SOCIO LEGAL STATUS OF TRANSGENDER IN INDIA

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Abstract

In present days the modern Indian society talks about the rights and the position of the Transgender persons. Where-as the Transgender people already occupied an important status in the ancient and medieval Indian society. According to the Rig Veda in Hindu mythology three types of gender had been considered Male that is Purus, Female that is Prakriti and Third gender that is Tritiya Prakriti. Transgender characters hold significant roles in some of the most important texts of Hinduism, including the Ramayana and the Mahabharata. In recent times, the Third gender people are struggling to be a part of the civil society, and hence, the government of India implemented new polices and schemes for the social protection and welfare schemes for the Third gender community. Transgender community includes Hijras, Eunuchs, Kothis, Aravanis, Jogappas, Shiv - Shakti etc. who have been a part of Indian society for centuries.

Keywords: *Transgender, Tritiya Prakruti, Social Discrimination, Colonial Era, HIV, India*

INTRODUCTION

The rights of Transgender Persons have become an important topic of discussion in the development sectors in the recent years. Presently, the modern Indian society talks about the rights and position of the Transgender persons. Where-as the Third gender people already occupied an important status in the ancient and medieval Indian society. India is a land of different religion and culture and Hinduism is largely practiced in India. In recent times, the modern Indian society considered Transgender as Third gender otherwise there was not any legal status of them. The Third gender people belong to category of those persons who are neither considered as male nor as female.[1] Transgender people have a constitutional right to change their gender and they are identified as Third gender. Sexual activity between people of the same gender is legal but same sex couples can't legally marry.[2] The Hijra community was having high position in the ancient and medieval India but this community faced many problems in the British Colonial but in the present era the Transgender in India is the most well known and popular third type of sex in the modern world. The Supreme Court of India had declared the Transgender is Third gender. In the modern era, the Government of India introduced so many welfare policies and schemes such as, census, documentation, issuing of citizenship ID cards, issuing passports, socio - economical development and constitutional safeguards for the Transgender people. The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) is a major initiative of the 11th five year plan period which brought employment opportunities for Transgender people. The Transgender persons (protection of rights) Act, 2019 is an act of the Indian parliament with the objective to provide for protection of rights of Transgender persons their welfare and other related matters.[3]

Meaning of Transgender

As per Section 2(k) of the Transgender Persons (Protection of Rights) Act, 2019 "Transgender Person' means a person whose gender does not match with the gender assigned to that person at birth and includes Trans - man or Trans - woman (whether or not such person has undergone Sex Reassessment Surgery or hormone therapy or lesser therapy or such other therapy), person with intersex variations, genderqueer and persons having such socio culture identities as kinner, hijra, aravani, and jogta.[4]

Ancient Period

There are many stories regarding Transgender in ancient India. Transgender persons had been part of Indian society for centuries. The concept of "Tritiya Prakriti" of "Napumsaka" had been an integral part of the Hindu mythology, folklore, epic and early Vedic and Puranik literatures.[5] The Hijra communities in India have a documented history spanning more than 4000 years. Many deities in Hinduism and Indian epics are represented

as both male and female at different times and in different incarnations or may manifest with characteristics of both genders at once. As per Indian mythology Ardhanareeshwar is a well known Hindu deity. Ardha means half, Naree means woman and Ishwar means man. Ardhanareeshwar is a combination of lord Shiva and Shakti whose half right body is full male body and half left body is full female body. Shiva has been considered as destroyer whereas Shakti is a creator. The concept of Ardhanareeshwar explains that every human being is half man and half woman.6

Mughal Period

Hijras had played significant role in Harem management in Delhi Sultanate and they held famous role in the royal courts of Islamic world. They occupied well known positions as political advisors, administrations, generals as well as guardians of the harems as trusted royal servants and some of them became aides of Queen. Hijras also held important positions in royal court and various aspects of administration during the Mughal era in India from 16th to 19th century.7 The Nizams of Hyderabad who employed and honored Hijras. The Hyderabad state had an inspector for hijras in police department to look after their welfare and also took responsibilities that they are not harassed by someone.8

