

2021

TRANSGENDER RIGHTS IN SOUTH ASIA: TRENDS, CRISES AND OPPORTUNITIES

WEBINAR REPORT

PARTNERS FOR LAW IN DEVELOPMENT & VARTA TRUST

Date and time: December 14, 2020; 3.00-5.00 pm (India Standard Time)

Support from: International Women's Rights Action Watch Asia Pacific,
Kuala Lumpur



1. Context

Growing socio-legal recognition of transgender rights in South Asia in recent years has generated hope for a more rights-based and securer future for the transgender communities in the region. However, this process has also been fraught with many challenges and even some setbacks. This has prompted a rethink in the strategies for addressing the concerns of transgender communities in South Asia.

[Partners for Law in Development](#) (PLD), Delhi, is a legal resource group pursuing the realisation of social justice and equality for women. [Varta Trust](#), Kolkata, is a gender and sexuality publishing, research and advocacy non-profit organization. PLD is part of a South Asia consortium called Feminist Inquiries into Rights and Equality (FIRE). The consortium has been looking at issues such as underage marriage and sexual violence to see how the over-reliance on criminal laws has disempowered the constituency sought to be benefited. Their endeavour is to push for recognition of restorative, victim-centric remedies and rights, which give voice to the actual proposed beneficiaries of the law. Similarly, Varta Trust, in collaboration with CREA, Delhi and SAATHII, Chennai, has been working to expand queer-friendly legal aid in West Bengal.

The webinar 'Transgender Rights in South Asia – Trends, Crises and Opportunities' was organized as part of a series of events seeking to contribute to the discourse on gender, sexuality, diversity and inclusion, and in particular on going beyond legal rights to achieve social justice for socio-legally marginalized communities.

The webinar had participation from Bangladesh, India, Nepal, Pakistan and Sri Lanka. It focussed on country-wise sharing of what the law is, in the respective countries, regarding transgender identity acceptance; what aspects of the law disappoint, or create obstacles for transgender communities in realizing their rights; and how have governments and other stakeholders reached out to transgender communities during the COVID-19 pandemic.

2. Programme agenda

- **Opening remarks and webinar context** – Madhu Mehra, Director, PLD; Pawan Dhall, Founding Trustee, Varta Trust; Debjyoti Ghosh, Moderator
- **First session** – Country-wise sharing of what the law is in the respective countries regarding transgender identity acceptance and what aspects of law and policy fulfil community priorities and needs
- **Second session** – Country-wise sharing on what aspects of the law disappoint, or create obstacles for transgender communities in realizing their rights, what the way forward could be, and do all solutions have to be approached through the prism of law



- **Third session** – How have governments and other stakeholders reached out to transgender communities during the COVID-19 pandemic and addressed their priorities
- **Q&A session** and discussion on potential next steps in specific countries and regionally
- **Closing remarks and thank you note** – Madhu Mehra, Pawan Dhall

3. Panellists

Bangladesh: Joya Sikder (*she/her*), LGBT Rights Activist, Shomporker Noya Setu; Ho Chi Minh Islam (*she/her*), Trans Feminist, Gender and Sexual Rights Activist, and Healthcare Worker

India: Zainab Patel, Transgender Rights Activist and Member, National Transgender Council (*she/her*); Mith Mukherjee (*he/him*), Transgender Rights Activist and Entrepreneur

Nepal: Rukshana Kapali (*she/her*), Queer Activist, Queer Youth Group; Bhumika Shrestha (*she/her*), Transgender Rights Activist, Blue Diamond Society

Pakistan: Uzma Yaqoob (*she/her*), Executive Director, Forum for Dignity Initiatives; Aradhiya Khan (*she/her*), Transgender Rights Activist

Sri Lanka: Thenu Ranketh, Transgender Rights Activist, Samabhimani Collective and Venasa Transgender Network (*he/him*); M. Moli Magret (*she/her*), Transgender Rights Activist, Jaffna Sangam

Moderator: Debjyoti Ghosh (*he/him*), Post Doctoral Researcher with the Department of Sociology, University of Pretoria, South Africa, and Varta Trust Volunteer

4. Proceedings

Opening session: In her welcome remarks, Madhu Mehra provided the context to the webinar. Pawan Dhall spoke about how the COVID-19 crisis had underscored numerous concerns of the transgender communities that pre-existed the pandemic. He saluted them for their courage in facing these crises. Debjyoti Ghosh remarked how the burden of colonial laws and penal codes still puts the onus of ‘correct behaviour’ on the shoulders of transgender individuals and penalises any variation.

