

**Unalienable Rights of Transgender in India – An Actino of Hope**  
(Taboo & Permissibility: Pondering the Left One's)

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**Abstract**

“While there is no shame in being gay, lesbian, bisexual, transgender or intersex – or even straight there is most certainly shame and dishonour in being a homophobe, a transphobe and a bigot.” - (Christina Engela)

Human being's identity is often appriized by the ethical dominance and discretions made by the community. Yet, the one who makes an effort to overcome these with their visage, sexual dogma and zeal is often fended, omitted and jilted as 'others'. The transgender community since long has been desperately seeking equal rights and in the least a tag of being accepted as a 'human'. Though, the Indian constitution, fabricates with liberal promises, re-establishment of their identity with the concept of third gender, balking prejudice that they should not face any discrimination from the other two genders and providing all the rights preserved for them. Transgender community in India, grips an illustrious memoir where they revelled prestige and perquisite for many centuries. In Indian mythology, third gender is not termed as a taboo, though it is permissible with a concept of Ardhnareeshwar (Androgynism), is acknowledged and worshiped, as in hindu epic the Mahabharata, Shikhandi the destroyer of Bhishmapitamaha has a notion of being a transgender, who was born a woman but treated as a man, the involvement of third gender in society is pre-eminent. In contemporary period, their role in strengthening society, providing NGOs, upliftment in Indian cinema has emerged even more vast and productive. A fiery transformation has taken stead as their position in modern era has manifested by engaging in social activities and enhanced living standards as compared to the prior centenaries. The paper afore calibrates the initiatives opted by the government and social institutions for the ennoblement of the transgender community. In addition to this, the paper will focus on the legal position, judicial treatment and rights reserved for the LGBTQ community, that have now increased consciousness and cogent developments for this section of the society.

**Keywords:** Transgender, Constitutions Rights, Equality, Mythology, Legal Identity, Discrimination

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**Introduction**

Biological creation of edea is merely exhibited by the lineal privity of human gender be it male or female. Yet, in tangibility, there are some people who are not cohere into this consuetude and contravene the biological bivariate. These are the 'Transgender' people, mostly treated as 'Others' before the NALSA judgement which set the loft with a rigid definition, “transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to their biological sex.”

Hereby, it can be mentioned that the terminology 'transgender' is not only straitened to visages whose edea are amalgamated but it is a shelter term applied to cede to persons with

identities, whose gender identity and phiz distinguishes from other men and women from the conventional swatch expected from their genesis gender. While, considering the conception of gender it is inevitable to mark that gender is a 'state of mind'. An individual born like a woman might feel like a man and vice-verse, these people are known by multifarious sobriquets in India like *jogaapaas, aravans, hijras, eunuchs, kothis, shiv-shaktis* etc. The third gender sex incorporates people who have exoterically been called *lesbian, gay, bisexual, homosexuals and transgender people (LGBTQ)*.

The life of third gender community is full of ambiguity, chaotic life cycle replete with trouble and hardship, forced to work as dancer in bars, prostitution and almsman who knock on the windows of cars at traffic signals merely for an uninterrupted living, which can fulfil their financial requirements.

“Gender and sexual orientation are important constituents of social identity. Transgender people are a case in point as they do not identify with the gender identity ascribed to them at their birth, hence wish exhibit a different societal image and they prefer or feel compelled to present themselves in ways that contradict social expectations of their designated gender roles.”

### **Memoir of Third Gender in India**

In the myriad path of India, Indian mythology endeavours scintilla of reality at times and a terse look at the reflexions of the past, prerequisite that the third gender person who are often calumniated today were once regarded and upraised to a great extent. Understanding the conception of third gender can be deemed from the hindu mythology which has numerous instance of deities realigning gender, revealing as an incarnation of opposite sex etc. It is believed that gods & goddess were oft pondered to be represented as female and male both at apart state and with diverse avatars, for example, Ardhnareeshwar (Androgynism).

