

THE THIRD GENDER PROBLEMS AND SOLUTIONS SPECIAL REFERENCE TO INDIA

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Abstract: -

The Aim of this blog is to study the position and status of Transgender in India and how have the courts interpreted their rights to broaden the scope of Equality, what are the hindrances to ensure successful legal Rights, what are the reforms that can be brought about to guarantee that this program is effective, efficient etc. The object behind this is to understand the importance of Equality and equal status of every person in India, its impact on the lives of the people and the need for an effective legal system. The Role of Article 14 and 21 of the Constitution of India, The Rights of Transgender in India and the details and drawbacks of the Transgender Bill and the Private Members Bill will be studied in this blog.

Last but not the least the Constitutional dictates that judiciary has duty to protect rights of the poor as also society as a whole. The Judiciary through its significant judicial interventions has compelled as well as guided the legislature to come up with the suitable legislation's and bring justice to the doorsteps of the weaker sections of the society. The concept of Equality in reference to the RIGHTS OF TRANSGENDERS AND THEIR POSITION in a Constitutional democracy like India where a significant section of the population has still not seen the constitutional promises of even the very basic fundamental rights being fulfilled for them. Everything mentioned above will be discussed.

Key Words: - Transgender, Constitution of India, Discrimination, Rights, Government of India, Bill etc.

Introduction

Transgender have a gender identity which change them from other sex. These were assigned at birth. The population size of transgender in the India is nearly around 4.9 lac's according to the Census report of 2011.¹

Population surveys today more often collect transgender-inclusive gender-identity data, and secular trends in culture and the media have created a somewhat more favorable environment for transgender people. Transsexual is generally considered as a subset of transgender, but some transsexual people reject being labeled transgender. Most legal jurisdictions all over the world recognize the two traditional gender identities and social roles, but tend to exclude any other gender identities, and expressions. However, there are some countries which recognize, by law, a third gender. There is now a greater understanding of variation outside the typical categories of "man" and "woman", including many self-descriptions such as Transsexual, Polygene etc.

Non-recognition of the identity of transgender persons repudiates them equal protection of law, which results in leaving them vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail. Sexual assault includes molestation, rape, forced sex and stripping is being committed with impunity and there are many materials to support such activities. Further, due to such non-recognition of this third sex (transgender) they tend to face a lot of discrimination's in almost every society mostly in the field employment, education,

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¹<https://www.census2011.co.in/transgender.php>

healthcare which further extends to access to public places like restaurants, cinemas, shops, malls etc. Access to public toilets is also a serious problem that is being faced by them every day as there are no separate toilets for transgender people; more often they have to use male toilets where they are prone to sexual assault and harassment. Discrimination on the ground of sexual orientation or gender identity which results in violation of constitutional rights such equality before law and equal protection of law provided under Article 14 of the Constitution of India.

Reasons for such discrimination

The fact we often ignore or don't even realize is that directly or indirectly, we as a society are responsible for their condition being disowned by their own families and harsh treatments from other people in society leads to their so called 'bad' behavior. Lack of access to education and non-availability of jobs often forces them to take to begging and prostitution. Transgender women are around 49 times more likely to be living with HIV than other adults of reproductive age with an estimated worldwide HIV prevalence of 19% these problems occurs mainly because Transgender people have low rates of access to health and HIV services due a range of issues including violence, legal barriers, stigma and discrimination.

World Health Organization has worked with countries to address the varied health needs of transgender people, including HIV prevention, diagnosis and treatment. ²

Violence against transgender people is common (including police abuse, abuse perpetrated by clients of sex workers and intimate partner violence). Further, transgender people experience family rejection, violation of their rights to education, employment and social protections and as such experience higher rates of unemployment, poverty, housing insecurity etc.

A lack of legal recognition of transgender in most countries is one of the basic reasons for their exclusion and marginalization while a few countries in South Asia recognize a "third gender" in other countries such as Japan China etc. Transgender people are required to undergo genital surgery before legal recognition of their gender. Legal procedures exist in some jurisdictions which allow individuals to change their legal gender or name to reflect their gender identity. In many places, transgender people are not legally protected from discrimination in the workplace or in public accommodations.

Dread of retaliatory conduct for example, being expelled from the parental home while underage, is a reason for transgender individuals to not turn out to their families until the point when they have achieved adulthood. Parental disarray and absence of acknowledgment of a transgender youngster may result in guardians treating a recently uncovered sex way of life as a "stage" or endeavoring endeavors to change their kids back to "typical" by using emotional well-being administrations to adjust the sexual orientation character.

The government of India has taken up many firm steps along with a number of rules and regulations in order to provide transgender people equal rights as provided to every citizen of India. In order to provide transgender people equal protection under the ambit of law and for them to exercise their constitutional rights it is necessary for the government to enact more powerful legislation's.

Media representation

As increasingly transgender individuals are spoken to and included inside the domain of mass culture, the shame that is related with being transgender can impact the choices, thoughts, and contemplation's dependent on it. Media portrayal, culture industry, and social underestimation all allude to mainstream culture norms and the relevance and centrality to mass culture too. These terms assume an imperative job in the development of

²<https://www.who.int/hiv/topics/transgender/en/>

thoughts for the individuals who have little acknowledgment or learning of transgender individuals. Media delineations speak to just a microscopic range of the transgender group, which basically passes on that those that are indicated are the main elucidations and thoughts society has of them.

