
TRANSGENDER IN INDIA: A SOCIO-LEGAL STUDY

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ABSTRACT

One of the world's countries with the most variety of religions and cultural practises is India. She has a very extensive history that represents the usages and customs of the period, and what's amazing is that these traditions and customs are still alive and well in our current world century. As they were acknowledged in our ancient history, the idea of Hijras and other transgender people in India is not a new one. Hijras, eunuchs, Kothis, Aravanis, Jogappas, Shiv-Shakthis, and other members of the transgender community are among those who make up the transgender community, and they have a long history in our nation as evidenced by references to them in Hindu mythology and other holy texts[1]. The ancient Hindu scripture known as Kama Shastra classifies males who want other men as having a "third nature" and refers to them as "tritiyapakriti" or "third gender" in both vedic and puranic literature. When a person lacks the ability to procreate, the word "napunsaka" is frequently used to describe this.

After being exiled from the kingdom for 14 years, Lord Rama in the epic Ramayana turned back to his people and pleaded with them to accompany him back into the city as he was about to depart for the wilderness. Only the hijras, among his followers, do not feel constrained by this course and opt to stick with him. Rama, moved by their devotion, grants them the right to bless people on auspicious events like births and marriages as well as during ceremonial gatherings that are said to have given rise to the practise of badhai[2], in which hijras perform songs and dances while bestowing blessings. The Indian Hijra community is regarded as having Bahuchara Mata, a Hindu Goddess, as their patroness.

Iravan/Aravan, the patron deity of the well-known transgender groups known as Ali, is another name from the tale that is used to continue the story. The practise of custom in India has also been highlighted in a large number of books written in Bengali and Sanskrit in the 14th century, notably the Krittivasa Ramayana. Though Hijras were acknowledged and given

prominence in our old customs and practises, the situation has been becoming worse over time.

Transgender people have experienced violence or prejudice during British colonial rule and into the post-independence era, including sexual violence and abuse at the hands of law enforcement organisations, which are responsible for maintaining law and order. current transgender conditions in India and the absence of transgender protection legislation. The transgender community does not feel that protective despite all the support they have received from the laws and courts.

Aims and Objective

The aims and objectives of the research are:

1. To understand the concept of transgender.
2. To understand the incidence, types of violence and abuse on transgender.
3. To understand the contemporary rights of transgender.

Research Methodology

The study is done with the help of secondary sources which includes research articles, books, judgements etc. the secondary sources are those that are already collected and is a compilation work and the selection will differ from study to study. The method the study has adopted is the Doctrinal and non-empirical study. The doctrinal study is also known as descriptive study and it is done on already given data and work done.

Hypothesis

The researcher assumes that transgender are protected from sexual abuse or violence similar to the protection laws for women from sexual violence.

Research Questions

1. What is the aftermath consequence of the NALSA judgement?
2. Whether society recognized these people after the two-landmark judgement of NALSA and Navtej singh case?
3. What protection of transgender rights act 2019 contains sufficient provision for safeguard

the interests of transgender?

4. What is the difference in protecting interest and punishment between Protection of transgender rights act 2019 and India Penal Code 1860?

INTRODUCTION

The Hijaras or Kinnars have a documented cultural heritage that dates back thousands of years in Ancient India. Hindu literature like the Ramayana and the Mahabharata make mention to them. He merges with his wife as Parvati in one of the numerous avatars of Shiva become Ardhanari have importance in the neighbourhood. This hamlet was frequently portrayed in paintings, sculptures, and other works of art at Sanchi, Ajanta, and Amaravati. During India's Mughal dynasty, they performed many administrative tasks as well as key roles in courts. Transgender people are referred to in India by a variety of names, including "Hijras, Kinnar, Jogtas, Joggapas, Khusras, and Shiv Shaktis."

With the continued rise in acts of violence and prejudice against minorities in the second-largest democracy in the world, we are horrified to feel as though our hearts are being held hostage. The media and newspapers brought attention to gender-based violence against transgender people. Because transgender people do not conform to standard gender norms, violence against them is frequently an expression of stigma and prejudice. A person who identifies as transgender is one whose gender identification differs from their sex at birth. From the moment of their birth, their gender behaviour or identity do not correspond with their biological sex. It's fascinating to notice that, in contrast to other societal norms and laws, attitudes against transgender people have gotten worse.

Once the historic NALSA ruling was rendered in 2014, the transgender community was in ecstasy. It was hoped that society would see them in a humane light, but reality fell well short of expectations. The hijra group continues to be socially marginalised. They are regarded as unlucky on some days and as cursed on others. The hijra, or transgender, community is still held in high regard by the general public. They frequently suffer abuse and hate crimes. They are said to not conform to our society's gender binary expectations and conventions.

Except when they get rewards during celebrations, they have been neglected by society at large. In India, there were 4.88 lakh transgender individuals as of the 2011 census. Although being somewhat numerous, they are still not treated as creatures of equal worth and are excluded from society. The problem of transgender people continues to be debated in societal and

cultural contexts despite the passage of many years. Due to the gender stratification that exists within India's social structure, gender equality still poses a challenge to the growth of society. But, only a select handful have triumphed over all prejudices and difficulties to establish themselves.

BEING A TRANSGENDER: WHAT DOES THAT MEAN?

Nowadays, a broader definition of "transgender" is utilised. The term "transgender" encompasses even homosexuality and bisexuality. The terms "trans" and "gender" are where the term "transgender" gets its etymological origin. The term "former" comes from the Latin for "across" or "beyond." Thus, "transgender" means "beyond or beyond gender" grammatically. It is now common knowledge that this phrase serves as an umbrella for gay men, lesbians, bisexuals, and transgender people.

