

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 6

2024

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Right to Equality to Transgender Community and their Social Recognition: A Critical Analysis

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ABSTRACT

One of the most fundamental aspects of life is “Gender Identity”. Sex of person assigned to him at the time of his birth becomes a legal fact from that very moment. “Biologically” and “Naturally” sex is expressed into two categories as men and women. It might happen in certain cases that the sex assigned to an individual after his birth does not correspond to the pattern of life that he develops as he grows with regard to dressing sense and speech with time. Due to such modifications and distinctions in the bodily appearance and characteristics of a person, he is regarded neither as man or woman but a third gender called “transgender”. The group of people belonging to this “other’ class often experience discrimination, avoidance and harassment in every sphere of life. They face social exclusion and due to overcome the feeling of solitude, distress, neglect and agony they indulge in Prostitution and continue earning their livelihood to satisfy their economic and social needs. Globally, female prostitution has received significant research attention but less is known about transgender prostitutes and their unique needs. It is the duty of the State to secure the human rights and accord social protection to transgender by National and International Effort.

Keywords: *Transgender, Discrimination, Sex Work, Human Rights and Social Protection.*

I. INTRODUCTION

“Sex” denotes male and female and “gender” denotes being a masculine and a feminine. It signifies the meaning attached to being a “man” or a “woman”. In order to establish the basic differences between the concept of “sex” and “gender”, a lot of hard work has been done on the part of “Sociologists”. If we see theoretically, a line of division has been well established but if we look into the daily application of the concepts, they appear to be overlapping.

The difference between “sex” and “gender” is that while on one side sex is a “biological concept” based on the difference of the “genitalia” between male and female on the other hand,

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“gender” concentrates on “personal”, “societal” and “cultural” perceptions of sexuality. Nature has created a biological distinction between females and males on the basis of “X Chromosomes” and “Y Chromosomes” that indicates the ovum fertilized by them and also determines their type of sexual and reproductive organs. It was later realized that the real difference between them was not “sex” but “identity”. Subsequently, everything began to be related to both men and women³.

From feminist perspective, “gender” is purely a “social construction” that carries with it various “patriarchal roles”, “values”, and “expectations”. As for example, to attract the attention of men, many women in our society are expected to wear high heels and to dress gracefully in order to comply with the rules of womanhood. Women are expected to obey the wishes of men with a smile even though they have to bear back ache or soreness in feet because of their dressing sense. Feminists consider gender a prison that keeps women in a position of “subservience to men” and pleads for the abolition of “gender” as for them gender is the problem, not the solution⁴.

It is so natural for us to divide human beings in two biological categories as man and woman. Such sex assignment to them at the time of a person’s birth is assumed to be both “common sense” and “permanent”. It is not nearly possible for us to even think about any alternative to this view of “sex” and “gender”⁵.

Traditionally, “Transgender” have been described as a “heterogeneous group” who wanted to live full or most of their life as women. The “Transgender” are commonly believed to have the elements of both male and female. They are viewed by the large proportion of the society as "neither male nor female", “impotent men” who undergo “emasculatation” to have all or part of their genitals removed.

“Transgender” have been recently termed as “third gender”. But this terminology has not been welcomed and accepted by everyone. It is opposed for a reason as all “trans people” do not want to be recognized as "third gender". They feel that it merely reinforces a third category against the binary set up of gender as “male” and “female”. The term may presuppose that it is a wish of both “trans men” and “trans women” to be combined under the single category called "third gender." ⁶

³ Kara Dansky, *The Abolition of Sex: How the “Transgender” Agenda Harms Women and Girls* 20 (Post Hill Press, New York, 2021).

⁴ Id.

⁵ Gudeep Singh, *Transgender and Their Social - Legal Status: An Empirical study in State of U.P.* (2015) (Unpublished Ph.D. thesis, Dr. B. R. Ambedkar University, Agra).

⁶Larry Nuttbrock, *Transgender Sex Work and Society* 214-235 (Columbia University Press, 2018).

“Transgender” adopt “female behavior” that include dressing and carrying them as women and taking on women's name and using female kinship terms and a special feminized vocabulary but are not considered as women, because they cannot give birth. They are not considered males as they are unable to “reproduce” children, an essential element in our society's concept of the normal male.

