

Study on Human Rights of Transgender as a Third Gender



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Abbreviations

BE	Belgium
DK	Denmark
ES	Spain
FR	France
IT	Italy
LV	Latvia
HU	Hungary
NL	Netherlands
PL	Poland
SK	Slovakia
FI	Finland
SE	Sweden
UK	United Kingdom
BG	Bulgaria
CZ	Czech Republic
EE	Estonia
IE	Ireland
EL	Greece
LT	Lithuania
LU	Luxembourg
MT	Malta
PT	Portugal
RO	Romania
SI	Slovenia
DE	Germany
CY	Cyprus
TG	Transgender People
FGD	Focus Group Discussion

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Chapter 1

Introduction

The prohibition of discrimination including verbal abuse and physical violence against transgender persons and the protection of their human rights are important elements of the legal order in several countries. However, the scope of various provisions in the legal system is limited and does not cover social protection, healthcare, education and access to goods and services, leaving transgender people vulnerable. Transgender people have existed in every society, nation, culture and class since ancient times while the rights of the members of the transgender community have started gaining attention only in the modern world. Their rights are not protected and they face discrimination in various areas. Non-recognition of the identity of human beings belonging to the transgender community, as a third gender, denies them the right of equality before the law and equal protection of law guaranteed under Article 14 of the Constitution and violates the rights guaranteed to them under Article 21 of the Constitution of India. An important step has been taken on 15 April 2014 by the Supreme Court of India passing a landmark judgment granting constitutional recognition to transgender as the "third gender". The Supreme Court, in the National Legal Services Authority judgment has recognized the legal and constitutional rights of transgender persons, as a 'third gender'. This judgment focuses specifically on the legal recognition of the transgender community, relying on the definition in the Yogyakarta Principles and clarifies the distinction between gender identity and sexual orientation. The court engages with both these categories, but focusing only on the transgender subject. There are two central questions that the court addresses. The first is the recognition of a third gender category for hijras or equivalent cultural identities in order to facilitate legal rights. The second is that transgender persons, for the purposes of the law, should be able to identify in the gender of their choice, which could be male, female or a third gender category. In the operative part of the judgment, the court the Court held that hijras and eunuchs be treated as a "third gender" to safeguard their fundamental rights. The Court has also held that and transgender persons have the right to decide their self-identified gender.)

The Court has directed the government to treat transgender as a socially and educationally backward class, entitled to quotas in educational institutions and for public appointments. As a distinct "third gender" category, they will have all rights under the law, including the right to marry each other, adopt, divorce, succession, inheritance and also to claim benefits under welfare programmes. For a variety of reasons, we do not see the participation of this particular section of the society in various institutions and programmes. Although the need for education, health, employment, housing, banking, pension and insurance are no different for individuals irrespective of their sex but the access to these services for transgender seems limited in the present set up. However, for the holistic development of a society, it is important to recognize the need of every segment and work towards human development.

Transgender are being deprived of many of the rights and privileges which other persons enjoy as citizens of this country. Transgender people are facing serious problems of human rights violation in the field of education, employment, health care, voting and contesting election and regarding their personal freedom, legal protection, family, marriage etc. Denial of equal protection of law leaves them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail, also by the police. They face harassment at work place, hospitals, places of public conveniences, market places, theaters, railway stations, bus stands, and so on.

In spite of the adoption of Universal Declaration of Human Rights in the year 1948, the inherent dignity, equality, respect and rights of all human beings, the transgender are denied basic human rights. There is a need to adopt human right approach towards transgender which may focus on functioning as an interaction between a person and their environment highlighting the role of society and changing the stigma attached to them. There seems to be no reason why a transgender must be denied of basic human rights which includes Right to life and liberty with dignity, Right to Privacy and freedom of expression, Right to Education and Empowerment, Right against violence, Right against Exploitation and Right against Discrimination, etc. Moreover, Yogyakarta Principles address a broad range of human rights standards and their application to the issues of sexual orientation gender identity.

Definition and Categories of Transgender People: The term 'transgender' or 'third gender' elude cohesive definition. The definition favoured by the World Professional Association for Transgender Health reveals the substantial difficulty in defining these terms: 'Some individuals describe themselves not as gender non-conforming but as unambiguously cross sexed. Other individuals affirm their unique gender identity and no longer consider themselves to be male or female. There are many transgender identities. The term 'trans' to refer to people whose internal sense of their gender differs from the sex assigned at birth. For instance, an individual born female who identifies as male is a trans man and a person born male who identifies as female is trans women. Transgender includes pre-operative, post-operative and non-operative transsexual people who strongly identify with gender opposite to their biological sex (UNDP India Report, 2010). In India there are a host of socio-ethnic groups of transgender like Hijras/Kinnars, and other trans identities like - Shiv- Shaktis, Jogtas, Jogappas, Aradhis, Sakhi, Aravani, Aruvani, etc. mentioned that application of concept of trans gender should not be limited to such socio-ethnic groups alone, but should cover all categories including female to male transgender. Female-to-male transsexual (FTM) people are born with female bodies, but have a predominantly male gender identity. Male-to-female transsexual (MTF) people are born with male bodies, but have a female gender identity. Many, but not all, transsexual people undergo medical treatment to change their physical sex through hormone therapy and sex reassignment surgeries.

The contemporary term "transgender" arose in the mid-1990s from the grassroots community of gender-different people. Transgender encompasses anyone whose identity or behaviour falls outside of stereotypical gender norms. In contemporary usage, transgender has become an "umbrella" term that is used to describe a wide range of identities and experiences, including but not limited to transsexual people; male and female cross-dressers (sometimes referred to as "transvestites," "drag queens" or "drag kings"); Other current synonyms for transgender include "gender variant," "gender different," and "gender non-conforming" .A generic definition of transgender person is that 'a person who chooses to identify himself/herself with a gender different from the one assigned at birth'. Various institutions and individuals have given definitions globally. In this context, APCOM defined the term transgender in the context of

South Asia ("Mapping Transgender Groups, Organisations and Networks in South Asia", Published by Asia Pacific Coalition on Male sexual Health (APCOM) report, No. 2, July 2008). It has defined a total of six categories of transgender people as follows:

- Transvestites : They have a fetish for cross dressing and are mostly heterosexual in orientation, they cross dress for sexual enhancement
- Transexuals : They cross dress because they believe they are in the wrong body (male). They opt for a sex change operation
- Drag Queens: They are male homosexuals who cross dress to attract other men or to play around with gender. Also called Satla Kothis
- Intersexed (Hermaphrodites): Primary body/genitals not fully male or female.
- Intersexed(Chromosomal issues) Two "X" or male chromosomes missing
- Hijras: Anyone from the other categories joining the religious cult of Bahuchari Mata or Aravanis and are under the guru or nayak tradition. Some of these may further have specific socio-cultural religious connotations such as in the case of 'Hijras' and 'Jogtas'.

Sexual Orientation: Transgender and other Categories under LGBT

Sexual orientation is an intrinsic part of a person's identity. It refers to a person's capacity for profound emotional, physical or romantic attraction towards other people. It is distinct from gender identity; trans people may be heterosexual, lesbian, gay or bisexual (or pansexual). The acronym 'LGBT' stands for 'lesbian, gay, bisexual and transgender'. It includes three sexual orientation terms (lesbian, gay and bisexual) and one gender identity term (transgender, or trans). The present study cover the transgender ie., 'T' under LGBT category. In India, these groups are getting united to address their problems especially those related to human rights. There are several organization that work for lesbian, gay, bisexual, and transgender peoples' rights. The present study covers the human rights- related issues of transgender people and other categories under LGBT are not dealt with.

1. Objectives of the Study

1.1 The main objectives of the study will be follows:

- i. Study the overall profile of transgender as a third gender encompassing important socio-economic variables, like age, caste, religion, education, employment, income, etc. and whether RCI includes transgender in census and other enumerations;
- ii. Examine various kinds of discrimination, human rights violations faced by them in all aspects concerning their lives, including coping mechanisms, both in urban and rural areas;
- iii. Evaluate entitlements given to transgender by Central and State Governments under various schemes/programmes like education, health, employment, food, pension, etc. and reasons for their inclusion/exclusion, including problems faced by them in accessing those entitlements;
- iv. Study in-depth the programmes/schemes launched/facilities provided for transgender by the Centre, State or Local Government and critically identify the areas of economic activities for self-reliance;
- v. Make an in-depth analysis of the laws and policies, if any, for transgender along with the Supreme Court judgments and steps taken by the Central and State Governments for their overall developments in the light of the given policy, law(s) and judgment;
- vi. Examine the prevalent practices towards transgender in foreign countries and also study the UN Yogyakarta Principles of international human rights law in relation to sexual orientation and gender identity; and
- vii. Develop and build database and come up with actionable recommendations to protect and promote their human rights – civil, political, economic, social and cultural rights.

Literature Review

Globally, several transgender related literature are available and most of them are quite relevant to the present study. Some of these studies have discussed health, social and economic issues of transgender students in western countries (Prosser 1997, Prosser 1998 and Sanlo 1998). These studies cover narration on inclusion of transgender and gender fluid students, best practices and assessment of programmes for their welfare and recommendations. Transgender students are becoming more visible on college campuses in different countries including India. In this context, the studies of Pfäfflin and Junge, 1998, Hage & Karim 2000 are quite significant as they examined the experiences of undergraduate and graduate students who self-identify as transgender. They have discussed the hostile climate for transgender students exists in the school and college campuses when these educational institutions lack resources and education on transgender issues. Jeffrey(2005) has made a detailed study of the experiences of transgender college students. Hageand Karim, (2000) have analysed various treatment options for non-transsexual gender dysphoria. De Cuyper, G., T'Sjoen, G., Beerten, R., Selvaggi, G., De Sutter, P., Hoebeke, P. and Rubens, R. (2005) mad a detailed analysis of sexual and physical health after sex reassignment surgery. A comprehensive literature review on the current status of the legal status (gender identity) and legal rights of hijras/transgender people in India was conducted by collecting and analyzing key legal and other documents such as relevant judgments and publications. Information about the legal rights of transgender people in general, and transgender people in particular in other countries (especially that have progressive laws in relation to Transgender people) was collected and analyzed. Similarly, academic and UN databases on legal issues and human rights of transgender people and other sexual minorities were searched and relevant documents were reviewed to propose potential legal models for the recognition of gender status of hijras and other transgender people in India. Gender Identity and Expression Sub-Committee of the Diversity, and Social Justice Committee, US has given different classifications of transgender. The definitions of different categories of transgender were developed by Mills students in collaboration with Student Diversity Programs in 2011 and are cited from Transgender 101, Mills Edition.

Mainstream gender related literature throws more light on various types of violations of human rights of transgender people in various countries. UNDP's Review (2012) examines existing literature on trans* people's human rights and HIV vulnerability across the Asia-Pacific region. The focus in this report is mainly (though not exclusively) on lower income and middle income countries of the region. This is not to suggest that trans* people in more affluent countries do not experience challenges. On the contrary, they often find themselves excluded from economic opportunities enjoyed by others and end up facing many of the same challenges of survival as do trans* people in less developed economies. The review examines the literature on existing laws, regulations, policies and practices that prompt, reinforce, reflect or express stigma and prejudice towards trans* people; identifies vulnerabilities to HIV and barriers to access or uptake of HIV-related healthcare services; and establishes a research agenda aimed at providing the sort of data that will enable a reduction in future risk, as well as better access to treatment, care and support for transgender persons living with HIV. Bochenek and Knight (2012) presented Nepal as a case study for the introduction of a third gender category in a legal and political system. In December 2007, the Supreme Court of Nepal issued a groundbreaking verdict in favor of sexual and gender minorities. The decision quickly became famous for declaring full, fundamental human rights for all "sexual and gender minorities"—lesbian, gay, bisexual, transgender, and intersex citizens. The article discusses what the decision of establishing a third gender category accomplished and examines the significance of the legal recognition of gender, focusing specifically on identification documents. It explains the definition of the Nepalese third gender as the court established it and puts this definition in the context of non-binary gender definitions according to academic literature and other cases and systems that explicitly or implicitly refer to a third gender category. Mentioning the path to legal implementation that has taken place in Nepal, it concludes by examining how non-male, non-female gender categories are supported and afforded protections under international human rights law and the implications of such protections. Sanders (2010) in his paper presented a general picture on legal and policy patterns regarding transgender in Asia and the West. It deals with: third sex identities, the Western model of individual transsexual rights, and discrimination faced by the third gender. Mitchell and Howarth (2009), in their Trans Research Review included a wide range of evidence surrounding the inequalities and discrimination faced by trans people in the UK. It has identified significant gaps in knowledge about trans people and highlighted the diversity

within the trans population. In addition to establishing the size of the trans population, in order to estimate demand for services, it emphasized that other characteristics of the trans community also needed to be better understood. For example, mapping the geographical location of trans populations in order that services can be targeted most effectively. Further, better understanding of the diversity that exists within the trans population is required if services and policies are to provide for the whole trans community. Despite the limitations imposed by a lack of robust research evidence, the review offers an important insight into the range and types of issues faced by transgender people.

Gender literature has discussed various issues of transgender people in India. UNDP India (2010) discusses how transgender communities have been excluded from effectively participating in social, economic and cultural life and decision-making processes. In this study, the health related issues are discussed with a special reference to HIV. Lack of livelihood options is a key reason for a significant proportion of transgender people to choose or continue to be in sex work - with its associated HIV and health-related risks. It highlights the fact that Hijras/Transgender women require understanding and support of the government, health care professionals, general public as well as their family members. Sharma (2012) in her contextual contribution presented the historical background and legal status of third gender in the Indian society. The paper highlights that the Constitution, while it contains certain prohibited grounds of discrimination such as race, caste, creed, sex, etc., does not specifically include sexual orientation. Neither the Hindu Marriage Act nor the Special Marriage Act mentions third gender. It notes that the transgender as third gender in India is not adequately provided for, though their existence is evident in our country. Thomas (2013) captures the third gender in India from ancient literature to present situation. The paper lists down the areas where the inequality is felt by the third gender. Some initiatives taken up by the government receives a mention in this study. UNDP (2012) presents the situation analysis of transgender of Chhattisgarh. The study emphasizes the need to strengthen the capacity of community members to identify, articulate and advocate for their human rights and development needs and to participate more actively in the development of policies and programs that shape services delivery effectively to the betterment and inclusion in mainstream for their community.

Table 1.2
Transgender Respondents: Selection of Districts for Field Study

State	Select ed Distri cts (No.)	Name of Selected Districts	Sampling Technique/Criteria for Selection of Districts
UP	2	Mathura Bijnore	Sampling Technique :Used Purposive Sampling Criteria for selection: (1)Cover districts where Transgender people are concentrated (2)cover samples represent rural settings
Delhi	2	East Delhi Shahdara	Sampling Technique :Used Purposive Sampling Criteria for selection: (1)Cover districts where Transgender people are concentrated (2)cover samples represent urban settings
Total	4		

Schedules/ Questionnaires: Two types of schedules/ questionnaires were prepared ; Type I for seeking information from Third Gender; Type II for seeking information from experts from different states/UTs of India, associations of transgender, CSO/NGO, present and potential employers of transgender, government officials, etc(Annexure I)

Major variables for data collection are the following:

- Educational qualifications of transgender
- Employment details of transgender
- Source of livelihood of transgender
- Annual income of transgender
- Pattern of expenditure/components of expenses
- Identity cards of transgender
- Family details of transgender
- Violation of human rights before and after entering the community

- Measures for improving their educational standards, professional and technical qualifications
- Support from various governments
- State level welfare programmes available to transgender
- Attitude and experience of employers towards transgender

Various types of secondary data were used for the study. These sources included books, articles, periodicals, statistical abstract and websites of relevant institutions/departments/ministries, etc. The secondary data was used to examine the prevalent practices towards transgender in foreign countries and also study the UN Yogyakarta Principles of international human rights law in relation to sexual orientation and gender identity.

Limitations of the Study

Some of transgender people who live with Gurus as a part of Hijra community show their reluctance in sharing some critical information during the field survey. It seems that Gurus have given strict instructions to maintain their privacy. Adequate support and cooperation were received from the transgender community. However, they were not forthcoming on certain issues may be due to the feeling of insecurity and fear.

Chapter 2

Socio-Economic Profile of the Transgender People

In this chapter, we discuss overall profile of transgender as a third gender encompassing important socio-economic variables, like age, caste, religion, education, employment, income, etc. . A brief on government policy on the coverage of transgender in census and other enumerations is also dealt with.

2.1 Socio-Economic Profile of transgender people in Delhi and UP

2.1.1 Age Pattern

As presented in Table 2.1 and Fig 2.1 about 10.56 percent of respondents are of the age group 15-20 years while 6.56 percent are of the age group 20-25 years and 13 percent are of the age group 26 to 30 years. The single largest size -18 percent- is the age group 31- 35 years. About 9 percent of transgender persons are of the age group 35-40 years and 14.56 percent are of the age group 41-45 years. Another 13.56 percent of transgender persons are of age group 46- 50 years. About 7.88 percent of the transgender persons are of age group 51-55 years and another 6.88 percent are above 55 years. There are not much variations in the age pattern of transgender persons between UP and Delhi. The age pattern clearly indicates that many of them are youth as around 47 percent of transgender persons are in the range of 21-40 years age group.

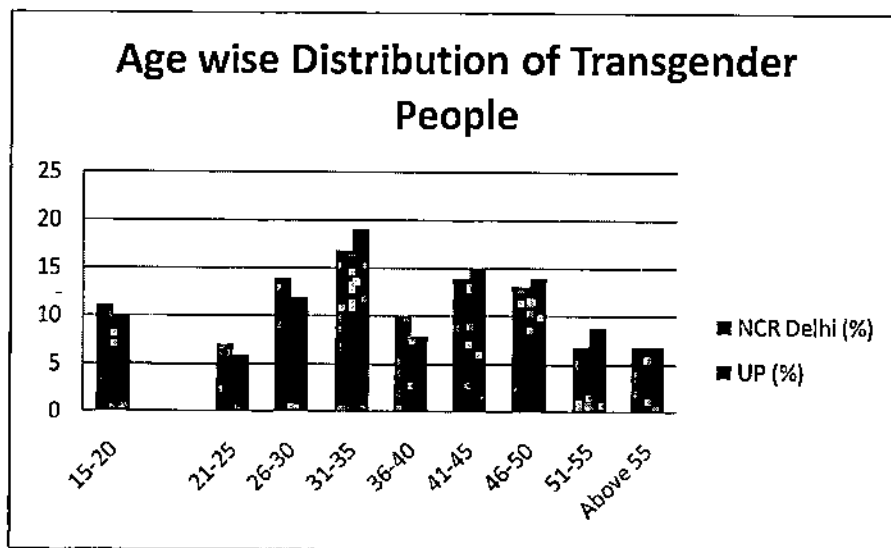
Table 2.1

Age wise Distribution of Transgender People

Age Group	NCR Delhi (No)	NCR Delhi (%)	UP (No)	UP (%)	Total (No)	Total (%)
15-20	50	11.11	45	10	95	10.56
21-25	32	7.11	27	6	59	6.56
26-30	63	14	54	12	117	13
31-35	76	16.88	86	19.11	162	18
36-40	45	10	36	8	81	9
41-45	63	14	68	15.11	131	14.56
46-50	59	13.12	63	14	122	13.56
51-55	31	6.89	40	8.89	71	7.88
Above 55	31	6.89	31	6.89	62	6.88
Total	450	100	450	100	900	100

Source: Field Survey

Fig 2.1



2.1.2 Education

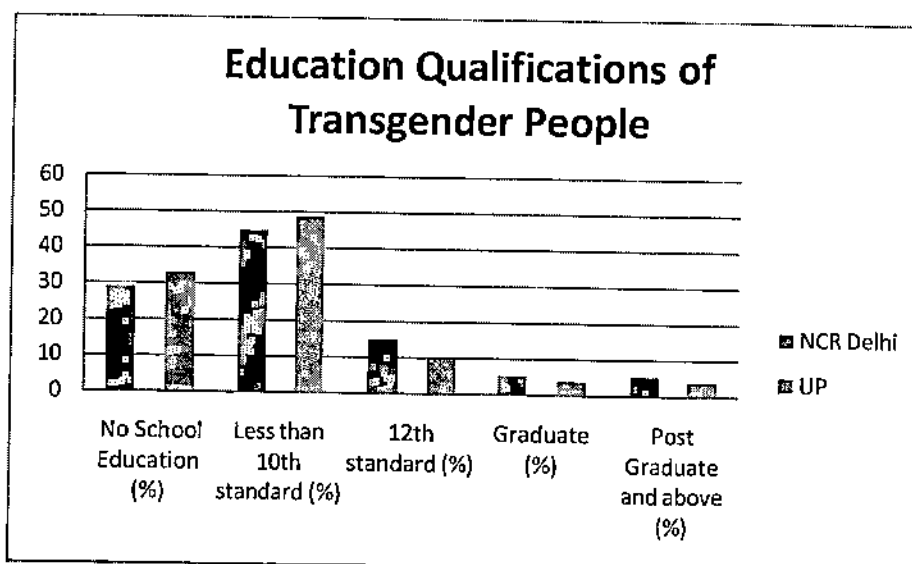
About 29.11 percent of transgender people in Delhi and 33.11 percent in UP have never attended school. A total of 20 percent of transgender people completed the primary level of school education both in Delhi and UP. About 45.11 percent in Delhi and 48.89 percent in UP have education below 10th standard. About 15.12 percent in Delhi and 10 percent in UP have 10th -12th standard school education. The results of the field survey is in line with census data (see Table 2.2 and Fig.2.2). It is important to understand that just 5.33 percent of transgender people in Delhi and 4 percent in UP have graduation degree. Around 5.33percent of transgender people in Delhi and 4 percent in UP have postgraduate degree. According to Census 2011, the literacy of transgender people in UP is 55.8 percent and 62.99 percent in Delhi. It is a matter of serious concern that transgender persons are denied of right to education even after the enactment of Right to Education Act 2009.

Table: 2.2
Education Qualifications of Transgender People

	No School Education (No)	No School Education (%)	Less than 10 th standard (No)	Less than 10 th standard (%)	10-12 th standard (No)	10-12 th standard (%)	Graduate (No)	Graduate (%)	Post Graduate and above (No)	Post Graduate and above (%)	Total (No)	Total (%)
NC R Delhi	131	29.11	203	45.11	68	15.12	24	5.33	24	5.33	450	100
UP	149	33.11	220	48.89	45	10	18	4	18	4	450	100

Source: Field Survey

Fig 2.2



2.1.3 Caste and Religion

Religion wise distribution of transgender people in Delhi and UP is given in Table 2.3 and Fig 2.3. Majority of the surveyed transgender people both in Delhi and UP belongs to Hindu religion. They are around 90.68 per cent and 87.12 per cent respectively. Another 8.44 per cent of respondents in Delhi and around 12 per cent in UP belong to Muslim religion. A very minuscule per cent of transgender people are from Christian (0.22%) and other religious categories (0.67%).

