



**LEGAL STATUS OF THE THIRD GENDER IN OUR SOCIETY**

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**ARTICLE INFO**

**Article History:**

Received 4<sup>th</sup> December, 2019

Received in revised form 25<sup>th</sup>

January, 2020

Accepted 23<sup>rd</sup> February, 2020

Published online 28<sup>th</sup> March, 2020

**Key words:**

Third Gender, Legal Status, Indian Society, Indian Constitution, Fundamental Rights, Education condition in Society

**ABSTRACT**

Society is made up of men and women and we see both the genders in light. But hidden is the third gender, the transgender, who are called as the “Special Children of God”. They are in between the masculism and feminism. These transgenders are not accepted by our normal build up society. They think of them as dirt or loop hole of the society. But in reality, they too are the creation of god just like men and women. Our Indian Constitution had given right to every citizen of our country no matter male, female or transgender. These people are given stink eyes whenever they made a step in field of education or employment. Instead of supporting and providing education to the third gender, they were mistreated and were thrown out of their own families and society. Because of these consequences, some of them hide their feelings to themselves thinking if someone came to know about them, they will be disowned publically. Majority of transgenders are in prostitution and some even beg for food and money in order to survive. This is a separate community in itself just like other communities of our country. Back in few years only, transgenders have come across in public to fight for their rights in society. After a long term of court case, finally they too are considered as a part of our society. In job forms also, a new column of gender has been mentioned. Our constitution provides opportunities for everyone who is the citizen of India under the Part III directing the Fundamental Rights (Article 14 to 30).

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**INTRODUCTION**

The whole world is filled up with beautiful things, places, men and women making up a society, but somewhere with these two genders, there comes those who roam around in streets, villages, trains and bless people. They are the Transgender, the third gender of our society, believed to be neither women nor men. Transgender are the people who differ from others in their characteristics, appearances, or behavior. This is the hidden part of our society. In mid of 1990's the term 'Transgender' was used to address such people. In India, they are commonly called as Hijras/Kinnars or in common language 'Eunuch'. The word 'Trans' separates them from our society. There are trans-men (not purely masculine) and trans-women (not purely feminine).

Transgender are not accepted in our society easily. It is believed that the child is born with a curse being like that. The family itself doesn't accept their own child to be a part of their family. Then comes the society, if family accepts their children as transgender without any hesitation, then the society won't let that happen. In reality, the life of transgender is way too much difficult than others as they are not much socialized. They face physical violence from society, not getting jobs,

education is not provided to them, no rights are made for them, no voting right is given to them as there was no option for them in the voting form, only male and female option, and is not even considered a part of our society.

Earlier only two genders were there i.e. male and female but now there is a third gender too, “The Transgender” and it is also a part of society. Only acceptance from people and from society will make a change for them. Proper education is necessary to be given to people only than acceptance of transgender in society will be to its fullest and will be accepted as normal human beings. They too have the equal place in society like males and females.

Society doesn't count the deformity of a person to a part of it. Transgender are one of those persons who come on top of this. They are rejected, abused sexually and physically, beaten up by the authorities and face many problems. Many rights are made for the betterment of transgender people and to protect them from such physical and mental torture. Transgender are being pushed into prostitution. To abolish or to stop all wrong activities, our constitution has made articles for transgender people. Earlier, the transgender were given a specific place in our society. They used to give blessing for peoples family, children, business etc. and there situation was quite well. But now, in today's scenario they are not considered a part of our society and are treated very badly. They are life just only for the sake of blessing and for own selfish work. But in reality, these people are far better than other society people in terms of

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behavior, conversation, etiquettes, etc. being a separate community doesn't mean they are not a part of society. They have their equal opportunities just like other male and female community. Even the Article under Universal Declaration of Human Rights<sup>1</sup> says itself that, "All Human Beings are born free and equal in dignity and rights". For this purpose the LGBT community or the Gay community was made and rights were set up order to protect the dignity and rights of the lesbian/gay/bisexual/transgender people. The transgender have been further classified as

1. MtF transgender - Male by birth and gender identity as female
2. FtM transgender - Female at birth and gender identity as male
3. Agender - Neither male nor female
4. Bigender - Both male and female identity
5. Pangender - May be more male today and female tomorrow or may be in between
6. Genderfluid - May be more female today and male tomorrow or may be in between and the list goes on.

