

## Not Only His and hers, it's time for 'others'

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*"The first step towards change is awareness. The second step is acceptance"*

-Nathaniel Branden

*"I am influenced more than ever before by the conviction that social equality is the only basis of human happiness"*

– Nelson Mandela

### Abstract

*This paper aims to upfront the voices of the unheard. The focus of this paper is to clarify the misconceptions about who transgender are, their struggle and their legal acceptance to be a dignified part of our closely knit Indian society. Transgender people suffer persistent inequalities in all aspects of life. It is high time that this neglected community with distinct needs is publically acknowledged as "the third gender" and are given a respectable position in the society having equal rights which are commensurate with those of men and women. Transgender have a long history of being discriminated and not being granted the basic status of a human being. As has been very aptly said by Justice K.S. Radhakrishnan, "Recognition of Transgender as a third gender is not a social or medical issue but a human rights issue." This paper lays its focus on the recognition and acceptance of the transgender/Hijra as the third gender and what are their legal, marital and parenting rights. Social equality is the basis of human happiness and the Constitution of India affirms equality in all spheres. India, as a growing and continuously changing nation has taken a positive step towards incorporating the true essence of equality in the present society.*

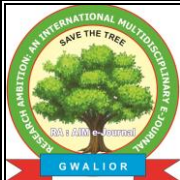
**Key Words-** Struggle, legal recognition, Marital status, Parenting Status.

### Introduction

Psychiatrist John F. Oliven of Columbia University coined the term *transgender* in his 1965 reference work *Sexual Hygiene and Pathology*.

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Transgender are generally people who are identified with a particular sex based on biology i.e., their chromosomes, anatomy, hormones but they do not feel connected to the body they are born in. They feel that the sex which is assigned to them is not justified to them. They are oriented towards a different gender altogether. The word sex and gender may seem interchangeable but both the terms have different meanings. The difference between sex and gender is basically based on the physical and mental aspect. Sex of a person is the biological aspect with which the person is born whereas gender relates to the learned behavior and attitudes of a person which is a result of the socialization process rather than of biology.

## History of transgender

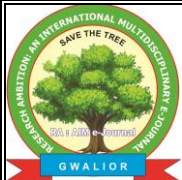
Lawrence Michael Dillon (1915- 1962) who was initially Laura Maud Dillon, was the world's first transsexual person. Born on the 1st May 1915 in London Laura Maud Dillon, daughter of Robert Dillon of Lismullen, County Meath, was anatomically a healthy female child. She was educated at an all girls' school and at St Anne's College, Oxford. She spent her summer holidays with a housekeeper on the family estate in County Meath. Facial hair and a deep voice confirmed her feelings of being physically and emotionally a man, she had a mastectomy in 1942, and in 1944 she had her birth certificate amended, changing 'daughter' to 'son' and 'Laura Maud' to 'Laurence Michael'.

Sir Harold Gillies, internationally renowned as the father of modern plastic surgery also one of the pioneers of sex change surgery, in 1945, along with his colleague Ralph Millard carried out the world's first sex change of a woman into a man on the young aristocrat, Michal Dillon.<sup>2</sup>

Unlike Western society, where transgenders often keep their lifestyle secret, transgenders in India have an active and celebrated lifestyle.<sup>3</sup> The transgender community in India (made up of Hijras and others) has a long history in Indian history and in Hindu mythology. According to legends **Bahuchara Mata** is a Hindu goddess. She was a daughter of a Charan by the name of Bapal dan Detha. She and her sisters were on a journey with a caravan, when a marauder named Bapiya attacked their caravan. It was common practice among charan men and women, if overpowered by

<sup>2</sup> *The World's First Transsexual Man*, (Last Modified Sept 2015) <http://www.gendercentre.org.au/resources/polare-archive/archived-articles/the-worlds-first-transsexual-man.htm>

<sup>3</sup> Kristina Mayhem, *The Hijras –Transgenderism In India*, <http://kristinamayhem.blogspot.in/p/the-hijras-transgenderism-in-india-man.html>



their enemies, not to surrender but to kill themselves. Legend tells that Bapiya was cursed and became impotent. The curse was lifted only when he worshiped Bahuchara Mata by dressing and acting like a woman. Today Bahuchara Mata is considered patroness of the hijra community in India.<sup>4</sup>