The existence of “Transgender” people is a fact evident since ages and is reflected from old Indian “temple carvings”. “Transgender” concept, categories and roles is not the discussion of modern day society. In fact, the ancient “Kama sutra” referred to “men who desired other men”, so-called “eunuchs”, “the male takes on the appearance of a female and the female takes on the appearance of the male”, or two kinds of “biological males”, one dresses as a woman, the other as a man.

Even the Hindu Epics contains the mention of “Transgender”. “Ardhanari” a god that is half “Shiva” and half “Parvati” has special significance as a patron of “trans gender”. “Lord Rama” during his 14 years of exile gave boon to the transgender to sing, dance and shower blessings on people during occasions like childbirth and weddings. Even “Mahabharata” talks about an epic episode on “Arjun” where he assumes an identity of a “eunuch-transvestite” and performs rituals during weddings and child births that are now performed by “transgender”.⁷

(A) Transgender and Non recognition

A society that is “multicultural”, “multilingual” and “multi religious” always creates certain norms. It recognizes normality and establishes dominance of a sect. In the Indian society, the patriarchal society establishes the normality of manhood and female are treated as the other. Such Notion thus justifies “heterosexuality” as against “homosexuality”

A women’s body in an Indian society while performing on everyday basis is associated with notion of purity. She undergoes exclusion and faces discrimination in her lifetime. The body of the transgender like women bears certain stigma through “expressions”, “verbal abuse” and at times treated as “untouchables”. The “sexuality” of women is accused of being associated with “pollution”, “diseases”, “dirtiness”, “impurity” and “death” and so they are often “medically” and “sociologically” compelled to pass through the normalization procedure in order to fit into the “gender” binary norms since the history of human life.⁸

The community of “transgender is not “homogeneous”. The term ‘transgender’ describes a wide

⁷ Id.

⁸ Skylab Sahu, “Identity and Other: Women and Transgender Sex Workers in Karnataka”, 68(1) Sociological Bulletin 44–59 (2019).

range of identities and experiences, including “inter-sexed” individuals, “transsexual” individuals, male and female “cross dressing”. They are also sometimes referred to as “transvestites”, “drag queens” or “drag kings”. The term “Transgender” is encompassing that describes them a class whose appearance or characteristics, regardless of “sexual orientation”, are perceived to be gender atypical.

From the moment of a baby’s birth in a family, parents tend to be clear about it’s identity of being a girl or a boy. Such parents curse the baby and their own fate if the sexual organs of the child are found unclear. Through medical help, they also look forward to change the sex of the baby. If however, due to reasons like poverty, the sex a transgender cannot be changed then such child is compelled to go through the journey of their childhood and puberty in disguise and within four walls of the house while hiding their bodies. Some are encouraged to discontinue their education or drop out in the shame of disclosing their real being. Only a few manage to come out of this concealment and survive with the real identity that they are born/identified with in the society.

The “transgender” who learns to live with its identity disclosed has to face “discrimination” and “humiliation” at every stage/sphere in life. Many “transgender” children finds problem to create a “balance” and “consistency” between the actual body and the “psychological” and “emotional” feelings and behavior that they opt or prefer to live with. In such circumstances, they are hesitant in revealing their status to their family members under the fear of facing rejection and being disowned by their own family. Generally they choose or are forced to stay within the community of “transgender” known as “Hijras” and other “transgender” identities like – “Aradhis”, “Sakhi”, “Jogtas”, “Jogappas”, etc. The “transgender” are the objects of shame, fear and mockery whose “pain” and “trauma” is seldom realized by this society.⁹

(B) Pathways of Entering into Sex Work by Transgender

Earlier, “prostitution” was only understood as a barrier restricting female prostitutes to the “paid prostitute” role, and male prostitutes as men who operated as a pimp for a female. It was looked upon through the lens of “heterosexual behaviors”.

Later, “cross dressed” and “cross named transgender” turn to “prostitution” for their “economic survival” when they failed to survive because of “gender discrimination”. Many others unable to maintain a feminine appearance through costly “hormone injections” and “plastic surgeries” enter prostitution for “financial incentives.”¹⁰

⁹ Id.