Colonial Period

The British Taj wanted to erase the Hijras as a visible socio - culture category and gender identity, and hence, Section 377 of the Indian penal Code had been introduced by them, this section banned same sex sexual relationship. In the 19th century, the Colonial administration vigorously declared to criminalize the Hijra community and denied all civil rights, and hence, the Hijras were considered to be separate caste or tribe in different parts of India by the English administration, therefore, the Colonial Period also introduced the Criminal Tribes Act in 1871, as per the aforesaid act, it was required for registration of eunuch's name, residence and their properties because they were reasonably suspected of kidnapping, or castrating children, or of committing offence under Section 377 of the Indian Penal Code, 1860. The eunuchs were required to furnish information of their properties in the register which was occupied by them to the local government. The eunuchs might be arrested without warrant, and be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both, if any registered eunuch, who was dressed, ornamented like a woman in public street or place or in any other place or who danced or played music or took part in any other public exhibition in a public street or place or for hired in a private house. Any registered eunuch who resided with a boy in the house or under his control who was not completed the age of sixteen years had been punished with imprisonment for a term which may to two years or with fine or with both. Any registered eunuch was not capable for being or acted as guardian to any minor, not made a gift or will or adopted a son and had to furnish information regarding all properties whether movable or immovable or which he was possessed or entitled or which was held in trust for him before the officer authorized by the local government but any such eunuch intentionally omitted to furnish such information or gave false information, who was committed an offence under Section 176 or 177 of the Indian Penal Code, 1860.9 Colonial law deprived eunuch of their primary source of income and their fundamental rights. The British pushed them further into poverty and social elimination. Since the era of British Taj, the Hijra community remained underground and lived in isolated life. They mainly resided on the outskirts of the villages and remained a close group for a long time. According to English people understanding, there are only two sexes. Homosexuals were criminalized too. Hijras had lost their status and lived on the outermost fringes of the society.10

Post Independence

* Social Status : -

Transgender people are facing many problems in India. The major problems are being faced by the Transgender are social exclusion - in social and cultural life, economy, discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities like HIV care and hygiene, depression, hormone pill abuse, tobacco and alcohol abuse, and problems related to marriage and adoption11.

Most of families do not accept if their male child starts behaving in ways which are considered feminine or inappropriate to the expected gender role. Consequently, family members may threaten, scold or even assault their son from behaving or dressing - up like a girl or woman. Some parents may evict their own child for crossing the prescribed gender norms of the society and for not fulfilling the roles expected from a male child. They do not get support from their biological family in the long run. Subsequently, they face a lot of challenges especially when they are not in a position to earn. Some of them, may decide to run away from the family not able to tolerate the discrimination and eventually find their way to join the Transgender communities. They face widespread discrimination while searching for jobs, searching for houses to rent, entry to public spaces. They are not accepted as normal by society. Due to discrimination, the Third gender people are not able to receive any formal education. Public toilets and bathrooms are not reserved for Transgender. Most employers deny employment for even

qualified and skilled Transgender people. Most of the Transgender people choose or continue to be in sex work due to lack of livelihood options12.

* Legal Status : -

In India, the pathway of the rights of Transgender can be trace back to the constitution. The principle of social engineering is best reflected in the Constitution of India. Chapter III of the Constitution provides Fundamental Rights to all the citizen of India. The concept of equality serves to accord the highest respect for human worth and dignity without discrimination on the grounds of caste, religion, creed, race, color, sex or place of birth. Article 14 provides a fundamental right to equality to all the citizens of India. It provides that every citizen is entitled to equality before the law and equal protection of law. Article 15 and 16 specifically provide that no citizen shall be discriminated against on the grounds of sex by the state. A person who belongs to the Third gender is also granted the protection of these constitutional provisions. Unfortunately, despite the availability of constitutional protections, the Transgender community has been the victim of countless atrocities in the name of the "sex" itself. Not only this, the Transgender community has been blatantly refused the right of freedom of expression and right to privacy as a part of fundamental right available to every citizen of the Indian Democracy under Article 19(1)(a) and 21 of the Constitution13.

