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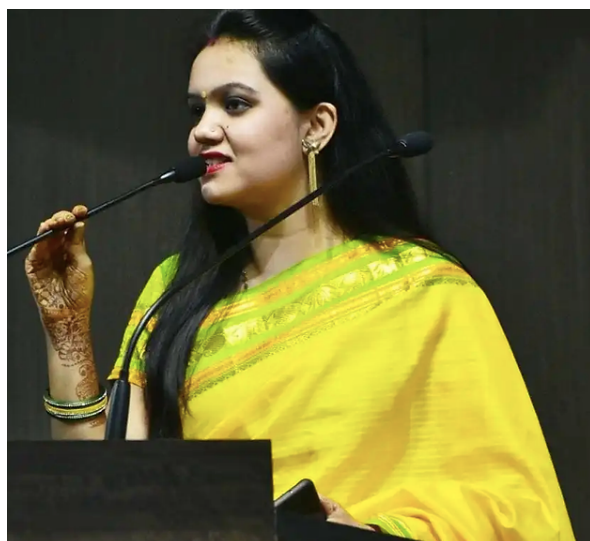


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Editor-in-Chief

Assistant Professor, New Law College, BVDU, Pune

“Ma’am is an Assistant Professor in Bharati Vidyapeeth New Law College, Pune. She has been a former Advocate at the Jharkhand High Court and has her specialisation in Corporate Laws. Ma’am has numerous publications and is an ardent researcher. With an inclination towards researching and writing upon Grey areas of Law, ma’am believes students shall look into matters which would help the existing and upcoming lawyers in a practical manner. In her opinion, students should be focused on prioritizing things in life. They should do things with full zeal and vigour.

Her message for the students is something which she herself preaches, ‘Live Your Today.’”

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“Sir is an Assistant Professor in Hidayatullah National Law University, Raipur. Through his teachings, he wishes to instil in students the skill to extract relevant material from the numerous resources available these days. Sir feels it is important for students to research in the field of law which have contemporary relevance.

Sir wishes the students to put in efforts to provide an InfoBase which would be a guiding force to all the researchers.”



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“Sir firmly believes that key factors for a student to excel in any profession is honesty, transparency and hard work. Law being a dynamic field, various areas of research are open to students. Students shall be creative and think out of the box while deciding their research topic. With the right amount of creativity and intellect, one can master the art of writing.”



Ms. Richa Dwivedi*Assistant Professor, Symbiosis Law School, Pune*

“During her tenure as an academician she comes across students with brilliant ideas but what lacks is the research. She emphasises on the importance of substantiating views as a student of law and not just opiating.

In Ma’am words research itself suggests searching the already searched. Therefore, the research of the students shall reflect their interest in the topic. She strongly believes that a topic to be researched upon shall have contemporary relevance.”

**Ms. Nupur Khanna***Assistant Professor, Christ Academy Institute of Law*

“Ma’am is an Assistant Professor in Christ Academy Institute of Law. She believes that for someone to excel in a professional course like Law one is expected to focus not only on the textbook knowledge but should also focus on shaping their overall personality by participating in extracurricular activities. As per ma’am most of the students are of the view that they can take benefit only from Moot Courts, competitions, however, any activity in which you participate will help you in your professional development. Just like learning calligraphy helped Steve jobs in creating apple’s typography.

Ma’am urges the young researchers to focus on the topics which are innovative and most importantly any field which interests their legal acumen.

Ma’am says that that research is at a very nascent stage in India, especially in the field of law and wishes to students that they should start focusing on improving their research skills and publishing quality papers.”

ABOUT US

The Legal Vidya is a student(s) initiative run online journal (Two Issues Per Year) started in 2020 with the aim of reaching youths of the nation, budding lawyers, students and academicians to bring forth the legal knowledge at your fingertips.

We are here to provide you with a lucid way of learning law with the help of daily blogs pertaining to the latest/other legal issues going on in the country.

We also provide legal advice and needed legal awareness to the masses with a pioneering objective of reaching the underprivileged and serving the idea of Free Legal Aid to them. (Article 39A of the Constitution of India).

We would be appraised to welcome blogs from the readers too. Readers can submit their blogs at contact@thelegalvidya.com.

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INDIA’S HEALTHCARE SYSTEM AND TRANSGENDERS

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Abstract: *We Indians have categorized people only as male or female. We live in the community where major part of the Indian society is structured by gender. In India there are various categories of this community like – Eunuch, Hijra, Kinnar, Aravani, Kothi, Jogti Hijras etc. But we cannot ignore the 4.8 million transgender community of our country (According to census of 2011) who are facing various challenges either in the form of discrimination or harassment on the basis of their gender which can be subjected to unfair treatments. For instance: Criticism, physical or sexual violence, false detention, illegally acquiring their property, denial of various services like education, employment opportunities, healthcare facilities, even usage of public space and what not?*

This community is highly neglected by our society only because of their gender. Even after Transgender Persons (Protection of Rights) Act, 2019 there is no slighter decline in the challenges faced by this community.

