
DISCRIMINATION: THE COST OF BEING THE THIRD IN LINE

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ABSTRACT

Worshipping *Bahuchara Mata*, the *Hijra*, gets empowered with the power of goddess to bless and curse only after the performance of the Emasculation Ritual or the performance of *Nirvan*. The ceremony is performed by the *Hijra midwife*, with two swift slices of the long blade, permanently severing his manhood¹. (Most Hijras are born with male genitalia however some of the Hijras are born intersex, meaning born with a combination of male and female sex). The remaining blood that gushes from the cut is considered the last of the "male part". The ceremony is performed without any Anesthesia or surgical tools available, for it is believed that medically performed castration would diminish the spiritual experience of the ritual.²

The term "citizen" refers to any individual who has their domicile in the territory of India or who was born within its borders. It is a gender-neutral term, encompassing all citizens, regardless of whether they identify as male, female, transgender, or belong to any other gender identity. However, the real issue arises when laws intended to ensure equality inadvertently perpetuate inequality by focusing primarily on binary gender categories—male and female. This creates a disparity, as the legal framework often fails to address the complexity of gender diversity. The concepts of "first gender," "second gender," and "third gender" are constructs that have evolved over time, but the true understanding of terms like *pulinga* (masculine), *streelinga* (feminine), and *napunsakilinga* (neuter) remains limited and vague. Historically, these terms were introduced, but their full meanings and implications were never thoroughly explored or explained in educational contexts. As a result, many individuals still stand at the crossroads of these questions: "What is gender & What is sex"³. Addressing these questions is complex and sensitive, as it challenges societal norms and risks alienating

¹Many Hijras, but not all go through a castration ceremony, removing their male genitalia as an offering to the Hindu Goddess Bahuchara Mata.

² Amisha R. Patel, India's Hijras: The Case for Transgender Rights, 42 GEO. WASH. INT'L L. REV. 835 (2010).

³ Sex, by definition, operates within the classic binary biological model, in which the human species is clearly divided into neat categories of either male or female. Gender, however, is a more inclusive term, which includes social constructs of personal belief and sexuality that have deeper meaning than the traditional biological sex distinction.

those who do not conform to conventional expectations. Transgender individuals, who have long existed within society, continue to experience alienation and a sense of insecurity. A critical issue that remains largely overlooked is the disproportionate focus on biological sex while psychological sex. The internal experience of one's gender identity often goes unacknowledged.

Keywords: Napunsak linga, binary genders, sex, genders, heterosexual, homosexual, gender-neutral term, sexual abuse, transgender person, gender inequality, Third gender, rehabilitations centers, injustice, Gender identity, dignified life, unemployment.

I. INTRODUCTION

Transgenders are also commonly called *HIJRAS*, *HIJ* which literally means, any person who leaves his or her tribe in search of his or her true self. Transgender holds an important and strong place in Indian history. Transgender community (TG)⁴ consist of Hijras, Eunuchs, *Kothis*, *Aravanis*, *Jogappas*, *Shiv-shakthi*, *mangakmukhi* etc. The *Tritiya Prakriti* or *Napunsaka* are an integral part of *Vedic* text, here “*napunsak*” means absence of procreative capability

Sexes and gender can be defined by two different things, although are often considered one. Sex can be defined by the title you are assigned by birth for example males or females. Gender on the other hand can be defined as an expression of yourself. A transgender is a person whose gender identity is different from the gender they were assigned to be at birth. A Transsexual⁵ is a person who has done their gender reassignment surgery.

We question the legitimacy of transgenders every day. It is a political issue as much as it is an academic issue. In society transphobia⁶ is spreading like blood in the water. People use terms like *HIJRAS*, *CHAKKA* as slang.

HISTORICAL RELEVANCE

In Ramayana, Lord Rama was leaving his kingdom with Lord Sita and Lord Lakshman. They were going to exile for 14 years, all his followers wanted to follow him but he asked all the

⁴ Transgender (TG)– an umbrella term that encompasses a wide range of people whose identity or expression may not match the sex they were assigned at birth.

⁵ Transexual – a person who has already done sex reassignment surgery

⁶ Transphobia-negative beliefs and attitudes about transgender people.

“men and women” not to follow him. The hijras, who were deeply attached to Lord Rama stayed and followed him as his statement did not include them. Lord Rama was moved by them and blessed them to confer blessings on auspicious occasions like weddings, childbirth, etc.

In Mahabharat, the son of Arjuna and *Ulupi* (snake princess), *Aravan*, (in Tamil known as son of God of snake) was offered to be sacrificed to ensure the victory of Pandavas. But the condition was that he must spend wedlock as a married man but no women were willing to marry him. Lord Krishna took the avatar of a woman called Mohini whose beauty was mesmerizing and she married *Aravan*, later this became the reason for hijras in Tamil Nadu to call themselves *Aravanis* named after *Aravan* their progenitor. In *Koovagam*, Tamil Nadu, there is an 18-day-long festival where the transwomen dress up as their wives and then mourn for *Aravans'* death.

In Mahabharata, *Shikhandi* was born female but saw herself as a male. He was considered as a transgender. Despite being transgender, *Shikandi* was made the king of the country and ruled the country for a very long time. *Shikandi* also played an important role in the Mahabharata during the war in *Kurukshetra*. *Shikandi* entered the battlefield which normally women did not.

In The latter part of history, *hijras* held a significant position in the royal court. In the Islamic era, especially the Ottoman Empire and the Mughal Empire the position in the administration. Whenever the Mughals had to leave the empire for the wars, eunuchs used to protect the begums. They were considered as trustworthy and responsible.

II. Legal Framework

CRIMINAL TRIBES ACT 1871 ⁷

During British rule, the law was passed to supervise the deeds of the TG community, called THE CRIMINAL TRIBES ACT, 1871, a section of it talks about transgender. Under this act, any eunuchs who were registered, and appeared to be dressed like a woman, in public, street, or place, as well as those who danced or played music can be arrested without a warrant and can be subject to imprisonment for Up to 2 years.

