

Social Exclusion of Transgender in Kashmir

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Abstract: *There was a provision for only two accepted genders everywhere in the world – the males and the females. But in the recent past the category of third gender is also identified and classified as one of the accepted in some parts of the world. Till 2011, Indian Census never gave recognition to the Transgender Community, but 2011 became the first census accounting of third gender persons in India. ‘Hijra’ is a term used in South Asia – particularly in India and Pakistan – to refer to transgender individuals who are born male, but being neither completely male nor female. The term commonly advocated for them is khwaja sira, khusras, zenanas (cross-dresser) or enunch. The total population of transgender’s is estimated around 4.88 lakh, which included 4137 transgender’s in Jammu and Kashmir as per the 2011 census. In April 2014, the Supreme Court in India gave them recognition in law. But in the State of Jammu and Kashmir, they still are living as ostracized and marginalized community. They face precarious and traumatized gender based violence which continues as human rights violation against their safety, stability, prestige, self-respect, freedom, health and development. In this realm of discussion, this paper intends to put forward the problems and hindrances faced by the transgender community in Jammu and Kashmir. It will further review the rights and highlight the discriminatory attitude based on gender and sexuality. The study is exploratory in nature and is based on the secondary sources of data. Lastly a set of recommendations will be suggested to address the problems in order to combat human rights violations and promote equality as basic principle of social justice.*

Keywords: *Ostracized Gender, Human Rights Violation, Jammu and Kashmir.*

1. INTRODUCTION

Gender draws attention to the socially constructed facets of differences between women and men. It is the fixation that portrays the personality of any individual in accordance with the society or culture or traditional dogmatic values that segregates as masculine or feminine. Today, the meaning of gender to the majority of nations depends on the physical and genetic attire at birth. Gender is the range of characteristics pertaining to, and differentiating between, masculinity and femininity. Depending on the context, these characteristics may include biological sex (i.e. the state of being male, female or intersex), sex-based social structures

(including gender roles and other social roles), or gender identity. Some cultures have specific gender roles that can be considered distinct from male and female, such as the transgender (*hijra*). There are double standards for sexuality for the male and female. Baby boys and girls are turned into adult men and women by the processes of socialization in child-rearing, education, youth culture, employment practices, and family ideology. Every society and culture infuses positivity and gives approval to only two types of gender (male and female) and their prescribed roles. But what about those who confirm the worldwide acceptance under the terminology used as transgender. The meaning of transgender refers to “individuals whose gender identity or expression (self-identification as woman, man, neither or both) does not conform to the social expectations for their assigned sex (identification by others as male, female or intersex based on physical/genetic sex) at birth”. These are marginalized and are among the most vulnerable. They constitute diverse groups. Women, aged, Dalits, LGBTQIA etc. are some of the most vulnerable that we talk about. They, very often, do not have the means or the power to realize their rights, and to report or struggle against its violation. Therefore, a different institutional mechanism, and greater and more specific support, is required for them to realize their rights. They experience exclusion, as human rights are guaranteed generally to citizens who constitute a majority. Persecution of minorities is one of the most violent human rights violations that nation-states have engaged themselves in. Dalit groups, at the margins of the caste hierarchy in India, emphasize their historical exclusion and oppression in an upper-caste dominated Hindu society. The caste-based oppression and inequality results into their deprivation of ‘equal’ guarantee of human rights. In fact, atrocities on Dalits are amongst the most despicable violations of human rights. The most commonly cited example of this is the systematic and persistent exclusion from various public arenas, attack on their dignity, practice of untouchability and violent attacks on them. Similarly, the transgender (*hijra*) community is denied their individual as well as collective rights over their existence, living and other things on account of various discriminatory policies.

2. REVIEW OF LITERATURE

‘Gendering’ and ‘gendered’ are conceptions which signify outcomes that are socially constructed (*Reskin and Padavic, 1994: 6*). If the sex of a person is biologically determined, the gender of a person is culturally and socially constructed (*Abercrombie, Hill and Turner, 2006: 163*). Ann Oakley’s path finding text, “*Sex, Gender and Society (1972)*” puts down argument for looking at the edifice of gender. She notes down how Western cultures seem most prone to exaggeration of gender differences. As seen in the philosophy of Locke, the minorities were simply citizens who had been outnumbered by a majority. They were no specific interests that they had, and the only guarantee of rights was the protection of natural rights to citizens. In other words, minorities did not exist (*Priyam, Menon and Banerjee, 2009: 65*). The relationship between the two types of

rights, that is, human rights and minority right, is described by Freeman as ‘complex and problematic’, even though it is assumed that minority rights belong to the field of human rights (Freeman, 2002: 114). The range of conceptions of the body present within gender studies can be grouped into three broadly defined categories: the body as nature, the body as socially constructed, and embodiment (Pilcher and Whelehan, 2004: 6).

