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Special Issue on Human Rights and
Democratisation

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Right to Education and Employment: A Step Towards Empowering Transgender Community

Naresh Kumar Vats* and Megha Purohit**

Abstract

The term Transgender is generally used to refer to those people who do not incarcerate themselves into the socially constructed gender norms i.e. male or female. Despite having international instruments and constitutional provisions on safeguarding the right to equality of all persons, still transgendered people face social stigma in every aspect of their lives. They face numerous overlapping challenges, specifically discrimination in education and employment. Even while looking at the Vedic period, there was less recognition to eunuchs but during the Mughal period, they were enjoying the position as guardians of harems. They were also given the privilege of guarding the holy places which they lost during the British period. They continue to face harassment on many occasions besides bullying at school and workplace. Now, India is still struggling to pass a Bill on Rights of transgendered ensuring to bring them into the mainstream of society. The right to education and employment, which are enshrined as a human right in the International Covenant on Civil & Political Rights, applies to all people irrespective of their sexual orientation but due to prevalent social stigma and people's attitude, the transgender community is facing various challenges. Hence, the paper is an attempt to provide a comprehensive overview on rights of education and employment of transgendered members. The approach in the paper is analytical and descriptive involving qualitative methodology. The study engages the internal and external desk-based research limited to specific rights to education and employment to the third gendered people.

'All human beings are born free and equal in dignity and rights.'¹

Introduction

More than a century ago, the issue of transgender was not a subject of discussion. The radical change in the anti-discriminatory laws has positively affected civil, political, economic, social and cultural rights of people all over the world. While human rights are guaranteed as safe and sacred globally, the fundamental liberties (freedoms) are observed in only some parts of the world.

The world has witnessed various movements protecting the gender recognition and human rights of the transgendered. It has influenced the thinking of the individuals in India and in the world at large. The Vedas (1500 BC - 500 BC) also describe individuals as belonging to one of three separate categories, according to

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¹ UN General Assembly, *Universal Declaration of Human Rights* (UDHR), adopted on 10 December 1948, 217 A (III), art.1.

one's nature or *Prakriti*. These are also spelt out in the Kama Sutra (c. 4th century AD) and elsewhere as *Pumsprakritistri-Prakriti* (female-nature), and *Tritiya-Prakriti* (third nature)². A Nepali lexicon noted that the word *hijra* was derived from the Persian *hiḏ*. *Hiḏ* meant one who is “effeminate”, “disdains woman”, “a catamite”³. According to Muzaffar Alam, a prominent Persianist, *hiḏ* was from old Pahlavi Persian, a sister language of Sanskrit, in usage before the eighth century A.D. *Hiḏ* meant ineffective and incompetent. Other Persianists suggest that the origin of *hijra* was *hich*, from the word *hichgab* meaning nowhere.⁴ The Mughal period can be considered the golden period for *Hijras* when they were enjoying privileged positions as the guardian of Harems to guarding of holy places of Mecca and Medina. In comparison, in the British period, they were disintitiled from inheriting property and treated with cruelty. Once again in the modern age, to note and accept their voices against the discriminatory practices of the society as well as by the states, The Supreme Court of India in *National Legal Services Authority v. Union of India*⁵ case has recognised neuters as belonging to the ‘Third Gender’. In its ruling, the Supreme Court ruled the Indian constitution to provide equal opportunity “irrespective of caste, religion or gender”. Justice K.S. Radhakrishnan said the “recognition of transgendered (people) as a third gender is not a social or medical issue but a human rights issue”.⁶ It was further ruled that the Third Gender should be recognised as ‘backwards’ and be entitled to reservations in government jobs and universities. But the biggest challenges are to enforce and implement the policy, give it teeth and arms.

The Constitution of India, 1950 ensures the right to education and prohibits any kind of discrimination in employment. Apart from this, various states are also trying to adopt a transgender friendly environment. However, still, there is a lot to achieve in this regard. Amongst the various rights, education and employment are of utmost importance in the human rights jurisprudence as they are the essential human rights guaranteed and protected by the UDHR (1948), ICESCR (1966), U.N Resolutions, constitutions of various states, legislative enactments and policies at national level. These rights are guaranteed to all human beings irrespective of their gender orientation.

Some parts of the world have achieved a remarkable development concerning the rights related to the transgendered community. Awareness, knowledge, and awakening on the international and national level have become considerable and effective steps to sensitise the human rights throughout the world, especially after

² M. Michelraj, ‘Historical Evolution of Transgender Community in India’, vol. 4, no. 1, *Asian Review of Social Sciences*, 2015, p. 17.

