



THE PLIGHT OF THE THIRD GENDER IN INDIA

LADEN YANGZOM SHERPA
RESEARCH SCHOLAR
JAWAHARLAL NEHRU UNIVERSITY

ABSTRACT

In the words of Johann Wolfgang von Goethe, “I am who I am, so I accept who I am”.¹

Self-expression has become one of the most important and necessary aspects of a person's existence in today's world. However, in India, the self-expression of the transgender community was rejected under section 377 of the Indian Penal Code of 1860. Freedom may exist because the prohibition of homosexual relations was legalized in colonial times. However, the problem does not end there. Legal restrictions have been proposed, but social restrictions still exist in most Indian societies and cultures of today. In the past, transgender people have been discriminated against by society in areas such as personal employment, education, and health care. In today's world, this debate and the changes in thought, mindsets, and laws that follow have become more important than ever. Transgender people are also individuals, so they are legally equivalent. This paper looks into the rich history of the Hijras, sheds light on the policies of the government, highlights the cases which led to their recognition as the “Third Gender” and finally suggests some recommendations.

Keywords: Public Policy, Marginalization, Transgender, Social Exclusion, Discrimination, and Third Gender.

INTRODUCTION

In a free democratic society where there is a lot to be happy about regarding education, healthcare and vibrant economy, etc, there are still a group of people who have not been able to access these equal opportunities, benefits, and services. This inequality is also called marginalization, and it exists even in the strongest, wealthiest countries in the world. Ongoing debates on the public policy of the government and the marginalized social groups have been increasingly reflected in society.²

¹ Aliza, Z. “Transgender Community in India: Rights, Chances and Challenges”. 2021 [TRANSGENDER COMMUNITY IN INDIA: RIGHTS, CHANCES, AND CHALLENGES \(lawgicstratum.com\)](https://www.lawgicstratum.com)

² Anitha chettiar, “Problems Faced by Hijras (Male to Female Transgenders) in Mumbai with Reference to Their Health and Harassment by the Police”, IJSSH 752, 2015, [http://www.ijssh.org/papers/55 1- W10007.pdf](http://www.ijssh.org/papers/55%201-W10007.pdf).

We live in a society that is deeply structured by sex and gender. The categorization of people as ‘male’ or ‘female’ pervades our society on every level. But sexual orientation categories based on the gender binary system are disrupted by gender diversity.³ Gender diversity provides a challenge to the gender binary system in a number of ways. This very community challenges the normalization of gender barriers.

In India, there are a host of socio-cultural groups of transgender people. All these members have faced severe discrimination and harassment in all respects in contemporary India and they are subjected to unfair treatments like verbal abuse, physical and sexual violence, false arrests, denial of share in their ancestral property, services, and admission to educational institutions, and victimization in multiple settings like family, educational institutions, workplace, health care settings, public spaces.⁴ Seldom, does our society realize or cares to realize the trauma, pain, and agony that the members of the Transgender community neither undergo nor appreciate the innate feelings the members of the Transgender community, especially of those whose mind and body disown their biological sex.⁵ Our society often ridicules and abuses the Transgender community and in public places like railway stations, bus stands, schools, workplaces, malls, theatres, and hospitals, they are side-lined and treated as untouchables.

So far, these communities perceive that they have been excluded from effectively participating in social and cultural life, economy, politics, and decision-making processes. A primary reason of the exclusion is perceived to be the lack of recognition of the gender status of hijras and other transgender people.⁶ It is a key barrier that often prevents them from exercising their civil rights in their desired gender.

Many research has been carried out around the globe stressing issues of identity, health, and social stigmata and efforts have been made to get their rights and freedom by trying to provide legal protection in the eyes of law and this battle is still continuing today.

PUBLIC POLICY AND MARGINALIZATION

Marginalization is a historic reality and a very specific phenomenon. Peter Leonard defined Marginality as, “being outside the mainstream of productive activity and or social reproductive activity”.⁷ Marginalization is a multi-layered concept it has aspects in sociological, economic, and political debates. Therefore, marginality is an experience that affects millions of people throughout the world. People who are marginalized have little control over their lives and the resources available to them by society. This results in making them less privileged in probing contribution to society. A vicious circle is then set up

³ Jayna Kothari, “Trans Equality in India. Affirmation of the Right to Self-Determination of Gender,” NUJS Law Review 13, no. 3 2020, <http://nujlawreview.org/wp-content/uploads/2020/09/13-3-Kothari-Trans-Equality-in-India-Affirmation-of-the-Right-to-Self-Determination-of-Gender.pdf>.