Session one: Debjyoti Ghosh asked the panellists: What laws exist in your country for transgender individuals? What are the existing policies at the central and local government levels? How are these laws and policies being used for the benefit of the transgender communities?

Joya Sikder (Bangladesh): Joya said that there exists just one proposal from one ministry in Bangladesh regarding the transgender communities – this proposal pertains to the Hijra (third gender) community and was announced in the *Bangladesh Gazette* in 2014 by the Ministry of Social Welfare. However, no policy or law has been promulgated by the Parliament. As a result, though the passports and many official and banking documents



have a third gender category, this feature is not uniform and varies from ministry to ministry. Since there are no overarching policies or laws, each department adds whatever it sees fit. Prior to the gazette notification, a [landmark decision was made by the Government of Bangladesh](#) acknowledging the Hijras as a third gender community on November 11, 2013. But specific laws are yet to be made, and the rest of the transgender communities are still not recognized.

When asked what could possibly be done to make transgender recognition uniform across the different ministries, Joya replied that there is still no agreement on this even among the different transgender communities in the country. For instance, the Hijras do not want to identify as transgender. After the gazette notification with regard to third gender identity, there came about the inclusion of 'X' as a gender option in passports, while the banking processes and national identity cards mention 'third gender' as an option. But there is not much being done by way of transgender identity recognition through any comprehensive legislation. A lot of people involved in policy and legal processes do not understand what transgender means and there is not much of an agreement among different stakeholders. The government is still talking about 'medical tests' to identify 'real' and 'fake' transgender persons, and the Ministry of Social Welfare labels the Hijras as 'sexually disabled'!

This confusion is reflected also at the level of the general population, where there is a complete lack of awareness about transgender identities, especially regarding transgender men. Joya added that a [dialogue has been ongoing with a few organizations, including Bangladesh Legal Aid and Services Trust \(BLAST\)](#), to deliberate on this matter. There is an understanding that clarity on transgender identities and concerns must be reflected through a comprehensive law. Otherwise whatever recognition there is on paper will not materialize into anything concrete.

Zainab Patel (India): Zainab shared that India has recently seen a passionate civil society movement regarding transgender rights. The Parliament has passed the Transgender Persons (Protection of Rights) Act, 2019 (*henceforth Transgender Rights Act*) with the stated objective of protecting the rights of transgender people, promoting their welfare, and related matters. The rules and regulations for this Act were published in the *Gazette of India* on September 29, 2020 by the Ministry of Social Justice and Empowerment (MSJE). So, in India there is a focal ministry to look at the concerns of transgender communities, and there is a piece of legislation with a significant portion dedicated to anti-discrimination, access to legal recognition of one's gender identity, and overview of reforms in associated areas. But an earlier version of the Act also mandated medical screening to get a transgender identity card (whether as 'transgender' or as either of the binary identities of 'male' or 'female'). This was criticised and rejected by transgender activists, people working in the fields of gender, health and human rights, academics and even some politicians.

Prior to this Act, in 2014, there was the NALSA judgement ([National Legal Services Authority Vs. Union of India & Others](#)) issued by the Supreme Court of India. The National Legal Services Authority of India had filed a public interest litigation (PIL) for legal recognition of persons who fall outside the male-female gender binary, including persons who identify as 'third gender'. This was considered to be a hallmark judgement. It was a rare judgement



which affirmed one's right to gender self-identification. It was hoped that this progressive judgment would pave the way for other legal and legislative reforms. But nothing really happened until the Government of India was pushed into passing the Transgender Rights Act, and it took a long time of activism to amend the rules and regulations in a way that they did not infringe on bodily autonomy¹.

In addition, many other punitive laws and Acts exist that are used selectively against Hijras and other transgender people, like laws against beggary, obscene behaviour, immoral trafficking, and various Police Acts in the states of Karnataka and Maharashtra. These laws are often used against those who depend on begging and sex work as the only available means of livelihood. But on August 8, 2018, the Delhi High Court passed a verdict that decriminalized begging in India's capital.

There are also other multiple pieces of legislative and judicial reforms in process, including the April 2019 Madras High Court verdict that ordered authorities to register a marriage between a cisgender man and a transgender woman. In November 2020, a petition was filed with the Delhi High Court seeking a direction to the central government to recognise same-sex marriages under the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954.

