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Status of transgender in India: A review

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Abstract

India has approximately 5-7 lac transgender people. Sexuality is an issue in India. It has created social divides. Transgender community includes Kinnar, Hijras, Eunuchs, Kothis, Aravanis, Jogappas, Shiv-Shakthis etc., who have been a part of Indian society for centuries. The Vedic and Puranic literatures mention “tritiyaprakriti” meaning the third gender and “napunsaka” meaning someone with the loss of procreative ability. Sexual minorities have been oppressed in our society on the ground of them being deviant. The term 'transgender people' is generally used to describe those who transgress social gender norms. Transgender is often used as an umbrella term to signify individuals who defy rigid, binary gender constructions, and who express or present a breaking and/or blurring of culturally prevalent stereotypical gender roles. Transgender people may live full- or part-time in the gender role 'opposite' to their biological sex. Therefore, the issues related to the rights of genders, their health problems and also do not find place in the top agendas of the governments and human rights movements. Barriers to health care, social participation, emotional support experienced by transgender people. The refusal by many national health systems and health insurance programs to cover services for trans people. This review article is based on transgender health, their rights and situation in India.

Keywords: Transgender, sexuality, health problems

Introduction

Transgender people have a gender identity or gender expression that differs from their sex assigned at birth. Some transgender people who desire medical assistance to transition from one sex to another identify as transsexual. In addition to including people whose gender identity is the opposite of their assigned sex (trans men and trans women), it may include people who are not completely masculine or feminine. Other definitions of transgender also include people who belong to a third gender (Third gender or third sex is a concept in which individuals are categorized, either by themselves or by society, as neither man nor woman). In addition to including people whose gender identity is the opposite of their assigned sex (trans men and trans women), it may include people who are not completely masculine or feminine. Other definitions of transgender also include people who belong to a third gender (Third gender or third sex is a concept in which individuals are categorized, either by themselves or by society, as neither man nor woman). A person's internal sense of being male, female or something else is their gender identity. For cisgender, or non-transgender people, their gender identity matches their sex at birth. For transgender people, the two do not match.

Third gender

In April (2014), India's Supreme Court recognized transgender people as —The Third gender along with male and female. Eunuchs, apart from the binary gender, is treated as —third gender for the purpose of safeguarding their rights under our constitution and the laws made by parliament and the state legislature. Earlier, they were forced to write male or female against their gender.

The apex court said that transgender will be allowed admission in educational institutions and given employment on the basis that they belonged to the third gender category. Hijras, especially have a strong social network and hierarchical social system: Gurus (Masters) and Chelas (Disciples). Several indigenous identities –

- Hijras and Kinnars- Most parts of north India
- Aravanis or Thirunangai- In Tamil Nadu
- Yellamma- Karnataka

- Shiv-shakthi- Andhra Pradesh
- Jogappa- Maharashtra

Transgender in India

Indian Census has never recognized 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 and 8422 in Haryana as per 2011 census.

The data have been primarily linked to the males section as they are usually counted as men, but on request, they may be counted as women. Due to this, it is impossible to comment on the actual transgender population, though the census has provided an approximate estimate. The 2011 census also reported 55,000 children as transgender identified by their parents.

Problem faced by transgender

The main problems that are being faced by the transgender community are of discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities. The other fields where this community feels neglected are inheritance of property or adoption of a child. They are often pushed to the periphery as a social outcaste and many may end up begging and dancing.

In 1994, transgender persons got the voting right but the task of issuing them voter identity cards got caught up in the male or female question. Several of them were denied cards with sexual category of their choice. Transgenders have very limited employment opportunities. Transgenders have no access to bathrooms/toilets and public spaces. Most families do not accept if their male child starts behaving in ways that are considered feminine or inappropriate to the expected gender role. Consequently, family members may threaten, scold or even assault their son/sibling from behaving or dressing-up like a girl or woman.

Social welfare departments provide a variety of social welfare schemes for socially and economically disadvantaged groups. However, so far, no specific schemes are available for transgender except some rare cases. The combined operation of the various societal institutions and mechanisms which bear down upon the affected person constructs a mindset wherein the person begins to think of himself as dirty, worthless, unclean and vulgar. The invisibility and silence which surrounds the existence of sexuality minority lives and worlds produces its own order of oppression, creating in many the impression that they are the only ones 'cursed' with such desires in the world. There is a huge erosion of self-esteem, which is prolonged by the way dominant society operates, what it believes in and what it says. It is a process of self-abuse wherein the person believes that what society says about sexuality minorities is true for her.