⁴ Mott, Roberto Luiz, “Epidemic of hate: Violation of the human rights of gay men, lesbians and transvestites in Brazil”, Grupo Gay da Bahia, Brazil, 1996

⁵ Anitha chettiar, “Problems Faced by Hijras (Male to Female Transgenders) in Mumbai with Reference to Their Health and Harassment by the Police”, IJSSH 752, 2015, <http://www.ijssh.org/papers/55-1-W10007.pdf>.

⁶ Jaffery, Zia, “The Invisibles” Phoenix, London, 1996.

⁷ Leonard, P. “Personality and ideology: Towards a materialist understanding of the individual”. London: Macmillan, 1984 p.181.

whereby they are prevented from participating in local life matters, which in turn leads to their further isolation. This has a tremendous impact on them as well as on society at large.⁸

As the objective of development is to create an empowering environment for people to enjoy a productive, healthy, and creative life, it is important to address the issues of marginalization. Development is always broadly conceived in terms of mass participation and this very marginalization deprives a large majority of people across the globe from participating in the development process. It is a complex problem, and many factors cause marginalization. This complex and serious problem needs to be addressed at the policy level.⁹

Marginalization may lead itself in forms like genocides, ethnic cleansing, and other activities, to more basic economic and social hardships. Of course, the forms of marginalization may vary which can be linked to the level of development of society, culturally, and economically too. For example, it would generally be true, that there would exist more marginalized groups in the Third World, and developing nations, than in the developed nations.¹⁰ All these attempts or the practices of marginalization against people can also be traced to the theory of Social Darwinism.¹¹ Thus, marginalization is a complex as well as a shifting phenomenon linked to social status.¹²

Down the ages, our society has condemned and alienated people who do not conform to its norms.¹³ Transgender persons are one such group of people who have been marginalized, abused, disdained, and neglected community in almost every known society. They are exposed to suffering, discrimination, and marginalization these persons are usually rejected from their families and other social organizations and face varied forms of social exclusion.¹⁴ The problems and issues about transgenders vary from culture to culture, environment to environment and country to country. Moreover, various welfare programs have been devised and implemented for the upliftment of the socially and economically excluded, deprived and marginalized sections of society. These measures have not dispersed significant development for transgenders due to lack of political will, social activism, community participation, media intervention and research support. There has still been a lack of research aimed at understanding the difficulties faced by these people, who are very much a part of the society that still does not consider them normal human beings to be at par with other members of society.¹⁵

The rights of trans people are protected by a range of international and regional mechanisms. Yet, national laws, policies and practices targeting transgender people, including complex procedures for changing

⁸ Bowring, F, "Social exclusion: Limitations of the debate" *Critical Social Policy*, 20(3), 307-330, 2000.

⁹ Bowring, F, "Social exclusion: Limitations of the debate" *Critical Social Policy*, 20(3), 307-330, 2000.

¹⁰ Bowring, F, "Social exclusion: Limitations of the debate" *Critical Social Policy*, 20(3), 307-330, 2000.

¹¹ Heather Winlow, "Darwinism and Social Darwinism", *International Encyclopedia of Human Geography (Second Edition)*, 2020

¹² Arnstein, S, "A ladder of citizen participation", *Journal of the American Association of Planners* 35, pp. 216-224. 1969

¹³ Chomsky, N. "Rogue states: The rule of force in world affairs" London: Pluto Press 2000.

¹⁴ Sridevi Shivakami, P.L. and K.V. Veena, "Social Exclusion has a Negative Impact on the Health of Transgender", *Indian Streams Research Journal*, Solapur, 2011.