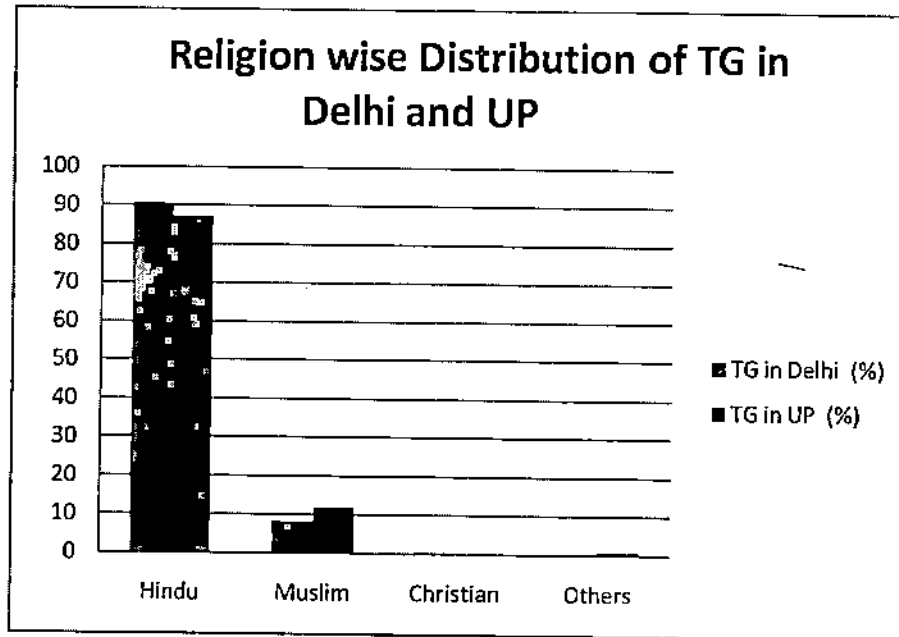
Table 2.3

Religion wise Distribution of TG in Delhi and UP

Religion	TG in Delhi (Number)	TG in Delhi (%)	TG in UP (Number)	TG in UP (%)	Total TG (Number)	Total TG (%)
Hindu	408	90.68	392	87.12	800	88.89
Muslim	38	8.44	54	12	92	10.22
Christian	2	0.44	0	0	2	0.22
Others	2	0.44	4	0.88	6	0.67
Total	450	100	450	100	900	100

Source: Field Survey

Fig 2.3



In principle, caste system is not applied to transgender people after joining the Hijra community. A significant number of transgender people under Hijra community was not ready to reveal much about the caste system. However, according to some NGOs working closely with transgender community in Delhi and UP, a form of caste system exist. These NGOs have categorically states^d that upper caste, middle caste and lower caste categories exist among the members of Hijra community in line with caste system prevailing in India. This caste system has reflected in their livelihood activities. Upper caste members visit houses during wedding, birth of new children and other auspicious occasions. Middle caste members quite often involve in the begging in the streets, bus stops and other public places. Sex workers under the transgender category are from lower caste. The caste pattern in Delhi and UP is presented in Table 2.4 and Fig 2.4 .The single largest share of the surveyed transgender people belong to Other Backward Community (OBC) in both the states. About 15 per cent of transgender respondents in Delhi and 16 per cent in UP surveyed belongs to Scheduled Caste. It is significant to note that around 22 per cent of transgender people in Delhi and about 26 per cent in UP are unaware of their own caste. There are notable numbers of people who do not respond to this query in both the states.

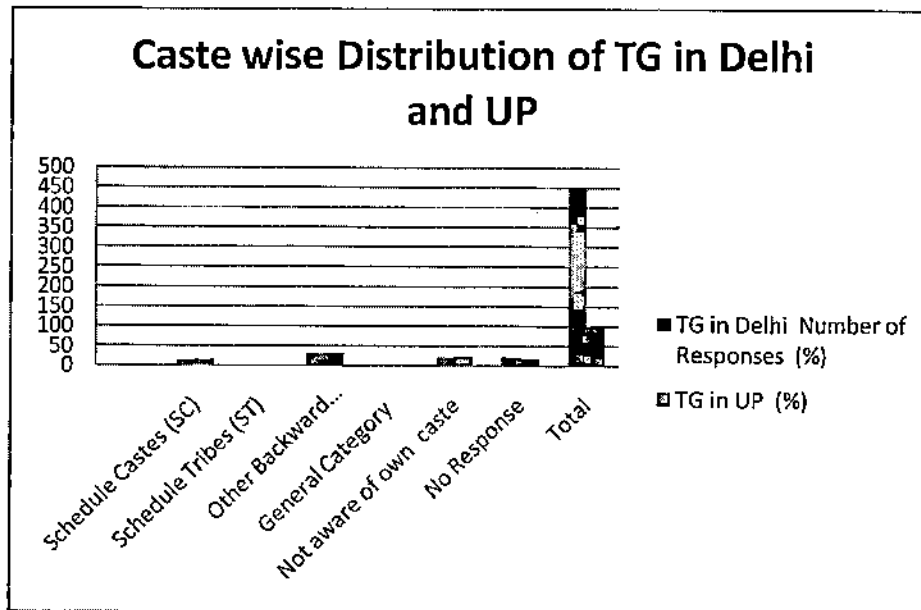
Table 2.4

Caste wise Distribution of TG in Delhi and UP

Caste	TG in Delhi Number of Responses	TG in Delhi Number of Responses (%)	TG in UP Number of Responses	TG in UP (%)	Total (Number)	Total (%)
Schedule Castes (SC)	66	14.66	72	16	138	15.33
Schedule Tribes (ST)	13	2.89	9	2	22	2.45
Other Backward community (OBC)	144	32	148	32.88	292	32.44
General Category	23	5.11	18	4	41	4.56
Not Aware of Own Caste	99	22	117	26	216	24
No Response	105	23.34	86	19.12	191	21.22
Total	450	100	450	100	900	100

Source: Field Survey

Fig 2.4



2.1.4 Employment and Livelihood

The pattern of employment and livelihood of transgender people in Delhi and UP is presented in Table 2.5 and Fig.2.5. Just 6 percent of transgender people are employed and moreover, they are employed in private/ NGO sector. Majority of transgender people are engaged in informal sector. The results of the field survey showed that nobody is employed in government sector. About 24.44 percent are engaged in *badhai*, blessings, singing and dancing. About 4.56 percent of transgender persons are sex workers. About 10.44 percent of transgender persons are engaged in begging while another 13.11 percent are engaged in sales of food items, fruits, vegetables, flower, cloths, etc. It is interesting to understand that 4.56 percent are engaged in undertaking miscellaneous work including domestic help.

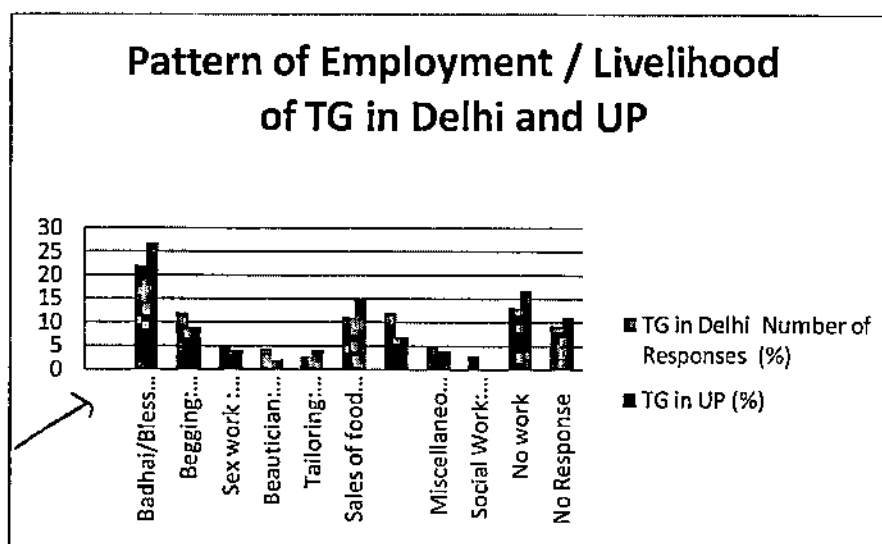
Table 2.5

Pattern of Employment/ Livelihood of Transgender in Delhi and UP

Employment/ Livelihood	TG in Delhi Number of Responses	TG in Delhi (%)	TG in UP Number of Responses	TG in UP (%)	Total (Number)	Total (%)
Badhai/ Blessings/ Singing/ Dancing: Informal sector	99	22	121	26.88	220	24.44
Begging: Informal sector	54	12	40	8.89	94	10.44
Sex work : Informal sector	23	5.11	18	4	41	4.56
Beautician: Informal sector	20	4.44	9	2	29	3.22
Tailoring: Informal sector	13	2.88	18	4	31	3.44
Sales of food items / fruits/ vegetable, flower, cloths, etc. as street vendors/ by visiting houses/offices: Informal sector	50	11.11	68	15.11	118	13.11
Miscellaneous work including domestic help: Informal sector	54	12	32	7.11	86	9.56
Miscellaneous work : Employed in the private sector	23	5.11	18	4	41	4.56
Social Work: Employed in the NGO sector	13	2.88	0	0	13	1.44
Employed in the Government sector	0	0	0	0	0	0
No work	59	13.13	76	16.89	135	15.
No Response	42	9.34	50	11.12	92	10.23
Total	450	100	450	100	900	100

Source: Field Survey

Fig 2.5



As shown in Table 2.6 and Fig.2.6, forty percent of transgender people made career choice between the age group of 15 -20 years. Fifteen percent of transgender people made their career choice between 21 - 25 years. Thirty percent of the transgender people made the career choice between the ages 26 - 30 years. Fourteen percent of transgender people made career choice at the age limit of 31-35 years. One percent of transgender people made career choice above 35 years. About 75 percent of transgender people showed high level of dissatisfaction in their career or income generating activities. It is pertinent to understand that the transgender people do not have the right to a decent and productive work. They are denied of the right to get protection against unemployment.

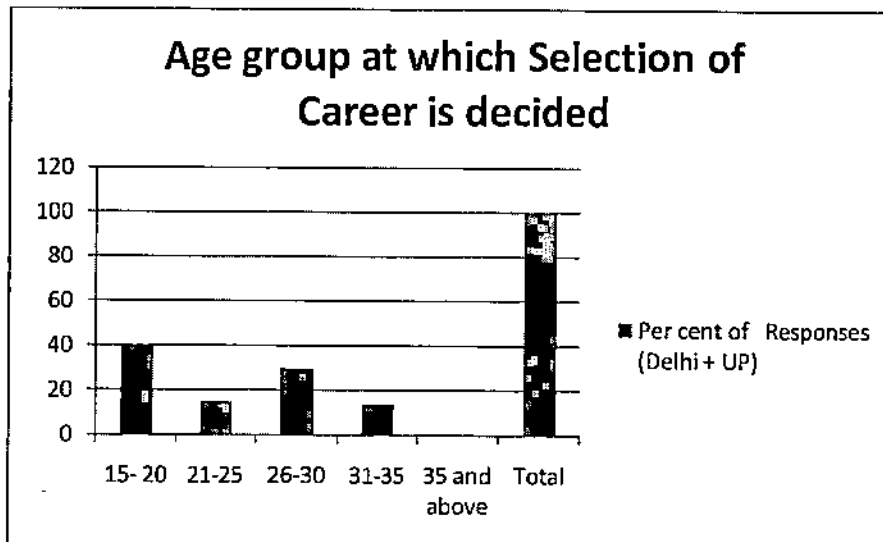
Table 2.6

Selection of Career

Age group at which Selection of Career is decided	No of responses (Delhi + UP)	Per cent of Responses (Delhi + UP)
15- 20	360	40
21-25	135	15
26-30	270	30
31-35	126	14
35 and above	9	1
Total	900	100

Source: Field Survey

Fig: 2.6



2.1.5 Monthly Income

The income pattern of transgender people is reported in Table 2.7 and Fig 2.7. About 3.8 percent of the transgender people have the income below Rs. 5000. The monthly income of 22.35 percent of transgender people is between Rs.5001- Rs.7500. Another 26.46 percent of transgender people have a monthly income which ranges between Rs.7501- Rs.10, 000. About 26.35 percent of transgender people have monthly income in between Rs. 10001 - Rs.15000. Another 12.35 percent of transgender people have a monthly income ranging between Rs 15001- Rs.20000. About 3.46 percent of transgender people have the monthly income ranging between Rs 20001- Rs.25000 and another 1.11 percent have more than Rs.25000. It is quite significant to note that the level of income is abysmally low for the transgender community. They are denied of right to have a decent standard of living.

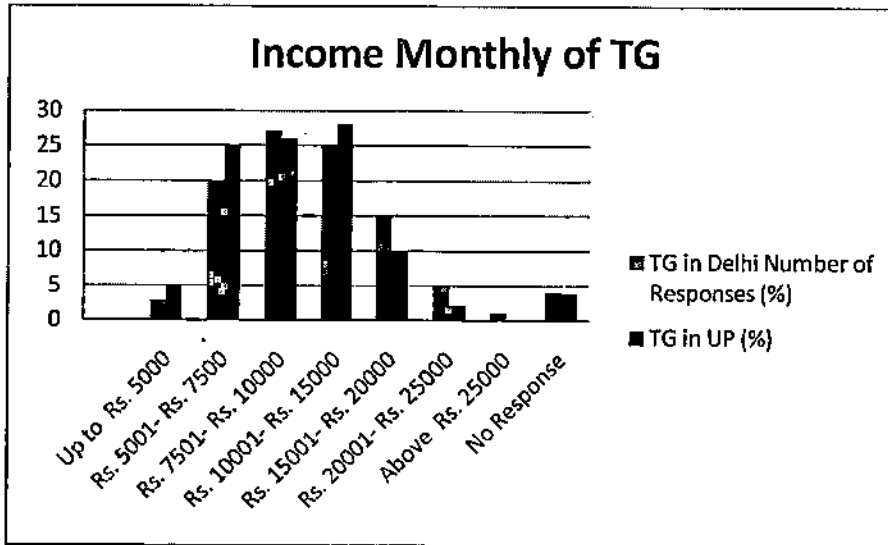
Table: 2.7
Income Monthly of TG

Employment / Livelihood	TG in Delhi Number of Responses	TG in Delhi Number of Responses (%)	TG in UP Number of Responses	TG in UP (%)	Total (Number)	Total (%)
Up to Rs. 5000	13	2.89	22	4.88	35	3.8
Rs. 5001- Rs. 7500	90	20	112	24.89	202	22.35
Rs. 7501- Rs. 10000	122	27.11	117	26	239	26.46
Rs. 10001- Rs. 15000	112	24.89	126	28	238	26.35
Rs. 15001- Rs. 20000	67	14.89	45	10	112	12.35
Rs. 20001- Rs. 25000	22	4.88	10	2.23	32	3.46
Above Rs. 25000	5	1.11	0	0	5	1.11
No Response	19	4.23	18	4	37	4.12
Total	450	100	450	100	900	100

Source: Field Survey

Note: In most cases transgender people are given common accommodation under Guru Chela system

Fig 2.7



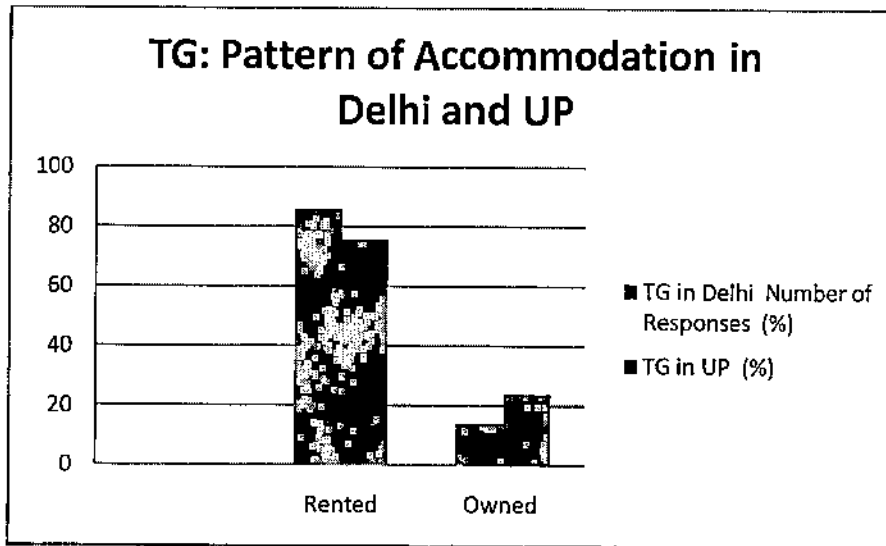
2.1.6 Housing/Stay

The ownership pattern of accommodation of transgender persons is shown in Table 2.8. Only 19 percent of transgender persons have accommodation while the remaining have rented accommodation. The results of the survey clearly indicate the unavailability of own accommodation to a large section of transgender community. They are denied of the right to adequate housing.

Table: 2.8
TG: Ownership Pattern of Accommodation in Delhi and UP

Nature of Accommodation	TG in Delhi Number of Responses	TG in Delhi Responses (%)	TG in UP Number of Responses	TG in UP (%)	Total (Number)	Total (%)
Rented	387	86	342	76	729	81
Owned	63	14	108	24	171	19
Total	450	100	450	100	900	100

Fig 2.8

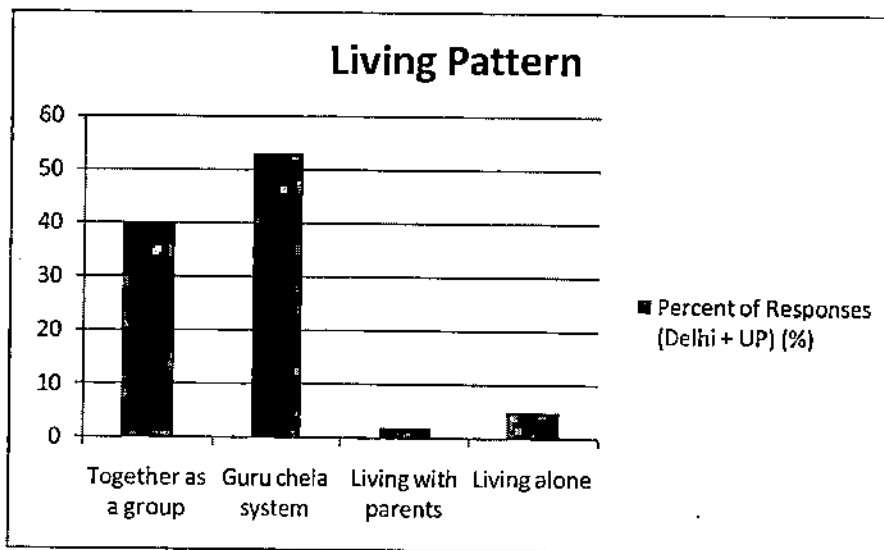


As is evident from Table 2.9 and Fig. 2.9, about 53 percent of transgender persons lives under Guru Chela system. While 40 percent lives with other transgender persons. These categories include those transgender persons as spouses also. Another two percent of transgender persons lives with their parents and another 5 percent live alone. It clearly substantiates the fact the level of acceptability of transgender persons by their family and parents is abysmally low.

Table: 2.9
Transgender: Pattern of Living

Nature of Living pattern	Number of Responses (Delhi + UP)	Number of Responses (Delhi + UP) (%)
Together with transgender persons as a group	360	40
Guru chela system	477	53
Living with parents	18	2
Living alone	45	5
Total	900	100

Fig : 2.9



2.1.7 Legal Document and Bank Accounts

Document wise details of identity cards of transgender people are reported in Table 2.10 and Fig 2.10. About 14.88 percent of transgender people in Delhi and 16 percent of transgender people in UP are given voter ID card in the name of transgender. For both states together only

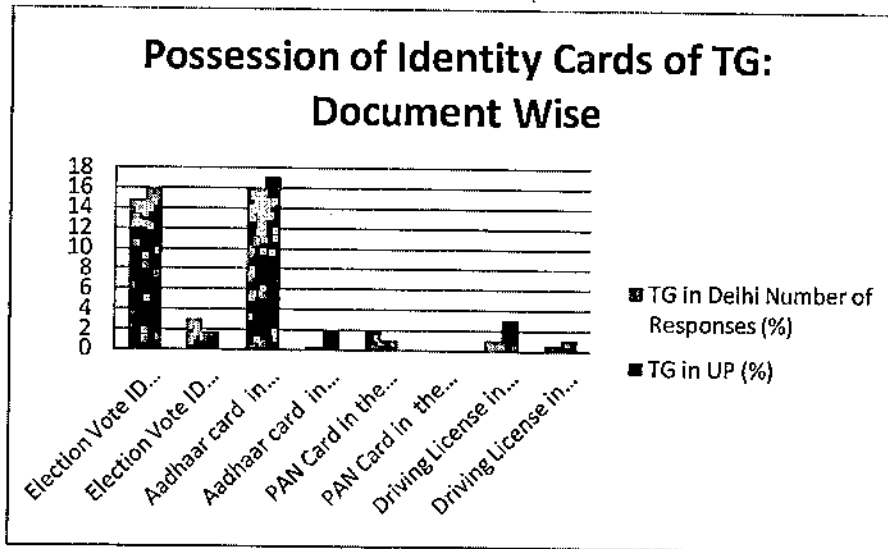
15.4 percent of transgender persons have a voter card issued by Election Commission of India in the name of the transgender and 16.6 percent have Addhar Card issued in the name of the transgender. Just 1.11 percent transgender people in Delhi and 3.11 percent in UP has got driving license issued in the name of transgender. It is important to understand that a small size of transgender people have identity cards in their old name with female or male gender status as reported by their parents. The reason for not having identity cards such as voter card, ration card or the bank account may be attributed to the limited education, lack of awareness and poor exposure to the social, political and legal system.