It is important to note that, with the exception of a few nearby nations, transgender people have taken on an unique and independent class/category in India that is not common elsewhere in the world. Hijaras, Eunuch, Kothis, Aravanis, Jogappas, Shiv- Shakthis, etc. are all members of the TG community in this nation. The third gendered or "Hizra" is the term used to describe transgender individuals in the Indian community. There are many different transgender identities, cultures, and experiences, such as Hijras, Aravanis, Kothis, Jogtas/Jogappas, and Shiv-Shakthis. (Hijras: They are biological males who reject their manly identity over time to identify either as women, or „not men. Hijras who identify as Aravanis live in Tamil Nadu. Kothi: There are several different types of Kothis. Kothis can be characterised as naturally masculine individuals who exhibit varied degrees of "femininity." They are known as jogtas or jogppas and are devoted to serving as the goddess Renukha Devi's servants in her temples located in Maharashtra and Karnataka. When a male-to-female transgender person worships Goddess Renukha and is also a member of the Hijra society, they are referred to as Jogti Hijras. Shiv-Shakthis: They are seen as males who have female gender expression and are either very close to or possessed by a goddess. In contrast to the traditional gender roles of men and women, they act and behave differently. As they fall outside the traditional definitions of males and women and because of this divergence from the norm, which is undesirable to the great majority of society, they have a much harder time advancing in life. The worst thing you can do is try to live a life of dignity. The hijra, who are clearly transvestites, obnoxiously beg from business owners who promptly heed their mute demands under pain of vulgar insults. They sometimes, particularly on festival days, pound home their points with raucous and vulgar

singing and dancing.

The word "transgender" (T.G.) is used as an umbrella to refer to a wide range of identities and manifestations of persons who identify differently from their biological sex and does not solely refer to transsexuals. According to the general definition, there are four categories of individuals:

(1) Individuals whose behaviour, gender identity, or mode of expression do not correspond to their biological sex.

(2) Transgender persons are also permitted to identify with the sex that was assigned to them at birth. These are the people known as "Hijras/Eunuchs," who identify as neither male nor female. They lack a female reproductive system, making them neither women nor males by virtue of their anatomy or looks. Because they lack reproductive capabilities, they are referred to as "third-gender." There are three types of Hijras: intersected people, non-intersected people, and emasculated males (castrated, nirvana) (hermaphrodites).

(3) Those who have had sex reassignment surgery (SRS) to match their biological sex with their gender or who want to have SRS are considered transgender. "Transsexual individuals" is how they are referred to.

(4) There are those that cross-dress or wear clothing made for the other sex. Transvestites are what they're known as. They just feel more at ease wearing opposite sex clothing and are not often transsexual. They desire the label "Cross-dressers" to be used to describe them.

TRANSGENDERS' HISTORICAL CONTEXT IN INDIA:

The TG Community is made up of Hijras, eunuchs, Kothis, Aravanis, Jogappas, Shiv-Shakthis, etc. They have a long history in our nation and are prominent in Hindu mythology and other sacred writings. The vedic and puranic literatures both contain the concept of tritiya prakrti or napunsaka. The term "napunsaka" has been used to refer to the incapability to procreate¹. In the epic Ramayana, Lord Rama, who had been exiled from the kingdom for 14 years, asked all the "men and women" to return to the city as he was about to depart for the wilderness. The hijras are the only ones among his followers that do not feel constrained by this approach and opt to stick with him. Rama is moved by their devotion and grants them the authority to bless people on auspicious events like births and marriages as well as during ceremonial gatherings

¹ NALSA v. UOI [2014]

that are said to have given rise to the tradition of badhai, in which hijras sing, dance, and bestow blessings.

Aravan, the son of Arjuna and Nagakanya, volunteers to be sacrificed to Goddess Kali in the Mahabharata on the condition that he spend his final night married in order to secure the triumph of the Pandavas in the Kurukshetra battle. No lady wanted to wed a man who was destined to die, but Krishna takes the shape of Mohini, a stunning woman, and marries him. The Hijras of Tamil Nadu refer to themselves as Aravanis and see Aravan as their ancestor.

Jain Writings also extensively cite TG, which makes reference to the idea of "psychological sex." In the royal courts of the Islamic world, particularly during the Ottaman and Mughal eras in mediaeval India, hijras also played a significant role.² **Hijras And The Legacy Of British Colonialism** This clause made non-procreative sexualities illegal in India in 1864, while Britain still controlled the country. It was a legal adaptation of the British 1533 Buggery Act. Transgender people, particularly hijras, a traditional population in India and South Asia more widely, were historically among those it was used to attack. In the Sultanate and Mughal courts, hijras were typically influential individuals in charge of levying taxes and charges. Although S377 was not intended explicitly to target the hijras, it criminalised them as a group and had significant effects on the neighbourhood.

In a historical analysis of how sexuality was employed by British colonial control to suppress possible dissidence from a particular population in India, 11 present legal issues are revealed. S377 is a fascinating case study for examining how the hijra community has resisted the legislation throughout time and how well certain programmes have carried it out. During colonial control, state measures started to become harsh in 1864.

