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# **Third Gender Discrimination- A Struggle For Self- Identification**

Ramsha Zaidi

## ABSTRACT

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*Mainstream social constructions of gender tend to demand conformity by adhering to only two choices of gender identity, male and female. However, individuals who seek to challenge these with their personalities, sexual orientations and inclinations are often shunned, abandoned and treated as the “other”. Ostracized and ridiculed by the society, they face discrimination and injustice in every sphere of their life. Even though our Indian Constitution makes mighty promises to ensure equality and prohibiting discrimination to all sorts, they have been struggling for their basic rights over a long period of time. The purpose of this paper is throw light on their historical backgrounds and retrogression, followed by legislative and judicial actions. The supreme Court have been taking bold and proactive steps in favour of Transgender people as in NALSA and Navtej Singh Johar case. But, with the Transgender persons(Protection of Rights) Ac 2019 , legislature not only disappointed but succumbed them. The main objective has been to throw light on the status of transgenders in India and also tends to analyse their position across the globe towards the end of the paper. Despite some positive developments, this murky world has been unable to ensure a dignified existence to them and major problems still plague this section of the society.*

## INTRODUCTION

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Human gender is conventionally classified as male and female based on the biological design of their genitalia. However, there is an existence of a community which does not fit in this custom and defy the biological binary. The people in this community are referred to as 'Transgender' people. Transgender people come from all walks of life. They belong to a diverse community, representing all racial and ethnic backgrounds, as well as faith backgrounds. The word “transgender” – or trans – is an umbrella term for people whose gender identity is different from the sex assigned to us at birth. Although the word

“transgender” and our modern definition of it only came into use in the late 20th century, people who would fit under this definition have existed in every culture throughout recorded history. The transgender community is incredibly diverse. Some transgender people identify as male or female, and some identify as genderqueer, nonbinary, agender, or somewhere else on or outside of the spectrum of what we understand gender to be. Trans is a form of gender identity, not a sexual orientation and should not be conflated with it. Most trans people identify as lesbian, gay, bisexual or heterosexual and are not a new form of sexual orientation.

Excluded from the society, they face extreme discrimination and abuse. Existing evidence suggests that Transgender people experience, and are badly affected by, transphobia, in a wide range of forms. This includes bullying and discriminatory treatment in schools, harassment and physical/sexual assault and rejection from families, work colleagues and friends.

*Has their voice been heard? Why intersex people feel excluded from the society? Whether transgender who are male or female have a right to be identified as third gender. Whether a person has a right to get himself to be recognised as a female as per choice after having undergone surgery? The laws which were passed to ensure justice to transgender people, have ever been implemented? Have we tried to find a way to achieve a legal & social solution?*

This raises more questions than it answers. Recognition of transgender is not about gender identity, not about sexual identity it is about Human identity.

In Indian subcontinent, they are referred to as "Hijras" which includes eunuchs, inter-sex people and Transgender people in its ambit. Legally recognizing as '*third gender*' in NALSA<sup>1</sup> judgement and '*decriminalising homosexuality*' in *Navtej Singh Johar case*<sup>2</sup> proved to be significant steps towards equality and justice from which they were deprived for long. But, the struggle isn't over yet. The Transgender persons (Protection of Rights) Act, 2019 which was sought to improve the condition of the transgender people and the discrimination against them does not fulfil what it

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<sup>1</sup> National Legal Services Authority v. Union of India & Ors, (2014) 5 SCC 438.

<sup>2</sup> AIR 2016 SC 76.



claimed. This paper attempts to deal with every step taken by the legislation towards 'Transgender' people and the loopholes.

## **HISTORICAL BACKGROUND**

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The Transgender persons who are often denigrated today were once venerated and appreciated to a great extent, Indian mythology itself is a treasure of references of their existence. There was historical evidence of recognition of “third sex” or persons not confirm to male or female gender in near the beginning writings of ancient India. The concept of “napumsaka” had been an integral part of the Hindu mythology, folklore, epic and early Vedic and Puranic literatures. The idea of "third- gender" was a well established thought back then.

