

Civil Society and the Changing Perception towards Transgender Community

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Abstract

“Sex is what you are born with, gender is what you recognize and sexuality is what you discover.” - A. Chettiar

The existence of the transgender can be traced back to the pre-modern era. They were always part of the society but societal norms made their presence invisible among us. They always fought in order to secure their basic human rights which were denied to them by the so-called protectors of the society. But with the passage of time, the situation is changing and now they are being recognised as the third gender by our honourable Supreme Court. This shift has been made by the continuous effort of this community and by the lawmakers. In the present research paper, the objective of the researcher is to show what attitude of the society in the past time and what is present attitude which the society has towards the transgender community. The study will also make it clear how time has favoured them and now they are able to secure the basic rights from which they were deprived off earlier.

The researcher will also put light on the role of the judiciary which came forward to protect the interest of this marginalised class and this paved the way for enactment of the Transgender Persons (Protection of Rights) Act, 2019.

Keywords: Transgender, Discrimination, Section 377 of Indian Penal Code, 1860, Transgender Persons (Protection of Rights) Act, 2019 and NALSA

Introduction

The world is exceedingly beautiful and the great almighty has decorated it very gingerly and meticulously with diverse shades, colours, species and kinds and what not. But one sad reality is that there exists a third gender in this beautiful world that is either altogether alienated or detested. We live in the 21st century where human rights are assured and preserved for human being except the third gender i.e. transgender.¹ Despite all the constitutional guarantees, the transgender are even denied to have their basic rights like the right to dignity, personal liberty etc. These transgender have been subject to mental harassment and cruelty throughout the ages. But over the last few years, there has been an important development for eliminating the historic discrimination against the transgender person and for ensuring that they are accepted in society.

The term 'transgender' refers to anyone whose identity falls outside the gender norms. In other words, intersexed individual whether men or women who are gender-atypical will come under the umbrella of transgender.² The term transgender has been defined in the Transgender Persons (Protection of Rights) Act, 2019 in the following words - "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*.³ In India, transgender are called by a different name such as Hijras, Kinnars, Kothis, Eunuch, Shiv Shakti, etc.⁴

If we look at the position of the transgender in society they are only given respect at the time of childbirth because their blessing is considered auspicious. But if we put a light on the other side of reality, their

presence in society is not visible. Though in the present scenario, we can see that the Apex Court has issued various beneficial guidelines for improving the condition of this community in the society but the lack of proper implementation of the rules is the reason for their social and economic sufferings. If we focus upon the journey of a transgender in the society, except the money and the gift which they receive in lieu of their blessing at the birth of a child or at the time of the marriage, their source of income is prostitution or begging.

Life is difficult but not impossible - this truth of life goes well with the deserted transgender. They are being abandoned by their family and because of the poverty they have to submit themselves into the world of prostitution. It is the societal pressure that has forced them to go into this dark world which is very shameful for humanity. Since this heterogeneity has no acceptance in the world, therefore, there is apparent invisibility of empathy towards them.

Status of Transgender in the Ancient Period

If we talk about the existence of transgender in India in the pre-modern era we can witness that Indian mythology shows the subsistence of transgender in society. In the Vedic period, many texts talked about the presence of the third gender. *Mausmruti*⁵ and other scriptures make a reference about *Tritiya-Prakriti* (third nature) i.e. third gender. In the pre-modern period, there were male, female and intersexuals. In Patanjali's *Mahabhasya*,⁶ the recognizance has been given to three genders. As per astrological texts, the planet Mercury and Saturn are associated with the third gender.

Lord Shiva has presented himself in the form of *Ardhanarishvara* which manifest the third gender personality. Hijra community relate themselves to the Mohini avatar of Lord Vishnu. The great epic work of *Mahabharata* mention about a great warrior *Shikhandini* who was neither male nor female and was the reason for the defeat of the *Kauravas*. We also hear about the tale of a transsexual in the tale of *Ramayana*.⁷ Goddess *Barucha* is considered as the goddess of hijras

Hijras played an important in the royal courts of Mughals. They were appointed to the post of advisor, supervisor, royal guards and guards of the harem. The Sultans granted them acres of lands as a grant. If we analyse the position of transgender in the British era we can make out that the status of the transgender deteriorated. The estates which were given to them as a grant by the royals were confiscated by the British authority. The Government in the year 1871 passed the *Criminal Tribes Act, 1871*, to punish the hijras on the ground of suspicion of being indulged in criminal activities.⁸

Status of Transgender in the Contemporaneous Period

After independence, the Act of 1871 was repealed in the year 1952.⁹ In the post-independence period, if we look at the condition of the transgender, the perception of the patriarchal mindset of our society is not appreciative towards them. Though their blessing is considered pious but at the same time, the society does not want to get communal with them.

