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**Rights of Transgender People – Sensitising Officers to Provide Access to Justice
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DEFINITION

The term 'transgender' has been derived from the Latin word 'trans' and the English word 'gender'. Different sorts of individuals come under this category. No particular form of sexual orientation is meant through the term transgender. The way they behave and act differs from the 'normative' gender role of men and women. Leading a life as a transgender is far from easy because such people can be neither categorized as male nor female and this deviation is "unacceptable" to society's vast majority. Trying to eke out a dignified living is even worse.

HIJRAS: THE THIRD GENDERED PEOPLE

In India, the hijra community has existed for more than four thousand years and is currently believed to number half a million. The word "hijra" designates an alter-native gender to the male-female binary; the term translates as eunuch or hermaphrodite. The hijras' base their group's third gender identity on an episode in the Ramayana where Rama is banished. In the story, Rama tells a tearful group of men and women, lamenting his banishment, to leave and return to the city. A group of people "who were not men and not women" did not know what to do and remained with him. Rama rewarded the hijras for their loyalty by giving them the power to bless auspicious occasions such as marriage and childbirth through customary singing and dancing.

Irregular male sex organs are central to the group's definition. The hijras include both ceremonially emasculated males and intersexed people whose genitals are "ambiguously male-like at birth." All hijras have a female gender identity. There are no ambiguous females who identify as males in the group. Instead, all hijras dress and act as women even though they are not biological women.

RIGHTS OF TRANSGENDER PEOPLE

Preamble to the Constitution mandates Justice - social, economic, and political equality of status.

Thus the first and foremost right that they are deserving of is the right to equality under Article 14. Article 15 speaks about the prohibition of discrimination on the ground of religion, race, caste, sex or place of birth.

Article 21 ensures right to privacy and personal dignity to all the citizens.

Article 23 prohibits trafficking In human beings as beggars and other similar forms of forced labor and any contravention of these provisions shall be an offence punishable in accordance with law.

The Constitution provides for the fundamental right to equality, and tolerates no discrimination on the grounds of sex, caste, creed or religion. The Constitution also guarantees political rights and other benefits to every citizen. But the third community (transgenders) continues to be ostracized. The Constitution affirms equality in all spheres but the moot question is whether it is being applied.

This phenomenon can be observed at the international level also, principally in the form of practice related to the United Nations-sponsored human rights treaties, as well as under the European Convention on Human Rights. The development of this sexual orientation and gender identity-related human rights legal doctrine can be categorized as follows:

- a) Non-discrimination
- b) Protection of Privacy rights and
- c) the ensuring of other general human rights protection to all, regardless of sexual orientation of gender identity

In the light of the Constitutional guarantees provided, there is no reason why Transgender Community should not get their basic rights, which include Right to Personal Liberty, Dignity, Freedom of Expression, Right to Education and Empowerment, Right against Violence, Discrimination and exploitation.

The Constitution endures persons in every generation and every generation can invoke its principles in their own search for greater freedom, therefore, it is the duty of judiciary to interpret the provisions of the Constitution in such a way so as to ensure a life of dignity for them.

As per the Constitution most of the protections under the Fundamental Rights Chapter are available to all persons with some rights being restricted to only citizens. Beyond this categorization the Constitution makes no further distinction among rights holders. Official identity papers provide civil personhood. Among the instruments by which the Indian state defines civil personhood, sexual (gender) identity is a crucial and unavoidable category. Identification on the basis of sex within male and female is a crucial component of civil identity as required by-the Indian state.

The Indian state's policy of recognizing only two sexes and refusing to recognize hijras as women, or as a third sex (if a hijra wants it), has deprived them at a stroke of several rights that Indian citizens take for granted. These rights include the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's license, the right to education, employment, health so on. Such deprivation secludes hijras from the very fabric of Indian civil society.

The main problems that are being faced by the transgender community are of discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities like HIV care and hygiene, depression, hormone pill abuse, tobacco and alcohol abuse, penectomy and problems related to marriage and adoption.

In 1994, transgender persons got the voting right but the task of issuing them voter identity cards got caught up in the male or female question. Several of them were denied cards with sexual category of their choice.