Discrimination and dilemma of transgender

In spite of national and international protection, transgender have been a neglected community worldwide. Baring few countries, there is no recognition of their rights and are sometimes forced to lead animal survival life. Transgender people bear the brunt of social and economic marginalization due to discrimination based on their gender identity or expression. Advocates confront this reality working with transgender people who have lost shelter, jobs, experienced mistreatment and violence, or been unable to access the health.

I. Sex Discrimination

Action is taken against an individual because of stereotypical beliefs about the nature of men and women (about their appearance and behavior). The argument for a straightforward application of sex-based anti-discrimination law has been rejected in many cases. This fails to acknowledge that the transgender person has been singled out for adverse treatment based on a belief about his or her sex – namely, that he or she should not change his or her sex or express it in a different manner than cultural norms allow.

II. Disability Discrimination

Because of misperceptions and misunderstandings about disability laws, some people have expressed discomfort in pursuing legal protections for transgender people based on disability. The term 'disability' in anti-discrimination laws, however, is not used in the popular or colloquial sense, and is not limited to individuals who are significantly debilitated or who appear outwardly ill.

III. Sexual Orientation Discrimination

Transgender people are harassed because they are perceived to be gay. Assumptions about a person's sexual orientation may often arise either because of clothing the person wears or because of their gender presentation, which may be subtler than a person's attire.

IV. Discrimination by the Medical Establishment

Most during treatment for STD's/HIV/AIDS and when they go in for sex reassignment surgery. In some Western countries, there are stringent regulations governing such surgery, with the surgery being permitted only after extensive psychological counseling, but in India there is no legal framework governing such surgery.

V. Discrimination in Employment/Education

Transgender find it extremely difficult to get suitable employment of their choice. Due to social discrimination in employment most of them are forced into sex work. Apart from the fact of social discrimination, the low levels of literacy in the community also ensure the social, economic and political powerlessness of the community.

VI. Discrimination in the Family

Some families, once they realize that their children are a transgender, they rather disown and send him/her away rather than encourage and be there for them. This is what makes them turn to other immoral activities knowing well that there is no longer family for them.

Health related issues of transgender

The common conception of Trans health is that it refers only to medical procedures involved in Transition. However, Trans health is a much broader field. As the WHO recognizes, health is a state of complete physical, mental, and social well-being, not merely the absence of disease or infirmity. The full picture of trans health thus involves broad recognition of all the services, protections, and resources that trans people need to live healthy lives in safe communities.

This includes a range of primary and other health care services, as well as a focus on socio-economic determinants of health such as identity document policies poverty, employment, housing and public acceptance of trans people.

Trans people worldwide experience substantial health disparities and barriers to appropriate health care services that

keep them from achieving the highest possible health status. Among other health disparities, trans people are significantly more likely than the general population to be targeted for violence and harassment, to contract HIV, and to be at risk for mental health concern such as depression and attempted suicide.

1. HIV

Transgender people are 49 times more at risk of living with HIV compared to the general population. HIV related stigma and transphobia create barriers to the access of HIV testing and treatment services by transgender people.

Social exclusion, economic vulnerability and a lack of employment opportunities means that sex work is often the most viable form of income available to transgender people, and a high proportion of transgender people engage in sex work.

2. Mental health

Mental health needs of Transgender communities are barely addressed in the current programs. Some of the mental health issues reported in different community forums include depression and suicidal tendencies, possibly secondary to societal stigma, lack of social support, HIV status, and violence-related stress. Most transgender people, especially youth, face great challenges in coming to terms with one's own gender identity and/or gender expression which are opposite to that of the gender identity and gender role imposed on them on the basis of their biological sex.

3. Alcohol and substance use

An unknown but significant proportion Transgender communities consume alcohol possibly to forget stress and depression that they face in their daily life. Transgender provide several reasons justifying their alcohol consumption that range from the need to 'forget worries' (because there is no family support or no one cares about them).

Discrimination in healthcare settings

- Transgender face discrimination even in the healthcare settings. Often, healthcare providers rarely had the opportunity to understand the sexual diversities and they do not have adequate knowledge about the health issues of sexual minorities. Thus, transgender people face unique barriers when accessing public or private health services.
- Barriers in accessing HIV testing, antiretroviral treatment and sexual health services have been well documented.
- Types of discrimination reported by transgender communities in the healthcare settings include: deliberate use of male pronouns in addressing transgender registering them as 'males' and admitting them in male wards; humiliation faced in having to stand in the male queue; verbal harassment by the hospital staff and co-patients; and lack of healthcare providers who are sensitive to and trained on providing treatment/care to transgender people and even denial of medical services. Discrimination could be due to transgender status, sex work status or HIV status or a combination of these.

