



## VIRTUAL PANEL DISCUSSION

### TRANSGENDER RIGHTS: CONTEMPORARY ISSUES AND CHALLENGES

AUGUST 18, 2020

Gender discourse in the country has seen a paradigm shift in the way we view roles, discrimination, equality etc. One cannot ignore the injustices faced by one of the most vulnerable communities in society: Transgenders. **Mumbai First & K.C. Law College** collaborated on a new initiative to bring about the right awareness on contemporary issues and challenges of Transgenders and their legal and social rights.

Gender is a socially constructed term and education and sensitization have shaped this construct for years now. Sensitization and right information is the key to establishing a gender neutral society going forward. Setting the right tone for youngsters at an impressionable age will help in ensuring a bright future, thereby providing equal opportunities in a gender neutral society.

Transgenders in India have waited to gain equal status in society and have been targeted by the laws in our country for long now. Most transgender people in India are poor, unaware of their rights and available opportunities for legal recourse. The current COVID crisis has further made them vulnerable to abuse and loss of livelihood.

As per the latest legislation, Courts have recognized transgenders as a distinct community and this has also necessitated the government to provide them with safeguards and the right to identify themselves as transgenders. However, a lot more needs to be done towards their empowerment. The right kind of legal awareness will benefit the transgender community and ensure their welfare and empowerment.

Mumbai First & K.C Law College organized a Panel discussion on “**Transgender Rights: Contemporary Issues and challenges**”. Mumbai First & K.C. Law College had taken the lead to invite some prominent judges, lawyers, urban thinkers and citizens to contribute to this discussion.

The broad themes of discussion were as follows:

- Key Highlights of Transgender Persons (Protection of Rights) Act, 2019
- Legal recognition of transgender after NALSA Judgement
- Transgender Inclusion in the society; reducing transphobia
- Sensitization and Public awareness.

## SUMMARY OF THE PROCEEDINGS

### DR. KAVITA LALCHANDANI

Kavita Lalchandani spoke briefly about the NALSA Judgement which recognizes Transgenders as the third gender and all rights will be equally available and they will be able to identify themselves as Transgenders. She mentioned that the legal recognition of the transgender community is extremely important and all the laws are very welcome in supporting the socio - economic upliftment and also helping with the safety and health of the community. 2019 Madras High Court reiterated this judgement and they said that sex and gender is not the same thing and marriage between cisgender and transgender is completely valid.

### DR. NEVILLE A. MEHTA

Dr. Neville Mehta moderated the panel session. The discussions were steered by him. He also hosted the Question and Answer session towards the end of the conference.

### AKSHAT AGARWAL

Mr. Akshat AGARWAL spoke about the struggles behind NALSA judgement and what essentially meant for the community. NALSA gives fundamental rights to Transgenders and every law has to be tested against it. The law also states that there is no testing/ surgery required for a person to identify as a Transgender. The law also recognized that the community has been marginalized and will need assistance for upliftment.

The challenge after the judgement has been to realize it as an Act which has not been that fruitful as the Transgender Act has a few limitations.

1. The Act diluted the NALSA judgement and altered the testing rule. If a person has identified as a transgender and then wants to later identify as a Male or a Female then surgeries and testing will be required.
2. The Act did not include transgenders in the policy making and the lived experiences of the community were not taken into account.

Mr. Akshat also spoke about the Transgender Rights Rules. He mentioned that the 1<sup>st</sup> draft of the rules was problematic. The community had a few consultations post which a 2<sup>nd</sup> set of draft rules was released. 2<sup>nd</sup> draft cleared a few key things:

1. People who already had an identity card did not need to apply for it again.
2. It spoke about the employment discrimination and how employers need to change that.
3. Other socio economic policies which the Central Government and the State Government needs to undertake to help the case of the community.

The division of roles and responsibilities of state and central government was discussed. The main point of contention was how the rules are implemented on the ground level because the rules will not be effective till everyone is sensitized regarding the transgender community and that the community should be also made part of policy making.

### VIVEK ANAND

Mr. Vivek Anand introduced the Humsafar Trust which was established in 1994 and became an alternate family for the entire LGTBQ community. They were also petitioners in the Supreme Court for reading down of Article 377.

Regarding NALSA judgement, Mr. Vivek said that it did not turn into a healthy and robust act with a lot of things missing. Humsafar Trust works very closely with Lawyers Collective and they have made community teams and are trying to identify what corrections are needed.

