

The Evolution of Transgender Rights in India: A Historical and Legislative Perspective

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Abstract: Transgender people in India experience societal stigma & legal discrimination due to their nonconformity to heterosexual gender & sexual norms. The research delves deeply into the history of transgender rights legislation & policy in India. The study starts with the Supreme Court's 2014 acknowledgment of a "third gender" and continues by looking at later legal changes, such as the Transgender Persons (Protection of Rights) Act of 2019. The study delves into the complex issues encountered by India's transgender minority by combining historical accounts with legislative landmarks. The purpose of this article is to investigate & evaluate the availability and efficacy of transgender people's rights protections in Indian law. In addition, the articles discuss the many societal problems that transgender people encounter.

Keywords: Transgenders, Protection of Rights, India, Legal Provisions

Introduction

The transgender population in India¹ has been dealing with a lot of issues, and a lot of those issues stem from their low socioeconomic status. They often turn to prostitution or other low-wage occupations to make ends meet. The Transgender Persons (Protection of Rights) Act, 2019 was ostensibly enacted with the intention of resolving issues encountered by India's transgender community & affirming their legal status, making laws and rights applicable to them. Therefore, members of the transgender community can sue any individual or group that violates transgender equality legislation by treating transgender people differently because of their gender. The transgender community gained countless civil & political rights after the Supreme Court's landmark decision in *National Legal Service Authority v. Union of India*, 2014 (the NALSA verdict) was announced. This acknowledgment has its roots in the universally acknowledged inherent worth of every human being and in the inherent freedom of choice that is inherent to all civil rights.

Members of the transgender community, especially those whose bodies & minds reject their biological masculinity, face immense anguish and pain, and society rarely acknowledges or even cares about this. Nor does it accept the inherent emotions of

¹Athreye Viji (2015), "The life of Transgender in India" available at: <http://www.mapsofindia.com/my-india/government/the-life-of-transgenders> (accessed on 6th April 2017)

these people. As a result of centuries of discrimination, including widespread scorn and abuse, members of these communities are still marginalised in many areas of modern life, including but not limited to: social & cultural life, the workplace, schools, and politics. The transgender community must demand immediate constitutional recognition of their rights. Article 14 of the Indian Constitution defines "Person" as any individual, regardless of gender. According to the country's constitution, the third gender is officially acknowledged. As a result, the nation must ensure that transgender persons enjoy a wide range of rights and are safe from criminalization & discrimination based on their gender. Articles 14, 15, 16, and 21 all make clear that transgender people have the same rights as everyone else.

Objectives

- 1) To study the evolution and history of Transgender in the society
- 2) To study the various legal protection rights for Transgender
- 3) To discuss the role of society and government regarding Transgender rights

Research Methodology

Research for this project will follow a methodical process. When lawyers conduct doctrinal research, they organise and analyse existing case laws, legal frameworks, and structures in order to discover novel concepts through a thorough literature review that does not include any actual fieldwork.

Sources

This research is primarily based on secondary sources, such as books, journals, and news stories. Various databases and online resources.

Hypothesis

There is no significant the legal protections for transgender people.

Evolution of Transgender Community in India

Indian society has accepted transgender people for a long time. Even in the earliest Indian texts, there was acknowledgment of a "third sex"—those who did not identify as either male or female. In early Vedic & Puranic texts, as well as in Hindu folklore, epic, & mythology, the idea of "tritiyaprakriti" or "napumsaka" played a significant role. For a long time, people used the name "napumsaka" to describe a person who couldn't procreate because they didn't share any characteristics with male or female markers. As a result, the discussion of sexuality & long-held belief in a third gender was central to several of the first writings. As a matter of fact, the Jain scripture alludes to the idea of "psychological sex," which separates an individual's mental makeup from their physical attributes. As he sets out into the jungle, Lord Rama, who had been exiled from his

kingdom for fourteen years, turns to his supporters and summons them all, "men & women," to come back to the city.

Only the hijras, who were obligated to follow him because of this path, stayed with him. Rama was so impressed by their devotion that he gave them the authority to bless people on special events like marriage & childbirth, as well as at inaugural ceremonies. This was to pave the way for the later practice of badhai, in which the hijras would perform songs and dances while bestowing blessings. In the Mahabharata, Aravan—son of Arjuna and Nagakanya—offered to be sacrificed to Goddess Kali in exchange for a promise that he would spend his last night married. This promise was made in order to guarantee that the Pandavas would win the Kurukshetra war. Krishna disguises himself as a lovely woman named Mohini and marries her since no woman would marry someone destined to die. Identifying as Aravanis, the Tamil Nadu Hijras trace their ancestry back to Aravan.

