

11 RMLNLUJ (2019) 18

Journey From Marginal to Mainstream - The Woes of Transgender in India

JOURNEY FROM MARGINAL TO MAINSTREAM — THE WOES OF TRANSGENDER IN INDIA

by

**Sangita Laha\***

*"Today we no longer have Section 377, instead we have the freedom of the queer movement and a new pathway for LGBT people to seek their rights, protect their dignity and access healthcare. We are thankful to India's Supreme Court but we must not forget the sacrifices of millions of LGBT leaders who fought shoulder-to-shoulder over the years and made this dream come true. We are queer and we are free."*

## ABSTRACT

*In the area of sexual identities the development in India is still lacking behind. According to the Census of 2011, India, male population is around 623,724,248 and female population is around 586,469,174, whereas, the eunuchs residing in India is around 19 lakhs, as of March 1, 2011 census. The most prominent among the Transgender in India are the Hijras. They form an integral part of the community but are the most neglected and denied ones. In spite of occupying a considerable population, the transgender living in India, are excluded from the basic conditions necessary for a decent and dignified living. Uncertainties still prevail even after the Supreme Court of India recognizing them as Third Gender. Situation has not much changed after the honourable Supreme Court judgment in 2014, as the perception of Indian society mindset and their behaviour towards Transgender has not changed much.*

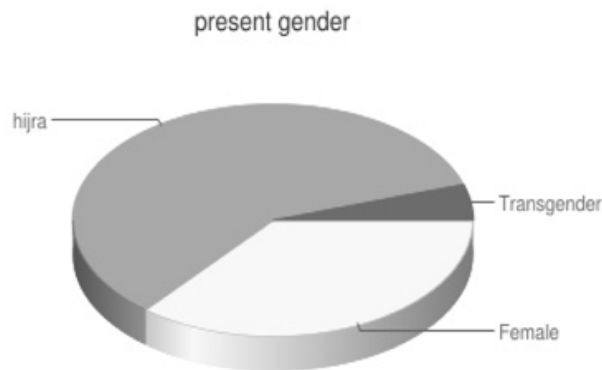


Page: 19

Keywords: Third Gender, Transgender, Hijra, LGBT, UNAIDS

## I. INTRODUCTION

The local trains that run across Mumbai are known as the city's lifeline. Rarely will you meet a Mumbaikar who doesn't, or hasn't at some point of his life has not used the local transportation system. It has an average ridership of close to 7.5 million people to-and-fro on a daily basis--that's almost double the population of New Zealand, five times the population of Estonia and ten times that of Bhutan. Hours are spent by people on the trains, people from all walks of life crammed together in the same space. We often end up seeing the same people at the same time of day while coming across to see transgender asking for money from people sitting or standing in crammed spaces. Quite often we come across the regular scenarios of them - begging for money, which often results in extortion of money, and out of compulsion and frustration they curse and harass people if their needs are not met with. These persons are referred as LGBT (or GLBT) which stands for lesbian, gay, bisexual, and transgender.



The situation in Kolkata is no different or better. Kolkata has the second largest suburban rail network after Mumbai, and if one happens to travel in a local train from Sealdah to Baruipur, the sights of eunuchs resorting to beggary are common.



The sights at big crossings, whether it's Rashbehari crossing, Ballygunge Phari or Esplanade, Transgender's in gaudy clothes with loud makeup on, can be seen going from cars to cars waiting at signals, tapping on the windowpanes, clapping their hands and begging for alms, which has become a regular thing now.<sup>1</sup> They are popularly known as the 'Hijras', as we call them, but now a days known as the '*third gender*', after the passage of "*The Transgender Rights Bill, 2014*". The Hijra population is scattered across India. There is no data available at the national level to know their exact population. The pie diagram explains that some transgender were interviewed to understand their identity. Out of 95 percent of Hijras, 36 percent claimed as female while the majority claimed as male and had husky voice. While the third group said that sometimes they were raised as boys and sometimes as girls.<sup>2</sup> During the census operation in India, which is administered once in 10 years, the population data was enumerated only for two sexes i.e. male and female. Till a few years ago, Hijras were enumerated under the male category. Since there was no separate census count for transgender in India, it was difficult to know their exact number.<sup>3</sup> The second most prominent transgender of this community are known as Kothis who are biological male and shows varying degrees of 'femininity.' Some proportion of Hijras may also identify themselves as 'Kothis,' but not all Kothis identify themselves as transgender or Hijras.<sup>4</sup> Hijras are biological males but reject masculine identity. Aravanis, the regional variation of Hijras are used in Tamil Nadu. Jogtas/Jogappa are those persons who are dedicated to and serve as a servant of Goddess Renuka Devi (Yellamma) whose temples are present in Maharashtra and Karnataka. Kinnar are regional variation of Hijras used in Delhi/the North and other parts of India such as Maharashtra.<sup>5</sup>

