
SENSITISATION OF TRANSGENDERS REGARDING THEIR VOTING RIGHTS IN INDIA: AN ANALYSIS

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ABSTRACT

In India, the transgender community has existed for more than four thousand years and is currently believed to number half a million. There is no reason why the Transgender Community should not be granted their Constitutional rights, which include the right to personal liberty, dignity, freedom of expression, access to education and empowerment, protection from discrimination and exploitation, and, most importantly, the right to vote as an Indian citizen. Despite the fact that transgender people have been recognised as third sex following a long legal battle in the Navtej Singh Johar case, there is still a need for education for both the transgender community and society regarding their rights.

This paper will discuss the main themes namely sensitisation of the transgenders towards their voting rights. The paper will examine the various NALSA schemes, rules, laws, regulations, and judgments pertaining to transgender voting rights, as well as their practical ramifications in the actual world. The paper will critically analyse how viably transgender people are informed about their voting rights. The study will suggest the measure for ensuring the building of sensitisation mechanism.

Keyword: LGBTQI, Transgender, Voting Rights, Sensitization, Schemes.

Introduction

A livelihood; secure, permanent employment; earnings; property, credit, or land; housing; minimal or prevailing consumption levels; education, skills, and cultural capital; the welfare state; citizenship and legal equality; democratic participation; public goods; the nation or the dominant race; family and sociability; humanity, respect, fulfilment and understanding.¹

Over millennia, transgendered people have played a vital role in ancient Indian society. They were depicted in well-known Hindu sacred texts such as the Ramayana and Mahabharata.² They were assigned important positions in Mughal rulers' imperial courtyards. Their downfall occurred only with the establishment of British control in the early 1800s when they were blacklisted and punished as criminal elements.

Only in April 2014, advocates for transgender rights in India celebrated a significant victory when the Supreme Court issued a landmark decision, *National Legal Services Authority (NALSA) v. Union of India and Others*³, recognising historical, social, and cultural discrimination against transgender communities. According to the ruling, there is a "moral failure" in society's refusal to contain or embrace multiple gender identities and expressions, "a worldview that we must change." The justices ruled that transgender people should be granted civil rights and opportunities and should not face discrimination based on their gender. With the passage of The Rights of Transgender Persons Bill, 2014 by the Rajya Sabha and The Transgender Persons (Protection of Rights) Bill, 2016 by the Lok Sabha, the debate on transgender rights has progressed. However, recognition of rights has been both celebrated and criticised, primarily because inclusion in discourses surrounding citizenship has failed to alleviate the actual situation of transgender people, and, equally importantly, the framework used to recognise individuals is complex and contradictory.

One of the most common criticisms levelled is a failure to sensitise the transgender population about their rights, particularly voting rights. Election law is a discipline falling at the juncture of constitutional law and political science. It researches "the politics of law and the law of

¹ Amartya Sen, *Social Exclusion: Concept, Application, and Scrutiny* 1 (Asian Development Bank, Manila office of Environment and social Development, 2000).

² Agoramoorthy, G., & Hsu, M. J. "Living on the Societal Edge: India's Transgender Realities" 54(4) *Journal of Religion and Health* 1451–1459 (2015).

³ AIR 2014 SC 1863.

politics”. Every democracy provides the right to vote to its citizens so that it can equally contribute to decision making.

Research Methodology

The research methodology used in the article is doctrinal. The researcher has studied numerous statutes, legal texts, literature, news, websites, reports, annual reports, case laws and the schemes related to the sensitisation of transgender in India and other nations to comprehend the topic fully.

Transgenders rights before 2014

Transgender persons can be found all over India. Local names for them include hijra, Kinnar, Kothi, Iravanis, Jogtas, Jogappas, Khusras, and Shiv-shaktis. They are upbeat, and they wear bright, feminine outfits. The conservative culture has frequently neglected this culturally different population. Many biologically male hijras are subjected to a ritualised castration known as nirva (sex reassignment). They are biologically similar to her maphrodites, born with ambiguously male-like genitals. The specific transgender population is unknown because census data collection agencies have hitherto overlooked them. Various non-government social work agencies, on the other hand, estimate their population to be as high as six million across India.

Transgender people in India have remained untouchable in society, with limited access to education, health care, and employment. During a hearing of public interest litigation filed by the National Legal Services Authority, the justices chastised the government for such discrimination. This legal entity advocates for transgender people's rights. Social activists claim that transgender people cannot be discriminated against only based on their gender and that they belong into the socially and educationally disadvantaged category mentioned in Article 15 (4) of the Constitution of India.