“It is used to be thought that a woman is a woman because of her ovaries alone. There are many individuals with ovaries who are not women in the strict sense of the word and many with testes who are really feminine in many other respects”. (Bell cited in Oudshoorn, 1994: 37)

Having either a penis or a vagina is usually seen as the fundamental difference. There are bodies that cannot be definitely classified as either ‘male’ or ‘female’ and these intersex people throw light on the social aspects of sexual classifications (Fausto-Sterling, 2002a; 2002b; Hird, 2004; Kessler and McKenna, 1978). Any perceived differences in ways of using minds and bodies are heavily shaped by the way people live. Transgender is often used as an umbrella term to signify individuals who defy rigid, binary gender constructions and who express or present a breaking and blurring culturally prevalent stereotypically gender roles (UNDP, 2010). They do not confirm to conventional notions of male or female gender but combine or move between the two (Khan et, al. 2009).

3. OBJECTIVES OF THE STUDY

- To put forward the problems and hindrances faced by the transgender community in the state of Jammu and Kashmir especially with respect to their health scenario.
- To review the rights and highlight the discriminatory attitude towards their standard of living based on their gender and sexuality.
- To formulate a set of recommendations that will be suggested to address the problems in order to combat human rights violations and promote equality as basic principle of social justice.

4. METHODOLOGY

The present research study is exploratory in nature as such the study relies entirely on the secondary data related to the origin, dimensions, features, and other explorative factors related to Transgender community. This work mainly focused on review and analysis of the different aspects associated with Human Rights Violation. An attempt has been made to highlight the various issues and problems faced by them by reviewing the previous various research studies

conducted on the topic and in related fields as well. Some of the secondary sources of data including books, journals, magazines, were used for conducting literature review.

5. DISCUSSION, RESULTS AND CONCLUSION

During the contemporary era, several crusaders have fought for the rights of transgender and several efforts are exercised at the national level to work for the Transgender community for their transformation to improve their conditions in India. Social reform movements started in various parts of India. Certain social uprisings have led to the adoption of various legislative measures. Several welfare organizations have been working for their upliftment all over the country. Yet, glaring gender discrimination exists in India over the centuries. Establishing third-gender identity is a significant step for the country as well as for the state of Jammu and Kashmir, the effects are evident. Transgender in all communities, suffer from limited freedom to participation in auspicious, religious and social gatherings. They carry a social stigma of unacceptability. Transgender people are called '*laanch*' in Kashmir which in itself is stigmatization and a ground of discrimination. The non-conformity, to their prescribed gender roles makes them vulnerable. The social recognition of transgender is very low in Kashmir and so their visibility. Therefore the exact number of the transgender in Jammu and Kashmir is not known (*Bund, 2013*). In the state, they have always been regarded as a symbol of ridicule or laughing stock. Their existence has been shunned by the mainstream society. They are forced to act and behave as a male against their gender. They cannot stay away from the dilemma of their identity crisis. They live in the condition of acute insecurity, deprivation and violence. There are several factors which cause concern about transgender in Kashmir. First is that there is general social disapproval for them. Secondly, the majority of them are poor. Widespread illiteracy is noticeable among them. Although, literacy is an eye-opener to enlighten the individual which imparts self-confidence with moral boost and also develops communication skills. But, the highest incidence of illiteracy is noticed among them. Further, globalization and technological revolution are bound to marginalize them in the matter of employment and they are bound to be the prime victims of unemployment as they lack education, necessary social network and support for getting a job to begin with and to hold it. Fourthly, in the unequal world of gender this factor also works as a contributor in their social inequality. Finally, there are other social problems like health issues, economic deprivation, old age problems etc associated with them. During their childhood phase, their parents thrash them severely; subject them to various forms of brutality in order to control and regulate their behavior as per their choices. They face extreme inequity in comparison to their 'normal' siblings especially in terms of affection, love, care, respect, education, health facilities, festivities, occasion, and mobility. Different communities and religions impose various restrictions on the life and behavior of transgender (some of them are overt, but most of them covert). Because of such social stigma, they experience loneliness,