History of Transgenders in India

According to Indian mythology, which provides glimpses into the present and a condensed view of the past, the transgender persons who are now the target of so much criticism were previously respected and accepted. The concept of third sex has its roots in Hindu mythology, which describes several gods who undergo a transformation in their sexual orientation or who appear as Avatars of different genders. It was common practice to address divine creatures as either male or female, depending on the context and the specific manifestation. As an example, Ardhanarishvara, who was created by the union of Lord Shiva & Parvati, was highly revered².

For transgender people, the Mahabharata & Ramayana were like fortune cookies. Among Hindu legend, the transgender character Shikhandi from the Mahabharata is particularly notable. A small but crucial transgender character who is often believed to have laid out the lineage from which transgender people are conceived is Aravan or Iravan, the child of Arjuna. The Mahabharata also has a moment where Arjuna is banished, which highlights the presence of third sexual orientations. He conducted rituals at weddings or labours while there, assuming the role of Brihandala, a eunuch. People who identify as transgender often find inspiration in the Ramayana. Addressing his devotees as "men and women," Rama pleaded with them to come back to the city as he set off for fourteen years in the jungle. The hijras³, in particular, chose to remain with him since they did not feel obligated to follow the order. Rama was so moved by their devotion that he bestowed upon them the ability to bestow blessings on special occasions. The hijras were well-known in the Mughal Court from 1526 until 1857 for their roles as political advisors, overseers, commanders, & guardians of mistresses' possessions. They were able to influence state decisions and even held top positions in

² Historical Evolution of Transgender Community in India; M. Michelraj; Asian Review of Social Sciences; Vol. 4 2015

³ TG Issue Brief, UNDP, VC. Dec. 2010 titled "Hijras/Transgender women in India: HIV, human rights and social exclusion"

the Islamic rigid establishments. Later on, during the British era, these benefits were repealed through legislation.

A steady decline in transgender people's visibility and acceptance began with the rise of the British Empire in the 17th and 18th centuries. What the "pilgrim space" saw as an anomaly was the transgender person's proximity to the open circle. Indian men were understandably frightened by the prospect of sexually transmitted diseases brought on by their close proximity. Transgender people's displays were interpreted by the British logic as a call for sexual services. In the Indian Penal Code of 1860, Section 377, all penile-non-vaginal sexual actions between individuals were criminalised by the late 1800s. Under the Criminal Tribes Act (CTA) of 1871, the British government also used the organisation for surveillance and control purposes. By labelling them as "sexual deviants" and "habitual criminals," there was an obvious effort to erase transgender people from society.

Problems of Transgenders⁴

Lesbian, Gay, Bisexual, and Transgender (LGBT) people are often lumped together. They are a part of the society's oppressed minority that has it rough on all fronts: legally, socially, culturally, and economically.

1. Issues encountered by the transgender population in India encompass -
2. Discrimination: The biggest issue facing transgender people is discrimination. When it comes to access to justice, entertainment, education, & jobs, they face prejudice.
3. Disrespect: With very few exceptions, such as when a kid is born and they are asked for blessings or when a newlywed couple blesses them, they are treated with complete and utter disrespect in all parts of life.
4. Downtrodden: People who are oppressed by those in power. Being transgender makes them more likely to fight for equality.
5. "Child Nabbing": People in this group actively seek for transgender infants and children. The moment they find out, they start trying to kidnap the kid from their parents.
6. Prostitution: Members of their community, acquaintances, or family coerce them into becoming prostitutes. The involvement of their parents is even revealed in certain instances.
7. Pressurised to leave parental house: After being recognised as an individual, they are compelled by society to leave their parents' home because they are not accepted as part of the usual community or class.
8. Unwelcome attention: Transgender people can face unwelcome stares and comments from members of the public. They insult, humiliate, abuse, or curse at them in an effort to set the scene.