Focusing on the drastic problems faced by community the researcher is drawing your attention towards difficulties and challenges faced by the Transgender community in India and a need of gender diversity society.

INTRODUCTION

What is the suffering of being distinct and divergent? Distinct altogether physically and suffering mentally as a result of that unlike nature by each passing day. We couldn't even visualize the discomfort of the minority community of our country "Transgender".

Segregation of gender in the country like India is the greatest necessity and a need of an hour. The intersexual section of the mankind requires a high demand of clarity and transparency over the rights of their land. This community is present in the World population in today times which include India, China, Japan. About 4.8 million of Indians have been recognized as 'Transgender' when the previous census was calculated in the year 2011¹.

For the matter of fact, the literal meaning for the term 'transgender' is a person who isn't complying with the societal gender standards and customs. Bisexual community of our society is a kind of multiple expression which put in various terms into it representing the same as a non-binary person. For instance: 'transgender', 'intersexual', 'multigender', 'gender-bending', 'transsexual', 'transvestite', and 'homosexual' etc. The term transgender is an outspread expression which embrace the twain of transmen and transwomen together which means neither male nor female. In India, there are different groups and categories of the said community which can be comprised of Hijras, Eunuchs, Kothis, Aravanis, Jogappas, Shiv-Shakthi's, Kinnars and many more. Out of all these 'Hijras' are formally acknowledged as third gender in the Indian Subcontinent².

Due to non-availability of employment and education services many of these community members are working as sex workers. Transgender people are being highly criticized by our society only on the nail of blame of their gender which indeed harm their self esteem and ruin the entire life structure of these individuals who have become the victim of social persecution, assault, differentiation and unfairness. Thus, this section of our society is being highly condemned and face struggles regarding the most salient matters of standard of living i.e., legal, social as well as economic strains. They are often ill-treated in public spaces too namely, railway stations, schools, public parks, cinemas, malls, bus stands, hospitals, government offices and where not? The full fledged personal, cultural and social life of members of community are being drastically affected due to criticism of their gender identity which can be resolved by creating the social awareness in the society for the recognition of these individual's as the third gender which is over the context of the demeanor of the people.

TRANSGENDERS IN INDIA

In one way or another it can be said that the Indian society in some extent doesn't came out of gender biased stereotypes. Today even in many backward areas of the country women are not even made and given equal rights as of men. Consequently, there is no way a need to quote the minority status of this most suffered community of our country only on the grounds of their looks, appearance, their behavior and conduct. They are highly inflicted

¹ <https://www.census2011.co.in/transgender.php>

² [https://en.wikipedia.org/wiki/Hijra_\(South_Asia\)#:~:text=Hijras%20are%20officially%20recognized%20as,suggested%20by%20the%20Kama%20Sutra.](https://en.wikipedia.org/wiki/Hijra_(South_Asia)#:~:text=Hijras%20are%20officially%20recognized%20as,suggested%20by%20the%20Kama%20Sutra.)

community faces so much social oppression, physical and mental torture by the way of their gender identity. They even suffer Gender dysphoria which is a kind of emotional and intellectual disorder accompanied through stress that is much in the cognizance of their gender identity. This can even initiate in early childhood and goes on until their adulthood depends upon their own body and its changes.

The residents of transgender in the country are differentiated from state to state, the above said data will efficiently explains the highest number of populations of their presence in different states³.

1. Highest Population: Uttar Pradesh (28.18%),
2. Highest Population of the age of 0-6 have observed in: Uttar Pradesh (34.15%)
3. Scheduled Caste Transgender: Uttar Pradesh (33.50%)
4. Schedule Tribe Transgender: Madhya Pradesh (15.80%)

DEFINING THIRD GENDER

The Apex Court of India in the case of National Legal Services Authority v. Union of India⁴ on April 15, 2014 gave an immensely paramount judgement and altered the landscape of our society had created and recognized third gender as transgender for the first time and further enumerated that the individual's falling in this category will be entitled to get all Fundamental rights in our Indian Constitution and International law. This was the first legal decision came in the favor of this section and the Court directed the Central and State Governments for taking further initiatives for the protection of the minority section of the people.

The Court emphasized that this weaker section of the mankind will get equal rights and protection under Article 14, 15, 16 and most important Article 21.

A bit stress over the Rule of law was also opinioned that law is supreme and everyone is equal in the eyes of law yet, the life of the intersexual person is somewhat like an everyday battle which is causing them stress and depression. Hence, Nalsa case decision has made a push in the identification of them.

