



# THIRD BUT NOT INSIGNIFICANT: ACCESS TO JUSTICE TO THIRD GENDER

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**ABSTRACT:** It took certain time to complete this paper. This particular paper is based on certain governmental journals, internet sources, books, recent judgements, and the recent statutes. My work for the paper publication is on the following topic:

**“Third but not insignificant: Access to Justice to the Third Gender”.**

Transgender is also a part of the society and they have equal rights to everything in the world that is available to all other persons. The presence of such transgender is not new, but their presence is there since the time immemorial as could be seen from several scripts, probably because the nature requires such a class to maintain the equilibrium. The most important aspect we have to think is the discrimination. The discrimination based on their class and gender wakes the Transgender community one of the most disempowered group in the Indian society. In the light of Constitutional guarantees provided, there is no reason why Transgender community should not get their basic rights which is inherent.

I hope and trust that this work for publication should prove useful to everyone, who is interested in working in this field and making some contributions towards the conditions of the third gender community. It will help to identify and recognize the need of the day involved in legal process to improve the system.

## I. INTRODUCTION:

The entire Asian-based countries have existed the ancient history of the presence of gender-diversified males. From the previous decade, these people have been recognized as transgender women and have lived in India. Kama Sutra offers a realistic illustration of the people's sexual life associated with the third gender, also represented as Tritiya Prakriti.

There has been significantly existed transgender-based identities throughout India, whose experiences or cultures exist, such as Aravanis, Hijras, Kothi, etc. Compared to the present days, these people mainly had been treated with broad respect, and currently, they become a significant part of the globalized culture.

## II. CONCEPT OF TRANSGENDER

The terminology 'transgender' has been extracted from the Latin term 'trans' concerning the English word 'gender' where the diversified range of people come beneath this category. This terminology does not provide any specific gender orientation where the behavior of these people have such variation from the generalized gender-based male and woman. The continuous procedure of leading life as the transgender is not articulated as a more straightforward process because these people have neither been categorized as female nor male, so they cannot be accepted by most of the entire Asian society. These categorized people are the individuals based on any sex or age who are variant from the stereotypes of the generalized men and women. Their personal characteristics, appearance and behaviors have a significant difference compared with others. Throughout Asia, these transgender people have existed irrespective of the diversified culture, class, race by which the human lives' stories have been recorded. The terminology 'transgender' and, according to that, the medical technology-based facilities available for the trans-sexual are the latest concepts. Besides, this term has many other synonyms, including "gender non conforming", "gender variant", and "gender different". From the broad perspective, transgender entails the criteria of the specific people, whose characteristics have such differentiation than the generalized stereotypical people.

## III. HIJRAS: THE THIRD GENDER PEOPLE

The categorization of the third gender-based people demonstrates the 'Hijra' spread throughout the Indian periphery for the last four thousand years. This is identified that now this community is accompanied the half of a million of the entire Indian population. The term 'hijra' converts as a hermaphrodite, emphasizing the alternative gender compared to the men-women characteristics. The present terminology 'transgender' derived in the middle of 1900 from the base of the gender-variant people, which now has become the umbrella terminology that has broadly been utilized for specifying the wide varieties of experiences and identities of those people. This has described not only the trans-sexual people even the cross-dressers' intersex people based on both genders have also been included. Accordingly, irrespective of

both genders' sexual attitudes, the characteristics and appearance are recognized to be unusual and contained within this terminology specification.

#### **IV. VIOLENCE EXPERIENCED BY TRANSGENDER**

Based on the discrimination from the stereotypes, the individual who cannot identify himself as transgender still the society represents him under this category has experienced social abuse or the physical violence that hinder their mental stability. This occurred violence has also been continued for the respective who actually categorized themselves beneath this category. Transgender people have experienced the diversified problematic scenarios throughout India from where these people have stated that due to their differentiation from others, they are excluded from the culture, social, political participation, even from the decision-making procedures. The root cause of this exclusion is the gap of adequate determination of transgender people and hijras' gender status entails the major limitation in utilizing the legal rights based on their preferred gender. Concerning the period, the unfair treatment with the transgender, the occurrence of violence, varieties of specified harassment and even refusal from the services have been demonstrated in varieties of the news media.

