

## Transgender Policy - A Foot in the Door for the LGBQ Community



Source : - <http://blogs.hrhero.com/entertainhr/2015/02/13/transparent-bringing-gender-identity-issues-to-the-forefront/>

## In This Issue

### **LEAD ESSAY:**

- Transgender Policy - A Foot in the Door for the LGBTQ Community

### **HEADLINE OF THE WEEK:**

- SC Right on AFSPA Abuse in Manipur

### **SECTION 1: GOVERNANCE AND DEVELOPMENT**

- **Politics and Governance:** Statehood Issue Root of Rocky Centre-AAP relationship
- **Defence :** SC Right on AFSPA Abuse in Manipur

### **SECTION 2: SOCIETY**

- **Gender:** Women's Duty is to Follow Her Man: Rajasthan Text Book
- **Regionalism :** Nagaland is in Process of Banning Dog Meat
- **Language And Culture :** In 14 Years, Little Boost for Bodhgaya

### **SECTION 3: INDIA AND WORLD**

- **India in the World :** US Lawmakers Introduce Bill to Prevent Indian Firms from Hiring on H-1B, L1 Visas
- **International Affairs:** Is it Time to Celebrate Democracy in Turkey?, Salvaging the War on Terror.
- **Americas :** Brazil: Slower, Lower, Weaker

### **SECTION 4: OPINIONS/BOOKS**

- **Opinions:** Is Protectionism a Problem?

## Lead Essay

### Transgender Policy - A Foot in the Door for the LGBTQ Community

#### Introduction

The transgender community in India has seen a lot of firsts and it shows that India is moving towards becoming a more progressive society. The recent steps taken by the government and the acceptance that the transgender community received is bound to give the remainder of the acronym, the Lesbian, Gay, Bisexual Queer community, hope. The transgender community may have become a part of the policy framework but, in light of the recent judgment upholding the sodomy law, the LGBTQ community may have a long way to go before their voices are heard. The differences between the two communities are based on the differences between understanding gender and sexuality even though both communities deserve the same basic human rights.

#### Policy

In 2014, the Supreme Court of India recognized, in a significant step, the transgender community as a third gender along with male and female. The petition for the same was filed by the National Legal Services Authority and the bench stated that “eunuchs, apart from the binary gender, be treated as a “third gender” for the purpose of safeguarding their rights under our Constitution and the laws made by Parliament and the State Legislature.” It was stated that they must be treated as a socially and educationally backward class and the government must extend to them reservation for admission in educational institutions and for public appointments. The ruling also stated that all identity documents, including a birth certificate, passport, ration card and driving license would recognize the third gender and they would have the right to vote, own property and marry.

In 2015, a private member’s Bill was passed in Rajya Sabha for the first time in over three decades. The aim of the legislation was to promote the rights of the transgender community, including reservations and financial aid. The policy is considered to be the brainchild of DMK MP Tiruchi Siva but, even before the Kerala policy was implemented, Tamil Nadu has had its own welfare board for transgenders since 2008. This welfare board may very well have been the first welfare board for transgenders in the world. Siva stated that even though, as per the statistics, the number of transgenders in India is only 4.5 lakh, there are actually over 20 lakh members of the community living in the country.

Today in India the transgender community enjoys various privileges such as access to free Sex Reassignment Surgery (SRS) in the Government Hospital (only for MTF); free housing program; various citizenship documents; admission in government colleges with full scholarship for higher studies; alternative sources of livelihood through formation of self-help groups (for savings) and initiating income-generation programmes (IGP). They have been categorized as an economically and socially backward class and have the right to choose which reservation they want to opt for while applying for benefits. There is a progressive movement on gender equality around the world and India wants to be a part of it. Plans are being made for a Gender Park with five acres of land gifted by the government of Kerala. They also want to host an international research Centre with fellowships and residencies for scholars working on gender. Minister of Social Justice, Dr MK Muneer recently also announced that he would be moving a resolution in the Assembly for Kerala to challenge the Supreme Court’s judgment on Section 377 that re-criminalized consensual sexual activity “against the order of nature”, which assumes nature to be heterosexual, despite abundant evidence to the contrary.

Therefore the current situation begs the question, where does the distinction between the rights of the transgender and LGBTQ community lie? Despite facing similar hardships what makes the society more comfortable with and accepting of one community, while the other community is treated as criminals?

i

The courts passed their judgment on the status of transgenders in 2014 but, the Centre is yet to act on it. The Centre sought clarification on what is covered under the term ‘transgender’ to which apex court responded, by threatening to dismiss the application with costs, that the April 2014 judgment was crystal clear that lesbians, gays and bisexuals had

## Lead Essay

not been included in the category of “transgenders” and refers to hijras, eunuchs, Kothis, Aravanis, Jogappas, Shiv-Shakthis, etc. The judgment further states that “The grammatical meaning of ‘transgender’, therefore, is across or beyond gender. This has come to be known as umbrella term which includes gay men, lesbians, bisexuals, and cross-dressers within its scope. However, while dealing with the present issue we are not concerned with this aforesaid wider meaning of the expression transgender.”

