DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume I Issue X is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis
EDITORIAL TEAM

EDITORS

Ms. Ezhiloviya S.P.
Nalsar Passout

Ms. Priya Singh
West Bengal National University of Juridical Science

Mr. Ritesh Kumar
Nalsar Passout

Mrs. Pooja Kothari
Practicing Advocate

Dr. Shweta Dhand
Assistant Professor
ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN

2582-6433 is an Online Journal is Quarterly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN

2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.
INDEX

1. Abstract _____________________________________________________________ 1
2. Introduction _________________________________________________________ 2
3. History of Trans-genders in India ______________________________________ 3
   - Mythology
   - The Vedic Period
     - 1526-1748
     - 1643-1680
     - 1860-1935
4. Social barricades ______________________________________________________ 5
   - Exclusion within the family
   - Harassment of Transgender Students in Schools
   - Weak economic status
   - Victims facing crimes and violence
5. Judicial progress pertaining to Trans-rights ____________________________ 8
   - Queen Empress v. Khairati (1884)
   - National Legal Services Authority v. Union of India (2014)
   - Justice K.S. Puttaswamy v. Union of India (2017)
   - Navtej Singh Johar v. Union of India (2018)
   - Arun Kumar v. Inspector General of Registration, Tamil Nadu (2019)
   - Hina Haneefa @Muhammed Ashif Alin v. State of Kerala (2021)
6. Statutory development through years ____________________________________ 12
8. State trans-upliftment _________________________________________________ 16
9. Conclusion __________________________________________________________ 17
THE BACKLOG OF GENDER PROGRESS: SYSTEMACTIC ANALYSIS OF TRANS-RIGHTS IN INDIA

(By : Harsha Menon & Madhusudan Lahoti)

I. ABSTRACT

India has always embraced the third-gender in her culture; however, due to British colonization, the laws and legislative enactments have overturned the status of trans-persons in the country. Not only has their status crippled gradually, but also recognition of their rights became questionable in the subsequent years. Trans-genders face difficulties like exclusion from family and social institutions, poor health conditions and economic undependability from very young age, which needs to change in the future years. This paper briefly reviews their existence throughout the glorious history of Indian mythology and puranas to obtaining the right of “third gender” in India. Law and justice must go hand-in-hand in order to deliver equality, but due to social stigma and weak economic status trans-genders suffer heavily to succeed in their struggle. Various enactments by the State as well as the Central Government have aided in uplifting trans-rights in India helping this community to build their career respectably. The paper also analyzes the lacuna in existing Act passed for Transgender Rights in India and attempts to make fair suggestions in the light of case laws and current conditions of the community. These problems can be solved if the society is more robust and recognizes gender outside the binary walls. Analysis and growth of judicial thinking along the years have been portrayed in order to highlight exponential thinking within the legal profession.

II. INTRODUCTION

Gender-Binary: a prevailing melancholy

Amidst the existing gender bigotry in the country where women still struggled to be accepted as equal to that of men, embracing the third gender was not a plain sailing task to this hidebound society. Although the origins of Hijras¹ can be traced back upto 4,000 years, this community was left ostracized after the colonial-era resulting them to beg, dance and subsequently indulge in prostitution². Transgenders are often used as an umbrella term to categorize individuals who do not fit in the binary gender constructions and break through from the prevailing stereotypical

¹ S. 2(k), Transgender Persons (Protection of Rights) Act, 2019 defines Hijras as “Hijras are biological males who reject their ‘masculine’ identity in due course of time to identify either as women, or “not-men”, or “in-between man and woman”, or “neither man nor woman”.
² People’s Union of Civil Liberties–Karnataka, Human Rights Violations against the Transgender Community: A Study of Kothi and Hijra Sex Workers in Bangalore, 36, 37, 38 (2003)
gender roles. A wide range of individuals recognized as trans-sexuals (who identify as their opposite biological sex); men or women who have undergone sex-reassignment surgery; cross-dressers (“transvestites”; drag-king or drag-queens); and men or women whose appearance are gender-atypical are often (although not exhaustive) included in the TG category. Even the medical professionals determine a child's gender by examining external genitalia, however, some sexual organs are ambiguous and individuals with incongruent sexual characteristics may embrace third-gender identity. India has always been cherishing the third gender in her puranas, Royal courts, mythology, temple sculptures and are known with vivid names across the country, including – Aravans, Kothis, Jogtas or Jogappas, Shiv-Shaktis depending on their region and distinguished characteristics. However, the British conquest have turned around the status of hijras and it has been deteriorating ever-since. Even after introduction of various legislations supporting trans-rights, the condition is still sublime resulting in mental, physical and social abuse of transgenders due to attached social stigma pertaining in the society.