On June 26, 2020, the Bombay High Court directed the Social Justice & Special Assistance Department of Maharashtra to ensure that the transgender communities had access to various reliefs and welfare schemes in the wake of the COVID-19 pandemic, including access to essential medical aid and supplies. Similarly, in May 2020, the Kerala High Court was moved through a petition seeking to ensure the distribution of food rations and medicines, and access to medical treatment to the transgender communities in the state in the wake of the coronavirus lockdown. In July 2020, the Telangana High Court directed the state government to earmark special COVID-19 wards for transgender community members in hospitals – this was brought about by specific litigation from within the transgender communities.

Zainab concluded that there has also been the formation of the National Transgender Council under the Transgender Rights Act to help the central government strategise community development and address grievances of the community. Additionally many states now have transgender welfare boards. Officially, all the identity documents have the option of gender self-identification, giving the choice of male, female, other/third gender/transgender. But it is open to question how accessible and possible these options

¹ The Transgender Persons (Protection of Rights) Act, 2019 does not mandate any form of medical screening for a person seeking a legal gender identity as 'transgender'. After the formulation of the rules and regulations for the Act, now a District Magistrate can process applications for legal gender identity change on the basis of an affidavit and issue a certificate of transgender identity. But for transgender persons seeking to identify within the gender binary as 'male' or 'female', the Act mandates a two-step process. After acquiring a transgender certificate, they must produce medical evidence of sex reassignment surgery to the District Magistrate in order to have their gender changed in the certificate to 'male' or 'female'. In the rules and regulations, however, the requirement for medical evidence has been somewhat diluted by broadening the definition of 'medical intervention' to include counselling and hormone therapy apart from surgical intervention. Transgender activists believe such a formulation of the rules is more respectful of a person's bodily autonomy, though how the District Magistrates actually implement the rules remains to be seen.



are without showing some external/official marker of a transgender identity. This is something that remains to be clarified under the Transgender Rights Act.

Bhumika Shrestha (Nepal): Bhumika said that on December 21, 2007, the Supreme Court ordered the Nepal government (in [Sunil Babu Pant Vs. Government of Nepal & Others](#)) to recognize the identity of third gender people, repeal all the laws that discriminate against them, and to provide citizenship cards to them clearly mentioning their third gender identity. In response, the government began giving out citizenship cards with an 'other' gender option. Articles 12 (citizenship), 18 (equality) and 42 (social justice) of the Nepal Constitution talk about sexual and gender identity. However, while forming policy, no one has considered the third gender issue. Nepal's sexual and reproductive health policy provides some recognition for third gender concerns, but other civil laws and the criminal code do not address third gender persons. The term 'other' is used to refer to their gender in citizenship cards and passports, as well as in immigration forms in addition to male and female. They can also vote with the 'other' gender option. But in order to have citizenship with a third gender identity, they need to go through a medical check-up. A parliamentary committee has put forward this policy which is against the Constitution.

Bhumika added that third gender and other transgender people now have greater acceptance at the family and social levels, but government recognition is still limited. For example, if a transgender person wants to have a female status (that is, identify as a woman), there is no scope to do so. Bhumika shared her personal situation – at first she had male gender mentioned in all her identity documents since childhood. Later she took up citizenship as 'other' but could not change her name in the citizenship card or get a female status. She has been asking the local municipal authority to at least change her name, but there has been no movement so far. She added that in 2077 BS (2021) there is going to be a population census in Nepal, in which the government is planning to count the number of third gender persons under the 'other' category.

Aradhiya Khan (Pakistan): Aradhiya informed that though there has been a landmark decision recently, the [Transgender Persons \(Protection of Rights\) Act, 2018](#), there are no uniform notified rules, so different provinces follow the Act differently. On June 18, 2018, there was also the landmark *suo moto* decision taken by the Chief Justice of Pakistan (CJP) on national identity cards for transgender persons. The CJP ordered the formation of a committee to provide free computerised national identity cards to transgender persons in their desired gender identity, while also seeking the body's recommendations for the community's welfare within three weeks. In the education sector there has been a lot of awareness and policies being developed for non-discrimination against transgender students. In August 2018, the Punjab government stated that there was no room for gender-based discrimination against transgender children in school admission, directing admission of transgender children on an 'equal basis' in schools.

In the Sindh province, work is being done for the implementation of the Transgender Policy 2020 and for an old age home for elderly transgender persons. After a central Bill is passed, the provincial assemblies are empowered to amend and implement it in their own ways. So, for example, the Sindh government is talking about gender affirmative surgeries and



hormone therapy, and is considering a ban on cutting off transgender women's hair as a form of punishment.

