

**MISSING COLOUR OF RAINBOW
COMMUNITY- DENIAL OF HUMAN RIGHTS
BY YASHMITA ***

Introduction

The history and cultural relations of the hijras are rooted both in ancient Hinduism, where eunuchs are mentioned in a variety of texts, including the epic Mahabharata, and in Islam, where eunuchs served in the harems of the Mogul rulers. The ritual participation of hijras in life-cycle ceremonies has a clearly Hindu origin, though they may perform for Muslims as well. Many aspects of hijra social organization are taken from Islam, and many of the most important hijra leaders have been and are Muslim. However, hijras differ from traditional Muslim eunuchs, who did not dress as women and were sexually inactive. Muslim court eunuchs were endowed with the powers to bless and to curse that hijras derive from their ambiguous sexuality and connection with the mother goddess. In the eighteenth and nineteenth centuries Hindu and Muslim hijras did not live together, but in contemporary India they often do. Another historical connection of the hijras appears to be with the Magna Mata cults in ancient Greece, whose devotees also dressed in women's clothing and sometimes castrated themselves. Transgender like other countries are also extensively exploited in India in the field of prostitution.¹

These days the prostitution in transgender is also a common scenario and they commonly engage themselves into prostitution in order to earn their livelihood. The plight of the transgender was not same throughout they were respected by the Mughals, but considered criminals by British colonisers, today many live as sex workers and beggars.²

Many new guidelines have been laid internationally for the protection of the transgender since the third gender has not been given much recognition under Indian laws also there was no separate census for the transgender till 2011 it was the first time in history that their population was calculated which came upto six million³ which was a rough estimate of the total population of the transgender and the official government website have no mention of the transgender population.⁴ Indian passport had introduced a new category "E" for eunuchs in November 2009⁵ since most of the transgender were hesitant to mark their category under male or female. Also the same thing was done for the identity cards and electoral rolls.⁶ No

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¹ Retrieved on < <http://www.anti-caste.org/hijra-by-serena-nanda.html>> accessed on 11 December 2013 at 5:20pm IST

² Retrieved from <<http://stream.aljazeera.com/story/201310170000-0023115>> accessed 8th December 2013 at 8:10am IST.

³ Retrieved from <<http://www.indianexpress.com/news/census11-transgenders-prepare-to-be-counted/735282/1>> accessed on 20th December 2013 at 11:02am IST.

⁴ Retrieved from < <http://censusindia.gov.in/>> accessed from on 20th December 2013 at 11:50am IST.

⁵ Retrieved from < <http://infochangeindia.org/human-rights/news/third-sex-finds-a-place-on-indian-passport-forms.html>> accessed on 21st December 2013 at 1:10pm IST.

⁶ Retrieved from <<http://www.jharkhand.gov.in/ceo/AllForms/Eng/Form-6.pdf>> accessed on 21st December 2013 at 1:30pm IST.

matter how many reforms are being introduced in the system but still the basic mind set of the people remains the

Meaning Of Transgender

Transgender," at its most basic level, is a word that applies to someone who doesn't fit within society's standards of how a woman or a man is supposed to look or act.

"Transgender" can also be used as an umbrella term, meaning it groups together a variety of people with different identities. The common link is that people under the "transgender umbrella" don't really fit within their society's standards of how women and men are supposed to look and act (in other words, they're "gender non-conforming").⁷

Various Types Of Transgender

Before discussing the various types of transgender it is important to know the difference between "sex" and "gender". "Sex" refers to biological status as male or female. It includes physical attributes such as sex chromosomes, gonads, sex hormones, internal reproductive structures, and external genitalia. "Gender" is a term that is often used to refer to ways that people act, interact, or feel about themselves, which are associated with boys/men and girls/women. While aspects of biological sex are the same across different cultures, aspects of gender may not be.⁸

Transsexuals

Transsexuals are transgender people who live or wish to live full time as members of the gender opposite to their birth sex. Biological females who wish to live and be recognized as men are called female-to-male (FTM) transsexuals or transsexual men. Biological males who wish to live and be recognized as women are called male-to-female (MTF) transsexuals or transsexual women. Transsexuals usually seek medical interventions, such as hormones and surgery, to make their bodies as congruent as possible with their preferred gender. The process of transitioning from one gender to the other is called sex reassignment or gender reassignment.

