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The Right to Housing for the Transgender Community in India

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The transgender community is subjected to discrimination at various levels in society because they do not conform to a specific gender type. Trans-persons are at a greater risk of being homeless, facing violence and discrimination and this fear is even more palpable for trans-children, most of whom are evicted from their homes after they disclose their gender identities. India being a welfare state needs to take due care of providing necessities to transgenders, who form a part of the most marginalised communities in the country. Therefore, it becomes the solemn responsibility of the government to take care of the fundamental needs of food, shelter, and clothing of its citizens. The transgender community is a part of the citizenry and has the same rights and entitlements as that of every other citizen. Owning a house is one of the most essential requirements for any person because a house provides a sense of comfort and security. Also, the right to housing forms an essential part of living with dignity, thereby forming part of the right to life under the Constitution. Thus, the government must introduce adequate housing schemes and improve access to housing facilities for the transgender community so that they are also able to fulfil their basic need of living in a safe place that they can call home.

Keywords: *transgender community, discrimination, basic needs, housing facilities.*

INTRODUCTION

“Rahne ke liye makaan, khane ke liye roti aur pehenne ke liye kapde, this is the basic need of every human being and that’s what we need”

– Reshma Prasad, a transwoman.¹

An equal place in the society has been long denied and delayed for the Transgender community. They were a socially neglected class before their recognition as the ‘third gender’ by the law. During earlier times, transgenders were highly respected in India and even hired as guards for the queen’s quarters. But, after the arrival of the British in India, they were socially ostracised and registered as criminals. The British had various pre-conceived notions about eunuchs, that they were involved in criminal activities like kidnapping children, performing sodomy, etc. Thus, stringent laws were made against the transgender community which ensured that they do not get enough rights in India.

Article 15 of the Indian Constitution guarantees that “there shall be no discrimination against citizens, based on religion, race, caste, sex, place of birth or any of them.” *Article 14* guarantees “equality before the law”, *Article 19* grants “freedom of speech and expression to all citizens”, *Article 21* guarantees the “right to life to all persons.” Yet, transgenders have been wrongly targeted by our country’s laws, with their fundamental rights being violated for a long period. The beneficiary of the fundamental rights mentioned in Part III of the Constitution is required to be either a ‘person’ or a ‘citizen’. A trans-person is a human being and unless there is an exclusion or a denial for granting such fundamental rights, the constitutional rights must logically and necessarily be granted to transgenders as well. Also, neither the Citizenship Act nor *Article 5* of the Constitution requires the determination of sex or gender identity as a condition pre-requisite for acquiring citizenship in India. *Section 3(42)* of the *General Clauses Act, 1897* defines a person to “include any company or association or body of individuals, whether incorporated or not.” *Section 13* of the Act states that words related to the masculine gender will mean to include the female gender as well. This requirement is as per the statutory direction unless it is repugnant to the subject/context. Hence, the collective understanding of the said Acts and the constitutional provisions shows that no conflict exists on the meaning or the

¹ Clarence Mendoza, ‘Evicted from homes, transgender community fights for survival amid coronavirus lockdown’ (CNBC TV 18, 20 April 2020) <<https://www.cnbc18.com/healthcare/evicted-from-homes-transgender-community-fight-for-survival-amid-coronavirus-lockdown-5723661.htm>> accessed 05 May 2021

concept of the word 'person' and accordingly a “Transgender” person would naturally come within the definition of 'person'.²

However, unfortunately, transgender persons living in India live destitute lives, mostly unaware of their rights and therefore hesitate in approaching law courts. But the Indian courts have always indicated that trans-persons must be given their due rights and treated equally by the government. Also, the Hon'ble Supreme Court of India by its judgment in the case of *National Legal Services Authority v. Union of India* propounded those trans-genders have equal human and fundamental rights. The Hon'ble Supreme Court further observed that “gender identification becomes a very essential component which is required for enjoying civil rights by this community.”³ The Apex Court also directed the Union and State governments to take upbeat steps for safeguarding the rights of transgender persons.