S377 of the IPC was used as a political instrument to restore colonial power following a rebellion that threatened British colonial control in 1857, particularly over what it perceived to be a "deviant" minority within society. The hijras had existed in South Asia for thousands of years, but their culture was fundamentally at variance with Western morality and gender norms. Pre-colonial India historically had a society accepting of sexual fluidity that can be traced back to ancient Sanskrit books like Vatsyayana Kamasutram and the literature of the Jain religion from the fifth century. All nonheteronormative behaviours became pathologized as a result of colonial rule's body policing and medicalization of the population. According to Foucault,

² "With Respect to Sex: Negotiating Hijra Identity in South India" – Yoda Press (2006) by Gayatri Reddy

sexuality is suppressed and silenced in order to punish bodies over decades. In order to criminalise hijras as a group, the colonial authorities exercised control over them through creating information about them as deviants. Forensic medical science was used by colonial laws like the Criminal Tribes Act (CTA/1871–1897) and the Indian Penal Code (IPC) to produce "rational" evidence that connected criminal behaviour and fluid sexuality to support court proceedings.

VIOLENCE/DISCRIMINATION ENCOUNTERED BY TRANSGENDER

Because they do not fit into the norm, transgender people experience prejudice on every level of their lives, social gender roles. Everyone who identifies as transgender must have experienced verbal, sexual, and at least once in their lives, physical violence. Moreover, transphobia is the primary cause of such violence and prejudice towards these individuals. Hatred, doubt, and other negative emotions are all examples of transphobia. dread of transgender persons or those whose gender expression is non-conforming, or mistrust of them the established gender roles. They thus experience constant uneasiness and stress. They're terrified feeling of unrelenting judgement.

Areas where transgender people frequently experience abuse include:

(A) Employment: Transgender people have a very difficult time locating suitable employment.

Due to societal pressure, they are driven into sex work, begging, dancing in bars, etc. discrimination in the workplace. In addition to the community's poor literacy rate, they also even applying for these positions was impossible for transgender persons.³ Here are a few situations where bright Several people's futures were hurled into oblivion. A young athlete from Tamil Nadu was chosen for the police service, but during her medical, she was fired from her work when a test revealed she was transgender, even though women had alternative options qualifications. Similar to this, a young woman in Maharashtra was fired from her job despite in light of the fact that police forms did not recognise transgender as a gender. She was transgender and was not permitted to take the UPSC test in Tamil Nadu. Once more, the UPSC only recognises two gender categories: male and female. She submitted a request and RTI, but she was not permitted to take the test.

³ Biology Is Not Destiny: People who are intersex or transgender deserve equal rights and dignity, *Economic and Political Weekly*, Vol. 48, No. 24 (Jun, 15, 2013), p. 9,

Nowadays, this circumstance has altered following the The NALSA ruling recognises transgender people as a third gender. NHRC research indicates that 89% of transgender people do not get Despite possessing the necessary qualifications and abilities, there are career prospects being somewhat to blame for having to perform sex work to support oneself During Covid-19. During the pandemic lockdown, these transwomen had greater difficulties finding work because the majority of them depend on illicit sexual activity or beg or bless for money, which was not feasible during the lockdown.

(B) Education: According to the 2011 Indian census, illiteracy rates among transgender people were 46 percent against 74% of the general population Apparently, a study was done on 120 transsexual people live in Coimbatore, where 56% of people attend elementary and middle schools. education. After observing the changes in them, some of them were reluctant to enrol in school (64 percent) of them were in the low-income category ,52 percent of transgender people, according to NHRC report *Biology Is Not Destiny*:⁴ Intersex and transgender people deserve equal rights, dignity, and economic opportunity. Transgender People's Health Is Negatively Affected by Social Exclusion, a student dropped out of school due to bullying, and transgender students made up 12% of the student body Many departed as a result of being bullied by their teachers at school. For many whose entire lives are characterised by gender judgements, formal schooling was a distant fantasy, identity. Since they are afraid of discrimination, transgender people lack fundamental rights number in universities and higher education.

(C) Family: Transgender people experience violence and prejudice mostly as a result of cultural norms. Trans children are frequently punished, blamed, and criticised by their parents due to these expectations. household members. Over 60,000 people, according to a National Institute of Epidemiology research Transgender people discovered that there was a sizable community of in 17 states, including Tamil Nadu. biological parents did not provide financial assistance for their offspring.11 Parents disown and expel their offspring. because they believe it would bring dishonour to their family and frequently have an impact on others. youngsters in the family. Also, transgender people struggle to get their fair part of the property or get what would be legally theirs in the form of inheritance. Sometimes a kid or teenager they decide to leave their home since they can't stand the abuse and prejudice on the part of their relatives. A

⁴ Sridevi Shivakami, P.L. and K.V. Veena, Social Exclusion has a Negative Impact on the Health of Transgender, Indian Streams Research Journal, Solapur, 2011.

research by the Kerala Development Society claims that According to the National Human Rights Commission, just 2% of trans people living with their household.

(D) Exclusion from Health Services: Transgender people's medical issues are not included in the government's top priority list. Transgender persons suffer serious health issues on a global scale. inequities and obstacles to receiving adequate medical treatment. transgender individuals are more Compared to the overall population, they are more likely to experience sexual assault and harassment⁵. HIV. The likelihood of having mental health problems, which frequently lead to sadness and other The likelihood of suicide attempts rises over time. Communities of trans people faced unfair practises by healthcare organisations and insurance companies programmers to pay for transgender treatments. AIDS Control National Organization (NACO) reported that the trans-HIV population's prevalence rate was 8.82% in 2015–16. among high-risk categories, second highest. An estimated 8.2 percent of transgender people are HIV positive. a variety of These persons have a higher risk of contracting HIV due to social, economic, and legal issues.

The Pehchan programme assists transgender individuals in 18 states of India to improve their access to social, legal, and health services.

