

Human Rights of Transgender in India

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ABSTRACT

The Indian Constitution also grants equal rights to all citizens residing in the nation. Articles 12 through 35 of Part 3 of the Indian Constitution discuss the Original Rights. From Article 14 to Article 18, equal rights have been granted to all citizens. That is, all forms of discrimination based on religion, original ancestry, caste, gender, or place of birth have been outlawed. The freedom of people is covered by Article 19 from 22 to 22.

Introduction

A part from this, to bring equality in the Society, instructions have been given to make the duties of states in Part 4 of the Constitution. Even though at the international and national level, everyone has the right to equality, it is found on the basis of gender discrimination, discrimination, exploitation and hatred in society.

International Provisions That Establish Equality

Inequality is characteristic of all societies. Therefore, many provisions have been made at global and national level to eliminate inequality and establish equality. Globally, the introduction of the United Nations Charter in 1945, the country has been given a right to equality or a big woman or a man. Under the United Nations Charter, all the citizens residing in all countries are equal to all those who believe in any religion. The United Nations Charter seeks international cooperation for achieving Human Rights and independence without discrimination of Race, Gender, Language Religion and more incentives in this direction. According to Article 13 of the United Nations, Rights have been given to the General Assembly to begin, promote and make recommendations in respect of Human Rights and fundamental freedoms. The Universal Declaration issued on Human Rights says that without the discrimination of Color, Gender, Species, Language, Religion, Political, Birth, Post, Property or any other kind, Social Security, Social Equality, Life and Liberty on earth All the living creatures receive. United Nations General Assembly adopted the Declaration of Human Rights on 10 December 1948. There are 30 Articles in the Declaration Letter. Provisions have been made regarding Civil and Political Rights in Article 2 to 21. And from 22nd to 27th, various Social and Economic Rights have been reported.

Judicial Role in India's Protection of Transgender Rights

The Delhi High Court ruled on July 2, 2009, that Section 377 of the Indian Criminal Code, 1860, which criminalises homosexuality in India, is in violation of the Indian Constitution. This judgement is known as the NAZ Foundation case. The campaign against Section 377's restrictive and oppressive character rose rapidly with the advent of the modern age. In

Suresh Kumar Koushal and another v. NAZ Foundation and Others, the Supreme Court of India heard the appeal and overturned the High Court's ruling in the NAZ Foundation Case.

Judge Singhvi claims that Section 377 of the Indian Criminal Code is constitutionally sound. Whether it would be desirable and lawful to remove the Section from the legislation or to amend it to allow for private consenting sexual conduct between two adults of the same sex is a decision that he left up to the competent legislature.

The Court stated, citing Indian and international rulings, the Yogyakarta Principles, which recognise sexuality as a personality structure, and global trends in the protection of homosexual people's security and aristocratic privileges:

"The sphere of privacy allows person to develop human relations without interference from the outside community or from the State. The exercise of autonomy enables an individual to attain fulfillment, grow in self-esteem, build relationships of his or her own choice, and fulfill all legitimate goals that he/she may set. In the Indian Constitution, the right to live with dignity and the right of privacy are recognized as dimensions of Article 21".

The basic rights are implicit in the Universal Declaration of Human Rights, 1948. The judgment of the Delhi High Court reflects general conscience towards the sexual minorities. They should be treated with utmost respect as a citizen of this country, without any discrimination in exercising their right to apply for a employment opportunity, their right to seek justice.

In April 2014, the Supreme Court of India declared Transgender to be the 'third gender' in Indian law. Justice KS Radhakrishnan noted in his decision that,

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

By recognizing the Transgender as a third gender, this Court is not only upheld the rule but also advanced justice to the class, so far deprived of their legitimate natural and constitutional rights. It is, therefore, the only just solution which ensures justice not only to the Transgenders but also justice to the society as well.