This unjustified attitude of the society has resulted in the deprivation of their basic rights to education, to live with dignity, the right to have one's own family, right to work like the other citizens of the country. They are thrown out of the home by their own family members and being humiliated by their parents because their sexuality does not conform to societal norms. Employment doors are closed for them, in hospitals they are ill-treated because of their sexuality.¹⁰ If they are found expressing their sexual orientation they are immediately booked under section 377 of the Indian Penal Code.¹¹ Like other citizens they are too entitled to get constitutional benefits and other legal benefits.

Constitutional Protection to Transgender

If we carefully scrutinize the provisions of the Constitution we can see that this living document ensures the right to equality, right to justice, right to dignity to all individual which impliedly includes the transgender person. The combination of Articles 14, 15, 19 and 21 of the Constitution provides sufficient security to this vulnerable community to live with pride as other individuals. Article 14.¹² talks about equality before the law and the protection of the law is available to all individual irrespective of the sexes but the Constitution is 'sex blind' and it does not consider transgender to fall under the ambit of the term 'sex' as used in Article 15 of the Constitution.¹³ Article 14 never provided equality to them. In the case of *St. Stephen College v University of Delhi*,¹⁴ the court held that the expression "equal protection of the law" should be read as a positive obligation on the state to ensure equal treatment to all by making necessary social and economic changes so that no one should be denied protection. In the case of *Indra Sawhney v Union of India*,¹⁵ it was held by the Supreme Court that the right to equality is the basic feature of the Constitution which cannot be taken away from any person.¹⁶

In the case *E. P. Royappa v State of Tamil Nadu*,¹⁷ it was observed by Bhagwati J. that fairness, equity and justice are the essence of any law and no arbitrary action is possible and, therefore, any law which provides for the arbitrary action shall be void on the face of it and will not be able to pass the test of reasonable classification under Article 14 of the Constitution.¹⁸ In the case of *Maneka Gandhi v Union of India*,¹⁹ it was held that Article 14 strikes at the arbitrariness. In the case of *Naz Foundation v Government of N.C.T Delhi*, with respect to Article 14, it was observed that, the criminalisation of private sexual relations between consenting adults is arbitrary and unreasonable. If the objective is irrational, unjust and unfair, necessarily the classification will have to be held as unreasonable.²⁰ If we go by the series of these judgments we can easily come to the conclusion that despite being equally competent they are denied the fundamental right to equality.

If we proceed to the next fundamental right, we can witness that transgender are given the constitutional right of not being discriminated against on the basis of 'sex' under Article 15 of the Constitution. Here this fundamental right gives one person the right to express his sexual orientation, that

is, freedom to declare his sexuality which is directly connected to the fundamental right provided under Article 19 of the Constitution which deals with freedom of speech and expression. Before the judgement of *Navtej Singh Johar v Union of India*, no person was authorised to express his sexuality, it was a criminal offence. In the case of the Naz Foundation case, the court found Section 377 to be violating the non-discrimination provision in Article 15, asserting that discrimination on the basis of sexual orientation is not authorised by Article 15. Discrimination on the ground of sexual orientation is impermissible even on the horizontal application of the rights enshrined under Article 15.