³ Anitha Chettiar, ‘Problems faced by hijras (Male to female Transgenders) in Mumbai with reference to their health and harassment by the police’, vol. 5, no.9, *International Journal of Social Science and Humanity*, September 201; see also S. Nanda, *Neither Man nor Woman: The Hijras of India*, California, Wadsworth Publishing Company, 1990.

⁴ *Ibid*; see also Z. Jaffrey, *The Invisibles: A Tale of the Eunuchs of India*, London, Phoenix, 1996.

⁵ (2014) 5 SCC 438.

⁶ Dean Nelson, ‘India’s Supreme Court creates official third sex for eunuchs and transgenders’, *The Telegraph*, 14 April 2014, available at <http://www.telegraph.co.uk/news/worldnews/asia/india/10767555/Indias-Supreme-Court-creates-official-third-sex-for-eunuchs-and-transgenders.html>, accessed on 09 May 2017.

the emergence of information technology. These developments have sensitised the citizens to keep connected with world affairs, especially those relating to human rights. The Human rights has become a concern of utmost interest in the modern era. The Indian Government has initiated many steps in piece-meal basis for the progress of human beings. Initiatives such as “Sab ka Sath, Sab ka Vikas” i.e. ‘*support of all, development of all*’, may indicate to be a comprehensive and inclusive attitude towards the rights of transgendered.

Hence, this paper is an attempt to revisit what has been done for the transgendered communities in the ambit of human rights jurisprudence. The paper will conclude by suggesting some reformatory measures for building strong and effective legal mechanism for the transgendered community.

Right to Education

The right to education is a basic fundamental human right which paves the way for the enjoyment of all other rights. Education provides personality development by encouraging the empowerment and securing the freedom and dignity of the individual. International instruments and Constitution of India reflect the notion that everybody is entitled to the right of education. However, discrimination is not permissible in the attainment of this right.

Article 26 of the Universal Declaration of Human Rights, 1948 ensures ‘right to education’ to every human being without making any discrimination. The term ‘every person’ includes persons having different sexual characteristics i.e. men, women, ‘transgendered or eunuchs or *bijras*’ as well.

In the year 1960, United Nations Educational Scientific and Cultural Organization adopted Convention against Discrimination in Education. It requires that education be accessible to all persons without any discrimination on the ground of race, colour, sex, language, religion, political or another opinion, national or social origin, economic condition or birth.⁷ The Convention explicitly prohibits discrimination in providing education on the ground of sex or birth. Thus, even if one is born transgendered, that person should not be discriminated against.

Article 13 (1) of the International Covenant on Economic, Social and Cultural Rights, 1966 also states:

The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all

⁷ *Convention against Discrimination in Education 1960*, available at http://portal.unesco.org/en/ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html, accessed on 16 February 2017.

nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.⁸

Thus, education sustains the full development of the personality as well as secures the sense of dignity to the human beings. In *General Comment No. 13*, Committee on Economic, Social and Cultural Rights highlighted the value of education in the life of an individual. It was stated that education helps the economically and socially marginalised adults as well as children to participate fully in their communities.⁹ Further, the comment laid down four essential features that education must conform to stating that education must be available, accessible, acceptable and adaptable¹⁰. Therefore, it can be said that international law concerning the right to education is well-developed and it takes into consideration for the holistic development of human beings without any discrimination.

Indian Perspective

In India, it has been seen that *Hijras* or Eunuchs are deprived of the right to education since their childhood. Preamble of the Indian Constitution, 1950 starts with the words: “*We the people of India...this Constitution.*” These words encompass the wider attitude of the state within themselves. It can be understood to include not only the male or female but all human beings irrespective of their genders. The Constitution secures the rights of all people by embracing social, economic and political justice.

Article 21-A of the Indian Constitution ensures the fundamental right to education for children of age between 6-14 years.¹¹ However, it is surprising to note that the legislators have excluded the scope ‘Transgender’ under section 1(c) of the Right of Children to free and Compulsory Education Act 2009 which was enacted in pursuant to Article 21-A.¹²

Apart from this, Article 45 of the Indian Constitution guarantees that the state shall provide education to all children till the age of 14 years in a free and compulsory basis.¹³ Article 46 states,

“The State shall promote the educational and economic interests of the people weaker sections, and, in particular, of the Scheduled Castes and the Scheduled Tribes with special care, and shall protect them from social injustice and all forms of exploitation”¹⁴.]

