



General Assembly

Distr.: General
28 February 2024

English only

Human Rights Council

Fifty-fifth session

26 February–5 April 2024

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Réveil communautaire d'assistance aux victimes, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 January 2024]

* Issued as received, in the language of submission only.



Ensuring the Safety, Dignity and Protection of Transgender Individuals from Discrimination in India

Research studies indicate that transgender persons are one of the most vulnerable populations in the world, India is no exception. The transgender community in India suffers from various issues ranging from education, healthcare to harassment. In recent years, India has progressed substantially in the promotion of the rights and dignity of transgenders. India's policy of inclusion and sensitivity in dealing with transgender community issues has led to positive action and execution in legislative, executive and juridical efforts.

Constitutional Protections and their interpretation by the Indian Supreme Court

The Constitution of India mandates equality before law and justice to every citizen of India. Fundamental rights as enshrined in the Constitution, especially pertaining to the right to equality, right against discrimination and freedom of expression are intrinsic rights of all citizens in India, irrespective of their gender.

The Indian judiciary in India has played a pivotal role in ensuring recognition of transgender individuals as equals in the country. The Supreme Court of India in National Legal Services Authority (NALSA) Vs. Union of India¹ recognised transgender as a 'third gender' thereby expressly recognizing them under the ambit of term 'citizens' and upholding the application of the fundamental rights as enshrined in the Constitution, especially Articles 14, 15, 16 and 21.

In addition to recognizing equality of status, the Supreme Court recognized the transgender persons' right to privacy by holding those individuals identifying as third-gender should not undergo any biological or medical examination that would infringe upon their constitutional right to privacy. Today all fundamental rights are not just limited to the biological sex of male and female but also apply to those who consider themselves as neither male nor female.

The Supreme Court further directed the state and central government to treat transgenders as socially and educationally backward classes of citizens so that all reservations and societal incentives may be afforded to them. Additionally, in light of widespread sexually transmitted diseases, the Central and state governments were directed to set up HIV sero-surveillance centres and to set up proper medical care in hospitals to make healthcare more accessible to transgender. The government was also asked to increase public awareness and access to public facilities like public toilets to promote dignity.

Progressive and Protectionist Legislations by the Indian Legislature

In 2019, the Indian Parliament passed The Transgender Persons (Protection of Rights) Act for the protection of the rights and welfare of transgender persons. The Act explicitly prohibits anyone or any establishment from discriminating against transgenders in relation to education, employment, provision of service or use of any good available to the public. It also prohibits unfair treatment and denial of opportunity in other areas such as occupancy of any property, discrimination in holding public or private office and restrictions on right to movement.

The Act provides for the issuance of a certificate of identity on application by a transgender person and provides a framework for medical inclusion of transgender persons into the public healthcare system. State Governments have also been advised to issue health manuals for sex reassignment surgery following the World Profession Association for Transgender Health guidelines and to provide financial coverage for medical expenses for such surgeries.

Executive Action and Welfare Schemes

The impact of progressive legislative and judicial efforts is being seen in executive action through the implementation of various measures that provide recognition and enhance dignity of identity for persons of transgender community.

In 2016, the Ministry of Railways too implemented a modification to its reservation form by incorporating a third gender column and adding the option of 'transgender' in railway ticket forms. In 2020, the Ministry of Personnel directed all central ministries and departments to amend pertinent examination rules and application forms to explicitly incorporate 'transgender' as a distinct category for all central government job applications.

The Ministry of Social Justice and Empowerment has devised a national-level umbrella scheme titled, "SMILE - Support for Marginalized Individuals for Livelihood and Enterprise". The scheme aims to address the multifaceted needs of both transgender individuals and individuals involved in begging activities with a special focus on rehabilitation, provision of medical facilities, counselling, education, skill development, economic linkages, and other related initiatives.

Additionally, The National Education Policy (NEP) 2020 acknowledges transgender children as part of Socio-Economically Disadvantaged Groups (SEDGs) and strives to provide them with equal and quality education. The National Council of Educational Research and Training (NCERT) has been conducting training sessions for teachers, teacher educators, and school heads, focusing on gender sensitization with a comprehensive approach. Issues related to this matter are covered in various textual and training materials, manuals, and modules under NISHTHA (National Initiative for School Heads' and Teachers' Holistic Advancement).

Conclusion

The conferred political recognition by the Indian state upon transgender individuals represents a slew of progressive measures aimed at safeguarding the interests of transgender groups in India and ensuring optical as well as real equality.

Judicial efforts championed by the Supreme Court and paradigm-shifting legislations have played a crucial role in setting the groundwork for the legal recognition of the transgender community. These legal frameworks have been complemented by proactive government schemes like SMILE and Garima Greh demonstrating a commitment to comprehensive rehabilitation and support for the transgender community.

The progression towards a more equitable and inclusive society for transgender individuals in India persists, characterized by legal advancements, policy interventions, and initiatives aimed at addressing the multifaceted challenges encountered by the community.

Recommendations

1. The NGO Réveil communautaire d'assistance aux victimes (RECOVI) recommend India to provide further information on the training of law enforcement officers to further ensure the safety, dignity and protection of transgender individuals from discrimination including for Non-Citizens
2. The NGO Réveil communautaire d'assistance aux victimes (RECOVI) further request India to provide insight on healthcare insurances for persons in transition 1