#### **V. EQUAL RIGHTS BASED ON THE INDIAN CONSTITUTION**

The Preamble to the Constitution mandates Justice- social, economic and political equality of status. Thus the first and foremost right that they are deserving of is the right to equality under Article 14<sup>1</sup>. Article 15<sup>2</sup> of the Indian Constitution speaks about the prohibition of discrimination on the ground of religion, race, caste, sex or place of birth. Article 21<sup>3</sup> of the Indian Constitution ensures rights of privacy and personal dignity to all the citizens. Article 23<sup>4</sup> of the Indian Constitution prohibits trafficking in human beings as beggars and other similar forms of forced labour and any contravention of these provisions shall be an offence punishable in accordance with law.

##### **(a) LEGAL RIGHTS FOR INDIAN CITIZENS**

The Constitution provides for the fundamental right to equality, and tolerates no discrimination on the grounds of sex, caste, creed or religion. The Constitution also guarantees political rights and other benefits to every citizens. But the third gender continues to be ostracized. The Constitution affirms equality in all spheres but the root question is whether it is being applied.

The phenomenon can be observed at the International level also, principally in the form of practice related to the United Nations sponsored human rights treaties, as well as

<sup>1</sup> Article 14- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

<sup>2</sup> Article 15- Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth.

<sup>3</sup> Article 21- No person shall be deprived of his life or personal liberty except according to the procedure established by law.

<sup>4</sup> Article 23- Prohibition of traffic in human beings and forced labour.

under the European Convention of Human Rights. The development of this sexual orientation and gender identity related human rights legal doctrine can be categorized as follows:

- (i) Non-discrimination
- (ii) Protection of Privacy Rights
- (iii) The ensuring of other general human rights protection to all, regardless of sexual orientation of gender identity.

In the light of the Constitutional guarantees provided, there is no reason why Transgender community should not get their basic rights, which include Right to Personal Liberty, Dignity, Freedom of Expression, Right to Education and Empowerment, Right against Violence, Discrimination and Exploitation.

## **(b) CONSTITUTIONAL IMPLICATION OF LEGAL RIGHTS**

The Constitution endures person in every generation and every generation can invoke its principles in their own search for greater freedom, therefore, it is the duty of the Judiciary to interpret the provisions of the Constitution in such a way so as to ensure a life of dignity for them.

As per the Constitution, most of the protections under Fundamental Rights are available to all persons with some rights being restricted only to the citizens. Beyond this categorization, the Constitution makes no further distinction among rights holders. Official identity papers provide civic personhood. Among the instruments by which the Indian State defines civic personhood, sexual (gender) identity is a crucial and unavoidable category. Identification on the basis of sex within male and female is a crucial component of civic identity as required by the Indian State.

## **(c) LEGAL POLICY FOR THIRD GENDER**

The Indian State's policy of recognizing only two sexes and refusing to recognize hijras as women, or as a third sex (if a hijra wants it) has deprived them at a stroke of several rights that Indian citizens take for granted. These rights include the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's license, the right to education, employment, health, so on. Such deprivation secludes hijras from the very fabric of Indian Civil Society.

The main problems that are being faced by the Transgender community are of discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities, depression, hormone pill abuses, tobacco and alcohol abuse, penectomy and problems related to marriage and adoption.

## **(d) NEGLIGENCE OF TRANSGENDER'S LEGAL RIGHTS**

In 1994, transgender persons got the voting rights 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.

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 outcast and many way can end up begging and dancing. This is by all means human trafficking. They even engage themselves as sex workers for survival.

## **VI. ACCESS TO JUSTICE**

One to four percent of the world population is intersexed, not fully male or female. After Independence, however they are denotified in 1952, though the century old stigma reduces the transgender to individuals who are not considered human, thus devoid of all human rights. They suffer a whole lot of mental, physical and sexual oppression in the society. The health and well being of transgender people suffers great harm by attitudes of intolerance and hatred toward diverse gender expression.

