

# Legal recognition of gender identity of male-to-female trans people in India: Community perspectives

Venkatesan Chakrapani<sup>1</sup>, Arvind Narrain<sup>2</sup>, Ernest Noronha<sup>3</sup>

<sup>1</sup>Centre for Sexuality and Health Research and Policy (C-SHaRP), Chennai, India, <sup>2</sup>Alternative Law Forum (ALF), Bangalore, India, <sup>3</sup>United Nations Development Programme (UNDP) - India, New Delhi, India

## Introduction

In India, hijras and other male-to-female transgender people continue to be excluded from effectively participating in social and cultural life, economy, and politics.

Recently, a public interest litigation has been filed in the Supreme Court on the legal recognition of the gender status of trans people.

As part of developing a background paper related to legal rights of trans people in India, we explored the perspectives of the hijras and other subgroups of male-to-female transgender people on how they want their gender to be legally recognised.

## Materials and Methods

Ten focus group discussions (n=60 participants) with diverse subgroups of male-to-female transgender people were conducted in 5 cities - Delhi, Kolkata, Chennai, Bangalore, and Mumbai.

Purposive sampling was used to recruit different subgroups of MtF trans people.

Focus groups and interviews were audiotaped and transcribed and translated.

Data were analysed using techniques derived from thematic analysis (Guest, MacQueen, & Namey, 2012) and constant comparison method of grounded theory approaches (Corbin & Strauss, 2008).

## Results

### **Sociodemographic characteristics:**

Participants' mean age was 29 years (SD 7.5). About one-fourth had completed primary education, another one-fourth had completed secondary education, and 19% had a college degree. About one-fourth were engaged in *mangti* (refers to asking money from shopkeepers and the general public) and 37% were sex workers. Nearly one-half of the participants were living with their community peers and about one-fourth were living alone. Nearly half (48%) identified as hijra and the remaining as 'transgender' (English term) and/or had one of the indigenous trans-related identities (Thirunangai, aravani, yellamma).

Trans participants were divided in their opinion on whether they want the law to recognise them as a woman or as a separate "third" gender (See Table 1).

### **Community perspectives**

#### **Key articulated reasons for wanting to be legally recognised as a separate gender included:**

- high possibility of getting separate social protection schemes, and reservations in jobs and election contests; and
- not wanting to be subsumed under the 'woman' category as they are not "biologically" female.

#### **Key articulated reasons for wanting to be legally recognised as a woman included:**

- self-identification as a woman, even though they are not born as a female; sufficient to obtain equal rights as that of a woman/female; and
- social protection benefits alone should not be a reason for the need to be recognised as a separate gender.

Some of the participants seemed to have misunderstood that getting social protection benefits as getting legal recognition, while others thought that getting social protection benefits and getting a legal recognition as a woman were mutually exclusive.

## Conclusions

Differences exist among male-to-female trans people in India on how their gender identity needs to be legally recognized. As MtF transgender people in India are quite heterogeneous, the differences in perspectives are understandable in terms of self identity, socioeconomic status, and ideology.

Further consultations and informed debates with and among communities of male-to-female and female-to-male transgender people and other stakeholders are needed to obtain a pragmatic solution/consensus on how the Indian laws need to recognise the gender status of trans people.

Table 1. Perspectives of hijras and other male-to-female trans people: Illustrative quotes for asking for legal recognition as woman or as 'third gender' or 'transgender'

Legal recognition as a separate gender (Third gender or Transgender)	
<b>"Not biological females"</b>	"Female is one such [sex/gender] which is gifted by god and people like us just like that one can't become female by undergoing surgery. We can't become "complete female". Female is one who is capable of giving birth to a child and this is not possible by people like us. So we cannot be recognized as female." (A hijra community leader)
<b>High possibility of getting separate social protection schemes</b>	"If we get recognition as women, we will get only the reservation meant for women. Only if we get recognition as TG, we can easily get [trans-specific] schemes and benefits from the government." (A MtF trans-identified person)
<b>Perceived lack of acceptance by biological females</b>	"Let us say if my ID card states I am a female. In case I have to travel in a plane or something then after seeing the ID and then [airport security] looking at me - there may be some problem like "This person looks like a Hijra how come this person's ID says female." (A hijra community leader)  "If we get recognition as women, whether it would be possible for us to mingle with other women and work [at work place]. Would women accept this? They might look at us differently. Some might be afraid of us." (A non-operative MtF trans person)
Legal recognition as woman	
<b>Self-identification as a woman</b>	"Legally, I would like to be recognized as a woman. We were born males, but as we grew up our behaviour, desires and dreams began to change. We have thus changed our sex to live like a woman. Therefore, I would like to be considered as a woman." (A post-operative MtF trans-identified person)
<b>Sufficient to obtain equal rights as that of a biological female</b>	"We need to be identified as a woman. All the rights given to a woman, then need to be given to us too. That should be okay for me." (A MtF trans-identified person)