The landmark judgement of *Naz Foundation v. Govt. of NCT of Delhi*⁴ was decided by a two-judge bench of the Delhi High Court, which concluded that criminalising consenting homosexual intercourse between adults is a breach of the Indian Constitution's fundamental rights. As a result of the ruling, gay actions involving consenting adults are no longer illegal in

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2009 SCC Online Del 1762

India. The Supreme Court of India later overturned this in *Suresh Kumar Koushal v. Naz Foundation*.⁵

For nearly two centuries, the transgender minority have been denied social and cultural participation. They have restricted access to education, health care, and public services. To make matters worse, they are legally classified as nonentities, which is a violation of the Indian Constitution. According to the constitution, citizens have the right to vote and run-in elections. However, before 1993, the electoral ballots only featured two gender categories: male and female. They were only allowed to vote in elections for the first time in 1994 when the electoral commission introduced a third category called E (eunuch) to acknowledge them as citizens. Some of them ran as candidates in the general elections held in 2014.⁶

Transgender Voting Rights in India: National Legal Services Authority Judgment

In April 2014, the Supreme Court declared hijras, transgender individuals, eunuchs, and intersex people as a legal 'third gender.' The Supreme Court of India did this on April 15, 2014, in the landmark case of *National Legal Services Authority vs Union of India & Ors.*⁷

In this case, the plaintiff argued that all Indian citizens have the right to vote and contest in elections. However, only two sex categories are specified on the electoral rolls - male and female. This is unjust to India's third sex because they are denied their statutory right to vote and contest elections. Along with several other issues, it was brought before the Court that in 2003, the Hon'ble High Court of Madhya Pradesh upheld an Election Tribunal's order that nullified the election of a Hijra, Kamala Jaan, to the post of Mayor of Katni, on the grounds that it was a seat reserved for women and that KamlaJaan, being a 'male,' was ineligible to contest the seat.⁸

After considering the entire issue, a wide decision was made. Hijras and Eunuchs, in addition to a binary gender, should be treated as "third gender" for the purposes of protecting their rights under Part III of our Constitution and the laws enacted by the Parliament and the State Legislature.

⁵ Civil Appeal No. 10972 of 2013.

⁶ Loh, J. U., "transgender identity, sexual versus gender 'rights and the tools of the Indian state'", 119 *Feminist Review*, 39–55 (2018).

⁷ *Supra* note 2.

⁸ available at: <https://www.outlookindia.com/website/story/india-news-why-must-indian-parliament-reserve-seats-for-transgenders/363008> (last visited on March 24, 2022).

Centre and State Governments are directed by the supreme court to take steps for framing various social welfare schemes for their betterment, to create public awareness so that transgender will feel that they are also part and parcel of the social life and be not treated as untouchables, and take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

The Government of India has also taken some measures in this area, such as the inclusion of the transgender community on the voter's list by the Election Commission of India. There is no law prohibiting transgender people from contesting for election to the Parliament or State Legislature. Furthermore, during the Census year 2011, the Registrar General of India provided the option of "other" for registering those who did not wish to be registered as either male or female. UIDAI has also added a "T" option for transgender people. Many issues, however, remain unresolved.

The Transgender Persons (Protection of Rights) Act, 2019

Based on the Supreme Court direction, the Ministry came out with an Act called The Transgender Persons (Protection of Rights) Act, 2019, on December 05, 2019. It provided transgender's equal rights in many respects.⁹ Section 3 of the Act says that “No person or establishment shall discriminate against a transgender person on any of the following grounds, namely: —

(h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office;

This Act gives Transgenders the right to contest elections and also vote when read with the Representation of the People Act, 1951. The Election Commission of India further clarified the matter to the J & K High Court. Jammu & Kashmir High Court – Srinagar Bench in the case of *Aijaz Ahmad Bund and Others v. State of J & K and Others* on 3 June 2019 noted that “We are informed by Mr S. A. Makroo, learned counsel appearing on behalf of Election Commission of India that steps to recognize the transgenders in the records of the Election Commission of India and to enable them to exercise their right to vote have been taken. He further submits that he has received the status report in this regard from the Election Commission of India just today and prays for leave to place the same on record.”

⁹ available at: Voting rights and representation of the Transgender in the Elections in India - Indian Law Watch (last visited on March 24, 2022).