Aradhiya added that training workshops and awareness building activities are being conducted with the law enforcement personnel because currently, as also in the past, the most rampant abuse of transgender people happens through them. In numerous cases across the country, when transgender people are murdered by their lovers/domestic partners, any attempt to file a complaint leads to various kinds of abuse.

Thenu Ranketh (Sri Lanka): Thenu spoke about incremental changes taking place with regard to laws for transgender communities in Sri Lanka. The British colonial-era Section 365 of the Sri Lankan Penal Code continues to criminalize same-sex sexual acts; Section 399 criminalizes gender impersonation and is often used against transgender persons; and the State continues to document the gender of an individual as male or female in the birth certificate. However, in June 2016, transgender communities in the country were able to gain the right to have their desired gender identity recognized in all identity documents, which is an essential and fundamental part of the right to life and dignity.

After sustained advocacy by transgender community members and activists, the National Human Rights Commission intervened in the matter and the [Ministry of Health, Nutrition and Indigenous Medicine decided to implement gender affirmative care services for transgender persons](#). Though this policy decision is not as powerful legally as an Act of the Parliament, it is still welcome as a step in the right direction. According to the guidelines, criteria and specific processes released by the ministry, a government psychiatrist must provide [gender dysphoria] assessment, counselling and issuing of a gender recognition certificate to assist in the process of changing the gender in the birth certificate. Gender reassignment surgery is not compulsory for obtaining a gender recognition certificate. Only a single application form need be filled up to change one's gender in all pertinent government records. Thus now transgender persons can have their gender markers changed in all the official documents, including the national identity card, which is compulsory for everyone above 16 years of age to access everything from transport to housing and education, international travel and public and private services.

Session two: Debjyoti remarked that many countries in South Asia have recently introduced policies and laws stated to be for the welfare and rights of the transgender communities. But it is important to look at how these policies and laws may also create barriers towards access and rights. Also, what impact do the existing anti-LGBTIQA+² laws, like the recently read down Section 377 of the Indian Penal Code, have on transgender lives?

Ho Chi Minh Islam (Bangladesh): Echoing Joya from the first session, Ho Chi Minh said that Bangladesh still does not have a comprehensive policy or law for all transgender communities. The policy adopted by the national government in November 2013 officially recognises only the Hijras or third gender people. There is confusion and disagreement even

² LGBTIQA+ stands for lesbian, gay, bisexual, transgender, intersex, queer/questioning and asexual, while the plus sign signifies the existence of more identity terms related to gender identity, gender expression, sexual orientation, and sex characteristics.



among transgender activists, allies and the larger civil society on the issue of what transgender means. Ho Chi Minh pointed out that while working on COVID-19 issues she finds it interesting that on the ground there is recognition of transgender people. But in government discourses there is recognition of only the Hijras. The same is reflected even in Google's translation feature, which conflates 'transgender' and 'Hijra'. This can be confusing, especially for the cisgender allies of transgender persons who may use an offensive term unknowingly. It is important to encourage proper usage of terms and their recognition.

Ho Chi Minh said that today the Hijra community leaders say that they have been at the discourse on rights for third gender people since a long time, and since transgender is a term used by only a handful of people, they should hold their discourse separately. But Hijra is mainly a professional identity, and yet the government is mixing up a professional identity with the issue of transgender identity. There is a lot of civil society discourse coming up from individuals exposed to western education. This is unlike what is happening in India and Pakistan. She said Bangladesh is still behind in this matter.

She expressed anguish that often NGOs want to work with transgender communities in Bangladesh, but not in terms of their rights. What about looking at the concerns of transgender communities in terms of their histories, for example, in the Mughal period? Then again, while Hijra is seen by most people as the only transgender identity, the society and government label the Hijras as 'sexually disabled'. This is problematic! Also what is the recourse for a person identifying as transgender but not Hijra? This is a tactic of the system to create differences within the larger transgender communities. Globally, minorities of all kinds need to come together in their struggles. Divisions do not help.

Mith Mukherjee (India): Mith spoke about the ground level reality in the West Bengal state of India. He said that the state government has announced free rations for transgender people till June 2021 under the Public Distribution System to help with the pandemic situation. The rations are supposed to include 2 kg of rice and 3 kg of wheat every month. The government has started the process of issuing tokens to transgender people who currently do not have ration cards. But Mith questioned if 2 kg of rice and 3 kg of wheat a month were enough for anyone? He pointed out that most transgender people do not live with their natal families, and most of them have lost their livelihoods during the pandemic and lockdown. So he wondered how far the government's support would be of help.

