

INCLUSIVE SOCIETY FOR TRANSGENDERS; A DISTANT DREAM?



Source: HuffpostIndia

“The biggest grief is to know that nobody loves you, and we transgenders have always felt it so far”

- Laxmi Narayan Tripathi

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INTRODUCTION

The term transgender generally refers to a person who doesn't identify with the sex she/he is born with and associates oneself with a gender different from the biologically assigned one. They desire to express themselves (through behaviour, appearance or interest) differently from the established stereotypes of being men or women. There are different vernacular terms for Transgender e.g in India we use the words Hijra, Kinnars and Aravanies. In India they are mostly seen as a socio-cultural group rather than just a gender variation. We find several references of transgenders in Indian history as political advisers, administrators and closest to kings and queens (M.Michelraj, 2015). However today, the transgender community is a closed and marginalized community and its main activity is confined to blessing newly-wed couples or a new born child. The reason for this is the deep rooted stigma associated with the notions of a transgender. Due to discrimination and lack of opportunities, this group has had to resort of prostitution and begging. As a result, transgenders are mostly seen as, immoral, deceitful and not trustworthy. Poverty also makes the community more vulnerable to risks of mental and physical health.

Non Governmental Organizations and Co-operative Societies are seen working in different parts of the country through different models. However the absence of laws and State initiatives has hold back the progress. A big leap towards inclusivity came with the Supreme Court's verdict of NALSA vs Union of India, 2017. The Judgment gave legal status to the identity of transgenders and included the right of gender identity in right to life with dignity. However, post the verdict there has been a lack of policies and laws regarding the protection of the community. The third gender community is still one of the most backward and marginalised communities in India. Along with educational, economic and social marginalization, they are also marginalized in terms of accessing any other public space like legal and health services.



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SUPREME COURT JUDGMENT

The Supreme Court Judgment of NALSA (National Legal Service Authority) vs Union of India 2014 acknowledged the exploitation of the community and gave cognizance to their rights. It stated that the right to choose one's gender is an integral part of right to life and dignity. It directed the government to include the category of 'third gender' in official documents and the choice of the gender to be considered as individual choice. It suggested the formation of a national institution to work for the cause of upliftment and empowerment of this community. The Supreme Court also asked the government to look for ways to reserve seats for transgender in educational institutes and public employment. It directed the implementation of the recommendation of the 'Expert Committee Report' of Ministry of Social Justice and Empowerment which had suggested ways to cope with the discrimination of the community. However none of the recommendations by Supreme Court or the Expert Committee has been executed so far. The judgment had not changed the situation on ground much, as even after that transgender patients had died in hospitals because the staff was unable to decide if the patient should be admitted in female or male ward (Saumya, 2015).

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2016

The Transgender Persons (Protection of Rights) Bill, 2016 which was brought to make laws for the transgender community, still stands pending in the parliament, inspite of Government's claim to pass it in the last monsoon season. Prior to this Bill, Rights of Transgender Person Bill was introduced in Rajya Sabha in 2014 as a Private Member's Bill. This Bill gained unprecedented attention and support in the assembly and was passed unanimously. However the fate of the Bill was not the same after it got transferred to the lower assembly. The bill was not discussed, was delayed and later Ministry of Social Justice and Empowerment displayed a draft with a similar title but with much omitted content which later became the Transgender Persons (Protection of Rights Bill) (Aruvidha, 2016).



