

TRANSGENDER AND HUMAN RIGHTS – CURRENT SITUATION AND POTENTIAL OPTIONS OF DEVELOPMENT IN INDIA

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Abstracts:

In a millennium challenge in the arena of human rights, recognition, promotion and protection of rights of Transgender became a biggest challenge. This research summary studies the transgender in human rights perspective in a macro level dealing with current situation with key to their development in India.

Keywords: *Human, Rights, Transgender, Challenges, India*

Transgender are the people who are born with male or female anatomies but they feel different from their body structure. They are born with cryptic gentiles and are sexually neutral. They transgress social norms. These individuals signifies uncompromising binary gender constitution. They possess a hackneyed rampant gender role culturally. They experience a mismatch between their gender identity, gender expression and their assigned sex. These people either full time or part time live in a gender role opposite to which they are born with.

Due to these characteristics, transgender most commonly live in groups under the umbrella of a “guru”. They are mostly commonly abandoned from their family. They don't have a permanent home and most of them live in communes thus live in commune slums on the outskirts of the society. They become subject to public humiliation. They are also embarrassed by police more often than any other sector of the society.

Still, these communes possess a very strong social structure. They have a system of

Gurus and chela. Among them they share a loving and nurturing relationship which continues through generations. These communes are also place of social security and safety to the new or young Hijara who are shunned by their families.

Hinjaras¹, enuchs², chakkas, transsexuals, Aravanis, Kothis³, jogappas⁴ are the different names we call them across India.

¹ Hijras are biological males who reject their 'masculine' identity in due course of time to identify either as women, or “not-men”, or “in-between man and woman”, or “neither man nor woman”.

² Hijras in Tamil Nadu identify as “Aravani”. Tamil Nadu Aravanigal Welfare Board, a state government's initiative under the Department of Social Welfare defines Aravanis as biological males who self-identify themselves as a woman trapped in a male's body.

³ Kothis are a heterogeneous group. 'Kothis' can be described as biological males who show varying degrees of 'femininity' - which may be situational. Some proportion of Kothis have bisexual behavior and get married to a woman.

⁴ Jogtas or Jopgappas are those persons who are dedicated to and serve as a servant of Goddess Renukha Devi (Yellamma) whose temples are present in Maharashtra and Karnataka.



Transgender are human being. Still in India till, very recently, they were not recognized as human beings. This itself is a huge violation of Human Rights. This lack of recognition had segregated them from the society and more worst, in the matter of civil rights .they have been destitute from many rights and privileges that we as Indians enjoy. They are not the part of social and cultural participation in public, they are neglected by family and society. The schools did not gave them admission so there was no chance of joining colleges and universities at higher level. Those who joined at lower level school where shunned off once thereality came in picture. Only very few around 1% - 2%, of transgender can make it to higher level of education.

Before 2014, transgender had tethered access to education, health and health services, public spaces, livelihood opportunities, obtaining passport, driving license, ration card etc. while applying for bank account they had to tick male or female as there was no option for third gender. As per the census 2011, there are about half a million Transgender people residing in India.

1. Historical Sketch

The presence of these transgender was recognized way back in “**Kamsutra**” in India, where they were identified as “**TritiyaPrakarti**” way back in **400 BC**.

During **Ramayan** there is an evidence that while going to exile for 14 years, when lord Ram asked all men and women of Ajodhya, to return back to their homes , these transgender kept on standing till 14 years. On his return when Lord Ram saw them standing, he asked transgender as to why they had not returned back to their homes. The transgender replied that they neither came in men nor in women. And since there

'Jogta' refers to male servant of that Goddess and 'Jogti' refers to female servant

was no mention about them in his speech they did not move from their place. Hearing

this lord Ram was so much impressed that he granted them boon to bless people during the auspicious occasions. This is from where the tradition of having hijaras on child birth, wedding or any auspicious ceremony started. All this happened some **8000 – 7000 yearsBC**

During **Mahabharat**, some **5000 years BC** , it is a well-known fact that first daughter of Kind Drupad was Shikhandi , who was a girl but had all qualities of a boy . She played a major role in the 14 day war, to bring down bheesm on the bed of arrows. Then we also have the evidence of Arjun turning into “vrihanalla” during their exile and perform all duties a eunuch or a transgender would have performed during those times.

These examples portray the importance of eunuch/hijara/transgender during the ancient times. Let us now have a look in the more recent years of History -

With the starting of **700 years AD**, **Rajputs** started rising has Hindu kings in west and north part of India. During their tenure, transgender were used as slave who used to do domestic work for the Royal people such as bathing them, massaging them, carrying litters and other house hold work. Since these men were considered to be women, they were consider as safe for women. So they were used to protect royal ladies when they went out of fort. It was believed that since they did not had families, would remain with the royal family till their fag end. Many a time they became ears to kings and queens, and conveyed secret messages as well. Their for even being a slave they had a important role to be played in the society.

