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Eunuchism in India Social and Legal Status

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ABSTRACT

This article provides an overview of the social and legal rights of the Transgender people in India. For the latter, an historical tracing of transgender community, and a conceptual study has been undertaken. This article, after providing the aspects of societal rejection and the legal support for the transgender, it is reiterating the necessity of practical steps towards achieving a trans-inclusive society. Finally, the article reiterates that the behaviour of the transgender on the streets is not something they love, but it is a forced behaviour from the decades of rejection, and suppression by the society. In a way, the legitimacy of transgender is often threatened by those on the streets when they overly dress like women, beg around. In this process, they receive public wrath, discrimination, social humiliation, and are forced to be alienated from the society. This article hopes to invigorate the forgotten fight for the restoration of transgender rights.

Keywords: Eunuchism, Social Status of Transgender, Trans Gender, Rights

I. INTRODUCTION

In general, transgenders are socially rejected people who cannot enjoy the self-determination rights due to the societal social construct of gender duality. In order to get out of the entanglement of this duality, it is important to understand, who is *Transgender*?

‘Transgender’ is a combination of two words- *Trans* and *Gender*. ‘Trans’ means people who cross over the boundaries of gender association constructed by their culture. To define and contain the gender association means, the societal construct of gender duality confinement. People who cross this gender barrier and opt themselves their own gender apart from the one which has been decided for them are known as Transgenders (Michelraj M, 2015).

II. TRANSGENDER BY RIGHT

In India, historically, for a lay person, there has been a constant juxtaposition of sex and gender even though they have been defined differently. Transgenders or people with third sex in India witnessed a series of transitions starting in the colonial era’s introduction of Criminal Tribes Act (1871). Transgender people had a sigh of relief in 2014. The judgement by Supreme Court

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of India provided people the freedom to choose their gender irrespective of their biological sex. However for a lay person, gender is an intrinsic part of the corrupted social construct. Some people will not separate it from the biological sex, pushing eunuchs outside the society. Such misunderstanding of the gender infringes the universal human rights declared by the United Nations Development Programme (UNDP). In the “Universal Declaration of Human Rights, 2015”, it talks about bioethics and human rights as 'conscious of the unique capacity of human beings to reflect upon their own existence on their environment, to perceive injustice, to avoid danger, to assume responsibility, to seek cooperation and to exhibit the moral sense that gives expression to ethical principles.' Patrica Williams, an American feminist scholar strongly opines that “Rights are gifts of Self-hood.” So, when a human being takes birth on this earth, he is born with his sex defined biologically but, gender is self-determined and it is the right of that individual.

III. TRACING TRANSGENDERS IN INDIA

Transgenders have been known by different names and it changes by the region across the world. Some of the anchored names are Gender queer, hijra, Kothis, Aravanis, Jogappas, Shiv-Shakthis etc. in India, Two Spirit in Native America, Travesti in South America. Even in Vedas and epics like “Mahabharata” there is reference to transgender as Brihannala. In Manu Smriti there can be found an explanation about origins of the third gender – “A male child is produced by a greater quantity of male seed, a female child by prevalence of the latter seed. If both are equal then there is the possibility of the third gender or male and female twins.” (Stryker, 2008)

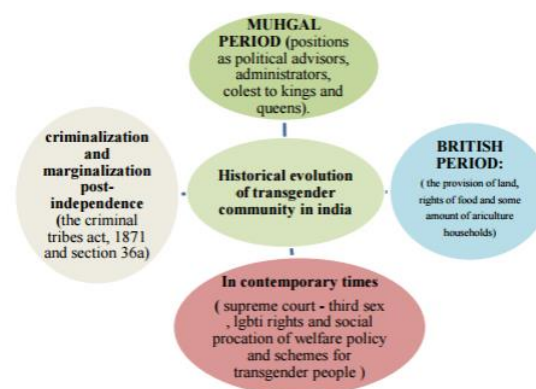


Figure 1: Evolution of Transgender in India, (Michelraj M, 2015)

Transgenders are not always seen as outcasts. Indian Community of hijras have occupied a respectable position in every respective cultures. In Islamic institutions, they are used to guard holy places of Mecca and Medina. During Mohammed bin Tuglaq’s period, military general

Mir Khafir was a eunuch. Whereas, in 1871, with the introduction of the Criminal Tribes Act, the entire community of hijra persons was deemed as innately criminals and the government targeted all hijras who were involved in kidnapping and castrating children and dressed like women to dance in public places. Punishment for these activities was two years of imprisonment or a fine or both. Later during India's independence, Mahatma Gandhi shared his wish to be God's eunuch and vehemently moved the ideologue of eunuchism to social frontiers. Recently, at the state level, Tamil Nadu and Karnataka are the most progressive states when it comes to development of transgender community. Tamil Nadu has appointed its first Transgender Police Officer for the upliftment of the third gender (India Today, 2017).

However, Indian society still has to go long way to accept the transgender completely. Though they have constitutional rights, they are fumed with the social rejection. Though they have legal protections, lack of proper legislations have crippled them.