### India vs. Other countries

Not only India comprises of transgender people, but other continental countries too have transgender people. Some countries had provided them with laws and some are on verge of acceptance of laws for the rights of transgender people. The places where law has not been yet accepted or implemented doesn't give authority or right to people to ignore these people, in fact a way should be made out of all the controversies going around in regards of transgender people. According to a report by Jack Harrison, Task Force Policy Analyst, "Argentina becomes the world's most transgender friendly country."<sup>2</sup> Including Argentina, there are 7 other countries which gave transgender people their fundamental rights. Those countries are Nepal, India, Pakistan, Bangladesh, Germany, New Zealand and Australia. Nepal became the world's 1<sup>st</sup> country which mentions the third gender as an option in the census form in 2011.

### Rights of Transgender under Indian Constitution

Our Preamble says about the constitutional justice in status of social, economic and political equality.

- ✓ Article 14 says about right to equality.
- ✓ Article 15 says about the prohibition of discrimination on the grounds of religion, race, caste, and sex or birth place.
- ✓ Article 21 speaks about the right to personal dignity and privacy to all citizens.
- ✓ Article 23 speaks about prohibiting trafficking in human beings

Also, the petition<sup>3</sup> filed by Transgender Lakshmi Narayan Tripathi with the help of NLSA, SC judges A.K. Sikri and K.S. Panicker Radhakrishnan gave a historical decision and it was held that transgender are third independent gender of society and have equal rights in property, in society and also matrimonial rights just like every other males and females of

society, and constitutional rights will be equally applicable on them like other two genders of the society.

But still the sexual preference of transgender is still pending and is being discussed. After the SC decision, transgender got a place in society and now have an equal status like male and female status. They got the right to:

- ✓ Marriage
- ✓ Divorce
- ✓ Adopt a child
- ✓ Vote

### Problems faced by transgender people

1. Discrimination in their own family.
2. Discrimination at work places.
3. Not getting proper educational facilities.
4. Not getting proper medical and sanitation facilities.
5. Physical and verbal abuse.
6. Forced prostitution.
7. Threat to life.
8. Poverty
9. Harassment and stigma
10. No proper healthcare
11. No legal identification documents

They are transgender because they do not possess masculine and feminine features completely i.e. they are hetero-mixture. We live in same society still transgender are the ones who have a struggling life and are ignored and harassed by the society. They are not allowed to approach public toilets and facilities. In their own families, the son is not accepted and is being scolded or beaten up for dressing like a girl or lady and are also disowned by parents.

Even from the cops they face physical or oral violence, extortion, sex abuse and sometimes false allegations also. Due to absence of protections from on duty authorities the Hijras are an easy target for money and sexual things. In recent survey, "Transgender in Kerala continues to face discrimination as weak grip".<sup>4</sup>

In a report of April 2011, it was estimated by the Williams Institute that about 0.3% were identified as American transgender of 2 states, California and Massachusetts, and the same was estimated in June 2016 report, that the percent increased to 0.6%. Also, in 2011, the same was found that 8.2% of Americans had engaged to same sex sexual behavior and 11% got attracted to same sex person.<sup>5</sup>

### Help needed to upgrade status of transgender

- ✓ Every person including Hijras, should have equal right to express their sexual identity.
- ✓ The process of untouchability among the Hijras should be taken in consideration and should be abolished in society and there should be legal protection against this discrimination.

### Civil rights such as

- ◆ Right to get a passport ; or

<sup>1</sup> Under UN

<sup>2</sup> <http://www.thetaskforce.org/argentina-becomes-the-worlds-most-transgender-friendly-country/>

<sup>3</sup> National Legal Services Authorities v. Union Of India (2014)

<sup>4</sup> Saturday, March 31, 2018 First Post News

<sup>5</sup>

[https://en.wikipedia.org/wiki/LGBT\\_demographics\\_of\\_the\\_United\\_States](https://en.wikipedia.org/wiki/LGBT_demographics_of_the_United_States)

- ◆ Right to get a ration card ; or
  - ◆ Right to make a will ; or
  - ◆ Right to inherit property ; and
  - ◆ Right to adopt a child
- must be allotted to them regardless of any improvements in their appearances.