In the case of *NALSA v Union of India*, the court directed the State to treat transgender as a socially and educationally backward class and extend all kinds of reservation as available to members of Other Backward Classes. The reservation was seen as a positive step to counter the systemic discrimination faced by the members of this community and emancipate them from the stigma stemming from religious, social as well as cultural prejudice. The court made the observation that Transgender are not considered as socially and economically backward class under Article 15(4) and hence not entitled to the benefits of socially and educationally backward classes. They are also entitled to reservation in the matter of appointment, as envisaged under Article 16(4) of the Constitution. They are entitled to the rights mentioned in Articles 15(2) to (4) and Article 16(4) read with the Directive Principles.²¹

The most important constitutional rights which are guaranteed by the Constitution to the transgender which is not only a fundamental right but also a basic human right which all living being possess from their birth is right to life under Article 21 of Constitution.²² In the case of *Francis Coralie v Union Territory of Delhi*²³ and in *Maneka Gandhi v Union of India*, it was held that the right to live includes the right to live with dignity. The term 'life' as used in Article 21 is not just a vegetative life rather it is a dignified human life.²⁴ In the case of *Subramaniam Swami v Union of India*,²⁵ it was held that the right to life under Article 21 includes the right to live with reputation. This implies the even this marginalised class has like other gender, the right to live with dignity and not be subjected to any kind of humiliation. The community is not treated equally in the daily spheres of life. They are subject to harassment, violence, sexual assault including molestation, stripping etc. Article 21 protects the dignity of human life, one's privacy etc. But this right to dignity is not available to transgender. In the Naz Foundation case, the Court observed that in the Indian Constitution, Article 21 includes the right to live with dignity and the right to privacy both. Section 377 IPC criminalises a person solely on account of his or her sexuality and thus violates Article 21 of the Constitution. This section denies to person a right to full personhood which is implicit in the notion of life under Article 21 of the Constitution.²⁶

In *State of Maharashtra v Public Concern for Governance Trust*,²⁷ it was held by the Court that a good reputation was an element of personal security and was protected by the Constitution. Therefore, Transgender have the full right to express and live their life without any fear. Apart from the above mentioned constitutional rights, one more fundamental protection has been provided under Article 23. It forbids any form of discrimination. The main intention of this provision is to secure the independence of individual identity by preventing exploitation. Due to their economic status, Transgender are exploited and tend to indulge in immoral activities such as prostitution. Ultimately, they are seen as taboo by society. Article 5 of the Constitution tells us who are entitled to citizenship under which this marginalised category definitely falls but like other citizens they are not allowed to express their feeling with regard to gender identity. The Citizenship Act, 1955, makes a determination of Indian citizenship. Though no express provision has been made for the transgender but Election Commission takes special measures for the enrolment of a transgender person as an elector.²⁸

All the law which are enacted so far by the legislators though not successful in protecting the rights of transgender but they never tended to cause harm to this community. But there was one draconian provision which aimed to criminalise the acts of transsexual and made their life more difficult. This law is given under section 377 of the I.P.C which deals with the unnatural offence. This provision criminalised transgender people if they get involved in the relationship. This section intends to punish the offence of sodomy, bigamy and bestiality. This section provides that carnal intercourse committed against the order of nature by a person with a man, or in an unnatural manner by or with a woman or by woman or man with an animal is an offence. Nowhere in this section is written about 'consent' and 'voluntarily'. Suppose there is intercourse between two transgender, both are adult and both have consented than both will be liable under section 377. The problem arises in the case of HIV AIDS, heterosexual can go for treatment but if homosexual would go for treatment than the police will arrest them. This problem of transgender was taken before the Apex Court in the case of *Navtej Singh Johar v Union of India*, where the consensual sexual intercourse between two people whether two male or two female was decriminalised. This paved a way for transgender to have a better life for them as they also need a companion for living a happy life.²⁹

Judicial trend in Current Scenario

If we talk about the role of the judiciary in the protection of the rights of the transgender – In absence of proper legislation, Court intervened to uphold their rights. In April 2014, the Supreme Court of India declared transgender to be the 'third gender' in Indian law in the case of *National Legal Service Authority v Union of India*³⁰. NALSA has taken this concern forward by filing a Public Interest Litigation (PIL) specifically related to entitlements for transgender people.³¹ The Court held that

transgender falls within the ambit of the Indian Constitution and therefore are entitled to enjoy all the rights of the Constitution. By recognizing the transgender as a third gender, the court affirmed that the fundamental rights guaranteed under the Constitution of India will be equally available to transgender people. The judgement gave them the right of self – identification of their gender as male, female or third gender. Moreover, the court also held that as a transgender community was a socially and economically backward class, they will be granted reservations in admission to educational institutions and public employment government was asked to recognize them as third gender in various documents such as passport, ration card, etc. They are entitled to all the schemes and benefits launched by the government as they are the citizen of India. Now the Election Commission of India has also taken special measures to enrol them.