Constitutional rights of transgender people

Preamble to the constitution mandates justice social, economic and political equality of status.

1. Thus the first foremost right that they are deserving of is the right to equality under Article 14.

2. Article 15 speaks about the prohibition of discrimination on the ground of religion, race, caste, sex, or place of birth.
3. Article 23 prohibits trafficking in human beings as beggars and other similar focus of forced labor and any contravention of these provisions shall be an offence punishable in accordance with law.
4. Legal recognition for people transitioning within male/female binary: The court merely states that they prefer to follow the psyche of the person and use the psychological test as opposed to-biological test. They also declare that insisting on sex Reassignment Surgery (SRS) as a condition for changing one 's gender is illegal.
5. Socio-economic rights: Centre and state Govt. have been asked to provide the community various social welfare schemes and to treat the community as socially and economically backward classes. They have also asked to extend reservation in educational institutions and for public appointments.
6. Stigma and public Awareness: Both the govts are asked to take steps to create public awareness so that Transgender people will feel that they are also part and parcel of the social life and not be treated as untouchables; take measures to regain their respect and place in society.

The Supreme Court judgement on Transgender Rights:

This judgment covers persons who want to identify with the third gender as well as persons who want to transition from one identity to another, i.e. to male to female or vice versa. The Court has directed Centre and State Governments to grant legal recognition of gender identity whether it be male, female or third gender.

Legal Recognition for Third Gender: In recognizing the third gender category, the Court ruled that fundamental rights are available to the third gender in the same manner as they are to males and females. Further, non-recognition of third gender in both criminal and civil statutes such as those relating to marriage, adoption, divorce, etc. is discriminatory to the third gender.

Legal Recognition for people transitioning within male/female binary: As for how the actual procedure of recognition will happen, the Court merely states that they prefer to follow the psyche of the person and use the 'Psychological Test' as opposed to the 'Biological Test'. They also declare that insisting on Sex Reassignment Surgery (SRS) as a condition for changing one's gender is illegal.

Public Health and Sanitation: Centre and State Governments have been directed to take proper measures to provide medical care to Transgender people in the hospitals and also provide them separate public toilets and other facilities. Further, they have been directed to operate separate HIV/ Sero-surveillance measures for Transgenders.

Socio-Economic Rights: Centre and State Governments have been asked to provide the community various social welfare schemes and to treat the community as socially and economically backward classes. They have also been asked to extend reservation in educational institutions and for public appointments.

Stigma and Public Awareness: These are the broadest

directions - Centre and State Governments are asked to take steps to create public awareness so that Transgender people will feel that they are also part and parcel of the social life and not be treated as untouchables; take measures to regain their respect and place in society; and seriously address the problems such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, and social stigma.

What led the Centre to introduce the bill?

- In 2014, the supreme court in a landmark judgement in the case of National Legal Services Authority versus the Union of India recognised the rights of transgender persons and their right to decide on their gender identity.
- In 2015, the government's bill was criticised by the community and activists for several reasons, including the way it defined transgender persons as "neither wholly female nor wholly male."
- The revised definition states that a transgender person is "a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman, person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta."

Rights of Transgender persons Bills

- **April 15, 2014:** The Supreme Court directs the government to legally recognise a "third gender" and give those who qualify new protections and benefits, including reservations in education and employment.
- **April 24, 2015:** RajyaSabha passes the Rights of Transgender Persons Bill, a private member's bill. The bill defines being transgender as a psychological phenomenon and provides reservations for transgender people.
- **August 2, 2016:** The government dispenses with the RajyaSabha bill and introduces its own Transgender Persons (Protection of Rights) Bill. It defines being transgender as a biological phenomenon and does not provide reservations.
- **July 22, 2017:** The standing committee on social justice and empowerment issues a report on the government bill.

The transgender protection right Bill-2019

- The Bill defines a transgender person as one who is partly female or male; or a combination of female and male; or neither female nor male. In addition, the person's gender must not match the gender assigned at birth and includes trans-men, trans-women, persons with intersex variations and gender-queers.
- A transgender person must obtain a certificate of identity as proof of recognition of identity as a transgender person and to invoke rights under the Bill.
- Offences such as compelling a transgender person to beg, denial of access to a public place, physical and sexual abuse, etc. would attract up to 2 years' imprisonment and a fine.
- Such a certificate would be granted by the District Magistrate on the recommendation of a Screening Committee. The committee would comprise a medical officer, a psychologist or psychiatrist, a district welfare officer, a government official, and a transgender person
- 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

Section 377

The Supreme Court struck down Article 377 of the Indian Penal Code and said, "The sexual orientation of an individual is natural and discrimination on the basis of sexual orientation is a violation of freedom of expression. The LGBT Community has the same rights as any ordinary citizen. The Supreme Court's decision to decriminalise homosexual behavior is the first step towards providing equal status and rights to the LGBT community in India. It further opens doors for the community to claim their right to marry, adopt and have a family. As the judgment only dealt with the criminalisation aspect of Section 377, it can be expected that the laws on same-sex marriage, adoption and inheritance of LGBT community.