¹⁰ Elizabeth Schepel, *A Comparative Study of Adult Transgender and Female Prostitution* (2011) (Unpublished

Some of the problems faced by “Transgender” are “Discrimination”, “Unemployment”, “Lack of Educational Facilities”, “Homelessness”, “Lack of Medical Facilities”. This community also feels neglected in fields of “inheritance of property” and “adoption of child.” They have meager “job opportunities” and “socially out casted”. Their families feel reluctant and ashamed in accepting their male child if he behaves in a way a female does. As a result they assaulted and threaten their child for not dressing and living like a female. This scatters and lowers the self esteem of such children and they consider themselves a “curse” for their family and society.¹¹

“Transgender” face a variety of Challenges while leading a normal life:-

1. “Homelessness” and “Social Exclusion”: “Trans people” are often noticed by their family members and society when they show “gender variant behaviors” or “mannerisms”. They are often addressed as a stigma by their elder siblings and male members of the family and even face violence from them in an effort to force “trans persons” to conform to natural gender norms.

“Transgender” also undergo difficulties in getting the basic “accommodation”. Due to their unnatural identity based on their “gender” and stigmatized “work status”, they are often charged heavy rents by their landlords. They are living on streets because many shelter houses and domestic violence shelter homes do not accept transgender people.¹²

As a result, many “gender-variant” children and youths are coerced to leave or are evicted from their shelter under the guise of avoiding embarrassment to the family. This is the reason to turn them to immoral activities.

2. Denial of “Quality Education”: “Transgender” are easily noticed by teachers and their peer groups in schools. This often leads to “bullying” by other students and loss of interest in the studies by the “trans people”. As a result, many do not finish college, which further limits employment opportunities in the formal work sector. They may be reluctant to have adequate education because of the stigma attached to their identity of being “Other”.

3. Joining a “Hijra Community”: Lack of understanding and support by the family, teachers and friends compel “trans people” to lead a secluded life. They either start working on streets begging and earning a livelihood or join a “Hijra community” and earn by dancing and singing in “Badhai” at occasions of “marriage” and “child birth”. Many also indulge in

Ph.D Thesis, Arizona State University).

¹¹ Pinki, Poonam Malik, Krishna Duhan and N Pavithra, “Status of transgender in India: A review” 6(2) International Journal of Home Science 127 (2020).

¹² Dr. Subhrajit Chatterjee, “Problems Faced by Transgender Community in India: Some Recommendations” 6(1) International Journal of Creative Research Thoughts (IJCRT) 672 (2018).

sex work in brothels or as “Escorts” who usually work through “Pimps” to earn bread.

4. **“Workplace Discrimination”:** Due to lack of education, “transgender” face problem in getting an employment of their choice and capability limited by stigma and “discrimination” in “recruitment practices” of many employers, as well as hostility in most workplaces, absence of “gender-appropriate” rest rooms, etc. in both “formal sector” and “informal sector”.¹³ If luckily they find a job but the employer and colleagues are “non supportive”. Other factors like restrictions based on “dress codes” and “lower wages” when compared to other co-workers (men and women) force them to quit job.
5. **“Transphobia” and “Psychological Distress”:** “Discrimination” toward “transgender people” is often defined as “transphobia” or “an emotional disgust toward individuals who do not conform to society’s gender expectations”.¹⁴ Due to their “sexual orientation”, Transgender are more likely to face “harassment” and “intolerance” than those that identify themselves as “heterosexual”. Many “Transgender” conceal their identity while living in “transphobic environment forces” for fear getting negative reactions from society.

“Transphobia” manifests itself in different forms, for example “physical attacks”, “discrimination in the workplace” and “negative media representation”. Such negative attitudes may lead “transgender persons” to develop emotions including “deep sadness”, “anxiety”, “loneliness”, “discomfort in social situations”, “ostracism” and feeling overwhelmed¹⁵.

6. **Discrimination in “Access to Justice”:** “Transgender” experience hardship in accessing justice due to lack of “anti-discrimination” legislation and policies to protect their rights from being violated. They may be reluctant to access justice out of fear that they will be “arrested” or “imprisoned”. They feel discouraged to file complaints against violence not wishing to face discrimination by persons involved in the “justice process” including “police”, “public officials”, “legal practitioners” and “judges”. They experience “transphobic” and/ or “whorephobic” attitudes at the various points of access because “police officers” are reluctant to carry out effective investigation into their complaints and that they are often not believed at the point of disclosure.
7. **Discrimination in “Access to Adequate Health care”:** “Transgender” get a differential treatment at hospitals if they suffer from any disease like HIV/ AIDS that resulted from

¹³ Supra note 9.

