

DISSERTATION PAPER

***RECOGNITION OF TRANSGENDER AS THIRD GENDER: AN ANALYSIS OF THEIR
EDUCATION AND EMPLOYMENT RIGHT***

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Declaration

I, Rokeya Romana Pinkey, do hereby solemnly declare and affirm that this research paper is original and my own work and is not copied from anywhere or from anyone's view. The purpose of this research is to complete my undergraduate degree as it is a course. A list of references is inserted to maintain the citation materials.

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Abstract

The right to education and employment is a universal right for all including the transgender where the constitution of Bangladesh also ensures equal right and provides equality before law with the prohibition of gender discrimination in availing education and employment facilities. Besides, the government of Bangladesh showing its concern to the transgender recognized them in 2013. So, this paper analyzes the support and enforcement of existing legal system of Bangladesh and the ratio of their development through education and employment right. Thus, the main focus of this research is to find out that how much such recognition changes their lifestyle and social acceptance along with legal support. Therefore, it aims to uphold their right to education and employment with an analytical discussion comparing with India and Pakistan. However, it is prepared on the basis of a qualitative and quantitative research by content analysis, article views and survey interview where apart from some exceptions, it is found that the transgender of Bangladesh are not getting their education right for non-acceptance of their gender and discrimination as a consequences they also deprived from their employment right where there is no existing law which strictly shows its concern for facilitating the transgenders. However, further studies obviously need to be much more broadly based for exploring it more.

Keywords: Transgender, Human Rights, Discrimination, Third-gender.

Abbreviations

Asia Pacific Transgender Network	APTN
Bangladesh Legal Aid and Services Trust	BLAST
Committee on Economic, Social and Cultural Rights	CESCR
Committee on the Elimination of Racial Discrimination	CERD
Human Rights Watch	HRW
International Covenant on Civil and Political Rights	ICCPR
International Covenant on Economic, Social and Cultural Rights	ICESCR
International Lesbian, Gay, Bisexual, Trans and Intersex Association	ILGA
Lesbian, Gay, Bisexual, Transgender	LGBT
National Human Rights Commission	NHRC
National Database & Registration Authority	NADRA
Office of the High Commissioner for Human Rights	OHCHR
Sexual Orientation and Gender Identity	SOGI
School Related Gender Based Violence	SRGBV
Transgender	TG
Universal Declaration of Human Rights	UDHR
United Nations Educational, Scientific and Cultural Organization	UNESCO

Contents

Chapter-1: Introduction Methodology, Scope and Limitation of the Study, Aims and object, Literature review and Research question 1-3

- 1.1. Introduction
- 1.2. Methodology
- 1.3. Scope and Limitation of the Study
- 1.4. Aims and objective
- 1.5. Literature review
- 1.6. Research question

Chapter-2: An Overview of the historical background 4-5

- 2.1. Previous situation of emerging the concept of transgender's right

Chapter-3: Current legal support in Bangladesh for the transgender. 6-14

- 3.1. Statutory provisions
- 3.2. Present conditions and legal status of transgenders
 - a) Initiatives taken by the government of the state
 - b) Initiatives taken by the NHCR, other NGOs and support from media
- 3.3. Their concern for implication of laws regarding their education and employment rights and achievements

Chapter-4: International obligations as to the employment and educational rights of the transgenders 15-17

- 4.1. Glimpse of the International Obligations
- 4.2. Influence of international obligation in Bangladesh

Chapter-5: A comparative overview with the context of India and Pakistan regarding the employment and educational rights of the transgenders18-25

5.1. Initiative takes in India

5.2. Initiative takes in Pakistan

Chapter-6: Social Reaction and Concern Regarding the Education and Employment Rights of the Transgenders 26-30

6.1. Output from Survey report

Chapter-7: Findings of the Study, Recommendations and Conclusion31-33

7.1. Findings of the Study

7.2. Recommendations

7.3. Concluding Remarks

Bibliography 34-43

Appendix-A: Survey Question 44-45

Chapter -1

Introduction, Methodology, Scope and Limitation of the Study, Aims and object, Literature review and Research question

1.1.Introduction:

The individuals who are categorized as neither man nor woman and exists with a separate physical structure are called transgenders in English.¹ They are not transgender by birth rather their minds, thoughts, choice and priority has been developed and transformed with their growing up. Belonging from a separate gender is not a curse rather it's a sexual identity² but peoples from different places are addressing them as a combined gender or as a non-gender. As a human being, transgender peoples are also a part of our society but our society treat them in an inhuman way, refused them from availing their rights and restrained them to fulfill their goals even though they are entitled to enjoy their human rights by birth.³ This group of people is not easily accepted as a consequence they are deprived from their basic rights, status both from their family and society.⁴ In that issue their skills, knowledge, labor remained in veil. In Bangladesh, they also rejected by their own family and also excluded from all the prospective opportunities.⁵

However, in 2013 the Government of Bangladesh recognized them as a third gender.⁶ Whereas the present world is also concern about their human rights issues⁷ where some basic rights are secured under the international laws, conventions, treaties, communities. Bangladesh as an active member of UNHRC⁸ is under obligation to comply with it and the Constitution of Bangladesh also provides

¹ Delliswararao K and Hangsing C, "Socio-Cultural Exclusion and Inclusion of Trans-genders in India" (2018) Int. J. Soc. Sc. Manage. Vol. 5, Issue-1: 10-17 DOI: 10.3126/ijssm.v5i1.18147.

² Seminar on "Third Gender is not a Word, it is a Gender", Organized by Bandhubs and National Human Rights Commission, [June 7, 2015] <<http://www.bandhu-bd.org/third-gender-is-not-a-word-it-is-a-gender/>> accessed 10 June,2019.

³ MJ Mia, ABMIH Khan; "Rights of Hijra Community: Regulatory Gaps and Future Directions" Bangladesh Journal of Dalit and Minority 3 (1), 27-43 [2018].

⁴ Md. Akramul Islam," Right to Education of The Third Gender of Bangladesh: An overview" [2016] 21 p29.

⁵ Sharful Islam Khan, "Living on the Extreme Margin: Social Exclusion of the Transgender Population (Hijra) in Bangladesh" [2009] p444.

⁶ Fahim Reza Shovon; Dhaka Tribune, "Transgender community celebrates recognition date" [November 11th, 2018].

⁷ Carlos Andres Pagan, "The Emergence of LGBT Rights in International Human Rights Law: A Historical Inquiry" by FCIL-SIS [2017].

⁸Dhaka Tribune, "Bangladesh becomes UNHRC member" [13 October, 2018].

some basic rights as to the education and employment in which it also prohibits discrimination on the ground of gender. Therefore, it is essential to analyze their conditions in availing education and employment right along with the Constitutional provisions and recognition of the Government of Bangladesh. Besides, it is necessary to find out the social condition and reaction as to their recognition and equal rights and the difficulties which barred the transgenders from education and employment rights to establish them like others.

In order to fulfill the purpose, it has been separated into seven chapters where it provides some basic discussion about this study and historical background along with their family and social views in the first and second chapters. Besides that, it discussed about their current legal support and availability of education and employment with the constitutional provisions in part three and also focused on some international obligations regarding the employment and educational rights of the transgenders in the fourth chapter. After that, it attempts to give a comparative overview with the context of India, Pakistan regarding the employment and educational rights of the transgenders in chapter five. Consecutively, it has exhibited a data presentation including the output and analysis which is based on an online survey and interviews. Thereafter, in the last part this paper concludes together with its findings of the overall research and prospective recommendations for future.

1.2.Methodology:

The research is a combination of qualitative and quantitative methods. It is based on both field visits, interviews, surveys methods, social experiments and library research, books, governing laws, publications, journals, articles, concerned scholar's view, policy maker's view. It has analyzed different statutes and case studies as a primary source and as for secondary source it researched on various journal articles, newspaper article. It also refers international laws and human rights conventions in this paper and make a comparison with the context of India and Pakistan. It is supported by the survey and interview of the professionals, general people, students and transgenders to know about their view and concern. Their opinion has highly influenced my research throughout this paper.

1.3.Object of the Research:

The main object and purpose for this research is to find out the current situation of right to employment and education along with the social reaction and concern for transgenders in Bangladesh. It will discuss about the issue regarding their two basic rights that is right to education and employment in the light of Constitution and Human Rights Conventions with their views, achievements, demands, recommendations and changes to ensure their rights and status.

1.4. Scope and Limitations of the Study:

This research has been focused on the basic rights of the transgenders as to the education and employment in the light of Constitutional provisions and a comparative view with India and Pakistan. Over and above, the limitation of this research is the non-availability of resources. Besides, non-availability of Bangladeshi case laws in internet and most importantly non-availability of particular books and failure of conducting interview due to restrictions is some of the limitations of this research paper. Moreover, it draws its conclusion by analyzing all legal provisions, Human Rights conventions, articles and including existing scenario in Bangladesh only.

1.5.Research question:

To what extent transgenders are entitled to avail their educational and employment right as a recognized citizen of Bangladesh?

Chapter-2

An Overview of the Historical Background

Transgender people are existed in this world from the very beginning of the history. They were called and known as different names. With the change and development of the society their condition has also been changed. On the other hand, the view of the society and their family is stuck in the same position even though the present world is more concern about the human rights issue.

2.1. Previous situation of emerging the concept of transgender's right:

From the ancient period transgender people has been existed in this world.⁹ But on that time, they were just a stigma for the society and their family.¹⁰ They have been killed, abused, treated brutally and identified as a criminal with the criminological views¹¹, for being different physical structure.¹² During that time, it was considered as a curse and abnormality so that the society were not willing to consider them as a human being.¹³ But, in the Mughal period, they played a vital role in the Royal Court as a political advisor, administrators, generals because they were trustworthy person¹⁴. Later on, the provisions of their land, right to food and little amount of money were abolished by the British legislation.¹⁵ After the Second World War, people from around the world became more concern about human rights issues irrespective of race, sex or religion. From this view, the equal treatment of all genders has been developed gradually and people from different countries developed their mind to accept transgender people as a human.¹⁶ It was 1948, when for the first time United Nation's General Assembly adopted the Universal Declaration of Human Rights to

⁹ Ariel David, "Ancient Civilization in Iran Recognized Transgender People 3,000 Years Ago, Study Suggests" [2018]. <<https://www.haaretz.com/archaeology/.premium.MAGAZINE-ancient-civilization-in-iran-recognized-transgender-people-study-suggests-1.6790205>> accessed 11 June, 2019.

¹⁰ Priti Salin, "Transgender spiritual order finally finds acceptance at Hindu pilgrimage" [May 30, 2019].

