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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

TRANSGENDER PEOPLE AND THE LEGAL SYSTEM: DISCRIMINATION AND ACCESS TO JUSTICE

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ABSTRACT

In India, discrimination by society and state prosecution of transgender individuals persisted unchallenged. Although there is ample evidence of police sexual and physical abuse of transgender individuals, the law does not protect against such abuse. Gender and sex have a profoundly structured influence on our culture. On all levels of our society, persons are classified as either "male" or "female." However, gender variety challenges the gender binary system's classifications of sexual orientation. Through intersex, third or other genders, gender fluidity, positions outside of gender, gender queer, and other means, gender diversity challenges the gender binary framework. This normalization of gender binary thinking is also contested by members of the "transgender" community. Shiv-shaktis, jogtas, jogappas, Aradhis, Sakhi, and other transgender identities are among the many sociocultural groups of transgender persons in India, including hijras and kinnars. In modern India, all members of these subgroups experience extreme discrimination and harassment in all spheres of life. They are also subjected to unfair treatment, including verbal abuse, physical and sexual violence, false arrests, denial of access to services, educational opportunities, and ancestral property, as well as victimization in a variety of contexts, including the workplace, public spaces, educational institutions, and families. The paper's primary focus is on highlighting some of the significant issues that the transgender population in India faces, raising awareness of these issues among the general public, and outlining the steps that the courts have taken to date to safeguard transgender people.

Key Words: Sexual Orientation and Gender Diversity, Transgender, Social Exclusion and Discrimination, Transphobia.

INTRODUCTION

Indian Mythology and History: In Indian culture, transgender individuals, also known as hijras¹, have a lengthy history. In the past, they were acknowledged and, in certain situations, even worshipped. In pre-colonial India, the Hijra community played roles in royal courts and religious festivities. Transgender humans are people of any age or intercourse whose appearance, private characteristics, or behaviours vary from stereotypes approximately how ladies and men are “supposed” to be. Transgender humans have existed in each culture, race, and sophistication because the tale of human existence has been recorded. Only the term “Transgender” and the clinical era to be had to transsexual humans are new. In its broadest sense, Transgender encompasses all and sundry whose identification or behaviour falls outdoor of stereotypical gender norms. Whether at work, school, or in social situations, transgender people frequently face discrimination because of their gender identification. Isolation and exclusion are exacerbated by negative assumptions and stigmatization that result from a lack of awareness of transgender realities. In schools, workplaces, and public places, transgender people particularly transgender women of color are frequently the targets of bullying, verbal abuse, and physical violence. Accessing culturally acceptable mental health services may be challenging for transgender individuals. Inadequate care may result from providers' ignorance of gender identity issues or their lack of empathy for transgender experience. The concept of "tritiyaprakriti" or "napumsaka" had been an integral part of Hindu mythology, folklore, epic, and early Vedic and Purnic literatures. The term "napumsaka" had been used to indicate the absence of procreative ability, presented by indicating difference from masculine and female markers. As a result, some of the early texts dealt extensively with issues of sexuality and the idea of third gender, which was an established thought therein. Transgender people had been a part of Indian society for centuries².

OBJECTIVES:

1. To Examine Discrimination Within the Legal System
2. To Investigate Legal Barriers to Equal Treatment
3. To Evaluate the Effectiveness of Existing Legal Protections

MARGINALIZATION AND CRIMINALIZATION IN THE ERA POST-INDEPENDENCE

Though the Act was repealed in 1952, its legacy endures, with numerous municipal laws reflecting prejudices against Hijras and other specific tribes. Similar to the Criminal Tribes Act of 1871, the Karnataka Police Act of 1964 was recently amended in 2012 to "provide for registration and surveillance of Hijras who engaged in kidnapping of children, unnatural offences, and offences of this nature" (Section 36A). Section 36A grants the Karnataka Police Act of 1964 the authority to regulate eunuchs. According to the Act, certain criminal tribes and eunuchs were to be registered, monitored, and controlled. Eunuchs who were registered and appeared to be dressed or ornamented like women were punished, as were those who danced or performed music in a public setting. They could also be arrested without a warrant and sentenced to a maximum two-year jail sentence, a fine, or both. The Act denied the registered eunuchs their civil rights by forbidding them from acting as guardians of minors, creating a will or gift deed, or adopting a son. It also made it illegal to keep a boy under the age of sixteen under the control of a registered eunuch, which carries a maximum sentence of two years in prison or a fine. However, the Act was abolished in August 1949³. Some Indian governments used to grant protections and benefits to Hijra people by integrating into the Hijra community at the start of the British era in the Indian subcontinent. Furthermore, because the land was not passed via blood relatives, the benefits, which included the gift of land, the right to food, and a smaller sum of money from agricultural households in a particular area were finally taken away by British legislation. In the early 19th century there was a tendency by hijra to show their genitals if people refused to give alms⁴.