The other fields where this community feels neglected are inheritance of property or adoption of a child. They are often pushed to the periphery as a social outcaste and many may end up begging and dancing. This is by all means human trafficking. They even engage themselves as sex workers for survival.

ACCESS TO JUSTICE

One to four percent of the world population is intersexed, not fully male or female. After independence however they were denotified in 1952, though the century old stigma continues. This

stigma reduces the transgender to individuals who are not considered human, thus devoid of all human rights. They suffer a whole lot of mental, physical and sexual oppression in the society. The health and well-being of transgender people suffers great harm by attitudes of intolerance and hatred toward diverse gender expression.

The laws that, in today's date, terrorize the transgender community are Section 377 of the Indian Penal Code, 1870 and the Immoral Traffic Prevention Act, 1986.

Immoral Traffic Prevention Act of 1956 (amended in 1986) is the chief instrument of the Indian state's regulation of prostitution which mandates to prevent the traffic of women and children into prostitution. With the 1986 amendment, the title was modified to "Immoral Traffic Prevention Act," and it became gender neutral. The ambit of the Act now applied to both male and female sex workers and possibly also to those whose gender identity was indeterminate. It is with the 1986 amendment that both male and hijra sex workers became criminal subjects of the ITPA. This provided the legal basis for arrest and intimidation of the transgender sex workers population.

See 377 of the 1860 Code was drafted by Lord Macaulay. It comes under the Section titled 'Offences Affecting the Human Body' and provision provides the sanction for the prosecution of certain kinds of sexual acts deemed to be unnatural. It is important to note that regardless of consent these sexual acts are liable for prosecution provided they are seen as carnal intercourse against the order of nature, with man, woman, or animal and, thus satisfy the requirement of penetration. **And to be a homosexual or a hijra is to draw the presumption that the hijra or the homosexual is engaging in "carnal intercourse against the order of nature."**

Section 377 has been extensively used by the law enforcers to harass and exploit homosexuals and transgender persons. Various such incidents have come to light in the recent past. In *Jayalakshmi v. State of Tamil Nadu*, Pandian, a transgender, was arrested by the police on charges of theft. He was sexually abused in the police station which ultimately led him to immolate himself in the premises of the police station.

Similarly, policemen arrested Narayana, a transgender, in Bangalore on suspicion of theft without informing him of the grounds of arrest or extending any opportunity to him to defend himself. His diary was confiscated by the police and he was threatened with dire consequences if he did not assist in identifying other transgenders he was acquainted with.

Homosexuals have also been at the aggrieved end of financial extortion by the police in exchange for not revealing their identities to society.

Similarly, the Indian Council for Medical Research (ICMR) and Indian Medical Association (IMA) have not prescribed any guidelines for Sex Reassignment Surgery (SRS). This reticence on the part of the medical sphere has led many transgenders to approach quacks, putting themselves at grave risk.

From the numerous instances of abuse and violence against homosexuals and transgenders, it is evident that Section 377 has been grossly misused. It is equally obvious that a judicial move to address this concern was exigent in the face of a law enforcement framework so hostile that exploitation at the hands of the alleged protectors became a quotidian affair for sexual minorities in India.

With the advent of the contemporary epoch, the movement against the repressive and oppressive nature of Section 377 grew exponentially and it was finally on July 2, 2009 that for the first

time any court in India pronounced that the oppression meted out to the transgender community and the homosexuals in the country is violative of Right to Equality under Article 14, Right against Discrimination under Article 15, and Right to Privacy and Personal Dignity under Article 21 of the Indian Constitution.

These rights are not only constitutionally guaranteed but are also implicit in the Universal Declaration of Human Rights and should therefore; enjoy a superior position to other rights. The judgment of the Delhi High Court reflects a sense of conscience and empathy towards the sexual minorities, emotions that were hitherto unknown. Section 377, in its criminalization of homosexual activity, was a repressive measure on the fundamental rights of the transgender community.