⁸ *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3, adopted on 16 December 1966, art 13 (1).

⁹ ‘General Comment No. 13: The right to education (article 13) (1999)’, United Nations Human Rights Office of the High Commissioner, available at [http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/dGeneralCommentNo13Therighttoeducation\(article13\)\(1999\).aspx](http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/dGeneralCommentNo13Therighttoeducation(article13)(1999).aspx), accessed on 16 February 2017.

¹⁰ It requires that the education must be adopted as per the changing needs of the society. It should challenge the traditional corridors of the system and promote equality without doing any kind of discrimination.

¹¹ *Constitution of India*, 1950, art 21A (86th Amendment) Act 2002.

¹² *The Right of Children to free and compulsory Education Act*, India, 2009, s 1 (c).

¹³ *Constitution of India*, 1950, art 45.

¹⁴ *Ibid*, art 46.

Hence, it becomes imperative upon the states to provide primary education to all children without any kinds of discrimination.

Further, transgendered persons can be considered as 'socially and educationally backwards' considering their situation which they are facing in the society. States can make special provisions for *Hijras*¹⁵ such as providing reservation in educational institutions according to Article 15 of the Indian Constitution. This article also prohibits discrimination on the ground of sex and the word 'sex' has been often interpreted as male or female. But the basic idea of the constitution is to provide justice to all people irrespective of their sexual orientation. Thus, it requires that these provisions should be made applicable to transgendered persons too. Only in that case education can be provided to this neglected class in our society.

According to the 2011 census, the Government of India, for the first time, officially declared that the number of the transgendered persons in the country is 4,87,803¹⁶. It was revealed that there were 4.9 lakhs transgendered persons in India by April 2014 out of which about 55,000 children were between the age group of 0-6¹⁷. Further, it was revealed that as of April 2014, the literacy rate among the transgendered community was 46% as compared to 76% in the general population¹⁸ whereas according to the 2011 Census, the average literacy rate of transgendered community was 56.07%¹⁹. Out of the states, the highest literacy rate was in Mizoram followed by Kerala and Bihar. The following table represents the data displayed by the government:

Table No. 1: Literacy Rate of transgender

States	Transgender	Child (0-6)	SC	ST	Literacy
India	487,803	54,854	78,811	33,293	56.07%
Mizoram	166	26	1	146	87.14%
Kerala	3902	295	337	51	84.61%
Bihar	40,827	5971	6295	506	44.35%

*Source: Census, 2011 (Government of India)*²⁰

It is clear that the data provided by the 2011 census indicates the condition of low literacy rate in the transgendered community. In this context, Anjali Gopalan from Naz Foundation stated that "I am not surprised that the literacy rate is so

¹⁵ Naresh Kumar Vats, 'Gender Equality-Human Rights Violations against Sexual Minorities', in Mizanur Rahman & Rahamt Ullah (Ed), *Human Rights and Critically Disadvantaged People, Empowerment Through Law of the Common People (ELCOP)* & Palal Prokashoni, Dhaka, Dec 2012, p.79.

¹⁶ 'Transgender in India', *Census 2011*, available at <http://www.census2011.co.in/transgender.php>, accessed on 16 February 2017.

¹⁷ Rema Nagarajani, 'First count of third gender in census: 4.9 lakh', *The Times of India* (30 May 2014), available at <http://timesofindia.indiatimes.com/india/First-count-of-third-gender-in-census-4-9-lakh/articleshow/35741613.cms>, accessed on 01 March 2017.

¹⁸ Ibid.

¹⁹ 'Transgender in India', *Census 2011*, available at <http://www.census2011.co.in/transgender.php>, accessed on 16 February 2017.

²⁰ Ibid.

low because it is not uncommon at all for people of transgendered to drop out of school because of the harassment and discrimination they face."²¹

This clearly shows the pathetic condition of the community as they are being denied of their basic and fundamental right to education. Discrimination against transgendered individuals starts from their family and it continues on their whole lives. This problem is not limited to higher education but is also prevalent at primary level. They have narrow ingress in taking the educational facilities due to the social stigma they carry with them.

Considering their problems, the Supreme Court in the case of *NALSA v. Union of India*²² ruled that transgendered should be given reservation as 'third gendered' with a notation (T) in educational institutions and public employments.

