

Issues related to Transgender Community in India

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Abstract

Transgender people are human being but having biological issue so by birth neither they are fully male nor fully female. In many cases they are discriminated in different ways few of which have been highlighted in this article. Discrimination in any form to any human being is deplorable. Our constitution is very clear in this regard. As it is known to all, preamble to the Constitution mandates Justice - Social, Economic, and Political equality of the status for all the citizens of India. It is evident that the first and foremost right of the Transgender community is their right to equality under Article 14. Article 15 has mentioned about the prohibition of discrimination on the ground of religion, race, caste, sex or place of birth. So in this article issues pertaining to transgender persons are presented based on secondary source data. Also few suggestions have been extended for their development.

Key words: Discrimination, Education, Income and Transgender.

FULL ARTICLE

According to Wikipedia, “are people who have a gender identity or gender expression that differs from their assigned sex. Transgender people are sometimes called transsexual if they desire medical assistance to transition from one sex to another. Transgender is also an umbrella term: in addition to including people whose gender identity is the opposite of their assigned sex (trans men and trans women), it may include people who are not exclusively masculine or feminine (people who are genderqueer, e.g. bigender, pangender, genderfluid, or agender). Other definitions of transgender also include people who belong to a third gender, or conceptualize transgender people as a third gender. Infrequently, the term transgender is defined very broadly to include cross-dressers, regardless of their gender identity” (wiki/Transgender) <https://en.wikipedia.org/wiki/Transgender>

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is very clear in this regard. As it is known to all, preamble to the Constitution mandates Justice - Social, Economic, and Political equality of the status for all the citizens of India. It is evident that the first and foremost right of the Transgender community is their right to equality under Article 14. Article 15 has mentioned about the prohibition of discrimination on the ground of religion, race, caste, sex or place of birth. Article 21 ensures right to privacy and personal dignity to all the citizens. So discrimination against transgender community is highly deplorable as it is related to biological change. In its broadest sense, transgender encompasses anyone whose identity or behavior falls outside of stereotypical gender norms. So discrimination in any way cannot arise rather it is an offence.

The Supreme Court judgement on Transgender Rights: This judgement focuses persons who want to identify with the third gender as well as persons who want to transition from one identity to another, *i.e.* male to female or vice versa. The Court has directed Centre and State Governments to grant legal recognition of gender identity whether it is male, female or third gender.

- Legal Recognition for Third Gender: In recognizing the third gender category, the

Court ruled that fundamental rights are available to the third gender in the same manner as they are applicable to males and females. Further, non-recognition of third gender in both criminal and civil statutes such as those relating to marriage, adoption, divorce, etc is discriminatory to the third gender.

- Legal Recognition for people transitioning within male/female binary: As for how the actual procedure of recognition will happen, the Court merely states that they prefer to follow the psyche of the person and use the ‘Psychological Test’ as opposed to the ‘Biological Test’. They also declare that insisting on Sex Reassignment Surgery (SRS) as a condition for changing one's gender is illegal.

- Public Health and Sanitation: The Centre and the State Governments have been directed to take proper measures to provide medical care to Transgender persons in the hospitals and also provide those separate public toilets and other facilities.

Revisit about Ministry of Social Justice & Empowerment:

In the year 1985-86, the erstwhile Ministry of Welfare was bifurcated into the Department of Women and Child

Development and the Department of Welfare. Simultaneously, the Scheduled Castes Development Division, Tribal Development Division and the Minorities and Backward Classes Welfare Division were moved from the Ministry of Home Affairs and also the Wakf Division from the Ministry of Law to form the then Ministry of Welfare. Subsequently, the name of the Ministry was changed to the Ministry of Social Justice & Empowerment in May, 1998. Further, in October, 1999, the Tribal Development Division had moved out to form a separate Ministry of Tribal Affairs. In January, 2007, the Minorities Division along with Wakf Unit have been moved out of the Ministry and formed as a separate Ministry and the Child Development Division has gone to the Ministry of Women & Child Development. Though the subject of "Disability" figures in the State List in the Seventh Schedule of the Constitution, The Government of India has always been proactive in the disability sector. It is not only running seven National Institutes (NIs) dealing with various types on disabilities and seven Composite Regional Centers (CRCs), which provide rehabilitation services to PwDs and run courses for rehabilitation professional but also funds a

large number of NGOs for similar services and also a National Handicapped Finance & Development Corporation (NHFDC) which provides loans at concession rates of interest to PwDs for self-employment. Besides, the Union Government is a party to (i) Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific Region - adopted at Beijing in December, 1992, and (ii) The UN Convention on the Rights of Persons with Disabilities (UNCRPD), which came into effect in May, 2008. The subject has received attention in various States Governments in varying degrees. At the Central level also disability being one of the several responsibilities of the M/o SJ&E, and being looked after by just one bureau, has resulted in inadequate attention, as most of its time and energy is spent only on implementing Ministry's own schemes, meeting their expenditure and physical targets, and organize annual time-bound activities like the National Awards for empowerment of PwDs. In the above background, it was stated in the 11th Five Year Plan that "The 'Disability Division' of the Ministry of Social Justice & Empowerment will be strengthened by converting it into a separate Department, so that it can liaise effectively

