

**“Transgender Rights: A Myth in the 21<sup>st</sup> Century”**

*\*Sayanika Basu  
Amity University,  
IGNOU*

*\*\*Gourav Roy  
Amity University,  
IGNOU*

We have always been taught from our childhood about the existence of two genders namely male and female and thus, during any discussion on gender biasness, these two sexes are given the utmost priority. However, most of us tend to ignore another type of gender: the ‘Transgender’. Who exactly are these neglected people called Transgenders? The term ‘Transgender’ acts a blanket term for those humans whose sexual individuality or personality does not have resemblance with the biological identity authorised at birth.<sup>1</sup> Magnus Hirschfeld, a German Sexologist in 1910, coined ‘Transvestite’ as a name for these people who were called as ‘Transgenders’ in 1971.<sup>2</sup> Globally, the Transgenders face problems of not only physical and mental torture but also with social acceptance. They are not provided with basic accommodations, legal protection or their basic rights, food, education and identity to self which are equally provided to the other two highlighted genders ‘male’ and ‘females’ and face severe discrimination everywhere and at every step.

Just like the rest of the world, India too, is no less biased when it comes to the Transgenders and they have their own history here. This history can be traced down to the Mughal Period when they were treated with dignity, held many respectable positions in workplaces and were considered important in the society. The invasion of the British in India was the major cause of their degradation as they considered these people as ‘a breach of public decency’ and excluded them from the society.<sup>3</sup> They started facing severe discrimination, ignorance and physical and mental torture which increased with time and did not leave even after the British left India. At present, even though they are given the minimum legal recognition in the society, the discrimination and torture are still prevalent.

Globally speaking, there is a scarcity of strict laws on transgender protection. The situation is so worse, even when there are laws they are not being properly implemented thus, causing severe discrimination and ignorance to this community. India, like any other country of the

---

<sup>1</sup>Alina Bradford-Live Science Contributor, Live Science, (June 07, 2020, 12:15P.M.) <https://www.livescience.com/54949-transgender-definition.html#:~:text=%22Transgender%22%20is%20an%20umbrella%20term,been%20born%20with%20male%20genitalia.>

<sup>2</sup> Prof. Stephen Whittle, The Guardian, A Brief History of Transgender Issues, (June 07, 2020, 12:50P.M.) [https://www.theguardian.com/lifeandstyle/2010/jun/02/brief-history-transgender-issues#:~:text=%22Transvestite%20originated%20in%201910%20from,British%20term\)%20not%20until%201996](https://www.theguardian.com/lifeandstyle/2010/jun/02/brief-history-transgender-issues#:~:text=%22Transvestite%20originated%20in%201910%20from,British%20term)%20not%20until%201996)

<sup>3</sup> Konduru Delliswararao & Chongneikim Hangsing, Socio-cultural Exclusion and Inclusion of Transgenders in India, International Journal of Social Science and Management, Vol-5, Issue1: 10-17, ISSN:2091-2986, (June 07, 2020, 01:28 P.M.) <http://nepjol.info/index.php/IJSSM/issue/archive>

world has certain rights and protection prescribed by law for their citizens which includes people from the Transgender community. The very Preamble of the Constitution of India clearly upholds equality in every aspect for all its citizens that include the Transgenders. Article 14 of the Indian Constitution guarantees all Indians to be treated equal legally and should be equally protected by law while Article 15 prohibits any sort of discrimination among the citizens on the basis of birth place, caste, religious belief or gender. Article 21 of the Constitution, in its vast explanation makes it clear that every Indian citizen has the right to live in a healthy environment with all the basic necessities being fulfilled and with his personal dignity. Lastly, Article 23 of the Constitution of India upholds the trafficking of any human being as a beggar or as a forced labour in any forms illegal and considers it punishable by law. There was a bill for the protection of these people which finally got its assent and became an act in the year 2019 known as Transgender Persons (Protection of Rights) Act.

Despite of the existence of so many laws, the Transgenders in India face many problems on a daily basis which a straight person does not. Education, which is a basic right for every citizen till 14 years of age, is not provided to the people of this community. They face a lot of trouble for any health issues, are severely humiliated at places and are ignored from getting the basic health care rights.<sup>4</sup> The society looks down upon them like some illness to the society just because their gender is somewhat different from that accepted worldwide. Not only this, they are physically and verbally harassed on a daily basis on various ways by the society which looks down upon them for being different. Another major problem is with the public washrooms which are only available for male and female and not for the people of other gender. These people are deprived from getting a job with a respectable position and those who get by chance struggle regularly for recognition, salary and daily harassment for being as they are. This leaves them to take up odd jobs like begging, working as prostitutes, smugglers and drug addicts. Not only this, they sometimes choose committing severe criminal offences like murder, kidnapping or offences like theft, dacoits as their profession for earning some money. They are the recognised citizens of India but are not facilitated with the right to vote and choose their representative, are deprived of taking part in social and cultural festivals all over India.

Thus, it can be seen that though they are legally recognised as a citizen and has laws protecting their rights, it is just for the sake of showing and not for the real identification. They have every right to be more than just a group of people who visits the houses of new born and bless the baby or dance in marriages or become sex workers. They need the Government to come up with regulations for their real upliftment like special quota system, introducing them as a part of us in the primary books where only two types of genders are being focussed which is the most basic way for their recognition, implement the laws in a proper and strict way so that they can enjoy their rights and lastly educate the mass for accepting them as they are.