(E) Housing Issues: Transgender people frequently experience prejudice in accessing a home for lodging, which involves encountering prejudice in the rental market, high even if they are given accommodation, they face harassment from landlords and other residents. According to a survey, police harass transgender people the most ,neighbours, landlords. Lack of identification and housing are important issues for transgender people. Accommodations for these persons are withheld due to documents as well. In Kochi, 21 transgender individuals were hired for jobs in metro services, but just one week afterwards Eight transgender employees have left their jobs because no one is prepared or willing to Rent them a house and few rooms.

(F) Gender-based violence: Transgender people frequently experience physical and sexual assault. solely because to who they are—violence, assault, etc. The prevalence of violence directed against these As many go undetected, the number of people is substantially greater. They have encountered the majority of the by their own households, friends, and lovers. Government gathers NCRB statistics each year. which depicts the crime against the victim but

⁵ Police harass transgenders most, says study, The Times of India, (Accessed on Apr, 17, 2021)

makes no mention of the precise crime commits a crime against a trans person. A female transgender person who has come forth.

In her book "Truth about me," Revathi described her experiences with violence at school and stated the following: When I was at school, I was afraid of the older lads in classes 11 and 12. They were constantly there. looking out for me. Me being marked differently from the others. Every time I passed them They would strike me on the head with their balled-up fists while shouting, "Hey girl-boy," on the school grounds fists. As I played Chandramathi, they would poke fun at me and remark, "When you played Chandramathi

What did you use to fill your chest?

When this occurred, I did not want to be seated close to the I was hesitant and bashful with the lads in my class.

Bhavitha, a transgender person from Telangana, was discovered dead on December 2nd, 2017 in dustbin. Her sisters and other Hijra people were not let to retrieve her remains by the police because Such allegations can only be made by blood relatives and parents. Karan Tripathi requested separate data on transgender inmates in the NCRB through a PIL reports. Transgender individuals would now be included, the Central government informed the Delhi High Court in the National Records Bureau's Prison Statistics Report starting in 2020.⁶

Discriminatory Laws: Transgender people are now considered "Third Gender" by Indian courts. But we still have discriminatory legislation, such as one that forbids transsexual people from getting married. People who are married and have started their own families. Cabinet just authorised the The Surrogacy (Regulation) Law of 2020 permits surrogacy for divorcees, widows, and heterosexual couples. Couples and single women are included in the measure, but nothing at all is said about their right to become parents. transgender individuals. Even the adoption laws prohibit lawfully adopting a transgender individual child. For the maintenance of runaway or abandoned children, they may engage in unlawful activity. their households. Gauri Sawant, a self-described hijra, acts as her mother in real life.

Transgender people would be given their own gender category in NCRB reports, according to Shreya Agarwal, the centre said. adoptive child. Motherhood is frequently viewed through the lens of a gender standard that it must adhere to the definition of femininity. The concepts of

⁶ Shreya Agarwal, Transgenders to be included as a separate gender category in NCRB Reports: Centre informs Delhi high court, Livelaw, (Dec, 7, 2020)

motherhood and adoption must be reviewed immediately. We must go beyond kinfolk and marriage outside of the binary gender sex.

Section 377 of the Indian Criminal Code, 1860 was repealed because it was discriminatory. Decriminalize homosexuals having the same sex. Also, the newly transgendered people. The (Protection of Rights) Act of 2019 is also discriminatory and imposes fines of up to six years. If a transgender person is the victim of a sexual offence, the sentence ranges from months to two years. as compared to crimes against women.

Social Response: Ever since the beginning, our society has denounced and rejected those who those who do not follow the accepted social standards. One such organisation is the transgender community. who have experienced abuse, neglect, marginalisation, and discrimination in practically every known society. They are unnoticed by society. They receive no invitations to events, including weddings and other social pursuits. A poll by the NHRC found that 99 percent of transgender people, Participants in the study acknowledged having experienced several social rejections in the past. These people typically endure social exclusion from families and other social groups, as well as marginalisation during each stage of their lives. Before the Transgender People (Protection of Right) Act of 2019, there are no particular consideration given to transgender people's rights. Many forms of abuse exist. done to transgender people, such as sexual and physical abuse that violates their basic human rights human rights and the right to a dignified life. They are gang-raped, raped, and arrested. unfairly, physically abused, and many other things. There is a lack of transgender people's access to justice. If they go to the police for justice on a lesser level, they are not backed and aided by the police. instead encountered police harassment and demands for money to view their case because Because of this, they dissuade people from calling the police. Those who identify as trans suffered a lack of basic recognition before the law, preventing them from seeking redress for the offence they committed against them.

(J) Problems with gender identity: In India, only masculine and feminine pronouns are used to denote gender. transgender people in India experience tremendous prejudice because to these factors. In general, a person's gender affects every area of their life, including their name, their choice of clothing, looks, conduct, employment, movement, etc. each identification paper for the person such as a passport, driver's licence, mark sheets, Aadhar card, and pan card, among others, contain the gender information. identity is required even for public services like restrooms in malls, airports, and locker rooms. In India, there are gender-specific security

checks at airports and other public locations. India is a country. The right of transgender people to possess their own identity has been suppressed in a certain nation. That is lack of knowledge on the complexity of their sex and gender identity gender-queer community.