And when a transgender is treated like an unequal or is humiliated by the ordinary people, there are not a lot of redressal mechanisms that are available to him. Thus to put an end to all the inhuman behavior towards the transgender community it is very important that reforms are made in the existing laws, the law officers are sensitized to adapt to a complete humanitarian approach while dealing with a person of transgender community and also the society should get rid of the century old bias and realize that transgender behavior is a normal and natural as their own feeling towards their sexual orientation.

All the laws of the land should be applied to them like any other person. They should be treated equally, respectfully and without any discrimination. They should not be discriminated against in exercising their right to apply for a job, access to a public place, right to property or their right to access to justice.

Thus it is very vital that the judicial officers and the police officers do not become the means to institutionalize or to enforce such discrimination. Rather, they should spread awareness in the societal area they work in and enlighten the laymen that the transgender are as human as them and deserve to be treated in the same manner. There should be a group of activists to whom any matter involving transgender rights as soon as it reaches the court can be referred to. This panel of activists should involve social workers dedicated to the cause of upliftment of the transgender community and also lawyers through with the law on the subject.

Shelter homes should also be made available for such transgenders who are facing violence and are in further risk of going through the same during the proceedings. The officials dealing with issues relating to transgenders should observe complete transparency during such events. One should always remember that being in the legal profession it is our first and foremost duty to fight for the rights of the people who can't fight for themselves. Thus establishment of a division under the local legal services authority in order to provide legal aid to the transgenders, will adequately serve the purpose.

While reforms are needed and suggested in the existing laws for the realization of equal rights for the transgender community, the target can not be achieved, if not fully but partially, if reforms take place in the implementation of such laws. And the State of Tamil Nadu has set an example of the above statement to the entire world. While it is the first State to constitute a Welfare Board for the transgender community, known as aravanis, with the official working staff along being the members of the transgender community; it has also taken affirmative action to achieve equality by reserving seats for third-gender students in government-owned art and science colleges and providing ration cards (identity documents) to third-gender people with the appropriate gender category. The state government was also giving subsidy to all those transgenders who wish to undergo surgical treatment for change of their sex.

India's transsexuals are also listed as 'others', distinct from males and females, on electoral rolls and voter identity cards since 2009. This identity of a third gender was a major step ahead in their struggle for political rights.

Another area of law which has to be seen with the glasses of welfare of transgenders is the juvenile justice system. Welfare and protective measures have to be implemented in the procedures and working of the Juvenile Justice system. The Juvenile Justice Act is more of a welfare legislation that penalizing one because it aims at proper upbringing of the delinquents by making the environment child friendly and informal. It is usually children with humiliating experiences in familial, economic or school life are found to be in conflict with law. Another factor that can be added to the list these humiliating experiences are the ones relating to the child's sexual orientation, which the Juvenile Justice System does not contemplate upon.

Adolescence is a confusing time during which the children learn the skills required to become healthy adults. They experience significant intellectual, emotional, and physical developments during this bridge to adulthood. This is equally true of the transgender adolescent, but they have the added disadvantage of coming of age in a society in which their identities are stigmatized and their families and schools often harass and victimize them. These children are often rejected, neglected, or abused by their guardians and choose a life on the streets rather than remain in hostile environments.

The members of the Juvenile Justice Board should be particularly compassionate towards a transgender juvenile and have a deeper understanding of his problems that led him into a delinquent act.

If the purpose of the juvenile justice system is to intervene in a troubled youth's life and guide them towards becoming contributing members of society, then the juvenile justice system must support transgenders in their youth in the exploration and expression of their sexual orientation and gender identity.

To bring about a change in the societal aspect it is necessary that we implement the seeds of equal treatment for transgenders in the minds of the new generation. A comprehensive gender and sexuality education should be provided to all children and youth, within and outside formal education systems, which includes discussions on sexual and gender diversity and sexual rights. This will not only ensure a better future outlook for the transgenders but also they will be able to earn self esteem and self respect which they deserve for the mere fact of being a human being.

To get any reform in any law that would affect the transgender community it is proposed that a few members of the transgender community be made a part of such commission so that the law does not remain a toothless piece of legislation and serves the purpose it was enacted or amended for.