Hijra is a word derived from the Arabic root '*hjr*' which means 'leaving one's tribe'. In ancient India, transgenders included barren women, impotent men, eunuchs, hermaphrodites and intersex.<sup>5</sup> Eunuchs in India have their origin rooted in the Ramayana where Rama is supposed have bestowed them with "special powers" to confer blessings on people and on Aravan who married Lord Krishna disguised as Mohini. The Aravanis also consider Aravan in the Mahabharata their progenitor. Aravan, the warrior son of Arjuna was to be sacrificed to goddess Kali for the Pandava's success in war and desired to be married before he died. Lord Krishna assumed the form of the beautiful Mohini and became Aravan's bride for a night. At the annual **Koovagam festival** in a small village in TamilNadu, transsexuals from all over India re-enact with great fanfare, Mohini's marriage to Aravan and her subsequent widowhood.<sup>6</sup>

## Struggle of transgender

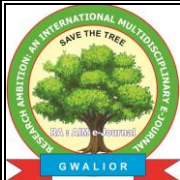
The main problems that are being faced by the transgender community are of discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities: like HIV care and hygiene, depression, hormone pill abuse, tobacco and alcohol abuse, penectomy, and problems related to marriage and adoption.

In 1994, transgender persons got the voting right but the task of issuing them voter identity cards got caught up in the male or female question. Several of them were denied cards with sexual category of their choice.

<sup>4</sup> Baluchara Mata, (Last Modified Nov 3, 2015) [https://en.wikipedia.org/wiki/Bahuchara\\_Mata](https://en.wikipedia.org/wiki/Bahuchara_Mata)

<sup>5</sup> Nazneen Akbari, *Transgenders: 10 facts on India's 'Third Gender'*, (last updated April 17, 2014) <http://www.akbarinazneen.com/?p=461>

<sup>6</sup> Thilaka Ravi, *Eunuchs - Children Of A Lesser God*, (last updated Aug 18, 2008) <http://www.medindia.net/news/interviews/Eunuchs-Children-Of-a-Lesser-God-40726-2.htm>



The other fields where this community feels neglected are inheritance of property or adoption of a child. They are often pushed to the periphery as a social outcaste and many may end up begging and dancing. This is by all means human trafficking. Sometimes running out of all options to feed themselves, they even engage themselves as sex workers for survival, disowning from families, eviction by families, running of children 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. This means many Hijras are not educated or uneducated and consequently find it difficult to get jobs. Moreover, it is hard to find people who employ Hijras/TG people. Some members of the society ridicule gender-variant people for being 'different' and they may even be hostile. Even from police, they face physical and verbal abuse, forced sex, extortion of money and materials; and arrests on false allegations. Absence of protection from police means ruffians find Hijras/TG people as easy targets for extorting money and as sexual objects.<sup>7</sup>

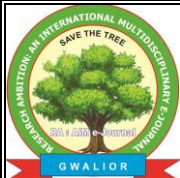
Following are the version of the transgenderl themselves with regard to the stress and stigma felt by them-

- **Laxmi Narayan Tripathy**, a Hijra, explained her trauma as growing up as a child, *“I felt different from the boys (as I was born as a boy) of my age and was feminine in my ways. On account of my femininity, from an early age, I faced repeated sexual harassment, molestation and sexual abuse, both within and outside the family. Due to my being different, I was isolated and had no one to talk to or express my feelings while I was coming to terms with my identity. I was constantly abused by everyone as a ‘chakka’ and ‘hijra’.”*

Later, she joined the hijra community in Mumbai as she identified with other Hijras and for the first time in her life, she felt at home.

- **Siddarth Narrain**, an eunuch, has similar things to say. He expresses his feelings as when, *“I was in the 10<sup>th</sup> standard when I realized that the only way for me to be comfortable was to join the hijra community. It was then that my family found out that I frequently met hijras who lived in the city. One day, when my father was away, my brother, encouraged by my mother,*

<sup>7</sup> Rights of Transgender in India, (Last Modified October 24, 2015) <http://blog.ipleaders.in/legal-rights-law-transgenders-in-india/#ixzz3xzsVi2qu>



*started beating me with a cricket bat. I locked myself in a room to escape from the beatings. My mother and brother then tried to break into the room to beat me up further. Some of my relatives intervened and brought me out of the room."*

Their stories tell the pain they suffered, how they are treated socially, their stress tells how difficult it becomes for a transgender to live in the society which doesn't even respect them or their existence.

