
IMPACT OF COVID 19 ON RIGHTS OF TRANSGENDERS IN INDIA

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ABSTRACT

One of the most important human rights of an individual is that of recognition of one's identity in the social, cultural, national, and global arena. The famous NALSA judgment accorded legal identity to the transgenders in India and pronounced that they are entitled to all the basic rights and fundamental freedoms guaranteed to any other individual. With the implementation of nationwide lockdown due to covid 19 both during the first and second phase the question of human rights acquired central place. But these marginalized sections have had to face lots of hardship for survival. The major source of livelihood being 'Badhai', begging and prostitution all came to stop still during the lockdown posing threat to their livelihood and consequently survival. The Constitution of India of India protects and promotes human rights, it ensures social justice and prohibits discrimination against any person in accessing basic necessities of quality life be it, food, shelter, clothing, education, proper health facilities, or any other social welfare, economic relief schemes announced by the Government from time to time. However, neither the government, stakeholders nor the civil society could integrate resources and these vulnerable communities could hardly be reached out to avail the benefits of social welfare schemes, disaster mitigating strategies, or even the most basic entitlements such as the right to food, the right to shelter, and adequate medical care facilities. This paper highlights the violation of the rights of transgenders, the apathy of the Government and society towards them during the covid era for the simple reason that they do not adhere to the stereotype gender behavior and identity assigned at the time of birth. The discriminatory practices, apathetic and shaming attitude, deprivation, harassment, disparagement, and violence have led to the robbing of the right to live a dignified life of these socially excluded classes. It is high time to sensitize the government as well as the people towards the human rights of the people and create more legal awareness for acceptance, inclusion, and social integration.

Keywords: Transgender, Gender Identity, Gender Role, Sexual Orientation, Identity crisis

INTRODUCTION

A public health emergency occurred globally due to the covid 19 pandemic in different phases since January 2020 on a massive scale leading to extensive lockdown across the world. India also witnessed the same and was no exception to it. A nationwide lockdown was imposed in India in different phases to curb the widespread use of the easily transmitted virus resulting in the closure of all activities except essential services. It thereby restricted freedom of movement leading to a denial of enjoyment of other human rights most important being the right to livelihood. The unavailability of the right to livelihood created several challenges such as a scarcity of resources to meet the basic necessities of life such as food, shelter, adequate health care, education, etc., especially amongst the most vulnerable ones. Transgenders are one of such ignored, disdained, vulnerable marginalized groups that have been badly affected in the covid era unable to access the basic necessities of life such as food, shelter, proper quarantine facilities, other disaster mitigating strategies, and adequate medical care. The plight of these people became more miserable with the covid crisis getting worsened with the mutation of the virus in the most easily transmissible, deadliest delta variant. Lakhs of people succumbed because of serious damage to the lungs and respiratory system. Hospitals were overcrowded. People were desperately in search of beds in hospitals, oxygen cylinders, life-saving drugs, and ventilators. There was an acute shortage of these life-saving equipment.

Who are Transgenders

Every society prescribes its values and moral dictates regarding pertinent or impertinent sexual and gender identity. Gender identity is one's inner inherent feeling of being a male or a female. It is fundamental to one's gender expression and personal identity. A person may be a cisgender or a transgender. Transgenders do not fit within the conventional gender binary and do not embrace the gender role assigned to them at the time of their birth. Transgenders may have the same sexual orientation or different orientation. Sexual orientation is attraction or inclination towards the other sex. The term transgender is an umbrella term¹ wide enough covering all types of trans people including cross dressers i.e. person who wears a mix of clothing, a person with no or dual gender, trans-man, trans-woman, a person with an intersex variation, genderqueer. In India Kinner, Hijra, Aravani, Kothi, and Jogta having socio-cultural identities

¹ <http://en.m.wikipedia.org> accessed on 12.7.2021

also fall within the purview of transgender.² Over 487,803 lakh transgenders live in the country, according to the 2011 census.³ Transgenders are generally intersexed i.e. neither male nor female. They often dress like women in glittering sarees and loud makeup.

Status of Transgenders in Indian Society

Transgenders were highly revered as demi-Gods in India in ancient times. The most worshipped Ardhnarishwara figure of Hindu mythology is an intersexed variation of Lord Shiva and Devi Parvati. According to ancient religious texts, Lord Rama was impressed with the devotion of the Transgenders and had granted them a boon to bless people on propitious occasions for example marriage, childbirth, etc. The Mahabharata hero Arjun had disguised a transgender to conceal his identity during expatriation. Sangam literature also mentions transgender people.

