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**ACCEPTING THE THIRD GENDER.**

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**ABSTRACT :**

Both in the ancient and medieval periods, transgender persons were respected. Earlier, especially during religious events, it was thought that they may bless other people. The third gender also played a significant part in the Mughal courts since they were actively involved as counselors, army generals, harem custodians or guardians, tax collectors, or advisors. In particular, the royal families were trusted because they were also seen as loyal.

Eunuchs, also known as Khawaja Sira, were the most dependable royal aides during the Mughal era. They commanded a great deal of respect and had amassed a significant fortune in some cases. They were mostly employed as harem keepers, while some became army generals, royal professors, and court counselors.

Gender refers to a person's sex, which determines who they are and how they seem. It is typically connected with the masculine and female gender. However, those who do not identify as either a man or a woman are referred to as third gender, third sex, or transgenders in India, also known as Hijras. Hijras, eunuchs, or people who have had or want to have sex reassignment surgery (SRS), commonly known as transsexuals, are included under the general term "transgender." Transvestites are people who enjoy cross-dressing.

With the turn of events and once the Imperial Legislative Council passed the Indian Penal Code (hereafter referred to as the IPC) in 1860, the entire community became a criminal offence. Section 377 of the IPC stated unnatural offences as follows: whosoever voluntarily engages in carnal intercourse with any man, woman, or animal against the order of nature shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall be liable to.<sup>1</sup>

Section 377, a legal adaptation of the British 1533 Buggery Act, was implemented in India during British colonial control in 1864 and made non-procreative sexualities illegal. Transgender people, particularly hijras, a traditional population in India and South Asia more broadly, were historically among those it was used to attack. Hijras were typically strong individuals in the Sultanate and Mughal courts who were in charge of collecting taxes and fees

Although S377 was not intended explicitly to target the hijras, it criminalized them as a group and had significant effects on the neighborhood. Through a historical analysis, one may learn how sexuality was employed by British colonial rule in India to quell possible dissidence from a particular population. Under colonial control, state measures started to become harsh in 1864. The elimination of IPC S377 in 2018 subsequently resulted in the reversal of these regulations. However, the repeal of this ordinance does not merely erase the effects of

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<sup>1</sup> Section 377 in The Indian Penal Code, 1860.

colonial control. A transgender bill presented in 2016 that the Upper House of Parliament has not yet approved threatens to reverse progressive rulings and the eagerly anticipated repeal of S377.

### **STORY SO FAR: Decriminalization of section 377 :**

When drafting the Indian Constitution, its creators envisioned a future India that would support a society devoid of prejudice based on factors such as caste, religion, colour, sex, region, etc. They saw India's future as one in which an equitable society had been built and there were no longer any caste, religious, gender, or regional inequities. claiming that every individual in India has equal access to opportunities and privileges. But this doesn't seem to be a reality in the transgender setting.

Indian history has a long and rich tradition of transgender people. The concept of transgender has been discussed in Indian mythology, including the Ramayana and Mahabharata. Who hasn't heard the Mahabharata's Shakuni story? It is also well acknowledged that Arjuna because of the curse of a lady forced him to temporarily lose his masculinity. In medieval history, transgender people are frequently mentioned. It is stated that transgender people were frequently used to serve the begums of Mughal emperors, particularly in Mughal history.

However, there is no reference to equal rights for transgender people in modern Indian history prior to the recent past. The status and employment circumstances of transgender people did not significantly improve even after achieving independence.

Nehru and Gandhi, two early post-independence Indian political figures, expressed their opposition to S377 IPC and its effects on society's tolerance of non-normative sexualities. In order to combat S377 IPC and its lasting effects on Indian society, activists turned to the legal system. In 1994, the first appeal contesting the validity of S377 IPC was rejected on the grounds that Indian society's social and moral norms should be upheld. The Naz Foundation made two additional failed challenges in 2001 and 2009, but the Supreme Court of India ultimately struck with two progressive historic decisions. In NALSA v. UOI in 2014, the Supreme Court acknowledged the existence of third gender and upheld the constitutional rights of transgender people. The Court invalidated S377 IPC in 2018 on the grounds that it went against the fundamental rights guaranteed by the Indian Constitution. Despite these two progressive legal rulings, the Transgender Bill that was put forth in 2016 fell short of actualizing the progressive intent of these two rulings.

