

Socio-legal exploitation of transgender

[Sociology](#), [Identity](#)



IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 21, Issue 5, Ver. 4 (May. 2016) PP 12-18 e-ISSN: 2279-0837, p-ISSN: 2279-0845. www.iosrjournals.org DOI: 10. 9790/0837-2105041218 www.iosrjournals.org 12 | Page The Socio-Legal Exploitation of the Third Gender in India Prof. Shilpa Khatri Babbar Prof. Shilpa is a sociologist from Delhi School of Economics, Delhi University, India and has been working on the marginalized segments of the society. She is currently teaching in the Law School of the Vivekananda Institute of Professional Studies (Affiliated to Guru Gobind Singh Indraprastha University, Delhi).

Abstract: This paper is an attempt to shift the focus of the discourse of social justice, from distribution or redistribution to a dignified recognition, primarily with reference to the injustices associated with sexuality and gender, both of which are viewed by the author as socio-cultural and are seen to be rooted in social patterns of representation, interpretation, and communication.

The main objective has been to throw light on the status of transgenders in India, in the background of the courts having acknowledged the travesty of their being, and despite being sympathetic to them to the extent of even affording recognition, have been unable to ensure a dignified existence to them. Key words: Gender, Sexual Orientation, Yogyakarta Principle, Transphobia I. INTRODUCTION Any discussion on the Third Gender must begin with the distinction between the much ignored or maybe deliberately under-played difference between the concepts of „gender identity“ and „sexual orientation“. Gender identity refers to a person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth. Sexual orientation, on the other hand, refers to the

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individual“senduring physical, romantic and/or emotional attraction to another person. Both of these are integral to one“spersonality and are aspects of self-determination, dignity and freedom.

Unfortunately, by defining individualidentity purely in biological terms, most of the literature before 1960s failed to distinguish sex from gender, andsexual differentiation from sex discrimination. Author opines that the sexual orientation, which lies at the core of “ private space”, is expressed throughsexual relations and ought to be viewed as a core part of individual identity and as an inalienable component ofthe Right to Life. Therefore the prohibition of certain private, consensual sexual relations under section 377unreasonably abridges the right of privacy and dignity within the ambit of Right to Life and Liberty underArticle 21 of the Indian constitution. In a similar wave of thought lies the observation of L“Heureux, who notesthat at the root of dignity, lie the autonomy of the private will and a person“s freedom of choice of action. iJustice V. R. Krishna Iyer, in Prem Shankar Shukla v. Delhi Administration, ii observed that human dignity isconcerned with both physical and psychological integrity along with empowerment. He added that this dignity isenhanced by laws which are sensitive to the needs, capacities and merits of different individuals, taking intoaccount, the context underlying their differences.

In Francis Coralie Mullin v. Administrator, Union Territory ofDelhi, iii the Supreme Court argued that the „ Right to dignity includes expressing oneself in diverse forms...all ofwhich is essential for the complete development and evolution of persons“. In this background, the current paper makes an

attempt to highlight the exploitation which the victims of injustice with alternative identities have been subjected to, both socially as well as legally. Postulating a repressed and homogenized identity, efforts have been made to discover, acknowledge and represent their fundamentally concealed identity. But the author is conscious of the fact that by claiming an independent identity, we can reverse or struggle with an oppressive gaze though we cannot back out of it and replace our muted or distorted identities with a real and authentic one. Further, fixing an autonomous identity always presumes a fixation of the “interpellating other”, i.e. a “respond to a request” v, in which the moment of subjection necessarily implies oppression.