



## THIRD GENDER: LAST PRIORITY?

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### Abstract

*“About 92 percent of transgenders are deprived of the right to participate in any form of economic activity in the country, with even qualified ones refused jobs” (NHRC Report cited in India Today Web Desk, 2020). “Just 6 percent of transgender people are employed in private/ NGO sector” (John, 2017). “Kochi metro railway has employed 23 transgender persons, but 11 have dropped out...” (Devasia, 2017)- We have read several such statistics on the status of the livelihood of transgenders.*

*There has been a steady change in the societal perception towards transgender persons. Alongside, the last decade has also seen several efforts of legislation in this regard. Even the apex Court of the country has stepped in to interpret equality and justice for the community through the NALSA judgment. This led to the introduction of legislations in the Parliament to address historical wrongs and guarantee rights to members belonging to the transgender community.*

*Elaborating upon the sub-theme ‘Economic independence for gender equality’, this research paper examines the changing scope and nature of the right to livelihood of persons belonging to the third gender. The aim of this paper is to study the impact of empowerment of individuals belonging to the transgender community through policy measures. The researcher has employed the Case Study research design. The paper will engage readers to dwell upon the usual life experiences, strife, personal victories as well as tragedy faced by a few members belonging to the transgender community.*

*In this paper, the researcher will be sharing real life stories of three transgender persons from her interaction with them and as informed by a close relative. The shedding of regressive ideas by way of education has led to a positive impact in general acceptance and entitlement of rights to transgenders. They have also been instrumental in contributing to a healthy social fabric, economy, polity and civil society.*

**Keywords:** *Transgender, employment, gender equality, law, policy.*



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### Introduction

In a research conducted by Dr. Jacob John from Kerala Development Society, New Delhi in 2018, sponsored by the National Human Rights Commission of India, several eye-popping statistical data is revealed. Out of the 450 transgender persons surveyed in Delhi, 34% work in the informal sector such as beautician, tailor, sex work or selling food items; and a whopping 22% are beggars, 13.13% are unemployed and none of them

have government jobs. Similar is the trend in Uttar Pradesh. (John, 2017)

The Transgender Persons (Protection of Rights Act) 2019, also known as the "Transgender Persons Act" was introduced to address the issues of deprivation of basic human rights such as healthcare, the fundamental right to



education and the lack of access to livelihood opportunities faced by transgender persons. (Kiran, 2020) This was preceded by the 2016 draft which faced major resistance from the transgender community as well as from allied human rights activists.

A critical analysis of all the previous Bills and the 2019 Act highlights several flaws. When we view the complete Act, it is quite upsetting as the objective is opposed if implemented (Knight, 2019). The Act which is created to ‘protect’ rights itself requires a ‘transgender certificate’ from a District Magistrate. A change in gender can be obtained on submission of hospital records of sex change surgery. This violates the individual’s right to privacy, freedom of expression as well as goes against universally held norms of not imposing or insisting for sex reassignment surgery (Tapasya, 2020).

The theme will be examined from the socio, political and economic viewpoint in this paper. It will include analysis of laws and policies in these views. The issues related to medical science such a sex change and variations within the third gender and its medico-legal aspect will be beyond the scope of the research paper. For all purposes, the third gender will be stated as ‘transgender’ or ‘TG’ henceforth.

### **Lens of Law**

The discussion on the rights of transgenders cannot be initiated without mentioning the NALSA judgment in 2014. It was the first time that a discussion on the rights of transgenders was brought into the mainstream. It specifically pointed to the state of affairs in the country by quoting a famous transgender rights activist Lakshmi Tripathy who had said that “...nonrecognition of the identity of Hijras, a TG community, as a third gender denies them the right of equality before the law and equal protection of law guaranteed under Article 14 of the Constitution and violates the rights guaranteed to them under Article 21 of the Constitution of India.” (NALSA Judgment, 2014) The government was thus called upon by the apex court to draft a legislation to ensure that steps are taken to prevent violation of their fundamental rights.

Hence a Private Member Bill was introduced in 2016 which faced fierce resistance, it was still passed by the upper house in April 2015. After the Indian Parliament was faced by protests by members of the transgender community and their supporters, the 2019 draft dropped a few of the provisions of that Bill that led to the contention. The last draft was supposed to be discussed with representatives of the transgender community as it was still not entirely beneficial to them. However, the government bypassed this stage and the bill ultimately received the President’s assent.

### **Case Studies**

#### **1. *Badhai* singers on my birth (1992)**

This incident dates to the year 1992. It is stated as narrated by my mother as she spoke fondly of her mother’s ‘bravery’ during an interaction with a group of ‘chakkas’. It is quite common to see groups of trans gender persons sing and dance during traditional celebrations such as birth and marriage. Commonly they’re known as *badhai* singers, which means congratulatory singers.

I was born in Bahrain, and my mother had to bring me to India for a series of surgeries due to a birth defect. My mother lived at her mother’s house in the central suburbs of Mumbai. It was a small house with a large family residing there. Hence financial resources were scarce. In addition, the surgeries were a greater financial burden.

One fine day in December 1992, eunuchs came to sing in the house and refused to leave without taking money. They were refused money and were asked to leave. However, they kept singing, started creating chaos and finally



threatened to ‘lift their saree’. The intent was probably to shame my grandmother. But my grandmother shot back at the leader saying, “Then I will also lift my saree”. At this, the group shouted curses and left.

It is important to note in this incident that three decades ago, the group of transgenders were considered blessed and held in awe. This gave some of them the opportunity to earn their livelihood by playing a role in traditional ceremonies. With wide acceptance of their song and dance, and people generously paying them for blessing the event with their graceful presence, it didn’t seem necessary to be covered under any social security scheme.