III. HISTORY OF TRANS-GENDERS IN INDIA

- **Vedic Period (c. 1500 – 500 BCE)**

Indian culture is largely dominated by the philosophies engraved in the Vedas which are deeply enriched with ethical, esthetical, social, political and economic aspects of life. Existence of third gender has been well-portrayed in Vedas where gender was a tripartite classification, called - Pums-prakriti (male), Stri-prakriti (female) and Tritiya-prakriti (third-gender). Vedic literature has also emphasized that each of these genders are determined by birth and third-gender traits are as normal as that of a male or female characteristics.

---

3. Hijras/Transgender women in India: HIV, Human Rights and social exclusion, Dr. Venkatesh Chakrapani, M.D. United Nations Development Programme, December 2015, Pg. 4
4. Jennifer Rellis, Please Write ‘E’ in this Box - Toward Self-Identification and Recognition of a Third Gender: Approaches in the United States and India, Michigan Journals of Gender & Law, Forthcoming
5. Class of Sanskrit sacred writings dated back to 4th Century AD.
6. Transgenders in Tamil Nadu are called as “Aravanis”. They are identified as biological males who believe themselves as women trapped in male bodies.
7. “Kothis” are a heterogeneous group of individuals who identify as biological males showing various “feminine” characteristics, occasionally. Few Kothis show bisexual traits and sometimes get married to women.
8. “Jogtas or Jogappas” are dedicated to the service of Goddess Renuka Devi (Yellamma) in the states of Maharashtra and Karnataka. “Jogi Hijras” are termed for male- to-female transgenders who worship Goddess Yellamma and who belong to the Hijra community. One can only become a part of this community if they are accepted by a Guru as his disciple or if one’s family traditions follow this lineage.
9. “Shiv-Shaktis” are males, possessed or controlled by a goddess who exuberates feminine gender expressions. Shiv-Shaktis often indulge in cross-dressing and use accessories and ornaments portraying feminine beauty.
10. Supra 2, at 11
11. Vedas are the original and the oldest scriptures of Hindu teachings, containing spiritual knowledge encompassing all aspects of life.
12. Dr. Vasumathi T1 & Geethanjali M, Transgender Identity As Hidden in Vedic Literature And Society, 7, International Journal of Humanities and Social Science Invention (IJHSSI), 1 (2018)
13. Sushruta Samhita, Galva 108
such as Narada-Smriti, Caraka Samhita, Smriti-Ratnavali has further defined third-gender as individuals who do not beget off-springs due to impotency or asexuality. Vedic literatures also revealed the ultimate truth of the nature that third-sex exists in natural and supernatural worlds which includes humans, animals, demi-gods and deities.\textsuperscript{14}

- **Mythology**

Hindu mythology has been the most dynamic epics in portraying the roles of trans-genders. The cross-dressing of Arjuna as a ‘eunuch’ – Brihannala, rebirth of Amba as ‘Shikhandi’ depicts existence of gender-neutral chords in Mahabharata\textsuperscript{15}. The famous depiction of Lord Shiva as “Ardhanareshwar” which symbolizes binary gender in a single body, Lord Vishnu’s conversion into beautiful woman called “Mohini” who gives birth to Lord Ayyappa is a famous folk-tale in southern India.