Social justice does not mean equality before law in papers but to translate the spirit of the constitution, enshrined in the Preamble, the Fundamental Rights and the Directive Principles of State Policy into action, whose arms are long enough to bring within its reach and embrace this right of recognition to the Transgenders which legitimately belongs to them.

Non-recognition of the identity of Hijras/transgender persons denies them equal protection of law, thereby leaving them vulnerable to violence and sexual assault, in public spaces or in jail by the police. Further, non-recognition of identity of Hijras/Transgender person results in facing extreme discrimination in all spheres of society, especially in the field of employment, education, healthcare etc. Hijras/transgender persons face huge discrimination in access to public spaces like restaurants, cinemas, shops, malls etc.

The applicability of the judgment in this case was restricted by the Hon^{ble} Supreme Court only to Transgender and explicitly excluded the Lesbians, Gays and Bisexual, thereby not going in the controversial question of validity of Section 377 of Indian Penal Code. 32 The Court on the basis of Human Rights highlighted the importance of gender for applicability of various human rights. 33 The court while deciding this looked at the International Instruments. 34 The Court directed that the recommendations by the report of Ministry of Social Justice and Empowerment Expert Committee must be examined based on the legal declarations made in this judgment and implemented within six months. 35 This broadened the ambit of rights that can be granted to the Transgender. However, though the judgment recognizes the harm done by Section 377 of IPC to the Transgenders, it did not pass any orders or make any recommendations.

The Supreme Court of India ruled that:

1. Hijras and eunuchs shall be considered as "third gender" in addition to binary gender in order to preserve their rights under Part III of our Constitution and laws made by the Parliament and the State Legislature.
2. The federal and state governments are supposed to respect transgender people's right to choose whether to identify as male, female, or a third gender.
3. The Court requires the federal and state governments to take steps to consider them as socially and educationally disadvantaged classes of citizens and to apply all kinds of racial and ethnic discrimination to their admission to educational institutions and public employment.
4. Due to the numerous sexual health concerns that Hijras and Transgender people confront, the Centre

and State Governments are instructed to run separate HIV sero-surveillance Centers.

5. The federal and state governments should take seriously the issues that hijras and transgender people face, such as shame, depression, suicidal thoughts, social pressure, fear, and gender dysphoria. It is also wrong and illegal to insist on undergoing sex reassignment surgery (SRS) in order to change one's gender.
6. The federal and state governments should take appropriate action to ensure that transgender patients get adequate medical attention in hospitals, as well as separate public restrooms and other amenities.
7. The Center and State Governments should also take steps to develop different social welfare programmes in order to improve them.
8. To ensure that persons who identify as transgender feel accepted in society and are not stigmatised as misfits, the federal and state governments should take steps to increase public awareness.
9. In order to regain the respect and position they formerly held in our social and cultural life, both the federal government and state governments should take appropriate action.

As a result, it is clear that the judiciary has played a crucial role in defending the rights of transgender people in India. The label of "third gender" has helped them gain social acceptance for who they are and raised awareness of their existence. The government must treat them as "socially and educationally disadvantaged classes of people," according to a judgement from a bench that included Justices K.S. Radhakrishnan and A.K. Sikri.

Conclusion

Following a thorough analysis of the discrimination, it becomes clear that Transgender and other people have been granted the following rights: the right to equality, the right to equal opportunity, the right to fundamental freedoms, the right to life, including the right to live in dignity, and the right against exploitation.

These rights include the fundamental liberties that are unalienable, and their loss separates hijras from the foundation of Indian civil society. India is moving forward with optimism as it progressively began to recognise the rights of the voiceless via the golden windows of judicial activism.

The Supreme Court's historic 2014 decision recognised transgender people as a third gender, gave them their own identity, and ordered the government to set aside quotas for them in employment and education. The Transgender can choose their own careers as a result, realising various aspirations. They could be chefs, lawyers, police inspectors, or doctors. They are now free to be anyone they want.

A private member's bill to recognise the rights and status of the transgender community was introduced in the House of Representatives last year as a result of the Transgender movement's increased visibility.

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