Mid-way hrough **15th century**, **Mughal** started evading India and started establishing their kingdom. Among other people of the society eunuch or the transgender played an important role in the society. They were



guard of Harems of Mughal emperors, and thus were required in thousands of numbers. They would play with young prince and princess, guard them and teach them moral values and ethics. Some of them were so loyal to the Royalty that they were considered to be the only means to reach the emperor. They were carrier of secret messages among the royalty. During the Mughal era they were paid suitably. The importance was so much that they used to dress in bright clothes, wear heavy makeup and wear bright perfumes. But as the Mughal royalty started descending, the importance and the status of transgender in the society also started diminishing.

But, the **British** rulers in India tried to eradicate the Transgender community from India. They categorized hijaras as a “criminal tribe” under the ‘Criminal Tribes Act’ of 1871.

2. Modern India

Still, people in India consider them as a boon to grant blessing on any auspicious occasion. They are considered to be bearer of luck, prosperity and fertility. But all this is not able to save them from possible discriminations from the society. They belong to the extreme lower class of the society and are most often discarded by the people.

They got right to vote only in **1994** and in **2014** in the historical order by the honorable Supreme Court of India, transgender were recognized as the third gender of the society. They will belong to backward class and get all reservation rights as per government laws. They got their right to education and voted for the very first time in 2014 general elections. Still, for a longest period of time, “transgender” have been excluded from participation in social and cultural life, politics and decision making process. Rather they have been subject to gender discrimination, gender harassment, violence, denial of services and unfair

treatment at public and private places. For all long transgender have been treated a unnatural and as an object of both mockery and fear

3. Current Problem

Exclusion– ever since British rule transgender have faced prejudice against in India. This prejudice is often translated into brutal violence at public places, police stations, prisons and at times in their homes as well.

If we, have a close look at Fig – 1, we can find that in present circumstances, there are three basic kinds of exclusions of Transgender in India –

1. Exclusion from Social and Cultural Participation –
 - a. Exclusion from family and society
 - b. No protection from violence
 - c. Limited entry in education sector, health services and public spaces
2. Exclusion from Economy
 - a. Exclusion from economy
 - b. Exclusion from livelihood and employment opportunities
3. Exclusion from Citizen Participation
 - a. Limited entry to collectivisation
 - b. Limited rights to citizenship
 - c. Limited right to participation in community decision making process

Though, the situation has changed after the honorable Supreme Court judgment in 2014, the perception of Indian society mindset and their behavior towards Transgender has not changed much.

Low level of poverty– they scrape out their living by begging, (this may include singing in train and bus and collecting money /begging at traffic signals/ forcefully blessing people at public places a common scenario in Delhi and collecting money etc.), doing



humdrum jobs and in some cases sex work too. Their low level background make them susceptible towards harassment by the police.

Less education- Till most recently they were denied right towards education. Thus because of no education they could not get government or private jobs.

Discrimination and ignorance – the class and gender discrimination has made the Transgender group most disempowered group in India. They are threaten of lively hood and thus do mean jobs for their living.

Lack of Medical Facility– due to lack of shelter, education and medical facilities these transgender, are more often prone to various kinds of health risk and setbacks. Since they are deprived of medical facilities in private and public health care system, most of them go to quacks for instant remedy. There due to lack of knowledge and hygiene transgender they become suspect to many contagious diseases.

Carrier of various contagious diseases such as HIV - living in poor hygienic conditions and trading themselves with sex work make them most vulnerable to drugged and contagious diseases such as HIV AIDS.

Alcohol and drug use – it is a fact that a large number Transgender take Alcohol or various other kind of drugs such as, ganja, hashish, brown sugar, cocaine, etc. This is mainly because they want to forget various kinds of hazards they face in their daily life. Consumption of such drugs lead them to risky sexual behavior and sexually transmitted diseases. At times due to lack of money they also use, used syringes to insert drugs into their veins.

Harassment and extortion–since they do not have secure homes and mostly wander in open areas they become much susceptible towards extortion of money and being targeted as sexual objects. A study conducted

by UNDP, in 2007 reported the percentage of various types of harassment which is reflected in Fig 2 –

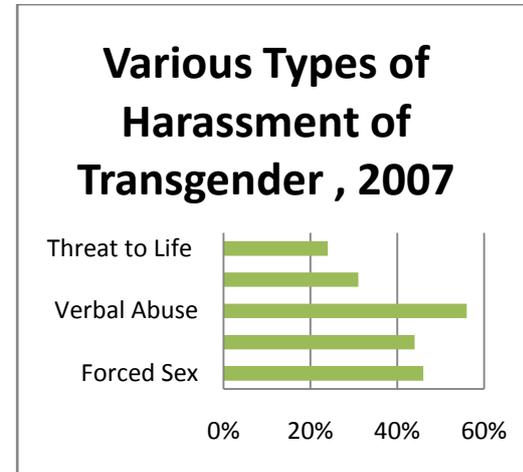


Fig - 2, Various Types of Harassment of Transgender, 2007

The above figure indicates various categories of harassment of Transgender stands as – Threat of Life – 24%, Blackmail for money – 31%, Verbal Abuse – 56%, Physical Abuse – 44% and Forced Sex at 46%.