- **1526-1748**

The Mughal era gave paramount importance to eunuchs by entrusting them provinces to administer\textsuperscript{16}, to defend territories\textsuperscript{17}, to govern the Mughal Empire\textsuperscript{18} and myriad consequential authorities. They were regarded as trusted persons to the Mughal sultanate and often designed as personal guards to female royals. Eunuchs were considered as clever, trustworthy and loyal and were also regarded as caretakers of Mecca and Medina.

- **1643-1680**

Eunuchs were also entrusted by Indian kings, such as Chhatrapati Shivaji Maharaj, serving as air fearers and queen’s personal guards\textsuperscript{19}.

- **1860-1935**

The Englishmen were confused to see Trans-genders regarded so highly in Indian society and could not comprehend why they were given such honorary positions in Royal courts and institutions. Hijras were considered to be a separate tribe in different parts of India by the colonial administration and were trapped within the Criminal Tribes Act\textsuperscript{20}. This Act included

\textsuperscript{14} Supra 14, at 63.

\textsuperscript{15} Home, The Vedic Soul, https://thevedicsoul.in/2020/06/27/bahuchara-mata/, last seen on 1803/2021

\textsuperscript{16} Abdullah Khan, an Amir (noble) of Jahangir’s empire had sent his Khwajasara Wafadar (The Loyal Eunuch) to govern the province of Gujarat which was of great strategic importance.

\textsuperscript{17} Ibitar Khan Khwajasara defended the city of Agra against the rebel Shah Jahan

\textsuperscript{18} Khwajasara Khwaja Agah was given the faujdarship (governorship) of Agra.

\textsuperscript{19} Columns, Star of Mysore, https://starofmysore.com/remembering-chhatrapati-shivaji-maharaj-11/, last seen on 15/03/2021

\textsuperscript{20} S. 24, The Criminal Tribes Act, 1871 suggests maintaining registers of eunuchs and their properties and categorised them into the ambit of “criminal tribes”.
all eunuchs who were concerned in kidnapping and castrating children and dressed like women. The punishment for such activities was up to two years imprisonment.

IV. SOCIAL BARRICADES

- **Exclusion within the family**
  Hijras face rejection from their families at a very young age when they find out about their gender preference. A large proportion of Transgenders across India do not receive support from their biological families and are left to decide their future by themselves. Many families in India does not accept gender non-conformity and try to mould the child according to their birth-genders irrespective of peculiar character traits and expressions. Due to shame and disgust, the parents even disown or evict their child, fearing marital prospects and family status. Parents then indulge in harming the child to “correct them” in behaving according to the gender they are born in. These children are often victims of depression, sexual-abuse, rebellious nature, poor socialization and undergo through abuse, bullying and threats. Gendered expectations from children lead to trans-children being scolded, abused and even assaulted by the family members.

- **Harassment of Transgender Students in Schools**
  The main cause of this community not excelling in lives is due to lack of responsibility by educational institutions and availability of equal opportunities. Transgender children are highly vulnerable in schools or colleges and it effects their personality growth at young ages. A child is moulded into the standards of the society by educational institutions; however, these educational institutions are not conducive to the third-genders who still lag behind on human development index. Nearly nine out of ten transgender students face discrimination out of which 31.7% of transgender students missed class and 32.7% missed a day of school as they felt unsafe. Almost 87% to 96% transgender students are verbally harassed, 53% to 83% has reported physical harassment, 26% are reported of being physically assaulted and 76% of students reported being sexually harassed. Moreover, among 4.9 lakh transgenders in India, 21

---

21 A survey conducted by National Institute of Epidemiology
22 Kate Vernon, *Promoting Transgender inclusion in India-What roles can the companies play?*, Dian India- Insights series,4 (2018)
23 Chakrapani, V. & Dhall, P. (2011); Family Acceptance among self-identified men who have sex with men (MSM) and Transgender people in India, Family Planning Association of India (FPAI): Mumbai
only 46% are literate compared to 74% of the total population.26