### **(a) IMMORAL TRAFFIC PREVENTION ACT (ITPA), 1956**

Immoral Traffic Prevention Act of 1956 (amended in 1986) is the chief instrument of the Indian State's regulation of prostitution which mandates to prevent the traffic of women and children into prostitution. With the 1986 amendment, the title was modified to "Immoral Traffic Prevention Act" and it became gender neutral. The ambit of the Act now applied to both male and female sex workers and possibly also to those whose gender identity was indeterminate. It is with the 1986 amendment that both male and hijra sex workers became criminal subjects of the ITPA (Immoral Traffic Prevention Act). This provided the legal basis for arrest and intimidation of the transgender sex workers population.

### **(b) INDIAN PENAL CODE, 1860 (SECTION 377)**

Section 377 of the Indian Penal Code, 1860, was drafted by Lord Macaulay. It comes under the section titled 'Offences Affecting the Human Body' and provision provides the sanction for the prosecution of certain kinds of sexual acts deemed to be unnatural. It is important to note that regardless of consent these sexual acts are liable for prosecution provided they are seen as casual intercourse against the order of nature, with man, woman, or animal and thus satisfy the requirement of penetration. And to be a homosexual or hijra, is to draw the presumption that the hijra or the homosexual is engaging in 'carnal intercourse against the order of nature'.



### (c) HARRASSMENT OF TRANSGENDER PEOPLE

Section 377<sup>5</sup> has been extensively used by the law enforcers to harass and exploit homosexuals and transgender persons. Various such incidents have come to light in the recent past. In a case **Jayalaxmi vs State of Tamil Nadu**<sup>6</sup>, Pandian, a transgender was arrested by the police on charges of theft. He was sexually abused in the police station which ultimately led him to immolate himself in the premises of the police station.

Similarly, a policemen arrested Narayana, a transgender, in Bangalore on suspicion of theft without informing him of the grounds of arrest or extending any opportunity to him to defend himself. His diary was confiscated by the police and he was threatened with dire consequences if he did not assist in identifying other transgenders he was acquainted with.

Homosexuals have also been at the aggrieved end of financial extortion by the police in charge for not revealing their identities to society.

Kokila is a 21 year old hijra, member of a traditional male to female transsexual community in South Asia, living in Bangalore city. On 18th June 2004, she was raped by several men. However, when Kokila attempted to seek redress by the police, she was arrested, verbally harassed and tortured. Her gender identity was ridiculed and she was forced to remain naked for many hours.<sup>7</sup>

Similarly, the Indian Council for Medical Research (ICMR) and Indian Medical Association (IMA) have not prescribed any guidelines for Sex Reassignment Surgery (SRS). This reticence on the part of the medical sphere has led many transgenders to approach quacks, putting themselves at grave risks.

From the numerous instances of abuse and violence against homosexuals and transgenders, it is evident that Section 377 of the Indian Penal Code, 1860 has been grossly misused. It is equally obvious that a judicial move to address this concern was exigent in the face of a law enforcement framework so hostile that exploitation at the hands of the alleged protectors became a quotidian affair for sexual minorities in India.

With the advent of the contemporary epoch, the movement against the repressive and oppressive nature of Section 377 grew exponentially and it was finally on July 2, 2009 that for the first time any court in India pronounced that the oppression meted out to the

<sup>5</sup> Section 377 IPC- Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years and shall also be liable to fine.

<sup>6</sup> 2007 4 MLJ 849

<sup>7</sup> [igLhrc.org/content/india-rape-and-police-abuse-hijra-bangalore-call-action-sangama](http://igLhrc.org/content/india-rape-and-police-abuse-hijra-bangalore-call-action-sangama)

transgender community and the homosexuals in the country is violative of Right to Equality under Article 14, Right against Discrimination under Article 15, and Right to Privacy and Personal Dignity under Article 21 of the Indian Constitution.