Keeping this rosy picture on one side, we must also not forget the fear of transgender persons and changing perceptions and decreasing societal acceptance due to the growth of science and education. Especially in urban areas, nuclear families have lost touch with tradition and do not encourage invasion of TGs into private events. This has pushed many TGs into poverty, and hence into beggary or the sex market.

## 2. Vegetable vendor in local market (2000)

I was in primary school and would accompany my mother to the market. In one prominent spot in the market, there was a TG person selling fresh leafy vegetables daily. The person was hardworking and earned her living through honest means. She would sit at the designated spot daily.

One day, surprisingly, she did not come to the local market and her cart was shut. This continued for a few days until news came around that she was murdered. I have no knowledge on when, how, why and who did it, nor can I find any reporting of the event in archival news about it. But on hearsay, I remember a few gory details of the manner in which the corpse was found.

Reflecting on this incident, we must examine the social life or niches that TGs are confined to. General hostility forces them to remain within the same community’s social sphere. It is only after the social media boom and the education effort of civil society organizations that TGs find place in the society and a chance to participate in mainstream economic activity, i.e. beyond beggary and sex work. Several now earn their living by selling fruits and wares.

## 3. Nurse in Government Hospital (2010)

When I started college, I traveled from Mumbai’s central suburb to South Bombay daily. The commute was an hour each to & fro. After the impression of two decades of TGs as godly, scary and vulnerable persons, an interaction in the year 2010 with a transgender person changed my entire outlook towards the community.

I was 18 years of age. By this time, participation in social activities and general awareness in college had educated me quite a bit on the difference between sex and gender, on the topic of tolerance and empowerment of weaker sections of society.

A couple of years from then, I had to undergo another major surgery to correct the same birth defect. I enrolled at a municipal hospital, and there was a waiting period of three years, during which I got my teeth fixed. In preparation for the surgery, before they do a routine check of the vitals, I had to undergo the ELISA test. It seems like the government had made testing for HIV mandatory before any surgery. The nurse was a TG person. She dressed in a neat cotton saree and spoke very professionally. In fact, she even confirmed that I know the reason of the test being done, and what the result would indicate.

It was amazing to see a TG person working as a healthcare worker in a government establishment at a time when there were rising cases of HIV among sex workers (Ganju & Saggurti, 2017), several of whom were transgenders



pushed into sex-work due to poverty. From this case study we learn that even before the Supreme Court direction and the government's imposition, steps were being taken to empower the TG community members.

A small step towards ensuring economic independence goes a long way in allied spheres of the life in general. Outstanding examples include Gauri Shankar who serves as the Goodwill Ambassador of the Election Commission of Maharashtra and also has an adopted daughter, Dr. Manabi Bandopadhyay – India's First Transgender College Principal from West Bengal, and K Prithika Yashini- India's first transwoman to become a police officer in India. (Saavitri, 2020)

Each of these success stories include unexplainable strife, yet an indomitable spirit, determination and grit. They are idols for many younger persons to follow irrespective of gender. When such persons offer public services officially, they even use their influence to promote the welfare of members from the transgender community. Today transgender individuals run NGOs, assist in movies and are a part of the government machinery.

### **Third Gender: Last Priority?**

A critical evaluation of the above case studies spread across three decades indicates the shedding of regressive ideas by way of education has led to a positive impact in general acceptance and entitlement of rights to transgenders.

In the first case study, society views them with awe, and things turn ugly and they are shooed away. There is no way for them to claim any right or entitlement in the absence of any law or policy to cover their basic rights. While they are addressed by different terms such as "chakka", "hijra" and "eunuch", they prefer being the term "Kinnar" which means "mythological beings that excel at song and dance." In the last one, the role transforms from a mythological to a mystical one due to her deep impact on the researcher.

Another major hurdle to economic independence and security faced by transgenders is caste discrimination. Since many of them leave their families to escape torture and persecution, in order to survive in the transgender communes, they need to find a guardian or *guru*. In this process the *Aravanis* or Hijras get preference, while those from lower castes do not. In fact, the *Jogwa* community in Maharashtra and Karnataka got transgenders married to a deity, and then they would sacrifice their life to singing and dancing in traditional festivals or simply beg for alms. Now however this has been criminalized. (Times News Network, 2020)

Even though the Transgender Persons (Protection of Rights) Act can be improved by seeking views and deliberating with representatives of the transgender community, on a policy level, several states have taken progressive steps towards the protection of rights and promotion of their welfare. For example, Kerala has started Gender-Taxis to drive away social stigma (Press Trust of India, 2016). The Odisha government has started Sweekruti – an umbrella scheme for gender equality and justice (PTI, 2015). Therefore, in India the third gender is no longer the last priority. There is no dearth of legislations and policies executed for transgenders. But there is, definitely, immense scope for amendments to the Transgender Persons (Protection of Rights) Act so that the execution of statutory schemes is a confluence of good intent and able direction, and usage of the right means to reach the desired ends.

Reportedly, transgenders belonging to forward castes in India will get reservation in education under the existing 27 percent in the Other Backward Class (OBC) category (Business Standard, 2020). In addition, there is a demand that transgenders get nominated to the Rajya Sabha under the quota for representation of people from the art and culture field (Adimulam, 2019).

The above case studies of three different decades is evidence of changes in legal and moral stance of the state and



society. In case of education and employment, the efforts of some state and parastatal bodies can be developed into replicable projects. In fact, the recent schemes on smart cities and smart villages can include capacity building and skill development of sexual minorities for their inclusion in contribution towards the state and ofcourse their own economic development and independence.

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