LEAD ESSAY

The Transgender Person (Protection of Rights) 2016 Bill has been criticized by academicians and activists on various grounds. Some of the major criticisms are:

- The Bill is framed with a welfare based approach instead of a rights based approach. The Bill does not list the rights of transgender and only aims at directing the government to act through welfare provisions. In the other provisions mentioned, it also fails to uphold fundamental rights like right to privacy.
- The Bill defines transgender as (i) neither wholly male or female (ii) a combination of female and male (iii) neither man nor women, conforming to the existing stereotypes of man-woman identities and denying the group the right of separate and self identification. The bill also used the word “intersex” and transgender interchangeably confusing gender and biological sex.
- The Bill provisioned creating of district level screening committees for the certification of sexual identity. This is against the right of self identification and might subject to loss of right to privacy at times. Many countries like Argentina, Ireland, Malta and Columbia have not built up any screening committee to certify the sexual identity.
- The drafting of the Bill had not allowed any involvement of people from the transgender community, which makes it undemocratic and lopsided in nature.

THE REVISED BILL

After the Bill was strongly opposed, a standing parliamentary committee was formed to give suggestions on this bill. The cabinet has recently accepted some of the changes suggested by the committee (Sharma, Cabinet passes reworked Transgender Bill with 27 changes, 2018).

Definition: The universally accepted definition of a transgender as one whose “sense of gender does not match with the gender assigned at birth including trans-men, trans-women, gender-queers, and other socio-cultural identities” has been added replacing the previous one. The revised bill also provides provision for self declaration and right to choose to be identified as a man, woman or transgender, irrespective of sex reassignment surgery (SRS) and hormonal therapy.

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Discrimination: The Bill of 2016 had mandated that organizations with 100 or more employees should designate an official to examine complaints of discrimination and other grievances of transgender employee. This has been extended now to all organizations irrespective of number of employees. Unlike the previous Bill the Cabinet defines ‘discrimination’ as per the Yogyakarta Principles and also provides redressal mechanism.

Reservation: However the Bill still does not talk about reservation of transgender in educational institution and public appointments. The standing committee denied to state anything on the reservation of transgender as during 2014 the National Commission for Backward Classes had already advised that all transgender persons who do not belong to SC/ST community should be included in the central OBC list so that they can obtain the benefit of reservation. However this proposition was withdrawn when OBC groups protested, as this would have led to a decrease in their share.

LIFE OF A TRANSGENDER: WHAT STUDIES REVEAL

A study by **National Human Rights Commission** done in collaboration of **Kerala Development Society** (2018) surfaces some crucial facts related to the status of transgender community in India.

The study reports that:

- 99% of transgender persons have suffered social exclusion from more than one place, which also includes families. Unlike other cases, families and parents have been seen to be involved in abuses and providing no protective role for the transgender child.
- 96% of transgender community was denied jobs and 89% said that there are no jobs for even the qualified persons.
- 50% to 60% have never attended school and the rest who had the chance had faced discrimination.
- 57% of transgender people wants to go through a sex-alignment surgery but do not have sufficient money.
- 2% live with their families and 53% live under the Guru-Chela (teacher-disciple) system.

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Another report of a **study done by World Bank** '*Economic Cost of Stigma and Exclusion of LGBT people: A case study of India, 2014*' states that 41 % of Indians do not want a homosexual neighbor and 64 % believe that homosexuality is never justified. This social discrimination faced by the community explains the low literacy rate of 56%, which is much lower than the national average of 74%. The harassment and discrimination faced by transgenders in school does not allow them to be a part of the formal education system and restricts human capital growth. Lack of growth in human capital in turn further marginalises them. Apart from the formal education, stigmas also prevent the transgender to participate in the training and skill development programmes. Further, the inability to participate in the production process and society also does not motivate transgenders to overcome discrimination and continue schooling.

The Census of 2011 shows that 38% of the transgender respondents were working compared to 46% of general population. 65% of transgender were employed for at six months in a year in comparison to 76% of the general employed population. A study of Kothis (common name for transgender women) done by Naz Foundation in five Indian cities and Bangladesh shows that 64% of the respondents live life with 70 dollars a month. The World Bank study reports that transgenders active in the leadership programme of the community development project also live a life below the poverty index. The social stigma leading to disinheritance from family properties also lead to poverty.