¹¹ Stephenie King, "The Criminal Justice System's Mistreatment of Transgender Individuals: A Call for Policy Reform to Assist a Marginalized Prisoner Community" [2019] VOL. 11 NO. 01 | PG. 1/1.

¹² Konduru Delliswararao and Chongneikim Hangsing, "Socio-Cultural Exclusion and Inclusion of Trans-genders in India" (2018) Int. J. Soc. Sc. Manage. Vol. 5, Issue-1: 10-17 DOI: 10.3126/ijssm.v5i1.18147.

¹³ Human Rights Watch, "Bangladesh: Transgender Men Fear for Their Safety" [January 19, 2018].

¹⁴ M. Michelraj, "Historical Evolution of Transgender Community in India" [2015] ARSS Vol. 4 No. 1 p18.

¹⁵ M. Michelraj, "Historical Evolution of Transgender Community in India" [2015] ARSS Vol. 4 No. 1 p18.

¹⁶ Karina Weller, "How World War II led to Human Rights Laws"[8th May 2017] <<https://rightsinfo.org/remember-world-war-ii-led-human-rights-laws>> accessed 11 June 2019.

ensure and protect the human rights universally.¹⁷ Under Article 1, it introduced a born free and equal rights and dignity of all human being.¹⁸ Transgender have a long-recorded history in the Indian subcontinent.¹⁹ After the emergence of Bangladesh, the father of this nation aimed and declared that all citizens of Bangladesh should be treated with equal rights, opportunities and treatment. In 1972, human rights and freedom has been ensured by the first Constitution of Bangladesh.²⁰ This equal treatment of all citizen became more effective through the supremacy of our constitution.²¹ Article 27²² states that ‘All citizens are equal before law and are entitled to equal protection of law’. Consecutively, Article 28(1)²³ states that ‘The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. But it was not absolutely possible for this newly constituted country to serve everyone equally with these limited resources and funds. On the other hand, they lead a challenging life during the period of martial law regime.²⁴ At the present scenario there are some organizations which worked for giving them legal status and constitutional rights. However, through the development of resources, finance and education the government of Bangladesh is concern about their right and recognized them in 2013.

¹⁷The Office of the United Nations High Commissioner for Human Rights, Secretariat, United Nations.

¹⁸Universal Declaration of Human Rights, 1948; General Assembly resolution 217 A.

¹⁹ Department of Foreign Affairs and Trade, Australia: *DRFAT COUNTRY INFORMATION REPORT BANGLADESH* (2 Feb 2018) p27.

²⁰ The Constitution of the Peoples Republic of Bangladesh, 1972.

²¹ Article-7 of Constitution of the Peoples Republic of Bangladesh, 1972.

²² The Constitution of the Peoples Republic of Bangladesh, 1972.

²³ The Constitution of the Peoples Republic of Bangladesh, 1972.

²⁴S. C. Sen, “The Constitution of Bangladesh and a Short Constitutional History” [1974] Vol. 7, No. 3 (1974), pp. 257-273.

Chapter-3

Current Legal Support in Bangladesh for the Transgender

In the previous chapters, it discussed about some basic issues and backgrounds. Therefore, this chapter focused on the practical implications of these rights along with the current legal support for the transgender in Bangladesh and analyzed the present context, their legal status, discrimination, challenges faced by them on the employment and educational field.

3.1. Statutory provisions:

The concepts of human rights and equal rights have been an issue the 20th century.²⁵ In Bangladesh transgender people are looked down upon as they are not human beings and are treated brutally.²⁶ Even though they are entitled to enjoy some rights as a human being under the provisions of the Constitution of Bangladesh which ensures some basic rights as fundamental rights²⁷ for all citizen of Bangladesh equally where it provides equality before law under Article 27²⁸ that all citizens are equal before law and are entitled to equal protection of law. It must be mentioned that the equality before law is involved in the enforcement of law while the equal protection of law involves the validity of law.²⁹ However as a citizen the transgender have right to get equal protection in a sense that they have right to enforce the laws for taking minimum standard of education and working in an office but in the case of *S.A Sabur vs. Returning Officer*³⁰ the court held that the equality clause under Article 27 does not guarantee absolute equality requiring the law to treat all person alike. It means the equal treatment of the transgenders are subject to the doctrine of classification.³¹ With this equality clause, the constitution of Bangladesh also ensures the right of equal protection under

²⁵Md. Akramul Islam, "Right to Education of The Third Gender of Bangladesh: An overview" [Sep. 2016] p.29 <<http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2021%20Issue9/Version-7/E2109072934.pdf>> accessed 17 June 2019.

²⁶Lubna Jebin, "The Rights of Hijras in Bangladesh: An Overview" [June 2015].

²⁷ Part III, Fundamental Rights, Constitution of the People's Republic of Bangladesh.

²⁸ Constitution of the People's Republic of Bangladesh.

²⁹Mahmudul Islam: Constitutional Law of Bangladesh (3rd edn) p145.

³⁰ 41 DLR (1989) AD p30.

³¹ Mahmudul Islam: Constitutional Law of Bangladesh (3rd edn) p146.

Article 31³² with the enjoyment of equal protection of law and to be treated in accordance with law for all citizen which also includes the transgenders as well. However, under the provisions of Article 28 of the Constitution³³ the state shall not discriminate against any citizen on the grounds of religion, race, caste, sex or place of birth. According to this provision transgender people are also entitled to enjoy all rights equal to men and women as they are also the citizen of Bangladesh. So, their right to education and employment is a considerable issue and subject to non-discrimination. Similarly, they are not only entitled to get equal treatment but also have right to life under Article 32.³⁴ The concept of right to life also includes right to live with dignity which has been redefined in *Maneka Gandhi vs. Union of India*³⁵ by the court. Therefore, as a human being they have right to live with respect and dignity with equal treatment in case of education and employment. Apart from the fundamental rights of the constitution of Bangladesh, there are some fundamental principles of state³⁶ where it introduces democracy and human rights³⁷ in a sense that the government of Bangladesh shall form some basic rules for ensuring fundamental human rights and dignity which cannot be enforced judicially.³⁸ Yet, it the fundamental responsibility of the state to secure the basic necessities³⁹ of life and right to work for all citizen.⁴⁰ All the same, it also provides that State shall take steps to protect and develop the unique local culture and tradition of

³² Constitution of the People's Republic of Bangladesh, (Article 31- To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen).

³³ Part III, Fundamental Rights, Constitution of the People's Republic of Bangladesh.

³⁴ Constitution of the People's Republic of Bangladesh. (the protection of right to life and personal liberty is also provided under that no person shall be deprived of life or personal liberty save in accordance with law).

³⁵ 1978 AIR 597, 1978 SCR (2) 621.

³⁶ Part II, Fundamental Principles of State, Constitution of the People's Republic of Bangladesh.

³⁷ Article 11, Part II, Fundamental Principles of State, Constitution of the People's Republic of Bangladesh. (the republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured).

³⁸ Mahmudul Islam: Constitutional Law of Bangladesh (3rd edn) p72.

³⁹ Article 15, Part II, Fundamental Principles of State, Constitution of the People's Republic of Bangladesh. (it shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens – (a) The provision of the basic necessities of life, including food, clothing, shelter, education and medical care;(b) The right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;(c) The right to reasonable rest, recreation and leisure; and(d) The right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases).

⁴⁰ Mahmudul Islam: Constitutional Law of Bangladesh (3rd edn) p72.

the tribes, minor races, ethnic sects and communities⁴¹. Therefore, it is the responsibility of the state to ensure basic rights of the transgender education and work.

a) As to their education:

Education is a social course of action through which peoples' knowledge, propensity, efficiency, moral strength and character are cropped up.⁴² Right to education is one of the basic rights of a human being because it allows individuals to exercise all their rights, all children have a right to a quality education and all children should be offered the same opportunities.⁴³ On the ground of transgenders education, it must be taken into consideration and under Article 28(3)⁴⁴ it shall be served equally to all irrespective of gender, caste, religion. Therefore, as a citizen transgender people are definitely entitled to get educational right like others.⁴⁵ However, In Bangladesh, the provisions regarding free and compulsory education is provided under Article 17⁴⁶ as state policy and responsibility of the government to facilitate the transgenders for taking a minimum standard of education as a basic human right.

b) As to their employment:

Employment is one of the basic rights of a citizen through which one can remove all the difficulties of life and become independent. It is the core necessity of the transgender community with a view that they are equal before law⁴⁷ irrespective of gender. Therefore, they are entitled to avail job facilities equally like others without any discrimination in any employment or office in the service

⁴¹ Article 23A, Part II, Fundamental Principles of State, Constitution of the People's Republic of Bangladesh.

⁴² Md. Akramul Islam," Right to Education of The Third Gender of Bangladesh: An overview" [Sep. 2016] p.32 <<http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2021%20Issue9/Version-7/E2109072934.pdf>> accessed 17 June 2019.

⁴³ GPE Secretariat," 3 things to know about education as a human right" [December 10, 2017] <<https://www.globalpartnership.org/blog/3-things-know-about-education-human-right>> accessed 17 June 2019.

⁴⁴ Part III, Fundamental Rights, Constitution of the People's Republic of Bangladesh.

⁴⁵ Md. Akramul Islam," Right to Education of The Third Gender of Bangladesh: An overview" (Sep. 2016) p29, IOSR Journal of Humanities and Social Science (IOSR-JHSS) Volume 21, Issue 9, Ver. 7.

⁴⁶ Part II, Fundamental Principles of State, Constitution of the People's Republic of Bangladesh. (the State shall adopt effective measures for the purpose of – (a) establishing a uniform, mass oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law; (b) relating education to the needs of society and producing properly trained and motivated citizens to serve those needs; (c) removing illiteracy within such time as may be determined by law).

⁴⁷Article 27, Part III, Fundamental Rights, Constitution of the People's Republic of Bangladesh.

of the Republic on the ground of their gender identity.⁴⁸ It must be noted that, the equality clause does not preclude the government for laying down of selective test and qualifications for the job.⁴⁹ It means these provisions are applicable only when a transgender fulfills all the requirement of a certain job but denied to be appointed thereto on the ground of gender identity. As the transgender people are deprived from their basic needs and remain in a backward condition, they can get some privileges under positive classification. On the other part, it is not a mandatory provision for the transgender that they have to work in a particular area or do a public service job only because they have their own freedom of profession or occupation.⁵⁰ It means they can be employed in any way as they think convenient for themselves with their freedom of choice and occupation.