Table 2.10
Possession of Identity Cards of Transgender People: Document Wise

Category of ID	TG in Delhi Number of Responses	TG in Delhi (%)	TG in UP Number of Responses	TG in UP (%)	TG Total (Number)	TG Total (%)
Election Voter ID Card in the name of TG	67	14.88	72	16	139	15.4
Election Voter ID Card in the old name (Female/Male)	14	3.11	8	1.78	22	2.4
Aadhaar card in the name of TG	72	16	77	17.11	149	16.6
Aadhaar card in the old name (Female/Male)	2	0.34	9	2	11	1.2
PAN Card in the name of TG	9	2	5	1.11	14	1.6
PAN Card in the old name (Female/Male)	0	0	0	0	0	0
Driving License in the name of TG	5	1.11	14	3.11	19	2.1
Driving License in the old name (Female/Male)	3	0.66	5	1.11	8	.9

Source: Field Survey
Multiple Response Questions

Fig 2.10



The status of savings bank accounts of transgender people and the availability of bank savings in their account are presented in Table 2.11. About 55.6 percent of transgender people have own bank accounts in Delhi and in UP together. However, 31 percent of transgender people do not have any amount of saving in their bank account. The amount of saving with the bank is less than Rs. 2000 for 51.4 percent of transgender people with bank account while it is in between Rs. 2001-5,000 for 18.8 percent, Rs. 5001-10,000 for 12.6 percent, Rs.10001-20,000 for 11 percent and Rs. 20,001 and above for 6.2 percent of transgender people with bank account. It is also found that about 98 percent of transgender persons covered under the field survey do not own any property. The results of the survey show that the financial position of transgender persons is quite weak and the right to an adequate standard of living is totally denied to a large section of transgender people.

Table 2.11
SB Bank Accounts and Bank Savings

Category	TG in Delhi Number of Responses	TG in Delhi Number of Responses (%)	TG in UP Number of Responses	TG in UP (%)	TG Total (Number)	TG Total (%)
Own SB account with any bank	279	62	221	49	500	55.6
Do not Own SB account with any bank	104	23	175	39	279	31
No Response	67	15	54	12	121	13.4
Total	450	100	450	100	900	100
Amount of saving with the bank: Less than Rs. 2000	144	32	113	25	257	51.4
Amount of saving with the bank: between Rs. 2001-5000	54	12	40	9	94	18.8
Amount of saving with the bank : between Rs. 5001-10000	36	8	27	6	63	12.6
Saving with the bank: between Rs. 10001-20,000	32	7	23	5	55	11
Saving with the bank: Rs. 20,001 and above	13	3	18	4	31	6.2
Total of Transgender people who have own SB account with any bank	279	62	221	49	500	100

*Source: Field Survey
Multiple Response Questions*

2.1.8. *Language and Culture*: Transgender people belonging to Hijra community maintain a unique communication strategy. They are capable of using two languages. They use a separate language for the internal communication. When they want to communicate something to other transgender people in the presence of non-transgender people they use their own language with some codes, etc. Their language does not have any script and it is similar to Farsi language of Afghanistan. Under Guru Chela system transgender people follow mostly Muslim religious practices, while they use Hindu religious occasions for blessing and collecting money from the public. However, most of transgender people do not practice Muslim religion outside the Guru chela framework. Most of the Gurus are Muslims. According to 35 percent of transgender people, the influence of Mughal rule is the major reason for the dominance of Muslim gurus under Guruchela system.

2.2 Transgender People in Census of India and other Enumerations: Government Policy

2.2.1 *Census 2011*: Indian Census had never recognized third gender namely, transgender while collecting census data for years. But in 2011, data of transgender was collected with details related to their employment, literacy and caste. There was no column for third or transgender candidates was available in election-related forms, including nomination paper, because of which candidates of such categories were facing problem. Transgender people are included in the 2011 census in 'Others' category after recommendations of the Technical Advisory Committee (TAC) were accepted by the Government of India. Accordingly, Registrar General of India (RGI), as recommended by Technical Advisory Committee transgender people are given a separate code i.e. '3' in the names of others, the '1' and '2' being meant for male and female respectively during the ensuing Census 2011. Registrar General of India had given the option of "other" for enrolling a person who did not wish to be recorded as either male or female.

2.2.2 *Aadhaar System*: UIDAI: Unique identification authority of India, Government of India (UIDAI) has also provided an option of "T" for transgender in the preparation of Aadhaar card. The gender is taken based on the declaration made by the resident without the requirement of any document. The person can declare his gender as male, female, or transgender in Aadhaar system. In Aadhaar system, the gender is taken as what is declared by the resident without the

requirement of any document and the resident can declare his gender as male, female, or transgender.

2.2.3 Election Commission of India Election Commission of India has issued directions under provisions of Rule-4 of the Registration of Electoral Roll-1960 to enroll transgender people as voters. In 2009 Election Commission of India decided to formally allow an independent designation for intersex or transgender voters. The move meant that Indians could choose an "other" category indicating their gender in voter forms. Election Commission of India, the Commission had issued directions under provisions of Rule 4 of the Registration of Electoral Roll, 1960 that in Forms (Form 6, 7, 8) relating to enrolment in the electoral roll, eunuchs/transsexual may include their sex as 'other' where they did not want to be described as male or female. Further, the Election Commission had directed the Chief Electoral Officers of all States/UTs to make necessary modifications in the form of Electoral Roll and all the forms relating to enrolment. As per the final electoral roll, with reference to 1st January, 2012, as the qualifying date, there were 11601 electors who had been enrolled under the 'other' category. All such persons enrolled in the 'other' category are also entitled to get the elector's photo identity card. According to Election Commission of India about 30,000 transgender people are registered across India with Election Commission. The Lucknow Bench of the Allahabad High Court on 30 September 2015 directed the Uttar Pradesh government and the State Election Commission in UP to provide for inclusion of transgender candidates in the documents of Panchayat elections, including nomination paper. The court, directed the respondents to provide a column for third gender.

2.2.4 Passport: The documents required by Ministry of External Affairs (MEA), Government of India for issue of passport. MEA has given the provision of third gender in their software for issuing passport and can be incorporated provided it is demanded by the concerned beneficiaries. The passport cannot be issued unless certificate for age and address is produced. The police verification and affidavit would also be the choices for consideration of address proof in near future. Passport authorities and Election Commission may consider replacing the existing column of 'other' by the term 'Transgender Gender'. These authorities should also consider accepting their existing residence for the address proof and Gurus as their parents.

2.2.5 School /College Admission Forms: The University Grant Commission (UGC) notification issued on July 2014 in line with the Supreme Court judgment in April 2014 that carved out an independent status for the third gender to provide transgender students a special status. Now universities have started taking steps to include transgender students as a separate category in its examination and admission forms from the academic year 2015-16 onwards. Universities have started to instruct their departments and affiliated colleges to provide admission facilitation and counseling facilities for transgender students.

In nutshell, absence of property ownership, low economic status, poor monthly income, poor housing, lower education level, absence of legal documents of identity such as Election Photo Identity Card (EPIC), Aadhaar Card, and PAN Card and ration card, poor physical health status, absence of family support, hostile attitude of community and society are common problems of transgender people. Illiteracy and low level of educational status and the lack of legal documents hinder their access to different social protection and livelihood promotion schemes like pension, micro credit, bank loan, etc. Low level of education and absence of vocational skills push them to low paying jobs, under employment or unemployment.

Socio-economic profile.

Chapter 3

Discriminations and Human Right Violations and Coping Mechanism

In this chapter we discuss several kinds of discriminations and various forms of violation of human rights of transgender people. The prevailing coping mechanism is also covered.

3.1 Human Rights Violations

3.1.1 Identity Crisis and Human Rights Violations

In India, gender expression combines elements of both masculine and feminine. Transgender faces severe discrimination in India. Gender determines every aspect of life of every individual including name, clothes, hair length, appearance, behaviors, occupation, mobility, etc. Every document of identity of a person such as birth certificate, ration card, voter card, pan card, passport, driving license and mark sheets/grade cards carries the gender identification. Even the public utilities like toilets, security check at airports etc. are also gender specific. In the gender specific India, the right of a transgender to have an own identity is totally denied.

Various human rights violations reported by the respondents during the survey is reported in Table 3.1. Majority of the respondents from both the states reported discrimination by the society. Around 40 per cent of respondents in Delhi and about 58 per cent of respondents in UP disclosed that they lack a regular source of income. Absence of support from family and family inheritance of property and assets was reported by 71 percent of respondents in Delhi and 77 per cent in UP. Around half of the respondent from both the states have complained that they do not enjoy any legal right pertinent to marriage and property inheritance.

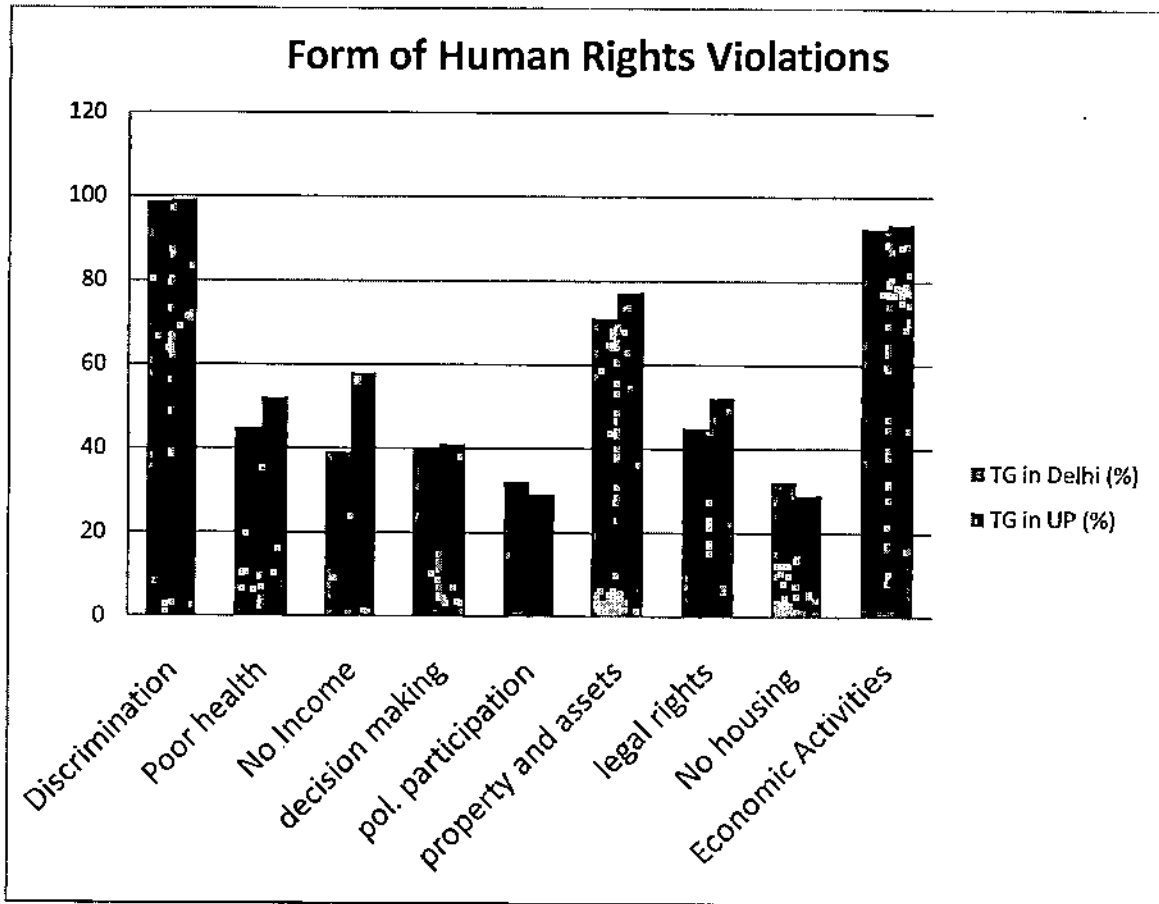
Table 3.1

Human Rights Violations Reported by TG: Delhi and UP

Form of Human Rights Violations	TG in Delhi Number of Responses	TG in Delhi Number of Responses (%)	TG in UP Number of Responses	TG in UP (%)
Discrimination in society	444	98.66	446	99.11
Poor health	202	44.9	234	52
No source of Income	176	39.11	261	58
No role in decision making	180	40	184	40.88
No political participation	144	32	130	28.88
Absence of support from family and family inheritance of property and assets	320	71.11	347	77.11
No freedom for legal marriage, having spouse and setting up of own family	202	44.9	234	52
No housing/ Accommodation	144	32	130	28.88
Discriminations in the field of Economic Activities	416	92.5	421	93.56

Source: Field Survey
Multiple Response Questions

Fig : 3.1



3.1.2 Discriminations at Education Institution Level

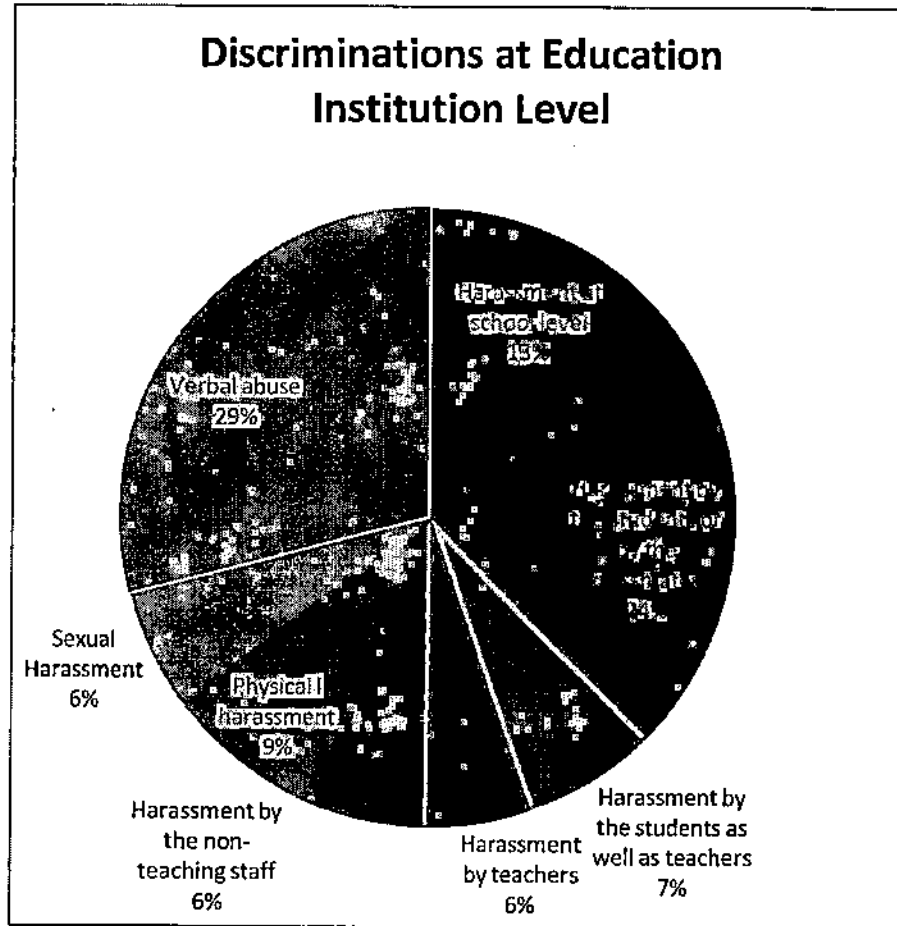
About 28 percent of transgender people covered by the field survey faced harassment at school level. Fifty two percent were harassed by the students or by the classmates. Fifteen percent were harassed by the students as well as teachers. Twelve percent of respondents said that they were harassed by their teachers. Thirteen percent of transgender people were harassed by the non-teaching staff of the school. While 18.5 percent of them were physically abused, thirteen percent of transgender people were sexually harassed and sixty two percent were verbally abused. These are some of the possible reasons for the community people not continuing studies. In fact, the staff and faculty of education institutions are totally unaware of transgender issues. This indicates that intensity of problems of transgender students.

Table 3.2
Discriminations at Education Institution Level

Discriminations	Number of Responses (Delhi+UP)	Responses (Delhi+UP) (%)
Harassment at school level	252	28
Harassment by the students or by the classmates	132	52
Harassment by the students as well as teachers	39	15
Harassment by teachers	30	12
Harassment by the non-teaching staff	33	13
Physical harassment	47	18.5
Sexual Harassment	33	13
Verbal abuse	156	62

*Source: Field Survey
Multiple Response Questions*

Fig: 3.2



3.1.3 Discriminations in the field of Economic Activities

About 92 percent of transgender people are highly deprived of the right to participate in any form of economic activities. They are totally invisible in all the spheres of economic activities. Low level of education and social exclusion limits their employment and livelihood opportunities. It is pertinent to note that there are several factors responsible for their economic deprivation. (See Table 3.1)

3.1.4 Discriminations in the Family

While about 18 percent of transgender people in Delhi and 21 percent in UP maintains the relation with the parents, even though they are not treated at par with other members of the family. Parents do not play a proactive role in the case of transgender children. Instead, they suffer verbal and corporal abuses at the hands of their parents, siblings and other family members are reported by most of transgender people covered in the field survey. It takes years for transgender children to understand that they are transgender and different from male or female. Most of them keep it as a secret for long till when they realize that it is impossible for them to hide it forever. When they communicate the reality to parents and family members, transgender children get unfair treatment. Most of parents and family members consider the status of transgender as physical and mental defects. There are several cases of transgender people who had undergone severe mental strain and agony. By and large, transgender people are excluded from their families and do not get any support including livelihood support.

3.1.5 Discrimination in the Society

Transgender faces discriminations from the local community, neighbours and the society as a whole. They are not in the mainstream activities of any society. They are not invited for any social activities or social functions. They are invisible in the society as a whole. Almost all the respondents (99 percent) participated in the survey revealed that they have suffered social rejections in more than one occasions in the past. (See table 3.2)

3.1.6 Discrimination in Employment Market and at Work Place

About 96 percent of transgender people reported that they were denied in the employment market. Many of them were forced to take low paying work or undignified work as their livelihood such as *badhai*, begging and sex work and they are exploited by clients and beaten up. They face stigma and discrimination at work place. Some of them were forced to leave the work in a short period of time.

According to 89 per cent of transgender persons covered under the survey there are no employment opportunities even for a qualified and skilled transgender person. About 23 percent of transgender people indicated that the unavailability of livelihood compels a section to engage in sex work with its associated health-related risks. If employment opportunities are provided, they are ready to take any alternative livelihood option or job.

3.1.7 Discrimination in Access to Law

Access to justice for transgender people is at a lower level. They do not get justice from police, if they approach. Further harassments by the police and difficulties in paying bribe to police discourage transgender people from approaching police authorities. There are cases of gang rape of transgender people. They cannot even go to police station for seeking help and assistance. Some of transgender people reported that they try to be presented as male in order to avoid rape. Transgender community in general and a transgender person in particular do not form a sizeable, large or noticeable vote bank for political parties to canvass. Hence the political discourse and appropriate legislations to address their grievances are not taking place (See Table 3.1).

3.1.7 Denial of Health Rights

About 57 percent of transgender people covered under the survey showed keen interest in getting sex realignment surgery. But they cannot afford it due to the cost involved. Many young transgender people who do not have any support from their parents are depressed since they cannot get operated upon without consent of parents. Some of these young transgender people resort to birth control pills, hoping that the high estrogen will help them feel like women while health experts find these pills will cause harm to these transgender people. Transgender people have a raft of surgeries available to make the "gender transition". For those wishing to be

female, the procedures are neo-vagina creation, penectomy (removal of the penis), orchedectomy (removal of the testes), clitoroplasty (construction of a clitoris), breast augmentation, rhinoplasty and hair transplants. For adopting the male gender, bilateral mastectomy (removal of the breasts), hysterectomy (removal of uterus), oophorectomy (removal of ovaries) and phalloplasty (construction of penis) are among the surgeries required. The authorities will also have to provide HIV surveillance centres as transgender persons are seen as vulnerable. Sex Reassignment Surgery (SRS) is an important aspect of transgender issue. There are different varieties of surgery, i.e., General surgery and specialized surgery. Dr. Kaushik in Pitampura is a doctor specialized in the surgery. The normal fees of surgery for planting womb are in the range of Rs. 3 lakh- Rs.5 lakh. Transgender deserves help, proper support and assistance to undergo sex realignment. Unfortunately, transgender people are deprived of all these health services as they are poor and isolated.

3.1.8 Housing: Right to Accommodation

Housing is a serious problem of a Transgender in any parts of India. The case reported in Box: 3.1 is one among several. As discussed in section 2.1.6, several cases of denial of accommodation, both monthly rental accommodation and hotel accommodation to transgender people are reported from different parts of India. Due to the lack of identity documentation, hotel management and house owners quite often deny the accommodation to transgender people. Ownership of house is a dream for most of transgender people.

3.1.9 Denial of Right to Marry

There is no legal support to a transgender for entering in to a marriage, having spouse and setting up of own family. Several cases of living- in-relation among transgender people are reported. Separation and collapse of the living- in-relation have resulted in the exploitation of money, assets of several transgender people (See Box 3.5)

Box 3.1

Case Study: *Transgender Told to Vacate Mum Flat*

A young transgender film-maker was asked to vacate a flat in Jogeshwari in Mumbai. she moved into a couple of weeks ago as the owner wanted to avoid "gay people" living in his house as neighbours might object. "He probably used the word gay because he may not know what transgender is," said Joe Paul, describing what her broker Jehangir told her on Monday. On being contacted, Jehangir said it was his mistake, he should have checked with the owner whether he would rent to a single person. Paul, a 28-year-old freelance ad-film director from Kolkata, refuted the broker's claim that she was being asked to move out because she was single; she was clear that she was being asked to leave on grounds of her sexuality. She had faced harassment for the

Source? → given in the previous draft.

? incomplete

Box 3.2

Case Study: *Livelihood Project*

With the support of Pahal, an NGO in Delhi, two transgender people- Meenakshi and Priyanka- set up a street food shop to sell momos, a dish with steamed vegetables or meat, in East Delhi. Initially sales were not good. In order to increase the sales they have increased quality of momos. But within a span of one month or so the shop has registered good sale generating a reasonable level of income. The success of the business has increased the confidence of the both the transgender persons.

Box 3.3

Case Study: Termination of Job

Poonam, a transgender woman in Pandav Nagar, Delhi was working with a Call Centre. Her employer was quite satisfied with her performance and efficiency as she was sincere and devoted to her work. She was the only Transgender and most of the employees were staring at her and watching her movements. She became a source of attention to other employees and some of them in the Call Centre had asked the owner to terminate the service of Poonam, a transgender woman citing the reason of diverting the attention of other employees. Subsequently, the employer had terminated her service and she lost the job with the Call Centre.

3.1.10 Denial of Human Rights under Guru Chela System in UP and Delhi

Those are some challenges from within the community. The prevailing guru-chela system is an obstacle for youngsters in availing opportunities as senior community members are not enthusiastic and encouraging. "Seniors are not educated enough" and they cannot understand the relevance of education and skill development. An innovative approach is required to develop a sense of responsibility and ownership among all the age groups of TGs in Guru-Chela system.

