

Third gender or **third sex** is a concept in which individuals are categorized, either by themselves or by society, as neither man nor woman. It also describes a social category present in those societies that recognize three or more genders. The term *third* is usually understood to mean "other"; some anthropologists and sociologists have described fourth, fifth, and some genders.

Biology determines whether a human's chromosomal and anatomical sex is male or female (or one of the rare variations on this sexual dimorphism that can create a degree of ambiguity known as intersex). However, the state of personally identifying as, or being identified by society as, a man, a woman, or other, is usually also defined by the individual's gender identity and gender role in the particular culture in which they live. Not all cultures have strictly defined gender roles.

The concepts of "third", "fourth", and "some" gender roles, which differ from that culture's two main roles of "man" and "woman", while found in a number of non-Western cultures, is still somewhat new to mainstream Western culture and can be difficult for some to understand within traditional Western conceptual thought. The concept is most likely to be embraced in the modern LGBT or Queer subcultures, or in ethnic minority cultures that exist within larger Western communities such as the North American Indigenous cultures that have roles for Two Spirit people.

While mainstream Western scholars, including those who have tried to write about Native American and South Asian third gender people, have often sought to understand the term "third gender" in terms of sexual orientation, other scholars, especially Indigenous scholars, consider this as a misrepresentation of third genders.

Policy initiatives for transgender and third gender

Refd. from IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) NO.400 OF 2012

1. Seldom, our society realizes or cares to realize the trauma, agony and pain which the members of Transgender community 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 in public places like railway stations, bus stands, schools, workplaces, malls, theatres, hospitals, they are sidelined and treated as untouchables, forgetting the fact that the moral failure lies in the society's unwillingness to contain or embrace different gender identities and expressions, a mindset which we have to change.

2. We are, in this case, concerned with the grievances of the members of Transgender Community (for short 'TG community') who seek a legal declaration of their gender identity than the one assigned to them, male or female, at the time of birth and their prayer is that non-recognition of their gender identity violates Articles 14 and 21 of the Constitution of India. Hijras/Eunuchs, who also fall in that group, claim legal status as a third gender with all legal and constitutional protection.

3. The National Legal Services Authority, constituted under the Legal Services Authority Act, 1997, to provide free legal services to the weaker and other marginalized sections of the society, has come forward by Writ Petition No. 604 of 2013.

4. Yogyakarta Principles pointed out that those principles have been recognized by various countries and the learned senior counsel also submitted that non-recognition of gender identity of the transgender community violates the fundamental rights guaranteed to them, who are citizens of this country. United Nations has been instrumental in advocating the protection and promotion of rights of sexual minorities, including transgender persons. Article 6 of the Universal Declaration of Human Rights, 1948 and Article 16 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) recognize that every human being has the inherent right to live and this right shall be protected by law and that no one shall be arbitrarily denied of that right. Everyone shall have a right to recognition,

everywhere as a person before the law. Article 17 of the ICCPR states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation and that everyone has the right to protection of law against such interference or attacks. International Commission of Jurists and the International Service for Human Rights on behalf of a coalition of human rights organizations, took a project to develop a set of international legal principles on the application of international law to human rights violations based on sexual orientation and sexual identity to bring greater clarity and coherence to State's human rights obligations.

Reference to few Yogyakarta Principles would be useful.

- (1) Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.
- (2) Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.
- (3) We direct the Centre and the State Governments to take steps to treat them 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.
- (4) Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/ Transgenders face several sexual health issues.
- (5) Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc.
- (6) Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.
- (7) Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.
- (8) Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.
- (9) Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.