¹⁵ Sridevi Shivakami, P.L. and K.V. Veena, "Social Exclusion has a Negative Impact on the Health of Transgender", *Indian Streams Research Journal*, Solapur, 2011.

identification documents, strip transgender people of their rights and limit access to justice.¹⁶ This results in gross violations of human rights on the part of state perpetrators and society at large. Transgender persons experience these realities in their day-to-day lives. Like all other human beings, trans people have their Fundamental Rights. In these circumstances, there can be no attainment of the goal of universal equitable development as set out in the 2030 Agenda for Sustainable Development. How marginalization impacts a trans person's life are interconnected, stigma and transphobia drive isolation, poverty, violence, lack of social and economic support systems, and compromised health outcomes. Each circumstance relates to and often intensifies the other.

Trans people who express their gender identity from an early age are often rejected by their families. If not cast out from their homes, they are shunned within households resulting in a lack of opportunities for education and with no attempts to ensure attention to their mental and physical well beings. Those who express their gender identities later in life often face rejection by mainstream society and social service institutions, as they go about undoing gender socialization. Hostile environments that fail to understand trans people's needs threaten their safety and are ill-equipped to offer sensitive health and social services.¹⁷

In addition, understanding of trans people's concerns around stigma, discrimination, and violence, related as they are to gender identity, is often limited due to their being combined with lesbian, gay, and bisexual sexual orientation issues.¹⁸ However, trans people's human rights concerns, grounded in their gender identity, are inherently different and necessitate their own set of approaches. Paying attention to these is key to effectively addressing the systemic marginalization that trans people experience. Such action can have immeasurable benefits. For trans people, the change must begin with the most fundamental element and that is the acknowledgment of their gender identity. Violations of their human and sexual rights have been overlooked in the traditional dogma. In our country, there is a bias against transgenders and a fair amount of ignorance.¹⁹ The common man in India is exposed more to transgenders. There is a lot of prejudice against transgenders in our society and they face a huge amount of discrimination and are often forced to beg.

Despite the Government of India's official recognition of "Third Gender" in 2014, the right to gender self-determination remains contested. Discrimination and stigma force them to resort to prostitution, begging on city streets, and performing at village festivals.²⁰ India, the largest democracy in the world, continues to struggle with these societal stigmas. In recent years, many groups have been able to influence the Indian legal system toward recognition of a "third gender."²¹

¹⁶ Ina Goel, "What does it mean to be a Hijra Mother?" Economic and Political Weekly, Vol. 53, Issue No. 8, (Feb, 24, 2018).

¹⁷ A. Revathi, "The Truth about Me: A Hijra Life Story", Penguin India, New Delhi, 2010.

¹⁸ A. Revathi, "The Truth about Me: A Hijra Life Story", Penguin India, New Delhi, 2010.

¹⁹ A. Revathi, "The Truth about Me: A Hijra Life Story", Penguin India, New Delhi, 2010.

²⁰ Sayantan Datta, We Refuse to be Subjects of Experiment for Those Who Do Not Understand Us: Transgender Persons Bill, Economic and Political Weekly, Vol. 52, Issue No. 49, (Dec, 19, 2017).

²¹ The National Human Rights Commission, study on Human Rights of Transgender as Third Gender (2017).

The legal struggle took a new turn in 2014, when a historic Supreme Court ruling ruled “that gender identity is integral to the dignity of an individual and is at the core of ‘personal autonomy’ and ‘self-determination’” and recognized transgender as a “Third Gender,” thereby upholding individuals constitutional right to self-identify their gender as male, female or transgender.²² This was a first step toward legally recognizing the transgender population and including them in the national census. Rights activists and the transgender community continued to fight for recognition, which led to the introduction to the parliament in 2016 of the Transgender Persons Bill. The bill came under intense criticism, as it had a series of flaws.²³

Later following the new step in recognition, the Transgender Persons Bill was modified and reintroduced in 2019.²⁴ The Transgender Persons Protection of Rights Act came into effect in 2020. It ensured the inclusion of transgender people in government-issued documents by providing additional gender options. Therefore, Judith Butler notes the importance of self-identification as “transsexuality is not a disorder, and ought not to be conceived of as one, trans people ought to be understood as engaged in a practice of self-determination, an exercise of autonomy.”²⁵

The role of public policy is becoming more important to developing strategies. Public Policy impacts almost every aspect of our lives, be it economic, social, or cultural.²⁶ Policymaking is a part of an ongoing process that does not always have a clear beginning or an end, since decisions about who will benefit from policies and who will bear any burden resulting from the policy are continually reassessed, revisited, and revised.