Ramayana and Mahabharata provided a great source of references to Transgender persons. Lord Rama, in the epic Ramayana, was leaving for the forest upon being banished from the kingdom for 14 years, turns around to his followers and asks all the ‘men and women’ to return to the city. Among his followers, the hijras alone do not feel bound by this direction and decide to stay with him. Impressed with their devotion, Rama sanctions them the power to confer blessings on people on auspicious occasions like childbirth and marriage, and also at inaugural functions which, it is believed set the stage for the custom of badhai in which hijras sing, dance and confer blessings. Shikhandi from Mahabharata is probably the most powerful transgender figure found in the Hindu mythology.<sup>3</sup> Aravan or Iravan, son of Arjuna is another minor, yet crucial transgender character who is believed to have laid down the lineage from which the transgender persons are born. The Hijras of Tamil Nadu considered Aravan their progenitor and called themselves Aravanis. In fact, the Jain text even mentions the concept of “psychological sex”, which emphasized the psychological make-up of an individual, distinct from their sexual characteristics. Even during the Mughal period, hijras played a significant role in royal courts of the Islamic world. Hijras were considered clever, trustworthy and fiercely loyal and had free access to all spaces and sections of population, thereby playing a crucial role in the politics of empire building in the Mughal era. The hijras also occupied high positions especially in guarding the holy places like Mecca and Madina and were able to influence the state decisions.<sup>4</sup> Later, these benefits were removed by legislation during the British period.

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<sup>3</sup> National Legal Services Authority v. Union of India & Ors, (2014) 5 SCC 438.

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

## RETROGRESSION

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Their downfall started in the 18th century during the Colonial rule finding them obscene and offensive, passed a law, Criminal Tribes Act 1871, which sought to criminalize the entire transgender community.<sup>5</sup> 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 warrant and sentenced to imprisonment up to two years or fine or both. The law was repealed in 1947, but their position remained the same.<sup>6</sup>

They faced extreme discrimination in workplaces, jobs, public places and services such as education and healthcare. Being a part of a marginalized community, they have to fight for minimal Human rights. They are deprived of opening a bank account. Doctors refuse to treat them, landlords do not rent them a house to live in. Ostracized from the society due to their gender identity, they are left with no option but to opt begging and prostitution to make a living. Even they are disowned by their own parents, once identified they are forced to leave their own house as they are socially unacceptable. They are prone to physical and verbal abuse and even rape. To improve the situation, certain rights are given to them but for the implementation of the same, there are many hurdles to cross.

## LEGALITY OF MARRIAGE

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The Corbett v. Corbett<sup>7</sup> was the first case to discuss about marriage involving sex change. In this case, Ormrod J rejected the idea that a surgical procedure could change a person's sex with respect to marriage. Marriage was a heterosexual union of man and woman, and no artificially created body could fulfil the requirements. It was further held notwithstanding the sex change, the respondent is still a male and a marriage between two males is void. The similar decision was held in R. v. Tan<sup>8</sup> where it was considered that a male remains a male in the eyes of law even after the operation of change of sex.

### ***TRANSGENDER PERSONS FUNDAMENTAL RIGHT TO MARRY: A STEP***

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<sup>5</sup> Id at 18.

<sup>6</sup> *Supra* Note 1.

<sup>7</sup> Corbett v. Corbett, (1970) All ER 33.

<sup>8</sup> R v. Tan & Greaves, (1983) 2 All ER 12.

## ***TOWARDS CHANGE IN INDIA***

The fundamental right of Transgender persons to marry individuals of their choice was affirmed by the Madras High Court in *Arunkumar and Another. v The Inspector General of Registration and Ors.* The High Court upheld a Hindu marriage between Arunkumar and Sreeja (a transwoman) which the Registrar of Marriages previously refused to register. At the outset, the Court clearly stated that a marriage solemnized between a Hindu male and a Hindu transwoman would be a valid marriage in terms of Section 5 of the HMA. The Court relied on the decisions of the Supreme Court in *NALSA v. Union of India*<sup>9</sup>, *Justice K. Puttaswamy v Union of India*<sup>10</sup> and *Navtej Singh Johar v Union of India*<sup>11</sup> to reiterate that transgender persons have the right to self-identify their gender. In the case of Justice K.S. Puttaswamy v. Union of India, the Court made the following observations:

*"Indeed, the Court has noted it would be contradictory to recognize a right of privacy with respect to other matters of family life and not with respect to the decision to enter the relationship that is the foundation of the family in our society."*