### **The situation of Transgender in India :**

Despite recent progress for the LGBTQAI+ community, many transgender people believe there is still much to be done to achieve equality. Let's examine what has been accomplished so far in India for the transgender community and what more needs to be done.

### **TRANSGENDER BILL 2016 :**

According to the transgender persons (Protection of Rights) Bill 2016, it is unlawful to discriminate against a transgender person, including by treating them unfairly or by refusing

to provide services in the areas of employment, education, healthcare, and access to public facilities and goods, among other things.

In addition, the Indian Supreme Court struck down Section 377 of the Indian Penal Code in 2018, declaring it unconstitutional with regard to consenting homosexual relations between adults, and decriminalizing homosexuality.

### **EMPLOYMENT OPPORTUNITIES FOR TRANSGENDER :**

The National Human Rights Commission's groundbreaking study on transgender rights paints a detailed picture of the transgender situation in the nation. The survey found that even qualified transgender people are denied employment and that around 92% of transgender people in the country are denied the right to engage in any type of economic activity. The Kochi Metro Rail Limited in Kerala employed 23 transgender people in 2017, but eight of them left their positions within a month because multiple landlords refused to provide them with housing. Since their employer had no moral or legal obligation to intervene and support them in their fight against this discrimination, they were left with no choice but to resign from their positions.

### **PROUD INDIAN :**

Recognition of transgenders as a third gender is not a social or medical issue but a human rights issue," Justice KS Radhakrishnan, who headed the two-judge Supreme Court bench, said in his ruling, "Transgenders are also citizens of India" and they must be provided equal opportunity to grow".<sup>2</sup>

"The spirit of the Constitution is to provide equal opportunity to every citizen to grow and attain their potential, irrespective of caste, religion or gender."<sup>3</sup>

### **WHAT NEEDS TO BE DONE :**

As stated in Articles 14, 15, 16, 19, and 21 of the Indian Constitution, "enjoyment of life by all citizens and an equal opportunity to flourish as human beings irrespective of their race, caste, religion, community, socioeconomic class, and gender" is the "golden thread" that unites the equality system.

The "right of choice and self-determination" is recognized and acknowledged as one of the fundamental principles of the equality program.<sup>4</sup> A person's right to self-determination and dignity are intrinsically tied to the gender to which they belong and are related.

Non-recognition of the Third Gender in the Indian legal framework has resulted in the systematic denial of equal protection of the law and widespread socio-economic discrimination in society at large as well as in Indian workplaces. In the wake of the Salsa Judgment, the Indian parliament recently enacted the Transgender Persons (Protection of Rights) Act, 2019 (the 'Act').<sup>5</sup>

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<sup>2</sup> <https://www.bbc.com/news/world-asia-india-27031180>

<sup>3</sup> [https://www.inform.kz/en/india-court-recognises-transgender-people-as-third-gender\\_a2649143](https://www.inform.kz/en/india-court-recognises-transgender-people-as-third-gender_a2649143)

<sup>4</sup> <https://www.sbhambridvocate.com/post/transgender-as-a-third-gender-in-india>

<sup>5</sup> *Ibid*

Legal change and gender sensitization should go hand in one. The transgender community must also engage in internal discussions and address problems that lead to discrimination. Transgender individuals desperately need to be included in political initiatives that discuss marginalized groups. Every movement, in my opinion, remains superficial when it comes to addressing the rights and dignity of transgender individuals. Political movements from underrepresented groups, including lower castes and other persecuted groups, are actively interacting with transgender persons. This is a fantastic start, and voices from repressed caste and gender identities are emerging. To fully combine the two, though, much more needs to be done. In India, achieving gender justice will take time.