One of the most necessities for a human being, along with food and water is having shelter over his or her head. The right to housing has been recognised universally by various constitutions but despite that, there is a considerable section of the population that is deprived of this basic right. In India, many people who still do not possess a house of their own and, especially people who belong to the transgender community find it very difficult to own a house in their name or get a rented accommodation to live in. There are several reasons for this which include expulsion by families, lack of proper government documents that are needed to determine proof of identity, social rejection, people unwilling to rent or sell their homes to transgenders, lack of education since most of them are ousted from their homes at a very young age, unemployment, or employment in very low paying jobs, etc.

The right to adequate housing is an internationally recognized basic human right and is mentioned in various declarations like UDHR, ICESCR, CEDAW, CRC, CERD, etc. Though India is a signatory and a ratifier to international instruments that guarantee the right to housing, yet this right has not been specifically mentioned in the Indian Constitution. In the

² 'Report of the Expert Committee on the Issues Relating to Transgender Persons' (Ministry of Social Justice and Empowerment, Govt. of India, 2014) <<http://socialjustice.nic.in/writereaddata/UploadFile/Binder2.pdf>> accessed 06 May 2021

³ *National Legal Services Authority v Union of India* WP (Civil) No 400/2012

landmark case of *Olga Tellis v. Bombay Municipal Corporation*⁴, the Hon'ble Supreme Court of India gave observations on the right to adequate housing, livelihood, and shelter as being part of an all-encompassing Right to Life under Article 21 of the Indian Constitution. The salient objectives of this article are:

- i. To what extent does the transgender community face social expulsion by society, thereby denying them the basic needs like access to housing, etc.
- ii. To understand in what ways is the transgender community facing problems in realising their right to housing and to give valuable suggestions.

LAWS THAT DISCRIMINATED AGAINST THE TRANSGENDER COMMUNITY

The Criminal Tribes Act, 1871: During the British rule in India, all “eunuchs” were mandatorily registered under the Criminal Tribes Act of 1871. This Act was amended in 1897 and renamed as “Act for Criminal Tribes and Eunuchs”. But registered eunuchs were barred from gifting, adopting a male child, making wills, or acting as guardians for a minor as per the Act. The legislation also stated that “any eunuch so registered who appeared dressed or ornamented like a woman in a public street or who dances or plays music or takes part in any public exhibition, in a public street could be arrested without warrant and punished with imprisonment of up to two years or with a fine or both.” The community of transgenders was subjected to the caprice of the Police who used the law to make arbitrary arrests without any legitimate grounds or reasons and also without sufficient evidence to incriminate them. Though the Criminal Tribes Act was repealed in 1952, it took us nearly 81 years to repeal such a punitive law.

The Indian Penal Code: Oftentimes, transgenders are unnecessarily implicated under the IPC with charges of flouting morality and public decency. Punishment of offences under sections 290 and 294 of the IPC are imposed on them that “punishes a person for doing acts annoying others or for doing an act considered to be obscene or an act that causes a nuisance to the public, or punishes any person who sings, recites or utters any obscene song, ballad or words.”

⁴ *Olga Tellis v Bombay Municipal Corporation* 2 (1985) 3 SCC 545

The Bombay Prevention of Begging Act, 1959: This was an Act that made begging a crime, and its operation was extended to Maharashtra and Delhi. Section 4 (1) of the Act stated, “Any police officer, or other person authorised on this behalf made by the State Government, may arrest without a warrant any person who is found begging.” Although the *raison d’etre* for enacting this legislation was to control the beggars. However, the officials of the police unfairly applied the law to harass and arrest the marginalized transgender community who resort to begging only because of the lack of an alternate income source. It was only in the year 2018, when the Hon’ble Delhi High Court, in the PIL in the case of *Harsh Mander & Anr. vs UOI & Ors.*⁵, declared the impugned Act unconstitutional and decriminalised begging. As many as 25 sections of the Act were repealed with fair reasoning that transgenders did not choose beggary out of their volition but were forced into this because they are considered socially disgraceful.