Box 3.4

Case Study: Family - Guru Chela Relations

Alisha, 23 years old transgender is a counselor with Pahal Welfare Society, Kanpur, Delhi, an NGO working for the welfare of TG. This social worker holds BA degree. The transgender's parents who want to see Alisha as a son call the transgender with the male name, Rakesh. Their parents have got ration card, Aadhar card and voter id card in the name of Rakesh. Alisha is keen to live as transgender with own identity. The Guru, after joining the Hijra community, has given the name Alisha. Unfortunately Alisha now is not in a position to get any identity document in the name of Alisha. Most of the time she had been staying with Guru 13 years. Now she does not live with Guru and stays with a partner in a family set up though it is illegal. Once in a while she goes to meet parents. It is interesting to note that Alisha gives a part of earnings to her parents. Alisha is quite keen to maintain the identity of transgender and the relation with the family.

3.2 Coping Mechanism

The interventions of a few NGOs and activities of Guruchela system can be considered as coping mechanism under which the stresses of transgender are managed and to a certain extent acted upon.

3.2.1 Discriminations and Human Right Violations and role of Voluntary Sector: In Delhi and UP a few NGOs have been working for the cause of transgender people. Some of them have been providing support services to them. For instance, People for Parity (PEP), an NGO based gender-based violence prevention initiative in Delhi, organizes regular fellowship of youth where several TG participate and share their problems and concerns. Similarly another NGO namely Pahel have made interventions to address various forms of discrimination. They have

organized training programme on livelihood such as food counter, cultural development focusing on dance and song practice for stage performance in public programmes. They have organized advocacy programme for issuing identity documents from various government agencies. It may be noted that NGOs get support from certain ministries and departments.

3.2.2 Significance of Guru Chela system as Coping Mechanism : Under Guru Chela system , after rejection by their family, they lose their identity and face many challenges and live their entire life in fear of discrimination and stigma, but a Guru or Nayak gives them protection and shelter.

Box 3.5

Broken Marriage and Exploitation of Wealth

Vijay, 33 years old transgender was married to Vipin, a male in Bijnore, UP in 2003. Both lived together for six years happily. In 2009, Vipin left Vijay and within three months married a female and moved to another district in UP. Vijay said that Vipin's intention was to exploit her money and wealth. In fact Vipin had taken away savings of the transgender spouse. Since the marriage of a transgender is illegal, Vijay cannot approach any court for any compensation or any form grievance redressal.

Transgender with good leadership quality is generally chosen as Guru. Though age is not a criterion about 65 percent Gurus under the survey are above 40 years. Guru chela system is the best alternative option for a transgender. Guru chela relation provides a certain level of protection. It takes care of old age life in a limited way. It ensure a consistency in the income flow while 50 percent of the income will have to deposit with Guru and the remaining 50 percent can be spent by transgender for current needs. Guru will takes care of unforeseen

contingencies and meet the expenses during lean period. There are certain strict guidelines and restrictions for each TG under Guru Chela system. These restrictions are related to dress code, speaking, addressing guru and other members, showing respect to Guru and following rituals

In nutshell, the rights of transgender people are largely compromised. Transgender persons are in a sense of isolation, within households, communities and institutions, in the midst of rampant societal gender discrimination. They face several forms of discrimination. Their right to education, right to work and legal protections are totally neglected. Access to several services especially general health services, HIV and AIDS, gender-affirming health services for transgender is poor and their rights are disregarded and issues of the transgender community remain unaddressed.

Chapter 4

Analysis of Policies and Welfare Schemes for Transgender in India

In the chapter the laws and policies of government of India and various state governments towards transgender people are analyzed. The Supreme Court judgments in respect of rights and privileges of transgender people and steps taken by the Central and State Governments for their overall developments in the light of the given policy, laws and judgment are covered.

4.1 Empowerment of Transgender in India: Laws and Policies of National and State Governments in India

4.1.1 **Judgments:** A few progressive judgments by the courts in India have been made to elevate the status of the transgender people in India. In the state of Tamil Nadu they were legally given voting rights as a third sex in 1994. In 2003 a transgender applicant was allowed to sit for the Tamil Nadu civil services after court order. On 14 April, 2014, Supreme Court identified transgender as third gender, directs states to treat them as "socially and educationally" backward classes and extend reservation in education and employment.

A hijra woman was allowed by the MP High Court to receive property from her Guru because the court accepted that the community cannot transfer property to anyone outside of the community. In this ruling the court explicitly acknowledges the existence of a distinct 'eunuch' class with its own customs and rituals that must be respected¹

The Naz Foundation India filed a public interest litigation in the Delhi High Court challenging the constitutionality of Section 377 of the India Penal Code, which makes it illegal to engage in any "unnatural" sexual act, defined as sex other than heterosexual intercourse. The Delhi High Court dismissed the original writ of petition in 2004 for lack of a cause of action. However, on civil appeal the Supreme Court of India set aside the dismissal and ordered the Delhi High Court to hear the petition on the merits. The petitioner argued that Section 377 encouraged discriminatory attitudes, abuse, and harassment of the gay community, and significantly

¹Ilyas and Others v. Badshah, alias Kamla. AIR 1990MP 334

impaired HIV/AIDS prevention efforts and access to treatment. The Court found in favour of the petitioner and held that Section 377 was unconstitutional². The Court found it violated the right to dignity and privacy

On 24 April, 2015, a Bill on transgender rights, seeks to mainstream transgender was passed by Rajya Sabha. In a rare action, Bill of a private member, who is from Tamil Nadu, protecting and providing rights for transgender was passed by the Rajya Sabha. The Bill seeks protection for transgender rights and guarantees reservation in education and jobs, financial aid and social inclusion (The Times of India 2015).

In its current form, the Bill has aspects that concern at least nine different ministries and there is a need for more inter-ministerial consultation. The Bill has 58 clauses in 10 chapters dealing with different aspects ranging from social inclusion, rights and entitlements, financial and legal aid, education, skill development to prevention of abuse, violence and exploitation. The Bill provides for creation of welfare boards at the Centre and State level for the community, Transgender Rights Courts, two per cent reservation in government jobs and prohibition of discrimination in employment. It also makes provisions for pensions and unemployment allowances for members of the community. The 'Rights of Transgender Persons Bill, 2015' prescribes that no child, who is born a transgender, shall be separated from his parents, Only a court order can take the child away from the parents, and courts too can intervene only in the interest of the child, like in cases where the immediate family is unable to care for a transgender child.

The bill says transgender people will be identified as OBCs and will be eligible for job/education quotas available to the Mandal bloc, except those born in SC or ST families who can tap their community's quota. Crucially, the bill is strong on gender rehabilitation. A transgender will be free to choose sex-male, female or 'third gender' -and local authorities will have to provide for a free "Sex Reassignment Surgery". The 2015 bill seeks to main stream transgender, the government's hand forced by a Supreme Court order and an unprecedented private member's bill passed by Rajya Sabha in April 2015. Besides ensuring a family life for

²*Naz Foundation vs. NCT Delhi (2009) 160 DLT 277*

transgender people, the bill enjoins upon local governments to provide them admission in educational institutions without discrimination and with financial help. A transgender, if eligible, can also appear for any job in sectors identified in the bill. This is the first time in 45 years that a private members' Bill has been passed by the House. The government assured the House that it would bring an updated Bill in the Lok Sabha. While the Government of India has accepted the spirit and sentiment of the Bill, it is in the process of bringing a fresh Bill after removing the impractical clauses.

Provisions in Indian Penal Code: Police Atrocities on Transgender People: Cases of atrocities by Police against Transgender people have been highlighted in media and brought to the notice of Courts, although no separate data is maintained by National Crime Record Bureau (NCRB). However, there has been no evidence or study of systemic bias or discriminatory attitude in law enforcement agencies against transgender people. The issues of atrocities and harassment by police are mainly due to lack of proper awareness on applicable legislations on transgender people and sensitization in police. In cases of reported crimes by transgender people, the law enforcement agencies are often at loss to ascertain applicable provisions of law and sometimes these have led to accusation of excesses by Police on transgender people. On the other side, a section of transgender people sometimes take advantage of the lacunae of law and resort to antisocial activities which become difficult to contain.

Sec. 375 of the IPC: The Criminal Amendment Bill 2011, introduced in Parliament, proposed to replace the word 'rape' wherever it occurs, in relevant sections of IPC by the words 'sexual assault', to make the offence of sexual assault gender neutral, and also widening the scope of the offence sexual assault. However, this has been expunged in the Criminal Law Amendment Act 2013. The petition against the order and judgment of Hon'ble Delhi High Court for repealing sec. 377 IPC is sub-judice before the Supreme Court.

4.1.2 Government of India: National Policy

While the States formulated schemes for the transgender community, a national policy is not yet ready in India. Ministry of Social Justice, Government of India has asked the States to submit

comments on finalizing the modalities for setting up the welfare boards. Government of India has asked various states to carry out registrations and surveys of transgender persons.

4.2. Transgender Population in India

Let us discuss the size of transgender population in India in order to understand the magnitude of their welfare needs. In India, total population of transgender is around 4.88 Lakh as per 2011 census. Uttar Pradesh has 137,465 transgender people followed by Andhra Pradesh (43,769), Maharashtra (40,891), Bihar (40,827), West Bengal (30,349), Madhya Pradesh (29,597), Tamil Nadu (22,364), Orissa (20,332), Karnataka (20,266), Rajasthan (16,517), Jharkhand (13,463), Gujarat (11,544), Assam (11,374), Punjab (10,243), Haryana (8,422), Chhattisgarh (6,591), Uttarakhand (4,555) and Delhi (4,213). A reliable statistics on transgender population in India is unavailable though they were included in 2011 census. During our consultation with experts in various states it was stated that census data is unreliable due to certain reasons such as accommodation and behavioral pattern of transgender community. Some experts argue that the population can be in the range of five to six millions as a large number still keep the gender status as a secret.

Table 4.1

Transgender Population

Sl. No	State	Transgender persons	Child (0-5)	SC	SC	Literacy
	INDIA	487,803	54,854	78,811	53,293	56.07%
1	Uttar Pradesh	137,465	18,734	26,404	639	55.80%
2	Andhra Pradesh	43,769	4,082	6,226	3,225	53.33%
3	Maharashtra	40,891	4,101	4,691	3,529	67.57%
4	Bihar	40,827	5,971	6,295	506	44.35%
5	West Bengal	30,349	2,376	6,474	1,474	58.83%
6	Madhya Pradesh	29,597	3,409	4,361	5,260	53.01%
7	Tamil Nadu	22,364	1,289	4,203	180	57.78%
8	Orissa	20,332	2,125	3,236	4,553	54.35%
9	Karnataka	20,266	1,771	3,275	1,324	58.82%
10	Rajasthan	16,517	2,012	2,961	1,805	48.34%
11	Jharkhand	13,463	1,593	1,499	3,735	47.58%
12	Gujarat	11,544	1,028	664	1,238	62.82%
13	Assam	11,374	1,348	774	1,223	53.69%
14	Punjab	10,243	813	3,055	0	59.75%
15	Haryana	8,422	1,107	1,456	0	62.11%
16	Chhattisgarh	6,591	706	742	1,963	51.35%
17	Uttarakhand	4,555	512	731	95	62.65%

18	Delhi	4,213	311	490	0	62.99%
20	Jammu and Kashmir	4,137	487	207	385	49.29%
21	Kerala	3,902	295	337	51	84.61%
22	Himachal Pradesh	2,051	154	433	118	62.10%
23	Manipur	1,343	177	40	378	67.50%
24	Tripura	833	66	172	181	71.19%
25	Meghalaya	627	134	3	540	57.40%
26	Arunachal Pradesh	495	64	0	311	52.20%
27	Goa	398	34	9	33	73.90%
28	Nagaland	398	63	0	335	70.75%
29	Puducherry	252	16	40	0	60.59%
30	Mizoram	166	26	1	146	87.14%
31	Sikkim	126	14	9	37	65.18%
32	Daman and Diu	59	10	1	2	75.51%
33	Andaman and Nicobar Islands	47	5	0	3	73.81%
34	Dadra and Nagar Haveli	43	5	0	22	73.68%
35	Lakshadweep	2	0	0	2	50.00%

Source: Census 2011

4.3 Welfare Schemes for Transgender People in Indian States and Select Foreign Countries in a Comparative Perspective.

4.3.1 Tamil Nadu

Tamil Nadu is a front running state in providing welfare support to transgender people. Tamil Nadu established a transgender welfare board in April, 2008, with representatives from the transgender community. Social welfare minister serves as the president of the board. Free sex reassignment surgery for trans women is made available in select government hospitals in the state.

Tamil Nadu has given free housing and full scholarship for higher education of transgender persons. Alternative sources of income are provided through formation of SHGs of transgender people. Under the initiative of state welfare board, ID cards are distributed to 3328 transgender persons; ration cards have been issued to 1544 transgender people; house patta issued to 1053; tailoring machines distributed to 102; insurance certificate given to 660 transgender people. Self Help Groups of transgender people have been formed and Rs. 154 lakhs have been given as loan to SHGs. Further, 20 percent interest subsidy has been given to their loan repayment. The government of Tamil Nadu has issued separate food ration cards for transgender people. Tamil Nadu state government's 'Aravani (male-to-female transgender people) Welfare Board' has given identity card for Aravanis. Social Welfare and Nutritious Meal Programme Department of Tamil Nadu helped to issue ID Cards through Transgender Welfare Board. Based on the ID Card they are now able to get Ration Card, Voter ID, etc. The transgender welfare board has focused only on the development of trans women. Recently it has started to examine the rights of trans men and gender variants.

Welfare measures of Tamil Nadu include creation of a database for transgender people; a government order for admission of transgender in to government run schools and colleges. Seats have been reserved in colleges and universities of the state for members of the transgender community. Specific schemes implemented by Social Welfare Department of Tamil Nadu for transgender community include providing transgender identity cards, house sites

with title deeds, house construction support, ration cards for public distribution , income generating activities, formation of Self Help Groups, free supply of sewing machines, training in beauty therapy and arts scholarship for education. Tamil Nadu had the most progressive welfare schemes for transgender people offering training and financial assistance up to Rs. 20,000 per month to each transgender.

The state government issued orders, in late-2006, directing the school and higher education departments to ensure that TGs are not denied admission to schools and colleges. Counseling has been made compulsory in schools (through teachers, counselors and NGOs) for students with behavioural issues, and their families. Tamil Nadu government issued an order on May 2008 to create a third gender column in application form for admissions to government colleges to improve the education of transgender people.

Grievance redressal meetings were held in once in three months in every district. This initiative has been particularly successful in opening direct channels for dialogue and negotiation between the community and the administration. "Issues discussed during the meetings were housing, Public Distribution System (PDS) cards for subsidized food and fuel, and the repeal of Section 377 of the Indian Penal Code, which criminalizes sexual expression by homosexuals, bisexuals and transsexuals.

Tamil Nadu AIDS Initiative had formed a federation of 20,000 transgender which provides various health services to its members. It operates rural community clinics and it conducts skill development and financial literacy programmes. The transgender people from Chennai district receive subsidy from the Government of Tamil Nadu and obtains loans from the commercial bank for setting up of income generating activities such as trading of garments. Some of them carry out their business from their houses. Some of transgender people sell sarees, night ware and other clothes within their transgender communities and others in the locality. Monetary help given by the Government through the Transgender Welfare Board has helped them to set up income generating activities. Examples of income generating activities are seasonable work like Idli making, Vegetable and Flower selling and selling of cooked maize etc.

Media in Tamil Nadu has been playing critical role in creating awareness about the rights of transgender people. In a monumental push in breaking taboos, the Tamil cable channel STAR Vijay started a talk show hosted by a trans woman named Rose. The programme is called "Ippadikku Rose". Kalki Subramaniam, a transgender person born in Pollachi, Tamil Nadu performs a lead role in a new Tamil movie "Narthagi".

A telephone helpline called "Manasu" ("Heart" in English) (0091-44-25990505) was set up by Tamil Nadu AIDS Initiative-Voluntary Health Services (TAI-VHS) for members of the transgender community, their families and the public. It functions between 10 a.m. and 6 p.m. It was launched by the then Principal Secretary of Health Department of Tamil Nadu in March 2009. The helpline supports transgender people in finding employment opportunities. Sahodari Foundation is an organization working for the transgender rights. Sahodari Foundation, founded in 2007, is a well-known organization in India for its creative and alternative advocacy methods. Srishti Madurai launched India's first helpline for LGBT on October 2, 2011 at Madurai. Later, in June 2013 the helpline turned to offer service for 24 hours with a tagline "Just having someone understanding to talk to can save a life".

4.3.2 Sikkim

The State government of Sikkim provides monthly stipend of Rs. 2000 to newly born transgender babies in Sikkim (Government of Sikkim, 2014). The State government sponsors the education of such children.

4.3.3 West Bengal

West Bengal government has set up a separate welfare board for transgender on 15 July 2014 recognizing transgender people as the third sex to address all their grievances. Various measures taken by the government include appointing India's first transgender college principal; setting up the country's third Transgender Development Board; considering the appointment of community members as civic police volunteers and constructing separate toilets for them (Hindustan Times, 2015). The Welfare Board of Transgender recognizes all transsexuals, whether biological or post-operative. West Bengal Government has introduced the Sexual Reassignment Surgery (SRS) facility at a few leading government hospitals as it is a

costly affair if performed in a private hospital. Moreover, it should be carried out with adequate precaution to prevent future health hazards. It has also offered dedicated beds to members of the community in all state-run hospitals. Dedicated beds may help them avail of proper treatment

4.3.4 Kerala

The state of Kerala has a comprehensive policy for the third sex, aimed at giving them equal treatment and opportunity including job reservations. It has set up an exclusive transgender justice board to hear their complaints and grievances. It has started to provide free legal aid to check discrimination and harassment. It has started to set up new comfort stations and toilets and a separate block for third sex inmates at some prisons. A 24x7 crisis management helpline is floated with the help of NGOs to redress their problems. Sangama is an NGO working in 10 districts of Kerala from 2010, implementing Global Fund Pehchaan Project reaching out to MSMs (men having sex with men). In Kerala the population of Transgender people are very less when compared to other Indian states due to various reasons. Transgender people in Kerala migrate to cities like Bangalore, Hyderabad, or Delhi as people in their home State do not accept them. Department of Social Justice Government of Kerala commissioned a project to conduct a socio-economic and situational survey of transgender people to sexual minority of Kerala to Sangama, in April 2014. The survey has identified over 25,000 transgender people in Kerala. Sangama, the non-governmental organization that works for the rights of sexual minorities conducted the survey in 14 districts of the state.

4.3.5 Rajasthan

Rajasthan has a pension schemes to transgender people. Transgender people can live in old age homes supported by Government of Rajasthan. They are given benefits in the states schemes like allotment of house and land. Rajasthan has a welfare scheme but limited only to persons identified as hijras who make less than Rs 60,000 a year upon proof to the government

4.3.6 Madhya Pradesh

The Madhya Pradesh Government formed a board which maintains a database of transgender persons in the state provide them with government jobs as per their educational qualifications.

The State of Madhya Pradesh has taken a few steps to encourage the transgender to work in many of government's awareness program in the field of literacy, sanitation and health. The Madhya Pradesh government has suggested that transgender be addressed by adding "Tgr" before their names on the lines of "Mr., Mrs. and Ms in English and "Ki" in Hindi. The state government has sent a proposal in this regard to Government of India

4.3.7 Punjab

The Punjab government has created a separate category in application forms under which transgender can apply for government vacancies. Although there was no bar on transgender to apply for government jobs, this is the first time the state has given them an option to choose their identity apart from the men and women categories.

4.3.8 Maharashtra

Maharashtra formed Transgender Welfare Board. It has set up a cultural institute dedicated to the transgender community. The Transgender Welfare Board and Cultural Institute help transgender to gain access to various government entitlements and services to transgender people. The Board has transgender community representation.

4.3.9 Karnataka

The state of Karnataka has established a separate welfare board to address the human right issues of transgender community. The Karnataka government has introduced a pension scheme 'Mythri' for the transgender community under which transgender people from the age group 18 to 64 are entitled to a monthly pension of Rs 500. Transgender people with annual income less than Rs. 12,000 per annum in rural areas and Rs. 17,000 per annum in urban areas are eligible for the scheme. They are required to submit relevant documents including a certificate from the Department of Health and Family welfare to prove their gender (Mitra Joy A, 2014).

4.3.10 Gujarat

In the state of Gujarat, transgender rights activist Laxmi Narayan Tripathi and gay rights activist Manvendra Singh Gohil have played a vital role in promoting the interests of

transgender. They have persuaded the state government to follow the Supreme Court order 2014 and as a result transgender welfare board is formed for the upliftment of the transgender in the state

4.3.11 Delhi

The Government of NCT of Delhi provides 1000 per month to the transgender people who are living in Delhi at least for 3 years. Food subsidy for Rs. 600 per month is given under Dilli Annashree Yojna. As per various studies, Delhi has one of the highest dropout cases. To help those who study in Classes VII to X, government has proposed a monthly scholarship of Rs.150 for day scholars and Rs. 350 for those who stay in hostels. The scholarship is being reviewed every 10 months. Government of India has started involvement of transgender people in certain public utilities in Delhi. In 2014, they were roped in the creation of awareness about traffic rules among the public.

4.3.12 Andhra Pradesh

Pension, housing, education support and SHG based facilities are made available to transgender in the state of Andhra Pradesh. The state government of Andhra Pradesh has set up the Minority Welfare Department to develop welfare schemes of transgender people.

4.3.13 Chhattisgarh

Welfare board was set up in the state and moreover, panels were set up in every district for the welfare of transgender persons. Counseling centers and skill development units to provide vocational training are set up in the state. The Government of Chhattisgarh has enacted Equal right and free education policy for helping transgender children in the state.

4.3.14 University Grant Commission initiatives and Education of Transgender Children

The UGC has issued a notification on July 2014 to facilitate the education of the third gender. Accordingly universities have started taking action. University of Mumbai has asked affiliated colleges to include transgender students as a separate category in its examination and admission forms from the academic year 2015-16 onwards. The university has also asked the

colleges to provide counseling facilities for transgender students and address concerns of these students within 24 hours through grievance cells in colleges. For example, Mumbai University has issued a circular in 2015 as follows: "It is essential to provide separate rest rooms to the students belonging to transgender community. Provision of counseling to transgender people and other students so as to enable them to assimilate as one student community will be a healthy practice for the varsity".

