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Health Perspective of Transgender

LATHA A. SARDAR¹ AND DR. AARTI TYAGI²

ABSTRACT

The transgender community suffered violence, harassment and discrimination in the past but the 19th and 20th century has witnessed many changes in the life of a transgender. The legal recognition of transgender started gaining momentum. In the year 2014 through NALSA judgment another gender was added to the existing binary gender in society i.e Third Gender. Transgender is altogether a new adjustment which poses challenges to the Judiciary, Legislative and to Government in proceeding towards a healthy life for the transgender. The facilities which were available to binary genders must be extended to Third gender communities including Health Care Services. The past has allotted them a lot of discrimination and harassment, the present should be dedicated to working on providing the solution to the suffering of transgender people and the future should be planned accordingly to remove all the disparities by providing systematic health care facilities. Accordingly, various laws have been accepted both in National as well as International forums. Medical services are often understood with that Public Health Care Services. But there is a difference between the medical services and comprehensive public health facilities for Transgender. The present focus must be on comprehensive public health care for transgender. Comprehensive Public Health Facilities for the Transgender community must be provided in the future. The legal development of the Third Gender in India and the future Health care needs of the transgender community are also equally important.

I. INTRODUCTION

From the ancient period, the Transgender community were treated outside the mainstream society. Transgender people are discriminated against in all sectors of society but the negligence of the healthcare system has affected them a lot. The social, and economical exclusion affected them badly in the past. The policy matters have excluded them from the application of various schemes of the respective government. Public-private participation aims to provide a healthy life for transgender in India. In this article, the required recommendations for the health care system, the medical health condition of the transgender community, the reasons and the lacuna in the existing legal system, the formulation of the new policies, the remedies for the upliftment of the status of transgender, and various other provisions from the perspective of Transgender

¹ Author is a Research Scholar at Reva University, Bangalore and Working at KLE's Law College, Chikodi, India.

² Author is a Professor, Reva University, Bangalore, India.

health care systems have been studied. The Transgender Persons Protection Act 2019 was considered as consolidated legislation for the protection of the Rights of Transgender. Various Rights have been provided under the legislation but the systematic implementation of legislation will boost the growth of Transgender people in the healthcare system. Various welfare schemes have been launched to protect the Rights of Transgender persons from sections 9 to 15 of the Act. The Transgender Protection Rules 2020 provides for the proper implementation of the Act.

(A) Objectives

- The primary objective is to understand transgender healthcare under the public healthcare system.
- The Rights of Transgender under National and International laws.
- The need for a Transgender Health Care system of the future.

(B) Definition of Health

According to the Oxford dictionary, Health means the state of being free from illness and injury.³ According to WHO Health is a state of complete physical, mental and social well-being and not merely the absence of disease.⁴

(C) Meaning of Transgender

The term Transgender is the umbrella term used for people who do not express or recognize themselves from the binary sex in society. It also includes Lesbians, Gays, Bisexuals or Non-Confirming Gender, Queer, Intersex or maybe none of the above and includes any other form. Two methods of identification are used to assess any individual that is Gender Identity and sexual expression/orientation. Gender Identity is when the sex of the person is determined. Sexual expression or orientation is when a person's feelings are mixed with his sex. The state of condition when the person's feelings do not match with his or her sex will be the Third gender which is Transgender.

II. TRANSGENDER IN ANCIENT INDIA

Indian society is known for its spirituality and generosity. Transgender has occupied a high position in ancient times. The transgender will be remembered during baby showers, marriage, and housewarming ceremonies for their blessings but nothing more than this is referred to in

³ Herald brussow, what is health available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3917469/>.

⁴ World health organization constituted on 7 April 1948. Preamble of the constitution of the who as adopted by international health conference , who, no .2, p.100.

the past.⁵ The study on transgender has shown that the community was subjected to marginalization, harassment and negligence. The presence of transgender can be recognized in the spiritual and holy Scriptures like Ramayana. The text supported the version that Lord Rama has conferred transgender to bless people on all the important occasions like Upanayana, housewarming and baby showers etc. The blessings from the transgender were considered a sign of prosperity.

Another mythological text is Kama Sutra narrates about woman-natured and third-natured women (Tritiya Prakriti). The Mogul Empire also witnessed the transgender community and placed them in high positions and they used to advise the king and help in the smooth running of the administration.