WIDESPREAD VIOLENCE AND DISCRIMINATION TRANSGENDER

PEOPLE FACE:

A form of hatred, disbelief, terror, fear, or mistrust for transgender people or those whose gender expression does not conform to traditional gender roles, transphobia is also the main cause of such discrimination and violence against these individuals, leading to a life of worry and anxiety as they fear constant judgment.

Education: The 2011 Indian census found that 46% of transgender people were literate, compared to 74% of the general population. A study of 120 transgender people in Coimbatore city found that 56% of them have completed elementary and middle school. Some of them

reluctant to go school after witnessing the changes in them and 64 percent of them belonged to low-income group. According to the NHRC report, 12 percent of transgender persons left school because their professors harassed them, and 52 percent of transgender people left school because their classmates harassed them.

Family: Because transgender people are subjected to violence and prejudice primarily due to societal expectations, trans children are frequently chastised, blamed, and criticized by their relatives.

Employment: Finding a suitable employment and the work of their choosing is extremely challenging for transgender people. Due to social discrimination in the workplace, they are compelled to engage in sex work, begging, bar dancing, etc. In addition to the community's low literacy rate, transgender people were unable to apply for these positions. Here are some examples of people whose promising futures were cast into a pit of despair.

Gender based violence: Transgender people experience assault, physical violence, sexual violence, and other forms of violence only because of their identity. Since some acts of violence against these individuals go unreported, the numbers are significantly greater. The majority of the violence they have experienced has come from their own friends, family, and partners. Crimes against transgender people are not specifically mentioned in the government's annual NCRB data collection of crime against persons. **Incarceration and Misplacement:** Several studies, including research by organizations such as the *American Civil Liberties Union (ACLU)*, have documented how transgender people are frequently placed in correctional facilities that do not align with their gender identity. This misplacement often results in harassment, sexual assault, and psychological trauma.

Lawsuits and Reports: The National Prison Project's reports and cases such as *Farmer v. Brennan* have brought attention to the insufficiency of health treatment and protections for transgender inmates.

DAY TO DAY PROBLEMS FACED BY TRANSGENDER COMMUNITY:

Transgender people in India face a variety of issues. This discrimination not only denies TG people equal access to key social goods, such as employment, health care, education and

housing, but it also marginalizes them in society and makes them one of the vulnerable groups who are at risk of becoming socially excluded.

1. Marginalization and Social Exclusion:

Marginalization is at the center of exclusion from pleasant and complete social lives at individual, interpersonal and societal levels. problem they face quite often. Since, there are no separate toilet facilities for Hijras/transgender persons; they have to use male toilets where they are prone to sexual assault and harassment.

Impact of Exclusion and Discrimination:

The exclusion and discrimination have major impacts on the lives of transgender persons. This has resulted in the following:

- * Dropping out of school earlier
- * Leaving Home and Family
- * Unable to find regular jobs, have less options than others.
- * Being ignored in the community and isolated
- * Unable to access various services and Unaware of what they are entitled to
- * Mobility, Move to other areas, (such as the city and urban areas)
- * Lack of family and social support
- * Migrate to other countries for seeking safer livelihood and acceptance
- * Rejected from Religion (Esp. Muslim and some Christian Fundamentalist sects)
- * Attempt suicide
- * Decide to follow their parents to marry opposite sex and then divorce.

2. Harassment of Transgender People in Educational System: The transgender network is a particularly marginalized and prone one and is significantly lagging at the back of on human improvement index specially withinside the vicinity of training. Majority of this network is illiterate or much less knowledgeable because of which they're now no longer capin a position to take part absolutely in social, cultural, political and financial activities. There are many elements chargeable for the low stage of training of this network however essential motives are exclusion from family/society, poverty, social stigma and discrimination, insensitive mind-set of teachers/staff, violence and sexual abuse.

3. Poor Economic Conditions and Discrimination in the Workplace: The interrupted education and social exclusion further limits the employment and livelihood opportunities for transgender community. There are several factors responsible for their economic deprivations which are as under:

- * Exclusion from Family and Society
- * Stigma and Discrimination at work place
- * Lack of knowledge and training in vocational skill development
- * Lack of opportunities
- * Lack of confidence in engaging them by employers.