4.3.15 International Practices and India/Select Indian States: A Comparative Analysis

Let us discuss the standards for legal recognition of gender identity of transgender people in India comparing international experiences.

India vs Argentina's Self-determination Model

Countries like Denmark, Malta and Argentina have made legislation related to self-determination. These provide viable and human rights compliant legal recognition models. Some of European Union members have taken drastic steps. Following Argentina's lead, India can choose to adopt the Yogyakarta Principles - that is, adopt a model of gender recognition that does not rely on a diagnosis of gender dysphoria by medical professionals. Rather, India's law can be aimed to allow individuals to self-identify as their own gender.

India vs Argentina's requirements for surgery and ID documents

India can follow the lead taken by Argentina and depart from current standards in countries like South Korea and Japan by not requiring gender reassignment surgery, divorce, or sterilization in order to change one's information on ID documents. Argentinean Gender Identity Law, Article 11.(Argentina's Gender Identity Law) enables trans people to change their name and sex details without requiring a medical diagnosis or specific medical interventions including those that would result in infertility. In doing so, it recognizes that identity does not depend on medical transition. In addition, the law guarantees access to trans-related health care on the basis of informed consent, with the costs covered by the national Mandatory Medical Plan.

India vs Pakistan, Nepal and Ireland in the area of Third gender options

Following Pakistan and Nepal's lead in recognising a third gender in all interactions between individuals and the states, India can consider allowing individuals to opt for gender categories

outside of the gender dichotomy of male and female. Qualitative research can be conducted with the transgender community to identify the best terminology/phrasing for this category. Current efforts in India that list 'Other' and 'Eunuch' could potentially be isolating for individuals who feel as if they are being stigmatized with these names. In this context, it is important to note that Pakistan's Supreme Court legally recognized third gender persons as a category for state/official identification documents and ordered the National Database and Registration Authority to issue these third gender identity cards to individuals identifying. In 2009, the Supreme Court of Pakistan ruled that a certain quota of all government jobs must be given to transgender persons. Ireland enacted gender recognition legislation that arms an individual's preferred gender, while protecting their right to privacy, personal dignity and family life, through a process that is efficient, fair and non-discriminatory.

India vs Portugal in the area of Transparency and Flexibility

India can follow the precedent established by Portugal, which currently is believed to have the most expeditious and transparent procedures for changing gender identity on official documents. In Portugal a decision for a change in name and gender has to be granted within a maximum of eight days following the submission of a complete application, and individuals are allowed to change their gender and name on their ID documents at the same time (unlike South Africa where individuals must submit two separate applications for these changes). Additionally, individuals can be allowed to change their gender on their documents multiple times without penalty.

India vs United Kingdom, Jersey, and Argentina in the area of Confidentiality

Following the standards adopted by the United Kingdom, Jersey, and Argentina, India can consider not having public records of changing gender/name on documents. For example, in Argentina transgender people are specifically exempted from the requirement of announcing a name change in the newspaper. Many transsexual people who are transitioning to the 'opposite' gender do not want their previous name and gender to be discovered.

India, the state of Tamil Nadu vs Germany on Safeguards

This law should anticipate delays in implementation and provide safeguards for this. Following examples in Germany and the state of Tamil Nadu, perhaps individuals who request

gender/name changes can be provided with temporary documentation that lists their 'old' and 'new' names to facilitate this process.

UK and No Unanticipated Legal Outcomes

In the United Kingdom, change in legal sex does not have an effect on marriage and security benefits/pensions and do not adversely affect parenthood or succession rights. India can aim for this standard as well.

Argentina, Brazil, and Iran on Sexual Reassignment Surgery

Sexual Reassignment Surgery as a Public Health Right: Following precedents established by Argentina, Brazil, and Iran, sexual reassignment surgery and hormone therapy should be defined as a public health right that is made freely available at hospitals across India. As part of this mandate, resources must be provided to equip medical service providers with adequate technology and skills to undergo these highly complex surgeries. It is significant to understand that Thailand has provided several facilities to the Trans Gender Community. Sexual Reassignment Surgery (SRS) is available in Thailand, with indication that Thailand performs the greatest number of male-to-female (MTF) SRS in the world. However, although MTF SRS is easily accessible in Thailand, female-to-male (FTM) SRS is not as easily accessible and as advanced. It is also more expensive. In terms of legislation, transgender individuals cannot change their sex on legal documents regardless of whether or not they have undergone SRS. However, they have been facing several problems even now. Transgender individuals cannot change their gender on identity papers in Thailand. Individuals must be of the minimum age of consent in India to be eligible for sexual reassignment surgery. While, according to current medical guidelines, individuals need to be diagnosed with gender dysphoria to undergo SRS, individuals must be informed by trained professionals about the risks, complications, and other pertinent information associated with undergoing such surgery.

In this context, it is quite relevant to discuss the Indian Standards of Care for Transgender People. The medical community in India must review the WPATH Standards of Care and identify what standards will be used. A procedure must be put in place to make sure that all individuals who choose to undergo such surgery are making fully informed decisions. In 2011, UNAIDS India convened a national working group to develop interim national guidelines for

SRS for male-to-female transgender people in India. There is a need for a comprehensive set of guidelines for gender transition for transgender people in India, which needs to be developed or finalised with the consent of Ministry of Health and Family Welfare.

Need for Non-discrimination Law in India

India might need a special law like the 2010 Equality Act in the United Kingdom, which tackles the issue of discrimination on the basis of gender identity as well as sex/gender reassignment. The U.S. Equal Employment Opportunity Commission, in a 2012 decision, ruled that discriminating against someone because that person is transgender is discrimination based on sex, which violates Title VII. There are laws that specifically protect transgender students from harassment or discrimination. More and more, schools are protecting transgender students from harassment or discrimination. Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Vermont, Washington, and the District of Columbia have state laws that specifically protect transgender students in public schools from harassment and/or discrimination. Here it is important to consider the need for partnerships with key stakeholders: Transgender rights often involve direct interventions and contributions by medical service providers, lawyers, judicial officials, the criminal justice system, and others who are involved with the process of transition and gender recognition. Therefore, it is important to build meaningful partnerships with individuals in a vast array of capacities in order to successfully realise these rights.

4.4. Cases of Successful/ Popular Transgender Persons in India

In a few states of India transgender icons and role models have emerged in different fields such as education, politics and governance, media and transgender activism. This has resulted in developing public interest in transgender community, though in a limited way.

4.4.1 Transgender in the field of Politics and Governance

4.4.1.1 In Madhya Pradesh, transgender Shabnam Mausi was elected to its State Legislative Assembly in 1998. She became the first transgender who was elected to public office. She represented the Sohagpur constituency in State Legislative Assembly from 1998 to 2003. It may be noted that transgender people were granted voting rights in 1994 in India. Shabnam Mausi is

born in a Brahmin family. Her father was a superintendent of Police. Even though she had completed only primary school level, she spoke 12 languages due to her wide travels. She spoke out against discrimination of Hijra's as well as to raise awareness on HIV/AIDS. In 2003, Hijra's in Madhya Pradesh have announced establishing their own political party called "Jeeti Jitayi Politics" (JJP), which literally means 'politics that has already been won'. In 2005, a fiction feature film titled 'Shabnam Mausi' was made about her life. Although she is no longer in public office, Shabnam Mausi continues to participate actively in AIDS/HIV programme with NGOs as gender activists in India.

4.4.1.2 Madhu, belonging to Dalit community, was the first transgender to get elected as mayor of Raigarh Municipal Corporation in the state of Chhattisgarh in January 2015. It is interesting to note that a city in Chhattisgarh has elected the country's first transgender mayor, nine months after a court ruled that transgender be recognized as a legal third gender. In 1999 Kamla Jaan, a transgender, became mayor in Katni, Madhya Pradesh. She was unseated after two and half years due to constant opposition by political opponents. In 2000, Asha Devi, a transgender was elected from Gorakhpur in Uttar Pradesh. She was expelled after three years.

4.4.2 Transgender in the field of Education

4.4.2.1 India has got its first transgender college principal when Manabi Bandopadhyay joined as the principle of Krishnagar Women's College in West Bengal on 9 June 2015. Prior to that, she was Associate Professor in Bengali at Vivekananda Satobarshiki Mahavidyalaya, West Bengal. Though the selection was made by the College Service Commission it was supported by West Bengal Education Minister. The new principal has a strong personality to run the college smoothly. Manabi is a good academician and an able administrator. She has an adopted son and 92-year-old father. Manabi Bandopadhyay is the Vice chairperson of West Bengal Transgender Welfare Board.

4.4.2.2 In 2014, Grace Banu was the first transgender student to secure admission in an engineering college, at the Alagappa Chettiyar College of Engineering and Technology, a self-finance college. She belonged to Scheduled Caste.

4.4.3 Transgender in the field of Media

4.4.3.1 Padmini Prakash, a 31-year-old transgender from Coimbatore. Tamil Nadu has worked with Lotus News Channel as morning news reader. Padmini is the first transgender television news anchor in the country. Padmini has acted in a television serial. She is a dedicated social activist for transgender rights.

4.4.3.2 Noori of the South India Positive Network has found a new visibility in the media. Noori, of the South India Positive Network, has worked for the welfare of around 2,000 HIV-positive members in Tamil Nadu. Noori, 60, who is also a transgender living with the virus as she was diagnosed HIV-positive in 1987. After stopping commercial sex work and she devoted her life for educating transgender people.

4.4.3.3 Transgender icons and television host Rose, India's first TG television host. She, after hosting a half-hour chat show Ippadika, Rose (Yours, Rose) on Star Vijay, has become popular. The programme covers controversial topics such as pre-marital sex and legalization of prostitution. Rose is a talented person who played a significant role in changing the public perceptions of transgender persons.

4.4.4 Transgender in the field of Transgender Activism

4.4.4.1 Laxmi Narayan Tripathi is a famous dancer as well as dance instructor. Laxmi was born in Thane in 1979 as the eldest child of an orthodox Brahmin couples from Uttar Pradesh. She has represented transgender community in Asia Pacific in the UN. Laxmi was on the boards of several NGOs which conduct LGBT activist work. As the President of the NGO DAI Welfare Society, she has worked with other organization for transgender people in South Asia.

Kalki Subramaniam is a transgender rights activist, writer and an actor who contest 2011 assembly election and 2014 general election. She has fought the elections focusing on issues of transgender community. Transgender Swapna and gender activist Gopi Shankar from Srishti Madurai staged the protest in Madurai collectorate on 7 October 2013 demanding reservation and to permit alternate genders to appear for examinations conducted by TNPSC, UPSC, SSC and Bank Examinations. Swapna, incidentally, had successfully moved the Madras High Court in 2013 seeking permission to write the TNPSC Group II examination as a 'woman' candidate.

4.4.5 Transgender in the field of Literature

4.4.5.1 "Vaadamalli" by novelist Su. Samuthiram is the first Tamil novel about Aravaani community in Tamil Nadu published in 1994. A. Revathi became the first transgender to write about transgender issues and gender politics in Tamil. Her works have been translated in more than 8 languages and acting as a primary source on gender studies in Asia. Her book is part of research project for more than 100 universities. She is the author of Unarvum Uruvamum (feelings of the entire body). The book is the first of its kind in English from a member of the transgender community. She has also acted and directed several stage plays on gender and sexuality issues in Tamil and Kannada. "The Truth about Me: A Hijra Life Story" by Transgender A. Revathi is part of the syllabus for final year students of the American College in Madurai.

4.5 Transgender Services and Transgender Movements

In States of Tamil Nadu, Maharashtra, and West Bengal which have highest number transgender CBOs/NGOs that are involved in various strong transgender movements. Continuous advocacy programmes with government and other stakeholders have resulted in improved services for transgender people.

Tamil Nadu is the front running state in implementing welfare programmes for transgender communities in India. Of late, a few other states have initiated welfare programmes in line with the state of Tamil Nadu. However, a large number of states have been quite slow in designing and implementing welfare programmes for transgender persons.

Chapter 5

Analysis of Laws and Policies for Transgender in select Foreign Countries

In this chapter we examine the prevalent practices towards transgender in foreign countries and discuss the UN Yogyakarta Principles of international human rights law in relation to sexual orientation and gender identity.

5.1 Practices towards Transgender in Select Foreign Countries

The Yogyakarta Principles on the application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2006), the Universal Declaration of Human Rights (1950), the International Covenant on Civil and Political Rights (ICCPR), 1976, and comparative law from the United Kingdom, the E.U., Germany, Argentina, South Africa, the United States, Hungary, Australia, Malaysia and New Zealand influenced different international practices towards transgender people. Gender equality has been gaining attention international law and so far twenty-nine countries have made legislations on the rights of transgender people. Some of these countries have recognized fundamental rights of transgender people.

5.1.1 European Union

European Union member states often use the definitions above differently as 14 member states (BE, DK, ES, FR, IT, LV, HU, NL, AT, PL, SK, FI, SE, UK) treat discrimination on grounds of transgenderism as a form of sex discrimination. Another 2 member states (DE, CY) treat that discrimination as sexual orientation discrimination and 11 Member States (BG, CZ, EE, IE, EL, LT, LU, MT, PT, RO, SI) do not have legislation or case law to set out the form of discrimination. The Court of Justice of the European Union, on 27 April 2006, confirmed that discrimination on grounds of gender reassignment has to be considered as discrimination on grounds of sex. The most advanced legislations on this issue are the Hungarian Act on Equal Treatment which includes sexual identity as one of the grounds of discrimination and the UK Gender

Recognition Act 2004 which considers that a person who has a full Gender Recognition Certificate cannot be discriminated against other than on grounds that would apply to anyone else of his/her acquired gender. The distinction between sex discrimination and sexual orientation discrimination is very important, because in the first case the legislation on equal treatment between men and women applies. As shown in Table 5.1 in April 2010, the Council of Europe's Parliamentary Assembly adopted a resolution on discrimination on the basis of sexual orientation and gender identity (European Parliament 2010).

There is no case law as yet at EU level that addresses the issue of mutual recognition when a transgender person wishes to exercise his/her right of the freedom of movement within the EU. The problem may arise when gender recognition takes place in one member state and the person seeks recognition in another member state. Transgender persons face problems in obtaining new identity documents with the appropriate name and sex change and this can prevent them from travelling.

Regarding same-sex marriage and civil partnerships member states of European Union have rules. "Ten Member States currently allow same-sex marriage: the Netherlands (since 2001), Belgium (2003), Spain (2005), Sweden (2009), Portugal (2010), Denmark (2012), France (2013) the UK (England and Wales, 2013; Scotland 2014), Luxembourg (2015) and Finland (effective from 2017). In Ireland a referendum on legalizing same sex Marriage was held on 22 May 2015. In Slovenia, Parliament approved a bill on 3 March 2015 by a vote of 51 to 28. The bill now needs to be signed into law by the President, with a referendum to be held beforehand. If the law is implemented, Slovenia will become the first country in central Europe and the first country in post-communist Europe to allow same-sex couples to marry. The remaining countries recognize unions similar to marriage or some weaker form of contracts or registration or do not provide for any legal scheme for same-sex couples. Registered/civil partnerships do not exist in Bulgaria, Italy, Latvia, Lithuania, Poland, Romania and Slovakia. In Estonia, a Cohabitation Act is due to enter into force in 2016, provided that several implementing acts are passed" (European Parliament 2015).

It may be noted that there are movements in many European countries supporting the introduction of more rules and guidelines to meet the genuine needs of transgender people. For

instance, Ireland, a member of European Union, legally recognizes transgender in June 2014 through the enactment of revised General Scheme of Gender Recognition Bill 2014 .The failure to introduce legal gender recognition has left transgender without formal legal status and had significantly impacted upon their ability to access basic services such as social security benefits, education and transport. Transgender Equality Network Ireland (TENI) asked to the advancement of the Bill. Transgender Equality Network Ireland suggests that parents and guardians should be allowed to apply for legal recognition on behalf of trans and intersex young people under the age of 18 years. Moreover, this process should not be unduly onerous or restrictive. TENI also strongly supports the introduction of guidelines to support the inclusion of trans and intersex young people in schools.

In November 2014, Germany officially recognized a "third gender" category, this time on birth certificates for intersex infants. If children show both male and female characteristics, parents can now mark their birth certificates with an "X," for undetermined gender. The law gives the possibility for intersex children (as many as 1 in 2,000 babies) to decide their gender identity once they reach an adult age, and not to be labeled male or female at birth without their will.

Table: 5.1

Prevalent practices towards Transgender in Foreign Countries

	Discrimination law	Gender reassignment requirements	Possibility to Change name in case of gender reassignment	Possibility to change Birth Certificate	Possibility to marry in New gender	Obligation to divorce to get a new gender
Belgium (BE)	Sex discrimination	Hormonal treatment and/or surgery	Easy, without medical evaluation	Yes, after gender recognition certificate (including Mental Health evaluation, hormonal treatment and sterility required)	Yes	Yes
Bulgaria (BG)	No law	Hormonal treatment and/or surgery	No law	No law	No law	No law
Czech Republic (CZ)	No law	Hormonal treatment and/or surgery	After medical evaluation and/or surgery	Yes, but Mental Health evaluation, hormonal treatment, secondary sex characteristics surgery required	No law	Yes
Denmark (DK)	Sex discrimination	Hormonal treatment and/or surgery	After medical evaluation and/or surgery	Yes, but Mental Health evaluation, hormonal treatment and sterility required	Yes	No
(Germany) DE	Sexual orientation discrimination	Hormonal treatment and/or surgery	After medical evaluation and/or	Yes, but Mental Health evaluation, hormonal	Yes	Yes

			surgery	treatment, secondary sex characteristics surgery required		
Estonia (EE)	No law	Hormonal treatment and/or surgery	Easy, without medical evaluation	Yes	Yes	Yes
Ireland (IE)	No law	No provision	No law	No	No	No law
Greece (EL)	No law	No provision	After medical evaluation and/or surgery	Amended, but Mental Health evaluation, hormonal treatment and secondary sex characteristics surgery required	Yes	No law
Spain (ES)	Sex discrimination	No hormonal and/or surgery requirements	After medical evaluation and/or surgery	No	Yes	Yes
France (FR)	Sex discrimination	Hormonal treatment and/or surgery	After medical evaluation and/or surgery	Amended, but Mental Health evaluation, hormonal treatment and sterility required	Yes	Yes
Italy (IT)	Sex discrimination	Hormonal treatment and/or surgery	After medical evaluation and/or surgery	No	Yes	Yes
Cyprus (CY)	Sexual orientation discrimination	No provision	No law	No law	No law	Yes
Latvia (LV)	Sex discrimination	No provision	After medical	No law	Yes	No law

	on		evaluation and/or surgery			
Lithuania (LT)	No law	No provision	Easy, without medical evaluation ³ 2	Yes, but Mental Health evaluation, hormonal treatment and sterility required and after genital surgery	Yes	No
Luxembourg (LU)	No law	No provision	Easy, without medical evaluation	No law	Yes	No law
Hungary (HU)	sex discrimination	no hormonal and/or surgery requirements	After medical evaluation and/or surgery	Yes	No law	Yes
Malta (MT)	No law	No provision	Easy, without medical evaluation	No law	No law	No law
Netherlands (NL)	Sex discrimination	Hormonal treatment and/or surgery	After medical evaluation and/or surgery	Yes	Yes	No
Austria (AT)	Sex discrimination	Hormonal treatment and/or surgery	After medical evaluation and/or surgery	Yes, but Mental Health evaluation, hormonal treatment and sterility required	Yes	Yes
Poland (PL)	Sex discrimination	Hormonal treatment and/or surgery	No law	No law	No law	Yes
Portugal (PT)	No law	Hormonal treatment and/or surgery	After medical evaluation and/or surgery	No	Non	Yes
Romania	No law	No provision	No law	No law	No law	No law

(RO)						
Slovenia (SI)	No law	No provision	Easy, without medical evaluation	No law	No law	No law
Slovakia (SK)	Sex discrimination	No provision	Easy, without medical evaluation	No law	Yes	No law
Finland (FI)	Sex discrimination	No hormonal and/or surgery requirements	After medical evaluation and/or surgery	Yes, but Mental Health evaluation, hormonal treatment and sterility requirement	Yes	Yes
Sweden (SE)	Sex discrimination	No provision	After medical evaluation and/or surgery	No, but under review	Yes	Yes
United Kingdom (UK)	Sex discrimination	No hormonal and/or surgery requirements	Easy, without medical evaluation	Yes, but gender recognition certificate (including Mental Health evaluation, and real life experience required)	Yes	Yes

Source: Data elaborated by the Policy Department C - DG IPOL - European Parliament, at European Parliament 2010

5.1.2 USA

Nearly 700,000 transgender citizens live in the U.S. However, the U.S. government still does not allow for a third gender option on legal documents while other countries, particularly in Asia, have taken the lead on this issue over the past ten years. There are state and local laws that clearly prohibit discrimination against transgender people. California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia

all have such laws. Their protections vary. For example, Nevada's law bans discrimination in employment, housing, and public accommodations like restaurants, hospitals, and retail stores; Maine's law covers those categories plus access to credit and education. At least 200 cities and counties have banned gender identity discrimination, including Atlanta, Austin, Boise, Buffalo, Cincinnati, Dallas, El Paso, Indianapolis, Kansas City, Louisville, Milwaukee, New Orleans, New York City, Philadelphia, Phoenix, Pittsburgh, and San Antonio, as well as many smaller towns. The governors of Indiana, Kentucky, Michigan, New York, and Pennsylvania have issued executive orders banning discrimination against transgender state workers. Some cities and counties have also protected their transgender public employees through local ordinances, charter provisions, or other means. People discriminated against by public entities on the basis of gender identity might also be able to argue that I's action was unconstitutional.

In respect of federal laws protect transgender people against housing and employment discrimination, USA has been lagging behind as US Congress has been slow to pass laws that clearly protect people against discrimination based on gender identity. However, in recent years a series of court decisions and other developments have made more and more clear that federal laws against discrimination based on "sex" apply to discrimination based on gender identity. Title VII of the 1964 Civil Rights Act prohibits discrimination on the basis of sex (among other characteristics) by an employer with 15 or more employees. Although there are some court decisions, mostly older ones, saying that Title VII does not prohibit gender identity discrimination, several federal appeals courts that have considered the issue recently have found some protections in the Civil Rights Act for transgender people. A federal district court in Washington D.C. ruled that employment discrimination for transitioning from one gender to another is illegal sex discrimination under the Civil Rights Act.