In some Indian metropolises and larger cities, the members of this community are more often, forced to beg or get into prostitution, and lead a life that is no better than an animal, due to the dearth of acceptance by the so-called civilized society of ours. The effect of these dangerous professions and the community's limited access to health and welfare services can be seen in the staggering fact of high HIV rates among Hijras.<sup>6</sup>



Page: 21

As per the 2011 Census, there are 4.88 lakh transgender persons in India and over 55,000 children under the ages of six who are identified as transgender. The data on transgender have been primarily linked to the male sections as they are usually counted as men, but on request, they may be counted as women. Thus, the census data under-represents the total transgender population in India across all age groups.<sup>7</sup>

The term transgender is an umbrella term which includes binary Tran's men and women, non-binary people, gender queer persons and gender non-conforming persons. To be simple, it refers to someone whose gender doesn't match with the gender that was assigned to them at birth. This feeling of misalignment causes what is called 'gender dysphoria'.

## II. OBJECTIVE OF STUDY

Based on review of available literature, this paper tries to delve into these issues.

- a. To understand the plight of the third gender in India.
- b. To retrospect the notion of human rights abrogated towards their well-being.
- c. To mitigate relevant legislations towards getting them under the common spheres of the society.

## III. RESEARCH METHODOLOGY

The research methodology is primarily doctrinal and draws from both primary and secondary sources. It includes reviews of relevant literatures such as study of articles from various journals, magazines, news articles, statues, bills and legislations.

## IV. REVIEW OF LITERATURE

Very less of work or literature are available on the Transgender community in India. In spite of stray of articles here and there some review on the available literature has been done. Some peep into the articles: '*Looking beyond Our Ghetto — A Peep into The Lives of Eunuchs*'<sup>8</sup> written by M.N. Shaikh, '*Social Exclusion of Transgender in the Civil Society : A Case Study of the Status of the Transgender in Kolkata*' authored by Sreoshi Sinha, '*Study on eunuchs/transgender: An opinion*' by Syed Wali Peeran and Karthikeyan Ramalingam



Page: 22

have been done. Articles from the Constitution of India, Governmental Documents, NGO reports like *The Salvation of the Oppressed Eunuchs, Transgender Rights Association, and Seeds of Peace*, some journals, books, periodicals, case laws and legislations have been referred and cited.<sup>9</sup>

## V. STATISTICAL DATA

It is estimated that 25 million transgender people are living around the world. In India,<sup>10</sup> according to 2011 census, 4,87,803 lakhs have been classified as transgender out of which 54854 is below 6 yrs. and literacy rate is 56.07%. Maximum number of concentration are found in Uttar Pradesh and Maharashtra consisting of 28 and 8% respectively. Besides that Andhra Pradesh stand in number 2 position with 9% followed by Madhya Pradesh and west Bengal with 6%, Tamil Nadu with 4% and Rajasthan and Punjab with 3% and 2 % respectively (Census, 2011).<sup>11</sup>

## VI. BACKGROUND AND OCCUPATION

The British Colonial India was eager to deny civil rights and therefore criminalized the Hijra community. Hijras were looked as separate caste or tribe in different parts of India by the colonial administration. *The Criminal Tribes Act, 1871*, included all Hijra who would dress like women in public places. They were mostly involved into kidnapping and castrating children, the punishment for which was up to two years of imprisonment and a fine or both. This pre-partition history influences the vulnerable circumstances of Hijra in this contemporary world.<sup>12</sup>

However the Act was repealed in 1952 and its legacy continues and many local laws reflected the prejudicial attitudes against certain tribes, including against Hijras. Some few years back, the *Karnataka Police Act* was amended in 2012 to "provide for registration and surveillance of Hijras who indulged in kidnapping of children, unnatural offences and offences of this nature" (Section 36A), in a similar vein to the Criminal Tribes Act, 1871.

