

The Status of Third Gender in Progressive India

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Abstract: For any person fundamental rights are of utmost importance, he holds on to them dearly and any abridgement of these rights is treated with extreme severity and our constitution and courts come to his rescue, they can be considered to be sacrosanct. The LGBT community has always been met with a certain prejudice, be it from society and in some scenarios the law enforcement agencies. Although in recent years there has been a progressive shift in the manner that we treat LGBT community, for instance the act of granting them recognition as the third gender, but it would be difficult to say that the situation is in any way ideal. This article aims to study and understand the conditions of life of the LGBT community while weighing in all the constitutional safeguards that are guaranteed to a person on account of being a citizen of India and answering the ever present conundrum that what have we as a democracy done for the LGBT community especially in reference to right to equality and have we delivered them a life with dignity?.

Keywords: LGBT, Right to Equality, Recognition & Dignity

1. Introduction

The existence of transgender in India is not a new idea or occurrence it has been present for ages. People we might consider transgender have existed across societies for as long as they themselves have existed, but in South Asia they have formed distinct communities with histories and mythologies that go back hundreds, if not thousands, of years. Age-old texts such as the "Mahabharata" and the "Kama Sutra" refer to eunuchs, and there are tales of gods — even the most powerful of them — who change genders on a whim.¹ In common parlance people transgender are not referred to as transgender and terms such as "hijra," "kothi," "kinnar," "shiv-shakti" and "aravani" are more common, depending on which region of the country one is in. Of those, hijra is the most common and has a meaning similar to kinnar and aravani, the latter of which is used exclusively in Tamil Nadu, a southern state, and the former across the north of the country.² These people, the transgender of India are assigned gender neutral roles wherein the only means of livelihood seems to be by dancing on occasions and giving ashirwaad³ on occasions, in this setup where the transgender

have not many options given by the society this article attempts to understand the hardships and the challenges that they face being what they are i.e. transgender and living in a country like India wherein their problems are not main stream, for lack of a better word, and the general consensus seems to be that that is what they (transgender) are supposed to do. This paper shall also look into case of NALSA v.

of fertility on newborn males and on newlyweds. But the *hijras* are not merely ordinary, impotent men . As ritual performers, they are viewed as vehicles of the divine power of the Mother Goddess, which transforms their impotence into the power of generativity. It is this power , which is displayed in the shameless , aggressive feminine sexuality of the *hijras*' performance, that legitimates, even demands, their presence on such occasions . The faith in the powers of the *hijras* rests on the Hindu belief in shakti—the potency of the dynamic female forces of creation that the *hijras* , as vehicles of the Mother Goddess, represent. The *hijras* are also identified with the creative power of ascetics, particularly with Shiva, who simultaneously, and paradoxically, contains the power of both the erotic and the ascetic .

See also Akhil Kang & Dipankar Krishna Das, *Indian Hijras lost in Space – Lack of Voice in mainstream LGBT and Queer movement* 3(1) NLUJ Law Review 65(2015) - *Hijras*, since the pre-British era had the right to beg as a legitimate *vatan* (hereditary right) and they had held documents to prove this right recognized by the king. This recognition was justified not by virtue of their being male or female or male impersonating as female but by virtue of these *hijras* belonging to the community. The beginning of institutional marginalization from the advent of colonialism can still be seen today. The discrimination and violence against the queer and trans community has been normalized to such an extent in India that even human rights groups generally shy away from collaborating with queer rights.