The need of providing them with the educational opportunities was reflected in the 2013 Report of the Expert Committee on the Issues relating to Transgendered Persons and it emphasised upon strengthening and sensitising the education system on the issues of discrimination and stigma of transgendered.²³

India's Supreme Court has created an official third sex for the transgendered and the eunuchs and announced that they will have a quota in government jobs and college placements to help them overcome discrimination.²⁴ This was followed by the Human Resource Development (HRD) Ministry, which asked all the states except Jammu & Kashmir and Union Territories to take necessary measures for "the inclusion of 'third gendered' children among socially and educationally backward classes for admission in educational institutions under the Sarva Shiksha Abhiyan (SSA) to universalize elementary education". The ministry directed the governments to treat transgendered as 'socially and educationally backwards' and providing them with the reservation in educational institutions.²⁵

University Grants Commission has published a circular dated 29th October 2014 to all the Vice-Chancellors of the universities soliciting them "to include a column for the transgendered category in all application forms/academic testimonials and

²¹ Rema Nagarajan, 'First count of third gender in census: 4.9 lakh', *The Times of India*, 30 May 2014, available at <http://timesofindia.indiatimes.com/india/First-count-of-third-gender-in-census-4-9-lakh/articleshow/35741613.cms>, accessed on 16 February 2017.

²² *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

²³ Expert Committee on the issues related to Transgender, Ministry of Social Justice & Empowerment (Government of India), *Report of the Expert Committee on the Issues relating to Transgender Persons*, 27 January 2014, available at <http://socialjustice.nic.in/writereaddata/UploadFile/Binder2.pdf>, accessed on 17 February 2017.

²⁴ Dean Nelson, 'India's Supreme Court creates official third sex for eunuchs and transgendered', *The Telegraph*, 14 April 2014, available at <http://www.telegraph.co.uk/news/worldnews/asia/india/10767555/Indias-Supreme-Court-creates-official-third-sex-for-eunuchs-and-transgendered.html> accessed on 09 May 2017.

²⁵ The Union Human Resource Development Ministry, 'Include Third Gender Children In Schools: HRD Ministry', 25 July 2014, available at <http://righttoeducation.in/media/news/2014/07/25/include-third-gender-children-in-schools-hrd-ministry>, accessed on 16 February 2017.

all other relevant documents processed by them as well as by their affiliated colleges without any discrimination”.²⁶

Report of Expert Committee on Gender and Education by National Commission for Women presented the idea that role of education should be made to sensitise the gender-related issues. The committee made recommendations for the educational institutions to bring their attention towards the issue of violence which is based upon ‘linguistic structure and terms’.²⁷

Tamil Nadu: It has been recorded that Tamil Nadu (TN) has worked phenomenally in this sector. The TN government has adopted a transgendered welfare policy²⁸ and consequently, various provisions have been made for them such as the provision for scholarship for getting admission in educational institutions, access to health care facilities etc. ‘Tamil Nadu Aravanigal (Transgendered) Welfare Board’ (TAWB) was set up in 2008 to look into the issues of ‘social security’ related to the transgendered communities. TAWB ensures that the educational grants are given to transgendered persons and that they are being utilised in giving them benefits for admissions in educational institutions.²⁹

But, recently, it has attracted many criticisms. The RTI filed by *The Hindu* revealed that the TAWB has not been reconstituted even after its expiry of tenure and the educational grants are not being utilised properly.³⁰

Kerala: Where other states are passive in their actions, Kerala has presented much more comprehensive policy named, ‘State Policy for Transgendered in Kerala, 2015’ pursuant to the judgment of *NALSA v. The Union of India*³¹. The policy aimed at ending discrimination and harassment towards transgendered community by creating gender friendly environment and social security issues.³² It ensures the right to dignity, equal opportunity and freedom to the transgendered community.

²⁶ Ministry of Human Resource Development, ‘Enrolment of Transgender Enrolled in Higher Educational Institutions’, 05 May 2015, *Press Information Bureau, Government of India*, available at <http://www.pib.nic.in/newsite/mbErel.aspx?relid=144921>, accessed on 18 February 2017.

²⁷ Charu Walikhanna, National Commission for Women (India), *Report of Expert Committee on Gender and Education*, 2014, available at http://ncw.nic.in/pdfReports/REPORT_of_Expert_Committee_GENDER_and_EDUCATION.pdf, accessed on 18 February 2017.

²⁸ Venkatesan Chakrapani, ‘The Case of Tamil Nadu Transgender Welfare Board: Insights for Developing Practical Models of Social Protection Programmes for Transgender People in India’, 2012, *UNDP India*, available at http://c-sharp.in/research_policy/Download/CaseStudyReport_TGWB_2013.pdf, accessed on 18 February 2017.