In a 2012 decision, the U.S. Equal Employment Opportunity Commission (EEOC) ruled that discriminating against someone because that person is transgender is discrimination based on sex, which violates Title VII. There are laws that specifically protect transgender students from harassment or discrimination. More and more, schools are protecting transgender students from harassment or discrimination. Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon,

Vermont, Washington, and the District of Columbia have state laws that specifically protect transgender students in public schools from harassment and/or discrimination. Some of these state laws explicitly apply to education, while other states (including Colorado, Delaware, Illinois, Maine, New Jersey, Nevada, Vermont, and Washington) include public schools in their bans on gender identity discrimination in public accommodations.

Transgender Law Center works to change law, policy, and attitudes so that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression. It envisions a future where gender self-determination and authentic expression are seen as basic rights and matters of common human dignity. Although the Fourteenth Amendment to the United States Constitution provides equal protection under the law for all, there is no federal law designating transgender as a protected class, or specifically requiring equal treatment for transgender people. There are 20 states and over 225 jurisdictions as of 20 January 2016[49]) including the District of Columbia which feature legislation that prohibit discrimination based on gender identity in employment, housing, and/or public accommodations. This legislation is similar to protections against sex and racial discrimination.

Hate crimes based on sexual orientation or gender identity are also punishable by federal law under the Matthew Sheppard and James Byrd, Jr. Hate Crimes Prevention Act of 2009. In 2011 and 2012, the Equal Employment Opportunity Commission ruled that job discrimination against lesbian, gay, bisexual and transgender individuals is classified as a form of sex discrimination and thus violated Title VII of the Civil Rights Act of 1964.[4]. The Organization of American States (OAS) has passed four OAS General Assembly Resolutions on Sexual Orientation and Gender Identity in order to affirm the rights of Transgender. In June 2013, the OAS adopted the Inter-American Convention list in gender identity and prohibiting various forms of discrimination.

5.1.3 New Zealand

New Zealand gave its transgender citizens a new gender category on their passports in 2012, with the introduction of "X" for "undetermined or unspecified." Transgender New Zealanders can change their gender category to "X" on their passports with a simple declaration. A Family

Court declaration is still required if citizens want to change their gender identity from male to female, and vice versa, on citizenship documents.

5.1.4 Australia

On April 2, 2010 Australia allowed a third gender under the law. An Australian court ruled that the government should recognize a third, neutral and non-specific gender besides the traditional "male" and "female" categories. With this landmark ruling, Australia also became the world's sixth country to recognize a third gender option for its citizens.

5.1.5 Thailand

Thailand has provided several facilities to the Trans Gender Community. Sexual Reassignment Surgery (SRS) is available in Thailand, with indication that Thailand performs the greatest number of male-to-female (MTF) SRS in the world. However, although MTF SRS is easily accessible in Thailand, female-to-male (FTM) SRS is not as easily accessible and as advanced. It is also more expensive. In terms of legislation, transgender individuals cannot change their sex on legal documents regardless of whether or not they have undergone SRS. However, they have been facing several problems even now. Transgender individuals cannot change their gender on identity papers. Recommendations to improve the rights of transgender individuals are being considered by the concerned authorities. These include ensuring that transgender students can choose their own uniforms, allowing transgender individuals to change their gender identity on legal documents and providing transgender individuals with comprehensive and targeted health care services. Existing marriage laws specifically reference only men and women, reflecting a traditional interpretation of gender and family structure. All biological males in Thailand are required to serve in the military. However, transgender women, including any biological males who have undergone sexual reassignment surgery (SRS) or any form of surgery to physically appear more feminine, are not allowed to serve in the military. Until 2011, they were given a letter of dismissal stating 'Permanent Mental Disorder' as the cause. After much lobbying by the LGBT community, the letter now states the cause as "Gender Identity Disorder."

5.1.6 Argentina

Relevant provisions in law related to transgender are made in the Argentina in 2012. In May 2012, the Argentine Congress passed the Gender Identity Act. Argentina's Gender Identity Law as approved by the Senate of Argentina on May 8, 2012. The statute permits individuals to amend the gender marker on all their social documents by simply submitting an affidavit which confirms their desire for the change. The Argentine law does not mandate the intervention of a medical officer nor does it require that an individual be first diagnosed with gender dysphoria. All that matters is the expressed self-identification of the Trans person. According to Gender Identity Law all persons have the right to: (a) the recognition of their gender identity, (b) the free development of their person according to their gender identity and (c) be treated according to their gender identity and, particularly, to be identified in that way in the documents proving their identity in terms of the first name/s, image and sex recorded there.

South Asia

South Asia countries has started taking legal actions to recognize gender non-normative groups. A few examples are given below:

5.1.7 Nepal

Nepal have recognized a third gender category in law in 2007. Nepal has included a third gender option on its census forms in 2011. The country has also introduced a third gender category on its passports. In 2007, Nepal recognized transgender as a separate gender category and granted equal citizenship to all persons identifying as such. In 2007, Nepal's Supreme Court ruled that the government must (i) issue 'other' citizenship certificates to those so identified, and (ii) recognize transgender individuals as equal before the law³. As part of its rationale, the court held that gender non-confirming individuals are 'also Nepali citizens and as natural person they should be allowed to enjoy all rights with their own identity as provided by natural laws, the Constitution and international human rights instruments.' As a result of this decision, new citizenship cards have a separate column for the third sex. In November 2008, the Supreme Court directed the Government of Nepal to draft laws recognizing same-sex marriage.

³*Sunil Babu Pant and others v. Nepal Government and others, writ no.917 of 2007 (at NJA Law Journal 2008)*

5.1.8 Pakistan

In 2009, Pakistan's Supreme Court legally recognized third gender persons as a category for state/official identification documents and ordered the National Database and Registration Authority to issue these third gender identity cards to individuals identifying as such⁴. In addition, the Supreme Court of Pakistan ruled that a certain quota of all government jobs must be given to transgender persons.

5.1.9 Bangladesh

At least 10,000 transgender people live in Bangladesh, according to national statistics. They have had the right to vote since 2009. In November 2013 the government announced the recognition of "hijra" as a third gender category in all national documents and passports.

International Practices: An Overview

International practices highlight the clear movement in countries such as Denmark, Malta and Argentina towards legislation based on self-determination. These provide viable and human rights compliant legal recognition models. Some of European Union members have taken drastic steps. Ireland has an opportunity to enact gender recognition legislation that arms an individual's preferred gender, while protecting their right to privacy, personal dignity and family life, through a process that is efficient, fair and non-discriminatory. Asian countries, especially south Asian countries, of late have come forward to introduce good legal practices to address the needs of transgender people.

5.2 Yogyakarta Principles

The Yogyakarta principles are on the application of international human rights law in relation to sexual orientation and gender identity. These principles were adopted by in a meeting held in Yogyakarta, Indonesia, from 6 to 9 November 2006. All human beings are born free and equal in dignity and rights and sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse. Several nations

⁴*Khaki, A. V. Senior Superintendent of Police, Supreme Court of Pakistan, 2009*

guaranteed the based on laws and constitutions the rights of equality and nondiscrimination without distinction on the basis of sex, sexual orientation or gender identity. Still human rights are violated in several parts of the world. These include other forms of violence, hatred, discrimination and exclusion. Many nations and societies impose gender and sexual orientation norms on individuals. A consistent understanding of the comprehensive regime of international human rights law and its application to issues of sexual orientation and gender identity is necessary to address these deficiencies. The Yogyakarta Principles affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfill that precious birthright. The international panel of experts in International human rights law and on sexual orientation and gender identity adopted the Yogyakarta Principles.

1. The Yogyakarta Principles the Right to the Universal Enjoyment of Human Rights

Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights. Amend any legislation, including criminal law, to ensure its consistency with the universal enjoyment of all human rights. Undertake programmes of education and awareness to promote and enhance the full enjoyment of all human rights by all persons, irrespective of sexual orientation or gender identity

2. The Rights to Equality and Non-discrimination

Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination. Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition.

3. The Right to Recognition before the Law

Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each

person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization. The Yogyakarta Principles or hormonal therapy, is a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.

4. The Right to Life

Everyone has the right to life. No one shall be arbitrarily deprived of life, including by reference to considerations of sexual orientation or gender identity. The death penalty shall not be imposed on any person on the basis of consensual sexual activity among persons who are over the age of consent or on the basis of sexual orientation or gender identity.

5. The Right to Security of the Person

Everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group. Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished, and that victims are provided with appropriate remedies and redress, including compensation. Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity.

6. The Yogyakarta Principles the Right to Privacy

Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including with regard to their family, home or correspondence as well as to protection from unlawful attacks on their honour and reputation. The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one's sexual orientation or gender identity, as well as decisions and choices regarding both one's own body and consensual sexual and other relations with others.

7. The Right to Freedom from Arbitrary Deprivation of Liberty

No one shall be subjected to arbitrary arrest or detention. Arrest or detention on the basis of sexual orientation or gender identity, whether pursuant to a court order or otherwise, is arbitrary. All persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention, whether or not charged with any offence.

8. The Right to a Fair Trial

Everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, in the determination of their rights and obligations in a suit at law and of any criminal charge against them, without prejudice or discrimination on the basis of sexual orientation or gender identity.

9. The Right to Treatment with Humanity while in Detention

Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person's dignity.

10. The Right to Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment

Everyone has the right to be free from torture and from cruel, inhuman or degrading treatment or punishment, including for reasons relating to sexual orientation or gender identity.

11. The Yogyakarta Principles the Right to Protection from All Forms of Exploitation, Sale and Trafficking Of Human Beings

Everyone is entitled to protection from trafficking, sale and all forms of exploitation, including but not limited to sexual exploitation, on the grounds of actual or perceived sexual orientation or gender identity. Measures designed to prevent trafficking shall address the factors that increase vulnerability, including various forms of inequality and discrimination on the grounds

of actual or perceived sexual orientation or gender identity, or the expression of these or other identities. Such measures must not be inconsistent with the human rights of persons at risk of being trafficked.

12. The Right to Work

Everyone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity.

13. The Right to Social Security and to Other Social Protection Measures

Everyone has the right to social security and other social protection measures, without discrimination on the basis of sexual orientation or gender identity.

14. The Right to an Adequate Standard of Living

Everyone has the right to an adequate standard of living, including adequate food, safe drinking water, adequate sanitation and clothing, and to the continuous improvement of living conditions, without discrimination on the basis of sexual orientation or gender identity.

15. The Right to Adequate Housing

Everyone has the right to adequate housing, including protection from eviction, without discrimination on the basis of sexual orientation or gender identity.

16. The Right to Education

Everyone has the right to education, without discrimination on the basis of, and taking into account, their sexual orientation and gender identity.

17. The Right to the Highest Attainable Standard of Health

Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity. Sexual and reproductive health is a fundamental aspect of this right.

18. Protection from Medical Abuses

No person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity. Notwithstanding any classifications to the contrary, a person's sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.

19. The Right to Freedom of Opinion and Expression

Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart

information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.

20. The Right to Freedom of Peaceful Assembly and Association

Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. Persons may form and have recognized, without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities.

21. The Right to Freedom of Thought, Conscience and Religion

Everyone has the right to freedom of thought, conscience and religion, regardless of sexual orientation or gender identity. These rights may not be invoked by the State to justify laws, policies or practices which deny equal protection of the law, or discriminate, on the basis of sexual orientation or gender identity.

22. The Right to Freedom of Movement

Everyone lawfully within a State has the right to freedom of movement and residence within the borders of the State, regardless of sexual orientation or gender identity.

23. The Right to Seek Asylum

Everyone has the right to seek and enjoy in other countries asylum from persecution, including persecution related to sexual orientation or gender identity.

24. The Right to Found a Family

Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.

25. The Right to Participate in Public Life

Every citizen has the right to take part in the conduct of public affairs, including the right to stand for elected office, to participate in the formulation of policies affecting their welfare, and to have equal access to all levels of public service and employment in public functions, including serving in the police and military, without discrimination on the basis of sexual orientation or gender identity.

26. The Right to Participate In Cultural Life

Everyone has the right to participate freely in cultural life, regardless of sexual orientation or gender identity, and to express, through cultural participation, the diversity of sexual orientation and gender identity.

27. The Right to Promote Human Rights

Everyone has the right, to promote the protection and realization of human rights at the national and international levels, without discrimination on the basis of sexual orientation or gender identity.

28. The Right to Effective Remedies and Redress

Every victim of a human rights violation, including of a violation based on sexual orientation or gender identity, has the right to effective, adequate and appropriate remedies.

29. Accountability

Everyone whose human rights, including rights addressed in these Principles, are violated is entitled to have those directly or indirectly responsible for the violation, whether they are government officials or not, held accountable for their actions in a manner that is proportionate to the seriousness of the violation. There should be no impunity for perpetrators of human rights violations related to sexual orientation or gender identity.

Source: www.yogyakartaprinciples.org

5.3 Interpretation of Yogyakarta principles in Indian Context

From the foregoing discussion it is found that the Yogyakarta principles recognize:

- (i) Human beings of all sexual orientation and gender identities are entitled to all human rights;
- (ii) All persons are entitled to the right to privacy, regardless of sexual orientation or gender identity;
- (iii) Every citizen has a right to take part in the conduct of public affairs including right to stand for elected office, to participate in the formulation of policies affecting their welfare, and to have equal access to all levels of public service and employment in public functions, without discrimination on the basis of sexual orientation or gender identity.

5.3.1 Right to live as born, Right to life and to live in the family and society

Article 23 provides that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Article 24 is regarding the protection of children and provides that every child shall have, without any discrimination, as to colour, sex,

language, religion, national or social origin, property or birth - the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the state. It also provides that every child shall be registered immediately after birth and shall have a name and accordingly every child has the right to acquire a nationality. The above provision protects the rights and interests of a transgender child as well and transgender persons. All peoples have the right of self-determination. In India, transgender people do not have the right to live as born, right to life and to live in the family and society. Our field experience shows that the possibility of elimination of the transgender child is very strong because the trans sexuality in Indian society is considered a curse. Many parents, when they find some sexual abnormality in the newly born child by external physical appearance, eliminate the child. Our field survey reported a few cases of abandoning the child to overcome the trauma of abnormal sex appearance. The child born with some sexual abnormality is abandoned in fear of social stigma. In some cases, parents hand over the child to a group of transgender people. In such case, the child is brought up as transgender since handing over. Feticide, infanticide or the elimination of transgender children violates the right to life. Every child of any sex and gender or with any physically abnormal sexual appearance has a right to live comfortably and with dignity in the family. Unfortunately, a transgender child is not accepted by most of Indian families and the society. Right to life and to live in the family and society are denied to transgender people in India.

5.3.2 Right to marry, Right to have a family and Children

There is no legal support to a transgender for entering in to a marriage, having spouse and setting up of own family in India. Right of sexual orientation has been recognized without protecting the right to marry.

Though there are several cases of living- in-relation among transgender people, right to marry, a fundamental right, is now denied to transgender people.

5.3.3 Right to Social Security, health services, change of sex and name in the official records

Though a significant number of transgender people have keen interest in getting sex realignment surgery they cannot afford it due to the cost involved. Many young transgender

people cannot get operated upon without consent of parents. Unfortunately, transgender people are deprived of all these health services as they are poor and isolated.

5.3.4 Right to Privacy

Transgender people have not received any attention with respect to right to privacy. Mostly government bodies like police violate this right, when they arrest the Transgender. Article 12 of the Universal Declaration of Human Rights (1948) refers to privacy and it states- "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. Article 17 of the International Covenant on Civil and Political Rights (to which India is a party), refers to privacy and states that- "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence, or to unlawful attacks on his honour and reputation". Everyone has the right to respect for his private and family life, his home and his correspondence. The Right to Privacy of Transgender under the present political and executive scenario seems to be a dream in India as the mindset of people cannot be changed overnight. In India our constitution does not contain a specific provision as to privacy but the right to privacy has been spelt out from the provisions of Article 19(1) (a) dealing with the freedom of speech and expression, Article 19(1) (d) dealing with the right to freedom of movement and from Article 21, which deals with right to life and liberty.

5.3.5 Right to Education

Government of India promulgated Right to Education Act (RTE) 2009 to re-affirm its commitment to provide free and compulsory education to children up to the age of 14 year. Accordingly, every child of the age of six to fourteen years shall have a right to free and compulsory education in neighborhood school till completion of elementary education. Promulgation of a separate Act further provided impetus to the government efforts in providing free compulsory education to children, as it has now become constitutional obligation for the state to provide free education. It is a step which can lead to inclusive education for transgender community. However, the transgender community is seriously lagging behind in education. Majority of the transgender population is uneducated or undereducated thereby

excluding them from participating in social, cultural, political and economic activities. Teachers' apathy towards transgender community, poverty, discrimination and increasing violence are the main factors which can be attributed to the inclusions of transgender persons in educational activities. High dropout rate and lower average of school years among transgender children are reported. The insensitivities of teachers and staff towards the community have adverse impact on the mainstreaming transgender persons in educational institutes. The teachers and staff do not have adequate knowledge and sensitivities about the community to support the transgender community in making education accessible and mainstream them into the system. The transgender person who is already excluded from the family and society does not find any support with the teachers and therefore forced to discontinue the education in between. The social hierarchy and community norms among Hijra communities influence their behaviors and decision making ability. These norms sometime become too strict and are not supportive for mainstream efforts or allow them to explore other opportunities and learn other skills.

5.3.6 Right to Work and Economic Activities

Article 14 of the Constitution of India guarantees equal rights and opportunities to men and women in political, economic and social spheres. Article 16 guarantees equality of opportunity in matters of public employment. The transgender community is highly deprived of several rights including their right of participating in economic activities including employment. The interrupted education and social exclusion further limits their employment and livelihood opportunities. The small countries like Thailand, Indonesia and Malaysia have recognized the right to work of transgender people. However, most of the transgender people in India cannot get a fair deal in the employment market. Many of them were forced to take low paying work or undignified work as their livelihood. They face stigma and discrimination at work place. Some of them are forced to leave the work in a short period of time. They are totally invisible in all the spheres of economic activities. There are no employment opportunities even for a qualified and skilled transgender person and a significant number of transgender people are highly deprived of the right to participate in any form of economic activities.

5.3.7 Right to take part in the conduct of public affairs

In Yogyakarta principles every citizen has a right to take part in the conduct of public affairs including right to stand for elected office, to participate in the formulation of policies effecting their welfare, and to have equal access to all levels of public service and implementation in public functions without discrimination on the basis of sexual orientation or gender identity. The right to serve the people as an administrator, police officer or member of the judiciary is denied to the persons born with abnormal sexual identity. Before ensuring the right to public office, social recognition, educational avenues and economic liberty should set the precedent. In India the right to contest election has been recognized and provided to all persons without discrimination on the basis of sexual orientation or gender identity. But it seems to be just the beginning; there is a long journey ahead.

5.4 Supreme Court Judgment and Gaps in its implementation

5.4.1 Supreme Court Judgment

On 14 April, 2014, Supreme Court identified transgender as third gender, directs states to treat them as "socially and educationally" backward classes and extend reservation in education and employment. The Supreme Court judgment was pronounced in *National Legal Services Authority (NALSA) v. Union of India & Ors.* [Writ Petition (Civil) No. 400 of 2012 (NALSA)] by a division bench of Justices K.S. Radhakrishnan and A.K. Sikri. NALSA's reasoning rests on two broad strands of human rights: freedom and equality. Underscoring the right to personal autonomy and self-determination under Article 21, the Court observed that "the gender to which a person belongs is to be determined by the person concerned". The decision recognizes the right of a person to identify in the gender that they relate to, that is, male, female or third gender, irrespective of medical/surgical intervention. The Court also protected one's gender expression by invoking the freedom of speech and expression under Article 19(1)(a) and held that "no restriction can be placed on one's personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution." Most importantly, NALSA draws forth from the ethos and philosophy of the Indian Constitution, by emphasizing that a "truly liberal and democratic society would only progress when each individual has realized their full potential" and that the "rule of law demands

protection of individual human rights. "Freedom and equality are further strengthened by the Court's observations on dignity, privacy, personhood and the free spirit of the human being, which are necessary for the human '*personality to flower to its fullest*'. The Court emphatically noted that dignity cannot be realized if a person is forced to grow up and live in a gender, which they do not identify with or relate to. In discussing the fundamental rights of the transgender persons, *NALSA* relies on principles of international human rights law, especially on sexual orientation and gender identity, by stating that these must inform and provide content to the rights guaranteed under the Constitution.

Supreme Court, in this case, relies extensively on international human rights principles and comparative law. They quote extensively from the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2006), the Universal Declaration of Human Rights (1950), the International Covenant on Civil and Political Rights (ICCPR), 1976, and comparative law from the United Kingdom, the E.U., Germany, Argentina, South Africa, the United States, Hungary, Australia, Malaysia and New Zealand.

The most interesting use of comparative law is the court's reference to recent Supreme Court decisions in Pakistan (*Dr. Mohammad Aslam Khaki v Sr Superintendent of Police, Rawalpindi, 2011*) and Nepal (*Sunil Babu Pant & Ors v Nepal Government, 2007*) where these courts in these countries have recognized a third gender category in law. The judges in this case refer to the historical presence of a third gender in the subcontinent. This reference holds out the possibility of developing a unique South Asian jurisprudence on transgender rights that can contribute to the existing international human rights framework.

Again, the Court observed that the role of the judiciary is not only to decide disputes but also to uphold the rule of law and ensure access to justice to marginalized sections of society, to which transgender persons clearly belong. The court says, "Our Constitution, like the law of society, is a living organism. It is based on a factual and social reality that is constantly changing. Sometimes a change in the law precedes societal change and is even intended to stimulate it. When we discuss about the rights of TGs in the constitutional context, we find that in order to bring about a complete paradigm shift, law has to play a more predominant role."

The Court issued a series of directions to the Central and the State governments, including granting legal recognition to persons' self-identified gender, as male/female/third gender; treating transgender persons as socially and educationally backward classes of citizens and extending reservations in public education and employment; providing separate HIV sero-surveillance for transgender persons and appropriate health facilities, amongst others. *NALSA* marks a break from the erstwhile paternalistic and charitable approach of the State towards the transgender community by framing their concerns as a matter of rights. The Supreme Court also firmly secured the right to equality and equal protection for transgender persons under Articles 14, 15 and 16 by prohibiting discrimination on the ground of gender identity. It has broadened the scope of the term 'sex' in Articles 15 and 16, which till recently meant biological sex of male and female, to include 'psychological sex' or 'gender identity'. Significantly, the Court also declared that no one can be discriminated against on the ground of sexual orientation. Then, a widely hailed judgment was passed by the Supreme Court in India that recognized the rights of transgender people and said they should enjoy all the fundamental rights enshrined in the Indian constitution. The judgment – *National Legal Services Authority v. Union of India*, colloquially called the *NALSA* judgment – gave broad directives to the Central and state governments on affirmative action, public health, social welfare and other services to be made available for transgender people.