HISTORY OF THE TRANSGENDERS

If we look back at our past, we can see that Indian mythology offers a very rich cultural history of the transgender community. The starting point of the concept of third gender can be traced from the Hindu Mythology which has many examples of deities changing gender, manifesting as an Avatar of the opposite sex, etc. Gods were often considered to be represented as both male and female at different points and in various incarnations.²⁷ For example, Ardhanarishvara, formed by integrating Lord Shiva and his consort, Parvati, is widely worshipped. Mahabharata and Ramayana were the treasure boxes for references to transgender people. Shikhandi from Mahabharata is probably the most powerful transgender figure found in Hindu mythology.²⁸

This clearly shows that gender variance in India has ancient roots. Transgender Community comprises of Hijras, Eunuchs, Kothis, Aravanis, Jogappas, Shiv-Shakthis, etc. The Hijra communities in India have a recorded history of many years. Hijras belonged to the Eunuch culture that was common across the

²² National Legal Services Authority v. Union of India & Ors, (2014) 5 SCC 438.

²³ The Transgender Persons (Protection of Rights) Act, 2019, Sec. 18.

²⁴ The Transgender Persons (Protection of Rights) Act, 2019, Sec. 18.

²⁵ Judith Butler, (2004). Undoing Gender New York: Routledge.

²⁶ “India Court Recognises Transgender People as Third Gender,” BBC News, April 15, 2014, <https://www.bbc.com/news/world-asia-india-27031180>.

²⁷ Akansha Mishra, “The Third Gender Rights: The Battle for Equality” Christ University Law Journal, 5, 2 (2016), pp 9-21

²⁸ Akansha Mishra, “The Third Gender Rights: The Battle for Equality” Christ University Law Journal, 5, 2 (2016), pp 9-21

Middle East and India, where Eunuchs worked as guards, advisers, and entertainers²⁹. Hijras trace their origin to the myths in the ancient Hindu Scriptures of the Ramayana and Mahabharata. The Concept of Tritiya Prakriti or napunsaka has also been an integral part of vedic and puranic kinds of literature. Hijras also played a prominent role in the royal courts of the Islamic world, especially in the Ottaman empires and the Mughal rule in Medieval India.³⁰

Though historically, transgender persons had played a prominent role, with the onset of colonial rule from the 18th century onwards the situation had changed drastically. During the British rule, legislation was enacted to supervise the deeds of the transgender community and called the Criminal Tribes Act 1871, which deemed the entire community of Hijra persons as innately ‘criminal’ and ‘addicted to the systematic commission of non-bailable offences.’³¹ The Act provided for the registration, surveillance, and control of certain criminal tribes and eunuchs and had penalized eunuchs, who were registered, and appeared to be dressed or ornamented like a woman, in a public street or place, as well as those who danced or played music in a public place. Such persons also could be arrested without a warrant and sentenced to imprisonment up to two years or a fine or both. Under the Act, the local government had to register the names and residences of all eunuchs residing in that area as well as of their properties, who were reasonably suspected of kidnapping or castrating children, or committing offenses under Section 377 of the IPC, or of abetting the commission of any of the said offenses³².

After Independence, the law was repealed in 1949, but mistrust of the transgender community has continued since. This has pushed the transgender to the margin without any serious effort to the mainstream. Transgender people have existed in every culture, race, and class since the story of human life has been recorded. In its broadest sense, transgender encompasses anyone whose identity or behaviour falls outside of stereotypical gender norms.

In “The Curious Case of Shanthi: The Issue of Transgender in Indian Sports” by Sudeshna Mukherjee mentioned that Transgender is an umbrella term that describes “individuals whose gender identity doesn’t match the gender identity commonly experienced by those of the individuals’ natal sex”.³³ Transgender does not imply any specific form of sexual orientation, they may identify as heterosexual, homosexual, bisexual, pansexual or asexual. The precise definition for transgender remains in flux, but includes, relating to or designating a person whose identity does not conform unambiguously to conventional notions of male or female gender, but combines or moves between these.³⁴ She also mentioned that, the

²⁹ PUCL-K, “Human Rights Violations against the Transgender Community: A Study of Kothi and Hijra Sex Worker in Bangalore” People’s Union for Civil Liberties, Karnataka, 2012.