⁴ Problems Faced by Transgender people in India, available at: <https://www.quora.com/What-are-the-problems-faced-by-transgender-people-in-India> (accessed 4th April 2017)

9. Refusal to entrance: They have difficulties even while trying to enter public spaces like parks, theatres, hotels, and places of worship.
10. Rape and verbal/physical abuse: the most typical experiences for transgender individuals. Their typical behaviour includes verbal & physical assault, followed by rape of the face.
11. Inadequate educational facilities: They do not have the same right as other persons to attend classes in universities. Disparities persist even in the realm of formal schooling.
12. STI & HIVAIDS issues: "MSM" refers to men who engage in sexual relations with other men. This makes transgender people more vulnerable to diseases like HIV/AIDS & STIs. The majority of transgender people come from lower-class backgrounds and have a low degree of education. It aspires to receive substandard medical treatment.
13. Human trafficking: Transgender individuals are among the most overlooked. This makes them vulnerable to the issue of human trafficking as well.
14. Social Exclusion: The biggest issue throughout is that they are cut off from society. They don't have a voice in political, cultural, or economic matters. In concise, they are eliminated from –
 - Economy, employment and livelihood opportunities
 - Excluded from society or family
 - Lack of protection from violence
 - Restricted access to education, health care or personal care
 - Limited access to public spaces
 - Limited access to collectivization
 - Rights of Citizenship
 - Excluded from decision-making
 - Lack of social security

Legal Recognition of Transgender Rights in India

For a better understanding of the current state of transgender rights in India, one must look no farther than the landmark decision of the Indian Supreme Court in NALSA v/s UOI. This landmark case upheld the right of transgender persons to identify with their preferred, self-identified sexual orientation while also outlining substantial explicit government support programmes. The Indian parliament has also approved measures to recognise transgender people's rights.

Constitutional Provisions

The rights and responsibilities guaranteed by our constitution are well-established. Therefore, transgender people have the same rights as people of the other two genders, including the four cornerstones of human dignity.

Right to Equality

The Constitution of India guarantees all citizens the same protections afforded by the law and the same standing in the eyes of the Indian government. In this context, "any person" refers to any individual, regardless of their station in life, religious affiliation, gender, sexual orientation, or any other categorization. In India, the phrase "any person" encompasses transgender people, and they are treated with the same respect & equality as those of the opposite sex⁵. It is unacceptable to separate the transgender community based on their subjective class or on the fact that they do not comply with any domestic legislation. The case of *National Legal Service Authority v. Association of India* expanded our definition of "person" in Article 14 of the Indian Constitution beyond a binary gender system. All the rights guaranteed under the comparable also apply to the transgender network since they are within the purview of the Indian Constitution.

Right against all Forms of Discrimination

The term "sex" has become a buzzword when discussing the safety of transgender people. No matter if these networks are traditionally associated with men or women, the definition of "sex" encompasses them all. In a landmark decision, India's highest court found that sex is inherently related to organic features. A person's sexual orientation is characterised by their mental self-view, which includes their sexual personality or character qualities as well as their privates, chromosomes, & optional sexual highlights. The Indian Constitution's provisions regarding "sex" segregation in Articles 15 and 16 bring to mind the practice of racial segregation based on a person's sexual orientation. The term "sex" is not limited to the binary of "male" and "female," but is instead intended to encompass people who identify as neither. In order to bring social uniformity to these networks—like open work—Articles 15(2) and 16(4) have also been interpreted. This means that states can make any special arrangement for the improvement of these vulnerable minority groups, which are currently classified as socially & educationally backward classes⁶.

In light of India's membership in various international organisations, including the Directive Principles of State Policy, the following articles urge social equity, a concept that transgender people can grasp if given the opportunity to live alongside people of the same gender in positions of power & respect. Article 19(1)(a) of the Constitution of India guarantees transgender people protection, self-character, independence, and individual uprightness, among other fundamental rights, and the state will surely guarantee and perceive the privileges of the residents. Those who are eligible to reside in India are defined in Article 5 of the Indian Constitution⁷. In order to become a citizen, you are not required to adhere to any certain lifestyle choices based on your

⁵ National Legal Service Authority v. Union of India, AIR 2014 SC 1863 at 1890 para 54.

⁶ Poonam Verma, Sorrows of Transgenders, Judiciary and our Society – A Study, 52(3) IBR 147 (2015).

⁷ The Constitution of India - Article 5

sexual orientation or gender. So, a transgender person has the right to express his feelings, behaviour, and character to the public, and the state must guarantee it. As a fundamental right, the state cannot limit this expression.

Right to Life

One of the most fundamental rights guaranteed by this article is the freedom to choose one's own identity⁸; this right is a reflection of the most fundamental human right—the right to exist—which the state must protect from violation. One of the most important components of Article 21 of the Constitution of India is the option to a stately life, which the transgender networks reserve. People have the right to fully express themselves when their sexual orientation is acknowledged, and the right to be silent when their orientation is not acknowledged is just as important⁹. Our transgender community has not been treated with respect; instead, transgender people are frequently shamed & attacked by those in positions of authority, which has tarnished their reputation & diminished their importance in society.