The transgenders popularly known as Hijras acted as political advisors, administrators, and also found places in harems of queens in the Mughal era. The Britishers categorized the transgenders as a criminal tribe under Criminal Tribes Act 1871. It made the act of dressing as a female and performing in street a crime. Compulsory registration and monitoring of the community were made mandatory. Section 377 was introduced in I.P.C penalizing unnatural homosexual relations irrespective of the fact whether it was consensual or not. This section was⁴ retained in the Indian Penal Code even after independence. The famous Navtej Singh Johar v. Union of India⁴ in 2018 has decriminalised the act as violative of the right to sexual autonomy, privacy, and dignity guaranteed under Article 21 of the Indian constitution.

However, prior to this victory, the legal identity of Transgender got recognition in a landmark case in 2014 in the famous NALSA v. Union of India & ORS.⁵ The apex court recognized the legal identity of transgenders giving them the right of self-identification and affirmed their rights including fundamental rights to be at par with that of any other person. It directed the government to enforce the fundamental rights of transgenders and include a third category in various documents such as aadhaar cards, voter id cards, passports, ration cards, driving license hospitals, educational institutions, etc. The apex court also directed the government to grant reservations to these socially educationally backward classes under the OBC category. The

² Ibid.

³ Ibid.

⁴ AIR 2018 SC 4321

⁵ AIR 2014 SC 1863

Transgender Persons (Protection of Rights) Act,2019 was passed which came to be criticized by all forums be it the transgender, lawyers, academia, lawmakers, or human rights activists.

It was expected that these pronouncements would prove to be a milestone in assuring and ensuring the political, social, economic rights of the sexual minorities but all went in vain. The Government apathy and insensitivity of people continued and were witnessed during the covid era resulting in massive violation of the fundamental rights of these marginalized, vulnerable people who were already living in pathetic conditions devoid of basic amenities, facing social stigma and discrimination.

Impact of Lockdown

The term 'lockdown' has not been defined under any Indian law but was used to restrict freedom of movement it a fundamental right enshrined under Article 19 (1) of the Indian Constitution. The fundamental right is not however absolute and subject to reasonable restrictions. Lockdown was imposed under sections 6,10 of the Disaster Management Act 2005 and under sections 2 and 2A of the Epidemic Disease Act 1897. It empowered the government to take necessary steps to control epidemics or diseases or disasters which may result in substantial loss of life or cause large-scale human suffering. Lockdown brought the entire nation and badly affected the right to livelihood.

The right to livelihood is an important component of the right to life under Article 21 of the Indian Constitution. Article 21 is in fact a bundle of rights. Reflecting on the right to life Justice Bhagwati in *Francis Coralie Mullin vs Delhi Administration*⁶ observed in paragraph 6 that "the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow beings. React with your friends against or a human unity would constitute deprivation pro tanto of this right to live...". The supreme court in *Kehar Singh versus Union of India*⁷ observed that "To any civilized society there can be no attributes more important than the life and personal liberty of its members."

⁶ AIR 1981 SC 746

⁷ AIR 1989 SC 653

The constitutional bench of the Supreme Court in *Olga Tellis v Bombay Municipal Corporation*⁸ observed that "If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.... Deprive a person of his right to livelihood and you shall have tried him of his life.....". Further in *Shantistar Builders v. Narayan Khimalal*⁹ in para 9 the apex court held "Basic needs of man have traditionally been accepted to be three- food, clothing, and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to ... reasonable accommodation to live in. The difference between the need of an animal and human beings for shelter has to be kept in view. For the animal it is the bare protection of the body; for the human being, it has to be a suitable accommodation which would allow him to grow in every aspect physical, mental and intellectual."

Emphasising the right to health as the primary duty of the government in a welfare state the Supreme Court in *Paschim Bang Khet Mazdoor Samity & Ors v. State of West Bengal*¹⁰ held "Article 21 imposes an obligation on the state to safeguard the right life of every person. Preservation of human life is there is of paramount importance. The government hospitals run by the state and the medical officers employed therein are duty-bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21."

Thus we find that the fundamental rights are available to all citizens of India irrespective of sexual distinction. The right to livelihood, food, shelter, education, movement, health is the most paramount of all the fundamental rights.