³⁰ People’s Union of Civil Liberties-Karnataka, “Human Rights Violations against Sexuality Minorities in India: A PUCL-K Fact-Finding Report About Bangalore”, 2001.

³¹ M. Michel Raj, (2015) “Historical Evolution of Transgender Community in India”, 4, Asian Review of Social Sciences 18, pp 17-19

³² From the judgment of the Supreme Court; New Delhi, April 15, 2014. WRIT PETITION (CIVIL) NO.400 OF 2012 National Legal Services Authority Petitioner Versus Union of India and others, Respondents WITH WRIT PETITION (CIVIL) NO.604 OF 2013. K.S. Radhakrishnan, J. In the supreme court of India Civil original jurisdiction Writ petition (civil) No.400 of 2012 National legal services authority, judgement 2013.

³³ Mukherjee, S. (2014). “The curious case of Shanthi: The issue of transgender in Indian sports”. Rupkatha Journal on Interdisciplinary Studies in Humanities. pp123-133.

³⁴ Mishra, A (2016); The Third Gender Rights: The Battle for Equality; Christ University Law Journal, 5, 2 (2016), pp9-21

term transgender was popularized in the 1970's describing people who wanted to live cross-gender without sex reassignment surgery. In the 1980's the term was expanded to an umbrella term and became popular as a means of uniting all those whose gender identity did not match with their gender assigned at birth. In the 1990's the term took on a political dimension as an alliance covering all those who have at some point not conformed to gender norms, and the term became used to question the validity of those norms or pursue equal rights and antidiscrimination legislation, leading to its widespread usage in the media, academic world and law.³⁵

PROBLEMS FACED BY THE TRANSGENDER COMMUNITY

Transgender people face discrimination in every facet of their life because they are not fit into the gender roles of society. Every transgender person must have encountered verbal, sexual, and physical violence. Transphobia is also the biggest reason for such discrimination and violence against these people.³⁶ A transphobia is a form of hatred, disbelief, terror, fear, or distrust for transgender people or people whose gender expressions do not conform to the traditional gender roles. This causes them to live a life of anxiety and worry. They are afraid of constantly being judged.³⁷

Transgender people in India face a variety of issues. This discrimination not only denies transgender people equal access to key social goods, such as employment, health care, education, and housing, but it also marginalizes them in society and makes them one of the vulnerable groups who are at risk of becoming socially excluded.

Marginalization is at the core of exclusion from fulfilling and full social lives at individual, interpersonal and societal levels. People who are marginalized have relatively little control over their lives and the resources available to them they may become stigmatized and are often at the receiving end of negative public attitudes.³⁸ Their opportunities to make social contributions may be limited and they may develop low self-confidence and self-esteem and may become isolated.³⁹ Social policies and practices may mean they have relatively limited access to valued social resources such as education and health services, housing, income, leisure activities, and work. The impacts of marginalization, in terms of social exclusion, are similar, whatever the origins and processes of marginalization, irrespective of whether these are to be located in social attitudes or social circumstances.⁴⁰

The individuals may experience multiple forms of marginalization-such as racism, sexism, poverty, or other factors alongside homophobia or transphobia that negatively impact mental health. The stigma attached to sexual orientation and gender identity or expression that fall outside the expected

³⁵ Narrain, S (2013) Being A Eunuch <http://www.countercurrents.org/gen-narrain141003.htm>.

³⁶ Shinu Asmy V.S. & Nagaraj Dr.P, "Preliminary problems faced in Educating the Third Gender Community" Vol. I. Issue XXVII, Asia Pacific Journal of Research. May 2015

³⁷ Ibid.

³⁸The Times of India, "Police harass transgenders most, says study"; Apr 17, 2016, <http://timesofindia.indiatimes.com/city/chennai/Police-harass-transgenders-most-says-study/articleshow/51869919.cms>

³⁹ Ina Goel, "What does it mean to be a Hijra Mother?" Economic and Political Weekly, Vol. 53, Issue No. 8, (Feb, 24, 2018).