Right against Exploitation

Human trafficking & beggary are two examples of the many heinous crimes that have been criminalised and made punishable by legislation. Article 23 of the Indian Constitution prohibits any kind of segregation, hence its scope is very broad. The general population usually looks down on improper exercises like prostitution. When there is a right against abuse, which creates a free situation for a person, everyone has the option to be self-aware. The most horrific victims of abuse are transgender people, who, because of their depraved financial situation, are able to engage in prostitution and other immoral activities while being socially stigmatised. The purpose of this article is to protect men from men's abuse and to guarantee the freedom of individuals' personalities.

Legal Provisions

The legislative body's establishment of diverse statutes is a by product of sacred arrangements that bestow lawful holiness through the establishment of this class's rights. Presented below are the key Acts that establish the character of this category without being overtly stated. There is no requirement, either express or inferred, for a particular sexual orientation or gender identity to be a prerequisite for acquiring Indian citizenship under the Citizenship Act, 1955¹⁰. One must be a permanent resident of India in order to cast a ballot (balloter). Extraordinary efforts have been made by the Election Commission of India to register transgender persons to vote.

⁸ I.R. Coelho v. State of Tamil Nadu, A.I.R. 2007 S.C. 861. See also Francis Corali v. Union Territory of Delhi, A.I.R. 1981 S.C. 1675. The Court held that the right to life includes the right to live with human dignity and all that goes with it, namely the bare necessities of life

⁹ State of Maharashtra v. Public Concern for Governance Trust, A.I.R. 2003 S.C. 223

¹⁰ The Citizenship Act, No. 57 of 1955, available at: <http://indiacode.nic.in>

Even more broadly, the term "person" is defined in the General Clauses Act of 1897. "Incorporate any organisation or affiliation or body of people, regardless of whether fused or not" is how the Act defines an individual¹¹. Unless there is anything antagonistic in the subject or environment, the legal bearing of Section 13 of the Act states that terms bringing in the masculine gender will be interpreted as include females¹². It is clear from a fair reading of the aforementioned Constitutional provisions, as well as those of the Citizenship Act of 1955 & General Clauses Act of 1897, that the concept of "individual" is not constrained in any way by any of these statutes, and that a transgender person would unquestionably be encompassed by the umbrella term.

Intriguingly, the 'sex;' or 'gender' of a person to be recorded in the event of a birth or death is not included in the Registration of Births & Deaths Act, 1969. There is no bias in the Act. It would appear that the requirements of the Act do not necessitate the inclusion of information regarding the sex or sexual orientation of a person in the Birth or Death certificate. The configurations of the declarations indicated in the Rules adopted by the States under the Act may have included such a necessity.

While some protections under the Fundamental Rights Chapter are reserved for Indian citizens, most of these protections are available to everyone. Recognisable evidence based on sex is an essential component of character. Segregation, unemployment, a lack of educational resources, vagrancy, a lack of clinical services (such as HIV care or cleanliness), depression, hormone pill abuse, cigarette and alcohol abuse, problems related to marriage and adoption, and so on are some of the primary issues being addressed by the transgender network.

Access to Justice

The US Supreme Court's decision in *Obergefell v. Hodges* has received praise from the US government.²⁶ However, despite having the largest sacred majority rule government in the world, India is still deeply entrenched in heteronormative practices that undermine alternative sexualities¹³. The case of *Jayalakshmi v. Province of Tamil Nadu*¹⁴ involves the apprehension of a transgender individual named Pandian by the authorities on suspicion of robbery. He committed suicide by setting himself on fire on the police headquarters grounds after being openly mistreated there. Police in Bangalore detained transgender man Narayana on suspicion of burglary without providing him with any information about his detention or giving him an opportunity to defend himself. The cops redirected his journal and threatened him with dire consequences if he didn't come up with names for the transsexual people he knew. Also,

¹¹ The General Clauses Act, No. 10 of 1897, Section 3(39), available at: <http://indiacode.nic.in>

¹² The General Clauses Act, No. 10 of 1897, Section 13, available at: <http://indiacode.nic.in>.

¹³ Shilpa Khatri Babbar, *The Socio-Legal Exploitation of the Third Gender in India*, ISOR-JHSS, Vol. 21 Issue. 5, Ver. 04 (May, 2016).

¹⁴ *Jayalakshmi v. State of Tamil Nadu*, (2007) 2 SCC 1

the police have used financial extortion as an incentive for gay persons to keep their identities hidden from society.