The court further stated that the discrimination on the basis of sexual orientation or gender identity would impair the equality before law and thus violates Art. 14 of the Indian Constitution held that the term 'bride' in Section 5 of the HMA cannot have a 'static' or 'immutable' meaning and that statutes must be interpreted in light of the legal system as it exists today. The Court relied on Article 16 of the Universal Declaration of Human Rights on the right to marry and on the Supreme Court's decision in *Shafin Jahan v Asokan K.M. and Ors.* where the right to marry a person of one's choice was held to be integral to Article 21 of the Constitution.<sup>11</sup> With respect to the stigma and public awareness on this issue, the Court made the following remarkable observation:

*"Any intersex child is entitled to and must stay within the folds of its family. The running away from the family to the margins and beyond is a fatal journey that must be arrested. Time has come when they are brought back from the margins into the mainstream. This is because even though the transgender community is having its own social institutions, the stories we hear are horrendous. The parents must be encouraged to feel that the birth of an intersex*

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<sup>9</sup> National Legal Services Authority v. Union of India & Ors, (2014) 5 SCC 438.

<sup>10</sup> (2017) 10 SCC 1 <sup>11</sup>

AIR 2016 SC 76.

<sup>11</sup> Breaking New Ground: Transgender Persons' Fundamental Right to Marry, available at:

<https://clpr.org.in/blog/breaking-new-ground-transgender-persons-fundamental-right-to-marry/> (last visited 2<sup>nd</sup> of June, 2020)

*child is not a matter of embarrassment or shame. It lies in the hands of the Government to launch a sustained awareness campaign in this regard."*<sup>12</sup>

For the foregoing reasons, the judgment given by the Madurai bench of the Madras High Court is being hailed as a path-breaking judgment. This was the first judgment in India where the right to marry under Article 21 of the constitution has been affirmed for transgender persons and holding that 'bride' under the Hindu Marriage Act would cover transgender persons who identify as women.

### ● **GAPS IN THE JUDGEMENT**

Although the judgment is a major step forward both legally and socially for transgender persons, it is important to observe that it only upholds the right to marry for those persons who self-identify within the gender binary, and who are accordingly deemed to be in heterosexual relationships. The judgment does not, by any means, legalise same-sex marriage and LGBTQIA+ persons in same sex relationships have still not been accorded a fundamental right to marry under Article 21 of the Constitution of India.

## **LEGALLY RECOGNIZED AS "THIRD GENDER"**

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After years of struggle and discrimination, transgender persons finally gained recognition as "third gender" by law. On April 15th, 2014, in a landmark judgment of *National Legal Services Authority v. Union of India & Ors.*<sup>13</sup>, the Supreme Court recognized the third gender category in the eyes of law and granted equal rights and protection to transgender persons relying on Art. 14, 15 and 16 of the Indian Constitution. Since Art. 14 deals with 'equality before law' and the term 'person' does not restrict itself to binary meaning. Transgender persons who are neither male nor female fall within the expression "person" and so are entitled to legal protection, including equal civil and citizenship rights.<sup>14</sup> Non-recognition of the identity of transgender persons denies them equal protection of the law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, as well as to extreme discrimination in all spheres of society. The Court therefore held that article 14 outlaws discrimination on the basis of sexual orientation or gender identity. Article 15 signifies that states shall not discriminate against any citizen on the

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<sup>12</sup> Prashant Singh, "BRIEFING PAPER: REGULATION OF SEX SELECTIVE SURGERIES ON INTERSEX INFANTS/CHILDREN" available at <http://srishtimadurai.blogspot.com/2019/07/briefing-paper-regulation-of-sex.html?m=1> (last visited 2<sup>nd</sup> of June, 2020)

<sup>13</sup> (2014) 5 SCC 438.

<sup>14</sup> Akanksha Mishra, "Third Gender Rights: The Battle for Equality", 5 *Christ University Law Journal* (2016).

ground of sex with regard to access to shops public restaurants , hotels & places of public entertainment. Article 16 states that there shall be equality of opportunities for all the citizens in matters relating to employment to any office. Article 15 and 16 also require the State to take affirmative action to assist the more socially and educationally marginalised groups in society. The Court found that transgender persons had systematically been denied their rights and had been discriminated against and that the State has an obligation to take affirmative action to assist them to achieve equality.<sup>15</sup> Gender identity is at the core of one's personal identity. Therefore it will have to be protected under Art. 19 of the Constitution. The Supreme Court stressed on the importance of right to dignity by recognizing ones gender identity within the ambit of Article 21 of the Indian Constitution.

