

Transgender

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Abstract:-

The term third gender describes individuals who are considered and are identified as of female gender. The Europeans and other countries, named it as 'transgender' or 'transsexual'. It is one of the great challenges for India, because India is the only country where the tradition of eunuchs is prevalent. There are about 1 million of them, though their role in life has changed drastically from that of royal servants and friends. They persist as a marginalized and creative subculture in deprived urban districts of Bombay, Hyderabad, Ahmadabad, and Delhi. They do have widespread presence as T-G communities in southern India, Pakistan and Bangladesh. With demands for proper identification, the Central Bureaus of Statistics (CBS) has included 'third gender' in the Census scheduled for 2011.

The third-gender indulges in prostitution and in the drug traffic for their livelihood. It is necessary to educate them and give suitable jobs and protection to avoid further problematic situation in the society. Practically, the problem is not with their inclusion but is how can we stop the blind faith that creates T-G?

Introduction:-

Third gender and third sex are concepts covering individuals categorized, either by themselves or by society, as neither man nor woman. It also describes a social category present in those societies that recognize three or more genders.

Trans genders, in our society, encompass all races, ethnicity, religious and social classes, yet, they've never enjoyed a respectable life, because of "what they are" and "how they are". They are subjected to confusions and anguish, resulting from the rigid, forced conformity to sexual dimorphism throughout the recorded history. They are facing disparities linked to societal stigma, discrimination, and denial of their civil and human rights. Discrimination against them have been associated with high rates of substance abuse and suicides, and they are facing rampant discrimination in the areas of family life, social life, housing, education, health etc.

They've been continuously subjected to hear and assimilate abuses from people about them. Their lives have always been subjected to abstaining from the colors of the world, just because of the denial of social acceptance. The society views them as eccentric characters, which wouldn't fit into the prescribed sanctimonious bounds.

Transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behavior does not conform to their biological sex. TG may also takes in persons who do not identify with their sex assigned at birth, which include Hijras/Eunuchs who, in this writ petition, describe themselves as "third gender" and they do not identify as either male or female. Hijras are not men by virtue of anatomy appearance and psychologically, they are also not women, though they are like women with no female reproduction organ and no menstruation.

Since Hijras do not have reproduction capacities as either men or women, they are neither men nor women and claim to be an institutional "third gender".

According to one estimate, India has about two million transgender people. In India, a common term used to describe transgender people, transsexuals, cross-dressers, eunuchs and transvestites is hijra. Campaigners say they

live on the fringes of society, often in poverty, ostracised because of their gender identity. Most make a living by singing and dancing or by begging and prostitution.

The abominable state of the third gender can be traced back from the colonial era, when the legislation was enacted to supervise the deeds of hijras/TG community, called the Criminal Tribes Act, 1871, which deemed the entire community of Hijras persons as innately 'criminal' and 'addicted to the systematic commission of non-bailable offences'. The Act provided for the registration, surveillance and control of certain criminal tribes and eunuchs and had penalized eunuchs, who were registered, and appeared to be dressed or ornamented like a woman, in a public street or place. Such persons also could be arrested without warrant and sentenced to imprisonment up to two years or fine or both.

Section 377 of the IPC found a place in the Indian Penal Code, 1860, prior to the enactment of Criminal Tribes Act that criminalized all penile-non-vaginal sexual acts between persons, including anal sex and oral sex, at a time when transgender persons were also typically associated with the prescribed sexual practices. Reference may be made to the judgment of the Allahabad High Court in *Queen Empress v. Khairati* (1884) ILR 6 All 204, wherein a transgender person was arrested and prosecuted under Section 377 on the suspicion that he was a 'habitual sodomite' and was later acquitted on appeal. This judicial legislation plays in contrast to the historical times in India where TG Community had got a strong historical presence in our country in the Hindu mythology and other religious texts. Lord Rama, in epic Ramayana, impressed with their devotion, sanctions them the power to confer blessings on 11 people on auspicious occasions like childbirth and marriage, and also at inaugural functions. Jain Texts also make a detailed reference to TG which mentions the concept of 'psychological sex'. Hijras also played a prominent role in the royal courts of the Islamic world, especially in the Ottoman empires and the Mughal rule in the Medieval India.

However, the abject conditions of the Transgender communities have been redressed through a step taken by The National Legal Services Authority, constituted under the Legal Services Authority Act, 1997, to provide free legal services to the weaker and other marginalized sections of the society, has come forward to advocate their cause.

Laxmi Narayan Tripathy, claimed to be a Hijra, has also got impeded so as to effectively put across the cause of the members of the transgender community and Tripathy's life experiences also for recognition of their identity as a third gender, over and above male and female.

As a result, In 2009, India's Election Commission took a first step by allowing transgenders to choose their gender as "other" on ballot forms.

The aforementioned judgment is buttressed by the recent landmark judgment (April, 2014) by Justice KS Radhakrishnan, who headed the two-judge Supreme Court bench, which recognition to transgenders as the third gender. The landmark ruling asks the Centre and state governments to treat them as socially and 'economically backward classes', to enable them to get reservations in jobs and education. This goes along with the court's decision to grant them all facilities including a voters ID, passport and driving license. Further, The Centre and States were also directed to take steps for bringing the community into the mainstream by providing adequate healthcare, education and employment.

Ironically, Section 377 of the Indian Penal Code, according to which same-sex relationship is an "unnatural offence" is existing in conjunction with the court's recent decision of giving 'recognition' to the third gender. Legal experts say that the aforementioned judgment puts transgender people in a strange situation: on the one hand, they are now legally recognised and protected under the Constitution, but on the other hand they may be breaking the law if they have consensual gay sex.

It said that section 377 of IPC is being misused by police and other authorities against them and their social and economic condition is far from satisfactory.

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The apex court passed the order on a PIL filed by National Legal Services Authority (NALSA) urging the court to

give separate identity to transgenders by recognising them as third category of gender.

Welcoming the Supreme Court decision, Lakshmi Narayan Tripathi, transgender rights activist said,

"the progress of the country is dependent upon human rights of the people and we are very happy with the judgment as the Supreme court has given us those rights."

The govt has announced special school for transgenders at Kochi. The Government had set aside Rs 10 crore money for the welfare works of transgenders. The school aims to make this people come forward to the society and make them well educated. Society always differentiates these people from the general lot. The government has tried to change this pathetic situation. The programme first plans to teach 10 transgenders till class 10. The programme included computer education and skill development programmes. If the programme becomes a success, it will be the first residential school for transgenders in India. So let's hope for the best.

Conclusion:-

- ▶ This is for the first time that the third gender has got a formal recognition. The third gender people will be considered as OBCs, the SC said.
- ▶ The SC said they will be given educational and employment reservation as OBCs.
- ▶ The apex court also said states and the Centre will devise social welfare schemes for third gender community and run a public awareness campaign to erase social stigma.
- ▶ The apex court expressed concern over transgender being harassed and discriminated in the society and passed a slew of directions for their social welfare.
- ▶ The bench clarified that its verdict pertains only to eunuchs and not other sections of society like gay, lesbian and bisexuals who are also considered under the umbrella term 'transgender'.
- ▶ The bench said they are part and parcel of the society and the government must take steps to bring them in the main stream of society.

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