Apart from the education and employment, the transgender community is also marginalized from standard health facilities. In addition to the stigma, the group faces mental and physical health issues which increase the suicidal tendencies. Studies in United States, Canada and Europe have found high rates of suicide attempts among transgender people. Globally, transgender community is 49 times more likely to have HIV and NACO (National Aids Control Organisation) estimates that in India 7.5% among transgender community has HIV. A project called "Trans Murder Monitoring project" 2017 states that around 2343 reported killings of gender diverse people have taken in 69 countries between 2008 and 2016. The highest number of crimes has found to be in the countries where social movements for this causes have started long back, like Brazil, Mexico, Columbia, Venezuela etc. The number of murders of transgender people in India during this time was 62. Most of the murders were of brutal nature and shows extreme pain and mutilation.

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EFFORTS AT REGIONAL LEVEL

A few States in India like Tamil Nadu, Maharashtra, West Bengal and Karnataka have constituted the Transgender Welfare Board to look into the issues related to transgender people. The Govt. of Tamil Nadu and Kerala have also reserved seats in colleges and universities for transgender person. Tamil Nadu AIDS initiative has formed a federation of 20,000 transgender person, to provide effective health services for the community. Kerala government brought state policy for transgender in 2015 under which a transgender justice board has been formed for redressal of cases and dispute. The village Panchayat and district Municipalities are asked to find jobs and employment for transgender persons in formal and stable economic activity. Kerala has also introduced a pension scheme for transgender above the age of 60. It recently directed the universities to reserve seats for transgender in undergraduate and post graduate courses. Odisha is also one of the States to draft a Transgender Bill which states that the family to abandon transgender child will be punished by law.

The role of NGOs, Cooperative bodies and activist groups has been instrumental in bringing changes in the life and conditions of transgenders. Activist groups and Community Centres are seen most of the big cities, like Kolkata, Mumbai, Chennai. There are also Community Health Centres and Self Help Groups functioning for the support of the community. 'Prothoma' in Kolkata is Asia's biggest shelter house for Transgender persons built by PLUS, an organization formed for transgender all over the country. Similarly there are other organizations working on these issues like SAATHII (Solidarity and Action against in HIV Infection in India) (Kolkata) and Sahodari (Chennai). Witnessing the efficiency of Co-operative societies in bringing changes, Kerala government declares financial assistance to transgender through co-operative societies.

A study was done by SAATHII in 2008 reveals that more than 60% of the total organizations are working in the eastern and southern regions. Organisations from the central and northern region constitute 21% and the western and North Eastern region is 12% and 6% respectively. Within the regions a few States had more organization than the others e.g. Andhra Pradesh and Tamil Nadu in south and West Bengal and Odisha in east. According to the research approximately all the organizations works on the front of HIV prevention and awareness programmes. A few old organizations also provide psycho- social counseling and further legal and policy help.

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The organizations are seen working mostly in the regions where States like Kerala and Maharashtra which have built measures to address the issue. This again highlights the need for State laws and sponsorship.

GLOBAL DEVELOPMENTS

Transgenders are a marginalized community worldwide. More than 50 countries called out for attention on the violation of rights based on gender identities and sexual orientation in UN Human Rights Council 2006 meeting. This call for action led to the formulation of Yogyakarta principles which were charted in Human Rights Council, Geneva 2007. The principles aimed at reducing crime and discrimination of sexual minorities by declaring their rights and directing the State to make laws. The principles have been added with more clauses to give new ground to gender expression and sex characteristics in 2017, which now is called ‘Yogyakarta Principles + 10’. The document elaborates the Rights to human and personal security, economic, education and cultural rights for transgender community. The other rights include right to expression, opinion and association, right of participation in cultural and family life. There are also additional recommendations for National Human Rights Institutions, funders, NGOs, UN agencies and other treaty bodies to function and take action against discrimination and to declare that effective human rights is a responsibility of all. The YP+10 also makes additional recommendation for forming a national human rights association sporting association inclusion of community in sports with dignity and all rights.