Current legislation, such as Section 377 of the Indian Penal Code¹⁵ of 1860 and the Immoral Traffic Prevention Act of 1986, is wreaking havoc on the transgender community. The Principal Tool for the Prevention of the Trafficking in Women and Children into Prostitution is the Immoral Trafficking Prevention Act (ITPA), 1956 (amended in 1986). Both male & female sex workers, as well as individuals whose sexual orientation is uncertain, are now included by the Act according to an amendment passed in 1986. The ITPA provided a legal basis for the apprehension of transgender sex workers & criminalised both male and hijra sex workers.

Long ago, in the East Indian Act for the Improvement of the Administration of Criminal Justice, the crime of homosexuality was first introduced. Section 377²⁹ of the Indian Penal Code, which was prepared in 1837, included "Unnatural sexual offences" in its section on human body crimes, which were previously handled under Clauses 361 & 362. Among Lord Macaulay's contributions to the Indian Penal Code, 1860 is Section 377. Certain types of sexual practices that are deemed abnormal are regulated by this system. When people encounter homosexuals or hijras, it is often assumed that they are engaging in activities that go against nature's will. Gay and transgender people have unmistakably been bugged and harassed on this area more times than anyone else. The Indian Clinical Association (IMA) & Indian Council for Medical Research (ICMR) have shockingly not yet limited any regulations for the Sex Reassignment Medical procedure (SRS). The numerous incidents of harassment and brutality directed towards transgender and LGBT persons make it quite clear that Section 377 of the Indian Penal Code has been utterly misused to inflict tremendous harm on this organisation. Section 45 of the Army Act, 1950 is another prominent model; it criminalises obscene conduct, which may include transgender network demonstrations¹⁶. It should also be noted that sexual minorities in India do not have the chance to form any kind of affiliation or association.

When it comes to protection claims, compensation¹⁷, or assignment for tip benefits, the sexual minority is most definitely not seen as an individual. In reality, transgender people in India face systematic rejection, discrimination, and persecution, making their lives very difficult. The recognition of unity is what will inspire the majesty in every individual, and it must not be forgotten that discord is the polar opposite of harmony.

Transgender Community & Higher Educational Institutions

In a circular sent to all university vice chancellors on October 29, 2014, the University Grants Commission (UGC) asked that all application forms contain a space for the transgender community. In order to help transgender students adjust to campus life

¹⁵ The Indian Penal Code, No. 45 of 1860, Section 377, available at: <http://indiacode.nic.in>.

¹⁶ The Army Act, No. 46 of 1950, Section 45, available at: <http://indiacode.nic.in>.

¹⁷ The Workmen's Compensation Act, No. 8 of 1923, available at: <http://indiacode.nic.in>.

without experiencing discrimination, harassment, or bullying, the circular also details the affirmative efforts that colleges & universities have taken. Among the other provisions contained in the circulars were calls for the development of transgender-friendly infrastructure, the launch of awareness campaigns, and the promotion of research into these topics and their potential answers. Of the 36,3413 people who applied for the MBA Maharashtra Common Entrance Test – 2017, 9,00 were classified as belonging to the third gender. The form expressly included a column for "others," meaning people who aren't male or female.

Legislative Actions to Procure the Rights of Transgenders

The Transgender Rights Bill, 2014

Following the NALSA ruling, in which the Supreme Court acknowledged transgender people as a "third gender." It cleared the path for transgender people's rights to be codified in law; in December 2014, Dravida Munnetra Kazhagam (DMK) Rajya Sabha MP¹⁸ Tiruchi Siva made the initial move to draft legislation protecting transgender people's rights. The Private Membership Bill¹⁹, also known as the Transgender Persons Bill, 2014, was introduced by him in the Rajya Sabha on December 12, 2014. Siva claims that his long-term involvement with transgender groups inspired him to write the Bill²⁰. Any lawmaker has the authority to introduce a private member's bill. The Rajya Sabha unanimously approved the bill in 2014, marking the first time a private member's bill had passed the upper house in 45 years²¹. The Bill has progressive provisions that acknowledge the right to self-identification of transgender people and establish tribunals and commissions to hear complaints from transgender people. In addition, the bill ensured that transgender people would have priority in government jobs, aid programmes, and educational resources.

