



## The Evolving Landscape of Transgender Acceptance: Embracing Alternative Gender Identities

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### Abstract

Received: 13<sup>th</sup> Dec 2021  
Revised: 17<sup>th</sup> Jan 2022  
Accepted: 21<sup>st</sup> Feb 2022

Transgender individuals in India face significant social and cultural exclusion, often being denied access to education, healthcare, and public spaces. This denial of fundamental rights undermines the constitutional guarantee of equality before the law and equal protection of laws. They experience discrimination across all facets of life, being treated as outcasts and untouchables in society. Lack of societal acceptance results in limited educational opportunities, with transgender individuals facing harassment and intimidation if enrolled in educational institutions, leading many to drop out. Consequently, some resort to begging or sex work for survival. Employment opportunities are also scarce for transgender individuals due to gender-binary hiring practices, and even if they secure jobs, they often face ridicule and discrimination, forcing them to quit. Engagement in sex work exposes them to a heightened risk of contracting HIV and other sexually transmitted infections. The enactment of "The Rights of Transgender Persons Bill, 2014" is seen as a positive step towards addressing their rights, offering hope for their welfare. This paper aims to shed light on the significance of "The Rights of Transgender Persons Bill, 2014" and critically examines efforts towards transgender empowerment and gender equality nationwide. It advocates for holistic approaches such as social and economic stability, establishment of separate courts, skill development, and employment opportunities to address the challenges faced by transgender individuals and promote acceptance of alternative sexualities. Drawing inspiration from successful models of transgender empowerment in other countries and the proper implementation of relevant policies, it envisions a brighter future for the transgender community in India.

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### I. EXORDIUM

"Coy Mathis who is six-year-old school going girl who just wanted to use washroom at school. For a year and half, it wasn't a point in question, but later on, Coy's school informed her parents that she is prohibited from

*using girl's restroom instead she can use boy's room or the staff or nurse room and the reason behind this was simply that Coy was enrolled as 'male' at birth".<sup>1</sup>*

Coy is one of the transgender who is ostracized, humiliated and sneered by the society simply for their very existence. These are the community that has long been deemed outcasts, unfit to mingle with. Time and again they have been insulted, isolated and ridiculed, denied basic human rights. Neglected transgender are also known as 'Unix' or 'she-males' have always lived on society's fringes. Every person has gender uniqueness. You do, and so do I. We all have a sexual conformance either it be straight, lesbian, gay, bisexual, or something else apostle for transgender uprightness and freedom trying to bestow the message that each individual has an inner sagacity of being male or female. Gender is a ubiquitous societal paradigm that manipulates influence over every single individual in our culture. The customary dichotomous gender exemplary is tyrannical, especially for transgendered people whose sense of them as gendered is incongruent with the gender they were consigned at birth. Transgender individuals are tormented for abuse when others attempt to administer conventional gender frontiers. To exhilarate their rights enforcement of "The Rights of Transgender Persons Bill, 2014" was like a rain on the desert. The objective of making this article is to fabricate a modest attempt to highlight the viability of The Rights of Transgender Persons Bill, 2014. The historic judgment by the Apex Court for their welfare holds out new hope. This paper critically examines the concept of transgender people's empowerment and the gender equality venture taken up across the nation. Adoption of holistic approaches- Social and Economic Stability, Separate courts for their reparation, Skill development and Employment will not only do away with the problems of transgendered people but will also be en route to acceptance of alternative sexuality. Taking on acceptable practices of gender equality and empowerment of transgendered people from peculiar prosperous nations, egalitarian model, proper implementation of relevant policies will enhance the transgender community in years to come.