Cross-Dressers Or Transvestites

Cross-dressers or transvestites comprise the most numerous transgender group. Cross-dressers wear the clothing of the other sex. The great majority of cross-dressers are biological males, most of whom are sexually attracted to women or neither, whereas gender identity refers to one's sense of oneself as male, female, or transgender. Usually people who are attracted to women prior to transition continue to be attracted to women after transition, and people who are attracted to men prior to transition continue to be attracted to men after transition.⁹

⁷ Retrieved from <<http://www.gaycenter.org/gip/transbasics/whatistrans>> accessed on 24th December 2013 at 9:36am IST.

⁸ Sally Hines, *Transforming Gender: Transgender Practices of Identity, Intimacy and Care*, The Policy Press, Bristol, 2007 at p.20

⁹ Retrieved from <<http://www.lgbt.ucla.edu/documents/APAGenderIdentity.pdf>> accessed on 26th December 2013 at 11:49am IST.

Genderqueer

Gender-queers are not necessarily transgender or transsexual, but often act or think in a non-stereotypical way regarding their physical gender. Some gender-queers have a rigid idea of what their gender is, while others feel that their gender is fluid, changing from day to day or even from one situation to another. Gender-queers are sometimes drag kings or drag queens, dressing as the opposite biological sex and acting out stereotypical gender behaviour as a form of parody. Gender-queers are usually homosexuals, but not all of them are.¹⁰

Androgyne

Androgyne may identify as beyond gender, between genders, moving across genders, entirely genderless, or any or all of these, exhibiting a variety of male, female, and other characteristics. Androgyny can be either physical or psychological, and it does not depend on birth sex.¹¹

Bigender

To identify as bigender generally means you identify as two genders. You could identify as both at the same time. You can go back and forth between two genders. Perhaps you have one stagnant gender identity and one that shifts while still only identifying as two genders.¹²

Drag Kings and Queens

Drag is a term applied to clothing and make-up worn on special occasions for performing or entertaining. This is in contrast to those who are transgender or who cross-dress for other reasons. Drag performance also includes overall presentation and behaviour in addition to clothing and makeup. Drag can be theatrical, comedic, or grotesque. Drag queens have been considered caricatures of women by second-wave feminism.¹³

History of Transgender

Eunuchs have existed since 9th century BC. The word has roots in Greek and means "Keeper of the bed" castrated men were in popular demand to guard women quarters of royal households. The practice is behind to have started in China where, at the end of the Ming Dynasty, there were as many as 70,000 eunuchs in grand place itself. In the Mahabharata, the Pandavas used Shikhandi, a eunuch, to defeat Bhishma Pitamah in the battle of Kurukshetra. The Hindu God Shiva is often represented as Ardhanarisvara, with a dual male and female nature; Typically, Ardhanarisvara's right side is male, and left side female. This sculpture is from the Elephanta Caves near Mumbai. References to a third sex can be found throughout

¹⁰ Retrieved from < <http://www.urbandictionary.com/define.php?term=genderqueer> > accessed on 26th December 2013 at 12:34pm IST.

¹¹ Retrieved from <<http://www.thefreedictionary.com/androgynous>> accessed on 26th December 2013 at 1:12pm IST.

¹² Retrieved from <<http://queerdictionary.tumblr.com/post/15355325370/bigender-adj>> accessed on 27th December 2013 at 4:17am IST.

¹³ Retrieved from <http://www.huffingtonpost.com/tom-bartolomei/10-myths-about-drag-queens_b_2979249.html> accessed on 27th December 2013 at 4:35am IST.

the various texts of India's three ancient spiritual traditions - Hinduism, Jainism and Buddhism - and it can be inferred that Vedic culture recognised three genders. The Vedas (c. 1500 BC - 500 BC) describe individuals as belonging to one of three separate categories, according to one's nature or prakrti. These are also spelled out in the Kama Sutra (c. 4th century AD) and elsewhere as pums-prakrti (male-nature), stri-prakrti (female-nature), and tritiya-prakrti (third-nature). Various texts suggest that third sex individuals were well known in premodern India, and included male bodied or female-bodied people as well as intersexuals, and that they can often be recognised from childhood. A third sex is also discussed in ancient Hindu law, medicine, linguistics and astrology. The foundational work of Hindu law, the Manu Smriti (c. 200 BC - 200 AD) explains the biological origins of the three sexes: "A male child is produced by a greater quantity of male seed, a female child by the prevalence of the female; if both are equal, a third-sex child or boy and girl twins are produced; if either are weak or deficient in quantity, a failure of conception results. Indian linguist Patanjali's work on Sanskrit grammar, the Mahabhasya (c. 200 BC), states that Sanskrit's three grammatical genders are derived from three natural genders. The earliest Tamil grammar, the Tolkappiyam (3rd century BC) also refers to hermaphrodites as a third "neuter" gender (in addition to a feminine category of unmasculine males). In Vedic astrology, the nine planets are each assigned to one of the three genders; the third gender, tritiya-prakrti, is associated with Mercury, Saturn and (in particular) Ketu. In the Puranas, there are also references to three kinds of devas of music and dance: apsaras (female), gandharvas (male) and kinnars (neuter).