He mentioned how including transgenders in the larger discourse of society has been tough and how individual transgenders have been facing discrimination in their own household even during Covid Pandemic. He mentions the prevalence of HIV in transgender and Gay community is very high and they have lobbied and become an integral part of the National Programme in the last two decades being implemented by the National AIDS Control Organisation of the Health Ministry.

He talked about how the issue of inclusion and rights of the transgender community has been a top – down approach. If the discussions and policy making for the Transgender Act were more inclusive then they law would have been more meaningful and constructive.

The changes after the striking down of Article 377 was then discussed. He said the Supreme Court has released clear cut directives to the Central Government to design certain programs that would reduce the stigma and discrimination surrounding the LGBTQ community but there haven't been any conversations regarding the same. He suggested the need for dialogue between colleges such as KC Law College and organizations such as Humsafar Trust to fight this uphill battle.

#### YATIN GAME

Mr. Yatin mentioned that the National Legal Service Authority is providing free legal assistance to the communities in need. He reiterated the provisions of the NALSA judgement. Article 14 and Article 21 was referred by the Supreme Court to ensure the rights of transgenders to live a dignified life.

In Mumbai, he has taken on an initiative to give paralegal volunteer training to a few selected transgenders. These people will further spread awareness and educate their community regarding new rules of the court and the fundamental rights available to them.

Another initiative was to create a Lok Adalat for matters which could be settled mutually outside the court. The bench of a Lok Adalat consists of a Judge, an Advocate and a member from the community. Yatin selected 6 Trans genders to be part of this Lok Adalat and represent the community and act as panelists. The whole idea was to promote inclusion and legal literacy. Another aspect was to sensitize the general public regarding the transgender community and their rights.

#### SALMA KHAN

Salma Khan is Mumbai's first Lok Adalat Panelist, President, Kinnar Maa Trust and she shared her experience of the same. Kinnar Maa is a CBO registered in Maharashtra. Since last 7 year, the CBO has been working on fundamental rights, health services, education, skill development, capacity Building, Advocacy, De-addiction, empowerment and social protection of the TG and Hijra community in Mumbai and adjacent districts of Mumbai. The goal of CBO is to mainstream the community and provide access to all the facilities and rights to the TG community. We have 5000 members from our community registered with us.

She mentioned that there is no support from family systems and no rights on the ground level. She discussed financial, mental and medical issues which the community is facing. She also spoke of the Transgender Welfare Board has been created in Maharashtra which would help the community in fighting these issues.

Some of Kinnar Maa's niche initiatives include:

- During Covid19 pandemic Kinnar Maa distributed ration, mask and sanitizers to 15000 transgender in mumbai and Maharashtra with the help of our donors.
- As a Co-Vice President of Maharashtra State Transgender Welfare Board 1st meeting regarding issues face by transgender Community during Covid19 pandemic and implementation of NALSA judgement for welfare of community.
- Kinnar Maa included transgenders in Swachh Bharat Mission and opened admission in SNTD Women's University.
- Kinnar Maa's Crisis Response Team is working for the human rights of transgenders and to give them Justice. They included transgenders in Mohalla Committee under DCP Zone VII and provided Paralegal volunteers training to 30 transgenders through MDLSA.
- Kinnar Maa for last 7 years has been providing nutrition support and health camps for the transgender Community specially Senior citizens, Handicapped and PLHIV transgender.

#### SIMRAN SHAIKH

Simran Shaikh is leading a Chamber of Commerce of LGBTQI which focuses on promoting entrepreneurship in the community. She not only mentioned the importance of gender neutral laws but also the importance of dignified lives of every human being. She spoke about her work with the "India HIV AIDS Alliance" in the health and human rights perspective.

Her organisation Rajmala Welfare Society(RWS), a diverse chamber of commerce empowers LGBTQI entrepreneurs, provides them equal opportunities and is trying to open the mind-set of people regarding what roles/professions members from these communities can perform. She said that people within the community also do not try to explore new avenues and opportunities as the members are themselves stuck in the notion of being an outsider.

She said that the hate crimes have not gone down even after the NALSA judgement and most of these crimes are not reported mainly due to the lack of awareness amongst the transgender community.

She says that sensitizing the general public and making them accept the transgender community is slightly more important than creating rules and regulations because unless the general public doesn't accept the community, no law can help.

#### AMRITA SARKAR

Amrita Sarkar is currently working with Solidarity and Action Against the HIV Infection in India (SAATHII) founded in 2002. She is leading a project SAMATA working to promote inclusive healthcare, education, legal aid and livelihood related services for LGBTIQ+ communities.