In Indian myth Ardhnareeshwar, an eminent hindu deity, ardha means half, naree means woman and ishwar means supreme lord, a lord who is half woman and half man. It is constituted by the combined integration of Lord Shiva and his wife Goddess Parvati. Lord Shiva has been believed as exterminator and where as Goddess Parvati is the Erector. Lord Shiva has given statuesque place in Indian mythology, that is why he is also known as Mahadev. The concept of Ardhnareeshwar, deciphers, that every human being is half woman and half man. Lord Shiva is widely worshipped in India, and it is major irony to see that on one side we cannot even give regard, love and support to his own creation and on the other side we people worship Ardhnareeshwar (Lord Shiva) with ample of assiduousness and great devotion, even though our purans and vedas inscribed several centenaries ago already established the same certainty that science has achieved now that, most of the human being is half woman and half man, which science now claimed it to be as Androgyne.

Alan Danielou says that, “The hermaphrodite, the homosexuals and the transvestites have a symbolic value and are considered privileged beings, images of the Ardhnareeshwar.” (Danieou, 1984)

Indeed, during the Mughal empire period (1526-1857), the Hijras (third gender) delighted with exclusive places in the royal courts as administrators, advisors and they were pondered as the most trustworthy and the guardians of harems where queens use to live. Earlier, they

had acquired high ranks in the Mughal empire. Malik Kafur, the trustworthy of Allaudin Khilji and a courageous cockerel who conquered Delhi estate to raise vogue and fame of Khilji.

Afterwards, their decline started in 18<sup>th</sup> century which gave rise to the British colonial rule, where the life of Hijras (Transgender) became pregnable. All the dignity and respect was vanished, had survived in a rigid circumstances as were sided to the boundary lines by the britishers, discarded at workplaces, public societies and from jobs. Being in a minority sector, they were receiving negative virtues and ill-behaviour from the britishers as their property and land were seized. Later on, this impermissible behaviour of public that caused straitened, bought them in low self-assuredness and self-respect, which consequentially quarantined them from the institutions, public and society. The tag and been treated as “Others” and encountered with the word as “Different” people, not eligible to exist in society, attain to the consequences that they found begging at traffics signals, functions, their source of livelihood was to work in brothels.

Later on, many stipulated rights were guaranteed to be provided, to ameliorate their standard in society, but due to the surpassing double gender concept of female and male, it faced some downfall while implementation. British acts and rules barricaded their freedom, work mode for earning as dancing in public, social gathering, dressing like women were all banned, and punishment and criminal acts were also imposed if found violating the conditions and norms.

### **Transgender: Not a Taboo anymore, though it is permissible**

“A taboo is an ‘Unthinkable’ action. We consider a model, taboos are part of the definition of one’s identity.” - (JEL Z13)

A culture or a community cicerones the conduct, character and concern of their fellows by agreed upon expectances and law poetics. The list of behavioural principles is exemplary indicated to as social prototype and taboo. These prototype and taboo have an intense influence on our lives, the manner we eat, dress, behave and talk, all these are governed by the prototypical principles and taboo of the communities we are a part of, so it is a disclaimer to choose the correct path, guidelines and principles whether it is accurate or not, humanitarianism does not allow anyone to discriminate, disrespect, dishonour any individual based on caste, creed, sex, language or body structure, the social evil i.e., imposing a tag of ‘Taboo’ is unjustifiable. For the sake of human kind, the forthcoming generation need to develop a mind psyche not to judge a gender whether it be any one of three based on what was done in past centuries.

It is a permissible right of every gender to lead a life full of glory, equality, parallelism, with constitutional rights inscribed in preamble, moral ethics and authenticity. The transgender people wish to be the imperative section of the conventional community, hence, their countenance and lifestyle, suffers from lack of privilege in society due to the stiff nature of people. The primus challenges this community encounters is the scarcity of employment and housing, as they preponderantly earn through prostitution and begging, hence they don’t have any other way for financial assistances.

It is in our conscience to choose a progressive and an ameliorative path which widely acknowledges the concept of humanitarian and thus we should accept transgender and

LGBTQ community wholeheartedly as they are an integral part of our society. “Being a transgender is not a taboo anymore, though it is permissible worldwide, even in Hindu Mythology”, though unlock the locked doors and fag end the notion of “Transgender is a Taboo” therefore, some taboo may get off or even vanished while on the other hand some may occur massy or more effective. So, it is the need of the desideratum to not to delay and assign back their civil rights and social status with great dignity which is already provided to them by the honourable Supreme Court of India.

### **Relevance with Indian Mythology**

The array of gender possibilities supplied by mythology involves the various avatars of Vishnu, the Ardhnareeshwar form of Siva, and the stories of the Ramayana and the Mahabharata.