In the Buddhist Vinaya, codified in its present form around the 2nd century BC and said to be handed down by oral tradition from Buddha himself, there are four main sex/gender categories: males, females, ubhahobyanjanaka (people of a dual sexual nature) and pandaka (people of various non normative sexual natures, perhaps originally denoting a deficiency in male sexual capacity). As the Vinaya tradition developed, the term pandaka came to refer to a broad third sex category which encompassed inter sex, male and female bodied people with physical and/or behavioral attributes that were considered inconsistent with the natural characteristics of man and woman.

Contrary to what is often portrayed in the West, sex with male (specifically receptive oral and anal sex) was the gender role of the third gender, not their defining feature.

Asian countries have centuries-old histories of existence of gender-variant males - who in present times would have been labelled as 'transgender women'. India is no exception. Kama Sutra provides vivid description of sexual life of people with 'third nature' (Tritiya Prakriti). In India, people with a wide range of transgender-related identities, cultures, or experiences exist – including Hijras, Aravanis, Kothis, Jogtas/Jogappas, and Shiv-Shakthis. Often these people have been part of the broader culture and treated with great respect, at least in the past, although some are still accorded particular respect even in the present.¹⁴

Hijras

Hijras can be considered as the western equivalent of transgender/transsexual (male-to-female) persons but Hijras have a long tradition/culture and have strong social ties formalized through a ritual called "reet" (becoming a member of Hijra community). There are regional variations in the use of terms referred to Hijras. For example, Kinnars (Delhi) and Aravanis (Tamil Nadu). Hijras may earn through their traditional work: 'Badhai' (clapping their hands

¹⁴ Danielou, A. (1994). The Complete Kama Sutra. The first unabridged modern translation of the classic Indian text by Vatsyayana. Thomson Press (India) Ltd: Mumbai.

and asking for alms), blessing new-born babies, or dancing in ceremonies. Some proportion of Hijras engage in sex work for lack of other job opportunities, while some may be self-employed or work for non-governmental organisations.

In the Mughal empire, eunuchs were employed to take care of harems and some of them became aides of queens. Being castrated males, they could not exploit women of the harems sexually, but were able to carry out domestic works. They were respected and recognised. They used to be treated as good omen on births and before war.¹⁵

India is officially incorporated into the British Empire. Two years later, the anti-sodomy law of 1860 is enforced upon the entire empire that now includes India. The law, which remarkably is still in place in India today as Section 377 of the Indian Penal Code, reads: "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine." Despised by the British, eunuchs are forced into the darkest shadows of society where they must now live as outcasts.¹⁶

Every year in Tamil Nadu these transgender collect and worship and marry their God Iravan and there is atmosphere of celebration and also various competitions are held including the beauty pageant. But on the very next day there is atmosphere of grief since they turn widow when Lord Iravan died. According to Indian mythology he had sacrificed himself in war of Kurukshetra as Mahabharata mentions. When Iravan or Aravan was going to sacrifice himself on the 18th day of war his last wish was to get married, but no female was ready to marry him since nobody wanted to turn widow. So in order to fulfil his wish Lord Krishna took avatar of female and married Aravan.¹⁷

Issues with Trans-Gender due to Human Rights Violation

Transgender people commonly face a wide variety of discriminatory barriers to full equality. Transgender people sometimes face difficulties meeting their basic needs (getting a job, housing, or health care) or in having their gender identity respected (like in the simple act of going to a public restroom).¹⁸ Some of the major issues which are suffered by transgender in almost all the states have been pointed below:-

Sexual Health

Hijras/TG communities face several sexual health issues including HIV. Both personal- and contextual- level factors influence sexual health condition and access to and use of sexual health services. For example, most Hijras/TG are from lower socioeconomic status and have low literacy levels that pose barrier to seeking health care. Consequently, Hijras/TG communities face some unique barriers in accessing treatment services for STIs.