3.2. Present conditions and legal status of transgenders:

The legal structures of Bangladesh are paradoxical when it comes to discrimination based on a particular social group.⁵¹ The society of Bangladesh remains as conservative society where it relies on traditional values, relationship to rest of the family, social circle and social expectations form an individual.⁵² Families are the most close-knit in which one of the primary factors is to maintain the family honor where transsexualism is introduced as a threat to family honour and experience

⁴⁸ Article 29, Part III, Fundamental Rights, Constitution of the People's Republic of Bangladesh [(1) There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic. (2) No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic. (3) Nothing in this article shall prevent the State from – (a) making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic; (b) giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination; (c) reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex].

⁴⁹ Mahmudul Islam: Constitutional Law of Bangladesh (3rd edn) p216.

⁵⁰Article-40; Part III, Fundamental Rights, Constitution of the People's Republic of Bangladesh (subject to any restrictions imposed by law, every citizen possessing such qualifications, if any, as may be prescribed by law in relation to his profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business).

⁵¹Tove Stenqvist, "The social struggle of being HIJRA in Bangladesh- cultural aspiration between inclusion and illegitimacy" (7 January 2015) p.13.

⁵²Tove Stenqvist, "The social struggle of being HIJRA in Bangladesh- cultural aspiration between inclusion and illegitimacy" (7 January 2015) p.12.

extreme pressure of maintaining it.⁵³ So far, their family got to know about their physical changes, they were neglected, refused and deported by and from their family and society.⁵⁴ In that case they failed to take education as their family try to conceal them. On the other hand, this educated society does not accept them to be an educated and gain knowledges with their identity⁵⁵ even though free and compulsory education to all children under the provisions pf fundamental principles of state policy.⁵⁶ Therefore, they are refused by the school authority on the ground that they will harm the environment of the school or they are not a boy or girl. Similarly, they are also excluded from job facilities because of lack of educational skills and qualifications. In this view they cannot live in a home because they have no money where their family also refused to recognize them and excluded them from their property. At the same time because of lack of education they failed to establish themselves and their rights for which they choose begging, street dancing etc. to maintain themselves.⁵⁷ Although the government of Bangladesh has recognized them as the ‘third gender’, this recognition cannot ensure the social acceptance of these people.⁵⁸ Yet they are suffering huge trouble for their gender identity.⁵⁹ Therefore, most of the transgenders failed to find a safe space at school and unable to adapt within hostile school environments where teachers are also abused them, shouting for change in their feminine behaviors so they could not stay in schools, resulting in discontinuation of education which ultimately diminished future employment opportunities as a result they were denied in the job market due to lack of education, ‘unusual’ non-conforming

⁵³Abubakr Saeed, Usman Mughal & Shaista Farooq, “It’s Complicated: Socio-Cultural Factors and the Disclosure Decision of Transgenders in Pakistan” [25 Aug 2017] p17<<http://dx.doi.org/10.1080/00918369.2017.1368766>> accessed 30 June 2019.

⁵⁴Sharful Islam Khan, “Living on the Extreme Margin: Social Exclusion of the Transgender Population (Hijra) in Bangladesh” [2009] p444.

⁵⁵ Md. Akramul Islam, “Right to Education of The Third Gender of Bangladesh: An overview” [2016] 21 p30.

⁵⁶ Article 17, the Constitution of the Peoples Republic of Bangladesh,1972.

⁵⁷ Part III of the Constitution of the People’s Republic of Bangladesh.

⁵⁸Jebin, Lubna& Farhana, Umme.” The Rights of Hijras in Bangladesh: An Overview” (June 2015).

⁵⁹Sharful Islam Khan, Mohammed Iftekher Hussain, Shaila Parveen, Mahbulul Islam Bhuiyan, Gorkey Gourab, Golam Faruk Sarker, Shohael Mahmud Arafatand Joya Sikder “Living on the Extreme Margin: Social Exclusion of the Transgender Population (Hijra) in Bangladesh” [2009] p444.

lifestyle unacceptable for the working environment even though most of them are expressed their desire to be involved in an occupation.⁶⁰

However, the philosophy of the society is changing rapidly from the ancient traditional view because of the active functioning of the International Human Rights organizations and Human Rights Watch. Besides that, the government of Bangladesh is trying to ensure their basic rights and the National Human Rights Commission is also playing a vital role for ensuring transgenders rights. Consecutively, there are various NGOs, Organizations which makes social awareness for the transgender's rights with the assistance of media coverage. Therefore, along with the media support the government, NGOs and other organizations are trying to increase, improve, introduce and provide them some basic human rights which are discussed concisely as follows:

a) Initiatives taken by the government of the state:

The government of Bangladesh has slowly embarked on the path in recognizing and fulfilling transgender people's rights, needs and manifold priorities.⁶¹ In this regard, it basically focused on the international human rights principles and Constitutional aspect for facilitating them towards their rights and aims to protect these right.⁶² However, the ministry of social welfare initiated to entail transgender community into its social safety net programs and launched several new programs on their skills enhancement across the country.⁶³ It has also taken a number of initiatives as a part of its better livelihood programme.⁶⁴ Where it bring in some development programme as to their allowances for older Hijra's under social safety net program ,scholarship on education for Hijra community, livelihood training programs which includes Cooking, beautification and small grant for starting their own business with the bank loan facilities.⁶⁵ Through these programs the education and employment right can be ensured by the state where at the same time the minimum

⁶⁰Sharful Islam Khan, Mohammed Iftekher Hussain, Shaila Parveen, Mahbubul Islam Bhuiyan, Gorkey Gourab, Golam Faruk Sarker, Shohael Mahmud Arafatand Joya Sikder, "Living on the Extreme Margin: Social Exclusion of the Transgender Population (Hijra) in Bangladesh" (2009 August).

⁶¹ Arup Barua," Transgender people's struggle for survival" (20 July, 2019).

⁶²Lubna Jebin, "The Rights of Hijras in Bangladesh: An Overview" (June 2015).

⁶³ Arup Barua," Transgender people's struggle for survival" (20 July, 2019).

⁶⁴ Md. Fosiul Ahsan and Zahid Al Amin," Celebration of the third gender" (September 01, 2015) <<https://www.thedailystar.net/op-ed/politics/celebration-the-third-gender-135667>> accessed 20 July 2019.

⁶⁵ Shale Ahmed; Bandhu Social Welfare Society" Recognition of 'Hijra' as Third Gender in Bangladesh" CSBR-ILGAAsia2015.

standard of life can also be ensured for them. In addition, the cabinet has also decided to give them opportunity in Public Employment through recruiting them in Traffic Police.⁶⁶ Where as part of this approach, a transgender has been given employment as caretaker to the residence of the Home Minister Asaduzzaman Khan Kamal.⁶⁷ This is a remarkable decision to make their life dignified with education and employment where they can change societies view through representation and increase their availability of human rights as to education and employment. Gradually, the National Social Security Strategy (NSSS) of Bangladesh also planning for the equal treatment of gender and rights as to the employment and educational field mainly.⁶⁸ Moreover, the National Election Commission also amended the Voter List Act and incorporated transgender as a separate sex, after men and women.⁶⁹

b) Initiatives taken by the NHCR, other NGOs and support from media:

The National Human Rights Commission of Bangladesh is positioned to play a significant role in addressing human rights issues related to sexual orientation and gender identity.⁷⁰ Besides, it is also advocating the government and promoting human rights of vulnerable populations in society particularly with regards to rights of transgender people.⁷¹ Therefore, it organized various events regarding gender discrimination issue. However, Prof Mizanur Rahman, Chairman of the NHRC said that they will continue their work in applying pressure on the government to enact a law so that the transgender community do not face any discrimination as citizens.⁷² Moreover, the NHRC appointed a transgender in their office as an executive to accommodate marginalized groups of

⁶⁶ Shale Ahmed; Bandhu Social Welfare Society” Recognition of ‘Hijra’ as Third Gender in Bangladesh” CSBR-ILGAAAsia2015.

⁶⁷Bangla Tribune Desk “Transgender gets job at home minister’s residence” [Aug 08, 2019] <<http://en.banglatribune.com/national/news/65369/Transgender-gets-employment-at-the-home-minister%E2%80%99s>> accessed 10 August 2019.

⁶⁸ Cabinet Division and General Economics Division of Planning Commission, Government of the People’s Republic of Bangladesh, Action Plan 2016-2021.

⁶⁹ Arup Barua,” Transgender people’s struggle for survival” (20 July, 2019).

⁷⁰Lubna Jebin, “The Rights of Hijras in Bangladesh: An Overview” (June 2015).

⁷¹Bandhubs; Bandhu Social Welfare Society (BSWS) “Transgender advocates call for laws on inheritance rights” (May 18, 2015) <<https://www.bandhu-bd.org/transgender-advocates-call-for-laws-on-inheritance-rights/>> accessed 20 July 2019.

⁷² Bandhubs; Bandhu Social Welfare Society (BSWS) “Transgender advocates call for laws on inheritance rights” (May 18, 2015) <<https://www.bandhu-bd.org/transgender-advocates-call-for-laws-on-inheritance-rights/>> ACCESSED 20 July 2019.

society in 2018.⁷³ Through this first transgender appointment, NHRC expressed their concern for their education and employment and encouraged other transgenders as well. Along with the NHRC, there are some non-governmental organizations which actively work for providing educational and employment facilities to the transgender and also work for establishing their inheritance right. First of all, Bandhu Social Welfare Society organized many programs and also organized a series of events under “HIJRA PRIDE 2014” in all divisional and central level to commemorate the day of third gender recognition for hijra community by the Government of Bangladesh in collaboration with Ministry of Social Welfare and UNAIDS.⁷⁴ It also facilitate the transgenders with job circulars and facilities to be employed.⁷⁵ Where BLAST is also published some articles as to their basic rights to show its concern. These organizations are creating social awareness rapidly and spreading its function towards Bangladesh.

However, the online news portals, journals and social medias also creates social awareness in every sector by publishing transgenders achievement and employments through introducing transgenders human rights issues with its active cooperation and still working thereon. In this regard, there are three major English language newspapers which actively focused on transgenders rights as to property, education and employment through their publications and facilitation to the NGOs these are the *Daily Star*, the *New Age* and the *Dhaka Tribune*. The frequency and the depth of these reports certainly create a favorable environment to recognize transgenders and to establish their rights where the *Daily Star* has increased the frequency of its reports on the third gender community since 2009 and has published almost 25 reports and opinion pieces.⁷⁶ On the other hand, the *New Age* online archive goes back until the beginning of 2014 and published six articles this year alone where the *Dhaka Tribune* on other hand published 24 articles on the issue, with articles

⁷³ Nawaz Farhin Antara, “Meet Chaity – the first transgender employee at Bangladesh Nat'l Human Rights Commission” (September 16, 2018) <<https://www.dhakatribune.com/opinion/special/2018/09/16/meet-chaity-the-first-transgender-employee-at-a-bangladeshi-human-rights-org>> accessed 21 July 2019.