4. Problems of Homelessness: The myriad problems facing Transgender people who are homeless include a lack of housing and services that meet their specific needs. They are living on city's streets because they were thrown out of their homes for being queer, or ran away to escape an abusive situation. Family housing in the shelter system across the country is not available for homeless same-sex couples. Transgender people are not allowed to choose with which gender they are more comfortable living in the shelter system. Abuse and harassment of Transgender homeless people is rampant in the shelter system.

5. Psychological Distress: Transgender people face considerable levels of stigmatization, discrimination and harassment in their daily lives.

Experiences that could negatively impact mental health:

- * Hostility from or rejection by loved ones or religious groups
- * Bullying at school, harassment by neighbors, danger of violence in public places
- * Casual homophobic and transphobic comments on everyday basis
- * Prejudice/embarrassed response from professionals
- * No protection against discrimination at work, housing, pensions, etc.
- * Childhood sexual abuse
- * Verbal harassment, greater fear of physical violence and discrimination.

TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

- 1) Definitions: The terms "transgender" and "intersex variation" have been expanded to include both men and women, regardless of whether they have received hormone therapy, sex reassignment surgery, or any other type of therapy.

- 2) Non-discrimination: In addition to reaffirming transgender people's freedom of movement, property, and office, the law strictly forbids discrimination against them in healthcare facilities, educational institutions, and other public settings.
- 3) Identity Certificate: The right to self-perceived gender identity is administered, and the district magistrate is also responsible for issuing a "certificate of identity as a TG person, without undergoing a medical assessment." For anyone claiming a gender change, it also allows for a subsequent gender change to either female or male.
- 4) Equal Opportunity: It also oversees equal opportunity in relation to policy issues. for the community of transgender people. The creation of specific policy measures that would be inclusive of transgender individuals has been required by legislation.
- 5) Complaint Officer: Every institution is required by law to designate a specific person as a complaint officer.
- 6) Healthcare and Medical Facilities: The law also calls for the creation of distinct HIV surveillance centers for TG individuals; these facilities must cover medical costs through an insurance plan tailored to the medical requirements of transgender individuals and provide healthcare related to hormone therapies, sex reassignment procedures, etc.
- 7) National Council for Transgender Persons (or "NCT"): The law also requires the NCT to be established in order to provide guidance and advice to government officials regarding the auditing of current policies, the creation of new ones, and the resolution of complaints.
- 8) Penalties and Offenses: The statute now covers crimes including putting transgender people into labor, denying them access to public facilities, abusing them mentally, emotionally, physically, or sexually, and other related offenses that are punishable by law⁶.

LITERATURE REVIEW:

Legal Recognition: One of the significant moments for transgender rights in India was the 2014 Supreme Court verdict in *National Legal Services Authority v. Union of India* (NALSA case)⁷, which recognized transgender people as a third gender. This ruling granted them legal recognition and called for measures to protect their rights.

The Transgender Persons (Protection of Rights) Act, 2019: This act aims to prevent

discrimination against transgender persons in various sectors such as education, employment, and healthcare. However, critiques have highlighted issues such as the lack of provisions for self-identification and concerns about the bureaucratic process to change gender identity, which is considered problematic by activists.

CASE STUDIES:

National Legal Ser.Auth vs Union Of India & Ors on 15 April, 2014

Gender identity is one of the most-fundamental aspects of life which refers to a person's intrinsic sense of being male, female or transgender or transsexual person. A person's sex is usually assigned at birth, but a relatively small group of persons may be born with bodies which incorporate both or certain aspects of both male and female physiology. At times, genital anatomy problems may arise in certain persons, their innate perception of themselves, is not in conformity with the sex assigned to them at birth and may include pre and post-operative transsexual persons and also persons who do not choose to undergo or do not have access to operation and also include persons who cannot undergo successful operation. Countries, all over the world, including India, are grappled with the question of attribution of gender to persons who believe that they belong to the opposite sex. Few persons undertake surgical and other procedures to alter their bodies and physical appearance to acquire gender characteristics of the sex which conform to their perception of gender, leading to legal and social complications since official record of their gender at birth is found to be at variance with the assumed gender identity. Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms. Gender identity, therefore, refers to an individual's self-identification as a man, woman, transgender or other identified category.