The social status of transgender in our Indian society is still not at par with those of the other citizens. Lets ponder on the following rights and see whether they are provided to the transgender or not, which are classified here as-

1. Constitutional Rights
2. Legal Rights
3. Martial Rights
4. Parenting Rights

## 1. Constitutional rights of transgender:

Preamble to the Constitution mandates Justice - social, economic, and political, equality of status and of opportunity. Thus the first and foremost right that they are deserving of, is the right to equality under *Article 14*. *Article 15(1)* speaks about the prohibition of discrimination on the ground of religion, race, caste, sex or place of birth. *Article 21* ensures right to privacy and personal dignity to all the citizens. *Article 23* prohibits trafficking in human beings as beggars and other similar forms of forced labor and any contravention of these provisions shall be an offence punishable in accordance with law.

The Constitution provides for the fundamental right to equality, and tolerates no discrimination on the grounds of sex, caste, creed or religion. The Constitution also guarantees political rights and other benefits to every citizen. But the third community (transgender) continues to be ostracized. The Constitution affirms equality in all spheres but the moot question is whether it is being applied.<sup>8</sup>

*As per the Constitution most of the protections under the Fundamental Rights Chapter are available to all persons with some rights being restricted to only citizens. Beyond this categorization the Constitution makes no further distinction among rights holders.*

<sup>8</sup> In a lecture delivered on Refresher Course for Civil Judges (Junior Division)-I Batch at Tamil Nadu State Judicial Academy on 12.02.2011 "Rights of Transgender People – Sensitising Officers to Provide Access to Justice" by Hon'ble Mr. Justice P.Sathasivam, then Judge, Supreme Court of India



## 2. Legal rights of Transgender as The Third Gender

The Supreme Court of India in its pioneering judgment by the division bench of Justices K.S. Radhakrishnan and A.K. Sikri in *National Legal Services Authority v. Union of India & Ors*<sup>9</sup> recognized the third gender along with the male and female. By recognizing diverse gender identities, the Court has busted the dual gender structure of 'man' and 'woman' which is recognized by the society.

“Recognition of Transgender as a third gender is not a social or medical issue but a human rights issue,” Justice K.S. Radhakrishnan told the Supreme Court while handing down the ruling.

The right of equality before law and equal protection of law is guaranteed under Article 14 and 21 of the Constitution. The right to chose one's gender identity is an essential part to lead a life with dignity which again falls under the ambit of Article 21. Determining the right to personal freedom and self determination, the Court observed that “the gender to which a person belongs is to be determined by the person concerned.” The Court has given the people of India the right to gender identity.

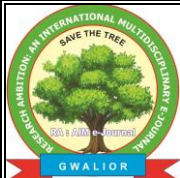
Further, they cannot be discriminated against on the ground of gender as it is violative of Articles 14, 15, 16 and 21.

The Court also protects one's gender expression invoked by Article 19 (1) (a) and held that “no restriction can be placed on one's personal appearance or choice of dressing subject to the restrictions contained in article 19(2) of the Constitution”.

The Court further noted that a person will not realize his dignity if he is forced to mature in a gender to which he does not belong to or he cannot relate to which will again hinder in his development. The Supreme Court has given certain directions for the protection of the rights of the transgender persons by including of a third category in documents like the election card, passport, driving license and ration card, and for admission in educational institutions, hospitals, amongst others.

<sup>9</sup> WP (Civil) No.400 of 2012





## Directions to the Central and State Government

This judgment covers persons who want to identify with the third gender as well as persons who want to transition from one identity to another, i.e. to male to female or vice versa. The Court has directed Centre and State Governments to grant legal recognition of gender identity whether it be male, female or third gender.

- **Legal Recognition for Third Gender:** In recognizing the third gender category, the Court ruled that fundamental rights are available to the third gender in the same manner as they are to males and females.