¹⁴ Kevin L. et. al., “Transgender Women and the Sex Work Industry: Roots in Systemic, Institutional, and Interpersonal Discrimination” *Journal of Trauma & Dissociation* (2013).

¹⁵ Dr. Vasant More, “Problems of Transgender Community in India: A Sociological Study” *Vivek Research Journal Special Issue 92-93* (2021).

activities perceived as unnatural or associated with “Homosexuality”.¹⁶ Healthcare professionals behave biased and sometimes overtly rude with their not-preferred gender clients.¹⁷

Even the mental health needs/ issues like “depression” and “suicidal tendencies” among “Transgender communities” are barely paid any attention.

Health is a state of complete “physical”, “mental”, and “social” wellbeing, not only the absence of “disease” or “infirmity” as recognized by the World Health Organization. Hence, the full picture of “trans health” is very important so that “trans people” can have healthy lives in “safe communities”.

8. “Gender Transition”: One of the reasons for engaging in sex work is to earn money for undergoing proper “sex-reassignment surgery” also referred to by activists as “gender-affirmative surgery” or at least to remove their male sexual organs, that is, “to become a nirvan”.

9. “Gender Affirmation”: Another dimension of the impetus for some “trans women” to engage in sex work is the desire to affirm their “gender identity” as “women” by having multiple male partners who are willing to have sex with them and appreciate them as “women”.

It is often found that the “Transgender community” is “ridiculed” and “abused” in “public places” such as “railway stations”, “bus stands”, “schools”, “workplaces”, “malls”, “theatres”, “hospitals”, etc. Consequently, the community feels that it has been sidelined as “untouchables” and excluded from actively participating in “social”, “cultural life”; “economy”; “politics” and “decision-making” processes.

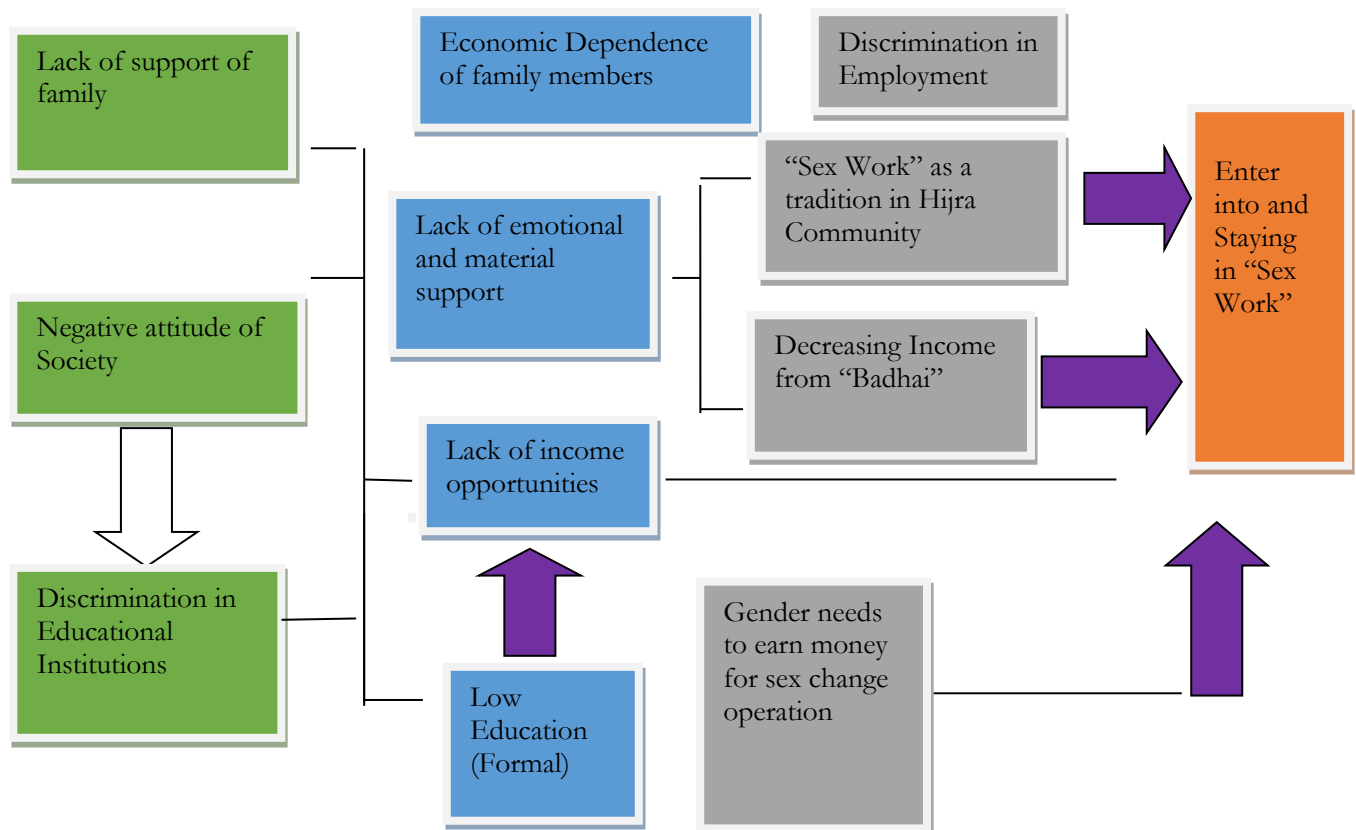
Many hijras/transwomen enter into sex work because of this large-scale exclusion from economic participation in both “formal” and “informal” employment sectors. Though poverty is an important impulsion behind sex work, there are numerous interconnected pathways like “negative societal attitude”, absence of support from family members and need for money for “gender transition”-related expenses that promote entry into and remaining in sex work by “transpersons”.¹⁸