¹ [Max Bearak](https://www.washingtonpost.com/news/worldviews/wp/2016/04/23/why-terms-like-transgender-dont-work-for-indias-third-gender-communities/), *Why terms like 'transgender' don't work for India's 'third-gender' Communities*, THE WASHINGTON POST, 23.04.2016 available at <https://www.washingtonpost.com/news/worldviews/wp/2016/04/23/why-terms-like-transgender-dont-work-for-indias-third-gender-communities/>, accessed on 09.11.2016 at 12:00 pm

² Ibid

³ See SERENA NANDA, *NEITHER MAN NOR WOMAN THE HIJRAS OF INDIA* 5(Wadsworth Publishing Company, 2nd Ed.) "The *hijras*, impotent and emasculated men, have this traditional ritual role of conferring blessings

Union of India vide which the Supreme Court of India finally gave recognition to transgender as the third gender⁴ and analyze Section 377 of Indian Penal Code of 1860, its applications and the legal battle related to its validity and the manner all of this has affected their lives. The paper seeks to understand the position and the status of the transgender in Indian society and as a nation.

2. Is your sexuality your offence!

Elephants do it, penguins do it, even butterflies do it. Ancient Greeks practiced it freely, as did ancient Indians. Current estimates of the occurrence of exclusive homosexuality range from one to twenty percent of the population.⁵ The aforementioned facts might seem to be related to just homosexuals but it takes into its folds transgender. Transgender are people that don't fit into gender specific roles of man and a woman, despite popular belief they do not identify as a woman. In 2014, the Supreme Court ruled that "it is the right of every human being to choose their gender,"⁶ granting legal sanctity to a gender classification that is neither male nor female, but a neutral third category⁷. Whenever we refer to the third gender it is imperative to understand the psyche of the masses which adheres to the belief any sexuality that negates any sexual activity is 'non-productive' of male semen. It penalizes homosexual men for the loss of the semen, which holds the seed for reproduction. The existence of Section 377, consensual homosexuality, discarded the legal notion of privacy held sacred when it comes to marriage. This is what Martha Nussbaum argues when she says that there exists a fear of the erosion of traditional distinctions and boundaries. Fear of a type of female sexuality that is unavailable to men, fear of a type of male sexuality that is receptive rather than assertive.⁸ This belief that the union between two individuals is for the purpose of recreation and celebrates the socially acceptable traditional gender roles wherein the female bears a child for man leaves no room for transgender and their sexuality. Transpersons get caught up in this oppressive societal gender as well as sexual expectations. Gender which psychologically maleness and femaleness,

gets represented legally to be immutable through time and space and be equated with sex.⁹

Moving on to the recent case law that brought into focus an important aspect of the life of the transgender, is Naz Foundation v. Govt. of NCT of Delhi and others¹⁰, this case dealt with the validity of penal provision Section 377 IPC which criminalizes sex other than heterosexual penile-vaginal. Although transgender or *Hijras* are considered to be asexual because of their inability to reproduce but there are evidences that they engage in homosexuality¹¹ and in certain cases have to resort to prostitution. In these circumstances, taking into consideration the last resort to prostitution, any attempt at entering into sexual relations would not be traditional heterosexual sex but would be outside the limits of the any sex for procreation. Section 377 criminalizes any sexual conduct that is against the order of nature¹².

The case is one where the petitioner NGO Naz Foundation had filed a Public Interest Litigation to challenge the constitutional validity of Section 377 of the Indian Penal Code, 1860 (IPC), which criminally penalizes what is described as "unnatural offences", to the extent the said provision criminalises consensual sexual acts between adults in private.¹³ The petitioner brought the action to bring to light the impact that enforcement of Section 377 IPC against the members of LGBT community was severely impairing

⁹ Supra Note 4 at 72.