5.4.2 Gaps in the implementation of Supreme Court Judgment: Issues and Action Plan

The paradigm shift that took place when the *NALSA* judgment was passed in April 2014 has not yet translated into reality. The Central and state governments have still not implemented the order full and effectively. Let us discuss some of the core directions set out in the judgment. Access to education and employment continue to evade the transgender people. Transgender community continues to face the violation of their right to life) facing unreported and unregistered hate crimes. There is very poor access to health and medical care, and many transgender people continue to be pathologised as having 'gender identity disorder' due to inaction by the Medical Council of India.

Supreme Court, which delivered a judgment based on constitutional equality, and spoke about rights, It has directed the governments to develop a policy. However, most of the states largely

have failed to do this. Part of the delay can be attributed to what transpired after the NALSA judgment was passed. In September 2014, the Ministry of Social Justice and Empowerment (MSJE) asked the Supreme Court of India to clarify certain aspects of the NALSA ruling. These included clarifying "which groups fall within the ambit of 'transgender' persons for the purposes of implementing the NALSA judgment" and "what classification and procedure, given existing frameworks, should be followed while designing affirmative action policies for transgender persons in public institutions." The MSJE also asked whether the six-month time limit for implementation could be extended, arguing that the recommendations were too broad to be implemented so swiftly.

Bill on Transgender Rights: On 24 April, 2015, a Bill on transgender rights, seeks to mainstream transgender was passed by Rajya Sabha. MP Tiruchi Siva introduced a private member's bill - the Rights of Transgender Persons bill - in the Rajya Sabha, which was unanimously passed. "The structure and substance of the Bill draws heavily from the NALSA judgment. The Bill's broad definition of the term transgender relies on the judgment's call for inclusiveness. The different rights recognized and given protection under the Bill include the right to equality, life, free speech, community, integrity, family, along with the right to be free from torture and other abuse." The bill is yet to be passed in the Lok Sabha. In late 2015, the MSJE published a draft bill its website while it includes a number of problematic changes. It says that a state-level authority will issue a certificate that a person is transgender. "Say a transgender person wants to file a case against perpetrators of hate crime, assault or discrimination. Then they will have to first obtain a certificate from the state proving that they are transgender people even if one already has other ID cards saying 'other' or 'transgender'". This manner of legislating identity is extremely restrictive.

OBC Status of Transgender People: Although the draft bill says that transgender people will be given OBC status. However there is no clarity on the matter of affirmative action. It also does not specify how reservations will be allocated. If transgender people are dalits, they can get two sets of reservations. The transgender community would like a clearly demarcated internal reservation quota based on gender - within the SC/ST or OBC categories. The government's bill has altogether deleted the section of the private member's bill that gave transgender people

recourse to the Executive Magistrate apart from the police. Also, there is no reservation in the government's bill for education, but there is one for employment. How will anyone access employment without access to education? For the scope of the bill: All intersex people face acute issues like lack of access to healthcare, education, employment and face violence, stigma and discrimination at multiple levels. Moreover, there are people with intersex variations who also identify as transgender. Recommendations were also sent to the Ministry by a group of activists with a special focus on trans masculine communities. Transgender reply, takes exception to the provision for the formation of state welfare boards to give out transgender identification. They need to understand the consequences of this kind of gate keeping very thoroughly. It is bound to include a few, and is likely to exclude a majority of people. On this matter, Would women be alright with the Women's Commission being given the power to reject their womanhood?. Other huge problem— parliamentarians are not sensitized or educated about transgender issues and rights. Our political leaders simply don't understand how diverse transgender communities are, and without awareness and education, how can they make a policy for us? Even if the judgment recognizes transgender people, society is still trans phobic and patriarchal. It is the government's responsibility to properly sensitize people, otherwise it is very difficult and painful for us to avail things that should be simple, like an ID change. Advocacy is required at every level.

Identities of Transgender- Need for Clarity: There are several inherent problems and contradictions. Transgender is an umbrella term assigned to a variety of identities of Transgender, such as kothi, trans man, trans woman, hijra, aravani, gender queer, etc. is not clearly outlined in the judgment. Judgment does not address issues faced by trans men and repeatedly uses offensive terms like 'eunuch', a word which has been used to criminalize transgender communities. There are certain problems of conceptualization as well as implementation that are now apparent with the draft transgender rights bill, such as the issue of certification or reservations. "To avail benefits like OBC reservation in jobs and education, would it be compulsory for trans women to get third gender identities? The process is not clear and neither is whether they have a choice. What does a blanket OBC reservation mean to a community that has a large number of dalit trans people? An unwarranted promotion? What does an OBC status mean to internal hierarchies?". It is not clear from the NALSA judgment whether sex reassignment surgery would be necessary for gender identity to be legitimized by

the state. The judgment is far from clear on its stance on the recognition of gender identity. "At one point it cites the Argentina model which allows for self-identification without requiring medical certification, a model which has been lauded by many trans activists. Yet at other points it seems to suggest that 'psychological tests' would be necessary, which is potentially very problematic given the constraints of how diagnosis of gender dysphoria works in psychiatry and medicine. Transgender people continue to be effectively criminalized by the Indian state, over two years after the Supreme Court judgment that at the very least attempted to look at gender beyond the stultifying and violent binary of 'male' and 'female', and to address transgender people who identify at different points in the gender spectrum. The criminalization of begging adversely and predominantly affects the poor just for being poor". "Things have moved very, very slowly by the government, and Transgender are still struggling for basic things. There is immense violence against transgender people every day. As for employment in the private sector, transgender people are facing a Catch-22 situation, where employers expect qualifications and experience that most don't have access to. Economic empowerment and housing are huge concerns. Transgender people are asking for identity, employment, education, recognition and dignity. Transgender people need human rights and basic needs. The NALSA judgment put in a strong pitch for two very positive things - the self-determination of gender, without insistence of gate keeping or certification through surgery or hormones, and affirmative action for transgender people. However, the Ministry of Social Justice has had a much more limited and problematic approach overall. Inter-ministerial consultation and coordination are required to take appropriate action to address the problem of Transgender people. The MSJE has yet to complete its task in taking appropriate steps.

5.4.3 Conditions of Transgender People after the Supreme Court Judgment of April 2014

Several States have started to formulate welfare schemes for the transgender community after the Supreme Court judgment of April 2014. Some of these states have already set up welfare boards. In the meantime, Ministry of Social Justice, Government of India has asked the States to submit comments on finalizing the modalities for setting up the welfare boards. Government of India has written to various states to carry out registrations and surveys of transgender persons.

Several positive measures have been taken in the field of education. The University Grant Commission has issued a notification on July 2014 to facilitate the education of the third gender. Subsequently, universities have started taking action. Some of the Indian universities and colleges have started action to admit transgender students. As a result, admission forms have an option for transgender in the gender column. Some of the education institutions have started to conduct orientation programme so that students and teachers can learn how to make transgender students "feel comfortable" and to create a friendly atmosphere. Some states have started to plan the introduction of launching the Scholarship schemes for higher education of transgender student. Relevant ministries/ departments / government have started to take action to issue national election identification cards, passport forms and the UID form.

In nutshell, international human rights standards recognize the rights of as transgender people. Accordingly states are obliged under international law to respect, protect and fulfill human rights of transgender. However, several countries have not taken adequate and proper legal actions to preserve the human rights of their citizens.

Chapter 6

Human Rights of Transgender People: Recommendations

In the first section of this chapter we attempt to present a summary of an analysis of database of transgender people in states of UP and Delhi. Here, we showcase Tamil Nadu as a model for other States to learn and adopt best practices for transgender in various fields. Major recommendations to protect and promote their human rights – civil, political, economic, social and cultural rights- are discussed in this section.

6.1 Analysis of data: Highlights

The age pattern clearly indicates the dominance of youth and working aged among transgender population. The single largest size -18 percent- is the age group of 31- 35 years. Most of transgender people are illiterate and less educated. About 29.11 percent of transgender people in Delhi and 33.11 percent in UP have never attended school. About 45.11 percent in Delhi and 48.89 percent in UP have education below 10th standard school. About 15.12 percent in Delhi and 10 percent in UP have education between 10th and 12th grade. It is important to understand that just 5.33 percent of transgender people in Delhi and 4 percent in UP have graduation degree. Around 5.33 percent of transgender people in Delhi and 4 percent in UP have post graduate degree. According to Census 2011, the literacy of transgender people in UP is 55.8 percent and 62.99 percent in Delhi.

Majority of transgender people in Delhi (90.68%) and UP (87.12%) belongs to Hindu religion. According to some NGOs working closely with transgender community, a form of caste system exists among the members of Hijra community in line with caste system prevailing in India. Upper caste, middle caste and lower caste categories exist among the members of Hijra community also. This caste system has reflected in their livelihood activities. The single largest share of the surveyed transgender people belong to Other Backward Community (OBC) in both the states. About 15 per cent of transgender people in Delhi and 16 per cent in UP surveyed belongs to Scheduled Caste. It is significant to note that around 22 per cent of transgender people in Delhi and about 26 per cent in UP are unaware of their own caste. Our sample survey results indicate Just 6 percent of transgender people are employed in private or NGO

sector and nobody is employed in government sector. Majority of transgender persons are engaged in informal sectors. About 24.44 percent are engaged in *Badhai*, singing and dancing. About 4.56 percent of transgender persons are sex workers. About 10.44 transgender persons are engaged in begging while another 13.11 percent are at sales of food items, fruits, vegetable, flower, cloths, etc. It is interesting to understand that 4.56 percent are engaged at miscellaneous work including domestic help.

The income pattern of transgender people is reported in Table 2.7 and Fig 2.7. About 3.8 percent of the transgender people have the income below Rs. 5000. The monthly income of 22.35 percent of transgender people is between Rs.5001- Rs.7500. Another 26.46 percent of transgender people have a monthly income which ranges between Rs.7501- Rs.10, 000. About 26.35 percent of transgender people have monthly income in between Rs. 10001 - Rs.15000. Another 12.35 percent of transgender people have a monthly income ranging between Rs 15001- Rs.20000. About 3.46 percent of transgender people have the monthly income ranging between Rs 20001- Rs.25000 and another 1.11 percent have more than Rs25000.

Only 19 percent of transgender persons have accommodation while the remaining have rented accommodation. About 53 percent of transgender persons lives under Guru Chela system. While 40 percent lives with other transgender persons. These category includes those transgender persons as spouses also. Another two percent of transgender persons lives with their parents and another 5 percent live alone.

About 14.88 percent transgender people in Delhi and 16 percent transgender people in UP are given voter ID card in the name of transgender. For both states together only 15.4 percent of transgender persons have a voter card in the name of the transgender issued by election commission of India and 16.6 percent have Addhar Card in the name of the transgender. Just 1.11 percent transgender people in Delhi and 3.11 in UP has got driving license issued in the name of transgender. About 55.6 percent of transgender people have own bank accounts in Delhi and in UP together. However, 31 transgender people do not have any saving in their bank account.

In India, total population of transgender is around 4.88 Lakh as per 2011 census. Uttar Pradesh has 137,465 transgender people followed by Andhra Pradesh (43,769), Maharashtra (40,891),

Bihar (40,827), West Bengal (30,349), Madhya Pradesh(29,597), Tamil Nadu (22,364), Orissa (20,332), Karnataka (20,266), Rajasthan(16,517), Jharkhand(13,463), Gujarat(11,544), Assam (11,374), Punjab (10,243), Haryana(8,422), Chhattisgarh(6,591), Uttarakhand (4,555) and Delhi (4,213). A reliable statistics on transgender population in India is unavailable though they were included in 2011 census. During our consultation with experts in various states it was stated that census data is unreliable due to certain reasons such as accommodation and behavioral pattern of transgender community. Some experts argue that the population can be in the range of five to six millions as a large number still keep the gender status as a secret.

6.2 Tamil Nadu a Model State to Learn and Adopt Best Practices for Transgender

Tamil Nadu can be considered as a model for other States to learn and adopt best practices for transgender in various fields. The highlights of its welfare measures and best practices are listed below:

Welfare Board: Tamil Nadu established a transgender welfare board in April 2008 with representatives from the transgender community. The transgender welfare board has focused only on the development of trans women. However, recently it has started to examine the rights of trans men and gender variants.

Livelihood: Alternative sources of income are provided through formation of SHGs of transgender people. Self Help Groups of transgender people have been formed and Rs. 154 lakhs have been given as loan to SHGs. Tailoring machines were distributed to transgender people. Further, 20 percent interest subsidy has been given to their loan repayment. The transgender people from Chennai district receive subsidy from the Government of Tamil Nadu and obtains loans from the commercial bank for setting up of income generating activities such as trading of garments. Some of them carry out their business from their houses. Some others sell sarees, night ware and other clothes within their transgender communities and others in the locality. Monetary help given by the Government through the Transgender Welfare Board has helped them to set up income generating activities. Examples of other income generating activities are seasonable work like Idli making, vegetable and flower selling and selling of cooked maize, etc. Tamil Nadu had the most progressive welfare schemes for transgender people offering training and financial assistance up to Rs. 20,000 per month to each transgender.

Identity Cards: Tamil Nadu state government's 'Aravani (male-to-female transgender people) Welfare Board' has given identity card for Aravanis. ID cards are distributed to 3328 transgender persons till 2015. Social Welfare and Nutritious Meal Programme Department of Tamil Nadu helped to issue ID Cards through Transgender Welfare Board. Based on the ID Card they are now able to get Ration Card, Voter ID, etc.

Insurance certificates: Insurance certificates were issued to 660 transgender people in Tamil Nadu till 2015

Database: Creation of a database for transgender people is another landmark achievement

Education: The state government issued orders, in late-2006, directing the school and higher education departments to ensure that TGs are not denied admission to schools and colleges. Counseling has been made compulsory in schools (through teachers, counselors and NGOs) for students with behavioural issues, and their families. Tamil Nadu government issued an order on May 2008 to create a third gender column in application form for admissions to government colleges to improve the education of transgender people. Full scholarship for higher education of transgender persons is available in the state now. There is a government order for admission of transgender in to government run schools and colleges. Seats have been reserved in colleges and universities of the state for members of the transgender community.

Grievance redressal Mechanism: Grievance redressal meetings were held in once in three months in every districts. This initiative has been particularly successful in opening direct channels for dialogue and negotiation between the community and the administration. Several issues such as housing and livelihood issues were discussed during the meetings.

Subsidized food and Fuel: Public Distribution System cards issued for supplying subsidized food and fuel to them and so far ration cards have been issued to 1544 transgender people. In fact, the government of Tamil Nadu has issued separate food ration cards for transgender people.

Housing: Tamil Nadu has given free housing house to transgender people. So far patta issued to 1053 transgender people. In fact house sites with title deeds and house construction support were given to them.

Health: Free sex reassignment surgery for trans women is made available in select government hospitals in the state. Tamil Nadu AIDS Initiative had formed a federation of 20,000 transgender which provides various health services to its members. It operates rural community clinics and it conducts skill development and financial literacy programmes. A telephone helpline called "Manasu" ("Heart" in English) (0091-44-25990505) was set up by Tamil Nadu AIDS Initiative-Voluntary Health Services (TAI-VHS) for members of the transgender community, their families and the public. It functions between 10 a.m. and 6 p.m. It was launched by the then Principal Secretary of Health Department of Tamil Nadu in March 2009.

Awareness creation about the rights of transgender people: Media in Tamil Nadu has been playing critical role in creating awareness about the rights of transgender people. In a monumental push in breaking taboos, the Tamil cable channel STAR Vijay started a talk show hosted by a trans woman named Rose. The programme is called "Ippadikku Rose". Kalki Subramaniam, a transgender person born in Pollachi, Tamil Nadu performs a lead role in a new Tamil movie "Narthagi". The helpline supports transgender people in finding employment opportunities. Sahodari Foundation is an organization working for the transgender rights. Sahodari Foundation, founded in 2007, is a well-known organization in India for its creative and alternative advocacy methods. Srishti Madurai launched India's first helpline for LGBT on October 2, 2011 at Madurai. Later, in June 2013 the helpline turned to offer service for 24 hours with a tagline "Just having someone understanding to talk to can save a life".

6.3 Major Recommendations

6.3.1 Enumeration and Estimates of Transgender People

There is a need for a reliable population data of transgender people. It is important to identify and enumerate transgender population to have an authentic data. The reliable transgender population data can be used for planning, implementation and monitoring welfare schemes. As is discussed in section 2.2, Government has taken certain measures to identify and enumerate transgender population. These measures need more streamlining and inter-ministerial cooperation is also required.

6.3.2 Mechanism and Schemes to Address the Stigmas

There is an urgent need for creating a strong mechanism and introducing schemes to challenge the stigmas attached with the transgender people and hence, the following steps may be taken.

Sensitization of Parents and Society: Our field survey reported a few cases of abandoning the child to overcome the trauma of abnormal sex appearance. A transgender child is not accepted by most of Indian families and the society. Right to life and to live in the family and society are denied to transgender people in India (see section 5.3.1.). It is important to sensitize parents of transgender children and other members of our Society with regard to the human rights of transgender community. We need to create more awareness and understanding among them on the culture, gender, and sexuality of transgender community. Most of the transgender people are poor and illiterate and now government is the only source for their rehabilitation and upliftment. Proper counseling should be provided to parents to enable them to treat transgender children at par with other children. Criminal action should be taken against those parents who disown transgender child. The mindset of society, parents and teachers towards the transgender needs to be changed. At present, transgender people are not invited to social gatherings in our neighborhoods and there is a need for a major shift in people's attitudes towards transgender. On the other hand, transgender children are under severe stress and low self-esteem and counseling services needs to be provided to transgender children also. Government can consider creating a component of such counseling services under the Integrated Child Protection Schemes.

Sensitization of Police: Transgender people have not received any attention with respect to right to privacy.. In India our constitution does not contain a specific provision as to privacy but the right to privacy has been spelt out from the provisions of Article 19(1) (a) dealing with the freedom of speech and expression, Article 19(1)(d) dealing with the right to freedom of movement and from Article 21, which deals with right to life and liberty(5.3.4).Sensitization of police about the human rights abuse of the transgender community is an urgent need. As there are several allegations of police atrocities and crime against transgender persons, police personnel should be given special training. Appropriate steps should be taken to stop the abuse and there should be a code of conduct both for transgender persons and police authorities. Training and sensitization of police on transgender issues can be on the lines of trainings and

sensitization should be made for treatment of issues related to women, children and other vulnerable section of s. Advocacy with police and other law enforcement agencies should be carried out to address the issues of harassment. Special Grievance Redressal Cells for their protection should be set up in all the police stations.

Access to Gender Segregated Spaces for Transgender :Similar to female and male line/ queue /section, transgender line/ queue /section should be set up in all gender segregated spaces like malls or airports, or public transportation, etc. Proper Urinal/Latrine facilities should be provided. There should be separate toilet facilities for transgender in schools, colleges, hospital wards and other public places.

ICT based Campaigns and Awareness Programmes: It is important to organize various types of ICT based campaigns and awareness programmes. This will enable the society to accept transgender people as third gender. In a few states of India transgender icons and role models have emerged in different fields such as education, politics and governance, media and transgender activism. They can be involved in the various awareness campaign programmes. Transgender people can work on community issues, as they can work as a field worker on various campaign programmes such as safe sex awareness campaign. The recruitment of transgender people as civic police volunteers to manage traffic in Delhi was a good step. By providing more responsibilities and role to these marginalized people can be brought to mainstream life.

6.3.3 Documents for Transgender

Each state government should take suitable steps to ensure recognition of transgender in the areas of social entitlements like passport, driving license, bank account. Appropriate legislation and its enforcement needs to be carried out to ensure their legal marriage, family inheritance of property and assets.

6.3.4 National Policy on Transgender

While several States formulated schemes for the transgender community, a national policy is not yet ready in India. (4.1.2). A national policy on transgender people is an urgent need and it can deal with various issues of transgender people in various parts of India. Transgender must be included as a category for formulation of specific provisions in planning policies including

land rights, right to have own family, entitlements to state services as well as education opportunities.

6.3.5 New Law and Guidelines and the Role of Ministries/ State Departments

Relevant Ministries of Government of India such as Ministry of Home Affairs and Ministry of Social Justice and Empowerment will have to take action to make appropriate legislation and to formulate guidelines for the welfare of transgender people in India. The abandonment of child is a punishable offence under Section 317 of the IPC. The abandonment of transgender children takes place usually between the age of twelve and eighteen years. Ministry of Home Affairs can enhance the age limit of a child for this offence to eighteen years. Child protection laws need to be strengthened to address issues faced by transgender adolescents. A section can be added to the Indian Penal Code to deal with cases of sexual assault on them. Separate law is to be enacted centrally to suit their mandatory needs and to solve their problems that may be very different from others. A separate legislation, similar to the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act 1989, which can comprehensively incorporate the definition, scope, intent and rights of the transgender people will address most of their problems. Rape and trauma centers should be set up for transgender people. It will be ideal to dedicate a day for transgender. For instance, "Transgender Diwas" may be declared once in a year to give them respect and recognition. A few Indian states have initiated welfare programmes in line with the state of Tamil Nadu. However, a large number of states have been quite slow in designing and implementing welfare programmes for transgender persons (see Chapter 4). There should be welfare board for transgender population in all states/UTs while a few states such as Tamil Nadu have an active welfare board.

6.3.6 Legal Recognition of Right to marry, Right to have a family and Children

Legally transgender cannot enter in to a marriage, having spouse and setting up of own family in India. Right of sexual orientation has been recognized without protecting the right to marry. Though there are several cases of living- in-relation among transgender people, right to marry, a fundamental right, is now denied to transgender people (see section 5.3.2.). Transgender people should be given legal recognition of right to marry, right to have a family and children.

6.3.7 Sex Re-assignment Surgery and Gender Transition Services

A significant number of transgender people cannot afford Sex-Reassignment Surgery due to the cost involved. Many young transgender people cannot get operated upon without consent of parents. Unfortunately, transgender people are deprived of all these health services as they are poor and isolated (see section 5.3.3). Proper public health care services should be made available to transgender people including those who wish to undergo Sex Re-assignment Surgery. All treatment and other facilities should be provided free of cost or at a subsidized rate to all the transgender patients both in government and private hospitals. In the case of transgender people seeking, Indian doctors should adhere to internationally accepted standards of care. Transgender persons may be supported to choose gender by providing them 'gender-transition services', as the vast section of them come from the poor segment. Transgender people have a raft of surgeries to make the transition. For those wishing to be female, the available procedures are neo-vagina creation, penectomy (removal of the penis), orchidectomy (removal of the testes), clitoroplasty (construction of a clitoris), breast augmentation, rhinoplasty and hair transplants. For adopting the male gender, bilateral mastectomy, hysterectomy, oophorectomy (removal of ovaries) and phalloplasty (construction of penis) are among the processes. Government may consider providing gender transition services.