Furthermore, Supreme Court directed Centre and State Government to :

- Grant legal recognition of their gender identity such as male, female or as third gender.
- Take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.
- Operate separate HIV Sero-surveillance Centres since Hijras/ Transgenders face several sexual health issues.
- Seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.
- Take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.
- Take steps for framing various social welfare schemes for their betterment.
- Take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.

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<sup>15</sup> Lavina Bhargava, "Supreme Court Case Analysis: NALSA v. Union of India and Ors. (Transgenders Rights Case)" available at:

- Take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

The Universal Declaration of Human Rights recognizes all human beings as free and equal in dignity and rights. The Court aimed to broaden the scope of fundamental rights of the Indian Constitution by taking into consideration international covenants and principles, namely UDHR 1948, International Covenant on Civil and Political Rights 1966 (ICCPR) and Yogyakarta Principles. The Constitution has a living character with its interpretation being dynamic. It inherits liberal and substantive democracy which believes in the rule of law.<sup>16</sup> The Court ordered the recognition of a 'third gender' beyond the gender binary for the purpose of safeguarding their rights enshrined in the Constitution. The right of self-determining their gender was upheld, even without mandatory medical transition. The legal recognition of the third gender is essential not only for upholding rule of law but also to advance justice to this social class who had been denied basic human rights for decades.

### **DECRIMINALIZATION OF HOMOSEXUALITY: A RAY OF HOPE**

On September 6th 2018, the Supreme Court lifted a colonial-era ban on gay sex in a landmark judgement has brought a ray of hope for LGBT community who have been fighting a long battle for their rights. A five judge bench consisting of then Chief Justice of India Dipak Misra, Justices R F Nariman, D Y Chandrachud, A M Khanwilkar and Indu Malhotra in *Naveen Singh Johar v. Union of India*<sup>17</sup> unanimously ruled that Section 377 was unconstitutional "in so far as it criminalises consensual sexual conduct between adults of the same sex". The court further overruled its own 2013 decision and struck down section 377. Malhotra, the only woman on the bench, ushered in the personal rights of the LGBTQ+ community, saying, "*LGBT people have the right to live unshackled from the shadow*" and that "*history owes an apology to the community*" for the years of stigma imposed on them.<sup>18</sup>

The movement to repeal Section 377 was initiated by AIDS Bhedbhav Virodhi Andolan in 1991. As the case prolonged over the years, it was revived in the next decade, led by the Naz Foundation (India) Trust, which filed a public interest litigation in the Delhi High Court in 2001, seeking legalisation of homosexual intercourse between consenting adults.<sup>20</sup> The various organs of the state

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<sup>16</sup> Supra Note 13 at 14.

<sup>17</sup> AIR 2016 SC 76.

<sup>18</sup> Priyanka Mittal, Neetu Chandra Sharma, "This is the beginning of the end of prejudice: Supreme Court" available at: [www.livemint.com](http://www.livemint.com) (Last visited 3rd of June ,2020)

also remained oblivious of this issue till the Naz Foundation v/s Govt. of NCT, Delhi case wherein homosexuality was legalised by the apex court. This was overruled by the apex court's judgement in the *Suresh Kumar Kaushal v/s Naz Foundation*<sup>19</sup> case. One of the major grounds taken in the aforementioned case was that since the LGBT community is in minority in the country, their interests can't be given priority over societal values and morality. The struggle for the restoration of their rights became even more difficult with this decision. But, this ground was beautifully struck as invalid in the *Navtej Johar* case wherein the court said that the constitution is for every individual in the country, regardless of whether it is a part of a minority group or that of majority. India doesn't support any majority group rule.<sup>20</sup> Every section of society is entitled to equal treatment. The preamble of the constitution also points towards this. The aspect of right to privacy as upheld in the *K.S. Puttaswamy* case is also an important point of consideration. The Supreme Court in the Puttaswamy judgement held that denying the LGBT community its right to privacy on the ground that they form a minority would be violative of their fundamental rights. Thus, keeping in view the Constitutional rights of a citizen, they must be extended to the LGBT community as well.

