

Editorial

Third Sex and Gender Equity

Sex is between the legs and Gender is between the ears.^[1] Sex of a person is the biological distinction of male and female (phenotypically penis is found in a male and vagina in a female; Genotypically testes in male and ovaries in a female; karyotypically XY chromosomes in a male and XX chromosomes in a female). Gender of a person is the social construct of a person. A male may have masculine attributes along with feminine attributes. Similarly a female may also have feminine and masculine attributes. It all depends on the power a person enjoys in the society. A male may have control over the female; upper caste female/male over the lower caste male/female; abled person over the disabled; rich person over the poor person – all these known as Intersectionality. This power imbalance leads to a lot of gender discrimination in the society. As a result in the society, Male is considered as the first sex; female as second sex and other sex as third sex.

Lay person often believes identifying the biological sex of the individual is never difficult. This perception is imbedded deep in their mind because they never found either the grand mother or the midwife, ever having problem in declaring the sex of the newborn. But when there are ambiguous genitalia, then there is not only mistaken identity of sex; there is a huge psychological impact on the person - because of being reared as different sex then the real perceived sex by that person. Often there are testimonials by such persons – as have been ‘a female soul trapped in a male body’ and vice versa. Such persons often get themselves operated (sex reassigned surgery (SRS) and get themselves changed to desired sex. These individuals are transgenders. These surgeries are often performed in unhygienic conditions, in dingy rooms, by unskilled persons or quacks – ending up in lot of morbidity and also mortality.

When having ambiguous genitalia or even intersex condition is not due to that person’s fault, shouldn’t the society offer sex correction surgeries, free of cost to them in a professional way? If we can accept it as a right of the transgender person - then how is the reciprocal duty of the society accomplished? The transgender community wants recognition of them as fellow human beings by the society and not sympathy or charity towards them.

Main stream society is yet to accept them and give them their rights due. As a result there is lot of discrimination towards transgenders, forcing them to either beg for their daily square meal; or to do commercial sex activity for a living. Even in sex work there is lot of exploitation and forced sex; with violation of their dignity, privacy and confidentiality. Police and goons have often exploited these persons for money and forced sex. Though some transgenders may get invited to participate in religious functions of child birth and / or marriage; this may not be a routine affair to earn their living. Getting respectful and appropriate health care is a nightmare for a transgender. The biggest hurdle being the insensitive approach of the health care provider. Common medical conditions forcing these persons to approach hospital would be for treatment^[2] of sexually transmitted infections including HIV, Hepatitis; care of physical injuries; psychological care, psychiatric treatment and mental counseling for depression, self harm, drug / alcohol abuse. The need of the hour is to sensitise the health care providers to the issues of transgenders; having standard operating procedures to deal with them in hospitals without gender discrimination; clear and practically operable guidelines for sex reassignment surgeries – what, where, who, when, how to do these sex reassignment surgeries. Why cannot transgender person earn a livelihood and gain employment; benefit from community and family support; access education and information; form the family arrangements and personal relationships that they desire; get respectful and appropriate health care; live free from violence and harassment; benefit from social protection programmes; seek justice through the law? These questions remain yet unanswered by the society satisfactorily.

The euphoria of winning an election by a hijra, Kamala Jaan, to the post of Mayor of Katni, Madhya Pradesh and also of winning the election by Asha Rani for the post of the Mayor of Gorakhpur was short-lived; as in both the cases the Courts nullified their winning elections on the technical ground that those mayoral posts were reserved for females and these transgender – Hijras were not females. In another case wherein a transexual had murdered a female over dispute for money during Commercial sex trade, the police wanted the doctor

to examine and certify whether the transsexual was indeed a male or female. The policeman's argument was that before producing the accused in front of the magistrate, this examination for identifying the sex of the transsexual would help the magistrate in sending this transsexual to either a male room or female room of the jail. First of all by medical examination of physical characteristics alone no doctor could conclude whether a transsexual was a male or female.^[3] Next why couldn't the magistrate order for placing this transsexual in a separate room when such privileges very often our politicians keep enjoying? Why should the investigative team be so discriminative with these transsexuals? The sensitive doctor in this case had argued against such medical examination being done only for sex identity purpose. There are several such examples around us - the Caster Semenya case of South Africa, Shanti Soundarajan case from India, Pinki Parmar case from India to name a few wherein there was discrimination of the transsexual / transgender because of their sexual identity.^[3] In 2014, Supreme Court of India gave a historic judgement recognizing transgenders as the 'third gender' in India. With this India also joined the international community in recognizing the transgender rights. But it was required again for the Supreme Court to clarify in 2016 that transgenders alone qualify as third gender; and that the Lesbians (Female homosexuals), Gays (Male homosexuals) and Bisexuals (both homosexual and heterosexual orientation) are not included in the list of third gender. As a result of this historic legal recognition for transgender rights, today they have voting rights, can apply for a bank account, can apply for a passport as a transgender; and need not have to identify themselves into the sex binary of male or female. Though they can easily have/own movable property and have/own self acquired property, it's not very clear with regard to their rights over the immovable property and also ancestral property. They are at the mercy of their relatives and society. Negligible numbers of transgenders are employed on government jobs. It became national news when the Karnataka High Court appointed a Transgender as its group D employee.

All Indian citizens enjoy the Fundamental rights, and when Article 14 guarantees equality for all, that means including transgenders. But at present the transgender community is not having an equal footing - with regard to enjoying their rights in comparison to the rest of the community of males and females - thus the equity principle is due. So urgently special social and economic provisions of reservations in all walks of life, proportionate to the transgender population is overdue. There

are only few NGO's working towards upliftment of these transgender communities; the work of the government agencies towards transgenders is not perceived at the required level and speed. When noncitizens are enjoying human rights in this democratic country of India, it's unfortunate that the food, water and sex rights of these transgenders are deprived and the society has failed in even perceiving such a requirement. Still there is a long journey ahead for the due recognition and gender identity of transgenders. To conclude there should be no gender discrimination against anybody including a transgender in this just and humane world.

References

1. Bernhardt C. The third sex: The truth about gender ambiguity. Available at <https://www.independent.co.uk/life-style/health-and-families/features/the-third-sex-the-truth-about-gender-ambiguity-1922816.html>.
2. Dupka LT. Third bodies: Examining mental and sexual health problems of the Hijras of north Bengal and Kolkata, Available at <https://ideas.repec.org/p/sek/iacpro/1003519.html>.
3. Jagadeesh N. Sex verification tests: Ethical, legal and social aspects. *Indian J Med Ethics* 2013;1:49-51.

Dr. Jagadeesh.N

Professor of Forensic Medicine and Toxicology, Vydehi Institute of Medical Sciences and Research Centre, Nallurahalli, Bangalore-560066
E-mail: forensicjagadeesh@gmail.com