The Supreme Court's NALSA decision, which recognised transgender people, was issued on April 15, 2014. individuals as the "Third gender," abandoning the nation's binary gender system. The court awards the ability to choose psychological tests over biological tests for gender identification, and thereof grant legal recognition. They also have commitments to the federal and state governments. Government should provide a legal and political climate that gives transgender people access to fully use their civil rights and contribute to society. Many people lack sufficient documentation, which Universities refused to admit transgender students. Violence inflicted by Law Enforcement: On September 6, 2018, the Supreme Court issued a landmark decision decriminalising homosexuality in India and establishing the freedom for the LGBT community. Yet, given that this is perceived as a a positive step forward, horrible acts of abuse and violence against members of the In the capital, there has been an increase in the transgender population. A transgender lady who claims to have experienced hell says, "In the past week, we have witnessed hell." harassment in the Connaught Place district of Delhi. No matter what we do, the cops are on our trail. First, they would bother us when we were out working, but now they won't even let us to Whenever they spot us, they chase us away, even if we are simply sitting and talking. There is no tranquilly because they beat us and verbally insult us, the woman claimed. Another trans woman said, "The police goes around and arrests kinnara ladies for no reason." We are being tormented by the government because of their assault on us and insertion of lathis into our bodies , incidents of violence or harassment directed against kinnara or trans people by police With the Supreme Court's ruling against Section 377, the situation for women seems to have become worse. One of the victims said that the abuse started on the day of the verdict. We were taken into prison by two to three police officers, strung up against walls, and tortured. For a long period, they verbally tormented us before raping us. just recently We were chatting as we were seated there when they dragged us away. Existing is it a crime? " said a "Please do explain the cause for my absence," said the kinnara lady who requested anonymity.

Anonymity. While they are meant to keep us safe, the cops actually despise us. My entire life, I have battled to , I would most probably be killed right now if I tried to prove my identity," she said. As they are attempting to make a living, other kinnaras allege that the police harass them.because we are kinnaras, we must rely on begging for a living because no one will hire

us. they accuse us of prostitution and public indecency while chasing us away or beating us for chatting to other individuals. One of the affected trans women remarked, "It's a hassle. The struggles of the LGBT community have already been regularly brought to the a restriction on the transgender community's access to work and housing in the nation because of this they are compelled to beg on the streets for a living. They don't allow us put up booths to sell stuff either; they don't even let us beg. They also steal our money, our daily wages, and occasionally they depart.

A 32-year-old Kinnara lady who was allegedly beaten as a child claimed, "There is nothing for us to subsist on. Well, In a social media video shared by the grassroots LGBT-straight alliance Nazariya Pinky and Anjali, two Kinnara women who support intersectional action, are shown offering remarkably similar descriptions of the issues their community experienced that were handled by police enforcement "We demand justice... all this abuse and exploitation of the Kinnara people should stop," said agents. We need to be treated with the same respect as men and women, our rights must community, and the LGBT community deserves the same respect and decency as everyone else, " they say. The Delhi Police in particular, as well as the police in general, have been purposefully pursuing sexual Our members have been harassed on the street by the police and minorities, and We don't feel comfortable at pride parades since we've been repeatedly "eve-teased" for our looks. under the name of "protection" are surrounded by their attackers. The trans community in particular Despite 377, the police have been subjecting them to severe difficulties.

In a statement, leaders from Nazariya called for "urgent legislation that safeguard the community." towards The Citizen Now, Nazariya is striving to secure legal assistance and retribution for the transwomen who police brutality and abuse, including the recent escalation of violence against those who Being exposed to transsexual women so soon after Section 377 was repealed bringing to light the issue of how safe sexual minorities actually are in India. A gay activist who collaborates with Nazariya said, "The ruling on Section 377 is a historic." It is aimed at preserving LGBT people's dignity, but it falls short of fully shielding us. Everyone should vehemently oppose the harassment of innocent trans people by our own police officers. We must speak out against the way the LGBT community is now treated. As a matter of fact, without a shift in mentality about transgender women and other members of the Real freedom and equality for the LGBT population in India will continue to be an unattainable goal. regardless of their constitutional right to equality, even when the laws have changed. The state

apparatus's use of violence against transgender women is evidence of the The LGBT community is really given a demeaning status.

Sexual assault and transgender people: A 2016 October study by academics from Collaboration between Stanford University and the University of California, Berkeley and the Civilian A non-profit organisation in Kolkata called Welfare Foundation discovered pervasive transphobia. The exercise includes speaking with 300 doctors from five major Indian medical centres. cities with the goal of determining the degree of transphobia there, the causes of it, and its impact on their interactions and care for patients who identify as transgender. According to Scroll.in, a transwoman is a person who is born with the male gender but later chooses to identify as a female. who took part in one of these studies and who self-identifies as female reported that when she went to a the doctor questioned her in the hospital after she was gang raped, "How can you be raped?" This demonstrates the insensitivity to and ignorance of the serious sexual assault crisis that threatens the community.

The Justice Verma Committee had received testimony from a number of women's rights and LGBT Before presenting their complex advice that the legislation on sexual orientation and gender identity be As far as the victim or survivor is concerned, assault and rape must be gender inclusive. save for special offences like incarcerated rape, which are unique as to the offender,

In the spirit of gender-neutral legislation, sexual harassment, voyeurism, and stalking were introduced to the Indian Criminal Code, where the old gendered power relations might be overthrown. Several changes were made to the Indian Penal Code and Criminal Process. Yet, the ordinance to make all legislation gender neutral only lasted for 58 days. The Criminal Law (Amendment) Act, 2013, abolished and replaced and as a result, the existing laws specify that stalking and sexual harassment must be directed at a certain gender, with the guy is the only offender, and females are the only victims.