Mental Health

¹⁵ Retrieved from <http://articles.timesofindia.indiatimes.com/2008-04-27/patna/27764238_1_eunuchs-third-gender-population-mughal-era> accessed on 10 February 2014 at 10:20am IST.

¹⁶ Retrieved from <http://www.galva108.org/Indias_Descent.html> accessed on 10 February 2014 at 11:03am IST.

¹⁷ Retrieved from <<http://www.hindu-blog.com/2012/07/story-of-aravan-iravan.html>> accessed on 10 February 2014 at 11:30am IST

¹⁸ Retrieved from <<https://www.aclu.org/lgbt-rights/discrimination-against-transgender-people>> accessed on 15th February 2014 at 5:20pm IST.

Mental health needs of Hijras/TG communities are barely addressed in the current HIV programs. Some of the mental health issues reported in different community forums include depression and suicidal tendencies, possibly secondary to societal stigma, lack of social support, HIV status, and violence-related stress. Most transgender people, especially youth, face great challenges in coming to terms with one's own gender identity and/or gender expression which are opposite to that of the gender identity and gender role imposed on them on the basis of their biological sex. They face several issues such as: shame, fear, and internalized transphobia ; disclosure and coming out; adjusting, adapting, or not adapting to social pressure to conform; fear of relationships or loss of relationships; and self-imposed limitations on expression or aspirations.

Alcohol and Substance Use

Hijras provide several reasons justifying their alcohol consumption that range from the need to 'forget worries' (because there is no family support or no one cares about them) to managing rough clients in their sex work life. However, alcohol use is associated with inability to use condoms or insist their clients to use condoms, and thus increase risk for HIV transmission and acquisition.

Social Issues

The hijra, known throughout south Asia as a "third gender" because they are born male and identify as female, live in close-knit communities on the fringes of mainstream society. Since many government documents, including passports, require them to identify as male or female, many of the hijra see their rights curtailed by the impassive machinery of government bureaucracy. Ironically, though the hijra have been widely stigmatized and harassed, they've occupied a venerable place in marriage culture since ancient times, often tasked with singing at weddings and births and, therefore, treated with respect among individual households. In India, cases of violence go unreported as the present social and legal environment is oppressive towards transgender persons and Hijras.

Economic Issues

This brings us to the issue of economic dimensions mainly involving the livelihood prerogatives of the transgender. The social hierarchy assigned to the hijra group is based on their professional engagement for their livelihood. There are mainly three categories:

(1) At the very top are the hijras who engage in *tolli badhai* – a traditional Indian way of showering blessings on certain auspicious occasions including celebrations like that of the birth of a child, weddings, for fulfilment of expectations of a male child, success for a newly set-up business venture or shifting to a newly purchased residence.¹⁹

(2) This is followed by hijras who engage in sex work as a means of earning their livelihoods. The dominant modus operandi includes standing at streets and bus stands or going to established *chalti-phirti dagars* (moving sex sites where customers come and negotiate with the hijras standing in clusters and then either drive them away in their vehicle or go to some other avenue). Many hijras are a part of organised lobbies in various pubs, bars and discotheques in and around Delhi.

¹⁹ A hijra who has undergone the ceremony of castration is referred to as nirvana. This “involves both penectomy and orchiectomy (removal of penis and testicles)”

(3) The last in the ranking are those who engage in *laal-batti mangna* – this includes all the hijras who engage in begging as a means of earning a living. The most common sites are traffic signals, hence the name *laal-batti* which literally means “red light” in Hindi.²⁰

Education Issues

The scope of education is limited for the transgender. India as a country has low literacy rate and if a person is transgender the scope of education becomes even bleak. The Indian mentality doesn't accept transgender people and they are always looked down upon. Leave aside the society the family themselves does not accept a child with different choices and feels that such a child is bringing bad name for the family.

