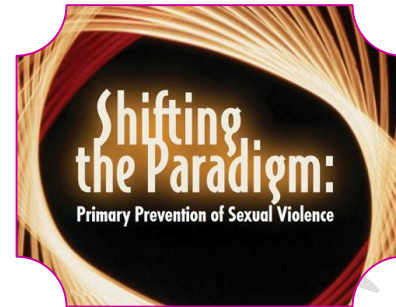




## SHIFTING PARADIGM IN SEXUALITY: A CRITICAL EXPLORATION

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### ABSTRACT

People often take sex and gender as synonymal terms. They don't mark any demarcation between them. But there is a big difference between sex and gender. Sex is biological phenomenon of being male or female while gender, cultural and social. The former refers to the anatomy or physiology of a man or woman while the latter refers to dress, manner, behavior, role, activities and attributes. From the very beginning of civilization our society portrayed only man and woman in gender frame because they were highly influenced by the binary concept of gender given by the West. On 15<sup>th</sup> April 2014 the Apex Court of India in its verdict treated hijra as third gender which collapsed the wall of binary gender.

In this research paper I have made an attempt to draw the lines of differences between sex and gender in the light of the verdict of the Apex Court of India. I have also highlighted that except male and female, third gender also exist in our society, they come neither in the category of male or female by which they have been abused, marginalized and humiliated.

**KEYWORDS:** Gender, Sex, Third Gender, The Apex Court, LGBTQ.

### INTRODUCTION :

In today's society gender issue is a burning problem. To understand gender, its characteristics, its nature and the causes of its blooming many seminars, workshops and symposiums have been organized. Even both the State and Central Governments have launched many programs to awake the people about 'gender gap'. P.M. Modi's slogan 'Save daughter, Educate daughter' 'Beta-Beti Ek Samaan and 'Women Empowerment' probably draw our attention towards 'gender issue'.

The term gender is a negative term which stands to show cultural, political and economic gap between 'man' and 'woman'. Gender is a socially constructed definition of women and men. It is not the same as sex (biological characteristics of women and men) and it is not the same as women. Gender is determined by the conception of tasks, functions and roles attributed to women in society and in public and private life. ([www.gender.cawater-infonet](http://www.gender.cawater-infonet))

Cambridge Dictionary defines, "the physical and/or social condition of being male or female.

According to the *Publication Manual* of the American Psychological Association, "Gender is cultural and is the term to use when referring to women and means social groups. Sex is biological, use it when the biological distinction is predominant." And according to the World Health Organization, "Sex refers to the biological and psychological characteristics that define men and women. Gender refers to the socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for men and women." ([www.psychologytoday.com](http://www.psychologytoday.com))

Since the very dawn of civilization men ruled over all things. For their facilities men made slave to natural objects and used them for their benefits. They violated the norms of nature by following the concept of 'gender' and ignoring 'sex' that is biological, gives equal opportunity to men and women in every sphere of life. 'Sex' refers to anatomy, physiology and outer appearance of men and women in every corner of the world. Sex is universal while gender is bound with time and place. 'Male' and 'Female' is an example of sex while 'man' and 'woman' gender. The identity of 'men' and 'women' lie in their gender role assigned by patriarchy. It refers to culture, dress and manner. On the other hand, sex refers to biological sexual organ of 'male' and 'female' which is universal and unchallengeable. Gender role depends person to person. Gender is artificial product of our society. Gender gives the clue what the work should be performed by women, what they have to wear? what they have to eat? how they have to live? Probably 'masculine' and 'feminine' are well-known examples to refer the attributes of gender.

Behind the blooming of gender, men centric society played vital role. It gave birth to patriarchy which deprived women of all their rights and honour. Wollstonecraft in *Vindication of the Rights of Woman* criticized the entire process that went into making "women" different from "men", which today we might call process of social construction. French feminist Simone de Beauvoir's *The Second Sex* (1955) remarks that 'women are not born but made' (P.295). To understand 'sex' and 'gender' in metaphorical way one can say that 'sex' is body and 'gender' cloth which comes later (MWG-002, P.26)

Everyone has an internal sense of his or her "gender" and this sense is called gender identity (Stone, 2004). Most people's gender identity is congruent with their assigned sex but many people experience their gender identity to be discordant with their natal sex." (Lev, 2004, P.397)

The role of gender can be seen in the poem of KamlaDas' "An Introduction".