with all the other concerned Ministries/Departments and fulfill its responsibilities towards the disabled". Looking to the specialize nature of the subject on "Disability", the wide ranging work to be done in the light of the UNCRPT, and the inadequacy of existing implementation structure, the time has now come to upgrade the existing Disability Bureau in the M/o SJ&E. The decision to create a separate Department of Disability Affairs within the M/o SJ&E was taken up by the Government, in principle on 3rd January, 2012. This was also announced by the President before both houses of

Parliament on 12th March, 2012. Now the two departments have been created under the Ministry of Social Justice & Empowerment vide notification dated 12.5.2012, namely:- (i) Department of Social Justice and Empowerment (Samajik Nyaya and Adhikarita Vibhag)

(ii) Department of Disability Affairs (Nishaktata Karya Vibhag) now renamed as Department of Empowerment of Persons with Disabilities (Divyangjan)

So it is suggested that one Department under Ministry of Social Justice & Empowerment may be created for Transgender persons in the country for their welfare.

Table 1: Transgender data based on 2011 Census

Sl. No.	India	Total Number of Transgender population 487,803	SC population 78,811	ST population 23,293	Literacy 56.07%
1.	Uttar Pradesh	137,465	26,404	639	55.80%
2.	Andhra Pradesh	43,769	6,226	3,225	53.33%
3.	Maharashtra	40,891	4,691	3,529	67.57%
4.	Bihar	40,827	6,295	506	44.35%
5.	West Bengal	30,349	6,474	1,474	58.83%
6.	Madhya Pradesh	29,597	4,361	5,260	53.01%
7.	Tamil Nadu	22,364	4,203	180	57.78%
8.	Orissa	20,332	3,236	4,553	54.35%
9.	Karnataka	20,266	3,275	1,324	58.82%
10.	Rajasthan	16,517	2,961	1,805	48.34%
11.	Jharkhand	13,463	1,499	3,735	47.58%
12.	Gujarat	11,544	664	1,238	62.82%
13.	Assam	11,374	774	1,223	53.69%
14.	Punjab	10,243	3,055	0	59.75%
15.	Haryana	8,422	1,456	0	62.11%
16.	Chhattisgarh	6,591	742	1,963	51.35%
17.	Uttarakhand	4,555	731	95	62.65%
18.	Delhi	4,213	490	0	62.99%
19.	Jammu and Kashmir	4,137	207	385	49.29%
20.	Kerala	3,902	337	51	84.61%

21.	Himachal Pradesh	2,051	433	118	62.10%
22.	Manipur	1,343	40	378	67.50%
23.	Tripura	833	172	181	71.19%
24.	Meghalaya	627	3	540	57.40%
25.	Arunachal Pradesh	495	0	311	52.20%
26.	Goa	398	9	33	73.90%
27.	Nagaland	398	0	335	70.75%
28.	Puducherry	252	40	0	60.59%
29.	Mizoram	166	1	146	87.14%
30.	Chandigarh	142	22	0	72.22%
31.	Sikkim	126	9	37	65.18%
32.	Daman and Diu	59	1	2	75.51%
33.	Andaman and Nicobar Islands	47	0	3	73.81%
34.	Dadra and Nagar Haveli	43	0	22	73.68%
35.	Lakshadweep	2	0	0	50.00%

Source: www.census2011.co.in/transgender.php

Although the points in the table are self-explanatory but important points which may be mentioned here are:

- Literacy rate varies from state to state in some of the states rate is low such Bihar, Jharkhand, Jammu and Kashmir and Rajasthan where rate is less than 50 percent , so steps may be taken to improve the same.
- Rural and Urban data should be available from next census.

Although in the Census Urban and Rural transgender data are not available but based on Socio Economic and Caste Census it is observed that Rural India has little more than 70,000 transgenders which in actual number is 74,286 transgenders. The state wise data reveal the fact that Uttar Pradesh tops the list with around 13,000 persons,

Bihar is placed to second with 9,987 and West Bengal is the home to around 10,000 as per the Socio Economic and Caste Census 2011.

So it is suggested that for the 74, 286 persons a comprehensive plan may be drawn by them by providing them housing facilities under PMAY-Rural, pension to the deserving cases, wage employment in Government, *panchayats*, etc and self-employment who desire so that Transgender persons need not go for begging or other trivial work.