❖ To prevent them from being raped at Brothels and in police custody, protection and safety should be provided. Hijras must not be sent in female cells just to protect them from being harassed, abuse or rape.

A compulsory subject on sex-education should be inserted as a part of academic curriculum in order to make children aware of sexual information, orientation and sexual behavior.

#### **Educated and Successful transgender with their Achievements**

Within the transgender community there are some of the strugglers who walked every step and went beyond their limit and made a successful career and become inspiration for other transgender community people. Some of the big achievers are:

##### **Kalki Subramaniam as entrepreneur**

- ✓ *Masters degree in Journalism and Mass Communication.*
- ✓ *Masters degree in Intellectual Relations.*
- ✓ *A journalist, a writer and a social activist*
- ✓ *Founder of the Sahodari Foundation for transgender community.*
- ✓ *Also made a debut in Narthaki – Life of transgender Woman.*

##### **Padmini Prakash as News Anchor**

- ✓ A vocalist.
- ✓ Trained Kathak dancer.
- ✓ Miss Transgender on India, 2009.
- ✓ Popular time face of news channel

##### **Madhu Bai Kinnar as Mayor**

- First citizen of Raigarh in district of Chattisgarh.
- Street play artist
- A folk dance performer

##### **Bharathi as Pastor**

- ✓ Bachelor's degree in Theology.
- ✓ Conducts weddings.
- ✓ Serving as Pastor in Evangelical Church of India.

##### **Manabi Bandyopadhyay as Principal**

- ✓ Doctorate degree in Philosophy.
- ✓ Principal of Krishnanagar Women's College.
- ✓ Authore of best seller novel ' Endless Bondage' based on Hijras.

##### **Lakshmi Narayan Tripathi**

- Transgender Rights Activists
- A Bharatnatyam dancer
- An actress.
- Introduced the 'others' category in gender selection.
- Represented Asia Pacific in the UN.

#### **CONCLUSION**

After analyzing everything, transgender community should be given equal privilege, place and position in our society. Rights made for transgender community should be implemented fairly and properly, so that the inequality faced by transgender community gets abolished and they get free from crimes and offences done against them. They are also a part of our society and complete it as much as male and females do. They should not be called by any name given to them by society but should be called them by their own names as we call our friends and family members.

#### **Reference**

1. Agarwal, Bina. 1998. 'Struggles Over Resources, Struggles Over Meanings', A Field of One's Own: Gender and land rights in South Asia.
2. Agarwal, Bina. 2008. 'Engaging with Sen on Gender Relations: Cooperative Conflicts, False Perceptions and Relative Capabilities', Essays in Honor of Amartya Sen.
3. Bakshi, Sandeep. 2004. 'A Comparative Analysis of Hijras and Drag Queens: The Subversive Possibilities and Limits of Parading Effeminacy and Negotiating Masculinity', Journal of Homosexuality, 46(3/4): 211-223.
4. Bhan, Gutam. 2006. 'Sec 377 and Same-Sex Desire', August 2006, pp.49-51.
5. Bhugra, D., S. Gupta, G. Kalra, and S. Turner. 2011. 'Migration and LGBT Groups'
6. Chakravorty, Bhaswati. 2007. 'Rights for the Third Gender: Problems of Identity and Recognition'.
7. The Status of Hijras in Civil Society: A Study of Hijras in Greater Mumbai. Unpublished Ph.D. Thesis. University of Mumbai.
8. Kalra, Gurvinder. 2011. 'Hijras: the Unique Transgender Culture of India', International Journal of Culture and Mental Health, 5(2): 121-126
9. Misra, Geetanjali. 2009. 'Decriminalising Homosexuality in India', Reproductive Health Matters, 17(34): 20-28.
10. Vishwanathan, Sharda. 2012. 'Life in the City: Sexual Minorities'

#### **How to cite this article:**

NIDHI VERMA (2020) 'Legal Status of the Third Gender in Our Society', *International Journal of Current Advanced Research*, 09(03), pp. 21466-21468. DOI: <http://dx.doi.org/10.24327/ijcar.2020.21468.4219>

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