insecurity of life, ill-treatment and isolation from their family/siblings/relatives and others, segregation from the society, obturated impediment from acquiring education and employment. They are forced to withdraw completely from the social life of the community and are made to follow a severe discipline which makes their existence a virtual social death. Discrimination against them is a common phenomenon which is deep rooted in the traditional values and belief system of the society. They face abundance of problems all over the valley due to the doctrine of patriarchy and social debasement. Among them, the most vulnerable are those who have been living alone or pushed away from their families. Some of the major problems they face are lack of companionship, violence against them, spiteful and harsh abuse of all forms, hindrances in moving out, control over sexuality, victimization, and psycho-social adjustment with their own family and others within the society. The oppressive traditional society has been tabooing down upon them and their existence. In the valley, they are confined to the secluded areas and are forbidden from appearing in the public. Living in secluded areas especially which are far from the city hub but located in the periphery also make them deprived of the necessities of life like good food, pure water, sanitation and healthcare facilities. They mostly settle down in unconstructed houses or the places under construction on rental basis. Either due to scarcity of water supply or timely water supply, they face problems in washing, cooking, drinking, bathing etc. But hardly does anyone truly understand or care about their problems. The community still has problems accessing benefits, entitlements and medical treatment. Lack of adequate medical care is a common experience for transgender person. When they go to the government hospital, doctors ask them to show their genital areas to see what they have; trans-people are told to leave or are treated like aliens. There are no queues for trans-people; only for men or women ... Doctors will say they only serve women or men.

Too many people undervalue what they are, and overvalue what they are not. They are considered as a virtual non-entity: they bring themselves social death but are biologically alive. The most formidable problem that they face in traditional culture is the set of cruel and inhuman customs and practices that society has imposed on them and that divested them from all their social roles. They are reduced to the position of a living non-entity. Despite advances in standard of living of the population, the condition of 'transgender' remains deplorable in the society. They are the neglected and the voiceless segment of the society. They are even deprived of normal social interaction. They are often encountered by denied social presence as much as possible. The situation is worse with their unique social, cultural and economic milieu, which even ignores and denies the basic human rights of this vulnerable section of the society. The fact is that thus the transgender are also associated with psychological ramifications and thus they suffer from varying psychological stressors which is often being ignored. It has been concluded that such stressors could be harbingers of psychiatric illnesses (for example, depression, anxiety, substance

dependence and incidence of suicides). They are only cared by other transgender. No one else cares about them.

India is a multicultural and multilingual subcontinent with secular acceptance of different religions thus being a secular country. The literary exchanges and cultural movements have taken place perpetually down the ages and have never been confined to a single geographical region or single group. Then why the history of India excludes and stigmatizes the existence of third gender. As per the Indian constitution, we have Fundamental Rights of equality, freedom of expression and speech, also Civil laws of inheritance, and customary laws relating to marriage and inheritance, land ownership, but still there exists a large gap between the legal measures and practices due to the rigid attitude towards them. Across India, they continue to struggle for gender equality and their rights issues but particularly, in Kashmir, they are facing problems and hardships in every manner but also with the laws and customs concerning their inheritance and legal protection within the family, outside the family as well as within the society because of traditional norms, cultural practices and beliefs ingrained within the mindset of the Kashmiri society. In India, being a democratic country, Transgender of Kashmir has never casted a vote or has no right of entry to the social and political rights. They are not the part of any welfare scheme (*Bund, 2013*). A derogatory facial expression appears and is visible on our face just as soon as the term transgender is only spoken aloud or overheard. Why do we get offended by their existence? If they accept us as we are, why can't we? Is our humility only meant for those belonging to us? We sympathize even with animals but we humiliate those who are even brought down to earth by the Almighty himself. Who are we to question and judge their existence? Off and on they face blatant violation of human rights and rigorous inhumane practice by all. Even the children roaming around don't spare them without throwing stones on them or passing a lewd comment. Their need is barely recognized and if any sort of acceptance is given to them but only in negative terms and they are always ridiculed and acknowledged as ill omen.