¹⁶ The Needs and Rights of Trans Sex Workers, available at <https://www.nswp.org/sites/default/files/Trans%20SWs.pdf> (last visited on September 12, 2022).

¹⁷ Strasbourg, “Human Rights and Gender Identity” 2 CommDH/IssuePaper (2009).

¹⁸ Venkatesan Chakrapani, et.al., “Hijras/Transwomen and Sex Work in India From Marginalization to Social Protection”, available at file:///C:/Users/hites/OneDrive/Desktop/books%202/Chakrapani_Newman-TGW_SxWork_2018.pdf (last visited on September 11, 2022).

Table 1 shows interconnected contexts to indulge “trans persons” in Sex Work:-



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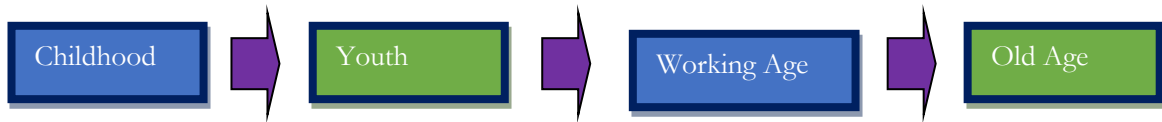
(C) Social Protection to “Trans women”

“Social protection” for “trans women” in sex work in India is necessary in light of “stigma” and “marginalization” faced by them across multiple sectors. “Social protection” aims to ensure a life of dignity for everyone, including “trans people” in sex work.

For “transgender sex workers”, a “rights-based”, “gender sensitive”, “transformative” (i.e.,

addressing discrimination and inequities), and “anticipatory” (e.g., anticipating economic vulnerabilities and risks at particular stages in life) “social protection” is needed.

Table 2 presents a framework for social protection for “trans people”:-



S.No	Protection of Rights From:	Rights to be Protected:
1.	Infringement of right of Education	Right to Education
2.	Discrimination at all places (School, workplace, public places and Society)	Right to Physical and Mental Health
3.	Exploitation in all forms	Right to Decent standard of living
4.	Poverty	Economic Equality (Pension and health insurance)
5.	Discrimination on basis of “Gender Identity”	Right to “gender identity” and “sexual orientation” and “voluntary sex”
6.	Denial of Employment of Choice	Right to “Decent Work” and assistance for “self employment”
7.	Violence	Assets and Ownership

a. Transgender and a Life Cycle Approach¹⁹

Various Social Security/ Protection measures at every stage of life of a “transgender” can help preventing her from adopting Prostitution as a means of Livelihood or to secure a transgender dignity throughout her life :-

- **Childhood:** “Trans people” often abandon their family of birth and their education due to the family's lack of acceptance. Acceptance of “gender-variant” children and youths

¹⁹ Supra note 13.

by family members need “Counseling interventions” and programs to promote understanding of “trans people” among school and colleges, thus removing a barrier to completion of education. In fact, “non discrimination” policies on “gender-variant” children and youth is needed to strengthen these “sensitization” and “educational” initiatives.