While defining the nature of occupation of Hijras the answer remain ambiguous.<sup>13</sup> Due to low literacy rate the proportion of working group is below 45%, while others are engaged in prostitution as a means of survivals which is a

---



Page: 23

great threat to disease like AIDS or HIV. Due to low population and gender variants they undergo several discrimination and abuse from all the sectors which led to various social and economic factors like, low income and social stigmata which in turn affect the life of Hijras. Overlapping social, cultural, legal and economic factors contribute to pushing transgender people to society's margins.<sup>14</sup> Transgender people are more likely to have dropped out of education, had to move away from family and friends, and faced workplace discrimination, limiting their educational and economic opportunities. They encounter problems accessing basic goods and services and even public spaces. These challenges are exacerbated by a lack of legal recognition of their gender and the absence of anti-discrimination laws that explicitly include transgender people. According to UNAIDS 17 out of 117 reporting countries had laws that criminalized transgender people.<sup>15</sup>

They are just not the average beggars we come across in an urban pavement. With male voices shouting expletives, palms meeting crossways in a trademark clap, we often meet them in the daily local trains, sometimes in the long distance mail trains or mostly at a crossing or a busy signal, thinking their regular trade or business.<sup>16</sup> Other occupation may also include collecting alms in streets, temples and receiving payments for newborn babies. Due to their gender variants people are not willing to employ them, which gives them a minimal chance to express their ideas and talents.<sup>17</sup>

Around 90 percent of Transgender people engage in prostitution which is the most viable income available to them. The reasons are social exclusion, economic vulnerability and a lack of employment opportunities.<sup>18</sup> For example, the proportion of transgender people who sell sex is estimated to be up to 90% in India, 84% in Malaysia, 81% in Indonesia, 47% in El Salvador and 36% in Cambodia.<sup>19</sup> In addition, the high costs associated with transition healthcare can put extra pressure on transgender people to make money.<sup>20</sup>

---



Page: 24

## VII. SOCIAL STIGMA AND SOCIAL EXCLUSION

Transgender people experience high levels of stigma, discrimination, gender-based violence, abuse, marginalization and social exclusion across the globe.<sup>21</sup>

The prejudice against Hijras is for two reasons. The first, most obvious cause of it is that they are viewed by mainstream society as being abnormal or freaks". In Indian society, the term Hijra is often used as a term of abuse for a man who is wimpish, womanly, effeminate, impotent or ineffective. In spite of the fact that in India Hijras comprise the most exploited and impoverished sections of the society, they do not get any sympathy. The second reason is that apart from being abnormal, Hijras may in fact choose to emphasize their differences. While some may try to extort money from people by using an abusive/obscene languages, or resorting to indecent behavior, which may include exposing their mutilated genitals. They are detested for such a behavior. This leads to the social stigma attached to the term and the transgenders obtain a hostile reception from the society which leads to their social exclusion. The third gender people who are extremely marginalized from the mainstream society are also included in the category of socially excluded in the Indian context. The moment the person decides to assert their gender identity as a third gender (Hijra), the family casts them out of the house. The family's rejection is often conditioned by the wider societal intolerance towards gender non-conformity.<sup>22</sup> In teeth of the fact that Articles 14, 15 and 16 of the Constitution of India provides every person an equal status before the law and an equal protection of laws within the territory of India, yet it is felt that they are discriminated on the grounds of gender, race and ethnicity and are excluded in the Indian context. In present circumstances, there are three basic kinds of exclusions of Transgender in India:—

- A. Exclusion from Social and Cultural Participation (Social Exclusion) —
  - a. Exclusion from family and society
  - b. No protection from violence
  - c. Limited entry in education sector, health services and public spaces
- B. Exclusion from Economy (Economic Problem) —
  - a. Exclusion from economy
  - b. Exclusion from livelihood and employment opportunities



- C. Exclusion from Citizen Participation (Political Status) —
  - a. Limited entry to collectivization
  - b. Limited rights to citizenship
  - c. Limited right to participation in community decision making process

## VIII. PLIGHT OF THE THIRD GENDER IN INDIA

Hijras, being sexually deformed carry a stigma; this biological condition causes identity crisis for them. According to Hijras themselves, this state of theirs makes their acceptance very difficult in the society. The fear of stigma is so strong among general populace that it not only drives Hijras out of their homes but also put into danger their families' relationships within the kinship circles and also hinders formation of new relationship with others. Being sexually deformed, they are not capable of reproducing. Inability to reproduce, in view of the cultural traditions of Indian society is socially disapproved. Any such individual is singled out in the society. It is on account of sexual deformity that the third gender people (Hijras) become stigmatized. In any

human society, there is always every likelihood that people, in general, would practice discrimination against any stigmatized individual. The sense of stigma practiced, as Goffman puts it, is the gap between what a person ought to be, "virtual social identity", and what a person actually is, "actual social identity". Anyone who has a gap between these two identities is stigmatized. The stigma of asexuality makes Hijras (third gender) some kind of an outsider in the society. The stigma not makes him an outsider in relation to members of the society as such but also isolates him from his family and from the society at large. He, therefore, does not find a space in the family and consequently is forced to look for an alternate arrangement for his living. Since their presence in the family attaches a stigma therefore they have no alternative other than to leave home and live with others of their kind.