Acceptance Issues

Most families do not accept if their male child starts behaving in ways that are considered feminine or inappropriate to the expected gender role. Consequently, family members may threaten, scold or even assault their son/sibling from behaving or dressing-up like a girl or woman. Some parents may outright disown and evict their own child for crossing the prescribed gender norms of the society and for not fulfilling the roles expected from a male child. Parents may provide several reasons for doing so: bringing disgrace and shame to the family; diminished chances of their child getting married to a woman in the future and thus end of their generation (if they have only one male child); and perceived inability on the part of their child to take care of the family. Thus, later transgender women may find it difficult even to claim their share of the property or inherit what would be lawfully theirs. Sometimes, the child or teenager may decide to run away from the family not able to tolerate the discrimination or not wanting to bring shame to one's family. Some of them may eventually find their way to Hijra communities.

Being a transgender does not make you less of a citizen as guaranteed by Constitution. If a person has different approach it does not mean it is wrong it is meant that, that person is unique in his self. People who are different should be guaranteed the same rights as the normal citizens and should not be looked down upon. They should be viewed and accepted like normal people since they have same feelings and same thinking.

Transgender and Law

The ambiguity in the legal status and recognition of the transgender and lack of opportunity of sex reassignment and post surgical gender recognition leads to decline of legal rights of transgender which ultimately creates barrier in accessing health and protective services, which often leads to stigma and discrimination of a particular caste which is unconstitutional will make them more prone to poverty and sexual violence which will eventually force them to do sex work in order to sustain themselves which will ultimately increase the risk of HIV in the transgender as well as the society at large.

Laws Related To Transgender in India

²⁰ Retrieved from <<http://www.epw.in/commentary/trajectories-transgender.html>> last visited on February 27,2013 at 2:05pm IST

When it comes to the documentation and the identity proofs of them most of the transgender are harassed by asking themselves to categorise themselves under the gender which is not even their preference. Third gender has not been given much recognition under Indian laws also there was no separate census for the transgender till 2011 it was the first time in history that their population was calculated which came upto six million²¹ which was a rough estimate of the total population of the transgender and the official government website have no mention of the transgender population.²²

Issuance Of Identity Cards

None of the state governments except Tamil Nadu has made provision for changing transgender people's birth name and sex in official gazette and official identity documents either after realising their gender identity or undergoing sex transition surgeries. Notably, Tamil Nadu state government through its Transgender Welfare Board (TGWB) constituted a district level screening committee. in each district to certify 'aravanis' This identity card is usually required if transgender people apply for TG-specific welfare schemes (e.g., loans for self-help groups) of TGWB, or if they go to government hospitals to obtain SRS services. While some members complained that TGWB ID card is not accepted as a valid card for identity and address proof (e.g., for opening bank accounts), some have opened bank accounts and obtained passports using this card.²³

Enrolment Of Names In Official Gazette

According to the latest effort of Tamil Nadu government there is a recent provision to enrol the name of male to female and female to male in the official gazette.

Issuance of Indian Passport and Electoral Cards

Indian passport had introduced a new category "E" for eunuchs in November 2009²⁴. Also the same thing was done for the identity cards and electoral rolls.²⁵

Issuance of Adhaar Card

The latest provision of the Adhaar card have been extended to the transgender since a separate category of transgender has been mentioned.²⁶

Issuance of PAN Card or Permanent Account Number

²¹ Retrieved from <<http://www.indianexpress.com/news/census11-transgenders-prepare-to-be-counted/735282/1>> accessed on 27th February 2014 at 1:26pm IST.

²² Retrieved from <<http://censusindia.gov.in/>> accessed on 3 March 2014 at 5:13pm IST.

²³ Retrieved from <<http://prashanth.photoshelter.com/image/10000Db4Y34rPmrM>> accessed on 3 march 2014 at 4:15pm IST

²⁴ Retrieved from <<http://infochangeindia.org/human-rights/news/third-sex-finds-a-place-on-indian-passport-forms.html>> accessed on 5th March at 3:14pm IST

²⁵ Retrieved from <<http://www.jharkhand.gov.in/ceo/AllForms/Eng/Form-6.pdf>> accessed on 5th march 2014 at 3:40pm IST.

²⁶ Retrieved from <<http://uidai.gov.in/what-is-aadhaar-2.html>> accessed on 7th March 2014 at 4:05pm IST.

PAN card or the permanent account number which is used for the tax purposes and is issued to almost everyone as a matter of right without much discrimination. The PAN card's form does not discriminate on the basis of male or female.

