

**Contesting the Gender Binary: A Study on the Changing Status
of Transgender Communities in Tamil Nadu, Karnataka, West
Bengal and Tripura between *circa* 1990 and 2016**

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CERTIFICATE

This is to certify that the thesis entitled “**Contesting the Gender Binary: A Study on the Changing Status of Transgender Communities in Tamil Nadu, Karnataka, West Bengal and Tripura between *circa* 1990 and 2016**” submitted by Ms. Swarupa Deb (ID No. 2012PHXF0407P) for the award of PhD Degree of the Institute embodies original work done by her under my supervision.

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ABSTRACT

This dissertation is based on a comparative study of the changing status of select transgender communities of Tamil Nadu, Karnataka, West Bengal and Tripura between *circa* 1990 and 2016 through field studies. It examines the causes for the marginalisation of transgender people in the domains of identity, access to health care, education and employment.

The main aim of the dissertation is to study the changing status of the transgender people in the four states between ca. 1990 and 2016. This has been divided further into five specific objectives: One, to unravel (and re-problematize) the meaning and significance of the term 'transgender' in the Indian context; two, to analyze the diverse nature of transgender identities in the four states towards understanding the complexity of the transgender phenomenon; three, to chronicle a narrative account of the struggle for rights of the transgender people between ca. 1990 and 2016; four, to explain the challenges faced by transgender communities in the domains of identity, access to health care, education and employment in the four states; and five, to examine the efficacy of the various provisions adopted by different bodies of the Indian State for de-marginalizing/mainstreaming transgender communities.

The binary model of gender (male and female) as well as institutionalized hetero-normativity have limited the possibility of accepting an alternate gender category. The study problematizes the process of 'othering' the transgender identities and their restricted scope for gender expression. Hence, the title reflects the argument that the transgender phenomenon inherently contests the male-female binary as well as hetero-normativity.

The Criminal Tribes Act, 1871 and the *NALSA v. UoI* verdict (2014) have been taken as historical markers for the criminalisation and subsequent de-criminalisation of transgender people in India. The timeline between ca. 1990 till 2016 was chosen to capture the

transgender collective formation, mobilisation of the communities as well as the response of the various organs of the Indian state and civil society towards the transgender community.

The literature review on transgender people in the Indian context highlights numerous studies on the *hijra* community. However, there are several other transgender identities and communities, which have received far less attention like- the *gurmas* in Tripura, *saatla*, *sutto* and *hamaam hijras* in Karnataka and the *rupantarkaami* and *launda* communities in West Bengal. This study therefore, highlights and examines the diversity of transgender identities in the four states.

Additionally, this dissertation chronicles a narrative of the struggle for transgender rights, which has not received adequate attention. A historical account of the struggle empowers the sense of dignity of the transgender communities. Besides, such a narrative also generates new knowledge in the field of transgender studies. Furthermore, the study addresses how numerous socio-political categories like class, caste, race, religion, regional identities, migration, urban and rural contexts are crucial to understanding the transgender phenomenon in India. The dissertation also explores the changing internal dynamics of the traditional transgender organizations, the evolving transgender leadership as well as the relationship between diverse transgender communities.

The study is based on the interview method and participant observation using snowballing technique. Sixty one respondents across rural and urban areas of Tamil Nadu (1 April 2015 - 30 April 2015), Tripura (9 October 2015 - 8 November 2015), Karnataka (11 August 2016 - 09 September 2016) and West Bengal (14 October 2016 - 9 November 2016) were divided into two groups. One group consisted of transgender and non-transgender respondents including members of civil society organisations, academics and government officials, associated with the struggle for transgender rights at different capacities. Another

group consisted of members of transgender communities belonging to diverse gender-variant and socio-economic profiles across the four states.

This dissertation argues that the institutionalised gender binary model and hetero-normativity constitute the principal cause for marginalising transgender people. It demonstrates how other social, economic, political and cultural factors play a role in the marginalisation of the transgender people. Therefore, the study responds to the issues of the transgender community within a framework of rights. Moreover, the study challenges the Western-centric term “Transgender” within an Indian context that obfuscates the heterogeneous nature of the diverse gender non-conforming identities. It proposes that the transgender phenomenon in the Indian context provides a unique perspective with regard to the socio-cultural sanctions of hetero-normativity, which further complicates the biological versus psychological dichotomy pertaining to the transgender identity.

The contribution of this dissertation is to gauge the impact of various measures adopted by different organs of the Indian State for improving the condition of the transgender people as well as the level of sensitization of mainstream society towards gender non-conforming people. As this research is spread across four states of India, it becomes possible to highlight a variety of causes that marginalize transgender people. These causes vary from state to state and even differ within a state. The interpretative history of the struggle documented in the dissertation focuses on the mobilisation and formation of collectives among the gender non-conforming communities of India almost in parallel to the Western transgender liberation movement. The diversities of issues pertaining to the transgender identities encountered during the course of this research highlight the perils of generalizations about the transgender people in India

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CHAPTER 1: INTRODUCTION

This dissertation is a comparative study of the changing status of the select transgender communities of Tamil Nadu, Karnataka, West Bengal and Tripura between ca. 1990 and 2016. The study is situated in a post-colonial context. It argues that the contemporary intolerant attitude towards gender non conformity in India has been drawn from the colonial ideas of hetero-normativity. As Victorian ideas of sexuality took root in India, gender variant identities were considered “unnatural” and “barbaric”, and thus, these were criminalized (Narain and Bhan 2005, Singh 2010). The criminalisation of transgender identities in the 19th century had further added to their social exclusion in contemporary times. The binary model of gender (male and female) as well as institutionalized sexuality (hetero-normativity) have limited the possibility of accepting an alternate gender category by both the Indian society and the State. This dissertation challenges the marginalisation of transgender people by tracing the complex socio-cultural categories that underline their gender non-conformity within a framework of rights.

This dissertation is titled *Contesting the Gender Binary* because it problematises the restricted scope for gender variant expressions and identities within the gender binary framework. A transgender body contests the male/female binary by transcending from one gender to the other. Therefore, the transgender phenomenon questions the epistemological structure of the socially conceived notion of the gender binary with the prefix ‘*Trans-*’, a space through which bodies are made to live and express varied gender non-conforming expressions (Alexander 2005: 23, Stryker and Whittle 2006: 15, Stryker 2008: 8-10). Thus, a study of transgender identities invariably contests the scope for gender expression within the restrictions of the gender binary framework and hetero-normativity. The rationales for selecting the timeline and the loci for field studies have been discussed in detail in section 1.5.2 and 1.5.3.

1.1. Research objectives

The main aim of this dissertation is to study the changing status of the transgender people in Tamil Nadu, Karnataka, West Bengal and Tripura between *ca.* 1990 and 2016. This objective has been divided into the following:

1. To unravel (and re-problematize) the meaning and significance of the term ‘transgender’ in the Indian context.
2. To analyze the diverse nature of transgender identities in Tamil Nadu, Karnataka, West Bengal and Tripura towards understanding the complexity of the transgender phenomenon.
3. To chronicle a narrative account of the struggle for rights of the transgender people in Tamil Nadu, Karnataka, West Bengal and Tripura between *ca.* 1990 and 2016.
4. To explain the challenges faced by transgender communities in the domains of identity, access to health care, education and employment in Tamil Nadu, Karnataka, West Bengal and Tripura.
5. To examine the efficacy of the various provisions adopted by different bodies of the Indian State for de-marginalizing/mainstreaming transgender communities.

1.2. Structure of the dissertation

The dissertation is divided into seven chapters. The introductory chapter explains the context of the study, the title of the dissertation, and lays out the research objectives. It then proceeds to review available literature under the different heads for locating the research gap. After locating the research gap, the relevance of this dissertation is spelt out before proceeding to questions of research method, data collection and analysis.

The second chapter titled “Diversity of gender non-conforming identities” explores the definitional maze of the word transgender and the problems of nomenclature due to the diversity of transgender identities. This chapter then outlines the nature of various

transgender identities in the four states of Tamil Nadu, Karnataka, West Bengal and Tripura. It concludes by listing out specific transgender identity symbols.

The third chapter titled “Chronicling a narrative of the struggle for transgender rights between *circa.* 1990 and 2016” provides a narrative account of the struggle for the rights of transgender people. It explains the origin of the transgender mobilization under the banner of the queer movement in late 20th century and later as a distinct community in response to the medical crisis generated by the HIV-AIDS as well as a challenge to the atrocities and prejudices of mainstream society and the Indian State.

The fourth chapter titled “The State, civil society, and transgender people” examines the attempts of the Indian State towards understanding the perils and issues faced by the transgender community. It analyses the impact of various measures adopted by the judiciary, the executive and the legislative arms of the State against perpetual humiliation, violence and socio-legal exclusion encountered by the transgender people and for mainstreaming them.

The fifth chapter is titled “Living on the edge: Access to healthcare facilities for the transgender communities”. This chapter deals with health care related issues of the transgender community involving four main components: HIV-AIDS related awareness and healthcare facilities, psychological healthcare services, Sexual Re-assignment Surgery related facilities and general healthcare amenities for the transgender community in Tamil Nadu, Karnataka, West Bengal and Tripura.

The sixth chapter is titled “Education and Employment: Challenges and responses”. The chapter deals with the challenges facing the transgender communities towards accessing discrimination free education and employment opportunities in the four states. The chapter examines the prospects of education and employment for transgender individuals and the extent to which the state has been able to respond towards the issues of transgender community’s rights to education and livelihood opportunities.

The concluding chapter summarises the changing status of the transgender community in the four states and the extent to which their problems have been resolved. It addresses the further challenges facing the transgender community and suggests recommendations for ameliorating their conditions.

1.3. Review of literature

The term gender is derived from *genre*, meaning “kind” or “type”. It is the way of the society to sort different kinds of bodies into fixed normative categories (Stryker, 2008:11). Historically and across cultures, there are instances of several societies arranging bodies into more than two gender classifications (Cohen 1995, Nanda 1999, Reddy 2006, Narrain and Bhan 2005, Lal 1999, Singh *et al.* 2012). The meaning of gender is not universal: it changes through time, varies from place to place and culture to culture. In this diversity, lie the discourses of modern transgender politics (Stryker and Whittle 2006: 15, Stryker 2008: 11-13). Thus, the normative concepts of masculinity and femininity are not restricted to biology alone (Lal 1999, Reddy 2006, Stryker and Whittle 2006, Green 2006). Early feminist literature had identified the social construct of sex and gender as being based on the primary genitals of the body. Consequently, the biological sex was considered as a rigid construct that could not be changed or transcended (Alexander 2005: 47, Walters 2005: 22, Hill and McBride 2007, Bettcher 2013: 205). Consequently, the socio-cultural construct of gender is primarily derived from constructing and maintaining a specific set of identities and roles through de-limiting, categorising and policing the bodies in accordance with their respective bodies (Butler 2002: 14, Narrain and Bhan 2005: 4-5, Stryker and Whittle 2006: 11, Sappho for Equality 2011: 7).

The issues of transgender people are political because it contrasts the normative belief that gender is fundamentally determined by the sex of their body. Thus, a transgender body is questioned because of its “gender-non-conformitvity” as well as for its movement in

between (and sometimes outside) the two socially conforming gender spaces: 'male' and 'female' (Roen 2001: 253, Butler 2002: 10, Stryker and Whittle 2006: 3, Stryker 2008: 12-13, Hall, 1997: 340-42, Nanda 1999: 2, Reddy 2006: 5, Singh 2005: 83).

It is imperative to understand that Transgender Studies as a discipline first emerged at the intersection of Feminist and Queer Studies that had already begun to analyse the understanding of 'gender' through transformed lenses (Walters 2005: 112, Narrain and Bhan 2005: 6, Stryker 2008: 98-99). The First-wave African-American feminist Sojourner Truth's speech *Ain't I a Woman?* serves as a powerful reminder that claiming representation within the term "woman" is not only a significant aspect of the feminist tradition but also a paradigm for claiming social equality among genders. Throughout the feminist movement, a certain racial, national, religious, and ideological agendas concerning "women" have characteristically mobilised themselves in a way that only some categories of women were recognised at the expense of others (Walters 2005: 78, Kumar 1993: 97). In many aspects, the fight over the inclusion of transsexual women within feminism was not different from the other fight involving the exclusion of different racial and class categories. Dealing with transgender issues within feminism requires re-examining some of the exclusionary assumptions regarding 'what constructs a woman' embedded within the core conceptual biases of feminism (Butler 2002: 7-8). Thus, Butler held that feminist theories have the tendency to restrict the meaning of gender by setting up exclusionary gender norms in the presumption of its own practice which habitually leads to homo/trans phobia. Hence, the transgender phenomenon inherently contests the homogenising potential of the categories 'male' and 'female'. Thus, it demands newer analyses, strategies and practices towards battling gender based discrimination and inequality (Nanda 2004: 10-11, Sullivan 2006: 156, Stryker and Whittle 2006: 3, Riddell 2006: 148-149).

1.3.1. Feminist, Queer and Transgender discourses

Kate Bornstein had opined that gender is inclusive of several facets of an individual's life (Bornstein 1995: 4). Thus, according to her, the perfect gender is not just male, but racially superior, having sexual autonomy and control over fertility. Hence, in comparison, the other gender(s) is not perfect and some are even inferior. Stephen Whittle has maintained that the transgender and feminist theories, though essentially based on the politics of body went vile when the feminist came across people, who were simply not whom they claimed to be (Whittle 2006: 197). Thus, a theoretical point of contention was based on feminist scholars on questioning "how can a person be born with a penis claim to be a woman, when to be a woman requires that you are not born with a penis and vice versa" (Greer 2007: 24, Riddell 2006: 144, Stryker and Whittle 2006, Stryker 2008: 9-10, Dutta 2012: 825).

The emergence of transgender discourses cannot be studied without recognizing the parallel rise of Queer Studies during the late 1980s and early 1990s in the backdrop of the AIDS crisis in the West. The homophobic characterisation of AIDS compelled a reconsideration of the association between sexuality, identity, and the State (Stryker, 2008: 113). This identity based struggle acknowledged a diverse array of bodies and sexualities affected by the HIV epidemic as sexual minorities. Thus, a new "queer" politics, based on contradicting the hetero-normative social oppression came into existence. The queer movement rather than demanding protections from violence and social stigma provided a broader framework for claiming non-discrimination based on hetero-normativity (Stryker and Whittle 2006:22). Although Queer Studies provided an anti-hetero-normative framework with same-sex objectivity as the only way to distinguish heterosexual cultural, it still fell short of acknowledging that the transgender phenomenon presents a spectrum of anti-hetero-normative behaviours and practices (Narrain and Bhan 2005:4-5, Stryker 2008: 91-93). The fundamental theoretical paradigm of Queer Studies distinguishing "hetero" from "homo"

sexuality loses its rationality just as the very idea of what is 'sex' is interrogated in relation to what is 'gender'. Thus, fundamental conceptual agenda of sexuality in queer politics and Queer Studies is essentially problematized by the transgender phenomena (Stryker 2008: 99, Mottier 2008: 179)

Several queer and non-trans (mostly feminists) individuals have engaged with issues relating to gender non-conformity and the concept of transgender in unfriendly terms (Namaste 2007: 17, Whittle 2006: 194, Sullivan 2006: 162, Greer 2007: 21-24). Gender has often been differentiated from biological sex, wherein gender has been understood as a product of socialisation and cultural roles assigned on the basis of the sex of an individual at birth. Thus, sex has been considered something that is "natural" and gender as "social" or constructed (Bornstein 1994: 6, Butler 2002: 8-9). Simon de Beauvoir's comment that "one simply is not born a woman, but becomes one" was one such construct (Walters 2005:12, Mottier 2008: 34-36). Women are oppressed because of their lower hierarchical position in the social hegemony (Bornstein 1994: 22, Kumar 2003: 8). The sexual and gender non-conforming communities too are similarly susceptible to violence and discrimination for similar reasons. Thus, the theoretical paradigms involving the framework of patriarchal hierarchy and oppression of feminist, queer and transgender identities have developed in conjunction with each other and are interrelated (Stryker 2008: 64-65).

The trans-feminist association can be understood through the intersection of transphobia and sexism. Sexism and transphobia go hand in hand. Transsexuals, who identify as (trans)woman are inherently subjected to sexism and sexual violence (Haggerty and McGarry 2007: 5). Though, in contemporary times, the discourses of feminism and transgender have taken different routes "gender related subjugation" is the common thread between the two (Green 2006: 499, Whittle 2006: 195). According to Bettcher (2013: 610), there are two parallel cultures: one, the dominant culture, second, the trans subculture.

Association of certain characteristics what/who can be called a woman is very different within the cultural contexts and the trans subcultural context. Though the idea of who is a man or a woman remains the same throughout the dominant cultural context, the question of whether a transman/woman can or cannot be identified as a man or woman varies within the trans subculture. The trans subculture diverges on the views of presence or absence of primary genitals towards self-identifying oneself as man or woman (Reddy 2006: 55, Bettcher 2013: 605). Thus, the sex of the body is not the standard for constructing the gender 'woman' or 'man' (Rosario 2004: 280). Therefore, a transman or a transwoman might or might not require to have a vagina or a penis within trans-culture (Halberstem 2005: 8-11, Stryker and Whittle 2006: 10-12, Stryker and Azura 2013: 4).

Socio-culturally, the body is both sexed as well as gendered. The sexed, and consequently gendered body (through a complex process of socialisation), is placed with a binary framework: sex/gender, homo/hetero which is at the heart of all modern gender and sexuality related debates. Emergence of the homosexual (men) movement remained strongly detached from the feminist discourses, whereas the lesbian discourses remained conjoined within the framework of a women-centric approach (Walters 2005: 15). Transgender identities were distinguished as interlopers, who were transgressing and challenging the very ideas of the binary framework (Bettcher 2013: 617). Judith Butler's cultural construction of sex and gender performativity theory has been perceived as being trans-friendly as she explains that biological male/ female sexes are independent of its cultural contexts (Bettcher 2013: 612). Furthermore, the idea of "sex" that was perceived to be a constant construct was questioned by transsexual bodies through medical interventions by altering their that altered bodies to match their desired gender (Felski 1996: 340, Stryker and Azura 2013: 1-3). Thus, transsexuals challenged the unaltered nature of sex by transforming into their desired bodies through medical intervention. However, much of these deliberations are framed within a

Western context. A discussion within a non-Western context has been dealt in the later part of this section.

The growing field of Transgender Studies is producing independent knowledge concerning the issues relating to gender, sexuality and identity (Stryker and Aizura 2013: 1-2, Kunzel 2014: 286). Transgender discourses open up the possibilities of the existence of multiple forms of body and gender (Stryker 2008: 19). Though feminist discourses critique the hetero-normative nature of sex, gender, and sexuality, it has failed to capture the lived experiences of non-conforming gender, sexuality, identity as well as bodily experiences of transgenders (Cromwell 1999: 122, Alexander 2005: 47). Queer theories which emerged from the post-modernist and post-structuralist framework have also been criticized for its misrepresentation of transgender issues as it is more focused on gay and lesbian issues (Bornstein 1997: 23, Alexander 2005: 57-59, Halberstem 2005: 12, Stryker 2008: 19-21). Transgender identities have been spoken about but rarely emphasized. Thus, a need for understanding the lived experiences of the transgender is required towards constructing a theoretical framework of gender identity for embracing the transgender phenomena within the context of social expectations as well as lived experiences (Reddy 2006: 15-16, Stryker 2008: 1-2). Discourses on the transgender context provided an opening towards recognising the politics of gender non-conforming identities thereby challenging the hegemonic traditions based on the gender binary gender (Roen 2001: 253). The contemporary transgender theories have essentially built a paradigm that encapsulates the collective lived experiences of an array of diverse gender non-conforming practices, behaviours and identities in the areas of sex, gender, sexuality, identity, and body politics (Alexander 2005: 46-47).

1.3.2. Transsexual and Intersex Debate

For an extensive period of time sex has been thought to be a mutually exclusive and there were only two categories: male and female. Though the male-female binary was considered

to be biological, this is not always the necessary case (Lal 1999: 120-121). A child can be born with any number of biological characteristics that can make it difficult to determine its sex like ambiguous genitals, chromosomal variance cases, or being born intersexed bearing the reproductive and sexual organs of both male and female. In most cases intersexes infants are altered into a “pure male” or “pure female” through surgical interventions (Chase 1998: 300-301, Benjamin 2006: 219-222). Similarly, transsexuals go through complex medical procedures in order to change the sex they were assigned at birth (Cromwell 1999: 122, Nanda 1999: 98, Singh 2010: 84). Thus, the existence of intersexed individuals and the increasing possibilities for bodily alterations for transsexuals due to medical interventions and technical advancements have called into question the notion of sex being entirely biological.

Gender though used interchangeably with sex often does not convey the same meaning. Gender, in reference to man and woman, is considered to be a socio-cultural construct. It is defined as a set of behaviour patterns and traits assigned to each sex to fit in a societally approved role (Nanda 1999: 15-16, Reddy 2006: 31, Lal 1999: 119, Stryker 2008: 8-10). Masculine and feminine are the only two socially approved genders. In a hetero-normative society, immediately after a child is born, the social agencies begin to assign a male or female gender characteristics to the new born; and soon socialisation on the basis of biological sex begins for training the child to be either masculine or feminine. Accordingly, men are socialised into behaving like a men, demonstrating ‘manly’ characteristics, just as most women learn to behave as women, showing socio-cultural characteristics typical to their sex. These two categories are thus, thought to be mutually exclusive towards maintaining a healthy “reproductive society” (Lal 1999: 120, Bronstein 1994: 14, Reddy 2006: 32-33). Thus, an individual can be masculine or feminine, but not both, nor can gender roles be altered. Since gender is a social construct, many feminists and transgender theorists have

argued that what is considered to be the ideal traits of masculinity or femininity can be transmuted over time (Stryker 2008: 13-16). Thus, transgender discourses have proposed two arguments relating to gender: first, a person could combine both masculine and feminine traits/behaviours at the same time; second, a person can be taught/trained in both aspects of masculinity and femininity (Felski 1996: 340-342, Butler 2002: 22, Stryker and Aizura 2013: 5-7).

The issues pertaining to transgenders and the intersexed challenge the notion of rigid definitions of sex and gender they often overlap. The term transgender is inclusive of female-to-male transgender people as well as male-to-female transgender people. They are often referred to as transmen and transwomen respectively (Stryker and Whittle 2006: 8, Haggerty and McGarry 2007: 11-12). While sex is typically associated with biological characteristics like chromosomes, reproductive organs, genitalia, and hormones, gender identity refers to an individual's deeply felt desire for self actualisation by identifying themselves either as a male, female, both or none (Stryker 2008: 13). Though gender has been essentially considered to be sociological, trans-gender brings in a psychological element in defining or redefining one's sexual identity (Dutta 2012: 826). While psycho-medical studies have observed that a sense of gender, in this case, transgender, begins to develop from a certain age, certain scholars have argued that gender non-conformity and the urge to be identified outside their sexed body assigned at birth is innate (Alexander 2005: 62, Stryker 2008: 11-13, Dutta 2012, Stryker and Aizura 2013: 7, Olson *et al.* 2015: 375).

Sexual orientation refers to the sex of the person, who is attracted to a particular sex group. A homosexual person is attracted to the members of his or her sex while a heterosexual person is attracted to those of the opposite sex. Heterosexuality and homosexuality have constructed a rigid sense of the binary (Narrain and Bhan 2005: 16). Thus, the problem of homo/hetero sexuality is in itself restrictive in nature as both fail to

encompass sexual orientations outside the gender binary. Gender variance is often associated with sexual orientation assuming that a homosexual person identifies and expresses desire like his/her opposite gender (Halberstam 2005: 21-22). However, not all homosexual individuals identify themselves as transgender or vice versa (Whittle 2006: 195). Transgender individuals can be gyno-sexual, andro-sexual, bisexual, or might not adhere to any or one particular sexual orientation (Narain and Bhan 2005: 2-5, Stryker 2008: 19, Dutta 2012, Tripathi 2015: 180).¹

The transgender variations are at times difficult to comprehend as our social minds are inherently hardwired to understand the world through the lenses of the binary (Narain 2005). Transgender activist Susan Stryker has said that while dealing with the issues of transgender one has to unlearn not only their previously conceived notion about sex/gender but everything that is associated with the binary module (Stryker 2008: 20). It is important not to confuse variant gender expressions like transgender and transsexuals as they have been present throughout history. Transgender scholars acknowledge that though the term “Transgender” collectively crystallized within an Euro-American context only in the late 1980s, it has now begun to circulate widely across the globe (Dutta 2012, Stryker and Aizura 2013: 1-2, Kunzel 2014: 287-290). Nonetheless, though the term originated recently in the West several indigenous cultures recognise gender roles outside the binary male/female (Hall 1996: 227, Nanda 1999: 19, Stryker 2008: 11-12).

1.3.3. The term Transgender

During the late 19th century, European sexologists came across a separate community within the “homosexual” people, whom they termed as “third sex” (Stryker 2008: 36-28). The thirdness was in reference to the individual’s desires to be identified as a person from the opposite sex while being attracted to a person of the same sex. Thus, early sexologists referred to the

¹ The term gyno-sexual implies any person, who is sexually attracted to women/female and andro-sexual implies any person, who is sexually attracted to men/male. Queer scholars have suggested that these terms are more appropriate than lesbian and gay respectively (Tripathi 2016: 147).

third sex as a person of neutered gender or a eunuch referring to the state of an individual's gender identity not matching his/her sexed body (Dean 2006: 218). In the present, the transgender phenomenon is evolving whereby gender non-conforming communities present their identities in a wide range of ways. The sexuality of transgender people can be located anywhere with the wide spectrum of sexual identities as they can be heterosexual, homosexual, bisexual, pansexual or asexual (Stryker and Whittle 2006: 9). Thus, transgender is an umbrella term denoting a wide range of gender variant expressions or behaviours that are traditionally not associated with their sex assigned at birth (Stryker 2008: 11, Reddy 2006: 122-123, Narrain and Bhan 2005: 24-25).

The possibilities for altering the embodied gender were noticed after World War I. The term 'transsexual' was widely recognised when Einar Wegener (allegedly intersexed) and Christine Jorgensen underwent a highly experimental sex-reassignment surgery in 1930 and 1952 respectively (Benjamin 2006: 221, Stryker 2008:47). Later in 1955, Hampson Money proposed a theory relating to the process of gender identity formation sometimes referred to as the psychosexually-neutral-at-birth theory (Haggerty and McGarry 2007: 78). The theory claimed that children were born without any inherent gender identity but only acquired one through the process of socialization. The focus on pre-eminence of socialisation contesting the importance of biological differences between man and woman advanced along with feminism from the mid-1960s and onwards (Butler 2002: 8). The idea of the construction of gender through socialisation was the political argument of feminists, some of who claimed that the biological differences between men and women explained the prolonged oppression of women through social and institutional structures (Walters 2005: 119, Mottier 2008: 45).

In the early 1970s lesbian women began to attack Male to Female transsexuals alleging that transsexual women brought a sense of 'male energy' with them and were unwelcome in the "real women" spaces (Sullivan 2006: 160, Whittle 2006: 197). This view of

MTF transsexuals within feminist circles gained supporters and climaxed in Janice Raymond's book titled *The Transsexual Empire* (1979). Raymond claimed that transsexual women can never be real women because they do not have the proper set of chromosomes and were not socialised as females. Several theoretical, as well as practical arguments, focused on the similar concept during early 1990s, when the definition of 'woman' was narrowed down to specifically exclude transsexual women from the women's space (Greer 2007: 15, Riddell 2006: 149, Stryker 2008:95).

Susan Stryker has situated transsexuality as a “culturally and historically specific transgender practice/identity through which a transgendered subject enters into a relationship with medical, psychotherapeutic, and juridical institutions in order to gain access to certain hormonal and surgical technologies for enacting and embodying itself” (Stryker 2006: 225). On similar grounds, transgender scholars have argued that gender non-conformity and modes of sexual embodiment (not in conformity with the sex assigned at birth) have provided scope for bodies to live through different gender experiences otherwise unavailable to them within the strict binary framework (Butler 2002: 22-25, Juang 2006:714).

Transsexual and cross-dressing behaviour have been treated as a form of mental disorder since the second half of the 1950s. In 1980, transsexuality was recorded as ‘Gender Identity Disorder’ in *Diagnostic and Statistical Manual of Mental Disorders* (DSM) of the American Psychiatric Association (Spade 2006: 315). During the early 1990s, the term transgender arose as a an umbrella term to represent all categories of gender non-conforming communities including cross dressers and transsexuals, transgenderists and all other gender varying characteristics and behaviours, and those who chose to live as members of their desired sex with or without genital reassignment surgery, hormonal therapy or other body alterations. (Stryker and Whittle 2006: 220). The newly emerging transgender discourses challenged the medicalization of the transgender bodies and argued that being gender non-

confirmative is equally an inevitable social role as being male or female (Feinberg 1998: 214). This paradigm shift, from the medical to the political, has significantly impacted the mental health community. Some mental health professionals continue to discriminate against the transgender community due to lack of effective training and research concerning gender non-conforming individuals (Olson 2015: 374, WHO 2016).

It has been however pointed out that not all gender variant communities/individuals identify as transgender and some comfortably identify their gender transition within the binary (Stryker 2008: 65). Susan Stryker, one of the prominent transgender scholars, expanded the scope of the term transgender for referring “to the widest imaginable range of gender variant practices and identities” (2008: 11). Thus, the term transgender can be understood as a spectrum of identities with varying degrees of gender non-conformities both within and outside the binary consisting of cross dressers, transsexuals, drag kings, drag queens, butches, hermaphrodites and several other gender-varying identities. Thus, transgender represents a number of related but nevertheless independent identities. Transsexuals are one of the most widely acknowledged identities within the transgender spectrum and it is commonly presumed that almost all transgenders are transsexuals. Transsexuals, also known as post-operative transsexuals, choose medical intervention and hormone replacement therapies for altering their physiological condition to match their desired sex/gender identity (Feinberg 1998: 207, Stryker and Whittle 2006: 19-21). The transsexuals are those who solely depend on surgical and medical interventions for living the gender roles of their desired sex.

Identities like drag king and queen too are used in different contexts pertaining to transgender identities. The term drag is associated with clothing in accordance with a particular gender worn in a parodist fashion. Thus, drag kings and drag queens are people who engage in cross-gender performances on various sub-cultural spaces (Reddy 2006: 24,

Stryker 2008: 7-8 Dasgupta 2013: 445, Dutta 2013: 497). Though drag is a transgender behaviour per se, the person performing drag might or might not identify as transgender (Stryker 2008: 16-17, Dasgupta 2013: 443). Drag involves cross dressing. However, there is a difference between being a cross dresser and a transvestite. It is claimed that the term transgender is a modern day replacement of transvestite (Stryker 2008: 17). Coined in 1910, transvestites represented individuals, who occupied a spectrum between 'male' and 'female'. While cross dressing is non-associative with erotic impulse, transvestism usually denotes an association of cross dressing for erotic pleasure (Halberstam 2005: 13-14, Stryker and Whittle 2006: 11).

The term Genderqueer is associated with the LGBTQ context referring to an amalgamation of gender identities and sexual orientations. The term suggests non-conformity of gender binary stereotypes converging both gender and sexuality towards challenging the existing constructions of identities (Halberstem 2005: 24, Narrain and Bhan 2005: 3-4). Gender queer represents a way of opposing hetero-normativity without automatically assuming a gay, lesbian, bisexual or trans gender/sexual identity. Hence, it is more of a political identity than a sexual representation.

Androgyny, on the other hand, represents a gender identity that does not clearly place itself into the distinctive gender roles. Androgen identities may claim to be outside the binary, within the binary, between the binary, moving across the binary, gender-less, assuming characteristics of both male or female, or all of these. However, they do not imply a specific sexual orientation (Stryker and Whittle 2006). Androgyny can be either physical or psychological or both. Androgen identities include pan gender, ambigender, non-gendered, agender, gender fluid or inter-gender.

An individual, who move between masculine and feminine gender roles, may identify themselves as bi-gender. These individuals often portray two distinct personalities, both male

and female, at different times depending on the context. The difference between androgyny and bi-gender is that an androgynous person maintains their same gender behaviour across situations and contexts. The bi-genders consciously shift their gender behaviour primarily between masculine and feminine or vice versa (Stryker 2008:18).

Gender varying people often desire to align their anatomical construction with their desired gender (Dutta 2012). Post transition, however, such individuals may or may not necessarily identify as transgender or transsexual but as a man or a woman (Green 2006: 504). Green says that there are several transgender persons, who hold strong ties with their pre-operative selves while others might choose not to reveal or openly discuss their transgender status post operation. The “operation” which is often a part or the end of the transition process is collectively known as gender reassignment therapy, which includes hormone replacement as well as gender reassignment surgeries (Spade 2006: 317, WHO 2016). The references such as ‘pre-operative’, ‘post-operative’ and ‘non-operative’ transgender indicates the status of a gender non-conforming individual in context of the Sexual Reassignment Surgery. However, some transgender activists reject the use of such terms as they pathologizes the transgender community on their surgical status instead of their self-identified psycho-social gender role (Juang 2006: 706-707).

Transgender discourses critically analyse the restrictive ways through which gender has been understood. In Western cultures, the biblical norms are the predominant source for interpreting gender. Here, the anatomical scope is restricted to male and female (Dutta 2012). The earlier “Eurocentric unease” with the notion of third gender(s) arrangements eliminated the scope for alternative gender expressions. Thus, transgender was considered to be a deviant category for something that was non-conforming in relation to the traditional male-female binary (Stryker and Aizura 2013: 7, Dutta 2012, 2013: 450).

Three frameworks have been suggested in order to explain the transgender phenomenon: gender essentialism, social construction and gender performativity. These three paradigms, which are elaborated below, offer perspectives to look at sex and gender through different lenses. In addition to sex and gender, these concepts essentially lay emphasis on gender identity and gender expressions. Gender identity of a person may be male, female or in between or outside of the binary. Gender expression, on the other hand, is a way of expressing gender identity through gender-typical appearances, expressions, behaviours and traits (Stryker 2008: 7-11).

Stryker has argued that transgendered individuals have often identified themselves as people stuck in the wrong body. Most transgender people do not identify with the sex category they were assigned at birth and identify themselves with the opposite sex/gender (Olson *et.al.* 2015: 374). In this case, the transgender persons view themselves being stuck in a body that is non-conforming to their desired gender for as long as they could remember (Revathi 2010, Vidya 2013, Tripathi 2015, Bandopadhyay 2016). Stryker points out that this is a gender essentialist notion of the transgender phenomenon as it relies on the notion that a person is born with a gender identity as opposed to the notion that gender is constructed or imprinted through socialisation during a person's life (Stryker 2008: 12-15). An example of the essentialist theory can be observed in the transgender biographies and personal narratives, where the gender non-conforming persons feel an imminent need to change their sex to match their gender identity. The autobiographies of Revathi (2010), Living Smile Vidya (2013), Laxmi Narayan Tripathi (2015), Manabí Bandopadhyay (2016), and the memoir of Caitlyn Jenner (2017) though situated in different socio-cultural contexts, resonate with the similar feeling of being born into the wrong sex and therefore desire to change their physiology in concordance with their gender identity.

The social constructionism theory refers to the notion that sex and genders are separate concepts and that both are socially constructed (Lal 1999: 120). One of the strong advocates of this theory Stephen Whittle, who suggested that as gender was socially constructed over a period of time through social interaction, similarly, sex too was a socially constructed category by the medical community based on anatomy (Whittle 2006: 197). Whittle further claims that while gender was thought to be based on sex, and as sex too could be changed, there was always a possibility that individuals could break the socially conforming binary dictates. According to this theory, transgender individuals experience and interpret sex and gender as distinctively and do not think that there is any reason for their gender to be based on their anatomical sex (Narain and Bhan 2005: 4-5). Thus, gender identity is the key concept in this case, where it is not necessarily seen as something one is born with but as something the individual inculcates over a period of time. Thus, there is a scope to alter it in the future. Laxmi Narayan Tripathi in her autobiography has mentioned that though she identifies herself with the feminine gender, she does not feel the need for sex reassignment surgery as her gender identity is independent of her genitals (Tripathi 2015: 175). Thus, transgender persons, whose gender does not match their sex but do not want to alter their sexual anatomy falls within the social constructionism of gender.

Gender performativity as proposed by Butler is a third way to view transgender identity construction. Stryker, heavily influenced by Butler, proposed gender performativity was central to self-actualisation of transgender identity (Butler 2006). She has pointed out that the reality of gender lies in doing it, rather than being an objective quality of the body (Butler 2002: 11-13). Gender performativity for transgender persons is constituted of innumerable acts of performing gender including dressing, behaviour and character traits. This theory implies that transgender identity is not ambiguous but real as any other expression of identity which can be attained through performance. The transgender persons

often practice and perform the traits of their desired gender repeatedly, mimicking their socio-cultural embodiments towards establishing their trans-gender status (Hall 1997: 352, Nanda 1999: 27).

Stryker has argued that the issues relating to the transgender communities cannot be resolved only through theoretical engagements. As knowledge production is equally necessary for the field of transgender studies, Stryker expressed her apprehension towards the burgeoning amount of transgendered related studies over the last decade that has been essentially perpetuating a minoritizing or ghettoising use of the term 'transgender' (Stryker *et al.* 2008: 20). The trans- normative discourses tend to delimit and contain the relationship of the conceptual operations of 'trans-' to '-gender' statuses and practices in a way that reduced them to be the exclusive property of a minuscule class of marginalised individuals (Stryker and Aizura 2013: 10-12). It is important to comprehend that any gender-defined space is not only inhabited by varied forms of gendered embodiment, but are crossed by the boundaries of significant forms of difference other than gender including the threats of violence, socio-economic marginalisation, and denial of rights (Reddy 2006: 20-21). Currah and Minter (2000) observed that a large number of transgender people face economic depravity and lack of State protection. The transgender communities not only face discrimination pertaining to their socio-cultural gender non conformitivity but several other layers of depravity (UNDP 2013: 4). Most of the transgender people have incomes below the poverty level. Transgender and transsexual people across different States face employment discrimination. They face dejection from their family and are vulnerable to sexual violence and hate crimes (Olson *et al.* 2015: 375). Due to an excessive amount of stigma faced in educational institutions, many transgender people are forced to dropout, and eventually, the lack of income options force them towards sex work (UN Human Rights Council Report 2015: 9).

1.3.4. Transgender in the non-Western framework: The Indian context

The term transgender is a culmination of Western experiences. It thus enjoys certain linguistic and cultural prerogatives (Dutta 2012, Stryker and Aizura 2013: 11). An attempt at universalising the term transgender as a transnational “umbrella term” tends to incorporate the non-Western and previously colonised discourses (Kunzel 2014: 286). In this context, transgender has evolved into a local expression of practices of gender/sexual variance associated with non-conforming identities without questioning the conceptual baggage associated with the transgender category (Dutta 2013: 495). According to Stryker (2006), globalization has opened up ways of exchange of multi-directional terminology, concepts, and technologies. Terms like transgender, transsexual, transvestite, and so on, have transcultured with new meanings in different geo-political contexts, where bodies live through significantly diverse social arrangements of sex and gender embodiments (Narain 2013, Stryker and Aizura 2013: 7-8). For understanding the transgender in a non-Western and post-colonial context, Transgender Studies will require an “ethico-critical” assessment (Stryker 2013: 15). While discussing the scope for transgender studies in the twenty-first century, in the introduction to *Transgender Studies Quarterly* 2 (2013), Stryker argues that transgender discourses involving non-Western categories require self-conscious crossing of cultural imaginaries and geo-political boundaries. Dutta added that while the term transgender has increasingly become a “shorthand” term to identify gender variance across cultures such superimposition of a Western notion primarily derived from the Western experiences recapitulates the power structures of colonialism (Dutta 2013: 497). Though Stryker acknowledges that the term transgender is a First World construct being exported for Third World consumption various non-European, colonized, and diasporic communities, who construct gender in ways that are marginalized within Eurocentric contexts, have begun to

produce an entirely new genre of analysis while engaging with the term transgender (Stryker and Aizura 2013: 18).

In the Indian context, Vanita and Kidwai (2008) attempted to reconstruct the historical continuity of sexual non-conformity within the Indic traditions from the Vedic period till the end of the colonial era. It has been argued that the gender fluidity documented within the Indic texts like *Manusmriti*, *Kamasutra*, the *Puranas* and the epics *Ramayana* and *Mahabharata* provided scope for alternate gender expressions within Indian culture (Cohen 1995: 276, Hall 1997: 345, Lal 1999: 122, Nanda 1999: 17) There is a paucity of research that has analysed these gender fluid phenomena in the framework of contemporary transgender identity politics. A structural paradigm involving the discernment of complex socio-political cartographies of violence and rights-lessness is needed towards analysing the ideas of “tritiya prakriti” and “vikriti” is suggested for the non-conforming phenomenon within the Indic texts (Reddy 2006: 22).

Serena Nanda’s seminal work on the gender non-conforming *hijra* community of Maharashtra, *Neither Man nor Woman: The Hijra of India* (1999) is one of the first few early studies on the *hijra* communities. This study is one of the most detailed ethnographic accounts of the lives of the *hijra* communities in India. Nanda studied the *hijra* communities outside the framework of deviance depicting them as “full human beings”. Her study organizes itself around the communities’ institutionalisation of a third gender role, portraying the *hijra* as occupying an alternate gender role in Indian culture. Thus, Nanda attempted to portray Indian culture’s implicit accommodation of gender fluidity, posing a contrast between the openness of the non-Western/indigenous cultures to varied gender expression, unlike the hetero-normative Western culture.

Gayatri Reddy’s ethnographic account of the transgender communities can be read in conjunction with Nanda’s epistemological understanding of *hijra* being at the centre of

gender non-conformity in India (2005). Although Nanda has reinforced a distinction between western gender binary and the Indian accommodation of gender variations outside the binary framework, Reddy emphasised that it is not always necessary that the *hijras* identify themselves as third gender individuals. Reddy challenged the straightjacketed understanding of transgender communities as a ‘third gender’ by arguing that *hijras* in India adopts the cultural symbolism of both masculinity and femininity. She further established that the self-identity of the *hijra* community is not merely based on their apparent gender non-conformity but is embedded in different socio-cultural contexts like religion, class and kinship. In her study, *With Respect to Sex*, Reddy portrays the *hijra* community not as an alternate gender community but as a distinct marginalized community in the socially, economically and culturally changing ‘urban space’ (Reddy 2005: 24).

Earlier ethnographic studies on the *hijra* communities proposed categorically defining *hijra* as neither man nor woman, or as nurtured eunuchs (Cohen 1995: 276-277, Hall 1997: 344). Reddy radically challenged this notion by portraying the members of the *hijra* community adopting cultural symbols that are either feminine or a combination of both masculine and feminine. The *hijra* community, described in several colonial and post-colonial ethnographic accounts, as eunuchs or intersexed-castrated-transvestite men have been discussed widely in India (Cohen 1995, 1997, Hall 1997, 1998, Nanda 1998, 1999, Lal 1999). The ethnographies of Lawrence Cohen (1995), Kira Hall (1997), Serena Nanda (1999), and Gayatri Reddy (2006) described *hijra* as a complex identity of marginalised male-born, sometimes intersex, transvestites, combining the kinship-based social organisation of both Islamic and Hindu religious practices. These scholars identified *hijra* as a subject of society’s apathy and rendered abject at the margins of society (Nanda 1999: 22-21). Being born into a male body, but unable to reproduce, which forms the central fabric of Indian kinship oriented society is where the problem lies (Hall 1996: 352, Lal 1999: 124). Due to

their location outside the reproductive duty of the society, bearing similarities with barren women and widows, is the reason for Indian society's seemingly moral conflict, the attitude of non-acceptance, and sense of abjectness towards the *hijra* community (Lal 1999: 123-124). Though placed outside the margins *hijras* have been portrayed as claiming divine powers of blessings while being vulnerable to intolerance. *Hijras* of India are people living on the edge, with no shame and engaging in insolence towards responding to the collective injury caused to them through social exclusion (Hall 1997, Nanda 1999, 1999). Certainly, the religious-cultural 'third gender' *hijra* identity provides an opportunity to understand the rigid sex/gender binary position within the context of a non-Western postcolonial context (Reddy 2006: 32). The existence of a *hijra* subculture outside the dominant gender binary mainstream society explains that *hijra* bodies are non-problematic due to the religious angle claimed by them (Hall and O'Donovan 1996: 341, Lal 1999: 120). Vanita and Kidwai claimed that though during the colonial regime gender non-conformity was ruthlessly policed (and the trend continues even today) gender fluidity of bodies has been always tolerated in India (Vanita and Kidwai 2008: 9).

However, Reddy (2006), and subsequently Dutta (2013), have criticized the earlier ethnographic studies for being focused only on the *hijra* community claiming it to be a prominent non-Western 'third gender'. While the indignity of the *hijra* identity has been contested, it has been portrayed as a quintessential marker of Indic alternate gender/sexual arrangement with a more historically continuous trajectory, dating to at least the seventeenth century in comparison to the Transsexual/Transgender identities in the West (Reddy 2006, Dutta 2012, 2014). Transgender scholar Aniruddh Dutta (2012, 2013) has criticized the *hijra*-centric research of the gender non-conforming communities of India. Though the earlier studies were responsible for producing gender diverse literature in the Indian context, these studies can be critiqued for imposing a sense of trans-normativity whereby certain

transgender identities (in this case *hijra*) were recognized and folded into the transnational gender non-conformity discourses, while other ethnic, gender variant identities of India were omitted. Selective identity politics, in the case of non-Western transgender identities, leads to a limited gain in the transgender phenomenon, where one or few dominant identities gained recognition at the expense of others (Dutta 2013: 452, Reddy 2006: 32-33). Moreover, earlier transgender accounts that were modelled on the Western discourse of transgender have failed to arrest the complexities of the gender non-conforming communities in India (Reddy 2006: 34). Anglophone hegemony among the researchers as well as activists has further widened the cleavage between the regional, the indigenous and the Western or Western recognised identities (Singh 2010: 126-127).

Colonial transphobic mentality reinforced itself during the HIV pandemic era in India, which consequently, escalated the rates of atrocities towards the transgender community that eventually crystallised into a struggle for transgender rights witnessed today (Baxi 2003: 4-5, Narrain and Bhan 2005: 7). Singh (2010) argues that the earlier transgender mobilisation of India that has been recorded under the broader queer movement had two significant characters. First, with the rise of atrocities towards the community a need for activism demanding recognition of identity as well as claim for rights emerged. This need eventually resulted in mobilising various gender non-conforming identities across India into a common platform. Second, with the rise of funding opportunities and availability of HIV related health care opportunities, exclusive transgender agendas and identity politics began to surface. Venkatesh Chakrapani (2007) made one of the earliest attempts to introduce other gender non-conforming identities of India apart from the *hijra* community. The demography of India nestles varied traditional identities based on practices of gender and sexual non-conformity. Each community has a unique set of characteristics and faces varying social and legal challenges corresponding to their respective region. Thus, India provides a unique

context, where the ritual sanction of gender non-conformity further complicates the biological versus psychological dichotomy pertaining to the transgender identity.

1.4. Gap in existing research and relevance of the study

The transgender community in India not only face social ostracism due to their gender non-conformity but also face layers of discrimination due to their status as marginalised communities across socio-cultural categories. Although the constitution of India provides for equality, equal rights, and protection to all citizens of India, the transgender communities here are deprived of the basic human rights.

The literature review on transgender people in the Indian context highlights numerous studies. Many of these studies focus on the *hijra* community. However, there are numerous other transgender identities and communities, which have received far less attention like *Satla and Sutto hijra* and those others that have received no scholarly attention at all, like the *Gurmas* and the *Brihannalas* of Tripura. This dissertation therefore examines the diversity of transgender identities in the four states.

Numerous studies have established that colonial ideas of heterosexuality were substantially responsible for criminalizing transgender communities and homosexual communities in India (Lal 1999, Baxi 2003, Dutta 2012, Narrain 2014). It has been further inferred that contemporary prejudices against the transgender people in India are partly due to the persistence of those colonial ideas in post-colonial India. Some scholars have mapped the trajectory of the struggle for rights of these gender and sexual minorities (Singh 2010). However, an exclusive history of the struggle for rights of the transgender community is yet to be written. This dissertation makes a modest attempt at chronicling a narrative of that struggle.

This dissertation also seeks to address how numerous socio-political categories like class, caste, race, religion, regional identities, migration, urban and rural contexts are crucial

to understanding the transgender phenomena in India. Besides, this dissertation also explores the internal dynamics of individual transgender communities especially, the traditional transgender organization and new age transgender leadership as well as the relationship between diverse transgender communities.

Although there are many studies on the marginalized status of the transgender people in India (Baxi 2003, 2007 and Chakrapani 2003, 2012) as well as numerous reports on the various provisions of the Indian State for ameliorating their condition, the effect of these need to be explored first-hand. The most significant contribution of this research is the collection, documentation and analysis of first-hand data from the field on the perils faced by transgender people in Tamil Nadu, Karnataka, West Bengal and Tripura. In the process, it has been possible to gauge the impact of various measures adopted by different organs of the Indian State for improving the condition of the transgender people as well as the level of sensitization of main stream society towards gender non-conforming people. As this research study is spread across four states of India, it becomes possible to highlight the variety of causes that marginalize transgender people. These causes vary from state to state and these also differ even within a state. The diversities of issues encountered during the course of field research highlight the perils of generalizations at the level of the country, South Asia or the world.

1.5. Research method

When this research was initiated four years ago, the researcher had a minimal understanding of transgender issues from the literature review. Thus, it was important to engage with, observe and understand the transgender phenomenon both as individuals and as members of a community first-hand. Prior to initiating the research, the researcher had only known and interacted with one transgender individual many years ago. That contact was however lost.

For establishing contact with transgender people, the 'snowballing technique' was adopted. A preliminary contact was established with civil society activists belonging to Non-Governmental Organizations and Community Based Organizations via E-mail and telephone. After establishing such contacts in the states of Tamil Nadu, Pondicherry, Karnataka, West Bengal and Tripura detailed questionnaires were prepared. These questionnaires were addressed to potential respondents and were often adapted at the site. The researcher then travelled to a number of sites for interviewing the respondents, who were transgender individuals, members of transgender communities, non-transgender experts and activists as well as transgender activists themselves. Besides interviews, the researcher had the opportunity to observe and participate in a limited number of transgender community activities but with restricted access.

The interviews were digitally recorded and then transcribed. Some of these interviews were in languages other than English. In some cases, translators were necessary. The transcripts of interviews and the field notes were analyzed. On the basis of the preliminary observations field reports for each state was prepared. As interviews were conducted with people, who were living at the margins of the law or in the shadow of the law, it is inappropriate to release the data into the public domain. That may amount to a violation of their fundamental right to privacy. The researcher has attempted not to treat the respondents merely as sources or pieces of data but as human beings. However for academic reasons, the details of the interviews and field studies are given below.

1.5.1. Research design

The research design was drawn to explore a diverse gender non-conforming spectrum towards generating data that can explain the changing status of the transgender communities within a framework of rights. Extreme marginalisation has pushed the transgender community into a state, where they have hardly any agency to represent themselves. Hence,

this study represents the terms of the transgender individuals and their viewpoint. This study is based on interview methods and participant observation. Respondents were divided into groups in each state. One group consisted of transgender and non-transgender respondents including members of civil society organisations, academics and government officials, who are associated with the struggle for transgender right at different capacities. Another group consisted members of transgender community belonging to diverse socio-economic and gender-variant profiles across the four states. Consequently, two sets of questionnaires were prepared with respect to the respondents. While most of the questions in both sets remained the same, some variations were made corresponding to each state keeping in mind the region-specific issues concerning the communities. The study aims at mapping a range of gender non-conforming identities in each state but the gate-keeping attitude of the communities were a challenge. The snowballing technique was utilised to gradually gain entrance and trust of the community members.

1.5.2. Rationale for selecting the loci of field studies

The dissertation emerged out of primary data gathered during field studies conducted in Tamil Nadu (1 April 2015 - 30 April 2015), Tripura (9 October 2015 - 8 November 2015), Karnataka (11 August 2016 - 09 September 2016), West Bengal (14 October 2016 - 9 November 2016). The study aims at documenting the struggles for transgender communities' rights and identity between 1990 and 2016 to assess the condition of transgender communities of the four states for the purpose of understating if there has been any change in their lives in the domains of Identity, Rights, access to health care, education and employment. Therefore, it was only apposite that the study takes into consideration those states for field study where the highest number of the transgender struggles for rights and identity was observed. Through a careful analysis of available literature it was inferred that Tamil Nadu and Karnataka have witnessed the highest level of organised transgender struggle

and activities in India. Both states have a long history of trans pro activities in India. These two states have also implemented trans-inclusive measures after the formation of the Expert Committee on the Issues Relating to the Transgender Persons (2013) and Supreme Court judgement of *NALSA v. UOI* (2014). After considering reports on the transgender struggle in India, it was concluded that most of the early organised transgender struggles were initiated in the two states during the 1990s. Moreover, prominent transgender welfare associations/civil society organisations like Sangama (Karnataka) and Sahodaran (Tamil Nadu), which facilitated the early mobilisation and organisation of the transgender community in India for their rights and identity awareness are based in Karnataka and Tamil Nadu.

West Bengal was added as another locus of the field study after the approval of the research proposal. The rationale for choosing West Bengal was to make a cross-cultural comparison between an already established trans pro states (Tamil Nadu and Karnataka) and an evolving pro trans state (West Bengal). Moreover, the transgender communities of West Bengal post *NALSA* judgement are actively participating in mobilising themselves towards claiming rights and recognition of their identity following the Tamil Nadu and Karnataka model, while maintaining their regional distinctions.

Like West Bengal, Tripura too was added after the initial research proposal approval, as the state provided a singular ground for research due to the different layers of marginalisation associated with the transgender community. The transgender community of Tripura was additionally marginalised due to their status as illegal migrants. This further provided a scope for enriching the study by analysing additional layers of marginalisation faced by the community apart from their gender non-conformity.

The gender non-conforming communities of Tamil Nadu, Karnataka, West Bengal and Tripura represent diverse identities, which cannot be straitjacketed within a uniform

transgender identity. The transgender communities of each state have diverse socio-cultural identities and have contrasting notions about transgender rights and identities. The variations in the four states bring out a range of transgender issues for comparison, which has not been attempted as yet. The field studies indicated that the governments of Tamil Nadu, Karnataka, West Bengal and Tripura have taken some of the earliest pro-transgender measures towards recognising the community. Thus, for the above mentioned reasons, these four states were selected for field studies.

1.5.3. Rationale for selecting the time line

Previous studies have highlighted that the struggle for transgender communities' rights had begun along with the queer movements in early 1990s. *The Criminal Tribes Act, 1871* and the *NALSA v. UOI* judgment (2014) have been taken as historical markers for the criminalisation and decriminalisation of transgender people in India. Moreover, the 1990s has been identified as a phase where the sexual minorities, as well as some transgender identities, began to form collectives in response to the atrocities against them and the threat of an HIV epidemic (Baxi 2001: 8, Narrain 2003, Singh 2010:63). Thus, the timeline between ca. 1990 till 2016 was chosen to capture the transgender collective formations, shifts in activism, mobilisation of the communities as well as the response of the various organs of the Indian state towards the transgender community.

1.5.4. Methods employed for data collection

Data collection was conducted through a semi-structured open-ended questionnaire as they have been asserted as a better way of gaining access to people's thoughts ideas and memories (Davidson 2007: 61). Moreover, a semi-structured interview pattern provides the freedom to manoeuvre the interview in accordance with the respondents mood and thought process (Blee and Taylor 2002: 94) The questionnaire enquired about their self-identity, their community

membership, their perception of what was transgender, their views on the State, activism and visions of change (not necessarily always in same the order).

The same set of questions was asked to the experts as well as the transgender respondents with some minor changes for each state. A sample questionnaire is attached in the Appendix VI and VII. However, sometimes for corroborating the facts, similar set of questions were repeated during the interview. For example, one set may ask: Do you know that Aadhaar provides for the transgender option? The other set posed the similar question in a different way: Do you have an Aadhaar card? (If yes,) in what gender category did you register yourself and why? Similarly, steps were taken to corroborate the answers given by the experts as well as transgender persons against each other. For example, the transgender community members were individually asked if they knew about the NALSA judgment and their take on the welfare schemes available in each state. Similarly, the experts were asked about their opinion regarding the sensitization of the community members regarding the responses of the states as well as the welfare measure available to them.

Apart from the interview method, a certain degree of participant observation was also utilised towards engaging with the lives of the respondents. This method provided an opportunity to participate in protests rallies, the Pride March and social gatherings involving the transgender community members. A close observation of the transgender community members within their personal as well as the work space (civil society organisation offices and footpaths for begging and sex work) provided an understanding of the transgender communities and their issues.

1.5.5. Approaching the target respondents

As the transgender community is completely excluded from the mainstream society, the snowballing technique was employed. However, gaining entry into the community to conduct interviews without any reference was difficult. Serena Nanda (1999) and Gayatri Reddy

(2006), who had conducted two of the most influential anthropological studies on the transgender communities of Mumbai and Hyderabad in 1999 and 2004 respectively too had mentioned of this challenge. This challenge was overcome by building contacts with prominent NGOs/CBOs/individuals working for the transgender in each state.

Therefore, after building a certain rapport with the contact person at civil society organisations in each state (except Tripura), the contacts with prominent/influential transgender gurus/activists were established. Upon building a certain amount of trust with them, the procedure to conduct interviews began, when one transgender person would help in introducing other transgender persons from different localities. In some cases, invitation from the respondents was received to participate in rallies and to spend a day with them, which provided scope for observing the community closely. In Tripura, due to lack of any civil society organisations working with the transgender communities, the community members were approached with the help of people whom the community trusted and perceived as their well-wisher. This eventually led to building cordial relations conducive for the interviewer and the respondents.

1.5.6. Respondents' profiles

Out of the total sixty one respondents, forty were transgender individuals belonging to regional identities of each state like, the *Aravanis* and *Thirunangais* of Tamil Nadu, *Jogammas* of Karnataka, *Laundas* of West Bengal and *Gurmas* of Tripura. The remaining twenty one respondents were experts belonging to both transgender and non-transgender community. The experts were individuals associated with the transgender struggle almost since its inception and possessed adequate knowledge about the community members and their issues. These experts have been conducting and/or participating in transgender crisis management, transgender welfare training, and had spoken for/about transgender rights at different platforms.

The final version of this dissertation after the completion of the exam *viva voce* conducted on 27 September 2018 refrains from disclosing the personal information of the respondents. As the dissertation will be available in the public domain, revealing the identity of the respondents might create the possibility of abuse/misuse/unauthorized use of the information pertaining to the respondents and put them in harm's way. The names and other elements that may reveal the identity of the respondents have been removed or concealed for maintaining the anonymity of the respondents. Instead of names, the text uses a code: the respondents, who are experts in the domain of transgender studies, are referred to as E 1, E 2, ... ; and the respondents, who identified themselves as transgender individuals, are referred to as R 1, R 2... . The decision to restrict personal information of or about the respondents was taken in consultation with the external examiner, the doctoral advisory committee members and the supervisor.