Persons who do not conform to the gender assigned to them at birth include transgender men and women (regardless of whether they have undergone sex reassignment surgery, hormone therapy, laser therapy, etc.), gender-queers, and a variety of socio-cultural identities like kinnars, hijras, aravanis, jogtas, etc., as described in Clause 2 (t) of the 2014 Bill. This definition encompassed a diverse array of socio-cultural identities, going beyond the simplistic binary view of gender. After "correcting infirmities," the administration promised to bring the Private Member's Bill to a vote in the Lok Sabha. Reportedly, the authority had problems with the bill's reservation

¹⁸ For a more detailed account of the legislative history of the Transgender Persons Act, see Dipika Jain, 'Lawmaking by and for the people: A Case for Pre-legislative Processes in India, 20 ST. L. REV. 10-15 (2019)

¹⁹ Siva is a Rajya Sabha MP, representing the state of Tamil Nadu and the Dravida Munnetra Kazhagam (DMK) party

²⁰ Rajya Sabha Passes Transgenders Rights Bill, First Private Member Proposal in 46 Years' INDIA TODAY (Jun.6, 2021, 7:03 PM), <https://indianexpress.com/article/india/india-others/5-questions-tiruchi-siva-manbehind-rights-of-transgender-persons->

²¹ P Chandra, Why Tiruchi Siva Moved a Private Member's Bill to Ensure Rights for Transgender People, SCROLL (Jun.6, 2021, 7:03 PM), <https://scroll.in/article/723205/why-tiruchi-siva-moved-a-private-membersbill-to-ensure-rights-for-transgende>

requirements and the fact that it "gives too much obligation on the part of the government," hence it was never brought to the Lok Sabha²².

The Transgender Persons (Protection of Rights) Bill, 2016

A two-week inter-ministerial negotiating process began in March 2016 with the Transgender Persons (Protection of Rights) Bill, 2016, which was prepared by the Ministry of Social Justice and Empowerment²³. The Legal Ministry received the Bill in April 2016, notwithstanding the unhelpful feedback from other ministers (before to submission to Cabinet for clearance). If you want to know why post-consultation deliberation is so important, go no further than the Rights of Transgender Persons Rights Bill, which the Ministry of Social Justice & Empowerment put out in 2015. It appears to be more in keeping with the Private Membership Bill of 2014²⁴. Many groups felt the deadline for submitting suggestions was too tight & unrealistic, despite the fact that the Ministry had asked for feedback on this Bill. ²⁵Regardless, this plan was endorsed by multiple transgender-led organisations²⁶. It appears that no one paid attention to the many suggestions made to amend the bill in order to include transgender children's rights, simplify gender recognition processes, expand its coverage to include intersex persons, remove Section 377, and so on. It appears that the more stringent 2016 Bill took precedence over the 2015 Bill, which was never submitted in Parliament. Transgender advocacy groups' suggestions went unconsidered, despite government attempts to hold public discussions following the 2015 Bill's preparation. As an alternative, a new bill was prepared by the Ministry of Social Justice and Empowerment, which stripped the 2014 and 2015 bills of numerous crucial features. To prevent this kind of problem, there needs to be a standard policy on appropriate consultation and debate. The newly prepared bill was introduced in the Lok Sabha by the Ministry of Social Justice & Empowerment on 2 August 2016. The transgender community's strong opposition was inevitable given that it did not embrace a right-based approach. The Standing Committee of the Lok Sabha sought suggestions regarding the Bill in response to the criticism. People who identify as transgender or intersex or who have experienced gender dysphoria have spoken out against the 2016

²² V Lalwani, How Parliament Came to Have Two Bills on Transgender Persons Rights (and Why Neither May Pass), SCROLL (Jun.6, 2021, 7:30 PM), <https://scroll.in/article/906587/how-parliament-came-to-have-twobills-on-transgender-persons-rights-and>

²³ J Jos, Limiting Gender Variance: Critical Reflections on the Transgender Persons Bill, 3 ECO. & POL. WE. 21-23 (2017) and can be also accessed at, https://www.epw.in/journal/2017/4/commentary/limiting-gendervariance.html?0=ip_login_no_cache%3Dc9636f258ddaa53

²⁴ The Rights of Transgender Persons Bill, 2015 LIVE LAW (June.6, 2021, 8:40 PM), http://orinam.net/content/wp-content/uploads/2014/04/TGBill_2015.pdf

²⁵ A reference to the - MSJE Rights of Transgender Persons Bill 2015, ORINAM (June.6, 2021, 8:40 PM), <http://orinam.net/resources-for/law-and-enforcement/nalsa-petition-tg-rights-india/msje-rights-of-transgenderpersons-bill-2015/>

²⁶ Response to MSJE's Rights of Transgender Persons Bill (2015), SAMPOORNA WORKING GROUP, (June.6, 2021, 9:00 PM), <http://orinam.net/sampoorna-response-msje-trans-rights-bill>

Bill, describing it as "undermined, proscribing and anthologies based on erroneous assumptions that constitute or mount towards human rights infractions."²⁷

Yet, the LGBTQ community was granted some relief when the Supreme Court ruled on August 24, 2017²⁸, that the Right to Privacy was a fundamental right and may therefore be used to safeguard people's sexual orientation. It was planned to be reintroduced at the next meeting of the Parliament after the government revised or preserved a new bill, The 2017 Transgender persons (Protection of Rights) Bill, which had been sent to the Standing Committee on Social Justice and Empowerment for consultation.

