

ANALYSIS OF TRANSGENDER RIGHTS IN INDIA WITH EMPHASIS ON EDUCATION

By - Kshitij Kasi Viswanath

BBA LL.B 3RD Semester, NMIMS

ABSTRACT

This paper aims to analyse the recently passed Transgender Protection Act, 2019 with emphasis on education. The paper also aims to bring out the humane critique of the document with certain explanations and examples provided through the paper. The paper also analyses the Act in place with the previous 2016 bill and compares the provisions of the bill thereof. The paper also sees how numerous case studies have bolstered the rights of transgenders and how their rights are affected. Further, the paper also analyses the rights of these transgenders in the European Union. Keeping all these factors in mind, the paper also provides suggestions to improve the effectivity thereof.



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INTRODUCTION

Humans are unique beings. We yearn acceptance and identity in society, which transverses all boundaries. Yet often, many of us are denied these fundamentals, which is rightly termed as oppression. One group of people greatly affected by oppression would be the Transgender community, who have been ignored for centuries, often shamed for who they were and humiliated publicly for being who they are.

Deemed as '*Hijras*', this community often can be seen on public transport and streets, clapping for alms, despite being revered in religious texts and scriptures. For a very long time, the transgenders lived in what we can say to be a 'grey in the system', where they had no legal identity and in a state such as India, the desperate need for identity prevented the members of this community to avail any benefit offered by the state, furthering worsening their plight.

However, in light of recent developments in this field, this is quickly changing; with cases such as *Naz Foundation v. Govt. of NCT of Delhi* which is considered landmark to the rights of the LGBTQ community in India and the Transgender Protection Act, 2019 there lies hope for development and inclusivity.

Education of Transgenders in India

Although there are no legal restrictions on the education of transgenders i.e. transgenders are recognized as the third gender in the Indian Constitution, the deprivation of social and cultural inclusion of these transgenders is the pioneering cause for dropouts among this community with respect to education, creating room for concern.

The stigma against transgenders has also led a large of number of them to be ostracized from society, rather from their own families, depriving them of the resources to avail quality education. This forces a large population of transgenders to take up unstable and undignified jobs such as sex work and begging. 96% of these transgenders are denied work opportunities and are forced to take up undignified jobs and 24% of them have never attended school, according to an NHRC report¹⁰⁷

¹⁰⁷ Dr. Jacob John, Study on Human Rights of transgender as a third gender, NHRC 1, 23-24(2018).

However, efforts have been made to ensure education, a fundamental right, reaches this sect of society. In December 2016, Kerala saw the first residential transgender school in its helm, which was completely run by transgenders. Further, numerous transgenders have broken the taboo and have completed their education and have important roles in reputed organizations, showing that better times are to come.¹⁰⁸

Incidents against The LGBTQ community in Indian Schools

India, like the rest of the world is no new face to bullying of queers in school. In fact, the threat in India is not solely in the hands of student bullies, but the administration also is hand in gloves.

A member of the LGBT community in Chennai was asked by her principal ‘to go kill herself’ for her sexual identity. In other instances, a boys’ school in Bangalore discriminated its students on having ‘feminine features’, and another girls’ school’s principal took action against pupils with boy cuts, deeming them ‘tomboyish’¹⁰⁹

It is not uncommon for transgenders to drop out of school due to the stigma that they face in school. In an incident in Chennai, a young trans girl was teased for walking in a ‘feminine’ way, this young was further bullied for dressing in a girls’ uniform aged 10 with stones being thrown at her at times, forcing her to drop out of school, leaving her dreams and aspirations, with begging or sex work as the only source of survival in the future¹¹⁰.

Review of the Transgender Persons (Protection of Rights) Act, 2019

In light of recent events, the Transgender Persons (Protection of Rights) Act, 2019 passed in the Lok Sabha. However, this was not the first attempt at passing such a Act was in 2016. It prohibited discrimination, provided a procedure for recognition and provided a right to residence. However, this Act faltered in many places such as its limited protection against sexual offences, criminalized begging and did not provide reservation for the Transgender Community.

¹⁰⁸ India opens first transgender school, BBC NEWS, December 30, 2016, <https://www.bbc.com/news/world-asia-india-38470192> (last visited Jan 18, 2020).

¹⁰⁹ Labelled, bullied, humiliated: What LGBT students in our schools go through | , CITIZEN MATTERS (2018), <http://citizenmatters.in/india-city-schools-homophobia-lgbt-discrimination-gender-research-6863> (last visited Jan 18, 2020).

¹¹⁰ Bullied by peers, India’s LGBT+ children drop out of schools, REUTERS, July 17, 2019, <https://www.reuters.com/article/us-india-lgbt-school-feature-idUSKCN1UC2UI> (last visited Jan 26, 2020).

The government, seeing its fault drew up another Act in lieu of protection in 2019, keeping in mind the mistakes of the previous Act. The new Act provides 1) A broader definition of a transgender person, which covers the gambit of trans-men and trans-women, queers and people with distinct socio-cultural identities, thus covering larger ground. 2) this Act guarantees the education, healthcare and protection against harassment by employers. 3) The newer Act also made progress by decriminalizing begging prevalent in the transgender community, as the government recognized that begging was sometimes a sole mean of earning amongst this oppressed community.

Yet, there is a long way to go. The Act lacks in multiple fronts. Although the definition is wider, it fails to cover a large sect of the LGBTQ community. The concept of providing reservation to transgenders according to the NALSA judgement too remains unanswered. Finally, punishment for crimes committed against transgenders have more lenient punishments than those committed against members of other communities¹¹¹.

