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Transgenderism : Moral Practical and Legal Aspects

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Abstract

The term "third" is usually understood to mean "other", some anthropologist and sociologically have described fourth' fifth even some genders. The concepts of "third", "fourth" and "some" genders can be, somewhat difficult to understand within Western conceptual categories. Although biology usually determines genetically, whether a humans biological sex is male or female (though inter-sex people are also born), the state of personally identifying as, or being identifies by society as, belonging to neither the male or female genders is considered relative to term 'third gender' in terms of 'sexual orientation,' several other scholars, especially the native non-western scholars, consider this as a misrepresentation of 'third genders. This definition is favored by those who argue for a strict interpretation of the "third gender" concept. In any case, all of these characterizations are defining gender and not the sex that biology gives to living beings. The term has been used to describe hijras of India, Bangladesh and Pakistan who have gained legal identity, Fa'afafine of Polynesia, and Sworn, virgins of the Balkans, among others, and is also used by many of such groups and individuals to describe themselves. Even sometimes these people face difficulties in meeting their basic needs also like getting a job, housing, or health care or in having their gender identity respected like getting the facility of a public restroom. Throughout their life the transgender people face the worst challenges, regardless of which country they are coming from or situated in. Though the type of challenges vary from country to country due to the difference in political and social environment in that country, but usually the Trans people are on the borders of the society, being the most marginalized ones.

Keywords: *Transgender, Culture, Dignity & Rights*

Introduction

Gender identity is one of the most fundamental aspects of life. The sex of a person is usually assigned at birth and becomes a social and legal fact from there on. However, a relatively small number of people experience problems, with being a member of the sex recorded at birth. This can also be so for interrex persons whose bodies incorporate both or certain aspects of both male and female physiology, an d at times their genital anatomy, For others, problems arise because their innate perception of themselves is not in conformity with the sex assigned to them at birth. These persons are referred to as 'transgender' or 'transsexual' persons. For a long years together, there has been a controversy regarding the recognition of the transgender people in the society. They become breathless under the cover of a conflict between man and woman. The recent judgment of the Indian Supreme Court pronounced on 15th April 2014 had thrown water on the fire of the long debated controversy all over the world on the rights of the transgender. In the absence of any concrete definition of the term, everybody tries to define it according to one's own perception. Defining the

term, the Trans-gender ASIA says, "Trans people are those males or females of any age who are unhappy living in the gender identity ascribed to them at birth. Transgender, transsexual, or Trans persons are people whose psychological sex gender, or sense 'of their own innate gender identity is different from their physical sexual characteristics.

Terminology

The terms third gender and third sex describe individuals who are categorized (by their will or by social consensus) as neither man nor woman, as well as the social category present in those societies who recognize three or more gender. The term "third" is usually understood to mean "other", some anthropologist and sociologically have described fourth' fifth even some genders. The concepts of "third", "fourth" and "some" genders can be, somewhat difficult to understand within Western conceptual categories.

Although biology usually determines genetically, whether a humans biological sex is male or female (though intersex people are also born), the state of personally identifying as, or being identifies by society as, belonging to neither the male or female genders is considered relative to term 'third gender' in terms of 'sexual orientation,' several other scholars, especially the native non-western scholars, consider this as a misrepresentation of 'third genders.

Trans Gender Culture

To different cultures or individuals, a third gender may represent an intermediate state between man and woman, a state of being both (such as "the spirit of a man in the body of a woman"), the state of being neither (neuter), the ability to cross or swap genders, another

category altogether independent of men and women. This. last definition is favored by those who argue for a strict interpretation of the "third gender" concept. In any case, all of these characterizations are defining gender and not the sex that biology gives to living beings.

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Like the hijra, the third gender is in many cultures made up of individuals considered male at the time of birth who take on a feminine gender role or sexual role. In cultures that have not taken on Western heteronomativity, they are usually seen as acceptable sexual partners for male-identifying individuals as long as the latter always maintain the "active" role.

Historical Aspect

Around the world, there have always been people whose gender identity and expression differ from the culture expectation associated with sex were assigned at birth. Some people born in male bodies lived as women, some born in female bodies lived as men, and others identified as a 'third gender Culture and religion can be key parts of a trans person's identity. In parts of Asia and the Pacific c, there are traditional terms for trans women, including those who identify as a third gender. Some trans women historically performed specific ceremonial roles. This visibility has continued to the present day.