Constitution of India and recognition of Transgender

Indian constitution talks about protecting the rights of the minority groups, but what happens when it comes to the recognition of the rights of the transgender. the basic question arises when it comes to the recognition of right to life and liberty and their basic need to have sex and get married to who so ever they want to. The National Legal Service Authority (NALSA) in its petition pointed out that, Article 21 of the Constitution provided fundamental right to life and personal liberty that could not be denied to transgender people. "Right to life includes right to live with human dignity and transgender are entitled to bare necessities in life such as food, nutrition, clothes, shelter, medical facilities, right to education and to adopt children, and marry."

It also stated, "Every citizen has the right to decide their sex orientation and to espouse and determine their identity including transsexuals, transgender, transvestites and they are entitled to be considered as third and equal sex. The Citizenship Act of India uses the expression person without reference to sex. Transgender, being citizens of India, ought to be entitled to vote and to contest elections as they are natural persons." Treating a transgender as a legal nonentity was a violation of Articles 14, 15 and 16 of the Constitution and it was arbitrary and discriminatory.²⁷

In 2009 the Delhi High Court in India ruled that the inclusion of consensual same sex acts under Section 377 of the Indian Penal Code 1861, which criminalizes anal and oral sex, was unconstitutional. The effect of the judgment was to de-criminalise homosexuality. However on December 11th 2013, the Supreme Court of India overturned the 2009 ruling, re-criminalising homosexuality. Despite petitions from the Government of India and human rights organizations requesting the Supreme Court to review its judgment, the apex court struck down the requests on 29th January 2014.²⁸

Movements For Rights Of Transgender In India

There is not much which is done for transgender in country like India where they are alienated from the society and are denied the basic human rights which they are entitled to as citizens of India. There have been certain movements to protect their rights as humans.

- **Santi Seva** facilitates and enhances effective participation in the fight against HIV/AIDS through advocacy, networking, research, capacity building, and treatment services. The organization runs a support group for male-to-female transgender communities and offers informal education and vocational training to transgender populations.²⁹
- **Parcham**, an organization of sex workers and their families, fights against the criminalization and stigmatization of sex workers and advocates for the extension of government social service programs to India's red light districts—areas that are

²⁷ Retrieved from < <http://www.thehindu.com/news/national/court-notice-to-centre-states-on-transgender-issue/article3956185.ece> > accessed on 9 March 2014 at 1:28am IST

²⁸ *Naz Foundation v. Government of NCT of Delhi* 2nd July 2009

²⁹ Retrieved from < <http://www.saathii.org/project/santi-seva> > accessed on 10 March , 2014 at 3:36pm IST

traditionally ignored by government departments. The organization's project "Livelihood Rights for Sex Workers" forms community-based committees of sex workers and their families in 25 red-light districts in southern Bihar and advocates for the extension of government social service programs.³⁰

- **Kashish movement, pride walk for the LGBT have been organised by the Chandigarh based NGO in the month of March 2014.**³¹

Transgender and International Recognition

India is party to international human rights treaties that recognize individual, civil and political rights.³² The problem of defining the terms of "gender" and "sexual minority" is a significant difficulty in enforcing existing human rights protections for sexual minorities. The Government of India adopted a National Policy for the Empowerment of Women in 2001 to bring about gender justice and make de jure equality into de facto equality.³³ At first glance, the use of this terminology signifies the establishment of seemingly inclusive rights. Yet, these rights remain severely limited by the Western binary gender construct—no real and effective protections are available to sexual minorities, unless such protections are construed by stretching conventional rights enumerated in international human rights instruments.

Universal Declaration of Human Rights

UDHR or Universal Declaration of Human Rights though not binding and a codified law but has laid down principles of human rights which are to be recognised in international community. Article 2 of UDHR is very similar to Article 14 of India Constitution which states "that everyone is entitled to rights and freedom without any distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, or property, birth or other status."³⁴

Article 7 further states All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

International Covenant On Civil And Political Rights

Further India is a signatory to ICCPR or International Covenant on Civil and Political Rights Article 2 of the ICCPR provides: "each State . . . undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized . . . without distinction of any kind, such as . . . sex . . . or other status."³⁵

³⁰ Retrieved from < http://ajws.org/who_we_are/news/archives/features/human_rights_day_2010.html > last visited on March 3, 2013 at 5:04pm IST

³¹ Retrieved from < <http://www.tribuneindia.com/2013/20130211/battrib.htm> > accessed on 10 March , 2014 at 4:10pm IST

³² *Convention On The Elimination Of All Forms Of Discrimination Against Women* adopted on Dec. 18, 1979, 1249 U.N.T.S. 13

³³ Retrieved from < <http://www.un.org/womenwatch/daw/Review/responses/INDIA-English.pdf> > accessed on 18 March , 2014 at 3:53pm IST

³⁴ Retrieved from < <http://www.un.org/en/documents/udhr/index.shtml#a2> > accessed on 18 March, 2014 at 5:22pm IST

³⁵ Retrieved from < <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> > accessed on 18 March, 2014 at 6:07pm IST

Similarly Article 26 of the ICCPR provides: "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as... sex... or other status."

