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## **The Struggle for Identity: Transphobia and the Third Gender in India**

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### ABSTRACT

The fundamental tenet of the Indian Constitution is equality, and it will be violated if anyone is treated unequally or unfairly in the other direction. Kant believed that the golden rule—treating others as you would have them treat others, including yourself—lays the foundation for all notions of justice, regardless of the culture or religion that inspired them. Transgender people are people just like us; they are not different from us, and as such, they too deserve the respect and dignity that we receive. Since the beginning of time, our dynamic society has widely accepted undergoing changes, but this is another change we are willing to recognise.

Due to the fact that the people from LGBTQ community are born with all the organs required for a being to carry out the typical daily tasks, we do not consider them to fit the concept of an Exceptional Child as it is currently defined. They instead possess higher levels of oestrogen and testosterone than a typical human.

They are not supported by the society because many of our forefathers did not see them as a part of it, but now is the time to start doing so because supporting them would only help humanity survive a little bit longer.

The fundamental problem is not the societal acceptance of the third gender; rather, there are problems caused by the social aspirations of each gender in society. Every "homo sapiens" born on this earth is entitled to the essentials of life, but our society is unaware of the tremendous suffering and torment experienced by the transgender population. Although their pronouns must differ from ours, they must nevertheless be accorded the same fundamental rights because they are still people.

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Keywords: Transgender and Third Gender

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### INTRODUCTION

*"Change will not come if we wait for some other person or some other time. We are the ones we've been waiting for. We are the change that we seek."*

– Barack Obama

Transgender people's rights and recognition have advanced greatly as a result of the Indian Supreme Court's ruling that they constitute a Third Gender under the constitution and recent laws.

Transgender means a person who is -

- a) Neither wholly female nor wholly male ; or
- b) A combination of female or male ; or
- c) Neither female nor male ; and

whose sense of gender does not correspond to the gender given to them at birth, including transgender people (both men and women), people with intersex variants, and gender-queers<sup>2</sup>

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.

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, color, 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 inequalities, claiming that every individual in India has equal access to opportunities and privileges. But this doesn't seem to be reality in the transgender setting.

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## HISTORICAL BACKGROUND

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? Another well-known detail about Arjuna is that the curse of a lady forced him to temporarily lose his masculinity. Throughout mediaeval 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.

Yet, there is no reference of 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.

In the recent past, even if a transgender infant was born in a household, his or her family members were not allowed to keep him or her in their home. After all, how is it the baby's responsibility that they were born transgender? But the transgender child was forced to leave his parents' home because it was not socially acceptable. They were compelled to live their lives by working as sex workers, begging, dancing, etc. because they were not given the resources for education and jobs.

It is common knowledge that film reflects society. What happens in society is reflected in cinema. The same is true in Indian setting as well. If one looks at how transgender people are portrayed in Indian movies, they primarily play dancers, beggars, and sex workers. Who

could ever forget how transgender people were portrayed in Indian films like "Sadak," "Amar, Akbar Anthony," and others? At the risk of becoming repetitive, it is claimed that even in Indian films, the representation of transgender people is limited to the portrayal of unfavorable characters, which further highlights the dire state of their situation in Indian society.

Nonetheless, a few decisions made by the illustrious Indian courts in recent years have raised the level of social acceptance for them. Yet, certain social care agencies deserve praise for their efforts on behalf of transgender people.

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## LEGAL RECOGNITION

Transgender Persons (Protection of Rights) Act (2019): .This legislation seeks to safeguard the rights of transgender individuals in India by addressing issues such as discrimination, educational access, and employment opportunities. Nevertheless, there is ongoing debate regarding the law's implementation and effectiveness, with activists contending that it does not adequately address the concerns of the community.

The Honorable Supreme Court of India issued a judgement in 2014 with the following title :

In the case of National Legal Services Authority v. Union of India, it was noted that

transgender people were referred to as the "Third Gender" since they were different from men and women.

