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# Position of Transgender in India: Primitivism to Post Modernization

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## ABSTRACT

*“Let it be male, female or third gender,  
All have to live happily together,  
Leaving all ongoing unfair practices,  
Society has to eradicate all those tactics.”*

*Apart from the male and female gender, there is recognition of the third gender. These are people who identify themselves opposite to their biological sex. From the very beginning, they often came across with different names like Hijras, Eunuchs, Kothis, Aravanis, Jogappas, etc. Somewhere they have been treated very loyally even somewhere kept as royal servants and bodyguards at Queen’s place. However, during British Colonial Rule they have been declared as a criminal tribe. When we come, across the present situation, transgender is often treated as untouchables and also they live in absolute poverty because of the limited source of earning their livelihood, they started trading with their uneasy feeling.*

*The government of India took numerous measures to counterbalance the position of transgender in India. Despite it, they are facing plenty are often ridiculed and abused in public places, workplaces, railway stations and where they are found. Many petitions were filed asking for legal status (TG community), to provide free legal services to the weaker and the marginalized section of the society(National Legal Service Authority), recognition as the third gender (claimed by Laxmi Narayan Tripathy), legal protection and socio-economic benefit(by Kinnar community), access to education, healthcare, constitutional guarantee to equality before la. The initiative was taken by Denmark and Argentina to grant recognition to the LGBT community.*

*Our society has a Transphobic attitude, which reflects the biases towards them. Everyone is born with a sexual orientation, which gives them an identity. This states the fact that gender is inherent from birth and there should be no discrimination in this regard. Society has to evolve according to a present need.*

*The paper seeks to answer the problem faced by transgender even after the Bills related to the protection of transgender were passed. The purpose of this study is to present a*

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*critical analysis of the Bills passed on for the protection of transgender and their loopholes, also a systematic review of transgender from the very beginning to the present era, challenges faced by them from THEN TO NOW.*

## **I. INTRODUCTION**

People who are male but deny accepting their masculine identity and choosing it to be as women, not men, between men or women are transgenders. Transgenders are the same as normal people society can't discriminate or disrespect them because of little variations in them they are considered different from society, not been treated equally, deter to use public accommodations, indulge in prostitution, begging for income, forced to leave their family when they are identified as transgender and are asked to live with their community. They face complete denial from society even from their families. Our society is complicated, where we talk about no gender Biased culture and still not able to accept third gender people declared as transgender in an act passed in 2014. They are denoted by the term 'umbrella' because their gender identity, orientation does not match their sex assigned at the time of their birth.

## **II. HISTORICAL BACKGROUND**

When we look at their origin, they are not new to society their existence is felt from the era of Ramayana. According to Hindu mythology when Lord Rama left home for 14 years of exile a huge crowd of people followed him with immense devotion towards him. He asked all the 'men and women to return to their houses. Those who were neither of them stayed. When Lord Rama went back to Ayodhya after 14 years, came to know about those people who stayed because of being neither men nor women. Impressed with their devotion Rama give them powers to bless and even curse people. With the onset of the 18th century in British Colonial rule, the situation changed drastically. These people were declared as a criminal tribe because of their dressing sense people had a fear that they are the ones who engaged in kidnapping like activities. Also, in the Mughal era, they were considered very respectful.

## **III. LGBT COMMUNITY**

The acronym LGBT signifies Lesbian and Gay which is an interaction of female to female and male to male respectively, Bisexuals are attracted towards both male and female they are homosexuals. Then comes the transgender who identifies themselves as different from the sex assigned at their birth. There is a need to make a difference between transgender and Transsexual, Transsexual is those who are not happy with the sex they are assigned and takes

the help of medical assistance to get the transition.