**Then I wore a shirt and my  
Brother's trousers, cut my hair short and ignored  
My womanliness, dress in sarees, be girl,  
Be wife, they said, be embroiderer, be cook,  
Be a quarreler with servants, fit in oh,**

A. Revathi, a well-known third gender activist in her book. *A Life of Trans Activism* states:

**"Biological sex is determined at birth by chromosomes and the presence of sex organs. Sex is a biological fact, gender identity, the process of becoming a man or woman, is socio-culturally constructed based on traditional masculine and feminine stereotypes associated with being male and female respectively. Gender identity refers to a person's deep-seated feelings of whether one is a boy/girl, man/woman. In other words, it is one's feelings, and not one's biological sex that determines gender identity." (Revathi, P.29)**

Discarding the concept of gender Revathi further quotes DevaraDasimayya, a tenth century mystic and Kannad poet.

**Breasts and long hair - is this a woman?  
Beard and moustache – is this a man?  
But what of the soul, which is neither man nor woman? (Revathi, P.28)**

In the Supreme Court of India Civil Original Jurisdiction writ petition (Civil) No: 400 of 2012 National Legal Service Authority Petitioner

Versus  
Union of India and others Respondents  
with  
writ petition (civil) No: 604 of 2013

**Honorable Judge K.S. Radhakrishnan remarks:**

Gender identity is one of the most fundamental aspects of life which refers to a person's intrinsic sense of being male, female or transgender or transsexual person. A person's sex is usually assigned at birth, but a relatively small group of persons may be born with bodies which incorporate both or certain aspects of both male and female physiology... Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms. Gender identity, therefore, refers to an individual's self-identification as a man, woman, transgender or other identified category. (PP 15-16).

After making the distinction between sex and gender an idea comes that binary concept of gender is wrong. It does not represent the whole society or community. Except 'man', 'woman', 'hijra', eunuch' and 'khawajasira' also exist on this earth. They are entirely different to men and women on the basis of sex and gender. They don't have sexual organs like men and women. They can't beget children. They can't fit in the category of men and women. This is why they have been humiliated, marginalized, suppressed and abused. They found themselves isolated, alienated and entirely cut off to the mainstream of life. Apex Court of India put such people in the category of third gender.

**K.S. Radhakrishnan J. states:**

Seldom, our society realizes or cares to realize the trauma, agony and pain which the members of transgender community neither undergo, nor appreciates the innate feelings of the members of the Transgender community, especially of those whose mind and body disown their biological sex. Our society often ridicules and abuses the Transgender community and public places like railway stations, bus stands, schools, workplaces, malls, theatres, hospitals, they are sidelined and treated as untouchables, forgetting the fact the moral failures lie in the society's unwillingness to contain or embrace different gender identities and expressions a mindset which we have to change. (pp. 1-2)

Shri Raju Ramchandran, learned senior counsel stated that TGs are neither treated as male or female, nor given the status of a third gender, they are being deprived of many of the rights and privileges which other persons enjoy as citizens of this country. TGs are deprived of social and cultural participation and hence restricted access to education, health care and public places which deprives them of the constitutional guarantee of equality before law and equal protection of law. State cannot discriminate them on the ground of gender, violating Article 14 to 16 and 21 of the Constitution of India (pp.3-4).

Shri T. Srinivasa Murthy, learned counsel appearing in 9. A. No. 2 of 2013, submitted that transgenders have to be declared as a socially and educationally backward class of citizens and must be accorded all benefits available to that class of persons, which are being extended to male and female genders. He also submitted that the right to choose one's gender identity is integral to the right to lead a life with dignity, which is undoubtedly guaranteed by Article 21 of the Constitution of India. (P.5)

Shri Rakesh K. Khanna, learned Additional Solicitor General, appearing for the Union of India, submitted that the problems highlighted by the transgender community is a sensitive human issue, which calls for serious attention. (P.6)

Laxmi Narayan Tripathy, a Hijra, through a petition supported by an affidavit, highlighted the trauma undergone by Tripathy from Tripathy's birth. In Tripathy's own words:

**"That the Applicant has been born as a male. Growing up as a child, she felt different from the boys of her age and was feminine in her ways. On account of her femininity, from an early age, she faced repeated sexual harassment, molestation and sexual abuse, both within and outside the family. Due to her being different, she was isolated and had no one to talk to or express her feelings while she was coming to terms with her identity. She was constantly abused by everyone as a 'chakka' and 'hijra'. Though she felt that there was no place for her in society, she did not succumb to the prejudice. She started to dress and appear in public in women's clothing in her late teens but she did not identify as a woman. Later, she**

joined the *Hijra* community in Mumbai as she identified with the other *hijras* and for the first time in her life, she felt at home.