	Tamil Nadu	Karnataka	West Bengal	Tripura	Total
Total Respondents	16	16	15	14	61
Experts	Total 6 (4 TG, 1 NTG, 1 Gender Neutral)	Total 6 (All NTG)	Total 5 (4 TG, 1 NTG)	Total 4 (All NTG)	21
Transgender respondents	Total 10 (5 Aravani, 2 MSM kothi, 2 Kothi, 1 Thirunangai)	Total 10 (4 Hijra, 2 Jogamma, 2 pant shirt hijra, 1 FTM, 1 MSM kothi)	Total 10 (8 Hijra, 1 Kinnar, 1 Launda)	Total 10 (All Gurma/Hijra)	40

Table 1.1: Respondents' profiles

State-wise Respondents' profile:

TAMIL NADU

Name	Designation	Identity	Location
E1	Concealed	Man	Chennai

E2	Concealed	<i>Hijra</i>	Puducherry
E3	Concealed	Transgender Woman	Puducherry
E4	Concealed	FTM	Chennai
E5	Concealed	Woman (Member of the <i>Hijra</i> community)	Chennai
E6	Concealed	Gender Questioning during interview	Chennai

Table 1.2: Experts' profiles in Tamil Nadu

Name	Age	Identity	Location	Occupation
R1	22 yrs.	MSM <i>Kothi</i>	Porur	Begging
R2	32 yrs.	<i>Aravani</i>	Namakkal	Chela's begging
R3	32 yrs.	<i>Aravani</i>	Porur	Begging
R4	28 yrs.	<i>Aravani</i>	Namakkal	Begging
R5	24 yrs.	<i>Aravani</i>	Namakkal	Not disclosed
R6	23 yrs.	Thirunangi	Pondicherry	CBO Volunteer
R7	22 yrs.	<i>Kothi</i>	Puducherry	CBO Volunteer/ Dance Teacher
R8	29 yrs.	MSM <i>kothi</i>	Puducherry	CBO Volunteer/Temple Priest
R9	22 yrs.	<i>Aravani</i>	Namakkal	Not disclosed
R10	24 yrs.	<i>Kothi</i>	Salem	Begging

Table 1.3: Transgender respondents' profiles in Tamil Nadu

KARNATAKA

Name	Designation	Identity	Location
E7	Concealed	Man (trans ally)	Bengaluru
E8	Concealed	Woman	Bengaluru
E9	Concealed	Woman	Bengaluru
E10	Concealed	Man	Bengaluru
E11	Concealed	Queer man	Bengaluru

E12	Concealed	Man	Bengaluru
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Table 1.4: Experts' profiles in Karnataka

Name	Age	Identity	Location	Occupation
R11	34 yrs.	Transgender/ <i>Sutto Hijra</i>	Bagalgota	CBO Volunteer
R12	41 yrs.	Hamaam <i>Hijra</i>	Bangalore	Hamaam-in-charge
R13	27 yrs.	Hamaam <i>Hijra</i>	Bangalor	Providing services at hamaam and occasional sex work
R14	23 yrs.	Transgender woman	Bangalore/Tumkur	Escort service
R15	41 yrs.	MSM <i>Kothi</i>	Gulbarga	Computer coaching institute as documentationist
R16	42 yrs.	Transgender (Former member of <i>Hijra</i> community)	Nagashettyhalli	Transgender activist/former sex worker
R17	25 yrs.	Transgender Man	Bangalore	FTM Activist
R18	28 yrs.	Transgender Woman	Bangalore	Working at a CBO
R19	42 yrs.	Transgender Woman (Member of <i>Hujra</i> community)	Bangalore	Working at a CBO
R20	40 yrs.	<i>Jogappa</i>	Bellary	<i>Jogamma</i> services at Yellamma temple, Bellary

Table 1.5: Transgender respondents' profiles in Karnataka

WEST BENGAL

Name	Designation	Identity	Location
E13	Concealed	Transgender woman (Member <i>hijra</i> community)	Kolkata
E14	Concealed	Transgender man	Kolkata

E15	Concealed	Homosexual Man	Kolkata
E16	Concealed	Woman (Member of <i>hijra</i> community)	Patna
E17	Concealed	Woman (Member of <i>hijra</i> community)	Kolkata

Table 1.6: Experts' profiles in West Bengal

Name	Age	Identity	Location	Occupation
R21	28 yrs.	Transgender Woman	Kolkata	CSO volunteer
R22	27 yrs.	Transgender Woman	Gariya	CSO volunteer/theatre artist
R23	24 yrs.	Transgender Woman (member of <i>hijra</i> community)	Kolkata	CSO volunteer
R24	25 yrs.	Transgender	Hooghly	Transgender activist
R25	22 yrs.	<i>Hijra</i>	Puruliya	Begging
R26	32 yrs.	<i>Kinnar</i>	Kalighat	Charity, Badhai
R27	30 yrs.	Man/launda	Kolkata/Darbhangha	Professional launda performance
R28	38 yrs.	Transgender woman (Member of <i>Hijra</i> community)	Kolkata	Badhai
R29	26 yrs.	Transgender woman (Member of the <i>hijra</i> community)	Kolkata	Badhai, Begging and CSO volunteer
R30	22 yrs.	Transgender woman (Member of <i>Hijra</i> community)	Kolkata	Badhai, Begging

Table 1.7: Transgender respondents' profiles in West Bengal

TRIPURA

Name	Designation	Identity	Location
E18	Concealed	Man	Bishalgarh

E19	Concealed	Man	Agartala
E20	Concealed	Man	Agartala
E21	Concealed	Man	Agartala

Table 1.8: Experts' profiles in Tripura

Name	Age	Identity	Location	Occupation
R31	45 yrs.	<i>Hijra/Gurma</i>	Agartala	Begging and Baksish
R32	30 yrs.	<i>Hijra/Gurma</i>	Agartala	Begging and Baksish
R33	Not Disclosed	<i>Hijra/Gurma</i>	Narsingarh	Begging and Baksish
R34	Not Disclosed	<i>Hijra/Gurma</i>	Udaipur	Begging and Baksish
R35	45 yrs.	<i>Hijra/Gurma</i>	Narsingarh	Begging and Baksish
R36	40 yrs.	<i>Hijra/Gurma</i>	Khoyerpur	Begging and Baksish
R37	50 yrs.	<i>Hijra/Gurma</i>	Udaipur.	Begging and Baksish
R38	35 yrs.	<i>Hijra/Gurma</i>	Bishalgarh	Begging and Baksish
R39	20 yrs.	<i>Hijra/Gurma</i>	Bishalgarh	Begging and Baksish
R40	30 yrs.	<i>Hijra/Gurma</i>	Agartala	Begging and Baksish

Table 1.9: Transgender respondents' profiles in Tripura

1.5.7. Data analysis

The first step towards analysing the primary data that emerged from the field work was formal documentation. All the interviews conducted during the field work were digitally recorded and transcribed. During the first phase of documentation, a narrative of the text was developed evolved into four state wise field study reports. These reports were divided into the core themes of identity, access to health care, access to education and employment opportunities. In the second step, an analysis of the transcripts was used towards conceptualising the emerging themes to provide a detailed description of what was observed. These emerging concepts were often tested against new observations as the field study progressed leading to the refinement of concepts. Examining the relationship between various

pieces of data (in this case individual interviews) allowed moving from simple description of the events towards causal explanation. Thus, various connected data pieces were linked across the four states chronicling and constructing the transgender struggle and presenting the changing status of the community. Thus one can, if not generalise, validate the responses as these seem to be coming together as a uniform narrative towards documenting the transgender communities' struggle for rights and identity.

1.6. Challenges faced during data collection

Building trust with the civil society organisation members as well as the transgender community members was one of the biggest challenges. It was often time-consuming, which slowed down the process of data collection. It was observed that instruments like camera, dictaphone and other electronic gadgets used during data collection sometimes posed as a barrier to communication. Some transgender persons were unwilling to appear on camera, or say anything, while the recorder was on. They feared the recording of the interviews and photo documentation. Even the experts would sometime ask to pause the recording while providing sensitive information. This demonstrates their fear of outsiders or members of the mainstream society.

Although the overall field work experience was cordial, there was instances of hostility. Due to lack of professional experience, most of the NGOs in Tamil Nadu, Karnataka and West Bengal were not well equipped with proper records or archives. It was learnt that they destroyed or misplaced old pamphlets, posters and other documents for reasons of space. Sometimes, the unprofessional and laid back nature of the members of civil society organisations/individuals caused delay. Certain transgender individuals in Tripura were unwilling to interact without monetary benefit. A reluctance to provide information or respond along expectations was observed across the four states.

CHAPTER 2: DIVERSITY OF TRANSGENDER IDENTITIES

Transgender is an umbrella term that signifies individuals, who transcend the binary gender framework and breaks away from culturally prevalent stereotypical gender roles. The usage of the term transgender originated in a Western context in the early 1980s. The origin was within a medical context but has evolved into a complex socio-political identity. The term is now up for global consumption (Stryker 2006: 15). However, diverse indigenous gender non-conforming identities further complicate the meaning of the term. This chapter attempts to engage with the meaning and significance of the term transgender by unpacking a diverse range of gender variant identities and practices across the socio-cultural demographics of Tamil Nadu, Karnataka, West Bengal and Tripura. These gender non-conforming identities are on the one hand constantly struggling to be a collective within a homogeneous category for demanding their rights while also trying to maintain their diverse historical, regional, linguistic and cultural identities.

2.1. Definitional maze of the word Transgender

The term transgender acquired its present day meaning from a highly influential pamphlet by Leslie Feinberg titled *Transgender Liberation: A Movement Whose Time has Come* (1992). Feinberg used the term as a political concept, contrary to its earlier usage as a medical term for those men, who lived socially as women without undergoing genital modification surgery (Stryker 2008: 19). Feinberg's use of the term transgender brought about a new radical meaning to those who were marginalized or oppressed due to their embodied gender. The new term helped form an alliance of all individuals, who were uniting in their struggle for social, political and economic justice. Transgender in this sense was a 'pan-gender' umbrella term - for a community encompassing transsexuals, drag queens, butches, hermaphrodites, cross dressers, masculine women, effeminate men and anybody else willing to acquire this identity. Around the 1990s, the word transgender first started to acquire its current definition as a catchall term for all non-normative forms of gender expression (Stryker and Whittle

2006: 5). Since the late 1960s, different variations of the term appeared among individuals identifying themselves as gender variant like: transgenderal, transgenderist and transgenderism, which were different from transsexual and transvestite (Alexander 2005: 46-47). During that time gender variant communities were looking for an all-encompassing term to signify their transition into a gender space that is not incoherent with their biologically assigned gender without surgically altering their body (or genitals) (Stryker and Whittle 2006: 6, Chase 2006: 311, Davidson 2007: 64). Though the term “transgenderist” was popularly used by the Male to Female transgender persons during the 1980s, Holly Boswell contributed by expanding the scope of the term transgender with her article *The transgender Alternative* published in 1991. Later, Feinberg contributed to the wider popularity of the term transgender through her radical movement connecting diverse gender variant groups, which were oppressed due to their non-binary identity. Thus, the term transgender gradually established not only as socio-cultural identity representing a non-binary gender but also against oppression, violence and discrimination of gender non-conforming identities across cultures. In 1992, Sandy Stone argued against Janice Raymond, who considered transsexuality to be a form of “false consciousness”. Stone deferred the anti-transsexual ideas embedded in some strands of feminist thoughts by appealing to a new set of studies for analysing the transgender phenomenon outside the concrete realities of “changing sex” (Stryker and Whittle 2006: 15). Thus, for Feinberg, “transgender” became critical to re-identify what gender was. At this point, one has to address Judith Butler’s concept of “gender performativity”, which is central to the notion of self-actualising of one’s own identity. For Butler, gender performativity is a way through which the reality of the gender can be actualised by performing it. Thus, Butler suggests that rather than being an objective quality of the body, gender identity is achieved through innumerable acts practised again and again. Setting this in a transgender reality, a trans-gender identity is as real and innate like the

binary genders (Butler 2002: 21, Stryker 2006: 12-13). Furthermore, even the category of sex, which is conventionally considered to be the physical foundation of gender is actually produced by how diverse cultures understand gender (Stryker 2008: 11, Nanda 1999: 17-19).

Trans activist and academic Susan Stryker has referred to the term transgender as the widest imaginable range of gender variant practices and identities (Stryker 2008: 19). This definition of the term appears to be generic as it implies a movement away from the initially assigned gender position and refers to any and all kinds of variations from gender norms and expectations. However, it is almost impossible to comprehend what behaviour or practices constitute the transgender identity. Thus, there are no clear markers for determining who is a transgender person. Though the definitional maze is one of the biggest challenges of the transgender nomenclature, it also provides a context for contesting the restricted framework of the gender binary.

2.2. Unravelling the transgender nomenclature

2.2.1. From the medical to the political

Prior to the 1980s, transgender people were considered to be suffering from a gender identity disorder, and hence, the transgender phenomenon had a medical connotation (Benjamin 2006: 219). The word transgender was coined in the 1980s by Virginia Prince, an advocate for the freedom of gender expression. Prince used the term transgender for referring to an individual, who was located somewhere between a transvestite and transsexual; someone, who had permanently changed their gender in public without altering their genitalia surgically (Stryker 2008: 19). Thus, the term transgender gained popularity among a diverse range of gender non-conforming identities including, pre and post-operative transsexuals, non-operative gender variant communities, cross dressing, transvestite and all other gender non-conforming communities, who were oppressed as their gender assigned at birth and their self-identified gender were not in conformity.

Over a period of time, the term transgender had a paradigm shift from being understood as a physiological disorder into a distinct gender identity. Transgender identity is not a hormonal, mental or psychological disorder, but it is still understood by many, including several transgender persons, within a psychological context instead of physiology (Raymond 1979, Stryker 2006, Benjamin 2006). However, it has not been able to free itself completely from the shackles of pathologizing the identity (Benjamin 2006: 222). As already mentioned, the term transgender much like the notion of gender varies across cultural contexts (Stryker 2008: 11, 19). In some contexts, transgender identities are performed through social roles, in others, it is based on one's sexual preference, and in certain others transgender identity is achieved through ritualistic practices. Thus, the psychological understanding of the term too is highly contested.

Furthermore, the term transgender itself is problematic. Unlike the terms male and female that represent two distinct gender categories, the term transgender signifies 'crossing the gender category' itself. The term transgender need not indicate position in terms of the binary. This is problematic because the term transgender also signifies the necessity of the 'binary gender' towards understanding one's identity in the gender spectrum. While transcending the gender binary, the transgender identity is referred in relation to the gender binary. The transgender phenomenon while questioning the gender hierarchy, inherently suggests alternate/complimentary gender(s) apart/outside the socially established binary gender. It once again establishes the need for the binary gender in order to understand and accommodate an alternate gender identity.

2.2.2. Western and Indigenous

The term transgender is invariably a Western import. The term indicates gender variance or identities that cross the boundaries of what is considered socially normative in the Western civilisations and especially the United States (Dutta 2012). As discussed above, the term was

coined in the West towards denoting a gender identity disorder/gender dysphoria, which was later politicised by the contemporary transgender activists and academics towards creating an umbrella term to denote a diverse range of gender non-conforming identities, practices and behaviours. However, these experiences were centred substantially on the Western and 'White' experience. It might not reflect the alternate gender identities of other cultures. Superimposing a Western-centric transgender identity on to a non-Western culture might dilute the indigenous identities (Nanda 1999, Stryker 2006, Dutta 2012). Due to the intermixing of religion along with several other categories, Indian transgender identities invariably implicate themselves in the Western versus Indigenous debate. Nanda argues that several post-colonial cultures, including India, were tolerant towards an alternative gender identity in contrast to the West (Nanda 1999: 128). Scholars have emphasized that the *hijra* (as the term transgender/gender non-conforming was not popular then) occupy an alternate gender role as a quintessential third gender category, which is rooted in the Indian culture implying accommodation of gender fluidity (Nanda 1999: 6-7, Lal 1999: 120 and Vanita and Kidwai 2001: 16). During field studies, it was learnt that not all gender non-conforming persons always identified as transgender, nor in opposition to the binary framework. The term transgender does not always signify crossing over the binary and establishing another distinct identity. Even a transition within/between the binary can also denote transgenderism. Moreover, ethnic transgender communities like the *hijra* (along with its regional variations), *kothis* and *jogta/jogtis* adopt the cultural symbolism that are a combination of both feminine and masculine rather than defining themselves as a neither man, nor woman, or as a transman or transwoman unlike the transgender/transsexual identities in the Western context. Thus, the Western versus indigenous dichotomy come afore evidently, whenever the term transgender (with its Western baggage) is directly adopted to define indigenous gender varying experiences in India (Reddy 2005: 26, Dutta 2012). Besides, the transition of gender identity

assigned at birth has also to do with religion, spirituality, kinship roles, class/caste, and regional identities unlike the clinical experience of gender transition. These gender varying subcultures have constructed their self-identity, which cannot be straightjacketed into a Western imported umbrella term.

The Supreme Court of India, in the land mark judgement of *NALSA v. UOI* and others, has acknowledged the transgender community as a third gender community appropriating all gender non-conforming communities of India within the umbrella term transgender. Several traditional transgender community leaders and activists have however expressed their apprehensions regarding this term. These indigenous communities are apprehensive of being classified under the term ‘transgender’ fearing that it might dilute/restrict their traditional self-constructed uniqueness. Stryker too has identified the problem of superimposing an American term onto a wide array of gender diversity across heterogeneous cultures (Stryker and Aizura 2013: 16). Transgender has been recently used as a shorthand way of referring to a range of gender variance and gender atypical identities in non-Western contexts and even to people and communities, who might not want to apply it to themselves. For example, *hijra* might not want to identify themselves as transgender, or transsexuals (in case they have undergone *nirvaana*) or even as transwomen. *Hijra* is a complex identity that can not only be seen through the medical or political lenses but as a community that embeds sexuality and gender performativity along the cartographies of inter connected socio-cultural constructs (Reddy 2005: 224, Dutta 2012). E5, a transgender activist from Tamil Nadu expressing her disgust towards the “third gender” identity said:

“I hate the term third! Supreme Court is patriarchal and the people in ECIRTP are not properly sensitized. They simply assume male and female are first and second. People can have as many genders as they like. Who are they to restrict anybody to first second and third? Tomorrow, I might declare myself as fourth gender. Who are they to decide?”¹

¹ E5. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu.

2.3. Select gender non-conforming identities in non-Western cultures

The term transgender as mentioned earlier denotes a movement away from the gender assigned at birth. Although transgender refers to variations from gender norms and expectations, gender itself varies through place and time. Thus, defining the term transgender inevitably calls into question the diverse norms and expectations across cultures. Historically and across cultures, there are instances of several societies arranging bodies into more than two genders (Nanda 1999: 115). The meaning of gender is not universal: it changes through time. It varies from place to place and culture to culture. Herein lays the discourse of modern transgender politics (Stryker 2008: 19). Thus, one needs to bear in mind that defining transgender might not be easy as the ideas of (trans)gender vary from culture to culture and time to time. The meaning of the term transgender depends on a lot of different seemingly unrelated things that integrate towards constructing a trans-gender identity.

The term *xanith* in Oman means "impotent, effeminate, and soft" (Nanda 1999: 130). In Oman, the *xanith* are biological males, who embody both feminine and masculine characteristics. *Xaniths* identify with masculine names and enjoy the rights assigned to men by Islamic law. However, the most significant reason as to why *xaniths* are considered "not men" is the fact that, in Oman, the definition of a man is centred on the sexual potency and the ability to perform sexual intercourse as a penetrator. Therefore, as the *xaniths* takes the receptive role in sexual relations, they are associated with being a woman even though they enjoy the legal rights of a man. Thus, *xaniths* embody both male and female socio-cultural roles.

The *berdache*, also referred to as two-spirited people, among Native Americans are a cross dressing community. Though they take spouses of the same sex, their spouses are not classified as homosexuals as the two-spirits transcends the social dichotomy of sex/gender occupying a special spiritual status (Towle and Morgan 2006: 668). Serena Nanda has

identified two alternative gender roles apart from the male and female amongst the Mojave: *alyha* (male two spirits) and *hwame* (female two spirits). During puberty, if a Mojave boy demonstrates feminine traits, the parents conduct a public ceremony for other members of the family and the tribe to get accustomed to the boy in female clothing. An *alyha* takes a female role in a marriage with a heterosexual man as her husband. *Alyha* imitates pregnancy by stuffing rags in their skirts. During the completion of the term of pregnancy, the *alyah* would drink a decoction to cause constipation. After a day or two of stomach pains, ze [sic] would go into the bushes and sit over a hole, defecating in the position of childbirth. The faeces is then treated as a stillbirth and buried. The *alyha* would then weep and mourn the stillbirth. Similarly, in Tahiti, a cultural space is made for diverse gender roles and identities called *mahu*. The *mahus* are non-castrated cross dressing homosexual men. The *mahus* never cohabit with women, shave their facial hair and dress as women (Nanda 1999: 135).

Another gender non-conforming identity called *kathoe*y exists in Thailand (Nanda 1999: 141, Reddy 2012: 35, Winters 2012: 1-2, Tripathi 2015: 114). Reddy has highlighted that the Buddhist myths in South and Central Asia refer to three kinds of sexes: male, female, and hermaphrodite. In Thailand, the hermaphrodites are called *kathoe*y. They distinctively identify themselves as a third sex, apart from male and female. *Kathoe*ys are effeminate and maintain exclusive sexual relations with men. However, they differentiate themselves from the gay community by maintaining their preference only towards heterosexual male partners (Nanda 1999: 142, Reddy 2005: 54, Towle and Morgan 2006: 686). Furthermore, there are references to diverse gender non-conforming communities in regions close to the vicinity of South Asia, like the *Waria* of Indonesia, *Mak nyah* of Malaysia, *Apwint* and *Au chuuk* of Myanmar, the *Bakla* and *Báyot* of Philippines, and the *Sap prophet song* of Thailand (Nanda 1999: 140, Towle and Morgan 2006: 672).

Pakistan, Nepal, Bangladesh and Sri Lanka too propose a considerable diversity in terms of gender non-conforming identities (Jami 2005: 2, Sanders 2008: 5, Habib 2013: 2-3). Each community has its unique set of characteristics and faces varying social and legal challenges in the local regions of the corresponding countries (Jain and Rhoten 2013: 11). The *nanchi* community of Sri Lanka and the *kothis/kothey* community of Bangladesh (also in India) are admittedly masculine and engage in receptive sexual intercourse, while simultaneously adopting feminine modes of gesture, speech, and behaviour. The *hijra* communities of Pakistan identify themselves as *khwaajasira*. Legally, they may identify themselves as either female, male, or third gender (Jami 2005: 1-2). Apart from *khwaajasira*, the gender non-conforming communities of Pakistan are also identified as transsexuals, *khusras* and *zenanas*. In Nepal, those individuals, who are born as biological male and yet exhibit feminine characteristics are known as *meti*, bearing a close resemblance to the *hijra* identity in India (Winter 2012: 9).

2.4. Gender non-conforming identities in India

The diversity of transgender people in India is numerous and it is believed that there are many more communities that are yet unrecognized (Narain and Bhan 2005: 5-6). During the field studies in Tamil Nadu, Karnataka, West Bengal and Tripura, a diverse range of gender variant identities were observed. Some people identified as transgender, others identified according to their desired gender identity, while certain others claimed transgender identity in public for a political reason and claimed to be hetero-normative in their private lives. Some identities claimed to embody both masculine and feminine traits and some identified themselves outside the gender spectrum altogether. Even though these identities are distinct in terms of their diverse social, cultural, political and geographic locations, it was observed that their gender identity transcends caste, class, regional and linguistic identities, age, religion, migrant identity among other categories.

Hijra: In India, the dominant transgender community is the *Hijra*. The term “*hijra*” is derived from the Urdu word ‘*hij-gah*’, which means nowhere (Singh 2013: 35). *Hijras* are biological males who reject their ‘masculine’ identity in due course of time to identify either as women, or “not-men”, or “in-between man and woman”, or “neither man nor woman” (Chakrapani 2010: 3). The members of the traditional *hijra* communities mostly consider themselves to be a heterosexual woman and over the course of years of practice/training have socialised themselves into adopting a feminine identity. Not all *hijra* identify as the third sex in opposition to the binary framework (Nanda 1999: 19, Reddy 2005: 46-47). Instead, they adopt feminine cultural symbols or a combination of feminine and masculine instead of defining themselves categorically as a third gender or transgender identity as claimed by Nanda (Nanda 1999: 20, Lal 1999: 22). *Hijra*, who are initiated into the community, often take feminine names and prefer feminine pronouns. The rite of passage and several other rituals in the *hijra* community are very similar to practices and rituals that are performed traditionally on women during menstruation, childbirth and marriage (Cohen 1995: 284, Nanda 1999: 27, Hall 2010: 168). In one of the earliest texts to document the discrimination faced by the transgender communities, *hijras* were defined as “a community, (that) represents an existing Indian tradition which clearly contests any hetero-normative understanding of gender, sexuality and the body” (PUCL-K 2001: 5). The *hijra* community includes biologically assigned male and hermaphrodites, who undergo ritual ‘sex-change operation’ (*reeth*), and other hormonal treatment for transitioning towards their desired gender identity (Chakrapani 2003: 9).

Nirvaan/Pakka hijra: According to Hindu mythology, *nirvana* suggests liberating oneself from material human consciousness, the beginning of a new life or opening the eyes to wisdom. The *hijras* understand *nirvana* as a rebirth. For them, it is the process of being born into the body of their desired gender (Nanda 1999: 26). As the traditional *hijra*

community considers male genitalia as the important mark of masculinity, they believe that getting rid of their male organ would transform them into a woman (Hall 1997: 345, Reddy 2005: 92). It is believed that through the operation, the former impotent male self dies and a woman with sacred power is reborn. Thus, this ritual is the most important event in a *hijra*'s life (Lal 1999: 122, Nanda 1999: 25). A *hijra*, who has undergone the emasculation ceremony called *reeth*, is known as a *nirvaan* or *pakka hijra*. Once a *hijra* is initiated into the community, if willing to undergo nirvana, has to assume a certain code of practices conferred on them by the elders of the community. The *hijra* needs to grow her hair, get rid of any facial hair, and conduct themselves like a woman. Gayatri Reddy has compared these strict practices to the modern Western pre-surgery period of a year and a half during which a person willing to undergo SRS is tutored to adopt feminine behaviour and dressing (Reddy 2005: 54-55). Vidya (2007) and Revathi (2010) too have documented their process of re-socialisation as a woman towards attaining the status of a woman while alienating themselves from their body's masculine traits. Though these processes are at times akin to harassment, abuse and even violence by the elder *hijra* members such cases are hardly formally reported due to the *hijra* communities' exclusive institutional structure. The ethnographies of Nanda and Reddy have documented that the operation was earlier performed in secret by local quacks without any medical expertise because emasculation is a grievous offence according to the Indian Penal Code. However, some aided government and private hospitals in Tamil Nadu, Pondicherry, Karnataka and West Bengal are now conducting the operation even though the response of the State is unclear.

The *nirvana* begins with receiving blessing from Bahuchara Mata through a series of rituals.² It was observed that given the irreversible and life-threatening nature of the

² Many *hijra* communities pray to Bahuchara Mata. The lore of Bahuchara Mata is found in several oral traditions of *hijra* community. Though there are several variations of her story, here is the most often used retelling. A beautiful girl was married to a boy belonging to a respectable family. However, her husband never came to her at night. Instead, he would run out into the forest. One day, determined to unravel the mystery about

operation, it was reasonable to interpret the ritual as a way of attempting to resolve the uncertainty that the operation generates (Nanda 1999: 27). Traditionally, the operation is conducted by a quack without any anaesthesia. With few quick cuts both the penis and testicles are completely separated from the body. Not using anaesthesia and allowing the blood to gush out symbolises the first menstruation and becoming a woman in the life of *hijra* (Nanda 1999: 29). The *hijra*, who undergo surgery through medical intervention, is considered as *pakka hijra* but their status is lower than those who have undergone the surgery with the help of a *dai maa*, for the latter have experienced pain like a “real” woman. Following the operation, a thirty to forty day recovery period is allowed to the *nirvaan hijra*. All her needs are taken care of by the elder of the house, similar to that of a woman after childbirth. On the final day, the *nirvaan hijra* is bathed with turmeric and *heena* is applied on her hand and dressed like a bride, mimicking the wedding ceremony of a girl (Nanda 1999: 28). Thus, *nirvaan* is a complex process by which gender non conforming person is reborn as a girl, who comes of age and is then married for fulfilling the physiological and socio-cultural needs towards becoming a woman.

Akwa hijra: The pre-*nirvana* members of the *hijra* community, who have not yet undergone the emasculation ceremony and under the tutelage of an elder guru.

Zenana hijra: Traditionally, *hijras* who do not undergo *nirvana* are considered inferior to the *nirvana hijra*. It is often considered that non castrated *hijra* are incomplete women, who merely cross dress. Thus, *zenanas* are those who identify themselves as *hijra*

her husband, she started out for the jungle mounting a fowl. She eventually found her husband having sex with another man in the jungle. Fierce in range, she castrated her husband but felt sorry for him too. Thus, she declared that men like him should be emasculated and remains celibate and worship her as their goddess. Another well recounted story of Bahuchara describes her to be one of the daughters of Charan Bapal and Detha. Once, while she and her sisters were travelling in a caravan, a bandit named Bapiya attacked them. The sisters announced *Tragu*, a form of self-destruction, upon being attacked. Legend has it that they cut off their breasts, with Bahuchara cursing Bapiya to a life of impotency unless he dressed and acted like a woman, and worshipped her for the rest of his days. Evidently, impotence or genital mutilations are frequent themes in tales associated with the goddess. The Bahuchara Mata temple is located near Ahmadabad in Gujarat. Traditionally, the emasculation operation was performed as part of the initiation into the *hijra* cult, at the site of the Mata's temple. In 1888, however, this rite was outlawed by the King of the area, in spite of strong *hijra* protests against its prohibition (Nanda 1999: 25-27).

but do not undergo castration. However in recent times, many *hijras* do not undergo castration. A prominent transgender activist, Laxmi Narayan Tripathi, openly speaks of herself as a non-operative *hijra* (Tripathi 2015: 81). Similarly, several *hijra* gurus, who were interviewed during the field studies, admitted that even though they have undergone emasculation, they would not force the operation on their chelas. Revathi too has mentioned a similar account in her autobiography, *The truth about me* (2010), where she counsels her chela to reconsider her decision to undergo the operation as it is life threatening. Revathi, Tripathi and such other *hijra* gurus belong to a new generation of the *hijra* community, who are attempting to transcend the conventional norms of the *hijra* community. They believe in psychological and performative gender, which is located in behavioural and psychological elements. This is in contrast to the ideas of sex/gender being physiological.

Saatla hijra and Sutto hijra: During the field study in Karnataka, it was observed that a group within the local *hijra* community, irrespective of being emasculated or not, adopted the feminine garb (often the Sari) identifying themselves as *saatla hijra*. *Saatla hijra* and, another variation called, *Sutto hijra* are transgender identities specific to Karnataka. The *saatla hijras* identify themselves as feminine transgender persons, who are born into a male body. Though they do not primarily identify themselves as a woman, rather adhere outside the gender binary by adopting feminine socio-cultural symbols. They grow their hair, wear makeup, always dress in feminine clothes and use female pronouns to address themselves and adopt feminine names. Most of them undergo castration. Within *saatla hijra* community, it is common for many of them to save money for the breast implant surgery and wear heavily padded bras all the time as a marker of femininity.

The *Sutto hijra* or the pant shirt wearing *hijra* are those who were former members of the *hijra* community or those who do not live with the other *hijra* community members. The *sutto hijra* of Karnataka identify themselves as non-English speaking working class

transgender persons. They usually prefer men's clothing or unisex attire over the normative feminine clothes unlike the *saatla hijra*. *Sutto hijras* even keep facial hair, something that is strictly prohibited within the *hijra* community. The *sutto hijras* do not conform to the orthodox norms of *hijra* culture and live on their own and do not accept chelas. They are primarily engaged in activism by working with civil society organisations. Some even take up low level regular jobs such as e-shopping delivery persons, mall maintenance staff, cleaning staff and other unskilled jobs without expressing their gender non-conformity in public. Some *sutto hijras* even live with their biological families. Though their gestures are mostly effeminate, they prefer to be called by their male names but with feminine pronouns. R11, a *sutto hijra* from Karnataka, insisted that he be addressed as *di*, instead of *da* during the interviews. Some of the *sutto hijras* might not want to identify as gender non-conforming as they might not have yet come out openly about their identity even with their family, employers or place of education.

Hamaam hijra: Besides the *hijra* community there is another *hijra* community in Karnataka which live and earn their livelihood through sex work in *hamaams*. They are called *hamaam hijra*. *Hamaams* are bathing places available to the travellers for a fee. These facilities are often frequented by the truckers, auto drivers, and men from the lower classes. *Hijras* maintain these hamaams for not only providing bathing facilities, but also as a place for sex work. Men who come there for a bath are usually the customers for the *Hamaam hijras*. It was observed that the *Hamaam hijras* claim separate identity from the other *hijras* doing sex work as they consider the hamaams as not only their site of employment but their residence as well. During the field work in Karnataka, it was revealed that the Karnataka state government has conferred the *mangalmukhi* identity to the *hijra* towards honouring them.³

³ Retrieved from <http://www.gaylaxymag.com/latest-news/karnataka-government-launches-pension-scheme-mythri-for-transgender-people/#gs.kQdkYuo>. Accessed on 02/12/2016.

Thus, the *hijra* community itself is not a homogeneous identity. There are various distinctions within the community itself that simultaneously mimic as well as challenge the gender binary framework of mainstream society. The *hijra* community of India claims to be a longstanding ritualistic community. Thus, *hijras* occupy a precarious situation in Indian society, being both profane and sacred at the same time: commanding respect, though inciting fear. *Hijras* sanctify themselves as auspicious through age old tales and trace their long standing relationship within the mainstream Indian society. Gayatri Reddy has identified that the imagination of being “auspicious”, invokes a sense of *izzat* (respect) for the *hijra* community in India. This however is not experienced by the transgender communities in the West (Reddy 2006: 17). *Hijra* claim authority for their gender non-conforming practices and behaviour from the *Mahabharata*, the *Ramayana*, several *Puranas* and the *Vedas*. In Northern India, the *hijra* community is believed to possess the power to bless those who respect them. *Hijras* trace their tradition of collecting *badhai* by invoking Lord Rama's blessing to the community. Due to the obvious cultural differences between the northern and southern parts of India, *hijras* do not occupy a similar ritualistic status in southern India. Thus, it must be understood that the status and issues of the *hijra* community in the south are different in several aspects from north India.

Internal dynamics of *hijra* communities

Studies have extensively detailed the primordial and structural associations of the *hijra* community in India (Cohen 1995, Nanda 1999, Lal 1999, Reddy 2005 and Hall 2010). The *hijra* community is highly structured, with strict rules of hierarchy; and follows its own ways of life (Nanda 1999: 38, Reddy 2006: 153, Singh 2013: 87). Each *hijra* community is divided into *gharanas*. The *hijras* seek a living through ritual singing and dancing during weddings and childbirth. The *hijras* claim them to be devoid of sexual feelings (Reddy 2005: 56). Thus, traditionally, the *hijras* do not openly engage in prostitution though that is not always the

case. Due to social exclusion and lack of civil rights, *hijras* have been earning their livelihood through *mangti* (begging) and *badhai* (the custom of receiving an amount of money upon blessing a new born and the newlyweds) and *dhandra* (sex work) (Lal 1999: 130, Reddy 2005: 56-57). The act of blessing is specific to the *hijra* and the *kinnar* communities. It is imperative to understand that the *hijra* should not be misconstrued as a Western equivalent of the Male to Female transsexual, nor are the terms transgender or third-gender English equivalents of *hijra* (Nanda, 1999: 140). The *hijras* occupy a socio-cultural and ritualistic distinctness instead of medico-psychological identity. Furthermore, it is important to realise that not all transgenders are *hijra*. *Hijra* is a community identity and is not conferred on a person simply for being gender non-confirmative. A transgender individual is *hijra* until and unless they maintain their membership within the community. There are several variations of *hijra* identity within the community:

The *hijra* community has its own well-defined culture including ways of living, hierarchical social structure, their own festivals, and deities. Despite extreme social marginalisation, the *hijra* community has survived over a century forming their own, intricate sub-culture outside the binary gendered mainstream society. The *hijra* social structure mimics the mainstream society in almost every way, even to an extent of patriarchal domination. A traditional *hijra* society is rooted in a hegemonic social structure characterised by strict norms. The conventional *hijra* community in India follows strict rules and has several layers of hierarchy, where every *hijra gharana* is headed by a *nayak*, followed by gurus and chelas, forming the bottom of this structure. The norms of the community are sometimes extremely oppressive. Transgender icons such as Laxmi Narayan Tripathi and Revathi have expressed their experiences in the oppressive *hijra* system through their autobiographies. During the fieldwork it was observed that the guru-chela system is highly domineering. However for most *hijra*, it is their only support system.

Gharana structure: The *hijra* household is organized on the fundamental principles of mutual co-operation and co-existence. Membership in the *hijra* community provides shelter and protection from the discriminating society and is a place for expressing their true self. In return, the *hijra* are expected to contribute their earnings and help with household chores. Thus, the *hijra* household functions like a joint family unit, where each member is co-dependent on the structure and the structure in turn thrives due to its member's integrity (Nanda 1999: 45). Towards maintaining the autonomy of the *hijra* structure, every *hijra* living within the household is subjected to strict rules. Their collective is based on their mutual identity. The *hijras* are divided into *gharanas*: a clan with a generational hierarchy that forms the *hijra* community. It is estimated that there are eighteen primary *hijra gharanas* in India and several local *gharans* are members of the primary *gharanas* (Nanda 1999: 38, Reddy 2005: 47, Singh 2012: 87, Dutta 2012: 847). When a *hijra* joins the community, she automatically becomes the member of her guru's *gharana*. The *gharana* is a structural principle of organisation and does not have any geographical existence (Dutta 2012: 846). Serena Nanda (1999) has described the *gharanas* as "symbolic descent groups, like clans". Members of the same *gharana* can live in different locations. The main function of these *gharanas* is to divide the community into groups in order to facilitate intra-community organization. The *gharanas* are not ranked and do not provide any apparent advantage in joining one over another. However, some transgender persons have indicated that each *gharana* has strict mandates in term of choice of occupation for its members: some not preferring sex work, some being liberal towards a *hijra* choosing a partner and so on (Revathi 2010: 187, 196-197).

Guru-chela hierarchy: Another characteristic trait of the *hijra* community is the guru-chela system. This generational hierarchy is the key to the *hijra* social identity. The guru, meaning a master or a teacher, is a senior member of the *hijra* community. The *chela* is

an apprentice of a guru and a junior member of the *hijra* community. In the *hijra* community, seniority plays a key role in maintaining the hierarchy through social organization and social control (Reddy 2005: 162). It is mandatory for every *hijra* to have a guru (even if the guru does not necessarily have to accept a chela). The guru performs the rite of passage to their *chelas*, when a transgender person joins the *hijra* community. As a seal of initiation, the newly recruited *hijra* undergoes nose and ear piercing with gold (a gift from the guru) and is given a female name approved by the guru (Nanda 1999: 43). This initiation ceremony almost resembles a marriage ceremony, where the bride loses her family name and takes the surname of her groom.

It is imperative to understand that the guru-chela relationship is not only a family structure but also acts as an employment unit. Serena Nanda has expressed that “the connection of guru to chela is the foundation of the economic benefits gained by joining the *hijra* community”, where the guru expects their *chelas* to earn money and contribute to the household (Nanda 1999: 48). Commonly, a *hijra* remains a chela of her original *guru* for life. However, there are provisions to exit the guru-chela relationship in case of conflict. Both Revathi (2010) and Tripathi (2015) have written about their experience of suffering at the hands of their gurus and eventually resorting to leaving their initial gurus. During the field work, it was observed that the gurus were highly domineering over their *chelas* to an extent that sometimes they would even restrict them from speaking for themselves. The younger *chelas* have complained about such restrictions and hardships. They are expected to submit their daily earning to their respective gurus, who would then divide the money for ration and give them their individual share. Most of the *chelas* seemed too scared to express themselves freely in front of their guru. Furthermore, *gurus* belonging to the conservative *gharanas* sometimes restrain their *chelas* from veering away from the traditional employment opportunities and in selecting a partner from outside the *hijra* community.

While several prominent transgender persons have spoken against the repressive tendencies of the traditional guru-chela hierarchy, the *hijra* respondents have highlighted several salient advantages of the *hijra* organisational structure. Though overtly domineering, the traditional guru-chela relationship provides the family support that the *hijras* are forced to renounce. It was observed during the field study that the chelas considered their gurus to be their only family and were mostly devoted to them. In return, the guru is expected to take care of the chela as a parent does of a child (chelas are often referred to and addressed as daughters or children). The gharana system has remained as the only support system for the young transgender persons, who were abandoned by their biological family. In Tripura and West Bengal, it was observed that many of the *hijra* respondents do not remember their biological family. However abusive their gurus may be, they at least provide solidarity and a sense of belongingness to the younger chelas. In addition, the *hijra* community provides security during illness or old age. The *hijras*, who undergo emasculation surgery are completely taken care of by other *hijra*. They provide psychological support to the *hijra* during her pre and post-operative phase. Moreover, an elderly *hijra* too can find refuge within the community when she is disabled by age. This co-dependence of *hijra* on their community is similar to the organizational principles of the Indian joint family system, where every member of the unit across ages submits to the hierarchy for combining their resources and maintaining the security of the whole (Nanda 1999: 46). Though the traditional *hijra* hierarchy has been coloured as an oppressive sub-system that mimics the patriarchal oppression of the mainstream society, it is also true that the societal values of hierarchy, dependence on the community, and tight social networks have ensured a thriving sub-culture of *hijra* despite the exclusion and marginalisation faced by them.

Jamaat: The *hijra* community is governed by a body called the *jamaat*. This is a council of the elder *hijras*, who gather to take important decisions for the community. As

mentioned above, the *hijra gharanas* facilitate intra-community organisation in different regions under the guidance of a leader called *naik*. The *naik*, meaning the chief, of each *gharana*, is elected from time to time on the basis of their seniority, influence and dedication towards the community (Nanda 1999: 52). The *jamaat* gathers together to decide on important policies concerning the *hijra* community, celebrating significant events/occasions and for presiding over any dispute that concerns the integrity of the community. One of the most important tasks of the *hijra jamaat* is to resolve disputes between the community members and sometimes disputes concerning the community members and others. Being able to witness a *hijra jamaat* in session in Karnataka, it was observed that the *jamaat* is assembled in extraordinary situations that threaten the integrity of the community or disrupt the harmony amongst the community members. Traditionally, the community members avoid any external mediation, including by the police or other non-*hijra* organisations for resolving their conflicts. The decision of the *jamaat* is considered paramount. Overriding the *jamaat*'s decision by approaching non-*hijra* institutions for problem solving is often seen as disregarding of the community.

Kinnar: *Kinnars* are a regional variation of the *hijra* community. The *kinnars* and *kimpurusha* are mentioned as one of the sects of the *devas* (celestial beings) according to Hindu mythology (Mani 1975: 412). The term *kinnar* is derived from Sanskrit root and have been mentioned in several Indic texts (Reddy 2005: 19-21). It is derived from two Sanskrit words: *kim*, meaning if/whether and *nar*, meaning man, implying an ambiguity towards the persons gender identity. It is said that the all the *Kinnars* were born to sage Pulaha (Pattanaik 2014). In the *Agni Purana*, *kinnars* are described as heavenly musicians with a gender fluid identity often portrayed holding *vinas* (musical instruments) in their hands (Vetṭammani 1975: 412). Reference to *Kinnars* can be found in the *Jataka* and other Buddhist texts, where they are portrayed as talented musicians, often mischievous and shifting shapes, which could

refer to their gender fluidity or cross dressing tendencies (Pattanaik 2014: 32). Male to female transgender persons belonging to central and northern India denounce the Islamic connotations attached to the *hijra* identity, and thus, prefer to identify themselves as *kinnar* instead of *hijra* (Reddy 2005: 21 104-105, Singh 2012:24, 32-33). The Hindu transgender persons might be adopting the *kinnar* identity for maintaining their religious distinction. The traditional practices and beliefs observed within the *kinnar* community are similar to the *hijra*. Reddy has argued that the *hijra* identity is Islamic irrespective of the member's religion/faith. Though the definitive history that the *hijra* identity is Islamic may be challenged, yet the term *hijra* (castrated eunuchs) came to be used extensively in the subcontinent only after the arrival of the Mughals in the sixteenth century (Reddy 2005: 21). It is believed that before the Islamic invasion, the Pali/Sanskrit terms like *napumsaka*, *kliba*, *pandaka* and *tritiya parakriti* were used to denote sexual/gender alternatives in India. However, it is difficult to ascertain how the *hijra* identity eventually predominated over the other terms/identities for referring to gender non-conformity. Although the *hijras* employ Islamic commensal, sartorial and other customs, they primarily worship a Hindu goddess and draw legitimacy of their existence through Hindu texts. Thus, while the *hijra* community has adopted a fusion of both Islamic and Hindu traditions and cultural symbols, the *kinnar* identity have sought purity in terms of religion.

Aravani: The *Aravanis* of Tamil Nadu are counterparts of the *hijra/kinnar* identities. It was observed during the field studies that the *aravanis* follow a similar social structure and cultural identity as the *hijra/kinnar*. As mentioned earlier, the social and cultural roles played by the *hijra* in the south is different from other parts of India. In south India, the *hijras* does not perform *badhai*, and thus, they are severed from the mainstream society. The *Aravani* identity was conferred upon the *hijra* communities of Tamil Nadu by Mr. Ravi, during the annual Koothandavar festival in 1998 (Lingam 2013: 38). This identity was derived from the

ritual marriage of the *hijra* communities of Tamil Nadu with Lord Aravan during the annual Koothandavar festival in the Koovagam village. The story of Aravan is a popular among the transgender communities of Tamil Nadu. This story can be traced to the *Mahabharata*. To ensure the *Pandavas*' victory in the battle of Kurukshetra, the sacrifice of a perfect man was required. However, only three men in the *Pandava* army matched that description: Krishna, Arjuna, and Aravan. Since Krishna and Arjuna had to play a major part in the war, Aravan agreed to sacrifice himself. However, his last wish before sacrificing himself put the *Pandavas* in a fix. Aravan had wished to marry the night before his death. Since no girl came forward to marry Aravan, only to be widowed the next day, Krishna assumed the form of a woman, Mohini, and married Aravan. The next day after marriage, Aravan sacrificed himself. That day Mohini (Krishna) wept for him and mourned his death like a widow (Revathi 2010: 260)

Every year on the day of the full moon in the month of *chaitari* (between mid-April and mid-May) many gender variant communities across South Asia assemble in the Koovagam village to celebrate the Koothandavar festival. On the first day, after a procession of the idol of Aravan through the village, the *hijra* pray to the god and tie a *thali* (a thread/gold necklace worn by brides during marriage) around their neck signifying their marriage with lord Aravan. They assume themselves to be the incarnation of Mohini. The next day, before the break of dawn, Aravan is sacrificed, reiterating the story of Mahabharata. After the symbolic death of Aravan, the *aravanis* break their bangles, rip off their *thalis* and adorn white clothes while mourning the death of their husband. This ritual is similar to the *Alyha* of Mojave, where they mourn the symbolic stillborn. During the festival it was revealed by some respondents that the Koothandavar festival was gaining attention from the gender non-conforming communities as a platform for expressing their gender varying identity without any fear of discrimination. A respondent said that only the elderly gurus

visited the festival for religious purposes, whereas the younger transgender persons participated in the festival as it presents an opportunity for them to dress up as their desired gender and express their real self. For some, it is a rare opportunity to dress as like a woman without family pressure and fear of being discriminated. During the festival, transgenders engage in sex work without fear or permission of their guru or being scared of the police. Moreover, the annual beauty pageant (Miss Koovagam) is a huge attraction among the community members. One of the respondents said that if she wins the pageant she might receive better wages during sex work. Though some appreciate the Koothandavar festival as a platform to express their identity, prominent transgender activist E3 remarked that the Koovagam festival glorifies widowhood, which is not only oppressive to transgender women but to women in general saying “The Koovagam festival symbolises degrading of one self, subjecting one’s self identification, it projects us in a degrading way.”⁴ Another, MTF transgender person, E2 criticised the purpose of the festival by remarking “Koovagam festival is no more a religious festival, which provided a platform to *Aravanis* to meet community members, but it has turned into a fest where people usually participate for sex work.”⁵

Thirunangai: The *hijra/aravani* affiliated to the Dravida Munnetra Kazhagam (DMK) in Tamil Nadu identifies them as *thirunangai*. The term *thirunanagai* meaning a respectable lady, and according to some respondents it meant a beautiful woman, was conferred on the *Aravani* community by the DMK leader M. Karunanidhi (Lingam 2013: 64). However, several transgender community members and activists have expressed their concern that both *Aravani* and *Thirunangai* identities denote MTF transgender persons only thus, completely avoiding the visibility of the female to male transgender persons.

⁴ E3. (2015, April, 09). Interview with Swarupa Deb. Pondicherry.

⁵ E2 (2015, April 13). Interview with Swarupa Deb. Chennai: Tamil Nadu.

Jogappas: In northern Karnataka, in the district of Bellary, there is small a group of gender non-conforming community, mostly Hindu, who have identified themselves as *Jogamma/Jogappa/Jogti/Jogta*. This gender non-conforming community has a sense of pride about their identity. They claim their lineage from the emasculated sons of sage Jamdagni and his wife Renuka (Aneka 2012: 9). There are two different identities in the community. First, the *jogti/jogtas* are the Hindu intersex/transgender persons claiming to be the devotees of goddess Yellamma.⁶ They claim be possessed by the goddess since they were young. Consequently, they were given away by their family to the Yellamma temple. Most of these *jogtas* are lower caste Hindus from a poor rural family background. It is not known if they are castrated or not. However, some of them may have been intersexed. They wear female clothing, mostly sari and adopt a feminine name with a suffix *-amma* meaning mother (e.g. Mangalamma). They claim to have been chosen by goddess Yellamma for sharing a mother-daughter relationship with the goddess. The *jogtas* address each other as sisters and prefer using the feminine pronoun. They consider themselves to be superior to other gender non-conforming communities claiming a sacred status and for not being involved in sex work or begging.

The second identity consists of *Jogappas/Jogammas*. Recently, people of lower economic background from rural areas, both Hindus and Muslims, have started pledging themselves or their spouses or children to the goddess Yellmma. These people join the Yellamma cult as *jogappas* or *jogammas*. Though the *jogappa/jogmaa/jogti/jogta* are used alternately, a popular connotation attached to the *jogappa/jogamma* community is their

⁶ There are many versions of the story of goddess Yellamma and rituals dedicated to her. According to a common version of the myth, Yellamma, also known as Renuka was the wife of sage Jamdagni. She was a doting wife and a pious woman. However, one day her devotion to the sage was corrupted she happened to see two Gandharvas (celestial beings) playing in the nearby water. On seeing them she became sexually aroused and lost her concentration. Furious that his wife had 'impious' thoughts Jamdagni ordered his sons to behead their mother. The first four sons refused to do so, but his youngest son, Parasurama immediately followed his father's order. An impressed Jamdagni brought Renuka back to life at the request of Parasurama. However, his four elder sons who refused to behead Renuka were cursed to lose their masculinity. Thus, the *Jogappas* trace the legacy of their gender identity through the cursed sons of Jamdagni (Aneka 2014: 17).

profession as temple prostitutes. These *jogppas/jogammas* are usually heterosexual and are allowed to have sexual relations and even marry. However, they are not appointed as the priests or chief servants of the goddess. Serving the goddess and performing rituals are exclusive to the *jogta/jogti*, who enjoy priestly status in the Bellary district and are often considered auspicious. Serving the goddess involves bathing the idol and changing her clothes, which might involve touching her private parts. Therefore, it is assumed that a man might get sexually aroused by touching the goddess. As the priestly rights are mostly available to men only, the goddess Yellamma is served by biologically born males, who identify themselves as women (or as transgender).

Gurma: *Gurma* identity is another regional variation of the *hijra* identity specific to Tripura. However, the *gurma* community follows the social structure of the *hijra*, with slight variations. Though the etymology of the term is unknown, one possible sense of the word could derive from combining “guru” and “maa”, where guru represents teacher or a respectable person and maa meaning mother or a respectable lady. Due to the Bengali influence, the *gurma* community has replaced traditional term *gharana* for *dorza* (meaning door), guru for *ustaad* (a skillful or a teacher). The *gurma* community in Tripura habitually migrates between Tripura and Bangladesh for better income opportunities.

Brihannala: *Brihannala* is an honorific term conferred to the Male to Female transgender community of Tripura, West Bengal and parts of Orrisa. The term is considered respectable as it is derived from the *Mahabharata*, where Arjuna disguised as Brihannala (a eunuch) served as an entertainer in King Virat’s court during his yearlong incognito period after thirteen years in exile, along with his four brothers and their wife. Several transgender experts as well as grass root transgender persons in West Bengal have expressed their assent to the name Brihannala than any other gender non-conforming or androgynous character from

the Indic texts. This is probably because Arjuna is an esteemed character in the *Mahabharata*. Moreover, Arjuna as Brihannala assumed the role of a teacher, a highly respected profession in Indian culture. Thus, by associating themselves with the name Brihannala, the transgender community claims both respect and pride. The FTM transgender community members/*hijra* are called *Dhurni* (a man who gets penetrated in the anus) and *Chibri/chimri* in West Bengal. However, both are pejorative terms (Dutta 2012: 387).

Kothi: *Kothi/kothey* is an effeminate male identity, which is adopted by some people in South Asia including India. A *kothi* is a biological male who adopts feminine dressing, speech and behaviour and prefers a heterosexual male partner (Narain and Bhan 2005: 5). Most *kothis* are non-English speaking and belong to the lower-income working class background. During the field study in West Bengal, E17, a transgender activist said, “due to the gender fluidity of the *kothi* identity they associate themselves with both Men having Sex with Men (MSM) community as well as the transgender community”.⁷ Due to their feminine characteristics, cross-dressing practices and homosexual (sometimes bisexual) preferences, the *kothis* occupy a position both within the queer as well as the transgender communities in Tamil Nadu, Karnataka and West Bengal. E17 thinks that the term *kothi* is derived from an indigenous herb called *kotila*, a soft marshmallow-like substance, which is said to have cooling properties. As physical and physiological ‘softness’ is often associated with the female gender, the effeminate *kothis* are associated with *kotila*. Many *kothi* men often marry heterosexual women and even father children while simultaneously being in a relationship with a male partner. With these men, the *kothis* play the role of a woman.

Launda: The *Launda* identity of West Bengal and Bihar and certain parts of Uttar Pradesh are often term as effeminate dancing boys (Dasgupta 2013: 442). They are cross dressing effeminate men engaging in homosexual relationships. Most of the *laundas* belong to

⁷E17. (2016, April 11). Interview with Swarupa Deb. Kolkata: West Bengal

extremely impoverished families of rural Eastern India. Traditionally, *laundas* are cross dressing male dancers, who provide entertainment for the wealthy eastern Indian elites like local politicians, *zamindars* and other influential men addressed as *babus*. Several wealthy men of West Bengal and Bihar often kept the company of *laundas*. However, it is not clear if they had a sexual relationship with them. As women (wives/mistresses) were not allowed within men's quarters, these *babus* kept the company of *laundas* for entertainment. The *laundas* however, neither identify themselves as transgender nor as gay men. Several retired *laundas* now residing in rural Bihar are said to have received a share of the inheritance from their deceased *babu's* property. In recent times, several young men have identified themselves as professional *launda* dancers performing exclusively for men's gatherings. *Launda naach* is a popular function organised during the last day of *chatt puja* celebrated by the Bihari community in Bihar and West Bengal. It was also observed that several wealthy families of Eastern India organise *launda naach* as a special treat for the male members of the groom's party during weddings. Moreover, several local political leaders (mostly in semi-urban and rural West Bengal and Bihar) organise *launda ka naach* to boast their influence and attract people to their political rallies. Organising a *launda naach* is often associated with status and wealth (Dasgupta 2013: 446). Additionally, it is important to point out that the *laundas* are often from the lower caste background. Thus, they are extremely marginalised due to their caste identity. Perhaps due to their social and economic marginalisation, *laundas* have opted for such unconventional practices. However, it remains unclear whether the individuals identifying as *laundas* adopted their identity entirely owing to the lack of better income and their caste status or whether they were closeted and had expressed 'tabooed' homosexual/gender-non conforming desires.

Apart from the above-mentioned identities observed during the field study, there are many other gender non-conforming identities in India. Most well-known of them are the

Shiv-Shakthi community in Andhra Pradesh and Maharashtra, and the *Nupi-manobi* community of Manipur. *Shiv-Shaktis* are biological men, who are believed to be possessed by, or are particularly close to a goddess and exhibit effeminate characteristics. This community is located largely in Andhra Pradesh and in some parts of Maharashtra. (Narrain and Bhan 2005: 5, Singh 2013: 24). In Manipur, the Male to Female gender non-conforming individuals identify themselves as *Nupi-manobi*.⁸

Female to Male transgender identity: Female to Male transgender persons are perceived as individuals who are “Assigned Female at Birth” but identify closer to the masculine side of the gender spectrum (Stryker 2008: 114). Formerly, the term transmen/transsexual men referred specifically to female to male people, who underwent hormone therapy or Sexual Reassignment Surgery or both. However, as the transgender movement transitioned from “medical to political”, the description of FTM has broadened to include psychological elements of gender identity. In terms of sexual identity, transgender men can be homosexual, bisexual, or heterosexual based on their gender identity (Green 2006: 452). One of the respondents, R17, a FTM transgender person is in a live-in relationship with his long time “girlfriend”, an MTF transgender person identifying herself as a female. Several transgender men opt for medical procedures like administering hormones and surgery to make their bodies as identical as possible to their desired gender identity. In India, some FTM individuals undergo mastectomy, as well as removal of ovaries and uterus to get rid of the menstrual cycle, and some others choose to bind their breasts. Due to the expensive nature of the MTF Sexual Reassignment Surgeries as compared to castration, only wealthy and the urbane can afford these. Those who are not financially capable but desire surgical intervention seek donations through civil society organisations. However, surgical

⁸ Van Helsing, Date not identified. *Nupi Manbi: Quest for Transgender Identity and Challenges*. Retrieved from https://www.academia.edu/27608032/Nupi_Manbi_Quest_for_Transgender_Identity_and_Challenges Accessed on 27/11/2017.

interventions often complicate the matter further as transsexual FTMs (those who have undergone surgery) claim a higher status over those who have not reassigned their bodies. This constructs a sense of hegemony within the Female to Male transgender community, where the surgically reassigned seek a higher status than the others.

Gender questioning and gender neutral: There are some identities, who neither conform to the gender binary nor identify with alternate gender identities. Rather, they choose to be outside the gender spectrum. The gender questioning individuals are those who are going through the process of transitioning, a phase where a gender varying person separate themselves from their gender identity assigned at birth and adopts the mannerism of their target gender or a more gender neutral identity (Orr *et al.* 2015: 8). A gender-neutral identity might occur during the phase of transitioning or after transitioning, if the gender non-conforming persons do not find themselves identifying within any of the binary or complementing gender identities. It is possible that a gender neutral and gender questioning individual might eventually conform to a distinct gender identity. E6, one of the experts interviewed in Tamil Nadu, identified as gender questioning at the time (2015), later embodied a feminine persona by changing hir [sic] name t. However, the notion of gender neutrality might not always be associated with trans-gender identity alone. Several cis-gender persons and gender non-conforming individuals consciously make a political statement by adopting gender neutral or gender questioning identities without identifying with any specific gender believing that that gender based discrimination arises due the societal norms that arise from the binary gender framework (Cromwell 1999: 130, Stryker 2006: 27).