⁷Criminal tribes act of 1871- Economic & Political Weekly - ISSN (Print) - 0012-9976 | ISSN (Online) - 2349-8846. <https://www.epw.in/tags/criminal-tribes-act#:~:text=During%20British%20colonial%20rule%2C%20the,against%20them%20at%20all%20times.>

THE NIRVAN: THE GURU CHELA SYSTEM

“It is my own family who has refused to accept me, what I can hope for from society”

- Shree Gauri Sawaant

What is a guru chela system, one might ask. Within the transgender community, the guru chela system is very much prevalent now. The guru refers to the teacher and Chella refers to the disciple. The TG community is dependent on this system. The *guru-chela* practice is an uncodified custom practice surrounded by the inheritance of power. it is a never-ending chin. The *guru* also had their *gurus*, who would teach them the rules and regulations of the community. The system starts when a *guru* adopts a *hijra (CHELA)* and takes the chela to the *Gharana*⁸ where they can express themselves freely, without any hesitation, and where they feel like a home. But often this comfort comes at a price. The *guru-chela* system carries a lot of restrictions on the *chela* by the *gurus*. There is also a hierarchy that is created within the community. First, there are the senior most *chelas*, only they can sing and dance. Next in line comes the ones who are expected to beg, go to weddings, and houses, shower people with their blessing, and collect *shaguns*⁹ in exchange. The last in the hierarchy comes the ones who are into sex work. All the *chelas* must give their full earning to their *gurus*, who will later decide the amount of money that has to be given to the *chelas*, mostly it is in the ratio of 50-50 but sometimes for some *chelas* it can also be 30% or even 10%. Among all this *chelas* were also expected to clean the house as well as clean the guru's "*thukdaan*"¹⁰. There are also some horrific times when *chelas* want to leave their *gurus* but they are not permitted. Many of them try to run from the *Gharanas*, but later get kidnapped by other *chelas* and are beaten by the *gurus* and often their heads are shaved. Hence transgenders find themselves trapped by the vicious cycle of society, most of them run from their homes, are cut from their roots, face unacceptance, and are treated as sex objects. They are living in a society, where even a doctor refuses to touch them. forced into sex work, beggary, the TG community does not have options left with themselves. Where are the laws that protect the rights of the CITIZENS, where is the legal framework that guarantees equal rights, justice, and fraternity to the CITIZENS of this country?

⁸ Gharana- home for transgenders (Gharana means "*ghar*")

⁹ Shaguns- in the form of money or sometimes jewels.

¹⁰ Thukdhaan – spittoon

TRANS SEX WORKER

“Even **doctors refuse to touch us**, to treat us. Even dogs have the right to be treated by a doctor.”

- Shree Gauri Sawant (India's first transgender mother)

THE IMMORAL TRAFFIC (PREVENTION) ACT 1956¹¹

What are morals, ethics, and values? Who defines these words? For a man who believes in the institution of marriage, a divorced person can be immoral. Then who decides what is moral and what is immoral? Certain works are moral and certain works are immoral by society. One of these works is sex work and prostitution. The IMTA Act declares prostitution as a legal profession but declares solicitation, and brothels as illegal¹². Although it declares prostitution as a legal profession it does not have any codified laws for it.¹³ Even if it was codified, society would have still treated it as a taboo.

Most of the transgenders face problems in making their Aadhar card or pan card, even ration cards. And even if they already have one, they face problems in changing their name (from a male name to a female one or vis a vis) or have problems changing their gender, after their sex reassignment surgery. Most of the transgenders have run from their homes or have been thrown out of their homes by their parents at a very young age and hence were not able to complete their education. This is one of the reasons that many do not have any education qualifications they cannot apply for any corporate jobs, and even if they are educated, many of them face torture, bullying, and cruelty just because of their gender

“I was born in the wrong body, at least God, let me die in the right body.”

- PRITZ (Indonesian transgender man)

There are no **counseling centers**¹⁴ for transgenders, is it not important for a child who has been

¹¹ The Immoral Traffic (Prevention) Act 1956.

https://www.indiacode.nic.in/bitstream/123456789/15378/1/the_immoral_traffic_%28prevention%29_act%2C_1956.pdf

¹² Section 3 of the IMTA, 1956.

¹³ There is no in India, which makes prostitution as an offence or a punishment, Bombay High Court.

¹⁴ Counselling centers- is a form of therapy, where individuals meet a skilled professional to discuss their problems.

thrown out from their own house and by their parents just because of their gender which at that time they did not even properly understand to at least have counseling centers. 14–15-year-old children thrown out of their homes to face the world alone, with incomplete education, with incomplete knowledge. What more options does that child have other than begging or doing sex work? They are not accepted by any shop vendors or by anyone who is doing local business. Rejected by society, with those traumatic memories and with mixed feelings of fear and anger they do not have any other option but to turn to the *Gharanas*, where they get introduced to a new life, a new system of GURU-CHELA and a new struggle of being involved in beggary or sex work.

CASE LAW: BUDHADEV KARMASKAR VS. STATE OF WEST BENGAL¹⁵

The Supreme Court of India held that under the pursuit of Article 21 of the constitution, everyone has the right to live a life with dignity irrespective of anything. And hence sex workers should also have the right to have a dignified life. The court also ordered the police to stop harassing and arresting sex workers who voluntarily are in this profession.

HEALTH OF TRANS SEX WORKER

Human immunodeficiency virus (HIV) is the deadliest disease and its rate among sex workers is very high. HIV can spread through semen, breastfeeding or through blood. HIV enters the body in the form of a virus and starts affecting the tissues. If proper **medical care** is not taken then the infection can take the form of AIDS. Which destroys your immune system in which simple fever can be risky.

According to the **Centers for Disease Control and Prevention¹⁶** (CDP) and the **World Health Organization** transgenders are at very high risk of getting infected by HIV. It is also a proven fact that transgenders are 14 times more likely to get infected by HIV than adult women. In India estimated transgender HIV prevalence is 8.82, which is 20 times higher than the general

¹⁵ Jain, A., & Jain, A. (2024, December 20). *Supreme Court order on sex work historic, but execution will be the real hurdle*. ThePrint. <https://theprint.in/campus-voice/supreme-court-order-on-sex-work-historic-but-execution-will-be-the-real-hurdle/988049/>

¹⁶ Boulos, M. N. K. (2004). Towards evidence-based, GIS-driven national spatial health information infrastructure and surveillance services in the United Kingdom. *International Journal of Health Geographics*, 3(1). <https://doi.org/10.1186/1476-072x-3-1>
Centre for disease control and prevention - <https://www.cdc.gov/hiv/default.html>

population.