These rights are not only constitutionally guaranteed, but are also implicit in the Universal Declaration of Human Rights, and should therefore enjoy a superior position to other rights. The Judgement of the Delhi High Court reflects a sense of conscience and empathy towards the sexual minorities, emotions that were hitherto unknown. Section 377, in its criminalization of homosexual activity was a repressive measure on the fundamental rights of transgender community.

#### **(d) MODIFICATION OF LAWS FOR TRANSGENDER PEOPLE**

In contrast, transgender people have experienced inhumanity and abused physically or mentally by others, then they have not acquired any compensation approaches against facing grievance. In order to eradicate the inhuman behavior or maltreatment towards transgender, there has been a significant necessity to improve the existing laws within the Indian Constitution. Accordingly, the lawyers and even police departments adopt such humanitarian approaches through which they become sensible about the transgender people and properly behave with them while further dealing with this community. By properly modifying the laws, and becoming sensible, the Indian society should eradicate the ancient bias and acquire that the transgender people are normal as others. The differentiation is within their feelings towards sexual orientation.

All the laws of the land should be applied to them like any other person. They should be treated equally, respectfully and without any discrimination. They should not be discriminated against in exercising their right to apply for job, access to public place, right to property or their right to access justice.

#### **(e) ACTIONS FOR TRANSGENDER PEOPLE**

It is very vital that the judicial officers and the police officers do not become the means to institutionalize or to enforce such discrimination. Rather, they should spread awareness in the societal area they work in and enlighten the laymen that the transgender are as human as them and deserve to be treated in the same manner. There should be a group of activists to whom any matter should involve social workers dedicated to the cause of upliftment of the transgender community and also lawyers through with the law on the subject.

Shelter homes should be made available for such transgenders who are facing violence and are in further risk in going through the same during the proceedings. The officials dealing with issues relating to transgender should observe complete transparency

during such events. One should always remember that being in the legal profession it is our first and foremost duty to fight for the rights of the people who can't fight for themselves. Thus establishment of a division under the local legal services authority in order to provide legal aid to the transgenders, will adequately serve the purpose.

India's transsexuals are also listed as 'others', distinct from males and females, on electoral rolls and voter identity cards since 2009. This identity of a third gender was a major step ahead in their struggle for political rights.

## VII. PROTECTION OF TRANSGENDER COMMUNITY'S HUMAN RIGHTS UNDER THE INTERNATIONAL COVENANTS AND FOREIGN JUDGEMENTS (ICFJ)

Right to life and privacy is a basic inherent right that all individuals may possess and there are certain International Covenants which governs for the protection of such rights to an individual irrespective of their sex, caste, religion, status, nationality etc.

Article 12 of the Universal Declaration of Human Rights, 1948, refers to privacy and it states that:

**“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”**

Article 17 of the International Covenant of Civil and Political Rights, 1966, refers to privacy and it states that:

**“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence nor to unlawful attacks on his honour and reputation.”**

The European Convention on Human Rights also states that:

1. **Everyone has the right to respect for his private and family life, his home and his correspondence.**
2. **There shall be no interference by a public authority except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country for the protection of health or morals or for the protection of the rights and freedoms of others.**



**Dudgeon vs the United Kingdom**<sup>8</sup> was a European Court of Human Rights case, which held that Section 11<sup>9</sup> of the Criminal Law Amendment Act, 1885, which criminalized male homosexual acts in England, Wales and Northern Ireland violated the European Convention on Human Rights. This was the first case of European Court of Human Rights to be decided in favour of LGBT (Lesbian, Gay, Bisexual, Transgender). The court held by 14 votes to 5 that it was not necessary also to examine the case under Article 14<sup>10</sup> taken in conjunction with Article 8<sup>11</sup> which would otherwise have meant considering the aspect of discrimination. It stated that once it has been held that the restriction on the applicant's right to respect for his private sexual life give rise to breach of Article 8 by reason of its breadth and absolute character, there is no useful legal purpose to be served in determining whether he has in addition suffered discrimination as compared with other persons.

