

AN ANALYSIS OF SPECIFIC LAWS ON HUMAN RIGHTS OF TRANSGENDERS

LOVEPREET KAUR

Research Scholar and Assistant Professor of Law, Rajiv Gandhi National University of Law, Patiala (Punjab)

ABSTRACT

The majority of countries in the world make it difficult or do not allow trans people to amend identity documents (such as birth certificates, passports, and national ID cards) to reflect their gender identities. Without proper identity documentation, trans people are denied citizenship rights. Trans people face massive discrimination and marginalization in all social institutions, including the family, labour market, housing, health, education, and religion. Transgender movements address numerous issues for gender non-conforming populations across the globe. Trans folk “deal with great levels of hate and violence across societies, which leads some authors to suggest that a transgender genocide is taking place world-wide.

It is difficult for trans people to navigate gender-segregated services, including public restrooms, homeless shelters, drug-therapy facilities and prisons. Trans people have less access to healthcare than the general population, due to discrimination and harassment by providers, inability to pay, lack of insurance, and a host of other socioeconomic barriers. Trans people in prison face challenges not only related to gender segregation and violence, but also due to lack of access to proper clinical care and medication – especially in relation to transition-related medical care.

Trans rights activists are confronted with torture, prison, and death in many parts of the world.” Human rights have to be given importance over traditional norms of societies that have distracted people from the path of elevating a transgender person as an equal being. A rigid morality restrains the freedom of choice and expression of people, and especially transgender people who are very often discriminated against. So, the researcher will discuss the rights of transgender under the international instruments and thereby make an analysis by seeing the reality that does these rights are actually availed by them in the society or these are just in paper and not in practice. And the researcher will also suggest measures to resolve all these issues prevailing in the society.

Keywords- Transgender, Transgender Rights, Standard Binary, Yogyakarta Principles, Rigid Morality.

INTRODUCTION

When a baby's born, he or she is assigned a sex at the time of birth. Following that, a child would be treated as either a man or a female. Some people are born with bodies that combine or incorporate features of both masculine and female physiology. It's also possible that, despite being born as a male, due to genital anatomy issues, a person's innate viewpoint is that of a female, and all of his activities are female-oriented. The situation might be exactly the opposite, with a woman born as a man having the same characteristics as a man.

The term 'transgender' is formed from two terms, namely 'trans' and 'gender.' The word 'trans'

comes from the Latin word trans, which meaning 'across' or 'beyond.' Transgender has a linguistic meaning that surpasses or transcends gender. Persons whose identity, gender expression, or behaviour do not match the sex to which they were assigned at birth are referred to as "transgender." Gender identification is a person's internal experience of being male, female, or something other, whereas gender expression is how that person expresses gender identity to others through behaviour, dress, hairstyles, voice, or body traits.

When a person's gender and sex are not usually or even equivalent, they are referred to as transgender. This is a broad phrase that encompasses transsexuals (pre/post-operative), non-gender people, bi(tri and multi) gender people, and rogyne, among other things. "Denoting or pertaining to a person whose self-identity does not conform unambiguously to traditional concepts of male or female gender, "according to Oxford Dictionary. The Transgender Persons (Protection of Rights) Act of 2019 defines 'transgender' as a person whose gender does not match the gender assigned to them at birth and includes trans-men and trans-women (whether or not they have undergone Sex Reassignment Surgery, hormone therapy, laser therapy, or other therapy), people with intersex variations, genderqueer, and people with these socio-cultural identities as kinnar, hijras, aravanis and jogtas.

Transgender are people whose gender assigned at birth does not match with their self-perception. They usually face apathy from the mainstream society for being different. Indian society has a certain degree of tolerance and acceptance of the Transgender community. Despite this, the Trans community has still remained an exceptionally marginalised community. This is in respect to access to healthcare, education and job opportunities, whilst facing discrimination.