2.5. Trans normative identities

While a plethora of scholarly studies on transgender began to flourish from the 1990s onwards, it invariably constructed a trans-normative framework stereotyping several gender varying communities/persons. Due to the formation of the so-called trans normative ideas, the

community is usually ghettoised furthering their gender marginalisation (Stryker 2008: 20). It is important to understand the issues and challenges facing the community not merely within the strict perspective of gender non-conformity, but across other significant boundaries including national identity, religion, culture and caste (Reddy 2006: 224). This section attempts to understand the transgender community not only as a community suffering discrimination and stigma solely due to their trans gendered status but having marginalised by other categories that foster discrimination. Stryker suggests that while gender certainly remains a primary category for the transgender community, there is however an urgent need to establish an intersectional framework towards understanding, identifying and consolidating the transgender community not only as a category or class of people, characterized as “crossers,” while everything else could be characterized by “boundedness and fixity” (Stryker 2008: 22). This section briefly discusses certain categories of marginalisation other than gender and how these create a sense of hegemony or transgender normality. The discussion is based on the analysis of the data collected during the field studies.

2.5.1. Reassigned bodies

2.5.1.1. Female to Male and Male to Female bodies

A conflict between the Female to Male and Male to Female transgender communities was noticed during the field studies across all the four states. The FTM transgender persons in India face challenges arising from the absence of family support but also due to lack of any organised support system. Moreover, it was observed that though the FTM transgender communities and the MTF transgender communities share a certain sense of camaraderie in the urban civil society organisations, the FTM persons are not recognised in the traditional MTF transgender communities. E4, an FTM transgender person from Tamil Nadu, affirming the lack of support system for FTMs said:

“Transmen do not have security and they don't have an established organisation. If a transwoman comes and says I am a transwoman she gets certain benefits, she gets certain community membership, which is not there for transmen [sic].”⁹

Most of the indigenous Male to Female gender non-conforming communities of India like the *Hijra*, *Kinnar*, *Aravanis* and *Jogappas* have access to organised support systems outside the mainstream society. Each community operates through their well-defined interlinked common identity-based networks. However, such community-based support systems are unavailable to the FTM transgender persons due to their invisibility and fear of being found out and violated.

Transwomen, on the other hand, allegedly face more discrimination than transmen in the areas of education and employment due to their visibility. As the FTM persons do not fit into the typical trans-normative description of a transgender person, they usually receive better educational and income opportunities at least in urban areas that is unavailable to the MTFs. The FTMs blame the MTFs for not accepting them as transgenders alleging male chauvinist attitude even though they have renounced their male body. FTMs argue that the MTFs due to their male body enjoy a greater prerogative to explore their gender identity but the FTMs are often bound to home and family due to their female bodies. E4 asserting the claims of FTMs that they hardly get a chance to explore their gender identity as they are bound to stay at home says, “parents control their daughter’s sexuality more than their son's. So the transition period is very difficult for them.”¹⁰ Moreover, MTFs can save themselves, or at least resist, in case of physical assaults, whereas, MTFs fear for their female body being raped. In this regard, E4 held:

⁹ E4. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu.

¹⁰ E4. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu.

“A Transwoman can protect herself, but a trans-man cannot protect himself because biologically she is a female: We also we do not have any organised community support like the *hijra* or the *aravanis*. Thus, there is a constant problem going on between the FTMs and MTFs.”¹¹

Transmen have repeatedly complained about the lack of organised support for their community as well as being outnumbered and bullied by the transwomen. Thus, blaming the transwomen for not sharing opportunities and resources allotted to the transgender community equally. R17 believes that, “MTF have more freedom than FTM. Even though they identify as female, they are still getting benefits of their male body. We are marginalised within the marginalised.”¹² E14, a FTM transgender from Kolkata, says:

“Just because of they [MTFs] are more organised and more in number, nobody cares about us. We are pushed into silence even by our own community... Transwoman has the body of a male and our body is female. Again, patriarchy that is embedded deep inside us takes centre stage. This is the reason why transwomen are intolerant of transmen. The hate and discrimination that is directed towards the MTF transgender communities are perpetrated back to the FTM persons by the MTF, thus, establishing a patriarchal hegemony within the transgender sub-culture.”¹³

R17's narrative is very telling in this regard. He says:

“My mother is also a transgender [MTF] person. She adopted me... Regarding my acceptance, my mother could not accept me well in her society. I was angry that both my mother and I are transgender but she still does not accept me.”¹⁴

E14 expressed: “[...] I think it was easier for them [his parents] to accept me gradually because I was becoming a son from a daughter, though of course, I cannot sire a grandchild for them.”¹⁵ E13, a transgender leader from West Bengal encapsulating the whole situation says:

¹¹ E4. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu.

¹² R17. (2016, September 03). Interview with Swarupa Deb. Bangalore: Karnataka.

¹³ E14. (2016, November 06). Interview with Swarupa Deb. Kolkata: West Bengal.

¹⁴ R17(2016, September 03). Interview with Swarupa Deb. Bangalore: Karnataka.

¹⁵ E13. (2016, October 19). Interview with Swarupa Deb. Srerampore: West Bengal.

“We are all in this together. See we transwomen come under the light at a very early age so it results in school dropout and no education. So we are the daredevil desperate people and we come out. But they face maximum problems only during marriage. But by then, most of them have at least gone to schools and colleges, they might even have employment. At least they have a better standing than us. Yes, they have issues, but their issues are less visible. Their issues are mostly psychological. But our issues start with the economy. So if a person is economically strong they will hardly have any problem. So I think a portion of rights is allowed to transmen but not to us transwomen.”¹⁶

2.5.1.2. Operated versus non-operated transgender bodies

There is a clear hegemonic distinction between the operated and non-operated transgender communities. Certain layers of this hegemony need to be highlighted. Firstly, the MTF transgender persons, who have been initiated into the traditional communities, are often preferred by the fellow community members over those who are not the members of the community. Similarly, Laxmi Narayan Tripathi, though sought membership into the *hijra* community preferred to live with her biological family, instead of her *hijra* guru causing outrage and repeated conflicts between Tripathi and her guru. Thus, having a *hijra/aravani/kinnar* community membership is important for establishing one’s “true” identity as a transgender. This is another reason why the FTM transgender individuals are not considered as a part of the traditional transgender communities irrespective of their gender non-conforming status.

Secondly, if a traditional MTF transgender community member has undergone the emasculation ceremony, they are conferred a higher position in comparison to a community member, who has not undergone the ceremony yet or does not want to undergo it (Nanda 1999: 26, Reddy 2006: 91). The emasculated transgender is called *pukka* meaning, a real *hijra*. Furthermore, the honour of a *pukka hijra* increases many folds if she has undergone the emasculation procedure through a *dai ammma* without anaesthesia in comparison to a *pukka hijra*, who had undergone the surgery through medical intervention. The psychological

¹⁶ E13. (2016, October 19). Interview with Swarupa Deb. Srerampore: West Bengal.

motivations of the *hijra* emasculation ritual are reinforced by more material concerns. The *hijra* (along with its regional variations) is not only a community identity but also a professional identity. Thus, emasculation is not only a religious obligation, but also a means to differentiate real *hijra* from “fake” *hijra* or *behrupiya* (Reddy 2006: 72). Thus, conventionally transgender individuals, who have not undergone socialisation (both cultural and religious) under the strict mandates of the traditional *hijra* community are often seen as outsiders and as a threat to their community identity. This could be another reason why the FTM and transgender persons, who are not members of traditional communities, are not accepted.

Moreover, the traditional transgender communities are phallogocentric in a sense because the absence or presence of the male genitalia is central to their identity. Therefore, most MTF transgender community members prefer to undergo emasculation. Within the traditional MTF transgender communities, the penis symbolizes masculinity, thus, emasculation is considered as a “re-birth” (Cohen 1995, Reddy 1999, Lal 1999). Therefore, most of the MTF transgender community members believe that separating the male genitalia from their body would separate them from their male identity and bring them closer to or, enhance, their femininity. Thus, non-operative and FTM transgenders are placed at the bottom of this hegemonic structure, where the phallogocentric idea of gender is still the dominant factor. E4 asserted FTMs desperate desires to assert their identity as a “real man” saying:

“Transmen do the surgery whatever the cost is [sic]. They think, if I can have a penis for one day, I can die peacefully [sic]. You can ask what is the need but he wants to prove to the whole world, he is a man!...it is very important for us [sic].”¹⁷

¹⁷ E4. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu.

Similarly, Vidya in her autobiography narrated her post-operative self as “I was at peace, It was a huge relief. I was now a woman. Mine was a woman’s body. Its shape is what my heart wanted, yearned for.” (Vidya 2007: 16)

2.5.2. Phenotype and caste

The transgender identities face challenges and discriminatory behaviour owing to their physical appearance and skin colour within their community. In Karnataka and Tamil Nadu, where the primary source of income for the traditional transgender communities is through sex work and *mangti*, it was observed that the gurus preferred younger chelas, who were fair skinned and spoke Hindi and English fluently. An English speaking fair skinned chela is often considered to be the guru’s favourite. The traditional *hijra* group operating from *hamaams* in Karnataka employ younger fair skinned *hijra*, who are considered ‘beautiful’ for sex work. On the other hand, the ‘not fair’ skinned chelas are often employed for door to door solicitation. Asserting this fact, E11, a transgender activist and former sex worker from Karnataka said:

“In the *hijra* community, there is so much discrimination. If I am good looking, fair, and young, then guru will favour me because I will get more money for sex work. But if I am not looking good and I am not fair then my guru will send me for begging and not like me.”¹⁸

Most of the *hijra*, who went for *mangti* complained that they had to not only do physical labour involved in street begging, but they were also made to do household chores like washing, cooking, cleaning and other domestic work. The ‘beautiful’ *hijra* engaged in sex work could relax and were assigned the least of household of chores. Similar conditions have been highlighted in the autobiographies of Vidya and Revathi: Revathi believed that as she was fair skinned, she was often considered a favourite among the elders of the community as she was considered beautiful like a cinema actress (Revathi 2010). On the contrary, Vidya

¹⁸ E11. (2016, September 02). Interview with Swarupa Deb. Bangalore: Karnataka.

expressed that due to her thin constitution and skin, her gurus sent her for *mangti* while her beautiful sisters were assigned lesser household tasks (Vidya 2007).

Serena Nanda (2005) from her anthropological study on the *hijra* community has argued that caste identity is not significant within the social organization of the traditional transgender communities. However, this argument can be contested as during the field study in West Bengal, it was learnt that though *hijra* community members initially denied the significance of their caste identity within the community, it was later revealed that the upper caste *hijra* often oppress those *hijra* belonging to lower castes. Even though the community leaders said that they do not care about caste, the case was different in eastern India. Some community leaders revealed that that in case of fights or disputes the upper caste *hijra* would use pejorative name calling for the other *hijra* based on their lower caste identity. Interestingly, almost all the influential LGBT leadership positions in West Bengal are occupied by upper caste, urbane and educated individuals like Ranjita Sinha, Aparna Banerjee and Manobi Bandopadhyay.

2.5.3. Urban and rural identities

Apart from being marginalised by their gender identity, the transgender community members belonging to the rural areas face larger perils in comparison to their counterparts dwelling in urban and semi-urban areas. It was observed that the transgender communities from the rural areas were far less sensitized of their rights and had limited access to healthcare facilities and other amenities including housing, access to stigma-free education and employment opportunities across the four states. E7, a transgender activist from Karnataka, asserting the lack of opportunities for transgender persons said, “In rural areas, they are still begging or do sex work. That is the only option”.¹⁹ The condition of transgender communities in rural Karnataka, Tamil Nadu, West Bengal and Tripura is much worse than their counterparts in

¹⁹ E7. (2016, August 18). Interview with Swarupa Deb. Bangalore: Karnataka.

the urban areas. Due to lack of awareness, they were unaware of the welfare schemes for the transgender communities. Affirming the poor condition of the rural transgender individuals, E14 says:

“In rural areas, the situation is worse for trans people. Most of them live and ultimately die in a situation of confusion and self-conflict. Why? Because they never got that opportunity. There are several unreported cases, where people in their mid-thirties or mid-forties having children, feel they are trapped in a wrong body. But then because they don’t know about these things like transgender, sex change operation and everything else, most of them remain unaware all their life.”²⁰

The only support system available to the local MTF transgender communities is their local *hijra* households. These local households are equally unaware of the on-going transgender activism, and instead, impose strict control over their members. MTF transgenders, who are not initiated into the *hijra* system, remain unsure about their identity as transgender people because as they have no access to civil society sensitisation or the social media. Those who are aware of their gender-nonconformity are apprehensive of expressing themselves due to the fear of being socially ostracised, for bringing a bad reputation to their families and for being denied inheritance rights as a coparcener. The condition of FTM in rural areas is much worse as they face disdain not only for being gender non-conforming but also threats of violence due to their female physiology.

2.5.4. Between borders

While, transgender people are generically marginalized in the domains of identity, rights, access to health-care, education and employment, there is an additional layer of marginalization of transgender people in Tripura as most of them are illegal migrants from Bangladesh. The transgender community in Tripura, known as *Gurma* and *Brihannala*, is not only oppressed and marginalised because of their third gender status. In Tripura, the transgender people are burdened because they are without legal documents. During the field

²⁰ E14. (2016, November 06). Interview with Swarupa Deb. Kolkata: West Bengal.

study in Tripura, it was noticed that most of the *gurmas* did not originally belong to Agartala. Every year they visited Tripura in the second week of January and stayed on till mid-March, and then revisited to Tripura between May and June and yet again during the first week of October till mid-November. A close look at the pattern of these periods shows that these months are considered auspicious according to the Hindu (Bengali) calendar for marriages or other social functions. Once the wedding seasons are over they leave for Bangladesh thus, making it difficult to identify their nationality. As many of these *gurmas* do not stay in one particular area throughout their life, it is hard to ascribe any regional affinity or identity on them except as living between national borders. The *gurma* community in Tripura is vulnerable to several threats and constraints for being illegal migrants. However, despite these challenges they still choose to migrate between the two countries for better income opportunities. The transgender individuals in Tripura indeed suffer like other transgender communities elsewhere in India due to their gender non-conforming behaviour and their lower class status. Notwithstanding, it is no less important to highlight that the miserable condition of the *gurmas* in Tripura are accentuated by their status as illegal migrants, who without the requisite documentation live and work between the borders of Bangladesh and India (Deb 2017: 137).

2.6. Identity markers specific to transgender communities

The traditional Male to Female transgender communities has been often described as “invisible” at the sometimes “hyper-visible” (Reddy 2006: 2). They are invisible owing to the different layers of marginalisation that they face in their day to day life and hyper-visible due to the specific identity markers associated with traditional transgender communities. The traditional MTF transgender communities employ various tactics for drawing attention towards them in response to the “invisible” or “deviant” traits tagged to them (Hall 2002: 136). The *hijra* and other the traditional MTF transgender communities respond to their

societal invisibility in two ways: parody and inciting fear. Another distinct cultural marker that immediately distinguishes a *hijra* is the *taali*: a loud clap made with the flats of the palm. The *taali* is used to draw the attention of the audience and sometimes as an act of mild intimidation (Nanda 1999: 6, Reddy 2006: 136, Zimman and Hall 2010: 168). There are however different kinds of *hijra taalis* that are employed by them for different purposes. One particular kind of clapping is to assemble *hijra* in the vicinity in case of probable altercations.

The *hijra* community is known to incite fear through lewd sexual insults and curses (Hall 1997: 340). Most of these curses are sexual and “vulgar”. The *mangti hijras*, who solicit in public places like markets, temple areas, public transportation and traffic signals, often, use such insults to grab the attention of the non-*hijra* mainstream audience. When someone refuses to pay, or pays too less an amount as against the requested alms, the *hijras* insult them using profane words, which are otherwise considered inappropriate in the hetero-normative society (Nanda 1999: 6, Hall 1997: 342). Clearly, *hijras* (and other gender non-conforming communities) are not accorded dignity in contemporary Indian society. Therefore, they demand respect though offence. They are described as “intimidating” due to their peculiar appearance and offensive behaviour, launching the most degraded abuses and hurtful curses (Reddy 2006: 138-139, Hall 1997: 342). Serena Nanda argues that due to the extreme nature of their marginalization, a *hijra* has the prerogative of availing a free range of sexual insults to dare the social order through language that has systematically excluded them (Nanda 1999: 7). As *hijras* are seemingly placed outside the reproducing hetero-sexual normative society that considers even death to be a better option than their unfortunate lives, the *hijra* seem to assume that they have nothing to lose through verbal defiance (Hall 1997: 347).

As *hijras* live in a society, where they are neither male nor female and instead occupy an intermediate space between the gender binary, they are also people freed from traditional gender norms of decency and shame. In addition, these performative behaviours are their

adapted survival mechanisms in harsh world. Nanda in her anthropological research on the *hijra* communities of Maharashtra depicted them as a community positioned at the lowest end of the social structure, freed from maintaining the hierarchy and notions of decency. Thus, according to her, it is their lack of shame that makes people disinclined to provoke them in a public confrontation, at the same time grants them free hands for invoking indecency in public space (Nanda 1999: 51). *Hijras* often push their hearers to the limit using lewd sexual vilification leaving the latter with no other choice but to pay the requested alms. On the other side, a *hijra's* perspective on this issue is quite telling. *Hijras* consider their techniques of vilification as a survival strategy. *Hijra* community is highly concerned about the notion of *izzat* or respect (Reddy 2006: 40). Reddy explained that *hijras* use obscenity for claiming respect that is ordinarily unavailable to them. Being paid an inadequate amount upon performing during *badhai* is considered disrespectful. Thus, they humiliate their clients using a series of verbal abuses and insults ranging from mild to severe. When the most severe of the abuses and insults fail, the *hijras* threaten to lift their garments and expose their genitals in public - a common practice associated with the *hijra* community. Besides, these exaggerated gestures may also be a way of performing in accordance with the expected attributes of their desired gender, which in the case of MTF are the feminine attributes.

2.7. Summary

This chapter has sought to highlight the diversity of transgender identities from field studies in four states of India. In emphasizing the diverse transgender communities, textual references to select non-Western gender non-conforming communities were included. The diversity of gender non-conforming communities in India and certain select communities within non-Western cultures point to the hegemonic nature of the Western term 'transgender' – a term that must necessarily be problematized. In addition, this chapter has also demonstrated the effects of intersectionality or how certain categories like the phenotype of

the transgender body, natural and surgically reassigned bodies, class, caste, migratory lives between national borders and other spaces - like urban as opposed to rural - generate multiple layers of discrimination and new forms of identity within the transgender community. While it is now self-evident that non-transgender people ostracize transgender individuals, it is equally important to note that discrimination of transgender individuals by other transgender persons is prevalent. In a world where norms of decency are determined by heteronormativity, gender non-conforming individuals and communities are compelled to transcend these norms by profane words, lewd comments, harsh curses and particular gestures for adapting and surviving in a harsh hetero-normative world.

**CHAPTER 3: CHRONICLING A NARRATIVE OF THE
STRUGGLE FOR TRANSGENDER RIGHTS BETWEEN *circa* 1990
and 2016**

This chapter attempts to present a narrative account of the struggle for transgender rights between ca. 1990 and 2016. This narrative account forms part of the core of this dissertation for five reasons: First, this narrative account explains the impact of the *Criminal Tribes Act, 1871* on the gender non-conforming identities of India. Second, this account narrates how the transgender communities of India began to mobilise themselves first under the Queer movement and later acquired an independent community identity in a response to the HIV-AIDS crisis and the prevalent trans/homo-phobic atrocities/prejudices. Third, this narrative provides details of the areas of conflict and negotiation within the struggle. This is central to understanding the politics of exclusion and inclusion of a gender minority, the movement's potential for policy reform and its capacity to execute social changes in the Indian context. Fourth, this interpretative history focuses on the mobilisation and formation of collectives among the gender non-conforming communities of India almost in parallel to the Western transgender liberation movement. Thus, it tries to present a comparative picture of the transgender phenomenon in the West as well as in non-Western contexts. Finally, documenting the struggle would help in understanding the changing status of the transgender communities over the last two decades and a half.

This narrative chronicle aims to contribute to the knowledge of the transgender communities in India. It could be of use to those who are interested in the dynamics of the gender non-conforming communities of India, for transgender activists seeking to formulate a transformative social agenda as well as social movements at large. A history of the transgender struggle of rights in India has not yet been written. Additionally, there is a paucity of material. Therefore, this narrative account is based on interviews with the transgender respondents and transgender activists as well as a minimum of documents collected during fieldwork. While the experts as well as the transgender community members responded from their individual memory, elements of these interviews were corroborated

with other available sources like newspaper reports, documents and case laws. Though this narrative account alludes to the transgender struggle in a pan-Indian context, it is primarily centred on events and processes of transgender activism in the four states of Tamil Nadu, Karnataka, West Bengal and Tripura.

This narrative account of the struggle for rights and identity of the transgender communities has been divided into three phases. The first phase, between *ca.* 1990-1999, documents the struggle against discrimination of sexual and gender minorities by hetero-normative discourses in the urban areas. Though the Queer movement could not completely recognise the issues of the transgender community, it at least provided a platform for the urban gender non-conforming identities to form collectives based on their queerness. These individuals eventually created a new line of transgender leadership and activism in the first decade - the 2000s.

The second phase, between 2000 and 2012, shifted towards rights based activism. Moving beyond a mere struggle against discrimination, there emerged demand to accessing right to health care in the wake of the accelerating HIV-AIDS crisis. As both -the LGB as well as the traditional transgender communities- were equally vulnerable to HIV their concerns converged in a demand for the right to health care. The diverse gender non-conforming communities were able to transform this crisis for mobilising themselves under a common identity, thus, marking the beginning of an emerging political identity. The landmark event was the Public Interest Litigation *NALSA v. UOI* and others in the Supreme Court of India in December 2012.

The present phase, since 2013, of the transgender struggle for rights and identity is witnessing a new line of leadership that employs a policy-based approach while collaborating with other minorities.

2.1. Formation of the collectives

Like every socio-political movement, the transgender struggle has been a movement for protecting the civil and democratic rights of the gender variant people, who have been systematically excluded from the mainstream society. The modern transgender liberation struggle that is witnessed today has transitioned. It has been argued that the social movement of the gender non-conforming communities is characteristically transitory and factionalized due to their own changing/evolving consciousness about the criteria of membership into the community (Davidson 2007: 62). The transgender struggle has demonstrated a certain degree of organisation- ranging from a loose, informal partial level of a collective formation to a highly institutionalised, politically conscious mobilisation from time to time.

The transgender struggle that gained momentum in the late nineties was heavily influenced by the Queer movement that surfaced in India *ca.* 1990. Both these movements had different goals and eventually bifurcated along different paths but the queer movement indeed provided a foreground for the transgender struggle in India during the early years of the formation of a collective. Along with the Queer movement, it was observed during field studies, that the transgender movement was influenced by other social movements especially the Self- Respect movement in Tamil Nadu, the struggle of Sexual Minorities and Sex Workers, and the on-going Dalit movement. As a travelling companion of several other social movements, the objectives, the agenda and the course of the transgender struggle have been influenced by the larger politics of identity in India.

The urban gender non-conforming identities were initially a part of the LGBT struggle till *ca.* 2000 until the term transgender was introduced as a sub section under the Men who have Sex with Men (MSM) category for the *hijra/kothi/panthi* community during

the National AIDS Control Programme phase II (Singh 2013: 88).¹ Prior to that, the umbrella term transgender was not commonly used for referring to gender non-conforming individuals and their struggles were hardly documented. Therefore, a substantial part of the initial mobilisation of the transgender community in India remains intermixed within Queer struggle. In the absence of textual data, interviews conducted with prominent LGBT activists were relied on. Several of these interviews highlighted that the initial transgender collective needed to be explained under two different settings: one, the urban LGBT communities' collective and; two, the traditional *hijra* community's mobilisation for rights and identity.

Documents dating between 1990 and 2003 point towards the atrocities conducted by the police towards the homosexual and transgender communities (Baxi 2001, Narrain 2003). The agitations against police atrocities and the movement against Section 377 of the *Indian Penal Code 1860* was initiated the LGBT community, where the traditional *hijra* community had hardly any role to play. The LGBT community at that time implied to educated and urban sexual minorities whereas, the *hijra* communities were referred to as a lower class, uneducated rural gender varying community occupied in begging and sex work (Singh 2013: 85). E15an LGBT activist from Kolkata affirming this situation said:

“Being gay in a closed group was quite fashionable, it reflected western liberal ideas, but being a *hijra* was almost equivalent to a beggar or a sex worker. Till date, this imagination of *hijra* is intact in people's minds. And strangely, the transgenders were nowhere in the picture. The term transgender only came in the 2000s.”²

During those times, the term transgender was fairly new and was only used in a medical context (Singh 2013:56). A majority of the transgender individuals, who were not members of the *hijra* or other traditional gender non-conforming communities were identified as MSM or effeminate homosexual men and identified themselves as a part of the LGBT community

¹ Targeted Interventions Under NACP III Volume I: Core High Risk Groups. (2007): 7. Retrieved from <http://naco.gov.in/sites/default/files/NACP-III.pdf> Accessed on 11/11/2017.

² E15. (2012, October 20). Interview with Swarupa Deb. Kolkata: West Bengal.

(Singh 2013: 59). In summary, in the early 1990s, the urban LGBT community and the traditional *hijra* community did not converge.

2.2. The First phase (ca. 1990-1999)

This section restricts itself to the issues of the transgender community and consequently does not delve deep into the Queer movement that began in *ca.* 1991-1992. However, it will be inappropriate to entirely omit the influence of the LGBT movement that contributed to the present transgender struggle. As mentioned earlier, the LGBT community was heavily affected by the police atrocities (AIBVA 1999, Baxi 2001, Narrain 2003). In response to the violence caused to the sexual minorities, several urban educated LGBT community members, began to form collectives of LGBT community members for creating a sense of solidarity and for providing support. These support systems included occasional ‘friendly counselling’. These city-based groups usually consisted of members of the gay, lesbian, bisexual and gender non-conforming (not identifying as transgender, rather as transvestites), who found solidarity and support in each other. The initial motivation for establishing these support groups was limited to seeking community membership and solidarity. There was no political undercurrent, at least in the early 1990s. E15 said:

“If you are looking at the formation of groups, publications of LGBT journals, awareness and cultural events, then it started in the early 90s. But if you are looking at a subcultural kind of committee formation or the collectives of gender and sexual non- conforming person, then there are many incidents to look at. So it's not that on a fine day we made this club and came together. There were people, who have been meeting, doing things since a very long time. It was just not very visible. So what happened in the nineties, if you look at the deeper linkages, you will see that things were already happening [sic]. But the difference was that it was more or less sexual or social, not political.”³

During the 1990s, the advent of HIV epidemic in India further marginalised the sexual and gender minority communities, when they were specifically targeted by the police as well as

³ E15. (2012, October 20). Interview with Swarupa Deb. Kolkata: West Bengal.

the society as being the prime agents of spreading HIV (Singh 2013: 99). The arrival of the HIV epidemic was a time of tragedy not only for the mainstream society but also for the sexual and gender minorities. The community members regularly succumbed to police atrocities as well as harassment and sexual abuse by goons due to the intolerant attitude of the state towards them.

AIDS Bhed Bhav Virodhi Andolan (ABVA) founded in 1988 and based in Delhi was the India's first AIDS activist association, which publically asked for the civil rights of the LGBTQ people. AIBVA received recognition with the publication of its pioneering report *Less than Gay: A Citizens' Report on the Status of Homosexuality in India* in 1991, which was the first document to publicly demand Queer rights in India. Though the document referred to Queer as a representation of LGBT community, where LGB stood for Lesbians, Gays, Bisexuals, the T represented Transsexuals and Transvestite, instead of the modern sensitivities of the term Transgender. In this regard, E15 ruminates:

“Strangely, the term transgender was nowhere in the picture. The term transgender only came in the 2000s. There was already so much confusion. So many people used to come to us for the term. I remember Mahohar [Elavati], E1 and I used to talk about it a lot. So initially, we all knew that some people wanted to change their body and be a woman and some women wanted to be men. That community was then known as Transsexual or Transvestite.”⁴

In *Less than Gay: A Citizens' Report on the Status of Homosexuality in India* (ABVA 1991: 17), transsexual was defined as:

“An individual anatomically of one sex, who firmly believes s/he belongs to the other sex. This belief is so strong that the transsexual is obsessed with the desire to save his/her body, appearance, and social status altered to conform to that of his/her ‘rightful’ gender. The popular description of this situation is that the transsexual male feels like a woman trapped in a man's body; not synonymous with “gay” though some gay persons may fit this description.”

⁴ E15. (2016, September 20). Interview with Swarupa Deb. Kolkata: West Bengal.

While transsexuals were understood as a category of people seeking to pathologically alter their anatomy, the transvestite was described as a psychological gender expression. The transvestite was characterized as: “a person who likes to dress in the clothing which has been socially assigned to the opposite sex; some, but not all, gay people may fall into this category; nor are all transvestites gay” (ABVA 1991: 18). Though, the report did mention about the *hijra* communities as a MTF sexual non-confirming individuals distinct from transsexuals/transvestites. It did not take into account the other gender non-conforming identities like the FTMs and *Kothis*. Though these definitions of the gender varying communities were limited to the body, sexual experience and their attire, they omitted the modern socio-psychological understanding of transgender identities. The report received wide accolades for being ground breaking, as it documented the alternate lives of the sexual minorities in India.

The term transgender was used formally for the gender non-conforming individuals in India when the NACP II introduced the transgender category as a high-risk group apart from the MSM and Female Sex Worker (FSW) category. However, the term was used in a strict medical context denoting those, who were either intersexed, emasculated MTF transsexuals, and transvestites engaged in sex work. This definition of the transgender mostly represented the *hijra* and the cross dressing *Kothi* identities only.

In the 1990s, the collective formation was primarily in the form of a safe place to express one’s identity freely. It was organised around the concept of a club. Some of the early LGBTQ clubs that were established in India between 1990 and 1993 were the Red Rose in Delhi, the Fan Club, and later the Council Club in Kolkata and the Good as You in Bangalore. In early 1990s, a meeting space for the lesbian, gay and gender non-conforming persons called Fan Club was started by E15 and Anish Chaudhuri along with few other homosexual men and woman in South Calcutta. The Fan Club was mostly an ‘elitist’ urban-

centric approach towards the Lesbian, Gay, Homosexual and (barely addressed) Transgender issues. However, after conducting a few gatherings, the club closed down in 1991 due to leadership issues.

In 1993, the Council Club was established for the purpose of providing counselling and support to the LGB community. The Council Club, now defunct, later went on to successfully provide a safe and comfortable space for the LGB community of West Bengal to thrive as well as create political consciousness. If one were to document the Queer struggle, the Council Club played a very prominent role not only in West Bengal but for the pan-Indian Queer movement. It was single-handedly responsible for forming a larger network of urban LGBTQ movements in India in the 1990s. The Council Club organised the First Pride in India in 1994, where members of the sexual minorities and gender varying persons marched for the first time in public showcasing their distinctiveness and demanding recognition. However, it could not attract many *hijra* or other traditional gender non-conforming community members. Interestingly, the current line of transgender leadership in Kolkata were the members of the Council Club. They identified themselves as effeminate gay men before identifying as transgender.

Though the Indian sexual minority scene was founded on a sense of solidarity and friendship, they were not devoid of activist politics. Between 1990 and 1994, protests and mass gatherings were organised by the LGBT community against police atrocities on suspected homosexuals and for repealing section 377 of the IPC. In 1992, AIBVA (AIDS Bedhbav Virodhi Andolan) organised India's first LGBT protest rally against police atrocity on the community in Delhi (Vanita and Kidwai 2003).⁵ Subsequently, in 1994 they filed a petition in the Delhi High Court challenging the constitutional validity of section 377.

⁵ Vanita and Kidwai, *Same Sex Love in India* (2003): xix [preface].

However, the petition was dismissed in January 2001 as AIBVA became defunct and could not appear in court on the matter.

In the contrast to these developments in the urban queer scene, the position of the *hijra* and other traditional gender varying communities were very different. Due to the *Criminal Tribes Act*, the life of the transgender persons, especially the MTF transgenders were under constant surveillance that resulted in their extreme social exclusion. In turn, the community severed all its ties to the outside world except the social and cultural roles that they played in mainstream society. Thus, due to the social seclusion of the community, it generated stronger social and structural hierarchies as mentioned chapter two. Though the *hijra* community was inward looking, they thrived on their collective identity and interdependent social system that supported them. While there is no mention of the participation of the *hijra* community urban Western-centric queer movement, there were singular instances of struggle by the members of the *hijra* communities. These provided a base for the later transgender struggle in the late 1990s. While the urban transgender (then known as Queer) collectives were building on the notions of rights and equality, the socially excluded *hijra* communities, in both rural and urban centres, started mobilising based on their common identity. E15 said:

“[...] the *hijra* community, their struggle started informally from a much earlier time. Their *gharanas* are a century old. So, once we talk about movement, their efforts were already there, so we need to acknowledge that. They [*hijra* *gharanas*] were already mobilised and well connected. Of course, not in terms of our modern sensibilities of movement, struggle, identity politics and all that, but they had already formed a collective based on their exclusion and common identity.”⁶

E16, a transgender activist associated with the struggle in West Bengal since its inception (now residing in Bihar), highlighting the social position of the *hijra* community said:

⁶ E15. (2016, September 20). Interview with Swarupa Deb. Kolkata: West Bengal.

“See in India the transgender community is not outside the mainstream. They are always a part of it. In the West, yes, they are outside the margins of civilised normal society. But in India, they are part of the most important rituals of life, that is, birth and marriage, both associated with procreation. That itself shows that they are not marginalised. It is that they do not have legal security and protection. It is a Western imagination that some English educated homosexual people like to think that they have an upper-class standard but we [*hijra* and other traditional gender non-conforming communities] are beggars and uncivilised people.”⁷

Due to lack of any social support, security and the nature of extreme marginalisation facing the transgender persons, the *hijra* community started building a close-knitted support system of their own outside the mainstream society. Their autonomous sub-culture provided support for runaway uneducated transgenders from a rural background. This eventually led to further strengthening of the orthodox guru-chela hegemony. Though the *hijra* community has a distinct self-identity, it can be argued that they remained untouched by the initial urban support groups like the Council Club and others for two reasons.

In 1994, Shabnam Mausi a member of the *hijra* community from Madhya Pradesh wrote to the Chief Election Commission enquiring under which category could *hijra* vote. This effort eventually resulted in Election Commission issuing a direction allowing *hijra* to register as male or female in the electoral role depending on their statement at that time (Narain 2003). Shabnam Mausi was eventually elected as a member of the Madhya Pradesh State Legislative Assembly thus increasing the visibility of the gender non-conforming communities. Kamala Jaan, another member of the *hijra* community from Madhya Pradesh was elected as a mayor of Katni. However, her election was contested because the seat for the mayor was reserved for women. The Madhya Pradesh High Court decided that a *hijra* was a castrated male, and thus, Kamala Jaan could not occupy the seat of the mayor (Narain 2003). These sporadic events of the *hijra* community members claiming their rights drew the attention of the urban Queer organisations.

⁷ E16. (2016, October 28). Interview with Swarupa Deb. Patna: Bihar.

Round this period, in the late 1990s, sexual minority NGOs like Sangama in Karnataka and Sahodaran in Tamil Nadu contributed to the struggle for transgender rights. Sahodaran, an NGO at Tamil Nadu established in 1998, was successful in bringing together the queer-identified sexual minorities as well the traditional *hijra* and *kothi* identities across varied educational and class backgrounds. Unlike Sangama, the influence of Sahodaran however, remained restricted to Tamil Nadu as they employed linguistic and regional politics to mobilise the community members. Sahodaran engaged the discourses of Dravidian/Tamil identity to invoke the values of the Self Respect Movement for forming a collective of sexual minority and gender non-conforming communities. Sahodaran reinterpreted the gender-based marginalisation of the communities as the subjugation of the lower class/caste by the upper class/caste. Thus, it appealed to the community members to inculcate self-respect about their identity. During the field study, it was observed that gender non-conforming communities of Tamil Nadu and Pondicherry feel a sense of pride and empowerment in their identity. E5, an *Aravani* transgender, resonated with the emotion: “See we are not like this by choice. God made us like how they made any man and woman. It is natural like anybody else”.⁸ On the contrary, it was observed that several transgender community members of Tripura and West Bengal referred to their identity as a “god’s mistake”. Sahodaran concerned itself with providing support and solidarity for the MSM and *Kothi* communities from the underprivileged backgrounds while maintaining close ties with the traditional community as well as the educated Queers and urbane for developing community leadership.

In Karnataka, Sangama has been credited by several transgender activists towards moulding the transgender movement that we see today. Sangama was formed in 1999 as a response to the repeated atrocities towards the gender non-conforming community members by Manohar Elavati, a gay man with the support of his other friends belonging to the LGBT

⁸ E5. (2015, April 04). Interview with Swarupa Deb. Chennai: Tamil Nadu.

community, for raising awareness for mobilising the community about their rights and identity. As the term transgender was uncommon at the time, a majority of the gender non-conforming communities used to identify as MSM or gays, and those who were initiated into the traditional communities identified in accordance to their community identity. Several transgenders were regularly harassed and abused by the police under section 377 of *Indian Penal Code* alleging them to be homosexuals. Though, Sangama began much like the Council Club in Calcutta- by providing a space for safe meeting place and forming a collective on the basis of community identity- it eventually occupied itself with raising awareness and solidarity among transgender persons. The awareness sessions known as ‘Sunday meetings’ by several transgender persons in Karnataka were mostly conducted for providing a safe meeting place for the community members to express themselves without any fear. E2, a transgender activist from Tamil Nadu recollecting the initial sense of collective formation reminisced:

“We wanted a place, where, every week, people like us can come and talk about their issues in their free time [sic]. At least, there, they could dress up, speak and behave how they really felt like [sic]. This is how people like us got to know each other. One person told their friends and then they told their friends about these meeting places. We felt Oh my God! So many people! So many people like us! [sic].”⁹

Regular meetings, plays, newspaper reading sessions laid the groundwork for the collective mobilisation of the community members. Though Sangama was successful in attracting members of the sexual minority and some *hijra* and *kothis*, it was initially limited to urban participants only.

2.3. Second phase (2000-2012)

The second phase was marked by active political mobilisation of the gender non-conforming communities under a common identity. It would be appropriate to mark the beginning of the

⁹ E2. (2014, April 13). Interview with Swarupa Deb. Pondicherry.

second phase in the year 2000, when NACO was actively working towards ameliorating HIV AIDS. During the National Aids Control Programme phase II in 2000, transgender sex workers were included in the targeted intervention group (NACO 2007: 3, Chakrapani 2007: 5, Singh 2013: 98-99). The inclusion of the transgender community as being distinct from the MSM category as a high-risk group at the receiving end of the HIV infections and sexual violence consolidated the urban, educated and aware gender non-conforming communities as well as the traditional transgender communities across the country under one homogeneous identity for the first time. The LGBT and the *hijra* communities, who were demanding civil rights and the recognition of their identity at different platform, had to suddenly merge together under the growing concern of an escalating HIV risk. The focus of the community, which was seeking civil and democratic rights, shifted to healthcare rights as more and more LGBT and *hijra* community members fell prey to HIV AIDS (Singh 2013: 99).

During *ca.* 1999-2004, the police rampantly conducted “clean-up drives” assaulting sexual and gender minority community members by illegally detaining them and harassing them regularly (Baxi 2001: 1-4, Narrain 2003). This created terror within Queer as well as the *hijra* communities. The publication of a report demonstrating the violation and discrimination of the MSM and *hijra* community in 2001 by the People’s Union for Civil Liberties-Karnataka was one of the earliest efforts at concrete attempts for political action. They demanded an end the violation of their constitutional rights. Section 377 of the IPC had grown into a powerful tool in the hands of the police and other deviant groups for abusing, harassing and torturing members of the sexual and gender minority. Section 377 reflected colonial ideologies of interpreting any penetrative sex that was against the course of nature as unnatural and thus, criminal (Narrain and Bhan 2005: 7). In 2001, four people were arrested and charged with suspected homosexuality in Lucknow. Not only were these individuals denied bail but were shamed publically by accusing them of spreading HIV. This incident is

popularly known as the 'Lucknow incident'. This and other hate crimes towards sexual and gender minorities eventually led to the filing of a Public Interest Litigation by the Naz Foundation in the Delhi High Court seeking legalisation for homosexual intercourse between consenting adults in December 2001.

At that time, Sangama members realized that in the absence of an effective mechanism for mobilising the members of the sexual and gender minority communities they would face more violence and they had no place to seek recourse. Thus, in February 2002, a Sunday drop-in centre called, Vividha- a crisis intervention programme for sexual minorities for the poor and non-English speaking backgrounds was formed in Bangalore. Two more similar outreach programmes were launched in other districts of Karnataka. Sangama members and volunteers would listen to the problems of sexual minorities in the local parks, gardens or other public areas and intervened on their behalf whenever police came for clean-up drives. The reason, why Sangama was more successful in collecting and mobilising sexual and gender minorities across diverse backgrounds was due to its strategic approach towards the traditional communities. The main difference between Sangama and the Council Club was that the former despite being a city-based organisation not only provided space for the urban educated sexual minorities but also involved the *hijra* and *kothi* communities as well. These communities were otherwise considered lowly, as beggars and sex-workers. The Council Club, on the other hand, projected itself as a closed group for social and intellectual deliberations on matters related to identity politics of sexual and gender minorities. It was restricted to educated professionals only. Thus, the Council Club in Kolkata or even the other sexual minority organisations like the Naz Foundation, the Red Rose Club in Delhi and other urban LGBT fora could not appeal to the insular *hijra* and *kothi* communities though all these organisations were engaged in rights-based activism.

It was observed during the field study that the educated, upper-class homosexual community dwelled upon issues of the indigenous communities through a Western centric sex/gender framework ignoring their socio-cultural association, unlike Sahodaran and Sangama. E7, an academic and a sexual minority activist from Karnataka, mentioned that during 2002, a series of police harassment acts on the *hijra* and *kothi* sex workers in Karnataka agitated the community members further.¹⁰ The sexual minorities thus, began to collaborate with the on-going sex workers' movement to create an impact on the state government for recognising the rights of sex workers of all genders. In August 2002, representatives of both groups met S. M. Krishna, the Chief Minister of Karnataka, for submitting a memorandum against police violence on sex workers in Karnataka (Narrain 2003). Immediately, a Sex Workers' Forum was formed to address the concerns of both female and gender non-conforming sex workers. A state-wide public protest was organised on 28 June 2002 in front of the Bangalore Town Hall, where female, male and LGBT sex workers participated in huge numbers. This was followed by the first ever "*Hijra Habba 2002*" organized on 24 August 2002 as an initiative for providing public platform and visibility to the otherwise socially ostracised gender and sexual minorities. The *Hijra Habba* served its purpose well as it was positively covered by regional media. The community members from all over the country participated with enthusiasm.

In the same year (2002) Chandni, a transgender woman allegedly committed suicide in Karnataka. It was later discovered that her husband had killed her. As the police were not ready to file a case for murder, Sangama and the Sexual Minorities Forum immediately intervened expressing the lack of social security for transgender and people belonging to the sexual minority. The matter garnered state and national media's attention. As a result, the transgender community of Karnataka spurred into mobilizing against discrimination by both

¹⁰ E7. (2016, August 18). Interview with Swarupa Deb. Bangalore: Karnataka.

the State and the mainstream society. The transgender community members in Karnataka believe that the Chandni Case may have triggered the transgender movement for rights and identity in South India.

Soon after, the fateful Banasankari event followed, during early 2004, that served as a nationwide catalyst for mobilised the transgender communities under the umbrella term 'transgender' for launching a struggle for their rights and identity.¹¹ Certain respondents recollected that over thirty transgender people, who were assembled in the Banasankari Park in Bangalore, were massacred ruthlessly by the police. The Banasankari incident was not a stand-alone event. The dismissal of the Naz petition by the Delhi High Court in 2001 on the ground of *locus standi*, further agitated the sexual and gender non-conforming communities. These incidents collectively sowed the seeds for a greater merger of the interests of the transgender communities and the Queer movement towards responding to the violence inflicted upon them.

In West Bengal, the urban transgender communities, which earlier identified themselves as gay/transvestites now began to identify themselves as transgenders with the growing popularity of the term. Unlike Karnataka, no particular event or series of events has yet been documented in West Bengal that acted as a catalyst towards the collective mobilisation of the transgender communities of the state. E13recalled:

“[The] Council Club was an informal setting for people like us to come together and talk and discuss ourselves and our lives [sic]. During that, some of us met people from the outskirts, rural areas, who used think they were all gay and bisexual men. So after, the Council Club ceased to function. Some of us started different organisations. Like Prateek, Sappho and Amite and others between 2001 and 2003. That time we transgenders used to think we were gays. I mean those who were from urban areas and not from the *hijra* community. We found that people were constantly harassing the

¹¹ The Banasankari incident and the atrocities caused towards the transgender communities of Karnataka were captured in a motion picture documentary *Let the butterfly fly* (2010) by Gopal Menon. Available at https://www.youtube.com/watch?v=12rH9_1XcII. Accessed on 05/12.2017

transwoman because of their visibility. So we began a formal network for HIV intervention. That was the main concern initially.”¹²

Thus, after the Council Club dissolved in 2000, transgender persons started their own support groups at different locations in West Bengal. These smaller support groups eventually turned into civil society organisations such as Amite Trust under the leadership of Aparna Banerjee, while Ranjita Sinha led Gokhale Park, E15 and E17 started SAATHII in Kolkata.

In order to develop a common voice for the urban LGBT and the traditional transgender communities, a national consultative meeting was convened in 2005. Thus, a collective mobilisation around section 377 of the IPC began. The highlight of this attempt was the birth of a Delhi based coalition called ‘Voices Against S 377’. This coalition not only included members of the LGBT community and traditional gender non-conforming communities but also women’s and human rights activists, medical practitioners and academics. They initiated a nationwide struggle demanding that section 377 be read down towards excluding adult consensual sex as a criminal offence under the Indian Penal Code (Singh 2013).

The HIV-AIDS crisis, though a tragedy, brought with it ample opportunities for the transgender community members. The community was identified as a marginalised high-risk group and received formal acknowledgment. Furthermore, NACP phase III not only acknowledged the transgender communities right to health care, but also claimed that until their civil and political rights as well as issues relating to their social marginalisation were not addressed, a resolution of their health care issues will be incomplete. Thus, NACP III provided opportunities for the transgender communities with funds for sensitization and community strengthening, which opened a flood gate of new avenues (Singh 2013: 119). The funding opportunities led to the formation of community-based organisations that provided support to the vulnerable communities.

¹² E13. (2016, October 19). Interview with Swarupa Deb. Srerampore: West Bengal.

The struggle, which thus far concentrated on asking for health care and ending violence, now developed into a political movement for recognising their identity and seeking equal rights for the community. In the earlier phase, non-transgender civil society organisations were directing the course of the struggle. In the second phase, due to the intervention of Community Based Organisations, transgender community members took charge of the movement through leadership building among the community members. Between *ca.* 2000 and 2006, several sexual and gender minority CBOs mushroomed all across India. Dai Welfare Society (1999) in Maharashtra, Lakshaya Trust (2002) in Gujarat, Sundar foundation (2004) in Tamil Nadu and Sahodaran Community Oriented Health Development Society (SCOHD) (2003) in Pondicherry were some of the important CBOs that were active till the end NACP phase III. These CBOs, which began with the aim of providing support for the community members by creating leadership and accountability within the community, eventually brought a sense of empowerment within the community.

In 2003, Manobi Bandopadhyay a transwoman from West Bengal, who was employed as a college professor and lived on campus, in the teachers' quarters- was forced to move out because of her gender non-conformity and was accused of child abuse. E13 approached the West Bengal State Human Rights Commission complaining against the discrimination in workplace by her colleges (Bandopadhyay 2017: 105). She was eventually cleared of the accusation, and thus, was able to retain her position and reclaim the living quarter. In 2004, Karnataka State government acknowledged the transgender community with the effort of Sangama and the Sexual Minority Forum by issuing driving licences in the 'other' category. In 2005, the Government of India introduced a category 'E' (eunuch) in passport applications for the members of the transgender community. In 2006, the transgender community of Tamil Nadu set up a model for public sensitization by conducting a workshop on "Third Gender Concerns" in Chennai with the participation of the government officials of Tamil Nadu.

During the workshop, members of the transgender community sensitized the police and other government officer of their problems. Moreover, the Supreme Court passed an order remanding the PIL filed by the Naz Foundation back to the Delhi High Court so the matter could be heard on its merits. Additionally, the National Aids Control Organization (NACO) filed an affidavit in the Delhi High Court stating that the enforcement of section 377 of the IPC was a hindrance to HIV prevention efforts. In 2007, the Madras High Court provided a verdict favouring the member of the transgender community in the case of *Jayalakshmi v. The State of Tamil Nadu*. Pandian, a transgender person from Tamil Nadu, was harassed by law enforcement personnel. Unable to bear the humiliation, Pandian committed suicide. In his dying declaration, he stated that he had ended his life because of the harassment faced from the police. Jayalakshmi, Pandian's sibling filed a case against the law enforcement personnel and the State of Tamil Nadu holding them responsible for his death. The Madras High Court passed an order against the law enforcement personnel and ordered to the State to pay a compensation of Rupees fifty thousand to the petitioner. That same year (2007), Sexual Reassignment Surgeries were conducted legally in Tamil Nadu for the first time in two government hospitals. In April 2008, with the establishment of the Tamil Nadu *Aravanigal* Welfare Board, Tamil Nadu gained the reputation of being the most transgender pro state in India (ECIRTP 2013: 35, 80). The transgender welfare board was the first of its kind response towards the transgender community by any state government in India. In Tamil Nadu, the transgender communities, which were already forming a collective based on their regional and linguistic identity then began an active movement demanding rights for the transgender community. The community garnered recognition by affiliating with dominant political parties. It was observed that the DMK and the AIDMK parties, which were followers of Periyar's ideologies, led to the socio-cultural de-marginalisation of the community in Tamil Nadu (Lingam 2013:15). Several transgender experts from Tamil Nadu

expressed the role played by Ms. Kanimozhi in supporting the challenges faced by the transgender community and advocated for transgender welfare in the State.

DMK's regional/linguistic based ideologies contributed to the changing status of the transgender communities in Tamil Nadu. It has been argued that because of Periyar's ideology the traditional *hijra* social structure in Tamil Nadu was comparatively less oppressive than the *hijra gharanas* elsewhere. In this regard, L. E1 added:

“In Tamil Nadu due to the many activities and reforms within the community, the traditional set up [*hijra* hierarchy] is loose here and more and more people are coming out of it. So many transgender individuals are now joining alliances with political groups like CPIM, Tamil Nadu Progressive Writer's Association and all that. Kanimozhi, daughter of Karunanidhi, she, mobilised a number of transgender people into joining DMK party. You can see many transgender leaders like E7, Priya Babu, Revathi, E2, E5 and many others, who are not only members of the traditional community but are also engaged in activism trying to break the traditional hierarchical setup.”¹³

E5 affirming the role of Self-Respect Movement in transgender identity building said:

“There was a space for transwomen to get associated with movement like the Self-Respect Movement. Mainly because the Periyar movement was completely revolutionary, throwing away tradition, religion, everything, creating a new space for everyone, who was marginalised [sic]. Therefore, transwomen could fit in.”¹⁴

In 2009, Laxmi Narayan Tripathi moved the Maharashtra State Human Rights Commission in Mumbai on the matter of the right to vote for transgender people. Tripathi appealed against denial of voting rights for the transgender communities as a violation of their human rights (Medhini 2013: 27). Tripathi lodged a complaint demanding the government to extend the fundamental right to vote for the transgender people. In response, the Maharashtra SHRC issued notices to the Chief Secretary of Maharashtra state. Consequently, in 2009, the transgender community won the right to be listed as 'others', distinct from males and females, on the electoral rolls and voter identity cards. In 2010, the

¹³ E1. (2015, April 10). Interview with Swarupa Deb. Chennai: Tamil Nadu.

¹⁴ E5. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu

Bangalore University introduced an 'others' category under the gender column in its application format. The same year, Laxmi Narayan Tripathi and other transgender leaders conducted India's first transgender beauty pageant named 'Indian Super Queen' in Bangalore. Tripathi said that such platforms would provide a sense of empowerment to the community members (Tripathi 2015: 132). Thus, the individual examples of personal gains translated into visibility, empowerment and collectivisation of the transgender communities in India.

As mentioned earlier, the HIV epidemic which brought crisis and disaster into the lives of transgender communities also opened new avenues for them. Moreover, due to the collective formation and mobilisation of the transgender community, several regional transgender communities now became visible (Singh 2013: 121). The Chakrapani Report of 2010 titled *Hijra/transgender women in India: HIV, human rights and social exclusion* is one of the first sources that list diverse transgender communities apart from the *hijra* identity across socio-cultural categories. These otherwise ignored and dispersed communities like, *Shiv-Shakthis*, *Jogappa/Jogamma* became visible during the second phase. This further contributed towards marking a distinct identity for the transgender community apart from the Queer communities. During this phase, the transgender communities and the Queer community were distinguished from each other as they had different needs and agendas (Singh 2013: 121-123). The heterogeneous gender varying communities now began to identify themselves under the umbrella term transgender.

During this phase, several county wide, transgender fora/seminars and workshops were conducted by the various transgender organisations towards setting a common agenda and popularising the term transgender. Moreover, it was during this phase that the term transgender, which was initially perceived as a medical term for denoting Gender Identity Disorder or a category of HIV infected/vulnerable individuals, now evolved into a distinct

political identity. An attempt to define the meaning of transgender by V. Chakrapani during this phase clearly shows the shift from the medical to the political. Chakrapani (2010: 3) thus, affirms:

“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 pre-operative, post-operative and non-operative transsexual people (who strongly identify with the gender opposite to their biological sex); male and female ‘cross-dressers’ (sometimes referred to as “transvestites”, “drag queens”, or “drag kings”); and men and women, regardless of sexual orientation, whose appearance or characteristics are perceived to be gender atypical. A male-to-female transgender person is referred to as ‘transgender woman’ and a female-to-male transgender person, as ‘transgender man’.”

The year 2010 proved to be a year of promise for the sexual and gender minorities in India. The annual NACO report of 2009-10 announced decline and containment of HIV epidemic in India. Moreover, the Delhi High Court in July 2009 read down section 377 of the IPC decriminalising homosexuality among consenting adults. The Naz judgement brought in a sense of empowerment and pride to the sexual minority community as their sexuality was formally legalised. The Naz judgment further encouraged the transgender community to file a PIL in the Supreme Court of India seeking a legal declaration of their self-identified gender identity and claiming a legal status as third gender with the accompanying legal and constitutional protections. The PIL, *NALSA v. UOI* and others, was filed in 2012 by the National Legal Services Authority, when former Chief Justice Altamas Kabir was the Patron-in-Chief of NALSA. During the interview with L. E1, it was learned that Justice Kabir had closely associated himself with the perils of the *hijra* and other traditional transgender communities.¹⁵ Filing of the petition served as the final catalyst that altered the course of the transgender movement. During the period of filing the PIL, the transgender communities came out of the shadows of the Queer community, pronouncing their exclusive identity, distinctiveness in terms of linguistic, regional, social and cultural categories. At the same

¹⁵ E1. (2015, April 10). Interview with Swarupa Deb. Chennai: Tamil Nadu.

time, new nomenclatures like transwoman, transman, non-operative transgender and others came into fore. Another lesser-known PIL that was filed for ameliorating the condition of the transgender community was by the Salvation of Oppressed Eunuchs (SOOE) in the Bombay High Court in the same year.

2.4. Third phase (2013 and onwards)

The period after 2012 was a phase that witnessed a range of policy and advocacy issues concerning the transgender communities of India. The NACP that had begun the health care activism concerning the transgender community had now evolved into conscious socio-political activism for an inclusive civil rights movement and the recognition of gender non-conforming identities apart from the normative male and female gender categories. One of the outcomes of the health care activism that happened between ca. 1999 and 2010 was recognising that the little could have been done to prevent HIV-AIDS among the communities unless their issues and rights were not concurrently addressed. Interestingly, this shift of focus from claims for healthcare to claim for rights can be observed within the policy framework of the State as well. According to a survey carried out by SOOE, in 2011, the transgender community of India faced extremely “stigmatised, socially marginalised and economically impoverished” conditions.

Subsequently, in July 2012, the Cabinet Secretariat decided that the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) would handle the PIL and the related matters in consultation with other relevant ministries. Thus, a meeting was organised by the Ministry of Social Justice and Empowerment on 23rd August 2013 for discussing the issues related to the transgender persons in India. Representatives from the transgender community, academics, and state governments were invited. At this meeting, it was suggested that an expert committee should be constituted for an in-depth study of transgender community and suggest suitable remedial measures for addressing their

problems. Thus, an order for constituting an expert committee on the issues relating to the transgender community was made on 22nd October 2013. The committee was given a three-month time frame to submit a report. Thus, on 27th January 2014, the report of the committee on transgender person was submitted to the Ministry of Social Justice and Empowerment, New Delhi. The eighteen member committee was mandated to make an in-depth study of the problems being faced by the transgender community and suggest suitable measures that can be taken by the government to improve their problems. The committee members were from different backgrounds like the academia, transgender communities and government. The committee received many comments from the state of Manipur, Rajasthan Kerala, Madhya Pradesh and others for the upliftment of the transgender community in the respective states. The Expert Committee provided an extremely comprehensive and wide-ranging definition of the term transgender as a group of

“Individuals of any age or sex whose appearance, personal characteristics, or behaviours differ from stereotypes about how men and women are “supposed” to be. Transgender people have existed in every culture, race, and class since the story of human life has been recorded. Only the term “transgender” and the medical technology available to transsexual people are new. In its broadest sense, transgender encompasses anyone whose identity or behaviour falls outside of stereotypical gender norms.”

(ECIRTP 2013: 1)

The Expert Committee compiled a list of various transgender socio-cultural groups. However, by strictly restricting the concerns of the committee to the issues of transgender persons, and it did not discuss the issues of lesbian, gay and bisexual persons. While discussing transgender identity, a crucial issue for consideration is whether a transgender person should be categorized as male or female depending on his/her choice, or a separate category of third gender, namely, ‘transgender’ should be created. In this regard, the recommendation for a certification committee was proposed towards declaring one’s transgender identity (pp. 33-34). It was pointed out in the committee meetings that the

genesis of the problems of transgender persons in India laid in the stigma and discrimination they faced in the society. Thus, for solving this problem, a dedicated effort to mainstream the community through an adoption of an inclusive approach in all spheres of life was require (p. 148).

While 2013, proved to be an eventful year for the transgender community, in terms of the executive arm of the state acknowledging their challenges and recommending ways to ameliorate their situation, disappointment and outrage soon broke out in the Queer and sexual minority communities. On 11 December 2013, the Supreme Court of India set aside the progressive 2009 judgement of the case *Naz Foundation v. Govt. Of NCT of Delhi* issued by the Delhi High Court. It recriminalized sexual intercourse “against the order of nature”. The verdict of the case *Suresh Kuma Kaushal v. Naz Foundation* stated that section 377 of the IPC did not suffer from the vice of unconstitutionality and the declaration made by the Division Bench of the High court to decriminalise consensual homosexual relation between adults was legally unsustainable. The bench observed that unless a clear constitutional violation was proved, the court could not invalidate the section in the IPC.

