

ADDRESS BY  
THE HON'BLE THE CHIEF JUSTICE  
HIGH COURT, MADRAS  
AT  
THE ONE DAY NATIONAL SEMINAR ON  
"TRANSGENDER"  
AT NEW DELHI  
ON  
5<sup>th</sup> FEBRUARY, 2011

The only true principle for humanity is justice; and justice to the feeble is protection and kindness.

..Henri-Frederic Amiel

This clarion call is not only from the Author of the quote but from 1.2 million transgenders residing in India. They are deprived of various Human rights like, Right to marry, Right to contest in Election, Right to Vote, etc. They are deprived of such rights, only because the law recognizes only two sex i.e., Male and Female and the transgender being not considered as 3<sup>rd</sup> sex which. So far as criminal liability is concerned they cannot escape punishment when they are accused of committing crimes. This kind of discrimination cannot be justified at all.

Therefore, this is a very important conference, hence, I am extremely thankful to my esteemed Brother Justice V.Vikramjit Sen, Executive Chairman, Delhi Legal Services Authority for giving me this opportunity to attend this one day National Seminar on Transgender and to share my views.

As you all know, in order to draw the attention of the nation regarding the need to ensure the rights of Transgenders, the first Regional Seminar in the country was organized in Chennai under the aegis and guidance of the Hon'ble Executive Chairman, National Legal Services Authority. The seminar was especially organized for discussion and deliberation on the issue of their rights and how to bring them to the mainstream of the society.

Albert Einstein Said “I cannot imagine a God who rewards and punishes the objects of his creation and is but a reflection of human frailty”

Yes, God has created human beings as equal without any discrimination as to their skill power, will power, grasping power, intellect, etc. But is the human beings who discriminate and misuse the abuse human being and treat them as objects and the fault lies only on the selfish nature of the human beings.

Transgenders are also part of the society and they have equal right to everything in the world that is available to all other persons. The presence of such transgender is not new, but their presence is there from the time immemorial as could be seen from several scripts, probably because the nature requires such a class to maintain the equilibrium. The most important aspect we have to think is the discrimination. The discrimination based on their class and gender makes the transgender community one of the most disempowered group in Indian Society. This seminar, therefore, has been specially organized for discussion and deliberation on the issues of their Rights, and how to bring them to the main stream of the Society.

As you all know, under Article 7 of the United Nations Declaration on Human Rights, everyone has a right individually and as an association with others to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Preamble to the Constitution mandates justice – social, economic and political and equality of status.

Article 15 speaks about the prohibition of discrimination on the ground of religion, race, caste, sex or place of birth.

Article 23 prohibits trafficking in human beings as beggars and other similar forms of forced labour and any contravention of these provisions shall be an offence punishable in accordance with law.

In the light of the Constitutional guarantees provided, there is no reason why Transgender Community should not get their basic rights, which included Right to Personal Liberty, Dignity, Freedom of Expression, Right to Education and Empowerment, Right against Violence, discrimination and exploitation. *As it is rightly said, the constitution endures persons in every generation and every generation can invoke its principle in their own search for greater freedom. Therefore, it is the duty of the judiciary to interpret the provisions of the Constitution in such a way that, Article 14, is an umbrella to the transgender community.*

Problems faced by Transgender Community:-

- *Discrimination*
- *Employment*
- *Education*
- *Homelessness*
- *HIV Care & Hygiene*
- *Depression*
- *Hormone pill abuse*
- *Tobacco & alcohol abuse*
- *Penectomy*
- *Marriage & Adoption*
- *Documentation*
- *Aging*

Out of all problems I would like to highlight the most important one i.e.,  
Penectomy:-

For pre-operative male-to-female transsexual people, the removal of their genitals which they feel that it gives immense psychological satisfaction. They feel more close to being a complete woman. They are constantly in an urge to get rid of their male genitals. Many of them pay thousands of rupees to doctors who are not qualified enough to perform this surgery. As a result, after the surgery eventually their urinary passage gets blocked. This is a very painful problem for the person who underwent this surgery.

Male-to-female transsexual people undergo penectomy as they can not spend enormous money on sex reassignment surgery. Sex Reassignment Surgery, shortly known as SRS, is a very expensive surgery which may cost several lakhs. Only right transsexual people can afford SRS.

The State and the Central Law Ministries, Health and Social Welfare Ministries need to recognize transgender people's rights and work on reforms. The States should set up Gender Dysphoric Clinics where treatment for transgender people should be free. Only then, transsexual people will not be victims of wrong medical treatment.

Despite discrimination and marginalization, transgender people is emerging as successful personalities, thereby proving their potential. There are instances of transgender persons occupying positions of political power. For example – Shapnam Mousi became Member of Parliament from Sahogpur in Madhya Pradesh in 2000, Kamla Jaan was elected as Mayor of Ketni in the same year. These odd instances have not significantly empowered the large community. Such people cannot do things which others do such as to find mainstream job, to vote, etc. In 1994 transgender persons got the voting right, but the task of issuing them Voter Identity Cards got caught up in the male or female question. Several of them were denied cards with their sexual category of their choice.

The other fields where this community feels neglected are inheritance of property or adoption of a child. They are often pushed to the periphery as a social out caste and many may land up begging and dance. This is by all means human trafficking. They even engage themselves as sex workers for survival.

There is need for social acceptance of transgender group. For instances, there is no space available for them, say in hospital wards. The authorities do not admit them in women's ward because women do not feel comfortable or free in their presence and in men's ward they face sexual abuse. Besides there are no separate toilet facilities for them.