⁷⁴ Bandhubs; Bandhu Social Welfare Society (BSWS), “Third gender is not a word, it is a Gender” (June 7, 2015) <<http://www.bandhu-bd.org/third-gender-is-not-a-word-it-is-a-gender/>> accessed 22 July 2019.

⁷⁵ Nawaz Farhin Antara, “Meet Chaity – the first transgender employee at Bangladesh Nat'l Human Rights Commission” (September 16, 2018).

⁷⁶ Partha Sarker, “The “third gender” in Bangladesh 1” (2015) <<https://www.giswatch.org/en/country-report/bangladesh/bangladesh>> accessed 18 July 2019.

appearing more frequently soon after the hijra gender status was officially recognized.⁷⁷ Apart from these newspapers there is an organization in Rajshahi named 12 Vaja which particularly work for creating a social platform and ensuring their education and employment rights where it successfully employed some transgenders.⁷⁸ These newspapers and organizations are also showing their concern as to the right of the transgenders which also create concern the transgender people about their legal right and encouraged them with their support.

3.3. Their concern for implication of laws regarding their educational and employment rights and achievements:

As a member of a gender minority population, transgender peoples are continuously encounter the challenges in terms of self-discovery and sexual identity.⁷⁹ On the other hand, they are also concern about ensuring the transgenders rights through facilitating, moderating and advising them. Tanisha Yeasmin Chaity, the first transgender official of NHRC survived a lot towards her journey but successfully removed all the obstacles and try to establish other transgender in the job field.⁸⁰ Besides, with the support of 12 Vaja organization Joyeeta Poly successfully removed all the obstacles and became an owner of a boutique where 250 other women also working under her supervision and also recognized by the government for her contribution as a struggling women entrepreneur.⁸¹ However, the ratio of their success is very limited comparing to their population but still these employed transgenders are working for giving other transgenders a better and respected life with the education and employment facilities.

⁷⁷Partha Sarker," The "third gender" in Bangladesh 1" (2015) <<https://www.giswatch.org/en/country-report/bangladesh/bangladesh>> accessed 18 July 2019.

⁷⁸ 12 Vaja<https://www.facebook.com/pg/12vaaja/about/?ref=page_internal>.

⁷⁹Miti Sanjana," Respecting their rights" (December 20, 2017) <<https://www.dhakatribune.com/opinion/oped/2017/12/20/respecting-their-rights>> acceded 18 July 2019.

⁸⁰Nawaz Farhin Antara," Meet Chaity – the first transgender employee at Bangladesh Nat'l Human Rights Commission" (September 16, 2018) <Meet Chaity – the first transgender employee at Bangladesh Nat'l Human Rights Commission> accessed 22 July 2019.

⁸¹ 12 Vaja<https://www.facebook.com/pg/12vaaja/about/?ref=page_internal> (9 June 2019).

Chapter-4

International Obligations as to the Education and Employment Rights of the Transgender

From the emergence of international law, the international community are working on human rights issues for the people.⁸² Therefore, the international human right organizations established an obligation that the states are bound to undertake international human rights treaties into their domestic laws through ratification which is compatible with their treaty obligations and if they failed to do so the international communications are available to ensure such right.⁸³ So, the states are obliged by their treaty to ensure education and employment right of the transgender. In this regard the United Nations are activity focusing on TG issue through OHCHR which aims to ensure universal enjoyment of human rights for all, to remove obstacles to their effective implementation and to enhance coordination and cooperation of human rights-related activities.⁸⁴ Therefore, this chapter discusses about the international obligations as to the transgender right to education and employment in the lights of international human rights declarations, treaties, case laws etc.

4.1. Glimpse of the International Obligations:

The international community is more concern about the gender issues for which the international conventions on human rights do not divide people by any gender.⁸⁵ In this regard, the transgender propels right is also a considerable issue of the international treaties. Therefore, the states are bound to follow the treaty obligations provided by the Universal Declaration of Human Rights, European Convention on Human Rights, International Covenant on Civil and Political Rights etc.

⁸²United Nations for LGBT Equality, "International Human Rights Law and Sexual Orientation & Gender Identity" <<https://www.unfe.org/wp-content/uploads/2017/05/International-Human-Rights-Law.pdf>> accessed 16 July 2019.

⁸³United Nations for LGBT Equality, "International Human Rights Law and Sexual Orientation & Gender Identity" <<https://www.unfe.org/wp-content/uploads/2017/05/International-Human-Rights-Law.pdf>> accessed 16 July 2019.

⁸⁴United Nations Human Rights Office of the High Commission, "The role of OHCHR"

⁸⁵Mohammad Javed Mia, A.B.M. Imdadul Haque Khan, "Rights of Hijra Community: Regulatory Gaps and Future Directions" p28.

- a) **The Universal Declaration of Human Rights** ensure equality by introducing a provision for free and equal treatment⁸⁶ where Article 6 of the Universal Declaration of Human Rights states that everyone has the right to recognition to everywhere as a person before the law where Article 3 of the UDHR states that everyone has the right to life, liberty and security of person".
- b) **European Convention on Human Rights** prohibits discrimination on the ground of gender under Article 14⁸⁷ which means the transgender people cannot be denied for availing education and employment on the ground of gender.
- c) **International Covenant on Civil and Political Rights** stands for the minority protection⁸⁸ with the equal treatment⁸⁹ of all human being before the law. Being a sexual minority group the right of the transgender people are protected which means they cannot be denied for availing their human rights.
- d) **The Convention for the Protection of Human Rights and Fundamental Freedoms, 1966**introduces right to education for all under Article 2. It directly emphasizes the education for all as right. So, neither school authority nor society can deprive the transgender for being educated.

4.2. Influence of international obligation in Bangladesh:

Bangladesh has ratified eight out of nine core human rights treaties for which it entails obligation under international law to respect, protect and fulfil human rights enumerated in those treaties.⁹⁰ However, In 2006, Bangladesh was also elected as a member to the newly formed United Nations Human Rights Council, and re-elected in 2009 and in 2012.⁹¹ In some parts, the constitution of

⁸⁶ Article-1 of the Universal Declaration of Human Rights, 1948.

⁸⁷ Article 14, European Convention on Human Rights.

⁸⁸Article 27, European Convention on Human Rights (In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language).

⁸⁹Article 26, European Convention on Human Rights; (All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status).

⁹⁰JAMAKON Report to the UN Human Rights Committee.

⁹¹Tove Stenqvist," The social struggle of being HIJRA in Bangladesh- cultural aspiration between inclusion and illegitimacy" (7 January 2015) p.13.

Bangladesh is aligned with the international regulations on Human Rights; in that the constitution guarantees fundamental rights and liberties to the Bangladeshi citizens which directly referred to in article III of the constitution, as it is stated that the constitution prohibits any discrimination on the grounds of religion, race, and sex.⁹² Based on these provisions the transgenders are entitled to get education and job facilities that they can live their life independently with dignity and self-respect. Apart from these obligations, Bangladesh is a signatory to both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of diverse sexualities.⁹³ Besides, Article 25 of the Constitution of Bangladesh provides that the principles of international law and the principles enunciated in the UN Charter' will be respected by State.⁹⁴ Bangladesh being a member of UDHR and subject to the Constitutional supremacy is bound to ensure the provisions of constitution.

⁹²Tove Stenqvist," The social struggle of being HIJRA in Bangladesh- cultural aspiration between inclusion and illegitimacy" (7 January 2015) p.13.

⁹³Lubna Jebin, "The Rights of Hijras in Bangladesh: An Overview" (June 2015) P.1.

⁹⁴Md. Mostafa Hosain," Application of UDHR by Supreme Court of Bangladesh: Analysis of Judgments" (January13, 2013) <<https://www.clcbd.org/journal/13.html>> accessed 16 July 23019.

Chapter-5

A Comparative Overview with the Context of India and Pakistan Regarding the Education and Employment Rights of the Transgender

Transgender people in the Asia-Pacific region and globally remain among the most marginalized populations in development efforts, experiencing persistent poverty, social exclusion and poor health outcomes.⁹⁵ In most Asian countries, the vast majority of transgender people cannot obtain any official identification documents that reflect their gender identity.⁹⁶ But to safe guard the transgender communities there are many policy and schemes implemented by the government of the states.⁹⁷ Transgenders are still a deprived section of the population with limited access to education and job opportunities.⁹⁸ However, many from this community have dared to challenge gender stereotypes and have made a mark with their contribution towards the society.⁹⁹ The global movement for transgender rights has achieved remarkable success over the past three decades in India and Pakistan.¹⁰⁰

5.1. Initiative takes in India:

The transgender of India constitutes the insignificant section of the society and thus face legal, social as well as economic difficulties.¹⁰¹ Where the Indian census has never recognized the transgender while collecting census data for years.¹⁰² However, in the Census of 2011, data of transgender were collected in the category of “Others” under Gender with details related to their employment, literacy, and caste.¹⁰³

⁹⁵UNDP & APTN, “Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia” (2017).

⁹⁶ UNDP & APTN, “Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia” (2017).

⁹⁷ M. Michelraj, “Historical Evolution of Transgender Community in India” [Jan - June 2015] ARSS Vol. 4 No. 1 P19.

⁹⁸Prabuddha Neogi, “6 Famous Transgender Personalities of India” [July 28, 2017] < <https://outofpandora.com/6-famous-transgender-personalities-india/>> accessed 29 June 2019.

⁹⁹Prabuddha Neogi, “6 Famous Transgender Personalities of India” [July 28, 2017] < <https://outofpandora.com/6-famous-transgender-personalities-india/>> accessed 29 June 2019.

¹⁰⁰Sean Dickson, Steve Sanders, “India, Nepal, and Pakistan: A Unique South Asian Constitutional Discourse on Sexual Orientation and Gender Identity” [2014] Cambridge University Press, p316.

¹⁰¹Viji Athreye, “The Life of Transgenders in India” [27 November, 2015] <<https://www.mapsofindia.com/my-india/government/the-life-of-transgenders#>> accessed 29 June 2019.

¹⁰²Neena Sawant, “Transgender: Status in India” [January 2017].

¹⁰³Neena Sawant, “Transgender: Status in India” [January 2017].