Soon after, the Supreme Court provided a significant judgement pertaining to the rights of the gender minorities. This judgement of the Supreme Court in the case of *NALSA v. UOI* (14th April 2014) was a landmark one because the judiciary formally recognised, for the first time, a third gender, outside the traditional binary classification of gender as male/female. Until this judgement, sex/gender determination was based substantially on biological elements alone, otherwise known as Corbett principle or the biological test. Now, the Court brought in the element of psychological evaluation of an individual as a necessary condition for deciding the gender identity of a person. The Court judiciously employed the international guidelines on issues related to sexual orientation and gender identity including the *Yogyakarta Principles* of 2006 (Paras 22 and 23), the *Universal Declaration of Human*

Rights of 1948 and the International Covenant on Civil and Political Rights of 1966 (Para 21) via the “doctrine of harmonisation” (Para 51). The judgement sought to alter nearly two centuries of discrimination against transgender the people in India. The judgement also discerned gender identity from sexual orientation, whereby the former was intrinsic to the individual while the latter was expressed in relation to another person (Para 19 and 20).

The NALSA judgement had far-reaching consequences than what was conceived in the beginning. Though the judgement was considered to be one of the most progressive verdicts, several transgender and Queer leaders recognised that the Supreme Court’s judgment to criminalize homosexuality on one hand while acknowledging the transgender identity was contradictory. Moreover, the judgement somewhere bifurcated the common interest of the Queer and transgender collective mobilisation as well. In this regard, R11, a member of the transgender community from Karnataka said:

“State is doing divide and rule. First, they said homosexuality is not approved, then quickly they got this transgender judgement saying that we are acknowledging the transgender. We are the same community. How can you separate both? Our sexual relations also come under section 377 only, or else how will we have sex? So the government is doing divide and rule on us.”¹⁶

E13 resonating similar feelings affirmed:

“I think the government is again playing the divide and rule policy on us. It is giving us the choice of gender identity as I want, but again the government has in a diplomatic way criminalised my sexuality.”¹⁷

Though the NALSA judgment provided a sense of pride and legal inclusion to the transgender communities, the case was won only inside the courtroom and not in society. Soon after the judgement, the transgender struggle became complex. During the field study, it was observed that the struggle was reduced to a service providing tool in the post NALSA phase. Instead of engaging with the challenges emerging from the binary gender as well as

¹⁶ R11. (2016, August 23). Interview with Swarupa Deb. Bangalore: Karnataka.

¹⁷ E13. (2016, October 21). Interview with Swarupa Deb. Srerampore: West Bengal.

making efforts to implement the Expert Committee recommendations and the SC judgment, the community members seemed to be more concerned with their individual politics. The fund flow that was available during 2002 and 2009 from the NACP projects began to dry out as the NACP entered into its fourth phase in 2013. As the spread of HIV was- to an extent- contained, several transgender CBOs that flourished during the time began to disappear. As a result, the thriving transgender struggle became vulnerable to the politics of funding. The movement that had laid its basis on improving sensitization and community support became prone to intra community politics. The transgender struggle, which was until recently positioned on attaining acknowledgement was launched into a fragmented regionally dispersed struggle.

The new line of transgender community leaders, who belonged to the traditional communities, came out of their traditional organisations. They challenged the traditional structure as abusive and patriarchal. This threatened the distinct primordial gender non-conforming communities of India. Some transgender leaders saw economic opportunities in the fund politics. Thus, they began to set up organisations for receiving funding from various sources at the same maintaining dominance over the transgender communities in the locality. These transgender organisations remodelled themselves into a newer version of the traditional oppressive community organisation. Though several transgender leaders do not believe in the orthodox guru-chela relations, it was observed that they were highly domineering and enforced a sense of control over the transgender persons of their area. Moreover, it was observed that prominent transgender leaders had established their own civil society organisations for providing counselling, advocacy, awareness and support to the transgender community. However, it was disheartening to see that though these organisations and their top leadership while maintaining a façade of solidarity were competing with each other for grants and funding resources. The organisations seem to operate in their specific

areas only, while ensuring that all transgender persons of that particular area were affiliated to their own organisations. These transgender leaders boasted of their position over the others and were less concerned with the grass root community members. Moreover, dependency on fund-related politics and bifurcation of the struggle led to multiple variations of gender non-conforming identities. E16 expressing her concerns on this situation said:

“The established NGOs and CBOs had started a rat race for getting funds. These NGOs and CBOs are nothing but the traditional system in a new corporate style. Then they start controlling their areas, their customers. So it is not the community is trying for de-marginalisation. It is just a charade. They have evolved into a more professional setting. It is all a race for earning money.”¹⁸

In another attempt at ameliorating the condition of the transgender persons, *The Rights of Transgender persons Bill, 2014* was introduced in Rajya Sabha on 12th December 2014, which was passed by the upper house of the parliament on 24th April 2015. The Bill was presented in Rajya Sabha by DMK Member Tiruchi Siva. In accordance with Article 17 of the *International Convention on Civil and Political Rights* 1966, of the Bill proposes for ‘targeted interventions by the State towards undoing centuries of discrimination that the transgender community has faced’. Section 2 (f) of the Bill defined Transgender persons as:

“[...] whose gender identity does not match with the gender assigned to the person at birth and includes Transmen and Transwomen (whether or not they have undergone SRS or hormone or laser therapy etc.), gender queers and a number of socio-cultural identities such as *kinnar*, *hijra*, *Aravanis*, *Jogtas* etc.”

The Bill provided for equality and non-discrimination towards transgender persons granted under Article 15 of the Indian Constitution along with the right to life and personal liberties, right to live in a community without any discrimination and having access to equal community choices, social security and inclusion within society (section 7). It proposed reservation for the transgender communities in educational and employment sectors.

¹⁸ E16. (2016, October 28). Interview with Swaruapa Deb. Patna: Bihar.

Additionally, the bill proposed National and State Commissions for transgender persons and provisions for penalising offences and hate speeches against transgender community members (section 50). The bill was popularly called as Tiruchi Siva Bill and was considered as a most inclusive legislative instrument. However, there was an unanticipated delay in discussing the bill in the Lok Sabha. The reason became evident, when on 26 December 2015, the Ministry of Social Justice and Empowerment uploaded a draft Transgender “Protection” Bill 2015 with diluted provisions of its predecessor. Subsequently, the massively watered down Transgender Persons (Protection of Rights) Bill, 2016 that was passed by the Rajya Sabha betrayed the transgender community due to its insensitivity to the community and its concerns.

2.4.1. Select key milestones in the transgender struggle since 2015

Between 2015 and 2016, several positive responses from the State as well as non-state agents towards the transgender community were observed. A time line of the struggle for transgender rights has been prepared towards documenting a chronology of the significant events between 1969 and 2017, which have impacted the movement (Appendix II). To avoid repetition of the facts, this segment comments on select events concerning the transgender struggle and the response of the State.

On 12 November 2015, the Department of Social Justice, Kerala unravelled the State Policy for transgenders. The Kerala State policy is the only transgender policy in India thus far. On 27 October 2017, the Karnataka transgender policy was cleared by the cabinet. Sangama has actively participated in drafting both the state transgender policy. It would require further research to understand the impact of these state policies on the transgender communities in Kerala and Karnataka respectively. On 19 January 2016, a pre-Legislative Consultation on Rights of Transgender Persons Bill, 2015 was held under the chairmanship of Minister, Social Justice & Empowerment Mr Thaawarchand Gehlot along with

representatives from the concerned ministries, legal experts and representatives of transgender community in New Delhi. This resulted in the introduction of *The Transgender Persons (Protection of Rights) Bill, 2016* in the Lok Sabha on August 2016. Section 2 (i) of the bill defined transgender as “transgender person” means a person who is- (A) neither wholly female nor wholly male; or (B) a combination of female or male; or (C) neither female nor male...”. The bill diluted the progressive attitude of its predecessor Tiruchi Siva bill, 2014. The bill faced outrage and rejection from the transgender community members and activists for its pre-colonial sensibility or lack of it regarding the transgender community. Additionally, civil society organisations like Sangama, Sahodaran and others demanded that the new bill be framed either by the members of the transgender community, or in consultation with them. Thus, On 22 August, 2016 Sangama in association with Reach Law organised a press conference in Delhi demonstrating that the new bill instead of imposing social and legal security for the transgender community violated their identity and was in discord with the Expert Committee recommendations as well as the NALSA judgement. Later, the Forty-Third Report of the Standing Committee on Social Justice and Empowerment made amendments to *The Transgender Persons (Protection Of Rights) Bill, 2016*, which was presented in Lok Sabha on 21 July 2016 and placed in the Rajya Sabha on the same date. A detailed comment on the situation of the bill has been made in chapter 4.

The University of Kerala announced its educational policy for transgender people in September 2016. This policy has provisions for identifying transgender students in educational institutions under the University of Kerala, protecting their identity and self-respect, sensitizing teaching faculty, non-teaching staff as well as the student community with penalties for discrimination, violence and harassment. The policy further identified measures to be implemented for resolving problems of safety of transgender individuals, creating an inclusive curriculum, providing monetary assistance for transgender students and conducting

awareness programmes for faculty members/teachers and administrative staff. Shortly after the education policy was unveiled, a trans-inclusive school Sahaj International was inaugurated in Kochi, Kerala on 30 December 2016. The school, while seeking to address real issues faced by transgender individuals, is expected to serve as a skill development centre for transgender school dropouts and train them under the National Open School System for the examinations corresponding to class 10 and 12. It is worth highlighting that the teachers and staff of the school have members from the transgender community. The issues related to the transgender education and the response of the Indian State has been detailed in chapters 6 and 7.

2.5. Chronicling transgender struggle: An appraisal instead of a conclusion

Although anthropological studies of specific transgender communities in India by Serena Nanda (1999), Gayatri Reddy (2006) and Aneka (2012) have material that could constitute the elements for a history of the transgender community in India, the recent struggle for the rights and identity of the transgender people has not been historically documented. There thus exists an authentic research gap in the field of transgender studies in India. A historical account of the struggle could empower the sense of dignity of the transgender individuals and communities. In addition, such a history could also generate new knowledge.

Transgender people and women have at least one point of convergence and another of divergence. Women were hidden from history for a long time. However, the women's movement of the 20th century created a space for documenting and writing histories of women. Transgender people were 'invisible' too, but unlike women, transgender people were criminalized. This poses a serious challenge for writing the recent history of transgender struggle. There is a paucity of sources and there are hardly any well maintained archives. Any attempt to document the history of the transgender struggle would have to rely on reports by civil society organizations, transgender autobiographies that are now emerging in the public

domain and anecdotes narrated by transgender people as well as activists. This chapter has relied on these three kinds of sources for chronicling a narrative of the recent transgender struggle for rights and identity in the four states of India.

In chronicling a narrative account, the preliminary step was to prepare a timeline as given in the appendix. This timeline in the appendix revealed ruptures and it was therefore divided into three phases, which explains the structure of this chapter. In the first phase of the struggle between *ca.* 1990-2000, the transgender people remained criminalized. With the emergence of the HIV-AIDS crisis, women sex workers and the Queer community became the focus of attention and not so much the transgender people. However, a gradual mobilisation of the transgender people was emerging at around the same time though they continued to remain outside the margin of society.

Since 2001, transgender people began to be recognized as an independent identity within the Queer movement. This marked the beginning of the second phase of the transgender struggle in India. In 2005, the National Aids Control Programme specifically targeted the transgender people in the second phase of the intervention programme. Consequently, it was recognized that matters of public health or transgender health problems were connected to the absence of civil and political rights of the transgender people. This led to targeted medical intervention by NACP and targeted intervention empowered the struggle of the transgender community for rights and identity. This phase of the struggle culminated in December 2012, when the National Legal Services Authority filed a Public Interest Litigation against the Union of India in defence of the rights of transgender people. This litigation separated the second from the third phase of the transgender struggle in India. In the third and most recent phase, since 2013, the executive and judicial organs of the Indian State have responded with provisions for decriminalizing transgender people and guaranteeing the protection of their rights. This chapter attempted to chronicle a narrative account of that

struggle for transgender rights since the *hijra* convention that was organized in Delhi in the late 1980s.

**CHAPTER 4: THE STATE, CIVIL SOCIETY AND
TRANSGENDER PEOPLE**

The chapter maps the systematic exclusion of the transgender community through colonial legislations like the *Criminal Tribes Act 1891*, the *Indian Penal Code 1860*, the *Andhra Pradesh (Telangana Area) Eunuchs Act, 1329F* and the *Karnataka Police Act, 1963* that have marginalized the transgender communities in India. It examines the responses of the Judiciary, the Executive and the Legislative against the perpetual humiliation, violence and socio-legal exclusion faced by the transgender communities in India. As mentioned in the previous chapters the on-going transgender struggle in India has been seeking the legalisation of their identity and the promised constitutional right for equality and equal protection under the law. Thus, this chapter seeks to understand the extent to which the Indian state has been able to emancipate the transgender communities from the shackles of socio-legal regulations.

Though Indic texts have made references to gender non-conforming identities, there exists a huge gap of information regarding the lives of the transgenders communities for several hundred centuries i.e. from late 16th century to early 19th century. During this period, most of the discourses on non-binary gender minorities were either based on eroticizing the community or looking at them through the lenses of deviance. One of the prominent references of the gender-conforming community was made during the enactment of the *Criminal Tribes Act of 1871*, which criminalized every aspect of the lives of the community causing grievous consequences to their identity and human rights. (Baxi, 2001: 2, 2003: 4-5).

2.1. Transgender phenomenon and the colonial British Indian State

Indic philosophy has the concept of *tritiya-prakriti* which means third nature. They are mentioned as third sex by nature and are not expected to behave like ordinary men or women. Their participation in religious ceremonies, especially as cross-dressing dancers and devotees of certain temple gods/goddesses, is considered auspicious in traditional Hinduism. Some Hindus believe that third-sex people have special powers allowing them to bless or curse others (Nanda 1999: 49, Lal 1999: 132). The *Vedas*, which form the foundation of Hinduism,

do not refer explicitly to homosexuality, but the *Rigveda* refers to *Samsara* that consists of *Vikruti Evam Prakriti* (normal and different). The *Kama Sutra*, an ancient text dealing with *kama* or desire, which in Hindu philosophy is one of the four normative and spiritual goals of life compiled by Vatsayana around the 4th century CE. Vatsyayana mentions the third sex (*tritiya-prakriti*), describing them as those, who appear masculine but dress up as women. Studies in the Indian context have extensively mentioned the scope for gender non-conforming identities within the Indic texts (Vanita and Kidwai 2003: 20, Reddy 2006: 19). However, it was argued that the contemporary violence against the *hijra* community can, in fact, be traced back to the laws enacted in colonial India that pushed the gender non-conforming communities to social exclusion (Baxi 2003: 1-2).

2.1.1. *The Criminal Tribes Act, 1871*

The *Criminal Tribes Act 1871* was an extraordinary legislation that departed from the principles on which the Indian Penal Code was based. In the *Indian Penal Code*, in order to establish an accusation, the accused in question needs to be proved guilty beyond reasonable doubt. However, the *Criminal Tribes Act* was based on the assumption that certain communities and tribes were criminals by birth, and that criminality was passed on from generation to generation. The idea of a criminal tribe was based on the notion that ‘crime as a profession passed on from one generation of criminal caste to another’. The *Criminal Tribes Act* has the extraordinary jurisdiction to prosecute members of a notified ‘criminal tribe’ on the basis of assumption/suspicion. The Act included gender non-conforming communities through the colonial perception of the normativity of the binary gender. Thus, any gender expression that was in non-conformity with the Victorian ideas of male and female were considered deviant, and hence, criminal. According to section 24 (b) of the Act, an eunuch was “deemed to include all members of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent”. Thus, under the provision of this Act, the local

government was required to maintain a register of the names and addresses of all eunuchs who are “reasonably suspected of kidnapping or castrating children or of committing offences under section 377 of the *Indian Penal Code*” (Section 24 a). According to the section 27 of the Act, “If the eunuch so registered had in his charge a boy under the age of sixteen years within his control or residing in his house, he could be punished with imprisonment of up to two years or fine or both”. *Section 26* of the Act further provided that “A eunuch so registered who appeared dressed or ornamented like a woman in a public street or who dances or plays music or takes part in any public exhibition, in a public street be arrested without a warrant and punished with imprisonment of up to two years or with a fine or both”. According to section 29 of this Act, a eunuch was made incapable of acting as guardian, making a gift, drawing up a will or adopting a son.

Thus, due to the gender non-conformity of the eunuch, every aspect of their lives was subjected to restriction and strict policing. This discriminating attitude towards the eunuchs manifested into a “deviant” stereotype that haunts the transgender identity even today. The gender non-conforming/eunuchs were thus portrayed as impotent/castrated, cross-dressing, singing and dancing for livelihood. The social prejudice against the community considering them to be deviants took root from this Act whereby the eunuchs were suspected of kidnapping children and castrating them. Thus, the colonial status stripped the gender non-conforming individual from their human rights and dignity and stigmatised their identity and suppressed their voice.

2.1.2. Section 377 of *The Indian Penal Code, 1860*

The Criminal Tribes Act was repealed in 1949 but the discrimination against gender non-conforming people has lingered on in the section 377 of the *Indian Penal Code*. It is one of the dominant bones of contention that concern the lives of both queer as well as transgender communities in India. Section 377 of the IPC penalises ‘Unnatural Offences’. It reads:

“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation - Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

In the previous chapter, it was mentioned that the gender non-conforming and queer communities have been struggling to decriminalise consensual homosexuality among consenting adults. Clearly, section 377 is based on the ideas of binary gender and that sexual relations are only for procreation and thereby maintain the order of the society. Essentially, any form of sexual intercourse which does not result in procreation comes within the rubric of section 377 of the IPC. After a progressive verdict to decriminalise homosexuality by the High Court of Delhi is the case of *Naz Foundation v. Government of NCT of Delhi and Others* in 2009, the Supreme Court of India in the case of *Suresh Kumar Kaushal v. Naz Foundation* dismissed the verdict of High court re-criminalising homosexuality within the scope of section 377 in 2013.

Though section 377 of the IPC might not seem to be affecting the transgender community, it is important to understand that the issues concerning homosexuality also concern the transgender community. The implications of section 377 are located largely within Queer and homosexual contexts but the transgender community too is affected by this. Although several transgender community members identify themselves to be strictly heterosexual irrespective of their physiology at a practical level they too attract the provision of “carnal intercourse against the order of nature”. Moreover, due to the homo/trans phobia associated with the transgender people, they are often vulnerable to violence and harassment under section 377 of the IPC.

Another Indian statute by which the transgender communities are regularly harassed is the *Immoral Trafficking Prevention Act, 1956*. Though the Act does not forbid prostitution,

it criminalizes brothel keeping, trafficking, pimping and soliciting. Though the Act was a mechanism to prevent sex trafficking and to provide rehabilitation of the sex workers sex workers, it marks them vulnerable to discrimination and violence. Sections 7 and 8 of the Act respectively deal with prostitution in public places and soliciting. In India, the majority of the arrests of sex workers are under section 8, which defines the offence of soliciting for purpose of prostitution. Though the Act was applied only to female sex workers, the transgender sex workers too come under the ambit of this act. The police often target sex workers including women and transgender on the grounds of preventing immoral trafficking and protecting public order and decency. Thus, ITPA has become an instrument of police atrocities against the community. The transgender persons are specifically targeted due to their gender status and the lack of any support system. The community members are taken into police custody, humiliated, and brutally tortured without lodging any case. Thus *section 377* of the IPC and ITPA are two of the major sources of State violence against the community.

2.1.3. *Andhra Pradesh (Telangana Area) Eunuchs Act, 1329F and The Karnataka Police Act, 1963*

Certain state legislations like the *Andhra Pradesh (Telangana Area) Eunuchs Act, 1329F* and Section 36A of *Karnataka Police Act, 1963* echo the colonial sentiment of the *Criminal Tribes Act, 1871*. The Provisions of the *Andhra Pradesh Eunuch Act* are exactly similar to the *Criminal Tribes Act*. Section 1(A) of the Act states: “A eunuch shall for the purpose of this Act include all persons of the male sex who admit to be impotent or who clearly appear impotent on medical inspection.” Section 2 provides for the maintenance of a register by the government that will contain: “the names and place of residence of all eunuchs residing in the City of Hyderabad or at any other place [...] and who are reasonably suspected of kidnapping or emasculating boys, or of committing unnatural offences or abetting the commission of the said offences [...]” Kannabiran (2017) argues that the existence of the

Eunuchs Act despite the legalisation of the transgender identity by the Supreme Court of India has resulted in the continued practice of criminalisation of the transgender persons in Andhra Pradesh (Telengana).

Additionally, section 36A of the *Karnataka Police Act, 1963* reads:

“Power to regulate eunuchs- The Commissioner, may, in order to prevent or suppress or control undesirable activities of eunuchs, in the area under his charge, by notification in the official Gazette, make orders for- (a) preparation and maintenance of a register of the names and places of residence of all eunuchs residing in the area under his charge and who are reasonably suspected of kidnapping or emasculating boys or of committing unnatural offences or any other offences or abetting the commission of such offences, (b) filing objections by aggrieved eunuchs to the inclusion of his name in the register and for removal of his name from the register for reasons to be recorded in writing; (c) prohibiting a registered eunuch from doing such activities as may be stated in the order. (d) any other matter he may consider necessary.”

Thus, the existence of such legislative provisions has continued to put the gender non-conforming identities of India in perilous situations. Though the Constitution of India provides for equality and equal protection under the law, the existence of such legislation against the transgender community clearly shows that gender non-conformity does restrict individuals and communities from accessing rights available to the binary genders.

2.2. Recent responses of the Indian State against extant discrimination

The *Universal Declaration of Human Rights* (1948), the *International Covenant on Civil and Political Rights* (1966) and the *International Covenant on Economic, Social and Cultural Rights* (1966) together promote and encourage respect for human rights and for fundamental freedoms for all without distinctions of race, sex, language and religion. Although these international documents might be restricted by notions of sex/gender of the time in which these were drafted, these have nonetheless established global precedents for emphasizing the rights and identity of all human beings. Therefore, in the following section, only those

international precedents that have had a direct and perceptible influence upon Indian laws concerning the transgender people have been alluded to.

4.2.2. Global and regional precedents

4.2.2.1. The Yogyakarta Principles

The Yogyakarta Principles developed in November 2006 is one of the earliest efforts to affirm binding international legal standards that all States are obligated to comply with respect to gender and sexual minorities. The Yogyakarta Principles deals with a wide-ranging issues and challenges facing the sexual and gender non-conforming identities and the application of human rights standards towards ameliorating their marginalised status.

Principle 1 of the Yogyakarta Principles deals with the right to the universal enjoyment of human rights stating that: “All human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights.” Consequently, the clauses 1(a) and (b) principle directs the States to stand for the universality of human rights for all its citizens in their national constitutions or other appropriate legislation towards the realisation of the universal enjoyment of all human rights. The principle further directs the states to amend any legislation towards ensuring its consistency with the universal enjoyment of all human rights. Principle 1 (c) directs the States to undertake programmes of education and awareness to promote sensitization of human rights of all persons irrespective of sexual orientation or gender identity and to integrate a pluralistic approach within State policies towards recognising and affirming inclusion of aspects sexual orientation and gender identity.

Principle 2 provides for the rights to equality and non-discrimination to all human beings irrespective of their sexual orientation or gender identity. Thus clause 2(a) and 2 (b) directs the States to adopt the principles of equality and non-discrimination on the basis of sexual orientation and gender identity in their national constitutions by the means of

amendment and interpretation. Principle 2(b) further provides for repealing criminal and other legal provisions. Clause 2 (e) of the principle further add that the sexual and gender non conformitivity based discrimination might intersect with other forms of discrimination. Therefore clause 2 (f) appropriate actions needs to be taken by the States towards eliminating prejudicial and discriminatory attitudes towards the community members.

Principle 3 provides that everyone has the right to recognition as a person before the law irrespective of their sexual orientation and gender identity. The principle further states that no one shall be subjected to concealment, suppression or denial of their sexual orientation or gender identity. Therefore, clause 3(a) - (d) of this principle directs the States to ensure that all persons are accorded legal capacity in civil matters, freedom to express their self-defined gender identity and respect the dignity and privacy of the person concerned.

Principle 4 provided that everyone has the right to life and no one shall be arbitrarily deprived of life thus, directing the States to repeal any mandates that attack the lives of persons based on sexual orientation or gender identity.

Principle 6 provides for the right to privacy for all regardless of the sexual orientation and gender identity 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. According to the scope of this principle the right to privacy includes the State to grant freedom to all for choosing to disclose or not to disclose information relating to one's sexual orientation or gender identity, as well as decisions and choices regarding one's own body and mind.

Apart from the basic human rights standards, the Yogyakarta Principle provides civil rights of the transgender pertaining to Right to Work (Principle 12), Right to social security and other Social Protection Measures (Principle 13), Right to adequate standard of living and Adequate Housing (Principle 14 and 15), Right to Education (Principle 16), Right to the

highest attainable standard of health and protection from Medical Abuses (Principle 17 and 18). The Yogyakarta Principles furthermore provides for Right to Family (Principle 24), Right to Participate in Public and Cultural Life (Principle 25 and 26). It provides for legal aid for the community through the Right to promote human rights and the Right to effective remedies and grievance redresses (Principle 27 and 28)

4.2.2.2.UNAIDS Action Framework – Universal access for MSM and transgender people (2009)

The United Nations AIDS Action Framework was developed with a view to achieving universal access to HIV prevention, treatment, care and support for MSM and transgender people in order to achieve universal access for all. The framework highlights that well-collaborated actions must be grounded in an understanding of and commitment to human rights and that actions must be informed by evidence. Action is required by a broad range of stakeholders including affected communities, allies, governments and the private sector.

4.2.2.3.Status of the transgender communities in Nepal, Pakistan and Bangladesh

The Supreme Court in the verdict of *NALSA v. UOI* and others have mentioned the effort taken by the neighbouring states of Pakistan, Bangladesh and Nepal towards recognising the transgender communities and their rights. Therefore, it is only apposite to dedicate a brief section to assess the legal status of the three states in comparison to India because of the shared histories and the cultural continuities between these countries.

Among India, Pakistan, Bangladesh and Nepal, the latter is the pioneering country in the whole of South Asia towards recognizing transgender identity and in establishing equal rights for gender non-conforming people through the ruling of its Supreme Court in the case *Sunil Babu Pant and others v. Government of Nepal* in 2007. The Supreme Court of Nepal directed the Government of Nepal to make necessary arrangements, towards ensuring that people belonging to gender non-conforming communities could enjoy their rights without

discrimination. Furthermore, the court ordered to make amendments to the constitution for guaranteeing non-discrimination on grounds of gender identity and sexual orientation. Consecutively, the citizen card system in Nepal that provides access to ration card, voter ID card and citizenship cards to all Nepalese citizens was amended to provide a separate column for a third sex.

Pakistan followed suit on 25 April 2009 in the landmark judgement that emerged out of a public interest litigation case *Dr. Mohammad Aslam Khaki v Sr Superintendent of Police*. The Supreme Court of Pakistan ruled that as transgender people were equal citizens of the country, they enjoy the protection of the State as well as the support schemes provided by the provincial governments. It ruled that the government conduct a survey of transgender people; directed the National Database and Registration Authority to insert a third gender column in national identity cards; ordered the corresponding authorities to register transgender people in electoral rolls; instructed the Interior Ministry to assist transgender people with inheritance rights and to ensure that the police provide adequate protection to transgender people from crime as well as from police harassment.

Unlike Nepal and Pakistan and India, the recognition of the identity and rights of transgender people in Bangladesh was not a consequence of a judicial decision, rather through an executive action in 2009 (Jain and Rhoten 2013: 11). The Government of Bangladesh has also recognized the right of transgender people for inheriting family property.

Pakistan, Bangladesh, and Nepal have provided national identity cards to the transgender citizens as well as passports with the third gender option (Sanders 2008: 9, Jain and Rhoten 2013: 11). There is a growing civil society movement in Pakistan that supports transgender rights led by organizations like the Participatory Organization for Empowerment of Transgender people (POET), which is based in Karachi and it was formed for persuading the government to implement measures for protecting transgender rights. In Nepal and

Pakistan, one can undergo SRS only in the case of a gender identity disorder. The Nepalese government has provided for special toilet facilities for transgender persons. Pakistan provides free education to all transgender persons. In Nepal, transgender people have the opportunity to be trained as chefs and caterers, beauticians and hair-dressers under a new scheme funded by the Norwegian government. The Government of Pakistan has reserved a quota of two per cent of jobs in all sectors and has even proposed anti-discrimination laws in employment. The government and civil society organizations in Nepal are collaborating with international organizations towards initiating projects to provide income-generating skill based training for the transgenders. The government of Bangladesh has promised to provide separate budgetary allocation for the education and training of transgender persons. *Hijra* sex work though has been made legal by the Supreme Court of Bangladesh in 2000.

4.2.3. The Expert Committee on Issues Relating to the Transgender Persons

The previous chapter provided a chronological narrative account of the struggle for transgender communities' rights. The chapter argues that the Indian state responded towards the issues of the transgender communities as a result of the communities forming a collective towards seeking the legalisation of their identity and asserting the constitutional protection of their rights. In response to the struggle, one of the significant measures adopted by the organs of the governments of India was the constitution of the Expert Committee on issues relating to the Transgender People in 2013. The eighteen-member committee included members from the transgender communities, civil society organisations, academics as well as bureaucrats.

The Expert Committee report stated that Constitution of India is 'sex blind' and does not discriminate between its citizen on the basis of sex and gender, and therefore, guarantees equality for all irrespective of their gender identity (p. 147). The report was premised on several international precedents pertaining to transgender rights in a global context. The committee report acknowledged that the transgender people were citizens with equal rights

under the Constitution. One of the key recommendations of the Committee was to declare the transgender communities as third gender category and be treated on par with socially and economically backward communities through affirmative action (p. 148). The report additionally provided recommendations with regard to access to health-care, educational opportunities, housing, employment as well as other challenges faced by the community (p. 150).

The Expert Committee acknowledged that legal recognition of gender identity of transgender people should be based on their choice. Thus, the Committee recommended that a transgender person shall have the choice to declare himself/herself either as a man, a woman or a transgender. The Committee recommended that only the nomenclature 'transgender' should be used to denote the transgender community members in legal documents instead of 'Other' or 'Eunuch' (p. 148). The Committee further stated the need for a certification committee towards declaring one's transgender status based on the Tamil Nadu *Aravinal* Welfare Board created by the Tamil Nadu State Government (p. 154). The Tamil Nadu Transgender Board issues transgender identity card on the basis of the clearance given by the District Level Screening Committee headed by District Magistrate/Collector and comprising Deputy Director (Tamil Nadu State Housing Society), District Social Welfare Officer, psychologist/psychiatrist and a representative of the transgender community. The Committee also recommended that Tamil Nadu model may be adopted by other States (p. 155).

The Expert Committee viewed that inclusive approaches both from the State and non-State actors should be the bedrock of Government's strategy to mainstream the transgender community. The Committee recommended that the Ministry of Social Justice & Empowerment collaborate with all concerned Ministries/Departments of Government of India and state governments to include the development of the transgender community in

their policies, programmes and schemes towards de-marginalising them (p. 149). Furthermore, it was recommended by the committee to employ a convergence approach by advocating that concerned ministries to support education, housing, access to healthcare, skill development, employment opportunities and provide financial assistance to the transgender community (p. 154). The Expert Committee recommended that identification be provided for transgendered persons in all Government and non-Government records by introducing a separate column to include the third gender. Moreover, the report suggested the Ministry of Social Justice and Empowerment along with the Ministry of Statistics and Programme Implementation to conduct a national census towards determining the number of transgender persons in India and map their socio-economic status in order to create statutes for protecting the interests of the community and for improving their living conditions (p. 157). This may also help the concerned ministries in preparing appropriate schemes for the improvement of their socio-economic status.

While addressing problems like stigma, discrimination and violence faced by transgender people, it was observed by the Expert Committee that the initial discrimination begins at the family level. Thus, awareness and sensitisation programmes were needed for parents to support their gender non-conforming children (p. 150). Additionally, counselling and other mental health care services for the children and their parents alike were recommended. The Committee recognised that besides a supportive family environment, gender-conforming and transgender youth needs appropriate counselling and support to overcome self-doubt and for coping with the trauma of violence and abuse faced by them at different social institutions (p. 151).

Healthcare is arguably the most compelling challenges. The Expert Committee recommended intervention programmes to reduce discrimination against transgender persons (p. 155). Acknowledging the challenges faced by the transgender community with regard to

housing, the Committee recommended that every effort should be made to provide safe residence for the community. The Committee recommended to the Ministry of Social Justice & Empowerment to seek convergence with other ministries and their existing schemes like MGNREGA, National Rural Livelihoods Mission, National Urban Livelihood Mission, National Health Mission, *Indira Awas Yojana* and others for a more targeted and focused approach towards the welfare of transgender community, while considering an exclusive scheme for direct targeted intervention in specific areas (p. 152).

The Committee opined that legal and law-enforcement systems needed to be sensitized on the issues of transgender people. The agencies ought to be sensitized in case of sexual assault, harassment and violations of human rights of transgender persons (p. 157). Admitting the role media plays in shaping public opinion, the Committee recommended that the transgender human rights issues must be highlighted in the media and other public fora so as to improve public awareness and also to curb stigmatizing portrayals of the community (p. 157). The Committee concluded by recommending that the Department of Social Justice & Empowerment and the Ministry of Social Justice & Empowerment to act as the nodal agency of the Government of India for matters concerning the transgender communities. Furthermore, the Committee recommended that the Department of Social Justice & Empowerment should coordinate with various Ministries/Departments of the Government of India and state governments for ensuring welfare measures for the transgender persons.

4.2.4. *National Legal Services Authority versus Union of India and Others*

The judgement of the Supreme Court in the case of *NALSA v. Union of India* (15th April 2014) is a landmark one because the judiciary has formally recognised, for the first time, a third gender, outside the traditional binary classification of gender as male/female. Until this judgement, sex/gender determination was based substantially on biological elements alone, otherwise known as Corbett principle or the biological test. Now, the Court has brought in the

element of psychological evaluation of an individual as a necessary condition for deciding the gender identity of a person.

The Court judiciously employed the international guidelines on issues related to sexual orientation and gender identity including the *Yogyakarta Principles* of 2006 (paras 22 and 23), the *Universal Declaration of Human Rights* of 1948 and the *International Covenant on Civil and Political Rights* of 1966 (para 21) via the “doctrine of harmonization” (para 51). It argued that if Indian society is as yet unwilling to embrace different gender identities (para 1), and, if Indian domestic law is not in conflict with international covenants pertaining to human rights (para 119), these norms of international law may be applied to Indian conditions. This persuasive argument not only underlines a striking innovation within Indian jurisprudence but also spells out a nuanced aspect of judicial activism, whereby the Court sees itself as an agent propelling social change.

In recognizing the third gender, the Court was not only following the guidelines prescribed by contemporary international comparative law, as in Australia and New Zealand (paras 27 & 28) as well as elsewhere but was also harking back to the traditional Jain concept of “psychological sex” (para 15). This decision of the Court to include biological and psychological elements in determining gender identity of an individual is in tandem with the recommendation of the Expert Committee on issues relating to Transgender Persons, wherein it is stated that a person could be certified as transgender on the “recommendation of a district level screening committee headed by the Collector/District Magistrate and comprising of the District Social Welfare Officer, psychologist, psychiatrist a social worker and two representatives of the transgender community [...]”¹ Such a method of determining the gender of a person recognizes the individual’s right to choose one’s own gender (para 7, 62 & 84), and this element of choice alone makes the judgement one of revolutionary salience.

¹ Recommendation no. 6, clause ii of the section titled “transgender identity” in the “Summary of conclusions and recommendations” of the *Report of the Expert Committee on issues relating to Transgender Persons*.

Siddhartha Narrain has advanced the argument that this judgement of the Supreme Court of India has opened up the possibility of the emergence of a distinctive South Asian jurisprudence on transgenders that may eventually contribute to expand the international human rights discourse on gender and sexual minorities (Narrain 2014). This is verily possible because, as the judgement of Justice Sikri emphasized, the transgender people in India belong to a separate category, uncommon to most other parts of the world except in certain neighbouring countries (para 108). Elsewhere in the judgement, it has been noted that historically (paras 12-17), both in the legendary past as well as during the Medieval era, transgender people had a prominent role to play in society but changed with the coming of British laws. Section 377 of the *Indian Penal Code* of 1860 and the *Criminal Tribes Act* of 1871 criminalized all penile-non-vaginal sexual acts and also criminalized the appearance of eunuchs in public. Since then transgender people in India have been faced with stigma and prejudice, abuse as well socio-economic marginalization. The judgement has sought to alter nearly two centuries of discrimination against transgender people in India.

The judgement also discerned gender identity from sexual orientation, whereby the former is intrinsic to the individual while the latter is expressed in relation to another person (para 19 and 20). Consequently, transgender people have been defined as those whose gender identity, behaviour, and expression do not conform to biological sex and includes pre-operative, post-operative and non-operative transsexuals who strongly identify with persons of the opposite sex (para 11).

The theme of the judgement asserted that non-recognition of the transgender identity violated the natural rights enshrined in Part III of the Indian Constitution, especially the right to equality, right to equal protection under the law, and the right to dignity in accordance with the Preamble of the Indian Constitution. Admittedly, there was enough and more evidence to conclusively prove beyond the shadow of doubt that non-recognition of transgender people

have resulted in society discriminating against them in the domains of health, education and employment. The judgement consequently added that expressing oneself as a transgender was consistent with the right to freedom of expression (para 62). Though the judgment was widely appreciated by the transgender as well as the non-transgender communities alike, some of the varying opinions of transgender respondents on the judgment recovered during the field studies are given below:

“There are a lot of questions concerning identity and I would say the Supreme Court judgement did not answer. So it is not a complete judgement and a total sham.”²

“I am happy with the judgement”.³

“This judgement? What is it giving us? Nothing. Can a transgender marry or not? Is she having any reservation for education? Can they adopt children or not? Maybe she can get a loan from the bank or something? May be she can get a credit card or not? There is nothing. Just like blind. Ok, we are giving you third gender status ok finish. Then after work who will do? It is already one year, still, nothing happened. It is like ok on paper and on paper also it is only for the court”.⁴

“It is good. Now people know about us. They are aware of our existence”.⁵

“I have heard people saying something about Supreme Court. But I am not educated...so I could not understand exactly”.⁶

“I have never heard of it”.⁷

“SC is saying we are the third gender. So who is first gender? Who is second gender? If men are the first gender, *to pehle mahilaon ka he de-marginalisation nahi hua to transgender ka kya aukaat?* (If the woman is still marginalised then who will care for the transgenders?)”.⁸

² E1. (2015, April 10). Interview with Swarupa Deb. Chennai: Tamil Nadu.

³ R1. (2015, April 12). Interview with Swarupa Deb. Chennai: Tamil Nadu.

⁴ E2. (2015, April 13). Interview with Swarupa Deb. Pondicherry.

⁵ R9. (2015, April 20). Interview with Swarupa Deb. Namakkal: Tamil Nadu.

⁶ R33. (2015, October 19). Interview with Swarupa Deb. Agartala: Tripura.

⁷ R31. (2015, October 22). Interview with Swarupa Deb. Agartala: Tripura.

⁸ R11. (2016, August 23). Interview with Swarupa Deb. Bangalore: Karnataka.

“I know the judgment gave us freedom. But if I want to marry and have children, that and all judgment is not saying”.⁹

“I think the Supreme Court judgement actually recognised us. That is a very big step”.¹⁰

“We want to get married legally, have children and all. But the judgement is silent there. We are a part of the society, even if they agree it or not. So a judgement is really not required. I would have personally appreciated the judgment had some real provisions for us.”¹¹

“Yes, it was very heartening when the judgement came, but when you look at it closely there are no specific directives. Nobody has made that extra effort to clarify certain extra stances. Sexual violence, domestic violence, adoption, marriage, inheritance all these aspects are muted in the judgment.”¹²

“It seems government has accepted us. Will they give us money?”¹³

The excerpted remarks from the transcripts of the interviews reveal that though the transgender communities received a sense of relief due to their formal recognition, they expressed their apprehension as the judgment could not fulfil some of their aspirations. The community members expressed that the step for self-identification of gender was indeed progressive. However, they were not happy with the third gender identity as it highlighted a sense of hegemony among the genders. Moreover, the judgment’s silence on towards the issues of marriage, adoption, inheritance rights, social security and other concerns were challenged by the community members.

4.2.5. *Rights of Transgender Persons Bill, 2014 and Transgender Persons (Protection of Rights) Bill, 2016: A comparison*

The Rights of Transgender Persons Bill, 2014, presented by DMK party member Tiruchi Siva was introduced in the Rajya Sabha as a private member’s bill on 12th December, 2014. The

⁹ R13. (2016, August 25). Interview with Swarupa Deb. Bangalore: Karnataka.

¹⁰ R14. (2016, August 25). Interview with Swarupa Deb. Bangalore: Karnataka.

¹¹ R18. (2016, September 03). Interview with Swarupa Deb. Bangalore: Karnataka.

¹² E15. (2016, September 20). Interview with Swarupa Deb. Kolkata: West Bengal.

¹³ R25. (2016, September 26). Interview with Swarupa Deb. Puruliya: West Bengal.

bill was highly appreciated by the transgender community members and activists for being progressive and taking the perils of the community into consideration.

The Rights of Transgender Persons Bill, 2014 was passed by the Rajya Sabha on 24th April 2015. In accordance with Article 17 of the *International Convention on Civil and Political Rights* (1966), the Bill proposes for “targeted interventions by the state towards undoing centuries of discrimination that the transgender community has faced”. The Bill consisted of fifty eight clauses in ten chapters dealing with issues ranging from rights and entitlements, education, employment and skill development, social security, health care, rehabilitation, duties and responsibilities of appropriate governments, provisions for constituting National and State Commissions for transgender persons and Transgender Rights Special Courts among others. In concordance with the Expert Committee Report and the *NALSA v UoI* verdict, section 2 (t) of the Bill defines Transgender persons as:

“Whose gender identity does not match with the gender assigned to the person at birth and includes Transmen and Transwomen (whether or not they have undergone SRS or hormone or laser therapy etc.), gender queers and a number of socio-cultural identities such as *Kinnars, hijras, Aravanis, jogtas* etc.”

The Bill provided for equality and non-discrimination towards transgender persons granted under Article 15 along with the right to life and personal liberties, right to live in a community without any discrimination and access to equal community choices, social security and inclusion within society (section 4-7). Furthermore, the Bill provided for measures to ensure human rights of transgender persons across age groups along with rights to living facilities, provisions for inclusive educational opportunities as well as provision for transgender education programmes (section 13). It provided for non-discriminatory policy in employment, infrastructure for vocational training and self-employment (section 15). Towards discrimination free healthcare facilities, the Bill provided for separate HIV sero-

surveillance care, free of cost sexual reassignment surgery and 'barrier-free' access in health care institutions (section 18).

Apart from addressing the day to day issues faced by the transgender communities in the areas of education, employment, housing, and health care, the Bill also provides scope for legal protection and social security of the community (section 9). The rights of the transgender bill provided scope for rehabilitation programmes for transgender persons in the areas of health care, education and employment in consultations with NGOs working towards transgender causes as well as for equal participation in the cultural life and other recreational activities towards including them into the mainstream society (section 20). The Bill provides for two per cent reservation for transgender persons in all government funded/recognised primary, secondary and higher secondary educational institutes, government establishments and incentive policies in private sector as well as provision for Special Employment Exchange for transgender persons (section 21-22).

The Bill was hailed to be progressive because it had proposed National and State Commissions for Transgender persons. Such commissions shall consist of a Chairperson and six members out of whom at least three members shall represent transgender community (section 26 and 38). Additionally, the Bill proposed for a special Transgender Rights Court for each sub division as well as an exclusive Transgender Rights Court for each district and city (section 46). The Bill also provided for penalising offences by establishments and hate speeches against Transgender persons/ community (section 50).

On 1st August 2016, the Ministry of Social Justice and Empowerment introduced another bill on transgender protection. *The Transgender Persons (Protection of Rights) Bill 2016* heavily diluted the private member's bill passed by the Rajya Sabha to a point of being called the most "insensitive response of the State" by the transgender communities across

India. On the contrary, section 2 (i) the *Transgender Persons (Protection of Rights) Bill 2016* begin with defining a transgender person as:

“Who is— neither wholly female nor wholly male; or a combination of female or male; neither female nor male; and whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.”

This definition is not only degrading to the transgender communities as it perceived transgender persons as semi-human and incomplete in reference to the binary gender. Moreover, this definition is inconsistent with the Expert Committee Report as well as the NALSA judgement, which provided transgender as a distinct gender identity independent of the binary gender. Against the Tiruchi Siva bill that advocated the self-identity of the transgender community in accordance with the NALSA judgment, the *Transgender Persons (Protection of Rights) Bill 2016* proposed a district screening committee towards certifying the identity of the transgender persons. Moreover, the 2016 Bill removed the provisions for National and State Transgender Welfare Commissions, which was one of the unique and significant aspects of the Tiruchi Siva bill. Moreover, the 2016 Bill removed the provision for reservation in education and employment for the transgender community as well as avoided discussing their rights to marriage, inheritance and adoption among others. The bill further removed the State’s responsibility of protecting the community against violence and hate crimes.

The 2016 Bill was widely criticised by transgender communities for being extremely insensitive towards their needs. In response, several prominent transgender civil society organisations made press releases demanding a revision of the Bill.¹⁴ E11, critiquing the judgement said:

“It is probably one of the worst bills in a long time. It is most regressive. In 2015, the government came with a rough draft and asked for comments. We organised a South India consultation with

¹⁴ Sangama press release. Available at <https://thewire.in/rights/will-the-transgender-persons-bill-2016-actually-enable-the-community>. Accessed on 22/08/2016.

around thirty other organisations and submitted our comments along with other individuals and civil society organisations. We want to stand clear and tell the government that we might start a nationwide campaign regarding the present bill. We might go till parliament for pushing amendments.”¹⁵

E10, a transgender activist from Karnataka added:

“So we had the Tiruchi Siva bill and then the parliament’s own bill. We discussed all that with women’s rights associations; jail rights associations and other minority communities about the bill. The new bill does not go with the many current laws, the inter-sectionality is not working. They are not discussed in this bill. So now we are thinking of recommending that we draft the Bill ourselves.”¹⁶

The field studies in Karnataka and West Bengal were conducted during the on-going movement against *The Transgender Persons (Protection of Rights) Bill 2016*. The transgender community members claimed that the Expert Committee Report, the NALSA judgment, as well as the government bill, had collectively failed to uphold their promise of safeguarding and de-marginalising the community. Following are some extracts from the interviews with the transgender respondents for emphasizing the point:

“Some [gender non-conforming community members] want to be recognised as women, some as men and not as transgender. Some are saying why we are thrown into OBC category. Some communities claim higher status within the transgender community given their religious connotation. They are more acceptable by the general public because more than transgender they are the vehicle of god. These kinds of hierarchical problems are there. Moreover, the regional communities do not want the transgender umbrella term as they think it will dissolve their ethnic identity. So I will say that the judgment, the Expert Committee Report and the Bill have not been able to capture these varying issues. They [the gender non-conforming communities] are a part of the society even if you don’t accept it. They don’t need inclusion, they need acceptance. So I will say all three failed.”¹⁷

¹⁵ E11. (2016, August 23). Interview with Swarupa Deb. Bangalore: Karnataka.

¹⁶ E10. (2016, August 23). Interview with Swarupa Deb. Bangalore: Karnataka.

¹⁷ E7. (2016, August 18). Interview with Swarupa Deb. Bangalore: Karnataka.

“I want to marry, adopt children, and start a family. The judgement and the Expert Committee Report are not saying anything about this matter. So what is the use? The judgment is a joke...the bill should deal with our real issue not their imagination of what is transgender. We have so many different identities all over India. But because the government will get confused they want all of us to identify as transgender.”¹⁸

“These things [The Expert Committee Recommendations, the NALSA verdict, and the provisions in the 2016 Bill] are not working because they do not take our feelings into consideration.”¹⁹

“I personally think it is because of lack of political will after a point. The government does not want to go the whole way. They are doing it just for the sake of doing it.”²⁰

“The NALSA judgement or the expert committee recommendation or this new bill does not take our perceptions into consideration. They are just bureaucratic pacifiers.”²¹

“These bills, judgements, report, they have not done anything. Before all this I was a *hijra*, now I am transgender, may be in future they will call me something else. But before also I was discriminated and today also I am discriminated [sic].”²²

On 21st July 2017, the Standing Committee on Social Justice and Empowerment presented its report on the *Transgender Persons (Protection of Rights) Bill, 2016*. The Standing Committee advocated the right to self-determination of one’s gender identity as per Articles 14, 19 and 21 of the Constitution of India as well as in the language of the NALSA judgment (p. 16). The standing committee further affirmed that the definition of the transgender identity in the bill was regressive as it contradicted the psychological aspect of one’s gender identity and assumed that gender was based on one’s sexed body alone. Moreover, the Standing Committee recommended that the bill include the definition of discrimination in its provisions based on the Yogyakarta principles. On par with the NALSA judgment, the Standing Committee has taken various international precedents into

¹⁸ R11. (2016, August 23). Interview with Swarupa Deb. Bangalore: Karnataka.

¹⁹ R17. (2016, September 03). Interview with Swarupa Deb. Bangalore: Karnataka.

²⁰ E15. (2016, October 20). Interview with Swarupa Deb. Kolkata: West Bengal.

²¹ R22. (2016, October 21). Interview with Swarupa Deb. Hoogly: West Bengal.

²² R24. (2016, October 21). Interview with Swarupa Deb. Hoogly: West Bengal.

consideration towards understanding the issues of the community (p. 30). It recommended several additions to the 2016 Bill by borrowing from the Tiruchi Siva Bill with regard to reservation in educational and employment sectors, legal protection and social security of the community members. The Standing Committee further recommended for the legal recognition of the rights to adopt children by transgender persons and their rights to found a family as in the Yogyakarta principles (p. 34). The Standing Committee recommendation received mixed responses from the transgender activists as well as the members of the community. Some praised it as a sincere effort for granting justice to the community, while some criticised it for being ambiguous and lacking understanding on the nature of the transgender identities. As of November 2017, the Ministry has rejected the recommendations of the Standing Committee and plans to go ahead with the 2016 version of the bill as it was originally drafted.²³

4.3. Response of the state governments and civil society organizations towards the transgender communities since 1990s

4.3.2. Tamil Nadu

The status of transgender communities in contemporary India is currently veiled in obscurity. This is ironical considering that even though the Constitution of India provides equal rights to all its citizen, the transgender community is deprived even the basic human rights because of their gender non-conforming status. During the field study in Tamil Nadu, it was found that the state hailed for being the most pro trans-state in India was still lacking in providing social inclusion to the community members. The common transgender persons were still unaware of the welfare schemes directed towards the community.

²³ According to a newspaper report, the 2016 Bill has been amended according to the recommendations of the Standing committee report on March 2018 including the definition of the term transgender. Available at http://indianexpress.com/article/india/bill-on-transgender-rights-sent-to-cabinet-5102366/?utm_source=Dailyhunt. Accessed on 18/03/2018.

It will not be wrong to say that the transgender community of Tamil Nadu is extremely organised through a network of well-connected civil society organisations. It was learned during the field studies that the transgender people of Tamil Nadu have a network of Non-Governmental Organisations (NGO) and Community Based Organisations (CBO). Thus, transgender activism has led the state to respond in a positive manner towards the community.

During an interview with the SAATHI Tamil Nadu team, it was learnt that the targeted intervention programme specifically directed towards the MSM and TG communities that started during the end of the second phase of national AIDS control programme strengthened the formation of CBOs. These CBO programmes were initiated to strengthen the community from within and provided them with a sense of empowerment through capacity building and community leadership. This newly formed chain of community leadership in turn helped in reaching out to the transgender communities across the state from diverse backgrounds. However, as mentioned in the previous chapter, some CBOs were able to sustain themselves through the fund crunch during late 2000. The existing CBOs like TNAA, SCHOD and Nirangal among others have developed a strong footing in the community to the extent of running their own targeted intervention programmes. The civil society organisations in Tamil Nadu not only provide counselling to the transgender persons but also organise workshops and other programmes to sensitize transgender communities as well as people outside community regarding the rights of transgender people.

Tamil Nadu Aravanigal Welfare Board

Tamil Nadu Aravanigal Welfare Board otherwise known as Tamil Nadu Transgender Welfare Board was formed in April, 2008 to address the issues of transgender people of Tamil Nadu. After a decade of dedicated work, the board collapsed when the new ruling party AIADMK cut down the funds and support that the earlier party DMK had bestowed on

the Board. Several transgender persons have spoken against the new government because the welfare board along with the transgender welfare schemes have ceased to function effectively due to lack of support from the State government.

During the period, ca. 1991, the MSM and transgender communities were vulnerable due to the escalating risk of HIV as well as police atrocities. Towards the end of the 1990s, some senior transgender community leaders initiated the formation of a community-based organisation for *aravanis* and succeeded in executing HIV intervention programmes. The first transgender CBO that received government funding for HIV intervention was Tamil Nadu *Aravanigal* Association (TNAA) was fully funded by Chennai Corporation AIDS Prevention and Control Society (CAPACS). In 2002, TNAA received funds from the Tamil Nadu State AIDS Control Society (TANSACS) to organise an advocacy programme for community leadership building and HIV awareness programmes.

The opportunity for forming a transgender welfare board appeared in the early 2000s, when the Tamil Nadu government authorities took the initiative to address the “sexual exploitation of women and children”. This also required the government to simultaneously acknowledge the social marginalization of the transgender people in sex work. During the fourth Tamil Nadu state level co-ordination committee meeting to battle “trafficking and commercial sexual exploitation of women and children” held on 4th August 2003, the Commissioner of Social Defence recommended to the Tamil Nadu government to constitute a sub-committee for conducting a detailed study on the ‘rehabilitation’ of transgender people. Subsequently, a Sub-Committee for Rehabilitation of Transgender People under the Social Welfare and Nutritious Meal Programme Department was formed in the same year. The sub-committee was required to submit a report on the strategies for rehabilitation of transgender people within a month from the date of its formation. During the same time, other state

sponsored programmes were initiated to improve the economic conditions of the transgender communities.

In 2004, the Tamil Nadu Corporation for Development of Women awarded certificate degrees to transgender people, who underwent computer training. In July 2004, a group of transgender activists filed a writ petition in the Chennai High Court seeking the right to vote as per their self-identified gender. The Court decided that transgender people may choose to vote either as a male or female. In due course, since 2006, the issues of transgender people were approved in the election manifesto of the DMK party in Tamil Nadu. In August 2006, the representatives of the transgender communities in Tamil Nadu submitted a memorandum that contained several recommendations including the need to focus on the social, and health needs of transgender people to the Tamil Nadu Social Welfare Minister. Consequently, a meeting was held in October 2006 organized by the Director of Social Welfare, Tamil Nadu. The Sub-Committee for Rehabilitation of Transgender People proposed several recommendations including access to sexual re-assignment surgeries for eligible transgender people, provision for family counselling for the acceptance of the transgender people, access to educational opportunities including special vocational training and skill development training for transgender people and scope for special grievance redressal meetings to be convened by the district collectors. These recommendations were later issued as a government order in December 2006. On 24th August 2007, the Co-operation, Food and Consumer Protection Department announced its decision to issue ration/food card for transgender persons.

In December 2007, a 'public hearing' on the issues of *aravanis* was organized by a federation of NGOs working with marginalized groups. The jury of this public hearing issued several recommendations to various departments of the Tamil Nadu government. After that public hearing, the Social Welfare Commission led to form a four-member committee and

submitted its recommendation. In relation to these recommendations, the Director of Social Welfare wrote to the Tamil Nadu government, which led to the government order that announced the formation of the Transgender Welfare board on April 15, 2008. Later, the Tamil Nadu government officially announced April 15 as ‘*Thirunangai Day*’ for celebrating the day on which the Transgender Welfare Board was formed.

The Tamil Nadu Welfare Board proposed self-employment grants primarily to address the employment needs of the community. Furthermore, the board provided access to existing government schemes from various government departments including health insurance, education, and employment. Provisions for free sex reassignment surgeries were made by Kilpauk Medical College Government Hospital and Madras Medical College Government Hospital. One of the most significant contributions of the Tamil Nadu Welfare Board was in conducting a state-wide census towards enumerating the transgender community and provided them with transgender identity cards and thus making them eligible for receiving transgender specific schemes. E5, on commenting about the present situation of the transgender communities in Tamil Nadu said:

“In Tamil Nadu now we are not getting any benefits. With the new AIADMK government coming into power, all funders that were previously allotted to Transgender Welfare Board have now stopped and the board is also no more functional. Ten years ago, if the transgender people faced any kind of issue, be it legal, health-related or anything. Now we have CBOs who take our issues to media and different public spaces. May be most of the issues do not get solved, but at least they are reported and talked about.”²⁴

During the field studies in Tamil Nadu, it was observed that the transgender communities in the state enjoy their distinct identity within their well-constructed sub-culture that is both socio-culturally and politically conscious. The transgender community in Tamil Nadu is highly motivated to break away from the traditional *hijra* roles as beggars and sex

²⁴ E5. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu.

workers. However, they are still restricted in the domains of rights, health care, education and employment. These means of employment are insufficient for a dignified living, and high rate of dropouts at school level prevail due to lack of sensitization. With the Transgender Welfare Board having now defunct, there is no organ that would act as a bridge between the government and the transgender community. Such changes in the political scenario in Tamil Nadu have placed the transgender community in grave distress. Regarding the implementations of Expert Committee Report on Issues Relating to Transgender Persons (ECIRTP) the *NALSA v. UoI* judgement, many transgender community members and CBOs expressed unhappy feelings. They complained that neither of these documents have helped in uplifting the grass root level transgender person's situation.

4.3.3. Karnataka

In Karnataka, the transgender communities are less inclined towards traditional sources of occupation like *badhai* and *mangti* and seemed more comfortable expressing their identity as sex workers. Those who were working with civil society organisations in different capacities identified themselves as working class non-English speaking transgender persons. Interestingly, it was gathered during the field study that the transgender communities of Karnataka were more concerned about establishing their self-identity, which they thought was the core of their struggle unlike the transgender communities of Tamil Nadu, who were more inclined towards their rights and welfare. The transgender communities of Karnataka living within city limits had access to discrimination free health care. However, those living outside Bangalore are still facing exclusion in the areas of health care. High dropout rates in educational institutions were observed among the transgender community in Karnataka. Regarding the scope of employment, it was observed that those who did not openly express their gender non-conformity could secure employment opportunities at various organisations. Those, who were openly transgender, could merely seek employment

opportunities in civil society organisations only. However, a large number of transgender persons in Karnataka are involved in sex work.

The civil society organisation networks working towards the transgender community seemed very effective in Karnataka. On the other hand, various organs of the Karnataka State government do not seem to be in unison regarding sensitization of the community. However, on the bright side, the transgender community of Karnataka appeared to be more aware of their rights and identity and were politically sensitized. The community members openly enjoy a distinct identity apart from the normative binary gender within the city limits of Bangalore and without prejudice but problems regarding marginalisation and social ostracism still persist in rural areas. The most interesting aspect of the transgender struggle in Karnataka is that the transgender communities are not only demanding for their own rights, but they have entered into a collaborative movement along with other marginalised communities towards demanding their collective rights and identities. In Karnataka, self-identity is given more importance than the certification of gender identity unlike in Tamil Nadu. The transgender community members, both experts and grass root people opined that any person should have the right to self-identify their gender. Moreover, the transgender communities of Karnataka believe that one's gender identity need not reflect in their choice of clothing and outer appearance. Therefore, in Karnataka it is not mandatory for a *hijra* to wear sari and have long hair. Ze [sic] can grow facial hair, wear male attire and still identify as a *hijra*.