III. ANALYSIS OF RELEVANT CASES

NAZ FOUNDATION VS. GOVT OF NCT DELHI

In 2009, the Naz Foundation challenged the constitutionality of section 377 IPC, which criminalizes intercourse against nature, with any man, woman, and any animal. This act shall be considered a punishable offense with a lifetime imprisonment or fine or both.

The Naz Foundation was conducting a campaign of distributing condoms, when HIV-anticipating laborers, who were appropriating condoms to gay men, were captured and claimed that they were plotting to commit an offense.

However, the court ruled out that consensual sex between two adults is not a criminal offence. It also stated that sex does not only mean biological sex but also sexual orientation. The court also stated that it also violated Articles 14, 15, 19, and article 21. **It further stated that lesbians, gays, bisexuals, and transgenders have the same constitutional rights as other people in this country are having.**

SR SIRAS VS. ALIGARH MUSLIM UNIVERSITY, HIGH COURT AT ALLAHABAD INDIA (1 APRIL 2010)¹⁷

The petitioner was a professor of Marathi and the Chairman of the linguistic department in Aligarh Muslim University. The petitioner was living in the campus accommodation when two people who claimed to be from the press broke into his house (his private space) and started filming videos without his consent. The petitioner was performing a homosexual activity with his male partner when people who claimed to be from the press started filming them and started beating them with a *lathi*. Soon four officials of the university reached there but did nothing to stop it. Although one of the officials promised the petitioner that the video would not be leaked, it was leaked soon.

The next day the petitioner was suspended without any inquiry or without giving an opportunity

¹⁷International Commission of Jurists. (2012, July 31). *SR Siras v. Aligarh Muslim University High Court at Allahabad, India (1 April 2010)* | ICJ. <https://www.icj.org/sogicasebook/sr-siras-v-aligarh-muslim-university-high-court-at-allahabad-india-1-april-2010/>

of appeal. The petitioner filed a charge sheet. He was given only 7 days to leave his apartment, also the lights were cut and 4 hours of electricity was only provided to him. He was also made to write an apology where he was made to write that he was feeling ashamed for his actions. The same was used against him in the court.

The video of him with his partner was leaked in every news channel, media house, social media handle, etc. He was having trouble in finding a house as nobody was accepting to give him accommodation, moreover, the petitioner was a 64-year-old senior person.

In the court, it was argued that the constitutional rights of the petitioner were blatantly violated. The petitioner further argued that the constitution gives EVERY CITIZEN OF THIS COUNTRY the right to life and personal liberty which was infringed by the two persons who broke into the premises of the petitioner without permission and started filming him and his partner without any consent.

The court agreed that the constitutional rights of the petitioner had been blatantly violated. Also, the court referred to the case of NAZ FOUNDATION VS. THE GOVT OF NCT DELHI. The court ordered the reinstatement of the petitioner at Aligarh University. But by then it was too late, the petitioner was found dead in his house. although the police declared it as suicide, many termed it as a murder.

SURESH KUMAR KAUSHAL VS. THE NAZ FOUNDATION ¹⁸

Suresh Kumar Koushal's case overruled the Delhi High Court ruling and said that the “right to privacy” cannot be elaborated so much that a crime could be committed. The high risk of AIDS and HIV in homosexuals is again a reason to continue decriminalizing Section 377. Also, homosexuality is a criminal offense in which only parliament can interfere, and the court cannot make amendments in the law.

NALSA V. UOI¹⁹

¹⁸ Columbia Global Freedom of Expression. (2021, July 6). *Koushal v. Naz Foundation - Global Freedom of Expression*. Global Freedom of Expression. <https://globalfreedomofexpression.columbia.edu/cases/koushal-v-naz-foundation/>

¹⁹ Centre for Law & Policy Research. (2020, July 22). *NATIONAL LEGAL SERVICES AUTHORITY (NALSA) VS. UNION OF INDIA - South Asian Translaw Database - THIRD GENDER*. South Asian Translaw Database. <https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity/>

In *National Legal Service v. Union of India & Ors* (2014) 5 119 a writ petition No.400 Of 2012 was filed to protect the rights and identity of the transgender community. The writ petition was filed by NALSA under the Legal Service Authority Act, 1997. It gave us one of the biggest judgments by recognizing the third gender and providing transgenders with the most important right, which is the right to self-determine their gender.

Another written petition of No. 604 o 2013 was filled by Poojaya Mata Nasib Kaur ji women welfare society, seeking the respect of *Kinnar* in the TG community

Laxmi Narayan Tripathy claimed to be a hijra and shared her experience and claimed that non-recognition of the third gender is a violation of their right to equality before the law guaranteed under Article 14 of the constitution and violates the right to life that comes under Article 21.²⁰

Shree Gauri Sawant approached the supreme court in 2014 and under the NALSA VS. UOI filed a petition demanding the adoption right to transgenders.

JUSTICE K.S PUTTASWAMY VS. UOI²¹

Justice Puttswamy, a retired judge of Madras High Court challenged the constitutionality of the Aadhaar scheme as it violated the right to privacy of a person, to which the court declared that giving demographic or biometric data does not violate the fundamental right of a person although it also declared some of the provisions of Aadhaar scheme unconstitutional.

Another aspect of this case was that the right to privacy is deeply correlated with human dignity and violation of that will violate Articles 14,15,16,19 and 21. The court also observed that many international judgments have considered privacy an important fundamental right. The court overruled the judgment of MP Sharma and Karak Singh and declared the right to privacy as a fundamental right.

This judgment gave shape to the Navtej Singh Johar VS UOI, which declared section 377 of IPC as unconstitutional.

²⁰ Infringement of article 14, 16,19,21

²¹ Centre for Law & Policy Research. (2021, December 8). *JUSTICE K.S. PUTTASWAMY VS. UNION OF INDIA - South Asian Translaw Database - PRIVACY*. South Asian Translaw Database. <https://translaw.clpr.org.in/case-law/justice-k-s-puttaswamy-anr-vs-union-of-india-ors-privacy/>

NAVTEJ SINGH JOHAR VS. UOI²²

Five individuals from the LGBTQ community filed a writ petition challenging the constitutionality of section 377, which criminalized intercourse between persons having the same sex.

The court declared CONSTITUTIONAL MORALITY as the ideals and morals of the Constitution that create an inclusive society. The court held that the classification of natural and unnatural sex is not constitutionally valid. The court ruled that discrimination based on sexual orientation violates Articles 15 and 21 and deprives a person of his dignity and other fundamental rights.