With changing times, society has been more accepting of the transgender community and the laws have also become more favourable for them. For instance, in the year 2005, the External Affairs Ministry, via the Passport Control authority became the foremost authority in the government to acknowledge the different and distinct identity of trans-persons. Then, 2009 was the year when another government body, India’s Election Commission, introduced a separate box for the identity of transgenders on ballot forms.

The Transgender Persons (Protection of Rights) Act, 2019: It is recent legislation for the welfare of trans persons that received the President’s assent on 5th December 2019. The Bill recognizes the rights of trans-persons concerning residence, seeking employment with the government sector or private sector, education without discrimination, etc. The Act further envisages the provisions for adequate healthcare that includes establishing clinics by the government, specifically for transgenders so that they are easily able to afford HIV treatment and surgery for sex reassignment.⁶

RIGHT TO HOUSING AND THE TRANSGENDER COMMUNITY

⁵ *Harsh Mander v Union of India* WP (C) Nos 10498/2009 & 1630/2015

⁶ Transgender Persons (Protection of Rights) Act 2019

Right to Housing in India

As per Article 21 of the Indian Constitution, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” In *Olga Tellis v. Bombay Municipal Corporation*, it was for the very first time observed by the top court that the right to livelihood and shelter is an important component of the Right to Life. In this case, the PIL was filed on behalf of the pavement dwellers of Bombay city. This judgment extended the scope of the right to life given in Article 21 to take within its scope, the right to livelihood. Thus, it was translated to mean the right to be allowed to remain on the pavements and with this judgment commenced the history of the right to housing in India.

Thereafter various cases of the same kind reached the Hon’ble Supreme Court of India. For instance, in *Shantistar Builders v. Narayan K Totame* and *Chameli Singh v. the State of UP*⁷; the case was of the allotment of certain flats or land blocks for the marginalised sections of the society like Dalits or Scheduled Castes and Scheduled Tribes. Again, a couple of years later, a significant advancement was made towards the commitment of right to housing in *Ahmedabad Municipal Corporation v Nawab Khan Gulab Khan*⁸, in which, the Court endorsed the State Corporation’s order for the removal of the pavement dwellers but only after being satisfied that the displaced dwellers will be provided with an accommodation somewhere else by the State Corporation.

The state has a constitutional obligation not only under Article 21 but also Article 19(1)(e) according to which a “citizen has a right to reside and settle in any part of the territory of India.” Owning a house is important for many reasons related to an individual’s life, including security, comfort, health, and most importantly a child’s right to be brought up in a safe environment. Homelessness and regular displacements are shown to impair a child’s learning. Even though housing remains as essential as food and security, the number of homeless people, people living in hutments, the rise of unregulated colonies especially on the outskirts of the metropolitan cities

⁷ *Chameli Singh v State of UP* AIR 1990 SC 630

⁸ *Ahmedabad Municipal Corporation v Nawab Khan Gulab Khan* (1997) 11 SCC 123

is constantly increasing. This issue is being neglected and has not received the required attention that it deserves.

Transgenders and Housing

Transgender communities face a plethora of social security problems. Since most people belonging to the third gender either run away or are evicted from their homes, they do not have safety nets to fall back on and expectations of support from their biological families are not there at all. Adding to their despair is their inability to generate income easily because of various reasons like low employment opportunities, old age, health concerns, etc.⁹

Many transgenders can recount bad experiences when they faced unnecessary personal questions while house-hunting for rented accommodations, like landlords questioning their identity as a boy or girl or if they underwent operations for castration, even extending to demeaning assumptions like all transgenders dress in sarees and beg at traffic signals, etc. Moreover, when brokers are engaged in finding them a suitable property, then they are charged with hefty commissions as finding houses for transgenders is considered to be no less than an impossible task. Even after finding a suitable place, privacy has been an issue for many transgenders living in rented homes. They most often complain of either the landlords or other people barging into their rooms either to harass them or on account of suspicion. All these factors combined make finding a suitable accommodation arduous for transgenders. As of now though there is no specific enacted law providing for the protection of property interests of the third gender in India.¹⁰