It is of utmost importance that the transgender community is made free from violence and discrimination at all levels of the society. It is due to the discrimination they face since school that they never have enough confidence to continue studying and become eligible for all the white collar jobs. This mindset has to change if India truly wants to be the champion of human rights in the world. The surgery of sex reassignment should be given a legal status so that the transgenders do not risk their lives going through it in a secret unlawful manner. This record will also be helpful in accurately determining their census. There should also be a separate column in the sex

determinant portion in all government and non-government forms.

There is need for their social acceptance. They should be provided separate wards in all government hospitals. The authorities do not admit them in women's ward because women do not feel comfortable or free in their presence and in men's ward they face sexual abuse. Besides, there are no separate toilet facilities for them.

Some progressive measures are:

- a) To sensitize the society with regard to their identity.
- b) Support of civil society organization to advocate for their cause and efforts. For example, advocate for land/ shelter, creation of separate public toilets, hospital wards, recognition of their right to vote as citizens, reservation seats in election, etc.
- c) Support of Media - both print and electronic, to highlight their status and plight rather than portraying them in poor light.
- d) Extend financial support for community based organizations run by transgender communities.
- e) To generate awareness, so that the transgender is viewed and understood as a culture, community and a movement.

RECOMMENDATIONS AND SUGGESTIONS

Discrimination against hijras and kothis is embedded in both state and civil society. The violence that this community faces is not only due to the state but also has deep societal roots. Wider change is premised on changing existing social relations. Apart from shifts in class relations, change would also crucially hinge upon overturning the existing regime of both gender and sexuality that enforces its own hierarchies, (e.g. heterosexuality over homosexuality), exclusions (e.g. hijras as the excluded category) and oppressions. While keeping in mind this wider context, a human rights approach has to deal with the various institutional contexts and think through ways in which change can be brought about.

Legal Measures

1. Every person must have the right to decide their gender expression and identity, including transsexuals, transgenders, transvestites and hijras. They should also have the right to freely express their gender identity. This includes the demand for hijras to be considered female as well as a third sex.
2. Comprehensive civil rights legislation should be enacted to offer hijras and kothis the same protection and rights now guaranteed to others on the basis of sex, caste, creed and colour. The Constitution should be amended to include sexual orientation/gender identity as a ground of non-discrimination.
3. There should be a special legal protection against this form of discrimination inflicted by both state and civil society which is very akin to the offence of practicing untouchability.
4. The Immoral Trafficking Prevention Act, 1956, as has been pointed out earlier, is used less for preventing trafficking than for intimidating those who are the most vulnerable i.e., the individual sex worker as opposed to brothel keepers or pimps. This law needs to be reformed with a clear understanding of how the state is to deal with those engaged in sex work.
5. Section 375 of the IPC should be amended to punish all kinds of sexual violence, including sexual abuse of children. A comprehensive sexual assault law should be enacted applying to all persons irrespective of their sexual orientation and marital status.
6. Civil rights under law such as the right to get a passport, ration card, make a will, inherit property and adopt children must be available to all regardless of change in gender / sex identities.

Police Reforms

1. The police administration should appoint a standing committee comprising Station House Officers and human rights and social activists to promptly investigate reports of gross abuses by the police against kothis and hijras in public areas and police stations, and the guilty policeman be immediately punished.
2. The police administration should adopt transparency in their dealings with hijras and kothis; make available all information relating to procedures and penalties used in detaining kothis and hijras in public places.
3. Protection and safety should be ensured for hijras and kothis to prevent rape in police custody and in jail. Hijras should not be sent into male cells with other men in order to prevent harassment, abuse and rape.
4. The police at all levels should undergo sensitization workshops by human rights groups/queer groups in order to break down their social prejudices and to train them to accord hijras and kothis the same courteous and humane treatment as they should towards the general public.

Other Measures

1. A comprehensive sex-education program should be included as part of the school curricula that alters the heterosexist bias in education and provides judgement-free information and fosters a liberal outlook with regard to matters of sexuality, including orientation, identity and behaviour of all sexualities. Vocational training centers should be established for giving the transgender new occupational opportunities.
2. The Press Council of India and other watchdog institutions of various popular media (including film, video and TV) should issue guidelines to ensure sensitive and respectful treatment of these issues.
3. Several NGO's are working in almost every field but ironically there are very few NGOs for transgender.