Section 377 has made homosexuality a punitive act. The contemporary situation has given rise to a movement against the repressive and oppressive nature of Section 377 and finally on July 2, 2009, the Delhi High Court passed a judgment in favour of the LGBT in the landmark judgment of *Naz Foundation v Government of N.C.T Delhi*³², wherein the court declared section 377 of I.P.C is unconstitutional and violative of Articles 14, 15, 19 and 21 of the Constitution as it criminalises homogeneity and read down the section, allowing consensual sexual activity between two homosexuals above 18 years of age. It was held that the individual has a right to privacy under Article 21 of the Constitution and therefore the person has the right to indulge in any kind of sexual act in private with the other consenting person. Also under Article 19(1)(a), every citizen has the fundamental right to speech and expression and it includes the freedom to express one's sexual orientation/inclination and also to indulge in sexual activities. If a person is homosexual and is inclined towards a person of the same sex than he/she should have the freedom to declare that but because of section 377 of I.P.C out of fear of being prosecuted one is not able to make a declaration in this regard and that is a violation of Article 19(1)(a). It was also held that the state cannot discriminate on the ground of sex as per article 15(1). Thus transgender cannot be punished if they express their sexual inclination towards the other. So section 377 of I.P.C was declared unconstitutional

The matter went to appeal in the Supreme Court of India in *Suresh Kumar Koushal and another v NAZ Foundation and Others*,³³ where the Supreme Court struck down the decision by the High Court in the Naz Foundation case. Justice Singhvi was of the view that that Section 377 does not suffer from any defect and left the matter to the competent legislature to decide upon the legitimacy of the section from the statute book and to decide upon deleting it or making the important changes so as to allow consensual sexual activity between two adults of the same sex in private. This judgement restricted the rights of Transgender to express their sexual orientation and

social inclination towards others as such expression would subject them to punishment.

Recently in 2018, the Supreme Court in its landmark judgement of *Navtej Singh Johar and Ors v Union of India*,³⁴ decided by five judges bench of Supreme Court partially struck down section 377 of I.P.C which made carnal intercourse against the order of nature a criminal offence. Section 377 was struck down on the ground that it violates the right to equality, freedom of speech and life under articles 14, 19 and 21 of the Constitution. Thus consensual intercourse between two major is now not considered as an offence. This decision has proved as a boon for transgender communities as now they have the freedom to declare their inclination towards other people for which they will not be punished. This judgement gave some relief to people of the transgender community.

Thus the Apex Court has taken incredible steps for securing the interest of this minority class, these steps got stronger when the parliament has recently passed legislation for the transgender for giving effect to direction passed in the NALSA case for the last five year. In the year 2019, the Transgender Persons (Protection of Rights) Bill, 2019 was passed by Lok Sabha and Rajya Sabha. This Bill has been adopted as the Transgender Persons (Protection of Rights) Act, 2019 after the assent of the President on December 5, 2019. Earlier also the Bill on the transgender person was introduced in 2014 and in 2016 but unfortunately both lapsed.

Apart from above mentioned constitutional and judicial protection, there are few other protection in the form of welfare scheme and various programmes which aims to provide a dignified life to them. For instance, in Karnataka, the Government has listed the transgender in the category of Backward Class under section 19(1) of the Karnataka State Backward Classes Commission Rules, 1955 as implementing the directions made by the C.S. Dwarakanath Backward Classes Commission Report of 2010, which recommended for putting the transgender community in the Backward Class list so as to entitle them to all the government benefits. Tamil Nadu Government has established a Tamil Nadu Welfare Program for developing the various beneficial programmes for the benefit of the transgender. Lingathwara Alpasankhyathara Yojana has been started by the Karnataka Government for providing identity to the minority class.