During the field study, it was learned that the condition of transgender community is comparatively better in Karnataka due to the effective civil society organisational network. Sangama has substantially contributed to pro-transgender activities of the state. Soon, others like, Vividha, Solidarity foundation, Samara and certain other organisations that bifurcated from Sangama contributed to the transgender awareness and mobilisation. An active chain of

CBOs and NGOs provide dedicated services in terms of counselling, legal aid and temporary shelter for the transgender person across age groups. NGOs like Samara and Solidarity foundation have intervention programmes for mediating between the government and the transgender community in case of any dispute. They even deal with the internal conflicts among the community members for maintaining the solidarity of the community. Moreover, these NGOs are involved in leadership programmes for creating a new line of transgender leadership for mobilising and the community further towards a collective goal. However, NGOs are not able to contribute actively in recent times by raising their voices against the government as most of them are funded by the state government. Internal disputes among the civil society members have also divided several NGOs and CBOs leading to their declining influence.

The Karnataka state government seemed to be in two minds regarding the issues of the transgender community. The response of the different branches of the state towards the community seemed to be not inclusive. Following the progressive steps to grant driving licence to transgender persons in "others" category in 2004 and the introduction of the "others" category under the gender column in Bangalore University application form in 2010, the state government of Karnataka introduced Mythri pension scheme for transgenders aged above 40 and Rs. 20,000 loan scheme in February 2014 in its 2014-2019 budget. A budget for the state transgender policy was announced and consequently a Karnataka state transgender policy draft was formulated in 2015. In October 2015, Akkai Padmashali, a renowned transgender activist, who had to start her career from Sangama was honoured with Rajyotsava Award- the highest Karnataka state civilian award for her exceptional work for the gender and sexual minorities. In November 2015, an exclusive transgender public toilet was constructed at the Mysore bus stand.

Although certain branches of the state are pro-transgender community the *Karnataka Police Act, 1963* and the failing government welfare schemes are raising concerns for the transgender communities. The community members informed that the section 36A of the Police Act reflects the colonial trans-phobic mentality of the *Criminal Tribes Act 1871*. A petition was filed by the Karnataka Sexual Minorities Forum challenging the constitutional validity of section 36A on 26th April 2011 in the case *Karnataka Sexual Minorities Forum v. State of Karnataka & Others*. On February 6, 2017, *The Karnataka Police (Amendment) Act 2016*, was laid before the Legislative Assembly to brought into effect the amended provision where the word “eunuch” was substituted for “person”.

Though both *Mythri* project as well the Rs. 20,000 loan scheme for income generating activities for transgenders had initially benefitted several transgender persons, the effects are now slowly declining. Hardly any transgender person has reaped any benefit from both schemes since 2015. A rehabilitation scheme for transgenders aged between 18 and 64 through vocational training, workshops and financial assistance announced in 2012 by the state government was never implemented. The community members informed that they still face discrimination at government offices. On being asked if the community was receiving welfare facilities from government, E11 said:

“Yes, we are getting the Aadhaar card, driving licences and all. Getting is not a problem but applying for the procedure is difficult for us due to the societal stigma [sic]. We are mocked at, in public, which is a big problem for us. You don’t give us the ration card, Aadhaar card, driving licence, we don’t have any problem! But give us respect. We do not want to be mocked and discriminated like that. What will I do with driving licence, when nobody will let me drive or give a job as their driver? When we stand in queues for my monthly supply in a ration shop people are making fun of us. We don’t want that. All these government schemes are on pen and paper only.”²⁵

²⁵ E11. (2016, September 02). Interview with Swarupa Deb. Bangalore: Karnataka.

Showing similar feelings as E11, R18 said: “They have not helped the community, the real grass root community a bit. They are still begging and singing and those who chose sex work, they are being raped daily.”²⁶

The much hyped exclusive transgender toilet in Mysore bus stand failed to impress the community members. Most of the transgender persons described it as an unnecessary effort. Some even alleged that construction of a toilet specifically for the community as part of mechanism of systematic exclusion. The community members rejected the toilet facility stating that either there should be a unisex urinal or the transgender people should be allowed to access toilets according to their target gender without any discrimination. In this regard, R11 said:

“They opened a toilet for transgender. They put a board saying transgender toilet. So nobody is going there. We do not want a toilet with the transgender board on the door. This will only lead to identifying the transgender community member and make them vulnerable to various kinds of threats.”²⁷

Most of the grass root transgenders were afraid of accessing the toilet fearing being identified and assaulted. The community also expressed their concern that the state government might be trying to stop the growing momentum of the LGBT movement. They expressed their apprehension of the state government acknowledging the rights and identities of the transgender community albeit with restrictions. However, by denying acceptance to the homo/bisexual community, the government was creating a rift between sexual minorities and the transgender communities.

4.3.4. West Bengal

During the field study, it was observed that the transgender communities in West Bengal have earned a distinct identity apart from the gender binary of male and female. However, such recognition is only restricted to the urban, educated, English speaking transgender

²⁶ E18. (2016, September 03). Interview with Swarupa Deb. Bangalore: Karnataka.

²⁷ R11. (2016, August 23). Interview with Swarupa Deb. Bangalore: Karnataka.

persons. There is a glaring difference between the status of urban transgender persons (restricted to Kolkata only) and rural transgender communities. Most of the urban transgender persons having the advantage of English education and affluent lifestyles are part of the top leadership positions in registered civil society organisations. These urban transgender communities were highly motivated to break away from the traditional *hijra* occupations as beggars and sex workers. Most of these *gurus* were seemingly liberal minded and encouraged their *chelas* to take up employment opportunities within the mainstream. On the other hand, the transgender communities of rural West Bengal are still non-sensitised, ill-connected to the mainstream as well their urban counterparts. They are living painfully closeted lives.

The transgender communities, both in urban and rural West Bengal, are facing restrictions in the areas of rights, health care, education and employment. The means of employment for the community members are insufficient for a decent living and high rates of dropout in schools and colleges still persists due to lack of sensitisation. The West Bengal Transgender Development Board initiated by the Trinamool Congress is non-functional since its establishment in 2014. Moreover, there are no transgender welfare/development programmes available for the community. Most of the transgender community members expressed their anguish towards the Transgender Bill (2015) as well as the failure of the government, both Central and State towards implementing the recommendations of Expert Committee on Issues Relating to Transgender Persons (2013) as well as the *NALSA v. UOI* judgement (2014).

In 2014, The West Bengal Transgender Development board was set up to ameliorate the condition of the transgender community of the state following the Expert Committee recommendations. In 2015, Dr. Manobi Bandopadhyay, an Associate Professor of Philosophy from Jhargram College, West Bengal was appointed as the first transgender Principal of a state government affiliated college for girls near Kolkata. During the West Bengal state

election in 2016, two transgender persons were employed as polling personnel by the state election commission. Moreover, during that same election, the transgender community members cast vote in 'Other' category for the first time in the state instead of as either male or female.

Though the state government implemented the Expert Committee recommendations for constituting a transgender welfare board immediately after the NALSA judgment, it is disheartening to see the board still remaining non-functional.²⁸ The thirteen member board was constituted under the state Department of Women and Child Welfare Development involving representatives of the transgender communities from West Bengal. However, it is yet to provide any significant development scheme for the community welfare. Some of the board members complained that significant transgender issues raised during board meetings were often neglected by delegating the tasks to other departments instead of taking any firm action by the board. E13, a member of the West Bengal development board said:

“The West Bengal government suddenly realised that we were marginalised after the NALSA judgement. So they initiated a West Bengal Development Board. The tragedy is that we started the meetings in 2015 in the month of July. Since the judgment or the board is formed, I have not seen even a single instance, when Mamata E13 has favoured the [transgender] community in public. It has been some time now since the board has started and we are still confined to the issues of ID cards of the board members.”²⁹

She further added:

“We need census first. Whom are you going to give these schemes to? This board exists no one knows. Even transgenders are not aware of this board, of their situations except some of the elites living in the city.”

²⁸ Bengal's transgender development board member alleges its all-around failure. <http://www.hindustantimes.com/kolkata/bengal-s-transgender-development-board-all-around-failure-alleges-member/story-8YZ4xiM8DMkd9DBYRj5FVI.html>. Accessed on 07/01/2018.

²⁹ E13. (2016, October 21). Interview with Swarupa Deb. Srerampore: West Bengal.

Affirming E13's response, E15 said, "[the] board has no agenda, even the members don't know why they are there. It is so pathetic in West Bengal!"³⁰

The West Bengal government is clearly not following the 'inclusive approach' recommended by the Expert Committee requiring all the concerned ministries/departments of Government of India and state governments to include the development of the transgender community in their policies, programmes and schemes for de-marginalising them. E13 commenting on the lack of response from the government on the challenges facing the community members said:

"[the state] government is ignorant of our issues. They are not allowing the communities' views to come out. So we propose that there has to be a census, so they will say it is the work of election commission. That's it. Over! Then we say that there should be counsellors in every school, which has transgender students to lower the dropout level. So they say that is the problem of the department of education. So like that nothing is happening."³¹

The state government of West Bengal has not provided for any welfare scheme or policy for the transgender community in the state. Neither are they integrated into any existing welfare schemes. The TMC government, as well as the opposition parties, do not seem to be concerned about the issues of the transgender communities. The transgender communities of West Bengal too are not politically affiliated towards any party like their counterparts in Tamil Nadu. E14 and E13 said: "Yes, this state has a TG development board. I don't know what development they will do. There are no transgender specific instructions for the community, no schemes, no facilities, nothing".³² E17 expressing her anguish over the neglected response of the state government towards the community said:

"In West Bengal, the government only thinks we are *hijra*. Everybody is a *hijra*. But transmen are not *hijra*. *Laundas* are not *hijra*. So many transgenders are not *hijra*. So, this is what the TMC is doing."³³

³⁰ E15. (2012, October 20). Interview with Swarupa Deb. Kolkata: West Bengal.

³¹ E13. (2016, October 21). Interview with Swarupa Deb. Srerampore: West Bengal.

³² E14. (2016, November 06). Interview with Swarupa Deb. Kolkata: West Bengal.

³³ E17. (2016, April 11). Interview with Swarupa Deb. Kolkata: West Bengal.

4.3.5. Tripura

Tripura was one of the first few states to recognise transgender persons under third gender category. However, it was observed that in Tripura the transgender community is highly unaware of the recent government decisions towards mainstreaming transgender people. Though the community members had full access to the health care facilities without any apparent discrimination, there is limited scope in the areas of identity, rights, education and employment. The means of employment for the transgender community of Tripura are insufficient and restricted to begging and *bakshish* received during weddings and child births. Most of the transgender persons are illiterate due to lack of sensitization. It was upsetting to learn that the State Welfare Board, which is the nodal agency responsible for transgender welfare of the state for implementing the recommendations of the Expert Committee on Issues Relating to Transgender Persons (ECIRTP), is equally ignorant about the conditions of the transgender community or even the Supreme Court judgement or the Expert Committee itself. The commoners and the government officials of the state were not sensitized about the community. There are no NGOs or CBOs nor any non-profit voluntary groups working towards the cause of transgender persons. Many of the community members were Bangladeshi migrants without proper legal document identifying their citizenship status or gender.

The Supreme Court of India in the case of *NALSA v. UOI* verdict had mentioned Tripura as one of the first few states acknowledging the 'third gender' status of the transgender persons (para 70, *NALSA v. UoI*). The field work was extended to Tripura keeping in mind the Supreme Court's verdict anticipating a higher degree of State responsiveness towards the transgender community. E21, an activist confirming the inadequacy of the Social Welfare Department towards the cause of transgender persons said:

“They say some something and don’t work on it. It is all about big words. They get things printed in newspapers about their contribution towards upliftment of the *brihannalas*. But it is all candy floss.”³⁴

The state transgender pension scheme is not only a welfare policy; it is an instrument recognising the validity of the transgender community. It can be presumed that the State of Tripura acknowledges the transgender population and their perils. However, the "Notification" of a pension scheme for transgender persons was flawed at several levels.

Clause 2 of the Notification reads:

“The persons who are identified as Transgender having no source of income shall be eligible for getting pension with the following condition

- i) The applicant of all ages shall be eligible for getting the benefit under this scheme irrespective of APL/BPL.
- ii) The applicant must be a resident of Tripura.
- iii) The applicant shall submit a medical certificate from the Govt. medical officer not below the rank of Tripura health service Grade IV during submission of the application.”³⁵

The sentence ‘person who is identified as transgender’ is problematic. It does not clarify on what basis persons can identify them as transgender. The document was not clear about whether the transgender persons could self-identify their gender (as suggested by the Supreme Court), or they need to obtain any kind of proof of identity through affidavit, or if there was any certificate issuing procedure (as suggested by the Expert Committee as well as the Transgender Person Bills, 2014 and 2015). Most of the transgender persons had no proof of citizenship. Those, who had Aadhaar cards, were listed as female, making them technically non-eligible for the pension.

³⁴E21. (2015, September 30). Interview with Swarupa Deb. Agartala: Tripura.

³⁵ Notification of the Pension Scheme for Transgender, Education (Social Welfare & Social Education) Department, Agartala: Tripura (No. F.3 (72)/DSWE/PEN.CELL/2011(L)/9584(200) Dated 12/08/2015) p. 2.

However, E18, a bureaucrat from Tripura, who is closely associated with the transgender communities of the state challenged the intentions of the Social Welfare Department towards the cause of transgender persons. He said:

“Actually that preparation of the list was made whimsically. What have they done actually from the Social Welfare Department, they met only a few so-called *hijras* [sic]. And according to them third sex, intersex, or that transgender and other things, I am in doubt whether they understand those classifications very clearly [sic]!”³⁶

He further added...

“Even I am not sure whether they understand the difference between transgender and intersex people. So whatever they are saying it is not the correct list.”

Another problem with the “Notification” was for obtaining a medical certificate from a State authorised medical practitioner. There is no clarity on the kind of certificate and what kind of tests/screening needs to be conducted towards obtaining the certificate. According to the Supreme Court’s verdict as well as the Expert Committee’s recommendations and other institutional norms like Yogyakarta Principles, a medical practitioner alone cannot provide a certificate of transgender identity. It is well established now that sex is no longer biological but also has a psychological element. Thus, any committee/person providing a transgender person with a certificate of identity needs to consult a psychologist as well. These errors in a government notification show the level of sensitization amongst the different organs of the state executive.

The level of non-sensitization is not only limited to the Welfare Department but also extends to the State Police. During the field study, two police stations in Agartala were visited. These have jurisdiction over the most populous transgender areas. The reason for visiting the police stations was to enquire about the level of sensitization, both from the side of the general public as well as the transgender community. The officer-in-charge was asked

³⁶ E18. (2015, September 30). Interview with Swarupa Deb. Agartala: Tripura.

if any transgender person had filed First Information Reports (FIRs) alleging discrimination or physical/mental assaults, or if any member of the common public had filed any complaint regarding the transgender community of the area. But it was shocking to learn that the police was unaware of the fact that several transgenders were dwelling in their area of jurisdiction. There could be two explanations for this: one, the police personnel were highly insensitive or, they did not want to speak about it.

E18 opined that though general public of Tripura is not so sensitized about the community, there has been a change in the attitude of the transgender community towards the general public.

“But you know the majority of the members of the society has a peculiar conception about them. But there has been a change in approach. What we have seen during our childhood that the *hijra* had a very rude attitude. But now there is a change in that attitude. They [transgender persons] have become very polite. Maybe that politeness is helping them to earn money. They have become friendly now. So that was lacking before. Now for that reason may the attitude of society towards them has also changed. But the false conception is still there.”³⁷

What E18 said could be substantiated by several instances, where most of the transgender respondents had mentioned being polite to people even if they encountered rude behaviour from the general public. One of the respondents said:

“We do not misbehave with anyone. So they are sympathetic towards us as well. I told you, there are good and bad everywhere. It is all up to me how I conduct myself.”³⁸

Another transgender respondent, R34 added:

“Some people are very kind and generous towards us; some are extremely hostile. If someone behaves badly with me, I talk to them politely. I do not have any complaint.”³⁹

Though the transgender community appeared to have adopted a different approach in terms of public conduct, what is lacking in case of the transgender community of

³⁷ E18. (2015, September 30). Interview with Swarupa Deb. Agartala: Tripura.

³⁸ R39. (2015, September 26). Interview with Swarupa Deb. Agartala: Tripura.

³⁹ R34. (2015, September 27). Interview with Swarupa Deb. Agartala: Tripura.

Tripura is a strong community-based organisation. Unlike the transgender communities of several states like Tamil Nadu, Pondicherry, West Bengal and Karnataka, there are no civil society organisations working towards the development or sensitization of the transgender community. This definitely shows a very low level of awareness amongst the population of Tripura regarding the transgender community. Few youth communities though tend to donate clothes and other rations to the community members of their respective areas. Again such charity is performed only during festivals like Club's Annual Day or Durga Puja. Thus, Tripura has shown a remarkable lack of awareness towards the transgender community. Several major State executive bodies have shown a frustrating level of insensitivity.

4.4. Summary

To summarise, it can be said that the executive and the judiciary in India have made an attempt to undo the wrongs done to the transgender communities in India arising out of colonial legislatures. The Expert Committee Report and the NALSA verdict have been able to respond to needs of the transgender communities to have a distinct identity apart from the binary male and female. However, the responses of the State have not been effective, partially due to the lack of sensitization towards the transgender phenomenon in India. Another reason for the ineffective implementation could be that every state in India has varied gender non-conforming identities, with different sets of socio-cultural dynamics and politico-legal status. Therefore a blanket de-marginalisation scheme might not be effective.

“I do not think only welfare schemes will help. You need development too [...] we need a multidimensional approach. I think it will still kind of take time. If you compare the transgender movement, with any other movement in India, this is the only movement where so many changes happened in last 15 years. No other movement has been able to reap changes so quickly. The

community got recognition with 15-20 years of their struggle. There is no mechanism in place to completely implement all these changes quickly.”⁴⁰

Implementation of the NALSA judgment, as well as the Expert Committee Recommendations pertaining to the transgender community calls for a structural change. Towards establishing a comprehensive discrimination free de-marginalisation infrastructure for the transgender communities, the primordial socially hardwired binary structure needs to be challenged first. Thus, the responses of the Central, as well as the state governments of Tamil Nadu, Karnataka, West Bengal and Tripura, are not only situated within the context of the polity but also involve the deep-rooted socio-cultural approaches to the concept of sex/gender.

⁴⁰ E11. (2016, August 23). Interview with Swarupa Deb. Bangalore: Karnataka.

**CHAPTER 5: LIVING ON THE EDGE: ACCESS TO
HEALTHCARE FACILITIES OF THE TRANSGENDER
COMMUNITIES**

Transgender individuals are often deprived of the healthcare entitlements due to their gender non-conformity. They not only face challenges regarding discrimination free access to healthcare facilities, but also the fear of being stigmatised and ridiculed by healthcare professionals. These factors discourage them from accessing the services. Consequently, the community members resort to indifferent methods of treatment putting them at fatal health related hazards. Article 25 (1) of The Universal Declaration of Human Rights ascertaining the significance of healthcare and wellbeing as a human right provides,

“Right to a standard of living adequate for the health and well-being [of an individual] and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood.”¹

The constitutional provision for the right to health in India is not explicit. The Supreme Court of India has collectively interpreted Articles 21, 38, 42, and 47 of the Constitution towards providing the right to healthcare and medical aid as an integral part of Article 21, the right to life (Das 2013: 38).² The legal, economic and social marginalization of the transgender people affects every aspect of their lives. The community members are dispossessed of human rights due to their non-conforming identity. Though the Supreme Court of India in the case of *National Legal Services Authority v. Union of India & Others* (2014) acknowledges the transgender persons as distinct gender identity apart from the binary male and female category there is no legal protection available for them (Para 129.1). Due to lack of social security and legal protection, transgender people are vulnerable to violence and discrimination that severely impact their health and general well-being.

¹ The Universal Declaration of Human Rights. Retrieved from: http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/downloads/0_Whole_OHCHR_Report_2011.pdf. Accessed on 10/11/ 2017.

² The Supreme Court of India has asserted right to healthcare as a fundamental right through the landmark judgements of cases like *Bandhua Mukti Morcha v. Union of India*, AIR 1997 SC 2218; *Consumer Education and Resource Centre v. Union of India*, AIR 1995 SC 923; *Paschim Baga Khet Mazdoor Samiti v. State of West Bengal and others*, AIR 1996 SC 2426; *Parmanand Katara v. Union of India*, AIR 1989 SC 2039 and others.

This chapter deals with the health care related issues of the transgender community involving four main components: HIV-AIDS related awareness and healthcare facilities, psychological healthcare services, Sexual Re-assignment Surgery related facilities and general healthcare amenities for the transgender community in Tamil Nadu, Karnataka, West Bengal and Tripura. In India, transgender individuals engaged in sex work have been identified as one of the core high risk groups vulnerable to HIV-AIDS epidemic by National AIDS Control Organisation-National AIDS Control Policy (NACO-NACP). Additionally, the community suffers from psychological/mental trauma due to the socially embedded transphobia.

Social ostracism towards the community members further undermines their self-esteem resulting in increased levels of depression and suicidal tendencies among the transgender persons across ages. It is imperative to understand that the issues of transgender adults and transitioning gender variant teenagers and young adults are distinct. Most of the medical knowledge and facilities available for transgender persons in India like the mechanism to deal with HIV, gender reassignment surgeries/hormone inducement replacement therapies, support counselling are mostly adult-centric. Very little research and attention have been given to the issues of gender-variant children and young adults undergoing transition.

The transition phase has been characterized as a process through which transgender people begin to live by the gender with which they identify rather than the one assigned to them at birth (Asaf Orr and Baum 2015: 7). Transitioning is the most difficult phase of a transgender person's life. A transgender individual usually begins struggling with their gender non-conformity at an early age, while still a child. This phase is marked by a crisis of one's own identity and the ensuing confusion in engaging with others. Lack of family support adds to their sufferings. The disapproval and ridicule from friends, family, people around as

well as educational and healthcare institutions consequently creates a burden of stress often pushing them towards self-destruction. In India, there are hardly any paediatric medical support and well-being facilities available for the transitioning gender variant children and young adults. Furthermore, within transgender communities, there are minority groups (migrants, racial, religious, rural transgender persons), facing even greater risk of marginalization and violence as well as being in a disadvantageous position to access healthcare benefits.

The Expert Committee on Issues Related to Transgender Persons (2013) acknowledges the lack of healthcare facilities for the transgender community. The Expert Committee report in the area of healthcare recommended:

“Interventions to reduce discrimination against transgender persons in the health care system emphasizing the need to prevent physical and psychological violence inflicted on gender-nonconforming and transgender children and adolescents through conversion therapy attempts such as electric shock treatment.” (p.91)

Moreover, the report recommended transgender friendly hospital/medical institute policies as well as a transgender health related curriculum to be incorporated within medical training courses towards raising sensitization about transgender healthcare. The Yogyakarta Principles asserting the State’s responsibility towards providing healthcare facilities for the gender non-conforming communities reads:

“The State shall - Take all necessary legislative, administrative and other measures to ensure enjoyment of the right to the highest attainable standard of health, without discrimination on the basis of sexual orientation or gender identity; Take all necessary legislative, administrative and other measures to ensure that all persons have access to healthcare facilities, goods and services, including in relation to sexual and reproductive health, and to their own medical records, without discrimination on the basis of sexual orientation or gender identity.” (Principle 17)

The Supreme Court of India in the case of *NALSA v. UOI* observed that transgender persons are deprived of social and cultural participation and hence have restricted access to health

care facilities which amount to depriving them of the “Constitutional guarantee of equality before the law and equal protection of laws” (para 4). Additionally, the Supreme Court of India observed that Article 14 of the Indian Constitution does not restrict the word ‘person’ only to male or female. Therefore, transgender persons too shall be accommodated within the expression ‘person’ entitling them legal protection in all spheres of State activity, including healthcare as enjoyed by any other citizen of this country (para 61). The operational part of the judgment asserting discrimination free healthcare provisions for the transgender community provided:

“Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since *Hijra/* Transgenders face several sexual health issues (para 129.4).

Centre and State Governments should seriously address the problems being faced by *Hijra/*Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one’s gender is immoral and illegal (para 129.5).

Centre and State Governments should take proper measures to provide medical care to transgenders in the hospitals and also provide separate public toilets and other facilities.” (para 129. 6)

Despite the attempts made by the State and not-State actors as well as international guidelines toward providing discrimination free healthcare services for the transgender community, the status of transgender community’s right to discrimination free access to healthcare is still very restricted. During field studies in Tamil Nadu, Karnataka, West Bengal and Tripura, the opinions of transgender community members on standards of healthcare facilities varied. In Tamil Nadu and Tripura, the transgender community members expressed having fewer difficulties in accessing healthcare facilities. The transgender respondents of Karnataka and West Bengal, on the other hand, observed that they were facing serious challenges in accessing medical aid.

4.2. Level of sensitization/discrimination in the area of healthcare

The transgender persons of Tamil Nadu expressed that due to a higher level of success of the National AIDS Control Programme phase-III, medical interventions initiated by the Tamil Nadu government and the sensitisation programmes conducted by the civil society organisations have considerably reduced the prejudiced behaviour of the medical practitioners, atleast within the city limits. Regardless of several ambiguities in the healthcare system in Tamil Nadu for the transgender patients, the situation is significantly better. Transgender people have fairly relaxed access to healthcare facilities and treatment opportunities at nominal costs. Moreover, the MTF community members were able to receive gender change certificate upon surgery. The respondents expressed that discriminatory behaviour persisted only among the doctors and medical staff, who were less sensitized of the transgender community in comparison to the healthcare professionals having previous medical experience about the community's issues.

In Karnataka, M.S. Ramaiah Medical College and the National Institute of Mental Health and Neuroscience (NIMHANS) provide exclusive transgender healthcare facilities. While Ramaiah hospital provided a separate ward for the transgender patients, NIMHANS provides psychological counselling for the transgender persons about to undergo SRS, victims of alcohol/substance abuse or those who are suicidal. Both medical institutes provide a certificate of gender change to castrated transgender persons. However, both the facilities were not well equipped with proper medical facilities necessary for transgender patients. Moreover, the transgender community faced a higher level of discrimination in accessing health care facilities in both private and government hospitals. There were no free SRS services available for the transgender community members. Only a few doctors within Bangalore were sympathetic towards transgender persons and the situation is far worse in rural areas.

Access to stigma free healthcare is still a far-fetched dream for the transgender communities of West Bengal. The transgender communities living in Kolkata were treated sensitively by a few medical practitioners, who had previously engaged with the community. The condition in the rural areas was grave. Most of the rural dwelling transgender people were denied medical check-ups by the doctors as well as government clinics. Due to such discrimination combined with acute poverty, transgender people rely on medication by unauthorised practitioners. Consequently, many transgender persons regularly suffer from allergic reactions, poisoning and other fatal infections.

Surprisingly, the transgender persons of Tripura expressed that they faced fewer problems in accessing healthcare facilities. Though the general healthcare facilities are not up to the expected mark in Tripura, the transgender persons did not face any specific gender identity related discrimination. The healthcare system of the state does not provide any transgender specific services like Sexual Re-assignment Surgery, hormone replacement therapy or intervention programmes for HIV-AIDS affected transgender persons. However, it was observed that the transgender persons faced comparatively lesser discrimination accessing healthcare for general ailments in Tripura.

A large cleavage between the rural and the urban was observed for transgender communities in accessing health care facilities across Tamil Nadu, Karnataka, West Bengal and Tripura. The transgender persons, as well as non-transgender experts, had expressed that accessing healthcare facilities in urban areas were comparatively easier than in rural areas. Due to the relatively higher level of sensitisation regarding the transgender issues in the urban areas, healthcare providers were less likely to deny them medical check-up. On the other hand, transgender persons dwelling in rural areas faced severe discrimination from medical practitioners due to lack of sensitisation.

Due to lack of transgender health related training in the medical curriculum along with the societal prejudice, the health care providers were often disinclined to treat transgender patients. However, in all four states, the respondents informed that a handful of healthcare professionals were extremely concerned about the transgender person's health and were sympathetic toward their well-being. On asking several sets of transgender respondents as well as non-transgender experts across the four states about what could have led to such a concerned behaviour by a handful of professionals, the responses were uniform. All the transgender as well as non-transgender experts responded that healthcare providers, who had previous experience of treating transgender persons as well as being exposed and sensitized towards their issues were prone to be sympathetic towards the community members. They informed that the awareness of the few healthcare providers regarding the transgender community took place during the NACP phase II and III. Selected medical practitioners, who were a part of the programme were sensitized towards the issues of the core high risk groups vulnerable to HIV-AIDS including Female Sex Worker, Injecting Drug Users, Men having Sex with Men and Transgenders.

4.3. HIV-AIDS vulnerability among the transgender sex workers

The 'official' arrival of HIV-AIDS in India is marked somewhere around 1986 (Singh 2013: 95-99). HIV brought an enormous sense of fear among several vulnerable groups due to rising mortality rates during the early 1990s from HIV-AIDS. Within a span of 25 years, HIV epidemic was counted as one of the country's serious health problems. With response to the growing HIV epidemic threat, National AIDS Control Organisation launched its first phase of National AIDS Control Programme in the year 1992 towards a comprehensive prevention and control of HIV-AIDS in India. The main objective of NACP I was to slow down the spread of HIV infections for reducing morbidity, mortality and impact of AIDS in the country. The first phase between 1992 and 1997 was further extended to 1999. It focused on awareness

generation, identifying and providing services for the high risk group population, setting up a surveillance system for monitoring HIV epidemic and measures to ensure access to safe blood transfusion and preventive measures. During the first phase, only Female Sex Workers (FSW), and Injecting Drug Users (IDU) were identified as the High Risk Group. The latter half of the second phase of AIDS control second programme, otherwise known as NACP II launched in April 1999. This phase identified the need to include MSM (including *Kothis* and MTF transgender persons). NACP III, the third phase of the national programme was launched in July 2007. It had the goal of halting and reversing the epidemic. NACP-III indicated the need to include sexual and gender minority groups.

“It is clear from the experience gained so far that the social marginalisation and disempowerment that characterise [High Risk Groups] are the key vulnerabilities that need to be addressed before any interventions related to HIV/AIDS can be successfully adopted by them.”³

The third phase identified 1.15 million HIV effected MSM and transgender persons as High risk group.⁴ Additionally, NACP III recognised that the MSM group was non-inclusive of transgender identities acknowledging the unique HIV prevention, care, and treatment needed for transgender persons.⁵ It held:

“Members of the transgender population, who have many male partners are also at high risk, since many of them engage in anal sex. Because many men who have sex with high-risk MSM and transgendered individuals also have other partners, both male and female, targeted interventions for these HRGs are strategically critical to controlling the HIV epidemic.”⁶

³*Strategy and Implementation Plan: National AIDS Control Programme Phase III*. (2006: 26). Retrieved from http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/ilo_aids/documents/legaldocument/wcms_117311.pdf. Accessed on 08/11/2017.

⁴*NACP III: To Halt and Reverse the HIV epidemic in India*. (2007: 12) Retrieved from <http://siteresources.worldbank.org/INTHIVAIDS/Resources/375798-1151090631807/2693180-1151090665111/2693181-1155742859198/India20V3.pdf>. Accessed on 08/11/2017.

⁵*Evidence to Action: Strategic Plan for Scaling Up Interventions for MSM and Transgender Populations in India*. (2007: 5). Retrieved from http://humsafar.org/wp-content/uploads/2016/12/pdf_7_Scaling-up-MSM-TG-Interventions-for-NACP-III-2007.pdf. Accessed on 08/11/2017.

⁶*Targeted Interventions Under NACP III Volume I: Core High Risk Groups* (2007: 7). Retrieved from <http://naco.gov.in/sites/default/files/NACP-III.pdf>. Accessed on 05/11/2017.

Bilson Joseph, an LGBT activist from SAATHII (Chennai), opined that the transgender persons in Tamil Nadu could avail HIV treatment without discrimination.⁷ With the help of NACO, the Tamil Nadu State AIDS Control Society is providing bi-annual free health examination for the transgender persons.⁸ During the year 2007, this targeted intervention programme, which was earlier reserved only for women in prostitution, was later extended to the transgender persons as well. E1 of SAATHII (Chennai) added that between the years 2007 and 2012, i.e., during the third phase of AIDS control programme, became a hotbed of transgender activism in India.⁹ During this phase NGOs and CBOs received extensive grants through NACO projects for conducting wide-ranging programmes for the MSM and TG communities like distribution of condoms, taking them for medical examinations, giving them HIV testing, counselling, and other targeted intervention programmes related healthcare services. According to E1:

“Tamil Nadu brought a new thing or integrated health care system into the targeted intervention system. They brought in a system called Master Health Check-up where all the community people including the MSM, TG sex workers and (non sex-worker) TG people were taken to the hospital and were given Master Health check-up.”¹⁰

The Master Health check-up programme, though focused on Sexually Transmitted Diseases and Human Immunodeficiency Virus (HIV) related infections, offered the opportunity for free (or at a nominal cost) full body health check-ups by government hospitals. This benefitted the transgender community of Tamil Nadu in the long run. Doctors and medical assistants involved with the Master Health Check-up programme were sensitized about the

⁷ Bilson Joseph. (2015, April 10). Interview with Swarupa Deb. Chennai: Tamil Nadu.

⁸ The Sexually Transmitted Infection services to be provided by NACO NAPC III include periodic check-ups, syphilis screening and treatment of asymptomatic infections under STI Package. (2007: 67). Retrieved from <http://naco.gov.in/sites/default/files/NACP-III.pdf>. Accessed on 05/11/2017.

⁹ E1. (2015, April 10). Interview with Swarupa Deb. Chennai: Tamil Nadu.

¹⁰ E1. (2015, April 10). Interview with Swarupa Deb. Chennai: Tamil Nadu. This information was corroborated with Health and Family Welfare Department, Government of Tamil Nadu. The provision of Master health check-up provided for full body check-up for MSM transgender and other sexual and gender minorities in the state. Retrieved from <http://www.tnhealth.org/directorate/tmmscmhc.htm>. Accessed on 10/11/2017.

problems of the transgender communities. The transgender community members, who were otherwise ostracised at the medical institutes, were given priority to access government facilities. According to the experts at SAATHII (Chennai), though the Master Health Check-up programme was undertaken on a project mode, it could still cover only seventy per cent of the population, which had utilised the programme at least once. Thus, the medical professionals associated with the transgender community later on after the completion of the project remained sympathetic towards the community and were often the most preferred health care providers among the transgender community in Tamil Nadu.

The HIV AIDS scenario seemed grave in Karnataka. Though many transgender persons initially benefitted through the NACO projects, between 2002 and 2012, the condition gradually declined. E7 of Solidarity Foundation pointed towards the problems faced by the transgender communities both in the urban and rural areas due to the unavailability of the medicine:

“There are no medicines in the HIV-AIDS centres. The district medical suppliers, who get medicine from NACO only operate between 9 AM and 4 PM so people do not come in day out of fear and at night it is closed.”¹¹

Furthermore, he pointed towards the constant changes in the composition of the medicines as well as dosages causing problems as many are unable to adapt to such rapid changes:

“Before, there were two tablets every day. Now the government has changed it to one tablet per day. Twenty four hours, one tablet how much effect it will cause to the body you can imagine [sic]. The anti-retroviral therapy is affecting the body. More people are dying in the process. Some of the ingredients in the medicine are unavailable, so the components of the medicine have changed. So the new medicine is giving skin allergy and sudden skin rashes. So this sudden change in combination is killing more people [sic].”¹²

¹¹ E7. (2016, August 08). Interview with Swarupa Deb. Bangalore: Karnataka.

¹² E7. (2016, August 08). Interview with Swarupa Deb. Bangalore: Karnataka.

Though condoms are easily available, the transgender sex workers refrain from using them fearing that it might reduce their customers. Often customers were ready to pay extra money for not using condoms. Therefore, it was very difficult to control sexually transmitted diseases among the transgender sex worker communities.

In West Bengal, HIV intervention programmes have not adequately reached the transgender sex worker community. Only the transgender persons affiliated with the Civil Society Organisation networks have benefitted from HIV intervention programmes. One reason being, the transgender sex workers in West Bengal were not forthcoming about their identity, unlike their counterparts in Tamil Nadu and Karnataka. Therefore, only a small group of transgender individuals dwelling within city limits were provided HIV intervention benefits. Additionally, AIDS affected transgender sex workers chose to suffer in silence and not to reveal their HIV positive status fearing ostracism within the community in addition to losing clients. Those, who came out as HIV positive faced discrimination at the intervention centres due to lack of sensitization. E15, one of the former members of SAATHII (Kolkata) contemplating on the status of HIV intervention in West Bengal observed:

“The situation in West Bengal is unfortunate. It started well and then again in last three to four years these intervention programmes have stopped functioning. So all the gains that were made were lost, because in any case, the vast majority of transgender people were not reached in West Bengal and most of the HIV intervention programmes were limited to urban and semi urban areas only. The HIV programmes did not reach too many as it should have. And those who were covered have nowhere to go now.”¹³

The transgender persons of Tripura were not ready to speak about HIV AIDS related issues. The community members strongly suggested that they were not practising sex work. Thus, they had no problems related to HIV-AIDS. It was observed that the social prejudice about HIV-AIDS, associating it with sex work was reflected within the transgender

¹³ E15. (2016, September 20). Interview with Swarupa Deb. Kolkata: West Bengal.

community members of Tripura as well. The community members were not sensitized enough regarding the threats of the HIV as well as about the fact that AIDS infection need not necessarily occur due to intercourse with multiple partners/AIDS affected partners/without protection. Moreover, the NACO programmes dealing with awareness and HIV intervention for MSM and transgender persons did not extend to Tripura. The Tripura State AIDS control Society too seemed not concerned about the MSM and transgender issues.

4.4. Issues of Mental health

4.4.2. Psychological issues of transgender persons

The transgender community suffers from several psychological issues resulting from the challenges and ostracism by the mainstream society. Suppression of identity and desires, fear of being violated and constant expulsion eventually laid the grounds for severe emotional and psychological trauma among gender non-conforming individuals. Majority of the transgender children and young adults face challenges due to non-acceptability of their gender variance within the family. They were pressurised to behave according to their biological gender role causing conflict within the self. On the one hand, they are not able to receive care and love from their family at the same time they are unable to understand the reasons for their difference from the others. Such emotional conflict often leads to severe psychological damage to the transgender teenagers. Many develop a feeling of hatred towards their family for not accepting them (Olson *et al.* 2015: 374). Some have suicidal tendencies, some take to substance abuse and others run away from home searching for a place of belonging. Thus, the adolescent transgenders look for emotional and psychological support lacking in the family.

Many transgender persons seek out romantic partners to compensate the lack of affection and emotional support received from family and easily falls into the traps of an abusive relationship. Moreover, transgender persons feel trapped in their biological body. They desire to modify their body in order to be re-assigned into the body of their target

gender. However, transition through the medical procedures, like emasculation or the complex cosmetic surgeries, are not easy. Apart from being expensive they also require psychological counselling and other hormone-induced pre-surgical procedures as such types of surgeries tend to have a permanent result on one's physiology and reversing the process is almost impossible. Conversely, many transgender persons belonging to the lower socio-economic classes in India do not adhere to such medical requirements and insist on sex change surgery (which mostly comprises of emasculation in the case of MTF transgenders and mastectomy and uterus removal in case of FTM transgenders). Most of these young-run-away transgenders imagine that soon after the surgery, they will be able to fit into their target gender groups. However, due to lack of surgical advancements for transgender persons, most of them feel disappointed and eventually drown in depression.

Dysfunctional relationships, dissonance towards their body, lack of sufficient means of living with the prejudices faced by the transgender persons, both within the community as well as from the mainstream, often impel them towards self-dejection and self-harming inclinations. It is common among the transgender community members to take to heavy alcohol abuse, self-mutilation and self-depreciative tendencies. Many do not visit doctors in case of any medical ailments considering death to be a better option than being a transgender person. Several transgender respondents have repeatedly spoken about their belief in next birth, where they could be either a male or a female, instead of being a gender non-conforming individual.

4.4.3. Lack of psychological counselling

Psychological issues and mental health are crucial aspects of transgender healthcare. A transgender person might require adequate medical counselling and support during different phases of their life like transitioning, pre and post Sexual Re-assignment Surgery, family/relationship dysfunction and old age. However, psychological assistance facilitated by

trained practitioners is scarcely available in India, apart from the few CSOs providing informal counselling. Most of the experts, as well as grass root transgender persons, expressed their concern about the lack of information and sensitisation about transgender psychology among medical specialists.

E4, a FTM transgender person from Nirangal (Tamil Nadu) expressed his concerns regarding the lack of psychological counselling and other assistance that should be provided to transgender persons undergoing SRS.¹⁴ R11, a transgender person from Karnataka pointing towards the lack of sensitization of the mental health counsellors at NIMHANS said:

“They are trying for counselling at NIMHANS. But the problem is who the counsellors are? They are not good enough. They think transgenders do sex work, transgenders do begging. They do not understand transgender psychology fully.”¹⁵

The counsellors at NIMHANS were not particularly trained in transgender psychology and treat the patients based on their imagination of trans-normativity. Similarly, transgender respondents of West Bengal too opined that the counsellors often force the transgender patients to acknowledge their biologically assigned gender persuading that their transgender identity was a mental illness. R23, a transgender person from West Bengal shared her experience saying:

“When I came out to my family as a transgender, they tried to treat me... they took me to a reputed hospital [in Kolkata] where I was [falsely] treated for epilepsy... the psychiatrist kept me drugged for twelve to fourteen hours each day and finally pronounced me as a mental patient. Then, in a medical college in Kolkata, they said that I am mad and my behaviour is abnormal. They counselled me to behave like a boy because I was born as a male and finally they sent me to a mental hospital. There they used to give me medicines and shock treatment.”¹⁶

¹⁴ E4. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu.

¹⁵ R11. (2016, June 23). Interview with Swarupa Deb. Bangalore: Karnataka.

¹⁶ R23. (2016, October 22). Interview with Swarupa Deb. Serampore: West Bengal.

Several reputed medical institutes and practitioners associated gender non-conformity with gender identity disorder. Often transgender youths were referred to mental institutes and were prescribed high doses of sedatives and electric shock therapy coercing them to accept their biologically assigned gender.

4.4.4. Association of transgender identity with Gender Identity Disorder

Gender non-conformity or transgender behaviour is often considered as a deviation from pathological normalcy. In the Indian context, the transgenders and gender non-conforming individuals are denied their right to healthcare on the basis of pre conceived notions of gender incongruence as a mental disorder. Most of the transgender respondents have shared their unpleasant experiences while availing healthcare services asserting the lack of sensitization about transgender persons as well as the trans-phobia associated with transgender practices and behaviours as a mental illness. Medical and psychological/psychiatric practitioners often associate gender incongruence with a mental/psychological deviation/abnormality that can be cured through pathological/medical interventions. The doctors often try to avoid surgeries on the basis that a transgender person could be ‘cured’. Thus, sometimes the medical practitioners enquire about parents/family member's signature before conducting an SRS. E4 Kumar’s anecdote in this regards is quite telling:

“One time a MTF approached me to talk to her psychiatrist. After several months one day, she called me requesting to appear as her brother/guardian to talk to the psychiatrist. So, he said, can you talk to him? I said, what was the need for talking? [Sic] After she repeatedly requested me, I went to the doctor. The doctor asked me what is LGBT? I said Lesbian, Gays, Bisexual and Transgender. Then, he asked me, why were people were choosing to be a transgender/homosexual? Then, he asked, if her parents were willing to sign a paper approving the SRS? Is the transition ok with them? So, I asked, she was an adult and why should she get a certificate from her parents approving the surgery? [Sic].”¹⁷

¹⁷ E4. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu.

The World Professional Association for Transgender Health (WPATH), *Standards of Care* 7th Version urged for de-psychopathologization of gender non-conformity worldwide stating that:

“The expression of gender characteristics, including identities that are not stereotypically associated with one’s assigned sex at birth is a common and culturally-diverse human phenomenon [that] should not be judged as inherently pathological or negative.” (2011: 4)

It is not necessary that every transgender person suffers from the anxieties of gender dysphoria. Accordingly, the *Diagnostic and Statistical Manual of Mental Disorders*, 5th edition (DSM V) states that people, who experience intense, persistent gender incongruence can be given the diagnosis of gender dysphoria (Chakrapani 2016: 144). According to WPATH, *Standards of Care*, gender dysphoria refers to the discomfort/distress that is caused due to the incongruity between a person’s gender identity and that person’s biologically assigned sex (2011: 5). Though the appropriateness of the diagnosis, recommended by DSM V has been contested on the basis of it pathologizing gender incongruence and should be eliminated (APA 2013: 54, WPATH 2011: 5, Martinez-Guzman 2014: 7, Olson 2015: 375, Chakrapani 2016: 149). However, it is imperative to understand that the gender dysphoria diagnosis does not incriminate transgender persons as problem/disorder (APA 2011: 7, WPATH 2011: 5, Olson 2015: 376). DSM V clearly recognises that transgender identity is not the problem rather the distress that one faces due to living with an assigned gender that is different from one’s experienced gender is the dysphoria. The gender dysphoria diagnosis provides for diagnosis of transgender persons allowing them to receive the healthcare needs including counselling services, hormone treatments as well as gender transitioning procedures. The diagnosis provides a safeguard to avail their legal right to discrimination free healthcare (APA 2011: 6, WPATH 2011: 10). *The International Classification of Diseases* (ICD-10) that enlists gender non-conformity as a gender identity disorder, referred to by the *Mental Healthcare Act, 2017* in India to determine mental illness is currently under

revision. However, Section 3, sub-section 3 (b) of the Act provides that: “Mental illness of a person shall not be determined on the basis of - (b) non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person’s community”.

Additionally, Section 18 (2) of the Act provides that:

“The right to access mental health care and treatment shall mean mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers.”

4.5. Provisions for Sexual Re-assignment Surgery for the transgender individuals

The transgender individuals feel trapped inside a body that does not match their gender identity. Thus, many transgender persons wish to realign their physiology as much as possible to their target gender identity. The Male to Female transgender persons adopt methods for removing their facial hair and breast either through surgery or hormone administration and sometimes both. Most of the traditional MTF transgender communities of India assume the genital centric idea of manhood. They consider the primary male reproductive organs (penis and testes) at the core of the masculine identity. Thus, most of them desire to get rid of their male genitalia to attain a more feminine-like identity. The FTM transgenders mostly consider childbirth and menstruation as the central physiological indicator of womanhood. Thus, the community members often resort to bilateral mastectomy, removal of the uterus and ovaries as well as hormone administration to attain a more masculine appearance.

In India, there is a lack of sufficient provisions for the standard sexual re-assignment surgery that mostly consists of Vaginoplasty (reconstructing the male genitalia to appear and function as female genitalia), pre and post-operative hormone replacement therapy and facial hair removal procedures. Such surgeries are extremely expensive and should be performed by

experienced cosmetic surgeons specialised in transsexual medical issues. However, due to financial constraints as well as insufficient medical facilities for the transgender persons, the community members can only avail emasculation surgery to get rid of their male genitalia. Traditionally, the MTFs, who initiate within the *Hijra / Kinnar/Aravani* ritually, undergo the emasculation ceremony otherwise known as *reeth* towards attaining a woman-like appearance and getting rid of their male genitalia. Those who are not part of the traditional transgender community too can seek emasculation as the procedure decreases generating male hormones resulting in a substantial decrease of facial hair growth and body ‘softening’. Traditionally, *reeth* or the emasculation ceremony within the *Hijra/Kinnas/Aravani* community was conducted by a quack known as *dia maa*, without any medical supervision. Though, in contemporary times, many transgender persons (whether or not from the *Hijra/Kinnar/Aravani* community) prefer emasculation procedures to be conducted by medical practitioners (and some are also choosing not to undergo emasculation). However, the response of the Indian State towards gender change surgeries is still unclear. Section 320 r/a Section 325 of the *Indian Penal Code* provides for ‘Emasculation’ as a ‘Grievous Hurt’ and a punishable offence.¹⁸ This could be the reason along with the normative practice of associating transgender behaviour as a mental disorder as to why the medical practitioners often avoid conducting SRS.¹⁹

¹⁸ Section 320 of The Indian Penal Code reads: “Grievous hurt: The following kinds of hurt only are designated as “grievous”:

First- Emasculation.

Secondly- Permanent privation of the sight of either eye.

Thirdly- Permanent privation of the hearing of either ear,

Fourthly- Privation of any member or joint.

Fifthly- Destruction or permanent impairing of the powers of any member or joint.

Sixthly- Permanent disfiguration of the head or face.

Sevently- Fracture or dislocation of a bone or tooth.

Eighthly- Any hurt which endangers life or which causes the sufferer to be in the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits”.

Section 325 of the Indian Penal Code reads: “Punishment for voluntarily causing grievous hurt: Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with

Standard SRS for FTM transgender persons includes bilateral mastectomy, hysterectomy (the removal of internal sex organs like ovaries, uterus and fallopian tube), phalloplasty and pre and post-operative counselling and hormone replacement therapy. However, such procedures are not available for FTM in India. Transmen only have the option of bilateral mastectomy and removal of ovary and uterus which do not account for sex change operations. Moreover, bilateral mastectomy and hysterectomy in itself are expensive procedures in comparison to the emasculation surgery locally available for the transgender woman. In such case, several transmen choose to bind their breast and wait for a longer period of time to accumulate sufficient funds for undergoing surgeries.

In Tamil Nadu, Kilpauk Medical College Hospital and Government General Hospital are providing free SRS services for transgender persons since 2010.²⁰ Mahatma Gandhi Medical College in Pondicherry has a special wing dedicated to providing medical care to the transgender patients. The transgender speciality wing treats HIV infected patients and provides SRS services for transgender persons across India at a nominal amount. In Karnataka, M.S. Ramaiah Medical College provided a two seat exclusive ward dedicated to the transgender patients.²¹ Apart from that, there is hardly any government aided SRS facilities available for the transgender persons in Karnataka. In West Bengal, though the Transgender Development Board (established in 2015) provided for state-aided SRS facilities at a nominal cost. However, unlike Karnataka, no such facilities have been yet made available to the community. Few private clinics offer SRS services in Tamil Nadu, Karnataka and West Bengal alike. However, the respondents from the states have said that most of the

imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”.

²⁰Free SRS services for transgender community in Tamil Nadu. Retrieved from <http://www.deccanchronicle.com/nation/current-affairs/060216/transgenders-prefer-private-clinics-for-srs-surgeries.html>. Accessed on 19/08/2017.

²¹ An exclusive transgender ward in the M. S. Ramaiah Medical College, Bangalore. Retrieved from https://www.youtube.com/watch?v=m7TTup_smvs. Accessed on 17/08/2017.

procedures were carried out in the private clinics under questionable circumstances without proper medical documentation or assistance. Several transgender persons have suffered fatal post-surgery infections and an unaccounted number of persons have died during or after the procedure due to lack of medical facilities. On the other hand, the transgender persons belonging to affluent families or working at high paying ranks in CSOs prefer to undergo primary and secondary genital reconstruction surgeries, implants and other procedures in expensive private clinics in India or abroad.

The situation is equally worse for the transmen in the three states. Female to Male transgender persons, who underwent the expensive bilateral mastectomy surgery were not satisfied with the post-operative results. Most of them complained that the breast tissues were not clearly removed and causing infections. Due to the expensive nature of these cosmetic/reconstructive surgeries, many transgender persons waited for several years to save the required money or get donations for the procedures. Therefore, a failed surgery was depressing for most of them as undergoing a corrective surgery was almost impossible. Advance genital constructive surgeries like phalloplasty are hardly done in India. Moreover, they were extremely expensive as well. Thus, most of them opt for ovary and uterus removal surgeries to get rid of menstrual circles for experiencing proximity to the male body. E4 expressed his anguish over lack of gender reassignment procedure for Transmen saying:

“[...] for transmen that is from female to male, the only procedure is a double mastectomy, you get rid of the breasts [sic]. But beyond that the surgical procedures are not very effective, even if they implant an artificial penis, it is not functional.”²²

R17, resonating a similar experience said:

“[...] doctors who are doing top surgery are not qualified. I did my surgery one year back, but I have to do it again. They have not cleared the breast fat properly. So in Bangalore, around 30 people have done top surgeries, all are facing the same problem. We did this surgery on donation and fund collection

²² E4. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu.

money. *Ab dobara karna hai to koi nahi dega na* (now nobody will donate money for same surgery again). It is not possible to get funds. Even government is not ready to do free surgery.”²³

Transgender persons in Tamil Nadu, Karnataka and West Bengal (both MTF and FTM) administer hormone replacement therapy through pills and injections. However, they are mostly not prescribed by authentic medical practitioners and the community members maintain discretion about the matter. Upon further urging, some transgender persons revealed, off the record, that they illegally acquire such hormones from the local chemist at a high price or source them through their acquaintances living in abroad. Often MTF persons administer locally available contraceptive pills, the likes of Mala-D, Ovrall-G and others assuming to be female hormonal tablets which are comparatively cheaper. Un-prescribed hormones can cause several body disorders and fatal complications including blood clotting, infections and cancer. Many transgender persons, in the three states, who had earlier administered un-prescribed hormone therapy, are facing critical organ failures, psychological issues and severe skin diseases. When asked as to why they consume these hormones knowing that their health is at stake, the transgender persons who discretely came out to be administering HRT responded that they would try anything that can help them identify as close as possible to their target gender even if their life is at stake. Transgender experts have expressed their concern about the prescribed hormonal replacements therapies as well. In this regard, E13, a transgender activist from West Bengal said:

“Even in India, doctors treat us as guinea pigs. They are not much aware of all this [Hormone Replacement Therapy] so they try on us. These hormones have such huge side effects. It might damage my heart functioning, my kidney functioning, everything. But still a transgender will say, let my kidney fail but I want my body as a women or man, how I desire [sic]. So in this desperate case, the doctors also experiment a lot and it has caused fatal damages to many people.”²⁴

On similar ground, R11 added:

²³ R17. (2016, September 09). Interview with Swarupa Deb. Bangalore: Karnataka

²⁴ E13. (2016, October 19). Interview with Swarupa Deb Srerampore: West Bengal.

“[...] hormone therapy is very expensive and not many doctors are qualified to do hormone therapy counselling. So, sometimes people feel hormonal misbalance because the doctors do not know how to do it.”²⁵

Transgender persons change their name and gender identity according to their target gender while transitioning or after the transition was completed and sometimes, after initiation into the traditional *Hijra/Kinnar/Aravani* communities. The Supreme Court of India in the judgement of *NALSA v. UOI* has acknowledged that a transgender person can self-identify their gender (Para 129.1). However, most of the name/gender change affidavit, identity card applications (Aadhaar, Passport, Ration card, Voter ID card) require a gender change certificate towards assessing the applicant's transgender identity. MTF transgender persons can easily avail a gender change certificate from a medical professional, if they have undergone emasculation procedure. Kilpauk Medical College Hospital and Government General Hospital in Chennai, Mahatma Gandhi Medical College in Pondicherry, M.S. Ramaiah Medical College, NIMHANS in Bangalore and certain private clinics across various states are now providing gender change certificates to the transgender persons. However, younger gender variant people in the early stages of transition, non-castrated MTF transgender persons, and the FTM community cannot claim legal protection/facilities/schemes available for the transgender community as the gender change certification is only available if a person has sought SRS (emasculation for MTF) and not on the basis of self-identification. Mastectomy, as well as surgical removal of ovary and uterus or hormone therapy, is not medically considered to be sex change procedure. Thus, several MTF transgender individuals either choose to undergo operation against their desire only for receiving the certificate. FTM and transitioning gender variant persons have no scope for obtaining a gender change certificate due to non-availability of SRS grade surgical procedures.

²⁵ R11. (2016, August 23). Interview with Swarupa Deb. Bangalore: Karnataka.

4.6. Difficulties in availing healthcare services in case of general medical ailments

In the area of accessing medical facilities for general ailments and non-transgender specific health issues, the transgender communities across the four states have almost provided similar responses. The community members usually faced uncomfortable situations at healthcare facilities in terms of asserting their binary gender non-conforming identity. They were either made to stand in male or female queues or forced to identify by their biologically assigned gender due to lack of choices. Most of the medical professionals were either confused about their identity or ridiculed them for their gender non-conformity. In case of in-patients, there were often confusions as to whether a transgender person was to be admitted to a ward according to their biologically assigned sex or their target gender identity.

In Tamil Nadu, regarding the issue of registering in the hospitals under specific gender column, E1 informed that:

“In case of out-patients, it is not much of a hassle. However, in case of in-patients, it is still a concern. Certain government hospitals do respect the choice of gender of a transgender person. However, in most facilities, they are still admitted in male wards or registered under male gender.”²⁶

R1, a MTF transgender person, describing the non-sensitized nature of the healthcare providers narrated that: “[Doctors] are very bad...They are saying rude things to me and teasing [sic]. You are transgender? Like that they are saying all the time [sic].”²⁷ R8, another transgender person from Tamil Nadu added:

“I went to a hospital once for some pancreas problem. There all the doctors were laughing at me saying I am having this kind of problem because I do anal sex. Very vulgar things they were saying [sic].”²⁸

R6 added to the challenges facing the community members and the lack of sensitisation of the medical professions:

²⁶ E1. (2015, April 10). Interview with Swarupa Deb. Chennai: Tamil Nadu.

²⁷ R1. (2015, April 15). Interview with Swarupa Deb. Chennai: Tamil Nadu.

²⁸ R8. (2015, April 15). Interview with Swarupa Deb. Chennai: Tamil Nadu.

“Once my friend had some nail problem so I accompanied him [sic]. The doctor knew that I am a Transgender. He is saying, oh! You are a transgender? Why are you simply coming to hospital? [Sic] I am not going to treat you gays. So I said that my friend is having problem so we have come for a tetanus injection only. The doctor is telling, yes you can suck my penis. Like that he is telling [sic]. They think we are all sex workers.”²⁹

In Karnataka, the transgender community in urban areas does not face as many problems as several doctors in Bangalore and Tumkur areas were open to treating them without prejudice due to their previous engagement with the community members during NACP phase II and III. The community members too prefer visiting only those doctors having previous experience about the community to avoid any unpleasant circumstances. However, the transgender persons in rural Karnataka were facing prejudice in accessing health care facilities. The doctors or the local health care centres usually deny healthcare to them because of lack of awareness. Thus, they eventually resort to taking un-prescribed medicines from local chemists. Most of the experts, as well as grass root transgender persons, accept the fact that the doctors were not trained in transgender physiology, and thus, it was difficult for them to treat a patient, who was gender-non-conforming. E11, an LGBT activist said:

“There is no uniformity. Somewhere they [doctors] are open, some could be trans-phobic, and there could be discrimination in health care settings. Evidence shows that there are a lot of stigmas attached to TG accessing health care.”³⁰

R11, a MTF transgender person further explained the challenges in healthcare accession for their community,

“In Bangalore city, there are hardly ten doctors who will look at us. In districts and all, they are not even looking at us [sic]. They are deciding in their mind that this person is a sex worker; this person

²⁹ R6. (2015, April 21). Interview with Swarupa Deb. Chennai: Tamil Nadu.