- **Adolescence:** The fundamental human rights of “trans women” who voluntarily enter into sex work should be protected. Additionally, “trans women” who chose some other employment should be supported and provided adequate opportunities according to their qualifications and abilities.
- **Working Age:** “Unemployment benefits” in the form of “stipends”, assistance to individual “trans people” and to self-help groups of “trans women” for initiating “small-scale” business enterprises may provide important support to “trans persons” seeking “self-employment” or “group employment”. Moreover, development of “redress” and “accountability” measures for issues at workplace may also help in preventing workplace discrimination and promoting sustained employment of “trans women”.
- **Old Age:** Young transgender can lead a better life as compared to those whose age is growing in number. Old “Hijra sex workers”, are less likely to be able to sustain their income through an adequate number of clients. They become gurus, depending on their chelas (disciples) who engage in sex work to support them. There is a need to provide older “Hijras” by providing an “old-age” pension.

(D) Legal Context of Transgender/ Law and Identity of Otherness

From ancient times, “Transgender” are fighting/ struggling for their basic human rights against the “sufferings”, “humiliations”, and “discriminating” treatment of the society against them. While on one hand, humans have reached the moon, this class of society is still weeping for its rights. The socially superior class of the society is still against this sect of the society.

“Trans Sex Workers” experience distinct levels of “criminalization” across the globe. Countries have different norms that either “criminalize” or protect “trans people” and “sex workers”. Furthermore, in every part of the world, “sex work” as an occupation is “criminalized” either directly and/ or indirectly. In many countries, “Trans people” face hurdles in accessing the process in order to change name and gender in their legal documents like “ID cards”, “passports”, “birth certificates” or other documents.

“Transgender” are deprived of equal participation at “social” and “cultural” fronts because of

their “unnatural identity”. They enjoy limited “civil”, “economic”, “social” and “political” rights and their identity keeps traveling between the notions of “legality” and “illegality” of criminal law. In India, the Indian Constitution and the Judiciary has always been supporting this “vulnerable class” of society.

a. “Trans gender” and “Constitutional Rights”

The Indian Constitution provides to all its citizens including “trans gender” certain basic rights. It provides for “equality before law” and “equal protection of law” to every person living in India. Transgender people also come within its ambit. They too are entitled to “equal protection” in all spheres of “State activities”.²⁰

It also prohibits discrimination on the ground of religion, race, caste and sex. So the transgender being the citizens have the right of not being discriminated on this ground.²¹ The constitution further provides that in matter of employment and equal opportunities the “third gender” should not be discriminated on the basis of their “sexual orientation”.²²

It is a matter of grief that though the “law of the land” talks about “personal liberty” and “right to life”²³, but the transgender since time immemorial have been deprived of both these rights.

b. “Trans gender” and Judiciary

The modern day society has seen a remarkable change in the recognition and acceptance of “third class.” Many laws and policies were framed in this regard and Judiciary has also played an important role in providing human rights to “trans gender community.”

*In National Legal Services Authority v. Union of India and Others*²⁴, the Court elaborated upon “Gender Identity” as:

“Gender identity refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms. Gender identity, therefore, refers to an individual’s self-identification as a man, woman, transgender or other identified category.”

“Transgender” was a non recognized community for long and “homosexuality” was considered

²⁰ The Constitution of India, art.14.

²¹ Id.,art.15.

²² Id., art.16.

²³ Id., art.21.

²⁴ (2014)1 SCC 438. Popularly known as NALSA Case.

as “abnormal” and “unnatural” under Section 377 of Indian Penal Code, 1860.

The IPC 377 reads:

Of unnatural offences: whoever voluntarily has carnal intercourse¹⁰ against the order of nature with any man, woman, or animal, shall be punished with imprisonment of either description for a term which may extend to 10 years and also be liable to punishment of imprisonment and fine²⁵.