Section 375 of the Indian Penal Code was amended in 2013 by the Criminal Law (Amendment) Act. The 2013 amendment provided a more sophisticated definition of rape and consent. characterised as non-consensual sexual activity, where the definition of sexual activity was only involves the male genital organ penetrating the female genital organ. The amendment broadened the definition of rape to include acts other than peno-vaginal penetration and The definition of consent was given as "an unambiguous voluntary agreement when Using words, gestures, or any other verbal or nonverbal cues from the lady, expresses a desire to engage in the particular sexual act: Given that a woman who does not physically resist the act of

penetration, then for no other reason could it be considered to have done so. seen as giving permission for the sexual action. Amrita Sarkar, a transgender activist, was questioned on the need for rape laws that protect women. How are these laws different from those protecting trans women from rape? a sentence of seven years to life in prison but just six months to two years for another?

ANALYSIS OF TRANSGENDERISM IN CONTEMPORARY SOCIETY

The right to a dignified life: - In *National Legal Services Authority v. Union of India*, the supreme court cited transformative constitutionalist ideas to hold that the constitution lead the society into a practical mindset where basic rights are zealously protected. To ensure that the human rights of the LGBT people are respected, constitutional morality would take precedence over social morality. The court ruled that denying that one's gender identification is fundamental to who they are as people would be a violation of their dignity. The court ruled that having consenting sexual contact with another adult, whether they are homosexual or heterosexual, in a private setting does not violate morals or public decency in any manner. Sec. 377 violated Article 19.1 (a). One aspect of individual liberty is the freedom to pick the mate of one's choosing. The world community and several decisions by this Court have recognised the right to live in dignity as a fundamental human right. As a result, constitutional courts must work to uphold each person's dignity since, in the absence of that right, all other rights are worthless.

According to the Supreme Court of India, transgender people are entitled to basic rights. 14–21, 19(1)(a), and 16–15. In addition, the court cited international agreements and the Yogyakarta Principles to recognise the human rights of transgender people.

(B) The right to an identity According to estimates, 75% of transgender persons do not have Aadhar cards. They are denied access to necessities like PAN cards and ration cards so they cannot receive government aid. The third gender was stated in the form of the modified Indian passport application in 2005. Even yet, it is still not a standard practise. Reshama has appealed the September 19, 2017 judgement of the High Court in Patna denying her plea for self-identification as the Third Gender in PAN for the purpose of connecting PAN and Aadhaar and to take advantage of the accompanying advantages in a Special Leave Petition filed by Human Network. The Centre revised the Income Tax Regulations, 1962 to identify transgender people

as a separate category of applicants for acquiring a Permanent Account Number (PAN) for their tax-related activities, which is a victory for the whole transgender community.⁷

Election participation and the right to vote:

Every person of India is granted the constitutional right to vote and to run for office. The only gender categories on election ballots up to 1993 were male and female. The right to vote for transsexual people was established in 1994. Since then, "Eunuch" has been recognised as citizens by the electoral commission. In 2014, several of them ran for seats as lawmakers in general elections. The Constitution (Amendment) Bill, 2020 (substitution of articles 331 and 333) was submitted by BJD member Sasmit Patra on March 12, 2021, in the Upper House. This bill establishes a transgender reservation in the national legislature and state legislatures.

Adoption and marriage rights:

Despite being recognised as transgender, those who identify as transgender have yet to use their democratic rights in marriage, adoption, or childrearing. One persuasive argument in favour of offering adoption services to this group is that no one from the general public would volunteer to adopt a transgender child who may be a runaway or abandoned. What is wrong if this community wants to formally adopt a child who is already adopted in every sense? Such children have frequently been cared for in this community from the beginning of time.

Section 377 of the IPC used to be nothing more than a representation of the Victorian age, when sexual activity was reserved for child reproduction exclusively. The conventional idea of marriage as a means of childbearing has to be modified in light of the development of the sex notion. With the development of technology, particularly in the medical sciences, procreation is now achievable via a variety of techniques including IVF, sperm donation, and egg freezing. Societal morality fluctuates throughout time. A five-judge panel unanimously decided that Section 377 of the Indian Criminal Code, 1860, was unconstitutional insofar as it pertained to consensual sexual activity between adults in private. But, the court has not made any rulings about their right to be married or have children.

The psychological harm transgender children experience:

Compared to cisgender children, transgender youngsters have much greater levels of anxiety

⁷ 25 Apporva Mandhani, Centre Amends rules to include transgender option in PAN Cards, Livelaw (Apr, 10, 2018) <https://www.livelaw.in/centre-amends-rules-include-transgender-option-pan-cards-read-notification>

and sadness. Teenagers in particular are always at danger of being condemned for having sexual desires that are inconsistent with their gender.

Parents frequently give in to peer pressure and neglect their children. A child's psychological transformations, including changes in sexual orientation and attraction to same-sex partners, go unnoticed, giving them the impression that they are unique.

Social media is also a factor in how society operates in the present. Children have been exposed to a wide range of opinions because of what is seen cool and what does not pass the barrier. Consider the pressure placed on young people to conform to such standards and how hard it would be for a transgender youngster to comprehend the genetic changes taking place in their body.

According to reports, transgender kids who get support for their gender identification experience anxiety and despair at normal levels. According to the study, bullying, contempt, and rejection are to blame for the anxiety, sadness, and suicidality that are linked to transgender youngsters rather than being inborn traits.⁸

Medical Innovation:

A person has the right to identify as the gender of their choosing. The sex of a newborn kid is decided upon at the moment of birth. A kid would then be considered as belonging to that sex, thus either a male or a female. Nonetheless, as detailed in detail in the preceding ruling, certain humans, albeit relatively very rare in number, may be born with bodies which combine both or certain characteristics of both male or female physiology. and other

His activities would all be directed towards women because of his potential female-biased natural perception. The situation may be quite the opposite, where a female person might act like a male person.