**David Norris vs Ireland**<sup>12</sup> was a case decided by European Court of Human Rights in 1988 in which David Norris successfully charged the Republic of Ireland's criminalization of certain homosexual acts between consenting adult men was in breach of Article 8 of the European Convention on Human Rights.

## VIII. PROTECTION OF LIFE AND PERSON'S DIGNITY AND PRIVACY UNDER THE CONSTITUTION OF INDIA

Until the decision of the Supreme Court in the case **Maneka Gandhi vs Union Of India**<sup>13</sup>, a rather narrow and constricted meaning was given to the guarantee embodied in Article 21. But in Maneka Gandhi's case, a seven Judge Bench decision, P.N. Bhagwati J. held that the expression "personal liberty" in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and give additional protection under Article 19. Any law interfering with personal liberty must satisfy a triple test:

- (i) It must prescribe a procedure;
- (ii) The procedure must withstand a test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation;
- (iii) It must also be liable to be tested with reference to Article 14.

<sup>8</sup> 45 Eur. Ct. HR 1981

<sup>9</sup> Section 11 of the Criminal Law Amendment Act, 1885 commonly known as the Labouchere Amendment. It was later repealed by the Sexual Offences Act, 1967.

<sup>10</sup> Article 14- Article 14 of the European Convention on Human Rights deals with Prohibition of Discrimination.

<sup>11</sup> Article 8- Article 8 of the European Convention on Human Rights deals with Right to respect for private and family life

<sup>12</sup> [1983] Application No. 10581/83

<sup>13</sup> AIR 1978 SC 597

**(a) EVOLUTION OF LAWS AFTER MANEKA GANDHI'S CASE**

The decision in Maneka Gandhi's case became the starting point for a very significant evolution of the law, culminating in the following decisions:

- (i) **M.H. Hoskot vs State of Maharashtra**<sup>14</sup>,
- (ii) **Hussainara Khatoon and Others vs Home Secretary, State of Bihar**<sup>15</sup>
- (iii) **Sunil Batra vs Delhi Administration**<sup>16</sup>
- (iv) **Prem Shankar Shukla vs Delhi Administration**<sup>17</sup>
- (v) **Francis Coralie Mullin vs Administrator, Union Territory and Others**<sup>18</sup>

Dignity, as observed by L'Heureux-Dube J. is a difficult concept to capture in precise terms.<sup>19</sup> As its least, it is clear that the constitutional protection of dignity requires us to acknowledge the value and worth of all individuals as members of our society. It recognises a person as a free being who develops his or her body and mind as he or she sees fit. At the root of the dignity, is the autonomy of the private will and person's freedom of choice and action. Human dignity rests on recognition of the physical and spiritual integrity of the human being, his or her humanity, and his value as a person, irrespective of the utility he can provide to others. The expression "dignity of the individual" finds specific mention in the Preamble to the Constitution of India. V.R.Krishna Iyer. J. observed that the guarantee of human dignity forms part of of our constitutional culture<sup>20</sup>.

Human dignity means that an individual or group feels self respect and self worth. It is concerned with physical and psychological integrity and empowerment. Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, and merits of different individuals, taking into account the context underlying the differences. Human dignity is harmed when individuals and groups are marginalized, ignored and devalued.<sup>21</sup>

In India, our Constitution does not contain a specific provision as to privacy but the right to privacy has, as we shall presently show, been spelt out by our Supreme Court from the provisions of Article 19 (1) (a) dealing with freedom of speech and expression, Article 19 (1) (d) dealing with right to freedom of movement and from Article 21, which deals with right to life and liberty.

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<sup>14</sup> AIR 1978 SC 1548

<sup>15</sup> AIR 1979 SC 1360

<sup>16</sup> AIR 1978 SC 1675

<sup>17</sup> AIR 1980 SC 1535

<sup>18</sup> 1981 SCC (1) 608

<sup>19</sup> Egan vs Canada (1995) 29 CPR 79 at 106

<sup>20</sup> Prem Shankar Shukla vs Delhi Admin (Supra) page 529 of SCC

<sup>21</sup> The Canadian Supreme Court in Law vs Canada (Ministry of Employment and Immigration) 1999 1 S.C.R. 497

In **Kharak Singh vs State of Uttar Pradesh**<sup>22</sup>, the U.P Regulations regarding domiciliary visits were in question and majority referred to **Munn vs Illionis**<sup>23</sup> and held that our Constitution did not refer to the right to privacy expressly, still it can be traced in Article 21.