¹⁰ (2009) 160 DLT 277

¹¹ Serena Nanda, *The Hijras of India: Cultural and Individual Dimensions of an Institutionalized Third Gender Role* 11 Journal of Homosexuality (1986) available at http://anthro.vancouver.wsu.edu/media/Course_files/anth-303-clare-wilkinson-weber/chapter-12-the-hijras-of-india.pdf at 2, "The extant literature on the *hijras* is scant, confusing, misleading, contradictory, and judgmental. With few exceptions (Salunkhe, 1976; Sinha, 1967) it lacks a basis in fieldwork or intensive interviewing. A major dispute in that literature has been whether or not the *hijra* role encompasses homosexuality. In my view, the essential cultural aspect of the *hijra* role is its asexual nature. Yet, empirical evidence also indicates that many *hijras* do engage in homosexual activity. This difference between the cultural ideal and the real behaviour causes a certain amount of conflict within the community". See also Supra Note 4 at 10 "There is absolutely no question that at least some *hijras*—perhaps even the majority—are homosexual prostitutes. Sinha's (1967) study of *hijras* in Lucknow, in North India, acknowledges the *hijra* role as performers, but views the major motivation for recruitment to the *hijra* community as the satisfaction of the individual's homosexual urges, a satisfaction related to their engaging in prostitution.... So in Orissa, too, *hijras* are both performers and prostitutes."

¹² S. 377 Indian Penal Code 1860

¹³ Supra Note 11

⁴ National Legal Services Authority v. Union of India and Others (2014) 5 SCC 438.

⁵ Shamnad Basheer et al, *Section 377 And The 'Order Of Nature': Nurturing 'Indeterminacy' In The Law?*, 2 NUJS L. Rev. 433,434 (2009).

⁶ Supra note 5.

⁷Shahnoor Servai, *India's Third Gender*, GUERNICA 16th march 2016 available at <https://www.guernicamag.com/interviews/indias-third-gender/> accessed on 09.11.2016 at 02:30 pm.

⁸ Rukmini Sen, *Breaking Silences, Celebrating New Spaces: Mapping Elite Responses to the 'Inclusive' Judgment* 2 NUJS L. REV. 481, 482 (2009).

the efforts made by them for prevention of the disease of HIV/AIDS owing to the discriminatory attitudes exhibited by state agencies.¹⁴

The major issue that came up for consideration in this case was whether the government can have any say about and criminalize any sexual activity that was in contravention of its prescribed law scheme even if the same happened within the confines of a private place between two consenting adults, who at all times by virtue of being citizens have the right to life and thus the right to life envisaged in it. While contesting the matter the petitioner argued that the relevant Section creates an atmosphere of fear for the people who engage in sexual activities provided under the provision for instance same sex desires and its continuance creates and fosters a climate of wherein the law enforcement authorities can abuse their power to harass and violate the rights of all the people that are affected by the statute including transgender.¹⁵ The Delhi High Court while declaring the said provision i.e. section 377 as it criminalises consensual sexual acts of adults in private and, is violative of Articles 21, 14 and 15 of the Constitution made an observation that "The sexual orientation and gender identity - related human rights legal doctrine can be categorised as follows: (a) non-discrimination; (b) protection of private rights; and (c) the ensuring of special general human rights protection to all, regardless of sexual orientation or gender identity"..... "The sphere of privacy allows persons to develop human relations without interference from the outside community or from the

State. The exercise of autonomy enables an individual to attain fulfillment, grow in self-esteem, build relationships of his or her choice and fulfill all legitimate goals that he or she may set. In the Indian Constitution, the right to live with dignity and the right of privacy both are recognised as dimensions of Article 21. Section 377 IPC denies a person's dignity and criminalises his or her core identity solely on account of his or her sexuality and thus violates Article 21 of the Constitution. As it stands, Section 377 IPC denies a gay person a right to full personhood which is implicit in notion of life under Article 21 of the Constitution."¹⁶

This decision was welcomed by the transgender, as it in addition to declaring unlawful an archaic and intolerant law, it for the very first time observed that a person cannot be denied his identity in the society merely based on his sexuality and that people belonging to the transgender community are as much entitled to their fundamental rights as everyone else. Even though the Supreme Court in the 2013 appeal¹⁷ set aside the order passed by the High Court and restored the validity of Section 377 but even then the decision would pave way for a better tomorrow for the transgender as, at the very least the problems faced by the LGBT community were brought to the forefront and addressed. In a recent development in the case, Supreme Court has agreed to hear a curative petition against its own decision as it had questions of importance to the public especially with respect right to privacy and dignity and thus the cause has once again become alive and the members of LGBT community are hopeful.¹⁸

