

# **TRANSformation in India- Understanding the Third Gender**

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## **ABSTRACT**

*How many times have you seen only two options for gender but what if you don't belong to these two genders? According to the 2011 census, the total population of Transgender people in our country was around 4.88 lakh but guess what their existence was missing in the country for the longest time possible. They have been existing in our society for centuries but they have been legally recognized for just 7 years now. There has been a long history of discrimination against Transgender (TG) people in India. From facing derogatory remarks to physical violence, there's nothing that they haven't gone through. This article throws light on the life of Transgender people, their history, and the current socio-economic problems they face even after the historical NALSA judgement. The discussion in this article is limited to Transgender people in India i.e. Hijras, Kinnars, Kothis, etc.*

## **INTRODUCTION**

For years now, society has been determining the way we should live, it has not just been constrained to two genders but also the third gender. Social constructs have been determining our appearance, clothes, hair length, occupation, and whatnot, but things have been hard for people who do not fit into any gender category i.e. Transgender people because we have been neglecting, their issues, their rights, and most importantly their existence.

To understand who is a Transgender person, one must have a basic understanding of gender and how it is determined? Sex and gender are two different terms mostly used interchangeably by people but sex refers to the biological or sexual characteristics of a person, on the other hand, gender is something that is assigned to each one of us based on the primary sexual characteristics or external genitals that we are born with, so an infant born with a "penis" is assigned "male" gender at birth and an infant born with a "vagina" is assigned "female" gender at birth. The terms can be expressed as a person assigned gender female at birth (PAGFB) and a person assigned gender male at birth (PAGMB), rather than simple terms male and female, the terms PAGFB and PAGMB would be used. It is important to note here that the societal norms give us specific gender at our birth based on our sexual orientation that we may not be comfortable with, in years to come.

Having established that gender is assigned to us, it should now be understood that gender assigned at birth may or may not match the person's idea of their gender as they grow up. As a result, some humans sense cushty in gender assigned to them, these humans are called "cisgender" and include *cismen* and *ciswomen*, then there are humans who do not feel comfortable and aligned with the gender assigned to them, these people would be called as "Transgender", these

include *transmen, transwomen, genderqueers* and numerous other socio-cultural identities such as *Kinnars, Hijras, Jogtas, Aravanis, etc.*

## UNDERSTANDING TRANSGENDER PEOPLE IN INDIA

Now that we know, Transgender people are the ones whose gender assigned at birth does not match their inner sense of gender, it is important to understand here that such people may use different terminologies to express their gender and all these terminologies can come under the umbrella of one single word i.e. Transgender. They identify themselves as neither man nor woman, which is why they are called “Third Gender”. While the third gender includes many different groups, Hijras/Kinnars and Kothis are the most prevalent ones in India.

“Hijra” is an Urdu word that means a person who leaves his tribe in search of his true self. Hijra is one of the oldest ethnic transgender communities in the world. Hijras can be either people assigned gender male at birth (PAGMB) who identify themselves with the characteristics, roles, and behavior conventionally associated with women or rarely persons with intersex variations. They dress like a woman and even live their life as a woman. They are usually seen dressed in ill-fitted sarees, faces covered in loud makeup roaming on the streets begging or gatecrashing weddings and childbirth by singing songs and demanding money for the same.

In India, Hijras and Transgender are used interchangeably but one needs to understand here that Transgender is an umbrella term that consists of Hijras, Kinnars, Kothis, etc., Transgender is more of like an identity while Hijras is a community that is joined by PAGMB, they leave their house and join hijra community, they come to *gharanas* or *deras (specific households for Hijra community)* where they join the community and live in groups headed by their Gurus. The disciples who come and join the Gharanas have to follow specific rules and regulations of the community; they are allowed to do some specific work only, they exist in their groups only, moreover, the disciples, called *chelas* are not allowed to go to any function without their gurus, whatever the disciples earn, they have to give that to their gurus.

Kothis, on the other hand, is a term used to describe PAGMBs who like to crossdress and see themselves as women but do not join the Hijra community and live by themselves. In short, PAGMBs are Kothis till they join the Hijra community.

The main thing here is that, while there is a community for PAGMBs but an equivalent community does not exist for People assigned gender female at birth. The absence of such an alternate support system for PAGFBs along with patriarchal subjugation and limited mobility are the reasons for the relative invisibility of Female to Male transgender people in India.

## **HISTORICAL BACKGROUND OF TRANSGENDER PEOPLE IN INDIA**

Transgender people have been a part of Indian society for centuries and were integral to different mythologies, religious folks, Vedic literature, etc. In Ancient India, different words were used for homosexual gender in different languages such as napunsaka, kinnar, eunuch, hijra, etc. Within the Indian context, Hijra is used for people who identify themselves as neither man nor woman; kinnar or third gender.

