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BREAKING DOWN BARRIERS: AN EXAMINATION OF TRANSGENDER INCLUSION IN EMPLOYMENT IN INDIA

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"Inclusivity does mean innovation. The more inclusive you are, the more debates you can have, the less hierarchy you have, the faster it is to recover from failure… If you say everyone should 'talk like me, look like me, be like me, have the same background as me' – I don't think that would work well for companies." -NISABA GODREJ

ABSTRACT
Since they do not fall into the broad gender classifications of "male" or "female," the transgender group is one of the most disenfranchised groups in the nation. As a result, they deal with issues including prejudice, social marginalization, unemployment, a lack of medical facilities, and a lack of educational resources. About 92% of transgender people in the nation are denied the opportunity to engage in any kind of economic activity, and even those who are suitable for jobs are denied them, according to National Human Rights Commission research. This paper's literature recognizes the legal position of India's transgender population and demonstrates the necessity of an efficient legislative framework for their involvement in the public sector.
KEYWORDS: *Transgender, Discrimination, Rights, Government Services, Society*

1. INTRODUCTION

In India, discrimination against transgender individuals is not uncommon, particularly when pertains to job possibilities. The Hon'ble Supreme Court issued a historic ruling in the 2014 case of National Legal Services Authority vs. Union of India as a consequence of the persistent efforts of campaigners over the previous few years. The Court emphasized that mistreatment and discrimination against the transgender minority are widespread in India, especially in fields like work and education. Thus, in accordance with Article 21[1] of the Constitution, the Court acknowledged the third gender's right to a dignified life. The Transgender Persons (Protection of Rights) Bill, 2016 (the Bill) has been developed in an effort to give statutory support to the recommendations made by the National Legal Services Authority of India. It is presently awaiting parliamentary approval to become law.

People who identify as homosexual, bisexual, gay, lesbian, transsexual, transgender, or intersex are considered sexual minorities. Due to the wide range of terms and their applications for defining sexual minorities, it has proven difficult to apply the current requirements of international human rights law to their situation. sexual minorities, as well as how some of them—such as the term "queer," which has evolved over time—remain contentious. Less than half of India's transgender population has access to school, and those who do (62% approximately) experience prejudice and abuse. Additionally, 92% of the population is denied the ability to engage in any kind of economic activity.

1.1 WHO IS A TRANSGENDER

"Transgender persons are those who are socially, legally, and medically classified as such as male as well female, however who argue that this is not their self-identity and/or expression," the Supreme Court defined in the seminal ruling of *NLSA vs. Union of India*[1]. People who identify as transgender may or may not be intersex".

1.2 HISTORICAL BACKGROUND

Throughout Indian mythology, transgender individuals may be found in a number of Hindu books, including the Mahabharata, where Arjuna disguises herself as the teacher Brihannala, Shikhandi changes her gender, and Ardhanarishvara is the androgynous hybrid of Shiva and Parvati. King Ila, who lived half his life as a man and the other half as a woman, is mentioned in several Ramayana versions. In addition to being recognized in ancient Hindu temple sculptures, transgender persons are mentioned in the Kamasutra, an ancient Indian Hindu scripture describing human sexual behaviour. The practice of transgender individuals blessing newborns and weddings is

[1] *CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) NO.400 OF 2012*

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known as badhai in some regions of India today[2]. However, trans women do not often do this in Kerala or the Northeast. A well-known story from the Ramayana, in which Lord Rama, a significant Hindu god, bestowed blessings to trans people because they waited for him during his exile, is responsible for their semi-divine position today[3]. A lot of trans persons use this story to highlight their worth and position in society. The history of transgender individuals in India dates back about 4,000 years. In medieval India, they were known to have contributed to the Ottoman and Mughal empires. They served in court in key capacities as advisers, administrators, and generals. The enhanced prominence of transgender persons under the Mughal empire, particularly in harem administration, has been observed by several visitors. According to British tourist Eldon Rutter's 1925 travelogue, they also protected the Prophet's grave[4].

Unfortunately, transgender persons were punished and marginalized under the Criminal Tribes Act of 1871, which was passed during the British Empire. The whole Hijra community was declared to be "criminal" and "addicted to the systematic commission of non-bailable offences" under the Act. The Act required transgender individuals to be registered and monitored, and they might be detained without a warrant, imprisoned for up to two years, fined, or both.

2. NEED FOR EFFECTIVE LEGAL FRAMEWORK

In India, discrimination against transgender individuals is not uncommon, especially while it comes to job possibilities. The Hon'ble Supreme Court issued a historic ruling in the 2014 case of National Legal Services Authority vs. Union of India as a consequence of campaigners' persistent efforts over the previous few years[5].