¹⁴ Ibid

¹⁵ See Supra note 11 at 19 Reference of 'Bangalore incident, 2004' was given that had instances of custodial torture of LGBT persons. The victim of the torture was a hijra (eunuch) from Bangalore, who was at a public place dressed in female clothing. The person was subjected to gang rape, forced to have oral and anal sex by a group of hooligans. He was later taken to police station where he was stripped naked, handcuffed to the window, grossly abused and tortured merely because of his sexual identity. Another occurrence, "In an instance referred to as "Lucknow incident - 2002" in the report titled 'Epidemic of Abuse : Police Harassment of HIV/AIDS Outreach Workers in India' published by Human Rights Watch, the police during investigation of a complaint under Section 377 IPC picked up some information about a local NGO (Bharosa Trust) working in the area of HIV/AIDS prevention and sexual health amongst MSMs raided its office, seized safe sex advocacy and information material and arrested four health care workers. Even in absence of any prima facie proof linking them to the reported crime under Section 377 IPC, a prosecution was launched against the said health care workers on charges that included Section 292 IPC treating the educational literature as obscene material. The health workers remained in custody for 47 days only because Section 377 IPC is a non-bailable offence.

¹⁶ Supra Note 11 para 48

¹⁷ *Suresh Kumar Koushal and another v. Naz Foundation and Others* [(2014) 1 SCC 1]

¹⁸ Krishna Das RajGopala, *Five-judge Constitution Bench to take a call on Section 377* THE HINDU available at <http://www.thehindu.com/news/national/supreme-court-refers-plea-against-section-377-to-5judge-bench/article8183860.ece> accessed at 10.11.2016 at 09:45 am - The Supreme Court on Tuesday referred a batch of curative petitions against Section 377 of the Indian Penal Code, a colonial-era provision criminalising consensual sexual acts of Lesbian, Gay, Bisexual and Transgender (LGBT) adults in private, to a five-judge Constitution Bench for a possible back-to-roots, in-depth hearing. A three-judge Bench of Chief Justice of India T.S. Thakur and Justices Anil R. Dave and J.S. Khehar gave credence to arguments that the threat imposed by the provision amounts to denial of the rights to privacy and dignity and results in gross miscarriage of justice. Chief Justice Thakur said the petitions pose several questions with "constitutional dimensions of importance" while dictating the order of reference to a Constitution Bench he would be setting up shortly. This Bench neither admitted the petitions nor issued notice to the government, leaving it to the future Constitution Bench to do so, if found necessary. Rebellious against its own procedural

One of the positive impact of the aforementioned decision is that there was an unprecedented increase recorded in the number of persons from the LGBT community coming up for treatment of HIV/AIDS as compared to the time before this decision, when the fear of coming out to the authorities due to fear of penalization would force them to live with the diseases without any help.¹⁹

3. Recognition of third gender:

It was in the year 2014 that an epoch making judgment²⁰ was passed by the Supreme Court of India by which a legal recognition was given to transgender as the third gender. Before the passing of this judgment the members of the transgender community had no option but to identify themselves as women or men, gender roles they clearly did not opt for or a gender role they do not relate to

conventions in dealing with curative pleas, the Supreme Court indicated its openness to re-consider the constitutionality of Section 377 with new eyes. Chief Justice Thakur told senior advocate Anand Grover, appearing for petitioner Naz Foundation, that the new Bench may not limit itself to the narrow confines of the curative law — the Curative Bench will only entertain if petitioners prove that its review verdict violated principles of natural justice and the judges were biased — and opt for a comprehensive hearing of the arguments placed for the protection of the dignity and rights of the LGBT community.