Africa—meme (for trans women in Namibia) and kuchu (for. trans, lesbian, gay and bisexual people in Uganda)

Asia—kathoey, Poo ying kham phet, and sao phra phet song (Thailand); abang and mak nyah (Malaysia); bin-sing-jan and kwaa-sing-bit (Hong Kong); transpinay (the Philippines); waria (Indonesia); hijra and aravani (India); and meti (Nepal)

Pacific—vakasalewalewa (Fiji), palopa (Papua New Guinea), fa'afafi ne (Samoa, America Samoa and Tokelau) fakaleiti or leiti (the Kingdom. of Tonga), akava'ine (Cook Islands), and fakafi fi ne (Niue island) An estimated 155 of the 400 indigenous societies in North America traditionally had a third (and in many instances a fourth) gender. Two terms used in the past were alyha for trans women and hwame for trans men.

Position of the Transgender in the Society

From time immemorial people belonging to transgender category face a wide variety of discriminatory barriers in enjoying full equality throughout the World. Even sometimes these people face difficulties in meeting their basic needs also like getting a job, housing, or health care or in having their gender identity respected like getting the facility of a public restroom. Throughout their life the transgender people face the worst challenges, regardless of which country they are coming from or situated in. Though the type of challenges vary from country to country due to the difference in political and social environment in that country, but usually the Trans people are on the borders of the society, being the most marginalized ones.

These people do not face only the societal dangers, but also a huge number of other challenges arising due to medical access in the country they live in depending upon the fact that how it legalizes the gender markers in their documents like birth certificates etc. For example, if a person could not be able to legally change his/her name and gender in the ID book by any means, he! she cannot be able to get employment anywhere. This concludes that in such kinds of situations they will never be able to be employed and will certainly have no income which will ultimately lead to having no livelihood. This is how a transgender is being deprived of his basic citizenship rights.

Progressive Gender Recognition Laws

Principle 3 of the Yogyakarta Principles states that "each person's self defined gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom" and "no one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity". Increasingly, countries are responding to calls from trans people, health professionals and human rights bodies to implement human rights-based gender recognition laws. The Argentinean Gender Identity Law was approved on, 8 May 2012 and camc into force in July 2012. It is the most progressive gender recognition law in the world. The law is ground-breaking because it is framed in terms of human rights, including the right to one's gender identity The case study at the end of this section discusses the law in more detail.

Since publishing its legal recognition statement in 2010, the WPATH Board has advised courts and governments in Ireland; Ontario, Canada; and South Korea. It has argued for legal gender recognition without requiring a diagnosis, medical treatments or that a trans person has lived for a defined period in their preferred gender role. The WPATH Board's June 2013 letter to the Irish government explicitly supported the Argentinean gender recognition law.

United States of America

With a view to ensure equal protection and due process clauses in Article 1 of the U.S. Constitution, that would implicitly include transgender and transsexual persons, as well as any other identifiable group, the Fourteenth Amendment to the U.S. Constitution was made with ratification. As per the Article, deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". Though the Supreme Court has not fully embraced the Amendment's implications for transgender rights, these clauses will presumably form the basis of future rulings. Since 2003, pursuant to the landmark ruling of the U.S. Supreme Court in Lawrence v. Texas that made same-sex sexual activity legal in every U.S. state and territory, sexual activity between consenting adults and adolescents of a close age of the same sex has been legal nationwide. In fact, while deciding the case, the Court overturned its previous ruling on the same issue in the 1986 case of Bowers v. Hardwick, where upholding a challenged Georgian statute, it did not find a Constitutional protection of sexual privacy.

Another important issue relating to transgender activists came up before the U.S. Senate in November 2013, when the Senate approved the

Employment Non-Discrimination Act, which would ban workplace discrimination on the basis of gender identity as well as sexual orientation.