Transgender Voting Rights and the World

"In many regions, people face violence and discrimination because of their sexual orientation or gender identity," the UN General Assembly observed. Even the perception of homosexuality or transgender identity puts persons at risk in many circumstances. Violations include homicides, rapes and physical assaults, torture, arbitrary detention, deprivation of assembly, expression, discrimination in terms of employment, health, education and most crucially, their voting rights are curtailed.¹⁰

The principles of universality and non-discrimination enshrined in Article 1 of the Universal Declaration of Human Rights,¹¹ which declares that "all human beings are born free and equal in dignity and rights," guide the application of international human rights law. All people, including lesbian, gay, bisexual, and transgender (LGBT) persons, have the right to the protection afforded by international human rights law, including the right to life, personal security, 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, peaceful assembly and voting rights of these marginal community.

The Vienna Declaration and Programme of Action confirm that, "while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

Nepal, Pakistan, and Bangladesh have all legally accepted the existence of a third gender, with India, Pakistan and Nepal including an option for them on passports and certain official documents. US transgenders are facing challenges to vote due to strict ID Card laws. EU is unclear on transgender rights despite the European Parliament adopting a resolution on transgender rights as early as 1989. However, the case-law of the European Court of Justice provides some protection by interpreting discrimination on the basis of 'sex' to also refer to people who have had 'gender reassignment'.¹²

¹⁰ United Nations High Commissioner for Human Rights (2011), Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity, Geneva office of the United Nations High Commissioner for Human Rights.

¹¹ Universal Declaration of Human Rights, 1948.

¹² available at: Voting Rights | National Center for Transgender Equality (transequality.org) (last visited on March 24, 2022).

Japan is working towards equal rights for the LGBT community. Human Rights Watch is among 116 organisations to have signed a letter calling for Japan to draft and pass an anti-discrimination bill on the basis of sexual orientation or gender identity prior to the rescheduled Tokyo 2020 Olympic and Paralympic Games.¹³

Sensitisation: A significant Issue

The issue concerning transgender persons is a cross-cutting issue for many line departments and a number of officers and staff of different departments that are involved in providing various services to transgender persons. Due to a lack of adequate basic knowledge and information of problems and issues concerning transgender persons, many employees are unable to handle the matters relating to transgender persons. To address the issue, special provision has been made to sensitize Govt. officials, NGO heads, PRI members, corporate managers and other officials on issues relating to transgender persons. Some of the schemes that are available for the transgenders in the states are as follows

SWEEKRUTI- The Government of Odisha's Department of Social Security and Empowerment of Persons with Disabilities (SSEPD) recognises transgender people as a valuable human resource. It seeks to create an environment that provides them with equal opportunities, protection of their rights, and full participation in society. As part of an integrated programme for Transgender Equality and Justice, the Department has launched a new umbrella scheme called "SWEEKRUTI," which will function in a mission mode with several objectives. The Sweekruti plan focuses on the following broad objectives to guarantee equitable justice for transgender people. To establish an enabling environment for the state's transgender people to have equal opportunity, equity, social justice, and empowerment. Encourage all stakeholders to take voluntary action and participate in order to ensure effective social integration of transgender people. Increase outreach initiatives for the preservation of transgender people's rights and entitlements in the state. Encourage transgender people's individual and group efforts for employment, self-employment, and other socio-educational services. Strengthen the existing implementation apparatus and establish facilities to ensure that all transgender people in the state are covered.¹⁴

¹³ available at: <https://www.hrw.org/news/2021/01/26/japan-introduce-lgbt-equality-act-olympics> (last visited on March 24, 2022).

¹⁴ available at: http://www.ssepd.gov.in/index.php?route=catalog/subschemedetails&subscheme_id=13 (last visited on March 24, 2022).

The Govt of Tamil Nadu initiative- For the first time in the country, the Tamil Nadu government took bold moves to acknowledge transgender people as a separate gender. In Tamil Nadu, Hijras are known as Aravanis. A remarkable group of aravani activists have, through legal and advocacy measures, been able to get the Tamil Nadu government to constitute an Aravani Welfare Board, meant especially to look after the welfare of the aravani community. The Board has ten aravani representatives who act in an unofficial advisory capacity. The welfare board is empowered to look into the various problems, difficulties and inconveniences faced by the transgenders and based on these inputs, formulate and execute welfare schemes for their betterment.¹⁵

The government also announced to create a special database of transgenders that would help deal with their problems and demands. The database would be created by a non-governmental organisation and would map the population of transgender in the state and find out their precise demands such as ration cards, voter identity cards and health facilities etc. It is the government's responsibility to ensure wide publicity through the print and visual media of the fact that aravanis are entitled to get registered in electoral rolls and that transgender individuals could choose either 'male' or 'female' as their gender when applying for official identity documents. The state's education department issued a G.O. creating a "third gender category" for admission in an educational institution; as per this order, educational institutions have to issue application forms for undergraduate courses that will include transgender as a separate category. This will permit transgender students to join any college of their choice, whether co-educational, men's or women's colleges. Further, the government has issued guidelines for schools to provide for counselling of transgender students, counselling for families of transgender students to ensure they don't disown them, and ensuring disciplinary action against schools and colleges which refused to admit aravanis.

