

## LEGAL SAFEGUARDS AND WELFARE MEASURES OF TRANSGENDER IN INDIA

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### Abstract

This article deals with the legal safeguards and welfare schemes of Transgender people in India. Transgender are the marginalized community in India, whom denied the education, employment, accommodation and health opportunities. In addition, they are deprived the social status, including religious space. Even they are not treated as the normal human, neglected their rights. In the democratic country of India, the legal acts executed for the enhancing the status of this community. Prior to develop the community and provide security through the legal and welfare measures. Transgender were received highest dignity before the British arrived in India. During ancient period, they were treated as the great position, through the mythological and religious views. In Medieval period, they were in the prominent position as equal other genders, also given equal opportunities in the royal household. British are reached India; they curtailed the power of Transgender, also announced them as criminals, under Criminal Tribes Act of 1861. By reflection, transgender lost their rights and pride in the society. However, there were continues steps to taken by the central and state government of India for the welfare of the people, through conditional rights. Finally, they got great opportunities in the NALSA judgment in 2014. The legal safeguards and welfare measures has given the prosperous life of transgender in the contemporary period. Nevertheless, the social stigma and social space missed out in the society.

**Keywords:** Transgender People, Legal Safeguards, Welfare Measures, Social Stigma, NALSA Judgment.

### INTRODUCTION

Transgender are the marginalized community in India, whom denied the education, employment, accommodation and health opportunities. In addition, they are deprived the social status, including religious space. Even they are not treated as the normal human, neglected their rights. In the democratic country of India, the legal acts executed for the upliftment of this community. Prior to develop the community and provide security through the legal and welfare measures. Transgender were received highest dignity before the British arrived in India. During ancient period, they were treated as the great position, through the mythological and religious views. In Medieval period, they were in the prominent position as equal other genders, also given equal opportunities in the royal household. British are reached India; they curtailed the power of Transgender, also announced them as criminals, under Criminal Tribes Act of 1861. By reflection, transgender lost their rights and pride in the society. However, there were continues steps to taken by the central and state government of India for the welfare of the people, through conditional rights. Finally, they got great opportunities in the NALSA judgment in 2014. More than 13 states establish welfare board to enhance the status of the transgender people.

The welfare schemes given the benefaction to the community over the years. This article deals with the legal safeguards and welfare schemes of Transgender people in India.

## **Transgender**

The psychiatrist John F Oliven Columbia University coined the Term transgender in 1965.<sup>1</sup> The Transgender defined by the NALSA judgment as “all individuals whose gender does not assigned to them at birth and includes trans-man and trans-women (whether or not they have undergone sex reassignment surgery (SRS), and individuals with socio cultural difference, named under law as third gender. The transgender people have been known under different names in different places ; ‘baklas’ in the Philippines, berdaches among American Indian tribes, ‘Xaniths’ in Omen,<sup>3</sup> ‘Serrers’<sup>4</sup>in Africa, ‘Kathoey’ in Thailand, and ‘Waria” in Indonesia. In India, they are known as Khusras, ‘Hijras’, Aravani’, ‘Aruvani’ ,Kothis, Jogtas/Jogappas, Shiv-shak, ‘Chakka kinnar’, ‘Jagappa’, Cross dressers (zenena), etc.,<sup>2</sup>In India people generally refereed as transgender are ‘hijras’ who can be loosely called a eunuch in English.

## **British Period**

Hijras played important role before the Colonial rule around 16<sup>th</sup> century. The situation has completely changed the approach of the British, perhaps they curtails the power and glory of the transgender. In addition, British made laws and legally strict the transgender as criminal tribes, from Criminal Tribes Act of 1871. British monitor the transgender in a different gender community executed some restrictions. After this act, transgender register their name in the local police station, if they appeared on the streets in public wearing jewelry as women, which made criminal action. In addition, the local officials monitor the transgender during this period. Moreover, this act given the power to the officials arrested the transgender without warrant. In addition, they could punish with imprisonment up to two years also fine or both panchayat bodies. Transgender should register the names addresses and property of transgender living in the area to the local panchayat bodies. Some of the transgender could suspect of abducting or mutilating children or committing offenses, under article 377 of the constitution of India. If the offense proved the act offense punishable by fine or imprisonment for two years for the registered transgender person to keep with her a child below sixteen years on age could be offense. Moreover, they are restricted to the civil rights, because transgender neglected to adopt the children. However, this law has removed on August 1949.<sup>3</sup>