Although similar features might be seen in former times, the fundamental cause or justification for such a behaviour remained unknown. The causes of such physical and psychological factors-based behaviour have gradually come into view via in-depth study and research, which has in turn caused certain modifications in society standards.

⁸ Is being a transgender child traumatic? Trauma institute and child trauma institute (May 3, 2016), available at <https://www.childtrauma.com/blog/trans>

Yet slowly, society has begun to accept the social standards of these people without labelling them as weird. Also, medical research has advanced to the point that it is now possible to surgically transform a person's physiology from male to female or vice versa. These people are able to obtain a physique that corresponds to how their gender and gender traits are seen in this way. Several nations have passed legislation granting rights to people to acknowledge their gender identity based on reassigned sex after undergoing Sex Re-Assignment Surgery in order to guarantee that law keeps up with the aforementioned advancements in medical research (SRS).

Law's shortcomings:

Prior to 2020, there was no law addressing the rights of the transgender people. Transgender People (Protection of Rights) Act, 2019 was approved by parliament with the intention of assisting the community in implementing the Supreme Court's ruling.

The measure, however, received harsh criticism for failing to take into account the realities of the situation and for being ineffective in defending the interests of the transgender community. Some key points include:

- i. Protection from discrimination: The legislation offers protection against discrimination in work and healthcare, both of which are protected by the Indian Constitution. The individual who discriminates against a transgender person, however, is not subject to punishment. Money compensation as a defence against discrimination is not mentioned.
- ii. Identification is recognized—this is one of the provisions of the legislation. A transgender person can apply to the district magistrate for an identification certificate. Nonetheless, it appears that this certification process goes against the spirit of judgement. According to the ruling, a person's right to self-determination is a crucial component of personal autonomy and is protected by the Indian Constitution's guarantee of individual liberty. Although the statute grants the right to one's self-perceived identity, it is not obvious what this right encompasses.
- iii. The legislation does not cover the steps involved in obtaining an identification certificate. As an illustration, it lacks the following: a procedure to be followed before issuing the certificate; a provision for an appeal in the event that the certificate is denied; a procedure to correct any errors in the certificate; and no mention of the rights to residence, surrogacy, adoption, or marriage.

iv. Reservation - The NALSA ruling instructed the government to regard the transgender community as a "socially and educationally backward class" and to grant them preference in hiring and entrance to institutions of higher learning, among other things. Nevertheless, the legislation remains quiet on this matter.

v. Medical care - The community claims that other from existing on paper, the act does not give a clear strategy with specific procedures to execute the health care services and medical facilities. It doesn't deal with the predicament of abuse victims by offering counselling, hormonal therapy, etc.

vi. Sanctions This crime received a discriminating punishment. "If someone sexually harasses or abuses a trans person, they might receive a 2-year prison sentence." That implies that they are viewing the victim through a lens rather than looking at them as a person. The punishment appears to be purely symbolic. Why can't a trans person, who identifies as a woman, be granted the same protections as women against sexual harassment? It doesn't include anything about failing to appoint a compliance officer to handle complaints in the event of legal violations.⁹

vii. The act ignores the sexual, bodily, or psychological abuse. For instance, it doesn't discuss crimes with gender-neutral penalties, such as rape, murder, and hate crimes.

viii. The statute makes no mention of any rights granted to an Indian citizen because their gender identity has been recognised. Marriage, inheritance, parenting, surrogacy, and adoption concerns are not addressed.

ix. The National Council for Transgender People, established under the Act, lacks a framework for frequent meetings and yearly reporting on areas for improvement.

x. Instead of addressing issues like family violence, social exclusion, etc., the provisions provide for sending them to a rehabilitation facility. One is forced to consider if segregation and relocation are the true solutions to these problems. On the same day that the proposal to repeal Article 370 of the Constitution was tabled, the measure was approved by the Lok Sabha without being debated. The haste with which a legislation for the transgender population was created is evident from a simple perusal of the statute. The transgender community referred to the day as "Gender Justice Murder Day" because of the incident. The protection requested by transgender people will be pointless if these issues are not resolved.

⁹ The Transgender Persons (Protection of Rights) Act, 2019, Sec. 18

Actions the government has made to support transgender people- In the famous case of *National Legal Services Authority v. Union of India*¹⁰, judges criticised the government for its treatment of these persons with such prejudice. The court additionally ordered the federal and state governments to take actions for the transgender community's growth, including recognising third gender as a "socially and educationally backward class of persons" entitled to reservations in government services.

The Transgender People (Protection of Rights) Act of 2019, Section 18, 19, outlines social welfare programmes for the community and applies to educational institutions and public jobs.

Tamil Nadu: Tamil Nadu was the first state to make unheard-of steps to safeguard transgender individuals and give them access to state and federal social safety programmes. At a few state government facilities, transwomen can get free sex reassignment surgery. They have informed schools and colleges that transgender persons would not be refused entrance and have provided full scholarships and free living facilities. The government of Tamil Nadu is also providing this group with training and Rs. 20,000 in financial aid. Transgender persons now easily qualify for food and other assistance programmes thanks to identity cards given by the Tamil Nadu government's welfare agency. Moreover, Tamil Nadu's media has been crucial in raising awareness of transgender people's rights. Another significant accomplishment by the Tamil Nadu government is the creation of a database for transgender individuals.¹¹

Karnataka: The state of Karnataka has created a number of welfare boards to defend the human rights concerns of the TG community. The "Mythri" pension programme was created specifically for transgender people, and under it, anyone between the ages of 18 and 64 is eligible to receive a monthly pension of 500 rupees as well as benefits if their annual income falls below 17,000 rupees in urban areas and 12,000 rupees in rural areas. Delhi- The Delhi government pays transgender residents who have lived in Delhi for three years 1,000 rupees per month.