Aim of the Study

The purpose of doing the research work on this issue is to make aware that the transgender community has been given various rights over a period of time. Though, India has not reached so far where a transgender would be accepted by his family or society but it is moving towards this mentality. The government through its legislation and judiciary try and makes the life of such people easier so that they do not face more discrimination from society. Major steps towards this have been - the Act which was passed by Parliament in 2019, the judgement of the Supreme Court recognising the transgender as a third gender and the decriminalisation of section 377 of

I.P.C. Various schemes are also launched for their upliftment. Thus the aim of this research work is that the researcher finds that though the law is trying to give them equal status by taking all the legal measures but unless and until society will not change its perception nothing will be achieved. Proper implementation of the current legislation enacted for them is necessary for the full realisation of the concept of equality for them.

Review of Literature

On the review of the literature we can find that the deteriorating situation of the transgender has been ameliorated with the passage of time by the continuous efforts of the lawmakers and judiciary which makes the way for the better future of transgender in India.

Hypothesis

The advancement of this marginalised group was never the main agenda of our society but the helping hands of few section of the society has build the road of development for these people. So the hypothesis of the study is that though the legislator has succeeded in making law for the benefit of the transgender and various steps are taken by the states in their respective areas but lack of proper implementation of such source are the reason for non-development of this community and a lot is required to be done for them so that they get the equal status in the society.

Methodology and Research Design

The present research paper is mainly dependent on primary sources such as books, journals and articles accessed from various websites. The present approach in the research is doctrinal and descriptive.

Findings

The outcome of my study is that present legislative and judicial steps taken are self sufficient to give these people an honourable place in the society. No special legislation is required now because present legal arrangements are enough to safeguard the interest of the transgender. What is required at current sphere is the implementation of available legal remedies.

Conclusion and Suggestions

Transgender due to their biological structure are considered as non-respectable in society. As they behave differently from the stereotype set by society, they have to face discrimination in every sphere of life. They are denied the basic human rights which any individual do possess from birth but the thekedaars of society are unwilling to give them such rights. A hijra from his birth till the last breath of his life is forced to suffer humility, hatred and negligence. In most of the family, the parents do not support such child which results in their continuous beating, they are often thrown out of their home or they ran away so as to escape daily torture. They had no means to earn for themselves so they either join the group of hijras where they dance at the childbirth or in the wedding. The other option left for them is to go for prostitution or begging. Sometimes they get involved in criminal activities.

From the advent of the Britishers in India, the position of transgender deteriorated very badly. They were considered criminal in society and thus they become the neglected class. But with the passage of time our society is changing its perception which it had against this community. Slowly and gradually lawmakers and the intellectuals of the society has realised that they too are a human being and they must get all the rights which other people have. Even in the International field, Article 1 of the Universal Declaration of Human Rights, 1948 provides that "all human beings are born free and equal in dignity and rights". This fundamental principle includes the rights of the transgender and their entitlement to enjoy equal protection provided by the human rights law with respect to the right to life, security, privacy, right to be free from discrimination and right of free speech and expression. In 2006, Yogyakarta Principles were introduced for the application of standards of international human rights law in relation to sexual orientation and gender identity.

Judiciary has shown its great concern for these people and through the tool of judicial activism ensured them such rights which they were entitled to as a human being. The series of judgments concerning transgender shows that there has been a change in the legal and social attitude of society. But more things are needed to be done in order to provide them with equal status in society.

At last, the researcher wants to give some suggestions which in the opinion of the researcher are fruitful in improving the conditions of this minority class –

1. The law enforcement system must be made more sensitized so that emerging crime against the transgender can be curbed.
2. Those families who do not want to keep their child due to sexuality, NGO's must come forward to support the child.
3. Schools and colleges must encourage education programs for transgender children.
4. Social camps must be organised to make them aware of bout their legal and social rights.
5. Developing various programs to provide financial assistance in starting their carrier.

So, I would like to conclude this research paper by a simple statement that whatever has been done so far for this vulnerable group is not sufficient as what they suffered till now cannot be remedied by what we have done in present for them and a lot is required to be done for them.