³⁰ E11. (2016, August 28). Interview with Swarupa Deb. Bangalore: Karnataka.

has HIV and all that. It's been two to three years since transgenders are talking to doctors that you should treat us like other patients only [sic].”³¹

A similar situation was observed in West Bengal as well. The community members preferred visiting a handful of preferred doctors, who had previously dealt with the community to avoid any hostile experience. The community members admitted that inexperienced medical professionals often behaved rudely, ridiculing and declining to treat them. E17 of SAATHII (Kolkata) thinks that the general reaction of the medical professionals towards transgender persons was disgust.³² R21, a MTF transgender person, asserting the discriminative behaviour of the professional said:

“Doctor does not even want to see us. As soon as he sees us, he asks us what can happen to people like you. They don't even check us properly. The doctors just write us a prescription and tell us to leave.”³³

The condition is even worse in rural areas. R25, a transgender person from rural West Bengal said: “No there is no doctor. No doctor will touch a *hijra*”.³⁴ Due to the prejudiced behaviour by the medical professionals as well as acute poverty, the community members resort to medicines made by unauthorised practitioners. Such medicines would often cause allergies, poisoning and infection. In urban areas, the respondents said unless there was a serious issue they prefer self-medication over visiting a doctor.

In Tripura, the community members, in case of common ailments, prefer visiting private clinics nearest to their residence that are mostly less crowded. However, in case of serious health problems or medical emergencies, they prefer the government hospital for being less expensive. The respondents said that they were admitted to the female wards and nurses were kind to them most of the time. When asked about the reaction of the doctors and

³¹ R11. (2016, June 23). Interview with Swarupa Deb. Bangalore: Karnataka.

³² E17. (2016 November 07). Interview with Swarupa Deb. Kolkata: West Bengal.

³³ R21. (2016, October 10). Interview with Swarupa Deb. Kolkata: West Bengal.

³⁴ R25. (2016, October 26). Interview with Swarupa Deb. Puruliya: West Bengal.

hospital staff towards the community members, R36 a MTF transgender persons responded saying:

“Very nice. No one teases us there.”³⁵

R35, another MTF transgender person, added saying:

“No problem there (accessing health care facility). If we have any stomach ache or fever, we go to a doctor. Sometimes, if we clap chemists, don’t charge us any money. We bless everyone.”³⁶

4.7. Summary

The transgender persons are often eager to change their appearance in accordance with their target gender identity. However, due to financial constraints, they have to settle for cheaper alternatives that usually damage their body and causes side effects. Most transgender persons attach higher significance to their desire to be identified as their target gender in comparison to maintaining their health, which poses a serious threat to their general well-being. In India, the transgender healthcare facilities are mostly limited to HIV-AIDS care. The need for a comprehensive healthcare plan for the transgender person across ages as well as mental, psychological and general ailment care facilities are still lacking. It is imperative that the transgender health issues are identified as an exclusive health care discipline and the medical care giver and professionals are sensitized about their needs.

³⁵ R36. (2015, October 26). Interview with Swarupa Deb. Agartala: Tripura.

³⁶ R35. (2015, October 19). Interview with Swarupa Deb. Agartala: Tripura.

CHAPTER 6: EDUCATION AND EMPLOYMENT: CHALLENGES AND RESPONSES

This chapter deals with the challenges facing the transgender communities towards accessing discrimination free education and employment opportunities in Tamil Nadu, Karnataka, West Bengal, Tripura. The chapter analyses the problems of education and employment for transgender individuals and the response of the State and individual institutions towards the challenges facing the transgender communities in accessing education and employment opportunities. As education and employment are inherently co-dependent, this chapter combines the issues faced by the transgender persons in accessing discrimination free educational and employment opportunities. This chapter however is broadly divided into two parts, one dealing with education, and the other with challenges faced by the transgender persons in employment.

The first part of the chapter deals with the challenges facing transgender community in education begins with the problems of transitioning transgender persons and the discrimination and lack of trans-friendly environments in educational institutions. It then deals with the international best practices for guaranteeing right to education for the transgender communities. After which, it comments on the response of the various organs of the Indian State as well as individual educational institutes towards the issue of education for the transgender communities. This part concludes with the observations made during the field studies conducted in Tamil Nadu, Karnataka, West Bengal and Tripura in the areas of educational opportunities for the community. For the purpose of this study, educational opportunity includes formal schooling, college and university curriculum as well as vocational/skill-based training and scope for adult education for the transgender communities.

The second part of the chapter deals with the challenges to transgender employment in public and private sectors as well as scope for self-employment. This part begins with an analysis of the traditional Indian transgender occupations and their evolving professional

identity. The third section comments on the international norms and precedents and the Indian response towards the issue of transgender employment. This part concludes with the observations made during the field studies in the areas of employment in the four states.

6.1. Challenges facing transgender community in educational institutions

Transgender students often feel unsafe and violated psychologically and physically within the educational institutions. Such discrimination and feeling of being excluded eventually lead to negative repercussions upon them including lack of self-esteem, decreased ability to succeed in school, increased absenteeism, lower educational aspirations, poor academic performance, alarmingly high rate of school dropouts as well as incidents of suicide among gender variant individuals.

Article 26 of the Universal Declaration of the Human Rights provides that:

“Everyone has the right to education [...] Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all [...]”

On a similar note, Article 21-A of the Indian Constitution provides that “the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine”. Though the Indian State guarantees equality for all, including equal access to education, no clear provision for transgender individuals have been provided as yet. Due to lack of constitutional safeguards, transgender community member across age groups face a higher rate of discrimination within educational institutes. It is well known that the process of imparting education in any culture is closely associated with the process of socialisation. The purpose of education is not only limited to curriculum oriented subjects but also train students to successfully adapt to their society. From a very young age, children are taught to move, behave, sit and conduct themselves in socially required modes based on their biologically assigned gender. Concomitantly, the roles of teachers or those imparting education is especially important in the process as they are

often the persons responsible for reinforcing 'appropriate' behaviour among the young students within a formal institutional setting apart from the informal socialisation through the family. As the aim of formal education is to transmit cultural norms of the society to its younger generation, the young students are consciously trained to conform to their biologically assigned gender at birth. Such hetero-normative binary gender based system observed within formal educational institutes often prove to be a barrier for gender non-conforming students, who do not identify with the gender assigned to them at birth resulting into them in having severe socio-psychological consequences during their formative years.

6.1.1. Problems of transitioning transgender persons

A transgender individual usually begins to realise their gender non-conformity at an early age, while still a child but becomes more pronounced during puberty. This phase is marked by a crisis in one's own identity and the consequent confusion in engaging with others (Winter 2012). This phase in the life of a gender non-conforming person is called transition. During this phase, a gender varying person slowly transits and begins to embody the characteristic traits of the gender with which they identify rather than with the gender they were assigned at birth. The process of transition begins in early childhood and extend to the late teens or even beyond (Well *et al.* 2012, Winter 2012). This is an extremely complex psychological and emotional phase involving feelings of emotional uncertainty, the doubts of being in the wrong body and actualising about one's own identity. The phase often begins with the gender variant child taking a different name as per their desired gender instead of the given name, wearing clothes and grooming themselves according to their target gender, incorporating gender non-conforming behavioural patterns, desiring/attraction towards a person of same sex (often being mistaken by themselves and/or others as homosexual) and a strong urge to alter their body for approximating it to their target gender (Well *et al.* 2012, Anti-defamation League 2016). Transitioning (atleast in the initial phase) may or may not

also include medical and legal aspects, including hormone induction, surgical interventions or changing identity documents. Due to the transitioning nature of the process, it prolongs over a period of time and is not exactly a one-step procedure. Many transgender individuals have referred to the transitioning phase as the most difficult part of their life. During this phase, they are torn apart by internal conflict regarding their gender identity as well as discrimination faced at home and outside. Emotional disquiet, lack of care and support from family often snowballs into extreme psychological vulnerability leading to clinical depression and suicidal tendencies. Invariable discriminatory encounters and humiliation faced for their gender non-conforming behaviour at their educational institutions at the hands of peers as well as teachers add to their pain and suffering.

Vidya, a transgender theatre artist and an activist has revealed her experiences faced in school while transitioning, in her autobiography *I am Vidya* (2007). Vidya presents a heart wrenching memoir of all the humiliation faced in school while going through a transition. Similarly, Laxmi Narayan Tripathi and Revathi too have revealed incidents of humiliation and suffering they had to undergo during their school days in their autobiography. Tripathi, who went to upper class English medium schools in Mumbai, mentioned being physically abused and raped not only at home, but also at school, and after school hours at the hands of fellow students owing to her effeminate mannerisms (Tripathi 2015). Revathi, hailing from a small village in rural Tamil Nadu, too faced harsh physical and emotional violations to her integrity while continuing her formal education. Eventually, she had to drop out of school, unable to tolerate physical and emotional degradation that was brought upon her due to her gender non-conformity (Revathi 2010).

R21, a transgender community member from West Bengal resonating similar experience said,

“I faced problems in school. There was a tutor whom I used to go to for studying. He tried to abuse me on several occasions. Like that, at school, boys and teachers tried taking advantage of my situation.”¹

R12, from Karnataka, on never receiving an opportunity to go to school due to her transgender identity said, “[...] my parents realised I was a *hijra* [gender non-conforming] when I was very young. So they never sent me to school.”² R17, a FTM transgender person on being discriminated for hir [sic] gender non-conformity at school said: “My school suspended me for feeling attracted to another girl student. They thought I was a girl, when I felt like a boy.”³ R6 from Tamil Nadu added: “I faced a lot of teasing problems in school. It was a mental torture. My science teacher abused me. That time [itself] I attempted [to commit] suicide.”⁴

The gender varying students undergoing transitioning may display mannerisms identical to their target gender, thus, making them a susceptible to humiliation by the fellow students, teachers and staff alike with mild to higher sexual undertones. Such insensitive and discriminatory behaviour towards a gender non-conforming child within educational institutions often affect their curriculum adversely as most of them feel disturbed and cannot concentrate on their studies. Though some transitioning gender variant students try to cope up with being victimized by repressing his true gender identity, it is still very demanding for them as they do not get to express themselves fully. Such students might perform well academically or atleast finish their formal education have recollections of being feeling lonely. R15 from Karnataka who identifies as a *kothi* said:

“I [have] always control[ed] my [gender non-conforming] behaviour in front of other people. That is how I could study but it was very painful [for] not [being able] to express my real identity.”⁵

¹ R21. (2016, October 21). Interview with Swarupa Deb. Srerampore: West Bengal.

² R12. (2016, August 8). Interview with Swarupa Deb. Bangalore: Karnataka.

³ R17. (2016, September 3). Interview with Swarupa Deb. Bangalore: Karnataka.

⁴ R6. (2015, April 13). Interview with Swarupa Deb. Chennai: Tamil Nadu.

⁵ R15. (2016, September 2). Interview with Swarupa Deb. Bangalore: Karnataka.

6.1.2. Discrimination and lack of trans-friendly environments

The experiences of young students within educational institutions, directly and indirectly, affect their perception of gender differentiation to a large extent. Apart from the institution of the family, schools provide as a significant environment for gender socialization to the younger generation as they allocate a large amount of time for engaging with their peer group. Young students are conditioned with differential skill practices and inputs that lead them to socialize differently among their own gender and another gender. The schools further initiate gender segregation for young children according to their biologically assigned sex. Additionally, teachers influence gender differentiation by providing boys and girls with different learning opportunities. Moreover, teachers and peers also serve as model sources of learning about appropriate gender and their roles (Goble et al 2012: 67). Curricular materials too contain socially approved hetero-normative gender behaviour. Consequently, young individuals internalize gender stereotypes and prejudices, which in turn guide their own preferences and behaviours. Gender thus, becomes the most important classification through which children identify and organise themselves. Students are often addressed as “boys and girls” and are asked to sort themselves by gender and discouraged to involve with cross-gender play/study mates. Gender segregation has proved itself to be a huge flaw in formal educational institutions, where students are encouraged to participate in curricular and extra-curricular activities with same-sex partners leading them to spend more time in stereotypic gender practices. Likewise, peers too contribute to gender differentiation by teaching their classmates stereotypes and punishing them for failing to conform to stereotypes via verbal harassment and physical aggression which highlights the discrimination faced by the transgender students at the school.

As mentioned earlier, transitioning begin early in the life of gender varying students while being in primary school, so is their desire to adopt the behaviour of their target gender

arises strongly. Most of the male to female transgender respondents have mentioned that in school they would feel comfortable to sit with the girls and play with them. Young adults and adolescent MTF transgender persons would often feel attracted to a *cis*-gender boy. However on display of such feelings, they are harassed and labelled as homosexual. The teachers and school administration too would mistake them for engaging in the socially unacceptable abnormal behaviour. The young MTF transgender students being in the body of a boy but identified as a girl is often harassed and bullied for hir [sic] effeminate nature. They are constantly humiliated and ridiculed both by their teachers and peers. Moreover, gender non-conforming students hardly get to play with their mates from the target gender group. As girls and boys are often encouraged to play separate games, a MTF transgender child is not accepted in the girls play group. A child displaying gender variance is often labelled as ‘abnormal’ by other parents and instruct their wards to stay away from such students. School administration often lacking sensitivity towards transgender behaviour might complain to the child's parents, which in turn, build more pressure on the student and often result in violence at home during attempts to correct them. Therefore, a transitioning transgender student goes through the pain of self-actualisation of identity, which is already a tough process for a teenager at school approaching/going through puberty, violence and harassment from peers and family at home. Transgender students are also physically abused and assaulted by their teachers, peers or even by family members in attempts at punishing/correcting them. Such extreme situations faced by the transgender students at school lead to depression in a gender varying person for attending school, which leads to low level attendance, less concentration in studies and decreased performance. In this regard, E7, a transgender activist said:

“Completion of education is very rare. The transgender people unknowingly express their gender non-conformity. Because of that they are teased, abused and raped. Like the tuition master will ask a transgender student to stay back after the class and abuse them physically [sic]. Most of the school principals also abuse the transgender students. So this everyday abuse and teasing is a big

problem for them. Some people also blackmail them, like you have sex with me or else I will tell my other friends [sic]. So there are a lot of problems in their access to education.”⁶

Furthermore, in-school facilities and sensitization levels of the transgender phenomenon are equally low. The FTM and MTF transitioning students are not allowed to use toilets according to target gender, which causes them discomfort. Within residential schools, where every facility is binary oriented, it is very difficult for a transitioning gender variant student to fit in. Due to the lack of sensitization, the transgender students are made to occupy rooms with their biologically assigned gender groups. Often clustering a transitioning student along with cis-gender students instigates incidents of aggression and disdain towards the transgender students. Transgender students are at times pushed into extreme situations in the name of curing them that destroy their confidence and self-esteem. For instance, the sports teacher might ask a MTF transgender student to play an extreme sport with other boys with which the gender varying student might not feel comfortable. In such situations, transgender students are often called names, ridiculed and violated sexually. This might cause a life-long trauma. The discriminating/intolerant attitudes towards the transgender communities among the elders are passed on to younger children, who in turn bring them to school. Thus, transgender students often face insults and transphobic behaviour from their peers. Lack of any transgender friendly support system and in-school facilities accompanied by the daily harassment faced by the transgender students results in their perception of schooling as punishment and they thus, dropout.

Only a small minority of transgender persons could finish their education and go for higher education at colleges or universities. Though the discrimination level is not any less at colleges/universities, it has been perceived to be ‘less mean’ than schools by several transgender individuals. The respondents have said that, in colleges, they have faced lesser discrimination in comparison to schools. This could be due to the fairly liberal environment

⁶ E7. (2016, August 18). Interview with Swarupa Deb. Bangalore: Karnataka.

at college/university levels as well as the maturity of the students. R22, a transgender community member from Kolkata, had expressed that she faced comparatively lesser discrimination and “open-mindedness” from friends and professors in college. R22 often justified keeping long hair to her parents while going through the transition during her college life by citing “many male professors in my college keep long hair”.⁷ However, such instances cannot be generalised. Another reason for comparatively lesser discrimination beyond school could be due to the fact that by the time transgender individuals take admission to college, they have nearly completed their puberty and much of the transitioning process, which brings a sense of self-assurance within them compared to the insecurities of childhood and pre-puberty age.

“I studied till tenth but dropped out of school after that. That time so much was going on in my life, in my mind and body that I could not concentrate on studies. That’s why I dropped out. That time I was not so comfortable with myself like I am today.”⁸

Some transgender students could complete their education by suppressing their transgender identity. Several respondents, who have said that they could complete their schooling and college education as well as, faced lesser discrimination while growing up as they did not reveal their transgender identity to their peer and colleges. Though this could help them secure educational degrees, they however expressed unimaginable pain as prolonged suppression of one’s true identity took a huge toll on their psyche. Following are two extracts from the interviews with R15 and E18 for emphasizing the point:

“In school I was teased. So I controlled my behaviour in college. I try to control my behaviour as much as possible [sic]. So, now I know, I am educated and I am reading paper, I am careful whom I don’t like and whom I like. But controlling my true nature is very painful. I am a woman and I want to behave like a woman, not like something else [sic].”⁹

⁷ R22. (2016, October 21). Interview with Swarupa Deb. Srerampore: West Bengal.

⁸ R24. (2016, October 22). Interview with Swarupa Deb. Srerampore: West Bengal.

⁹ R15. (2016, September 2). Interview with Swarupa Deb. Bangalore: Karnataka.

“I have studied engineering from my hometown in Kerala. I belong to an upper class Malayali family [...] so when my parents got to know about my identity. They kept me under very strict restrictions. They would never let me go out of their sight. So I never met a *hijra* or anything throughout my graduation and I could never express my true nature. It always saddened me as a child. I still feel sad.”¹⁰

6.1.3. International best practices in transgender education

The Yogyakarta Principles ensures that every individual has the right to education, without discrimination irrespective of their sexual orientation and gender identity (Principle 16). Towards providing equal opportunities for the LGBT Community the Principle 16 requires the States to take “necessary legislative, administrative and other measures to ensure equal access to education, and equal treatment of students, staff and teachers within the education system, without discrimination on the basis of sexual orientation or gender identity.” The principle further provides the need for such education that caters to the needs of students of all sexual orientations and gender identities. The Yogyakarta Principle 16 (The Right to Education) puts forward the idea that aim of education is to develop respect for human rights for promoting peace, tolerance and equality while taking into account and respecting diverse sexual orientations and gender identities. Additionally, Principle 16 ensures that school curricula should take into account diverse sexual orientations and gender identities. The principle seeking to ensure the safety and social inclusion of the transgender students provided that the State needs to formulate laws and policies for adequate protection for people of diverse sexual orientations and gender identities against all forms of social exclusion and violence within the school environment as well as necessary legislative, administrative and other measures for ensuring discipline in educational institutions towards maintaining their dignity and discrimination free environment.

¹⁰ E18. (2016, September 3). Interview with Swarupa Deb. Bangalore: Karnataka.

In 2014, a *Model District Policy on Transgender and Gender Nonconforming Students* was developed by the Gay, Lesbian & Straight Education Network and the National Centre for Transgender Equality in the United States of America, which outlined model practices for schools towards ensuring safety and inclusion of gender non-conforming students. The model endorsed a safe and discrimination free educational environment for all students, regardless of sex, sexual orientation, gender identity, or gender expression, and to facilitate compliance with local, state and federal laws concerning bullying, harassment and discrimination. *Schools in transition: A Guide for Supporting Transgender Students in K-12 Schools* (2015) was developed to highlight best practices while offering strategies for building upon and aligning transgender/gender non-conforming students with school's culture. The guide responded to the challenges that affect a transgender student's experiences in school. It revolves around toward the needs of all students from kindergarten through twelfth grade incorporating distinctions and recommendations based on the specific ages and stages of students' development. The guide also provides for protecting transgender students from discrimination in school through state anti-discrimination laws. The document was a response to the incidents of transgender students feeling unsafe and experiencing verbal and physical harassment or assault in schools. It was jointly developed in 2016 by the US Education Department Office for Civil Rights and the USA Department of Justice's Civil Rights Division. It deals with transgender students' rights and schools' legal obligations under Title IX of the Education Amendments of 1972 called, *Dear Colleague Letter* (2016: 2). This document was aimed at responding to enquiries from schools on matter related to transgender students. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in federally funded programs and activities. The United States Department of Education's Office for Civil Rights (OCR) has issued guidelines recognizing that Title IX protects transgender and gender nonconforming students along with children of diverse

sexual orientations stating: “discrimination based on a person’s gender identity, a person’s transgender status, or a person’s non-conformity to sex stereotypes constitutes discrimination based on sex” (2016: 7). The U.S. Department of Education’s Office for Civil Rights (OCR) has also enforced Title IX to require the school to treat transgender students in accordance with their gender identity, even in the context of sex-separated spaces such as restrooms, locker rooms and overnight field trips.

Schools Transgender Guidance (2015) published by the Intercom Trust & Devon and Cornwall Police is a significant report for sensitizing the issues of the transgender students in the United Kingdom. The purpose of the text was to establish favourable practices for transgender students in schools and colleges. The text recommended ways in which teachers and administrators deal with transgender students in a sensitive manner for promoting inclusion of all, irrespective of their gender identity, within educational institutes. The document recommended best practices for improving in-school services for gender non-conforming students and empowering support.

The Gender Recognition Act, 2004 in coherence with the Human Rights Act, 1998 in the UK provides for the process by which a person can get a Gender Recognition Certificate.¹¹ *The Equality Act, 2010* (UK) ensures legal protection against discrimination for everyone under the nine protected characteristics defined in the Act, one of which is Gender Reassignment. Part 6 of *The Equality Act, 2010* makes it clear that the Act specifically refers to Schools and young people. Section 7 of *The Equality Act, 2010* states that:

“A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex.”

¹¹ Article 8 of the act provides “right to respect for private life and family life, Article 10 provides for “freedom of expression Article 14 provides for the prohibition of discrimination.

The Act applies to employment, education and a range of other areas where discrimination may take place. In order to be protected under the Act, a gender non-conforming person need not have to be undergoing a medical procedure to change the sex. However, such gender non-conforming persons must take steps to live in the opposite gender. The Act requires public bodies including schools to carry out their activities for the purpose of eliminating discrimination in all spheres of the educational system.

6.1.4. Responses of the Indian State in the domain of transgender education

Transgender students are often forced to drop out of school due to acute discrimination and abuse. The Expert Committee on Issues Relating to Transgender Person (2013) recognised the need for addressing the challenges facing the transgender communities in the educational sector. The Expert Committee recommended a comprehensive approach towards ameliorating their status through access to education, equity and an enabling environment at educational institutions and employment opportunities (p. 52). The committee observed that addressing stigma and discrimination at an early stage will help in bringing transgender children to school and retaining them up to the higher levels. The Committee also recommended that an enhanced understanding of transgender issues might lead to altering social attitudes towards the transgender community. The Expert Committee recommended a review and reform of the structural constraints at schools, legal procedures and policies that obstruct access to mainstream education for the transgender community along with ensuring a proper mechanism to ensure safety for transgender children in educational institutions. The Expert Committee recommended student counselling as an integral part of schools towards providing adequate opportunity to interact with trained counsellors as they undergo numerous gender dilemmas. Another important recommendation of the Expert Committee was to include transgender related matters into the curriculum of adolescent education in schools for scrutinizing children as a step to address the stigma/discrimination at schools. The Committee

further recommended that activities organized at schools need to be inclusive for ensuring participation of all children, for enabling other children in understanding the transgender phenomenon for giving better space to transgender children. The Expert Committee recommended mainstreaming the transgender community, a review of the existing educational and training schemes/programmes like *Sarva Shiksha Abhiyan*, *Rashtriya Madhyamik Shiksha Abhiyan*, *Jan Shikshan Sansthan* at various levels i.e. primary, secondary and senior level for incorporating the concerns of transgender persons (p.53). Additionally, the committee recommended that the Ministry of Human Resource Development through the National Council for Teacher Education may take up sensitization of teachers through a series of training programmes for which a separate module can be prepared.

According to the *Right of Children to Free and Compulsory Education Act, 2009* all children between 6-14 years of age have a right to education for free from class 1 to class 8 in a nearby government school or aided school in India (Section 2 c). The convergence approach of the Expert Committee to review *Sarva Siksha Abhiyaan* and include transgender children could prove to be an appropriate way of implementing the *Right of Children to Free and Compulsory Education Act, 2009*. Section 2 d of the act includes “child belonging to disadvantaged group”. A child belonging to the “disadvantaged group” means a child with disability or a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economic, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification. According to the provision of the Act, State-aided schools have to set aside a minimum number of seats for children, who want to get free education under this law. Till date only Tamil Nadu and Delhi state governments have included transgenders under the scope of the disadvantaged group in 2011 and in 2014 respectively. Moreover, the *Draft National Policy on Education 2016* lacks any provision for

transgender or gender non-conforming persons. Though the policy provides ample scope and inclusion strategies for persons/students suffering disability and students belonging to reserved/scheduled classes, the policy has turned a blind eye towards the transgender community of India (Bhattacharya *et al.* 2017: 135)

The NALSA judgement has observed that the transgenders are deprived of social and cultural participation, and hence, have restricted access to education, health care and public places, which deprives them of the Constitutional guarantee of equality before the law and equal protection of laws (Para 4). This judgement ordered that the Central and State governments should also take steps for framing various social welfare schemes for their betterment. Centre and State governments should take steps to create public awareness so that transgender individuals will feel that they are also part and parcel of the social life and not be treated as untouchables (Para 129. 8). The operational part of the judgment provides for Central and the State Governments to take measures to regain their respect and place in the society (Para 129. 9).

6.1.5. Select measures adopted by individual Indian educational institutions

In 2010, Bangalore University provided for enrolment of transgender students in graduate and postgraduate programs under 'other' category. Assam Jorhat College provided for enrolment of transgender students under 'third-gender' category in the year 2013 and Patna Women's College provides for enrolment of transgender students in 'female' category for graduate courses since 2010. 'Vistaar' a skill-based training programme was initiated by the Delhi University for the transgender persons in 2013. In 2014, Tamil Nadu announced that transgenders would have thirty per cent of the seats reserved for women in arts and science colleges. In the same year, in order to address the various issues and problems faced by transgender community in higher educational institutions with empathy and efficiency, the University Grants Commission (UGC) issued a circular on October 29th, 2014 to all the Vice

Chancellors of the universities requesting them to include a column for transgender category in all application forms/academic testimonials and all other relevant documents processed by them as well as by their affiliated colleges along with transgenders to be included as a third gender under various scholarship/fellowship schemes of UGC. On similar terms, the Delhi state government provided for twenty-five per cent reservations in admission for transgender students in government schools under the economically weaker section (EWS) in 2015. In the same year, Krishnanagar Government Girl's College in West Bengal appointed Manobi Bandopadhyay, a transgender person as the college principal. In 2016, the Ministry of Women and Child Development provided that transgender be included as the third gender in its guidelines for gender champions at educational institutions. The University of Kerala formulated a state transgender education policy in 2016. This policy has provisions for identifying transgender students in educational institutions under the University of Kerala, for protecting their identity and self-respect, for sensitizing teaching faculty, non-teaching staff as well as the student community with penalties for discrimination, violence and harassment. The policy further identified measures to be implemented for resolving problems of safety of transgender individuals, creating an inclusive curriculum, providing monetary assistance for transgender students and conducting awareness programmes for faculty members/teachers and administrative staff. Shortly after the education policy was unveiled, a trans-inclusive school Sahaj International was inaugurated in Kochi, Kerala on 30 December 2016. The school, while seeking to address real issues faced by transgender individuals, is expected to serve as a skill development centre for transgender school dropouts and train them under the National Open School System for the examinations corresponding to class 10 and 12. It is worth highlighting that the teachers and staff of the school have members from the transgender community. In June 2017, Indira Gandhi National Open University has exempted fees for all its programmes for transgender candidates.

6.1.6. Transgender educational challenges: Perspectives from the four states

6.1.6.1. Tamil Nadu

During field studies in Tamil Nadu, several respondents revealed to having dropped out of school or college due to extreme discrimination faced from the side of teaching staffs and students. Transgender activists have expressed their concerns over the increasing dropout levels of transgender students. It was revealed that the teaching staffs along with the students were not sensitized about transgender issues.

The transgender students especially face discrimination during the senior years of school. As the physical and psychological transformations gain prominence mostly during the pubescent age, transgender students easily become a victim of teasing and physical abuse by fellow students and teachers. E2 added that adolescence was extremely delicate and if not dealt with may turn the child towards deviant paths.¹² Most transgender youths hardly got any support from family. Discriminatory behaviour in schools and colleges further affects the psychology of a child adversely. Some of the respondents added that they could finish their graduation only because they did not reveal themselves as a transgender persons in public, which was very painful for them while growing up. R8, one of the respondents, mentioned that most people consider transgender persons as sex workers and harass them physically.¹³ R6, one of the respondents admitted that she was physically abused by her college teacher.¹⁴ R7 informed that many transgender youths/teenagers try to commit suicide when faced with discrimination and stigma that society throws upon the transgender community.¹⁵ E2 and E1 agreed on a point saying that through educational institutions and funding bodies like the University of Delhi, UGC and others were providing reservation for higher education, no attention has been given to primary and secondary schooling. They opined that the schools

¹² E2. (2016, April 13). Interview with Swarupa Deb. Pondicherry.

¹³ R8. (2015, April 13). Interview with Swarupa Deb. Pondicherry.

¹⁴ R6. (2015, April 13). Interview with Swarupa Deb. Pondicherry.

¹⁵ R7. (2015, April 13). Interview with Swarupa Deb. Pondicherry.

need to provide a sensitized environment for the transgender students as the highest rate of dropouts occur in senior schools. They pointed to the need for providing vocational training to the transgender youth, that might help them in skill building and explore small-scale industries as an employment option.

6.1.6.2.Karnataka

The school dropout level was quite high in Karnataka as in Tamil Nadu. Some respondents expressed that they dropped out of school due to extreme prejudice, discrimination and teasing they faced from the school teaching and non-teaching staff as well as from the fellow students. Many of them complained of being physically abused by their teachers and senior students. Some said that they voluntarily left studies as they were already dealing with too much emotional conflict in their personal lives while transitioning. They said that they were confused about their true identity. Some thought they were sick or mentally ill, while others said that they were facing conflict with their families. Thus, coping with the additional burden of studies and school work was too much for them.

Some young transgender persons, who were continuing their education at pre-university and graduation levels, said that they were working as high-end escorts. They mentioned that an educated, English speaking escort was desired by the hiring agencies so that they can adapt well with their high-class clientele. However, they added that often they keep their transgender identity a secret and publically identify according to their biologically assigned gender to save themselves from discrimination as well as to be accepted by their peers and teachers/professors. Some of the respondents mentioned that they could finish their graduation only because they did not reveal themselves as transgender person in public, which was very painful for them while growing up. It was learnt that though Bangalore University and UGC are providing reservation for higher education for the transgender students, it has not helped the community at all. The number of gender non-conforming

students registered under 'transgender' category is nil in Bangalore University. Most of the students do not want to register under transgender category fearing discrimination. Due to the lower socio-economic background of most of the transgender persons, they were not financially supported by their family, and eventually dropped out of college due to lack of financial support even if they wished to study further. Recently, Solidarity Foundation has begun an annual scholarship scheme for two transgender persons in Karnataka. The scholarship amount covers their tuition fees and other requirements related to their studies. However, most of the experts pointed towards the need for providing vocational training to the transgender youths, which might help them in skill building and explore the small-scale industries as an employment option.

6.1.6.3. West Bengal

The social ostracism and prejudices faced by the transgender communities disrupt their educational opportunities. The transgender communities of West Bengal are no exception to this. The young transgender students face abuse and discrimination in schools during the phase of transitioning leading them to drop out of school. Many gender non-conforming students voluntarily dropout from school during the transition phase for being unable to cope with their inner psychological conflicts, family pressures as well as the school curriculum. Those who complete their schooling and college education could do so only by hiding their transgender identity. Jadavpur University, National University of Judicial Sciences, Presidency College and few other private educational institutions in Kolkata are sensitive towards the transgender students. However, the enrolment in these elite institutions was quite difficult for the transgender students due to the expensive fee structure. Most of the transgender persons were not financially supported by their parents once they came out. Even daily commuting in public transport was a problem for those living in rural areas and they cannot afford hostels/accommodation within the city. On the other hand, the schools and

colleges situated in semi urban or rural areas did not provide any opportunities for the transgender students and were hostile towards the community members due to lack of sensitization. Consequently, transgender youths had no other option but drop out of school or college. Therefore, access to stigma free education still remains a challenge for the transgender communities of West Bengal.

6.1.6.4.Tripura

During the interview sessions, it was revealed that all the respondents in Tripura were illiterate. Moreover, they confirmed that almost the entire transgender community residing in Tripura had never attended school or any kind of formal education. R31, one of the transgender community members said that she had never attended a school nor did she encourage her chelas to attend any educational or vocational institution.¹⁶ R34 pointed towards the problem of discrimination faced by a transgender child at school.¹⁷ She believed that transgender children should be provided exclusive educational facilities and not to be sent to school with non-transgender children to avoid discrimination. Several other respondents like R32 and R33, seemed hopeless. They believed that no one would want to educate a transgender child and perhaps their only opportunity to learn reading and writing would be in their next life.¹⁸ Rotna pointed at the dreadful childhood of a transgender youth, when she said: “we have no education. Since childhood we are trained to beg, sing and dance”.¹⁹ Most of them seemed apprehensive of attending school fearing discrimination, ashamed at being transgender. The following is an extract from an interview with R36, a *gurma* community member for emphasizing the point:

“Swarupa Deb: Did you ever encourage your chelas to attend school?”

R36: No. If they will go to school, people will tease them. Don’t you understand? What is the meaning of such education for which the price is humiliation?

¹⁶ R31. (2015, October 22). Interview with Swarupa Deb. Agartala: Tripura.

¹⁷ R35. (2015, October 19). Interview with Swarupa Deb. Agartala: Tripura.

¹⁸ R33. (2015, October 19). Interview with Swarupa Deb. Agartala: Tripura.

¹⁹ R37. (2015, October 22). Interview with Swarupa Deb. Agartala: Tripura.

SD: But do you know that there are transgender persons, who studied against all odds and now they are well respected and chair positions in government offices?

R36: Didi, we are very poor people. We are barely surviving; we do not aspire for anything else except some food and shelter.”²⁰

Though most of them were unsure of whether they wanted education, some seemed hopeful. But it is definitely distressing to learn that an entire community of transgender people in Tripura is completely illiterate.

6.2.Challenges to transgender employment

As binary gender norms are deeply ingrained in the society, the individuals who do not conform to it are often stigmatized. As mentioned in the earlier chapters, social stigmas have out-casted the transgender community as undesirable or deviants. Such stigmatizing often devalues the victim in the eyes of others and themselves by reducing their identity to a socially dishonoured entity. In turn, such branding becomes associated with negative stereotypes, which are widely adopted within social systems, providing a basis marginalizing for those who are stigmatised. For transgender individuals, their position as a socially excluded stigmatised community contributes to the enduring social and cultural backlash they have to experience in social as well as professional settings. The hetero-normativity that is the prime source of stigma for the transgender individuals is their biological anatomy. In this regard, R17 said:

“In job sectors it is difficult. *Kahi ja ke mein Transgender hu bolne se, upar FTM hu bolne se sab yehi puchenge ki neeche kya hai. Dadhi much se kuch nai hota, sab neeche kya hai wohi jaana chate hai. To shayad mera rape bhi ho sakta hai, mein pregnant bhi ho sakta hoon* [If I will identify myself as transgender that too a FTM transgender, everybody will ask whether I have female or male genitalia. Having facial hair is not enough; everyone will be curious about my genitals. I might get raped, I might get pregnant].”²¹

²⁰ R36. (2015, October 26). Interview with Swarupa Deb. Agartala: Tripura.

²¹ R17. (2016, September 03). Interview with Swarupa Deb. Bangalore: Karnataka.

Due to social marginalisation and lack of education, transgender individuals have no other means than to adopt employment, which are not generally perceived to be respectful within mainstream society. The transgender communities like *hijra*, *aravani* and *kinnar* pursue their traditional occupations of *badhai*, *mangti* and *dhandra* for earning their livelihood.

Due to the increasing momentum of the recent transgender struggle, many gender non-conforming persons have been able to come out into the public domain and seek their rights in different areas. Some transgender persons like Shamnam Mausi (first transgender MLA from MP) Kamala Jaan (first transgender Mayor), Rose Venkatesh, Tista Das, Anjali Ameer (actors), Laxmi Narayan Tripathi, Vidya (international performers) Manobi Bandopadhaya (first transgender college principal), K Prithika Yashini (first transgender police officer) have ventured into domains outside their traditional occupations. Though these personal achievements have made the presence of the transgender community visible, these are not an accurate representation of the condition of the many gender non-conforming communities. Their marginalisation is not only limited to their gender non-conforming identity but several interrelated factors are responsible for their socio-cultural and economic deprivation. Thus, it is important for employers to be aware, sensitized and be prepared to address the needs of the transgender community. Employers need to be prepared to address the requirements of their transgender human resources by becoming sensitized on matters relating to binary gender non-conformity and transgender expression at work through creating opportunities for promoting transgender awareness and inclusive workplace ambience.

4.2.2. Traditional Indian transgender occupations

The traditional transgender communities engage in three types of occupation for their livelihood: *badhai*, *mangti* and *dhandra*. The *hijra* and *kinnar* belonging to the northern part

of India engage in *badhai* and are consequently called *badhai hijra*. *Badhai* is a ritual practice of singing and dancing for getting a payment on social occasions. The *badhai* practice is not too popular among the traditional transgender communities in south India. However, the practice of *mangti* or begging is common among the traditional transgender communities across India. *Dhanda* means sex work. It is pursued by several transgender community members irrespective of their affiliation with a traditional community. The traditional *hijra* and *kinnar* communities claim not to engage in *dhanda* for the virtue of being “holy” and celibate (Nanda 2005: 56).

4.2.2.1. Badhai

The term *badhai* meaning greetings is a practice associated with the *hijra* and *kinnar* communities of eastern, northern and western India. The *badhai* practice is gaining more popularity and tolerance among the traditional transgender communities and the general public in south India too due to the spread of culture and media. Traditionally, *badhai* is a practice, where by transgender community members sing and dance during childbirth and weddings. For their performance, they are paid a sum of money requested by the elder *hijra* of the group. The *hijra* claim to be gifted by the gods, with the power to curse or bless. Thus, they assert distinction/superiority over men and women. *Hijras/Kinnars* claim authority for their binary gender non-conforming practices and behaviour from the *Mahabharata*, *Ramayana*, several *Puranas* and even the ancient *Vedas* (Pattanaik 2014: 31). In north India, the *hijra* community is believed to possess the power to bestow good fortune among those, who respect them (Lal 1999: 122, Nanda 1999:49-50, Reddy 2006: 85-87). *Hijra* sanction their tradition of collecting *badhai* by invoking Lord Rama’s blessing to the community. According to *hijra* lores, when Rama, the prince of Ayodhya set out to go on an exile for fourteen years along with his wife and brother at the command of his father, his doting subjects accompanied him. But he asked them to return to their homes uttering “All men and

women please go back and perform your duties”. At the end of his exile, when Rama returned to Ayodhya, he was surprised to find some people still gathered at the same spot, where he had asked his subjects to go back. This small gathering of people informed him that since he only commanded all men and women to return and they were neither men nor women, they could not relate to his command. For this act of exemplary devotion towards him, Rama sanctified them with the power to bless or curse (Revathi 2010: 45). Thus, *hijras* sanctify themselves as auspicious through tales from Indic texts and assert their presence in Indian history through myths. As mentioned earlier, Gayatri Reddy has identified that the imagination of being “auspicious” invokes a sense of *izzat* (respect) to the traditional transgender communities in India, which is otherwise not experienced by the transgender communities in West (Reddy 2006: 17). Devoid of reproductive ability, these transgender communities claim to be ascetics, like E4, conferring blessings on a new-born child for bestowing good health and progeny to the newlyweds (Lal 1999: 124). The presence of transgender communities is considered auspicious and terrifying at the same time. While some feel blessed, some are uncomfortable and others amused, while wishing that no one in their family is ever born like them.

4.2.2.2.Mangti

The term *mangti* derived from a Hindi word मांग (maang) or मांगना (maangna) meaning to demand or ask for something, and in this case, alms. The traditional transgender communities of India, who seek a livelihood by asking alms, are said to be professing *mangti*. Nanda argues that there is no exclusive rule as to a transgender person pursuing *mangti* can or cannot participate in *badhai* or sex work (Nanda 1999: 49). Mostly, the MTF traditional transgender communities associate themselves with *mangti*. It is often the guru, who decides which of her chelas should be sent for *mangti*. The practice of *mangti* not only serves as a means of livelihood but also as training for the newly recruited members of the community to

practice and express their identity to the world. As the newly recruited *mangti hijra* have to deal with a wide range of people on a daily basis, as compared to transgender persons, who go for *badhai* or sex work they can learn to act in accordance with their identity. Moreover, this process helps them to deal with the deferential attitude of the general people towards the transgender community. The *mangti hijra* are often known to be employing verbal abuse and threatening to curse if the requested alms are not paid. The traditional communities have evolved into marking their territories and routes towards a systematically regulated *mangti* practice. The transgender groups often mark a specific territory, where they have the exclusive right to ask alms. The members of other *hijra* communities are not allowed to solicit in these areas. It was observed during the field studies that trespassing this system often leads to some form of disciplinary action or gang fights. Thus, specific areas, traffic points, specific railway routes are assigned to a specific *hijra* groups. Sometimes, the elder transgender people only seek money from their fixed patrons instead of door to door begging.

Anyone who is a transgender but has not been initiated into the traditional *hijra gharana* cannot earn the right to *mangti*. It is imperative to understand that a traditional *hijra* unit is not only a socio-cultural entity modelled on the joint family structure but also an economic unit. Many *hijra* communities are registering themselves as trusts/organisations. They are evolving from the traditional communities engaged in *mangti* into a corporate system, where by the *hijra* are now seeking alms in high profile ways. E16 a transgender activist criticizing the traditional community said:

“Before 1990, the *hijra* were begging, doing *badhai*, or some were engaged in sex work. But after the 90s the trend changed completely. Due to globalisation, the leaders realised that slowly the stigma about the community will fade and there will be less scope for begging and doing *badhai*, claiming godliness. So they started this civil society organisation business. They established NGOs and CBOs and started a rat race for getting funds. These NGOs and CBOs are nothing but the traditional *gharanas* in a new corporate style. Then they start controlling their areas, their customers. So the

community is not trying for de-marginalisation. It is just a charade. They have evolved into a more professional setting. It is all a race for earning money.”²²

4.2.2.3.Dhanda

The word *dhanda* (धन्दा) in Hindi means occupation or profession. It is often used in a sexually coloured form denoting prostitution. The MTF transgender community working as sex workers often refer to themselves as *dhandawali*. The *hijra* community in south India also use the term *kandra* instead of *dhanda*. The traditional communities of north India claim to be celibate as they are agents of gods and do not speak openly about their engagement in sex work. They consider *dhanda* as a deviance to the authentic occupations. Therefore, the transgender individuals engaged in *badhai* do not engage in *dhanda* and *mangti* at the same time, though they might convert from one occupation to another (Reddy 2005: 54). The transgender communities of south India, where the practice of *badhai* is less popular, often resort to *mangti* or *dhanda*. *Dhanda* or sex work is one of the primary sources of livelihood as well as violence towards the community. The *hamaam* system, common in Karnataka, has institutionalized sex work. The transgender persons who have engaged in *dhanda* are considered inferior to the *badhai hijra*. The *Jogappa* community of Karnataka consider themselves to be far superior to any other transgender community as they are priests and claim never to have engaged in sex work. Sex work is unlawful in India. Moreover, FTM transgender sex work often consists of oral and anal sex. It is considered to be against the law of nature and is a criminal offence under Section 377 of the *Indian Penal Code*. Thus the transgender persons often fall prey of “unnatural sex” during sex work. Though *dhanda* is not a traditional transgender occupation, it has remained to be the dominant source of income for several transgender persons. Of late, transgender persons have learned to adapt to more sophisticated methods of sex work, like escort services, where by young and educated

²² E16. (2016, October 28). Interview with Swarupa Deb. Patna: Bihar

transgender persons, who are otherwise reluctant to express their gender non-conforming status usually opt for high paying escort services. Many younger transgender persons are now aspiring to do so in other South East Asian countries as there is a larger stable sex work industry for gender non-conforming communities. Many transgender persons have found a new form of *dhandra* through pornography despite the exploitative nature of the industry.

4.2.3. Limited scope for transgender employment in public and private sectors

The transgender community faces severe discrimination in private and public service sectors. Even though the Supreme Court of India has acknowledged the community apart from the binaries of male and female, transgender persons do not fall within the scope of the existing labour laws in India. *Minimum Wages Act 1948, Industrial Employment (Standing orders) Act 1946, Payment of Wages Act 1936, Workmen's Compensation Act 1923, Industrial Disputes Act 1947, Employees Provident Fund and Miscellaneous Provisions Act 1952, Payment of Bonus Act 1965, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013* do not recognise transgender persons. Transgender persons either identifying within the binary (openly or discreetly) or as a gender variant individual outside the binary do not fall within the scope of the labour laws. A gender non-conforming person is not even allowed to appear in public services as transgender and can only identify either as male or female. Moreover, the additional de-marginalisation of the transgender communities in rural areas is disconcerting. Urban transgender persons can often secure jobs in civil society organisations in various capacities. However, transgender persons in rural areas have no other option other than the *mangti, dhandra* and *badhai*. Some of the responses by the transgender community members when asked if they had access to gainful employment are given below:

“For the jobs, which are well paid rarely there is anyone who has an educational qualification, and the jobs which pay less they are unable to meet our expenses. I work in a NGO but the salary I get is not

enough. So, in the evening I go to solicit in the wine shops. Otherwise from where will I get money?”²³

“My body is like a woman. Though my mind is that of a man, society *humesha body dekhta hai* (society is concerned about your biological sex). So when I came out I am always scared of sexual threats. *Fir mein to man hu, to mera rape ho gaya, to mera apna identity ke wahaj se he mein fas jaunga, kyunki man ko to rape he nai hota bolte hai* (I identify myself as a man. So if I will get raped then I will be in trouble as they say a man cannot be raped).”²⁴

“There are no jobs. Most of the transgenders are working in NGOs and CBOs. We get very less money. Government and corporate sectors are not giving any jobs to us. Many transgender activists are now leaving NGOs and CBOs and going back to sex work and hamaam. Their living condition is pathetic. Always gang fights between hamaam groups. Goons are harassing, slum type areas, no hygiene, nothing. But still, people prefer that over activism because at least the money they get is sufficient for sustaining. Many of my sisters, many prominent transgender leaders are leaving activism. This is a major setback.”²⁵

“I want to work but will you give me employment as your maid in your house? Well, I am educated. Will you employ me as a tutor for your children? Or as a babysitter? Activism, government jobs these are only dreams for my community. If someone will employ a transgender as a maid or a guard, that day I will say that we are now being included, or at least it is the beginning.”²⁶

“Nobody will give me a job. See, since childhood I was harassed so much, after that I stopped expecting anything from the mainstream. So I never applied, there is no meaning to get humiliated all over again.”²⁷

“I want to apply for government jobs. Even though I am BA pass, due to my status as transgender on my voter ID card and Aadhaar card, I cannot apply for any government job because there are only male and female columns.”²⁸

²³ E5. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu.

²⁴ R17. (2016, September 03). Interview with Swarupa Deb. Bangalore: Karnataka.

²⁵ R19. (2016, September 4). Interview with Swarupa Deb. Bangalore: Karnataka.

²⁶ E13. (2016, October 19). Interview with Swarupa Deb. Srerampore: West Bengal.

²⁷ R21. (2016, October 10). Interview with Swarupa Deb. Kolkata: West Bengal.

²⁸ R1. (2015, April 12). Interview with Swarupa Deb. Chennai: Tamil Nadu.

4.2.4. International best practices in transgender employment

Article 23 of the International Declaration of Human rights provides that

“Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment without any discrimination, right to equal pay for equal work, right to just and favourable remuneration.”

On similar lines, the Yogyakarta Principles provide for the right to work (Principle 12) for gender and sexual minorities providing that everyone has the right to decent and productive work and favourable conditions of work and protection against discrimination while accessing employment irrespective of their sexual orientation or gender identity. The Yogyakarta Principle 12 directed the states to take all necessary legislative, administrative or any other measures to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment. Additionally, the Principle recommended elimination of any discrimination on the basis of sexual orientation or gender identity to ensure equal employment and advancement opportunities in all areas of public service, including all levels of government service, employment in public sectors, including serving in the police and military. Several states in the US including California Colorado, Hawaii, Illinois, Massachusetts, Minnesota, New Mexico, New York, and others provide transgender citizens protection in the workplace. In 2006, New Jersey amended its law against transgender discrimination towards including transgender individuals within a discrimination free workplace (Koch and Bales 2008: 244). The landmark case of *Price Waterhouse v. Hopkins* (1989), where a senior woman was not granted a promotion, partially because of her attire being “too masculine” was entitled to a settlement based on gender discrimination.²⁹ This case has set an international precedent towards protecting employees displaying gender expressions that are not in conformity with their biologically assigned

²⁹ *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

gender. Title VII of the *Civil Rights Act of 1964*, Section 703 amended in 1991 in the United States of America makes it unlawful to:

“Fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, colour, religion, sex, or national origin.”

The United Kingdom Equality Act, 2010 protects individuals from gender reassignment discrimination. To be protected under the Equality Act, an individual does not necessarily have to undergo any specific treatment or surgery to change from their birth sex to their preferred gender (Section 7). In 2007, the landmark judgment of *Sunil Babu Pant and Others v. Nepal Government* recognised transgender persons in Nepal when the Supreme Court of Nepal ruled that individuals should have their gender legally recognized based on “self-feeling” and that they should not have to limit themselves to “female” or “male”. In 2015, the *Civil Services Act*, of Nepal was amended to include three genders. Several South Asian countries like Singapore, Thailand, Japan and Taiwan have repealed the ban on individuals openly identifying within the LGBT community to serve in the military.

4.2.5. Responses of the Indian State in the domain of transgender employment

Responding to the extremely marginalised condition of the transgender community, the Expert Committee on the Issues Relating to the Transgender Persons (2013) has recommended employment opportunities for the community (p. 51, 54). The Committee recognised that social exclusion limits the employment and livelihood opportunities for the transgender community members. The Expert Committee has suggested a holistic approach towards economic empowerment of the transgender community by rightfully observing that their economic marginalisation is located within a complex set of socio-cultural norms. Thus, taking these complex issues into account, the committee observed that an empowerment process has to be based on the aspects of awareness generation, skill and capacity building, strategic employment and entrepreneurship policies towards improvising access to

employment and creating income opportunities for the community members (p. 55). Furthermore, the Expert Committee recommended the provision for liberal credit facilities and other necessary support for economic activities including convergence with existing schemes of Ministry of Social Justice & Empowerment. The Committee further recommended the requirement for vocational skill-based training based on their needs and interest. The committee also recommended the need for convergence with existing centrally sponsored programmes and institutions like National Rural Livelihood Mission, National Urban Livelihood Mission, *National Rural Employment Guarantee Act 2005*, and National Finance Development Corporations towards ameliorating the challenges facing them in gaining employment opportunities (p.55).

The *NALSA v. UoI* (2014) judgement too acknowledged the marginalisation of the transgender communities by acknowledging their deprivation in the areas of securing employment and livelihood opportunities. The judgement provided that the transgenders are also citizens of this country, and thus, they were entitled to equal rights for achieving their full potential as human beings (Para 54). For this purpose, the judgement ensures that the community members are not only entitled to proper education, social assimilation, access to public and other places but also employment opportunities in the mainstream society as well (Para 58). The operational part of the judgement provided for directions to the Centre and the State Governments to take steps to treat transgender individuals as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments (Para 129.3).

In 2010, the Karnataka State Backward Classes Commission recommended inclusion of the transgender community in the OBC list under the name of *Mangalmukhi* and sought

fifteen per cent reservation for them.³⁰ Mahatma Gandhi Medical College and Research Institute in Pondicherry is not only conducting free SRS services for transgender persons but is also providing employment opportunities for gender non-conforming individuals in different capacities. The Madras High Court directed the Tamil Nadu government to create a separate column for transgenders in the application forms for recruitment of candidates in 2014. Padmini Prakash member of the transgender community was appointed as a news presenter on the Tamil-language Lotus TV since 2014. In 2015, a Bangalore based organisation launched an online portal www.1008jobs.com that lists job opportunities for members of the transgender community seeking employment opportunities. K Prithika Yashini was appointed as the first transgender sub-inspector in the police force apart from the male and female category in Tamil Nadu. In 2017, Kochi Metro employed twenty three transgender persons in different sections of the metro service, including housekeeping and ticket counters based on their qualifications. Joyita Mondal Mahi from West Bengal and Riya from Kerala were appointed as additional judges of National Lok Adalat in 8th July and 28th August 2017 respectively.

4.2.6. Transgender employment: Perspectives from the four states

4.2.6.1. Tamil Nadu

While discussing the status of employment opportunity for transgender persons in Tamil Nadu, E5, a MTF transgender activist agreed that though employment opportunities are not scarce for transgender persons in the state, the earning is not sufficient to afford a decent life style.³¹ She added that their earning from menial jobs like petrol pump workers etc. were not sufficient for them. Thus, they had to earn an extra amount of money through sex work or begging. Additionally, transgender persons usually develop alcohol and other addictions due

³⁰ Tracing the Journey from Inclusion to exclusion. (2010): 11. Retrieved from <https://172.24.3.254:8090/httpclient.html?u=http://cfar.org.in/wp-content/uploads/2017/06/Tracing-the-journey-from-Exclusion-to-Inc.pdf>. Accessed on 07/10/2018.

³¹ E5. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu.

to the stigma and exclusion faced by the society. They thus end up spending a good portion of their money on substance abuse. It was revealed that some transgender persons tried to earn the affection of their family members and partners by providing them money regularly.

Some of the respondents had informed that the transgender CBOs and some NGOs did provide job opportunities. However, due to lack of education, they seldom qualify for posts with higher salary scale. Mahatma Gandhi Medical Centre at Pondicherry provided employment opportunities to transgender persons in different capacities. Some educated transgender persons like Vidya, Kalki, Priya Babu and others have carved their names in theatre and media industries in Tamil Nadu. E1 spoke of some transgender youth, who aspired to appear for government jobs.³² However, in such situations, they were either forced to take up examination in their biological gender category or denied opportunity on the basis of their gender non-conformity.

4.2.6.2.Karnataka

While discussing the status of employment opportunities for transgender persons in Karnataka, it was learned that, traditionally the MTF transgenders in Karnataka were engaged in *Hamaam* or sex work. *Hamaam* facilities were used by the *hijra* for sex work. Apart from that several transgender persons carry out sex work in public places like parks and gardens. Their earnings were not satisfactory. However, some of the respondents said that at least in sex-work they received some amount of money almost every day which was helpful for sustenance. However, local goons snatched their money away and the police would usually not register their complaints. Following are the extract from the interviews with R14 and R19 to emphasize the point:

³² E1. (2015, April 10). Interview with Swarupa Deb. Chennai: Tamil Nadu.

“I am working as a sex worker. The money is very good and I am giving a portion to my guru. So everybody is happy. See, I will not get job. No respect. So atleast I should have the money. I am doing this as long as I can because there is some money every day.”³³

“Goons are harassing [the transgender sex workers], slum type areas, no hygiene, nothing [sic]. But still people prefer that over activism because atleast there is money. You can sustain. Many of my sisters, many prominent transgender leaders are leaving activism for sex work.”³⁴

Of late, several English educated transgender persons have been grooming themselves to become high end escorts.³⁵ This is a new trend that many transgender youths are aspiring for. These transgender persons undergo expensive cosmetic surgeries to enhance their bodies and train for voice modulation for acquiring a feminine tone. A transgender person with the most feminine body and voice are paid more than others. They earn quite well to maintain a decent lifestyle. Few transgender persons were now receiving employment in corporate offices as data analysts. However, at such offices, they face discrimination as most of the time they were asked not to express attributes of their target gender.

Transgender persons, who were not interested in sex work, were finding employment opportunities in Civil Society Organisations in different capacities. However, these job opportunities in CSOs were only limited to those NGOs and CBOs, which were specifically working for transgender causes. However, the salary was often far too less for a decent life style within city limits. Many of the transgender persons were too scared to use public transport fearing discrimination and stigma. Thus, they had to avail cab services or autos for daily commuting. Moreover, house rents and other expenses were too much to be covered by the CSO salary. Many transgender persons, who had left sex work and joined CSOs hoping for a respectable life, were therefore returning to sex work. The reason being that was the

³³ R14. (2016, August 25). Interview with Swarupa Deb. Bangalore: Karnataka.

³⁴ R19. (2016, September 9). Interview with Swarupa Deb. Bangalore: Karnataka.

³⁵ This information was revealed by a transgender respondent, who works at an escort service off the record and requested her identity to be concealed.

CSO salaries were too little. Moreover, the salary was received on a monthly basis, but in sex work they earned money every day, which was more convenient for their lifestyle.

4.2.6.3. West Bengal

In West Bengal, educated transgender persons either choose to remain closeted or worked under their biologically assigned gender identity to avoid discrimination. Those who had come out as transgenders had no other scope for income except joining Civil Society Organisations. As most of the CSO positions were not high paying, only those placed at the higher ranks earned sufficient amount of money for a decent lifestyle. Thus, the economic opportunities were extremely narrow even for the educated transgender people in West Bengal.

The West Bengal Public Service Commission did not provide for 'Transgender' or 'Other' category. Due to the discrepancy between the gender assigned at birth and their altered gender identity, transgender candidates were not allowed to apply for government jobs. Most of the transgender respondents blamed the government for their limited employment opportunities within the mainstream society. Though the state government of West Bengal provides several self-help programmes for women and disabled persons, no such scheme/facility was extended to the transgender community. Recently, some of the transgender persons were making individual efforts to find a space in the fashion industry, theatre and other fine arts platforms.

The *hijra* community of West Bengal was engaged in traditional occupations of *mangti*, *badhai* and *dhandra*. Though the *hijra gharanas* supported *mangti* and *badhai*, they too discriminated against the transgender sex workers. Unlike the transgender sex workers of Tamil Nadu and Karnataka, the transgender sex worker community of West Bengal was not well organised, and were vulnerable to violence. Transgender communities in West Bengal

were still facing stigma and discrimination so far as employment opportunities were concerned.

4.2.6.4.Tripura

The interviews with the transgender community members in Tripura not only signified the absolute lack of literacy amongst the transgender community in Tripura but additionally pointed towards the poor scope of employment opportunities for the community members. Most of the transgender persons in Tripura expressed themselves as entertainers assuming the identity of *brihannala*. The major source of earning a livelihood for the transgender community in Tripura was door to door solicitation and receiving *bakshish* during childbirths or weddings. The transgender community preferred to stay in Tripura only during the wedding seasons and migrated to Bangladesh for rest of the year for ensuring a steady source of livelihood.

The younger chelas were sent for begging in market areas, while the experienced elders mostly visited their fixed clientele for solicitation. The guru accompanied her chelas only while seeking *bakshish* during weddings or childbirth. The transgender persons of Tripura never applied for any job opportunity apart from their traditional occupation. It was observed that most of them reluctantly blamed the government. There were no state or private aided employment facilities available for the community members in Tripura. Though the state government runs several self-sufficiency programmes for women, no such scheme or facility is available for the transgender community. Thus, in a nutshell, it was observed that the transgender community of Tripura has no access to standard employment. Hardly anyone had received formal school education. The downside of being not educated contributed towards narrowing their employment opportunities. The State had no vocational training programmes directed towards making the transgender community self-sufficient. On the other hand, the community members were highly sceptical if they wanted education or

whether they would carry on with their traditional occupation as entertainers fearing discrimination from the mainstream society.