Be that as it may in 2014 the United States came to a "transgender tipping direct" agreeing toward Time. At this time, the media deceivability of transgender individuals achieved a dimension higher than seen previously. From that point forward, the quantity of transgender depictions crosswise over TV stages has stayed elevated. Research has discovered that survey different transgender TV characters and stories enhance watchers' demeanors toward transgender individuals and related policies.³ Passes on that those that are demonstrated are the main elucidations and thoughts society has of them.

TRANSGENDERS BILL

In its give an account of the 2016 draft Bill, the advisory group attracts regard for the lacking meaning of the third sexual orientation, which is established on a hetero perspective. It likewise advocates expanding social liberties appreciated by the citizenry, for example, marriage, separation, and reception, to include the third sexual orientation.

The draft is likewise filled with inside inconsistencies. While it has condemned separation on the grounds of sex, it keeps up that transgender are secured under the enactment for legacy. It must be noticed that usually the groups of transgender who banish them and push them into penury. Inducing transgender into beggary or leaving their home is a culpable offense for which the most extreme term is two years. A portion of the proposals that discover a place in the last draft incorporate the safeguard, insurance, and recovery of transgender. Instructive organizations have been coordinated to receive a comprehensive methodology that is sexually unbiased. The administration has additionally figured welfare conspires particularly focused at transgenders, for example, fundamental medicinal offices including sex reassignment medical procedure. Professional preparing programs are additionally in the pipeline.

The Transgender Bill came along with a bundle of rights and entitlements that must be provided to the transgender people. These rights include the right to education, employment, sexual orientation, health and safety rights etc.

Supreme Court ruling on August 24, 2017, that the Right to Privacy was a fundamental right, and was thereby applicable to the protection of sexual orientation of citizens gave a reprieve to the LGBTQ community. The Transgender Persons (Protection of Rights) Bill, 2016 is slated to be re-introduced in winter session of Parliament which starts on December 15, 2017.⁴

The Union Cabinet endorsed the Transgender Persons (Protection of Rights) Bill 2016 for presentation in Parliament, and this Bill is relied upon to bring social, instructive and monetary strengthening to the transgender network. To a network that has been excluded and oppressed for such a long time, this Bill could mean an opportunity to carry on with an actual existence of pride and balance.

³https://mediasmarts.ca/sites/mediasmarts/files/lesson-plans/lesson_transgender_representations.pdf

⁴<https://www.thehindu.com/news/national/all-you-need-to-know-about-the-transgender-persons-bill-2016/article21226710.ece/amp/>

Here are a couple of focuses to help show signs of improvement comprehension of the arrangements in the Bill:

1. The Bill makes it unlawful to drive a transgender individual to leave living arrangement or town, expel their garments and march them stripped, compel them into asking or any sort of fortified work. These demonstrations will be culpable with up to two years of detainment, alongside a fine and furthermore requests revisions in the law to cover instances of rape on transgender people.
2. Bill additionally condemns denying a transgender individual access to any open place and causing them any physical or mental mischief inside and outside the home. It ensures OBC status to all transgender not conceived as SC or ST, and qualifies them for reservation under the separate classifications
3. The Bill recognizes 'Transgender' as the third sexual orientation and gives a transgender individual the opportunity to distinguish as 'man', 'lady' or 'transgender', free of medical procedure/hormones. They can't be alluded to as the 'other' sexual orientation or as 'others', however just as transgender.
4. An endorsement of way of life as a transgender should be issued by a state level expert and this declaration ought to be satisfactory as sexual orientation personality for any official record like International ID, Aadhar card, and so forth.
5. It likewise guarantees that transgender people or transgender kids appreciate the directly to correspondence, every single human right, directly to life and pride and individual freedom as ensured by the Constitution of India
6. All administration establishments will give comprehensive training and will not oppress any transgender understudy and furthermore furnish transgender understudies with grant/privileges, free-waiver, reading material, lodging housing, different offices and sponsored rates.
7. The legislature will likewise set up restoration and welfare programs, data focuses, sharpening programs, and so forth for transgender people and give fundamental introductions to sharpen individuals in instructive foundations and somewhere else.
8. The Bill educates law the police to give each help under the law to a bothered transgender individual, and furthermore to put the individual in contact with the closest association for recovery of abused transgender people.
9. The Bill teaches the legislature to help and encourage work of transgender people, particularly for professional preparing and independent work, give credits, and to guarantee that there is no victimization transgender individual at working environments.
10. Under the arrangements in this Bill, transgender people will likewise have approach rights and access to a social life, relaxation and recreational exercises.

Conclusion:-

On the basis of some socially man made stereotypes. Like others, transgender children also Have rights of equality and other rights under of Indian constitution. Our present social and Education systems are not fit to educate transgender children due to lack of positive attitude and their social acceptance. The rules and regulations are not enough according to today's scenario. There must be reforms in the rules and procedure

under law and their strict implementation for furthering the interest of the transgender. The government should also accommodate some of the principles from the laws of the other countries which are more children friendly and work towards the advancement of justice.



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