## II. HISTORICAL PERSPECTIVE

*"Seldom, our society realizes or cares to realize the trauma, agony and pain which the members of Transgender community undergo, nor appreciates the innate feelings of the members of the Transgender community, especially of those whose mind and body disown their biological sex."*

- K.S. Radhakrishnan, J<sup>2</sup>

All the way through the centuries, the transgender community has to a certain extent been an unreceptive part of the Indian culture. Their chronological circumstantial can be outlined back to four thousand ages of the Indian folklore, Puranic literature and Vedic. In the ancient times, the transgender community including of Hijras, eunuchs, Kothis, Aravanis, Jogappas, Shiv-Shakti's,<sup>3</sup> etc. have conventionally engaged not merely in an imperative community get-togethers but then were also advice-givers and artists in courts, communal gettogethers, and societal occasions. Nevertheless archeologically, the transgender people stimulated a noticeable part in the society, the status quo turned suggestively by the end of the 18th century with the inception of the

British rule. What deteriorated it was the rough guide of legislations like Criminal Tribes Act, 1871, with a brutal and vicious cognizance; which considered the entire communal of Hijra people as distinctively criminals well as addicted to the orderly charge of non-bailable offenses. To add insult to the irretrievable damage caused, Section 377 of the Indian Penal Code was distorted and misused as there was a trend, in the British era, to capture and prosecute Transgender people under Section 377 simply on doubt<sup>4</sup>. Meanwhile then this communal has been the matter of endless harassment, domination, and discrimination in numerous areas counting healthcare, education, employment, social organization, etc.

## III. MAJOR JUDGEMENT

The Supreme Court of India in a division bench of Justice Radhakrishnan and Justice Sikri provided a

<sup>1</sup> Jill Filipovic, The Guardian, (March 2013). [online] Available at: <http://www.theguardian.com/commentisfree/2013/mar/20/school-society-inolerance-transgender> [Accessed 10 June 2017]

<sup>2</sup> Held in; N.L.S.A v. U.O.I.A.I.R 604 SC 2013

<sup>3</sup> Nanda, Serena. "Hijra." Encyclopedia of World Cultures. 1996. Encyclopedia.com.[online] Available at: <http://www.encyclopedia.com> [Accessed 13 June 2017]

<sup>4</sup> National Legal Services Authority v. Union of India; Writ Petition (Civil) No 604 of 2013.

Available online at: <https://jazindia.com>

Milestone verdict in 2013 in *National Legal Services Authority (N.A.L.S.A.) Vs. the Union of India*, which not simply acknowledged the transgender people as a separate ‘third gender’ but also scrutinized the Centre and state administrations to take measures to progress their situation in the social order and address their grievousness earnestly.

Justice KS Radhakrishnan, who regulated the two-judge Supreme Court bench, said in his ruling. “*Transgender are also citizens of India*” and they must be “*provided the equivalent opportunity to develop*”, the Court said. “*The essence of the Constitution is to provide equivalent opportunity to every citizen to grow and grasp their latent, notwithstanding of caste, religion or gender. It is the right of every single human being to decide on their gender,*” the detailed judgment stated.

On 24<sup>th</sup> April 2015 the Rajya Sabha took an initiative en route for the same unanimously passed *The Rights of Transgender Persons Bill, 2014*; being the first ever private member’s bill in the nation. The bill was presented for debate in Lok Sabha for the winter session in December 2015. This bill containing 58 clauses in 10 chapters would overlay mode for reservation for the community below the quota for Other Backward Classes along with the provision of a third gender category in all vital identity documents like birth certificates, passports, driver's licenses, etc.<sup>5</sup>