National Council for Transgender Persons

The bill provides for the formation of a National Council for Transgender Persons that will advise the government on formulating policies for the community, and monitor the implementation, and address grievances, among others. Besides this, the bill does not make any mention of reservation in education and employment for the transgender community.

The legislation also states that the court can decide to place a transgender person in a rehabilitation centre if their families are unable to take care of them. It also adds that the Centre will provide for healthcare services, including sex reassignment surgery and hormonal therapy. The bill is, however, not specific on whether these services would be free or subsidised by the government. It adds though that there will be "provision for coverage of medical expenses by a comprehensive insurance scheme for sex reassignment surgery, hormonal therapy, laser therapy or any other health issues of transgender persons."

State laws for transgender people

- In 2014, the states of Tamil Nadu and Kerala were the first Indian states to introduce a transgender welfare policy. According to the policy, transgender people can access free sex reassignment surgery (SRS) in government hospitals (only for male-to-female), free housing, various citizenship documents, admission in government colleges with full scholarship for higher studies, alternative sources of livelihood through formation of self-help groups (for savings) and initiating income-generation programmes (IGP). Tamil Nadu was also the first state to form a transgender welfare board with representatives from the transgender community.
- After 2015, 17 states of India introduce welfare policies for transgender people.
- In April 2017, the Ministry of Drinking Water and Sanitation instructed states to allow transgender people to use the public toilet of their choice.

Key provisions of the bill about employment opportunities

- **Section 3(b):** prohibits the unfair treatment of a transgender person about employment or occupation.
- **Section 3(c):** prohibits the denial of employment and discriminatory termination from the same.
- **Section 10:** bars establishments from discriminating against a transgender person in matters related to employment such as recruitment, promotion and other related issues.
- **Section 11:** creates an obligation on establishments to comply with the provisions of the legislation and provide

necessary facilities to transpeople.

- **Section 12:** creates an obligation on every establishment consisting of more than 100 people to appoint a compliance officer who would deal with complaints regarding violations of the Act.
- **Section 15:** creates a duty on the appropriate government to formulate welfare schemes and programs to facilitate and support livelihood for transgender persons, including their vocational training and self-employment.
- **Section 17:** provides for the formation of a National Council by the Central Government with a representative from the Labour and Employment Department and Department of Legal Affairs, amongst others.
- **Section 19 (d):** provides for penalties and punishments in the event any person harms, injures or endangers the life, safety, health, or well-being of a transgender person or tends to do any act which causes abuse of any nature whether physical, sexual, verbal, emotional and/or economic abuse.

Employment rates of transgender in India

The first-ever study on the rights of transgenders by the National Human Rights Commission gives a clear picture of the scenario of transgender in the country. According to the study, about 92 percent of transgenders are deprived of the right to participate in any form of economic activity in the country, with even qualified ones refused jobs.

As per 2011 census data, India's trans population consist of 490,000 people, out of which handful of them only make it to gainful employment. Though there are number of efforts being made to change this narrative.

Some examples from today

1. Chhattisgarh police to recruit transgender constables, deploy them to combat Maoists: Chhattisgarh police propose to recruit about 35,000 constables from each of the state's 27 districts, of which 17 are reeling from collective insurgency. —Since constables are district-level unit, it is possible a transgender recruit will have to fight Maoists if that person is hired from a Maoist-affected area.

2. Prithika Yashini: India's first transgender police officer, win acceptance- After fighting social dogma, gender bias and many glass ceilings, Yashini has become the first transgender to be appointed as a police officer in Tamil Nadu. Yashini attempted to achieve a next to impossible goal by applying to become a police officer

3. Joyita Mondal: India's first transgender judge- A woman who became India's first transgender judge in July 2018 says she continues to fight for justice and respect. Joyita Mondal was appointed as a LokAdalat judge in north Bengal in a historic appointment that she hopes will flag the way for other people.

4. Transgender peoples in Odisha: Odisha has become the first state in the country to provide food grains, pension, health, education and housing benefits to the transgender community, thus including them in the Below Poverty Line (BPL) category.

Methodology

This article is purely based on secondary data. The data is collected from journals, newspapers, research article, Internet and govt. reports. The present situation of Transgender, their

rights, health and the constitutional rights are discussed in this article.