---

<sup>4</sup> Malavika Rajkumar, The Challenges Faced by the Transpersons in India, (June 08, 09:00a.m.) <https://medium.com/one-future/the-challenges-faced-by-transpersons-in-india-fa46575ca14d>

The people of the Transgender community face regular problems at various places because of certain loopholes in the law and their implementation. The bill for the protection of the Transgenders which became an act in 2019 provides for the protection of these people and has guidelines for their upliftment in the society. The act states that they should be treated equally in the society with no discrimination for education, health and employment and has the right to rent or acquire property for accommodation alongwith the right to set up any offices or business for employment and the right to set up their own family.<sup>5</sup> The act also shows the offences against transgender like forceful labour or physical, verbal or economical harassment which may lead to a prison time of six months to two years.<sup>6</sup> This act starting from the bill was vehemently opposed by the LGBTQ community because it clearly showed discrimination with this community. The people of this community require following two step process for their legal recognition of which the first step is to apply for the 'transgender certificate' on the basis of his own declared identity who can also apply for 'change in gender' certificate asking the authority for their gender change and lastly, the second step includes the process of surgery and approval of a medical person.<sup>7</sup> The Bill and the Act clearly states that the District Magistrate to judge the rightness of the information provided in the application and it is upon his decision as to whether to grant a certificate as there are no guidelines on whose basis such decision should be made.<sup>8</sup>

It is clear from the provisions that there is discrimination for this community in such an act which was made solely for their protection. There is too much government intervention which might be filled with biasness. The straight genders which are the males and the females, unlike them, neither needs a statement from any person for being straight nor do they need a certificate for proving their gender. The laws even if they exist are neglected severely where its implementation is highly needed. The provisions of the Constitution of India are violated when it comes to the actual protection of these people and for the existing law for the protection of them. The punishments for any violation of rights of the transgenders are so less negligible that any culprit can get away with the crime which should be amended soon. It was only in 2014 in the case of NALSA vs. Union of India<sup>9</sup>, where the Supreme Court of India stated that the people from the Transgender Community should be recognised as the third gender and should be allowed to enjoy all the fundamental rights just like any other citizen alongwith the special benefits in respect of education and employment.

---

<sup>5</sup> Mr. Ayush Raina, A Brief Analysis of the Transgender Persons (Protection of Rights) Act, 2019- Murder of Gender Justice, Lawstreet News Network, Law Street Journal, (June 08, 09:47a.m.) <https://lawstreet.co/speak-legal/transgender-persons-protection-of-rights-act/>

<sup>6</sup> Ministry: Social Justice and Welfare, The Transgender Persons (Protection of Rights) Bill, 2019, (June 08, 2020, 09:58a.m.) <https://www.prsindia.org/billtrack/transgender-persons-protection-rights-bill-2019>

<sup>7</sup> LGBT Rights, India: Transgender Bill Raises Concern, (June 08, 2020, 10:27a.m.) [https://www.hrw.org/news/2019/07/23/india-transgender-bill-raises-rights-concerns#:~:text=The%20Transgender%20Persons%20\(Protection%20of,a%20landmark%20judgment%20in%202014.](https://www.hrw.org/news/2019/07/23/india-transgender-bill-raises-rights-concerns#:~:text=The%20Transgender%20Persons%20(Protection%20of,a%20landmark%20judgment%20in%202014.)

<sup>8</sup> Ramya Kannan, Why are there objections to the Transgender Persons Bill, The Hindu, (June 08, 2020, 10:43am.) <https://www.thehindu.com/news/national/why-are-there-objections-to-the-transgender-persons-bill/article30125894.ece>

<sup>9</sup> AIR 2014 SC 1863

Even though they have got their legal recognition after this judgment but legal discrimination against them is still prevalent alongwith the societal discrimination.

Every country has laws for the protection of the Transgenders which exist just for the sake of existence. They are not being properly and strictly implemented which is the main cause of a great hike in the crimes against this community. In India, even though there is a separate law for the protection of the Transgenders but, the law in it, is discriminating which portrays the lack of respect towards this community. The punishments for any crime against them or for violating any right of the transgenders are so less that makes it an easy bail for the culprits. The rate at which crimes against the people of this community are increasing needs high attention with proper implementation of the laws and with much severe punishment.

The law alone cannot bring any big change until the society learns to accept them as nobody different. The Government should also focus on educating the mass on how the people of this community are one of them and make them aware that this is not a crime or a disease but this is how their body is which is absolutely normal like any of those straight people. It is known that many people suffer from depression and even commit suicide when they are not supported by their own family for not belonging to the straight community. Being anyone from the LGBTQ community is still looked upon as a disease both mentally and physically in this century. There is a famous saying that ‘ Charity begins at home’ which indicates that the parents and the loved ones of any such person should be the first one to accept them as they are and support them strongly so that they don’t feel threatened to live in this society.

Recently a very few percentage of the transgender population are really doing well by holding a respectable position at workplace and in the country but the majority of the population is still deprived of this respect. The society is yet left to be more open to them by embracing the positive attitude and treating them like one in the upcoming years. The State Governments should take necessary steps for introducing separate public toilets for them in order to save them from regular humiliation and should also take the initiative of introducing them as another type of gender in the primary books so that they get recognition as one of us from the basic level. Not to forget, the world and the society has shown their little progress in the recent previous years for making the world a better place for them but there is still a long path left to overcome this biasness towards the community and accept them as one of us legally and in the society.

Every human being is a creation of god and thus is to be treated equally and just like any other citizen. Discrimination with this community from the straight people needs to be stopped at not only workplaces but in every corner of the world. These people are one of us and deserve equal love, affection and acceptance. It is our duty to treat them right and make the world a better place to live in so that no new cases of suicide, depression or hate crimes comes up against them.