National Legal Services Authority of India Vs. Union of India, 2014

This case was seen as a landmark judgement in the area of transgender rights and recognition. This was seen as the first step towards greater inclusion of the LGBTQ community in Indian society. At the moment, this legislation stands to be the yardstick for all legislations made in light of transgender rights and interests.

On analysing the judgement in hand, we can divide the analysis broadly under 2 categories. First in view of Articles 14,15 and 16. The question of equality and discrimination can be redressed under this heading, where it is argued that the term 'persons' is used and there is no mention of a male or female gender in specificity, showing that the idea of sex is not merely biological, but psychological as well.

The other view is in light of Article 19 and 21, where it is argued that a person has freedom of expression i.e. can express him/herself without facing discrimination, which directly protects the interests of those who have undergone sex change surgeries as well. It also provides for freedom and liberty for all citizens. These provide a constitutional backing for the rights of the transgender community.

¹¹¹ Critical Analysis Of The Transgender Persons Act, 2019, JATIN VERMA (November 28, 2019), <https://www.jatinverma.org/a-critical-analysis-of-the-transgender-persons-Act>.

The judgement can be said to be holistic as it has taken inspiration from numerous countries such as Singapore, Australia, United Kingdom, etc. The fact that this judgement provided reservation and identity to transgenders is ground to say the law is progressive.¹¹²

Transgender Protection Laws in the European Union; An Overview:

The EU is said to have one of the most comprehensive laws with respect to LGBTQ rights. Although Article 2 and Article 5 of the European Convention on Human Rights guarantee the right to life, 21% of the respondents of a study feared stepping out of their home¹¹³, showing that fear still exists. However, action has been taken at a European level and individual members as well. The European Parliament passed the resolution ‘Against Discriminations Against Transgenders’ in 1989, being the most notable European action.

Countries such as Germany have protected the rights of the transgender in terms of employment, and have also taken it as a challenge on the state to look after them.

France in 2012 took a progressive step by including ‘Sexual Identity’ in its criminal code. However, there is no specific right against discrimination of those from the LGBT community, but one can avail the right against discrimination in employment, education, goods and services, etc.

Yet, discrimination laws find hurdles in Countries such as Poland, where a legislation for their protection was rejected after receiving strong opposition from the Church¹¹⁴.

Analysis of Transgender Laws Worldwide:

After analysing the situation in India and the EU, we can infer that legal protection to the LGBT community is a fairly new trend that is yet to catch pace. Although progressive laws exist in both regions, we can understand that the attitude of the people towards the LGBT community is a driving factor for homophobia to still exist. It is impossible for change to come about unless there is change in the attitude of the people

With regard to legislations, they can be deemed as progressive steps, yet only in the nascent stage, as the laws have a long way to go to become completely inclusive. Numerous legislations do not

¹¹² REVIEW OF RECENT DECISIONS, 26 NLSIR 13 (2014).

¹¹³ Stephen Whittle et al., *Engendered Penalties: Transgender and Transsexual People’s Experiences of Inequality and Discrimination* 122.

¹¹⁴ Mr & Ms X: The Rights of Transgender Persons Globally, (2014).

provide adequate protection to Transgenders as crimes against them have lenient reprimands. Moreover, transgenders with respect to education and employment have faced oppression and, in many instances, do not have means to avail these facilities and thus it is essential to provide some amount of reservation to these citizens in order to ensure equality in society. When compared to international laws, Indian laws seem to restrict themselves to transgenders for the time being

However, certain provisions such as providing a right to residency i.e. ensuring a person cannot be abandoned or expelled from a house on grounds of being a transgender can be seen as a bold step by the judiciary.

Thus, we can say that the laws and provisions in India with respect to Transgender Protection and LGBT rights as a whole are moving towards progress, slowly but steadily.

SUGGESTIONS

From our analysis above, we can provide the following suggestions to the legislation in question:

- The legislation must consider increasing the punishment for convicts committing sexual abuse against transgenders and other LGBTQ+ communities as the current provisions do not provide adequate protection from the same.
- The District Magistrate must not have any arbitrary power to determine the 'correctness' of a gender change surgery of an adult, however a gender change certificate must be issued.
- Reservation must be provided to these transgenders under Article 16(4) of the Indian Constitution as most members of the transgender communities are socially, economically and culturally shunned and live in deplorable conditions.
- Freedom against discrimination and violence should be further pursued in order to ensure that every sect of people is safeguarded constitutionally against violent oppression.

CONCLUSION

In light of recent events, we have seen this particular Act be tabled in the Rajya Sabha, clearly showing that it is inadequate to suit contemporary needs and is not in the interest of the people as the law at present is threatening rather than inclusive in nature. With this view, we can safely say that the government would need to review and revamp the Act so as to make it inclusive and broader in its functions, allowing the transgender community to confide in the same and not fear a new legislation. However, the actions of the government can be said to be the first steps in a long journey towards equality, justice and inclusivity.

It could also be safe to say that the approach of the law holds no substance unless the people support the cause. The stigma towards the transgender community would disappear only when people of the country are sensitized on the issue and are shown that they, like everyone else, are humans too who see, feel and hear things and desire a better life for themselves.

To conclude, it is necessary to further study the quality of life of transgenders as not many studies have been taken on the subject leading to a paucity of information on the topic, especially when we consider bullying of transgenders in educational institutes.