The court also referred to Justice KS Puttaswamy's case where the right to privacy was declared as a fundamental right, and sexual orientation is also one's personal and private matter. The court also referred to the NALSA VS UOI case in which a person has the right to self-determine their gender.

IV. APPLICATION OF LAW:

Article 14 – “The state shall not deny to any person equality before the law or the equal protection of the law within the territory of India”.

Article 14 clearly talks about EVERYONE HAS THE RIGHT OF EQUALITY, which also includes every human being living in society. Irrespective of their gender. Equality is something that everyone living in society deserves and is a natural right that cannot be deprived.

CASE LAW; NANGAI VS SUPERINTENDENT OF POLICE ²³

Nangai was assigned a female at birth, her documents like her birth certificate, family card, school degree, and certificates from the girls' college she attended, all identified her as a

²²Centre for Law & Policy Research. (2020b, August 4). *NAVTEJ SINGH JOHAR VS. UNION OF INDIA - South Asian Translaw Database - SECTION 377*. South Asian Translaw Database. <https://translaw.clpr.org.in/case-law/navtej-singh-johar-vs-union-of-india-section-377/>

<https://translaw.clpr.org.in/case-law/navtej-singh-johar-vs-union-of-india-section-377/>

²³Centre for Law & Policy Research. (2021b, December 17). *NANGAI VS. SUPERINTENDENT OF POLICE - South Asian Translaw Database - Woman police constable*. South Asian Translaw Database. <https://translaw.clpr.org.in/case-law/nangai-vs-superintendent-of-police-woman-police-constable/>

female.

She cleared Grade II police constable (women) conducted by the Tamil Nadu Uniformed Services Recruitment Board. She was immediately sent to the tanning school where she had to clear a medical test which was a part of her training. The medical officer declared Nangai as transgender. After that, Nangai was forced to go through many medical examinations, so she could not complete her training properly and could not give the final examination. The board concluded that since she had missed her training, had falsely applied under women's quota and had missed her final examination her recruitment was terminated.

Aggrieved by this, she challenged it in the high court. The court referred to the registration of the Birth and Death Act of 1969, which states that sex at birth is determined by physical characteristics. Under no situation (employment, inheritance, election) must a person undergo a medical test to prove their gender, and forcing the petitioner to do so is irrelevant.

Moreover, it will be violating **Article 14 of the constitution (right to equality)** as well as Article 15, 19 and Article 21.

Article 15: "Prohibition of discrimination on the grounds of religion, race, caste, sex, or place of birth."²⁴

Race, caste, gender, sex, and religion, are some of the things that have been with us for a long time, and because of that it is embedded in us naturally. We do not even realize that we are a part of a particular group, a particular caste, or a particular gender, and many times directly or indirectly we get involved in these communities so much that we try to suppress others.

CASE LAW: ASHISH KUMAR MISHRA VS BHARAT SARKAR ²⁵

Under the National Food Security Act, 2013 a PIL was filed for food security of transgenders. section 13 of NFSA is gender-specific and deals with the head of the household. It states that the eldest woman can be the head of the household and in the absence of her, the eldest man can be the head of the household but must be above 18 years.

²⁴ Article 15 talks about prohibition of discrimination on the basis of caste, class, religion, gender and sex.

²⁵ Centre for Law & Policy Research. (2021b, December 17). *ASHISH KUMAR MISRA VS. BHARAT SARKAR* - South Asian Translaw Database. South Asian Translaw Database. <https://translaw.clpr.org.in/case-law/ashish-misra-vs-bharat-sarkar/>

Section 13 did not recognize transgenders as the head of the household, because of which transgenders were facing problems in getting a ration card, also it violated Article 15, where transgenders were facing discrimination because of their sex

The court understood the necessity of ration cards for providing food security and mandated the state include transgenders in the provision which listed them as head of the household.

Article 16: 1. *There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state*²⁶.

One of the most important things for us as humans is RECOGNITION, or having our own IDENTITY. Getting equal opportunity relating to employment is one of the factors through which we can achieve our identity and recognition in society. Article 16 in this respect holds a lot of importance, especially for those sections of people who have been deprived of this right just because of their gender or sex.

CASE LAW: ANJALI GURU SANJANA JAAN VS STATE OF MAHARASHTRA²⁷

Anjali Guru Sanjana Jaan is a trans woman, who nominated herself for the seat of village panchayat under the quota that was reserved for women. However, she was eliminated from the nomination as she was a transwoman and it was observed that there was no reservation for transwomen for the village election.

The petitioner approached the high court to allow her to nominate herself by practicing her right to a self-perceived gender identity.

The court held that, under NALSA V UNION OF INDIA it is the right of a person to self-identify one's gender. It is also cited in section 4(2) of transgender person (protection of right)2019

It was said that the petitioner can demand reservation for transgender persons in the election commission.

²⁶ article 16 of the constitution talks about equality of opportunity

²⁷ Centre for Law & Policy Research. (2021a, August 21). *ANJALI GURU SANJANA JAAN VS. STATE OF MAHARASHTRA & ORS.* - South Asian Translaw Database. South Asian Translaw Database. <https://translaw.clpr.org.in/case-law/anjali-guru-sanjana-jaan-vs-state-of-maharashtra-ors/>

Article 19: “protection of certain rights regarding freedom of speech etc. – (1) all citizens shall have.”²⁸

- a) *To freedom of speech and expressions*
- b) *To assemble peaceably and without arms*
- c) *To form associations or unions*
- d) *To move freely throughout the territory of India*
- e) *To reside and settle in any part of the territory of India.*
- f) *To practice any profession, or to carry on any occupation, trade, or business.*

Article 19(1)(a) is one of the most important laws as it gives the citizens the right to **privacy**, **dignity**, and **integrity**. We as citizens have the right to express ourselves, we want to have FREEDOM to do what we wish. Why even after these laws, transgenders must depend on begging, why do they have to force themselves to be a sex worker, why they can't live a life with dignity and by freely expressing themselves.

CASE LAW: TESSY JAMES VS. THE DIRECTOR GENERAL OF POLICE THIRUVANANTHAPURAM²⁹

Tessy has a daughter who is a transwoman, Tessy filed a writ petition of habeas corpus and claimed that a group of transgenders had forcefully taken her “son” with them. She also claimed that her “son” has some psychiatric disorder. When the court confronted Tessy's son, he made clear that he was not facing any mental disorder and accepted that she was transgender.