#### **IV. PROBLEMS FACED BY TRANSGENDERS IN INDIA**

The population of transgender is vast in range; it is increasing day by day along with their increasing problems. Every problem's solution is mentioned in the act passed but the problem is in its implementation. There are major issues which are to be covered by the government are as follows:-

- **Education:** - It is the biggest challenge faced by transgender also it is the biggest reason for their backwardness. If a person gets educated he will automatically be respected in society. But there is a lack of separate educational institutions for them because of which they are out of reach of their private and government jobs which leads to inequality. Also, this makes a limited source of income to them.

- **Poverty:** - These communities are left unaccepted by a society which makes them inferior in every aspect even because of Limited source of income they are forced to indulge in begging, prostitution, dancing and other activities

- **Exclusion:** - They are excluded from society in many ways socially, economically, culturally, politically and even they are restricted to use the public restroom. They even don't have proper access to fundamental rights and they are struggling a lot to claim them.

- **Disregard faced by them:** - Transgender are disrespected when they come across normal people of society their presence makes them behave awkwardly. There are even found unaccepted by their family side in many cases.

- **Access to Public accommodations:** - It is noticed that malls, shopping complexes don't even have proper facilities for these people who are considered transgender there should be a separate restroom, changing rooms for these people so they can use them without any kind of hesitation.

- **Need for educational institutions:** - There is an urgent need for an educational institution in every state. This is the only way transgender people can get awareness regarding themselves and through this way, they can contribute to the expansion of society and its growth.

- **Medical intervention:** - Transgender who live in India need a certificate that declares them as transgender and this helps them to claim benefits specially privileged to transgender. They are certified after going through a medical examination which violates the phrase "My Body –My Right" whereas in a country like Denmark there is no compulsion for the medical intervention and people are certified transgender based on their statement.

## **V. DECISIONS RELATED TO THE SUBJECT MATTER**

### **(A) National Legal Service Authority vs. Union of India and Ors.<sup>3</sup>**

In this case, the Hon'ble Supreme Court gave legal recognition to the rights of transgender people. The court recognized the rights of the transgender person as part of a fundamental right, which includes the right to freedom of speech and expression, right to life and personal liberty and right to equality. In this case, the Supreme Court also recognized the abuse or disrespectful attitude towards the transgender community.

Supreme Court directs Central and state government to maintain some legal structures so that every transgender in society realize their fundamental rights.

This orchestration involves steps taken by central and state governments to improve the conditions of transgender in society. The problems which were faced by the transgender person were separate public toilets, restrooms and lack of educational institutions, and many more. The court decreed to increase public awareness related to transgender fundamental rights. The decision of NATIONAL LEGAL SERVICE AUTHORITY VS. UNION OF INDIA<sup>4</sup> enlisted various rights and facilities to the transgender of India on 15 April 2014. The Central and state government was assigned to imply all decisions given by the Supreme Court within 6 months i.e., by October 2014 but there was no implementation of any decisions. So, two acts were passed to implement the decision i.e., The Rights of transgender person act 2014 and The Right of the transgender person (protection of rights) act 2016.

### **(B) Rights of transgender persons act 2014**

This act was enacted by the Parliament of India. It includes discontinuing the discrimination faced by transgender people in India. This bill was passed on 24 April 2015 by Rajya Sabha then further the bill introduced in the lower house or Lok sabha. Bill further works on no sexual abuse to the transgender, their overall development, and also the implementation of the national policy.

### **(C) The transgender person (protection of rights) act 2016**

- It includes a prohibition against discrimination transgender person
- Benefits related to health, education and employment
- A National Council for the transgender has to be set up to listen to all the grievances of transgender at the national level.

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<sup>3</sup> AIR 2014 SC 1863

<sup>4</sup> ibid

- states penalties and offences.

#### **(D) Transgender person (protection of rights) act 2019**

This act was passed on 5 August 2019. Many rights were provided in a bill passed in 2019 which states prohibition against discrimination, recognition of Identity of a transgender person, welfare measures by the government, obligations of establishments, Education Society security and health of a transgender person, national Council for a transgender person.