In the case of *National Legal Services Authority Vs. Union of India and Others*¹⁰⁴ it was argued that the recognition of only the binary genders of male and female under Indian law and the lack of legal measures to cater for the needs of the represented groups contradicted a number of constitutional rights including the rights to a dignified life, equality before the law, nondiscrimination and freedom of expression. So, the Court upheld transgender persons' right to self-identify their gender by considering Constitution and international human rights Conventions and norms.¹⁰⁵ Therefore, the apex court of India said that transgenders will be allowed admission in educational institutions and given employment on the basis that they belonged to the third gender category in 2014.¹⁰⁶ Based on the NLSA judgment, the Rajya Sabha passed the Rights of Transgender Bill, 2014.¹⁰⁷ Similarly, the government then passed another Bill named "Rights for Transgender Persons Bill, 2015" modifying on the 2014 bill by removing the provisions relating to Transgender Rights Court as well as the National and State Commissions.¹⁰⁸ However, this Bill of 2015 has been changed and another bill was introduced in the Lok Sabha in 2016 named The Transgender Persons (Protection of Rights) Bill, 2016.¹⁰⁹

However, the Transgender Persons (Protection of Rights) Bill, 2016, seeking to define transgenders and prohibit discrimination against them, was introduced in the Lok Sabha two years ago which was passed with 27 amendments.¹¹⁰ But, the Transgender Persons (Protection of Rights) Bill, 2018 fails to protect the human rights of transgender people as guaranteed under the Indian constitution and international law on the ground that it would effectively deny to most transgender people their right to self-identification, by providing an overly complex bureaucratic procedure requiring an individual's application for a transgender certificate to be approved by two different sets of authorities, despite earlier widespread condemnation of this process by the transgender

¹⁰⁴Writ Petition No. 400 of 2012 with Writ Petition No. 604 of 2013 SC.

¹⁰⁵ National Legal Services Authority v Union of India and Others, [Writ Petition No. 400 of 2012 with Writ Petition No. 604 of 2013 SC].

¹⁰⁶Dhananjay Mahapatra, "Supreme Court recognizes transgenders as 'third gender'" [15 April 2014] <<https://timesofindia.indiatimes.com/india/Supreme-Court-recognizes-transgenders-as-third-gender/articleshow/33767900.cms>> accessed 23 June 2019.

¹⁰⁷Neena Sawant, "Transgender: Status in India" [January 2017].

¹⁰⁸Neena Sawant, "Transgender: Status in India" [January 2017].

¹⁰⁹Neena Sawant, "Transgender: Status in India" [January 2017].

¹¹⁰Press Trust of India, "Lok Sabha passes transgender rights Bill" [17 December, 2018]

community.¹¹¹ Apart from this, there are transgender individuals who have written their own success stories with the help of their endowment, hard work, dedication and perseverance.¹¹²

- **Kalki Subramaniam:** With two masters' degrees, Kalki is a social activist and a journalist who made her debut as an actress in the movie *Narthaki-Life of a Transgender Woman* and has also founded the Sahodari foundation which supports the transgender community.¹¹³
- **Padmini Prakash:** Padmini is a trained Kathak dancer and also a vocal artist who has been awarded the title of Miss Transgender of India.¹¹⁴ She is India's first transgender TV anchor with a prime time show on a South Indian TV channel.¹¹⁵
- **Gauri Sawant:** She is a transgender activist from Mumbai and also the director of Sakhi Char Chowghi that helps transgender people and people with HIV/AIDS.¹¹⁶
- **Akkai Padmashali:** Dr Akkai Padmashali is a female transgender social and human rights activist, a motivational speaker, transgender rights activist, a classically trained singer and the first transwoman in the State to register her marriage who is actively involved in making a gender-just society and one of the Petitioners who battled for the success to strike down Section 377 of Indian Penal Code.¹¹⁷
- **K. Prithika Yashini:** Yashini became India's first transgender police officer of Tamil Nadu in 2015.¹¹⁸

¹¹¹Maitreyi Gupta; Advocates for Justice and Human Rights," India: Parliament must Revise Problematic Transgender Persons (Protection of Rights) Bill, 2018" [19 December, 2018] <<https://www.icj.org/india-parliament-must-revise-problematic-transgender-persons-protection-of-rights-bill-2018/>> accessed 26 June 2019.

¹¹² Viji Athreye," The Life of Transgenders in India" [27 November, 2015] <<https://www.mapsofindia.com/my-india/government/the-life-of-transgenders#>> accessed 29 June 2019.

¹¹³ Viji Athreye," The Life of Transgenders in India" [27 November, 2015] <<https://www.mapsofindia.com/my-india/government/the-life-of-transgenders#>> accessed 29 June 2019.

¹¹⁴ Viji Athreye," The Life of Transgenders in India" [27 November, 2015] <<https://www.mapsofindia.com/my-india/government/the-life-of-transgenders#>> accessed 29 June 2019.

¹¹⁵Hemchhaya De," Five famous transgender celebrities you should know" [June 3, 2016].

¹¹⁶TEDx Talks," Transgender rights in India | Gauri Sawant | TEDxGodaPark" [4 December 2018] <<https://www.youtube.com/watch?v=TpNk1LGMVYk>> accessed 29 June 2019.

¹¹⁷Rohini Banerjee," A Must-Read Interview with Firebrand Trans Activist Akkai Padmashali!" [2016] <<https://www.youthkiawaaz.com/2016/08/trans-activist-akkai-padmashali-interview/>> accessed 29 June 2019.

¹¹⁸Pramod Madhav," Prithika Yashini, India's first transgender police officer, wins acceptance" [April 4, 2017] <<https://www.indiatoday.in/india/story/prithika-yashini-india-first-transgender-police-officer-tamil-nadu-969389-2017-04-04>> accessed 29 June 2019.

- **Manobi Bandyopadhyay:** She not only becomes India's first transgender principal in Bengali at Vivekananda Satobarshiki Mahavidyalaya but also inspiration for her entire community.¹¹⁹
- **Bharathi:** She completed her bachelor's degree in Theology and today she is a pastor at the Evangelist church of India, and conducts weddings even though her journey towards life was not that much easy.¹²⁰
- **Megh Sayantan Ghosh:** Megh joined Hazra Law College in the year 2006 and passed BA LLB with first class in the year 2011 and became a transgender lawyer in India.¹²¹
- **Zara Sheikha:** She is the first transgender person in the India to become a HR consultant at UST Global, a major multinational company in Kerala.¹²² She says "I was always very effeminate as a child. I started learning classical dance from the age of 4 and I was extremely passionate about being a woman while dancing. My family wasn't supportive and I did not have many friends while growing up because of my 'girly' attitude. They mocked me. Only my teachers supported me and gave me the courage to face all kinds of circumstances".¹²³

Apart from them there Sathyasri Sharmila recently became India's first transgender lawyer, Joyita Mondal became the first judge as she was appointed at Lok Adalat in north Bengal in October 2017, Mumtaz, a social worker, is the first transgender who came out to contest elections in Punjab from Bahujan Samaj Party (BSP), Shabi joined Marine Engineering Department of the Eastern

¹¹⁹ Viji Athreye," The Life of Transgenders in India" [27 November, 2015] <<https://www.mapsofindia.com/my-india/government/the-life-of-transgenders#>> accessed 29 June 2019.

¹²⁰ Viji Athreye," The Life of Transgenders in India" [27 November, 2015] <<https://www.mapsofindia.com/my-india/government/the-life-of-transgenders#>> accessed 29 June 2019.

¹²¹Tirthankar Das," No Obstacle Is Hard Enough for Megh, The First Transgender Lawyer in India To Win A Case" [2018] <<https://www.youthkiawaaz.com/2018/11/first-transgender-lawyer-in-india-to-win-a-case/>> accessed 25 June 2019.

¹²²Josh Talks," The Remarkable Tale of India's First Transgender MNC Employee" [2017] <<https://www.youthkiawaaz.com/2017/10/the-remarkable-tale-of-indias-first-transgender-mnc-employee/>>accessed 29 June 2019.

¹²³Geetanjali Taragi," The Gritty Zara Sheikha Talks about Being Kerala's 1st Transgender Woman to Land A Job at an MNC" [12 June, 2017] <<https://www.scoopwhoop.com/zara-sheikha-first-transgender-hr-executive-shares-her-story/>> accessed 29 June 2019.

Naval Command, Kolkata's Jiya Das became the first transgender operation theatre or OT technician etc.¹²⁴

5.2. Initiative takes in Pakistan:

Pakistan being a predominantly Muslim society permits no place for any other gender neither in the legal structure nor in the religious sphere.¹²⁵ The transgenders of Pakistan have face insensitivity and discrimination where the elder transgenders are even excluded from the legal financial resources and community support and were unable to find any suitable jobs or resources for education like the other citizens.¹²⁶ Although the Supreme Court allowed the transgender community the right to be registered to vote and identify themselves as a third gender¹²⁷ along with the government official recognition in 2012, transgender individuals are largely confined to the margins of society, forcing them into begging, dancing, and prostitution in order to survive.¹²⁸ The movement for transgender rights in Pakistan is slowly progressing.¹²⁹ Where most of them believe that their current legal system is hugely unsupportive to assist them in seeking, accessing and getting justice.¹³⁰ However, in 2013, the Court ruled that the transgender must be treated as equal citizens of Pakistan by enjoying the same constitutional rights.¹³¹ Among other rulings, the

¹²⁴India Today Web Desk, "8 Indian transgender people who were the firsts in their fields" [July 3, 2018] <<https://www.indiatoday.in/education-today/gk-current-affairs/story/list-of-transgenders-firsts-who-made-it-big-in-their-fields-1276415-2018-07-03>> accessed 29 June 2019.

¹²⁵Abubakr Saeed, Usman Mughal & Shaista Farooq, "It's Complicated: Socio-Cultural Factors and the Disclosure Decision of Transgenders in Pakistan" [25 Aug 2017] p8 <<http://dx.doi.org/10.1080/00918369.2017.1368766>> accessed 30 June 2019.

¹²⁶Abubakr Saeed, Usman Mughal & Shaista Farooq, "It's Complicated: Socio-Cultural Factors and the Disclosure Decision of Transgenders in Pakistan" [25 Aug 2017] p9 <<http://dx.doi.org/10.1080/00918369.2017.1368766>> accessed 30 June 2019.

¹²⁷Mahwish Gul, "Recognizing a minority's human rights" [14/10/2018] <<https://www.dandc.eu/en/article/new-law-confirms-transgender-persons-enjoy-same-rights-other-citizens-do-pakistan>> accessed 22 June 2019.