Background Characteristics		Percent	Unweighted Count
Age	15-19	7.8	380
	20-24	23.2	1150
	25-34	49.2	2418
	35+	19.8	1018
Completed Education	No Education	9.5	478
	<5 years	6.6	323
	5-7 years	17.9	852
	8-9 years	17.3	920
	10-11 years	24.3	1161
	12 of more years	24.3	1229
	Missing values	0.1	3
Marital Status	Never Married	79.2	3857
	Currently Married	14.5	702
	Separated/Widowed/Divorced	6.3	374
	Missing values/Other	0.4	33
Occupation	Unemployed	5.8	327
	Student	5.8	284
	Service	3.5	165
	Skilled/Semi-skilled worker	3.2	160
	Self employed	5.2	247
	Labourer	11.5	575
	Domestic Servant	1.3	77
	Transport Worker	1.0	41
	Hotel Staff	1.9	96
	Sex Work	32.9	1,542
	Masseur	2.9	83
	Others	25.3	1,361
	Missing values	0.2	8

Aggregated N	4,966
--------------	-------

Source: *Socio-demographic Characteristics of Respondents, H/TG National IBBS, 2014*  
-15

#### IX. RECOGNITION OF TRANSGENDER IN ASIATIC COUNTRIES

As per my visit to Thailand, I came across many transgender people called as lady boys or 'Katoeys' who seemed to dwell in city life very well in contrast to what is led by them in Indian community and face challenges in daily life because their legal gender on their identification documents does not match their gender identity. Ordinary things in life like opening a bank account or travelling to another country using your passport can become a source of



Page: 27

harassment, and even violence. Accusations of using falsified documents is common, thus transgender people are often forced to reveal their sex assigned at birth against their wishes. The lack of gender recognition can foster social exclusion, stigma, discrimination and violence when individuals are perceived to deviate from gender norms because their gender identity and/or expression do not coincide with their sex assigned at birth.<sup>23</sup> The purpose of legal gender recognition is to overcome this gap, giving official recognition to a transgender person's gender identity. For a transgender person to meaningfully participate in society and to prevent discrimination, the provision of legal gender recognition to transgender people based on human rights standards is advised. In 2015, Thailand passed its first law to promote gender equality, namely the *Gender Equality Act B.E. 2558*, which provides protection from unfair gender discrimination. It became the first legal instrument in Thailand that specifically mentions transgender people. As Thailand considers the possibility of developing its legal gender recognition law, the participation of LGBTI people, particularly the transgender community, throughout that process is key and cannot be over emphasized.<sup>24</sup>

China being a communist country confronts significant challenges. In 2012 my visit to Chinese provinces was an eye opener about my views of transgender as perceived through the Indian society. They lack legal recognition and protection, which makes them both vulnerable and marginalized. Social stigma and discrimination is a common feature of many schools and universities, businesses and public offices.<sup>25</sup> This report, *Legal Gender Recognition in China: A Legal and Policy Review*, provides an important foundation for the inclusion of transgender people in Chinese laws and policies. The report provides specific recommendations and suggested actions that will promote legal gender recognition and inclusion for transgender people and, if adopted, will facilitate an enabling environment for transgender people to access education, employment, health and other public services. The report also highlights transgender community efforts and initiatives that could serve as new platforms for asserting transgender inclusion and those which could open the doors for more enhanced collaboration among the various sectors.<sup>26</sup>

The UNDP Strategic Plan 2018—2021 which sets out the direction for a new UNDP, optimized to help countries achieve the 2030 agenda for sustainable development suggests reducing gender inequalities and empowering vulnerable groups. It is vital in achieving the Sustainable Development Goals.<sup>27</sup>



Page: 28

Meeting the needs of vulnerable and marginalized groups such as LGBTI people ensures that no one is left behind. Full legal gender recognition is an important step for Thailand to meet international human right treaty obligations and regional policy commitments on respecting, protecting and fulfilling the human rights of all people, including transgender people. UNDP will continue to work with a broad range of stakeholders to comprehensively assess laws, regulations and policies in relation to legal gender recognition in Thailand, as well as in other countries in Asia.<sup>28</sup>