References

Act/Statute

1. *Constitution of India, 1950.*
2. *Indian Penal Code, 1860.*
3. *Transgender Persons (Protection of Rights) Act, 2019*

Bill

1. *Transgender Persons (Protection of Rights) Bill, 2016.*
2. *Rights of Transgender Person Bill, 2014.*

Books

1. Chandra U. Dr. (2010), "HUMAN RIGHTS", Allahabad Law Agency Publication, Prayagraj.
2. Kapoor S. K. Dr. (2011), "International Law and Human Rights", Central Law Agency, Prayagraj.
3. Nanjundaswamy S. and Gangadhar M. R.(2016), "Transgender Challenges in India" Aayu Publication, New Delhi
4. Pandey J. N. Dr. (2013), "THE CONSTITUTIONAL LAW OF INDIA", Central Law Agency, Prayagraj.
5. Patnaik Devdutt(2014), "Shikhandi and Other Stories they Don't tell you", Penguin Publication Ltd, London.
6. Revathi A.(2010), "The Truth About Me: A Hijra Life Story", Penguin Publication Ltd, London.
7. Talwar Rajesh(1999), "Third Gender and Human Rights" Gyan Publishing House, New Delhi.
8. Tripathi Narayan Laxmi (2015), "Me Hijra, Me Laxmi," Oxford University Press, United Kingdom.

Articles / Journals

1. Dona John, "Living a Life of Exclusion: Being a Transgender in Modern India", 2017.
2. Paulina S. Mposo, *Alternative Sexualities in India* (2017) (Unpublished PhD. thesis, Leiden University, Leiden).
3. M. Michelraj, "Historical Evolution of Transgender Community in India" Vol. 4 No. 1, ARSS, 2015.
4. Dr. Hassena V.A, "THIRD GENDER- THE CONFLICT FOR SEXUAL IDENTITY IN INDIA AS TRANSGENDER", Vol. 5 Issue 10, IRJHRSS, 2018.
5. Venkatesan Chakrapani and Arvind Narrain, "LEGAL RECOGNITION OF GENDER IDENTITY OF TRANSGENDER PEOPLE IN INDIA: CURRENT SITUATION AND POTENTIAL OPTIONS"(UNDP India 2012).
6. Preeti Sharma, "HISTORICAL BACKGROUND AND LEGAL STATUS OF THIRD GENDER IN INDIAN SOCIETY" Vol. 2, Issue 12, IJRESS, 2012.
7. Sanjana Mathur and Smriti, "BEGINNING OF A JOURNEY TOWARDS THE LEGAL RIGHTS OF TRANSGENDERS" Vol. 3, Issue 2, IJLLJSS, 2016.
8. Siddharth Narrain, "Gender Identity, Citizenship and State Recognition" Vol. 8(2), Socio-Legal Review, 2012.
9. Konduru Delliswararao and Chongneikim Hangsing, "Socio-Cultural Exclusion and Inclusion of Trans-genders in India", Vol. 5, JSSM, 2018.
10. Prof. Shilpa Khatri Babbar, "The Socio-Legal Exploitation of the Third Gender in India", Vol. 21 Issue 5, IOSR-JHSS, 2016.
11. Sribas Goswami, Sushweta Karmakar, "Transgender in India: Identified by Law Discriminated by the Society", Vol 9, European Researcher. Series A, 2018.

Website

1. <https://globalfreedomofexpression.columbia.edu/cases/national-legal-services-authority-v-union-of-india/>.

2. <http://docs.manupatra.in/newsline/articles/Upload/64016C83-7AF3-474F-A80F-F4468C5FCCC2.pdf>.
3. <http://docs.manupatra.in/newsline/articles/Upload/C348C957-63F1-457A-BD0C-2A24005C0702.pdf>.
4. https://www.academia.edu/33006703/PROBLEM_S_OF_TRANSGENDER_IN_INDIA_A_STUDY_FROM_SOCIAL_EXCLUSION_TO_SOCIAL_INCLUSION.
5. https://en.wikipedia.org/wiki/LGBT_rights_in_India.
6. <http://ili.ac.in/pdf/sakshi.pdf>.
7. <https://www.indiacode.nic.in/handle/123456789/13091?locale=en>.
8. <https://legislative.gov.in/sites/default/files/coi-4March2016.pdf>.
9. <https://indiankanoon.org/doc/320809/>.
10. <https://timesofindia.indiatimes.com/city/jaipur/community-demands-voter-id-cards-referring-to-them-astransgender/articleshow/65555350.cms>.

