

Transgenders : A Journey Of A Thousand Miles

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"Samaani va Aakootihi Samaanaa Hridayaanivah, Samaanamastu vo Mano Yathaa Vah Susahaasti "

(Let there be oneness in your resolutions, hearts and minds; let the determination to live with mutual cooperation be firm in you all)

-Rig Veda, Mandala - 5, Sukta - 60, Mantra -5

Introduction:-

The whole world is filled 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 nothing but the third gender of our society. They are neither men nor women; they are known as transgender. Transgenders are the people who differ from others in their characteristics, appearances or behaviour. Transgender is a person whose gender identity differs from the sex of the person at birth. Their gender behaviour are identity do not match with their biological sex from the time of their birth. They have been most marginalised ,forgotten and deprived sections of the Indian society. Transgenders persons had been part of Indian society for centuries but they are hidden part of our society. They are known by different names in different places according to their culture. They are commonly known as hijra, Kothy, aravani and thirunonagi jogtas ,jogppas, shivaskthy etc.

Types of Transgenders ¹

I) Kothi :

They are a heterogeneous group who are described as biological males with feminine nature. Some kothis are bisexual and get married to women. Most of them are poor and engage in sex work for their living. Some of the Hijras-identified people identify them as Kothis but all the kothi identified people do not identify themselves transgender or Hijras.

II) Aravanis and Thirunangi :

In Tamil Nadu Hijras are identified as "Aravani". Tamil Nadu government has initiated a Welfare Board for Aravanigal under the Department of Social Welfare . It defines Aravani's as 'biological males body' who self- identify themselves as a women trapped in male's body'. Some of the Aravani's activities desire that they may be called as 'Thirunangi' by the public and media.

III) Jogtas/Jogappas :

Those persons who are dedicated themselves to serve as a servant of goddess Renuka Devi (Yellamma) are jogatas and jogappas. Goddess Renuka Devi's (Yellamma) temples are in Maharashtra and Karnataka. Jogata refers to a male servant of that goddess and jogati refers to female servant who is also sometimes referred to as devadasi. An individual can become Jogta or Jogti their family agrees to their tradition or that individual finds a "Guru" or "Pujari" who accepts him/her as 'Chela' or 'Shishya'. Mostly, the term 'Jogti- Hijras' denotes those male-to-female transgender persons, devotees/ servants of Goddess Renuka Devi and who are also in the Hijra communities.

(IV) Shiv-shakthis:

They are considered as male who are possessed by our particularly closed to a goddess and who have feminine gender expression. Usually, Shiv- Shaktis are included into the Shiva Shakti community by senior gurus, who teach them the norms, customs and rituals to be observed by them.

(V) Hijras:

They are biological males who reject their "masculine" identity and identify either as women or 'not-men' or in between men and women, or neither men nor women. If a Hijra has to be adapted by a Hijra Guru, then that person has to pay the membership fees to enroll oneself in a particular gharana to which that particular Guru belongs to. It is mandatory that a hijra has to enroll in a gharana with which that individual adopts their customs and traditions.

History of Transgenders in India

Transgender community is not a new phenomenon. There are references to transgenders persons and communities in ancient civilizations of trans and in classical writings. India's transgender community has been a part of the subcontinent from time immemorial. They have a recorded history of over 4000 years. They are mentioned in ancient literature. In India various ancient text such as Manusmriti, Arthashastra, Kamasutra, Upanishad and Puranas deal with stories, legends or myths about homosexual relations.¹

The concept of tritiya prakriti or napunsak is an integral part of Indian myths. The concept of Ardhanarishwara is another classic example for sexual pluralism in Indian culture. As per the concept, God Shiva merges consorts goddess Parvati to his body and creates a body of half male and half female. The concept of ardhnarishwara can be seen as the recognition of reality beyond normalcy of biological identity. Ardhnarishwara shows that sexual Union of male and female can produced human being who are neither male nor female.

Similarly, the union of God Vishnu and his consort Lakshmi produced the Lakshmi Narayana representing gender plurality. Correspondingly Bhagwat Puran gives the picture of Mohini, who is a beautiful woman from of the male God Vishnu. The Brahmanada Purana shows that goddess Parvati is a shamed to see her husband's effort to woo Mohini, the female form of God Vishnu. The concept of Ardhanarishwara, Lakshminarayana and Mohini throws light on the deep rooted psychology of sexual and gender pluralism in Indian consciousness. These concepts show that mail identity is often transferred to female identity and vice-versa. As well, these mythologies represent the Indian mentality accepting sex change and sexual pluralism.