The status of transgender was only diminished during the British colonial Period. The transgender existence and its requirements were not given much importance. Total negligence can be realized during this period. They have not referred to any legislation. Transgender was considered against public morality decency and society. The British legislation⁶ provides for a total ban on transgender and is declared an unnatural offence. as India has been ruled by British domination silently transgender found a place on few occasions and without them, those functions were not considered complete.⁷

Transgender people are now recognized as the third gender in 2014 in the NALSA Case the Supreme Court stated that they must be considered as the Other Gender or Third Gender apart from the Binary Genders of society. In the year 2019 The Transgender Persons Protection Act 2019 was legislated to provide various rights to transgender people in India. The Act makes prohibition the denial or discontinuation of unfair treatment in healthcare services.⁸ The appropriate government must establish separate immunodeficiency virus zero surveillance centres for AIDS patients. The government must provide for various surgeries and counselling in health matters, a health manual for guidelines and they must provide insurance for the surgeries.⁹ The key barriers are lack of economic support, poor health conditions, lack of health education, and lack of health insurance schemes.¹⁰

⁵ Gurvinder Karla, Hijras: the unique transgender culture of India, *International Journal of Culture and Mental Health*, 2012, p-121.

⁶ Se 377 of Indian Penal Code 1860.

⁷ Goswami. S, Transgender in India: Identified by law discriminated by the society, *European Researcher*. Series A, 2018, 107.

⁸ Transgender Persons Protection Act 2019, se 3(d)

⁹ Se 15 of Transgender Persons Protection Act 2019

¹⁰ Access to health services: Barriers faced by the transgender population in India, Apurva kumar Pandya, Alex Redcay, *Journal of Gay & Lesbian Mental Health* 25 (2), p-132.

The NGO's role in social services cannot be neglected to assess health base conditions pehchan NGO has collected information on 48,280 transgender people all over India it was assessed that there is an increase in use and access to condoms by 12.5% to the previous 0.001, HIV counselling response increased from 20.10% to 33.7% in India emergency service responses 19.7% legal help 26.8% to 0.001% mental health care 33.0% to 10.01.¹¹ of the life insurance Corporation. India has introduced a third gender column after the decision from the Supreme Court in the year 2014 which increases the hope among transgender people to get involved in the various schemes. The same has been followed by other institutions, organizations, schemes under the mutual funds, national health Mission, Ayushman Bharat and national mental health programs also including and extending benefits to 3rd gender.¹² Under the Ministry of Health and Family Welfare Guidelines, the holistic approach to Transgender Healthcare has been initiated by the Manipur State AIDS Control Society, the national AIDS control Organisation NACO, and ITECH Indian supported by PEPFAR launcher working with the transgender health and wellness Centre in Imphal, Manipur on March 25, 2021. It is a private public-private partnership between USA and India. It provides services on blood checkups, and screening for HIV takes care of vulnerable sexual minorities¹³ and helps during the change in hormones.

III. PUBLIC HEALTH CARE SYSTEM

Medical care and medical health facilities were provided to British persons who enjoyed a good position in India. The British era was known for its systematic approach in all sectors and healthcare is not an exception to it. Various steps have been taken during the British period such as sanitization, medical emergencies, health facilities, hospitals and the construction of toilets. Very few personal toilets were constructed in India during this period. The healthcare system was developed due to the British era for the foundation they laid in India. The strong foundation of the British colonial period boosted public health even after 1947.

Medical services and healthcare facilities are often confused with one another. The public health care system or services mean the objective to narrow down various kinds of diseases for example various disease regulations do's and don'ts, the prevention of water pollution, the prevention of contagious diseases and awareness about dealing with diseases. Public health care services will increase economic growth and decrease the spread of diseases. They focus on the

¹¹ Empowering communities and strengthening systems to improve transgender health: outcomes from the Pehchan programme in India, Simran Shaikh, GitauMburu, Viswanathan Arumugam, Naveen Mattipalli, Abhina Aher, Sonal Mehta, James Robertson, Journal of the International AIDS Society 19, 20809, 2016

¹² Transgender: health and rights, Rajni Sharma, Purnendu Mishra, European Journal of Pharmaceutical and Medical Research, 570-579, 2020

¹³ First Transgender Wellness Centre in North East India <https://itech-india.org/first-transgender-wellness-centre-in-north-east-india/>

reduction of diseases by creating awareness than treating the Diseases. The strict regulation during the British period has seen ups and downs concerning the prevention of diseases like cholera and plague¹⁴ but other diseases were rampant during the 20th century. For example, malaria and stomach-related diseases. After independence, public health care services occupied a place in five-year plans,¹⁵ and schemes of governments of various states.¹⁶

IV. THE RIGHT TO HEALTH UNDER INDIAN CONSTITUTION

The health of the people is given paramount importance under the Indian constitution. According to WHO¹⁷ “it is states obligation to ensure access to timely acceptable and affordable care of appropriate quality as well as to provide for the underlying determinants of health such as safe potable water, sanitization, food, housing, health-related information, education and gender equality”

In India Part IV of the Indian, Constitution provides for this obligation on the states under the chapter directive principles of state policy,¹⁸ some of which are

- Promote the welfare of people,¹⁹
- Protect the health and strength from abuse,²⁰
- Provide public assistance in case of sickness disability or underserved want,²¹
- Ensure just and humane conditions at work
- Raise the level of nutrition and improve the standard of living²²

The public health care system is also seen in many areas of panchayats and municipalities,²³ which include safe drinking water facility

- Medical healthcare facility
- The welfare of the family
- Welfare of society

¹⁴ Arnold 1989, and the other paper in Dyson 1989.