#### IV. THE RIGHTS OF TRANSGENDER PERSONS BILL, 2014

The guidelines set by the Supreme Court describes transgender people as “whose sense of gender does not match with the gender assigned to that person at birth and includes trans men and trans women (whether or not they have undergone sex reassignment surgery or hormone therapy or laser therapy etc.), gender-queers and a number of socio-racial individualities such as — kinnars, hijras, aravanis, jogtasetc.”<sup>6</sup> Furthermore, it reformulates words like 'barrier', 'discrimination', 'exploitation', 'rehabilitation', etc. that will not only bring lucidity while understanding the act well along on but also make surefire that it is executed in their good turn. Then it makes available for the number of rights and powers awarded to the transgender people. It also guides appropriate administrations to take mandatory engagements to safeguard them the basic fundamental rights provided in the Indian Constitution. Further Sections 9 and 10 are tremendously note worthy since it put down sophisticated rapports concerning the security of the Transgender communal from vehemence, misuse and abuse both within and outside the home. The Bill clarifies the measures to be undertaken to move the criminal justice method and the rejoinder vital from the law enforcement agency and jurisdictional officers to such Bills of violence.<sup>7</sup> Also, there is an endowment to safeguard that transgender children delight in human rights on an equal root with other children. The only downside to such is that children, till they turn adolescents, may not in point of fact be responsive of their individualities so some other term could be used for them. Even though the bill make sure of basic societal civil liberties; it is hitherto to recognize any sexual rights to the transgender people and these cannot be provided to them without two vintage legislations, that is; *Section 377 of IPC* and the *Immoral Traffic Prevention Bill of 1956* are annulled which are the foremost tools of exploitation and harassment to this community. The Expert Committee,<sup>8</sup> Ministry of Social Justice and Empowerment suggested that the Administration is duty-bound to revise the meaning of ‘Gender’ in Section 10, IPC and be changed to; “*any human being though born male, female or with intersex variations, has a right to take on any gender which will reflect in all their civil, political, social, economic and cultural identification without any ridicule, harassment, denial, rights violation, and be accepted with dignity and respect by all*”.

<sup>5</sup> Nidhi Sharma, ET Bureau, (September, 2015). [online] Available at: [http://articles.economictimes.indiatimes.com/2015-0922/news/66792412\\_1\\_transgenders-winter-session-private-member](http://articles.economictimes.indiatimes.com/2015-0922/news/66792412_1_transgenders-winter-session-private-member) [Accessed 13 June 2017].

<sup>6</sup> The Rights of Transgender Persons Bill, 2015, Bill No. XLIX of 2014, Part II, Sections 4(t).

<sup>7</sup> Saif Rasul Khan, “The Rights Of Transgender Persons Bill, 2014: Provisions And Lacunas”, pg.3, Law mantra (International Monthly Journal, I.S.S.N 2321 6417) available at: <http://journal.lawmantra.co.in/wp-content/uploads/2015/05/72.pdf> [Accessed 14 June, 2017].

<sup>8</sup> Government Of India, Ministry Of Social Justice And Empowerment, Expert Committee on the issues relating to ‘Transgender Persons’ constituted on October 22<sup>nd</sup>, 2013, under the order of T.R. Meena, Joint Secretary to the Government of India.

## V. TRANSGENDER: LEGITIMATE RIGHTS & ACKNOWLEDGEMENT OF TRANSGENDER

### Rights Granted Under Indian Law to Transgender

The rule of law is absolute, supreme and each person is equivalent in the eyes of law. Hitherto, the transgender communal is in a perpetual skirmish, rebellious in contradiction of tyranny, abuse, and discrimination from every single part of the social order, whether it's their individual family and friends or the general public at large. "*National Legal Services Authority v. Union of India &Ors.*"<sup>9</sup> in this case J.K.S Radhakrishnan observed that acknowledgment of transgender as the third gender is a human rights issue and not to be well thought-out as the social issue.

Following are the various rights of the Transgender people:-

- The right of equality before the law and equal protection of the law is guaranteed under **Article 14 and 21** of the Constitution.
- The right to choose one's gender individuality is an indispensable part to lead a life with self-esteem which again falls under the ambit of **Article 21**.
- Further, they cannot be discriminated against on the ground of gender as it is debased of **Articles 14, 15, 16 and 21**.
- Further, the Supreme Court has given definite guidelines for the security of the rights of the transgender people by including of the third category in documents like the election card, passport, etc.

## VI. IMPORTANT ACT/LAWS

### Immoral Traffic Prevention Act of 1956

It was amended in 1986 and has turn out to be gender neutral lawmaking. The purview of the Act now smears to both male and female sex workers together with those whose gender identity was unstipulated. With the alteration, both the male and hijra sex workers developed criminal subjects as this gives the law enforcement agency the legitimate basis for capture and intimidation of the transgender sex workers.

**Section 377 of IPC:** It marginalizes similar sex relationships between consenting adults. This imposing period law is accountable for making the Transgender communal at risk to law enforcement agency nuisance, extortion, and abuse. In *Jayalakshmi v. State of Tamil Nadu, Pandian*,<sup>10</sup> a transgender, was arrested on charges of theft by the police department. He was sexually assailed in the police station which eventually led him to sacrifice himself.

