



Transgender Rights in India

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Abstract

Sexuality is a major issue in INDIA. Sexuality has been listed as unnatural. Therefore, transgender life is full of struggles. They experience a lot of problems in their life. They are facing discrimination in every aspect of life. These people are at risk because they have lack of health facilities, employment and education facilities. Social stigma is another major issue that forces them to take unwanted decision i.e. attempting suicide. These factors affect their mental health and they are more likely to get depression and anxiety attacks too. My article is focused on transgender struggle, their rights and their present situation in India.

Keywords: Transgender, Rights, Struggle, India.

Introduction

When we are talking about transgender, the first thing that comes into our mind is a different category. Their behavior, liking and inner feelings are opposite from the sex assigned at birth. They usually wear Saree. Some people consider them as “sacred”. They are called by different local names such as “Hijra”, “Aravani”, “kinnar” depends on area. In the year of 2005, Indian Passport application forms added a third category “E (Eunuch)”. In Nov. 2009, India agreed to differentiate them as others different from males and females in voting identity cards and voting rights. Indian government has taken many steps to recognize them as equal citizens. Supreme Court also recognized the third gender as neither female nor male. Being a

transgender is not easy their own parents, society, culture doesn't accept them. So in this article I tried to understand their rights I really want to bring the change in the society. I am writing this article and just hoping that someone somewhere will read this piece of information and it might change their mindset towards transgender or any transgender reading this article might become aware of their rights and responsibilities. Transgender people are struggling in current times even in the 20th century where everyone thinks that they are living in open minded society. But reality is often different from what we see around the world. We can see social media awareness everywhere but how many of us are actually able to experience it in real life that transgender are living freely? Some of us or No one, right? You know the problem lies within us - in our mindset. I have seen a carry minati's video recently on YouTube roasting tiktokers on the bases of gender calling them "meetha" and the worst part was that video became the most liked non music video and was breaking records. I have seen many people around me making fun of people and calling them "chhake". I am writing this on behalf of my personal experience and what I have observed around me. I have read many articles talking about constitutional rights, about many NGO working for the well being of transgender, about transgender community leader constantly motivating others and many online platforms which are working for uplifting the transgender community but discrimination is not yet removed fully. They are facing physical assault, sexual violence, mental torture, abuse, employment discrimination, economic insecurity, homelessness and many other serious problems at every turn of their life. Even police don't help them they usually mock the complainants. They rarely register any complain and in case they do, they are not going to take that complain seriously so many transgender choose not to report the crimes. This is where the humanity dies and we fail as human beings. This study revolves around the struggle of transgender life and tries to find out practical solutions.

Objectives

- 1) To know the term "Transgender"
- 2) To know the Constitutional rights of transgender in India.
- 3) To understand the current situation of transgender.

Research Methodology

My article is purely based on Secondary data. Data was collected from reading research articles, books, newspapers, journals, 2011 census data and govt. reports.

Steps taken by government and constitutional rights are also included in this paper. After reading and collecting Data, it was summarized and analyzed.

Transgender Population in India

We do not have exact data available because some people hide their gender identity due to social stigmas and the fear of being harassed. In 2011, census data was collected and according to that there are 4.88 Lakh transgender in India. (India at Glance - Population Census 2011, 2011)

Transgender in Ancient India

Importance of transgender people can be traced back from the ancient India. They were presented in Mahabharata and Ramayana. They were given extremely important roles in Mughal emperor. Their situation got worst in the year of 1860 when British rule introduced section 377 of Indian penal code and started treating them as criminals. They have always been in Hindu methodology stories. According to these stories, Arjuna had a transgender form. A very beautiful fairy named Urvashi was attracted to him and wanted to marry him but he refused to marry her. Then Urvashi cursed him to become a transgender. The appearance of Lord Shiva as “Ardhnaari” –which is half male or half female is also accepted by millions of devotees. There is one more interesting story of Ramayana while going for “Vanvaas”, Lord Rama asked all men and women to return back, these transgender kept on standing for 14 years and when lord Rama asked the reason they replied as he only mentioned men and women in his speech. They had not returned because they are neither men nor women. Lord Rama was highly impressed by them and gave boon to bless people. That’s why this tradition of having Hijras on auspicious occasions such as child birth and wedding started. (Hsu, August 2015)

The term “Transgender”

Transgender people are those whose characteristics do not fall under stereotypical gender norms. These people are born with male or female like genitals but they feel different from their body structure. They feel different from then sex which is assigned at birth. Their appearance, behavior, identity and expressions are different from gender norms. In most of the area in India they are known as “Hijra”. Aravani is the famous local term for transgender in Tamil Nadu. Shiv-Shaktis are also transgenders community in Andhra Pradesh. Jogtas is the term famous in Maharashtra and Karnataka.