¹⁹ See Dipika Jain & Kimberly Rhoten, *The Heteronormative State And The Right To Health In India* 6 NUJS L. Rev. 4 628 (2013) The United Nations AIDS organization ('UNAIDS') released a press statement post the Indian Supreme Court decision, calling on India (and other countries) to repeal all laws criminalizing adult consensual same-sex conduct on the basis that such criminalization hampers efforts to reduce and treat HIV/ AIDS. According to the press statement, treatment sites providing HIV/AIDS services for men who have sex with men ('MSM') and transgender persons increased by more than 50% during the four years following the Delhi High Court judgment decriminalizing adult private same sex intercourse. Such evidence lends credence to the central argument set forth by the petitioners in *Naz Foundation v. Govt. of NCT of Delhi* ('Naz Foundation') that § 377 interfered with efforts to curtail the spread of HIV/AIDS in India. UNAIDS expressed concern regarding HIV/AIDS prevention and treatment in direct response to the Supreme Court's decision to reinstitute § 377. According to UNAIDS, provisions such as § 377 "make it more difficult to deliver HIV prevention and treatment services to high risk groups such as MSM". Criminalizing same sex conduct reinforces the stigmatization of lesbian gay bisexual and transgender ('LGBT') and MSM persons and leaves them vulnerable to harassment, violence and bodily harm. The fear of harassment impedes access for LGBT and MSM persons to basic information and services on health.

²⁰ Supra Note 11

psychologically. The court stated that the instant case is one that is concerned with the grievances of the members of Transgender Community (for short 'TG community') who seek a legal declaration of their gender identity than the one assigned to them, male or female, at the time of birth and their prayer is that non-recognition of their gender identity violates Articles 14 and 21 of the Constitution of India. *Hijras/Eunuchs*, who also fall in that group, claim legal status as a third gender with all legal and constitutional protection.²¹ While hearing this case, the life stories and injustice that had happened to a lot of eunuchs was considered by the court and one such eunuch Laxmi Narayan Tripathy and while recognizing transgender as the third gender and upholding their right to decide their self-identified gender, it was observed by the court that "Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms. Gender identity, therefore, refers to an individual's self-identification as a man, woman, transgender or other identified category."²² It was further observed by the court that "Hijras/transgender persons who are neither male/female fall within the expression 'person' and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country..... non-recognition of identity of Hijras /transgender persons results in them facing extreme discrimination in all spheres of society, especially in the field of employment, education, healthcare etc. Hijras/transgender persons face huge discrimination in access to public spaces like restaurants, cinemas, shops, malls etc. Further, access to public toilets is also a serious problem they face quite often. Since, there are no separate toilet facilities for Hijras/transgender persons, they have to use male toilets where they are prone to sexual assault and harassment. Discrimination on the ground of sexual orientation or gender identity, therefore, impairs equality before law and equal protection of law and violates Article 14 of the Constitution of India..... Gender identification becomes very essential component which is required for enjoying civil rights by this community. It is only with this recognition that many rights attached to the sexual recognition as 'third gender' would be available to this community more meaningfully viz. the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a

²¹ Ibid

²² Ibid

driver's license, the right to education, employment, health so on.²³

4. Where do transgender stand in India?

India has always been accepting of transgender, and when I say that they we have been accepting I do not, in any way mean that we have given them any social status or recognition, it simply means that we have acknowledged that they merely exist. And it's interesting to note that the existence is merely on the sidelines of the society i.e. the roles that we have assigned to transgender or *hijras* is that of a colorful character having no real meaning in our lives, we see them on the sides of roads asking for money or singing and dancing at weddings and special occasions and in some scenarios forced into prostitution. That is only position that we have seen or are willing to see transgender in, nothing else, and we do not deem it necessary that they get their recognition and fair share of dignity in the society. All of this might seem a tad harsh but it is the ugly truth, and we might say that we support the rights of transgender but actions speak louder than words and a recent event would shed more light on it. Shashi Tharoor (Member of Parliament) had introduced a bill in the parliament that would proposed to decriminalize homosexuality but the bill was rejected (with 24 votes in favour and 71 votes against the bill) and the reaction that the chosen representatives had upon tabling of that bill was one that had to be seen to be believed, these elected members of parliament were uttering obscenities like "Tharoor only needs this bill for himself!" and screaming in the parliament, this incident is ample proof of just how accommodating we are of any person who does not conform to the traditional sense of sexuality.²⁴ Another instance, on 30th June 2016, following a seminal vote, [the United Nations Human Rights Council passed a resolution](#) creating a post of an independent expert on sexual orientation and gender identity. This expert, once officially appointed, will be tasked with the job of studying and reporting annually on the [nature, the cause, and the extent of discrimination faced by lesbian, gay, bisexual and transgender \(LGBT\) persons](#) around the world. In many ways, the establishment of the new post exemplifies a growing global trend towards addressing the egregious human rights violations suffered by LGBT persons. But to us, in India, it must come as a matter of grave shame that our country, in an act utterly