When we talk about the above mentioned laws it seems that these provisions are construed to include sexuality and gender-based rights, India's anti-sodomy law may be understood as prohibitively discriminating against its own citizens on the basis of "sex" or "other status."

Toonen v. Australia, In 1991, Nicholas Toonen, a homosexual man from Tasmania, sent a communication to the Human Rights Committee. At that time homosexual sex was criminalized in Tasmania. Toonen argued that this violated his right to privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR). He also argued that because the law discriminated against homosexuals on the basis of their sexuality, it violated Article 26. As a result of his complaint to the Human Rights Committee, Toonen lost his job as General Manager of the Tasmanian AIDS Council (Inc), because the Tasmanian Government threatened to withdraw the Council's funding unless Toonen was fired. The Human Rights Committee did not consider Toonen's communication until 1994, but it ultimately agreed that because of Tasmania's law, Australia was in breach of the obligations under the treaty. In response to the Commission's view, the Commonwealth Government passed a law overriding Tasmania's criminalization of homosexual sex.³⁶

In 2001, Naz Foundation India Trust, an NGO committed to battling the spread of HIV/AIDS in India, filed a petition in the Delhi High Court, arguing that Section 377 of the IPC is unconstitutional.

Yogyakarta Principles

In 2006, international human rights experts gathered in Yogyakarta, Indonesia to address the growing concern with human rights abuses based on sexual orientation and gender identity. This meeting spurred the March 26, 2007 launch of the Yogyakarta Principles on the Application of Human Rights law in Relation to Sexual Orientation and Gender Identity (Yogyakarta Principles). There was an Indian representative named Miloon Kothari.³⁷

These important developments indicate that sexuality and gender-based rights are not invisible, and that despite the lack of an effective U.N. framework, some informal progress is being made in this area.

Conclusion

India is signatory to most of the conventions and treaties which prevent gender based discrimination not only this, basic provisions under the Constitution of India are ignored. Right to Paternity and have a family and to fulfil ones biological needs are the basic rights if these rights cannot be fulfilled by the state, then there is no meaning of giving citizenship it is more of a slavery..³⁸

The recent judgement given by the Apex court in the month of April 2014 is considered to be a landmark judgement since under this the transgender are given separate status and they are now considered to be "Third Gender" in the words of Justice K.S. Radhakrishnan said when he announced the ruling. "Transgenders are citizens of this country and are entitled to

³⁶ Retrieved from < <http://www.humanrights.gov.au/human-rights-explained-case-studies-complaints-about-australia-human-rights-committee> > accessed on 19 March, 2014 at 2:25am IST

³⁷ Retrieved from < http://www.yogyakartaprinciples.org/principles_en.pdf > accessed on 19 March , 2014 at 2:33am IST

³⁸ Colin Harvey, *Human Rights in the Community : Rights as Agent for Change*, Hart Publishing, Oregon,2005 , p.198-199

education and all other rights.”³⁹ The apex court have enlisted transgender under OBC category and the intent of the court behind this judgement is to procure education and job for for the transgender without any discrimination. Some of the Key highlights of the Judgment:

- Recognition of people who identify in the opposite sex is based on self-identification. This includes female identifying as male and male identifying as female
- Discrimination on the ground of sexual orientation and gender identity amounts to discrimination on the ground of sex under Article 15
- No Sex Reassignment surgery is required for recognition of gender identity.
- The right of individuals to choose their gender identity is protected under the Constitution.

The Judgment directs State governments to ensure livelihoods, expand social security, provide health care, and to make civil amenities like public toilets and restrooms accessible and available for them. The case was filed by the National Legal Services Authority in 2012 and was subsequently impleaded by civil and legal rights groups. Since 2009, UNDP has supported efforts at greater recognition for the transgender community. This has included convening stakeholder consultations, generating greater awareness in the legal community and strengthening community institutions.⁴⁰ At present this judgement is being hailed but the relevance of the judgement shall be seen in the longer run.