⁴⁰ Sayantan Datta, We Refuse to be Subjects of Experiment for Those Who Do Not Understand Us: Transgender Persons Bill, Economic and Political Weekly, Vol. 52, Issue No. 49, (Dec, 19, 2017).

heterosexual, non-transgender norm relegates many Transgender people to the margins of society. This marginalization often excludes Transgender people from many support structures, often including their own families, leaving them with little access to services many others take for granted, such as medical care, justice, and legal services, and education. Marginalization and bias around sexual orientation and gender identity and expression regularly prevent Transgender people from accessing fundamental public services such as health care and housing and contribute to significant health disparities.⁴¹ Marginalization of Transgender people often starts with the family into which they were born. The familial marginalization of Transgender people hinders initial prevention and education efforts, encourages risk-taking behavior that can lead to HIV infection, and places obstacles in the way of receiving proper medical treatment and psychosocial support for Transgender youth already living with HIV/AIDS. Moreover, lacking other means of support, many Transgender youth are forced to turn to criminalized activities such as sex work to survive, which drives them further onto the margins of society and can expose them to greatly elevated risk for HIV.⁴² Hijras/transgender persons face huge discrimination in access to public spaces like restaurants, cinemas, shops, malls etc. Further, access to public toilets is also a serious problem they face quite often. Since there are no separate toilet facilities for transgender persons they have to use male toilets where they are prone to sexual assault and harassment.⁴³

Transgender people face a number of difficulties within the family. Most families do not accept gender nonconforming behavior in their children, which may manifest as early as three to five years of age.⁴⁴ A study by a team from the National Institute of Epidemiology among 60,000 transgender people across 17 states, including Tamil Nadu, found that a large proportion of them receive no support from their family.⁴⁵ For many parents, the news that their child is transgender or gender non-conforming can bring an array of emotions along with it: some feel sad, fearful and disappointed while others feel shocked, angry and upset. Very few are willing to support their loved ones without trying to make them change.⁴⁶ Parents may threaten, scold or even assault their male child for behaving in ways considered girlish or feminine, and their female child for behaving like a boy. They may have several reasons for doing so, fear that a gender-nonconforming child will bring disgrace and shame to the family, apprehension that their child will not marry, preserve the family line or discharge family responsibilities. Anxious parents attribute gender-nonconformity in children to a variety of causes including mental illness, sexual abuse, confusion, rebellion or poor socialization. Believing that the best way to help their children thrive as adults is to help them try to fit in with their gender normative peers and seek to make their children conform to their gender assigned at birth through abuse, bullying, threats, and medical treatment. These reactions undermine the self-esteem and sense of self-worth of gender-nonconforming and transgender children.⁴⁷

⁴¹ A. Revathi, *The Truth about Me: A Hijra Life Story*, Penguin India, New Delhi, 2010

⁴² A. Revathi, *The Truth about Me: A Hijra Life Story*, Penguin India, New Delhi, 2010

⁴³ Annual Report, Department of Health and Family Welfare, Ministry of Health and Family Welfare, Government of India (2015-2016).

⁴⁴ Shaikh, S. Empowering communities and strengthening systems to improve transgender health: Outcomes from the Pehchan programme in India, (2016) *Journal of the International AIDS Society*

⁴⁵ Sridevi Shivakami, P.L. and K.V. Veena, "Social Exclusion has a Negative Impact on the Health of Transgender", *Indian Streams Research Journal*, Solapur, 2011.

⁴⁶ Ibid.

⁴⁷ Annual Report, Department of Health and Family Welfare, Ministry of Health and Family Welfare, Government of India (2015-2016).

The myriad problems facing Transgender people who are homeless include a lack of housing and services that meet their specific needs. They are living on the city's streets because they were thrown out of their homes for being queer, or ran away to escape an abusive situation. Family housing in the shelter system across the country is not available for homeless same-sex couples.⁴⁸ Transgender people are not allowed to choose with which gender they are more comfortable living in the shelter system. Abuse and harassment of Transgender homeless people are rampant in the shelter system. Most domestic violence shelters do not accept gay men or transgender people. Homeless Transgender youth are without economic support, often engage in drug use and risky sexual behaviors, and often develop mental health disorders.⁴⁹ Homeless Transgender youth miss out on education and social support during critical formative years—more than half of homeless Transgender youth report experiencing discrimination from peers.⁵⁰