Once British use the powerful policy to annex, the states for an objective become the supreme power in India. On the path, the Subsidiary Alliance of Lord Wellesley, and Doctrine of Lapse of Lord Dalhousie become the prominent scheme to empower British as paramount power. However, some of the Independent states like Satara, Sambhalpur and Jansi lost their territory for the above plan. After lost their pride and wealth, they united to fight against the British, which called as Sepoy mutiny of 1858. After this incident, the British changed their vision, at once the Queen revealed that the friendly approach, and exhibited through Queen Proclamation of 1858. This could be the important act, which given the legal safeguard, that ‘every citizen of India are equal before the law’. This is also applicable for the transgender community, because they are curtailed the power of transgender through the Criminal Tribes Act.

<sup>4</sup>Later the King Edward VII authenticated through the proclamation, which reiterated the guarantee of equality. The adjoining development of the equality toward the important act of 1935. In this act, the section 298(1) tells, “No subject of His majesty domiciled in India, shall on the grounds only of place, religion, place of birth, descent and colour”. This act also gives the guarantee from sex discrimination of any citizen under section 275.<sup>5</sup>

### **Gender Identity and Sexuality United Nations Human Rights Organizations**

The United Nations is an instrument for recommending the protection and promotion of rights of sexual minorities, including transgender persons the universal declaration of human rights. The International Human rights covenant, the speech recognize an article 6 of 1948, given civil and political rights of everyone. In addition, the article 16 of 1966 recognize the inherent right once of everyone of life this right and protected by the law.

ICCPR speech states that not everyone shall subjected to arbitrary or unlawful interference with his privacy family, home and communications, such his honour and reputation should not be attacked under the article 17. It gives the legal protection to safeguard themselves through legal proceedings, such as interference or detention on behalf of alliance of human rights organization.

Moreover, the International commission of judges, the International service for human rights and International commission on human rights is committed to government an international legal framework for human right expert group of rights violations, like sexual orientation and gender identity. A project to develop the collection was undertaken by the meeting held on between 6 and 9 November 2006 at Katajamata University at Indonesia.

The Human rights expert group drafted developed and discussed reformed principles and unanimously adopted the Yogyakarta principles on the application of international human rights law on sexuality and gender identity the Yogyakarta principles comprehensively address human rights standards regarding sexual orientation and gender identity some yogic.<sup>6</sup>

### **Constitutional Rights**

After Independence, India have prepared to adopt the constitution for unique. For instance, the drafting committee convened under the headship of Ambedkar. This constitution adopted in 1950 A.D., under this constitution, the article 14 has given the rights of any citizen equal before the law. The constitutional scheme of basic rights to non-discriminations enshrined under the article 14 and 15 protects right of any citizen on the grounds of sex.

However, these rights recognized through the years only for traditional gender of female and males. The case of the National Legal Service Authority (NALSA) Vs Union of India, given the protection against the discrimination on the grounds of sex, includes sexual identity and sexual orientation. After passing the landmark judgment by the Supreme, at once Aishwarya Rituparna Pradhan, a 38-year-old transgender person joined financial service, become the first civil service servant of India.<sup>7</sup>

## **NALSA Judgment**

For surviving their life without received proper legal rights, social status and social identity, the landmark judgment upheld the Straus of transgender community in India. This judgment not only given great vision to the people, also the series of acts reveled by the parliament for enhance their status, dated 15.04.2014; <sup>8</sup>This judgment acknowledged that hijras or eunuchs apart from the binary gender, could be treated as third gender. It gives legal status now in the place; the transgender has access to the rights guaranteed under the constitution. This could be beginning point of real development of the transgender through constitution, and other welfare measure. Because, both central and state government made initiative about the concern of transgender given special progress with the welfare schemes and programmes.

