

Transgender Need of Humanitarian Approach

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I. INTRODUCTION

The notion of 'gender identity' offers the opportunity to understand that the sex assigned to an infant at birth might not correspond with the innate gender identity the child develops when he or she grows up. It refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender (i.e. 'gender expression') such as dress, speech and mannerism. Most people legally define transgender as man or woman will to have to change their legal, social, and physical status — or parts thereof - to correspond with their gender identity. Modification of bodily appearance or function by dress, medical, surgical or other means is often part of the personal experience of gender by transgender people.

Both the notion of gender identity and the forms of gender expression used in everyday life are important elements for understanding the human rights problems faced by transgender persons. Sexual orientation should be understood as each person's capacity for profound emotional, affection and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender (heterosexuality, homosexuality and bisexuality). In addition, many international and national medical classifications impose the diagnosis of mental disorder on transgender persons. Such a diagnosis may become an obstacle to the full enjoyment of human rights by transgender people especially when it is applied in a way to restrict the legal capacity or, choice for medical treatment.

II. 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.

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.

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 heteronormativity, they are usually seen as acceptable sexual partners for male-identifying individuals as long as the latter always maintain the "active" role.

III. HISTORICAL REFERENCE

In most parts of the world there are fewer historical references to trans men, or people born female who have a masculine gender expression. In northern Albania, the term burrnesha describes people who were born female, took a vow of chastity, wore male clothing and lived as men. In Thailand, the term kathoey was historically used to describe any 'non normative' gender behavior, and encompassed trans men as well as trans women. This usage persists in rural Thailand today.

Trans men in Thailand and Indonesia today typically use the terms tomboy/toms, while in the Philippines, these terms are interchangeable with the word transpinoy. In Malaysia, pak nyah is used to describe trans men and pengkid refers to tomboys. Indigenous terms used today in the Pacific for trans men include fa'afatama in Samoa and tangata ira tane in New Zealand. Historical records from other parts of the world describe trans men and pengkid refers to tomboys. Indigenous terms used today in the Pacific for trans men include fa'afatama in Samoa and tangata ira tane in New Zealand. Historical records from other parts of the world describe people born female who cross-dressed. Some of these individuals likely identified as male or as a third gender : Others may have been escaping Asia Pacific region suggested that there are over 9 million trans people in the region. In India, the hijra community alone is estimated to number around 1 million people,

without counting the many other trans women and men, viral in societies where only men had access to paid work.

IV. LEGAL GENDER RECOGNITION

The vast majority of trans people around the world cannot obtain official identification is required for most life activities from entering into a phone contract to traveling across borders, from starting a new job to being called in the doctor's waiting room.

Trans people face daily challenges and risks if their official identification or record differ from their outward appearances. They may also be denied basic citizenship rights, including access to state rations or employment. In situations of heightened security, inaccurate identification documentation can be life-threatening.

A trans woman who is not recognized as female is typically unable to be recorded as her partner's wife. A trans man usually cannot be listed as the father of his children on their birth certificates.

Trans people are vulnerable to discrimination when their previous name or sex details are revealed to others, disclosing that they are trans. An individual's right to change sex details on identity documents protects their privacy. It prevents discrimination and stigma based on someone's gender identity or because they have transitioned. For this reason, countries that have gender recognition laws typically prevent disclosure of previous name or sex details without the trans person's explicit consent.¹

Recognizing Third Gender Internationally 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.

New Zealand

Although New Zealand does not have specific transgender anti-discrimination laws, but in course of time its anti-discrimination laws are broadened enough to cover members of the transgender communities also. In 2005, the country's Human Rights Commission opined that it considered transgender people to fall within the definition of sex discrimination, and would accept complaints from transgender people. The battle for transgender rights continued for a longer period and finally in 2012, the Government of New Zealand gave its trans-gender citizens a new gender category on their passports, by introducing the option of "X" for "undetermined or unspecified" category. Thus now the Transgender of New Zealand can change their gender category to "X" on their passports with a simple declaration. However, a declaration of the Family Court is still required if citizens want to change their gender identity from male to female, and vice versa, on citizenship documents.

¹ See for example the United Kingdom's gender Recognition Act. 2004, accessed 4 June 2014.

Australia

The highest Court of Australia on April 2, 2014, delivering a historic decision ‘with far-reaching implications for institutions and individuals across the country, formally upheld the right of transgender person Norrie to be registered as neither a man nor a woman with the NSW Registry of Births, Deaths and Marriages. Norrie’s battle started in 2010 when she asked to be registered as having a "non-specific" gender. Though the New South Wales Registry of Births, Deaths and Marriages first supported the rights of the transgender, the highest court held that "sex" is not binary - it is not only "male" or "female" and that this should be recognized by the law and in the basic legal documents. The Court further ruled that people are not unambiguously male or female, thus people belonging to transgender category should be provided with legal protection. The category is now known as “indeterminate”

Recently the Government of Australia has released new Australian Government Sex and Gender Recognition Guidelines as per which people who are intersex, transgender and gender diverse will now be able to establish or change their gender identity on personal records in a consistent way. For example, whether it’s a record with the Department of Human Services, the Department of Immigration or the Department of Health and Ageing, the same criteria should apply, reducing complications and simplifying the process changes.

Bangladesh

At least 10,000 hijras currently live in Bangladesh, according to national statistics. They have had the right to vote since 2009, but it wasn’t until the end of last year that their gender identity was given a legal status. In November 2013 the government announced the recognition of “hijra” as a third gender category in all national documents and passports. The prime minister herself, Sheikh Hasina, announced the decision. Hasina’s Cabinet secretary, Muhammad Musharraf Hossain Bhuiyan, recognized the difficult situation faced by hijras in Bangladesh as well, noting the community was “being denied their rights in various sectors, including education, health and housing because of being a marginal group.”

Nepal

Geographical size doesn’t matter even a small Country can be a path-finder of a new horizon, which becomes true with Nepal being world’s first Country that had shown a new horizon to the whole world by Pant, Executive Director of Blue Diamond Society and Others v. Nepal Government, where a writ petition was submitted by Blue Diamond Society (BDS)² and three sexual minority groups, demanding protection of their legal rights. Their demands were threefold: to recognize the civil rights of transgender people without requiring them to renounce one gender identity for another; to create a new law preventing discrimination and violence against LGBT communities; and to require the state to make reparations to LGBT victims of state violence or discrimination. The Supreme Court acknowledging the growing ascendance of the notion that homosexuals and third gender people are not mentally ill or sexually perverts, has held that their rights should be protected and they should not be discriminated in the enjoyment of rights guaranteed by the constitution and human rights instruments. The Supreme Court hearing the matter has passed a ruling against gender identity discrimination. The country has also introduced a third gender category on its passports,

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 India³, 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.

V. 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

² Assessed from bds.org.np its as NGO

³ Writ Petition (civil) No 400 of 2012

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.

While discussing on the status of the transgender throughout the world, it is quite evidently visible that in almost all countries the judiciary has really played an important role in upholding the rights of the transgender. But it is not the end rather it is the beginning of a new era. Now it is open for all to go deep into the matter and to work hard to increase consciousness amongst people to recognize the transgender people not only legally but also socially and to allow them to live a dignified life. Thus, the responsibility of the society is to take effective