4.3. Summary

In conclusion, it can be said that the executive and the judiciary of the Indian state have acknowledged the poor condition of the transgender community in the domains of education and employment. Some transgender community members have been able to receive education and employment but many often face discrimination and stigmatization. For the larger community, the right to education and employment is still a far-fetched dream. The traditional transgender communities pursuing *mangti*, *dhanda* and *badhai* are now engaging in more evolved forms of these traditional occupations by themselves, in organisations, by joining professional entertainment sectors as well as pornography. The transgender communities of Tamil Nadu and Karnataka have been able to receive a certain space for claiming their rights to education and employment due to the struggle for rights and recognition. However, the condition is worse in West Bengal and Tripura, where most of the transgender communities are still non-sensitized about their own rights and identity in the absence of effective community collectives.

CHAPTER 7: CONCLUSION

This concluding chapter is divided into four sections. The first section offers a critical review of the recent responses by the Indian State to challenges faced by the transgender people. Although the dissertation primarily focuses on the challenges faced by transgender people in four domains – identity, health care, education and employment - a few other matters emerged during the course of field research. An assortment of such matters pertaining to transgender people including the importance of the arts in their lives, urban-rural divide within the community, problems of housing, issues of violence, and the case of one transgender minority (female to male) have been combined in the second section of this chapter. The third section contains the researcher's own recommendations for improving the lives of transgender people. Some of these recommendations of the researcher are improvements on the existing recommendations suggested by the Expert Committee on the basis of the researcher's field experience. A few recommendations are entirely from the perspective of the researcher. The final section offers an appraisal of the limitations of this dissertation and hints at possible avenues for future research.

7.1. Transgender challenges and the response of the Indian State: A critical review

Transgender communities have been ostracized and pushed to the margins in India. Several Indic texts contain the concept of *tritiya-prakriti* which means third nature. They are mentioned as third sex by nature and are not expected to behave like ordinary men or women. Frequent allusions to the third gender may be found in the *Kamasutra*, the *Manusmriti*, the folktales, as well as the epics. Thus, in traditional Hinduism, several references exist about the third gender among human beings as well as the gods. Transgender phenomenon was not unusual in India and many mythical characters incorporate both male and female elements (Nanda 1999, Lal 1999, Reddy 2005).

The reason for violence against the transgender communities can be traced back to laws in colonial India especially, the *Criminal Tribes Act, 1871*. Since the 19th century, every

aspect of the transgender existence was subject to surveillance, based on a threat of criminal activity. Though the Indian constitution provides for equal rights and opportunities for the citizen, transgender identities are still denied the fundamental rights. The weight of the colonial law has over the centuries has fallen on gender non-conforming individuals. The existence of this law has had an enormous negative impact on transgender people. It has been used to threaten them with possible arrests. Similar discriminating laws like the Section 32A of the *Karnataka Police Act 1963*, *The Andhra Pradesh (Telangana Area) Eunuchs Act 1329F* have targeted and violated the transgender communities for several decades.

As mentioned in the previous chapters, taking these atrocities into account, the Ministry of Social Justice and Empowerment, an executive body of the State commissioned the Expert Committee towards dealing with the issues of the transgender people in 2013. The Expert Committee eventually presented a report highlighting the perils faced by the transgender communities and a made recommendations towards de-marginalising them. A year later, the Supreme Court of India acknowledged the transgender community outside the binary of male and female category as a distinct ‘third gender’.

7.1.1. Identity

Though both the Expert Committee as well as the Supreme Court judgement acknowledged the extremely marginalised situation of the community and granted them recognition, there are certain loopholes that were ignored by both the executive and judiciary. The Expert Committee as well as the Supreme Court judgment extensively deal with the lack of human and civil rights of the transgender community. The operational part of the NALSA judgment granted transgender community the right to self-identify themselves as male, female or as a third gender. Though the Expert Committee too advocated that the transgender community should be able to self-identify their gender, it recommended a certification committee for

declaring one's transgender identity, which was clearly conflicting with the Supreme Court verdict. E1, a transgender activist and a member of the Expert Committee said:

“In the Expert Committee, there were a lot of people, who were for self-identification but there was a strong lobby within the Ministry, who were doctors and academics. They completely detested the fact that a person can choose their gender without the opinion of a medical expert. But I tell you, these people could not even distinguish between transgender and intersex. They were completely clueless. So to appease them we had to come to a common consensus; that in case a third party assessment is required, it has to be a psychological assessment and not medical or anatomical.”¹

Opposing the certification model, transgender activist E5 said, “They are no one to give us certificate. We don't want anybody's certificate.”² E2 added by saying:

“If I want to eat chicken I will eat chicken, if i want to eat mutton I will eat mutton. Who are you to tell me what I will eat? It is about my identity, how can someone else decide for me? I can wear *churidar* and say I am gay. I can say I am lesbian, I can identify myself as a Lesbian transgender. I can be a Bisexual transgender. So how can you classify my identity? That is my right.”³

Additionally, E4 pointed out that the gender non-conforming communities are diverse. They have varied ways of expressing their identity. Some might want to identify outside the binary and some might feel comfortable identifying with the binary. In this case providing a certificate would be against the principle of identifying one's own gender. E4 expressed his discontent over the verdict by saying:

“Within the transgender community many of them want to call themselves as *thirunangai*, there are also some MTF members, who do not want to use the term *thirunangai* but identify as women. Even the FTM persons want to be identified as a man. This Supreme Court judgement is bogus.”⁴

The transgender leaders and activists were apprehensive of the fact that establishing such a committee might result in community gatekeeping as different transgender communities had their individual agendas for identifying someone as transgender (like castrated, non-castrated,

¹ E1. (2015, April 10). Interview with Swarupa Deb. Chennai: Tamil Nadu.

² E5. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu.

³ E2. (2015, April 13). Interview with Swarupa Deb. Pondicherry.

⁴ E4. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu.

members of the traditional transgender communities and others). Thus, a clear conflict between the two mandates is an issue that has not been resolved yet. E1 added:

“But as of now, I can tell that the board will have a doctor, the district collector and one or two transgender community experts. It was recommended that this model is to be followed in all the states. But the problem arises at a different level altogether. Depending on who is the transgender community member, they might act as a gatekeeper of their community and other rivalries might arise. They might say ok you are fake or you are authentic. So, the transgender community members itself come in many flavours and many shades. So there are people who are post-operative, so they might think people who had surgery can only be considered as authentic and others are fake. But, there are some who are very broadminded. Also, there are some transgenders, who usually do not cross-dress at their houses and there are all kinds of fluid identities. So having transgender members on the board is again is very dicey.”⁵

Moreover, the Supreme Court provided a third gender status for the gender non-conforming individuals. The transgender community members opposed the third gender identity arguing that the term ‘third’ brings a hierarchy in the gender category. E5, displaying her dissatisfaction towards the term had said:

“We don't know anybody from Tamil Nadu within the community who want to identify as the third gender. The term third gender is problematic because there is a hierarchy of first second and third.”⁶

Moreover, the transgender committee members expressed their dissatisfaction over the elusive attitude of the Expert Committee as well as the Supreme Court verdict towards dealing with the issues of adoption, marriage, inheritance and other civil rights of the gender non-conforming persons. During the field studies, it was observed that very few transgender persons were aware of the Expert Committee, which was constituted towards dealing with the transgender community, except those working with the civil society organisations. Though the Expert Committee was constituted to ameliorate the condition of the community, its effect on the transgender community remained minimal due to its bureaucratic approach.

⁵ E1. (2015, April 10). Interview with Swarupa Deb. Chennai: Tamil Nadu.

⁶ E5. (2015, April 11). Interview with Swarupa Deb. Chennai: Tamil Nadu.

For most transgender persons, marriage and adoption were huge challenges. Though the community members desire to be legally married and adopt children, the community falls within the ambit of section 377 of the *Indian Penal Code* that criminalises homosexuality. Thus, while the sexuality of the transgender community remains criminalised, their identity outside the binary has been acknowledged by the Supreme Court of India in two contradictory verdicts- *Suresh Kumar Koushal v. Naz Foundation and Others* (2013) and *NALSA v. UoI* (2014). R21, a transgender community member from West Bengal said:

“The judgement categorises us as third. But where are our other rights? And on one hand you criminalised homosexuality. But if we will have a partner then what should we do? [sic] We will only look at each other’s faces, can we not have sex? Where are our marriage rights, adoption rights?”⁷

Regarding the absence of provisions for an inheritance for the transgender community, which was denied to them in the *Criminal Tribes Act 1871*, E17 said:

“Biologically born men, especially hide their gender identity so that they are not denied entitlements. Inheritance is a big issue, especially in an agricultural society like ours. The land is our biggest asset. Even the NALSA judgement or the Expert Committee recommendation or this new bill [*The Transgender Persons (Protection of Rights) Bill, 2016*] would not answer these questions.”⁸

Thus, though the transgender community has been acknowledged, their issues pertaining to human and civil rights are still denied. They are unable to assert their right to privacy, dignity, and freedom.

The Supreme Court verdict provided for the transgender communities to be identified as a socially and economically backward class. They have been awarded the Other Backward Class (OBC) status. Though the initiative of the Supreme Court seemed good willed, several transgender persons belonging to the upper castes were reluctant to be identified as OBC. Several Scheduled Tribe (ST) and Scheduled Castes (SC) transgender

⁷ R21. (2016, October 02). Interview with Swarupa Deb. Serampore: West Bengal

⁸ E17. (2016, November 11). Interview with Swarupa Deb. Kolkata: West Bengal

persons too were apprehensive about being identified with the OBC category. E1, in this matter, said:

“The NALSA judgement has mentioned that they [the transgender community] should be considered as other backward classes. But then the question is if a transgender person is born into a Dalit or SC or ST family will she or he be allowed to upgrade to OBC category? Similarly, will transgender people born in Brahmin families or any upper caste family be ready to be accepted as OBC? So, there are a lot of questions concerning identity that the SC judgement has not taken into consideration.”⁹

One of the biggest flaws of both the Supreme Court judgment as well as the Expert Committee recommendations was the ineffective implementation of the provisions. Though some state governments have created schemes for de-marginalisation of the community, their implementation have not been effective.

Though the transgender identity has been recognised, it is necessary to acknowledge that the Male to Female and the Female to Male transgender communities have separate issues. As mentioned earlier, several transgender communities have received benefits at the cost of others. This is essentially true in the case of Female to Male transgender community, who have been left out. Violence inflicted on them by the State and the mainstream society is not only for their gender non-conformity but also because of them being in a woman’s body. The exceedingly marginalised condition of the FTM transgender community in India is due to their invisibility. Their invisibility arises from their fear of violence. R17, a FTM transgender activist pointing towards the grey areas of the Indian legal system said:

“Kahi ja ke mein transgender hoon bolne se, upar se FTM hoon bolne se sab yehi puchenge ki neeche kya hai. Dadhi much se kuch nai hota, sab neeche kya hai wohi jaana chate hai. To shayad mera rape bhi ho sakta hai, mein pregnant bhi ho sakta hoon [If I will identify myself as transgender that too a FTM transgender, everybody will ask whether I have female or male genitalia. Having facial hair is not enough; everyone will be curious about my genitals. I might get raped, I might get pregnant]. So there is no security for us. Lekin mein to man hu, to mera rape ho gaya, to mera apna

⁹ E1. (2015, April 10). Interview with Swarupa Deb. Chennai: Tamil Nadu.

identity ke wahaj se he mein fas jaunga, kyounki man ko to rape he nai hota bolte hai [I identify myself as man. So if I will get raped then I will be in trouble as they say a man cannot be raped].”¹⁰

Section 375 of *Indian Penal Code* specifies provisions if a woman were raped. If a transman were sexually assaulted or raped, he cannot ask for redressal as men are physiologically, culturally as well as legally incapable to being raped (without attracting section 377 of the *Indian Penal Code* for “Unnatural Offence”) in India. Therefore, the only way a transman can file a rape complaint is by identifying himself as a female, as assigned at birth, which will, in turn, take away his self-identity. Moreover, transmen are vulnerable to forced sex or physical abuse by family members and law enforcement personnel. They are often blamed for not behaving like a woman (Sappho for Equality 2011: 22). Thus, sexual assaults against the female body of a transman causes trauma to his masculine psychology, as is reflected in R17’s testimony:

“My body is like a woman. Though my mind is that of a man, *society humesha body dekhta hai* (the society is concerned about biological sex). So, when I came out I was always scared of sexual threats. I always felt that if someone raped my female body, I will not be able to transform into a man.”¹¹

The Supreme Court of India has acknowledged transgender communities apart from the binary gender classification. Yet, the scanty scope for protection under the law might be available only through medical certification of one's transgender status. Unfortunately, such certification is made available only if a transgender person has sought SRS (read castration for MTF) and not on the basis of self-identification. This implies that young gender variant people in the early stages of transition, non-castrated MTF transgender persons and the FTM community cannot claim legal protection/facilities/schemes available for the transgender community. Mastectomy, surgical removal of ovary and uterus or hormone therapy, is not medically considered to be sex change procedures.

¹⁰ R17. (2016, September 03). Interview with Swarupa Deb. Bangalore: Karnataka.

¹¹ R17. (2016, September 03). Interview with Swarupa Deb. Bangalore: Karnataka.

The lack of sensitization and awareness regarding transgender issues and identities often leads the police and media to incorrectly associate transmen as lesbian women. The transgender persons are frequently misunderstood as homosexuals making them vulnerable to section 377 of the *Indian Penal Code*. This also raises concerns about the potentially large number of transgender persons being violated as homosexuals (Sappho for Equality, 2011). Furthermore due to lack of certification of transgender identity, non-operative and FTM transgender people face difficulty in obtaining official documents in accordance with their desired gender identity. Thus, due to the conflict in identity documents, transgender people often face difficulty in securing education, employment, healthcare facilities as well as other transgender specific welfare opportunities offered by the central as well as the state governments.

7.1.2. Healthcare

Access to healthcare for transgender persons is also directly linked to their identity. As mentioned chapter 5, though the constitution of India provides for the right to healthcare within the broader context of the right to life, a transgender person however has limited access to discrimination-free healthcare opportunities. Though the transgender communities now have access to SRS in several government and private hospitals in Tamil Nadu, Pondicherry, Karnataka and West Bengal, there are no clear mandates regarding their legitimacy. Moreover, most of the transgender healthcare frameworks available in India are HIV or SRS centric. There is hardly any study conducted in the Indian context that deals with the general healthcare system for the transgender community. Moreover, healthcare for young transgender persons, FTM, aged and disabled transgender persons have been not addressed. This limitation thus remains a great challenge for the community. During the field studies, most of the transgender persons expressed their uncomfortable situation with regard to identifying with the strict male and female categories at health care centres. Although

gender non-conformity is no longer considered as a psychological disorder a framework towards understanding transgender medical issues is still missing.

7.1.3. Education and Employment

The social obsession with hetero-normativity eventually affects the transgender persons' access to education and employment as well. The Bangalore University had provided for transgender persons to enrol as a third gender category in 2010 long before the Supreme Court judgment in the case of *NALSA v. UoI*. However, during the field study, it was revealed that hardly any transgender person has enrolled in the transgender category. Similarly, Tamil Nadu government's efforts to provide reservation for the transgender community in government women's college have failed. Similarly, the University of Delhi, Delhi State School Commission and the University Grants Commission too provided for reservation for transgender persons. Though it is accepted that the attempts were made to mainstream the community by providing reservation, hardly any transgender person has enrolled themselves within the "transgender reservation" category. The community members are apprehensive that enrolling under a specific 'transgender' category might lead to their further social exclusion. Furthermore, in a transphobic society, transgender person, who exclusively identifies as a third gender, might be susceptible to organised hate crimes. Even within educational institutions, a transgender individual might be identified as "other" and consequently assaulted. Moreover, it is imperative to understand that most of the transgender community members wish to identify within their target gender. Thus, Female to Male transgender persons might want to identify themselves as male rather than a transgender. In this case, forcing someone to affiliate with the transgender category outside the binary due to their gender non-conformity takes away the essence of the right to self-identity provided by the *Yogyakarta Principles* (2006).

Similarly, transgender communities' right to employment is filled with challenges. In 2016, Kochi metro's decision to launch employment opportunities for transgender persons in the metro services gained immense support from the community members. The initiative deserved to be applauded as it broke the stereotypes of transgender people begging in trains and stations being transformed into service providers. However, the programme crashed soon after as a large number of transgender persons resigned from the job. Though the initiative was in accordance with the Kerala Transgender State Policy 2016, there was a lack of an all-encompassing support system for the community members. As the community is located on the extreme fringes of society, the community members need a comprehensive support system instead of a single opportunity, and those half-baked de-marginalisation efforts might lead to greater challenges. The transgender persons, who received jobs in the Kochi metro, could not find any lodging facilities. Moreover, it ought to have been taken into account that several transgender persons might not have come out to their families. It was reported that several transgender persons were identified by their neighbours and they were forced to reveal their gender non-conforming identity to their family in dismay without any preparation. In addition, the transgender persons had to face additional layers of stigma when they were suspected of theft at the cash counters. They were then treated as untouchables by their colleagues and customers. This is not an isolated case. Several transgender respondents too have mentioned that the workspace environment in India was still not sensitive towards the transgender community. Thus, without sensitization and additional support systems providing merely a job opportunity might not help the community.

7.1.4. Exclusion through de-marginalisation programmes

In 2015, the Karnataka State government erected a transgender toilet in the Mysore Bus Stand in an effort to provide exclusive toilet facilities for the community members. In a similar manner, the Sahaj International, a trans-inclusive school was inaugurated in Kerala in

December 2016. This inclusive school provided for educational opportunities for the transgender community across age groups. Though both these efforts were meant to provide facilities for the transgenders such exclusive facilities take away the essence of the struggle towards mainstreaming them. Exclusive transgender facilities might seem like a solution at present but might cause harm to the community by furthering their differences with mainstream society.

7.2. An assortment of matters pertaining to transgender people

7.2.1. Transgender people and the Arts

Prominent transgender activists like Living Smile Vidya and Laxmi Narayan Tripathi have expressed that art forms like theatre and dance have provided an opportunity for them to express their gender identity. Vidya, now a renowned transgender activist and a theatre artist from Tamil Nadu, frequently mentioned about her yearning towards theatre since childhood. In her autobiography, Vidya mentioned that while going through a tough phase of her life, it was in theatre, where she found herself expressing her true identity (Vidya 2007: 59). While the audience thought that Vidya was enacting a woman during the performances, she was actually expressing her feminine “inner urges”. Similarly, Tripathi, another internationally celebrated transgender activist and a classical dancer, too mentioned in her autobiography how “dancing saved her” (Tripathi 2015: 23). Laxmi called dancing a therapy that brought her a sense of self-respect and dignity. According to her, “dancing transported me to a different world, where I could be my true self.” Though biologically a male, Laxmi brought a sense of effeminacy to her male body. While Laxmi went on to be an international celebrity in her own right, Vidya initiated a first of its kind transgender theatre group called *Panmai* in Tamil Nadu in 2014. Vidya after completing a theatre course from the United Kingdom has actively engaged in theatre and is currently running shows throughout Europe and America.

In West Bengal, it was observed that several transgender persons were actively associated with various media, art forms and alternative artistic platforms. Transgender persons in West Bengal were working as fashion models taking up both male and female modelling assignments. X1, a MTF model clarified that famous international female models like Miranda Kerr are often referred to as a model and not a Woman/Female model.¹² X1 expressed the desire to be addressed in a similar manner. Moreover, transgender people, who were usually ridiculed for not acting according to their biologically assigned gender, have found comfort in the theatres of Kolkata. Several closeted gender non-conforming persons were employed in backstage jobs in Bengali film sets. They mostly adopt careers as background dancers, make-up artist/assistants, hair-dressers, costume assistants and other similar jobs involving various degrees of creativity. Educated transgender persons were working as assistant directors, cinematographers and camera assistants with Bengali film directors.

Furthermore, several younger film directors were willing to take up transgender issues in their feature films, short films and biographical sketches. Mainstream Bengali movies like *Chitragada* (2012) acted and directed by the late Rituporno Ghosh, *Jenana* and *Maya Mridongo* (2016) were based on the issues of the transgender community. These were positively received by the audiences. Nonetheless, as pointed out by E15, most of the feature films/texts (magazine, fictions) concerning the issues of gender/sexual minorities were hardly directed at the mass audience.¹³ Produced with a dense intellectually complex content, these artistic productions were often restricted to an audience within a closed circle of urban educated elite, activists and academics. This limited the potential of these art forms for sensitizing the mainstream society.

¹² X1. (2016, October 24). In discussion with Swarupa Deb. Kolkata: West Bengal.

¹³ E15. (2016, September 20). Interview with Swarupa Deb. Kolkata: West Bengal.

Interestingly, rural gender non-conforming persons, still untouched by the modern transgender identity related politics have found a way to express their gender non-conformity through the *Jatra* culture. Shib Mohan, a member of the local *Jatra* party at Birbhum district in West Bengal, is married to a heterosexual woman and is a father of two children. He is however a gender non-conforming person. However, ze [sic] is popularly known as Mohini in hir [sic] native village, where Shib Mohan regularly enacts the role of Mohini in the *jatra*. Many others in rural West Bengal, like Shib Mohan, who were biologically born as male but identify as women were unable to escape the strict binary gender norms have found peace and identity in *Jatra*. Due to the comical and unabashed characteristics of the *Jatra*, such gender non-conforming individuals could express their identity through role play without the fear of being stigmatized.

The *launda* culture too has found certain visibility through theatre. In Patna, liberal theatre groups were supporting the *launda* culture that allowed transgenders to express their distinct identity. Culturally *launda naach* is perceived as a vulgar art form by elitist sensibilities. It is imperative to understand that most of the laundas not only belonged to the lower economic background but were also from the lower castes. Thus, the *launda* community can be perceived as an identity whose marginalisation is by caste and class and whose search for livelihood has resulted in them opting for art forms that have in turn provided them with an opportunity for expressing their gender non-conformity. R27, a respondent, who identified himself as a *launda* dancer has established a dance group called *Mamu launda* group in Bihar.¹⁴ Madav and many others like him are performing in small theatres in West Bengal and Bihar.

In 2015, a local puja community in Kolkata celebrated the transgender identity by demoulding the otherwise conservative Durga idol into an androgynous silhouette depicting

¹⁴ R27. (2016, November 05). Interview with Swarupa Deb. Kolkata: West Bengal.

both male and female forms.¹⁵ Moreover, several youth Durga puja organising committees in West Bengal, as well as Tripura, are now including members of transgender communities in their club activities like musical programmes, movie screenings and other public cultural gatherings. Change is perceptible.

Similarly, several transgender persons from Tamil Nadu and Karnataka too are actively engaged in theatre. The Tamil Nadu pride day, as well as the Karnataka Pride, has provided for several gender varying identities to present their artistic expression on stage. Transgender activists E3 and Rose Venkatesh too were involved in theatre and media. Rose is one of the first transgender individuals in India to host a television show. Somya, another transgender community member from South India, is a Bharatnatyam dancer and is also engaged in theatre. E5, one of the transgender respondents, performed in her own play titled *Nanga Ready* (We are ready) in 2015 garnered accolades for her use of theatre not only to express her identity but also for using it as a medium for sensitization.¹⁶ Similarly, some transgender respondents in Tamil Nadu too mentioned how they were involved in theatre and dance. Both R6 and R8 said that they had dedicated their lives to dance and were trying to establish themselves as dancers at different platforms.¹⁷

7.2.2. Urban and rural transgender communities

The Indian society is deeply class-ridden. This class-based division clearly reflects within the transgender communities as well. The class divide, although present within urban and rural areas, is accentuated in the divide between the urban and the rural. An enormous cleavage between the transgender communities of urban and rural areas was observed during the field study. These contrasts between the urban/rural, educated/uneducated, traditional/modern transgenders do not facilitate a collective mobilisation for rights and identity.

¹⁵ Available at <https://www.thebetterindia.com/36364/transgender-durga-idol-in-kolkata/>. Accessed on 17/10/2016.

¹⁶ E5. (2015, April 11). Interview with Swarupa Deb. Pondicherry.

¹⁷ R6 and R8. (2015, April 13). Interview with Swarupa Deb. Chennai: Tamil Nadu.

Urban transgender persons associated with cinema, theatre and fashion industry do not recognise the gender-non-conforming artistic expressions of their rural counterparts. At the same time, the extreme marginalisation of the rural transgenders has resulted in their issues being overshadowed by the urban and the educated. The urban-rural divide among the transgender community mainly occurred during the rise of fund based politics. Transgender communities dwelling in the urban centres realised the scope of funding opportunities during the advent of the HIV programmes much earlier than the communities living in the rural areas. Additionally, the organisations that were established for mobilizing transgender communities were often urban based. It was observed that most of the transgender related deliberations in India were happening in English. Though the seminars/conventions/talks regarding the issues of the transgender communities were a welcome platform for the urban educated English speaking community members, academics, researchers, bureaucrats and others, these spaces were not so welcoming of non-English speaking, rural transgender communities. The urban community members have been able to carve out space for themselves and it has become comparatively easier for them to participate in meetings and engage in discussions regarding their rights without any fear. However, the use of English language during such events continues to be an extremely difficult hurdle to cross even when these were promises to be inclusive. In the course of several transgender community meetings and NGO visits during field studies, it was observed that these spaces claimed to be homogenously representing members of the transgender communities across different social and economic backgrounds. However, it was observed that despite the professional camaraderie, they self-selected their companions from amongst people of their own class background. The non-English speaking rural members felt a sense of alienation from their own community members during recreation hours. The high earning English speaking groups seldom interacted with their non-English speaking peers. Though most of the transgender

activists denied that the transgender community does not segregate by class, the perception is inclined to the contrary.

It was observed that though the transgender communities based in the metropolitan cities like Chennai, Bangalore and Kolkata were venturing into various opportunities, the rural transgender community members were still living in ignorance and were least sensitized regarding recent changes in India. While the urban transgender communities were influenced by the contemporary ideas of activism for rights and identity, they were perpetuating the exclusion of rural transgender people, who were leading isolated lives fearing harassment and stigma.

As already mentioned, the traditional communities were modelled after the joint family system based on mutual co-dependency. This could be a reason as to why the rural transgender community members in order to retain their distinctness and traditional socio-cultural roles, irrespective of the stigma faced do not want to embrace the modern transgender discourses. This phenomenon has further divided the transgender community. While the urban community members were recalcitrant regarding the needs of their rural counterparts, the rural communities considered the urban communities to be far too progressive and were proceeding against the norms of the traditional communities.

Though such a phenomenon was not observed in Karnataka and Tamil Nadu, the urban and rural differences in the lives of transgender individuals were clearly visible. Tripura, being one of the North Eastern states in India, is generically marginalised in comparison to other states. Thus, the transgender communities of Tripura too displayed a similar situation like the rural transgender communities of the other three states. They perceived themselves to be outside the struggle for transgender communities for rights owing to their lower socio-economic status and illiteracy in comparison to metropolitan transgenders, who were immersed in discourses of rights and identity.

7.2.3. Housing

During the field studies, it was observed by several transgender community members that they faced problems pertaining to housing facilities. The community members informed that most of them, who were abandoned by their family at an early age, had to face numerous problems in finding a place to stay. Only those who had joined the *hijra* or any of the traditional transgender communities could avail a sustainable support system. Though the *hijra* community members were often encouraged to stay along with their gurus, those who wanted to stay independently faced a number of problems.

Primarily, the problems arose in the form of social discrimination and prejudice, when the landlords were reluctant in renting out places to the transgender community members. Most people were ignorant or misinformed about the transgender community and considered them as a bad influence and deviants. Many people believed that renting their residences to a transgender person might tarnish their reputation in the society. Moreover, the common prejudice that the transgender persons were affected with AIDS contributed to their perils of finding a dwelling place. Moreover, discriminatory assumptions like transgender persons would create nuisance through alcohol abuse, conducting sex work, as well as kidnapping children accentuated their problem in finding adequate housing.

Another problem faced by the transgender community was the higher rent charged due to their identity. As mentioned earlier, most people were reluctant to rent their residences to a transgender person. However, those who did charged an exorbitant sum of money from the community members in comparison to others. It was observed that though exorbitant rent was charged, the facility provided was often the bare minimum of the amenities and was not worth of the money. Most transgender persons did not have any steady source of income and with such limited means, it was very difficult for them to pay the higher rents charged specifically on them.

The Chennai floods of December 2015 were an eye-opener in this case. Although Tamil Nadu claimed to be one of the most progressive States in India for the welfare of the transgender community, it has not yet been able to entirely incorporate inclusive approaches for mainstreaming them. Two distinct issues emerged in the aftermath of the Chennai floods: first, the intolerant attitude of people towards the transgender community; second, further marginalization of ostracized communities with the extension of the city limits that consequently pushed the transgender people into the outskirts. It was observed during the field study in Tamil Nadu that when the rest of the country empathised with the victims of the flood, the transgender community members had to deal with prejudice and discrimination while trying to seek shelter and save their lives. Their principal source of income was through public solicitation and sex work, which makes a dignified life nearly impossible. The community members living within the city limits and around the urban fringes had to pay higher rents compared to non-transgender persons.

The extension of the city limits of Tamil Nadu Chennai has added to the existing woes of the community. The outskirts are not only prone to flooding but also lack civic facilities. Moreover, these areas are quite far from the city. The transgender persons have to spend an extra amount of money on the daily commute. Thus, the unrestricted growth of the city has furthered the social exclusion of the already ostracised transgender people. The urban fringes are often inhabited by the most marginalised classes of the society, like the transgender community, making them extremely vulnerable towards natural disasters like floods. During the Chennai flood of 2015, people who had lost almost everything including their home were provided shelter and some amount of comfort. But such was not the case with the transgender communities. Areas like Porur, Cuddalore and North Chennai inhabited by a considerable number of transgender people sank completely under water. Those living in the asbestos-roofed houses stayed back despite the heavy flooding. However, those living in

huts had to seek shelters in local schools. It was in this context that individuals like Living Smile Vidya as well as civil society organisations like Sahodaran, Nirangal, Thozi, and the online forum Orinam.net aided the relief effort. It is evident that though Tamil Nadu claimed to be a model pro-transgender State, it has not been able to facilitate the socio-political and civic pre-requisites for the inclusive de-marginalisation of the transgender community.

Additionally, the transgender respondents have mentioned that their landowners would often ask them to leave their house without any prior notice and show cause. E2 of SCHOD in Pondicherry and the members of Sangama in Bangalore too had mentioned that they had to move their offices several times due to the prejudiced nature of the landlords. Revathi, Vidya and Manobi Bandopadhyay have mentioned of their struggles towards finding a rented dwelling space due to social prejudice. The Karnataka state government had announced an exclusive housing area for the transgender community members. The Sangama members assume that granting a separate housing area for the transgender community member make them additionally vulnerable to transphobic violence against the community. They were also apprehensive that a separate transgender colony might contribute to the systematic exclusion of the community and prevent their de-marginalisation which is the fundamental aim of the transgender movement.

Interestingly, in Tripura, the transgender communities did not face any problem regarding housing. It was observed that the community members had found rented dwelling spaces in the rural areas. Their landlords were mostly people belonging to marginalised castes and lower classes. These landlords were protective of the transgender communities often restricting outsiders from interfering in the lives of the community members. It can be argued that the landlords' own socio-economic marginalisation along with their need for money might have facilitated them to demonstrate solidarity and provide shelter to the transgender community members.

Furthermore, the perils of homeless transgender persons and those disabled by old age and infirmities have been hardly taken into consideration. The FTM transgenders too face challenges in accessing housing facilities. Transmen had to often rent a dwelling place with their female identity as the renters were often not sensitized about the complexities regarding transgender identities. In most case, they were accused of prostitution or as sex offenders in case they were visited by their male colleagues or other transmen. Thus, creating a support system for providing a safe housing facility for the transgender communities towards ensuring their social security and human rights is imperative.

7.2.4. Issues of violence

Violence is multidimensional. There are diverse forms of violence, which are unveiled in a wide range of contexts. Violence can be physical, like assault torture and aggression, as well as verbal, like coercion, bullying, humiliation, and so on. Hence, violence can be individual or collective, interpersonal or institutional, symbolic or structural (de Haan 2008: 31). Violence can have psychological and social consequences in addition to physical injury. The context of violence can be public or private, where the victims and the perpetrator could be a family member(s) or acquaintances (Sappho for Equality 2011: 7). Therefore, it is hard to straight jacket a definition of violence because it is sometimes socially sanctioned and legitimized by the State.

Depending on the context and perspective, violations can be either condemned as immoral and illegal or justified as moral, legal and corrective. Violence as a legitimate social process yields systematic social injury perpetrated through the institutionalized form of social control over the body (Narain and Bhan 2012: 143). Thus, violence too is socially constructed and varies across socio-cultural and historical contexts. It can be understood as “the use of power to harm another, whatever form it takes” (Henry 2000: 3). In this case, harm is not only physical pain and suffering. It can also occur along many dimensions

beyond the physical to include psychological or emotional, material or economic, social or identity, moral or ethical, and so on. Within each dimension, the harm can be of two kinds: “harms of reduction and harms of repression” (de Haan 2008: 32). The transgender persons suffer through harms of reduction as their status as a human being is denied due to their gender non-conformity. They are harmed through coercive repression, violation and subsequent subjection to silence due to the non-conformity between their sexed body and gender identity.

The United Nations and other human rights experts have expressed concerns about the hate crimes and incidents of violence against transgender persons. The report of the *Special Rapporteur on Violence Against Women* (2015) has condemned such violence. Rights violation of any person for gender non-conformity breaches the provisions of the *Universal Declaration of Human Rights* (Article 2, 3, 5-7). Though violence and crimes against transgender persons are hardly reported, it may not be assumed that fewer reports reflect an absence of the crimes against them. The unreported incidents indicate the social tendency to systematically eliminate and exclude transgender matters. Sexual abuse and rape of transgender persons are commonly assumed to be “corrective rapes” a socially legitimised way of punishing them for daring to step outside the gender roles prescribed to their sexed body (Sappho for equality 2011: 11, Narrain and Bhan 2012: 147-148). These rapes not only increase the risk of sexually transmitted infections, unwanted pregnancies but also cause mental trauma and suicidal tendencies among the victims.

The transgender community faces violence from the society through the institutions of family, health-care system, educational institutions, workplace, media and popular culture (Sappho for Equality 2011: 17-19 Green 2006: 504, Narrain and Bhan 2012: 142). Violence from family is one of the most severe forms of violence against the gender non-conforming community (both transmen and transwomen). The family often executes psychological

violence through non-acknowledgement of one's desired gender identity. Besides, violence from family could be more direct like physical violence, including battering, house imprisonment, corrective rapes by close family members and sometimes, extreme medical interventions like shock therapy and so on. Moreover, it was revealed during the field studies that the transgender community members often suffer mutilation and other hate crimes as well. Many transwomen have been victims of acid attacks and some were amputated and severely disfigured when they were thrown out of running trains or buses while begging. R3, was aboard a public bus for begging, when the passengers threw her out of the running bus. As a result, she was severely injured and lost her fingers.¹⁸

7.2.5. Transgenders in love

The idea of hetero-normativity is complexly embedded within the traditional transgender communities in India. The term transgender does not merely represent a gender category outside the binary male and female, but also represents a complex psychological aspect that signifies people, who are transcending their gender identity within the binary. Thus, several transgender persons, who were assigned male at birth, identify themselves as a woman and those who were assigned female at birth identify as men instead of transgender. The term transgender has evolved in recent times. Earlier, the transgender phenomenon was body centric. Now it is associated with one's psychology as well. Serena Nanda had categorised transgenders as neither men nor women. Nanda's argument was primarily derived from the Western clinical definition of the term transgender, where by the experiences of the transgender persons were mostly related to their body. Scholars like Reddy (2005), Dutta (2012) Stryker (2013) have proposed that the experiences of a transgender person have more to do with psychology rather than physiology. Notwithstanding the importance of psychological aspects, transgender persons often attach their gender identity with their

¹⁸ R3. (2015, April 14). Interview with Swarupa Deb. Chennai: Tamil Nadu.

physiological construction. This leads them to opt for gender change surgeries (emasculatation, surgical intervention and hormone replacement therapy). The transgender experience develops within an adolescent child with the rejection of its biological sex and the consequent gender roles constructed by society. The transgender experience is at the intersection of psychological desires and the sexed body. A transgender individual often rejects his/her gender assigned at birth as well as the genitalia. Many transgender persons had revealed that before recognising themselves as transgender, they assumed themselves to be homosexuals. Thus, they adopted the social role of the opposite sex instead of same sex. For most transitioning transgender people, gender identity and gender consciousness emerged through their sexuality.

For transgender persons, the feeling of being stuck in a wrong body has prompted them to seek gender reversal through medical interventions. The desire to alter one's body is also prompted by desires of wanting to be accepted, loved and seeking to belong. A male to female transgender person, who identifies as a woman might want to undergo sex change operation due to many factors. As mainstream society is hetero-normative, certain bodies have exclusive access to gender roles and performances. The male to female transgender persons desire to get rid of their male genitals and the female to male transgenders desperately desire to acquire a penis. The penis is not only an anatomical symbol of what makes a 'man' but is also a socio-cultural and psychological embodiment of masculinity. The social construction of desire and longing for partnership has been constructed around hetero-normativity. Anything that is not heterosexual is unnatural and deviant. This aspiration to be part of the heterosexual construction of desire is present among transgender communities as well.

Laxmi Narayan Tripathi has highlighted how hetero-normativity is deeply ingrained within the traditional transgender communities (Tripathi 2015: 66). Thus, they often seek to

reverse their gender identity and in turn their sexuality through medical intervention. *Hijra* (transsexuals) seek to become a woman in order to be able to have sex with a man as in a heterosexual relationship. Interestingly, Tripathi narrated how she had rejected having sexual intercourse with a transman. Though not castrated, Tripathi identified as a female, and considered the transman as a female presumably because the FTM lacked male genitals. For Tripathi, sexual relations with a transman were akin to a homosexual relationship (Tripathi 2015: 98).

During the interview with E16, a transgender activist, she mentioned that a transwoman, who took a partner and got married, did so to convince her complete association with the female gender by proclaiming herself as a wife.¹⁹ Vidya, Revathi, Laxmi and Manobi have time and again expressed their desires for men. However, they have clearly mentioned that they have imagined themselves as a woman, while desiring men. Thus, their relationship does not fall within the ambit of homosexuality. Other transgender respondents have expressed their desire to be a “real woman” through marriage and maternity. Thus, the transgender identity essentially contests the foundation of heterosexuality and the traditional notions of the feminine and the masculine.

The elder members of the *hamaams* in Karnataka said that the younger transgenders were constantly looking for a romantic partner.²⁰ The gurus informed that many transgender persons in Karnataka took to substance and alcohol because of “heartbreaks” and “love failures”. They informed that the community members look for emotional security from their partners, which they never received from their biological family. Such heartbreaks have also resulted in several instances of self-inflicted violence. Many transgender persons blame themselves and their body for not being able to be in a steady companionship and for being unable to marry.

¹⁹ E16. (2016, October 28). Interview with Swarupa Deb. Patna: Bihar.

²⁰ R12. (2016, August 25). Interview with Swarupa Deb. Bangalore: Karnataka.

7.2.6. Female to Male: A transgender minority group

The situation is equally grave for the transmen. The FTM transgender persons faced challenges not only due to the absence of any support system but also due to their female body.

Most of the indigenous Male to Female gender non-conforming communities of India-like *Hijra*, *Kinnar*, *Aravanis* and *Jogappas* have access to organised support systems. Each community operates through well-defined interlinked common identity-based networks. However, such community-based support systems are unavailable to the FTM transgender persons due to their invisibility and fear of being found out and violated. Transwomen allegedly face more discrimination than transmen in the areas of education and employment due to their visibility. As the FTM persons do not fit into the typical trans-normative description of a transgender person, they usually receive better educational and income opportunities at least in urban areas, a space that is unavailable to the MTF. On the other hand, the FTMs blame the MTFs for not accepting them as transgenders.

Though in urban areas some MTF groups are sympathetic towards the MTF transgender, it is only limited to social camaraderie. Transmen have repeatedly complained about the lack of organised support for their community as well as being outnumbered and bullied by the transwomen. Transmen blame transwomen for not sharing opportunities and resources allotted to the transgender community equally. The hate and discrimination that is directed towards the MTF transgender communities are perpetrated back to the FTM persons by the MTF thus, establishing a patriarchal hegemony within the transgender sub-culture.

7.3.Recommendations

7.3.1. Identity

During the field studies, several gender non-conforming persons across different identities, regions and cultures were interviewed. These transgender respondents belonged to a varying

range of gender non-conforming identities. Some identified themselves as transgenders while others distinguished themselves on the basis of their regional religious, linguistic and socio-cultural contexts. Some of these respondents identified themselves outside the binary and some expressed a feeling of transition within the within the binary. There were also communities, which identified themselves outside gender spectrum. As explained in the previous chapters, the term transgender has gradually shifted from denoting to a medical context to a socio-political space. This term not only represents a distinct gender category, a complex psycho-social expression/experience, but is a politico-legal perspective that represents those who are marginalised or oppressed due to their self-identified gender inconsistent with their sex assigned at birth. The Supreme Court of India has provided a distinct third gender status to the transgender communities as well as the right to self-identify their gender. This means gender non-conforming individuals can decide their gender on the basis of their own choice. The self-identification of gender was one of the salient features of the NALSA judgement. The Expert Committee report has however provided for a certification committee for declaring one's gender identity, apprehending a misuse of the transgender category.

According to the Expert Committee recommendations, the certification committee may consist of a medical practitioner, district magistrates as well as members of the transgender community. While providing for a certification committee, the Expert Committee did not elaborate on the qualification/areas of specialisation of the medical practitioner. Again, it needs to be taken into account that all psychologists are not aware of the issues of transgender. Thus, there is a chance of discrimination based on lack of sensitization. Moreover, transgender activists like E1, expressed his concern that including a member of the transgender community in the certification committee might lead to gatekeeping as different transgender persons/communities have varying perspectives and scales for determining

who/what is transgender. For some transgender leaders, castration is an important factor to be determined as transgender. However, the traditional transgender persons might not agree to include gender a varying person, who is not a part of the traditional communities as a transgender. Moreover, some traditional transgender leaders amongst *hijra* and *kinnar* were strictly hetero-normative. Several traditional transgender communities engage in rivalry with each other. A member of the board might pursue their ulterior motive of vengeance and gatekeeping by denying certification to the member of a rival group. Thus, a certification committee might cause more problems and hurdles than making it easier. During the field study, it was observed that the transgender communities of Tamil Nadu, Karnataka and Tripura were promised to be provided with certain state aided financial benefits. However, such benefits could only be obtained through the production of a gender change certificate. It was observed that the community members were often apprehensive of visiting a doctor fearing stigma. Not all doctors could understand the nuances nor do they possess the empathy towards the community members.

In this regard, it is recommended that the judgement of the Supreme Court of India to provide rights for self-identification to the transgender community members is apposite and should be upheld. Not only, the transgender community should have the right to self-identify, they should also be free to choose among the binary gender in accordance with their target gender identity. Unless a proper mechanism is available to adopt the transgender community along the 'normalised' gender categories in all spheres, a transgender person might be given the right to self-identify without depending on a medical practitioner or a certification committee towards announcing their gender identity. For the purpose of any government welfare scheme, a transgender person should be able to self-testify their gender identity.

Another question that had transpired in this context was the misuse of the provisions for the transgender persons by others. In this context both E16 and E2, activists-members of

the transgender communities, have suggested that no man/woman would want to be identified as transgender unless there is a truly repressed desire to be identified outside their biologically assigned gender. According to them, the misuse of such schemes is unlikely.

Secondly, an urgent attempt needs to be made towards eliminating differential modes of identifying transgender persons in different government documents. Though the Supreme Court of India has identified transgenders as the third gender, the 'third gender' nomenclature suggests hegemony within the gender structure. Terms like 'Eunuch' and 'Others' needs to be uniformly replaced from all government documents as they bear a discriminating sense of 'othering'. Male to Female and Female to Male transgender persons, who might want to identify as female and male respectively should be exempted from identifying as transgender.

The term transgender has been contested by several transgender community members because of its Western origin and is considered as a forced superimposition on to the Indian context. Several academics and transgender leaders have expressed the view that the term transgender signifies a medical condition rather than a socio-cultural category. Moreover, the term transgender seems problematic as it situates a person as someone who is "not-normal". Thus, deliberations for a new term to replace transgender might be required. Until then, the term transgender should be used as an all-encompassing expression for denoting the variety of gender non-conforming identities in all official documents, identity cards, and other expressions of gender-variance.

It was observed during the field studies that the members of the transgender communities across different social strata were regularly victimised due to an enduring transphobia. The negative portrayal of transgender persons in different media and other platforms have embedded an undesirable stereotype concerning the transgender communities. As these stereotypes have sedimented over a period of time, removing these too will require time. Thus, it is recommended that the primary and secondary school curricula address the

life of transgender person by including instances/documentation of gender non-conforming personalities as well as their physiology in a positive light along with the other gender categories. The children need to be trained towards recognising that there are more than two genders from an early age. The curriculum as well as the process of socializing should be oriented towards a non-hetero-normative framework. This in turn will be able to sensitize the family, the educational institutions and eventually the larger society in the long run.

7.3.2. Health care

In the areas of healthcare, the State needs to clearly point out its position on sex reassignment surgeries. Section 320 of the *Indian Penal Code* concerning emasculation as grievous hurt and a punishable offence requires revision and should be read with Section 88 (exception to section 320) in the interest of the transgender communities. Moreover, matters relating to transgender psychology and physiology needs to be included in the study material in medical courses and the transgender phenomenon to be understood outside the scope of gender identity disorder. Not only medical institutions need to be sensitized about the community by including courses on the transgender health, the training modules at care giving centres require revision towards debunking the existing prejudices against the community. The respondents have affirmed that most of the hate crimes towards the transgender persons were due to lack of sensitization.

It has been observed that a majority of the transgender related health care facilities in India are centred on HIV, sexual reassignment surgery and psychological concerns for treating them for gender identity disorder. However, there is no system for transgender persons' regular health care needs. There is no specific healthcare system for transitioning transgender children and young adults. It is to be understood that most of the transgender related issues in India can be overcome if transgenders receive support from their family. Thus, the problem needs to be addressed at the level of the family by providing proper

counselling and medical facilities for transgender children. The parents of transgender children need to be sensitized towards their child's need.

Medical institutions like Mahatma Gandhi Medical and Research Facility in Pondicherry and few government and private hospitals in Tamil Nadu and Karnataka are providing SRS facilities for transgender individuals, which is mostly restricted to the MTF transgender only. Similarly, the gender change certificate is made available once a MTF transgender undergoes the emasculation procedure. However, no such medical certificate is available for a transgender man. As previously explained a transmen might not be able to undergo phalloplasty because it is expensive. Mastectomy and surgical removal of ovaries and the uterus are not considered as sexual reassignment surgeries. Therefore most transmen do not qualify for receiving a gender change certificate as it is based on the presence or absence of primary male genitals. Thus, the procedure for gender change certificate based on medical/surgical grounds should be eliminated and a transgender person might be allowed to claim their gender identity through an affidavit similar to the name/surname changing procedure.

7.3.3. Education

In the context of schooling, it was observed that the transgender persons often faced extreme transphobia in their school and among peers. Therefore an alarming rate of transgender students drop out of school, fall into depression and some commit suicide. Young transgender students, who were initiated into the traditional gender non-conforming communities at an early age, chose not to attend school out of the fear of bullying and sexual abuse. Therefore, the schools need to include issues of the transgender community in the curriculum. In a short-term, the educational institutions can conduct sensitization programmes in association with the organisations/members of the transgender communities towards providing awareness. The central and state school boards need to regulate such sensitization programmes as mandatory.

Moreover, young students should have the liberty to change their name/gender according to their preference, while transitioning. Every school need to set up a mechanism to cope with gender based harassment and prevent its recurrence. Schools may work towards the elimination of gender-based sorting for classroom activities at school. Similarly, colleges should readily accept change in gender/name of the students and make provisions for counselling services. UGC has already made provisions during admission for scholarship/financial assistance to transgender students, who do not receive financial aid from their family. In case of residential institutions, the student should preferably be provided a single occupancy rooms or dormitories as per their preferred gender identity. College/university need to encourage sensitisation programmes for students and staff (teaching and administrative). Colleges/Universities could appoint trans-gender champions (if any) besides boy/girl gender champions to promote gender equality in educational institutes as per UGC guidelines. The K-12 school model and the Oxford University anti-transgender discrimination model may be taken as benchmark for sensitizing and reducing discrimination against the community.

7.3.4. Employment

Most of the time transgender persons are unable to receive employment opportunities mainly for two reasons. One, they remain uneducated because of social stigma. Two, the educated transgenders could hardly receive any employment due to prejudice. Tata Consultancy Services in Kolkata and Bangalore is providing employment opportunities for the transgender community. There is a need for comprehensive state wise sensitization plan that specifically focuses on eliminating the suspicion and prejudices against the community. There is an immediate need for MNREGA and other stated employment schemes to make provisions for transgender persons. Transgender persons, who identify as women should be included in existing welfare plans concerning women and the same should be done with the transmen

with additional effort to ensure their safety. The definition of rape, sexual assault and workplace discrimination should be expanded uniformly in all relevant statutes to include gender non-conforming individuals.

7.3.5. Welfare programmes

The existing welfare schemes available for the transgender community have failed due to the lack of understanding of transgender communities. As mentioned earlier, the transgender toilet was boycotted by the community members. One reason is that not all transgender persons have come out, in public and thus, they are apprehensive of using a transgender toilet. Those who have come out fear using an exclusive facility that might lead them to be identified and assaulted. A large number of transgender persons identify with their target gender and they would like to use a toilet facility consistent with their target gender identity. The transgender leaders and members have pointed out that instead of making a specific transgender toilet, provisions for unisex toilets can be created so that anyone irrespective of their gender can use such facilities as per their needs. Similar concerns were raised regarding the transgender inclusive school.

Transgender activists and community members have pointed out that by providing such exclusive facilities the state is making an attempt to systematically exclude them. A somewhat similar problem was noticed in the transgender pension scheme in Tripura. Though the community members were excited about the monthly pension, some community members raised serious concerns about the same. The pension provided a monthly amount of Rupees 500, which was insufficient for a decent living. Thus, the community members complained that either the pension amount be raised or not given at all. If they receive the pension, people might not give them money assuming that they are already getting financial support from the government.

In this regard it is recommended that instead of providing monetary aid, the community members should be systematically included in various skilled and unskilled labour sectors like small-scale industries and other state supported employment schemes, which will not only provide them with a steady source of earning but will also include them into the society while sensitizing others.

During the field studies, respondents were asked if they thought the situation of the transgender community has changed over a period of time.

Here are some of the select responses:

“Yes yes. I think [the situation is] much better now.”²¹

“Now they [the mainstream society] are learning about us. But the awareness level is still less.”²²

“I feel in Tamil Nadu people are more sensitized.”²³

“First they [the transgender individuals] need a place to live with honour and dignity. Next, they need food. I am not saying that government should start working for them exclusively. But at least they can start with providing them Ration cards. They are very poor, ignored, marginalised people. Not everybody is bad to them. Those who understand them are usually sympathetic. But those who are not, they create a problem.”²⁴

“Yes, everything is good here [Tripura] [...] If I am good, then the world around me will be good too. If I will go around the street cursing the people, then obviously no would like me.”²⁵

“Tripura is a small and poor State. We are not concerned with anything else. All we want is some money so that our daily expenses are met.”²⁶

“Before transgender people [in Karnataka] were not sure exactly what their rights were. Like they used to see the police coming and they would run away in fear. Now they stand there and ask what happened.”²⁷

²¹ R8. (2015, April 13). Interview with Swarupa Deb. Chennai: Tamil Nadu.

²² R2. (2015, April 20). Interview with Swarupa Deb. Chennai: Tamil Nadu.

²³ R9. (2015, April 20). Interview with Swarupa Deb. Chennai: Tamil Nadu.

²⁴ E21. (2015, October 30). Interview with Swarupa Deb. Agartala: Tripura

²⁵ R31. (2015, October 22). Interview with Swarupa Deb. Agartala: Tripura.

²⁶ R35. (2015, October 19). Interview with Swarupa Deb. Agartala: Tripura.

“Some parts of Karnataka recognise the community. So if you take *jogappas*, they are accepted in any region because they have a religious connotation to them. The larger society still looks down at the transgender community, particularly those who are doing begging and sex work. The society is same, not changed much. The discriminatory attitude is still in the society. It will go with time”.²⁸

“It is very slow but there is a change. Things that we are asking for, hoping for, might not happen so quickly. But it will happen, maybe in next five years or maybe after hundred years, but it will happen.”²⁹

“The change is invisible. It is very slow. But one thing I can tell that our visibility has increased. Now people don’t see us just as *hijra* clapping and begging. They are seeing us as people wearing good clothes. Some speak good English, and travel in planes and air-conditioned compartments in trains. So this is a positive change.”³⁰

“Nothing has changed for us. Only the rich *hijras* are getting the benefit. We are still banished from the society.”³¹

These responses collectively resonate a feeling of a limited acceptance by mainstream society. The community members had expressed a similar feeling that the mainstream society is ignorant about the community which is the main reason for the prejudice, discrimination and violence against them. The community members believed that tolerance level towards the community has less to do with the education, class, community, and regional background but more to do with the level of awareness about the transgender community. In this context, it can be said that for ameliorating the condition of the transgender community, the concept of gender binary and hetero-normativity have to be contested first. Hetero-normativity can be shifted only through a convergence of the academia, activism and policy implementation.

The intolerant attitude towards the transgender community is due to the low level of awareness. Rather than recommending suggestions and half-baked welfare measures, an

²⁷ E7. (2016, August 18). Interview with Swarupa Deb. Bangalore: Karnataka.

²⁸ E12. (2016, August 19). Interview with Swarupa Deb. Bangalore: Karnataka.

²⁹ E13. (2016, October 19). Interview with Swarupa Deb. Serampore: West Bengal.

³⁰ R23. (2016, October 22). Interview with Swarupa Deb. Serampore: West Bengal.

³¹ R28. (2016, November 07). Interview with Swarupa Deb. Kolkata: West Bengal.

overall development of the community through a grass root level policy intervention schemes that are institutionally monitored for effective implementation is necessary. One of the main reasons for the grass root level transgender persons being unaware of the Expert Committee was the lack of strategic implementation and sensitization methods. Therefore an intricate chain of civil society networks needs to be laid that connects urban, rural, traditional as well as modern communities across class, caste, regional and linguistic backgrounds. It is highly recommended that a state-wise enumeration be conducted towards assessing the number of transgender persons in India. The census needs to take into consideration identities, who identify within the binary, those who identify as transgender, those who identify outside the gender spectrum as well as regional gender non-conforming identities. This will in turn bring forth the issues of the community, the extent to which problems have been resolved, what measures need to be taken to ameliorate the challenges as well as the ethnic diversities of the traditional communities. This state wise report can be further used to develop state wise policies for the community members in terms of their regional socio-legal challenges. Instead of centralised blanket schemes, individual state policies including responsibilities of the state, various social organisations, civil society organisations as well as the community members, need to be outlined comprehensively for the de-marginalisation the community.

E11 pointed out:

“I think it will still take time to change the condition of the community. If you compare the transgender movement with any other movement in India, this is the only movement where so many changes happened in the last 15 years. No other movement has seen so much change. In case of the transgender movement, it happened quickly and showed results in just 10 years. The society will take time to change. You have to give time for these changes. If you do a comparative analysis between the present and 10 years ago, then yes, there is a lot of change in peoples’ attitude.”³²

E16 hoping for a positive change in the condition of the transgender communities said:

³² E11. (2016, August 23). Interview with Swarupa Deb. Bangalore: Karnataka.

“I am a hopeful person. See I am pursuing a PhD. Which *hijra* had thought of that? There is much community visibility now a days. Today, you came to my house and [you are] drinking tea with me. This in itself shows that there is a change. I am sure in the next ten years there will be more changes and soon the transgenders will be integrated into the legal system too. I am sure.”³³

7.4.Limitations of the study and scope for further research

Sincere attempts have been made to cover a wide range of transgender identities across cleavages of caste, class, region, language, religion and other social categories. This study however covers only a fraction of the transgender population within the four selected states of India. Perhaps, the study could later be extended to include other states. The questionnaire was prepared with care for reducing any ambiguity. Very similar, almost identical questions were posed to all the respondents so that their responses could be corroborated against each other as well as for framing a comprehensive account of the transgender struggle and their lives. However, the limitations and biases of memory on the part of the respondents cannot be ruled out. Moreover, the data was collected only in the states of Tamil Nadu, Karnataka, West Bengal and Tripura. Therefore, no claims to generalizations are made especially because there are multiple groups of transgender people and their challenges vary. Often, the respondents would not provide a complete account of their private and intimate details due to a trust deficit. Therefore, this dissertation does not claim to embrace every aspect of their life. Regardless of these limitations, this study has been able to capture an interpretative history of the transgender struggle for rights and their changing status in the four states.

This study opens up avenues for further research. As this study has initiated the process of chronicling the transgender struggle for rights and identity in India since the early 1990s, it provides scope for further research by gradually incorporating other regions/states in India. This, in turn, could contribute towards comprehensively mapping the struggle in a pan-Indian context. This dissertation has alluded to a wide array of issues in the lives of the

³³ E16. (2016, October 28). Interview with Swarupa Deb. Patna: Bihar.

transgender communities. Some of those issues like challenges faced by transgender children, transpersons with disabilities and the aged transgender people could open avenues for further research. Most studies, including this dissertation, have been centred on adults. The dissertation concluded by suggesting recommendations for evolving a policy-based framework involving the institutions of the state, civil society organizations as well as the transgender community members. One important window for further research could be developing the aforementioned policy framework according to the specific local context in each state.

This study employed an observational and open-ended questionnaire towards capturing the sentiments and emotions of the members of the transgender communities. Each of the individual respondents was approached as a human being, not merely as objects of study for generating quantitative data. Notwithstanding, policy frameworks require quantitative data as well and this research could be extended for covering larger sections of the transgender population.

APPENDICES

APPENDIX I: A timeline of milestone events in the history of transgender struggle for rights (Circa 1990-2018)

- 1969** All India Hijras conference in Gujarat demanding to be counted as female instead of male in the national census. A subsequent conference in Bhopal, launching an organised campaign against the government sponsored family planning programmes, which was believed to hamper their *badhai* income.
- 1981** All India Hijra conference was organised in Delhi.
- 1992** The first recorded LGBT protest in India was organised by AIDS *Bhedbhav Birodhi Andolan* in Delhi.
- 1994** The Election commission allowed hijras to register as male or female in the electoral role depending on their statement at that time.
- 1995** *Ob-Manab* (sub-human), India's first transgender magazine published by Manobi Bandopadhyay.
- 1998** Shabnam Mausi was elected as a member of the Madhya Pradesh State Legislative Assembly.
- THAA (Tami Nadu *Arvingal* Association) was listed under the Tamil Nadu Societies Registration Act, 1975.
- 2000** Transgender sex workers were included in the targeted intervention group in phase II by NACO.
- 2002** The first *hijra hubba* was celebrated by the transgender community of Bangalore.
- 2003** Tamil Nadu State subcommittee on transgender welfare was formed to provide recommendations to the state government for improving the living conditions of *Aravanis*.
- 2004** Karnataka became the first Indian state to acknowledge transgender community by issuing Driving licence in 'other' category.
- 2005** The Government of India introduced a category 'E' in passport application forms.
- 2006** A workshop on "Third Gender Concerns" held in Chennai, with participation by officials from the government of Tamil Nadu.
- 2007** A Tamil Nadu Government Order on "Rehabilitation for *Aravanis*" issued.
- SRS (Sex Reconstruction Surgery) was performed legally for the first time in India in a Tamil Nadu government hospital.
- Social Integration Development for Aravanis Foundation started in Kanchipuram, Tamil Nadu.