Navtej Singh Johar vs Union Of India Ministry Of Law And ... on 6 September, 2018

there seems to be no reason why a **transgender** must be denied of basic human rights which includes right to life and liberty with dignity, right to privacy and freedom of expression, right to education and empowerment, right against violence, right against exploitation and right against discrimination. The Constitution has fulfilled its duty of providing rights to **transgenders**. Now it is time for us to recognise this and to extend and interpret the

Constitution in such a manner to ensure a dignified life for **transgender** people. All this can be achieved if the beginning is made with the recognition of TG as third gender. The aforesaid judgment, as is manifest, lays focus on inalienable —gender identity and correctly connects with human rights and the constitutionally guaranteed right to life and liberty with dignity.

Shivani Bhat Vs State of Nct of Delhi & Ors on 5 October, 2015

The present petition highlights and brings to the fore the socio- economic marginalization and exclusion of those whose behaviour is considered "inappropriate" by society. It clearly demonstrates that those who do not conform, render themselves vulnerable to harassment and violence not just by the Police but also by society that ridicules them. **Transgenders** have long lived on the fringes of society, often in poverty, ostracised severely, because of their gender identity. They have for too long had to endure public ridicule and humiliation; have been socially marginalized and excluded from society, their basic human rights have been severely denuded.

CONCLUSION AND RECOMMENDATIONS:

The following actions may help in improving the access:

1. Awareness of gender diversity and the need to safeguard transgender youth from hostile school environments is a dire need. Schools and teacher education programmes are crucial sites where Transgender issues and concerns need to be addressed. To help promote health and safety among Transgender youth, schools can implement the following policies and practices:
*Special school should be established for Transgender and provision of free education from 1 to 12 standards. Scholarship schemes for Higher Education should be effective for Transgender with the help of Central and State Govt.

*Encourage respect for all students and prohibit bullying, harassment, and violence against all students.

*Encourage student-led and student-organized school clubs that promote a safe, welcoming, and accepting school environment (e.g., gay-straight alliances, which are school clubs open to youth of all sexual orientations).

*Ensure that health curricula or educational materials include HIV, other STD prevention information that is relevant to Transgender youth; such as, ensuring that curricula or materials use inclusive language or terminology.

*A chapter on TG can be included in the adolescent education curriculum in the school to sensitize the larger society on Transgender. This can be an effective step to address stigma/discrimination at school level.

2. Transgender community has unique culture of dance, folk songs and arts etc. It gives great strength and a sense of identity to the community. These expressions of culture and arts are inseparable parts of the community and should be integrated with livelihood activities to ensure a greater community involvement. The efforts with adequate fund support should be made to serve as a link to employment opportunities.

3. Awareness and information are needed for parents to support their gender nonconforming or transgender children, setting aside their discomfort and deeply held normative attitudes. Parents and siblings should be alert to the risk of the children facing bullying and other violence outside the home – in the extended family, at schools, on the playground, and support them accordingly. They also need to take cognizance of the escalation in stress faced by a gender nonconforming or transgender child as he/she grows into adolescence and experiences dysphoria when he/she develops secondary sexual characteristics at odds with his/her sense of gendered self.

4. Policy and institutional reforms that enable access to social protection schemes, targeting the poor and other at-risk groups, must be made transgender inclusive.

*At the end it can be said that, protecting Transgender people from violence and discrimination does not require the creation of a new set of Transgender-specific rights, nor does it require the establishment of new international human rights standards. The legal obligations of States to safeguard the human rights of Transgender people are well established in international human rights law on the basis of the Universal Declaration of Human Rights and subsequently agreed international human rights treaties. All people, irrespective of sex, sexual orientation or gender identity, are entitled to enjoy the protections provided for by international human rights law, including in respect of rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly.

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2. Historical Evolution of Transgender Community in India - M. Michelraj
3. K.S. Radhakrishnan, J. In the supreme court of India Civil original jurisdiction Writ petition (civil) No.400 of 2012 National legal services authority, j u d g m e n t 2013.

4. Alms is a religious rite which, in general, involves giving materially to another as an act of religious virtue. It exists in a number of religions, for instance, Buddhism, Hinduism and Islam
5. *American Civil Liberties Union (ACLU)*
6. Transgender Persons (Protection Of Rights) Act, 2019
7. “third gender” – NALSA CASE – INDIAN KANOONⁱ

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1. ⁱ Hajras word - <https://www.wisdomlib.org/definition/hijra>
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 3. K.S. Radhakrishnan, J. In the supreme court of India Civil original jurisdiction Writ petition (civil) No.400 of 2012 National legal services authority, j u d g m e n t 2013. Alms is a religious rite which, in general, involves giving materially to another as an act of religious virtue. It exists in a number of religions, for instance, Buddhism, Hinduism and Islam
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