In the U.S., trans people have usually reported several instances when they have been turned down either for jobs or housing after their appearance in person did not match the gender

⁹ K Delliswararao & C Hangsing, 'Socio-Cultural Exclusion and Inclusion of Trans-genders in India' 5(1) Int J Soc Sc Manage 10-17,14

¹⁰ Editorial, 'Hunting for a home not easy for transgenders' (*Hindustan Times*, 14 September 2015) <<https://www.hindustantimes.com/real-estate/hunting-for-a-home-not-easy-for-transgenders/story-eKnNNU4ZYdlbCkPt0ZCtRM.html>> accessed 09 May 2021

identity mark on their official documents.¹¹ It was found in a study that 1 in 5 trans-persons in America have faced untoward discrimination while seeking to rent a home, and 1 in 10 have even given eviction notices only because of the reason of their gender identities. In response to this, the U.S. Department of Housing and Urban Development (HUD) had to promulgate certain guidelines that any sort of discriminatory practices against trans-persons, who want to rent or buy homes is prohibited under the Fair Housing Act (FHA) as it promotes gender stereotypes and unfairly discriminates against particular gender identity. Lamentably, even the homeless shelters that often help the homeless population fail to help and serve transgenders who are homeless and deny them a free shelter only due to their gender type or sometimes house them within places where people of other genders occupy space, and they are thus left feeling uncomfortable.¹²

HOUSING SECURITY SCHEMES

The Housing Security scheme which is a primary demand of the transgenders has not been taken care of by the government. Both, the Union, and State Governments only have a total of six housing schemes for trans-persons. The findings of a document titled “*Uptake of Social Protection Schemes by Transgender Population in India*” show that just 20% of the total schemes by the Union and State governments, across various categories of schemes, mention transgenders as beneficiaries. In Financial Security Scheme, twenty percent of the beneficiaries are trans-persons while 31 percent in the Citizen Rights scheme. The *Pradhan Mantri Gramin Awaas Yojana* (PMGAY) by the Union and the *Chief Minister's Solar Powered Green House Scheme* (CMSPGHS) by the state government of Tamil Nadu are only a part of the few housing schemes that distinctly list transgenders as the eligible beneficiaries.

¹¹ Neela Ghoshal & Kyle Knight, ‘Rights in Transition: Making Legal Recognition for Transgender People a Global Priority’ (*Humans Right Watch*) <<https://www.hrw.org/world-report/2016/rights-in-transition>> accessed 12 May 2021

¹² ‘Housing & Homelessness’ (*National Center for Transgender Equality*) <<https://transequality.org/issues/housing-homelessness>> accessed 13 May 2021

There is also a scheme for the rehabilitation of transgenders by the Karnataka state government by the name of “Shelter for Homeless”.¹³ Odisha is the first state to provide education and housing benefits along with food grains, health, and pensionary benefits to the transgender community. The state government has done so by making trans-persons a part of the Below Poverty Line (BPL) category.

PMGAY lists out that the State’s goal to provide sustainable and cheap housing benefits to the most marginalized and the most ignored demographic groups that include transgender as part of the target group. Most trans-persons are included in the low-income groups so, as long as they fulfil all the other essential requirements for eligibility, they can apply to get a benefit in the scheme, either as a single beneficiary or in a group i.e., in a family.¹⁴

The state government of Kerala has proposed a new programme named the ‘Sukrutham Housing’ project to provide land to financially unstable homeless trans-persons via local self-institutions. This initiative will be put in motion by the joint effort of the state’s Social Justice Department, community organisations, and the local bodies.¹⁵

LACK OF PROOF OF RESIDENCE

Another deterrent that comes in the way of trans-persons who wish to rent or buy their own homes is the lack of documents that can be used as residential proofs. This is because most often transgenders either migrate, run away, or are shunted out of their homes or rural communities after they come out in the society with their true gender identities. It so happens that either their families renounce them or them, themselves leave their homes for the fear of backlash from members of their families or the society. Therefore, because of migration or forced expulsion