2008 *Aravani* Welfare Board was established to address the issues of *Aravanis* in Tamil Nadu.

The government of Tamil Nadu began issuing welfare cards for transgenders with “T” indicating the sex of the person.

Tamil Nadu announced that transgenders would have 30% of the seats reserved for women in arts and science colleges. The application forms gave three choices for gender male, female and transgender (“*thiru nangai*”).

Rose Venkatesh appears as the first transgender prime time talk show host.

Chennai Gemini *Tirunangi* Lioness Club was started by *K. Manivannan*.

Federation of Indian Transgender was constituted in Chennai, Tamil Nadu.

2009 Transgender community won the right in a long standing campaign to be listed as 'others', distinct from males and females, on electoral rolls and voter identity cards.

Transgender Women’s Federation formed in Chennai, Tamil Nadu.

2010 Bangalore university introduced an ‘others’ category under the gender column in its application format.

India’s first transgender beauty pageant was organised named ‘Indian Super Queen’ in Bangalore, Karnataka.

The Karnataka State Backward Classes Commission recommended inclusion of the Transgender community in the OBC list under the name of “Mangalmukhi” and sought fifteen per cent reservation for them.

2012 Indira Gandhi National Open University introduced ‘Other’ category in its application form.

2013 Expert committee on issues relating to transgender persons was constituted by Ministry of Social Justice and Empowerment, Government of India.

2014 April 14: Transgenders being formally recognised as ‘Third gender’ by Supreme Court of India.

‘*Vistaar*’ a skill based training programme initiated by University of Delhi for transgender.

July: the University Grants Commission (UGC) had notified universities and colleges to introduce 'third gender' as a category in its admission forms.

July 16: State Level Consultation on the Rehabilitation and Welfare of Transgender Community was conducted for approving the constitution of Transgender Development Board in West Bengal.

August: Delhi University recognised transgender.

Aug 3: Madhya Pradesh Government has suggested that the transgender persons be addressed by adding "Tgr" before their names on the lines of "Mr, Mrs and Ms in English and "Ki" in Hindi.

Aug 24: Maharashtra became the second state to announce formation of the Transgender Welfare Board with Laxmi Narayan Tripathi, as one of the committee members.

May 14: National Commission for Backward Classes recommended the inclusion of transgender in the Other Backward Class (OBC) category.

June 19: Karnataka State government formulated a state policy for transgender persons in the state.

Dec 12: The Rights of Transgender Persons Bill, 2014 was introduced by Tiruchi Siva in Rajya Sabha as a private member's bill.

2015 March 3: Madhu Kinnar, a transgender person was appointed as a mayor of Raigarh, Chhattisgarh.

March 18: West Bengal government forms Transgender Development Board led by Dr. Shasi Panja and Dr Manobi Bandopadhyay as vice-chairman.

March 25: Directorate of Scheduled Caste, Other backward classes and Minority Affairs, Department of Ministry of Social Justice and Empowerment, Himachal Pradesh announced centrally sponsored schemes of Pension for transgender persons above 40 years of age along with pre-matric and post-matric scholarship for transgender youths; financial support for parents of transgender children and assistance for skill development training for transgender persons.

April 24: The Rights of Transgender Persons Bill, 2014 was passed in Rajya Sabha.

Aug 3: *Panmai*, a transgender theatre group of India, started by Living smile Vidya.

Aug 17: State wide protests demanding reservation in education and employment for trans-women in Vallur Kottam, Tamil Nadu.

Sep 22: Department of Social Security and Empowerment of Persons with Disabilities, Odisha introduces scholarships and a pension scheme for transgender persons, along with drafting a proposal for recognition of transgenders and providing them with certificates as third gender.

Sep 24: Odisha government formed a 16-member panel for welfare of transgender community.

June 9: Manabi Bandopadhyay took over as India's first transgender college principal in Krishnanagar Women's college, West Bengal.

July 28: Tripura State government announced an allowance of Rs 500/- per month for transgender persons throughout the State.

Sep 30: Chhattisgarh government pledged to draft an action plan for welfare of the transgender community of the State.

October 18: An androgynous Durga idol was celebrated in Kolkata.

Oct 28: Sujith Kumar alias Suji, a transgender person approached the Kerala state government to approve her suicide.

Nov 6: The Madras High Court directed the Tamil Nadu government to create a separate column for transgenders in the application forms for recruitment of candidates.

Nov 12: The Department of Social Justice, Govt. of Kerala unravelled a State Policy for Transgenders.

Nov 19: A transgender toilet at the city bus stand of Mysore, Karnataka.

Nov 30: K. Prithika Yashini was selected as a transgender sub-inspector, Tamil Nadu.

2016 Jan: Ministry of Social Justice and Empowerment, GoI drafted a Bill on the rights of transgender persons titled “The Rights of Transgender Persons Bill, 2015” and invited comments/suggestions from the stakeholders and expert groups on the same.

Jan 7: 6 Pack Band, India's transgender music band released their debut album.

Jan 19: A pre-Legislative Consultation meeting on Rights of Transgender Persons Bill, 2015 was held under the Chairmanship of Minister, Social Justice & Empowerment, Shri Thaawarchand Gehlot alongwith representatives from concerned Ministries, legal experts and representatives of transgender community, New Delhi.

Jan 21: A pilot programme called ‘wings rainbow’ was initiated by Wings Travels and Humsafar Trust. It will have taxis chauffeured by the LGBT community members, and is expected to start functioning in 2017, Mumbai.

Feb 2: The Supreme Court decided to refer the challenge against Section 377 of the Indian Penal Code to a five-judge bench to have a fresh look into the issue.

Feb 6: Madurai Bench of Madras High Court directed that the transgenders applying for jobs as noon meal organisers can be treated as women for the purpose of recruitment.

May 5: Protima Sharma and Riya Sarkar were selected by the State Election Commission to officiate as polling agent and polling officer respectively in West Bengal.

August: The Transgender Persons (Protection of Rights) Bill, 2016, re-introduced in Lok Sabha by Thaawarchand Gehlot, the Minister for Social Justice and Empowerment.

August 22: Sangama in association with Reach Law organised a press conference in Delhi demonstrating that the new bill instead of imposing social and legal security for the transgender community, violates their identity and is not in consensus with the Expert committee recommendations as well the NALSA judgement.

July 21: The Forty-Third report of the Standing Committee On Social Justice And Empowerment made amendments to The Transgender Persons (Protection Of Rights) Bill, 2016.

September University of Kerala announced its educational policy for transgender people in 2016.

Dec 30: Sahaj International, an exclusive transgender school was inaugurated in Kerala.

2017 Feb22: Shree a transgender woman from West Bengal was legally married.

April 3: The Ministry of Sanitation issued guidelines to the Swachh Bharat Mission stating that members of the third-gender community be allowed to use public toilets of their choice (men or woman).

May 11: Kochi metro employed transgender community members as their ground staff.

May 11: Meghna Sahoo, a woman belonging to the transgender community purchase nomination form required for the Rajya Sabha election.

June 29: IGNOU provided full fee waiver to transgender candidates on all programmes offered by the university.

July 8: Joyita Mondal Mahi, a transgender person from West Bengal was appointed as additional judges of Lok Adalat in North Bengal.

August 28: Riya from Kerala sat with a panel of judges of a National Lok Adalat held in the District Court complex at Manjeri.

Nov 13: Jodhpur High Court decided in the favour of trans woman, Ganga Kumari from Rajasthan to be recruited by the state police service.

Nov 21: Kajal from Mandya district in Karnataka became the first transgender radio jockey from the state.

2018 Jan 13: A five-judge Supreme Court Constitutional Bench will hear the challenge to IPC Sec377.

Jan 24: Akkai Padmashali, a trans woman from Karnataka officially registered her marriage.

Mar 22: Neaya S. and M.P. Selvi Santhosham, members of the transgender community received permanent job positions in the post of lab technician and physiotherapist respectively at the Rajiv Gandhi Government General Hospital, Chennai.

APPENDIX II: A list of the welfare measures available for the transgender community in India across states

The purpose of this section is to provide an overview of the changing attitude of the organs of the Indian State towards the issues of the transgender communities. Some of these measures are already mentioned in the time line and the chapters.

States	Welfare Policy/Schemes
Assam	<ul style="list-style-type: none">• Assam Jorhat College provides for enrolment of transgender students under ‘third-gender’ category, 2013.
Bihar	<ul style="list-style-type: none">• Patna Women's College provides for enrolment of transgender students in ‘female’ category for graduate courses, 2010.
Chhattisgarh	<ul style="list-style-type: none">• Two per cent Special Housing quota for transgender people, 2015.• Transgender people from the State are sent to Mahatma Gandhi Medical College and Research Centre, Puducherry for free of cost the SRS surgery along with travel allowance and financial aid for medicines, Department of Social Welfare, Chhattisgarh.
Delhi	<ul style="list-style-type: none">• Dilli Annashree Yojna, Department of Food, Supplies and Consumer Affairs, Delhi Government, 2012 provides for food security of transgender people below poverty level.• ‘Vistaar’ a skill based training programme initiated by University of Delhi for transgender persons, 2013.• Programmes for the upliftment of weaker sections of The Society (Trans Inclusive Growth), Planning Department, Govt. of National Capital Territory of Delhi, 2013.• University of Delhi provides for enrolment of transgender students in ‘third gender’ category, 2014.• Twenty five per cent reservations for transgender students in government Schools under the economically weaker section (EWS) and disadvantaged students for admission category, 2015.

- Haryana
- The Haryana State Legal Services Authority Rules, 1996 provides for free legal aid services for transgender persons.
- Karnataka
- Acknowledged transgender community by issuing Driving licence in ‘other’ category in 2004.
 - Bangalore University, 2010 provides for enrolment of transgender students in graduate and post graduate programs under ‘other’ category.
 - Karnataka State Backward Classes Commission included Transgender community in the OBC list under the name of “Mangalmukhi” and sought 15% reservation for them, 2010.
 - Monthly allowance of Rs 500/- under Maître Pension Scheme for Gender Minorities, 2013 by State Revenue Department.
 - First transgender toilet at the city bus stand of Mysore, Karnataka, 2015.
 - Karnataka state cabinet approved the State Transgender policy, 2017.
- Kerala
- State Transgender Policy, 2015.
 - Kerala Transgender Education Policy 2016.
- Maharashtra
- Formation of Transgender Welfare board on 24 August, 2014.
 - Maharashtra State 3rd Women Policy, 2014, Women and Child Development Department, Govt. of Maharashtra provides for equal opportunity and AIDS protection for transgender persons.
- Odisha
- Odisha State Youth Policy, 2013, Sports and Youth Service Department, Govt. of Odisha, provides for inclusion of transgender youth and sensitization of the society towards the community.
 - Department of Social Security and Empowerment of Persons with Disabilities, 22nd Sept, 2015 to deal with matters relating to transgender persons.
- Pondicherry
- Monthly allowance of Rs. 1500/- for transgender persons under Old age and destitute pension schemes, Department of Women And Child Development, Govt. of Pondicherry in 2012.

- Mahatma Gandhi Medical College and Research Institute conducting free SRS services for transgender persons and free of cost weekly medical aid.
- Tamil Nadu
- Tamil Nadu State AIDS control society, 2001 included transgender sex-workers.
 - Aravani Welfare Board was established to address the issues of Aravanis in Tamil Nadu, 2008.
 - The Government of Tamil Nadu conducted transgender census for issuing welfare cards for transgenders with “T” indicating the sex of the person, 2008.
 - SRS (Sex Reconstruction Surgery) was performed legally for the first time in India in a Tamil Nadu Government hospital. Kilpauk Medical College Hospital and Government Hospital, since 2010.
 - Tamil Nadu announced that transgenders would have 30% of the seats reserved for women in arts and science colleges, 2014.
 - The Madras High Court directed the Tamil Nadu government to create a separate column for transgenders in the application forms for recruitment of candidates, 2014.
- Tripura
- Monthly Pension Scheme for Transgender, Department of Social Welfare and Social Education, 2014, Govt. of Tripura.
- West Bengal
- Transgender Development Board, 19 March, 2015.
 - Krishnananagar Govt. Girls College appointed a transgender person in the post of Principal, 2015.
 - State has a dedicated medical team exclusively for transgender patients in Radha Gobinda Kar Medical College and Hospital, 2015.

APPENDIX III: A state wise list of the transgender population in India

Country	Total Population
India	487803
States	Total Population
Jammu & Kashmir	4137
Himachal Pradesh	2051
Punjab	10243
Chandigarh	142
Uttarakhand	4555
Haryana	8422
NCT Of Delhi	4213
Rajasthan	16517
Uttar Pradesh	137465
Bihar	40827
Sikkim	126
Arunachal Pradesh	495
Nagaland	398
Manipur	1343
Mizoram	166
Tripura	833
Meghalaya	627
Assam	11374
West Bengal	30349
Jharkhand	13463
Odisha	20332
Chhattisgarh	6591
Madhya Pradesh	29597
Gujarat	11544
Daman & Diu	59
Dadra & Nagar Haveli	43
Maharashtra	40891
Andhra Pradesh	43769
Karnataka	20266
Goa	398
Lakshadweep	2
Kerala	3902
Tamil Nadu	22364
Puducherry	252
Andaman & Nicobar Islands	47

Source: Census 2011, Available at Primary Census Abstract Data for Others (India & States/UTs)
http://www.censusindia.gov.in/2011census/population_enumeration.aspx, Last Accessed on 01/02/2018

APPENDIX IV: A list of films, documentaries, advertisements, series and other audio-visual sources dealing with the issues of gender non-conformity in India

The purpose of this section is to present a list of sensitive portrayals of the issues of the transgender community members since 1991 till the present. This list of Films/Documentaries/Advertisements/Series/Other Audio-Visual Sources does not claim to be exhaustive.

Name	Year of Release	Category
Sadak (Hindi)	1991	Film
Bombay (Hindi)	1995	Film
Daayraa (Hindi)	1996	Film
Darmiyaan (Hindi)	1997	Film
Tamanna (Hindi)	1997	Film
Navarasa (Tamil)	2005	Film
Shabnam Mausi (Hindi)	2005	Film
Gulaabi Aaina (Hindi/English)	2006	Film
68 Pages (Hindi)	2007	Film
Jodha Akbar (Hindi)	2008	Film
Welcome to Sajjanpur (Hindi)	2008	Film
Jogwa (Marathi)	2009	Film
Pavaiya - The sexless devotees of Goddess Bahuchara (Hindi)	2009	Web Documentary
Aarekti premer golpo (Bengali)	2010	Film
Natrang (Marathi)	2010	Film
Aur Neha Nahin Bik Paye (Hindi)	2011	Documentary
Kanchana (Tamil)	2011	Film
Narthagi (Tamil)	2011	Film
Paal (Tamil)	2011	Film

Queens: Destiny of Dance (Hindi/English)	2011	Film
Ardhanari (Malyalam)	2012	Film
Chitrangada (Bengali)	2012	Film
Let The Butterflies Fly (Kannada/English)	2012	Documentary
Bombay Talkies (Hindi)	2013	Film
Qissa (Punjabi)	2013	Film
Yellamma, Jogappa, Gender: A brief oral history (Kannada/English)	2014	Documentary
Satyamev Jayate (S 3 Ep. 3) (Hindi)	2014	Television Series
Naanu Avanalla, Avalu (Kannada)	2015	Film
Pumstri (Kannada)	2015	Film
6 Pack Band (Hindi)	2016	Music Video
Be You (Jabong) (English)	2016	Advertisement
India's Third Gender Movement (English)	2016	Documentary
Jenana (Bengali)	2016	Film
Maya Mridanaga (Bengali)	2016	Film
Others (Hindi)	2016	Short Film
'Mummy' is a Transgender (Vicks) (English)	2017	Advertisement
aAA eEE Anjali (Telegu)	2017	Web Series
Aruvi (Tamil)	2017	Film
Big F (S2 Ep.4) (Hindi)	2017	Television Series
Eunique (Hindi)	2017	Short Film
No Conditions Apply (Bengali)	2017	Video
Koovagam (English)	2017	Web Documentary
Nagar Kirtan	2017	Film
Peranbu (Tamil and Malayalam)	2018	Film

APPENDIX V: Sample questionnaire for Transgender respondents

This open ended questionnaire contains general to mildly sensitive questions. The questions were not necessarily asked in this order during the interviews. The interviews were conducted respecting the privacy of the respondents and keeping in mind their comfort level.

General Information

Name-

Age-

Are you attending/Did you attend the Koothandavar festival festival? (Tamil Nadu)

Why is the festival so important to you/ your community? (Tamil Nadu)

Where do you live?

Do you live alone or with family/friends?

- If biological family, then relation with the family members
- If *Guru*'s family, name of the *Guru*, structure of the family
- If friends, who are they?

Is it a rented accommodation?

- How is the conducts of landlord towards you?
- Did you have to produce any legal document/ID while taking the place on rent?
- How much rent do you have to pay?

Employment

What is your source of income?

How much do you earn per month/day?

Is it sufficient for your living?

Did you ever apply for a job?

- If yes, can you narrate your experience?
- If no, why not?

Education

Have you attended school?

If yes, till which standard? Did you attend college?

- If no, why not?
- If dropped out, at which standard? Why?

Were your family/peer group/others supportive of your education?

Did your biological parents/siblings attended school?

Educational/economical background of the biological family.

Health care

Do you have access to health care facilities?

Do you prefer government hospitals or private clinics? (Why?)

What is the reaction of the doctors/staffs/chemists/other patients towards you?

Would you like to mention any specific problem(s)/challenge(s) that you faced in the health care facility because of your third gender status?

Do you enter your gender/sex as Male/Female or third gender in various forms/applications available in the medical institutions? (Why?)

Do you use male or female toilets? (Why?)

Are you aware of the transgender toilet in Mysore, Karnataka?

What do you think about gendered toilet facilities?

Do you take hormones?

- Where do you buy them from?
- Are they prescribed by doctors (licenced medical practitioner)?

Rights

Are you aware of the recent Supreme Court judgement on transgenders?

- If yes, what does the judgement say? What do you think about it?

Are you aware of the reservation opportunity for the transgender community in Education and Employment institutions?

- If yes, did/will you avail them?
- If not, why?

Are you aware of the Transgender Welfare Board? If yes how does it help you? (For respondents in Tamil Nadu, West Bengal)

Are you aware of the Expert committee on the issues relating to transgenders and the recommendations?

Do you vote?

- If yes, whether you vote as Male, Female or Others? (If male or female, why?)
- If not, why?

Do you have ID card/Ration card/Aadhaar Card/Passport etc.?

- If yes, what are the procedures to obtain them? Did you face any problem in the respective Govt. offices while obtaining them?
- If not, why?
- (In cases possessing passport) Is your passport issued by India or Bangladesh? (Tripura)
- What is your gender status on your passport?
- If men/women, why?
- If transgender? What is the procedure?
- What is the status of transgender persons in Bangladesh? (For respondents in Tripura)
- (In case of not having a passport) Why don't you have a passport?
- What kind of challenges/threat do you face for not having a passport?
- What is the behaviour of Border Security Force personnel towards you?

Do you shuffle frequently between India (Tripura) and Bangladesh? Why do you do so? (For respondents in Tripura)

Do you know that Chief Minister of Tripura has promised to pay an allowance of Rs 500/- pm. for the transgender people? (Tripura) (For respondents in Tripura)

- If yes? Are you getting the allowance regularly?

Will you go to police to file a complaint if you are harassed?

Will you report harassment/abuse/discrimination by Police/Officials/others to the transgender Helpline? (For respondents in Tamil Nadu)

Identity

At what age did you join the Hijra/Aravni/Jogappa/Jogamma/Gurma/Kinnar/launda/Kothi community?

What is the name of your *Guru*?

Do you have any chela of your own? (How many? What is your relationship with them?)

Do you visit your biological family?

- If yes, how do they react to your identity?

- Is your family supportive towards you? (Do they respect your decisions? Do they treat you the same way like other family members?)
- If not, why?

How do you perceive yourself/ your identity? (Do you identify yourself as a male (in case of FTM), female (in case of MTF) or a person belonging to a third gender category?)

- If male/female, why?
- If transgender/third gender, why?

Where do you see yourself within your own community?

- If mobility is accepted in terms of change of *guru* (what are repercussions?), coming out of the community and having your own family and living independently?
- If there is any hierarchy within the community? What is the significance of such hierarchy?
- How supportive is your *Guru* towards you/your decisions, personal choices and others?

Are there any incident in your life, where someone outside your community (transgenders) has helped/supported you?

Do you think there has been any change in the society towards the transgender community during the last decade?

APPENDIX VI: Sample questionnaire for the experts

This is a sample questioner. The questions were not always posed in this order during the interviews. The interviews were conducted keeping in mind the comfort level of the experts.

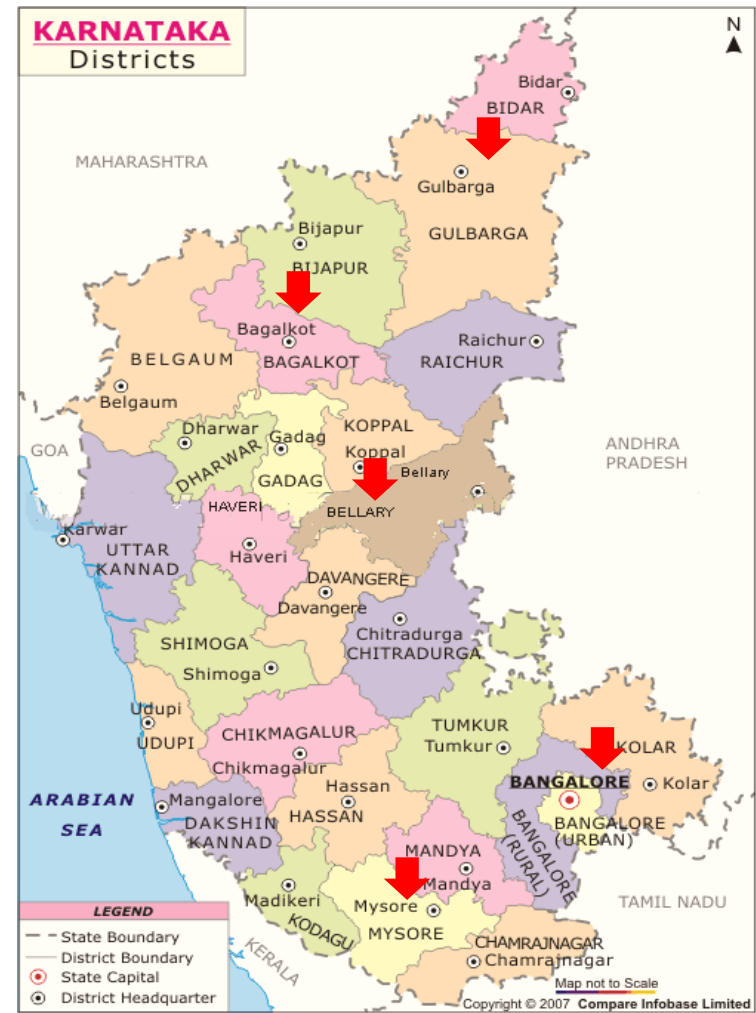
- Please tell me about your association with the transgender community?
- What are the most recurring complaints of transgender persons?
 - Do they have complaints regarding the general public? What kind?
 - Do they have problems within their community? What kind?
 - How often do they complain about police/government officers?
- How do you try to resolve their issues?
- What kind of legal aid is available to the transgender community of Tamil Nadu/Karnataka/West Bengal/Tripura?
- What are your opinions about the NALSA Judgement?
 - Has the State governments implemented the NALSA judgement?
 - Is the transgender community of the state aware of the judgement?
 - What do you think are the merits/demerits of the judgement?
- What is your opinion on the Transgender persons (Protection of Rights) Bill 2016?
 - Several NGOs, CBOs, as well as members of the transgender community have criticised the bill saying that its definition of the term ‘Transgender’ suffers from prejudiced. What are your views?
 - According to you what are the strengths of the bill and how do you think it will help the community?
 - What are the demerits of the bill?
- Where do you think the Indian State stands in terms of transgender protection legislature, compared to the international laws and conventions for the protection of transgender community?
- How would you describe the condition of the transgender community (in the areas of Rights, Identity, Access to Healthcare, Education, Employment) in your state at the present?
- Can you recollect any particular catalytic event or a series of events that resulted in organising the trans community for claiming their rights and identity?

- What kind of organised support system is available to the transgender community?
- What is the role of Civil Society Organisation: NGOs, CBOs and State Government in addressing the issues of the community?
- Is the transgender community of Tamil Nadu/Karnataka/West Bengal forming any political allegiance?
- What is the level of sensitization among police personal towards transgender/ or in general social security?
- What is level of awareness amongst the transgender community about issues of rights and identity?
- Do you think there is any significant difference between the traditional transgender community and the new age 'educated' transgender community?
- What is the status of the trans men in your state?
- What are the internal problems that a transgender person faces within their community?
- What is the HIV AIDS awareness level among the transgender community sex worker?
- Does the transgender community have access to stigma free medical facility? Are there any provisions for psychological counselling for the transition/post transition transgender person?
- Are there any welfare schemes/policies available for the transgender community?
- What is the status of access to education for transgender youths? What is the level of school/college dropouts?
- What kinds of job opportunities are available for educated transgender persons?
- What are different transgender communities/identities are there in Karnataka?
- Do you think transgender community has any space in the media and performing arts towards expressing themselves?
- How would you describe the current situation of Transgender people in your state? What changes do you think have taken place over the last decade?
- Do you think there has been any significant change in the attitude of general public towards the transgender community over the last decade?

APPENDIX VII: Maps of the four states visited during field studies

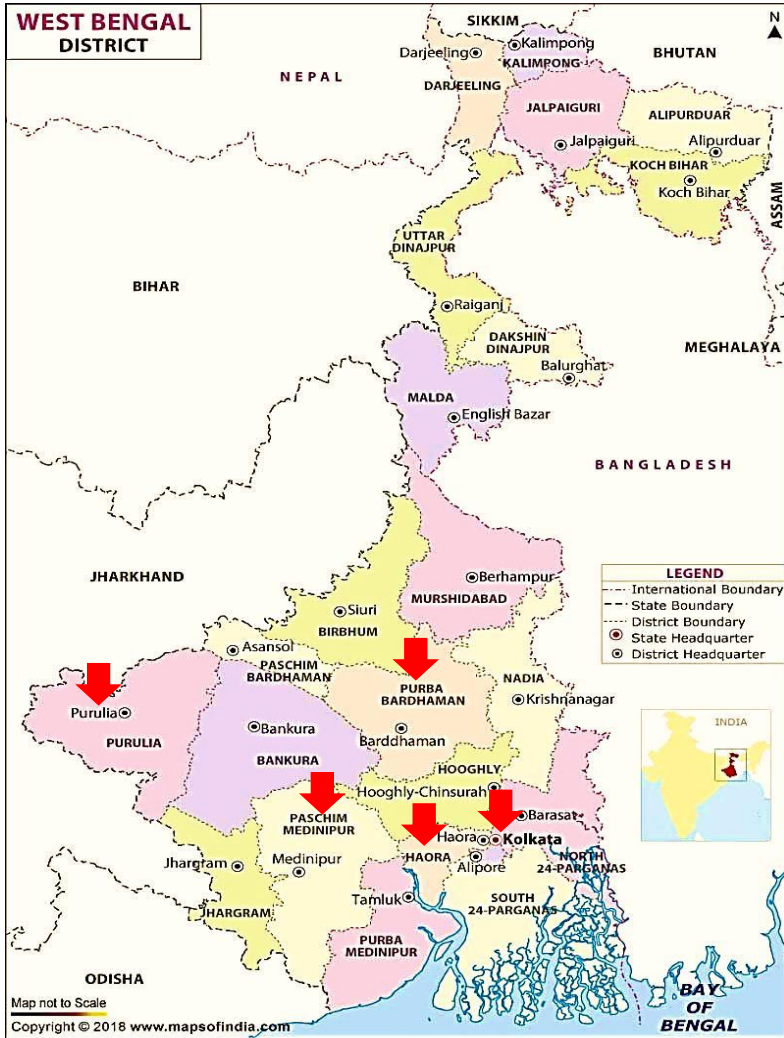


1.1: Map of Tamil Nadu (district wise)

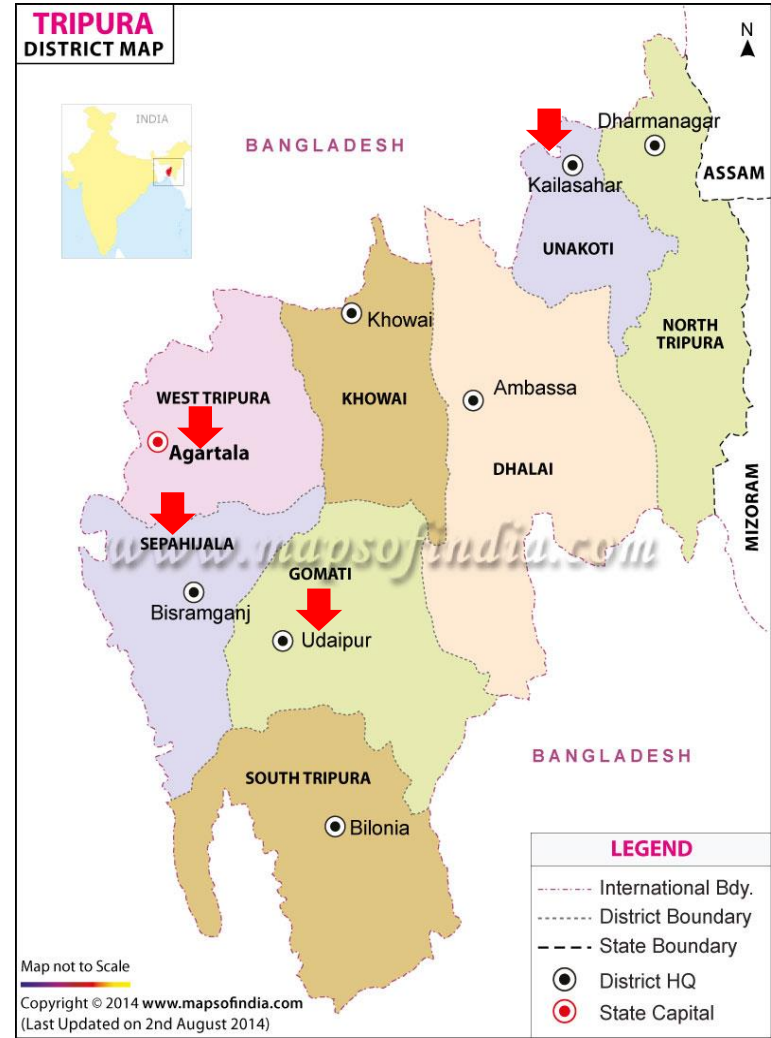


1.2: Map of Karnataka (district wise)

↓ Indicates districts visited during the field study



1.3: Map of West Bengal (District wise)



1.4: Map of Tripura (District wise)

↓ Indicates districts visited during field study

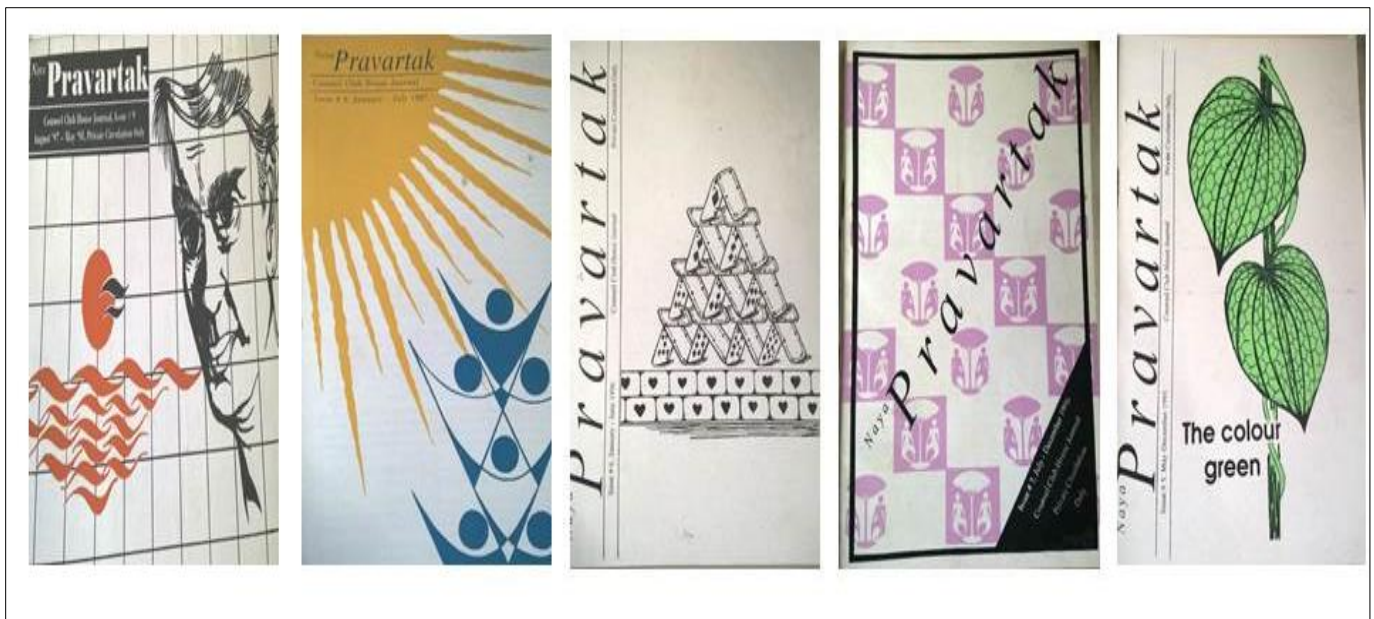
APPENDIX VIII: A pictographic documentation of the struggle for transgender rights in India

This section is divided into two sub sections. The former provides an account of the initial transgender identity mobilisation and struggles of the community through select books/magazine/report covers, pamphlets, and posters that were collected from civil society organisations during the field studies. The latter presents selected candid images of the respondents and events that were captured during the personal interactions with the community members. These pictures were captured using a Nikon 720, iPad Air and Nokia Lumia 520.

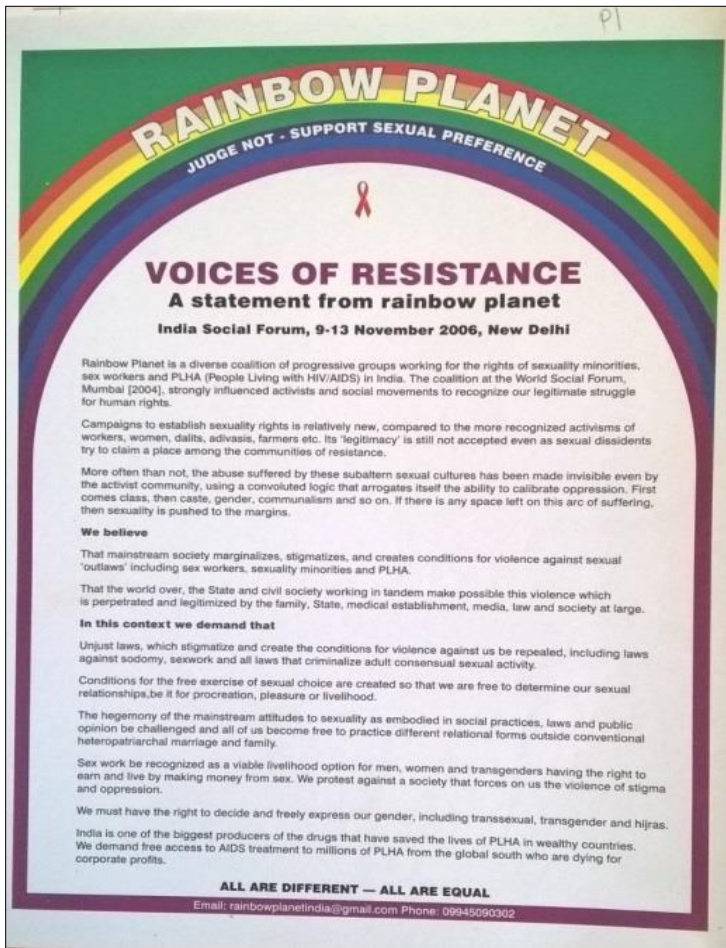
I. Selected images collected during the field studies



One of the first demonstrations for LGBT rights organised by the AIDS Bhedbhav Virodhi Andolan, Delhi 1992 (Source: Sangama)



Naya Pravartak, a journal published by Council Club, Kolkata on LGBT issues between 1995 and 1998 (Source: Sappho for Equality)



Voices of Resistance: A statement from Rainbow Planet, Rainbow Planet, Delhi 2006 (Source: Sangama)



A pamphlet about A collective of Lesbian, Bisexual Women, Intersex and Female to Male Trans persons, Karnataka 2008 (Source: Solidarity Foundation)

We are here today to tell the people, the courts, the government, and the entire world that we will not be beaten. We will not be forced into a life of shame and hiding, but will fight against this unjust verdict, in public and for however long it takes, to take back the rights that were always ours to take. We have come a long way in the last few years, in spite of setbacks like the recently passed draconian section 36A of the Karnataka Police Act which subjects every aspect of the life of a Hijra to surveillance.

Join us in this struggle ! This is your struggle too, this is the struggle of everyone who wishes to see a more democratic and inclusive India, a country where people who dare to think, live or feel differently can do so freely, a country where not a single person belonging to any minority is forced to lead their lives subject to narrow hate-filled views of others, to enjoy rights they have simply because they are human. What kind of a society do *you* want to live in ? Join us in our fight to turn our society into one that we can all be proud of.

Educate ! Agitate ! Organize !

For further information, contact :

Campaign for Sexual Minorities and Sex Workers Rights (CSMR), Bengaluru
(ksmforum@gmail.com; 74064-82772; 98867-88203, **Please give a missed call!**)

A pamphlet inviting to participate in a demonstration organised by Sexual Minorities and Sex Workers Rights to protest against criminalisation of sexual minorities, Karnataka 2009 (Source: Solidarity Foundation)

Condemn Police Terror on sexual minorities in Hassan

Withdraw fabricated cases against sexual minorities

Suspend and prosecute police officers responsible for the fabrication of cases, torture and sexual assault in police custody

Largest Arrests in Independent India under IPC 377: 13 persons arrested under draconian law

Join the public protest on 3rd Dec 2013 at 12 noon
at Suvarna Vidhana Soudha, Belgaum

Belgaum: During the sunny midnight hours of Nov 3 (the sun hours of Nov 4, 2013) when the whole country was celebrating Diwali, the Hassan police carried out a systematic raid arresting 13 persons under Section 377 of the IPC. The 14 persons were charged under 3 separate FIRs by Hassan City Police Station personnel. Very quickly the arrests became a media spectacle with the media storming the police station and televising photos of the arrested along with details of what they were allegedly doing.

In the first FIR the complainant, a 21-year college student, alleges that in 2011 he was coerced into having sex with 6 persons. These 6 persons, according to him, threatened him saying that they would reveal his sexual history, his sexual preference (for men) to his college authorities, to his college students as well as to his parents. He said that he was forced into having 'unnatural' sex and hence was infected with HIV. It is only now in 2013 that he has had the courage to report to what had allegedly happened to him two years ago.

Based on this complaint the police registered a case under Sections 143 (being member of an unlawful assembly), 377 (consensual sexual intercourse), 114 (quid pro quo for abetment), 306 (intentional insult), 270 (voluntarily doing an act likely to spread infection of disease dangerous to life) of the IPC.

The other two FIRs were registered around the same time, one each by the police under Sections 377 (consensual sexual intercourse), 114 (quid pro quo for abetment), 294 (doing obscene acts in public) and 34 (act done by several persons in furtherance of a common intention) of the IPC against 8 accused. The complainants by police officers are that 8 persons were found engaging in consensual sexual acts in public.

The police began the operation late at night by initially going to the house of the program manager of Swami Vivekananda Youth Movement's (an NGO) HIV prevention project and then pulling pressure on him, to identify their project staff members. From then the programme manager was taken to the house of a sexual minority person, who was in turn coerced to give the names of other sexual minorities. Using this method the police arrested a string of persons. Some people were picked up from their homes and charged as people picked up while having sex in public places.

This culminating into arrests of 13 persons in the wee hours of November 4. The media onslaught of arresting the persons at such an unearthly hour from their homes for offences which were allegedly done either in 2011 or for acts of so called sexual intercourse in public can be understood as aimed at spreading a climate of terror/fear among sexual minority community. The arrests were also accompanied by huge visibility in the media resulting in shaming and humiliating the arrested persons. This exposure of their sexual preference to the media as well as to family members and the society at large has resulted in great shame and distress to the community. All of the arrested were harassed in the jails on the basis of their perceived sexual preference. They were tortured and sexually assaulted by the Mahesh JE (PSE) while in police custody. The harassment has been so systematic that many of the arrested were inclined to commit suicide. The harassment continues even now by the Hassan police when all the accused are out on bail. This has resulted in creating a climate of fear within the sexual minority community in Hassan.

The police registered these FIRs in a collective fashion with the only objective of targeting the sexual minority community. The first FIR is supposed to be a complaint of forcible and non-consensual sex. But a closer analysis reveals too many flaws for it to be a true complaint. The forcible sexual intercourse which is the basis of the complaint has occurred in 2011 where as the complaint is filed in 2013, thus lacking in credibility. We strongly oppose any form of sexual harassment/ abuse, if the complaint was converted into having sex that should be investigated. But strongly opposed to these pre-meditated arrests and their harassment of sexual minority community. The methodology of creating sexual minority persons to file a complaint against their own community members has been used before by the police.

Further if this FIR is read along with the other two FIRs, all of which are filed around the same time, there is little credibility and veracity to the police narrative. Clearly the three FIRs are filed together and have a similar narrative of targeting the sexual minority community. The names may differ in terms of the different narratives in the three FIRs but the acts are the same. The three FIRs read together only point in one direction i.e. that these are collusive and fabricated cases, meant at most to generate some cheap publicity for the police establishment at the cost of the right to life with dignity, the right to privacy and the right to equality of the sexual minorities in Hassan. This targeting of sexual minorities ignores the fact that as per the judgement of the Delhi High Court in *Nar Foundation v. NCR DeM*, sexual minorities are full citizens of India.

Just when the struggle for equal citizenship of sexual minorities is slowly getting established, the mass scale of the Hassan arrests seeks to have the clock back and return sexual minorities to the closet. The arrests are a reminder of the arbitrary power vested in Section 377 of the IPC in local police officers and hence the urgent need for the repeal of this draconian provision.

Our Demands

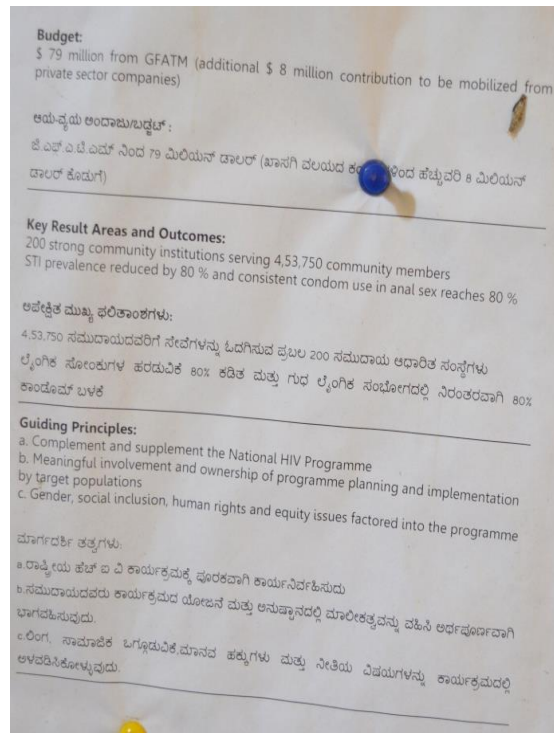
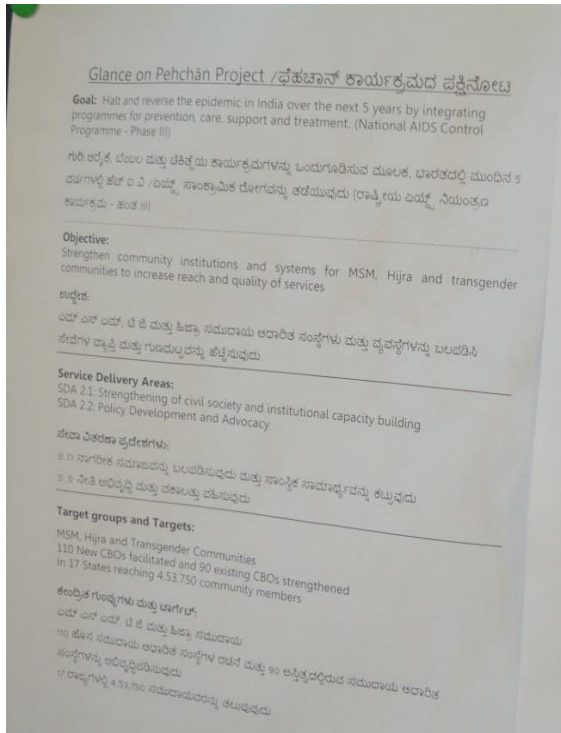
1. Withdrawal of prosecution against all the accused under Section 377 of the IPC
2. Suspend and Prosecute Mr Ravi D Chamanavar (SP), Mr Mahesh JE (PSE), Mr Krishna SK (PSE) and other police officers responsible for the fabrication of cases, torture and sexual assault in police custody
3. Compensation to all the arrested for the harm to reputation done by the false and frivolous prosecutions
4. Ensure that there is no sexual abuse/harassment of sexual minority prisoners in jails by ensuring separate cells
5. Repeal Section 377 of the Indian Penal Code

Organised by:

Karnataka Sexual Minorities Forum (KSMF, ksmforum@gmail.com, Ph: 95915 40181)

along with: Santhya state Federation of Unique Sexuality Community Karnataka, Abhyasagandana, Alternative Law Forum, Aneka, Apathavira, Jara Vilasa, Jeeva, Jyothi Mahila Sangha, Karnataka Sex Workers Union (KSWU), Lawyers Collective, Milana, Navanahala, Navapoorthi, Nianga, Pragarhi, Praja Rajakya Vaishya (PRV), Prakashni Sava Samithi, People's Union for Civil Liberties (PUCL)-Karnataka, Raksha, Sadhana, Samara, Samara Dharwad, Samara Siddhahatipada, Samara Jayanagara, Samara Ranganagara, Samara Yashwanthpur, Samatha, Sangama, Sangarvadi, Socha Society, Shreeya Senkaha, Sreevika, Piyasa, Q-Radio, Lathi, Sahasra Mahila Sangha, Adhara Samatha, Samachara, Vadhini, Himgangotri, Radio Active, Sahasragini Mahila Sanghataya Chikita, Spandana Network, Bida, Vinoochana and other supportive organisations.

A pamphlet inviting to participate in a demonstration organised by Karnataka Sexual Minorities Forum to condemn police terror on sexual minorities in Hassan, Belgaum 2013 (Source: Aneka)



Registration criteria for Pehchan SSRs

Core Indicator 1.4 - Number of CBOs providing at least two new services to members of MSM, Hijra and transgender communities

Core Indicator 1.5 - Number of beneficiaries among MSM, Hijra and transgender communities reached by SSR CBOs with at least 2 new services

Pre-TI	TI Plus		Pre-TI in transition to TI Plus	
All clients	Case 1-Client is not registered with any SACS TI i.e. completely new client	Case 2-Client is registered with the TI i.e. existing client part of TI	Case 1-Client is not registered with any TI i.e. completely new client	Case 2-Client is already registered with the TI i.e. old client part of TI
Only 2 basic services	Combination of any 2 services where one basic services with at least one advanced services as described in below cells:-	Only 2 advanced services to be considered	Combination of any two services where one basic services with at least one advanced services as described in below cells:-	Only 2 advanced services to be considered
Counseling	Any one basic services from the below list :- <ul style="list-style-type: none"> Risk assessment Risk reduction High Risk behaviour counselling Psychosocial Counselling Pre-pre-test counselling Post-post-test counselling 	Advance counselling: <ul style="list-style-type: none"> Mental health counselling ART Adherence Counselling Gender, sexuality Counseling on family support Counseling on relationship Awareness counselling on legal & rights issues Life skill education 	Any one basic services from the below list :- <ul style="list-style-type: none"> 1. Risk assessment 2. Risk reduction 3. High Risk behaviour counselling 4. Psychosocial Counselling 5. Pre-pre-test 	Advance counselling: <ul style="list-style-type: none"> Mental health counselling ART Adherence Counselling Gender, sexuality Awareness on legal & rights issues Counseling on trauma & violence

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A glance at the major activities under Project Pehchan (Karnataka). It was a five year programme funded through the Global Fund to Fight AIDS between 2010 and 2015. The Project was launched with an aim to halt and reverse the HIV epidemic amongst MSM and Transgender communities in India. It was operational in 17 states: Punjab, Delhi, Uttar Pradesh, Bihar, Jharkhand, West Bengal, Manipur, Odisha, Karnataka, Kerala, Andhra Pradesh, Tamil Nadu, Goa, Maharashtra, Madhya Pradesh, Gujarat, and Rajasthan (Source: Sangama)

Eight arrested

HASSAN: The city police, on Sunday night, arrested eight people on charges of engaging in obscene acts in public places and Sodomy. The police conducted raids on the Government High School grounds (now property of Hassan Institute of Medical Sciences) and Maharaja Park. The arrested were identified as Hemanth Kumar (22), Nagesh (27), Jayakeerthi (38), Prashanth (28), Pavan (26), Umashankar (40), Tabriz (23) and Anand Kumar (40). All are residents of Hassan. They were noticed in secluded places engaged in obscene acts. — Staff Correspondent

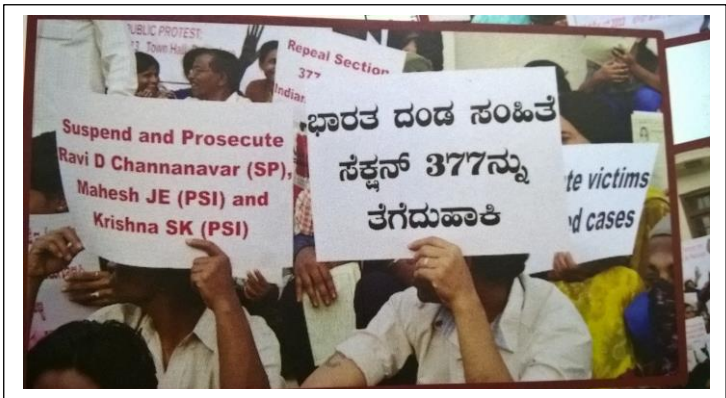


Homosexual Sex: Paediatrician arrested along with 14 people: further enquiry to be done by police [the headline has been translated verbatim from Kannada]

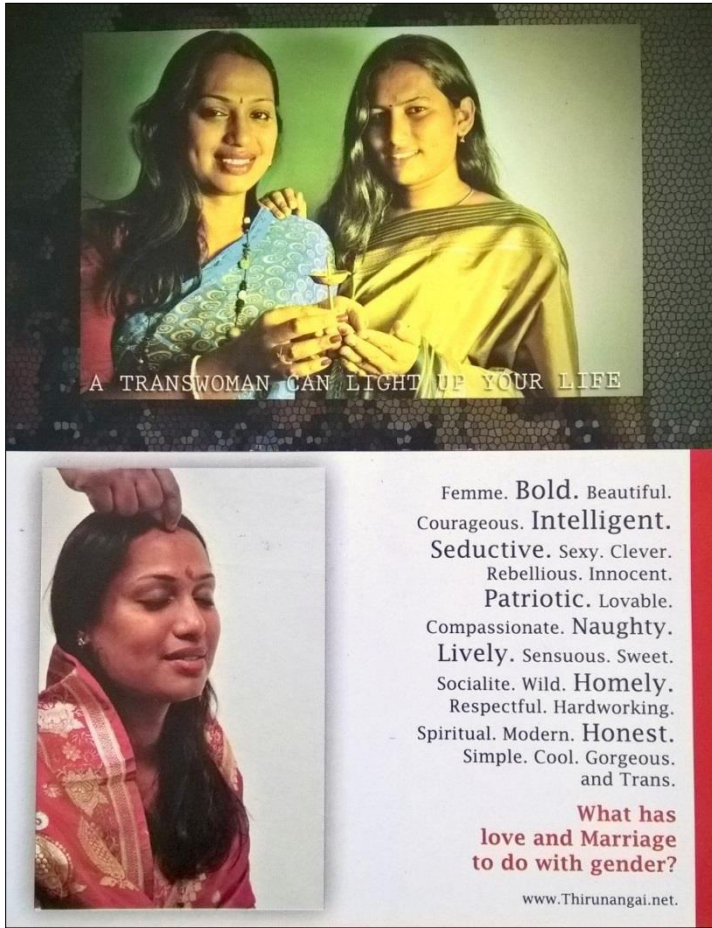
Doctor Held in Hassan

Hassan: Hassan City police led by Superintendent of Police Ravi D Channannavar on Monday arrested a 42-year-old doctor and 12 accomplices for allegedly sexually abusing youths in Hassan. The doctor, who was homosexual, reportedly used accomplices to lure youths of the same gender.

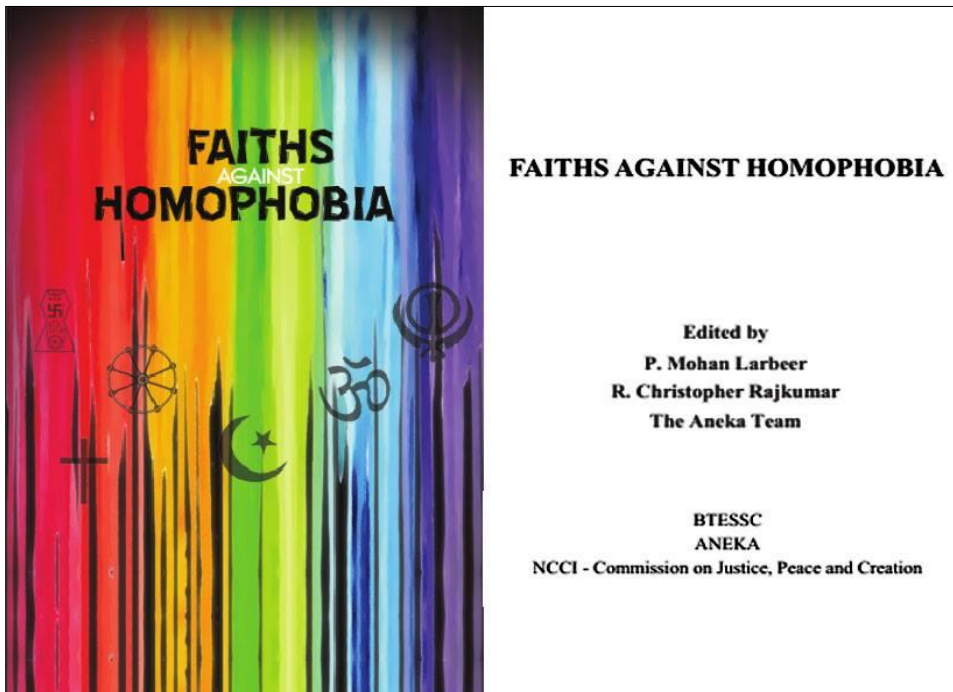
Interestingly, Dr Palaksha, who runs a clinic at Slaters Hall Circle on RC Road in Hassan, had been arrested nearly two years ago. His NGO Tavarina Tottilu, which shelters abandoned newborn babies, was accused of selling infants to childless couples. Acting on a tip-off, the city police raided Dr Palaksha's house on Aralikatte road after a college student complained about being sexually harassed. According to police, he lured youth using a group of accomplices. **INS**



Remove section 377 from the Indian Penal Code [the placard on the right has been translated verbatim from Kannada]



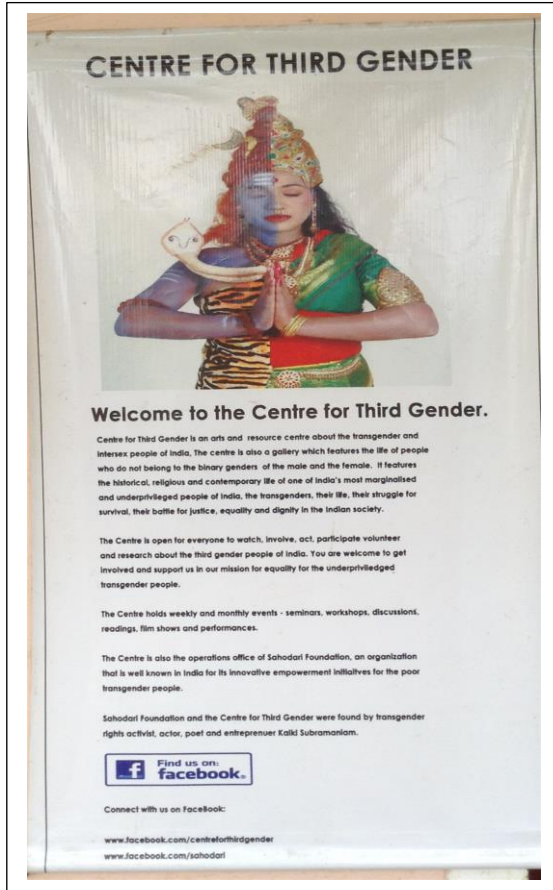
Postcards released by Sahodari Foundation sensitizing society of the right to marry of transsexual women and men, Pondicherry 2013
 Source: Sahodari Foundation



An edited volume released after a round table on “Faith Against Homophobia” organised by Aneka between 30th and 31st May 2014, Bangalore (Source: Sangama)

II. Selected images captured during the field studies

(The following pictures were captured by Swarupa Deb during the course of field studies. Appropriate credit has been given, when the pictures were clicked or collected from other persons/sources. The final version of the dissertation after the exam *viva voce* has removed profile pictures of the respondents for maintaining their anonymity.)



Centre for Third Gender, an association for the transgender community members, Pondicherry 2015



Poster of Reel Desire 2014, The Chennai International Queer film festival, Chennai



Transgender community rally marking one year of the NALSA v. UOI verdict on 14th April 2015,



The idol of Lord Aravan placed in the Temple *Garbhagriha*, Koovagam 2015



A mural depicting the legend of Krishna (L) and Arjuna (R) convincing Aravan (C) to sacrifice himself as engraved on the temple, Koovagam 2015



Lord Aravan being carried on his chariot in a procession during the first day of the Koothandavar festival, Koovagam 2015 (Picture courtesy: Senthil Raja)



The turmeric dyed flag on the temple roof signifies the life of Lord Aravan. After his ritual sacrifice, the flag is dyed in *kumkum* signifying his demise.



Aravan being taken for ritual sacrifice, Koovagam 2015 (Picture courtesy: Senthil Raja)



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Lawyers' Collective at <http://www.lawyerscollective.org/>

Orinam at <http://orinam.net/>

Salvation of Oppressed Eunuchs at <http://sooe.org.in/>

Varta at <http://www.vartagensex.org/>