Prior quoting certain chronicles of the two main indian epics, ‘Ramayana and Mahabharata’ it is important to be well acquainted with the contribution and role of third gender which occurred millennium of years ago, as far the current legitimate system is concerned. The Ramayana and the Mahabharata is an encyclopedia which attains the relevance and references to the presence of third gender.

In India, the Mahabharata showcases some human concepts and terminologies that have been recognized as a pristine law book. Hereby, in the current scenario we refer it’s moral teachings as rights, equality and freedom of a person. Consecutively to win the battle, an oracle happened for the Pandavas to abdicate their bonzer man Aravan, though he requested to get married before he makes an attempt to sacrifice his life. No other girl was ready to become a widow just after the marriage, so Lord Krishna incarnate himself as a woman named mohini and married Aravan. Hereby, transgender is believed to be born from this occurance, though that is why hijras and transgender are also known as *Aravanis*.

Shikhandi in the Mahabharata, is an another episode which witnesses the existence of transgender and is seemingly considered to be the most powerful transgender in the Hindu Mythology. Shikhandi was a woman by birth, but her father was promised by Lord Shiva to be blessed with a boy, her upbringing gradually changed her to a transgender. Though, the birth of Shikhandi is considered to be the avatar of Amba. Bhishmapitamaha abducted Amba without her consent, later on she decided to take revenge and commit suicide to take rebirth quickly to kill Bhishmapitamaha in her future incarnation. For the sake of Dharma, Lord Krishna requested Shikhandi to blow an arrow on Bhishmapitamah and got him killed. Krishna, elaborated that it was all requisite for the protection, biased with no one and establishment of Dharma. This incident shows that for the betterment of mankind and society and establishment of Dharma, Transgender people’s contribution cannot be candidly neglected.

The Ramayana is another stream of inspiration for the third gender people. Lord Rama, Sita and Laxman, while departing from the kingdom Ayodhya as was exiled for fourteen years, his followers were frigid and not ready to leave him, addressing to the crowd, ‘dear woman and man’ to return back to the town, though third gender people were following him throughout, as they didn’t come under single one gender, on noticing the hijras at his back, Lord Rama was impressed with their devotion, he bestowed them with the power of showering blessings and good fortune to the people on auspicious occasions.

Indian mythology has flourished the concept of third gender in society with some ethical and moral dominance, these community people has a special ability in dance, literature and art, as Arjuna who was exiled from the estate changed his appearance as transgender aka Brihannala to not to disclose his identity in the Mahabharata, who performs in estate, weddings and child birth occasions.

### **Representation of transgender in Indian cinema and Socio-Civil culture.**

Transgender community was bereft from their actual Identity and recognition and has been prolonged marginalized from every consecutive row and plan. Their portrayal within the social, cultural and ethical gestalt behooves critical consideration. The transgender community (LGBTQ) in India experienced tons of dissension, collision and discrimination with lack of acceptance in society. Their struggle is to scrutinize a space in the society where gender disobedience does not exist and is not termed as abnormal.

Transgender people were neither ever presented as active and accepted members of a society, but were also primarily victimized by the other two genders as ulterior people who are only subject to mocks and jokes on mass media grounds such as cinema. Suspected, boycotted, criminalized and rebuked for hundreds of years, now, third gender minorities are treading out from the shades of darkness and from an era of evanescence. A nation like India, where cinema is worshipped as God and which has the potential to change the psyche and perception of majority of the population. Factualizing movies and stories about the transgender community will undoubtedly have a major positive effect on the mindset of the people and will break the stereotypical and uncrippled thinking of the population.

The representation of the transgender community in prior some years has attained a doubled stride, not only the trans people, consequently their real stories, topics, struggle and biopics have come under the direction of the movie makers.

Representation of transgender identity in Indian cinematic earlier came with some brief minor characters and small appearance like in songs, dance featured prior to the chorus, but not their role in movies and theatres reportedly emerged more vast such as in, actor Akshay Kumar's backmost movie 'Laxmi', which describes an image of a transgender in a positive radiance, instead of using them as a comic trope, the transgender person suffers through injustices and immorality because they chose a path of proportionality, eventually leading her to death and hence the spirit continues to stay on terra, to ensure justice prevails.