6.3.8 Gender Recognition Certificate

Gender recognition certificate or document by a government authority should be made available to all transgender people. A medical certificate from a doctor that states the current sex/gender of the transgender person will be useful to each transgender especially when a change of gender is taken place. A state-level authority is to be set up in all states/UTs to address the critical issues of transgender people such as certification of a person as transgender and recording of change of gender on the birth certificate of a person after the age of 18.

6.3.9 Parliament, State Legislatures and Local Government Institutions

As is indicated in section 4.1, a few legislations are already made for the empowerment of transgender in India. Empowerment of transgender can be achieved in Indian states, through reservation of seats in parliament, state legislatures and local government institutions. Since the

number of transgender people is quite small, reservation may not be feasible and hence a system of nomination can be used to ensure the representation of transgender people in these government institutions. Local government needs to play a positive and proactive role in the removal of taboos and discriminations and creation of positive attitude towards transgender people. Organizing programmes for greater sensitization on issues of diversity to enhance inclusion, exercise restraint and punishment against offenders who may target or assault transgender community. Awards and incentives for villages and communities promoting inclusive local governance will also help to create a more conducive environment. After making necessary laws for the protection of their human rights, the subjects related to them can be transferred to the local governments for their upliftment and social protection. The local bodies can be entrusted the responsibilities starting from registration up to their various need satisfaction. Responsibility of dealing with any atrocities and social out-casting against them can be entrusted to the "Jagratha Samithis" (Vigilance Committee) under the local governments.

6.3.10 Transgender Rights and Role of Civil society Organizations and Political Parties

In Yogyakarta principles every citizen has a right to take part in the conduct of public affairs including right to stand for elected office, to participate in the formulation of policies effecting their welfare, and to have equal access to all levels of public service and implementation in public functions without discrimination on the basis of sexual orientation or gender identity. In India the right to contest election has been recognized and provided to all persons without discrimination on the basis of sexual orientation or gender identity. But it seems to be just the beginning; there is a long journey ahead (see section 5.3.7.) All political parties, national and state level, should give role to transgender people in the respective party. Moreover, welfare of transgender people should be made the part of their political agenda. Civil society organizations needs to carry out advocacy programmes for proving ownership of land and shelter to transgender at family level and to recognize their various rights in the family and society. There should be counseling centers, shelter homes and rehabilitation centers for transgender people who face violence and harassment. Civil society organizations can partner with government organizations in setting up of these facilities. All the respondents covered under the survey have suggested that there should be a local community support group and Transgender Welfare Board so that their issues are addressed and their voice heard.

6.3.11 Employment and Livelihood Opportunities

Article 14 of the Constitution of India guarantees equal rights and opportunities to men and women in political, economic and social spheres. Article 16 guarantees equality of opportunity in matters of public employment. However, each and every employer avoid the recruitment of transgender people. The transgender community is highly deprived of several rights including their right of participating in economic activities including employment. The interrupted education and social exclusion further limits their employment and livelihood opportunities (See section 5.3.6). Just 6 percent of transgender people are employed and moreover, they are employed in private/ NGO sector. Majority of transgender people are engaged in informal sector (see Table 2.5).

Transgender people should get equal employment opportunity in India and every employer should be made to declare policy statement on trans recruitment. The institutions should be asked to revise their recruitment policy and even recruitment application form should be revised accordingly. There can be a recruitment phases in each state, to start with. It is difficult to identify employable transgender people. Employment, regular or contractual, should be provided to transgender people both in government and private sectors. Government should introduce reservations in government jobs for them. Contract works and jobs like sanitary workers, sweepers etc., in the local government institutions and institutions managed by Panchayats, Municipalities and Corporations could be provided to them. Benefit of reservation should be provided to them in 3rd and 4th grade administrative services. Government should reserve certain portion of its contracts to transgender people for catering in government canteens. Transgender should be given priority and reservation in government jobs and private institutions giving employment to transgender should be encouraged by providing special subsidy. It is significant to note that in the post Supreme Court judgment phase, state governments have started recruiting transgender people. However, the implementation of the Supreme Court judgment is quite slow.

Training of transgender is an important issue to be addressed as an element of equality training for employees. The attitude of employer towards those issues needs a thorough change as there are several cases of denial of employment of skilled and educated transgender people.

Transgender persons can be employed in special jobs apart from the common jobs which may be more suitable to them. Mainstream jobs such as agents for Life Insurance Corporation of India and other insurance companies can be offered to transgender people. After undergoing some certificate courses, they may be given the opportunity to work as music teachers in select education institutions. Benefits under various government schemes should be made available to them. The art performance can provide much-needed supplementary income to transgender. Ministry of Culture can take suitable steps to promote performing arts and cultural activities focusing on transgender. Arts are effective tools that can communicate messages to public about various rights of transgender people.

Success stories of self-employed transgender people who run retail shops, conducting cultural programs are reported from a few States. A sector focus approach may be devised to provide livelihood opportunities to transgender people. Self Help Groups of transgender people may be promoted under government programme such as National Rural Livelihood Mission. Special support may be given to them under entrepreneurship development scheme and micro credit programmes of various government agencies. There should be a focus on establishing linkages with livelihood programmes, literacy programmes and other development programs like Rajiv Gandhi Awas Yojna, Indira Awas Yojna and other schemes of relevant ministries of Government of India. Transgender can work on community issues, as they can work as a field worker on various campaign programmes such as safe sex awareness campaign. The recruitment of transgender people as civic police volunteers to manage traffic in Delhi was a good step. By providing more responsibilities and role to these marginalized people can be brought to mainstream life. In nutshell, Transgender people should be given financial freedom and economic independence.

6.3.12 School Education and Vocational Training

The staff and faculty of education institutions are totally unaware of transgender issues. Transgender students faces harassment at school level (see section 3.1.2) The prevailing guru-chela system is an obstacle for youngsters in availing education opportunities (see section 3.1.10) The insensitivities of teachers and staff towards the community have adverse impact on the mainstreaming transgender persons in educational institutes. The teachers and staff do not have adequate knowledge and sensitivities about the community to support the

transgender community in making education accessible and mainstream them into the system. The social hierarchy and community norms among Hijra communities influence their behaviors and decision making ability. These norms sometime become too strict and are not supportive for mainstream efforts or allow them to explore other opportunities and lean other skills(see section5.3.5).

Education system needs to be strengthened with school and college administration through sensitizing them on issues of transgender. The fulfillment of the obligation under Right to Education Act 2009 is critical for the improvements in the education status of transgender children. Transgender community should be covered in elementary education promotion scheme. Ministry of Human Resource Development should take suitable steps to address drop out and other relevant issues of transgender at school level. The existing schemes of education promotion programme should be reviewed to assess their suitability to the transgender community. For example, socially disadvantage groups should include transgender community as target beneficiaries of Sarva Shiksha Abhiyana (SSA), a centrally sponsored programme. The environment prevails at schools and other educational institutions should be made favourable for transgender students to continue their study as several transgender students are forced to leave education institutions in order to avoid the mocking and harassment which leads to the mental trauma. Vocational training programmes for transgender should be introduced. Skill development of transgender persons can strengthen their employability. Training of transgender persons can make them employable in different fields such as beauticians, cook, dancers, decorators, tailors, data entry operators and video camera operators. Skill development programmes within the framework SHG programme under NRLM can be a better.

6.3.13 Higher Education of Transgender Students

The UGC has issued a notification on July 2014 to facilitate the education of the third gender and accordingly, universities have started taking action (see section 4.3.14). Some of the Indian universities and colleges have started action to admit transgender students. Admission forms have an option for transgender in the gender column. All the education institutions should conduct orientation programme so that students and teachers can learn how to make

transgender students "feel comfortable" and to create a friendly atmosphere. Scholarship schemes for higher education should be made effective for transgender with the help of available government programmes.

6.3.14 Housing and Accommodation

According to The Yogyakarta Principles , everyone has the right to adequate housing, including protection from eviction, without discrimination on the basis of sexual orientation or gender identity(see section :5.2). Care home for transgender children needs to be set up in all the States to prevent the exploitation of vulnerable transgender children. Government should take steps to provide housing facilities to transgender people. Construction of group houses for them at state or district level may be encouraged. Transgender should be given a special focus in centrally sponsored and state sponsored housing schemes. Legal actions should be initiated against land lords who refuse to give house on rent to transgender people. Similarly, owners of hotels and guest houses should be given clear instructions not to refuse their facilities to transgender.

To conclude, human rights of transgender people of India are highly comprised in India. There is an urgent need for safeguarding their rights by providing access to social resources, institutional facilities such as banks, educational and skill opportunities, housing and employment opportunities. Support for shelter and support services for health are immediate requirements. Awareness creation of the transgender people, families, society and police is essential for the mainstreaming of the third gender. Proactive participation of transgender in all democratic spaces should be facilitated. Legal and constitutional safeguards are essential to prevent human rights violations of transgender people in India.

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Questionnaire: 1-Transgender

KDS-Delhi, has been awarded a study on Human Rights of Transgender as a Third Gender by National Human Rights Commission. The objective is to study violation of rights, and discrimination faced by transgender community. The name and identity of the respondent will not be disclosed. The data and information provided would be used only for the study purposes and would be treated as strictly confidential.

(For investigators: Fill up as per instructions given with each question. Write codes/ values in the box provided at the right hand side)

Section: General Information	
11	State : (1= Delhi, 2=Uttar Pradesh)
12	Name, Address: Telephone if any:
13	If the present name is different from the name given at the time of birth please provide both the names----- ----- ----- Please explain place of birth and current place of stay----- ----- -----
14	Current practicing religion (1=Hindu, 2= Muslim, 3= Christian, 4=Others specify(-----)). Religion by birth? (1=Hindu, 2= Muslim, 3= Christian, 4=Others specify(-----)

	-----).	
15	If you belong to the Hijra community, please provide details (When did you join?, How did you join?, etc)- ----- ----- -----	
16	Caste: (1= General/Others, 2=OBC, 3=SC/ST)	
17	Age and Place of Birth	
18	Marital status (1=Married, 2=Unmarried) If married, please give additional details? (About partner, who organized your marriage, etc.)----- ----- -----	
19	Educational qualification (1=Illiterate, 2=Primary, 3=High school, 4= Senior Secondary, 5=Graduate, 6=Post Graduate, 7=Technical diploma/degree)	
110	Who supported you in your education (1=self, 2= parents, 3=others)	
111	Did you undergo any formal/informal training for skill development ----- ----- -----	
112	Did enumerators of Census 2011 meet with you? (1= Yes, 2= No) Please give details----- ----- -----	
Section 2: Socio-Economic Aspects		
113	Do you possess a ration card?	

	<p>(1= Yes, 2= No)</p> <p>If yes, how did you get it? Please explain the-----</p> <p>-----</p> <p>-----</p> <p>-----</p>	
1.14	<p>Are you availing ration facilities?</p> <p>(1= Yes, 2= No)</p>	
1.15	<p>Are you included in the food security scheme?</p> <p>If not, please explain the reasons</p>	
1.16	<p>Do you possess an ID Card? 1= yes, 2=No</p>	
1.17	<p>If Yes, please specify which ID card (1= Election Card, 2=Adhaar card, 3= Passport, 4=Driving license, 5=others (Please specify-----)).</p>	
1.18	<p>How did you get the ID card made? Did you face any problems?-----</p> <p>-----</p> <p>-----</p>	
1.19	<p>Employment status (1= employed, 2= unemployed, 3=Part-time, 4=others, specify ---)</p> <p>-----</p> <p>-----</p> <p>-----</p>	
1.20	<p>What is your source of income? Please explain-----</p> <p>-----</p> <p>-----</p>	

1.21	Monthly Income? Rs.-----
1.22	Annual Income? Rs.-----
1.23	Monthly expenditure Rs.-----
1.24	Please explain your employability (What type of services can you provide, what type of tasks you can be assigned? What type of skill/training/experience you have, etc.)----- _____ _____ _____
1.25	Do you have a Saving Bank Account/ Account with a Post Office? (1= Yes, 2= No) If yes, Please explain(since when, details of the bank/post office, etc)----- _____ _____ _____
1.26	Please explain your employability (What type of services can you provide, what type of tasks you can be assigned? What type of skill/training/experience you have, etc.)----- _____ _____ _____
1.27	What is your annual savings? Rs.-----

1128	<p>Do you possess any kind of assets? (1=Yes/2=No)</p> <p>If yes, please explain (nature and value of asset, own individually, jointly, others, etc.) _____</p> <p>_____</p>	
Section 3 Human Rights Violation: Harassment		
1129	<p>Are you facing any kind of harassment? (1=Yes/2=No)</p>	
1130	<p>What kind of harassments? 1= physical abuse/ 2= monetary /3= confiscations of property/ 4= verbal abuse/ 5= sexual harassment/ 6= any other, (specify). Please explain. _____</p> <p>_____</p>	
1131	<p>Do you pay hafta/bribe to any official on a regular basis ? (1=Yes, 2=No)</p> <p>If yes, to whom?</p> <p>1= official/ 2= Police/ 3= others (please specify)</p> <p>Please explain _____</p> <p>_____</p>	
1132	<p>How much do you pay hafta/bribe weekly?</p> <p>1= 100-500/ 2=501-1000/ 3=1001-1500/ 4= 1501 and above</p>	
1133	<p>Have you lodged any complaint about this to an agency?(1=Yes, 2=No)</p> <p>If yes, to whom?</p> <p>1= NGOs, 2=Police/ 3=officials, 4= Others (please specify)</p> <p>Please give details _____</p> <p>_____</p>	
1134	<p>Do you face any kind of violence/ harassment ? If Yes, Please specify. Is it physical violence or mental violence? Do you face verbal/physical/sexual abuse of any kind? Give details _____</p>	

135	Are you a member of any Association? (1=Yes, 2=No)	
136	Have you tried to organize yourselves into unions? (1=Yes, 2=No) If yes, explain. _____ _____ _____ If no, explain. _____ _____ _____	
Section 4 Human Rights Violation: Discriminations		
137	Explain your experience/problems in/ with education institutions? Did you face any discrimination in education? If yes, please explain _____ _____ _____	
138	Are there any entitlements given to you by Central/ State Government under various schemes/programmes for education? Please give details. _____ _____ _____	
139	Did you face any discrimination while finding or keeping a job? If yes, please explain _____ _____	
140	Did you face any discrimination while seeking Legal Protection? If yes, please explain _____ _____	
141	Did you face any discrimination while accessing health facilities? If yes, please explain _____ _____	
142	What are the coping mechanisms against various kinds of human right	

	violations/ discrimination?	
143	Did you face any social exclusion because of your gender preferences? Please Explain----- -----	
144	Did you undergo sex reassignment surgery (SRS)?(1=Yes, 2=No) If yes, please give details (Who paid for the surgery? When was it conducted, etc.)	
145	Are you associated with any political party? (1=Yes, 2=No) If yes, please provide the details such as name of the party, your role, etc----- ----- -----	
146	Do you get any assistance in the form of pension, insurance, any other welfare scheme from Panchayat/Municipal Corporation, state government or any other government authority? (1=Yes, 2=No) . If Yes, give details: ----- -----	
147	Are there any entitlements given to you by Central/ State Government under various schemes/programmes for health, education. Please explain? ----- -----	

Thank you

Name of the Investigator: -----

Signature : -----

Place of Survey : -----Date of Survey: -----

Questionnaire: 2-Government Officials, Associations of Transgender, CSO/NGO and Employers of Transgender

KDS-Delhi, has been awarded a study on Human Rights of Transgender as a Third Gender by National Human Rights Commission. The objective is to study violation of rights, and discrimination faced by transgender community. The name and identity of the respondent will not be disclosed. The data and information provided would be used only for the study purposes and would be treated as strictly confidential.

(For investigators: Fill up as per instructions given with each question. Write codes/ values in the box provided at the right hand side)

Section:1 General Information		
21	State : (1= Delhi, 2=Uttar Pradesh, 3= Any other State, please specify_____)	
22	Name, Address and Designation Telephone if any:	
Section:2 Officials		
23	Has there been an appointment of a transgender person in any of the government departments? (1=Yes, 2=No) If yes, Please give details _____ If No, could you explain what the reasons may be for not doing so _____ _____	
24	What are the entitlements given by Central/ State Government under various schemes/programmes for education and health of a transgender person? Please explain	

215	What measures are taken by the Central/state govt. to address the welfare of a transgender person?(pension, food security, insurance, etc)?	
216	What are the measures taken by the government to create awareness among general public to address the issue?	
217	What are the measures taken by the government to address various issues faced by a transgender person (human right violation, discrimination, abuses, etc)?	
218	Please indicate cases of transgender people who have succeeded/failed in some respects (for sharing the experience with others)	
Section 3: Associations of Transgender, CSO/NGO		
219	Nature and Activities of your Organization	
2110	What type of services / supports are provided by your organization to its members (issuance of an ID, Ration card, food security, availing government schemes, etc)	

2111	Geographical areas covered by your organization	

2112	How many members does your agency have? Please explain membership pattern, membership mobilization, etc	
2113	Have your organization ever received funding support from govt. departments/private. Agencies etc. to support the cause. If yes, please mention for what kind of projects, and the names of the funding bodies	

2114	Explain the role of your organization in providing education, capacity building, training and skill development of transgender people.	

2115	Please share your organization's experience while working for the rights of transgender community?	

2116	What are the steps needed for ensuring the rights of a transgender person?	
2117	Please explain your organization's role in ensuring the employability of a transgender person	

2118	What kind of harassments/violence faced by a transgender person and how did you help them to address it?	

219	How did you help a transgender person who is facing social exclusion ----- ----- -----	
2120	Did the organization help the transgender to undergo sex reassignment surgery SRS)? (1=Yes, 2=No) If yes, please explain the assistance provided ----- -----	
2121	Has the organization ever been associated with any of the Political parties/ any other associations? If yes, please provide the details such as name of the party, your role, etc ----- -----	
2122	What are the entitlements given by Central/ State Government under various schemes/programmes for education and health of a transgender person? Please explain ----- -----	
2123	What measures are taken by the Central/state govt. to address the welfare of a transgender person?(pension, food security, insurance, etc)? ----- -----	
2124	Please explain assistance provided by the organization in getting pension, insurance, any other welfare scheme from Panchayat/Municipal Corporation, state government or any other government authority? ----- -----	
2125	What are the entitlements given to you by Central/ State Government under various schemes/programmes for health, education? Please explain? ----- -----	
2126	Please indicate cases of transgender persons who have succeeded/failed in some respects (for sharing the experience with others)	

227	<p>Is there any caste system in the Hijra community?. Is there hierarchy among members of Hijra community ?. Please explain)-----</p> <p>-----</p> <p>-----</p> <p>-----</p>	
Section 4: Employer		
228	<p>Did you ever employ a transgender in your orgainsation? 1= Yes, 2=No</p> <p>If yes, Please explain the reasons for appointing them</p> <p>-----</p> <p>-----</p>	
229	<p>Did you find the efficiency/skill of them at par with other employees</p> <p>-----</p> <p>-----</p>	
230	<p>Did you pay them at par with other employees?</p> <p>-----</p> <p>-----</p>	
231	<p>How other employees in your organization treat them?</p> <p>-----</p> <p>-----</p>	
232	<p>Please share your experiences</p> <p>-----</p> <p>-----</p>	
233	<p>If No, Please explain the reasons for not doing so</p> <p>-----</p> <p>-----</p>	
234	<p>Have you ever considered appointing a transgender person?</p> <p>-----</p>	

235	Please indicate cases of transgender persons who have succeeded/failed in some respects (for sharing the experience with others)	

Thank you

Name of the Investigator: _____

Signature : _____

Place of Survey : _____ Date of Survey: _____

Focused Group Discussion: Check List

State & District & Block & Village/Town

Venue

Date

Participants Total No:

List of the participants to be attached separately

Coordinator of the FGD

Points to be covered in the discussion

- Various kind of discriminations and human rights violations faced by transgender people
- Programmes/schemes /facilities like education, health, employment, food, pension, etc available to transgender from Centre, State or Local Governments
- Reasons for the inclusion/exclusion, including problems faced by them in accessing those entitlements
- Suggestions to protect and promote their civil, political, economic, social and cultural rights.

Instruction:

- One FGD to be conducted in each district
- Every group should have 1 expert, 1 NGO representative and at least 5 Transgender people
- A group should have 8 to 10 members

Glossary

<i>Badhai</i>	Badhai is an activity of blessing people on auspicious occasions such as birth, wedding, festivals and seeking alms by dancing and singing. It is an ethnic profession of transgender persons under Hijra community
<i>Hijra</i>	A group of transgender persons lives under a Guru -Chela system where in the senior most person is Guru(Teacher) who looks after other transgender persons .
<i>LGBTI</i>	A diverse group of persons who do not conform to conventional or traditional notions of male and female gender roles. LGBTI people are also sometimes referred to as 'sexual, gender and bodily minorities'.
<i>Lesbian</i>	describes a woman whose enduring physical, romantic and/or emotional attraction is to other women .
<i>Gay</i>	describes a man whose enduring physical, romantic and/or emotional attraction is to other men, although the term can be used to describe both gay men and lesbians
<i>Bisexual</i>	describes an individual who is physically, romantically and/or emotionally attracted to both men and women.
<i>Transgender</i>	Describes people whose gender identity and/or gender expression differs from the sex they were assigned at birth and those people who wish to portray their gender identity in a different way to the gender assigned at birth. This includes, among many others, transgender persons who are between male and female, transsexuals and transvestites
<i>Intersex</i>	Covers bodily variations in regard to culturally established standards of maleness and femaleness, including variations at the level of chromosomes, gonads and genitals.
<i>Discrimination</i>	Less favourable treatment of one person or group than another on various grounds (direct discrimination), or the situation where an apparently neutral provision is liable to disadvantage a group of persons in comparison to others (indirect discrimination).

<i>Gender identity</i>	Each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body.
Sexual orientation	Each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.
Gender reassignment	The legal process whereby a person is formally recognized by the State in his/her "new" gender role
Hate speech	public expressions which spread, incite, promote or justify hatred founded on intolerance
Homophobia	the irrational fear of an aversion to homosexuality and LGB people based on prejudice
Sexual orientation	each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender
Trans phobia	the irrational fear of gender non-conformity or gender transgression, such as a fear of, or aversion to, masculine women, feminine men, cross-dressers, transsexuals and others who do not fit into existing gender stereotypes matching their birth gender.
Derived from the FRA report, the EU Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and the Yogyakarta principles)	