²⁹ Ibid.

³⁰ Zubeda Hamid, ‘TN’s Transgender Welfare Board in limbo’, *The Hindu*, 15 October 2015, available at <http://www.thehindu.com/news/cities/chennai/transgender-welfare-board-in-limbo/article7764631.ece>, accessed on 17 February 2017.

³¹ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

³² Department of Social Justice (Government of Kerala, India), *State Policy for Transgendered in Kerala*, 2015, available at <https://kerala.gov.in/documents/10180/46696/State%20Policy%20for%20Transgendered%20in%20Kerala%202015>, accessed on 17 February 2017.

It was stated that “the beneficiary candidate will receive the scholarship amount for 10 months’ duration in a year. The candidates enrolled in postgraduate, undergraduate and diploma courses will receive Rs. 2,000 per month. Students studying in Class 11 and Class 12 receive Rs. 1,500 while the students from Class 7 to Class 10 will get Rs.1,000.”³³

Apart from this, University of Kerala laid down the ‘Policy for Transgendered Students’ including these points³⁴:

(i) Identification of Transgendered Students; (ii) Equal Opportunities; (iii) Safety in educational institutions; (iv) Comprehensive syllabus; (v) Scholarships/ Entitlements; (vi) Transgendered friendly infrastructure and (vii) Awareness programmes by the University.

Kerala has recently opened a school for transgendered persons in Kochi and it became the first state to have this facility. Vijayaraja Mallika, an activist, said:

A group of teachers and social workers have come forward to be a part of this initiative. The aim of this school is to provide security, salvation and sustainability to the transgendered. In the beginning, we have a few sponsors *supporting us*. We are planning to seek financial help from the government after proving its worthiness.³⁵

Maharashtra: Inspired by the efforts of TN Government, Maharashtra Government’s Women and Child Development Department submitted a proposal to the Planning Department for setting up a welfare board for the transgendered community. But, the Planning Department refused to implement it and stated that there is no official count available for the transgendered community and in the absence of it, welfare board cannot be set up.³⁶

But later in the month of August in 2014, Maharashtra, with the support of UNDP, established the Welfare Board on Transgendered and became the second state to have the board. Maharashtra also set up a cultural institute for the transgendered community.³⁷

³³ Heena, ‘Kerala Drafts Policy For Transgender Students To Ensure Their Education’, *Exams Watch*, 23 September 2015, available at <http://examswatch.com/kerala-drafts-policy-for-transgender-students-to-ensure-their-education/>, accessed on 17 February 2017.

³⁴ University of Kerala, ‘Policy for Transgender Students’, 2015, *University of Kerala Official Website*, available at http://www.keralauniversity.ac.in/pdfs/news/kerala_university_transgender_policy1463741162.pdf, accessed on 17 February 2017.

³⁵ ‘India’s first transgender school soon to be set up in Kochi’, *YourStory* (20 December 2016), available at <https://yourstory.com/2016/12/indias-transgender-school/>, accessed on 17 February 2017.

³⁶ ‘Maharashtra Government’s welfare board for transgender in limbo’, *DNA India* (03 August 2014), available at <http://www.dnaindia.com/india/report-maharashtra-government-s-welfare-board-for-transgenders-in-limbo-2007571>, accessed on 16 February 2017.

³⁷ UNDP, ‘A Development Agenda for Transgender in Maharashtra’, available at <http://www.in.undp.org/content/india/en/home/ourwork/povertyreduction/successstories/a-development-agenda-for-transgenders-in-maharashtra.html>, accessed on 17 February 2017.

Recently, Maharashtra became the first state to provide the column for transgendered in State Common Entrance test for engineering and pharmacy courses from May 2017 as TG category.³⁸

After that, West Bengal Government also agreed for constituting ‘Transgendered Development Board’.³⁹

The state of Odisha has also made the provision of education for transgendered by including them under the category of Below Poverty Line (BPL).⁴⁰

The Rights of Transgender Bill, 2014

Despite taking these efforts, the majority of states in India are struggling to create legislative enactment and conditions of dignity for securing human rights of the transgendered community. The Rights of Transgendered Bill, 2014 was introduced in the Parliament as a private bill but it is still pending for recognition in the Lok Sabha. The preamble of the bill states the objectives to be achieved by the bill and it reads as:

to provide for the formulation and implementation of a comprehensive national policy for ensuring overall development of the transgender persons and for their welfare to be undertaken by the State and for matters connected therewith and incidental thereto.