It is believed that when Lord Rama was exiled from Ayodhya, his entire kingdom started following him, he asked his disciples that men and women please go back, so they left but some people stayed there for 14 years because they were neither men nor women, they were hijras, that's when Lord Rama blessed them with special powers to grace auspicious occasions with their presence. Aravanis, the term for Hijras in Tamil Nadu, consider Aravan, son of Arjuna and Nagkanya from Mahabharata as their progenitor. Jain texts also mention the idea of psychological sex and recognize Transgender people.

In Christianity, chapter Luke from verse 50 till 58, it is mentioned that Eunuchs will be born and will have a higher position than their sons and daughter. It is also believed that the author of Shiv Mahima Stotra, Pushpadanta was also a kinnar.

Then, in the medieval period, Hijras played a prominent role in the Islamic world where they enjoyed reputable positions in the royal courts of the Ottoman Empire and Mughal rulers. In the Mughal era, they were considered faithful servants of the crown, they were educated and used to advise princesses and queens on important issues. They also occupied important socio-political positions in the royal courts.

It was the onset of the British era that created problems for them in society, it is believed that Britishers were insecure about their positions in the royal courts and therefore the white colonizers did not approve of the third gender in the society. In 1871 a legislation called The Criminal Tribes Act was enacted by the British government which deemed the entire community of Transgender as criminals. The Act proposed for 2 years imprisonment if any Eunuch (castrated human male) was found to be dressed as a woman. Moreover, they were not allowed to dance and sing on the streets, the situation for them deteriorated as they were deprived of basic human rights in the country and were then seen as an outcast in the society due to which they used to get insulted by the general public.

Though transgender people enjoyed a respectable position in ancient and medieval India, their situation worsened when Britishers came to India. The sad part is that the legacy of discrimination against the Transgender community continued for years even after the departure of colonizers. But now, many policies and programs have been implemented for the upliftment of the Transgender community in the country.

## **DISCRIMINATION FACED BY TRANSGENDER PEOPLE DURING THEIR LIFETIME**

Despite being a dominant figure in ancient and medieval India, the way forward for Transgender people remained difficult even after Britishers departed from the country. People alienated them from mainstream society, human rights violations against Transgender people became common, from getting bullied in schools to getting tortured on the streets; they were socially, politically, and economically excluded from our society. The discrimination they face starts from when they are a child and goes on till their lifetime.

**Children and Adolescents:** As children, we are not aware of the gender roles that society expects us to follow but few children who do not conform to expected gender roles are not accepted by their families in the first place their families consider this just as a mental state in which a child must not be feeling aligned with the gender assigned at birth thinking that after some time, this feeling will go away but since this is not a phase, it becomes difficult for parents to accept that their child is transgender or gender non-conforming which in turn brings an array of emotions along with it, some may feel sad, disappointed, fearful while others may feel shocked, angry or upset.

Parents might even assault their children for behaving in ways that do not align with what society thinks is appropriate, they may have several reasons for doing so: fear that this child will bring disgrace and shame to the family, thinking that their child will not marry and their family line will not go forward, while this pressure is not enough, many transgender children end up being a prey of sexual harassment impacting them for a lifetime. These incidents in childhood undermine the self-esteem and sense of self-worth of gender non-conforming and transgender children.

Stigmatization of transgender children is amplified in the education system, in schools children are bullied by their peers for not conforming to the gender assigned which increases the level of stress for Transgender children. Participation in Sports, school uniforms, toilets in school premises, and a few school subjects which are gendered such as cooking for girls, mechanical subjects for boys mirrors the rest of the society in reinforcing strict gender norms and patriarchy. Trying to hide from all this pressure and stress, they drop out of the educational system entirely closing the door for employment opportunities making their future prone to further obstacles.

**Adults:** Stigmatization and discrimination in households and schools are further aggravated by economic marginalization. For the longest time, laws did not recognize their existence as a third gender or people whose gender identity is different from the gender assigned at birth, which made an impression that they do not have any legal protection further making them vulnerable to discrimination and violence in institutions.

Transgender people who live with their parents are also subject to a series of issues; attempts by their parents to get them married, seeking a counselor to get them rid of gender non-conforming behavior, this gets serious when after all such attempts their behavior remains the same, transgender adults are disowned by their families.

If in any case, Transgender adults somehow manage to go through the stigmatization and discrimination in their childhood, they face discrimination in recruitment practices of many employers and if we think of the best-case scenario of them getting hired, they end up in the trap of workplace harassment where they are not just sexually harassed for their non-conforming gender behavior but also go through a mental trauma because of the behavior of their coworkers towards them. This leaves them with no other option than to leave the workplace and beg or sell their bodies for money, so the only professions left for them are begging and sex work.

