

TRANSGENDER AND HUMAN RIGHTS

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INTRODUCTION

Transgender is the person whose gender identity, gender expression or behaviour does not conform to that typically associated with the sex to which they were assigned at birth. Gender identity refers to a person internal sense of being male or female. The changes in these peoples are due to hormones imbalance. Due to this hormonal variation the transgender depend on their parents, but the irony is that the later is not in a position to accept them income cases. Thus these people look for organizations that give food and shelter to such people. Transgender include trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormonal treatment or laser therapy, etc). In India there are a wide range of transgender related identities which includes the Hijiras, Aravanis, Kothis, Jogtas etc.

RIGHTS GRANTED UNDER INDIAN LAW TO TRANSGENDER

The Supreme Court of India in its pioneering judgment by the division bench of *Justices K.S. Radhakrishnan and A.K. Sikri in National Legal Services Authority v. Union of India & Ors.* [Writ Petition (Civil) No.400 of 2012(NALSA)] recognized the third gender along with the male and female. By recognizing diverse gender identities, the Court has busted the dual gender structure of 'man' and 'woman' which is recognized by the society. "Recognition of Transgender as a third gender is not a social or medical issue but a human rights issue," *Justice K.S. Radhakrishnan* told the Supreme Court while handing down the ruling.

The right of equality before law and equal protection of law is guaranteed under Article 14 and 21 of the Constitution. The right to chose one's gender identity is an essential part to lead a life with dignity which again falls under the ambit of Article 21. Determining the right to personal freedom and self determination, the Court observed that "the gender to which a person belongs is to be determined by the person concerned." The Court has given the people of India the right to gender identity.

Further, they cannot be discriminated against on the ground of gender as it is violative of Articles 14, 15, 16 and 21.

The Court also protects one's gender expression invoked by Article 19 (1) (a) and held that "no restriction can be placed on one's personal appearance or choice of dressing subject to the restrictions contained in article 19(2) of the Constitution".

The Court recognized the right to as to how a person choose to behave in private, personhood and the free thought process of the human being, which are necessary for the fullest development of the personality of the individual. The Court further noted that a person will not realize his dignity if he is forced to mature in a gender to which he does not belong to or he cannot relate to which will again hinder in his development.

The Supreme Court has given certain directions for the protection of the rights of the transgender persons by including of a third category in documents like the election card, passport, driving

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license and ration card, and for admission in educational institutions, hospitals, amongst others.

Human rights are basic rights and freedoms which are guaranteed to a human by virtue of him being a human which can neither be created nor can be abrogated by any government. It includes the right to life, liberty, equality, dignity and freedom of thought and expression.

RIGHT OF TRANSGENDER PERSONS BILL, 2014

The Bill was introduced in Rajya Sabha on 12th December, 2014 which is passed on 24th April, 2015 unanimously, with cross-party support. This was a private member's bill introduced by the MP from Tamil Nadu, Tiruchi Siva. 24th April is celebrated as Transgender day following the passage of the Bill in the Rajya Sabha.

The rights guaranteed under the Bill are mostly substantive rights such as the right to equality and non-discrimination, life and personal liberty, free speech, to live in a community, integrity, along with protection from torture or cruelty and abuse, violence and exploitation. There is a separate clause for transgender children.

Education, employment and social security and health are also covered under the Bill. The chapter on education makes it mandatory for the Government to provide inclusive education for transgender students and provide adult education to them.

With the employment chapter, there are two separate clauses dealing with formulation of schemes for vocational training and self-employment of transgender persons by the Government. There's a separate clause for non-discrimination against transgender persons in any establishment – public or private.

In the social security and health chapter, the Government is asked to propagate social security and health care facilities which are to be provided in the form of separate HIV clinics and free SRS.

They should be given the right to leisure, culture and recreation. Basic rights like access to safe drinking water and sanitation must be provided by the government.

The Bill envisages setting up a number of authorities and forums – National and State Commissions for Transgender Persons. The Commissions work will be mostly in the nature of inquiry or recommendations in the inconsistencies in the application of the law or violations of right of transgender persons. The Commissions can issue summons to witnesses, receive evidence, etc. There is penalty by way of imprisonment for upto a year for hate speech against transgender people.

Though Indian Government has given equal rights, they are kept away from them to a certain extent due to the implementation and execution procedures.

“Seldom our society realizes or cares to realize the trauma, agony and pain which the members of transgender community undergo nor appreciates the innate feeling of the members of the transgender community, especially of those whose mind and body disown their biological sex. Our society often ridicules and abuses the transgender community and in public places like railway station, bus stands, schools, work places, malls, theatres, hospitals they are sidelined, forgetting the fact that the moral failure lies in the society's unwillingness to certain or embrace different gender identities and expressions a mindset which we have to change”. - (Judgment of the Hon'ble Supreme Court of India on 15 April 2014).

These constitutional rights of Transgender are upheld on 15 th April 2014 by the Govt of India by emphasizing the fact that they ought to be treated as equal citizens in every sense of the term. The judgment has also directed the central and state governments to provide all the help to the transgender by considering them as OBC's for the purposes of education and employment in order to lead and life with dignity in the society.

TRANSGENDER PERSONS BILL 2016

The union Cabinet under the chairmanship of Prime Minister Narendra Modi approved the Transgender Persons Bill 2016.

Highlights of the Bill:

- The Bill defines a transgender person as one who is partly female or male; or a combination of female and male; or neither female or male. In addition the persons 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 involve rights under the bill.
- 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 health care. It directs the central and state governments to provide welfare schemes in these areas.
- Offenses like compelling a transgender person to beg, denial of accesses to a public place, physical and sexual abuse etc, would attract up to two years imprisonment and a fine.

CONCLUSION

Each being in this universe is indeed unique and an integral part of nature. It would be wrong to judge and discriminate people who may be different from the stereotype, which again is man-made. It is time that India realized that every individual in this country has equal rights and privileges, and follow the policy of "live and let live". Even if the Government and NGOs are taking so many policies for the education and other needs of the transgender, still a lot of work is remaining from the sides of Government, N.G.Os and other social welfare organizations for providing a platform for the education of the transgender in school and college levels. The education only will make the life of transgender to lead a normal life in the community.

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