The concept of movie is applaudable, our cinema is scaling the heights to showcase the concept of equality and justice for the transgender people which is already inscribed in our Constitution. It also depicts the scenario of the wrong will of other genders towards the third gender eminently exists, though, it is the moral duty of every individual to cast off bullying this community, which is trying rigorously to be accepted human enough.

Their consideration and portrayal become vital specifically when it wraps creative text, books, plays or literature. The creator of the art finds courage to depict the marginalized and comprehensive stereotyped community towards the world through artistic skills.

Skills leading a socio-civil cultural aura now provides a feather of glory to their hats. Transgender people performing with supreme zeal to achieve every goal they dreamt of. Mastering in each of the segment whether it to be a court judge, nation representative, civil

service officer, politician and so on. Most of the trans people who are coming with flying colors are:

**Laxmi Narayan Tripathi**, she is the one who courageously fought for the civil rights of transgender people. She is the first trans to represent India and her trans community at UN and also at world AIDS conference held in Canada likewise on various international platforms. She is known for her social activism for humanitarianism and has earned a prestigious place in mainstream society. She has also written a book named, “Me Hijra, Me Laxmi” which is widely appreciated.

**Madhu Bhai Kinnar**, won the local district election and became the first transgender mayor of Raigarh in Chhattisgarh state. Once, exiled from her own family because of her trans identity is now not only acknowledged by her family but also by the major section of people who showed faith in her and casted in her favor and elected as their mayor. This displays the gesture that if given a proper platform and an opportunity as the other genders have, they are no less than anyone. Now, she is the first person of Raigarh.

**Joyita Mondal** says, “It gives me great satisfaction to know I have broken gender stereotypes. It is also great to see those who taunted me about my gender, stand before me with folded hands waiting for a judgement on their case”, she has been recognized as the first transgender to become a civil court judge not only in West Bengal but in India as well. Her appointment as a civil judge is a great step for the transgender community as well as a major moment to reassert that they are equal citizens of the nation and hereby deserve the same dignity, respect and acceptance as everyone else gets.

### **Legal positions, Judicial treatment and Rights reserved for LGBTQ : An actino of hope by Supreme Court of India**

15<sup>th</sup> April 2014, was not an ordinary day for the transgender community. Passing of the heat waves during the summer season, the temperature was really hot inside and outside the Supreme Court. The Supreme Court of India, in their landmark judgement of *NALSA vs Union of India & Ors*, for the first time in the history of India, ‘Third gender’ was given identification and recognition and governmentally registered as another gender as much as male and female under the constitution principle article of 14, 15 & 16. The long run of millions of trans people crossing over trillions of hurdles as discrimination, biasness and inequality came to an end. Justice KS Radhakrishnan said, “Recognition of transgenders as a third gender is not a social or medical issue but a human rights issue.”

Earlier, transgender persons were forced to write their sex as male or female against their gender. The Supreme Court asked the Union of India to treat third gender as an economically and socially backward section, SC also ordered the centre that third gender will be allowed to be given OBC quota in educational institutions, admissions and in jobs as well.

The Supreme Court also emphasized on the importance of rights to dignity by considering and recognising one’s identity within the range Article 21 of Constitution of India.

Hereby, the controversial section 377, a 158 years old colonial law on consensual gay sex was later on scrapped and the decision came out in the favour of LGBTQ community by the Hon’ble Supreme Court of India.

Former Chief Justice of the Supreme Court of India, Hon’ble Deepak Mishra said, “LGBT community has same rights as of any ordinary citizen. Respect for individual choice is the

essence of liberty, LGBT community possesses equal rights under the constitution. Criminalizing gay sex is irrational and indefensible.”

### **The struggle against Section 377 : The timeline**

The story ways back to more than two decades when sexual contact between homosexuals was unconstitutional.

It was indeed a tough struggle for them but, what was even more unacceptable was the curtailment of the fundamental rights of all the homosexuals, transgender, gay, lesbian which were done by the public, by you, by me and everyone else. We weren't punished but they are, even today but it was way worse back in December 1991.

A document detailing the experiences of gay people was released by an organisation that fought against the social taboo faced by HIV or AIDS affected people: AIDS BhedbhavVirodhiAndolan (ABVA). The report revealed the shocking extent of blackmail, extortion, and violence that gay people faced, especially at the hands of the police.

Now, owing to that, our civilisation and morality is in deep question.