United Kingdom

The UK is having a number of legislations to protect the rights of the transgender people as follows-

- The Sex Discrimination Act 1975 makes it unlawful to discriminate on the ground of sex in employment, education and the provision of housing, goods, facilities and services.
- The Sex Discrimination (Gender Reassignment) Regulations 1999 extended the Sex Discrimination Act to make it unlawful to discriminate on grounds of gender reassignment, but only in the areas of employment and vocational training. These Regulations do not apply to discrimination in education or in the provision of housing, goods, facilities and services.
- The Gender Recognition Act, 2004 gives legal recognition to Gender Recognition Panel is successful, the transsexual person's gender becomes for all purposes the acquired gender and they will receive a full gender recognition certificate (GRC). The GRC allows for the creation of a modified birth certificate reflecting the holder's new gender.
- The Equality Act 2006 introduced the Gender Equality Duty, which places an obligation on public bodies to pay due regard to the need to address and eliminate the unlawful discrimination and harassment of transsexual people in employment, related fields and vocational training (including further and higher education) and in the provision of goods, facilities and services.
- The Sex Discrimination (Amendment of Legislation) Regulations, 2008 has extended the Sex Discrimination Act to make it unlawful to discriminate on grounds of gender reassignment in the provision of goods, facilities and services as well as in employment and vocational training.

With a view to make transgender equality a reality, the present Government is seriously looking for, thus in March 2011, the Government published 'Working for Lesbian, Gay, Bisexual and Transgender Equality: Moving Forward', which included Government's commitments to tear down barriers and advance equal opportunities for lesbian, gay, bisexual and transgender people in all areas of society — including in schools, at workplace and in healthcare.

Germany

Providing solution to a long debated question, Germany became the flu St European country to officially recognize a "third gender" category on birth certificates for intersex infants Previously, German parents had just a week's time to decide whether their intersex children were male or female, and register them appropriately at the registry office This resulted heavy pressure on the parents to take decisions, which often made them in a state of panic and fiequently lead to forced medical operations in the genital area. Thankfully, on 1st November, 2013, Germany became the first country in Europe as well as one of the firstr countries in the world to allow the parents of babies without "clear gender-determining physical characteristics, parents can now mark their birth certificates with, an "X", for undetermined gender.

Proceeding further, the new law also gives right to the intersex children to decide their gender identity once they reach an adult age, and not to be labeled male or female at birth without their will. This law is definitely a step towards a new horizon.

Pakistain

In 2009 the Supreme Court of Pakistan ordered the government to conduct a census of hijras living in the country. Earlier that year, local police had allegedly attacked, Robbed and raped eight hijra wedding dancers near Islamabad. That traumatic event led Muhammed Aslam Khaki, a

lawyer specializing in Islamic law, to file a private case in the country's Supreme Court, asking to recognize hijras as a third gender. At the end of 2009 the chief justice of Pakistan ordered the National Database and Registration Authority to issue national identity cards with a "third gender" category for non-binary citizens.

India

For quite a long period of time, the second populous country of the world, India has recognized the transgender as a separate community, known as 'Hijras' as citizens who don't identify themselves as either male or female term "eunuchs" despite the fact that only few of them are identified as• such. Their status has further been changed in the year 2009, when the Election Commission of India has decided to formally allow for intersex or transgender voters an independent designation which meant that the citizens could choose an "other" category indicating their gender in voter forms. It is pertinent to mention here that now after the recent judgment of the Supreme Court in National Legal Services Authority v. Union of India, the transgender are now categorically recognized as third gender having the right to vote, own property, marry and to claim formal identity more meaningfully. The Apex Court even proceeding a further directed both the center and the states to treat the transgender as socially and educationally backward classes of citizens and to ensure that they are not discriminated against in obtaining basic needs like health care, employment and education.

Conclusion

The aim of the paper is to understand the, the law related to the trans people in different parts of the world. What measures are taken by the government and judiciary of the different countries and understand the of human rights issue that the trans people are facing and the priority action required to secure trans people right to dignity, equality, health 'and security.

We all are humans and the transgender are born in our own society by us only so why people discriminate them and don't provide equal opportunity like they treat normal gender people, now this is the time for world to look them in different way. The most important point to be considered by every human being is that the transgender people are not like this by their choice, rather it is due to their physical structure by birth which they cannot change. It is thus a matter of concern for all, to regard them with dignity with all rights which being human everybody is entitled to enjoy.

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