Suggestions for Transgender Community

Rather than punishing transgender people, countries must offer transgender people access to effective HIV and health services and commodities as well as repealing all laws that criminalise transgender identity or associated behaviours.

- Respect existing civil and religious laws and guarantees related to the right to privacy.
- Repeal all laws that punish cross-dressing.
- Remove legal, regulatory or administrative barriers to the formation of community organisations by or for transgender people.
- Mend national anti-discrimination laws to explicitly prohibit discrimination based on gender identity (as well as sexual orientation). Though the new judgement have intended to include transgender among OBC for better education and job opportunities. But it is still to be verified that the discrimination which is practiced from past, will this judgement effect it.

³⁹ Retrieved from <http://www.washingtonpost.com/news/morning-mix/wp/2014/04/15/india-now-recognizes-transgender-citizens-as-third-gender/?tid=hp_mm> accessed on 19 May 2014 at 7:05pm IST.

⁴⁰ Retrieved from <<http://www.in.undp.org/content/india/en/home/presscenter/pressreleases/2014/04/15/undp-hails-landmark-supreme-court-judgment-on-the-rights-of-transgender-to-choose-their-identity/>> accessed on 20th May 2014 at 5:06pm IST

- Ensure transgender people are able to have their affirmed gender recognised in identification documents without any discrimination.
- Without the need for prior medical procedures such as sterilisation, sex reassignment surgery or hormonal therapy.
- Comprehensive civil rights legislation should be enacted to offer hijras the same protection and rights now guaranteed to others. The Constitution should be amended to include sexual orientation/gender identity as a ground of non-discrimination.
- Preventing trafficking than for intimidating those who are the most vulnerable i.e., the individual sex worker as opposed to brothel keepers or pimps. This law needs to be reformed with a clear understanding of how the state is to deal with those engaged in sex work.
- Section 375 of the IPC should be amended to punish all kinds of sexual violence, including sexual abuse of children. A comprehensive sexual assault law should be enacted applying to all persons irrespective of their sexual orientation and marital status.
- Transgender should have civil rights like inheriting the property, adoption, getting married, having a ration card etc
- A comprehensive sex-education program should be included as part of the school curricula that alters the heterosexist bias in education and provides judgement-free information and fosters a liberal outlook with regard to matters of sexuality, including orientation, identity and behaviour of all sexualities. Vocational training centres should be established for giving the transgender new occupational opportunities.
- The Press Council of India and other watchdog institutions of various popular media (including film, video and TV) should issue guidelines to ensure sensitive and respectful treatment of these issues.
- Several NGO's are working in almost every field but ironically there are very few NGOs for transgender.

Suggestions for Police Reforms

Police harasses these people to a great extent instead of protecting them. This leaves no outlet for transgender.

- The police administration should appoint a standing committee comprising Station House Officers and human rights and social activists to promptly investigate reports of gross abuses by the police against and hijras in public areas and police stations, and the guilty policeman be immediately punished.
- The police administration should adopt transparency in their dealings with hijras; make available all information relating to procedures and penalties used in detaining hijras in public places.
- Protection and safety should be ensured for hijras to prevent rape in police custody and in jail. Hijras should not be sent into male cells with other men in order to prevent harassment, abuse and rape.
- The police at all levels should undergo sensitization workshops by human rights groups/queer groups in order to break down their social prejudices and to train them to accord hijras the same courteous and humane treatment as they should towards the general public.

Suggestions for Medical Reforms

LAW MANTRA THINK BEYOND OTHERS
(International Monthly Journal, I.S.S.N 2321 6417)
Journal.lawmantra.co.in www.lawmantra.co.in

Medically it is possible to know that transgender are normal people and they should be treated like one without any discrimination. Some of the following suggestions might help transgender to retain their status in society.

- Initiate a debate on whether being transgender should be classified as a gender identity disorder or whether it should be seen as a choice.
- The Medical Council of India should issue guidelines to ensure that discrimination in medical treatment of hijras, which would include refusal to treat a person on the basis of their gender identity, is treated as professional misconduct.
- Reform medical curricula in medical colleges that moves beyond seeing transgenderism as a disease and a deviance.
- Separate wards should be provided to transgender in hospitals and they should not be forced either in male or female wards thus making them uncomfortable.
- Grants and Loans should be sanctioned for sex readjustment therapy also hospitals can do charity for such a surgery.