- **Legal Recognition for people transitioning within male/female binary:** As for how the actual procedure of recognition will happen, the Court merely states that they prefer to follow the psyche of the person and use the 'Psychological Test' as opposed to the 'Biological Test'. They also declare that insisting on Sex Reassignment Surgery (SRS) as a condition for changing one's gender is illegal.

- **Public Health and Sanitation:** Centre and State Governments have been directed to take proper measures to provide medical care to transgender in the hospitals and also provide them separate public toilets and other facilities. Further, they have been directed to operate separate HIV/ Sero-surveillance measures for Transgender.

- **Socio-Economic Rights:** Centre and State Governments have been asked to provide the community various social welfare schemes and to treat the community as socially and economically backward classes. They have also been asked to extend reservation in educational institutions and for public appointments.

- **Stigma and Public Awareness:** These are the broadest directions - Centre and State Governments are asked to take steps to create public awareness so that Transgender people will feel that they are also part and parcel of the social life.

I. **Challenging 377:** The judgment contradicts the findings of the Supreme Court in Suresh Kumar Koushal<sup>10</sup> in various ways. The main points include:  
The judgment notes that Section 377 Indian Penal Code 1860, though associated with specific

<sup>10</sup> Civil Appeal No. 10972 of 2013



sexual acts, highlighted certain identities, including Hijras. It also recognizes that sec 377; Indian Penal Code 1860 has been used as an instrument of harassment and physical abuse against Hijras and transgender persons. The judgment only says that this amounts to a misuse of the Section as opposed to what it actually dictates, thus refusing to meaningfully apply a fundamental rights analysis to it. Now we have a clearly contradictory finding.

- II. It argues against Koushal's infamous 'miniscule minority' argument noting that Transgender, even though insignificant in numbers, are still human beings and therefore they have every right to enjoy their human rights.
- III. The Court finds that discrimination on grounds of sexual orientation and gender identity violates Article 14, and that transgender are extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail, also by the police. If we are to read this with their finding that section 377<sup>11</sup> is used to harass and physically abuse transgender persons, we can clearly make the link that section 377 fails the test of equality under the Constitution.

### Inclusion of Right of Transgender Persons Bill, 2014

The Bill was introduced in Rajya Sabha on 12<sup>th</sup> December, 2014 which is passed on 24<sup>th</sup> April, 2015 unanimously, with cross-party support. This was a private member's bill introduced by the MP from Tamil Nadu, Tiruchi Siva. 24<sup>th</sup> April is celebrated as Transgender day following the passage of the Bill in the Rajya Sabha.

The rights guaranteed under the Bill are mostly *substantive rights* such as the right to equality and non-discrimination, life and personal liberty, free speech, to live in a community, integrity, along with protection from torture or cruelty and abuse, violence and exploitation.

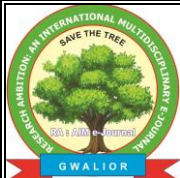
### 3. Marital rights

It has been explicitly accepted that family is the fundamental group of society and the natural environment for the growth and well-being of all its members.<sup>12</sup> The right of recognition in the society includes the right to have a family. Universal Declaration of Human Rights states that men and women of full age, without any limitation due to race, nationality or religion, have the right to

<sup>11</sup> Indian Penal Code 1860

<sup>12</sup> UN General Assembly, Convention on the rights of the child, 20 November 1989, United Nations, Treaty Series Vol. 1577, p.3, available at: <http://www.unhr.org/refworld/docid/3ae6b38f0.html>





marry and found a family.<sup>13</sup> Undoubtedly the right shall be available to transgender community. Transgender marriage occurs when a change of gender identity is judicially recognized in context of marriage. Since marriage in the majority of jurisdiction is defined in terms of opposite sex partner, courts ask whether an individual is men or women for the purpose of the marriage statute. What does it mean to be a male or female?<sup>14</sup>

Since India has now recognized the transgender as the third gender, it now calls for recognizing the right of marriage to the third gender in order to pave a way for equality and advancement of the group as a whole.

The Universal Declaration of Human Rights,<sup>15</sup> to which India is a signatory, also accepts this right under Article 16 but still there is a great lack of consistency in this regard all over the world. Some courts reject the notion that a person can be legally recognized in a new sex for the purpose of marriage, even if that person has been recognized in the new sex for other purposes. Other courts apply various tests of sexual functionality or physical appearance because of the medical risk involved in surgical construction of male genitalia. Physical appearance tests are significantly harder for transgender men to meet than transgender women.