Unemployment–unemployment is one of the major problems of the Transgender. The employers are not much interested in giving jobs to the transgender. There are some example of transgender running their small Dhabas, or pan shops. But they can be taken as exceptions. Since, they do not have much employment opportunities they resort to sex jobs or begging as their livelihood. In an unprecedented move recently, LIC has started recruiting Transgender as their agents.

Lack of social Welfare Schemes for Transgender

3. The Vicious Cycle of being a Transgender

- At the time of their birth or 7 – 8 years later when the parents realize the actual of their child. Due to societal pressure



and fear of the truth of their child coming in open, in most of the cases they disown their child. This is the first step of the vicious cycle.

- Now, since the parents disown the child he has nowhere to go. Schools also are not very open to having a transgender child in their institution. They fear that parents of other children may resort to objections of having such a child in their premises. Also education needs money in India and since such child is not supported by their parents they do not have enough money to pay for their education. This is the second step of the vicious cycle.
- Less education, in turn leads to less employment opportunity. In any case before 2014, there were negligible opportunities of employment for transgender. The reason was there was only two sex column Male and Female. After 2014 judgment now the government and private bodies have to have a third column for Transgender. But this does not improve their situation. As in present condition transgender are already uneducated. To educate them and bring them to a level where they can be employed will take another 20 years. This is the third step of the vicious cycle.
- Since the education is less they come under the lowest strata of the society where poverty is at its peak. They live in slums under the most unhygienic conditions. They thus become susceptible to various disease and crime. This is the fourth step of the vicious cycle.
- Combined with less education and poverty, transgender adopt to the lowest means of earning such as sex trade, selling of drugs, begging and some low level of crime. This is the fifth step of vicious cycle.
- Since they resort to above actions, they are again disowned by their families and the vicious cycle continues.

4. Action required for potential development of Transgender Community –

Need to implement 2014, Supreme Court ruling in letter and spirit - though the supreme court ruling is out for last one year now, the social stigma still continues . The implementation of this historic ruling is still not in picture. The harassment and marginalization of the community still continues. The social prejudice still exists against Transgender. Although transgender have been taken as backward community and they will be entitled for all benefits in education and jobs still the government and private agencies need to start focusing on implementing the order so that the benefits start reaching to the transgender community.

Need for Education –education is the basic right of every human being. For a very long time transgender have been deprived from attaining education. Now with Supreme Court ruling it's a new dawn for the transgender. But we need to enlighten the transgender about education and the benefits they can derive. The agencies need to advocate transgender to involve themselves in education. Schools and colleges need to open their doors to the community. Teaching community need to take special interest in education of Transgender and help them to attain success. More than anything it's the willingness of the transgender community to study hard and come out successful.

Need for better Health Care facilities – Since the transgender live in the most unhygienic conditions they are prone to various diseases. For a very long time since they have been denied from public and private health services, they often resort to quacks and thus the prolonged illness starts. Now doctors, health care specialists, policy makers and community service operators, will have to come in front and take the charge. We also need to educate transgender community about personal hygiene and various other health issues.



Need for separate HIV Surveillance – since most of the Transgender are involved in various sex acts under the most unhygienic conditions they are more susceptible to HIV /AIDS. There is a greater need to set up a separate HIV Surveillance for Transgender community to educate them on fair sex practices. Transgender who have HIV / AIDS should have fair access to the treatment and care.

Need to provide Holistic Care – since the transgender have been harassed by the publicly, socially and privately many of them live under continuous depression and thus resort to drugs and other practices. There is a strong need for counselling, both mentally and socially. There is a need of a comprehensive approach that includes health and social services for transgender people.

Need to involve transgender in community – decision – making process – transgender

have been socially deprived for a very long time in India. After they were allowed to vote in 1994 we have seen few political leaders from the Transgender community such as Shabnammausi – MP , Madhya Pradesh, 1998, Kamla Jan – Transgender Mayor of Katini . MP, 1999, Asha Devi – Transgender Mayor of Gorakhpur, 2000, Madhukinnar transgender mayor of India – Raigarh, Chhatisghar. But, due to lack of education they were not able to give back to the society the much needed support.

There is a greater need to involve Transgender in community decision making process such as to involve them in HIV surveillance for their own community, involve them in the education process of Transgender and also to implement the Supreme Court order.

5. Conclusion

It is now time for Indian authorities to implement the Supreme Court directives and bring the transgender to the main stream community. The authorities should also work towards ending the discrimination against the transgender and take care of their protection and social needs.

There is also a need to spread larger awareness campaign in public for the acceptability of the Transgender community. They should be welcomed with open arms in educational institutions, health care systems, work place both public and private, should be treated equally under the law and by the police. They should be provided proper medical facilities which includes health insurance and subsidized treatment.

For the general public it is important to understand the feelings and mental status of the Transgender community. People need to understand that humans are diverse but after all every one is a Human being. Transgender community has a right to behave and live they are and express their feelings without any fear.

The society needs to take off their social stigma towards transgender community and give them a chance to stand equally and participate in together in the community development process.



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