The historic ruling in the matter of Union of India v. National Legal Services Authority and others. It stipulated that a trans person may self-identify as the gender of their choosing and that there was no requirement for SRS (Sex Reassignment Surgery) in order to identify as trans. As a socially and economically disadvantaged group, transgender persons were to be given preference in employment and educational opportunities. The central and state governments were required to run HIV sero-surveillance centers for transgender individuals, offer separate restrooms, and provide tailored healthcare services in hospitals. The ruling also required gender sensitization, public awareness campaigns, and social assistance programs. However, the majority of these modifications have not yet been put into effect, even in 2019. The community did not entirely triumph from the NALSA ruling.

In this nation, transgender persons experience several sorts of oppression. In addition to social isolation, discrimination is widespread and severe, particularly in the areas of health care, employment, and education. Many of the rights and benefits enjoyed by other citizens of this nation are being denied to them. The Constitution's provision of equality before the law and equal protection under the law is denied to transgender people since they are denied social and cultural engagement, which limits their access to public spaces, healthcare, and education. Additionally, the community is discriminated against when it comes to running for office, voting, obtaining licenses, and other rights, and is essentially considered as an outsider and untouchable. Statecannot discriminate them on the ground of gender, violating Articles 14[6] to 16 and 21 of the Constitution of India.

Article 15(2)[7], which states that transgender individuals are not to be subjected to any liability, limitation, or condition with regard to entrance to public places, has been routinely denied to them. Additionally, transgender individuals have not been granted the special provisions outlined in Article 15(4) for the progress of citizens who belong to the economically and socially disadvantaged groups (SEBC), to which they are legally entitled and qualified. The state must take some affirmative action to help them progress in order to make up for the centuries of injustice they have endured. Because gender-based discrimination violates basic freedoms and human rights, transgender people also have the right to enjoy economic, social, cultural, and political rights without facing discrimination. Additionally, transgender people have been prohibited rights under Article 16(2) and subjected to sex-based discrimination in state employment and office. According to Article 16(4) of the Constitution, transgender people are likewise entitled to reservations when it comes to appointments. In order to provide them with adequate representation in public services, the state must use affirmative action. Together with the Directive Principles of State Policy and other international instruments to which India is a party, Articles 15(2) to (4)

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[6] *Article 14 of Constitution of India, 1950*
[7] *Article 15 of Constitution of India, 1950*

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and 16(4) call for social equality, which transgender people can only achieve if opportunities and facilities are provided to them so they can live with dignity and on an equal footing with people of other genders.

The LGBTQ community may have been very relieved by the Supreme Court's historic decision to decriminalize homosexuality, but not much has changed for its members as of yet. Coming out remains a difficult task. Furthermore, the Transgender Persons (Protection of Rights) Bill[8], which the federal government is attempting to adopt, is viewed as a backward step that would reverse all of the progress that has been made thus far.

3. EFFORTS ACROSS STATE GOVERNMENTS IN INDIA

By establishing the Department of Social Security and Empowerment of Persons with Disabilities (SSEPD) in July 2015, Odisha made significant progress in this area. This Department will deal with issues pertaining to transgender people's rights. A proposal to recognize transgender people in Odisha and grant them certificates identifying them as third gender has been developed by the SSEPD.

3.1 Role of SSEPD

For the benefit of transgender people, the SSEPD will carry out five sub-schemes that are supported by the Central Government. Transgender students are eligible for pre-matric & post-matric scholarships as part of the program. Training for skill development will be offered to transgender individuals. Additional sub-schemes include the national pension plan for transgender individuals and aid for parents of transgender children.

The Odisha government took action in September 2015 to allow transgender people to benefit from the National Food Security Act of 2013. Additionally, the Odisha government recently declared that under a number of programs, transgender people will get the same social assistance as those living below the poverty line.

3.2 Status in Indian States

States like Tamil Nadu, Andhra Pradesh, and Odisha have taken steps to guarantee transgender people certain rights; while Tamil Nadu has loosened the requirements for transgender people to join government service, Andhra Pradesh has a pension plan, and Odisha provides monthly welfare assistance to transgender people who are typically excluded from mainstream economic activities, India does not yet have a centralized law safeguarding their rights. The trans community in India is nonetheless susceptible to many forms of exploitation in the lack of such a law. A few of them are listed below:

1. In 2017, 23 transgender people were employed by Kerala's Kochi Metro Rail Limited; however, eight of them left their positions within a month because several landlords refused to provide them with housing. Since their employer was under no legal duty or motive to intervene and support them in their battle against such discrimination, their only option was to resign from their positions.
2. A transgender principal in West Bengal had to resign from her position due to a lack of cooperation from her employer and coworkers. She had to write to the President to request mercy-killing because Air India would not hire her due to her gender, exposing the extent of exclusion and discrimination experienced by the transgender community.
3. A 28-year-old guy who had sex change surgery in 2014 to become a woman & is currently being classified as a "transgender" person was turned down for a cabin crew position by Air India."
4. At January of last year, Manu (name changed), a thirty-something gay, was ecstatic to land a blue-collar job at a five-star hotel in the metropolis. He believed that he might at last live a secure and pleasant life with a consistent salary. However, ten months later, Manu is unemployed once more; he left his lucrative position after being humiliated for disclosing his sexual orientation.

3.3 Importance of financial inclusion

Gay and transgender employees are not receiving the fair treatment they are due in the current economy. Far too many gay and transgender Americans are losing their jobs or being turned down for jobs because of their sexual orientation or gender identity at a time when all families are struggling to make ends meet. Because of this, many employees face incredibly high rates of harassment and discrimination at work, and they frequently do not have access to basic benefits like health insurance for themselves and their families.

With the Supreme Court's historic ruling in the NALSA case and the repeal of Section 377, which made homosexuality illegal, it is time to focus on the struggles that need to be waged in India after Section 377. Although decriminalization could result from a favorable

[8] *Lok Sabha. (2016). The Transgender Persons (Protection of Rights) Bill*

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Supreme Court decision, equality for India's 45 million LGBTQ+ residents will not follow. All facets of society must be involved in order to achieve equality[9].

First off, it is not just beneficial from a welfare and uplift perspective, but it also makes financial sense for firms to concentrate on LGBTQ+ employment. Globally, there is sufficient research to support this. The worldwide LGBTQ+ community's purchasing power in 2015 was $3.7 trillion, or approximately ₹254 trillion, according to the venture capital firm LGBT Capital (this figure excludes allies, friends, and family of LGBTQ+ persons). According to calculations made by the LGBT Foundation in Hong Kong, the LGBT community globally would rank fourth in terms of GDP if it were a nation. Nearer to home, a 2016 World Bank analysis estimated that homophobia cost India $32 billion in lost GDP, or 1.7% of its total GDP[10]. Research conducted by Out Now Consulting and Forbes India found that 4% of Indians identify as LGBTQ+. Because workers can bring their "whole selves" to work with the assurance that their employer is protecting and empowering them, research from all around the world demonstrates that LGBTQ+ inclusion fosters both corporate innovation and happier workplaces.

SUGGESTIONS/CONCLUSION

The transgender population in India has had a terrible existence for a very long time, from being made fun of and treated differently to being unfairly rejected at employment to being the target of violence and death.

The trans population in India has historically relied on sex work and the streets for their living, which has led to abuse and ridicule. Therefore, educating people about the need of protecting and respecting these sources of income is a crucial first step in raising awareness. Whatever the goal, it does no good to shame them for their decisions and preach from a privileged position.

Seeing and identifying trans individuals in all spheres of society—as educators, students, business owners, engineers, artists, and so forth—is the first step. and normalizing talks is the only way to bring about this type of change. Making transgender individuals visible isn't necessarily the only way to advance. Since no battle can be won by one person alone, it is crucial that allies of the trans community, particularly queer people, stand out for the trans community and not feel ashamed to do so. Additionally, it begins with the children. This is due to two factors. One is that they will be able to express their support vocally from a young age, and the other is that the discussion will be beneficial to kids who are figuring out who they are.

To protect transgender rights, a strong legal framework is needed, and violators and offenders must face severe punishments. If we want to give transgender persons a welcoming climate in society, we still urgently need to offer them with career options. The government can provide incentives to companies who hire transgender people in order to accomplish this goal. By requiring employers to submit quarterly returns that include information about the number of open positions, the number of interviews conducted for those positions, and the number of positions filled, including the percentage of transgender employees working there, the government can take proactive measures to ensure that employers are adhering to this provision. Additionally, changes to several important laws, such Employee State Insurance and Maternity Benefit, can be proposed and put into effect to include transgender people within their jurisdiction.

Examples of personal challenges leading to success include Tamil Nadu's appointment of its first transgender sub-inspector and West Bengal's Joyita Mondal, who became the nation's first transgender judge.

The judicial system, as previously examined, is far from ideal. In addition to providing them with a chance to contribute to India's economic development, empowering the transgender population by making businesses more transgender-inclusive will significantly reduce prejudice against them. More specific legislation pertaining to transgender people's rights to property, banking, identification paperwork, and other areas would undoubtedly be beneficial as well.

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