#### X. EXCEPTIONS

But some of the exceptional transgenders not only made extra efforts to be accepted in the world of commoners but paved the way for others. Transgenders like Sathyasri Sharmila, who became India's first transgender lawyer, had to shun the stereotype mindset behind to set an example by pursuing law as a career. Manabi Bandyopadhyay became India's first transgender college principal to have set a record in their respective fields.<sup>29</sup> She became India's first third gender principal at Krishnagar Women's College in Nadia, West Bengal on 9th June, 2015. Currently, she is the first transgender to complete the Doctor of Philosophy (PhD) and is the first transgender professor in India. To move ahead of all the odds, Prithika Yashini became the first transgender sub-inspector though she was declared failed by one mark<sup>30</sup>. Nonetheless, she got her score re-evaluated in the physical examination and came out clear with flying colours.<sup>31</sup> Mumtaz, a social worker, is the first transgender who came out to contest elections in Punjab from Bahujan Samaj Party (BSP). Mumtaz contested elections from the Bhucho Mandi constituency. Shabnam Mausi has taken a tough road in life. She contested elections from Sohagpur constituency in district Shahdol, Madhya Pradesh.<sup>32</sup> As she was not supported by her family, she wasn't able to attend school, yet she learnt almost 12 different languages. Shabi joined Marine Engineering Department of the Eastern Naval Command around eight years ago. However, she underwent the sex reassignment surgery in 2016 in Delhi.<sup>33</sup> After the surgery she joined the naval base in Vishakhapatnam.<sup>34</sup> Atri Kar, a 29-year-old teacher at Ramnagar Government Primary School in Bandel (50 kilometers from Kolkata) made news last year as the first transgender from Bengal to appear for the civil services examination. Joyita Mandal from West Bengal made



Page: 29

history on 8<sup>th</sup> July, 2013 after she won a prolonged legal battle with the Central Administrative Tribunal.<sup>35</sup> She became the first transgender judge to attend a Lok Adalat at Islampur in North Dinjapur district of the state.<sup>36</sup> The story of K. Prithika Yashini of Salem is also not different. Her application for the post of sub-inspector as a 'transgender' was rejected by the police force stating that there were only two columns under which she had to file her application. But, she did not give up the fight and challenged the Tamil Nadu Uniform Services Recruitment Board to Madras High Court. She won the fight for her right as the high court ruled in her favour, paving the way for her to become the sub-inspector of police.<sup>37</sup> So, what does their struggle speak about?<sup>38</sup>

In this background, this paper makes a humble attempt to highlight the exploitation which the victims of injustice with alternative identities have been subjected to, both socially as well as legally.

#### XI. GOVERNMENT STEPS AND POLICIES-ARE THEY ADEQUATE?

In April 2014, the Indian Supreme Court recognized transgender people as a



distinct gender. Since then, health and welfare programmes to meet this group's specific needs have been set up. Evidence of improved access to HIV services is emerging, with NACO reporting 2,40,000 Hijras reached with HIV prevention and treatment services in 2015, compared to 1,80,000 the previous year.

Some basic rights denied to Hijras include ration (family) card, Right to vote, right to marriage, child adoption, opening a bank account and many other fundamental (transgender) rights. UNDP lists some of the legal issues faced by transgender in India such as legal recognition of their gender identity (difficulty in getting legal recognition as a woman or a transgender woman), inheritance, wills and trusts, immigration status, employment discrimination, and access to public and private health benefits. The change of name and gender on the credentials is also an issue. The sex assigned at birth mentioned on their birth certificate and other school/college documents do not match with the gender identity and hence transgenders are denied admission in colleges for higher education.<sup>39</sup>



Page: 30

## XII. LAWS IN INDIA

There is no mention of Third Gender either in the Hindu Marriage Act or the Special Marriage Act.<sup>40</sup> The Constitution gives rights on the basis of citizenship and on the grounds of gender. The Constitution, while it contains certain prohibited grounds of discrimination such as race, caste, creed, sex, etc., does not specifically include sexual orientation. A reading of Section 13 of *General Clauses Act, 1897* which talks about gender and number makes the discrimination holders more apparent.<sup>41</sup> It says: "Words importing masculine gender shall be taken to include females" which shows that the law makers did not take cognizance of eunuchs.<sup>42</sup> The other fields where this community feels neglected are inheritance of property or adoption of a child.<sup>43</sup> So, where does the Transgender stand today?

The *Section 377 of the Penal Code, 1860* makes sex or marriage with persons of the same gender punishable by law. However, on September 6, 2018, the Supreme Court of India decriminalized Section 377 making gay sex legal.