Transgender marriage cases are dominated by the 1970 British decision on *Corbett v. Corbett*.<sup>16</sup> In some sense, all transgender marriage cases are either an extension of Corbett reasoning or a reaction to it.<sup>17</sup> *In the concerned case, transgender marriage was annulled because it could not be consummated and marriage is generally understood as a relationship with the ability to procreate.*

However later in 1976 *MT Vs. JT*,<sup>18</sup> the Superior Court of New Jersey, (USA), marked a significant departure from Corbett. In reaching this conclusion, the court explained that it has a different understanding of sex and gender. One's self image, the deep psychological or emotional sense of sexual identity and character. Indeed it has been observed that "psychological sex of an

<sup>13</sup> Universal Declaration Of Human rights, G.A. res. 217A (III), U.N.Doc A/810 at 71(1948), Article 16 (1).

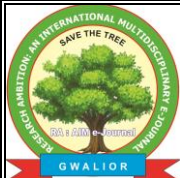
<sup>14</sup> David B. Cruz, *Getting Sex "Right"- the Heteronormativity and Biologism in Trans and intersex Marriage Litigation and Scholarship*, 18 Duke Journal Gender Law and Policy 203 (Fall 2010).

<sup>15</sup> UDHR, available at <<http://www.un.org/en/documents/udhr/>>

<sup>16</sup> *Corbett Vs Corbett* [1970], 2 All ER 33

<sup>17</sup> Andrew N. Sharpe, *From Functionality to Aesthetics: the Architecture Of Transgender Jurisprudence*, 8 Murdoch University Electronic Journal of Law (March 2011)

<sup>18</sup> *MT.Vs. JT*, Superior Court of New Jersey, Appellate Division, United nations (22 March, 1976)



individual,” while not serviceable for all purposes, is “practical, realistic and humane.” Thus, there was a shift in understanding of ‘sex’ from biological to psychological and emotional aspect. It was the first case where the court held that post-operative transsexual people could marry in their post-operative sex. One commentator has described the relationship between Corbett and *MT Vs. JT* as the journey from “biologic to functionality”.<sup>19</sup>

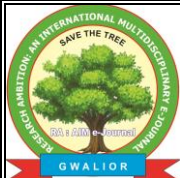
Markedly, different reasoning has evidenced by the US Board of immigration appeals In Re *Jose Mauricio Lovo-Lara*.<sup>20</sup> Here the marriage was held to be valid since the transsexual party got the legal recognition with regard to her sex by altering the sex on the birth certificate.

Taking this judgment into consideration it can be inferred that if a transgender is legally recognized as a sex, their marital relationship also holds validity. In India, the Hindu Marriage Act, 1955, Section 5 provides conditions for marriage. However the act does not provide any definition of ‘marriage’ and also does not deal with any eligibility with regard to ‘sex’ of the person concerned. Thus, it gives rise to numerous confusions if we go for the literal interpretation of this section of the Hindu Marriage Act, it does not prescribe any prohibition on the ground of consummation of marriage, so that transsexuals who are unable to consummate marriage maybe ineligible to marry. The only expression to concern occurring in the section 5 is “*suffering from mental disorder of such kind or to such an extent as to be unfit for marriage and procreation of children*”. But it is with regard to mental disorder, which is making a person to be unfit for marriage and the procreation of children and in no way we can term transsexuals as illness, much less mental disorder. However, on ground of non-consummation of marriage, it is voidable at the option of either spouse, but does not make a marriage void ab initio. The word ‘impotency’ has not been defined in Hindu Marriage Act, 1955. But it is a ground to avoid a marriage if it is established that at the time of marriage either of the spouses was incapable of effecting the consummation due to structural defect in the organs of generation rendering complete sexual intercourse impracticable or due to some other cause.<sup>21</sup>

<sup>19</sup> Sharpe, ‘From Functionality to Aesthetics: the Architecture Of Transgender Jurisprudence, 8 Murdoch University Electronic Journal of Law (March 2011)

<sup>20</sup> 23 I & N dec.746 (BIA 2005)

<sup>21</sup> M. V. Rao Vs. M.U. Sai Durga, 2001 (6) ALD 278.