**Elderly People:** The concerns for elderly Transgender people is a topic least talked about while creating gender-friendly schools, workplaces and institutions is a priority for the government but nobody talks about issues that Transgender people go through in their old age. As they are disowned by their families, no one takes care of them during their old age, because of poor economic status, they do not get the required resources for their health making them prone to more serious diseases.

The discrimination continues in the life of Transgender even after their death as burial grounds or crematoriums refuse access to them because of their gender status.

## **LEGAL PROVISIONS FOR TRANSGENDER PEOPLE IN INDIA**

What would one do in a country without a legal identity? Identification is the need of the hour as man is a social animal, it is needed for most of our life activities from basic citizenship rights to education and employment opportunities. While this identification that is this basic for human survival is what had been missing from Transgender people's lives for years. However, in 2008, Tamil Nadu became the first Indian state to recognize "Transgender" people on official documents, by giving the option of Transgender on ration cards. Subsequently, Tamil Nadu formed a Transgender welfare board and introduced education, health, employment, and housing policies for aravanis, however, it is believed that the board was completely inactive in Tamil Nadu for quite a long time.

The Preamble of the Indian Constitution on the other hand strives to achieve Justice, Liberty and Fraternity to all its citizens and ensures equality before law implying that everyone is equal in the eyes of law. The above aim of Constitution makers that is found in the Preamble gets evidence in different Articles of the constitution such as Article 14 that guarantees equality before the law; Article 15 that guarantees prohibition of discrimination on the grounds of birth, religion, caste, creed, place of birth, sex or any of them but in the case-law of *Suresh Kumar Koushal Vs NAZ Foundation*, it was held that the term sex has to be given a broader perspective than the binary norm of biological sex, in the historic judgment of *National Legal Services Authority of India Vs Union of India*, the honorable Supreme Court legally recognized people who did not belong to male/female gender binary, including people who identified as "third gender". This was a landmark judgment where the apex court legally recognized the third gender for the first time and

discussed gender identity at length. The apex court recognized that “third gender” persons were entitled to fundamental rights under the constitution of India and International law. Further, state governments were given directions to develop mechanisms for the recognition of the rights of Transgender people.

The decision of the apex court was followed by the implementation of different policies and programs for the Transgender community. In 2014, Tiruchi Siva, a Dravida Munnetra Kazagam Rajya Sabha MP introduced the Rights of Transgender Persons Bill, 2014 as a Private Member’s Bill which was passed unanimously by Rajya Sabha but it was never introduced in Lok Sabha. However, in December 2015, the Ministry of Social Justice and Empowerment put up a draft of The Rights of Transgender Persons Bill, 2015, and sought comments from the public to be sent by January 2016. Despite the recommendations being sent by the trans-led groups, it is believed that no such recommendations were made and a cruel version of The Transgender Persons (protection of rights) Bill 2016 was introduced in the Lok Sabha in August 2016. The standing committee on Social Justice and Empowerment presented its report on TG Bill 2016 in July 2017. The act Transgender Persons (Protection of Rights) Bill, 2018 was introduced in Lok Sabha in July 2019 and was passed by both houses by November 2019. The President assented to it and the act came into effect on 10 January 2020.

The Act consists of 9 chapters that cover important issues of Transgender people such as the prohibition of discrimination, recognition of identity, health care, employment, welfare measures, etc. One of the major highlights of the act is

1. The formation of the National Council for Transgender Persons (NCTP)

The NCTP is chaired by the Union Minister of Social Justice and is also represented by state governments, it also consists of members from the Transgender community and experts from Non-governmental organizations. The formation of a council is done to address the grievances of transgender persons and advise the central government regarding the legislations and projects concerning Transgender persons.

Another major highlight of the act is

2. Certificate of Identity for a Transgender person

A transgender person can make an application to the District Magistrate for a certificate of identity indicating the gender as ‘Transgender’.

The government has also set up 12 Garima Grehs (shelter homes) for the transgender community in different cities of the country, Garima Grehs has been set up to not just ensure that the Transgender community has access to a safe and secure environment but to also provide basic amenities like food, shelter, recreational activities and to support capacity building/ skill development of Transgender people.

## **CONCLUSION**

There is no doubt that the situation of Transgender people in this country has improved a lot but is it enough is the question that concerns many. The community struggles to find its place in this society; sex work and beggary remain a major source of livelihood for them; the humiliation faced by the community in public is not hidden from anyone. Our unacceptable behavior towards them in this society hinders their growth, leading them to live a life that nobody on the earth deserves. The policies and programs alone are not enough to bring a change about the issues and rights that we have been avoiding, it's the awareness that is to be brought through the means of the curriculum in academics, sensitization programs, and inclusivity in mainstream culture, activities, and trainings. The stakeholders here i.e. Police, Social workers, academic institutions, government functionaries, etc. need to play a huge role in the welfare of the Transgender community.

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