Sex is often seen both as the means for pleasure and reproduction. In the Indian society, “heterosexuality” is usually interpreted as order and “homosexuality” as against the nature or order. Even the state legal system followed a narrow approach towards understanding homosexuality which resulted in sexual violence within the sphere of homosexuals. Therefore, on 6 September 2018 the Supreme Court of India issued its verdict and ruled out the IPC Section 377 as unconstitutional and legalized homosexuality²⁶. Justice Sikri has rightly opined:

“there seems to be no reason why a transgender must be denied of basic human rights which includes right to life and liberty with dignity, right to privacy and freedom of expression, right to education and empowerment, right against violence, right against exploitation and right against discrimination. The Constitution has fulfilled its duty of providing rights to transgenders. Now it is time for us to recognise this and to extend and interpret the Constitution in such a manner to ensure a dignified life for transgender people. All this can be achieved if the beginning is made with the recognition of TG as third gender. The aforesaid judgment, as is manifest, lays focus on inalienable —gender identity and correctly connects with human rights and the constitutionally guaranteed right to life and liberty with dignity.”

c. Other countries that Support “Transgender”

“Gender refers to the roles, characteristics and behaviors that a given society associates with our identities as women, girls, men, boys or non binary people. Gender is socially and culturally constructed, so our understanding of gender differ across context and over time. Gender influences what is expected of each of us, the power we have in society, how we relate to others, and the norms to which we are expected to conform. Gender is a distinct concept and not the same as sex classification, which is typically assigned at birth.”²⁷

²⁵ Penetration is sufficient to constitute the carnal intercourse necessary to the offense described in this section.

²⁶ Navtej Singh Johar & Ors. v. Union of India, AIR 2018 SC 4321.

²⁷ Pathfinder’s definition of Gender, available at https://www.pathfinder.org/focus-areas/gender/?utm_source=adgrant&utm_medium=cpc&utm_campaign=womensempowermentpathfindercountries&source=QGXXXXXX-A&utm_medium=grant&utm_source=google&utm_campaign=XX&utm_content=&utm_term=gender%20equality&gclid=Cj0KCQjw3eeXBhD7ARIsAHjssr8lppaW0wLy8vBqwgrR (last visited on October 12, 2022).

“Gender equality” is a “human right” provided to all particularly “transgender” by removing barriers and introducing changes in policies, structures, and systems that hold individuals of all genders alike.²⁸ “Transgender community” is deprived of their basic “human right” not only in India but all throughout the globe. However, now “civil society” is raising its voice in support of this community and accordingly few countries allow them to lead their life according to their own choice and give them right to “sexual orientation”.

Table 3 shows the countries that support “Human Rights” for “Transgender”:-

S.No	Country	Rights to “Transgender”
1.	India	The Transgender Persons (Protection of Rights) Act, 2019, was passed by Parliament in November 2019. The Bill came into effect in November, 2020 and protects “transgender community” against discrimination in “education”, “employment” and “healthcare”. It recognizes the “gender identity” The bill aims to set up a "National Council for Transgender" comprising of a host of government and “community representatives”. It would advise the Union Government on formulation of policies with respect to “transgender persons”, “monitor and evaluate the impact of said policies”, “coordinate the activities of all departments” dealing with these matters and “redress the grievances of transgender persons”. ²⁹
2.	Argentina	Argentina is the first country in the world that made laws on “transgender rights”. “Argentina's Senate” unanimously approved the Gender Identity Law making sex-change surgery a legal

²⁸ Id.

²⁹ Punam Kumari Bhagat “A Comparative Study of Rights of Transgender under Human Rights Regime”(2022), available at https://www.researchgate.net/publication/358426368_A_Comparative_Study_of_Rights_of_Transgender_under_Human_Rights_Regime (last visited on October12, 2022).

		right in 2012 and it was included in both public and private health care plans. ³⁰
3.	Denmark	The European Council adopted a resolution in 2010 calling on member states to guarantee the rights of “transgender people” to obtain “official documents” with their chosen status .it allows them to do so without requiring other procedures such as “sterilization”, “surgery” or “hormone thereby”. Exactly after 4 years, Denmark became the first European country to allow people to apply for a “legal gender change” and obtain a “new gender status” on their “identification card” with a “simple declaration”. ³¹
4.	U.S.A	Discrimination based on “gender identity” has been banned in the USA, under Section 1557 of the Affordable Care Act, 2016. The rule applies to discrimination in “health settings” that receive “federal financial assistance”, every “health program” administered by the “Department of Health and Human Services”, and every “health program” administered by “Title I of the Affordable Care Act. The rule provides- it is unlawful for an insurance carrier to “have or implement a categorical coverage exclusion or limitation for all health services related to gender transition.” ³²
5.	Germany	In Germany, the “Federal Social Court” ruled in 1987 that “gender reassignment” measures in

³⁰ Amrita Sarkar, “Countries Supporting Gender Affirmation Related Procedures For The Transgender Community Members” available at <https://allianceindia.org/wp-content/uploads/2021/02/COUNTRIES-SUPPORTING-GENDER-AFFIRMATION-RELATED-PROCEDURES.pdf> (last visited on September 15 , 2022).

