

Transgender Rights in Bangladesh: Quest for a Specific Law

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Abstract:

Transgender persons are called Hijra in Bangladesh. It seems really strange that even in this modern civilization where protection of human rights is given the utmost priority, the transgender people have to live in the most inhumane condition possible in our country. And the cruel behavior of the society against the transgender community in Bangladesh has forced them to earn livelihood through illegal means. Bangladesh government has from time to time enacted legislations and framed rules for the advancement of various backward parts of our society. But even after 47 years of our independence there have been no specific legislation that can be used to protect the rights of transgender people of our country. In this article the necessity of a specific legislation that will ensure the rights of transgender people has been shown while discussing about the legislations in this regard of various other countries. And few recommendations have been given which can be considered while framing a law for the protection of the rights of transgender persons in Bangladesh.

Introduction:

Article 1 of Universal Declaration of Human Rights (UDHR) states that- “All human beings are born free and equal in dignity and rights.”¹ It declares all human beings as free and equal to another without any regard to sex, race, or disability. But that is just a theoretical statement without having much practicality. Let’s take transgender peoples as example, they are humans just like any other human being and yet they are denied even the most fundamental rights that any human being is entitled to have. According to Bangladesh government the number of transgender people is around 10,000 in the country.² But rights groups put the number in the country at around half a million.³ For a long time there was no legal recognition for this community. It was only in January 26, 2014 when the cabinet announced the recognition of a third gender category in its gazette.⁴ But the transgender community is still deprived of the most basic rights and thus getting involved in many crimes as a result of deprivation of these rights. And there is no specific law in Bangladesh yet to ensure the proper rights of the transgender people. And to fully ensure the rights of transgender people there is an acute need of a separate law.

Current Legislations:

In the constitution of Bangladesh, Article 28(1) states that-

¹ Article 1, Universal Declaration of Human Rights(UDHR), available at: <http://www.un.org/en/universal-declaration-human-rights/>

²M. Sophia Newman, Beyond hijra: Recognition for transgender Bangladeshis, available at: <https://opinion.bdnews24.com/2014/01/15/beyond-hijra-recognition-for-transgender-bangladeshis/>

³ Damien Gayle, Transgender Bangladeshis hold Dhaka's first-ever pride parade to mark a year since their official recognition as a third gender, available at: <http://www.dailymail.co.uk/news/article-2829481/Transgender-Bangladeshis-hold-Dhaka-s-pride-parade-mark-year-official-recognition-gender.html>

⁴Shahria Sharmin, “I Want to Live With My Head Held High” Abuses in Bangladesh’s Legal Recognition of Hijras, available at: <https://www.hrw.org/report/2016/12/23/i-want-live-my-head-held-high/abuses-bangladeshs-legal-recognition-hijras>

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.

And again, sub-article (3) of the same article provides that-

No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.

Article 29(2) of the constitution provides equal opportunity for all classes of people in public employment-

No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic.

And Article 28(4) of the Constitution also allows the government to make any provision for the advancement of any backward section of citizens. But there has been no use of this provision for the advancement of the transgender community. Apart from these provisions there is almost no other provision in any other law which can be shown to stop discrimination against the transgender community. This is quite obvious because most of the major laws that are applicable in our country were enacted long ago when there was no recognition for the transgender community. So a specific legislation regarding protection of their rights is the most necessary for their advancement.

Situation of the transgender community in our Society:

In the traditional society of Bangladesh there is a stigma associated with the word “hijra”.⁵ And the predominant norms present in Bangladeshi society have always forced hijras to leave their families, as discrimination and abuse are common factors in an adolescent hijra’s life.⁶ There is no job opportunity available for them. No employer wants a transgender working for them. And there is no special facility for them in public employments even though they are also classified as disabled.

These Transgender people can’t even get minimal health care due to marginalized social status. If they suffer from health problems and go to the government hospitals, they receive abusive behaviors from the staff, including the doctor.⁷ Even after death a transgender person does not get proper burial.⁸ If a local religious leader knows that the dead is a transgender, he often refuses to complete the religious rituals relating to the funeral.⁹ So being unemployed, with no other ways to earn livelihood, Hard chance of availing health care and almost no other fundamental rights accessible, what else can a person do than to commit to illegal ways.