When asked what barriers he faced as a transgender man, Mith shared that his family accepted him and his parents supported him, including his choice of clothes and haircut. But the work environment in the call centre where he was employed was not conducive. He faced problems because of his gender expression. Moreover, corroborating what Zainab had said about accessibility of gender options, none of his identity documents mentioned male, his desired gender identity. They still mentioned female. In a recent incident, when he tried changing the gender in his ration card to male, the authorities insisted that the new ration card should mention transgender. This reflects the fact that most government officials still do not realize that some transgender persons may want to identify within the binary of male and female, and, in fact, have the legal right to do so.



Rukshana Kapali (Nepal): Rukshana said that recently, in local and global media, Nepal has been touted as ‘progressive’ and a ‘beacon for transgender rights’. But in reality there are numerous administrative, legislative and judicial barriers that transgender people have to face. All identity documentation, from birth registration onwards, mentions name and gender assigned at birth. The birth name and gender are a must for school admissions. Certificates issued after school examinations at the eighth and tenth standards also mention name and gender assigned at birth. This continues all the way to the citizenship certificate, which can be acquired only on turning 16 and is needed for everything from getting a mobile phone SIM card to getting admitted into a college or acquiring a passport.

Different laws that govern all this paperwork – the National Identity Card and Vital Registration Act, 2076 BS; Nepal Citizenship Act, 2063 BS; Nepal Citizenship (First Amendment) Rules, 2063 BS; Correction of Age, Name and Surname Rules, 2017; and a directive on the operation and management of secondary level education (2068 BS) – only allow name changes in the case of any minor spelling errors or to add/remove a middle name. None of these laws allow a change of gender.

Rukshana sounded a critical note on the landmark Supreme Court verdict of 2007, in which the apex court, in response to a PIL filed by Blue Diamond Society, recognized transgender persons as part of a third gender. This ruling provides for a loophole in the matter of getting one’s gender changed. The positive aspect of this verdict, and another verdict issued four years ago, has been to make gender identity a matter of self-declaration, and not to be determined medically or by anyone other than the person concerned. But the Supreme Court did not lay down any directive on how the third gender option needs to be interpreted. As a result different government departments have taken forward the court ruling in different ways. While the citizenship certificate and passports have an ‘other’ gender option, other government departments use the term ‘third gender’ or even ‘gender and sexual minority’. In yet another ruling by the Ministry of Home Affairs with regard to choosing one’s gender for the citizenship certificate as ‘other’, the term ‘other’ actually stands for ‘LGBTI!’

In order to illustrate the ground level confusion around the third gender identity, Rukshana said that passports marked ‘other’ are not even machine readable at the airports, which always causes delay and adds to paper work for people travelling abroad.

Additionally, in Nepali tradition, all LGBTIQ+ people are considered as part of the third gender. Traditional Hindu Nationalism also encourages this othering and separation from mainstream and further impacts transgender rights, especially if one wishes to identify as a transgender man or transgender woman (that is get a male or female gender marker on identity documents) rather than as third gender.

Rukshana informed that queer groups in Nepal are also trying to bring about a change in language, and introduce a Nepali word for transgender rather than just say third gender. In 2020, there have been many demand charters, including one in March 2020 in which the National Transgender Demand Sheet was published. For the first time in Nepal, a demand has been raised that transgender men should be able to self-identify legally as men and transgender women as women. A similar demand sheet for intersex persons was published



in October 2020. There is a range of activisms going on around self-recognition of gender identity in Nepal, to take it beyond the current 'trinary' or *tritiyavaadi* narrative. A sample of resources on queer activisms in Nepal can be [accessed here](#).

Uzma Yaqoob (Pakistan): Uzma began by saying that the Constitution of Pakistan itself guarantees a number of fundamental rights for transgender persons. But given the social circumstances, specific policies and laws are needed for the transgender communities. Agreeing with Aradhiya, Uzma said that the Transgender Persons (Protection of Rights) Act, 2018 is indeed progressive. However, access to its benefits depends on many things. In Pakistan, the right to vote, and the right to hold public office existed for transgender individuals even before the Act was passed. Clause 48 of the Election Reform Act of 2017 had already guaranteed the right to vote and hold public office for transgender persons (apart from people with disabilities). As for ease of access, as with everything else, the privileged few who are from a certain educational and income status and are accepted by their families have access to everything. But the grassroots transgender community, the larger majority, has far less access and is not very happy about the Act. Among them there are many transgender women, who because of family and social pressure, got married to cisgender women. These individuals are now not sure how they can enjoy the benefits of the Transgender Persons (Protection of Rights) Act, 2018. For instance, the law now allows transgender persons to change their gender identity in the citizenship identity document. But these individuals are uncertain how availing this benefit will impact their lives. Some among them may also be concerned about what would happen to their right to inherit property if they change their gender legally.