- **Weak economic status**
With traumatized childhood and interrupted education, an individual finds it difficult to succeed in their professional life. Due to discrimination and stigma existing in the society, transgenders are curtailed of the opportunities available as compared to others. About 92% of transgender in India are unable to participate in any economic activity27. This statistic is alarming because transgenders are subjected to ridicule, abuse and sexual attacks during the course of their work. Voices are being raised against exclusion of transgender from POSH Act28, without which they may feel unsafe at workplace. Such problems at workplaces constrain transgender to work and eventually face economic crisis. A huge chunk of Transgenders is living on the streets because they are shunned from their homes at a very young age, resulting in drug-abuse, alcohol, and prostitution. To add to this melancholy, most shelter homes do not accept transgenders into their facilities to worsen their societal baggage.

- **Victims facing crimes and violence**
Unlike other genders, transgenders are not considered normal and are treated in a different manner in day-to-day life. Violence and extortion are not a new phenomenon for trans-persons as they face it regularly in sex work by clients and police due to the criminalisation of sex work in the country29. They are often charged under section 268 & 294 of I.P.C, 1860 and Section 7 & 8 of the Immoral Traffic (Prevention) Act of 1956, criminalizing for having sex in public place as they cannot prosecute under S. 377 of I.P.C. making them a victim of harassment and physical abuse by the police authorities.

V. **JUDICIAL PROGRESS PERTAINING TO TRANS-RIGHTS**
In order to analyse the imperceptible growth of the judicial minds in India, it is perineal to probe into the trends of evolving judgments through times.

- **Queen Empress v. Khairati (1884)30**
Recorded to be one of the first reported cases of transgender brutality, Khairati, a trans-woman was sexually exploited and was subjected to “unnatural offence” multiple times by the police

---

26 Census of India (2011)
27 Study of human rights of Transgenders as Third gender, Kerala development society. 5 (2017)
28 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
29 Chakrapani, Newman and Noronha, Hijras/Trans women and sex work in India from Marginalization and social protection. 5 (2018)
30 Queen Empress v. Khairati, ILR 6 All 204 (India)
officials, who arrested her under S.377 on the suspicion that she was a “habitual sodomite.” The case demonstrates the satanic side of S.377 highlighting the transgenders being used as an instrument of physical abuse. Even after continuing efforts by the prosecution to bring the police officials behind the bars, the Allahabad High Court quashed the conviction of these officers on lack of evidence from the complainant and released them free.

  The death of transgender in police custody ignited the fire amongst the public which gave this case a huge momentum and granted substantial compensation to the Petitioner. Pandian, a transgender woman was taken by police to the police station from 10 am to 11 pm every day on pretext of alleged theft in her village. On confrontation by her sister Jayalaxmi, Pandian confessed that she was physically and sexually assaulted by the police. Jayalaxmi and their mother tried to intervene in this matter, but situations were getting worse until Pandian self-immolated herself and succumbed to her injuries. The Learned Madras High Court quoted, “The court must not lose sight of the fact that the death in police custody is perhaps one of the worst kinds of crimes in a civilised society governed by the rule of law and poses a serious threat to an orderly civilised society.” The Court ruled that it was the physical and sexual abuse by police which forced Pandian to commit suicide. The Court directed strict actions against the perpetrating officers and directed the State of Tamil Nadu to pay compensation of Rs. 5 lacs to the Petitioner.

- **National Legal Services Authority v. Union of India (2014)**
  The Hon’ble Supreme Court with this monumental judgment accepted the transgenders as belonging to the “third gender” and held that, Gender identity refers to a person’s internal sense of being male, female or a transgender. By demarking this distinction, it makes them separate from both male and female genders and they consider themselves neither man nor woman, but a ‘third gender’. “Thus Hijras belong to a distinct socio-religious and cultural group and have, therefore, to be considered as a “third gender”, apart from the male and female genders.” The Hon’ble Court also held that, TG persons’ have the right to self-identify their gender and the Centre and State Governments are directed to aid them with legal recognition of their preferred gender-identity such as male, female or as third gender.