Review of Literature

Morton (2008) ^[8] found that 62 per cent of respondents had experienced transphobic harassment from strangers in public places who perceived them to be trans: mostly this had taken the form of verbal abuse but 40 per cent had experienced transphobic threatening behaviour, 17 per cent had been physically assaulted and 4 per cent had been sexually assaulted.

Sivakami, *et. al.* (2011) ^[12] conducted an interview on 120 transgenders of 20- 70 years old in Coimbatore to know their socio-economic status and nutritional status. The study revealed that transgenders suffered from mental stress due to non-acceptance and humiliation from society. These mental conditions affected their food intake routine. The common diseases known among transgenders are blood pressure, high blood sugar and HIV/AIDS.

Sudha, M. (2015) ^[13] found that thirty-five percent of participants had felt harsh transgender identity stigma, whereas 49 percent of participants had felt reasonable stigma. Only 44% of participants felt good quality of life (QOL), while 35% of participants reported very poor QOL. The QOL of participants depended on their acceptance or non-acceptance by their family members.

Chettiar A. (2015) ^[14] examined that the socio-economic status of hijras and to understand the problems faced by them with special reference to their health and the harassment face by the police. Among the hijras about half of them belong to the middle class and about 40% belonged to the upper lower class.

Athreye (2015) ^[3] argued that transgender people constitute the marginalized section of Indian society and face lots of legal, social as well as economic difficulties. Their families avoid to accept their transgender children, most of these children have left their school because of ill treatment by peers as well as by teachers, have very limited access to health services and public spaces. But some of the transgenders have excelled in various fields despite many barriers.

Divan, V. *et. al.* (2016) ^[5] explained that the United Nations Development Programme (UNDP) furnished literature of transgender community's human rights, health issues, socio-economic issues and also mentioned solutions for these problems. This document addressed to countries to take actions immediately to tackle the infringement of human rights of transgender persons, prevalence of HIV, poverty and humiliation. Suggests to encourage social acceptance, superior health services, impartiality and socio-economic development.

Andrews, D. T.G. (2016) ^[2] analyzed the dimensions of victimization of transgender people that includes biological, psychological, sociological and legal and also its effects on the permanent resident and migrant transgender people in Tamil Nadu state. Findings show that there is no significant difference between the biological dimension of victimization and educational qualification of the permanent resident transgender people and migrant transgender persons of Tamil Nadu state.

Thilakavathi *et al.* (2016) ^[14] All trans-women across each state reported that their sexual partners were males, whereas very few reported to have females also as their sexual partners. Majority of the trans-women mentioned during the discussion that they started having sex from the age of 8-15

years. For many, the first encounter happened with their close relatives and family members and mostly it was forced sex.

Sawant, N. S. (2017) ^[11] stated that Indian government has taken various welfare measures for the transgender people which include census, certification, providing citizenship ID Cards, passports, housing facility, legal measures, police reforms, legal and constitutional safeguards to prevent infringement of human rights of the third gender persons and institutional mechanisms to address unambiguous concerns of transgender people.

Konduru, D. *et al.* (2018) ^[7] defined the problems of transgender's sociocultural elimination and addition, their growth and attitudes of society towards them. Even after Supreme Court recognised transgender as third gender they still face elimination from social, cultural, political and economic fields. Society should have positive attitude towards them and accept them for giving dignified life.

Agosto, S. *et al.* (2018) ^[1] described that the rate of substance use is much higher in transgender community than the heterosexuals. The causing factors of this substance use in Transgender and Gender Nonconforming (TGNC) older adults are their loneliness, rejection from society, prejudicial treatment, guilt, violence and physical health.

Sameeta, *et al.* (2018) ^[10] found the connection between sociodemographic factors and subjective well-being among fifty transgender aged 18 years and above, in Manipur. The results show no significant connection between the subjective well-being and socio demographic parameters like age, educational qualification, profession, dwelling and outlook of family.

Conclusion

From the above discussion it is to be concluded that now it's time for the public of India to change their point of view towards the transgender. First step should be taken by the public and second by govt. of India. Indian authorities should implement the constitutional rights of transgender people. People need to understand that all people are different but after all every one is a Human being. The public and authorities should also work towards ending the discrimination against the transgender. There is also a need to spread larger awareness campaign in public for the acceptability of the Transgender community.

Recommendations

- Public should be welcomed with open arms in educational institutions, health care systems, work place both public and private, should be treated equally under the law and by the police.
- Transgender community has a right to behave and live they are and express their feelings without any fear.
- The society needs to take off their social stigma towards transgender community and give them a chance to stand equally and participate in together in the community development process.

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