Further, it lays a down duty upon the educational institutions to provide the gender inclusive education and not to discriminate the transgendered educations. Also, ‘adult education’ is to be given to them on equal footing with other adults.⁴¹

Meanwhile, the Transgendered Persons (Protection of Rights) Bill, 2016 was introduced in the Lok Sabha by the Ministry of Social Justice & Empowerment. It ensures that no person shall be subjected to discrimination on the ground of sexual identity, thus, education should be made available at transgendered persons also on equal footing with other persons. Further, the Bill makes provision for inclusive education for transgendered people and says “inclusive education means a system of education wherein transgender students along with other students learn together and the system of teaching and learning is suitably adapted to meet the learning needs of such student.”⁴²

It can be inferred from the above-mentioned particulars that the right to education has been guaranteed as a fundamental human right for all irrespective

³⁸ Ankita Bhatkhande, ‘Now, transgender option available on forms’, *DNA* (21 February 2017), available at <http://www.dnaindia.com/academy/report-now-transgender-option-available-on-forms-2329627>, accessed on 25 February 2017.

³⁹ Express News Service, ‘Bengal govt announces Transgender Development Board’, *The Indian Express* (19 March 2015), available at <http://indianexpress.com/article/cities/kolkata/bengal-govt-announces-transgender-development-board/>, accessed on 17 February 2017.

⁴⁰ ‘This state is first in India to provide pension and food benefits to the transgender community’, *Indiatoday* (06 June 2016), available at <http://indiatoday.intoday.in/education/story/bpl-status-to-transgendered/1/685370.html>, accessed on 25 February 2017.

⁴¹ *The Rights of Transgender Persons Bill*, 2014, passed by Rajya Sabha, 29 April 2015.

⁴² *The Transgender Persons (Protection of Rights) Bill*, 2016, clause 2 (c).

of their sexual orientation. Without safeguarding this right, society cannot realise its full potential in terms of sustaining the attributes of rule of law under the human rights framework.

Right to Employment

Since, the ancient times, *Hijras* have played a famous role in the royal courts of the Islamic world, particularly in the Ottoman Empire and the Mughal Rule in Medieval India. They rose to well-known positions as political advisors, administrators, generals as well as guardians of the harems. *Hijras* were considered clever, trustworthy and loyal and had free access to all spaces and sections of the population, thereby playing a crucial role in the politics of empire building in the Mughal era. The *Hijras* also occupied high positions in the Islamic religious institutions, especially in guarding the holy places of Mecca and Medina. As persons for trust, they were able to influence states' decisions and also received a large amount of money since they were the closest to the kings and queens. Thus *hijras* frequently recall the role of their status in that period.⁴³ Gradually, the position reverted in the beginning of the British period in Indian subcontinent when *hijras* used to accept protections and benefits in some Indian states through entry into the *hijra* community. Furthermore, the benefits included the provision of land, rights of food and a smaller amount of money from agricultural households in the same area, from which they were ultimately removed through British legislation as the law prohibited them from inheriting land through blood relations.⁴⁴

However, discrimination in employment is one the crucial concerns which transgendered people face on the ground of 'sex stereotyping' notion or anatomical characteristics despite the fact that right to employment is guaranteed as a human right in the ICESCR, 1966. The right is subjected to the progressive realisation by the positive steps undertaken by the states and to the availability of resources. Hence, states are required to provide the employment opportunities and conducive environment to their citizens without any discrimination. In India, it has been seen that they have very limited employment opportunities. That is why, in *NALSA v. The Union of India*,⁴⁵ the Supreme Court of India said transgendered people should have access to employment. It was also revealed by the report of UNDP that due to lack of job opportunities, some *hijras* are found to be engaged in 'sex work'.

It is a well-settled proposition that no person shall be discriminated on the grounds of race, religion, sex, caste in the matters of employment. On the same ground, it can be inferred that the transgendered people should not be discriminated or harassed or exploited at the workplace.

It was emphasised by the Supreme Court in *NALSA v. Union of India*⁴⁶ that "Equality includes the full and equal enjoyment of all rights and freedom" and

⁴³ M. Michelraj, 'Historical Evolution of Transgender Community in India', vol 4, no. 1, *Asian Review of Social Sciences*, 2015, p.18.

⁴⁴ Ibid.

⁴⁵ *National Legal Services Authority v. Union of India*, 2014, 5 SCC 438.

⁴⁶ Ibid.