---

31 Jayalaxmi v. State of Tamil Nadu, (2007) 4 MLJ 849 (India)
32 Rattiram and Ors v. State of M.P through inspector of Police and Or, (2012) 2 MLJ Crl 627 (India)
33 National Legal Services Authority v. Union of India, (2014) 5 SCC 438 (India)

This Petition challenged S. 36A of The Karnataka Police Act, 1963 which gave Commissioner of Police the ultimate power to suppress, prevent and control “undesirable activities of eunuchs.” It also allowed tracking “eunuchs” suspected of committing “unnatural offences” or “kidnapping and emasculating boys.” With this petition, the petitioners challenged the constitutional validity of S.36A as it stands ultra vires to Article 14, 15, 19 and 21 of Indian Constitution and directly contradicts the ideals set by National Legal Services Authority v. Union of India judgment. The Respondent Government submitted that they were ready to amend the legislation and Karnataka high Court passed an order to amend the legislation within six months. On 6th of February 2017, the amended provisions were brought into effect by the government where Section 36A was amended and the word “eunuch” was substituted with “persons.”

Justice K.S. Puttaswamy v. Union of India (2017)

With the inclusion of Right to Privacy under Article 21 of the Constitution, the Court made a rational nexus between Privacy and sexual orientation of an individual. The Court held, “Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation.” Court also determined that the choice of one’s own self is an addition to their human dignity which explores the scope of Article 21 of the Constitution. Shedding light on availing Aadhar Cards, the Court held that transgender person’ cannot issue the cards as they do not possess the necessary documents to provide for demographic or biometric information necessary for it, which directly effects their Right to Privacy.

Navtej Singh Johar v. Union of India (2018)

While delivering the judgment of decriminalising S.377, Justice Indu Malhotra referred to the J.S. Verma Committee Report which stated, “All the sexual identities, including sexual minorities, including transgender communities are entitled to be totally protected. The Constitution enables change of beliefs, greater understanding and is also an equally guaranteed instrument to secure the rights of sexually despised minorities. This judgment held that intercourse between two consenting adults must be their choice irrespective of their gender-identity. The Court struck down Suresh Kumar Koushal’s case and partially decriminalized

---

34 Karnataka Sexual Minorities Forum v. State of Karnataka, W.P No. 1397/2015 (Karnataka High Court)
35 Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India)
36 Justice J.S. Verma Committee, Lok Sabha, Report of the Committee on amendments to criminal law, 2013
38 Suresh kumar Koushal v. Naz Foundation, Civil Appeal No. 10972 OF 2013
the validity of S.377 of Indian Penal Code.

- **Arun Kumar v. Inspector General of Registration, TamilNadu (2019)**
  In this case, the Madurai Bench of Madras High Court held that a marriage solemnized between a male and transwoman of Hindu religion is valid. The Court held that every person had the right to decide their gender and life partner which forms an integral part of Article 21 of Indian Constitution. The Court also emphasized the dynamics of Indian Constitution and remarked that it cannot deny transgenders, the benefits of social institution that are already in place in the mainstream.

- **Hina Haneefa @Muhammed Ashif Alin v. State of Kerala (2021)**
  The most recent case uplifting trans-rights in India was that of a trans-woman named Hina Haneefa who wanted admission in National Cadet Corps (NCC) but however, was denied due to her gender. The Hon’ble Kerala High Court held that NCC Act does not recognize the third gender and that cannot be the ground for denial of their entry to NCC as it violates Article 14, 15, 19 and 21 of the Constitution of India.

VI. **STATUTORY DEVELOPMENT THROUGH YEARS**

- India had always embraced the third-gender before the colonial conquest, after-which The Indian Penal Code, 1860 stroke the first blow against the transgender with introduction of S.377. This section criminalized sexual intercourse between the sexual minorities and called such an act “unnatural”. This was often used as a tool to harass and abuse Transgender.
- The Criminal Tribes Act, 1871 aimed at registration, control & surveillance of certain tribes and eunuchs, which was applicable in all states of India. Thus, the bodies & labour of Transgender were controlled.
- Ironically British enacted, The Gender Recognition Act, 2004 in United Kingdom which gives full legal recognition to Transgender. On the contrary, India was still under the clutches of archaic colonial law.
- It was only in 2014 that Triuchi Shiva of DMK party took the responsibility on his shoulder and introduced a private member bill in Rajya Sabha titled as “Transgender Persons...
“(protection of Rights) Bill, 2014”. The bill was introduced after much consultation with Transgender community.

