender community and to treat them as a 3rd gender for the protection of their rights under part three of the Indian constitution.

- The Transgender person (protection of rights) Act, 2019

This 2019 Act recognized the identity of the transgender person by taking into consideration and providing the certificate of their identity. This Act plays a vital role in protecting the rights of the transgender people in India. The key provisions of the Act are follows

- Prohibition against discrimination.

This includes protection against unfair treatment. In the field of education, employment health care, movement, occupation, livelihood Etcetera. Against the transgender person and provide them the right of residence and if their family is not able to maintain them then they have to be placed in it. A rehabilitation centre or any shelter dedicated to transgender by the order of the court. Further, in case of employment matters, there cannot be any type of discrimination in the recruitment process, promotion, salary, etc, based on their gender. Further every organization or establishment must be instructed by the government to designate a person to be a complaint officer to deal with complaint in relation with the act.

The government funded educational institutions are directed to provide the education facilities to the transgender person without any discrimination. This Act again provides the right to transgender person to access the health facilities and comprehensive health insurance for them and other health care schemes.

- National Council.

Apart from all these above-mentioned rights, the transgender person Act also provides to take steps for the establishment of a National Council, which function is to

- Advise the Central government for the formulation of different policies.
- Monitoring the impact of those policies and programs to facilitate equality, freedom, liberty and right to the transgender persons.

- Reviewing the activities of various departments, institution which are dealing with the matters of the transgender.
- And the council also perform the duties which are prescribed by the central government time to time.

- Issues and challenges of The Transgender Persons Act, 2019

Though the act of 2019 is there to protect the transgender but still there is no better change in the condition of the transgender because there are so many lacunas or drawbacks found in the above-mentioned act, such as

- Lack of proper definition of the transgender.
- Drawbacks in proper identification of the self-determination of gender, which forced the medical science to intervene for the recognition of the 3rd gender.
- No strict implementation of various provisions of the act for the protection of the 3rd gender, for which they are facing discrimination in employment, education, and other similar areas.
- The app is further criticized that it failed to address the root causes of all the problems and dilemmas of the 3rd gender.
- Lack of awareness and training among the government personnel, public and administrators about the rights of the transgender and objective of the legislation. Further responsible for the challenging environment for the implementation of the act.
- Due to lack of accountability infrastructure and other social stigma, the act is also not properly implemented, which resulted towards the exclusion of transgender from their community, society and family.
- Lack of affirmative action by the act also responsible for the work condition of the transgender.
- Further, the act also failed to recognize the rights of the transgender in marriage, divorce and also in adoption.

Two writ petitions were filed by the transgender against the unconstitutional provisions contained in the act, such as by Swati Bidhan Baruah, a transgender advocate, resulting in Assam. And second was filed by various notable transgender activists on 12th June. 2020

V CONCLUSION AND SUGGESTIONS.

Though it will not happen overnight, but from the practical lenses and societal experience, we can recommend it that the human rights can be enjoyed by the transgender with the need of social acceptance Employment right to life with dignity etc. Only establishing and recognizing the right of them will not meet the purpose. One of the most important suggestions is the need for equality in the field of Education. Secondly, prohibition of discrimination Thirdly, provide adequate opportunities so far as the education and employment in public is concerned. Fourthly, arrangement of different sensitization programs to create awareness. Fifthly quality healthcare should be provided to the transgender person Sixthly, family, and social support are very essential for the protection of the transgender in the society. And further, it also helps for their self-expression by protecting their psychological health and wellbeing, the prevailing social stigma and discrimination. Through the article, the researcher also recommends the social and economic rights. This can be possible only when the transgenders have involvement in power and position. Gains which can be possible through the adequate representation in political field.

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