The judgement in Navtej Johar case is undoubtedly a historical one. As a result of this judgement, the homosexuals can now live in a more dignified environment and can freely express themselves. The judgment also underlined the progressive realisation of people's rights. Since the repeal of Section 377, there has been continued progress for LGBTIA+ rights in India, but there is a long way to go before full equality. To name a few successes, the Madras High Court of India banned sex reassignment surgery for intersex children, and a clinic for transgender people opened in Tamil Nadu. Indeed, several countries have followed suit. Within a year after India repealed its ban on same-sex relations, Angola, Botswana, and Bhutan have done the same. Transgender persons gained confidence with the repeal of section 377 and coming forward by accepting their identity.

## **TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019**

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The Transgender Persons (Protection of Rights) Act, 2019 seeks to empower transgender persons in social, economic and educational fields and is also intended to benefit the Transgender Community.

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<sup>19</sup> (2014) 1 SCC 1.

<sup>20</sup> Ritwik Guha Mustafi, "Case Comment on Navtej Singh Johar v. Union of India" available at <http://www.blog.ipleaders.in> (last visited 3rd of June, 2020).

## ***HIGHLIGHTS OF THE ACT*** <sup>21</sup>

- The Act aims to **stop discrimination against a transgender person in various sectors such as education, employment, and healthcare**. It also directs the central and state governments to provide welfare schemes for them.
- It states that **a person will be recognized as transgender on the basis of a certificate of identity issued by the District Magistrate**. This certificate will be proof of identity as transgender and confer rights under this Bill.
- Going by the Act, **a person would have the right to choose to be identified as a man, woman or transgender, irrespective of sex reassignment surgery and hormonal therapy**.
- It also requires transgender persons to go through a district magistrate and “**district screening committee**” to get certified as a transperson.
- **Composition:** The committee would comprise a medical officer, a psychologist or psychiatrist, a district welfare officer, a government official, and a transgender person.

The 2019 act describes a transgender person as someone whose gender does not match with the gender assigned to them at birth. Under the provisions of the 2019 act, a transgender person can apply to the district magistrate for a transgender person certificate which will give them the right to change the name on their birth certificate and have all documents updated accordingly. The 2019 act also protects transgender children and provides for states and institutions to come up with adequate policies for the welfare of transgender persons. The act provides for punishment for crimes against transgender persons, which stands as an imprisonment for a term not less than six months but which may extend to two years and a fine. It also provides for the constitution of a National Council for Transgender Persons.

## ***CRITICISM AGAINST THE ACT***

The Transgender Persons (protection of rights) Bill was opposed from the beginning by the Transgender Community as it was discriminatory in nature. The Transgender Rights Act 2019 is an only slightly improved version of its antecedents. The act was supposed to be the result of the

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<sup>21</sup> Transgender Persons (Protection of Rights) Act, 2019, available at: [www.insights.com](http://www.insights.com) (last visited 3rd of June, 2020).



Supreme Court in the 2014 NALSA case, mandating the central and state government to ensure legal recognition of all Transgender persons and effective steps for their welfare, but it has left more questions unanswered than it claims to address. Though , it has a comparatively inclusive and more eclectic definition of the term ‘transgender’, and no more includes the problematic provision requiring criminalisation of begging. However, there are various gaps in the bill that present a misplaced understanding of ‘gender’ and limited equalising potential:

**Ambiguous language:** Its language could be interpreted to mean transgender people are required to have certain surgeries before legally changing their gender; “whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy”- Clause 2(k)<sup>22</sup>

**Intersex persons put under the umbrella of Transgender:** Including intersex people without acknowledging that intersex persons are not always transgender or transexual (both of which also are different things) could mean that the bill is conflating sex and gender, thus diminishing its capacity to understand the needs of the transgender persons; “transgender person means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman, person with intersex variations”- Clause 2(k)

**Unclear legal gender recognition process:** It is a two- step process consisting of self-declaration of identity followed by getting it confirmed by a medical and a legal authority, thus giving power of denial to the said gender identity into another person’s hands, thus violating the Fundamental Right to Privacy, the Supreme Court ruling of 2014, and international standards of legal gender recognition. Clause 4 to clause 7 talks about this process. This a major point brought up in the outcry by the transgender community of the country against the Act.