West Bengal: On July 15, 2015, the West Bengal government established a special welfare board for transgender individuals and recognised them as third sex, allowing them to seek redress for any issues. They hired India's first transgender college principal for their care, social acceptance, and independence, and even built special restrooms for them. Since SRS may be

¹⁰ (2014) 5 SCC 438

¹¹ The National Human Rights Commission, study on Human Rights of Transgender as Third Gender (2017)

an expensive endeavour in private hospitals, SRS services were implemented in government hospitals.

Sikkim: The state government in Sikkim pays new-born transgender babies a stipend of Rs. 2000 per month and also arranges for their schooling. Kerala – On January 10, 2017, the Kerala government established a justice board that is only for transgender individuals. To guarantee that these individuals won't experience prejudice and harassment, they are also offering legal assistance services. Kerala enacted a "State Policy for Transgenders" in 2015 that aims to create a society in which men, women, and transgender people all have equal access to talents, economic opportunities, assets, and services, as well as the right to dignity and independence from violence and the freedom of speech. On April 28, 2017, a day-long sporting competition was organised that reflected the state's transgender policy. With the launch of SAMANWAYA, the Kerala State Literacy Mission Authority (KSLMA) placed a strong emphasis on supplying the transgender population with ongoing education.

SC petition for law modification

In a petition calling for revisions to the penal code to safeguard transgender persons from sexual assault, the Supreme Court on Monday sent notice to the Centre. Chief Justice of India S A Bobde said, "This is a good petition," when the three-judge bench heard the argument of Attorney Reepak Kansal. The petition claimed the absence of any provisions dealing with sexual assault by any male, female, or transgender on a transgender under the Indian Criminal Code. It said that transgender people are not covered by Section 354 of the IPC, which deals with the crime of sexual assault.

"Transgender people often could not obtain justice from the authorities owing to a lack of law/Act because Indian laws are for males and women. Many of the rights and benefits that other people have as citizens of this country are being denied to the third gender. According to Articles 14 through 16 and 21 of the Indian Constitution, the State cannot discriminate against persons based on their gender. The bench, which also included Justices A S Bopanna and V Ramasubramaian, asked Senior Counsel Vikas Singh, who represented the petitioner, to inform them of any matters on which the court had previously "legislated" and established rules and regulations. Transgender, transsexual, and Kinnar people have been included in the criteria of sexual assault under the IPC, and the petition has asked the government to create legislation against sexual harassment that are gender-neutral. The argument also included data demonstrating startlingly high rates of sexual assault and abuse of transsexual people.

According to the study, one in two transgender people had experienced sexual assault or abuse at some time in their life. It was noted that the right to life also includes the ability to live with dignity, however transgender people were unable to do so owing to sexual and other crimes committed against community members.

CONCLUSION AND SUGGESTIONS

Because of the societal stigma associated with gender and sexual orientation, transgender people must endure cruelties and discrimination throughout their lives. The judiciary has made great strides to assist them, win their battle for independence. The spirit of the ruling suffers from the lack of understanding and application of NALSA judgement at the grassroots level. A special law protecting transgender people's rights cannot imply that their needs are being satisfied.

The scientists Would want to recommend certain changes to lessen and enhance the position of transgender people.

- The community will be able to access legal mechanisms with the assistance of organisations, seminars, workshops, and training programmes that will sensitize the police.
- All public and private organisations must establish guidelines for the depiction of transgender people. If they are not sufficiently represented, it will be impossible to adopt any meaningful anti-discrimination actions.
- The elementary school curriculum needs to teach kids about stereotypes, gender prejudice, and gender equality. in order to respect all genders in everyday speech.
- Transgender education helps lessen gender prejudice. Reservations in schools and universities may lead to empowering steps forward.
- Without support for its minority, no state can fully profit. The advancement of women is essential to the nation's overall growth. Effective legislation must be made by the legislature to achieve gender fairness.
- The twenty-first century is a time of globalisation and community-wide connection. To combat these deeply ingrained gender-based prejudices and conventions in our society, transformation is necessary.
- In order to determine the direction of successful implementations, statistical data is needed.

It would display the current state of information about the economic impact of gender, crimes against transgender people, representation in schools and colleges, income generating, and general progress.

- The influence of media and social networks on social concerns is wider and more significant. Sensitization and gender equality campaigns would assist raise awareness among the general public.
- Creates hotlines and helpline numbers for people to call for assistance and support. They can maintain the victim's anonymity and offer counselling.
- To reach the grassroots level, the government must communicate with local governments, village councils, and NGOs, giving them specific instructions on how to respond to and provide prompt assistance to any transgender people who are feeling wronged.
- The process will be followed by awareness of plans and the fundamental rights of individuals. Thus, it is necessary to disseminate particular instructions, campaigns, and widespread advertising. A person's individuality ought to be respected to the fullest extent. The transgender community fights for acceptance within society and recognition as fellow humans. They desired to be given the same respect and decency as everyone else in society. I believe that we owe them that much as a society.

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