Reforming the Medical Establishment

1. Initiate a debate on whether being transgender should be classified as a gender identity disorder or whether it should be seen as a choice.
2. The Medical Council of India should issue guidelines to ensure that discrimination in medical treatment of hijras and kothis, which would include refusal to treat a person on the basis of their gender identity, is treated as professional misconduct.
3. Reform medical curricula in medical colleges that moves beyond seeing transgenderism as a disease and a deviance.

Hopes for the Future

- The right to be treated fairly with compassion & free from unjust treatment, cruelty, discrimination, & exploitation in all private & government institutions & other entities.
- The right to be recognized as a marginalized group thus appropriate representation be afforded to us in all government instrumentalities & all other groups & organizations whether local or international.
- The right to be given equal Opportunities in employment as Transgenders.
- The right to participate in all socia-Economic, political & cultural activities, programs & services that directly concern and affect us.
- The right to build a family and home without prejudices and biases.

- The right to form and organize groups to freely redress our grievances against the government and other institutions without fear of being imprisoned or killed.
- The right to adequate access to health care and support, appropriate information and attain the highest standard of sexual and reproductive health.
- The right to bodily autonomy and to decide freely the matters concerning our health and reproduction that is free of discrimination, coercion, violence and deceit.

TAMIL NADU SHOWS THE WAY TO TRANSGENDERS IN INDIA

There is a population of approximately 30,000 transgenders in the State of Tamil Nadu. They meet in ***Koovagam***, a village in the Ulundurpet taluk in ***Villupuram*** district, Tamil Nadu in the Tamil month of Chitrai (April /May) for an annual festival which takes place for fifteen days.

In Tamil Nadu, Hijras are known as Aravanis. Most of them do not finish high school because they are constantly teased by their peers. They dress in saris, give themselves feminine names, and refer to each other in female kinship terms. After becoming Aravanis, most of them leave their natal homes, and join the Aravani community. They are shunned by family members, especially their male kin, and offer material as well as emotional support to each other. Aravanis are more than cross-dressers. Many go through a sex change operation or take hormones to become a "perfect" female, and many also become sex workers to serve non-Aravani men. At times they maintain a monogamous relationship with a man they call a husband.

Tamil Nadu government took bold steps to recognize transgenders as a separate gender for the first time in the country.

In Tamil Nadu, a remarkable group of aravani activists have, through legal and advocacy measures, been able to get the Tamil Nadu government to constitute an Aravani Welfare Board, meant especially to look after the welfare of the aravani community. The Board has ten aravani representatives who act in an unofficial advisory capacity. The welfare board is empowered to look into the various problems, difficulties and inconveniences faced by the transgenders and based on these inputs, formulate and execute welfare schemes for their betterment.

The government also announced to create a special database of transgenders that would help deal with their problems and demands. The database would be created by a non-governmental organization and would map the population of transgender in the state and find out their detailed demands such as ration cards, voter identity cards and health facilities etc.

It is the responsibility of the Government to ensure wide publicity through the print and visual media, of the fact that aravanis are entitled to get registered in electoral rolls and that transgender individuals could choose either 'male' or 'female' as their gender when applying for official identity documents. The state's education department issued a G.O. creating a "third gender category" for admission In educational institutions.: As per this order, educational institutions have to issue application form for undergraduate courses that will include transgender as a separate category. This will permit transgender students to join any college of their choice, whether co-educational, men's or women's colleges. Further, the government has issued guidelines for schools to provide for counseling of transgender students, counseling for families of transgender students to ensure they don't disown them, and ensuring disciplinary action against schools and colleges who refused to admit aravanis.

Transgenders are in need of equality and security. They are being shunned by the society, suffer offences and crimes and are deprived of basic housing facilities. The sorry state of transgender

is not an age old phenomena. In ancient and medieval times they had some respect in the society. Recorded history says that transgenders were used as palace guards. They were entrusted with the responsibility to look after the security of the female chamber of the Royal Palace.

However, with the advent of Victorian sense of morality imposed by the British rule the transgender fell out of the mainstream in India. The Indian society now sees them as evil and immoral.

