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Development of Transgender People in India: A Critical Examination

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ABSTRACT

Transgender, also called as hijras in India, are a marginalized community in a society with less or no basic facilities and opportunities to rise above their problems. According to the census of 2011, the rate of literacy of trans-people is 57.06%, but their employment opportunities, violence against them, etc. leaves no trace of it. It can be agreed that the current situation of the trans-people is better than what they faced decades ago. The appreciation may be dedicated to the Hon'ble Supreme Court for pronouncing the judgment of National Legal Services Authority (NALSA) v. Union of India and Parliament for passing Transgender (Protection of Rights) Act, 2019. Yet, the trans-people are exposed to face a myriad of difficulties.

This article discusses the three main causes of such deplorable situation, namely: (1) lack of progressive social mobility, (2) No representation in politics and (3) inadequacy of laws regarding transgender community and brings out propositions to uplift the transgender community in India.

I. INTRODUCTION

Transgender is not a confusion in gender between male or female; but a gender in itself and also a peaceful freedom to choose between male or female. It is a pragmatically assigned gender identity to oneself with reference to their interest of portraying themselves to this world. Although India jumped gun through ages in wrongfully judging trans-people, it took its baby steps by legally recognizing them as 'third gender' by the Hon'ble Supreme Court of India in *National Legal Services Authority (NALSA) v. Union of India*² and Parliament passed Transgender (Protection of Rights) Act, 2019³ (hereinafter referred to as "the Act") complementing the judgment. Further, the Act lays down normative principles of not depriving the trans-people of their employment based on any kind of discrimination. The two steps are carved in the history of evolution of transgender rights in India.

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² National Legal Services Authority (NALSA) v. Union of India, A.I.R. 2014 S.C. 1863 (India).

³ Transgender (Protection of Rights) Act, 2019, No. 14, Acts of Parliament, 2019 (India).

According to census of the year 2011, the population of trans-people is believed to be around 4,90,000, the literacy rate of trans-people is estimated to be around 57.06%⁴ but about 92% of trans-people are deprived of the right to participate in any form of economic activity in the country, with even qualified ones refused jobs⁵. Although the State is seen to be making decent efforts in the past decade, compared to no efforts before, it can be evidently noted that the situation of trans-people is still pathetic.

II. CAUSES OF ABYSMAL SITUATION OF TRANSGENDERS IN INDIA

The problems of transgenders begin domestically which progress to regionally at schools, colleges, workplace, etc. Denial of access to opportunities force them to work as sex-workers, beggars and other heart-wrenching jobs. The plight of transgender is glaring and yet, we find ourselves to only cribbing about the problem and not attempting to solve them.

The measures to mitigate the problems of transgenders lies in comprehending the causes of it. This article attempts to lay down, amongst other grounds, the main reasons for the deplorable situation of transgender community in India, namely: (1) lack of progressive social mobility, (2) No representation in politics and (3) inadequacy of laws regarding transgender community.

(A) Lack of progressive social mobility

The society has assumed a great deal of power in deciding a 'normal course of nature' with less or zero room for adaptability or tolerance towards marginalized section of society. People in such a society are given a mission from early days to run towards it to build a life around it. Society takes due measures to condemn the persons who question such an ordeal nature of normalcy. The objective of society to find such a normal code of life is based on the urge to compare lives. The society is left confused when there are different actors or sections of people involved in such a 'race', whose very existence questions the normal course decided by the society.

The society whole heartedly welcomes two genders – male and female and the third gender, though legally recognized, is still on toss considering the lack of social progressive mobility. The arduous standards of normal course are impelling transgender people to either cover their identity or endure the path of hard struggle to achieve what is 'normally' considered to be

⁴ Bhumika Rajdev, *For Transgenders Discrimination begins in Schools*, THE WIRE (July 24, 2020) available at <https://thewire.in/lgbtqia/cbse-results-transgender-students-education-stigma-discrimination> (Last visited - 15-01-2022).

⁵ *About 96% of transgenders are denied jobs, 60% have never attended schools: Study*, MONEYCONTROL NEWS (August 13, 2018) available at <https://www.moneycontrol.com/news/india/about-96-of-transgenders-are-denied-jobs-60-have-never-attended-schools-study-2836281.html> (Last visited - 15-01-2022).

impossible for them. The complicated conservative attitude of the society invites hostility towards trans-people and our society lacks minimum will to appreciate diversity making several communities vulnerable to its cynicism.