Loss of Livelihood, Economic instability

Imposition of lockdown and restriction on movement, gatherings have resulted in the loss of income of the transgenders since they mostly live on begging and 'Badhai during auspicious occasions such as marriage and childbirth. Social gatherings are prohibited, marriages are mostly postponed or held privately within the presence of family members, in which the

⁸AIR 1986 SC 180

⁹ AIR 1990 SC 630

¹⁰ AIR 1996 SC 2426

opportunity to earn is lost. It becomes difficult to meet the basic requirements of life such as food, shelter, healthcare, education, etc. with little savings and no social security benefits. Many state governments had announced relief measures for the marginalized, it was the Kerala government that came out with temporary housing and food facilities for transgenders in the state. However, a few citizen-led initiatives have offered some respite to the trans-community by raising money through crowdfunding platforms, sensitizing the public about the plight of the community, raise money to source basic food provisions or facilitate direct bank transfer to beneficiaries.

Mist¹¹ is a group of lesbian, gay, bisexual, and transgender individuals from India founded by Shyam Konnur. The group raised funds during the pandemic for badly affected the 'hijra' community whose survival is dependant on public interaction. The organization observed that "Since the lockdown, many folks in the community are struggling to make ends meet. They live with disabilities, chronic illnesses, compromised immune systems, and without family support"¹². The organization has helped more than 100 members of the trans community in Hyderabad with food essentials that cost Rs 1,000 each.¹³ The beneficiaries are identified and simultaneously their details are mentioned on the crowdfunding platform. All purchase bills are uploaded on their website to maintain transparency and accountability. According to the group the Pune Police provided them digital passes to travel during the lockdown and reach out to the beneficiaries from the community who have exhausted their ration and medicines many members did not have ration cards and an urgent need was felt to provide the community members with ration cards and IDs. Yet another platform Milaap nearest crowdfunding in Thoothukudi, Tamil Nadu. It raised fees for several campaign-related to Covid-19. The campaign_supported more than 150 people from the community¹⁴. Grace Banu, was the campaign organizer. Thoothukudi district has 15 transgender households with as many as 12 members each.¹⁵ Few people were infected with HIV/AIDS and heavily depended on begging

¹¹https://www-downtoearth-org-in.cdn.ampproject.org/v/s/www.downtoearth.org.in/news/governance/amp/covid-19-what-about-the-transgender-community--70151?amp_gsa=1&_js_v=a6&usqp=mq331AQKKAFQArABIICAw%3D%3D#amp_tf=From%20%251%24s&aoh=16277089991600&referrer=https%3A%2F%2Fwww.google.com&share=https%3A%2F%2Fwww.downtoearth.org.in%2Fnews%2Fgovernance%2F covid-19-what-about-the-transgender-community--70151 last accessed on 24.7.21

¹² *ibid.*

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ *ibid.*

received money transfer in banks and 1229 received the ration kits.¹⁹

Domestic Violence and Sexual Abuse within homes

The Transgenders face non-acceptance and non-understanding by the hostile family including parents and siblings. There is an increased risk of physical, mental abuse, and domestic violence at home during lockdown since movement outside the home is restricted, all schools, offices are closed, all are compelled to share a common household with their abusers and perpetrators. Two women in Tamil Nadu committed suicide unable to bear the trauma.²⁰

Most are generally abandoned by their families and live with gurus in the guru chela system. They face stigma and discrimination and very few people let out rented houses to them. Paying house rent becomes difficult and the sword of eviction by the landlord is always there. They stay in overcrowded houses in filthy areas usually slum areas. Social distancing is not possible under these overcrowded homes. They are forced to stay at home in overcrowded rooms with no opportunity to intermingle with people of their choice. They are more prone to domestic violence inside the house by other members including sexual abuse and has an adverse effect on mental health too. They cannot go out and complain and even if they do so they are exploited by policemen too for violating safety norms in the form of extortions and even sexual abuse. Even otherwise there had been much news of atrocities by police to impose stringent lockdowns. Complaining can make them homeless. In a study in Kerala it was revealed that about 52% were harassed by police and 96% of victims did not raise complain.²¹ There are no separate shelter homes or institutions for homeless or domestic violence victims and hence have to reside with their perpetrators and abusers. As a result, hate posters could be seen in various parts and even violence erupted at few places against them.

Hatred and stigma is also evident from the fact that there spread a belief among people in Telangana that talking with a transgender can make one get infected with corona.²²

The Government of Kerala provided ration kits to the transgender during covid lockdown besides providing shelter to them in separate shelter homes for transgender men that were

¹⁹ <https://mybs.in/2Zf83MS> last accessed on 24.7.21

²⁰ <https://www.ohchr.org> last accessed on 15th July 2021

²¹ <https://mybs.in/2Zf83MS> last accessed on 24.7.21

²² <https://www.newindianexpress.com/cities/hyderabad/2020/mar/30/transgenders-shocked-by-hate-posters-in-hyderabad-amid-coronavirus-fear-2123284.amp> last accessed on 24.7.2021

arose as to in which ward male or female to be admitted. There was no separate ward for them and were unwelcomed in both the conventional wards due to stigma related to their sexuality. Generally, they were admitted to the male ward against their wish. Doctors, medical staff and other patients treated them with apathy and insensitivity. Many lost lives which were unrecorded.