State action and movements by social and activist groups are simultaneous phenomenon in most of the countries. Most countries have decriminalised homosexuality and have given legal status to transgenders. Countries like Malaysia, Kuwait and Nigeria have resisted the use of the word “opposite sex” as this term inherently identifies only two genders. Argentina brought effective and influential changes in 2012 by bringing legislation on gender recognition. It stated that people above 18 have full right to choose identity, reassign the gender and also change the previous record. In the next three months Columbia, Denmark, Ireland and Malta initiated provision for legal gender consideration making it easier for people to change and choose gender.

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In Nepal, the Supreme Court had asked the government to bring a third gender category based on self identification. Following this, transgender category was seen in voting rolls in 2010, federal census 2011, citizenship documents in 2013 and passports in 2015. Pakistan has also moved ahead with progressive laws. In 2009, the Supreme Court of Pakistan ruled the recognition of third gender and Pakistan assembly has recently passed its Transgender Persons (Protection of Rights Bill) in May 2018.

Another significant development at global level is the World Health Organisation's revision of the classification of diseases which has moved the diseases related to transgender out of the mental, behavioral, and neurological disorders category. These diseases are not put under diseases related to sexual health and hopefully will reduce the stigma and bring out the real health problems.

WAY FORWARD

The ground breaking verdict given by the Court does not imply a sudden and drastic change in the functioning of institutions and society. As seen in previous years, the institutions often behaved in a discriminatory matter. The infamous case of Jayalakhsmi vs Tamil Nadu stands as an example of discriminatory behavior of State agencies where the police was held for repeated rape of a transgender who later killed himself.



Many of the progressive steps taken till now have failed to bring any prominent change in the outlook of the society. Delhi University opened up seats for transgender students in 2014, however only a few applications on this category were received. In 2015 Ms Manav Bandopadhyay became the first transgender college principal in West Kolkata. Later she had to submit her resignation after she was unable to gain any cooperation from the students and teachers. In this regard she states *“All my colleagues turned against me. Most of the students, too, were opposed to me. I always tried to create an atmosphere conducive to studies in the college, but they didn't like it”*.

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The first and foremost step ahead on the part of the State would be clearing the Bill and immediate making of laws. The legislation of good and effective laws asks for more research and surveys. As most surveys till now have been done on the basis of the two existing gender identities of being male or female, a new perspective of third gender has to be integrated in the surveys. Insufficient data on various parameters and differences in rural and urban context is a major constraint to bring effective policies. There is a need of intersectional conversation between sociologists, economists, public health experts which would result to an integrated and wholesome development of the community.

More targeted programmes for transgenders should be started. The report on transgender community by Ministry of Social Justice and Empowerment acknowledged that training and sensitivity programmes should be initiated for the police forces to deal with transgender matters. The financial inclusion of the community can be increased by providing targeted loans and increasing the programmes for transgender's livelihood. 50% of the organizations in Bangladesh work on providing livelihood and earning ways whereas in India its only 16%. More skill development programmes and micro-finances should be made available for the community exclusively.

Apart from reservation for transgender person in educational institutions, the education curriculum should be updated to do away with the previous gender notions and stigma. The institutes should be mandated to create proper mechanism to end discrimination and drop out of the transgender students. The educational institutes can be made more inclusive for transgender people by addressing the issues like toilets and uniform. An increase in literacy rate in general is believed to reduce the stigma related to transgender.

The empowering of the transgender community is crucial for building a more inclusive society and also for economic reasons. A World Bank's survey calculates the monetary loss of India due to discrimination to be 32 billion dollars. The end of discrimination is also crucial if India wants to reach the sustainable goals. Supreme Court Judge Indu Malhotra said "*History owes an apology to the LGBT community; they deserve to live a life Unshackled from the shadow from being unapprehended Felons*" which shows the urgent need of laws to bring changes in the dismal situation.

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