Article 14 of the Indian Constitution applies to all persons including *Hijras*/transgendered, thus, they shall not be discriminated against in the matter of employment.

Further, Article 16 of the Indian Constitution provides for equality of opportunity in the matters of public employment. Article 16 (2) states: “No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.” Hence, there is a need to interpret the Constitution in such a manner so as to protect the dignified life of the transgendered people.

Apart from this, Tamil Nadu Aravanigal (Transgendered) Welfare Board also works for creating the economic opportunities for the transgendered community.

State Policy for Transgendered in Kerala, 2015 regulates the conditions for the scope of financial freedom by ensuring the non-discrimination at jobs.

The Welfare Board of Maharashtra also looks up the issue of creating employment for the transgendered community. Further, special emphasis has been given to the self-employment opportunities so as to ensure the equality.

However, it was revealed by the Government of India’s report on ‘Fifth Annual Employment’ that from Rural 51.1% and Urban 41.2% and in aggregate 48% of the transgendered comparatively to 75% Male and 23.7% female under 15 years of age are looking for the employment. The unemployment rate of transgendered is 4.2% as compared to 4% in the Male and 8.7% in the female population. However, in regard to the social security, there are only 19.7% transgendered availing social security benefits compared to 22.1% in the male and 19.7 in the female population. On the other hand, persons not eligible for social security comprise 67% of the transgender population as compared to 70.4% in the male and 74.0% in the female population.⁴⁷ Many of them are engaged in the self-employment, however, “the unemployment rate among transgender persons in urban areas is high at 10.3 per cent as compared to that of 2.1 percent for transgendered persons in rural areas.”⁴⁸

Contemporary Period

The transgendered community is recognised by the Supreme Court of India which has already declared that the transgender should be recognised as the third gendered. The third gendered people in India have emerged as a strong faction in the advocacy for LGBT rights. In the contemporary time, the Government of India introduced many welfare policies and schemes such as census, documentation, issuing of the citizenship ID Cards, issuing passports, socio-economic development and constitutional safeguards for the transgendered people. The Mahatma Gandhi National Rural Employment Guarantee Act

⁴⁷ Ministry of Labour & Employment, Government of India, *Report on Fifth Annual Employment–Unemployment Survey (2015-16)*, available at http://labourbureaunew.gov.in/UserContent/EUS_5th_1.pdf, accessed on 27 February 2017.

⁴⁸ Ibid.

(MGNREGA) is a major initiative of the 11th Five Year Plan period which brought employment opportunities for transgendered people. The Ministry of Housing and Urban Poverty Alleviation is the National Urban Livelihood Mission and Healthcare facilities. The social, economic, political transformation, Housing, legal measures, Police Reforms, legal and constitutional safeguards to prevent human rights violations of the transgendered community and institutional mechanisms to address specific concerns of transgender people are must.⁴⁹

The Rights of Transgendered Bill, 2014 (India)

In order to provide the legislative recognition, the government has evolved a mechanism for their social, economic and educational empowerment under the Rights of Transgendered Bill, 2014 which will benefit large number of transgendered persons by shielding them from stigma and discrimination in access to education and employment opportunities. This will lead to greater inclusiveness and render them productive members of society. Further, it will bring greater accountability upon the state and central government in formulating the schemes and policies for providing vocational training and self-employment to the transgendered community.

The provision for 'Special Employment Exchange' has also been made in the Bill. It casts the duty upon the employer to notify the vacancies for the transgendered. Furthermore, the Bill also makes provision for 'unemployment allowance' to the unemployed transgendered persons, who are registered in Special Employment Exchange for more than 2 years.

The Bill also makes provision for 'Rehabilitation of Transgendered' in employment considering their social experiences.

The Transgendered Persons (Protection of Rights) Bill 2016 (India) prohibits the discrimination employed towards the transgendered people in the matter of employment.

Clause 10 of the Bill states that "No establishment shall discriminate against any transgendered person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues."⁵⁰

Clause 15 of the Bill entails that "the appropriate Government shall formulate welfare schemes and programs to facilitate and support livelihood for transgendered persons including their vocational training and self-employment."⁵¹

Hence, the efforts have been made not only for providing employment by state but also ensuing provisions for self-employment as well as for skill development. This represents a comprehensive approach to the rights of the transgendered community.

⁴⁹ M. Michelraj, 'Historical Evolution of Transgender Community in India', vol 4, no. 1, *Asian Review of Social Sciences*, 2015 p.19.

⁵⁰ *The Transgender Persons (Protection of Rights) Bill*, 2016, clause 10.