The appeal to review the 2013 verdict of the Naz Foundation²⁹ was accepted by the Supreme Court in January 2018. Section 377, which forbids consenting sexual acts between adults of the same sex, was declared unconstitutional by the Supreme Court in the case of *Navtej Singh Johar v. Union of India*³⁰ on September 6, 2018. Indu Malhotra, R.F. Nariman, D.Y. Chandrachud, A.M. Khanwilkar, and the former Chief Justice of India, Dipak Mishra, were the five judges that handed down the ruling. Although the Constitution Bench partially knocked down Section 377, it will still apply to bestiality and sexual activities where one party does not consent, but it will no longer apply to homosexual, heterosexual, or lesbian consenting sex acts. In December 2018, following the aforementioned judicial events, the Lok Sabha presented and approved an updated version of the proposed law. Members of transgender groups in India, as well as transgender attorneys and activists, have voiced their disapproval of the Transgender Persons (Protection of Rights) Bill, 2018 due to its failure to pass after being introduced in 2016.

The Transgender Persons (Protection of Rights) Bill, 2018

The Lok Sabha introduced certain changes to the bill on December 17, 2018. There were twenty-seven amendments to the 2016 bill that were authorised by the cabinet³¹. The new draft did, however, include the definition as its sole substantial modification. The definition of a "transgender person" has been expanded to include "any individual whose sexual orientation does not correspond to their biological gender," which includes "trans-men," "trans-women," "gender-queer," and "kinnars," "hijras," "aravanis," "jogtas," and others. Transgender people, regardless of whether they've undergone sex reassignment surgery (SRS), hormone therapy, laser therapy, or any other comparable procedure, will have the right to self-declare and self-recognize their

²⁷ Responses from the Trans & Intersex Communities, ORINAM (June.6, 2021, 9:30 PM), http://orinam.net/content/wp-content/uploads/2016/08/Trans-led_CommunityResponse_toStandComm_TGBill_2016.pdf

²⁸ The Rulings of August 24 2017, Aadhar Scheme as violation of privacy, clarifies that demands made by officials for Aadhar Act

²⁹ Suresh Kumar Koushal and another v. NAZ Foundation and others (Civil Appeal No- 10972 of 2013)

³⁰ Through Secretary, Ministry of Law and Justice (W.P. (Crl.) No. 76 of 2016 D. No- 14961/2016, (2018) 10 SCC 1

³¹ S Nair and D Tiwary, Lok Sabha Passes Transgender Persons Bill with 27 Changes, INDIAN EXPRESS (June.7, 2021, 3:14 PM), <https://indianexpress.com/article/india/parliament-winter-session-lok-sabha-passestransgender-bill-5497844/>

gender identity. But transgender advocacy groups' other recommendations went unheeded. A two-tiered system whereby only persons who have not undergone SRS can be identified as transgender is maintained in the 2018 Bill, which also maintains the criminalization of begging and has reduced penalties for discriminating against transgender people³². Accordingly, the NALSA ruling acknowledges that the Bill, as written, breaches the basic rights of transgender & gender non-conforming persons. A prime illustration of the significance of discussion is the progress made in the Transgender Rights Bills. Transgender people's everyday issues, as highlighted during the 2014 Bill's drafting & subsequent debates on the 2016 Bill, should be addressed in legislation & policymaking. These concerns include access to healthcare, housing, education, and employment opportunities. Also, because transgender persons in India are so diverse, it's important to hear all sides of the argument.

Transgender Person (Protection of Rights) Bill, 2019

In July 2019, the Lok Sabha heard the Transgender Persons (Protection of Rights) Bill, 2019, which was introduced by Mr. Thaawarchand Gehlot, the Minister of Social Justice and Empowerment. Aiming to eradicate prejudice towards transgender people, the bill was introduced³³. Discrimination of this kind encompasses a wide range of practices, including but not limited to: refusal to provide services or biased behaviour in the areas of education, employment, healthcare, access to or use of property facilities, publicly available opportunities, freedom of movement, occupancy, rental rights, and other types of property occupation. Having access to public or private institutions that care for or are guardians of transgender people, as well as the possibility of holding public or private posts, are all viable options. The measure acknowledges that mental work, forced or bonded labour, and refusal to work are all illegal. These transgressions have penalties that range from a fine to a prison sentence of six months to two years. To further support transgender people, the bill established the National Council for Transgender People (NCT). In order to address the needs of transgender people, the Committee would study the impact of laws, regulations, and initiatives and provide recommendations to the federal government. Additionally, it will address the concerns faced by transgender individuals.³⁴