Progressive social mobility is a bi-product of democracy. Our country claims to be democratic but have failed to evaluate the mobility in the society. The mobility is realized both horizontally and vertically. Trans-people are denied to move up the ladder to sense the light of success and hence, thereby causing disruption in the vertical mobility. Again, they are restricted to interact and communicate their grievances to their own community which has placed a huge barrier for horizontal mobility as well. How can a community be expected to be happy with a judgment and a legislation when they are confined to the walls of their community and disparity!

It is needless to mention that mobility of people among different levels in society will be high, when the factors responsible to it, like education, employment, fair opportunities, equal and easy access to resources, are flexible and tends to the need of a person. The rate of literacy of the trans-people is more than 50% and yet, there is dearth of fair and easy access to resources in the society. The transgender people are constantly abused, both physically and sexually, which do not get reported and the persistent discrimination with belittling attitude of society abuses them mentally, which cannot make it to the papers, as it is ingrained strongly even at domestic levels. The deep-rooted lack of tolerance in society excludes transgender people socially, economically and culturally. Any chances offered for social mobility is a sign of development and paucity of such chances to a community, marginalizes them with less or no room for progression.

(B) No Representation in Politics

Representatives at Parliament and State Legislatures are believed to represent best interests of the society. What better way to protect and uphold the interests of transgender community than having transgender representatives themselves at such high level of bureaucracy. It is disappointing to mention that currently there are only handful of trans-people in politics. This prejudicial situation in politics can be tackled by assigning reservation quotas for trans-people. The said reservation may be observed at local, regional, State and National level to ensure voice of trans-people are heard at all levels and validates equitable distribution of resources to transgender community. Political representation of the said community will safeguard their interests and they would have their own people in power to whom they can turn to, in case of any discomfort.

(C) Inadequacy of Laws regarding Transgender community

A State has duty to respect, protect and fulfil rights of individuals. Our country might have obliged to duty to respect through drafting legislation and pronouncing remarkable judgment, but it is perpetually obliterating its duties to protect and fulfil. Our government has failed to fulfil even basic rudimentary essentials to them. Further, lack of stringent measures to protect transgender from imminent and circumstantial violations of their rights at the hands of society has exposed the transgenders to be played by many actors of the society.

Currently, the Parliament has passed the Act with an objective to ensure freedom to identity and welfare, including employment and education, to all transgender without any discrimination. The Act also penalizes the contravention of such actions. However, the statute stands with several flaws beginning with empowering District Magistrate with extraordinary amount of power to demand the trans-people for a proof of surgency to receive a certificate of transgender. Huge amount of power in the hands of high-ranking official is a red flag predicting arbitrary use of power. Further, the punishment imposed in the statute are inadequate in comparison to the gravity of the offence. It is cheerful to observe a legislation on transgender community, but it is also disappointing to notice a myriad of shortcomings overstepping the objective of the statute.

Hypothetically speaking, even if the above-mentioned statute was considered to be free of loopholes, it presents a big pragmatic question – is one Statute adequate to safeguard the interests of the whole community? The answer is clearly in negative as there are many other aspects, like marriage, family, adoption, crimes against trans-people, surrogacy, transformation, etc. which are not discussed in the Act. There are many offences against women which are also committed against trans-people as well. But the provisions of the Indian Penal Code, 1860 are cleverly worded to include only women and safeguard their integrity. A step forward to include even trans-people can be anticipated to reduce crime against them or at the least, it would help them to report it quickly and easily.

III. CONCLUSION

The judiciary is seen to be proud of their act of recognizing the identity of the transgender people as ‘third gender’ and condemning the sex reassignment surgery, but the real challenges are ahead of it. Transgender community has inherent right to identity and the Hon’ble Court gave a legal structure for the same, but what good would only the right to identity do, if their basic necessities of life are deprived from them and are constantly abused, physically, sexually, mentally, politically and culturally? Although the rate of access to education of trans-people is

poor, it is observed to be improved since decades. However, even the educated ones are not getting employed because of irrational prejudicial norms in the society. Even after ages of witnessing oppression of transgender people, the Parliament are yet failing to comprehend the gravity of the human rights violations against them and are not yet taking adequate measures to tackle the issue. It is ironic that the answers are clear to naked eyes in the form of reservation quotas, adequate laws in favour of them and change in detrimental thoughts and norms of society, and yet, we think we are helpless to uplift the transgender community.