IV. SOCIAL REJECTION

The societal rejection of transgenders can be understood from the revealing book "I am Vidya" written by a struggling transgender from Tamil Nadu. When an individual rejects a socially given gender and opts other gender, his/her family members find it difficult to accept. Family would be forced to force a gender against his/her will. This brings an immense psychological stress. Vidya a tirunangai (transgender) has mentioned how badly she was treated when she expressed her desire to dress like a girl (Vidya, 2013). Vidya has been brought up between girls' isolation from society due to the pressure of education (being the only male child in the family, parents wanted him to be educated to sustain economically). It is also interesting to note that most of the transgenders are from economically and socially backward societies, where they have been oppressed by parents and societies. Family and its environment play a major role in shaping the mind of child and in the later stage of development. But India is not the same inclusive place it had been in the history.

Not only from the family but whole society makes them an alien and take away their self-determined identity from them. This makes them feel vulnerable. Due to this identity crisis, they feel frustrated further leads to illegal acts making them socially evil. Had they been accepted as they were, there would not be any criminal tribes act and special surveillance by state police (such surveillance was attempted by government of Karnataka in 2015, but failed with the intervention of the High Court).

As a result of rejection, they have formed their own groups operating as different autonomous groups across the country. Each group is called parivar and have their own rules and

regulations. Their main occupation turns out to be begging, and prostitution. Even though Vidya³ has an MA in linguistics, she had no option other than begging. This shows the level of social rejection. Even movies have portrayed them as only beggars and people from lower rung of society or at the bottom of the societal structure.

V. LEGAL INCLUSION OF TRANSGENDERS

Yogyakarta principle for gender identity says that each person's deeply felt internal and individual experience of gender, may or may not correspond to the sex assigned at birth, including the personal sense of the body. Personhood is identified by the individual as a right to self-determination. If the state violates the latter, it is as much as is violating the fundamental rights as provided in Article 14 of the Indian constitution.

Here we shall examine how the European laws are coded in order to provide an individual the right to his/her private life. *Right to respect one's private life* – There should be no arbitrary public authority interference in the private life of an individual. This has been said by Article 8 of the European Court of Human Rights. European understanding of identity rights cannot be restricted by one country's perspective. In Germany, the right to respect and protection of the dignity of human beings is stated as inviolable. "Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law." Not only giving an option to choose either the two genders, but not choosing any of that is also a freedom of choice.

Similarly, according to Article 19 of Indian constitution, every citizen of India has the right to liberty under which the latter self-determinism also comes under. Thus, it is inviolable for states to step into the lives of transgender and restrict their choice making even when it does not cause any harm to other individual. In a landmark judgment of 2014, the Supreme Court of India has held that transgender persons are entitled to be recognized as the 'third gender' rather than being forced to identify as either male or female. The Court also held that discrimination based on gender identity violates constitutionally guaranteed rights to equality, freedom of expression, privacy, autonomy and dignity.

Significantly, in reaching its decision, the Court stated that the 'Yogyakarta Principles on the Application of International Law in Relation to Issues of Sexual Orientation and Gender Identity' should be applied as a part of the Indian law. 'Equality and non-discrimination on the grounds of gender identity or expression is increasing and gaining acceptance in international law and, therefore, should be applied in India as well,' the Court said.

Although, transgender laws are becoming widely accepted and are recognized by the state, it

must have social recognition. As it has been shown the previous section, social rejection and the sustained corrupted social construct of the duality of the gender makes the lives of transgender fragile.

VI. CONCLUSION

Despite being a developing country, and amidst the narratives of becoming global power, growing up in India as a transgender is still hard. In order to create a trans-inclusive society, pragmatic steps need to be taken by the Indian Government for their social and political upliftment of transgenders. Their identity is subject to discrimination, harassment and violence and are not eligible for the same legal protections against discrimination as cisgender people all over the world.

Although policy makers are pushing for their social inclusion and efforts have been made by NGOs and various state governments, still there is a lot that need to be done for their entitlements. The bill entitled 'The Rights of Transgender Persons Bills, 2014 which was passed by Rajya Sabha in 2016 is yet to be passed by the Lok Sabha. This shows the careless attitude towards the transgender community. This bill deals with the different aspects of their social inclusion, their legal and financial rights, education and skill development and prevention of abuse, violence and exploitation of transgender community.

In order to do away with all forms of discrimination against transgender community, inclusive approach should be adopted by government for their betterment. Law enforcement system needs to be sensitized and disciplinary actions needs to be taken for violence against them. For their upliftment, social institutions like school and colleges should play an important role for the providing education. Provisions for social entitlement should be ensured by the government in order to curb social and cultural barriers.

The twelfth Five Year Plan (2012-2017) also proposed that the third genre should be empowered through education, housing, access to services in health care, jobs and financial support. Furthermore, it is also suggested for the third genre to include a separate column in all government and NGO records. Together with the Ministry of Statistics and Program Implementation, their socio- economic Status will map out a better environment for them by increasing their standard of living.

In a way, the legitimacy of transgender is often threatened by those on the streets when they overly dress like women, beg around. In this process, they receive public wrath, discrimination, social humiliation, and are forced to be alienated from the society. This article hopes to invigorate the forgotten fight for the restoration of transgender rights. After providing the

aspects of societal rejection and the legal support for the transgender, it is reiterated that now is the time to take some practical steps towards achieving a trans-inclusive society. Finally, we would like to reiterate that the behaviour of the transgender on the streets is not something they love, but it is a forced behaviour from the decades of rejection, and suppression by the society.

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