The Supreme Court has determined in Mr. 'X' Vs. Hospital 'Z'<sup>22</sup> that right to marry is not an absolute right and it can be curtailed in certain circumstances though he deserves full sympathy and equal treatment in all walks of life. This limitation imposed by the apex court should not be understood as a constraint on recognition of same sex marriage.

Notwithstanding, the ratio will be binding as a precedent of the court, the fundamental considerations and factual situations are different in matter of transsexuals and transgender. In the instant case, Supreme court was morally obliged to restrain the right to marry in the interest of the other spouse and further in any marriage other party has right to information regarding the health and well being of his or her prospective spouse. While in the case of transsexuals, if the marriage is consensual and parties are major they are eligible to take reasonable decisions regarding marriage and other matters, then it is difficult to see why courts should not recognize same sex marriages.

In *Lata Singh Vs. State of U.P and Anr.*,<sup>23</sup> the following observations and directions by the court is relevant: *"This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes."* If the parents are against such marriage then can cut off all relations with their children but they can't use unlawful means to force them otherwise.

Thus in the light of direction in Lata Singh's case, it is the duty of all persons if the administration/ police authorities throughout the country that if any transsexual or transgender undergoes same sex marriage, their marital life should not be disturbed or harassed and if anyone gives such threats or commits acts of violence or instigates, it is the responsibility of the officers concerned to take stern actions against such persons as provided by law.

#### 4. Parenting Rights

In one of the first U.S. cases to recognize the second parent adoption decided in 1993, the Supreme Court of Vermont stated: "Our paramount concern should be with the effect of our laws on the reality of children's lives. It is not the courts that have engendered the diverse composition of today's family. It is the advancement of reproductive technologies and society's recognition of alternative lifestyles that have produced families in which a biological, and therefore a legal,

<sup>22</sup> AIR 1999 SC 495, JT 1998 (7) SC 626, 1998(6) SCALE 230.

<sup>23</sup> (2006) 5 SCC 475



connection is no longer the soul organizing principle... we are not called upon to approve or disapprove the relationship between the appellants. Whether we do or not the fact remains that Debora has acted as a parent of B.L.V.B and E.L.V.B from the moment they were born. To deny any legal protection of their relationship, as a matter of law is inconsistent with the children's best interest and therefore with the public policy of this state.<sup>24</sup>

As a number of decisions make explicit, the guiding principle is, or should be, the best interest of the child, as reflected in both the Convention on the Rights of The Child and domestic law. How that principle is applied in practice is a function of changing perceptions about sexual orientation, its relevance to child rearing, and the recognition that same sex families exist.

Indian laws under section 13 of Hindu Minority and Guardianship Act, 1965 also provides for welfare of minor to be paramount consideration during conclusion of custody or adoption. Hon'ble Apex Court in the case of *Rosy Jacob Vs. Jacob A. Chakramakka*<sup>25</sup> has held that paramount consideration governing the custody of the children is the welfare of the children and not the right of their parents which has remained common in all decisions.<sup>26</sup>

Recently, the *Naz Foundation Vs. Government of NCT of Delhi*<sup>27</sup> did not address marriage. But in explicitly describing the worth of same sex relationship, the court captured more precisely its value of intimacy outside the confines of the home. This observation may suggest that Naz Foundation offers broader protection to same sex intimacy by extending this protection to public spaces with potentially dramatic effects on sexual minorities in India.

The judgment of Supreme Court of India in Naz Foundation case has clearly disestablished the binary classification of men and women relationship and the definition of "normal". But till now same sex or transgender marriages have not been expressly legalized. In the present situation the court should interpret the law with an emotional and humane approach rather than following the rigid and age-old principles. Finally in order to prevent any form of discrimination a pragmatic

<sup>24</sup> In re adoption of BLVB, supreme Court of Vermont, 18 June, 1993, p.at p.376

<sup>25</sup> 1973 AIR 2090, 1973 SCR (3) 918.