State Transgender policy Madhya Pradesh 2020- This policy has the objectives to ensure the effective implementation of The Transgender Persons (Protection of Rights) Act, 2019 in the state and to expand outreach activities to protect the rights and entitlements of transgender persons in the state. The policy shall facilitate and ensure that all rights of transgenders are

¹⁵ available at: <https://www.shethepeople.tv/lgbtqia/tamil-nadu-transgender-community-writes-to-cm-mk-stalin-seeking-inclusion-in-welfare-schemes/> (last visited on March 24, 2022).

protected and enforced, including the right for self-identification of gender as man, woman, or transgenders.¹⁶

Although the above-mentioned transgender sensitisation programmes exist in some states, they are few in number, and as a result, their effects can be examined in the data below about transgender election participation. Only 1,968 of the total 28,527 registered transgender voters had used their right to vote in the 2014 Lok Sabha elections. According to the 2011 census, India's total transgender population was 4,87,203.¹⁷ According to the most recent election commission data, the number of registered transgender voters for the 2019 elections is barely approximately 40,000 - less than 10% of their overall population.¹⁸

There are various reasons why transgenders have failed to get a voter ID card so far. The lengthy procedure of registering as transgender is the key reason for the low number of transgenders on the electoral roll. To certify as transgender, transgenders must obtain legal documents from an oath commissioner and have them published in at least two local newspapers. Furthermore, the signatures of one's parents or guardians must be included in the required paperwork. No parent wants to admit that their child is a transgender person, and they are also unwilling to sign documentation proving their child's gender identity. This is due to a lack of voter sensitisation programmes that educate transgender persons about their voting rights and how to register to vote. Also, sensitisation programmes for their parents are required.

NALSA- With its programmes, NALSA has done a lot for the transgender community's welfare. Although the transgender community's rights are indeed being recognised on a broader scale in India as a result of the NALSA decision, the irony is that NALSA is organising few or no programmes to sensitise the transgender community about their voting rights.

Conclusions and Suggestions

This paper argues that the inclusion of specific transgender identities within citizenship discourses, has resulted in the appropriation of culturally acceptable and feasible identities by tracing the conceptualisation of 'transgender' identity within recent judgments and laws in

¹⁶ available at: http://aiggpa.mp.gov.in/uploads/project/State_Transgender_Policy1.pdf (last visited on March 23, 2022).

¹⁷ available at: <https://economictimes.indiatimes.com/news/elections/lok-sabha/india/others-voters-increase-by-15306-in-5-yrs-activists-blame-paperwork-insensitive-officials/articleshow/68449930.cms?from=mdr> (last visited on March 23, 2022).

¹⁸ available at: <https://indianexpress.com/elections/transgenders-lok-sabha-elections-apsara-reddy-bishesh-huitem-sex-worker-5653379/> (last visited on March 25, 2022).

India. The Supreme Court's NALSA decision aimed to improve the lives of transgender people by bridging the gap between them and their rights. After reading the foregoing literature, it is evident that the parliament and state legislatures have enacted numerous legislative acts to improve the lives of transgender, but little has been done to sensitise a marginalised community about their voting rights. This is necessary for them to participate in Indian politics. Even the least aspect in human existence causes complications for the transgender population in India.

Services and infrastructure for transgender people's rehabilitation are fast expanding, and institutions from the public, non-profit, and private sectors are stepping up to help transgender people. However, due to a lack of sufficient knowledge about the services that are accessible to them, a large number of transgender people are unable to take advantage of such programmes. To sensitise transgender people and their families about the services, schemes, and programmes that are accessible to them, some of the suggestions are that preparation of material, both print/electronic, should be there, which can be disseminated during the programs. The organisation of fairs/festivals from time to time can attract as much as the transgender community—publication of magazines/newsletters. TV/ Radio/ Print media publicity should be there. Cultural shows/ street plays should be organised. Community level meetings/ campaigns should be conducted. Posters, Hoardings and Banners. Sports and cultural events should also be organised and, such other awareness activities should also be there.

Sensitisation about voting rights is necessary for three stakeholders: the transgender person, both as a voter and as a contestant; the parents, whose involvement in the lives of a transgender person is required on both at psychological and legal level; and, last but not least, society, so that it can treat them with respect and consider them as members of society, which can be achieved through the above suggestions. A lot of effort will be necessary for this to happen, not just from the government but also from organisations such as NALSA.