It is very heartening that very laudable efforts are being taken by the Government of Tamil Nadu, mainly after the conference was organized In Chennai, to rehabilitate the transgender and to achieve equality for them in the community.

I am happy to inform you that the Government of Tamil Nadu have taken the pioneer effort to reach out to the transgenders and the Government on the Floor of the Assembly announced to constitute Welfare Board for the Transgenders in the State and allocated an amount of Rs.100 Crores. The Welfare Board comprise of 9 Transgender members, who have been empowered to look into the various problems, difficulties and inconvenience faced by the community and based on the inputs received, the Government have formulated and executed various welfare schemes. I would like to highlight some of the welfare schemes so formulated by the Government of Tamil Nadu:-

- 1) The Government has created a database on Transgender that would help to deal with their problems and demands such as housing, ration card, voter identity, patta, health facility etc.
- 2) The Government has also issued a Government order for admission of Transgenders in Government Schools and Colleges.

After the Judicial Colloquium, definite progress has been made and awareness on the part of public and philanthropists enabled for creating new job opportunities and programmes for Transgenders.

Life Insurance Corporation of India, In response to the Seminar arranged for employment mela has given appointments to Transgenders as Agent In the Corporation. Nearly 100 Transgenders participated and 14 of them were selected for appointment as agent. Further, 50 transgenders have given willingness to work as agents in the Life Insurance Corporation of India.

So far 8 meetings of the Welfare Board have been held and progress has been made and in the Welfare Meetings the Transgenders expressed their grievances.

The Transgender persons have been provided with education assistance of Rs.15,300/-

A proposal has been sent for making a documentary film on Transgenders incurring an amount of Rs.1,05,000/-, which has been approved by the Government.

Likewise, Rs.13,380/- has been approved for starting a tailoring training by a NGO for the transgenders in Chennai.

Rs.2.25 Lakhs has been distributed to the District Social Welfare Officer, Chennai for starting Beautician course for the transgenders.

It is proposed to start self-employment of manufacturing Agarbathis in Tuticorin District and in this regard the Government has been addressed for approval of Rs.1.60 Lakhs.

An amount of Rs. 100 Crores has been sanctioned by the Government for group houses for 182 Transgenders in 10 districts.

An amount of Rs. 1,06,813/- has been sanctioned towards staff salary and maintenance of the short stay home for the Transgenders, which is being run in Chennai by the Government.

In Chennai, efforts are being made to get houses for 163 Transgender persons through the Tamil Nadu Slum Clearance Board and proposal to this effect has been sent to the Slum Clearance Board.

Transgender persons, who have enrolled themselves with the Welfare Board, action plan has been drawn for rehabilitation through awareness programmes and providing employment opportunities.

It is high time the Central Government and the State Governments come forward, like the State of Tamil Nadu and take all possible steps for bringing the Transgender Community into the mainstream. The progress made in fostering public health systems and affirmative action policies for transgenders in Tamil Nadu should be replicated at the national level.

To put in a nutshell the following solutions are needed:

- The transgender persons must be properly documented in census.
- They need to be considered for statutory reservation in educational institutions and job opportunities in public and private sectors.
- They need to be empowered with high degree of educational and vocational trainings to upgrade their earning and status in the society.
- Since they are prone to health setbacks, they need proper medical facilities including insurance in the health sector.

There has to be togetherness. They should be brought under one umbrella, where people from mainstream society enjoy certain rights and benefits. They could be accorded security and further benefits through social, political and legislative intervention. Separate law is needed to ameliorate the condition of eunuchs, and ensure that they enjoy the rights granted to every citizen.

UNDP Country Director Caitlin Wiesen pointed out the progress made in neighbouring Pakistan and Nepal to give due recognition to the transgender community. She particularly highlighted the Pakistani Supreme Court's landmark judgment affirming their right of access to all government schemes and programmes.

In western countries, the transgenders are very much part of the society, then why not in India they will be given recognition and respect like others. We need to take a look either into their past or into the future to stop vast discrimination against such a large portion of the population and to help them to divert their way from sex workers to good Citizens.