She is regularly organising online sessions discussing challenges from the members of the community and experts from different fields providing possible help to tackle those challenges. She had sessions addressing the mental health problems faced during the transition phase.

In the past she has personally conducted sessions on gender and sexuality in schools in Delhi NCR. In collaboration with University of Delhi, she tries to promote higher education in the transgender community and literate the community regarding the steps they have to take in any legal matters. She also sensitizes corporates regarding gender and sexuality and helps to make the organisation more inclusion.

She shared a personal story of her experience of changing her name on her passport. She highlighted that the process of changing names or the gender on identity cards is very complicated and they are not supportive of the community. The person has to go to the District Magistrate to get the Transgender certificate and if they want to apply for binary (M/F) they have to the DM with medical records.

She also reiterates the importance of sensitizing the public regarding the community. The policies have to be implemented in the ground level and the local government officials are not open to helping any transgender. The corporates can use their CSR duty in helping creating awareness and educating people which would make them more understanding and open to transgender community.

## QUESTION AND ANSWER SESSION

**THERE ARE MANY INSTANCES OF HUMAN RIGHTS VIOLATIONS AGAINST TRANSGENDERS. TRANSPHOBIA IS COMMONLY PREVALENT. DESPITE COMMUNITY SENSITIZATION EFFORTS, A LOT MORE NEEDS TO BE DONE. HOW CAN INITIATE THIS FROM A YOUNG AGE AND START EARLY TO SET THE RIGHT TONE?**

**SIMRAN SHAIKH** The syllabus in schools does not talk about gender inclusiveness or talk about being inclusive. There are a few activists and organisations that are working on the grass root level and trying to change the syllabus to talk more about these topics. This will eventually help in changing the perception of children and public but also bring down the hate crime level.

**YATIN GAME:** Awareness is the best platform by which we can change the mind-set of the people. Not only illiterate but literate people also lack awareness about the issue and ignorance of law has led to exploitation. Legal Awareness and sensitization are the best tools to improve the situation. This should start during school days because that is when the mind-set of the child can be moulded correctly. They should create legal awareness but also involve the students in the process of protecting the right to stop exploitation of transgenders indefinitely.

**AMRITA SARKAR:** Parent Teacher Association can be used to sensitize the whole family together. Even in the New Education Policy, there is vague information about transgenders, there is no information regarding the issues the community is facing. Adolescent age is when teenagers want to explore their sexuality so that is the best age to tell them about this. Parents like to convert their children to “straight” through the conversion therapy which unethical and inhuman which needs to be stopped through sensitizing them.

**VIVEK ANAND:** He shared an example of a 13 year old teenager starting a Transgender chapter in his school and invited Transgenders through Humsafar and had a session with them with the entire school. Reiterated the fact that if we educate them young, we educate them well because as we grow older we start creating our own mind sets and are against changes. He said that it is necessary to start educating at a school level and continue with a dialogue and conversation with the older generation.

**GERIATRIC CARES AND HABITATION FOR ELDERLY MEMBERS OF THE COMMUNITY REMAINS A CHALLENGE. WHAT ARE THE LEGAL REMEDIES AVAILABLE TO ADDRESS THIS ISSUE?**

**AKSHAT AGARWAL:** The right to take health care decisions only lie with the individual. Even if a person is living with elderly for their whole life, they are not recognised as caregivers and do not have the right to

make decisions regarding hospitalization, insurance etc and this needs to be changed as these are practical problems which we will face as the population grows older.

SIMRAN SHAIKH: It is not only with senior citizens but also with people in their 40s and 50s. One of the biggest issues which the community faces is when they are asked to identify a nominee and the relation to the nominee during insurance, banking or healthcare and because of this some members are not able to access these services.

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**COULD YOU TELL US ABOUT THE STRUGGLES OF SECURING EMPLOYMENT FOR TRANSGENDERS? WHAT ARE THE CHALLENGES IN SETTING UP INCLUSIVE WORKPLACES TODAY?**

SIMRAN SHAIKH: She does not believe in quotas or reservations when the issue of equality or equity is raised. Organisations are now asking for community members to represent and be their staff members. Godrej has introduced Transgender Manifesto. Many MNCs have HR policies state equal treatment for all genders. Having sensitization and changing HR policies will bring about a better change and this would be a sincere approach.