The court ordered various medical tests and the results proved that Tessy's “daughter” was not facing any psychiatric disorder.

The court held that everyone has the right to freedom of expression under Article 19 and made

²⁸ Indian Constitution, Art 19

²⁹ Centre for Law & Policy Research. (2021e, December 17). *TESSY JAMES VS. THE DIRECTOR GENERAL OF POLICE, THIRUVANANTHAPURAM* - South Asian Translaw Database. South Asian Translaw Database. <https://translaw.clpr.org.in/case-law/tessy-james-vs-dgp-habeas-corpus/>

it clear that gender identity lies in one's identity. Gender expression and presentation will always be protected under Article 19(1)(a).

Additionally, the court said that Tessay's daughter has the right to be with like-minded people and nobody can compel her to stay with her parents thus the court dismissed Tessy's appeal of habeas corpus.

Article 21: protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law³⁰

One of the most important rights is Article 21 of the constitution which is the heart and soul of the constitution. It talks about not just the right to life but the right to live a dignified life. Living life with dignity, and one of the means to live a dignified life is by having recognition and having an identity. Having equal opportunity in jobs, having equality not just in books but in real life as well. EQUALITY, JUSTICE, and FREEDOM are the three key pillars to living a dignified life.

CASE LAW: ARUN KUMAR AND OTHERS VS. THE INSPECTOR GENERAL OF REGISTRATION³¹

Arun Kumar got married to Seerja, who is transgender. They got married through Hindu rites. When the couple approached the registration office to register their marriage, they were refused. The petitioners challenged the decision in the Madras High Court.

The court held that transgenders have the right to self-identify their genders as upheld by the supreme court in NALSA VS UOI which was also reiterated by Justice K. Puttaswamy vs. UOI and again in Navtej Singh Johar Vs UOI

The court addressed that the meaning of wife in HMA cannot have a static meaning and to marry a person of your choice is an integral part of Article 21 of the constitution. Hence court held that refusal to register the marriage of Arun Kumar and Seerja can violate Articles 21,14,

³⁰ Indian Constitution ,Article21 - right to have "dignified life"

³¹ Centre for Law & Policy Research. (2021c, December 17). *ARUNKUMAR & OTHER VS. THE INSPECTOR GENERAL OF REGISTRATION & OTHERS* - South Asian Translaw Database. South Asian Translaw Database. <https://translaw.clpr.org.in/case-law/arunkumar-vs-the-inspector-general-of-registration/>

and 25.

INTERNATIONAL LAWS:

For the UN, health care, education, housing, and the fair administration of justice are not commodities for sale to the few, but rather rights to which all are entitled without discrimination.

-Former UN Human Rights Chief, Navi Pillay, in The Tunis Imperative

- *International covenant on Civil and Political Rights*
 - a. *Article 6 (right to life) International covenant on Civil and Political Rights.*³²
 - b. *Article 7 (prohibition of torture or cruel, inhuman, or degrading treatment) International covenant on Civil and Political Rights.*³³
 - c. *Article 16(recognition before the law) International covenant on Civil and Political Rights*³⁴.
- *Universal Declaration of Human Rights (UDHR)*
 - a. *Article 1*³⁵- All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

³² 1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.2. No one shall be held in servitude.3.(a) No one shall be required to perform forced or compulsory labour;(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;(iv) Any work or service which forms part of normal civil obligations.

³³ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

³⁴ Everyone shall have the right to recognition everywhere as a person before the law.

³⁵ All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

- b. *Article 3-* Everyone has the right to life, liberty and security of person.
- c. *Article 5 -* No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- d. *Article 7* All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
- e. *Article 9-* No one shall be subjected to arbitrary arrest, detention or exile.
- f. *Article 12 -* No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
- *Yogyakarta principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity*³⁶

Principle 1 – universal enjoyment of human rights

Principle 2 – right to equality and non-discrimination

Principle 3 – right to recognition before the law

Principle 6 – right to privacy

Principle 4 – right to life

Principle 9 – right to treatment with humanity while in detention

Principle 18 – protection from medical abuses

The International Group of Legal Experts drafted it. Indonesia hosted the meeting in 2006. These principles advocate the application of international human rights law norms to address

³⁶ Yogyakarta Principles https://data.unaids.org/pub/manual/2007/070517_yogyakarta_principles_en.pdf

the mistreatment of LGBTQIA+ people. They focus on the acknowledgment of human rights law relating to sexual orientation and gender identity.

These principles stress the importance of one's right to have their self-defined identity recognized legally. The guiding concept guarantees that everyone, including transgender people, has the right to legal recognition. Everybody is entitled to full legal competence in all spheres of life. It states that none may be forced to undergo medical operations, such as sterilization, hormonal therapy, or SRS, to have their gender identification recognized. Furthermore, a person's gender identity is not recognized by their marital status or parental status. "The Yogyakarta principles further stipulate that the states should ensure that all people are granted legal capacity in all civil matters, without any discrimination based on gender identity or sexual orientation, and that they are given the opportunities to exercise such capacity including rights to enter into contracts and enjoy, acquire and dispose of their property, and to take all the necessary legislative and administrative measures to legally recognize each individual.

CASE LAW: OBERGEFELL VS. HODGES³⁷

Obergefell vs. Hodges is a landmark Supreme Court judgment that declared that marriage is a fundamental right that is guaranteed to every citizen, which means, in its comprehensive sense it is guaranteed to same-sex couples, under the "Due Process Clause" and "Equal Protection Clause" of fourteenth Amendment, same-sex couple have a right to get married.

International laws have a persuasive value in many countries. These are the laws that are used when a particular country does not have laws on a specific matter. But international laws are something that are always looked upon.

UDHR is one of the organizations of the UN, that talks about Human Rights, it states how human rights are important to live a dignified life. It talks about how Human Rights are the Natural Rights of a person which are inevitable. Then are Yogyakarta principles which focus on the application of international Human Rights Law with Sexual Orientation³⁸ and Gender

³⁷ Centre for Law & Policy Research. (2020d, August 4). *NAVTEJ SINGH JOHAR VS. UNION OF INDIA - South Asian Translaw Database - SECTION 377*. South Asian Translaw Database. <https://translaw.clpr.org.in/case-law/navtej-singh-johar-vs-union-of-india-section-377/>

³⁸ Sexual orientation is understood to refer to a person's capacity for profound emotion, affectional and sexual attraction to and intimate and sexual relations with individual with different gender or same gender.