In Mahabharata, there is a very interesting characterization of the concept of sex change. Shikhandi from Mahabharat is probably the most powerful transgender figure found in the Hindu mythology. Similarly, Arjun, the Archer hero of Mahabharata is another example for sex change. According to the story, Arjuna was cursed by a nymph named Urvashi that Arjun will be a third gender. Subsequently Arjun becomes Brihanala and lived in the kingdom of Virata for an year.

Ramayana is another source inspiration for the emergence of transgender people. The Epic Ramayana gives a more vivid picture of transgender community. According to the story, while Rama was leaving for the forest, he requested his followers that 'all men and women' to return to the city. The Hijras did not feel bound by Rama's appeal and decided to stay with him. Impressed with the devotion, Rama conferred powers on them to give blessings on auspicious occasion.²

Pride During Mughal days:

Members of transgender community held various positions in administration during the Mughal Era in India. It's surprised many foreign merchants during their visit to India when they witnessed the power and prestige enjoyed by the transgender community in the imperial household.³ During the Mughal Empire (1526-1857), Hijras were known for positions held in royal courts as political advisors administrators generals as well as guardians of the harems. They were considered as clever, trustworthy, and loyal. The sixth Nizam Mahbub Ali Pasha employed hijras as confidants and advisors domestic supervisors and menial domestics. They enjoyed influential position and have been considered as one of the important figures in the society. The Mughals entrusted the hijras with responsibility of protecting their women and children.

They even occupied high positions in the Islamic religious institutions especially in guarding the Holy places of Mecca and Madina. They enjoyed a life of privilege and proximity to the royalty.

¹ Anuradha Parasar, Homosexuality in India -The Invisible Conflict, Research Paper.

² Sidharth Narrain ,Being A eunuch

³ Adrija Roychowdhury, 'When eunuchs were the mid-rung of power in the Mughal Empire'. Research article.

Oppression Under the British Raj

During the Mughal Era, it was a cake walk for them in establishing their rights, but the advent of British rule changed the flow of water upward which made the going tough for them. The Empire where 'Sun never sets' reintroduced darkness into the lives of transgenders. These people who are never accepted by the family of society are forced to lead orphan lives. Although they laid down their lives for the royal household, their efforts were in absolute vein. Their fall from boys started in the 18th century during the British colonial rule.⁴

The introduction of 1871 Criminal Tribes Act (CTA), marked the beginning of their plight. The Act insisted upon registration and control of the third genders. Under this, wearing female clothes was made a punishable offence for men and dancing or playing music was declared as violation of law.

Footnote 5 : M. Michel Raj, Historical Evolution of Transgenders Community in India, 4 ASIAN REVIEW OF SOCIAL SCIENCES 18, 17-19 (2015)

Such gestures would be punishable with 2 years of imprisonment and fine. This legislation brought by the British was discriminatory as it deprived transgenders of their basic rights and sources of income. This pushed them to the age of the society and they were banished to live a life marked by unequal treatment and complete oblivion.

Post-independence Existence

During the Prime Ministership of Jawaharlal Nehru, the Criminal Tribes Act of 1871 was repealed as it was considered a hurdle for the description of free India. But the spirit of this Act was not repeated completely. In 1957, the Government of independent India passed a fresh Act named 'Habitual Offenders Act', incorporating the essence of Criminal Tribes Act, 1871.⁵

A number of amendments were brought to remove the anomalies and discrepancies in the aforesaid Act. But all the efforts of the Government of India to improve the social status of transgenders were futile as the stigma regarding them had already penetrated deep into the blood of Indians. However, the development of post structuralists ideologies, feminism and policies of post war globalisation in the 1970's created favourable conditions for the development of LGBTQ movements. At the international level moments for the right of LGBTQs have gained momentum since the 1960s. The South African constitution prohibited discrimination on the basis of sexual orientation. Similarly Scandinavia has equal rights for sexual minorities and any discrimination is seen as unconstitutional. Monica Tabengwa and Nancy Nicole have demonstrated how did development of sexual rights and LGBTQ movement can contribute towards gender justice in the context of Botswana.⁶

By 1980s, the issue of LGBTQ has become a visible identity problem in India. The city of Calcutta had a thriving social network of gay people since 1960s.⁷

'Bombay Dost', the first gay magazine was published in 1980 from Bombay which raised LGBTQ issue to the forefront. Earlier in 1977, Shakuntala Devi had published a study on homosexuality and it put forth the neglected sphere of LGBTQ world in India.⁹

Following the publication of Bombay Dost, a collective named Sakhi was started in Delhi for the rights of LGBTQs. Apart from Bombay Dost and Sakhi, numerous collective and magazines dealing with LGBTQ issues were published throughout the 1980s and 1990s. Fun club, Pravartak, Counsel Club were some of the important groups work for the rights of LGBTQs.