Subsequently through this judgement, The Rajya Sabha proceeded to pass a Bill named as 'The Rights of Transgender Persons Bill, 2014'. But the said Bill was certainly not passed on to Lok Sabha for further discussion and ultimately the Bill become invalid.

But Later on, after 2 long years followed by so many delays and years long protests another Bill was hereafter introduced in the Lok Sabha called as 'The (Transgender Protection of Rights) Bill, 2016'. In which it was found that the Bill had lot many anomalies as if taken into contrast with the Landmark Decision of NALSA. It can be drawn out that the bill was enacted with lot many inconsistent provisions which are against the interests of the community.

³ <https://www.census2011.co.in/transgender.php>

⁴ MANU/SC/0309/2014

The act was opposed by numerous NGO's supporting these communities, along with that Standing Committee also wrote few recommendations to be taken into considerations before passing it. But despite of recommendations the Bill was passed and came into force on December 05, 2019⁵.

After 4 days of the enactment of the Statute various members of the community came on roads in different parts of the country to come forward to outcast their concerns regarding the statute passed against judgment of Hon'ble Court in 2014. Accordingly, it was said that the Act is not fair on relations with Article 14, 15,16 and Article 21 of our Constitution.

HIGHLIGHTS OF THE KEY ISSUES OF THE ACT:

1. Application of the Certificate: Section 5 of the Act, clearly demands the individual to file an application for their recognition to the District Magistrate for the sake of their identification which is against the verdict given in the 2014 case in which Right to self-determination of the gender as male or female or transgender without the requirement of any medical procedure was required but this is a comprehensible contravention of the decision hence, should be reconsidered.
2. Certificate as a An Evidence of Gender: Section 6 further, specifies that the person who is the member of this community are necessarily be having a certificate as an evidence of their gender identity which is again the violation of Article 14 which provides Everyone is equal in the eyes of Law and all are subjected to the same Law of Land so why this provision is expressly denying the Right to Equality of the homosexual people.
3. No Reservation in Education and employment: Section 9 and 11 doesn't give any kind of reservations to the children of the third gender in various reserved categories which was purely stated in the 2014 judgement that State and Centre must take measures to make initiatives to treat and drag them as the part of our society especially in case of admissions in the schools and educational institutions and even no employment opportunities are provided to them.
4. Exclusion of express definition of "Discrimination": The Bill expressly and impliedly indicated the circumstances and difficulties of the discrimination of their gender which is again violations of Article 15 and 16. But nowhere in the whole statute the word discrimination is elaborated which is another point to be stated as erroneous.
5. Penalty is quite low: Section 18 states the offences and penalties for the crime against these persons which is expressly given to be maximum of only up to 2 years which is literally very insufficient as against the heinous and cruel crimes like Rape, sexual harassment, abuse, violence and many more.
6. Lack of Medical services: Section 15 expressly demands the appropriate government to ensure and give insurance schemes to these people for their medical services like sex reassignment surgery, hormonal

⁵ The Transgenders Persons (Protection of Rights) Act, 2019

therapy, laser therapy but nowhere it was found to have less than any initiatives and steps taken by our government to facilitate them in getting quality access in healthcare services.

QUALITY HEALTHCARE: A BARRIER FOR ISSUE THAT AROSE DURING TRIAL

It is not less than a nightmare when you are residing in a democratic country but opinioned on the ground of your gender what would be another better definition of “Inequality”?

It is highly regretful to say that our healthcare system has openly ceased to function for the transgenders. As they feel ashamed to enter in public and government hospitals which is strictly against various fundamental rights of an individual and if we talk about private hospitals, they are in itself highly priced and commercialized and the bills aren't within the pocket of the poor ones.

So, neither government nor private came forefront to aid these people and come up with basic psychological, mental and physical needs. Even there is high humiliation faced by third gender people by frequently interrogations by Doctors, nurse and medical professionals. Many horrible and uncomfortable questions as if about their sexual lives, genitals etc. are asked which directly triggered their mental and intellectual health. Not even medical guards even the patients around them saw them with an eye of curiosity which is what a barrier for the people of these communities to have a quality-based atmosphere for their health and privacy.

Even these people are not subjected to have health insurance which is one of the basic requirements of an individual which is highly criticized as what is an issue for not providing an insurance policy? Where are we running towards is this an Independent India where a minority community is dying to get a quality service equitable to other people of country?

Transgender adults of all ages might have more than one of the health conditions, which elevate their risk for serious COVID-19 illness such as; In a study it was found that⁶

- 208,500 transgender adults have asthma;
- 81,100 have diabetes;
- 72,700 have heart disease;
- 74,800 are living with HIV.

Moreover these people were on higher risk of getting covid19 infection as compared to the other as they are already dealing with lot many physical and mental health issues.