¹²⁸Aysha Qamar, "Marvia Malik Makes Headlines as Pakistan's First Transgender News Anchor" [April 3, 2018] <<https://www.browngirlmagazine.com/2018/04/marvia-malik-makes-headlines-pakistans-first-transgender-news-anchor/>> accessed 29 June 2019.

¹²⁹Aysha Qamar, "Marvia Malik Makes Headlines as Pakistan's First Transgender News Anchor" [April 3, 2018] <<https://www.browngirlmagazine.com/2018/04/marvia-malik-makes-headlines-pakistans-first-transgender-news-anchor/>> accessed 29 June 2019.

¹³⁰Gender Equity Program; Aurat Foundation and Information Services Foundation "Silent No More Transgender Community in Pakistan" [September 2016] p32.

¹³¹Mahwish Gul, "Recognising a minority's human rights" [14/10/2018] <<https://www.dandc.eu/en/article/new-law-confirms-transgender-persons-enjoy-same-rights-other-citizens-do-pakistan>> accessed 22 June 2019.

Supreme Court conferred the rights to transgender persons of inheritance, identity, employment and protection from harassment by law enforcement authorities.¹³²

In March 2018, the Pakistan National Assembly has taken an incredibly historical decision by enacting the Transgender Persons (Protection of Rights) Act.¹³³ This is a unique piece of legislation by which the legislators of Pakistan not only guarantee basic rights of the transgender people for the first time but also outlawing discrimination against them.¹³⁴ The Bill seeks to protect the rights of the transgender community including provisions to obtain a driver's license and passport in the gender of choice and change gender in the National Database and Registration Authority and also prohibits harassment of Trans people inside and outside their homes and prohibits discrimination in educational institutions, employment, trade, health services, public transportation, buying, selling or renting property and also ensure the right to inherit property and to vote in all provincial, local and national elections as well as to pursue public office.¹³⁵ But still they claimed that it is a discriminatory Act for which in the case of *Khaki v. Rawalpindi*¹³⁶, the court ordered law enforcement institutions to create mechanisms to prevent these problems from occurring. However, with the mainstreaming of transgender community, and the announcement of jobs by Sindh provincial government employed few TG at NADRA and the Social Welfare Department.¹³⁷ The country's first-ever old-age home for transgender people has recently opened its doors in Lahore by a transgender Ayesha Butt who has been pouring all of her earnings into building the old-age home spread over a canal of land in Lahore's Rachna town since 2011.¹³⁸

¹³²Mahwish Gul, "Recognising a minority's human rights" [14/10/2018] <<https://www.dandc.eu/en/article/new-law-confirms-transgender-persons-enjoy-same-rights-other-citizens-do-pakistan>> accessed 22 June 2019.

¹³³Raisul Sourav, "Plight of Bangladeshi transgenders" [June 2018].

¹³⁴Raisul Sourav, "Plight of Bangladeshi transgenders" [June 2018].

¹³⁵ Syed Naveed Qamar, MP; "Pakistan's National Assembly passes the Transgender Persons Bill 2018 championed by PGA Member Hon" [May 8, 2018] <<https://www.pgaction.org/news/pakistan-passes-transgender-persons-bill.html>> accessed 29 June 2019.

¹³⁶AD 43 [2009].

¹³⁷ Gender Equity Program; Aurat Foundation and Information Services Foundation "Silent No More Transgender Community in Pakistan" [September 2016] p27.

¹³⁸Arif Malik, "Country's first-ever old-age home for transgender persons opens in Lahore" [26 April, 2018] <<https://www.dawn.com/news/1404014>> accessed 25 June 2019.

Moreover, Catering to the educational needs of transgender community, first dedicated school was launched in Lahore early this year by an NGO called Exploring Future Foundation (EFF).¹³⁹ In Lahore, A school named “the Gender Guardian” offers a full 12 years of academic education from the primary level to matriculation and then leading up to college for the education and vocational training of Pakistan's transgender community is set to open its doors which will also impart technical education, such as fashion designing, beautician and hair styling courses, graphic designing, computer and mobile repairing, among others.¹⁴⁰ Recently, Inspector General Dr Syed Kaleem Imam announced that the members of the transgender community will be provided five per cent of the various jobs in Sindh police for the first time in a meeting between a delegations of transgenders with the Sindh police chief in Sukkur.¹⁴¹ However, there some successful transgender who established their right and able to achieve their goal by breaking all the obstacles and barriers.

- **Marvia Malik:** she is a Pakistani journalist who become the country’s first transgender news anchor, making history in a country where the transgender community is still ostracized and targeted in violent attacks.¹⁴² She breaks barriers and challenges discrimination as a first transgender news anchor in Pakistan who anchors Indian news in Lahore and also an activist of the transgene’s movement in Pakistan.¹⁴³
- **Jannat Ali:** She is a well-known Lahore based transgender activist, first transgender Project Manager, performing artist and NGO professional working at Khawaja Sira Society which is a community-based organization led by the transgender community for healthcare, human rights and advocacy in Pakistan.¹⁴⁴

¹³⁹ Ashfaq Ahmed,” Pakistan takes steps to protect the rights of transgender community “[April 02, 2019] <<https://gulfnews.com/world/asia/pakistan/pakistan-takes-steps-to-protect-the-rights-of-transgender-community-1.63071900>> accessed 30 June 2019.

¹⁴⁰ Rana Bilal, “Pakistan's first-ever school for transgender community set to open its doors” [April 06, 2018] <<https://www.dawn.com/news/1399970>> accessed 29 June 2019.

¹⁴¹ Imtiaz Ali,” In a first, transgenders to be offered 5pc jobs in Sindh police: IG” [April 02, 2019] <<https://www.dawn.com/news/1473252>> accessed 29 June 2019.

¹⁴² Aysha Qamar, “Marvia Malik Makes Headlines as Pakistan’s First Transgender News Anchor” [April 3, 2018] <<https://www.browngirlmagazine.com/2018/04/marvia-malik-makes-headlines-pakistans-first-transgender-news-anchor/>> accessed 29 June 2019.

¹⁴³ NBC News,” Transgender TV Anchor Challenges Pakistani Culture from A News Desk | NBC Out | NBC News” [Jun 28, 2018] <<https://www.youtube.com/watch?v=QaK1DK5EtM8>> accesses 25 June 2019.

¹⁴⁴ Muhammad Salman Khan,” Meet Jannat Ali: Lahore’s Trans Diva” [October 12, 2017] <<https://dailytimes.com.pk/124369/meet-jannat-ali-lahores-trans-diva/>> accesses 30 June 2019.

Comparing with the view of India and Pakistan, transgender people in Bangladesh are facing various difficulties as to establish themselves with education and employment where they are not fully concern about their rights like the transgender in India or Pakistan yet. Even though in India and Pakistan transgender people are also facing difficulties, they are supported by particular laws, bills, rules, educational institutions, job recruitment whereas in Bangladesh there is no particular law for them enacted by the government after recognition. On the other hand, the Transgenders in India and Pakistan are trying to establish their right with their courage and brevity and also trying to revolt against discrimination from the state in the light of their Constitution. As a result, the status quo is changing thorough their concern, active participation, courage, skill and they are flourishing through their achievements where they are trying to lead their community like others.

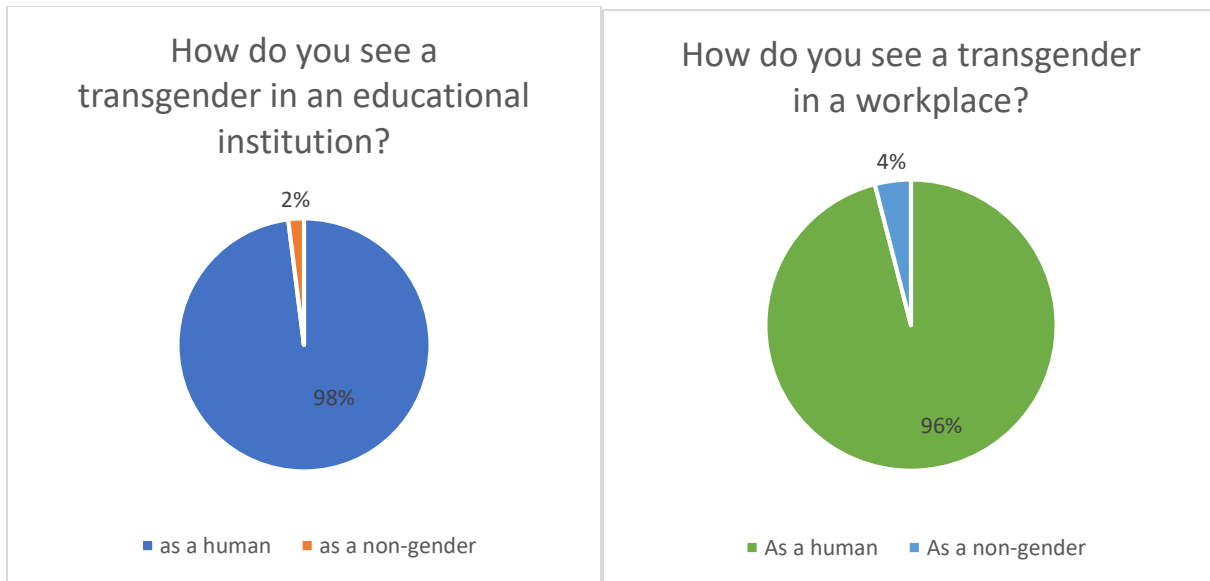
Chapter-6

Social Reaction and Concern Regarding the Education and Employment Rights of the Transgenders

To make this research work more effective it also focused on the social view along with research materials. It has been reached to them through online survey and general interviews through making some questions related to the work. Their response is highly appreciating. This online survey expressed that how the normal people think about the transgender's education and employment rights

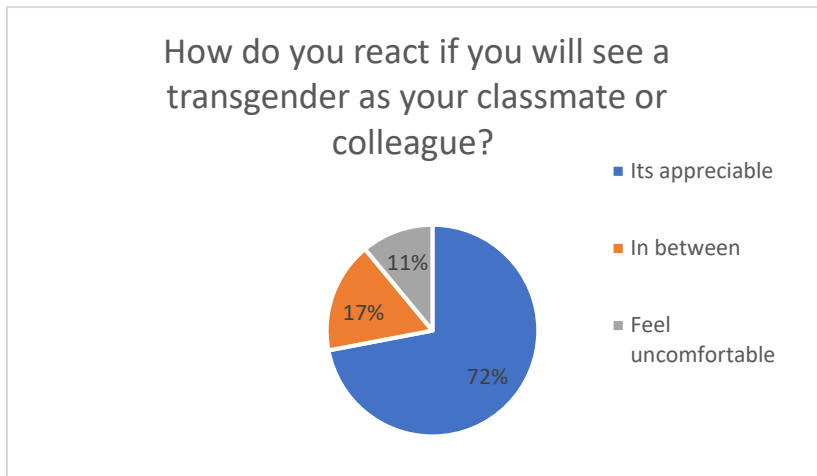
6.1. Output from Survey report:

It has conducted an online survey over 400 people where it found a mixed opinion from them and reached in a result from the survey. Therefore, these are explained below with charts:

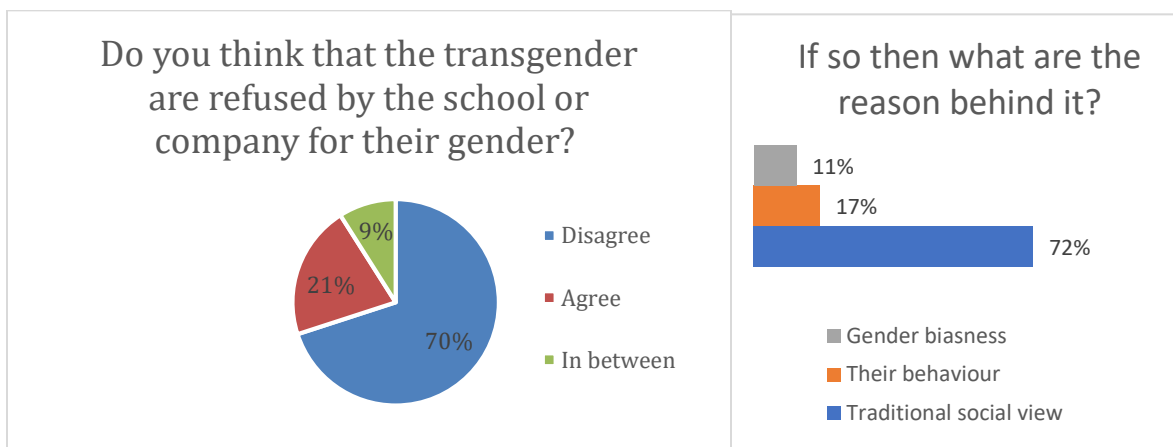


From Firstly, it asks about their view as to how they saw a transgender in an educational institution or in a workplace. Here 98% expressed that in an educational institution they saw them as a human being first. Besides that, 2% people saw them not as human being but as a non-gender who may not harm to them but their nature of thinking really effect on transgenders education and emolument rights particularly in case of admission in a school or appointment in an organization.

Whereas, this ratio has been changed in case of workplaces where 96% shows their view that they saw them as a human and 4% denied them as a human being.

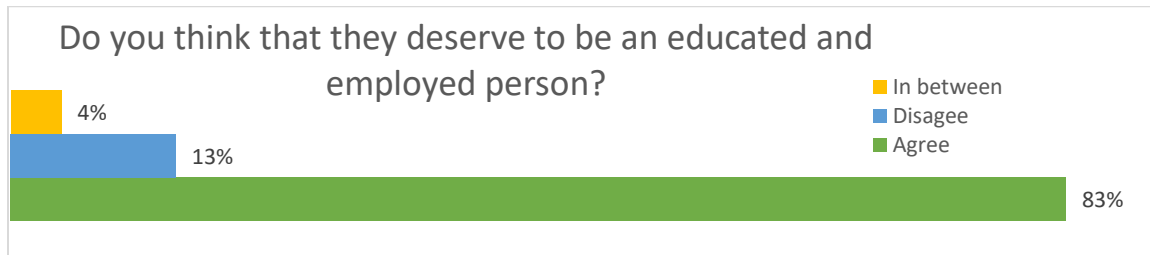


Similarly, it also has been asked as to their reaction if they will see a transgender as your classmate or colleague where 72% of them appreciate them as a classmate or colleague. This shows that the social acceptance of the transgenders in education and employment sector. Whereas 11% of them expressed that they feel uncomfortable which means they don't want transgender as their classmates or colleague. It also found that 17 % of them expressed their opinion in between. Where in a direct interview of Rafiqul Islam Sohel, advocate of Supreme Court of Bangladesh he opined that we should support them for their education and job facilities because they are the silent minority group who deprived from their rights.

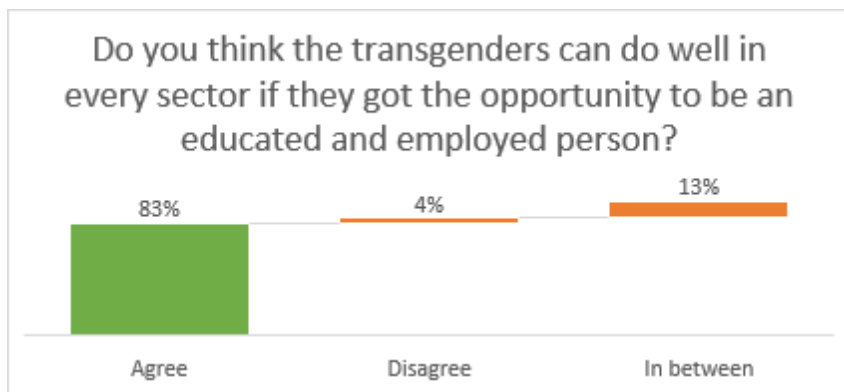


From the above two charts it has been analyzed their opinion as to whether they think that the transgenders are refused by the school or company for their gender and the reason behind it if they

think it genuine. Here, 70% of them give a positive opinion that transgenders are refused by the school or company for their gender. It means even though they opined that they think transgender as a human and its appreciable to see them as the classmate or colleague but still they agreed that the transgender are removed by the school or company where 72% of them think that they have been removed for the reason of traditional social view. On the other hand, 17% blame their behavior as the reason behind their removal from school or company whereas 11% viewed that it happens because of the gender biasness society. However, 21 % disagreed that they have been removed from school or company for their gender.

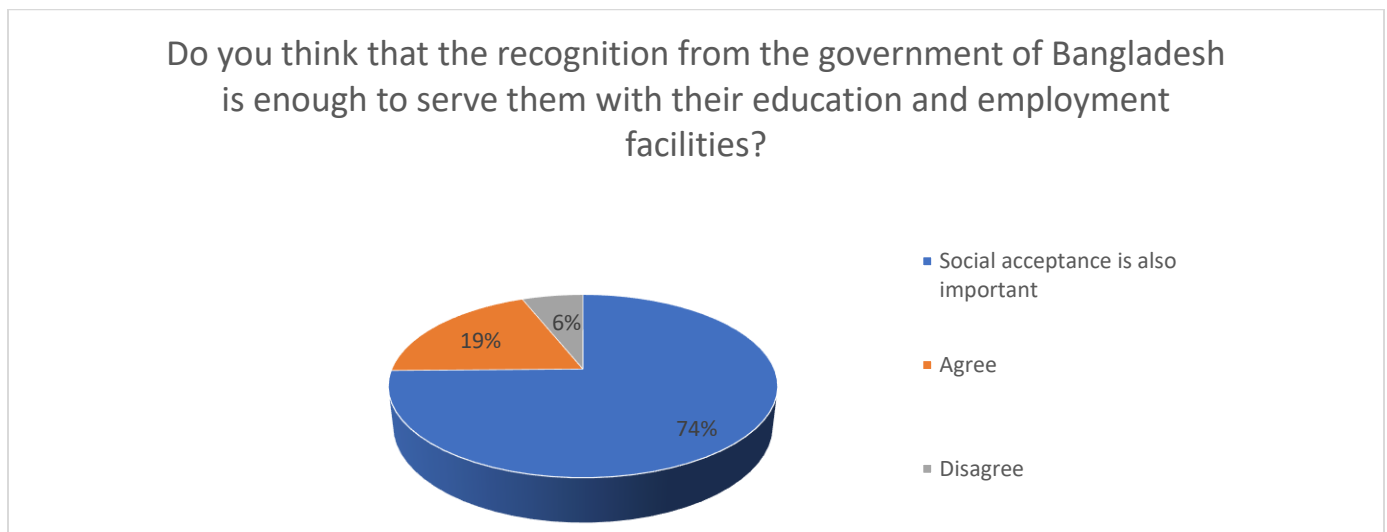


In the above chart, it shows their view that whether the transgenders are deserved to be an educated and employed person. Here 83% agreed that they deserve to be an educated and employed person. In this view it shows that they agreed that the transgenders are entitled with education and employment right and also agreed that a standard of education and workplace must be serve to the transgender. But there 13% of them disagreed that transgenders are deserve to be an educated and employed person where 4% are in a neutral position. This shows that the society is not fully aware about their education and employment.

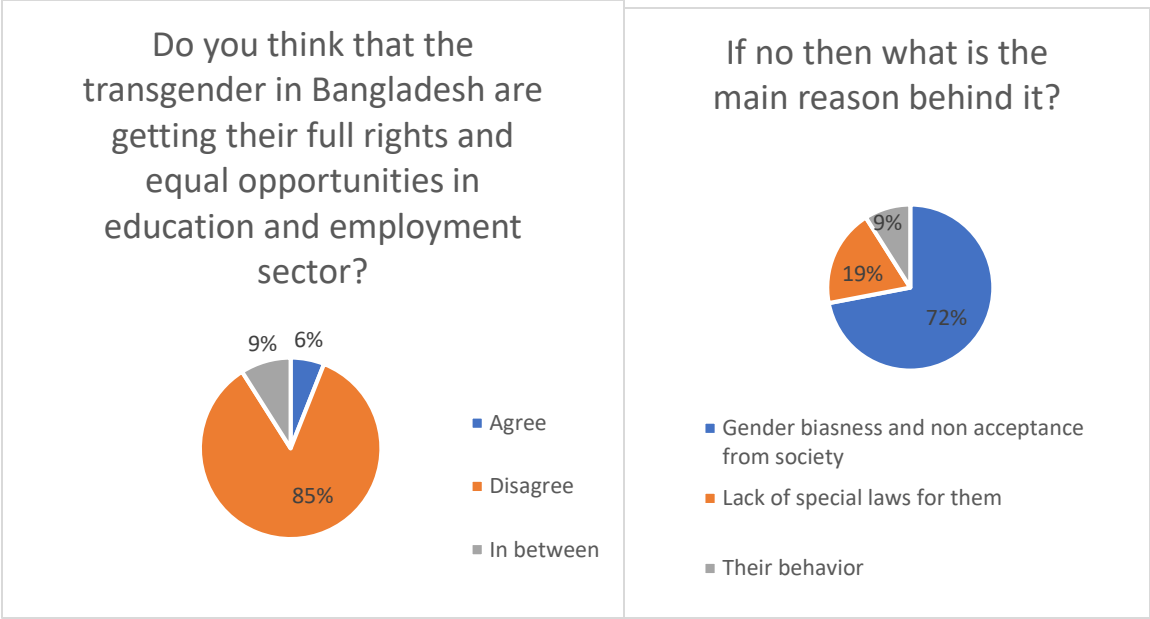


This chart exhibits that 83% of them are agreed that the transgenders can do well in every sector if they got the opportunity to be an educated and employed. It means they expressed their positive

view for transgenders education and employment. According to them transgender has the same potentiality and skill like others. However, 4% of them disagreed with this statement and 13% are in a middle position. It has been conducted an interview over the phone with a member of 12 Vaja organization which is situated in Rajshahi who said that they organized various programs and events for encouraging other transgenders to lead a better life with education and employment in a view to create a social platform for people who do not fit into the gender binary roles of the society where they are trying to expand their work through organizing social gatherings like skits, book readings and art exhibitions.