Though many problems exist, good things are also happening. There were five transgender candidates in the last general elections held in 2018. There were more than 2,014 registered transgender voters, and 125 transgender election observers throughout Pakistan. Many transgender people have become part of the election process as a result of the Act. All public and private educational institutions are legally bound to accept transgender candidates without discrimination and stigma. Universities are offering free courses for transgender people. Change is slow, but it is happening. The government is also planning to provide safe shelter for transgender people who are in crisis.

On being asked about intra-community dynamics in Pakistan, Uzma said that as in other parts of South Asia, there is some conflict within transgender communities in Pakistan as well. The Khwaja Siras, the most visible and dominant section, follow the *guru-chela* system, but there are other transgender people with relatively higher levels of education who do not want to identify as Khwaja Sira or follow the traditional community structures.

M. Moli Magret (Sri Lanka): Moli spoke about the grassroots reality in the rural areas of Sri Lanka. She said the government's policy on recognizing transgender identities does not get implemented in the villages. There are no conveniently located service providers from whom one can access a gender recognition certificate and then have a change of gender made in all the official documents. Thus for many transgender persons, all documents from birth certificate onwards into the work and education levels still carry the gender assigned at birth. There have been no real structural solutions for these issues. By and large the health sector



is still conservative and is not aware of transgender or other queer identities. Larger society is also still conservative and ignorant, particularly in the Tamil communities. The kind of policies and action seen in other parts of Sri Lanka around transgender issues are not visible in the Tamil-majority regions of the country.

Session three: In this session Debjyoti asked all the panellists to talk about the government response in terms of helping the transgender communities and aiding their rights during the COVID-19 pandemic and lockdown.

Ho Chi Minh Islam (Bangladesh): Since the pandemic started, a lot of people have suffered economically and it has been the same for transgender persons who are often dependent on the public for their livelihood. As crowds became dangerous, lockdowns happened and social distancing was undertaken, their livelihoods came to a halt. A lot of transgender persons are also sex workers whose spaces were shut. As the lockdown started, Ho Chi Minh kept a watch on the social media for some time to see if something was being said about transgender persons. But she was disappointed to see that there was a lack of discourse on the concerns of transgender persons, even from NGOs that have worked for the transgender communities since a long time. Then one day she saw one of the NGOs advertise for donations for serving food to transgender persons, which was odd since they did not get down on the ground to specifically work with the community. Then the government was also seen addressing the third gender community on their concerns around survival. Once again the question is what is meant by the third gender? Who is part of it and who is not?

Joya Sikder (Bangladesh): Agreeing with Ho Chi Minh, Joya said that at the government level in Bangladesh, there is confusion with the terms around transgender identities. At different times, different announcements have been made, and often the government speaks about helping the third gender. On November 9, 2020, there was an [announcement on property rights](#) for third gender persons. But this does not address the question about who all are the third gender? Also, if transgender persons are the third gender who are the first gender and second gender? Are women the middle gender?

Echoing Ho Chi Minh, Joya said that a lot of NGOs who have worked with the transgender communities should have jumped into the fray to support them right at the beginning of the lockdown. She said activists like her have been asked by transgender persons on how to survive when due to the lockdown they cannot leave their homes and earn a livelihood. Some of them even asked for poison as an alternative. In response, the NGOs began fundraising through aides in the UK and the Netherlands so that they could extend the necessary help to the transgender communities. The response from the government came much later and was limited to specific locations, which was inadequate.

Bhumika Shrestha (Nepal): During the COVID-19 pandemic, third gender people did not receive equal services. Aid and food was given out by Blue Diamond Society, some municipalities supported the third gender community, but the government was very inactive and did not create appropriate legislation to support the third gender community.



Rukshana Kapali (Nepal): The government gave out food and other help, but it was in very limited amounts, and one had to prove that one is poor and get a recommendation letter from the local government. A lot of transgender people did not have citizenship cards congruent to their gender identity. So there were a lot of different hurdles for the community.