For transgender, bodies matter in social relations, and with time, there have been shifts and transition in complications of what the body is, especially in relation to nature and to culture for them. Loss of identity also comes with life-threatening discriminations and injustice to them. There are several other exploitative situations which they face in the family or at workplace especially in home and property management in the matter of getting their rightful share, thus in nutshell, in all spheres and walks of life. Extreme poverty and income insecurity also afflicts to them especially to those who are older as they are thrown out of their homes and thus they lose property and other resources for their survival. Laws and customs concerning their inheritance and legal protection are snatched from them. They merely possess no ownership of voter id-card and ration card. As they are ridiculed far and wide so they themselves isolate. Cultural traditions and orthodox religious obligations prohibit them from working on paid wages and for free

movement outside their homes. Further, they face precarious consequences as they are deprived of education and training skills and thus they settle in exploitative and degrading occupations which reduce them to begging or exploitative occupations of sex selling such as sex workers, prostitution which infects their health and they fell prey to the most dreadful disease 'HIV-AIDS'. Moreover, they have slightest or no familiarity about the condom and Sexually Transmitted Diseases (STD's) which makes them more susceptible to catch venereal infection and life-threatening diseases (Bund, 2013). Hence, by all counts, they suffer at the hands of society and are in a very vulnerable situation.

Old age is the most terrifying phase in the life of a Transgender in Kashmir. Disowned by their families and alienated by themselves, they decay fighting alone against the prolonged illness, dreadful diseases, poor and weak health and other problems within the four walls where they are settled down in the later age. Death in most of the cases brings another problem as the dead body of a transgender is not being buried normally. The critical multiple societal and religious beliefs act as a barrier in conducting normal funeral of a transgender person. Death starts another grave-episode of disgrace for the dead bodies. The dead are often refused to bury in the graveyards as transgender don't have the ownership of graveyards, a precarious issue in Kashmir (Bund, 2016).

“We are all assigned a gender at birth. But that assignment doesn't match our inner truth, so there needs to be a place for self-identification. I am not trapped in my body. I am trapped in other people's perceptions of my body. I was not born a boy/girl but I was assigned as a boy/girl at birth. Understanding the difference between the two is crucial to our culture and society in accepting us. The world is so populated with labels and tags today that in the effort of simplifying the concept of identity, many times, we end up meddling with it.”

“I am the one who is living the absolute torment of occupying a body that never coordinated with who I am inside. It is never easy to accept what I am? Am I a man? A woman or what? But I am sure that I am a human being, I see, feel and react. I have emotions. (If God created only men and women then who created us? If we are mistakes then undoubtedly we are God's mistakes. For my existence who is to blame, potter or the pot creator or the creation?). We acknowledge that we are different and don't fit in the 'hetero-normative' roles but that surely doesn't make us less than a human. We are literally forced to beg. In the context of absolute misery many of us are being forced to sell sex. We never maltreat anyone then why are we treated this way?”

“It is revolutionary for any trans-person to choose to be seen and visible in a world that tells us we should not exist. A lot of parents will do anything for their kids except let them be themselves. There is nothing wrong with us. There is a lot wrong with the world we live in. It

becomes very difficult when our own people don't treat us as human beings, there's so much discrimination. There's acceptance but there's also violence, hate and hypocrisy.”

6. RECOMMENDATIONS

- To solve these serious problems and to improve the harmony of the society, gender definition should be redefined to include the transgender people in the mainstream society. If not solved, the transgender community will succumb to discrimination and be on the side of victimization that no human being should face in their life.
- A change in the mind set of the people is required before the transgender gets a rightful image and place in other spheres or dimensions of their life, for which a strong will is needed in the old customary ideology of the inhabitants in the valley and also in the law-governing political bodies.
- There is a need to awaken the conscience of the orthodox and irrational community. It will persuade them to accept the transgender as a social being and give recognition and rightful acceptance to their community.
- Change in attitudes through education, media and social practices is must to get change in the attitudes of the people. If only our eyes saw souls instead of bodies, how different our ideals of beauty would be.
- Gender equality and human rights should be introduced in the socialization process, education system, healthcare facilities, job opportunities, economic sources, political participation etc in order to acquire eco-friendly environment.
- Specific welfare programmes and schemes should be included for the transgender community in order to meet their basic needs, also proper initiatives should be taken to reduce stigma and discrimination against them; and need-based skillful training institutions should be established for them for livelihood opportunities.
- In the realm of mental health, suicidal tendencies, sexual harassment, physical and verbal abuse, drug addiction etc appropriate counseling and trouble-free access to health services should be provided.
- There should be provisions for detrimental and rigorous punishments for all types of crimes, violence and cruelty against them.
- Lastly, development of legal provisions like right to cast vote and contest elections, marriage, inheritance and adoption rights should be recommended for them.

“On concluding, the society is not prepared to listen to the plight of transgender. The most neglected are they, even if the society has a help mechanism”...

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