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**I'm Only Human: A Glance into the Life of Transgenders**

**Shruti Navayath**

In 2014, through the NALSA judgment, the Supreme Court of India recognized transgender as a third gender. It was truly a landmark ruling. Now, it's been six years since the judgment. Have we really moved forward?

Transgenders exist. And they exist globally. They've been around since the beginning of time. India is a country with deep roots in religion and the transgender community as a whole is not only one that has a strong historical presence, but they have also played a very important role in our religious texts and Hindu mythology. When Lord Rama had been banished and was leaving, he asked his followers, 'men and women' to return to the city, not finding themselves bound to his command, his transgender followers decided to go on with him and on being impressed by their loyalty he gave them the power to bless people on auspicious occasions.<sup>1</sup>

In the Mahabharata, the son of Arjuna and Nagkanya, Aravan consented to be sacrificed to Goddess Kali in order to help the Pandavas win the Kurukshetra war on the condition that he could spend his last night as a married man. No woman wanted to marry a dying man and thus Lord Krishna took the form of a beautiful woman named Mohini and married him. Transgenders from Tamil Nadu call themselves Aravanis in his honor.<sup>2</sup>

In the Mughal period, Transgenders assumed the position of royal courts and rose to high positions, they were considered loyal, trustworthy, and clever. In the British period, they were given benefits such as land, food provisions, and a small sum of money. These rights were soon snatched away in the colonial era. They were criminalized under the Criminal Tribes Act, 1871. Unfortunately, even after the Act was repealed in 1872, its after-effects lived on. Eunuchs have been marginalized and separated from common society. They are often suspected of unnatural crimes such as kidnapping and emasculation of children.<sup>3</sup>

The 2014 ruling identified the right of every person to choose their gender thereby also granting them the right to identify as neither male nor female. The provision of quotas from transgenders in areas of jobs and education was also ordered. Justice K S Radhakrishnan, very rightly stated that the recognition of transgenders as a third gender is not a social or medical issue but a human rights issue. As citizens of India, transgenders must be provided with equal opportunity to grow. It was also asked of the government to treat transgenders as the other minorities categorized as

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<sup>1</sup> "A BRIEF HISTORY OF TRANSGENDERS IN INDIA". 2020. *IILS Blog*. <https://www.iilsindia.com/blogs/brief-history-transgenders-india/>.

<sup>2</sup> Michelraj, M. 2015. *Historical Evolution Of Transgender Community In India*. Ebook. <https://www.trp.org.in/wp-content/uploads/2015/10/ARSS-Vol.4-No.1-Jan-June-2015-pp.17-19.pdf>.

<sup>3</sup> Michelraj, M. 2015. *Historical Evolution Of Transgender Community In India*. Ebook. <https://www.trp.org.in/wp-content/uploads/2015/10/ARSS-Vol.4-No.1-Jan-June-2015-pp.17-19.pdf>.

“socially and economically backward.” Not just members of the legal fraternity, but people all over the country celebrated the judgment as a step forward.<sup>4</sup>

It has been estimated that India has around two million people in the transgender community. Studies show that they are often struck by poverty and ostracised to the fringes of society, forced to make a living by singing, dancing, and prostitution or begging. In most public situations they are compelled to define themselves as either male or female.<sup>5</sup> When it really comes down to it, there is a mixture of negativity and positivity. We see them emerging from sad backgrounds often characterized by abuse, dangerous non-hospitalized castrations, and being cast out. Many end up in situations where they’re forced to sell their bodies for a minuscule amount, most of which is taken away by their brothel keeper. Many ‘hijras’ get looked at as freaks and are harassed and abused on a daily basis. People stare at them with gaping mouths as if they are aliens and have been created differently. In most cases, the only place they can really feel at home is within their own community. Their community also has a hierarchical system where the younger eunuchs, called “chelas” give the ones above them (“gurus”) the money that they earn and they in turn receive protection from the police and abusive customers.<sup>6</sup> But it is also positive because the situation is slowly improving.