<sup>26</sup> Ruchirkumar Gajanandbhai Suthar Vs. Amitaben D/O Hashmukhlal, decided on 5<sup>th</sup> December, 2006. Available at <http://www.indiankanoon.org/doc/512209/>

<sup>27</sup> WP(C) No.7455/2001 (2<sup>nd</sup> July, 2009), 160 Delhi Law Times 277.



comprehensive law should be enacted so that they get acknowledged and secured both really as well as socially.

## Changing trends in Transgenderism

Having determined so much a notion is raised that even after no explicit expression of rights of transgender it has been inferred that after the judgment of NALSA case there would be statutory development for the advancement of transgender. It has been a major step recognizing the transgender as 'the third gender'. So many rights are still to be provided to them through the RIGHT OF TRANSGENDER PERSONS BILL, 2014 which is still to be passed by the lower house. But there have been significant changes with regard to transgender which India is witnessing in the present times. Some major changes highlighted in India in the recent past are as follows:

1. Recently in the year 2016, India has got its first transgender band named as six pack bands composed of the six singers Asha Jagtap, Bhavika Patil, Chandni Suvarnakar, Fida Khan, Komal Jagtap and Ravina Jagtap.<sup>28</sup>
2. The world got its first transgender college principal when Manabi Bandopadhyay took charge of Krishnagar Women's College in West Bengal on June 9, 2015.
3. On 15<sup>th</sup> August, 2014, occasion of its 68th Independence Day, India freed itself from another kind of gender bias when Padmini Prakash became the first transgender television news anchor in the country.
4. Shabnam "Mausi" Bano is the first transgender Indian or Hijra to be elected to public office. She was an elected member of the Madhya Pradesh State Legislative Assembly from 1998 to 2003.
5. Kalki Subramaniam has become India's first transgender entrepreneur.
6. In 2009, India hosted its first transgender beauty pageant. 120 hopefuls from across the country battled it out to become the first transgender 'Miss India'. Winner was the Miss India Transgender pageant Karina Shalini from Mumbai, runner ups were from Manipur and Tamilnadu.

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<sup>28</sup> India's first transgender band, <http://indiatoday.intoday.in/education/story/6-indian-transgenders-who-dared-to-make-a-difference/1/440778.html>



## Conclusion

## Recommendations

### 1. Legal Measures:

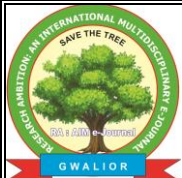
- a. The word 'rape' in Section 375 of Indian Penal Code (IPC) should include all sexual crimes against women, men, children and transsexuals/eunuchs, as eunuchs are often the targets of some of the worst sex crimes, more so, if they happened to be sex workers. It has, therefore, been recommended to direct appropriate modification/interpretation of section 375 to include transsexuals and eunuchs in the definition of the term 'rape'.
- b. Eunuchs are forced by their 'gurus' to lead a life of servitude and bonded labourers. A prayer has been made to ensure that the condition of eunuchs living as bonded labour be ended forthwith under the provisions of the Bonded Labour System (Abolition) Act, 1976.<sup>29</sup>
- c. There should be a special legal protection against this form of discrimination inflicted by both state and civil society which is very akin to the offence of practicing untouchability.
- d. The Immoral Trafficking Prevention Act, 1956, as has been pointed out earlier, is used less for 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.

### 2. Police Reforms

- a. 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 kothis and hijras in public areas and police stations, and the guilty policeman be immediately punished.
- b. The police administration should adopt transparency in their dealings with hijras and kothis; make available all information relating to procedures and penalties used in detaining kothis and hijras in public places.
- c. Protection and safety should be ensured for hijras and kothis 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.

<sup>29</sup>Salvation of Oppressed Eunuchs (Petitioner), PIL No. 1 of 2012





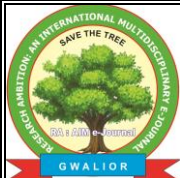
- d. The police at all levels should undergo sensitization workshops by human rights groups/queer groups in order to break down their social prejudices and to train them to accord hijras and kothis the same courteous and humane treatment as they should towards the general public.

### 3. Other Measures

- a. Awareness programmes and workshops should be conducted by public authorities at the places where the Hijra community resides. They should be made aware of the recent legal developments which have been taken in their interest.
- b. Vocational training centers should be established for giving the transgender new occupational opportunities.