A two bench Judge in the case **R.Raja Gopal vs State of Tamil Nadu**<sup>24</sup>, held the right to privacy to be implicit in the right to life and liberty guaranteed to the citizens of India by Article 21. "It is the right to be left alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among many other matters.

In **District Registrar and Collector Hyderabad and Anr vs Canara Bank and Anr**<sup>25</sup> it was held that right to privacy must be dealt with persons and not places. The right to privacy has been accepted as implied in our Constitution, in other cases, namely, **People's Union for Civil Liberties vs Union of India**<sup>26</sup> and **Sharda vs Dharampal**<sup>27</sup>.

## IX. CONTRIBUTION OF THE INDIAN JUDICIARY IN PROTECTING THE RIGHTS OF TRANSGENDER

**National Legal Services Authority (NALSA) vs Union of India**<sup>28</sup> is a landmark decision by the Supreme Court Of India, which declared transgender people to be a 'third gender', affirmed that the fundamental rights granted under the Constitution of India will be equally appreciable to transgender people, and gave them the right to self-identification of their gender as male, female or third gender. Moreover, the court also held that because transgender people were treated as socially and economically backward classes, they will be granted reservations in admissions to educational institutions and jobs.

The court in this particular case directed Centre and State Government 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 recognizes 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 s both criminal and civil statutes such as those relating to marriage, adoption, divorce etc is discriminatory to the third gender.

Legal Recognition for persons transitioning within male/female binary: As far as how the actual procedure of recognition will happen, the court merely states that they prefer

<sup>22</sup> 1963 AIR 1295

<sup>23</sup> 94 U.S. 113

<sup>24</sup> 1995 AIR 264

<sup>25</sup> Case No. Appeal (Civil) 6350-6374 of 1997

<sup>26</sup> Writ Petition (CrL.) 612 of 1992

<sup>27</sup> (2003) 4 SCC 493

<sup>28</sup> WP (Civil) No. 604 of 2013

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 transgender people.

**Socio- Economic Rights:** Centre and State Governments have been decided to take proper measures to provide medical care to Transgender people. 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 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 to 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.

The court notes that these declarations are to be read in light of the Ministry of Social Justice and Empowerment Expert Committee Report on issues relating to Transgender people.

## X. RIGHTS OF TRANSGENDER PERSON’S BILL, 2014

The “Rights of Transgender Persons Bill,2014” was passed by the Rajya Sabha 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, and is the first private member’s bill passed since the last 45 years.

The immediate legal opinion we have received about the status of the bill is the following:

“There are a number of steps required to be passed before the Rights of Transgender Persons Bill, 2014 becomes a law. A bill has to be passed by both Houses of Parliament and obtain Presidential assent before it becomes an Act. At present, the bill has only been passed by the Rajya Sabha. Following this it will be sent before the Lok Sabha for considering and passing. The Lok Sabha can make amendments to the Bill after which it will have to be passed by the Rajya Sabha again before it goes before the President for assent”.

The Rights Of Transgender Persons Bill, 2014 extends to the whole of India. This Act particularly contains certain rights which helps in protecting the dignity and rights of the transgender person and assures them social, economic, and political justice within the territory of the State.