It is suggested that one more Department may be created for Transgender persons in the country for their welfare.

In this section few issues pertaining to transgender are presented where both

positive and negative perceptions of people are observed towards transgender persons.

A) The case of Discrimination to Development:

This case refers how a Transgender person through her determination could establish in the society. This is the case of Manabi Banerjee. Banerjee's appointment as the principal of Krishnanagar Women's College in West Bengal by the College Service Commission was appreciated all over the country as a triumph of liberalism vis-à-vis in favour of humanity. In reality, it is Banerjee's personal victory, which she had pursued persistently over the years, swallowing every issue that came to Banerjee's way as barrier. It may be mentioned that Banerjee was born as Somnath, to a family at Naihati, in the vicinity of Kolkata. Banerjee, who has been managing a school for transgenders in West Bengal, now without bothering marching, forward (www.firstpost.com).

B) Transgender alleges assault by Army men, Jul 10, 2017, the Times of India

A member of the transgender community lodged a complaint with the police that Army personnel misbehaved and assaulted her on 8th July 2017 at Secunderabad. The

34-year-old transgender claimed she was allegedly attacked and molested by at least 10 Army men stationed at Secunderabad Parade ground. Here this case has been highlighted as according to her being transgender 'she has been harassed'.

C) School to be opened for transgenders, June 10, 2017, the Times of India

As per the news item, a school for transgender persons "will be opened by the Kerala State Literacy Mission in Alappuzha from August 2017". Transgender people who could not complete their studies due to various reasons can study for Class X and higher secondary equivalent courses in the school. The district coordinator of the literacy mission K V Ratheesh said "the special school has been named 'Edam T G' and that it will function in all Sundays and second Saturdays". Such step may be taken up in other parts of the country.

D) Transgenders to get free education at IGNOU, July 3, 2017, the Times of India

Indira Gandhi National Open University (IGNOU) has planned to provide exemption of fees for its transgender students of all programmes from its July session of 2017. Such initiative has been taken for universalization and democratization in education. It is pertinent to mention that

IGNOU has been providing free education to sex workers, jail inmates and weavers. Education is the powerful instrument of development so such move will definitely encourage transgender persons to earn descends income.

E) Row over 'assault' on transgender people, July 7, 2017, the Times of India

In July 2017, there was great news about the arrest of six transgender persons by police for robbery case in Kochi of Kerala. Activists say that the police personnel have assaulted and arrested the transgenders when they confronted a person who tried to rob them. On the other hand, view of transgender persons is that 15 transgender people were detained by the police following an 'alleged robbery' indicating police personnel had biased attitude. However, according to Navas of Marvel, a transgender organization, the incident happened around 10.30pm on Wednesday of 5th July 2017. "A youth had snatched purse from one of the community members, Andriya. The rest of them came to her aide as the person tried to flee. They themselves had called the police seeking help. The police who came an hour later sided with the man and took them into custody after assaulting the community members," said

Navas. Thus it is evident that allegation and counter allegation continued because of transgender.

F) Families offer homes to transgender staff, July 4, 2017, the Times of India

Getting rented house is an issue for transgender persons. Following controversies over the inability of the transgender employees of Kochi Metro to find proper accommodation in the city, a couple of families have showed willingness to offer housing for transgenders "The crisis of the transgender employees not being able to find a decent accommodation within the limits of their salary, which led to their opting out of the job, had come to the attention of the public lately. Around 2-3 families in the city have showed their willingness to provide accommodation for them," said Kochi Metro Rail Ltd (KMRL) spokesperson. Such laudable step may be popularize in other parts of the country.

Suggestions:

The following are some of the suggestions for developing the transgender persons.

- ❖ The persons of Transgender are citizen of the country so it is the responsibility of Central and State Governments to initiate development measures for them

both socially and economically. Also it is suggested that promotion of education through different scholarships is sine qua non. Further, it is suggested that income opportunities should be created for them.

- ❖ Any normal person taunting or discriminating against transgender person must be punished severely by imprisonment.
- ❖ Further, it is suggested that for the 74, 286 persons a comprehensive plan may be drawn by them by providing them housing facilities (those are in need) under PMAY-Rural, pension to the deserving cases, wage employment in Government and semi-Government sectors such as hospital, health centers, rural bank branches, ICDS, *panchayats*, etc. And self-employment may also be given who desire so that Transgender persons need not go for begging or other trivial work.
- ❖ In the Government. hospitals there are only male and female wards but there is no separate ward for the

Transgender Community. So separate ward is suggested for them.

- ❖ District authorities should be advised to protect the community from harassment, particularly police personnel should be sensitized in this regard.
- ❖ Lastly, it is suggested that one Department under Ministry of Social Justice and Empowerment may be created for Transgender persons in the country for their welfare.

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