Before this, the applicant's gender would only be considered when a woman or a man applied for a position. At the third choice, where "Other" is written, the applicant's sex is also present. This was added with transgender people's interests in mind. As a result, transgender people are treated fairly at work, regaining their dignity.

Several other developments have also occurred in the changing times. We frequently read in the news and see on television that transgender people are running for office. Transgender candidates are also chosen for local offices. It indicates well for their future.

96% of transgender people are denied employment and are thus compelled to engage in low- wage or degrading labour for a living, such as begging, badhais and sex work.

89% of transgender people claimed that even those who are qualified cannot find work.

Between 50 and 60 percent of transgender people never attended school, and those who did faced harsh prejudice. According to the NHRC, 52% of transgender students were harassed by their classmates, and 15% were bullied by teachers, which is why they stopped attending school.

Only 6% of transgender people work for private companies or Nonprofits.

About 1% of transgender people earn more than Rs. 25,000 per month; the majority— 26.35%—make between Rs. 10,000 and Rs. 15,000.

23% of people are forced to perform sex work, which has significant health hazards. HIV infection is 49 times more likely to occur in transgender people.

Some of the heartbreaking statistics that LGBTQ Community is facing in economic opportunities, this is not the only problem they are facing economically but also socially.

As per Hindu mythology has transgender characters. Arjuna, one of the Mahabharata's Pandava heroes, spends a year in King Virata's court while posing as a "eunuch" in the Bahuchara tale. Arjuna, Amba, Sikhandin, and Rama are examples of people with uncertain gender status who Hijras use to support their assertion that their true identities have existed

throughout history. They possessed a powerful position and were regarded as one of the most important members of society during the Mughal Empire, but after the British arrived in India, their status changed and they began to be treated as outcasts. In today's era this is still believed that the LGBTQI

Community is outcast and different from others Indian families are not accepting their child as a transgender. Instead they try to hide the fact that they belong to LGBTQI Community and are shameful and embarrassed to accept the fact.

Only 2% of the transgenders lives with their family, if a parent tries to live with their child who is a transgender society will not let them live peacefully and will treat them as if they do not belong to this world . Still in India the representation of these people in private and public sector is very less in number and about 23% of them are compelled to engage in sex work which has high health related risks , some small countries like Malaysia ,Thailand and

Indonesia has recognized their right to work but denied serving the people as an administrator police officer or member of judiciary . If we try to educate them the students have differences among each other and most of them hide their identities, 99% of transgenders have suffered social rejection more than once in their lives .

Indian Supreme Court declaration that transgender community are officially recognized under the constitution of India in 2019 . This safeguards the rights of transgender community and the penalties for offences are introduced in this act are

Anyone who :

- compels or entices a transgender individual into forced or bonded labour (excluding compulsory government service for public purposes);
- Denies a transgender person the right of public passage or use of public places;
- Forcefully removes a transgender person from a household, village or other place of residence; commits an act or intends to do an act causing physical, sexual, verbal, emotional or economic harm and/or abuse against a transgender person; shall be punished with imprisonment which may vary between six months to two years, with a fine.

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## CONCLUSION

There is a very slight difference between sexual behaviour and that of "homo sapiens." The biological concept of sex is presented as being based on the human body's chromosomes. Individual, societal, and social perceptions of one's place in society are managed by one's sexual orientation. While we have granted transgender people the status of the Third Gender, the scaffold still needs to be completed, but it will take a while to maintain the execution of the same. In a world that is constantly changing, every country is working in perfect harmony to modify the value of each person who is born on the globe in the constantly changing world. We do talk about sexual fairness and think that gender is a flexible idea, and we may have given them a new label called "transgender," but they are still considered to be human , despite the fact that they are still overcoming the loneliness and suffering that their forebears went through, they are fighting for recognition in our male-centered culture and have no right to continue leading respectable lives.