⁵¹ *Ibid*, clause 15.

UNDP also stated that transgendered community faces different types of challenges in terms of social security. They are excluded from economic participation in the state which leads to 'lack of livelihood' opportunities for them.⁵²

It is often seen that they face various kinds of challenges at the workplace such as discrimination, harassment, bullying, threat to the job security and thus, threat to their self-respect and human dignity. Despite having Constitutional provisions securing the right to employment and right to equality for all, the threat still persists. The further challenge is for 'self-identification' of the gender as held by the Supreme Court of India as part of right to dignity and autonomy under Article 21 of the Constitution. The objective criterion for entitlement under the category of 'Transgendered' is to be determined. The criminal and personal laws that are currently in force only recognise the genders of 'man' and 'woman'. It is unclear how such laws would apply to transgendered persons who may not identify with either of the two genders.⁵³

Conclusion

In this paper, the authors have tried to discuss the issues and challenges faced by the transgendered people, especially in India. The right to education and employment which are enshrined as a human right in the International Covenant on Civil & Political Rights apply to all people irrespective of their sexual orientation but due to prevalent social stigma and people's attitude, the transgendered community is facing different types of challenges. The problem of discrimination against transgendered people starts within the family itself. Whenever any child born with a different sexual orientation i.e. other than the male or female, the parents of the child handover him/her to the transgendered people rather than accepting him/her and providing with the right to human dignity, respect, education etc. Here comes a potential dilemma of asking for the rectification.

Further, we have seen that countries like the United States of America and the United Kingdom have taken a proactive approach towards protecting the rights of the transgendered people. Various laws, policies and rules have been enacted there but if we see the case of India, we are still struggling to pass the Transgender Bill. There are some states in India like Tamil Nadu, Kerala, Maharashtra, and Odisha, which have set the precedent for all other states to take the initiative in protecting the rights of the transgendered community but there is a need for an overarching model which would be applicable to all the states. The state should take positive measures to design Socio-Legal Environment which would create the educational and employment opportunities for the transgendered. It becomes imperative to

⁵² Dr. Venkatesan Chakrapani, 'Hijras/Transgender Women In India: HIV, Human Rights And Social Exclusion', December 2010, *United Nations Development Programme (UNDP) India*, available at http://www.undp.org/content/dam/india/docs/hijras_transgender_in_india_hiv_human_rights_and_social_exclusion.pdf, accessed on 22 February 2017.

⁵³ *The Transgender persons (Protection of Rights) Bill, 2016*, PRS Legislative Research, available at <http://www.prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2016-4360/>, accessed on 02 March 2017.

elucidate the institutional niche by creating some bodies that would look into the implementation of the laws and policies and will be responsible for providing the assistance to the transgendered people. The government should eradicate the stigma, discrimination and human rights violation for the betterment of transgendered community. And it can be only uprooted by education and employment to them. If all these are brought in their day to day life, it would enlarge the growth of the transgendered community as well as the national economy.

The Way Forward

Last but not the least, we can conceptualise the idea of setting up well-established complaint mechanism for the transgendered community on the line of scientific principles and for that, relative assessment of formal legal protections of other nations could be the best step. However, following are the recommendations which will uplift the conditions of transgendered people:

- (i) To pass the legislation i.e. the 'Transgendered Persons' (Protection of Rights) Bill, 2016 as soon as possible for safeguarding the rights of the transgendered community.
- (ii) To extend the scope of the definition of 'Child' u/s 1(c) of the Right of Children to Free and Compulsory Education Act 2009 i.e. to 'Transgendered' children.
- (iii) To implement the 'adult education' to transgendered persons as suggested by the Rights of Transgender Persons Bill, 2014.⁵⁴
- (iv) To open Special School/University Vocational Education Institutions.
- (v) To open Special Employment Exchange for the 'Transgendered' in all States/Regions.
- (vi) To monitor directly through Nodal Agency having its strong teeth and tongue i.e. Transgendered Welfare Board for enforcement of Government schemes and review there of regularly.
- (vii) To recruit them preferably for Security, Military/Paramilitary, Driver, Banking, Mining sectors, mason work etc.
- (viii) Free medical treatment for sexual orientation to enable them to determine their gender and mitigate the stigma.

Hence, there researcher hopes that the findings of the paper would help the government, academicians and researchers to further research development for welfare to transgendered communities.

⁵⁴ *The Rights of Transgender Persons Bill*, 2014, passed by Rajya Sabha, 29 April 2015.