This notion must be changed worldwide for the recognition of their equal rights. Yogyakarta principles have laid out a blue print for addressing issues faced by the Trans community. Our research sheds light upon the travesty of the Trans community. We analyse numerous statistics available worldwide regarding common people's perception of Transgenders.

TRANSSEXUALISM : CAUSES

Even among the medical, psychological, psychiatric, genetic, and other scientific sectors, there is no agreement on this. A brief examination of the subject reveals a variety of views about the origins of transsexualism. It's due of chromosomal abnormalities, according to biologists. It is well known that if a person has XX chromosomes, she is a female, and if he has XY chromosomes, he is a male. There are, however, people with XXY and YYX chromosomes. Chromosomal aberrations are what they're called. Although they may have XY chromosomes, some persons may have female physical traits despite having male XY chromosomes.

Similarly, there are people who appear to be males but have XX chromosomes, which indicate female features. Transsexualism is caused by biological variances, according to medical experts. Other hypotheses claim that hormonal imbalances or changes, as well as the use of certain drugs during pregnancy, might lead to transsexualism. There are additional views that claim transsexualism is purely a psychological condition. According to studies conducted by the Brain Bank in the Netherlands, there is a "brain sex" difference between men and women, and transsexual people have the brain sex of the gender with which they identify. As a result, it is clear that there is no agreement among numerous views about how transsexualism occurs in humans.

The right to be recognised as a person with dignity before law has been clearly spoken out in INDIAN Constitution as well as under many treatise on Human rights. In order to make such

recognition fruitful, statutes have boldly pointed out on dignified recognition i.e., each one of us has a dignified existence.

In 2013, American Psychiatric Association relabelled “gender identity disorder” as “gender dysphoria” in their Diagnostic and Statistical Manual, which humanised Trans identity by not considering it as a mental illness. Spain (64%) is amongst those countries which believe Transgender is “a natural occurrence.”

For legal recognition, many countries promote intrusive surgeries and necessary medical profiling to place people in the standard binary. Doctors stick to the notion that “biology is not bigotry.” In protection of Transgender rights, Spain (81) has set benchmark score while Russia fails in protection and security of Transgender and secured last position among countries that participated.

These statistics are quite clear to show that humanitarian approach in terms of judicial sense has maintained its legacy to protect the interest of Transgenders. But when we draw our eyes to our civilised society yet there is existence of dual opinion for Transgenders, which needed to be rationalised.

CLASSIFICATION OF TRANSGENDER

a) Hijras

Hijras are biological males who, over time, reject their "masculine" identity and identify as women, "not-men," "in-between man and woman," or "neither man nor woman." Hijras are the western equivalent of transgender/transsexual (male-to-female) people, but they have a lengthy history/culture and deep social ties that are formalised through "reet" rituals (becoming a member of hijra community). There are regional differences in the terminology used to refer to Hijras.

b) Eunuch

Eunuch refers to an emasculated male, while intersexed refers to a person whose genitals are ambiguously male-like at birth, but it is later determined that the infant was previously assigned to the male sex.

c) Aravanis and Thirunangi

Aravani is the name given to Hijras in Tamil Nadu. Aravanis are biological males who self-identify as a woman trapped in a male's body, according to the Tamil Nadu Aravanigal Welfare Board, a state government effort under the Department of Social Welfare. Some Aravani activists want the term 'Thirunangi' to be used by the public and the media to refer to Aravanis.

d) Kothi

Kothis are a diverse species. Kothis are biological males who exhibit varied degrees of 'femininity,' which may or may not be situational. A small percentage of Kothis engage in bisexual behaviour and marry women. Kothis have a lower socioeconomic standing, and some rely on sex labour to survive. A small percentage of hijra-identified people may also identify as Kothis. However, not all Kothi people identify as hijras or transgender.

e) Jogtas/Jogappas

Jogtas, also known as Jogappas, are devotees and servants of goddess Renukha Devi (Yellamma), whose temples may be found in Maharashtra and Karnataka. Jogta refers to the Goddess's male servant, whereas Jogti refers to the Goddess's female servant.