That being a *hijra*, the Applicant has faced serious discrimination throughout her life because of her gender identity. It has been clear to the identity of *hijras*/transgender persons by the State has resulted in the violation of most of the fundamental rights guaranteed to them under the Constitution of India ...” (P.7)

Siddarth Narrain, eunuch, highlights Narrain’s feeling, as follows:

“Ever since I can remember, I have always identified myself as a woman. I lived in Namakkal, a small town in Tamil Nadu. When I was in the 10<sup>th</sup> standard I realized that the only way for me to be comfortable was to join the hijra community. It was then that my family found out that I frequently met hijras who lived in the city. One day, when my father was away, my brother, encouraged by my mother, started beating me with a cricket bat. I locked myself in a room to escape from the beatings. My mother and brother then tried to break into the room to beat up further. Some of my relatives intervened and brought me out of the room. I related my ordeal to an uncle of mine who gave me Rs.50 and asked me to go home. Instead, I took the money and went to live with a group of hijras in Erode.” (P.8)

Sachin, a TG, expressed his experiences as follow:

“My name is Sachin and I am 23 years old. As a child I always enjoyed putting make-up like ‘vibhuti’ or ‘kumkum’ and my parents always saw me as a girl. I am male but I only have female feelings. I used to help my mother in all the housework like cooking, washing and cleaning. Over the years, I started assuming more of the domestic responsibilities at home. The neighbours starting teasing me. They would call out to me and ask: ‘Why don’t you go out and work like a man?’ or ‘Why are you staying at home like a girl?’ But I liked being a girl. I felt shy about going out and working. Relatives would also mock and scold me on this score. Every day I would go out of the house to bring water. And as I walked back with water I would always be teased. I felt very ashamed. I even felt suicidal. How could I live like that? But my parents never protested. They were helpless.” (P.8)

The word “transgender is a sort of umbrella term that encompasses anyone whose gender identity does not fully match their assigned with sex. This broad category includes transsexuals and cross dressers too. But for centuries in India, all these terms with their subtle distinctions have been brought under one broad category-called ‘hijra’. The community is often treated as criminals, subject to discrimination and abuse. Historically community has enjoyed reasonable dignity in mainstream society. If you look at medieval ages, you have references where transgender people have been queens. There are mythological tales of how gods would change their gender. The Vedas and Puranas, too speak of third gender characters. They were considered to bring good luck. However, things slowly changed and attitudes took on their presented day distorted form, starting from around the British colonial period. (Revathi, P.28)

Lakshmi Parvati, an activist, lawyer and founder of Naaz foundation in an interview says, “A major part of third gender/transgender population of the hijra has been ostracized for a very long time. The society has either treated them as boon or bane. The only time the society is happy to see them is when they come to celebrate your daughter’s wedding or at birth of your son. Most other times, many of you simply roll up your car window to avoid them when you spot them at traffic signals. All they have ever wanted to be treated as normal human beings. (www. motherwise.com)

There seems to be no reason why a transgender must be denied of basic human rights which includes Right to life and liberty with dignity, Right to Privacy and freedom of expression, Right of Education and Empowerment, Right against Violence, Right against Exploitation and Right against Discrimination. Constitution has fulfilled its duty of providing rights to transgender. Now it’s time for us to recognize this and to extend and interpret the constitution in such a manner to ensure a dignified life of transgender people. All this can be achieved if the beginning is made with the recognition that TG as third gender.

In the words of honorable Mr. Justice P. Sathasivam: “The constitution of India provides for the fundamental right to equality, and tolerates no discrimination on the ground of sex, caste, creed or religion. The constitution also guarantees political rights and other benefits to every citizen. But the third community

continues to be ostracized. The constitution affirms in all spheres but the root question is whether it is being applied.” (Justice P. Sathasivam’s lectures on Rights of Transgender People on 12.02.2011.

In the words of Dalai Lama, “We often talk of moral values, justice and trust, but the important thing is to put them into effect in our everyday lives. (www.org.)

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