National Legal Services Authority V/S Union of India is a landmark decision pronounced by the Hon'ble Supreme Court of India, which declares that the Transgender people to be a "Third gender" affirmed that the fundamental rights ratified under the Constitution of India shall be equal applicable to Transgender people and gave them the right to self identification of their gender as "Third gender".14 The said judgement recommended reservations for Transgender persons in jobs and educational institutions and the right of Transgender persons to declare their self - perceived gender identity without undergoing a sex reassignment surgery.15 On 6th September, 2018 the five judges' bench of the Supreme Court of India ruled unanimously in Navtej Singh Johar V/S Union of India decriminalized homosexuality by declaring Section 377 of the Indian Penal Code unconstitutional in respect to consensual sexual conduct sex between adults of the same sex.16 Homosexuality was never illegal or a criminal offences in ancient Indian and traditional codes but was criminalized by the British during their rule in India.17

The Transgender Persons (Protection of Rights) Act, 2019 is an act of the Indian Parliament with the objective to recognise the identity of Transgender persons and prohibit discrimination in the field of education, employment, healthcare, holding or disposing of property, holding public or private office and access to and use of public services and benefits. The Transgender Persons (Protection of Rights) bill, 2019 was introduced in India. The ace was passed to comply with the directions issued by the Supreme Court of India in its milestone judgement National Legal Services Authority V/S Union of India.18

HEALTH AND MENTAL PROBLEMS

India has nearly 7 lacs Transgender Persons. Sexuality is a critical issue in India that has created social divides. Social exclusion, economic problems and a lack of employment opportunities means that sex work is often the most viable way of income for Transgender people and a high proportion of Transgender people engage in sex work. The Transgender Persons face several sexual health issues including HIV. Transgender people are one of the most affected communities by the HIV disease and are 49 times more likely to be living with HIV than the general population. All over the world, it is estimated that around 19% of Transgender women are living with HIV.19 Putting trust in regular partners by condom less sex, violation against gender non - conforming persons, lack of community support, police harassment, health provider discrimination, and sex work environment create a context for HIV vulnerability.20 Some of the mental health issues reported in Transgender community due to depression, anxiety, suicidal attitude, societal stigma, lack of social support, HIV status and violate related stress. The Transgender Persons consume alcohol possibly to forgive stress, anxiety and depression that they face in their daily life. The Transgender community in India is highly vulnerable to mental and physical illness due to the limited economic opportunities.21

Suicide is complex behaviour which results from the complicated interaction of biological, psychological and environmental factor.22 People belong to marginal sexual communities including the Transgender Persons suffer from a serious kind of mental agony. They remained doubtful and confused regarding their sexual identity. Due to social humiliation, alienation and discrimination they can't have mental stability and confidence. In some cases the Transgender Persons commit suicide because before committing suicide they suffered from depression which was caused by social stigma and discrimination or hatred.23

CONCLUSION

The Transgender community was having high position in ancient and medieval India but they faced many problems in the British Colonial Rule. Social attitudes and stigma have been a major reason for limiting the opportunities of Transgender persons, whether it is their social or economic life or even within their own families. Despite the magnitude of the issue, awareness of the rights of Transgender persons has been lacking. To that

extent, the government provides many schemes and policies for the developing socio economic status of the Transgender it is a remarkable step. Through this article, the author wants to analyze the whole process of transition from the Third gender was being the important part of ancient Indian society to again becoming an issue of disrespect and fighting for their peaceful and dignified existence in the same society. This is huge scope for research in exploring and understanding the unique mental health and psychological facet of the Transgender community in the Indian context.

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