On April 15, 2014, the Indian Supreme Court in *National Legal Services Authority v. Union of India* recognized transgender persons as the 'third gender'. The Court gleaned their extensive rights from the Constitution. By referring to the wide scope of Article 14, which guarantees the right to equality to 'any person', it emphasized equal rights for transgender persons in employment, health care, education, and civil rights. It also stressed the need for affirmative action in favour of this 'socially and educationally' disadvantaged group under Article 15, calling for state action in this regard —going as far as to suggest reservation schemes. Significantly, by referring to the freedom of expression under Article 19, the Court declared self-identification and autonomy of gender identity as a fundamental right.<sup>44</sup>

### A. Transgender Persons (Protection of Rights) Bill, 2018 and its Limitations:<sup>45</sup>

The Transgender Persons (Protection of Rights) Bill, 2018 fails to protect the human rights of transgender people as guaranteed under the Indian



Page: 31

constitution and international law and standards and must not be passed in its present

form by the Rajya Sabha.

The Bill was passed by the Lok Sabha (Lower House of Indian Parliament) on 17 December, 2018. The next step in order for the Bill to progress is for the Rajya Sabha (Upper House of Indian Parliament) to pass it.

The ICJ considers this Bill to be a missed opportunity to address the serious problem of discrimination against transgender people in India. The ICJ calls for the rejection of its problematic parts by the Rajya Sabha and for the elaboration of a revised Bill in line with rights upheld by the Indian Supreme Court and India's obligations under international law.

The 2018 Bill, if adopted, would effectively deny to most transgender people their right to self-identification, by providing an overly complex bureaucratic procedure requiring an individual's application for a transgender certificate to be approved by two different sets of authorities, despite earlier widespread condemnation of this process by the transgender community.

"As the ICJ reported in 2017, the transgender community is continually harassed, stigmatized, and abused by the police, judges, their family and society. Ian Seiderman, Director of Legal and Policy at the ICJ made a comment that "this Bill, if it becomes law would further serve to facilitate and compound human rights violations against people from a marginalized community". The Bill has also introduced mandatory sex reassignment surgery for those transgender people who seek to identify their gender within the binary (male/female) framework. This requirement would be in contravention of the Supreme Court's judgment in *NALSA v. Union of India*, which guarantees the right to self-identification without the need for medical intervention.

Further, the Bill would collapse all offences against transgender people into one provision which includes offences ranging from "sexual abuse" and "physical abuse", to "compel[ing] or entice[ing] a transgender person to indulge in the act of begging" among others. These crimes have not been defined in the Bill.

It also would provide six-month to two-year sentence for all offences against transgender people. In some cases, this could be a significantly lighter sentence than when the same crime is committed against others, including discriminated groups such as cis-gendered women, under the general criminal law. In addition, the identification of "beggary" as an offence under the Bill is problematic since for many transgender people in the country, it remains one of the limited livelihood opportunities.



Further, the Bill does not address the question of reservations in employment and education despite specific directions by the Supreme Court in *NALSA v. Union of India*.

Lastly, while the proposed law guarantees the right to non-discrimination to transgender people against persons, state and private sector bodies, it does not provide a definition of discrimination, nor does it provide an enforcement mechanism for ensuring transgender people's right to non-discrimination.

The ICJ called on the Rajya Sabha to substantially revise the problematic provisions of the Bill before resubmitting it for parliamentary consideration. The Government introduced the Transgender Persons (Protection of Rights) Bill, 2019, before the Parliament on 19<sup>th</sup> July 2019. Despite several protests by the queer community

against the 2016 and 2018 bills, the bill tabled in 2019 did away with few of the severely criticized provisions of the 2018 bill. For example, the establishment of a District Screening Committee to process applications for issuance of transgender person certificates. But, it failed to incorporate the other principles in line with the Supreme Court judgment in *National Legal Services Authority v. Union of India (NALSA v. Union of India)* in 2014. Such as the right of transgender persons to self-perceived gender identity, mandatory reservations in jobs and educational institutions. Criticism was also made of the lesser punishment for crimes against transgender persons compared with punishment for crimes against non gender persons. set out lighter sentences for criminal offences when committed against transgender people (including "sexual abuse", "physical abuse", "verbal and emotional abuse", "economic abuse" and denial of "passage to a public place"); inadequate or missing definitions of offences; the retention of provisions that could be used to target transgender people for criminal prosecution; and the absence of mechanisms to enforce prohibitions on discrimination in the law. The 2019 Act was passed by the Lok Sabha on 5<sup>th</sup> August 2019. On 25<sup>th</sup> November 2019; it was passed by the Rajya Sabha. Eventually, it was signed into law by the President of India on 5 December 2019.<sup>46</sup>

### XIII. CONCLUDING REMARKS

A century ago, under traditional Hindu culture, transgender enjoyed certain degree of respect. Which was distorted by the 19<sup>th</sup> century in the Victorian era, by incorporating "*a strict sense of judgment to sexual mores, criminalizing carnal intercourse against the order of nature.*"

India established gender-specific rape laws stating that men cannot be raped thus lacking gender neutral provision hence, although cases of sexual



misogamy against transgender women can seemingly be covered under the penal code, transgender men have no legal respite

As per my analysis some key problems which need effective measures immediately are the unavailability of basic living amenities such as essential services, education, health and resources.