¹³ ‘Report on Uptake of Social Protection Schemes by Transgender Population in India’ (*Ministry of Health & Welfare, NACO*)

<<https://www.undp.org/content/dam/india/docs/pubpovertyreduction/Uptake%20of%20Social%20Protection.pdf>> accessed 14 May 2021

¹⁴ ‘Pradhan Mantri Awas Yojana’ (*Bank Bazaar*, 12 April 2021) <https://www.bankbazaar.com/home-loan/pradhan-mantri-awas-yojana.html>> accessed 14 May 2021

¹⁵ Steni Simon, ‘Sukrutham to house homeless transgenders’ (*New Indian Express*, 16 January 2021)

<<https://www.newindianexpress.com/cities/kochi/2021/jan/16/sukruthamto-house-homeless-transgenders-2250579.html>> accessed 15 May 2021

from homes, they are either denied from taking their things with them or often leave everything back home when they run away without prior planning. Eventually, without a date of birth certificate or address proof, they are stopped from applying for other essential identity cards like Ration card, Voter ID card, PAN card, thereby, hindering their ability to avail benefits of any welfare scheme like a housing scheme.

CONCLUSION AND SUGGESTIONS

In conclusion, it can be said that now it is time for the Indian government to put into practice the directives given by the Hon'ble Supreme Court and help the transgender community to assimilate into society. The government must take care of the citizens, their needs, their rights, and aspirations, etc. and transgender citizens are a part of the citizenry as everybody else.

Since transgenders face weighty challenges especially in the most vital areas of life like health care facilities, job opportunities, housing access, etc., the government should take it on war footing to make sure that all the necessities are provided to them without any harassment. The following suggestions can make access to housing a reality for the deprived community of transgenders:-

- i. One of the most common problems for a transgender student is getting a housing accommodation or assignment while studying in a university or college as traditional housing accommodation or hostel rooms are made as per the generally defined legal sex, wherein the same-sex students are made to share the same accommodation. *This type of room assignment procedure may not be suitable for a transgender, who may not identify with the gender assigned at birth.* Thus, it is suggested that various institutions should offer "gender-inclusive housing" so that the needs of transgender students are also taken care of.
- ii. Government should raise social awareness campaigns to encourage all members of society, particularly landlords so that they do not discriminate while renting out accommodations to people from the transgender community.

- iii. There should be adequate shelter homes for them in every district in every state, especially for transgender children as they require a safe environment to grow up. Bengaluru will be the first place in India where homes for transgender children will soon be established. The idea for establishing separate children's homes for transgenders came up due to several reasons like violence, abuse, and bullying faced by many transgender children while living in shelter homes for boys and girls. Ergo, this step was taken keeping in mind the comfort for such a vulnerable class of children.¹⁶ The other states should also follow the Bengaluru model and establish shelter homes for the welfare of trans-children.
- iv. The states should also devise schemes at their level, in addition to the housing scheme of PMJAY at the centre level so that the beneficiaries including transgenders can take full advantage of the social protection scheme.
- v. A law that guarantees housing to transgenders can be mooted but it is mainly the attitude of the people that needs to change. In response to this, a state like Chhattisgarh has led by example and established a Transgender Welfare Board and has also added lessons on the transgender community as part of the curriculum in schools. This will ensure that children grow up learning about transgenders and do not see them differently.
- vi. Transgenders often face the problem of lack of government identity proofs and because of which they are unable to take benefits of schemes like home loans or show identity cards to the landlords or avail any other benefits. The administration must look into this issue and assure that the basic facility of an identity card must be issued to every citizen including transgenders without any unnecessary hassles.

¹⁶ Tanu Kulkarni, 'India's first transgender children's homes will be in Bengaluru' (*The Hindu*, 3 December 2020) <<https://www.thehindu.com/news/national/karnataka/indias-first-transgender-childrens-homes-will-be-in-bengaluru/article33243137.ece>> accessed 17 May 2021