### References

1. *The World's First Transsexual Man* Available at: <http://www.gendercentre.org.au/resources/polare-archive/archived-articles/the-worlds-first-transsexual-man.htm>
2. Kristina Mayhem, *The Hijras –Transgenderism In India*, <http://kristinamayhem.blogspot.in/p/the-hijras-transgenderism-in-india-man.html>
3. Baluchara Mata, (Last Modified Nov 3, 2015) [https://en.wikipedia.org/wiki/Bahuchara\\_Mata](https://en.wikipedia.org/wiki/Bahuchara_Mata)
4. Nazneen Akbari, *Transgenders: 10 facts on India's 'Third Gender'*, (last updated April 17, 2014) <http://www.akbarinazneen.com/?p=461>
5. Thilaka Ravi, *Eunuchs - Children Of A Lesser God*, (last updated Aug 18, 2008) <http://www.medindia.net/news/interviews/Eunuchs-Children-Of-a-Lesser-God-40726-2.htm>
6. *Rights of Transgender in India*, (Last Modified October 24, 2015) <http://blog.ipleaders.in/legal-rights-law-transgenders-in-india/#ixzz3xzsVi2qu>
7. In a lecture delivered on Refresher Course for Civil Judges (Junior Division)-I Batch at Tamil Nadu State Judicial Academy on 12.02.2011 "Rights of Transgender People – Sensitising Officers to Provide Access to Justice" by Hon'ble Mr. Justice P.Sathasivam, then Judge, Supreme Court of India.
8. *National Legal Services Authority v. Union of India & Ors*, WP (Civil) No.400 of 2012
9. *Suresh Kumar Koushal case* Civil Appeal No. 10972 of 2013
10. Section 377, Indian Penal Code 1860
11. UN General Assembly, Convention on the rights of the child, 20 November 1989, United Nations, Treaty Series Vol. 1577, p.3, available at: <http://www.unhr.org/refworld/docid/3ae6b38f0.html>
12. Universal Declaration of Human rights, G.A. res. 217A (III), U.N.Doc A/810 at 71(1948), Article 16 (1).
13. David B. Cruz, *Getting Sex "Right"- the Heteronormativity and Biologism in Trans and intersex Marriage Litigation and Scholarship*, 18 Duke Journal Gender Law and Policy 203 (Fall 2010).
14. UDHR, Available at <<http://www.un.org/en/documents/udhr/>>
15. *Corbett Vs Corbett* [1970], 2 All ER 33
16. Andrew N. Sharpe, From Functionality to Aesthetics: the Architecture Of Transgender Jurisprudence, 8 Murdoch University Electronic Journal of Law (March 2011)
17. *MT.Vs. JT*, Superior Court of New Jersey, Appellate Division, United nations (22 March,1976)
18. Sharpe, 'From Functionality to Aesthetics: the Architecture Of Transgender Jurisprudence, 8 Murdoch University Electronic Journal of Law (March 2011)
19. *Jose Mauricio Lovo-Lara Case* 23 I & N dec.746 (BIA 2005)
20. *M. V. Rao Vs. M.U. Sai Durga*, 2001 (6) ALD 278.
21. *Mr. 'X' Vs. Hospital 'Z'* AIR 1999 SC 495, JT 1998 (7) SC 626, 1998(6) SCALE 230



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22. *Lata Singh Vs. State of U.P and Anr* (2006) 5 SCC 475
23. *In re adoption of BLVB*, supreme Court of Vermont, 18 June, 1993, p.at p.376
24. *Rosy Jacob Vs. Jacob A. Chakramakka* 1973 AIR 2090, 1973 SCR (3) 918.
25. *Ruchirkumar Gajanandbhai Suthar Vs. Amitaben D/O Hashmukhlal*, decided on 5<sup>th</sup> December, 2006.  
Available at <http://www.indiankanoon.org/doc/512209/>
26. *Naz Foundation Vs. Government of NCT of Delhi* WP(C) No.7455/2001 (2<sup>nd</sup> July, 2009), 160 Delhi Law Times 277.
27. India's first transgender band, <http://indiatoday.intoday.in/education/story/6-indian-transgenders-who-dared-to-make-a-difference/1/440778.html>
28. Salvation of Oppressed Eunuchs (Petitioner), PIL No. 1 of 2012