## **The Transgender Persons (Protection of Rights) Bill, 2014**

Trichy Siva, a member of Parliament introduced a private member's bill championed to evolve the transgender development. The bills has some features like healthcare, education, prevention of abuse, financial aid, violence or exploitation, social inclusion, acceptance and Rehabilitation. This Bill has introduced in the Rajya sabha on 10 December 2014. A series of discussion held on 27 February 2015 and 8 March 2015. However, the bill does not discussed on the following monsoon and winter session. On 16 December 2016, the bill displayed in the official website of Ministry of Social justice and Empowerment under the name 'The Transgender Persons (Protection of Rights) Bill, 2016'. However, some members have different opinion, because it did not uphold all the transgender community. Particularly, the bill completely criticized for the certification of transgender with approval of screening committee, which violated the benefit of equality.

## **The Transgender Persons (Protection of Rights) Bill, 2016**

The transgender persons bill again introduced in the new name "The Transgender Persons (Protection of Rights) Bill, 2016' in Lok Sabha. In December 2016, the committee sought three months extension for submitting its report the bill. The bill prohibits discrimination against transgender people in the following areas: healthcare, education, access to quality services, opportunities, facilities, public accommodations, freedom of movement, ownership or occupation of real estate, employment opportunities in public or private sectors, and access to government or private establishments, and other things. The bill established penalties for forcing transgender people to engage in forced or bonded labour, begging, denying them access to public spaces, refusing them a place to live or work, abusing them physically, verbally, emotionally, or financially, etc. Additionally, it shields transgender people who are subject to penalties and imprisonment for a period ranging from six months to two years.

According to the bill, appropriate government authorities will take action to guarantee transgender people's complete inclusion and involvement in society, as well as actions to guarantee their rescue, rehabilitation, and vocational training. In September 2018, the Supreme Court decriminalized homosexuality after overturning section 377 of the IPC. In November 2019, the Transgender Persons (Protection of Rights) Act enacted. Nonetheless, the district magistrate approves of the transsexual people who have verified as such. <sup>9</sup>

## **The Transgender Persons (Protection of Rights) Rules, 2020**

The Transgender Persons (Protection of Rights) Rules, 2020 formulated and published the Gazette of India on September 29, 2020. The rules seek to recognize the identity of transgender and prohibit discrimination in the fields of education, employment, healthcare, holding or disposing of property, holding public or private office, and access to and use of public services and benefits.

### **Welfare Boards**

In India, the marginalized community has to get the right through the legal rights and welfare schemes of the Government, especially tribal and women. On the path, the transgender have received the rights without welfare board, instead they connected with the women welfare board. Nevertheless, this welfare board is never fulfilling the all needs of the transgender community.

After NALSA, both central and State government made visionary ideas to establish the welfare board to the transgender individual manner. India has segregated as States and Union territories for the administrative reasons. Hence, every state has unique movement to enhance the status of the people. Hence, all the states made some initiative to improve the status of transgender in India.

There are thirteen states in India founded the Welfare board to the transgender in India, namely Gujarat, Kerala, Maharashtra, Karnataka, Chandigarh, Uttar Pradesh, Mizoram, Tripura, West Bengal, Bihar and Tamil Nadu.<sup>10</sup> Tamil Nadu is the pioneer in the establishment of Welfare Board in India for transgender.<sup>11</sup>

### **Educational Rights**

Transgender are the marginalized community, because of the social stigma prevailed in the society. In addition, they moved from home after recognizing they are transgender. After the movement, they get the shelter through the system of guru and chella. Transgender adopted by the guru, whom voluntarily or forcibly to do the jobs like Begging and Sex work. Therefore, Transgender are illiterate, also not getting proper awareness in the educational fields. Moreover, they neglected in the fields of education, because society not recognized the transgender.

However, the welfare board has made initiative to the development of transgender. Some of the Universities allotted the column of third gender like male and female in the admission process. Annamalai University, Chidambaram and Delhi University allotted the column in the degree application.<sup>12</sup> Mumbai University introduced to the column in scholarship, Maharashtra common entrance for engineering and pharmacy courses.