³¹ Countries that allow transgender people easy status change, available at <https://www.france24.com/en/live-news/20210629-countries-that-allow-transgender-people-easy-status-change> (last visited in October10, 2022).

³² Supra note 28.

		the case of “trans sexuality” are subject to payment. Once the medical necessity of the respective treatment has been determined, the costs for “gender-modifying” or “gender-adjusting treatments” are covered by the “health insurances”. ³³
6.	Sweden	Sweden Government provides “gender-affirming health care” for “transgender” and “gender-nonconforming” people. Their “multidisciplinary” care teams offer “personalized” and “patient-centered care” that addresses each individual’s unique “health care” needs. All costs for “medical care” and “pharmacological treatment”, except “facial surgery” are covered by the “national health insurance”. ³⁴
7.	Pakistan	In Pakistan, the Transgender Persons (Protection of Rights) Act, 2018 was enacted by the parliament in 2018 to legally provide “equality” to “transgender people” and to safeguard their rights. The law aims to legally recognize “transgender people” in the country and allows them to legally have the same rights as “cis gender people” with respect to “education”, “passport”, “driving license” and separate rooms at Jails. ³⁵

Although several legislative changes are made in every part of the world, the “transgender community” continues to face “discrimination” and “violence” in society with respect to their

³³ Available at

https://en.wikipedia.org/wiki/Transgender_rights_in_Germany (last visited on September 29, 2022).

³⁴ Supra note 30.

³⁵

Available

at

[https://en.wikipedia.org/wiki/Transgender_Persons_\(Protection_of_Rights\)_Act,_2018#:~:text=Transgender%20rights%20are%20legally%20protected,sexually%20assaulted%20in%20multiple%20incidents.](https://en.wikipedia.org/wiki/Transgender_Persons_(Protection_of_Rights)_Act,_2018#:~:text=Transgender%20rights%20are%20legally%20protected,sexually%20assaulted%20in%20multiple%20incidents.)

(last visited on October 22, 2022).

“social status”. Much of this change is “isolated”, “non-systemic”, and “insufficient”.

The recent commitment of the “international community” towards “Sustainable Development Goals (SDGs)” aim at preventing “human rights violations” and “social exclusion” and “equitable development”. The “SDGs” guided by the “UN Charter” and grounded in the “Universal Declaration of Human Rights” stand for respect to all “irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, or other status” and conceive processes that are “people-centered” and “gender-sensitive”. They perceive a “just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met.”

Everywhere across the globe, the exposure to “transphobic” and “discriminating attitudes” by “law enforcement agents”, refrains “Trans Sex Workers” from reporting violent incidents. Moreover, “language” and “financial problems” also create hindrance in TSW’s access to rights.

Consequently, the implementation of protective laws is “delayed”, “complicated”, and “hindered” by stigma and it thus takes a long time for the legal system to implement the directives and the local authorities to enforce them.³⁶

(E) Equality for Transgender: Time to Change

“Transgender” is not a “mental disorder”. It is the physical appearance of a being that is distinct from the rule of nature. “Transgender” is the most vulnerable cases who deserve to be equally treated in the society like the other two genders. Following are suggested to upraise the social and economic status of the “third gender.”

1. The society should treat them with sensitivity instead of taking them as shame.
2. They should receive a welcoming hand from the employment sector.
3. Education should be made available to “trans people” at primary and upper level.
4. Income incentives should be provided to the “trans persons” who opt to carry on the business of their choice instead of “begging” and “sex work”.
5. Affirmative and Strict action must be taken by government agencies against those exploiting the “trans persons” on the name of their “sexual orientation” and to wipe out the stigma attached to their identity.
6. “Workshops” and “Counseling Sessions” must be conducted to encourage “trans

³⁶ Fernando Belizario, European Union’s Rights, Equality and Citizenship Programme, “Guidelines for Comprehensive Intervention with Trans Sex Workers” (2020).

community” for better initiatives in life and to provide them a place for “cooperation” and “support”.

“Trans Sex Workers” lack information on their rights and unaware of the existence of organizations and services that can provide legal support to them. They should be provided sufficient knowledge about them.