In addition, the foresaid chart it displayed their view in regard to the recognition from the government of Bangladesh in a way that whether it is enough to serve the transgenders with their education and employment facilities where 74% of them mentioned that social acceptance is also important for facilitating them with education and employment because only a recognition cannot change the whole scenario of the society. Similarly, 19% of them disagreed with the opinion whereas 6% of them agreed with the statement as in the above they are saying that the transgender is refused from the school or company just because of gender issues even after such recognition.



However, the aforementioned charts are dealing with an overall opinion regarding whether the transgender in Bangladesh are getting their full rights and equal opportunities in education and employment sector where 85% of them are differing from it among which 72% are blaming that the gender biasness and non-acceptance from society is liable for depriving the transgenders from education and employment right whereas 19% of them are showing that the lack of special laws for them are the main reason behind it and 9% of them are saying that it's their behavior for which they are deprived from thereon. Besides, 6% of them are agreed and 9% of them are in between in the prior concerning issue.

Chapter-7

Findings of the Study, Recommendations and Conclusion

In this chapter, it illustrated the findings and result of the study based on the reviewed articles, survey reports and interviews. Then it has recommended some prospective solution for the outcomes of the study with a concluding remark.

7.1 . Findings of the Study:

The main purpose of this study is to find out the result as to what extent transgenders are entitled to avail their education and employment right. From the reviewed articles and journals firstly, it is found that almost six years have been passed after they got their recognition from the government but still there is no effective application of law or any special law for their education and employment rights and even there is no particular educational institution or training institution for them. In this consequence, they failed to provide themselves a dignified life with education and employment. Secondly, it discovered that there are almost 10000 transgenders are living in Bangladesh but few of them are avail to survive and trying to be employed with their suitable jobs and aims where the maximum is living an unemployed and uneducated life. Thirdly, because of lack of education and property they failed to get a good job or start own business for which they are trying to earn money in an illegal way and getting involved in crime. However, it also found that there are some transgenders who have been established their position in the social fields with positive acceptance but these exceptions cannot be an example to compare their availability of these rights as a whole unless the government implicate specific rules and established maximum of them.¹⁴⁵

On the other hand, from the survey report it shows that the society does not cooperate to make them employed and educated rather they feel uncomfortable if they have been found in an educational field, business area or office. As a result of such reaction nether school authority nor the employer are willing to admit or employ them in their institution on the ground of a greater interest that it will harm their institutional environment and its members. Therefore, they failed to

¹⁴⁵Tove Stenqvist," The social struggle of being HIJRA in Bangladesh- cultural aspiration between inclusion and illegitimacy" (7 January 2015) p.15.

avail their educational and employment rights under constitution. Whereas, from the interview of some transgenders it shows that they are willing to be an educated, employed and respected person like others but nobody gives them such right willfully even their family also deprived them from their property for which they also failed to run a business. Moreover, it is found that they are refused from their school¹⁴⁶and workplaces. As a result, they failed to develop and complete their educational skills for which they also deprived from their employment rights for the lack of educational qualifications. Therefore, they are largely deprived from their rights and suffer severe financial crisis so that they try to earn money through begging, dancing, illegal activities for their livelihood.¹⁴⁷ Over and above, from the outcome of the study it shows that they are neglected and discriminated in every sector of the society for their gender issue for which they failed to avail their legal rights.

7.2 Recommendations for further studies:

Out of the above discussion, the transgender in Bangladesh are failed to enjoy their right absolutely. Therefore, there are some proposals and favorable mentions for the outcomes of the study for ensuring transgenders rights and increase social awareness. These are:

- The government can establish a transgender community union for being update with and taking care of each transgender.
- Government can increase opportunities in public services and reform quota system for them for increasing their representations as they are I backward situation in government services.
- Government can also provide and facilitate them with government loan facilities that they can start their own business or invest money in a beneficial way.
- Government and NGOs can make some institutions as to train them for some suitable jobs and introduced them working experiences that they can cope up with employment environment without facing any difficulties.

¹⁴⁶ Sharful Islam Khan, "Living on the Extreme Margin: Social Exclusion of the Transgender Population (Hijra) in Bangladesh" [2009] p444.

¹⁴⁷ Md. Akramul Islam," Right to Education of The Third Gender of Bangladesh: An overview" [2016] 21 p33.

- Public and private authority can take some initiative to increase garments for employing the uneducated transgender as well as investing their hardworking skills in a productive way.
- Government can make special schools for them with scholarship facilities and make seminars thereon for improving their skills and also trained them for public communication.
- This is an ordinary course for the government to make strict rule as to non-discrimination on the gender and convenience them with the education facilities in every level that they can get a good job with their availed qualifications.
- Besides that, the legislatures can enact particular and special laws for enforcing their education and employment right without any discrimination.

7.3. Concluding Remarks:

The transgenders are entitled with constitutional fundamental rights and also the government recognized them in 2013 but still there are debates as to the enforcement of their basic rights for which they are neglected in every aspect of life starting from their primary education to professional field, trade and business area on the ground that they are sexual minority people which introduced as neither man nor women. Because only recognition cannot change the traditional view of the society unless there is some special laws and social awareness. However, some of NGOs are trying to increase their participation and development in education and employment ground where some of the transgenders are employed with their educational qualifications but that ratio is too limited. Therefore, it can be concluded that yet the transgenders are not getting their education and employment right as a whole for which they are deprived from thereon. As a consequence of lack of education, they cannot get a good job.

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১১- হিজড়াদের মিরাহ

- ◆ খুনছা তথা হিজড়া বলা হয় যাদের পুরুষ ও স্ত্রী উভয়লিঙ্গ থাকে।
- ◆ **খুনছা তথা উভয়লিঙ্গদের (হিজড়া) মিরাহের নিয়ম:**
- ১. খুনছার অবস্থা যদি অস্পষ্ট হয় তবে পুরুষের অর্ধেক ও মহিলার অর্ধেক মিরাহ পাবে।
- ২. যদি খুনছার অবস্থা প্রকাশ হওয়ার আশা করা যায় তবে তার বিষয় সুস্পষ্ট হওয়া পর্যন্ত অপেক্ষা করতে হবে। যদি অপেক্ষা না করে ভাগ-বন্টন করতে চায় তবে খুনছা ও তার সঙ্গে যারা আছে তাদের সাথে ক্ষতি তথা কম দ্বারা কাজ সারতে হবে। আর বাকিগুলো আটকিয়ে রাখতে হবে যতক্ষণ খুনছার অবস্থা পার্থক্য না করা যায়। এ অবস্থায় খুনছাকে পুরুষ ধরে কাজ করতে হবে। অতঃপর আবার তাকে মহিলা হিসাবে ধরতে হবে। আর খুনছা ও তার সঙ্গে ওয়ারিছদেরকে দুই অংশের কমটা দিতে হবে। আর বাকি সম্পদ তার অবস্থার পার্থক্য না করা যাওয়া পর্যন্ত আটকিয়ে রাখতে হবে।
- ◆ **খুনছার অবস্থা জানার আলামত:**
- খুনছার অবস্থা কিছু বিষয় দ্বারা সুস্পষ্ট হয় যেমন: দুই লিঙ্গের কোন একটি লিঙ্গ দিয়ে পেশাব অথবা বীর্য বের হওয়া। যদি দুটি দিয়েই পেশাব বের হয় তবে যেটি দ্বারা আগে হবে সেটি ধরা হবে। আর যদি দুইটি হতে এক সাথে বের হয় তবে যেটি দ্বারা বেশি সেটি পরিগণিত হবে। এ ছাড়া যৌন আকর্ষণ, দাড়ি গজানো, মাসিক ঋতু, গর্ভবতী হওয়া, বুকের স্তন বড় হওয়া স্তন থেকে দুধ বের হওয়া ইত্যাদি দ্বারাও বুঝা যাবে।
- ◆ **উদাহরণ:**
- এক ব্যক্তি এক ছেলে, এক মেয়ে এবং ছোট একটি খুনছা সন্তান রেখে মারা গেল। পুরুষ হলে মাসালা হবে (৫) দ্বারা: ছেলের জন্যে দুই, মেয়ের জন্যে (১) এবং খুনছার জন্যে (২)। আর নারী হলে মাসালা (৪) দ্বারা: ছেলের জন্যে (২), মেয়ের জন্যে (১) এবং খুনছার জন্যে (১)।

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Appendix-A

A Survey on Transgenders Education and Employment Right

1) How do you see a transgender in an educational institution?

- As a non-gender
- As a human

2) How do you see a transgender in a workplace?

- As a non-gender
- As a human

3) How do you react if you will see a transgender as your classmate or colleague?

- Feel uncomfortable
- Its appreciable
- In between

4) Do you think that the transgenders are refused by the school or company for their gender?

- No
- Yes
- In between

5) If so then what are the reason behind it?

- Their behavior
- Traditional social view
- Gender biasness

6) Do you think that they deserve to be an educated and employed person?

- No
- Yes
- In between

7) Do you think that the transgenders can do well in every sector if they got the opportunity to be an educated and employed?

- No
- Yes
- In between

8) Do you think that the recognition from the government of Bangladesh is enough to serve them with their education and employment facilities?

- No
- Yes
- Social acceptance is also important

9) Do you think that the transgender in Bangladesh are getting their full rights and equal opportunities in education and employment sector?

- No
- Yes
- In between

10) If no then what is the main reason behind it?

- Lack of special laws for them
- Their behavior
- Gender biasness and non-acceptance from society