It was in May 1994 that Kiran Bedi, inspector general of the Tihar jail in Delhi, refused to provide condoms for inmates. Her explanation said it would promote homosexuals but on the same hand agreeing to the fact that there were sexual engagements among people even before. Now the sort of hypocrisy in word and action is pretty inevitable and unjustified. In response when ABVA filed a petition to suggest section 377 as unconstitutional, it was denied after long deliberations.

The Naz Foundation struggled since December 2001 to fight against the unjust section 377 but all in vain as even after Deep examinations, they were finally left dejected.

While this continued until February 2006, Voices Against 377, a coalition of NGOs, joined the petition, while India's ministry of home affairs filed an affidavit against the decriminalisation of homosexuality came up in favour hence pressuring the government.

In a landmark judgment in July 2009, a Delhi high court bench of chief justice Ajit Prakash Shah and justice S Muralidhar were finally in favour of striking section 377, saying it violates the fundamental rights to life, liberty, and equality as enshrined in the Indian constitution. But critics, including Suresh Kumar Koushal, a Delhi-based astrologer, challenge the Delhi high court's decision in the supreme court.

A hard blow was experienced in December 2013 when the LGBTQ community was still in tatters on being denied their rights in the Supreme Court.

It was then that the voices of Navtej Singh Johar, Ritu Dalmia, Aman Nath, Keshav Suri, and others who filed petitions in support of the LGBTQ Community that the Supreme Court realised that Sexual orientation is an essential attribute of privacy and Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual.

In July 2018, a five-judge bench of the supreme court, including chief justice Deepak Mishra, began hearing the petitions filed by Johar and others against section 377 and finally in September 2018, the LGBTQ Community triumphed for the first time as in a unanimous verdict, the supreme court decided to scrap section 377.

The first step was won and so would they triumph all over once we realise that beyond their sexual orientation and design, they are human beings who deserve as much as any other would. And hopefully someday, their multicoloured flag will too triumph through our hands.

### **Initiatives taken by Government and Social organisations**

In the contemporary period, the Union Government of India proposed several welfare schemes and policies such as documentation, dispensing of citizenship ID cards, census, issuing passports, socio-economic improvement and constitutional protection for the transgender people. These people were registered in MGNREGA (Mahatma Gandhi National Rural Employment Guarantee Act) and Ministry of Labour & Employment, which provides them an employment opportunity. Ministry of Housing and Urban Affairs (MoHUA), prepares housing schemes, Ministry of Health and Family Welfare, facilitates them with proper and continual medical health check-ups. Ministry of Social Justice and Empowerment, leaving no stone unturned to provide them all legislative and judicial help, wherever, they face discrimination, social stigma and injustice.

In May 2009, Indian Election Commission took a golden step by allowing third gender to choose gender as 'Others' on ballot forms. The transgender persons (Protection of Rights) bill was introduced in Lok Sabha by Government of India in 2016, later amended with more rights in 2019. The bill grants them several rights and reservation against the discrimination faced by them, rights such as individual identity, right of residence, right to equality, legality of marriage with same sex. The social organisations and NGO's worked tirelessly to confer them economic, housing, political, legal positions, involvement of constitutional defence to stop human rights violation.

### **Conclusion**

India is a region of diverse customs, cultures and conventions. To recognise hijras or transgender or not, they are unalienable part of our society, as we look to their past and compare it with the present scenario, their living standard, acceptance has totally changed. Earlier, be it our mythology or past praxis, they were given consecration in kingdoms and institutions, admired with high ranks, regarded and greeted everywhere, but now they are discarded from the society. It is high time now to vanish the stain, calling them with abbreviation like 'others' and include them in the mainstream society. Just penning down the law cannot be effective alone, Hon'ble Supreme Court of India has done the needful, now it is the duty of the citizens to implement it honourably and wholeheartedly. Conferring them with the right of employment, housing and education can not only improve their living, but, also can contribute to nation building i.e. the integral part of 'good governance' with sustained equality. Hijras, transgender, LGBTQ community are rising with a glow, be it, cinema, literature, socio-cultural organisations, politics and many more. People like Joyita Mondal, Madhu Bhai Kinnar, Laxmi Narayan Tripathi encouraging others in their community to attain a respectful life rather than doing odd jobs like begging, sex worker, etc.

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