AMRITA SARKAR: She shared a story where a transgender working in Delhi faced discrimination at the workplace. She was not allowed access to the female washroom and was denied the cab service which was available to other employees. Inclusiveness is very important and workplace policies will need to be changed. There is no insurance policy for the transition phase, they have to take personal loan to undergo the surgery.

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**THE COVID 19 SITUATION HAS MADE IT PARTICULARLY DIFFICULT FOR MEMBERS OF THE TRANSGENDER COMMUNITY. WOULD YOU BE ABLE TO TELL US ABOUT WELFARE SCHEMES FOR TRANSGENDER COMMUNITIES?**

VIVEK ANAND: Humsafar set up #HumsafarFightsCovid19 where the employees of Humsafar gave up a part of their salary, they also got in touch with over 400 individuals and allies to support their covid relief. They initially planned on supporting transgender community for 3 months but on the ground level they realised the need is more and stronger. The community has lost their livelihood and are also getting evicted from their homes but there is no support from the government. They have so far supported 5,000 individuals in 20 states with Ration kits, medical help and mental health services through online counselling services. They now have enough support to take this initiative till December. There are 32 people working on covid relief without any monetary or financial assistance in return.

AMRITA SARKAR: SAATHII is providing daily need items in different states and provided relief to 119 Transgender people in West Bengal. She mentioned that the community is not able to access a specific hormone which is important during the transition phase and all the surgeries are getting postponed in South India. The stigma around transgenders is making it even more difficult for them to access normal healthcare in these times.

SIMRAN SHAIKH: Within the Social Welfare Justice Ministry, there is a wing called National Institution for Social Defence which released financial aid Transgenders who had bank accounts. Majority of the community does not have bank accounts so they could not access this aid. PM Awaas Yojana and other Schemes have teams which are advocating special Transgender provisions.

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**BREAKING MYTHS, BUSTING STEREOTYPES AND TABOOS. WHAT ARE THE FEW THINGS YOU WOULD LIKE TO TELL YOUNG PEOPLE IN THE VIRTUAL AUDIENCE TODAY?**



AMRITA SARKAR: Whenever transgenders are in public, they are looked down upon by the general public. A conversation needs to start in every household and raise voice against any discrimination or harassment is happening.

YATIN GAME: Young generation can play a vital role in changing the mindset and sensitizing the general public. All students should be involved in the issue of awareness and they can be used as a tool to bridge the gap between the government and common people.

## **ACTION POINTS AND PROPOSALS**

There were several points which were raised during the panel discussion but most of them circled back to one key point: Sensitizing the public. Even after all the rules and laws which are getting established it is the general public which has to accept the transgender community in the larger public discourse. As one of the panelists mentioned, before being Male or Female, everyone is a human first thus should be given an opportunity to live a dignified life.

1. Restarting the discussion on further drafts of the Transgender Rights Rules and trying to involve members from the community and include their feedback.
2. Reinforcing the importance of being included in the National AIDS Control Organisation of the Health Ministry and improving the statistics of HIV AIDS infection in Gay and Transgender community.
3. Holding more conversations and virtual sessions with Humsafar Trust, KC Law College and include someone from the Department of Social Justice and Transgender Welfare Board to get an insight of the challenges faced by the government in implementing or constructing the policies for this community.
4. Spreading this system of Lok Adalat and trying to get more panelists in the bench of the Adalat from the transgender community. This Adalat can also hold informative sessions with other members of the community to spread awareness of the legal rights available now.
5. Since the members of the community themselves are apprehensive about available employment opportunities, we should investigate as to how we can bring about a change in mind-sets of employers, making jobs more accessible and setting up inclusive workplaces.
6. Schools and Colleges have online classes now so we can speak to the principals and include sessions on related themes. It will be easier to reach a large amount of the adolescent population this way and will help to structure their thought process on this topic in a constructive way.
7. Tie up with corporates and hold virtual sessions with their employees in batches to start a conversation about what they think about this issue. This will help us to get ground level feedback and understand what the points of contention in the common understanding are.
8. 2011 census study was not a comprehensive one especially for the transgender community. There should be a more detailed study in the upcoming census and every state should have a more refined enumeration process.
9. A proper plan for coordinating NGOs with both State and Central Government should be made with respect to promoting inclusiveness in providing services such as healthcare, education, legal aid, policing and livelihood.
10. Colleges must welcome, encourage and create a friendly environment for transgenders to pursue education.
11. A dialogue with the Education Ministry needs to be started to develop and implement a curriculum on gender and sexuality.