In 2019, this measure became law, marking the first rule to specifically address the needs of transgender people. Nevertheless, a number of advocates for the transgender community have also spoken out against this legislation, calling it biased and overly restrictive. Additionally, it is highly opposed to the idea that the Act fails to adequately

³² The Transgender Persons (Protection of Rights) Bill, 2018, ORINAM (June.7, 2021, 3:20 PM), <http://orinam.net/resources-for/law-and-enforcement/trans-persons-protection-rights-bill-2018/>

³³ Critical Analysis of The Transgender Persons Bill, 2019, JV'S (June.7, 2021, 4:30 PM), 1 new message (jatinverma.org)

³⁴ Aviral, An Analysis of Transgender Persons (Protection of Rights) Bill, 2019, LAWYER KHOJO.COM (June.7,2021, 6:30 PM), An Analysis of Transgender Persons (Protection of Rights) Bill, 2019 (lawyerkhojo.com)

address the needs of all groups and expressions of gender identity, sexual orientation, and transgender people, and that the definition of "transgender" is inadequate. Though there are clear areas of confusion in the Act, the fact remains that it is the first step in the ongoing fight for transgender recognition.³⁵

The Transgender Persons (Protection of Rights) Rules, 2020

To provide a more comprehensive explanation of the 2019 Act, the Transgender Protection Rules 2020 were primarily passed. Attempts to reconcile the Act with the directives issued by the Supreme Court in *NALSA vs. Union of India* appear to have been the goal of the guidelines. The coronavirus lockdown prevented a thorough review of the proposed 2020 regulations that had been circulated for comment. Because many issues are still unresolved and the government once again disregarded the recommendations & ideas of transgender and right activists, some activists argued that the Act's rules did not live up to community expectations. Unfortunately, the term of discrimination was omitted from the final regulations that were notified, despite its inclusion in the second draft rules, which received widespread approval from the public.³⁶

Initiatives by State Governments

A transgender welfare policy was initially implemented by the state of Tamil Nadu. Free sex reassignment surgery in public hospitals, free housing, a variety of citizenship documents, admittance to public universities with full financial aid, and the launch of income-generation programmes are all perks of the policy that transgender persons can look forward to³⁷. On April 2008, the transgender welfare board was established by the Tamil Nadu government, with the social welfare minister serving as president. Separate boards for transgender persons were formed for the first time in India. In addition to unique identification cards, transgender people were even issued their own ration cards. Additionally, in May 2008, the officials of the Government College of Tamil Nadu issued an order to introduce a third gender option in an effort to enhance transgender people's access to school. Beginning in 2017, transgender students were eligible for free tuition at Manonmaniam Sundaranar University.³⁸

Conclusion

In conclusion, looking at the transgender rights movement in India through the lens of both historical trends and legislative shifts shows a fascinating and ever-changing path.

³⁵ Abhishek Goyal, Transgender Persons (Protection of Rights) Act, 2019: Enduring Struggle for Gender Rights Recognition, (June.8,2021, 5:10 PM), <https://www.scconline.com/blog/post/2020/06/25/transgender-persons-protection-of-rights-act-2019-enduring-struggle-for-gender-rights-recognition>

³⁶ Mugdha Dhar, Critical Analysis of Transgender Persons (Protection of Rights) Act, 2019, LAW & ORDER (June.8, 2021, 5:40 PM), Critical Analysis of Transgender Persons (Protection of Rights) Act, 2019 (laworder.org)

³⁷ "Call for awareness of LGBT issues". *Thehindu.com*. 27 June 2009.

³⁸ "Transgenders to get education free of cost". *Newindianexpress.com*

Among the many modern-day third-sex identities, transgender people in India are among the most visible and vocal. As a third gender, the Supreme Court has recognised transgender people. It was a watershed moment when the Supreme Court acknowledged the 'third gender' in 2014. This paved the way for further legislative progress, most notably the Transgender Persons (Protection of Rights) Act, 2019. Despite transgender people's elevated status during the Mughal era, they had numerous challenges under British colonial control. The government has adopted a number of programmes or policies in an effort to protect transgender people. However, a complex or inclusive approach is required when formulating policies regarding transgender people because of the many factors that intersect with transgender people's rights.

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