**Ambiguously giving power to the Court to separate children from parents:** Removing children from their parents is not allowed if the reason is either of them being transgender, but the same can be meted out if the force removing them is a court; “No child shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such child.”- Clause 12(1)

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<sup>22</sup> Prashasti Shukla, "India's Transgender Person (Protection of Rights) Act, 2019 - A Critique" available at <http://www.eurasiareview.com> (last visited 3rd of June,2020).

**No mention of structural change needed:** The establishments are expected to comply with the act but not expected to create better and inclusive spaces, and for addressing problems of transgenders.

**Certificate issued by the District magistrate in order to be recognized as Transgender person:** The process of recognition of identity of transpersons is affected by the same issues with the earlier Bill. Though the District Screening Committee has been dismantled, recognition of a transgender person's identity is then to be decided by the District Magistrate, who will then issue the certificate based on a certain set of documents that would be prescribed. The elemental question that arises is then as to what are the documents that would allow transgender persons to be recognised with regard to their identity as a transgender person. If a person is to then change their preferred gender to male or female, the Transgender Persons Bill harks back to the archaic understanding, enforcing the need for a Sex Reassignment Surgery (SRS) in order to change their gender identity to their preferred gender of either male or female. Moreover the validity of the SRS would be decided by the District Magistrate.<sup>23</sup>

**Shying away from trying to eliminate systemic biases:** The government and public servants are expected to fulfil their duties towards the act but are not liable in case they fail or refuse to do so or misuse their powers, meted out to them by the state, to harass or discriminate against transgender persons; "No suit, prosecution or other legal proceeding shall lie against the appropriate Government or any local authority or any officer of the Government in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and any rules made thereunder."- Clause 21

**Lesser punishment for sexual abuse of transgender persons:** The maximum punishment given to the perpetrators of sexual crime against transgender persons is two years, as compared to that against cis-gendered persons which is seven years; "harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic

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<sup>23</sup> Rachana Mudraboyina, Sammera Jagirdar and Philip C. Philip, "A Critique Of Transgender Persons (Protection Of Rights) Bill, 2019" available at <http://www.feminismindia.com.cdn.ampproject.org> (Last visited on 3rd of June, 2020).

abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.”- Clause 18(d)<sup>24</sup>

**Absence of any mention of reservation:** The previously promised 2% reservation, as in the older versions of the bill, is completely absent from this draft.

The act is highly criticized by the Transgender Community and they're still opposing it. Till the law is legally struck down, they have to keep struggling for their very basic Rights. The act does more harm to them than good. The act places them lower than the rest of the society and thus legitimizing the violence they have been through.

## POSITION IN OTHER COUNTRIES

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In many parts of the world, LGBTQ+ people are shunned socially and marginalized economically. There is a strong correlation between abuse, discrimination and socio-economic status. When LGBTQ+ kids face bullying and discrimination in school, it can affect their performance and life chances, as evident in school climate studies in Japan, the Philippines, the U.S. and Vietnam.

### ***COUNTRIES WHICH STILL VALIDATE DISCRIMINATORY LAWS :***

Italy, Switzerland, Poland, and Greece are among the countries that do not recognize marriage equality. Same-sex activity can be a capital offense in Afghanistan, Brunei, Iran, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, and Yemen. In Japan, trans people must undergo sterilization before they can amend official documents. Hungary is currently moving to ban trans people from legally changing their gender entirely.<sup>25</sup>

- **RUSSIA :**

In Russia, a federal law makes it illegal to distribute "propaganda of nontraditional sexual relations" to children. Critics say it's so broad that it can be used to ban Pride parades and arrest people for even identifying as a member of the LGBTQ community on social media.

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<sup>24</sup> *Supra* Note 22.

<sup>25</sup> Shayanne Gall and Ashley collman, "10 maps showing how different LGBTQ rights are around the world" available at <http://www.businessinsider.com.cdn.ampproject.org> (last visited 3rd of June, 2020).