I would like to take certain suggestive measures to overcome the foreclosure of the apathy of these people in the following manner:

- a. Sensitization programs to bring more awareness. Open-minded attitude of the people is required for their acceptance.
- b. Demonstrate awareness of the high degree of discrimination that transgender individuals have experienced in the workplace and how this discrimination may affect other life areas (e.g., housing, self-esteem, family support).
- c. Provide employers with consultation and education on gender identity issues and ways to facilitate workplace changes, such as restrooms, locker rooms, staff education, and creating a respectful, inclusive environment.
- d. Construction towards an approach of civil amenities advocating towards simple steps such as creation of gender neutral urinals, hospital wards, voting rights, reservation in institutions etc.
- e. Taking support of the social media to create global awareness against their plight.
- f. Advocate for gender identity and gender expression anti-discrimination policies in the workplace as they are applicable on both micro-level (e.g., in the workplace) and macrolevels (e.g., in the local and larger communities where we live, with

policy makers and legislators, etc.

- g. Extension of financial support and making such policies as to safeguard their economic and political rights.

There are different NGOs working for Hijras' social uplift. Some of them offer professional training to empower them financially. But only when individuals have a more open-minded attitude to them will these tiny steps become efficient. The "third gender" does not match the remaining two sexes until the moment they are looked down on, Transgender will live a life of ignorance, negligence and hushed voices wherever they go. This mainly orphaned community's social exclusion not only produces tension, violence and disturbance, but also perpetuates inequality and deprivation in society. Overcoming 'exclusion' is the most basic prerequisite, in the true sense of the word, for constructing a democratic community

\* PhD (Law), Associate Professor & Dean of the Faculty, National University of Study and Research in Law, Ranchi, India <[sangitalaha05@rediffmail.com](mailto:sangitalaha05@rediffmail.com)>.

<sup>1</sup> <https://timesofindia.indiatimes.com/city/kolkata/>.

<sup>2</sup> Sreoshi Sinha, "Social Exclusion of Transgender in the Civil Society: A Case Study of the Status of the Transgender in Kolkata", International Journal of Humanities & Social Science Studies (IJHSSS).

<sup>3</sup> "Hijra, Kothi, Aravani: A Quick Guide to Transgender Terminology" Published by Scholar Publications, Karimganj, Assam, India, 788711. [https://shodhganga.inflibnet.ac.in/bitstream/10603/17820/9/09\\_chapter%201.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/17820/9/09_chapter%201.pdf).

<sup>4</sup> "Hijra, Kothi, Aravani: A Quick Guide to Transgender Terminology", <https://scroll.in/article/662023/hijra-kothi-aravani-a-quick-guide-to-transgender-terminology>.

<sup>5</sup> A. Anusha and Dr Rashmi Ram Hunnur, "A Review on Status of Transgender from Social Exclusion to Social Inclusion in India" IOSR Journal of Business and Management (IOSR-JBM) e-ISSN: 2278-487X, p-ISSN: 2319-7668, Vol. 21, Issue 2, Ser. II (February, 2019), pp. 29-34 <http://www.iosrjournals.org>.

<sup>6</sup> Sreoshi Sinha, "Social Exclusion of Transgender in the Civil Society: A Case Study of the Status of the Transgender in Kolkata", International Journal of Humanities & Social Science Studies (IJHSSS), Published by Scholar Publications, Karimganj, Assam, India, 788711.

<sup>7</sup> "Challenges for Transgender-Inclusive Sanitation in India", Economic and Political Weekly Journal, Vol. 54, Issue 18, 4th May, 2019.

<sup>8</sup> <https://docplayer.net/74502484-Volume-iii-issue-ii-september-here-the-term-eunuch-refers-to-only-those-people-who-wish-to-be-treated-as-neither-male-nor.html>.

<sup>9</sup> <https://www.ijhsss.com/files/18.Sreoshi-Sinha.xml>.

<sup>10</sup> Transgender People, HIV and AIDS, <https://www.avert.org/professionals/hiv-social-issues/key-affected-populations/transgender>.

<sup>11</sup> Dr Rathna Kumari K.R., "Socio-Cultural Elimination and Insertion of Trans-genders in India", Vol. 6, Issue 2, April-June 2019, 22th March, 2019, [http://ijrar.com/upload\\_issue/ijrar\\_issue\\_20543558.pdf](http://ijrar.com/upload_issue/ijrar_issue_20543558.pdf).