²³ Ibid

²⁴ Raghu Karnad, *Hope for LGBTs in India*, THE NEW YORK TIMES available at http://www.nytimes.com/2016/01/20/opinion/hope-for-lgbt-rights-in-india.html?_r=0 accessed on 08.11.2016 at 10:00 pm.

unbecoming of a modern progressive state, chose to abstain from voting altogether to appoint the expert²⁵.

Transgender or Third Gender in India is still stuck in the age old practices and life on the outskirts of society, not being ostracized but never being accepted either and there is no one to take up their cause including the government. The Supreme Court in the NALSA case²⁶ had observed that "TGs have also not been afforded special provisions envisaged under Article 15(4) for the advancement of the socially and educationally backward classes (SEBC) of citizens, which they are, and hence legally entitled and eligible to get the benefits of SEBC. State is bound to take some affirmative action for their advancement so that the injustice done to them for centuries could be remedied. TGs are also entitled to enjoy economic, social, cultural and political rights without discrimination, because forms of discrimination on the ground of gender are violative of fundamental freedoms and human rights. TGs have also been denied rights under Article 16(2) and discriminated against in respect of employment or office under the State on the ground of sex. TGs are also entitled to reservation in the matter of appointment, as envisaged under Article 16(4) of the Constitution. State is bound to take affirmative action to give them due representation in public services.²⁷

Even though the circumstances are dire for the transgender but there is a person Laxmi Narayan Tripathy who did not let being a transgender become an obstacle, who defied all odds and broke the traditional shackles and ventured into territory that is entirely new for a transgender, by espousing the cause of the transgender and bringing it up for the whole world to take note of and demanding change in the status quo. Tripathi, is an activist of international repute who works for the community through her campaign group Astitva and is the first transgender to represent Asia-Pacific at the UN in 2008²⁸. As India began to grapple with HIV in the 1990s, she was one of the earliest activists to demand that the government's anti-AIDS program include hijras as a distinct category. Tripathi first traveled outside India in 2006 to

²⁵ Suhrith Parthasarathy, *To Be Equal Before The Law*, THE HINDU 9th June 2016 available at <http://www.thehindu.com/opinion/lead/supreme-courts-next-step-on-section-377-and-lgbt-rights/article8824834.ece> accessed at 10.11.2016 at 3:04 pm.

²⁶ Supra Note 11

²⁷ Ibid

²⁸ *We Too are Human Beings: Transgender Activist Lakshmi Narayan Tripathi*, DNA (DAILY NEWS & ANALYSIS) 27th April 2014 available at <http://www.dnaindia.com/india/report-we-too-are-human-beings-transgender-activist-lakshmi-narayan-tripathi-1982540> accessed at 10.11.2016 at 3:10 pm.

attend the World AIDS Conference in Toronto and has since become a familiar face at the UN and other international forums on HIV. And in 2012, she published an autobiography in Marathi; its English translation was released in February of 2015. The title, *Me Hijra, Me Laxmi*, is meaningful in both languages—*me*, pronounced “mee,” is Marathi for “I am.”²⁹