If it is in one's family tradition to be a Jogta (or Jogti), or if one finds a Guru (or Pujari) who accepts him/her as a chela or shishya, one might become a Jogta (or Jogti) (disciple). This name is used to distinguish them from heterosexual Jogtas who may or may not dress in women's clothing when worshipping the Goddess.

f) Shiv-Shakthis

Shiv-Shakthis are males who have feminine gender presentation and are possessed by or particularly connected to a goddess. Senior gurus induct Shiv Shakthis into the Shiv-Shakti society, teaching them the norms, practises, and rituals that must be followed.

Shiv-Shakthis are married to a sword that represents male power or Shiva in a ritual. Shiv-Shakthis is thus transformed into the sword's wife. Shiv-Shakthis occasionally cross-dress and wear accessories and jewellery that are typically/socially associated with women. The majority of persons in this group are from lower socioeconomic backgrounds and work as astrologers, soothsayers, and spiritual healers for a living; others also seek alms.

RIGHTS OF TRANSGENDER IN OTHER COUNTRIES AROUND THE WORLD

The trans community suffers from social stigma attached with fluidity of gender roles. Being effeminate or masculine contrary to gender assigned at birth is considered an abnormality. People must become adaptable to the changing dynamics from the perspective of human rights and then only will the Trans community feel safe.

The transgender community has shown enough resilience, the onus is upon the society and the governments to welcome their new identities. Those countries which gave Transgenders legal recognition in one or other manner as per the data available by "Trans Legal Mapping Report" in September 2020.

a) In Asia

In none of the Asian countries is there a specific law. Transgender people endure discrimination in their social and everyday lives, as well as at school and at employment. In Asia, society distinguishes between male and female; nonetheless, the lack of a clear gender distinction limits a person's social area significantly. There are no particular laws regarding transgender people in China, Nepal, Pakistan, India, or other Asian countries.

Although China recognises the right of individuals to have gender reassignment surgery, it has never passed explicit legislation to protect transgender people's rights; instead, it only authorises gender reassignment in papers such as birth certificates, student rolls, and academic records. There is no law prohibiting transgender people from marrying, nor does it impose any explicit restrictions on this right. Same sex marriage is not allowed in these countries.

As a result, many transgender people become involved in the sex business and operate as sex workers. As a result, their susceptibility to HIV and other illnesses grows. In 2017, it was confirmed that Pakistan, Nepal, Vietnam, and Kyrgyzstan were amongst those countries which moved themselves forward in discussing Bills which were related to Trans persons regarding change of gender in the legal sense.

The effort of Bangladesh is also remarkable. In January 2019, hijras were given Right to Vote under third gender category. In Japan, the requirement for sterilisation was confirmed through a superior court decision

b) In Europe

In United Kingdom, name change for identification purpose is possible under shelter of

Gender Recognition Act 2004 (2004, Chapter 7). A full gender recognition certificate is issued to a person. But the condition for the gender marker change is that the applicant must be “living in other gender” or have been granted legal gender recognition by other state.

In Denmark, it is an administrative procedure and a new social security number is issued on the basis of self-determination. In France, adult and an emancipated minor can make an application of gender correction. What is seen is that they are living in their aspired gender and known to their peers as having that identity.

Belgium, Portugal, Greece and Luxembourg have relaxed the requirements for gender change while Bulgaria and Hungary have taken steps for de-recognition. In Turkey, Azerbaijan and Serbia, ill treatment is meted out to the trans community. Europe is therefore a mixed plain when rights of transgenders are considered.

c) In United States of America

Some of the laws made by the states in the United States of America are in conflict with one another. The Hate Crimes Prevention Act of 2009, which increases the scope of the 1969 United States Federal Hate-Crime Law to include offences motivated by actual or perceived gender identity, gives protection to transgender people. All same-sex weddings that are legal under state law are recognised by the federal government.