Chapter II of the Act contains certain rights and entitlements which helps in assuring justice to the third gender. They are as follows:-

- (1) According to Section 4(1) the appropriate Government shall take all necessary steps to ensure that transgender persons enjoy the right of equality guaranteed by Article 15 of the Constitution of India on an equal basis with others.
- (2) Section 4(2) states that the appropriate Government shall take all necessary steps to ensure reasonable accommodation for the transgender person.
- (3) Section 5(1) states that the appropriate Government and local authorities shall take all necessary measures to ensure that transgender children enjoy human rights on an equal basis with other children.
- (4) It is provided under Section 5(2) that the appropriate Government and local authorities shall ensure that all transgender children shall have an equal basis with all other children a right to freely express their views on all matters affecting them and provide them appropriate support for the exercise of the right.
- (5) Section 11(1) states that no child who is a transgender shall be separated from his or her parents on grounds of being a transgender except on an order of competent court, if required in the best interest of the child.
- (6) According to Section 11(2) it is stated that where the immediate family is unable to care for a transgender child, the competent court shall make every effort to place such child within his or her extended family or within the community in a family setting.
- (7) It is mentioned clearly that under Section 6 that no person shall be deprived of his personal liberty only on the ground of being a transgender.
- (8) The appropriate Government and local authorities shall take all appropriate administrative and other measures to protect persons from being subjected to torture or cruel, inhumane or degrading treatment or punishment.
- (9) Section 10 states that the appropriate government and local authorities shall take all appropriate administrative, social, educational and other measures to protect transgender persons, both within and outside the home, from all forms of abuse, violence and exploitation.
- (10) Every transgender person has a right to respect for his or her physical and mental integrity on an equal basis with others.



## **XI. RECOMMENDATIONS AND SUGGESTIONS**

The continuous prejudice against Kothi and Hijra are included in both India's state and civil society. Accordingly, the brutality that they experience continuously is not for only the State's actions. The extensive and extended societal roots have the major cause beyond this violence. In order to recommend, it is needed to implicate broader modifications in the existing societal relations. Apart from shifts in class relations, change would also crucially hinge upon overturning the existing regime of both gender and sexuality that enforces its own hierarchies, exclusions and oppressions. While keeping in mind this wider context, a human rights approach has to deal with the various institutional contexts and think through ways in which change can be brought about.

## **XII. LEGAL MEASURES FOR TRANSGENDER'S PROTECTION**

The diversified legal measurements and actions taken by the government and local authorities to protect transgender securely is demonstrated as follows:

1. Comprehensive civil rights legislations should be enacted to offer hijra's protections. The Constitution should be amended to include sexual orientation/ gender identity as a ground of non-discrimination.
2. There should be a special legal protection against this form of discrimination inflicted by both State and Civil society which is very akin to the offence of practicing untouchability.
3. The Immoral Trafficking Prevention Act, 1956 as has been pointed out earlier, is used for preventing trafficking than for intimidating those who are the most vulnerable. This law needs to be reformed with a clear understanding of how the State is to deal with those engaged in sex work.
4. Section 375 of Indian Penal Code, 1860 and also another comprehensive sexual assault law should be enacted applying to all persons irrespective of their sex.
5. Civil rights under law such as the right to make a will, inherit property and adopt children must be available to all regardless of change in gender/sex identities.

## **XIII. POLICY REFORMS FOR TRANSGENDER**

1. The police administration should appoint standing committee comprising Station House Officers and human rights and social activists to promptly investigate reports of gross abuses by the police against kothis and hijras in public areas and police stations and the guilty policeman be immediately punished.
2. The police administration should adopt transparency in their dealings with hijras and kothis; make available all information relating to procedure and penalties used in detaining kothis and hijras in public places.
3. Protection and safety should be ensured for hijras and kothis to prevent rape in police custody and in jail. Hijras should not be sent into male cells with other men in order to prevent harassment, abuses and rape.

4. The police at all levels should undergo sensitization workshops by human rights groups/ queer groups in order to break down their social prejudices and to train them to accord hijras and kothis the same courteous and human treatment as they should towards the general public.

#### XIV. CONCLUSION

The overall explanation about the legal protection of transgender people has been deduced that the sex-education enabled programme must be included within the school level. This eradicates the aspects of heterosexism aspects in the education curriculum and offers judgement-free information for all citizens that boosts the liberal inspection concerning the aspects of sexuality, gender, identity, sexual orientation etc. Accordingly, vocational centres should be inaugurated for providing training to them to enhance their capabilities for further job opportunities.

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