<sup>12</sup> M. Michelraj, "Historical Evolution of Transgender Community in India", Asian Review of Social Sciences ISSN: 2249-6319 Vol. 4 No. 1, 2015, pp. 17-19.

<sup>13</sup> *Ibid.*

<sup>14</sup> *TransAction Pakistan*, 3rd December, 2017, <https://www.facebook.com/TransActionPak/posts/across-the-world-transgender-people-experience-high-levels-of-stigma-discriminat/1779510258727249/>.

<sup>15</sup> CVC Shared Incident Database for Key Affected Populations, <https://www.avert.org/professionals/hiv-social-issues/key-affected-populations/transgender>.

<sup>16</sup> Sreoshi Sinha, "Social Exclusion of Transgender in the Civil Society: A Case Study of the Status of the Transgender in Kolkata", International Journal of Humanities & Social Science Studies (IJHSSS), Published by Scholar Publications, Karimganj, Assam, India, 788711.

<sup>17</sup> *Supra* note 8.

<sup>18</sup> Transgender People, HIV and AIDS, <https://www.avert.org/professionals/hiv-social-issues/key-affected-populations/transgender>.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Supra* note 8, *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> Third Gender: Social Stigma and Social Exclusion, <https://shodhganga.inflibnet.ac.in/>.

<sup>23</sup> Shawn Crispin, "Same Sex Marriage Out of the Closet in Thailand", 26th December, 2018, <https://cms.ati.ms/2018/12/same-sex-marriage-out-of-the-closet-in-thailand/>.

<sup>24</sup> <https://www.undp.org/content/dam/thailand/docs/legal-gender-recognition-in-thailand-2018.pdf>.

<sup>25</sup> *Legal Gender Recognition in China: A Legal and Policy*, [https://issuu.com/undp-china/docs/undp-ch-legal\\_gender\\_recognition](https://issuu.com/undp-china/docs/undp-ch-legal_gender_recognition).

<sup>26</sup> <https://www.undp.org/content/dam/china/docs/Publications/UNDP-CH-Legal%20gender%20recognition%20-%20China%20180805.pdf>.

<sup>27</sup> UNDP Strategic Plan, <https://strategicplan.undp.org/>.

<sup>28</sup> *Supra* note 14.

<sup>29</sup> 8 *Indian Transgender People Who were the Firsts in their Fields*, India Today Web Desk, New Delhi, 3rd July, 2018.

<sup>30</sup> *Ibid.*

<sup>31</sup> *He She It - Posts | Facebook*.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> Dr Manabi Bandyopadhyay, *The Present Scenario of Transgender in India*, <https://www.indiatoday.in/education-today/gk-current-affairs/story/list-of-transgenders-firsts-whomade-it-big-in-their-fields-1276415-2018-07-03>.

<sup>35</sup> <https://www.telegraphindia.com/culture/people/the-transgender-identity-remains-lost-in-translation/cid/1690775>.

<sup>36</sup> <https://www.deccanchronicle.com/nation/current-affairs/271217/year-ender-2017-the-many-first-steps-india-took-to-embrace-transgender-people.html>.

<sup>37</sup> <https://www.deccanchronicle.com/nation/current-affairs/271217/year-ender-2017-the-many-first-steps-india-took-to-embrace-transgender-people.html>.

<sup>38</sup> *Ibid.*

<sup>39</sup> [https://shodhganga.inflibnet.ac.in/bitstream/10603/17820/9/09\\_chapter%201.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/17820/9/09_chapter%201.pdf).

<sup>40</sup> Sunil Mondal, *Third Gender Rights and Legislations Across the World*, Academike, ISSN: 2349-9796, <https://www.lawctopus.com/academike/third-gender-rights-legislations-across-world/>.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Sanjeev Kumar, *LGBT Community in India: A Study*, <https://books.google.co.in/books?id=TWKRdWAAQBAJ&pg=PA22&lp>.

<sup>44</sup> (2014) 5 SCC 438, [https://shodhganga.inflibnet.ac.in/bitstream/10603/17820/9/09\\_chapter%201.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/17820/9/09_chapter%201.pdf).

<sup>45</sup> <https://www.icj.org/india-parliament-must-revise-problematic-transgender-persons-protection-of-rights-bill-2018/>.

<sup>46</sup> [https://en.wikipedia.org/wiki/Transgender\\_Persons\\_\(Protection\\_of\\_Rights\)\\_Act,\\_2019](https://en.wikipedia.org/wiki/Transgender_Persons_(Protection_of_Rights)_Act,_2019).

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.