Endnotes

1. Lea T said "Include everyone, no matter their gender, sexual orientation, race, or religion. We are all human beings and we are part of society."
2. Dona John, "Living a Life of Exclusion: Being a Transgender in Modern India", 2017.
3. Available at: <https://www.indiacode.nic.in/handle/123456789/13091?locale=en> (visited on February 25, 2021).
4. Fuss Diana, "Essentially Speaking: Feminism, Nature, and Difference" New York, Routledge.
5. Paulina S. Mposo, *Alternative Sexualities in India* (2017) (Unpublished PhD. thesis, Leiden University, Leiden).
6. M. Michelraj, "Historical Evolution of Transgender Community in India" Vol. 4 No. 1., ARSS, 17-19(2015).
7. Some versions of Ramayana tell that in one part of the story, the hero Rama heads into exile in the forest. Halfway there, he discovers that most of the people of his home town Ayodhya were following him. He told them, "Men and women, turn back," and with that, those who were "neither men nor women" did not know what to do, so they stayed there. When Rama returned from exile years later, he discovered them still there and blessed them, saying that there will be a day when they will rule the world.
8. In the Criminal Tribes Act, 1871, the punishment was provided for all hijras who were suspected of in kidnapping and castrating children and dressed like women to dance in public places. The punishment for such activities was up to two years imprisonment and a fine or both. Only on the basis of suspicion, they were arrested.
9. Supra note 6 at 3.
10. Dr. Hassena V.A, "THIRD GENDER- THE CONFLICT FOR SEXUAL IDENTITY IN INDIA AS TRANSGENDER", Vol. 5 Issue 10., IRJHRSS, 6 17-19(2018).
11. Section 377 of Indian Penal Code, 1860, stated that, whoever voluntarily has carnal intercourse against the order of nature with any man, woman

- or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
12. Article 14 of the Constitution of India, 1950, states that, the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
 13. Available at: <https://legislative.gov.in/sites/default/files/coi-4March2016.pdf> (visited on March 1, 2021).
 14. Writ Petition (civil) 1868 of 1980.
 15. AIR 1993 SC 477.
 16. Available at: <https://indiankanoon.org/doc/320809/> (visited on March 4, 2021).
 17. 1974 SCR (2) 348.
 18. Dr. J. N. Pandey, *THE CONSTITUTIONAL LAW OF INDIA* 83(Central Law Agency, Prayagraj, 50th edn., 2013).
 19. 1978 SCR (2) 621
 20. Venkatesan Chakrapani and Arvind Narrain, "LEGAL RECOGNITION OF GENDER IDENTITY OF TRANSGENDER PEOPLE IN INDIA: CURRENT SITUATION AND POTENTIAL OPTIONS"(UNDP India 2012).
 21. *Id.* at 20.
 22. Article 21 of the Constitution of India, states that, "No person shall be deprived of his life or personal liberty except according to the procedure established by law."
 23. 1981 SCR (2) 516.
 24. Shukla V.N., *CONSTITUTION OF INDIA* (Eastern Book Company, Lucknow, 11th edn., 2010).
 25. (2016) 7 SCC 221.
 26. *Id.* at 20
 27. Appeal (civil) 14 of 2007.
 28. Available at: <https://timesofindia.indiatimes.com/city/jaipur/community-demands-voter-id-cards-referring-to-them-astransgender/articleshow/65555350.cms> (visited at March 7, 2021).
 29. On 6th September, 2018 the five-judge Bench partially struck down Section 377 of the Indian Penal Code, decriminalising same-sex relations between consenting adults. LGBT individuals are now legally allowed to engage in consensual intercourse. The Court has upheld provisions in Section 377 that criminalise non-consensual acts or sexual acts performed on animals.
 30. AIR 2014 SC 1863.
 31. In 2012, the National Legal Services Authority, an Indian statutory body constituted to give legal representation to marginalized sections of society, filed a writ petition with the Supreme Court of India. The petition was joined by a non-governmental organization representing the Kinnar transgender community, and an individual who identified himself as a Hijra.
 32. Writ Petition(Civil) No.7455/2001.
 33. CIVIL APPEAL NO.10974 OF 2013.
 34. AIR 2018 SC(CRI)1169.