Identity³⁹. All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible, and interrelated. Sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis of discrimination.

FAIZ ULLAH VS. P.P.S.C AND ORS⁴⁰

The petitioner was a transgender who saw a job advertisement and applied under the category of female. However, the application was rejected, saying that the job only applies to males and females.

However, the court held that it is against transgender person protection act of 2018(Pakistan). Also, it violates article 4,6,911 and 16 of the trans act 2018.

The government affirms the right to self-identity in terms of self-employment. Which should not be infringed by anything.

V. SPECIAL ACT INTRODUCED FOR TG COMMUNITY.

TRANSGENDER PERSON (PROTECTION OF RIGHTS) ACT 2019⁴¹

This act was introduced to protect the rights of transgender persons and their welfare and for matters connected therewith and incidental thereto

This act however was introduced to protect transgender, but many provisions within this act were criticized by the TG community. Many provisions within this act did not support the needs of the TG community.

The act talks about self-perceived gender identity but it also talks about application for certificate identity. The problem here arises with the procedure and manner that is to be followed to issue this certificate, which is not specified in the act.

³⁹ Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.

⁴⁰Centre for Law & Policy Research. (2021a, June 25). *FAIZ ULLAH VS. P.P.S.C. AND ORS.* - *South Asian Translaw Database*. South Asian Translaw Database. <https://translaw.clpr.org.in/case-law/faiz-ullah-vs-p-p-s-c-and-ors/>

⁴¹ Transgender persons (protection of right) act 2019-it was introduced in Lok Sabha on July 19, 2019 by the minister for social justice and empowerment.

Chapter IV section 8(4) talks about steps that the government should take for rescue, protection, and REHABILITATION⁴² of transgender persons to address the needs of such persons. But why are rehabilitation centers made for the TG community? Rehabilitation centers are also referred to as inpatient rehabilitation hospitals, for rehabilitation of a patient with various neurological orthopedic and other medical conditions. The TG community does not need a rehabilitation center, what they need are the welfare groups and moral support of society.

Chapter V section 12(3) again talks about rehabilitation centers but this time in a different context it says if any parent or any family is unable to take care of a transgender, the competent court shall by an order direct such a person to be placed in a rehabilitation center.

Another major and most important chapter is VIII section 18(d) which says anyone who harms, or injures the life, safety, mental or physical health of a transgender including physical abuse, sexual abuse, emotional abuse, verbal abuse, and economic abuse shall be punishable with imprisonment not less than six months but may extend to two years.

The point that should be highlighted here is the duration of the imprisonment, which is just **six months which may exceed two years**. Any punishment that is less than two years or two years is determined as **bailable**⁴³ offenses. For any sexual abuse that happens to a woman, the punishment can go up to seven years and can exceed that, as given in the Indian penal code under section 354. In **NALSA V. UOI** the Supreme Court gave the right to self-identify one's own Gender.

The National Council for Transgender Persons, or NCT, was established to advise the Central Government on policies and laws about transgender people. Any person found abusing or discriminating against a transgender person, which is a violation of this Act, without a valid defense and based on the victim's gender, will be punished with a fine and a prison sentence ranging from 6 months to 2 Years, depending on the specifics of the offense.

⁴² Rehabilitation centers – the action of restoring someone to health or normal life through training and therapy after imprisonment, addiction, or illness.

⁴³ Bailable offences- bailable offences are those in which punishment is for or less than 3 years, although exceptions are there.

CASE LAW: MS X VS. STATE OF UTTARAKHAND ⁴⁴

The petitioner was a transgender and was a victim in the rape case. She was repeatedly raped and blackmailed by the accused. She filed an FIR under section 376 of IP and clarified that she identifies herself as a female. The victim also presented all the certificates of the doctors that were given to her after her sex reassignment surgery.

But irrespective of all the documents the officer refused to accept that the victim was a female, and submitted the charge sheet under section 377 of IPC which criminalizes unnatural intercourse. The state refused to accept the medical reports and certificates of doctors and needed **competent authority** to determine the petitioner's gender.

Aggrieved by this, the petitioner approached high court and challenged this decision and sought to enforce her right to self-identify her own gender.

The court relied on the ruling of NALSA V. UOI for this case, in which the Supreme court gave more importance to "psychological test" rather than "biological test." The court said that it must look sex and gender based on the PSYCHE of a person. The court came heavily on the state for ignoring the verdict of the Supreme court and referring to the biological test.

VI. Judicial Responses

The NALSA judgement came from a divisional bench. The judgement was given by justice K.S. Radhakrishnan. The judgement relied on many foreign precedents. The court has focused on the psychological aspects rather than biological aspects. It refers to the case Corbett v. Corbett. The court also said that all the principles and international conventions that are consistent with the fundamental rights of the constitution must be followed

The court said that the TG community is a part of our country and hence should enjoy all the rights that are given to the people of India under the Indian constitution. This includes Article 14 which clearly says that the state shall not deny to ANY PERSON equality before the law, which means all the people within the territory of India have the right to enjoy equality. Also, it means they have the right to contest the election, they can cast their vote, they can enjoy

⁴⁴Centre for Law & Policy Research. (2021a, June 29). *MS. X VS. STATE OF UTTARAKHAND* - South Asian Translaw Database. South Asian Translaw Database. <https://translaw.clpr.org.in/case-law/ms-x-v-state-of-uttarakhand/>

health care, etc. Therefore, discrimination on the grounds of sexuality or gender identity can violate Article 14. The court also said that the TG community is not able to enjoy Article 15(4) and *that* we still need to improve social and educational disadvantaged groups. The court also said that the person's right to express gender identity through actions or words falls under Article 19. right to express, act, speak, and move is a fundamental right that needs to be protected

The court declared that the TG community has the right to have a dignified life under article 21 of the constitution and as they have the right, the court ordered the center and state government to recognize the TG community as the THIRD GENDER and by this statement, all the documents including the passport, ration cards, and all other government documents have the third column which includes TRANSGENDER.