Transgender people face grave violence like sexual violence, physical violence, assault etc. simply because of who they are. The numbers of violence against these people are much higher as some often goes unreported. They have been facing most of the violence by their own families, friends and partners.⁵¹

A. Revathi in her autobiography "Truth about me" narrated how she suffered violence in her school she explained that-⁵²

"At school, I felt fear looking at the big boys, those in Classes 11 and 12. And they were always on the lookout for me. They had marked me out from the others. Whenever I walked past them on the school grounds, they would yell, 'Hey girl-boy' and hit me on the head with their balled-up fists. They would pinch me on my chest, and taunt me saying, 'When you played Chandramathi, what did you stuff your chest with?' On the days this happened, I did not want to sit next to the boys in my class, for I felt coy and shy."

On 2 December 2017 Bhavitha a transgender person from Telangana, was found dead near a dustbin. The police did not allow her sisters and other hijra persons to claim her body because only the blood relations and parents can lay such claims.⁵³ A PIL filed by Karan Tripathi sought separate data on transgender prisoners in the NCRB reports. The Central government told the Delhi high court that transgenders will now be included as a separate gender in National Records Bureau's Prison Statistics Report 2020 onwards.⁵⁴

From ancient times our society has condemned and not accepted to those people who do not conform to its societal norms. Transgender community is the one such group who have been discriminated, marginalised, abused and neglected in almost every known society. They are invisible in the society.

⁴⁸ Ramesh Babu, "In one week, eight transgender employees quit working for Kochi Metro", Hindustan Times, (25 June 2017)

⁴⁹ A. Revathi, *The Truth about Me: A Hijra Life Story*, Penguin India, New Delhi, 2010.

⁵⁰ The National Human Rights Commission, *study on Human Rights of Transgender as Third Gender* (2017)

⁵¹ A. Revathi, *The Truth about Me: A Hijra Life Story*, Penguin India, New Delhi, 2010.

⁵² *Ibid.*

⁵³ Sayantan Datta, "We Refuse to be Subjects of Experiment for Those Who Do Not Understand Us: Transgender Persons Bill", *Economic and Political Weekly*, Vol. 52, Issue No. 49, (Dec, 19, 2017).

⁵⁴ Shreya Agarwal, *Transgenders to be included as a separate gender category in NCRB Reports: Centre informs Delhi high court*, *Livelaw*, (Dec, 7, 2020) <https://www.livelaw.in/news-updates/transgender-ncrbgender-category-delhi-high-court-karan-tripathi-166909?infinitemscroll=1>.

They are not invited in any functions, weddings and other social activities. According to NHRC survey 99 percent transgender persons who participated in the survey accepted that they have social rejections more than one in the past. These persons are usually ostracized by families and other social organisations and face social exclusion in every phase of their life.⁵⁵

NALSA JUDGEMENT 2014

National Legal Services Authority (NALSA) v. Union of India was a Supreme Court Landmark Judgement decided on 15 April, 2014 by a bench comprising Justice K. S. Radhakrishnan and Justice A. K. Sikri.⁵⁶ The transgender community comprises of Hijras, Eunuchs, Kothis, Aravanis, Jogappas, Shiv-Shakthis etc. and they have faced a lot of problems, and abuses regarding their gender, they are treated as untouchables. So, there is a need to change the mentality of the people and to accept this group as citizens of our country with equal protection of rights guaranteed by the constitution same as other genders like male and female.⁵⁷

The remedies that the Court has taken into consideration are also equally important. Three mandates have, as of now, been mentioned which are that- hijras are currently perceived as the third sex, that trans-persons have the privilege to pick between being male, female or having a place with the third gender, and that trans persons are to be given benefits that are duly offered under governmental policies regarding minorities since they would qualify as a 'socially disadvantaged, backward class'.⁵⁸

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT 2019

The Transgender Persons (Protection of Rights) Act, 2019 was made with the intention of protecting the rights of transgender, preventing discrimination against them, and ensuring their socio-economic and personal well-being.⁵⁹ The community had been neglected by society and discriminated against for years, thus requiring urgent positive action and the need for legislation to ensure the same. Hence, after a review of the bill by a Standing Committee and being passed in both the houses, the Act came into force.⁶⁰