Zainab Patel (India): The MSJE did a one-time cash transfer to transgender persons across India, roughly INR 2,000 each. There was distribution of rations and there were many other government schemes. The transgender communities also raised a lot of money. Several cases were filed in the courts to make sure that ration support was available to the most marginalised. Transgender people lost housing and livelihood, and many had to move back to often abusive families. There has been a sharp increase in suicides, depression, and issues have occurred with ease of access to antiretroviral therapy for HIV treatment. In all this, even if they were infected with the coronavirus or suffered from other medical issues, transgender people did not want to visit the health facilities because proper measures for treatment, like separate transgender wards, were not there. In addition, transgender people have even been branded as coronavirus ‘super spreaders’!

Uzma Yaqoob (Pakistan): The government response was encouraging. There were ration drives and sanitation kits were handed out. But sexual and reproductive services were halted during the pandemic and lockdown. This impacted transgender people who were in the middle of gender transition because hormone therapy became unavailable. Sex workers also suffered because of the halting of condom distribution drives. Most of the transgender persons do not have bank accounts or e-money accounts, so it was very difficult to get money to them even if donations were available.

Thenu Ranketh (Sri Lanka): The Sri Lanka government provided ‘families’ with money and rations. Since all these drives were aimed at families, they left out transgender people who very often live alone or in non-family groups as they are thrown out by their natal families. But organizations and individuals came together to raise funds and provide economic and psychological support, food and medicines, and travel related help to transgender people.

Q&A session:

Question: What is the position on medical certification for transgender people in Nepal?

Rukshana Kapali: On January 23, 2017, a judgment was passed by the Supreme Court of Nepal (*Aanik Rana & Others Vs. Government of Nepal*), which clarified that no medical certification was required. However, despite the order, the State Affairs and Good Governance Committee of the lower house of the Parliament has been asking for medical certification.

Question: Ho Chi Minh, could you please clarify “NGOs want to work with transgender people in Bangladesh, but not in terms of their rights”?



Ho Chi Minh Islam: Since there is not much understanding yet about the transgender community as a whole and most of the conversation is about the Hijra community, maybe NGOs want to only show the development work that they have done within the transgender communities for upliftment or relief, and think that there is not yet enough grounds for talking about transgender rights as we are behind most other countries in the region.

I would also like to add that we have no endocrinological (hormone therapy) support or transgender health facilities in Bangladesh. We have to go to Kolkata, India, to get our treatment and hormone therapy support. But now some organisations and some government departments are starting to show interest in addressing these issues. So change is coming, and I am hopeful that more change will happen soon.

Closing remarks: Both Madhu and Pawan thanked the panellists, other participants and the moderator for an engrossing discussion. They hoped to organize more such events in the coming year. Madhu felt the webinar had provided insight into many facets of the transgender communities in South Asia that never caught the public attention. Pawan said that the differences within the transgender communities on the way forward were actually a positive sign as good solutions usually come out of debate and discussion.

5. Country snapshots

Bangladesh: The policy and legal scenario in Bangladesh with regard to transgender rights in Bangladesh received a boost in November 2013 when the government recognized the Hijras as a third gender community. In 2014, the Ministry of Social Welfare came forth with a proposal for Hijra community development. Most recently, in November 2020, there was a government announcement on inheritance rights for transgender people in Bangladesh. But what is still missing is a comprehensive policy or law on transgender issues. Moreover, there is no government recognition for transgender persons who do not identify as Hijra or third gender, and there are differences within the transgender communities in this regard. Even the government has been talking about 'medical tests' to identify 'real' and 'fake' transgender persons. Civil society work with the transgender communities is by and large not rights-based and this also seems to have been reflected in the slow and inadequate provision of relief for the communities during the coronavirus pandemic. Transgender people in the country often have to travel to India to access hormone therapy. A dialogue has begun with the help of organizations like BLAST to bring about clarity on transgender identities and concerns through a comprehensive legislation.

India: The transgender rights movements in India experienced a significant step forward with the NALSA judgement issued by the Supreme Court of India in April 2014 (*National Legal Services Authority Vs. Union of India & Others*). This verdict affirmed one's right to gender self-identification and provided legal recognition for persons who fall outside the male-female gender binary, including persons who identify as 'third gender'. It took many years of persistent advocacy and protest before a legislation fell into place to implement the directives mentioned in the verdict. The Transgender Persons (Protection of Rights) Act, 2019, was passed with the stated objective of protecting the rights of transgender people and promoting their welfare. But, among other problems, it mandated a screening process