VII. ANALYSIS OF JUDICIAL PRONOUNCEMENT

In a country like India, it is easier to change the rules than change the mentality. But the judgment itself was the first step towards progress, towards humanity, towards justice and equality. Although there are some loopholes in the judgment itself. Equality and justice cannot be assured to a person just by making laws related to it, one needs to look after the application and implementation of such laws. The TG community is still struggling to get Equality and justice. They are still struggling to get a job; they are still struggling to get an education. Moreover, we can still see a lot of Transgender struggling for their IDENTITY. Also, the judgment did not give much emphasis on having a separate washroom for the Transgender. If we as females are having a separate washroom, if we as males are having separate washrooms then, they as transgenders should also have a separate washroom. Also, we need to upgrade our grammar according to them. If there is a "HE" used for males and there is a "she" that are used for females then there should "zie"⁴⁵ used for their transgenders as well.

Being an Indian I have found more transgender on the roads, begging, than I have seen them working. I have seen them being ill-treated, many of them, themselves do not know that they have equal rights as male and females do, and that they cannot be discriminated against on the bases of religion, case, sex, and gender. There should be proper campaigns arranged so that

⁴⁵ Zie- pronoun used for transgenders

awareness is spread.

Society has set up standards to accept people. One of the main major things that I had discovered while I was doing my research was that the situation of transgender community was the same in most parts of the country. Whether that's Pakistan, Indonesia, or Bangladesh. We often argue that who is the most powerful country? What I really felt after all this research was that none of the countries is powerful enough to protect its own citizens, to give equality to their own citizens.

VIII. IMPLICATIONS OF JUDGEMENT

Changing rules can still be easy but changing the mentality of people is a far more difficult process.

The judgment has opened many doors for transgender. Recently the Rajasthan high court directed the state government to provide reservations to transgenders in government jobs as per supreme court order. Karnataka recently announced a 'THIRD GENDER' reservation in police recruitment, becoming possibly the first state to do so.

The Sweekruti scheme - was also introduced for the promotion of transgender equality and justice. The approach of this scheme is to make available the whole range of services necessary for the rehabilitation of transgender persons. To include transgenders into the mainstream of society and actualizing their potential.

Smile75 scheme – it stands for support for marginalized individuals for livelihood and enterprise to address the persisting problem of destitution and beggary.

Ayushman Bharat TG Plus – health insurance would be available to transgender persons inclusive of gender reaffirmation surgery in the health benefits package under Ayushman Bharat Yojana. Each transgender person shall receive an insurance coverage of 5 LAKH per year under this scheme.

Garima Greh – started in Gujarat, it will run in association with Lakshya Trust, a community-based organization completely run by transgenders.

Shelter homes for transgender persons include basic facilities like shelter, clothing, food,

recreational facilities, skill development, legal support, technical advice for gender transition, etc.

However, the important thing is not the introduction of the scheme but the implementation of the scheme. At the ground level if the targeted audience is not enjoying the benefits of the schemes, then the schemes are pointless. Schemes should be easily accessible to people and should be timely managed by the respective authority. Simply introducing a scheme does not end the work for the government, in fact after that the real work starts.

The judgment that came gave recognition to transgenders but only on the paper not in practical life. We can still see many transgenders begging on roads at the red light. We can still see transgender struggling to make a living, not getting identified, and not getting respected. The judgment, no doubt, gave them their rights and identity but did not at all provide a chance to enjoy these rights.

We are just seeing that 30% of India in which we are living, we see only that and think that if these 30% of Indians are getting equality, the rest 60% of them are also getting equality. We completely ignore that 60% of the people, who constitute the real India.

X. GENDER NEUTRAL LAWS: COMPARISON BETWEEN BNS & IPC.

In 2023, when the new laws replaced the old ones, there was a hope in the mind of citizens especially LGBTQIA+ Community that it can be a new approach towards the gender-neutral society. However, the Legislature has yet missed an opportunity for establishing a gender-neutral legal system.

Part of Bhartiya Nyaya Sanhita corresponds to section of Indian Penal Code, the section states offences against women including rape, Gang Rape however, these section explicitly uses the term WOMEN thereby excluding Transgenders. (If we refer to the Transgender Persons Protection act as well, the act specifies only 2 years of Punishment for offence of physical and mental abuse, which has been criticised by a lot of LGBTQIA+ persons, the punishment for rape under Bhartiya Sanhita is 10 years which may extend to Life Imprisonment.

A 2015 report by the National Integrated Biological and Behavioral Surveillance (NIBBS), the National AIDS Control Organization (NACO), and the Ministry of Health and Family Welfare

states that 31.5 percent of trans women said their first sexual encounter with a man was non-consensual/forced.⁴⁶

Most of the women reported being minors at the time of the sexual assault—30 per cent were 15 to 17-years-old and 26 per cent were under 14-years-old.

Another Major Drawback of the Act is Complete exclusion of Section 377, the act has completely deleted the section 377, instead of criminalizing non-consensual act between same sex persons. Thereby leaving the transgender victims of sexual assault with fewer legal options.

XI. UCC Applicability on LGBTQIA+ Community

The Uniform Civil Code has been recently implemented in Uttarakhand, giving a wider ambit to the legal system by codifying the laws uniformly, however, not for the LGBTQIA+ Community. They feel still left out; the law is not gender inclusive. UCC only represents Gender Binaries and the definitions provided in the UCC documents only Cisgender Men and Women. The Bill further Defines “Person” as “an individual, whether male or female. The Bill is replete with references to son and daughter, husband and wife, brother and sister, completely excluding the LGBTQIA+ Community⁴⁷. Clause 4 of the Bill does it include Queer marriage as the law explicitly states “marriage between a Man and Women with this the Bill does not even recognizes Live-in Relationship amongst same-sex couples as clause 3 (4)(b) defines Live-in Relationship as a “relationship between a Man and Women.

Lack of Accountability

In *Supriyo*⁴⁸ The majority judgment said that the state is duty-bound to ensure that there shall not be any impediments for the queer couples to enjoy the rights flowing from all previous judgments as well as the rights to relationship as defined in the judgment. Former Chief Justice of India, D.Y. Chandrachud mandated the legislature to enable these rights. However the Uttarakhand has failed to comply with such Duty entrusted by the Judiciary⁴⁹.