A thorough examination of the Act and a legislative review has displayed the shortcomings of the Act, with respect to the social and legal environment surrounding the issue. The Act has failed to accommodate various recommendations of the Standing committee.⁶¹ Moreover, many provisions of the Act are outdated, unconstitutional and ambiguous, An understanding of the history of transgender rights and legislation necessitates a more effective Act that will successfully combat the legal, social, and economic problems faced by transgender. It is imperative that these shortcomings be corrected and replaced with a more humane and inclusive set of provisions gleaned from various sources, including but

⁵⁵ The National Human Rights Commission, study on Human Rights of Transgender as Third Gender (2017)

⁵⁶ National Legal Services Authority v. Union of India & Ors, (2014) 5 SCC 438

⁵⁷ Supreme Court ruling on Transgender rights, <http://orinam.net/resources-for/law-and-enforcement/nalsa-petition-tg-rights-india>.

⁵⁸ National Legal Services Authority v. Union of India & Ors, (2014) 5 SCC 438

⁵⁹ The Transgender Persons (Protection of Rights) Act, 2019, Sec. 18.

⁶⁰ Ibid.

⁶¹ The National Human Rights Commission, study on Human Rights of Transgender as Third Gender (2017).

not limited to, the Standing Committee Report, previous bills, suggestions by NGOs, State laws, and foreign laws.⁶²

In order to protect these Indian citizens as well as ensure their smooth transition into mainstream society, the society together with the lawmakers must come together to create a more inclusive and compassionate atmosphere, where one can self-identify their gender without being subjected to hatred and discrimination, where the law not only treats transgender and non-transgender alike but also protects the interests of transgender and takes requisite steps to ensure the holistic development of the community.⁶³

RECOMMENDATION

The study of the Hijras is one of the most interesting and significant areas to conduct research. It provides both valuable information and at the same time a better understanding of the community as a whole, which plays a positive role in bringing changes not only in the Indian society but also in the global scenario.

Despite the pre-colonial heritage that recognized and celebrated gender diversity in mythology and religious texts, transgender people in India, yet face intolerance, stigma, discrimination, violence, and atrocities. Human rights violations against transgender people infuse among families, educational institutions, workplaces, and institutions such as law enforcement, healthcare, media, and society at large.⁶⁴ Affirmative actions are needed to highlight and remove the stigmas and discrimination associated with the community at large.

Therefore, it can be said that protecting transgender people from various violence and discrimination does not require any other form of law or any new international human rights standards.⁶⁵ The legal obligations of States to safeguard the human rights of transgender people are well established in international human rights law based on the Universal Declaration of Human Rights. All people, irrespective of sex, sexual orientation, or gender identity, are entitled to enjoy the protections provided for by international human rights law, including respect for rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association, and peaceful assembly.⁶⁶

The transgender community requires understanding and support from the government, health care, general public as well as from their family members too.⁶⁷ We need to understand and accept the fact that humans are diverse. People have the right to be what they are and what they want to be. For transgender people, the same holds true.

⁶² Ibid.

⁶³ The National Human Rights Commission, study on Human Rights of Transgender as Third Gender (2017).

⁶⁴ Akansha Kumar, Third Gender and Gender Self Identification in India, A Review Journal of Politics & Governance, 2014, 3(4).

⁶⁵ The National Human Rights Commission, study on Human Rights of Transgender as Third Gender (2017).

⁶⁶ Ibid.

⁶⁷ Akansha Kumar, Third Gender and Gender Self-Identification in India, A Review Journal of Politics & Governance, 2014, 3(4).

CONCLUSIONS

Transgender individuals face intolerance, discrimination, and various forms of exclusion from society. This isolation varies from place to place and for most incomprehensive reasons. While the judiciary has taken a significant step to remove this stigma of the third gender, it is upon society and the people to recognize the true implications of this judgment and prioritize its enforcement. In a country where there are abundant reasons to grant reservations, the community which is attached to the social backwardness is being ignored.

Thus, it becomes important not only to understand the laws but at the same time address them among society and its people for the upliftment of the transgender community. The identity of an individual should be treated with the utmost respect. The fight of the transgender community is to be recognized as human and accepted into society. They wanted to be treated with the same respect and dignity as anyone in society.