- This iconic piecemeal was put to trash by the Ministry of Social Justice and Empowerment by introducing another bill by the ministry titled as Transgender Persons (protection of Rights) Bill, 2016 which had many lacunas and subsequently lapsed and could not be passed.

- On 5th August 2019, Ministry of Law and Justice, introduced Transgender Persons (Protection of Right) Act, 2019 in Loksabha and was subsequently passed which came in force on 5th December 2019.

VII. ANALYSIS OF TRANSGENDER PERSONS (PROTECTION OF RIGHT) ACT, 2019

The recently passed Act by the Parliament is Anti-Transgender, rather than protecting their rights or recognising them with due respect. The Act of 2014 had significantly succeeded in fulfilling the object set by NALSA judgement by incorporating novel provisions such as ‘Establishment of Special Transgender Courts’. But to vain, this historic feat could not survive much when the Government discarded the Act of 2014 by bringing ‘The Transgender Persons (Protection of Right) Act, 2019’. This Act has been drawn without consultation with the Transgender community for whose benefit it was eventually created contrary to what was done before bringing the 2014 Act. The Present Act has not lived to expectations of NALSA judgment; neither there was any reservation Quota (as suggested) in employment or educational institutions nor did it deal with issues of marriage, adoption, surrogacy & social security, which have been long standing issues concerning the Transgender Community.

Moreover, Present Act failed to achieve the International Standards as set by WHO, UN and World Professional Association for Transgender Health. Also, nor has the present act incorporated the recommendations of the Parliamentary Committee, which shows this act was more of a political gimmick rather than upliftment of Transgender Community.

Thus, FLAWS in the Act are numerous which needs reconsideration:

- The Transgender Persons (Protection of Right) Act, 2019 is published only in two languages; English and Hindi. Despite the fact that literacy rate within the Transgender community is low, translation of acts has been restricted to only two languages and not in any other vernacular language. Thus, it is creating a lack of awareness of the rights granted under the present act to be recognised by community.
For protection or availing the rights granted under the said Act, a transgender person has to ‘Identify’ himself as a Transgender and register with the Government to be officially recognised as ‘Transgender’, which itself is very derogatory provision.

Apart from Self Identification, if a person has had surgery to change his sex, such person has to submit a proof of surgery to the District Magistrate, who would have the discretionary power to decide the authenticity/validity of the certificate with a right to reject the same. Such discretion can lead to corruption and discrimination with the Transgender persons. Moreover, the act on this aspect does not address the issue of ‘Gender Transition’ wherein due to hormonal changes also a person’s gender can change. The above provision thereby does not take care of such situation. Also, this provision is in total contrast to NALSA judgement wherein the right to ‘self Determination’ as a Transgender should be without any medical certificate or other formalities, in such Justice K.S. Radhakrishnan held that “for declaring one’s Gender if there is any insistence of sex reassignment surgery is immoral and illegal”. Thus, there is blatant violation of the NALSA judgement in such regard.

The “Appropriate Authority” has been overpowered by the act wherein it has been granted many discretionary powers including of enforcement of the act, which raises question can independency of such executives who tend to discriminate with the Transgender community and will it act diligently to fulfil the aim of act. Eventually the Transgender Community as whole will be left at the mercy of such System which is another concern to be taken care of.

Despite the fact that the Present Act has included “Person with Sex Variation” within definition of Transgender, but the act has nowhere taken not taken care of Intersex People and the provisions of certificate of medical examination excludes such intersex people.

The Present Act has incorporated punishment for offences which are far less than those mentioned in Indian Penal Code such for offences like Sexual Abuse, in which punishment is “Imprisonment for six months which can extend upto 2 years” whereas for the same offence, punishment is much higher than it is in the present which clearly shows how serious the act is to eliminate Sexual Abuse of Trans-genders.