Transgender persons have all of the legal rights that other people have, such as the right to life, the right to work, the right to health, the right to marriage, the right to equality, the right to social security, and so on. In the United States, around 15 states and the District of Columbia have laws prohibiting discrimination based on gender identity and expression. Only a few states have issued executive orders banning the practise of discrimination.

d) In Australia

There are two Acts in Australia that deal with gender identity:

The 1984 Sex Discrimination Act and the 2013 Sex Discrimination Amendment (Sexual Orientation, Gender Identity, and Intersex Status) Act are two laws that prohibit discrimination based on sexual orientation, gender identity, or intersex status.

The Sex Discrimination Act of 1984 is amended by the Act of 2013. The Gender Identity Act of 2013 defines gender identity as a person's appearance, mannerisms, or other gender-related features, with or without respect to the person's given sex at birth (whether by medical intervention or not).

Discrimination based on sexual orientation, gender identity, or intersex status is prohibited.

e) In Africa

The African Commission has included gender identity and sexual orientation within its mandate and all the articles collectively point towards equality for everyone.

Most African countries propound a criminal approach towards transgenders but the continent is clearly witnessing waves of transgender activism. Much support has arisen out from judicial victories.

CONCLUSION

With the available data discussed above, we came to a conclusion that there is an increase in the number of countries which are on track to amalgamate transgenders into the mainstream

society. But there are still miles to go between promise and delivery, as people have not been appreciative of social reforms. It depends on adaptability and tolerance of the people towards another person's rights and support of the government for social welfare measures.

More than making laws and rules, we need to work on educating people and let them come out of their conservative thinking. Laws must be such that they not only protect the community on the face of it, but also in practice.

Laws are to be made dignified in character, and unnecessary hurdles for their well-being are to be removed. Self-determination, access to social welfare programmes and protection from discrimination are the key to their existence. Apart from these measures, social development programs, seminars and workshops are the best way to educate people and let them realise that transgender are not distinct from us.

The paper ends with a note of hope:

"We need a world where our families no longer disown us,
where society treats us as equal, and
where governments guarantee our rights;
a world that understands the transgender identity."

WORKS CITED

Acts

Civil Code, Arts. 60 and 61

Navnelov 524/2005, Article 13.2/13.3

Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act, 2013, Section 5A, 5B and 5C

The Transgender Persons (Protection of Rights) Act, 2019, Section 2(k).

The Constitution of India, 1950 - Article 21 – Right to Life and Personal Liberty

Books

Nanda, S. 'The Hijras of India: Cultural and individual dimensions of an institutionalized t h i r d gender role' in Parker R. and Aggleton P. (eds.) *Culture, Society and Sexuality: A Reader*. Psychology Press, 2006, 226-239.

Case Laws

National Legal Service Authority v. Union of India, AIR 2014 SC 1863.

September v. Subramoney and Others [2019] 4 All SA 927 (WCC) (23 September 2019)

Journal Article

Roan, K. 'Transgender Theory and Embodiment: The risk of racial marginalisation'. *Journal of Gender Studies*, 10:3, 2001, 253-263.

Online Resources

- Answers to Your Questions About Transgender People, (January 4, 2015), www.apa.org/topics/transgender.
- Commission of Jurists (ICJ). 2017. "Yogyakarta Principles - Principles on the application of International Human Rights Law in relation to Sexual Orientation and Gender Identity." Geneva.
- Epps, Garrett. 2018. The Atlantic. 8 June. <https://www.theatlantic.com/ideas/archive/2018/06/how-birth-certificates-are-being-weaponized-once-again/562361/>
- I. Jackuline Mary v. Superintendent of Police, available at: [Indiankanoon.org/doc/144523857](http://indiankanoon.org/doc/144523857)
- IPSOS. 2018. *Global Attitudes toward Transgender People*. <https://www.ipsos.com/en/global-attitudes-toward-transgender-people>
- African Commission on Peoples' and Human Rights,. <https://www.achpr.org/sessions/resolutions?id=322>.

PURVA MIMAANSA