

**Rights of Transgender Vis a Vis Right to Life and Personal Liberty as Human Being**

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**Abstract**

Most transgender people are in very bad social and economic conditions due to social exclusion. Many of them face ostracism and discrimination, as well as verbal physical and sexual abuse. They also lack of access to education and employment opportunities, ending up to organized groups, forced begging or demanding money. Odisha is the first region in the country to give transgender people social welfare benefits such as a pension housing and food grains -usually allocated for only the most impoverished, an official said on 'Thursday'. Niten Chandra, principal secretary of Odisha's Department of Social Security, said the move to give the transgender community the same benefits as those living below the poverty line was aimed at improving their overall social and economic status. 'Most transgender people are very bad condition because of social exclusion. For example, they very often do not get employment easily,' Chandra told the Thomson Reuters Foundation. 'The govt. had a consultation with transgender people in April, and they had raised their problems and issues. On the basis, we are now taking many decisions to help them- giving them Below Poverty Line status is one of them. Odisha became the first state in the country to give transgender people social welfare benefits- such as a housing, pension and food grains. This move seeks to give the transgender community in the state same benefits as those living below poverty line (BPL) in order to improve their overall social and economic status. In the land mark judgment in April 2014, Supreme Court had recognized transgender as a legal third gender and called on the government to ensure their equal treatment. The apex court had recognized them as a marginalized group and directed government authorities to implement policies and schemes to improve their socio-economic status. It also had directed government that all identity documents must recognize the third gender and certain number of public sector jobs, seats in schools and colleges must be allocated to third gender applicants. Laws along with changing attitude of the society can bring transgender on the equal footing with other citizens.

**Key Words – Transgender; Social Exclusion, Third Gender, Poverty.**

**Introduction**

The World is divided into two halves since the civilization came into being and people started to live together and formed social norms. Male and female were the two sexes recognized by larger communities and even by great civilization such as Greek, Roman, and Hebrew. But it was in Vedic Indian society where there are traces

of third sex. The way they behave and act differs from normative gender role of men and women. Transgender defy rigid binary gender construction and who express or represent breaking and blurring or culturally prevalent stereotypical gender identity. Most of us grow up believing men should act in certain way and women

in other way but transgender people have different sense of themselves.

### **Rights of Transgender:-**

The rights of transgender are one of the sensitive areas that have still not surfaced as one of the transformations that one hope a country in 21<sup>st</sup> would witnessed. Transgender though recognized very recently are struggling to find a foothold in Indian society as there is no recognition of rights of transgender in law. What makes harder for them is the fragile legal support system and social stigma and lack of legal recognition .The marked increase in attacks, rhetorical abuses and restrictive legislations against transgender makes activism for rights a risky Endeavour. So the transgender have the following rights:-

1. Legal Accessibility:
  - Right to domestic partnership.
  - Right to inherit property.
  - Right to fair trial.
  - Right to open a bank account.
  - Right to express their sexual orientation and gender identity.
2. Right to social security:
  - Right to become a nominee in provident fund.
  - Right to spousal survivors benefit.
  - Right to health and medical care.
3. Fundamental rights :
  - Right to equality.
  - Right not to be discriminated on the basis of sex.
  - Right to guaranteed freedoms.
  - Right to life and personal liberty.
  - Right to live with dignity and privacy.
4. Socio-legal rights:
  - Right to marry.
  - Right to education.
  - Right to employment.
5. Right to identification proofs:

- Right to vote.
  - Right to voters identity card.
  - Right to Aadhar card.
  - Right to ration card.
  - Right to passport.
  - Right to pan card.
  - Right to driving license.
  - Right to contest elections.
6. Socio-economic rights:
- Right to participate in socio –economic cultural and political activity.
  - Right to fight social stigma.
  - Right not to be exploited by family members

### **Recent Judgment of Supreme Court:-**

In a historic judgment, the Supreme Court (SC) on Thursday ruled that consensual adult gay sex is not a crime saying sexual orientation is natural and people have no control on it .Here is a look at the timeline of events which leads to this historic verdict.

At about 12.25PM, 6<sup>th</sup> September 2018, gay sex stands decriminalized .All fine judges signed the verdict .Homosexuality gets legal approval and recognition .SC reads down 158 years old colonial law and allowed gay sex among consulting adults in private.

Section 377 in the IPC refers to unnatural offences and says whoever voluntarily has carnal intercourse against the order of nature with any man, women, and animals, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to pay a fine.

- The section came into force in 1861 during the British rule in India (Modeled on the buggery act of 1533) which criminalized sexual activities “against

the order of nature” including homosexual activities.

- It says-whoever voluntarily has carnal intercourse against the order of nature with any man women or animal shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.
- The issue of section 377 was first raised by an NGO, Naaz Foundation, and AIDS Bedhbhav Virodh andolan; in the Delhi high court in 2001 .Both the petitions were dismissed in the court.
- Eight years later, the Delhi high court decriminalized sex between consenting adults of the same gender by holding the penal provision “illegal.”
- However, the 2009 judgment of the high court was overturned in 2013 by the Supreme Court which had also dismissed a review plea.
- The LGBT community got hope in 2014 when the SC directed the govt. to declare transgender a “Third gender.” And include them in the OBC quota.
- On 24<sup>th</sup> August, 2017, the SC had upheld the right to privacy as a fundamental right under the constitution. The SC had also called for equality and condemned discrimination, stating that the protection of sexual orientation lies at the core of the fundamental rights and that the rights of the LGBT population are real and founded on constitutional doctrine.
- In January 2018, three member SC bench heard a petition filed by five people asking the apex court to revisit the Naaz Foundation judgment, the case was referred to a larger bench and help was sought from the center also.

- The apex court on July 17 reserved its verdict on whether to decriminalize section 377 or not .the SC will decide the section criminalizing consensual gay sex is valid or not on Thursday.
- Gender rights activists have argued that section violets different articles of the Indian constitution –
  - ❖ Article 14 guaranteeing equality before law to all individuals.
  - ❖ Article 15 ensuring that no person is discriminated against on the basis of caste, creed, gender etc.
  - ❖ Article 21 ensuring the right of life and liberty to all the citizens of the country.

#### **Conclusion:-**

Preventing human rights violation and social exclusion is a key to sustainable and equitable development. This is true for Tran’s people as much as other human beings, just as the achievement of all 17 SDGs are of paramount importance to all people.

Specifically in regard to transpeoples, the SDGs are a call to immediate action in several fronts : Govt. need to engage with transpeoples to understand their concerns, on unequivocally support the right of transpeoples to legal gender recognition, support the documentation of human right violations against them, provide efficient and accountable processes whereby violations can be safely reported and action taken, guarantee the prevention of such violation, and ensure that the whole gamut of robust health and HIV services are available to transpeoples. Only then can transpeoples begin to imagine a world that respects their core personhood and a world in which dignity equality and wellbeing became reality in their lives.