**The Right of Transgender Persons Bill, 2014:-** The rights cast-iron under the Bill are customarily utilitarian rights, for instance, the right to equality and non-discrimination, life, and personal liberty, free speech, to live in a community, integrity, along with safety from torment or brutality and exploitation, violence and mistreatment. There is a separate clause for transgender children. Education, employment and social safekeeping and health are also protected under the Bill. The Bill visualizes setting up a number of establishments and forums like National and State Commissions for Transgender People.

## VII. HOLISTIC MEASURES

In order to exhilarate the lives of the transgender people following all-inclusive measures need to be accepted.

### Learning & Training

<sup>10</sup> 10 July, 2007

Education is necessary for the progress and development of any communal. "*Countless Transgender people emanate to setbacks of the educational system for the reason that the teaching-learning atmospheres are geared only for folks who undoubtedly identify as either male or female. This fallout more, in austere societal segregation of those schoolchildren whose sagacity of self-does not gracefully apt into these two gender classes and they will more often than not drop out of school.*"<sup>10</sup> The Bill, under **Sections 13 and 14** makes available for an comprehensive education system, which does not differentiate in contradiction of the Transgender communal in addition delivers for all scholastic foundations subsidized or accepted by the appropriate

<sup>9</sup> (Civil) No.400 of 2012(NALSA)]

<sup>10</sup> <https://www.theguardian.com/society/2015/aug/23/famous-transgender-help-the-cause-caitlyn-jenner-laverne-cox-kellie-maloney> [Accessed on 15 June, 2017]

Available online at: <https://jazindia.com>

administration would warrant that the Transgender community has an equivalent right of entry to schools and colleges so that they can make the most of on the social and academic improvement. It also lays down the responsibility to observer involvement, advancement in terms of accomplishment levels, and completion of education, in the esteem of every Transgender student. **Section 21** calls for reservation of seats, two percent of the total strength of the class or course in government organizations. This Section also makes a proviso that the Transgender would not be stopped from competing in the general category seats. The Bill has, nevertheless, unsuccessful to state the provision to reward scholarships reserved for Transgender students in Government Educational Associations – at all levels of education. The general public differentiates and banishes the Transgender community, which in turn fallouts in absence of rudimentary education and academic life. Hitherto the foremost delinquent that would endure is the reception of such children in the educational establishments due to the social disgraces existent; who in spite of the legal requirements may still be harassed, bullied and discriminated, consequently spaced out from this sustenance there is still a need for gender sensitization for all students, which needs to be gratified for in the bill.

### **Communal & Financial Firmness**

**Section 18** conveys the health concerns confronted by the Transgender communal. It clarifies on issues like distinct HIV surveillance Centres, sex relocation surgical treatment as well as the barricade free right of entry to hospitals. The community every so often suffers enormous discrimination and at times, the hospitals refuse to acknowledge them. They are forced to decide on either male or female as their gender in furthestmost communal domains. The Bill has no direct description to make available endowed Trans Health up keep Facilities, meeting Worldwide Criteria of Care measure sat least one most important Government Clinic in each state, which was suggested by the Expert Commission. Moreover, in hospitals, there are merely two wards that are the Male Ward and the Female Ward. There is no provision for Transgender Ward. The doctors in the hospital are not ready to treat them in the Female Ward. They are not prepared to admit them in the Male Ward either.<sup>11</sup> To all intents and purposes, the hospital management refuses to provide the treatment to the Transgender community. This is not merely an abuse of Fundamental Rights, however a very grave violation of human rights too. The Bill must make it compulsory for each hospital to have faithful Transgender wards for their treatment. A further endowment that needs to examine is funding for the sex relocation surgical treatment. Then, **section 19** talks over restoration route for the Transgender people in zones of education, health and employment. Nonetheless, it does envision organizations and progress tools to safeguard that the Transgender people gain profits of the Bill at the most primitive. **Section 20** states that the Administration is required to take all appropriate actions to endorse and look after the right of all Transgender people so that they can have a social life and can take part in vacation and recreational happenings on an equivalent root with others. It focuses on the patronage of Transgender plays, music and dance carnivals. It also calls for the founding of a Transgender antiquity arts center, which records and construes the antique know-hows of Transgender people.