⁴⁶The Many Rapes Of India's Transgender Citizens <https://www.outlookindia.com/national/the-many-rapes-of-indias-transgender-citizens> https://nhrc.nic.in/sites/default/files/2024-8-16_compressed.pdf

⁴⁷Uma, S. (2024, February 9). Not in the name of gender justice: Reflections on Uttarakhand's UCC - The Wire. <https://thewire.in/government/not-in-the-name-of-gender-justice-reflections-on-the-uttarakhands-ucc>

⁴⁸ *Supriyo vs. Union of India* [2023] 16 S.C.R. 1209

⁴⁹ Not in the Name of Gender Justice: Reflections on Uttarakhand's UCC

The UCC does not give equal representation to heterogenic people. The Right of Marriage and Adoption does not extend to the LGBTQIA+ Community. The objective behind UCC is to promote Gender Equality, Secularism, and the Fundamental rights guaranteed by the Indian Constitution. However Non- Inclusivity of ⁵⁰LGBTQIA+ Community violates the very principle objective of the Code. Legal framework introduced by the nation should not only protect the interest of minorities but also protect the sentiments of such communities.

XII. GRAVEYARD RIGHTS FOR QUEERS(TRANSGENDERS)

Not much of the literature available however there are different verses of it that has taken shape in India, there is a myth in some part of the society that believes that death of transgender is an event where they are bitten by slippers and such cremation rights are only carried out at night⁵¹. However these statements lack any evidence since there are few other accessible sources that mention that last rites of a transgenders are carried out in a normal way and at normal timings (depending on the time of death). However there are few literatures which says the body of transgenders are cremated and other few says the body is buried and not cremated.

One of the findings that came before us was, the discrimination that Transgenders face for performance of their last rights. Referring to the performance of last rites according to Hindu beliefs, one needs to tell his/her *Gotra and caste* and accordingly the space for the funeral is allotted. The practice is not prevalent in all parts of the country but there are still places which have beliefs in such systems. According to such practice if a person is belonging to a particular community which is considered as non acceptable by society, there are chances that such community shall not be having any land to perform their last rites.

THE CHANGING INDIA

The Transgender community has been recognised by the order of the supreme court as the third gender the Navtej Singh Johar Judgment. With this the government at national as well at state level has introduced various different schemes to make an inclusive India for them. India's First Transgender School "SAHAJ INTERNATIONAL" has started at Thrikkakara in

⁵⁰ Meghalaya. (n.d.). *Customary Marriage and Divorce Laws vs. Uniform Civil Code: Perspectives from North East India*. <https://nluassam.ac.in/docs/events/NCW%2013%20SEP%202023.pdf>

⁵¹ Moulika, Death no great leveller for transgender community, Times of India, July, 24, 2019. <https://timesofindia.indiatimes.com/city/hyderabad/death-no-great-leveller-for-transgender-community/articleshow/70353569.cms>

Ernakulam District of Kerala and has been inaugurated by the Transgender Activist. On July-8th 2018, 29 year old Mondal became the first transgender judge of a Loka Adalat, Islampuri of North Dinajpur, West Bengal, on 4th July 2018 Satyasri Sharmila, 36 became the first transgender lawyer, on 1st July 2016 Aishwarya Rutuparna Pradhan became the first transgender civil servant. The bench directed the centre and the states to take steps to treat them as socially and educationally backward classes and extend reservation for admission in educational institutions and for public appointments. This year 22 transgender candidates are going to appear for the CBSE 10th examination.⁵²

XIII. CONCLUSION AND SUGGESTIONS

It is this minority which constitutes the majority of the country.

Our Society often ridicules and abuses the transgender community and in public places like Railway stations, bus stands, schools, workplaces, malls, theaters, hospitals, they are sidelined and treated as untouchables, forgetting the fact that the moral failure lies in the society's unwillingness to contain or embrace different gender identities and expression, a mind-set which we have to change.⁵³

There is still a very long way to go in giving equal rights to the PEOPLE of the country. The world will change when we start normalizing certain things. We do not have to treat them differently or especially we just need to treat them equally, as we normally treat other individuals. we just must treat them as HUMANS.

The country talks about Article 16 which is equal employment opportunity but we have hardly seen any transgender working as a teacher, working as a lawyer, for that matter working as a doctor, not even as an employee in any restaurant. We do not need any special centers or any separate communities for the TG community, what we need is equality in relevant laws present today for the TG community. If we talk about the transgender person (Protection of Rights) Act 2019, we will be able to see laws that are not providing equality to the TG community. Phrases like rehabilitation centers and certificates for identity are some of the examples that can be taken. Punishment mentioned for sexual abuse, emotional, physical, and economic

⁵² Transgender to third gender : A short history of the journey, by Dr. Chittaranjan Mishra , Odisha Review, 2019, https://magazines.odisha.gov.in/orissareview/2019/Apr-May/engpdf/transgender_to_third_gender-33-38.pdf.

⁵³ Justice K.S Radhakrishnan, National Legal Service Authority vs Union of India (2017) AIR SC 1863

abuse is for six to two years. Any offense whose punishment is less than two years are bailable offense which is not fair.

What was past was past, nobody can change it. But what we need to look at now, is the future. How we can change the future. If tomorrow our children stand up and say that I am different from others, then it's our responsibility to teach them that they are not different, they are normal, it is the society that is having abnormal thinking.

SUGGESTIONS

- Need of Transgender Inclusion in Indian School System
- There should be proper awareness among the people and not just the people but also among the growing youth as today's youth will write tomorrow's future.
- Reservation of transgender in government jobs should be there as well as ½ % of seats should be reserved for the transgender in parliament.
- There should be separate washrooms for them and most importantly we need to stop using pronouns as HE or SHE for transgenders.
- Hiring ½ % of transgender in public and private institutions should be mandatory.
- No educational institution shall discriminate against transgender based on their gender.
- There should be more schemes like Smile 75 and Sweekruti scheme to protect the interest of transgenders and regular reports should be maintained.
- Moreover, in political, economic, and social institutions, they should get equal representation.
- Campaigns should be organized in each district in which the government should entertain all the problems faced by the community.
- Laws should be non-discriminated in nature and they should satisfy the needs of the community.

- Transgender Protection Act should be modified according to the needs of the TG community, Words like rehabilitation centers should be defined properly.
- The punishment for sexual abuse given under transgender persons (right of Protection) act 2019, is six months and may exceed two years, this provision needs to be changed and punishment should be exceeded.
- Ensuring that people belonging to the TG community feel safe and protected. Not only that but there should be provision for free legal aid to uplift the TG community.
- A separate committee should be made to investigate the implementation of the schemes made for the TG community.
- Proper medicines for HIV and AIDS should be distributed
- Most transgenders do not have enough knowledge about HIV and AIDS that can be sexually transmitted especially in the LGBTQ community.