¹⁵ First five year plan provides that only 3% of toilets were being constructed at their houses and remaining population lacked the facilities of sanitisation.

¹⁶ Gupta.D.M, Public Health in India: An overview, World Bank Publication,2005,

¹⁷ World Health Organisation

¹⁸ Directive Principles of State Policy enshrined in Chapter IV of Indian Constitution.

¹⁹ Article 38 of Indian Constitution

²⁰ Article 39(e) of Indian Constitution

²¹ Article 41 of Indian Constitution

²² Article 47 of Indian Constitution

²³ 11th and 12th Schedules added by 73rd and 74th amendments 1992

- The welfare of women and children Especially about sanitization

The fundamental right to health is not expressly provided in Part III of the Indian constitution. But the judiciary assured the right to health as a primary and fundamental right in many cases.

The right to life includes the right to a healthy life and not merely the animal's existence.²⁴ The scope of article 21 was widened and held that it is the responsibility of the government to provide medical help to each and everyone and thereby promote the welfare of the public.²⁵

V. TRANSGENDER HEALTH AND INTERNATIONAL LAW

transgender health is understood as availing medical facilities but transgender health requires not only medical assistance but also requires policy guidelines known as Transgender Public Health Care Facility System.

WHO recognizes the need for the protection of trans health in the broader sense which includes the medical facility and policy guidelines. These are called the Health Objectives of the Trans Community. Trans people faced discrimination at all levels but much affected them is the health disparities and fear of harassment in contacting to avail medical help. Under International law various provisions are given to Human Beings, now it is the duty of the Judiciary to interpret those provisions to include Third Gender.

ICCPR is the international covenant which prohibits discrimination and gives all person equality before the law²⁶

- Person's Right to Liberty²⁷
- The right to Health must be interpreted to include transgender people as a neglected and vulnerable community.

in the year 2017 a statement was released²⁸ which provides for LGBTQIA+ persons were protected under UDHR.²⁹ transgender people were never been a part of the census in India but population information was calculated in various fields such as employment, caste, and children. it was calculated approximately 4.88 lakhs as per the 2011 census which constitutes approximately 70,000 transgender people spread all over India. we have no information as to where and how they are treated in case of emergency and need of medical help. World Professional Association for Transgender Health (WPATH) is a non-governmental organization

²⁴ Francis Coralie Mullin vs The Administrator, Union Territory of Delhi AIR 1981 746.

²⁵ Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996) 4 SCC 37.

²⁶ Art 26 of ICCPR 1966

²⁷ Article 9 of ICCPR 1966

²⁸ OHCHR in 2017

²⁹ Universal Declaration of Human Rights 1945.

working for transgender healthcare needs worldwide. It was established in the year 1979 it has a review released by Seven Standards of Care (SOC)³⁰

- Recognize a trans prejudice as a health problem,
- De path lies in gender identity variance (GIV),
- Change the language used to describe trans,
- Incorporate more realistic figures for prevalence,
- Promote health care services in all languages,
- Recognize flexibility in real-life experiences (RLE), and
- Age requirement in transgender health care.

VI. THE TRANSGENDER PRESENT AND FUTURE SCENARIO

The health of transgender can be maintained by health professionals only like for the binary genders. We have established medical institutions and all the services are extended to binary genders. To monitor transgender people strict regulations with the updated syllabus must be introduced. The public and private community hospitals must be trained to deal with and extend medical help to transgender people and strict regulation boards to be displayed in the hospital zone with information on the punishment and fine for bullying, harassment and violence. Free legal aid facility is extended to enlighten about the legal rules, and procedures, in the same way, free medical aid campaigns should start in all the hospitals of India to create awareness about the health of the transgender and possible problems that the transgender health can suffer from in the future. The doctors must be specialized in transgender courses in the same way the course should be designed.

³⁰ Cultural Considerations for the World Professional Association for Transgender Health's Standards of Care: The Asian Perspective, Sam Winter, *International Journal of Transgenderism* 11 (1), 19-41, 2009

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