<sup>13</sup>The Punjab University, Bhim Rao Ambedkar Open University, Manomaniam Sundaranar University has given the free education and financial aid for the transgender students. Chhattisgarh allotted the separate hostels for the transgender students. The New educational policy have a concentrated the rights of transgender in Education<sup>14</sup>.

## Employment

The transgender are doing the regular work like begging and sex work. The Transgender Persons (Protection of Rights) Act, 2019 is considered the rights of transgender especially discrimination against in the health, education, employment places. Transgender were the migrant people, also move over from home to any metropolitan cities for employment opportunities. However, 96 percent transgender people forced to do low-grade jobs also refused the formal employment opportunities. Moreover, transgender not getting proper job opportunities, compelled to engage sex work around 23 percent. According to report of the National Human rights commission of 2018, only 2 percent of transgender people lived with parents in India. Also ninety percent of the transgender are deprived of the rights to participate in any from economic activity in India.<sup>15</sup>

## Health

Transgender are neglected in the society to get proper shelter and accommodation. Indeed, their inhabitants are located ahead of the city, town or village. In addition, some of them stayed in the public places. For this concern Government of India, establish a schemes namely Garima Greh, which established around 12 places in India. They are held in New Delhi, Odisha, Tamil Nadu, Bihar, Maharashtra, Chhattisgarh, West Bengal, Gujarat and Rajasthan.<sup>16</sup>In this shelter, there are 654 people are benefited in India.<sup>17</sup>Re assignment surgery is the sexual affirmation procedure, which involves the genital removal and genital reconstruction. Transgender have to do re assignment surgery, with the high cost of Rs.2 lakh to Rs.5 lakh for a male to female (MTF) transition, for a female to male (FTM) surgery is taken the cost Rs.4 to Rs.8 lakh, while the costly surgery is the biggest task, because transgender not posed the prominent job in India. After the surgery they have spend their life into home for recovery and do the supplementary medication.<sup>18</sup>Kerala, Tamil Nadu, Odisha and Chattisgarh are founded the SRS clinics in India. The Kerala and Bihar is given the aid around Rs.2 lakh for re assignment surgery, Bihar around 1, 50,000. Also, post assistance given to the transgender who have made surgery around Rs.3000 per month.

## Mandatory Documents

The first basic right for the transgender to providing the documents for living comport life, and getting the freebies from the Government. In India, adhar could be most important document to getting other documents for the getting benefits. All transgender having the adhar card in their dead name (means old name) but after recognizing themselves changed their name. For applying new adhar card or made corrections could be difficult in the position.

In addition, it could be biggest obstacles to getting new adhar, education, employment and health related aids. After NALSA Central, government and state government gave the Transgender ID card, with the authorization of District magistrate. Now it simplified after facing several difficulties to the transgender. Now they apply their id card in the prescribed website and getting the same, at the earliest. According to the Government data, there are 68,419 number of adhar card issued to the transgender until date.<sup>19</sup>

Voting rights are the fundamental right to the every citizen. Transgender is having the voting rights to the old name, because they already having the proper documents. However, they are registered their under the transgender name was prohibited. For long obstacle, transgender getting the voting rights in 1994, however, they registered under the male or female category. However, this could be rectified in 2014, while transgender allowed to register their votes as others category. In 2014, there are four members from transgender nominated in the elections.<sup>20</sup>

## CONCLUSION

Traditionally, there are two gender received prominent position in India, But other gender like transgender not even get the basic rights in the educational, employment and health platform. For long struggle, the constitutional rights enhance the position of the transgender better to compare with the British period. In 2014 the landmark judgment revealed by the honorable supreme court, bring out the better position of them in this society. By reflection, there were many laws executed for living prosperous life in the society. The legal safeguards, Protection acts, repeal of 377 progresses the transgender people in India. In addition, the welfare schemes and programmes are given to enhance the life and livelihood in better position. Finally, the awareness of the transgender people, through social media and other platform leads the transgender as better position. Thus, the legal safeguards and welfare measures has given the prosperous life of transgender in the contemporary period. Nevertheless, the social stigma and social space missed out in the society.

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