- **UNITED STATES :**

In the United States, one in five transgender people has faced discrimination when seeking a home, and more than one in 10 has been evicted from their home because of their gender expression. A study conducted by the social-science company CivicScience found the unemployment rate for trans workers was twice that of cisgender people. The data may be inconclusive, however, because Civic Science only tested a small sample of the population.

The United States government has the resources to collect this sort of data on trans communities but decided to exclude gender identity from the 2020 US Census. This exclusion leads to a discriminatory trickle-down effect. Without proper data, it's difficult to assess the scope of issues faced by trans communities and challenging to lobby for federal funding to support them. By disregarding gender identity, governments like the US give a tacit thumbs-up to ongoing injustices.

***COUNTRIES STEPPING FORWARD TO ENSURE JUSTICE TO TRANSGENDER PERSONS :***

Scandinavian countries — along with Argentina, Belgium, Colombia, Ireland, and Uruguay — lead the way when it comes to legal identification, too. The Danish Parliament began allowing self-determined gender recognition among adults without medical intervention in 2014. In 2016, Norway started allowing autonomous legal gender recognition for people between 16 and 18, and children between six and 16 can legally change their gender with parental guidance. The following year, Sweden announced it would compensate around 800 transgender people who were forced to undergo sex-reassignment surgery to change their gender identity legally.

It should be no surprise that all three Scandi nations were named some of the happiest countries in the world by the World Happiness Report this year. By embracing equality and attempting to correct past injustices, Scandinavia is the gold standard when it comes to fairness and justice. <sup>26</sup>

- **TAIWAN :**

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<sup>26</sup> *Supra* note 28.

In 2019, Taiwan became the first country in Asia to allow for same-sex marriage in adherence to a constitutional court ruling, despite a referendum that came out opposed. And Northern Ireland finally joined the rest of the United Kingdom in allowing same-sex marriage.

- **MALTA :**

In Malta, the Gender Identity, Gender Expression, and Sex Characteristics Act, passed in 2015, protects a person's right to identify as their "internal and individual experience of gender," without government interference. There are no judicial or surgical requirements that deny trans individuals the ability to obtain legal identification that matches their gender expression.<sup>27</sup>

- **CANADA :**

In 2021, Canada will give voice to a once-invisible population by adding a third gender option to its census. By taking a comprehensive snapshot of gender identity, Canada will be better suited to serve the needs of its trans and nonbinary citizens. This adjustment is an added bonus for queer Canadians — the government already set aside \$6.7 million to create the Centre for Gender, Diversity and Inclusion Statistics to identify issues faced by disenfranchised trans communities and adequately address them.<sup>28</sup>

This radical visibility is the kind of inclusion necessary in all countries if governments want to understand how to help their trans and nonbinary populations rise above the pains caused by centuries of systemic discrimination.

## **CONCLUSION**

The road to the legal recognition of the transgenders as a third gender has been, and continues to be a long and difficult one. The LGBTQ community still faces considerable stigma based on over a century of being characterized as mentally ill, socially deviant and sexually predatory. The Constitution of India provides every essential right to the people of its country and now it is the duty of the judiciary and legislature to interpret the same in a rightful manner. Though some

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<sup>27</sup> Azadesh Ansari, "Transgender rights: These countries are ahead of the US" available at: <https://edition.cnn.com/2017/02/23/health/transgender-laws-around-the-world/index.html> (last visited 3rd of June, 2020).

<sup>28</sup> *Supra* note 28.

significant actions have been taken by them in the past few years but their implementation is still in question.

To remove the stigma attached to them and to be treated as a normal individual is still a battle to win. It is essential for all of us to stop treating them differently because it is inhuman. Awareness and information is needed among parents/ guardians to support their gender -nonconforming or transgender children, setting aside their discomfort and deeply held normative attitudes. Services and infrastructure for rehabilitation of transgender persons are rapidly increasing and institutions in govt., NGO and even corporate sectors are coming forward to work for the transgender persons. But due to want of proper information on availability of services for them, a major section of transgender persons are unable to take the benefit of those available services. Role of administration is of foremost importance, it is for them to ensure the implementation of the Government schemes and the Acts which were meant to benefit them. In this country where there is a galaxy of reasons to grand reservations, the community which is synonymous to social backwardness is seldom thought about. It is hence necessary to not only pen down laws, but also bring them to action for the upbringing of the transgender community to the basic rostrum of human dignity.