It is commendable what Lakshmi has achieved, but she is an exception and not the law as the conditions are not the same for the rest of the transgender living in India, sadly they are still objects of ridicule. Even after the passing of judgments by the Supreme Court the transgender community is still struggling, and even though they have a legal status and a recognition in the country the prejudice against the LGBT community is rampant, which brings me to the title of this i.e. The Status of transgender in progressive India. India is the world's biggest democracy with more than one billion populace and is one of the world's fifth biggest economy but even with all the progress, the technological advances and growth in trade that we have had, the conditions of the transgender have not improved. We are still homophobic, still ignorant of the problems faced by these sections of society and still cling on to old practices that are clearly hurtful to these people in the name of customs. But all is not lost, and I am hopeful that with all the recent turmoil (recent cases), someday, the transgender of this country will get the dignity and their place in the society that they deserve.

5. Conclusion:

After everything that was said and done in the Naz Foundation³⁰ case and NALSA³¹ case, a new bill passed by the Rajya Sabha i.e. The Transgender persons (Protection of Rights) Bill 2016, the Bill defines a transgender person as one who is partly female or male; or a combination of female and male; or neither female nor male. In addition, the person's gender must not match the gender assigned at birth, and includes trans-men, trans-women, persons with intersex variations and gender-queers, and the bill has some loopholes like it states that a person a person recognised as 'transgender' would have the right to 'self-perceived' gender identity. However, it does not provide for the enforcement of such a right. A District Screening Committee would issue a certificate of identity to recognise transgender persons; the definition of 'transgender persons' in the Bill is at variance with the definitions recognised by international bodies and experts in India; the Bill includes terms like 'trans-men', 'trans-women', persons with 'intersex variations' and 'gender-queers' in its definition of transgender

persons. However, these terms have not been defined; certain criminal and personal laws that are currently in force only recognise the genders of 'man' and 'woman'. It is unclear how such laws would apply to transgender persons who may not identify with either of the two genders.³² But in spite of these issues this bill provides some protection to transgender.

In the light of the above discussion it can be said that India is slowly but surely inching its way to grant freedom, recognition and status to the transgender. But when a comparison is made with other countries³³ like Germany, Argentina, Europe, South Africa etc wherein proper laws are in place to protect and grant rights to the LGBT community the pace at which everything is happening in India seems impractical and archaic. And until the time comes when we grant to transgender the dignity that every human being deserves, their status will not improve

³² The Transgender persons (Protection of Rights) Bill 2016, PRS LEGISLATIVE RESEARCH available at <http://www.prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2016-4360/> accessed on 10.11.2016 at 3:50 pm.

³³ See Supra Note 11 - In Germany, a new law has come into force on 5th November, 2013, which allows the parents to register the sex of the children as 'not specified' in the case of children with intersex variation. The Senate of Argentina in the year 2012 passed a law on Gender Identity that recognizes right by all persons to the recognition of their gender identity as well as free development of their person according to their gender identity and can also request that their recorded sex be amended along with the changes in first name and image, whenever they do not agree with the self-perceived gender identity. European Parliament also adopted a resolution on discrimination against transsexuals on 12th September, 1989 and called upon the Member States to take steps for the protection of transsexual persons and to pass legislation to further that end. United Kingdom has passed the General Recommendation Act, 2004, following the judgment in Christine Goodwin (supra) passed by the European Courts of Human Rights. The Act is all encompassing as not only does it provide legal recognition to the acquired gender of a person, but it also lays down provisions highlighting the consequences of the newly acquired gender status on their legal rights and entitlements in various aspects such as marriage, parentage, succession, social security and pensions etc. In Australia, there are two Acts dealing with the gender identity, (1) Sex Discrimination Act, 1984; and (ii) Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act, 2013 (Act 2013). Act 2013 amends the Sex Discrimination Act, 1984. Act 2013 defines gender identity as the appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not) with or without regard to the person's designated sex at birth.

²⁹ Supra Note 8

³⁰ Supra Note 5

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