Since the ruling, the government has put into place certain safeguards for transgenders. Previously, because the third gender wasn’t legally recognized, the community suffered in terms of protection and widespread discrimination. The government enacted the Transgender Persons (Protection of Rights) Act, 2019. The Act is designed to help all transgenders regardless of whether or not they have undergone sex reassignment surgery. The government has also guaranteed certain rights to them contained in the Act from Chapter II to Chapter VIII. These rights include-

1. Prohibition of discrimination in the form of denial or discontinuation of access to or enjoyment of, or unfair treatment in educational institutions, healthcare services, right of movement, etc.
2. Recognition of identity and the right to obtain a certificate of identity
3. Welfare measures such as effective participation in society, social security, etc.
4. Rescue and rehabilitation measures

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<sup>4</sup> "India Court Recognises Transgender People As Third Gender". 2020. *BBC News*.  
<https://www.bbc.com/news/world-asia-india-27031180>.

<sup>5</sup> "India Court Recognises Transgender People As Third Gender". 2020. *BBC News*.  
<https://www.bbc.com/news/world-asia-india-27031180>.

<sup>6</sup> Gettleman, Jeffrey. 2018. "The Peculiar Position Of India'S Third Gender". *Nytimes.Com*.  
<https://www.nytimes.com/2018/02/17/style/india-third-gender-hijras-transgender.html>.



5. Obligations on establishments to provide facilities as regulated by the Act
6. Establishment of National Council of Transgender Persons
7. Penalties for offences against transgender persons.<sup>7</sup>

Although, the Act has failed the transgenders on several accounts because the definition of terms like “family” needs to be updated as several members of the community do not even live with their biological family and the support they get is through their chosen family. Intersex persons have been considered the same as transgenders; the chapter discussing penalties for offences, lacks the required authorities and measures and it divides the community on the basis of class as separation from their family would only be allowed through a court order, which is out of reach for many trans people and thus only the upper class can make use of this provision.<sup>8</sup>

The Act isn't perfect and it does have negatives, many negatives in fact. But we must also look at the wins. The government has given them legal recognition, which is definitely a step in the right direction. The Act does need amendments and it needs to be worked on majorly by a committee that understands the wants and needs of the community. Also, states like Kerala now offer free sex surgery that will hopefully prevent them from consenting to surgeries without proper intensive medical care. The provision of better health services reservation quota and criminalization has a lot of room for improvement. But, what must be noted is that we are starting somewhere and even if we started late, we do have an opportunity to finish strong as a nation. Through amendments hopefully, we can achieve success.

Yes, there are problems we must fix, and fix them we will. For example, the requirement of a certificate for identification that needs to be confirmed by a District Magistrate. A certificate is important to prevent misuse of welfare measures but at the same time, the Act has failed to mention how exactly the “correctness” of gender will be decided. Another way this affects the community is that the documents are not only difficult to obtain but there are also issues regarding the name on the documents which might have been changed through the course of time. Such rules if changed, would make a great difference and would make the Act one that is welcomed by the very community it was made for.

What we must understand is that the problem isn't just legal. Actually, it is more social than legal. We as humans must do everything, we can to help the situation and do away with discrimination,

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<sup>7</sup> Tewari, Alok, Shivika Upadhyay, and Vishal Singh. 2020. "Transgender Rights, The 'Third Gender' And Transforming The Workplace In India | Lexology". *Lexology.Com*.  
<https://www.lexology.com/library/detail.aspx?g=b49d9488-c484-4d00-882c-2c386a041a07>.

<sup>8</sup> Mudraboyina, Rachana, Sammera Jagirdar, and Philip C. Philip. 2019. "A Critique Of Transgender Persons (Protection Of Rights) Bill, 2019". *Feminism In India*. <https://feminisminindia.com/2019/08/05/critique-transgender-persons-protection-of-rights-bill-2019/>.

humiliation, and abuse in all circumstances be it political, legal, social, or job-related. One of the most beneficial deeds that can be done as a common person is to open up conversations in spaces and educate people on the matter. We, as the majority, must urge the government to create more welfare schemes directed towards the betterment of the community. And we, as people must become more accepting of transgenders in all spheres of life. Such changes even though small, have the ability to make a huge difference.