We are seeing the result of the unfortunate tale of the transgender community and it is affecting the rest of the society. They too are human, but when a person is denied the

⁵Sharful Islam Khan, Living on the Extreme Margin: Social Exclusion of the Transgender Population (Hijra) in Bangladesh, *Journal of Health, Population and Nutrition*, 27(4), 441-451. available at: www.ncbi.nlm.nih.gov/pmc/articles/PMC2928103

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ Ibid

most basic necessities of life, their violation of law seems a reasonable outcome. From this viewpoint we can see that a special law regarding the protection of rights for the transgender community is not only needed for the advancement of the transgender community but also to eradicate the harassment that the rest of the society suffers due to the backward status of this community.

Law regarding protection of 3rd gender rights in other countries:

In April, 2014 the Supreme Court of India guaranteed the nation's transgender population rights, including equal access to education and employment in a landmark judgment of *National Legal Services Authority v. Union of India*(2014) 5 SCC 438. The Supreme Court directed the government to give legal recognition to the third gender, so that transgender individuals would be able to identify themselves as third gender.¹⁰

Following that judgment the Indian government took steps to frame a new law for the protection of rights of the Hijra/Transgender community. The *Transgender Persons (Protection of Rights) Bill, 2016* was introduced in Lok Sabha in August 2016.¹¹ Although the bill is still pending, framing and passing the bill was a step forward for safeguard against discrimination with India's 6 lakh transgender (as per census 2011 of India).¹² The bill contains specific definition of a transgender person, rules for prohibition against discrimination, Right of residence, Employment, Education and Healthcare, Certificate of identity for a transgender person and most importantly the bill provides for a *National Council for Transgender persons (NCT)* to be set up by the government.¹³ The council will advise to the government on formulation and monitoring of policies, legislation and projects with respect to transgender persons.¹⁴

In September, 2012, Pakistan's Supreme Court gave a decision that incorporated right to life, property, dignity, and inheritance of Transgender peoples.¹⁵ In August, 2017 Pakistan National Assembly cleared the *Transgender Persons (Protection of Rights) Bill 2017*, a legislation that will amend the Pakistan Penal Code (PPC) and Code of Criminal Procedure (CrPC).¹⁶ The amendment bill frames penalties for offences against transgender individuals, and makes it illegal to deprive such persons from inheriting property, unlawfully evict them from any premises or deny them entry to educational institutions.¹⁷

¹⁰National Legal Services Authority v. Union of India (2014) 5 SCC 438, Global Freedom of Expression Columbia University, available at: <https://globalfreedomofexpression.columbia.edu/cases/national-legal-services-authority-v-union-of-india/>

¹¹ IASPOINT-GKTODAY, available at: <https://academy.gktoday.in/article/transgender-persons-protection-of-rights-bill-2016/>

¹²*Ibid*

¹³*Ibid*

¹⁴*Ibid*

¹⁵*Ibid*

¹⁶Telesur, Pakistan set to Criminalize Discrimination Against Trans People, available at: <https://www.telesurtv.net/english/news/Pakistan-set-to-Criminalize-Discrimination-Against-Trans-People-20170811-0029.html>

¹⁷ Hassan Belal Zaidi, First-ever bills on transgender rights tabled in NA, available at: <https://www.dawn.com/news/1350508>

The *Transgender Persons (Protection of Rights) Bill 2017*, ensures employment opportunities for transgender people, they will be able to register to obtain a driver's license and passport, establishing a safe house for transgender persons and provide them medical and educational facilities and psychological counseling, establishment of separate jails where transgender offenders could be detained, Provisions for their entitlement to inherit property and many other interesting provisions.¹⁸

In Canada, a new law has been passed which explicitly prohibits discrimination against transgender Canadians and affords them protection against hate crimes.¹⁹ The law is named as Bill C-16 which tends to amend the Canadian Human Rights Act and the Criminal Code to protect transgender individuals from discrimination.²⁰ The amending legislation(Bill C-16) adds "*Gender identity or expression*" to the list of prohibited grounds of discrimination in Section 3(1) of the *Canadian Human Rights Act*.²¹ The new law identifies transgender persons as an oppressed and vulnerable minority and grants them equality in federally regulated workplaces and services.²²

These are some examples of how the outside world is aiding to the situation of protection of Transgender rights by amending and framing new laws. And Bangladesh is way behind in terms of ensuring such legal rights to the transgender persons.