The transgender community cannot be overlooked as they are entitled to all constitutional and legal rights. It is, therefore, necessary to bridge the wide information gap regarding transgender community and work towards bringing recognition and respect for this community. What is required is a substantive understanding of the transgender people and their rights as human beings. The transgender is treated as an "*invisible citizen*", so government's policies and programmes hardly ever benefited the community. It is very heartening that very laudable efforts have already been taken by the government of Tamil Nadu by constituting a Board for transgender community under the Social Welfare Department with an aim to rehabilitate the transgenders and to achieve equality for them in the community and security in the society.

Some of the key issues which need consideration and appropriate action are access to essential services, education, health and resources. These issues can be well addressed by implementing some progressive measures such as –

- a) To sensitize the society with regard to their identity.
- b) Support of civil society organization to advocate for their cause and efforts. For e.g. advocate for land/shelter, creation of separate public toilets, hospital wards, recognition of their right to vote as citizens, reservation of seats in elections, etc.
- c) Support of Media – both print and electronic, to highlight their status and plight rather than portraying them in poor light.

- d) Extend financial support for Community Based Organizations run by transgender communities.

To generate awareness so that the transgender is viewed and understood as a culture, community and a movement.

After constitutional amendment, right to education has become fundamental right and all steps should be taken by the government to ensure proper education to them, and in this respect proper legislation is to be made like other countries. For e.g., in the United States the Constitution has been amended. California Law explicitly provides that public schools and non-religious private schools that receives State funding have a legal duty to protect students from discrimination and harassment on the basis of sex and perceived gender identity. Under the Federal Law, discrimination or harassment directed at transgender or gender transformed students may violate the equal protection clause of the Constitution. All students have Federal Constitutional right to equal protection under the law and this means that the schools have a duty to protect transgender students from harassment on an equal basis with other students. If the management fails to respond to harassment directed at transgender students, then that will amount to violating equal protection clause.

According to the other constitutional provisions, transgender students' right to dress in accordance with his or her gender identity is also protected in



both the First and Second amendments to the U.S. Constitution. The First Amendment prohibits government officials from censoring students' speech or expression without compelling reasons.

It is very heartening that very laudable efforts are being taken by the Government of Tamil Nadu, mainly after the conference was organized in Chennai, to rehabilitate the transgenders and to achieve equality for them in the community.

I am happy to inform you that the Government of Tamil Nadu have taken the pioneer effort to reach out to the transgenders and the Government on the Floor of the Assembly announced to constitute Welfare Board for the Transgenders in the State and allocated an amount of Rs.100 Crores. The Welfare Board comprise of 9 Transgender members, who have been empowered to look into the various problems, difficulties and inconvenience faced by the community and based on the inputs received, the Government have formulated and executed various welfare schemes. I would like to highlight some of the welfare schemes so formulated by the Government of Tamil Nadu after discussions with me and office bearers of the State Legal Services Authority :-

- 1) The Government has created a database on Transgender that would help to deal with their problems and demands such as housing, ration card, voter identity, patta, health facility, etc.

2) The Government has also issued a Government order for admission of Transgenders in Government Schools and Colleges.

After the Judicial Colloquium, definite progress has been made and awareness on the part of public and philanthropists enabled for creating new job opportunities and programmes for Transgenders.

Life Insurance Corporation of India, in response to the seminar, arranged for employment mela for giving opportunity for appointment of Transgender as Agent in the Corporation. Nearly 100 Transgenders participated and 14 of them were selected for appointment as agent. Further, 50 transgenders have given willingness to work as agents in the Life Insurance Corporation of India.

So far 8 meetings of the Welfare Board have been held and progress have been made and in the Welfare Meetings the Transgenders express their grievances.

The Transgender persons have been provided with education assistance of Rs.15,300/=.

A proposal has been sent for making a documentary film on Transgender incurring an amount of Rs.1,05,000/=, which has been approved by the Government.

Likewise, Rs.13,380/= has been approved for starting a tailoring training by NGO for the transgenders in Chennai.

Rs.2.25 Lakhs has been distributed to the District Social Welfare Officer, Chennai for starting Beautician course for the transgender.

It is proposed to start self-employment of manufacturing Agarbathis in Tuticorin District and in this regard the Government has been addressed for approval of Rs.1.60 Lakhs.

An amount of Rs.100 Crores has been sanctioned by the Government for group houses for 182 Transgenders in 10 districts.

An amount of Rs.1,06,813/= has been sanctioned towards staff salary and maintenance of the short stay home for the Transgenders, which is being run in Chennai by the Government.

In Chennai, efforts are being made to get houses for 163 Transgender persons through the Tamil Nadu Slum Clearance Board and proposal to this effect has been sent to the Slum Clearance Board.

Transgender persons, who have not enrolled themselves with the Welfare Board, action plan has been drawn for rehabilitation through awareness programmes and providing employment opportunities.

It is high time the Central Government and the State Governments come forward, like the State of Tamil Nadu and take all possible steps for bringing the Transgender community into the mainstream.

*To put it in a nut shell the following solutions are needed:-*

- *The Transgender persons must be properly documented in census.*
- *They need to be considered statutory reservation in educational institutions and job opportunities in public and private sectors.*
- *They need to be empowered with high degree of education and vocational training to upgrade their earning and status in the society.*
- *Since they are prone to health setbacks, they need proper medical facilities including insurance in the health sector.*

I hope that the discussion and deliberations of this seminar will be an eye opener for the society and will accord more benefits to the Transgender people.

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