for transgender individuals seeking a legal gender identity change. This went against the NALSA verdict. After further advocacy, the Ministry of Social Justice and Empowerment, the focal ministry to look at the concerns of transgender communities, published the rules and regulations for the Act in September 2020 taking into account community inputs to dilute the requirement for medical screening for legal gender identity change. Beyond this Act though many states in India still have punitive laws that are used selectively against transgender people, like laws against beggary, obscene behaviour, immoral trafficking, and various Police Acts. Fortunately, in August 2018, the Delhi High Court passed a verdict that decriminalized begging in India's capital. There are other multiple pieces of legislative and judicial reforms in process brought about by specific litigation from within the transgender communities. There has also been the formation of the National Transgender Council, and state based transgender welfare boards. Officially, all the identity documents have the option of gender self-identification, giving the choice of male, female, other/third gender/ transgender. But it is open to question how accessible these options are without showing some external/official marker of a transgender identity. Conflation between transgender, third gender and Hijra is common in India as well. Ground level realities still do not reflect equal rights for transgender people. Government provision of relief to transgender people during the coronavirus pandemic has been inadequate. Issues of loss of housing and livelihood, impact on mental health, and family violence remain poorly addressed. But community members and their allies contributed significantly to relief work during the pandemic.

Nepal: In Nepal, despite media representations of the law being progressive, transgender rights are yet to be fully achieved, with the current rights' focus being on people who identify with the third gender category (similar to Bangladesh). In 2007, the Supreme Court of Nepal ordered the government to recognize the identity of third gender people, repeal all the laws that discriminate against them, and to provide citizenship cards to them clearly mentioning their third gender identity (in *Sunil Babu Pant Vs. Government of Nepal & Others*). However, the National Identity Card and Vital Registration Act, 2076 BS; Nepal Citizenship Act, 2063 BS; Nepal Citizenship (First Amendment) Rules, 2063 BS; Correction of Age, Name and Surname Rules, 2017; and a directive on the operation and management of secondary level education (2068 BS) only allow name changes in the case of any minor spelling errors or addition/removal of a middle name. None of these laws allow a change of gender. Following the 2007 order, the government started giving out citizenship cards with an 'other' gender option. However, a medical certification is required, despite a 2017 Supreme Court decision against it (*Aanik Rana & Others Vs. Government of Nepal*). Also, till the other laws are changed, transgender people cannot apply for a name change. Passports issued under the 'other' gender category are not machine-readable, which creates travel delays. Moreover, the third gender category is often used to conflate all sexual and gender identities.

Pakistan: In Pakistan, transgender rights have made progress through the Transgender Persons (Protection of Rights) Act, 2018. But in matters of the right to vote and hold public office, transgender inclusion precedes this Act. The Election Reform Act of 2017 had already guaranteed these rights. On its part, the 2018 Act has ensured availability of free computerised national identity cards to transgender persons in their desired gender identity. Its impact has been felt on the education sector, which has seen the formulation of non-discrimination policies in provinces like Punjab. The Sindh province is implementing a



comprehensive policy for transgender persons, including gender affirmative care services and an old age home for elderly transgender persons. However, there are no uniform notified rules for implementing the Act and so the implementation differs from province to province. Ease of access to the benefits under the law often depends on class, education and family acceptance. There is still uncertainty for the grassroots communities, especially transgender women married to cisgender women. Continued sensitization of law enforcement personnel is crucial as they often deny services to transgender persons and commit rampant abuse against them. Provision of relief to transgender persons during the coronavirus pandemic was a mixed bag. While they did receive rations and sanitation kits from the government, availability of hormone therapy was badly affected. Poor financial inclusion meant that the flow of donations to transgender persons was also affected.

Sri Lanka: Transgender people in Sri Lanka continue to be criminalized under the British-era Section 365 and Section 399 of the Sri Lanka Penal Code. While Section 365 criminalizes same-sex sexual acts, Section 399 criminalizes gender impersonation and is often used against transgender persons to harass and penalize them. The government has failed to act on proposals for decriminalization more than once in the Parliament. However, in a positive turn of events in June 2016, sustained advocacy by transgender community members and activists led to the Ministry of Health, Nutrition and Indigenous Medicine issuing guidelines, criteria and specific processes for gender affirmative care services and issuing of gender recognition certificates that can help change gender markers in all official documents, including the national identity card. On the flip side, the benefits of this development have not reached the rural areas because of a lack of healthcare and legal aid service providers. The health sector continues to be largely transphobic. Tamil communities have not seen the same progress on transgender issues as in the other parts of the country. During the coronavirus pandemic, the government made ‘family’ as the unit for provision of relief. This left out numerous transgender people who do not live with their natal families. Fortunately, civil society stepped forward to address this gap.

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