The West Bengal government had reserved 10 beds for members of the transgender community at its government hospital M R Bangur hospital in Kolkata.²⁶

Impact on mental Health

Unemployment, Scarcity of income, food insecurity, gender dysphoria, staying in overcrowded homes, abuse at homes, stigma, discrimination, non-acceptance by society, social isolation all lead to mental problems among them. Due to lack of psychological support and adequate counseling, they develop depression and other related mental problems including suicidal tendencies, and even resort to drug abuse. Such incidents are on high during the lockdown. Though various governments have started online counseling Transgenders have limited or no access to such facilities due to a lack of requisite resources and education. Moreover many times the counsellor is not an expert as experts charge high fees for their job. The already unemployed and poor community who has exhausted their little left resources have hardly anything to pay or afford mobile phones or internet facilities.

The Ministry of Social Justice and Empowerment has also announced a free helpline for distressed transgender persons for psychological support and mental health care highly needed during the pandemic. Any transgender person could take the assistance of psychological experts on the helpline number 8882133897 from Monday to Saturday between 11 AM to 1 PM and 3 PM to 5 PM.

Insurance Facilities

India has adopted universal health coverage. It has brought up a national health government scheme Ayushman Bharat to provide health insurance to millions of people living below the poverty line and in need of financial support for fighting diseases. It provides financial supports both for physical as well as mental illness and indoor and outdoor patients families living below

²⁶ <https://www.ohchr.org> last accessed on 15th July 2021

the poverty line. The treatment also includes medicines as well as counselling services to patients suffering from psychiatric disorders and patients needing treatment against drug abuse including sending them to addiction centres. Despite the fact that the Insurance Regulatory and Development Authority has issued guidelines to all insurance companies to provide policy cover to people with mental disorders by October 1 2020²⁷. It is only the HDFC Ergo My Health Suraksha plan which provides coverage for mental health treatment.²⁸ How far are transgenders able to avail this and pay premium is a million dollar question.

Vaccination

Ministry of Social Justice and Empowerment Government of India²⁹ and proposed several advisories to be followed by a transgender community for protection against covid such as taking nourished food, consuming liquids, maintaining proper hygiene, use of disinfectant, maintaining social distancing, and keep a list of addresses and contact number of health care center hospitals ambulances and other services.

The most important was to get themselves vaccinated to reduce the risk of infection. The registration process requires access to the Cowin platform and Aarogya Setu app with any one of the prescribed identity cards such as aadhaar card, PAN card etc. Since many people did not have a mobile number a single number code can be used to register at least four people. There again arises a problem of obtaining legal documents such as Identity cards which most of them do not have or are pending in relevant offices for change of name and gender according to their choice. Alternative identification methods such as thumb impressions need to be admitted to make the campaign successful.

²⁷https://www.financialexpress.com/cdn.ampproject.org/v/s/www.financialexpress.com/money/insurance/including-mental-illness-in-insurance-policies-supreme-court-seeks-reply-from-irdai-centre/1993243/lite/?amp_gsa=1&_js_v=a6&usqp=mq331AQKKAFAQrABIIACA%3D%3D#amp_tf=From%20%251%24s&aoh=16278269328295&referrer=https%3A%2F%2Fwww.google.com&share=https%3A%2F%2Fwww.financialexpress.com%2Fmoney%2Finsurance%2Fincluding-mental-illness-in-insurance-policies-supreme-court-seeks-reply-from-irdai-centre%2F1993243%2F last accessed on 24.7.21

²⁸https://www.hdfcergo.com/Campaign/Health-insurance-new.aspx?&utm_source=google_search&utm_medium=cpc&utm_campaign=YR_17_AN_HDFCERGO_CN_Health_Brand_Phase_New_OB_SALES_PK_COA_CP_VV_VGNONE&utm_content=hdfc%20health%20ergo&utm_term=MK_IN_AT_AWTEXT_AG_Missing_Keywords_Phrase_FF_&placement_id_identifier=&ad_group_id_identifier=42546515970&device=m&location=9303042&gclid=CjwKCAjwjJmIBhA4EiwAQdCbxn91D6Trn8nQJtRyVfUE-3LZUmQtHHsyF05SV9WwtxAo1RmiGvm-BxoCX2cQAvD_BwE last accessed on 24.7.2021