Recommendation for the proposed law:

Article 2 of *Universal Declaration of Human Rights(UDHR)* contains provisions regarding rights and freedoms applicable to transgender persons- "*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*"²³ Since there is no specific law regarding protection of the rights of Transgender Persons in Bangladesh yet, no law can be said to effectively ensure this provision of UDHR. But here are some recommendations which the government should keep in mind if they are willing to enact a special law with regards to protection of transgender rights in Bangladesh-

- There should be provision that will specifically prohibit any kind of discrimination towards the Transgender People Specially in Educational Institutions and work places. Discriminations and harassments that the transgender persons have to face in these places are intolerable.
- There should be provision to ensure proper and equal health care for a transgender person. Article 25 of *CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)* states a provision in this regard- "States parties shall take

¹⁸ Nadir Guramani, Senate unanimously approves bill empowering transgenders to determine their own identity, available at: <https://www.dawn.com/news/1393766>

¹⁹ Phil Heidenreich, Senate passes Bill C-16 which defends transgender rights, available at: <https://globalnews.ca/news/3532824/senate-passes-bill-c-16-which-defends-transgender-rights/>

²⁰ Wikipedia, An Act to amend the Canadian Human Rights Act and the Criminal Code, available at: https://en.wikipedia.org/wiki/An_Act_to_amend_the_Canadian_Human_Rights_Act_and_the_Criminal_Code

²¹ The Law Library of Congress, Canada: Senate Passes Landmark Transgender Rights Bill, available at: <http://www.loc.gov/law/foreign-news/article/canada-senate-passes-landmark-transgender-rights-bill/>

²² *Ibid*

²³ *Supra* Note 1, Article 2

all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation.²⁴

- The government should frame rules to ensure employment of transgender persons in public employments. The government should reserve a certain quantity of employment for the transgender persons.
- There should be provision for transgender person's entitlement to inherit property. There should a specific procedure in this regard because the current inheritance law has provisions for male and female but since transgender persons are none of them, that creates a problem in inheritance.
- There should be provision to establish safe houses to provide transgender persons medical and educational facilities and psychological counseling.
- Most importantly, there should be provision to set up a council by the government for formulation and monitoring of policies, legislation and projects with respect to transgender persons.

A law with respect to protection of transgender rights in Bangladesh is a must need in current situation. And the government should bear in mind these points while framing a draft for law in this regard.

Concluding Remarks:

The third gender population in Bangladesh lives a difficult life.²⁵ The Transgender community has been the most marginalized group in Bangladeshi society.²⁶ Poverty and exclusion from minimum daily requirements such as health services, housing and work are the reality many transgender people live in.²⁷ The government frames rules, enacts new laws for the backward parts of the society but it is very strange that even after 47 years of independence of Bangladesh, no government took steps to frame a new law for the protection of the rights of the transgender community. But better late than never, the transgender peoples are being forced to commit crimes as a result of discrimination towards them and it's high time the government took initiative to frame a new law that will ensure the advancement of the transgender community in Bangladesh.

²⁴ Article 25, Convention on the Rights of Persons with Disabilities (CRPD), available at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

²⁵ Partha Sarker, The "third gender" in Bangladesh, Global Information Society Watch 2015: Sexual rights and the internet, P. 63, available at: <https://www.giswatch.org/en/country-report/bangladesh/bangladesh>

²⁶ Tove Stenqvist, The social struggle of being HIJRA in Bangladesh-cultural aspiration between inclusion and illegitimacy, P. 8, available at:

<https://muep.mau.se/bitstream/handle/2043/18568/Stenqvist-T-DP15%20final.pdf?sequence=2>

²⁷ Supra Note 21, P. 64