⁴ M. Michel Raj, Historical Evolution of Transgenders Community in India, 4 ASIAN REVIEW OF SOCIAL SCIENCES 18, 17-19 (2015)

⁵ Footnote 6: Dona John, "Living a Life of Exclusion Being a Transgender in Modern India".

⁶ Monica Tabengwa with Nancy Nicole, The Development of sexual rights and the LGBTQ movement in Botswana PP 339-358.

⁷ Bina Fernandez (Eds) Humjinsi: A resources book on lesbian gay and bisexual rights in India. India Centre for Human Rights and Law, Mumbai, 1999, p. 101, 102.

Legal Visibility To Third Gender Rights

With changes taking place at the international level and considering the mounting pressure from various LGBTQs movements, section 377 of Indian Penal Code came under social and legal scrutiny in various times. In 2001, the Naz Foundation (India) Trust, a non- governmental organisation has file a lawsuit in the Delhi High court seeking legalisation of homosexuality. On the other hand, the International Commission of Jurist and international service for human rights on behalf of a group of human rights organisation development the yogyakarta principles. The principal was named such because it was developed as yogyakarta Indonesia to established certain legal promises to a firm the role of states to rotate the rights of all human beings irrespective of any sexual orientation. These principles were adopted by the meeting held from 6 to 9 November 2006.

Again, in India, Naz Foundation judgement has come in 2009. In this case a two judges bench of Delhi High court decided in 2009 that treating consensual homosexuality as a crime is a violation of fundamental rights. Similarly, it is landmark judgement in National legal services authority (NALSA) vs Union of India, in 2014, legal recognition for Gujarat or transgender was recognised by the supreme court of India which created the position of "third gender". In Suresh Kumar Kaushal vs Naz Foundation, a to Ben judgement of supreme court decided to reinstate the section 377 of IPC. However, in Navteg Singh Johar vs Union of India in 2018, a five judges bench of Supreme Court decided to scrap section 377, decriminalising homosexual intercourse between adults. On the other hand, on July 19 2019, the Minister For Social Justice And Empowerment introduced the Transgender Persons (Protection of Rights) Bill, 2019 in Loksabha and it became the Transgender Persons Protection of Rights Act , 2019 on December 5 2019. The Act aims to end discrimination against transgender persons in assessing education employment and healthcare.

Present Position

The judgements related to Transgenders' rights are very crucial in India. These judgements of courts are all for affirmative action in education, primary health care, employment. Now a days the Government of India has formulated welfare schemes especially targeted at transgender, such as education institutions have been direct it to adopt an inclusive approach that is gender-neutral. Medical facilities including sex reassignment surgery, vocational training programs are also in the pipeline. Also transgenders are beginning to be productivity employed in careers by various agencies. For example when Cochin metro rail project was launched in the year 2017 the loco pilots were chosen from among LGBTQ community. Tamil Nādu, Maharashtra and West Bengal have Transgender Welfare boards. Andhra Pradesh and Tamil Nādu and Kerala government introduced several welfare measures for transgender people. Currently debate are going on in the issue of allowing legal sanctity to transgender marriages in the apex court of India.⁸

Conclusion

The supreme court verdict and after that transgender persons protection of right act 2019 is a milestone in the history of transgenders rights in India. But question is does this rights offer them a place in society? Will it create and end to their miseries? Easy to beginning of prosperous time for them? Because transgender community in India still occupies a distant position. Society is accepting the transgender community but very slowly, people of the society still have thoughts of transgender as normal sometimes and sometimes it has gone up.

The Supreme Court verdict cannot overrule social prejudices or popular belief which needs social awareness and deep rooted respect for democracy. There needs to be greater awareness regarding gender diversity in families in public species educational institutions in healthcare and among law enforcement authorities including police. It is the need of the hour to have an inclusive approach toward the transgender communities for redressing their discomfiture. The triple E approach i.e. Education, Empowerment and Enlighten is needed for their empowerment.

⁸ Footnote 9 : Kalpana V. Jawale . Issues and Challenges of 'LGBTQ' Minority People in India, International Journey of Applied Research, 2016; 2(6) 408 - 410.