²⁹ <https://www.socialjustice.nic.in> last accessed on 24.7.21

Structural inequalities, lack of education badly affected vaccination drives among transgenders. Volunteers and medical officers should reach out to these people to make them understand the benefits of vaccination. Accessibility and awareness are essential components to make the drive successful. There is a need to change the mechanism of the distribution of vaccines. Separate vaccination centers need to be set up in each district. Assam has started such centers with the cooperation of transgenders. The state of Haryana has also started a separate vaccination booth for transgenders. The registration process needs to be made easy by availing of easy reiteration on the spot. Vaccine incentives can also be announced to lure people to vaccination.

Approach of Judiciary

The judiciary has adopted a just and humane approach towards the pitiable situation of transgenders. The Karnataka high court was the first one to realise the struggle of transgenders to meet their basic needs. It directed the government to provide social security immediately in the form of two months of cash relief along with free rations.³⁰ Human Rights Law Network in Bihar filed a petition in Patna high court drawing the attention of the judiciary to the effects of the nationwide lockdown and covid-19 cases on the transgender community³¹. The courts took cognisance of the deplorable state of these communities and issued directions to the state government to avail food, ration, medicines, masks, sanitisers and other resources through the period of the lockdown. A similar petition was filed by the Centre for Law and Policy Research in Telangana.³² In Court on its own motion vs State of Jharkhand and Amarjeet Singh versus chief secretary state of Jharkhand and others,³³ the division bench of the Jharkhand High Court Held that the state has duty to take care of the transgender people residing within the state and provide them immediate relief and ensure food and medical facilities are reached out to them.

Suggestions

First of all, there is a need to identify vulnerable and marginalised groups, their needs and reach

³⁰ https://indianexpress-com.cdn.ampproject.org/v/s/indianexpress.com/article/cities/bangalore/karnataka-hit-by-covid-19-lockdown-transgenders-seek-relief-and-vaccines-7332083/lite/?amp_gsa=1&_js_v=a6&usqp=mq331AQKKAQArABIIACAw%3D%3D#amp_tf=From%20%251%24s&aoh=16278271681291&referrer=https%3A%2F%2Fwww.google.com&share=https%3A%2F%2Findianexpress.com%2Farticle%2Fcities%2Fbangalore%2Fkarnataka-hit-by-covid-19-lockdown-transgenders-seek-relief-and-vaccines-7332083%2F last accessed on 23.7.21

³¹ <https://www.livelaw.in/news-updates/patna-high-court-issues-notice-to-the-government-of-bihar-regarding-the-pitiful-condition-of-the-transgender-community-156149#.YQasixr961I> last accessed on 24.7.21

³² <https://www.barandbench.com/news/litigation/covid-19-lockdown-ensure-free-foodgrains-medicines-to-transgenders-without-insisting-on-production-of-ration-cards-telangana-hc-to-state> last accessed on 24.7.21

³³ <https://indiankanoon.org/148024672/> last accessed on 24.7.21

out to them at areas where they reside. The government officials including the medical officers should be specially trained and sensitized to the particular needs of the community. The government can take the help of civil society organizations and reach out to these transgender people to identify their needs, provide essential items such as food medicines masks sanitizers, and other hygiene-related products. Free, immediate support and less cumbersome procedure should be made available to them so that they can get the legal documents prepared with the name and gender of their choice. Alternate identification methods can be evolved so that none of the marginalized are deprived of social welfare schemes and social security benefits pronounced by the government from time to time during a crisis. It is essential to set up safehouses with equipped healthcare services. Adequate online awareness programs and counseling facilities be made accessible to them so that they have proper information of their rights, enforcement agencies, and social measures implemented by the government from time to time. There should be effective coordination and communication among all segments of government officials and society for proper implementation. Government can take the help of civil services organizations in this regard. Media including social media platforms such as Facebook, Twitter, etc. can also play a prominent role in creating awareness and do away with stigma and structural inequalities. Familial and social acceptance should be promoted by various incentive schemes to those taking care, protecting, and providing education to these vulnerable classes. Social acceptance and inclusion will lead to social integration.

We have to realise that we have a collective responsibility towards the marginalised segment of our transgender community. They are also entitled to the sacrosanct inalienable human rights and the fundamental rights enshrined in our constitution without any discrimination. We need to be sensitive and accept their sexuality and legal identity. Only then can the sustainable development goal agenda 2030 be realized.