### **Skill Innovation & Education**

Employment is the first footstep in the direction of pecuniary liberation and firmness. The Bill lay emphasis on self-employment and vocational training in addition to makes requirements for advances and other amenities that would support the communal in being independent. These provisions will safeguard their financial freedom and emancipation from the handcuffs of poverty. **Sections 15 and 16**, places interest in the needed provisions for the engagement and working out of Transgender communal in the humanity. It states that essential outlines and platforms must be delivered for the employment of the Transgender, explicitly concentrating on selfemployment and vocational training. It also makes available that the Administration establishments must set up instruments, which will spread out heaps to the Transgender at concessional rates for the resourcefulness and undertakings taken up the community to frontward self-employment. **Section 16** restates that there intend to be no discrimination in contradiction of the Transgender in matters of employment and the communal need to have an equivalent chance of satisfying any post in case of the vacancy. **Section 22** which makes available incentives to private employers, is placed down with the optimism that private segment would open up its doors for this community.

### **Separate Courts For Their Reparation**

*“The true measure of development of a nation is not economic growth; it is human dignity”*

<sup>11</sup> <http://journal.lawmantra.co.in/wp-content/uploads/2015/05/72.pdf> [Accessed on 15, June 2017]

Available online at: <https://jazindia.com>

-Justice Krishna Iyer<sup>12</sup>

The requirements of legitimate enactment are not as comprehensive as required. The recommendation of the Expert Committee, the Bill must make provision for aall-inclusive anti-outrages Bill that influences out the human rights of Transgender people to gender manifestation of any categories as well as penalizes discrimination and violence against people based on gender identity. The violence carried out against Transgender people array from rape, stripping, disfiguring the genitals, imprisonment etc. In addition to the same, it's recommended that oral abuse can be made punishable as a crime or lead to stern penalties accountable on the outcome it has had on the individual. An anti-discrimination Bill must empower Transgender people to take legitimate stroke against any usage of discrimination come across in chasing their education, employment, in receipt of the right of entry to accommodation, access to health care, access to washroom space, access to public transport, etc. Furthermore, sexual assault, the sexual nuisance as well as domestic violence laws must turn out to be comprehensive: The gender of the survivor of sexual attack and provocation circumstances should comprise all people notwithstanding of gender. Under the present laws, only womenfolk can file cases of sexual assault. Section 375 of the IPC necessitates an amended in order to create it sexual category neutral with reference to the victim. This will safeguard that even if the assailant is mannish, the victim of any sexual category should fall under the purview of this Bill. It need also take account of marital rape as a punishable offense. The punishment for rape should be the same notwithstanding of whether the wrongdoer is married to the victim or not.

### VIII. CONCLUSION

Since the Transgender communal lives on the outer reaches of the social order and furthestmost make an existence by singing and dancing or by begging and prostitution. One most important fragment that has been unnoticed in these sections is that in spite of the rules being ubiquitous, this communal in specific wants to be completed responsive about the civil liberties being secured by the lawmakers as soon as it comes into power. Correspondingly it won't make any upshot without the social order in over-allis acquainted with these provisions; as there is a foremost societal disgrace involved that might not permit a modification likely in first place. Next to pale is the important self-respect of a minority that suffers several humanoid rights waves of abuse. The capacity to advantage legitimate acknowledgment according to their sexual characteristics would symbolize the first step in addressing one fundamental source of exploitations against them. "Transgender people be worthy to some degree dynamic; your respect. From that esteem develops a zealous communal, a more compassionate the social order and a better world for all."<sup>13</sup>

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<sup>12</sup> State of Karnataka v. Rangnatha Reddy (AIR 1978 SC 215)

<sup>13</sup> Meenakshi Ganguly, South Asia director; in a letter to Lok Sabha on July 20, 2015 available at

<https://www.hrw.org/news/2015/07/20/letter-lok-sabha-rights-transgender-persons-bill> [Accessed on 14 June 2017]

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