#### **(E) Flaws in Act passed - Transgender person act, 2019**

- **Section 6** - Application for certificate of Identity - - “My body my right”
- These people are undergoing medical intervention for certifying them with transgender identity but in a country like Denmark statement by transgender is enough to certify them as transgender without any medical intervention. **MY BODY MY RIGHT** best describes the right of a person on his/her body; no interference is needed in this regard.
- **Section 9** - As stated in the Act there shall be no discrimination in employment but transgender in today's life are still facing discrimination in getting jobs, recruitment, promotion, considered weak and other related issues.
- **Section 13** - It is mentioned to provide inclusive education opportunities, sports recreation, without any discrimination but they are still lacking on this ground. There is an absence of accessibility to education and Recreation, sport too.
- **Section 15**- It States proper Healthcare facilities for transgender. But still, doctors deny examining them and even exploit them.

### **VI. WHAT MORE CAN BE DONE**

- For enhancing the condition of transgender government can create separate restrooms and washrooms for them, as we see when we go to the shopping complex or malls there are only two categories of washrooms but we need a distinct place for them so that they cannot be discriminated and use them without any hesitation.
- For certifying the third gender as transgender and to avail rights and protection provided to the transgender community needs a certificate which is given after undergoing a medical intervention. But as in Denmark a statement from a person is enough to certify them as transgender. There must be no interference on the body of any person.
- They are educationally backward people. Because there is a lack of separate institutions for them. So, there must be separate educational institutions available for them so that

they can get educated without being bullied. And also their teachers appointed must be transgender which will increase the job opportunities for them.

- And very importantly, the viewpoint of society has to be changed, it should be taught in elementary classes about these people, their history and to maintain equality among all the genders. So that when the small seed grows, it grows up with a discrimination-free mindset.

## **VII. ACHIEVEMENTS**

After facing obstacles in their life there is a lot of transgender who broke all flatters to achieve their goal and outshine themselves. It's not easy to achieve your dreams when you are always questioned about your sexuality. Every transgender has to face derogatory behaviour in the society they live in. As like us, transgender career life is not as normal as we think. They have to hear abusive language continuously from society.

But as we know that person who tries never fails, to prove themselves there are many transgender who makes our country proud. If you reach a good respectable post, irrespective of your caste, sex, gender, people will salute you. In this context there comes our

1. **India's first transgender lawyer** Sathyasri Sharmila who set an example for all transgender by pursuing law so that she can fight against injustice their community face at every turn of their life.
2. Joyita Mondal becomes the **first judge at Lok Adalat** in North Bengal before she pursues law she was working for transgender rights in an organization.
3. Prithika yashiki becomes the **first transgender Sub Inspector**; she passed all hurdles and came out with flying colours.
4. Manabi Bandopadhyay becomes the **first transgender College Principal** of Krishnanagar women's college to complete a doctor of philosophy.
5. **India's first transgender MLA** Shabnam Mausli contested election in Madhya Pradesh.

## **VIII. CONSCIOUSNESS MAKES A MAN UTILISE THE OPPORTUNITIES**

People who are conscious enough utilize their energy to the best of their efforts. Awareness plays a major role. Transgender who were aware get success but who are still in dark and are not aware of the opportunities available to them constitutes a backward community. There has to be regular inspection about, whether the rights available to them are actually utilized by them or still they are unaware about the equality they have in society.

## **IX. CONCLUSION**

In a nutshell, we need to have a look at the situation of the transgender, the situation they were in the primitive period and what it is now. As human beings, they are also an equal part of society and there is no such difference in males, females and transgender. Male as gender is distinct from a female and vice versa. Similarly, transgender as gender is distinct from male and female. As females and males are happily accepted by society, similarly transgender is also to be accepted. But the reality is harsh. The situation they are in is very different from what we think. Jobs are not easily accessible to them which is the main cause of their low standard of living. Society is still living in a binary concept of gender, people have to change their mindset and accept them as a part of the nation. They are not fully aware of the law passed for the protection of their community, some are aware and have succeeded but some are still lost. The government took all necessary steps to curb the discrimination faced by them but society have failed to implement it in itself.

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