The Present Act prescribes for a National Council for Transgender people without any representative of the community in Council and is dominated by officials thus not serving any purpose. On the contrary, establishment of National Commission for Transgender on the side-lines of National Commission for Women, SC/ST was needed with Transgender community as its representatives vesting with some judicial powers. Thus, the Council is nothing but a tooth less tiger with no power.
VIII. State trans- upliftment

- Tamil Nadu has introduced Transgender Welfare Policy\(^{42}\) which granted access to Sex Reassignment Surgery (SRS) only for trans-female, education, free housing, self-help and income generating programmes. Subsequently, Kerala joined the same path in 2015\(^{43}\) and Assam published a draft policy with similar benefits in 2019\(^{44}\).
- States like West Bengal, Rajasthan, Gujarat, Bihar and Union Territory of Chandigarh have established Transgender welfare Boards and have formulated various schemes for their upliftment and social exaltation.
- Odisha\(^{45}\) and Himachal Pradesh\(^{46}\) also forwarded financial support for transgender community by furthering employment.
- Andhra Pradesh\(^{47}\) and Jammu Kashmir\(^{48}\) formed policies to provide pension benefits and medical insurance for transgender.

IX. Conclusion

Transgender is an umbrella term taking within its ambit all kinds of people who have expressed themselves to a gender different from their sex allotted at birth. Such people have often faced discrimination, harassment, violence due to their sexual orientation since time immemorial. Even during lockdown Transgender were denied ration cards & discriminated due to their gender and Patna High Court had to intervene to afford them justice\(^{49}\). In such context when the object of the Present Act is “An Act to Provide Protection of Transgender Persons and their Welfare” the Government ought to have stringent Provisions on similar that of SC/ST Prevention of Atrocities Act\(^{50}\) so that the atrocities/exploitation that is committed will be controlled. Moreover, they have been discriminated in civil law & criminal statues due to non-recognition of their third Gender status till the Judiciary granted them their rights in very recent times. This discrimination is apparent in Surrogacy Act 2019 as it excludes Transgender people the right to have children through surrogacy. Thus, the

\(^{42}\) Venkatesan Chakrapani, UNDP: The case of Tamil Nadu Transgender welfare board, for Developing Practical models of social, Protection Programmes for Transgender People in India (2012)
\(^{43}\) Social Justice (B) Department, Government of Kerala, State policy for transgenders in Kerala, 2015
\(^{44}\) Draft state policy on transgender available on www.socialwelfare.assam.gov.in
\(^{45}\) Social Security and Empowerment of Persons with Disabilities (SSEPD) Department, Government of Odisha, Sweekruti, a scheme for promotion of Transgender Equality and justice, 2018
\(^{47}\) About, YSR Pension Kanuka, [https://sspensions.ap.gov.in/](https://sspensions.ap.gov.in/), last seen on 16/08/2020
\(^{48}\) Schemes, Directorate of Social Welfare, Jammu, [https://jkdswdj.jk.gov.in/schemes.html](https://jkdswdj.jk.gov.in/schemes.html), last seen on 19/08/2020
\(^{49}\) Veera Yadav v. State Of Bihar, CWC No.5627/2020 (Patna High Court)
\(^{50}\) The Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989
struggle for recognition & non-discrimination for Transgender community is unending even with the passage of Transgender People Act of 2019. The act also mandates the Self-identification certificate of gender for Transgender. Also, the punishment for sexual abuse is maximum 2 years of imprisonment, contrary to that of S.376 of I.P.C. which provides for heinous punishments. Thus, Transgender community should be afforded equality in true sense by providing an amendment in Article 15 of the Indian Constitution on the sideline of section 9(3) of the South African Constitution and take such positive efforts for the upliftment of transgender in true sense & spirit. Similarly, the Present Act ought to be reconsidered with due consultation from the Transgender community and the same with amendments in the Indian Penal Code.

---

51 S.376, Indian Penal Code, 1860 defines “Punishment for rape”