Rights of Transgender

I am going to talk about the rights of transgender granted under Indian law. Every person must be aware of his rights and responsibilities for better confident life.

Human Rights

As the name suggest human rights are basically given to all the human beings regardless of any Sex, caste, race, religion, ethnicity, language etc. Human rights include right to equality, freedom, liberty, life, education, expression and more. It also gives protection from torture, slavery and discrimination. (United Nations)

Rule of law

We all know that Rule of law is supreme which states that every individual is equal before law. Rule of law secures our right of equality.

Article14

Indian constitution gives us right of equality in Article 14. Everyone can enjoy the right of equality and can't be discriminated on the basis of color, caste, religion or sex (Indian kanoon)

Article15

Indian constitution protects everyone from any kind of discrimination against sex, caste and religion. Anyone can approach to court in case they are facing any kind of discrimination.

Article16

Article 16 gives us the equality of opportunity. No citizen shall be discriminated in employment opportunities on the ground of religion, race, caste, sex.

Transgender have all the right of equality same as the common people. Article 14, 15, 16 and 21 supports and secures their rights.

Article21

Article 21 of Indian constitution gives us protection and liberty.

Article23

Article 23 prohibits human trafficking and gives them freedom.

Rights of transgender Persons act, 2014

This bill gives many rights to transgender to ensure their equality and respect in society. No one can be deprived from the basic personal liberty on the ground of being transgender.

In 2014, government legally recognized "third gender" and guarantees equal education rights, no discrimination in employment, social security and health rights for their fullest development. (TRANSGENDER PERSONS BILL, 2014)

The court has also issued directives for state and central government to protect their fundamental rights.

Rights of transgender person bill, 2015

This bill talks about the ‘identification of transgender persons’. Transgender person holds freedom to choose their own gender option. Transgender people come under SC/ST category and can enjoy reservation facilities for backward classes.

(TRANSGENDER PERSONS BILL, 2015)

In 2016, the government introduced the transgender bill (Protection of rights).

Section 377

Section 377 was unconstitutional in nature, it criminalize consensual same sex relations. It was colonial era law which started recognizing transgender as criminals. In 2018, the supreme court of India abandoned section 377 and decriminalized homosexuality. This decision was the biggest victory in LGBTQ lives. (THE FIGHT TO DECRIMINALIZE HOMOSEXUALITY SINCE THE REPEAL OF SECTION 377)

Present situation of transgender

We have talked about the constitutional rights of transgender but the actual questions are “Are they actually able to enjoy their rights fully?”, “What is the present situation of transgender in India?” So we know that the court legally recognized the “Third gender” and provide them equal rights. Besides all these constitutional rights, they are still feeling ignored in the society. In present times their community in the society is still being unacceptable mostly. They are ignored in social and cultural participation and they have restricted access to education, health care, employment and other public services. People laugh on their different gender identity and make them feel unnatural. Their life is a battle, everyday they have new challenges standing on their doors. Instead of understanding their gender, everyone including their own family and friends forced them to behave according to the sex which assigned at the time of birth. Situation is not yet good because many health problems are faced by transgender people. Because of limited employment opportunities, these people are involved in sex work and risk their own life. They are more likely to get HIV and at high risk. Mental health, depression, harassment, mental and physical torture and violence are also very common in present times. They are facing a lot of challenges every day. An act, Protection of Rights of Transgender Persons was passed last year amid criticism and protests by activists. The community has said that government is ignoring their requests. Mumbai based Trans activist has claimed that Section 18 is contradictory itself where the punishment for rape is seven years but the punishment for sexual harassment against transgender is maximum of two years. They said when rules are not perfect

how we can assume these rules will change our situation. They are still fighting for their self identification. According to the act passed in 2019, they need to visit DM in order to be certified and DM can reject the application. Before this act they can simply file the application declaring their own identity but now the process has become complex and lengthier for them. Their main agenda is to let them be self identified and mandate this certificate only when they want to avail the government welfare benefits. Some of them are economically strong and they don't need the benefits. What they need is respect, love and their own identity.

Conclusion: Now the situation is changing because of the social media and awareness facilities. Transgender people are finding other people online belonging to the same gender and their unity is becoming their strength. They are now aware of their rights and responsibilities. Every individual should respect them as they are also human beings and we should treat them equal as our fellow citizens. State and central government should implement the laws strictly and give serious punishment to those who violates their rights. There should be more awareness program and campaigns for their community. They should be welcomed in the society, health care, educational institutes and everywhere. We should together work to end the discrimination, to uplift them and to create safe environment for them. People should understand their feelings “this is not a problem, this is only a gender- a third gender”. Third gender is different from male and female and this surely does not make them any less from human being. We need to remove this stereotype social stigma and give them chance to stand together. Let's make our India happy by spreading love and care among all.

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