HIV AND TRANSGENDERS

HIV is a virus that changes the immune system and can elevate the effect of other infections and ailments in our body. Without correct treatment and therapy, HIV may headway to stage 3, an extreme stage frequently known as AIDS. Transgender people are at extremely higher risk of HIV and these people even don't get any treatment and due care by the way of healthcare system. The variety of factors, such as violence, legal struggles, stigma, and

⁶ <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-COVID19-Apr-2020.pdf>

most importantly discrimination, might affect the access that transgender people aren't in a condition to have to proper care and concern over their health as everyone has a right to health as Fundamental right as governed under Article 21 of our Indian Constitution. Transgender people faces so much of health discrimination which is clear indication of inequality. This discrimination can be in the form of doctors not knowing how to care for transgender people rather harass them by refusing to use their correct names or pronouns by not providing the treatment. Some doctors may even try to avoid treating transgender people which is again biggest hindrance and can literally upset the mindset of them.

In a study it was found that presence among MSM was around 7.4% as against the overall adult HIV presence of 0.36%.⁷ Until recently, Hijras/transgender people were included under the category of MSM in HIV sentinel surveillance. Recent studies among hijras/transgender women have indicated a very high HIV prevalence (17.5% to 41%) among them. Mental health needs of Hijras communities are not even taken into considerations in the current HIV programs handled by the government. Some mental health issues reported in different community administrations include depression and suicidal tendencies, societal stigma, lack of social support, HIV status, and violence-related stress which are not subject to have by the community as a suffering only on the basis of its gender. Most transgender people, especially youth, face great hindrances in terms of their own gender identity which are opposite to that of the gender identity and gender role imposed on them on the basis of their biological sex as it is against the societal meaning of having a social meaning of gender. They face several issues such as: shame, fear, and transphobia; disclosure in coming out of their places, adjusting, adapting, the societal pressure, fear of relationships and self-imposed limitations which is highly condemned to be against the rights of the individuals. Financial barrier is also indeed play an important part in non-access to healthcare these people are less likely to be able to afford healthcare services which is again an important social issue .

COVID 19 HAS AGGRAVATE THE HEALTH ISSUES

Covid-19 has highly and lifelong impact on our minds in every manner which can be either socially, legally, economically , mentally and in every possible way the pandemic has destroyed our lives. Moreover this situation has left transgender people even more endangered to hunger, poverty and healthcare problems. Because of social distancing protocols, travel restrictions, curfews, loss of livelihood and lack of support from the society and civil society organisations, many people in the transgender community witnessed poor health and even faced disruptions in getting treatment of HIV.⁸

Although the COVID-19 pandemic compounded many existing disparities, the most crucial was markedly reduced access to expert clinical care. As public health authorities called for appropriate measures to diminish the spread of COVID-19, delays occurred in accessing gender-affirming health services⁹. We are well known with the fact

⁷ <https://swachhindia.ndtv.com/discrimination-and-barriers-make-access-to-quality-healthcare-a-challenge-for-many-transgenders-58669/>

⁸ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8492083/>

⁹ <https://thewire.in/health/indias-healthcare-systems-persistently-exclude-lgbtq-people-this-needs-to-change>

that our whole healthcare system collapsed due to pandemic it was very difficult to curtail the situation in the ongoing pandemic for normal citizens too but as we are living in gender biased society this would be very difficult to explain the situation of this community which is not in a position to get health benefits in normalised era what would be their position in the pandemic. Even our government does not have data on the number of transgender people above 45 years of age who had their Covid vaccine¹⁰. Around 5.22% transgenders are vaccinated till now. The activists remarked that misinformation, lack of digital knowledge and lack of government documents are the main reasons behind hesitancy of the community members for not getting vaccinated. Accordingly, They had a mind set and misconception that there are some side-effects of the vaccines, including death, but that is a very, very rare event as compared to deaths due to Covid-19 Even they had a perception that vaccine will affect their body in negative terms also .

CONCLUSION AND SUGGESTIONS

Inequality is an issue which should be solved by the way of awareness and education in the society. We are living in a marginalized society where there is indeed a need of a transform which needs to change the minds of our society and accept this minority community and diversify our society from gender biased to gender identical society.

Gender diversity is a need of an hour. In a democratic country like India, we all are having fundamental rights out of which Right to Health Is also our Fundamental right guaranteed under Article 21 of our Constitution which are available to every person.

Transgenders have equal rights to live their life with dignity and The Central and State Governments should come forward to protect the interest of this community by way of various schemes like Health insurance, HIV related treatment services, separate cells for these people for protecting them from harassment and discrimination in public places etc.

¹⁰ <https://www.hindustantimes.com/india-news/no-data-on-vaccinated-transgender-people-govt-in-ls-101628048737988.html>