### The Divide

- The reason the two communities are separate is because, courts have drawn a distinction between the two communities on the basis of gender and sexuality. While the gay, lesbian and bisexual people are categorized by their sexuality, the transgender people are characterized by their gender non-conformity. Gender identity and sexual orientation are not the same. Sexual orientation refers to an individual's enduring physical, romantic, and/or emotional attraction to another person, while gender identity is about which gender one identifies with the most. There is a common misconception that transgender people are gay, probably due to being clubbed together with the LGBQ community but, transgender people may be straight, bisexual, lesbian, gay, or asexual. The reason behind the misconception is that when the first gay activists started working towards equality they naturally clubbed the transgenders together as well. Both communities face almost the same issues of hate crimes, discrimination, lynching, prevalence of HIV-AIDS, prostitution along with lack of recognition but, the underlying issue is quite different. The fact that in most other countries, unlike India and Pakistan, the LGBQ community got recognition before the transgender community further led to more misconceptions. The fact that sex and sexuality is considered a taboo topic even amongst the educated class in India is a major reason for the transgender community receiving recognition while the LGBQ community fights for its rights.
- India is a society where the topic of sex is even today considered taboo. This adds to the reasons it is difficult for India to talk about the LGBQ community. On the other hand, the transgender community has had an important role in society in India. They were used as palace guards during the Mughal period and even today hijras are given money during weddings or at the birth of a child as a sign of good luck. Unlike the gay community which is less visible, hijras are frequently seen at traffic signals. For the common man, transgenders are not an alien concept but someone they see regularly and accept as a part of society.
- There can be many approaches to finding recognition for the LGBTQ community. Firstly, one's sexual orientation or gender identity can be treated as a matter of privacy in which the state should not intervene. The same logic would make criminalizing gay sex against one's Right to Privacy which is a part of Article 21 of the Constitution. Secondly, the human rights approach would also give the community a right to freedom of expression and rights to their gender and sexuality. In either case, the reasons behind supporting one community apply to the other as well.
- The reason the transgender community got recognition in India is because they have been recognized as economically and socially backward class of society, in the same category as SC's and ST's. Their recognition comes from the fact that most transgenders can't find employment and end up as sex workers. The same cannot be said about the LGBQ community which can function as a part of society by blending in and hiding their sexuality. The William's Institute in USA recently published research which links economic development of a country to social inclusion of the LGBQ community. It found that in developing economies by not recognizing the rights of the LGBQ community the overall development of the country suffers. The inclusion of this community on the other hand has led to economic growth and increased productivity. The reasoning behind this is that by criminalizing the community the country is reducing the available human resource which would have economic consequences. The 2014 study by the World Bank on "The Economic Cost of Homophobia in India" has revealed that India suffers a loss between 0.1 to 1.7% of GDP or about 2-30\$ billion because of homophobia. Section 377 costs the nation between \$712 million to \$23.1 billion in health costs (HIV, depression and suicides). There's a price to be paid for bigotry, and the whole nation is paying it.

## Lead Essay

- Section 377 is the law which criminalizes the actions of the LGBTQ community in India. The law dates back to 1860 and was introduced by the British. Ironically, homosexuality is not a crime in Britain anymore and wasn't a crime in India till the country was colonized. India is under pressure from the international community today to repeal Section 377 even though it is clearly a byproduct of western thought on India. The law criminalizes carnal intercourse against the order of nature including fellatio and anal sex.

Way Forward: Mr. Shashi Tharoor, a Congress Member of Parliament and a vehement supporter of LGBTQI rights hoped to “raise consciousness” through his public petition on change.org, which has gathered over forty thousand signatures and will be sent to the prime minister. Mr. Tharoor's attempt to introduce a private member's bill to decriminalize gay sex was defeated twice in Parliament. In an interview he stated that “How you bring about change is by getting people to think and talk. Even if my bill is defeated in the Parliament, I would at least like it to be defeated after a debate. People (need to) understand the issues at stake rather than being opposed in the very introduction stage”. India's LGBT individuals are perennially in fear of being apprehended, and of being branded as criminals. In recent years the number of arrests made under this section has skyrocketed from less than 200 arrests in the past 150 years to 578 arrests in 2015 alone. The transgender community is different in this context as well for many reasons. They are not always gay, they can have physical features of both genders, many have faced forced castrations as children and those who do identify as gay transgenders usually fall in the heterosexual category after their sex change operation. The law again becomes an issue of criminalizing a sexual act or sexuality and not against gender.

Unfortunately, despite policies being implemented in Tamil Nadu we find that the community still faces discrimination and lack of support from the government and the people. The implementation of the policy is now a reality in Kerala, with promises of employment for transgenders in the Kochi metro once the project is completed. Kerala has even seen its first transgender school principle and police officer. In the same spirit, India could also learn from the ongoing debate in the US on transgender policy in public spaces and educational institutions. Steps must also be taken towards inclusion of the transgender community into society by looking into gender neutral uniforms and bathrooms at the work place, 24x7 help lines, updating personnel records, locker room, health insurance, counseling sessions for family, implementing reservations in government educational institutes and most importantly by taking steps towards spreading awareness about gender identity amongst the public.

### Conclusion

While talking about the transgender community the Supreme Court said that “recognition of transgenders as a third gender is not a social or medical issue but a human rights issue. Transgenders are also citizens of India. 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.” If that be the case, then the LGBTQ community should also be recognized and provisions should be made for them as citizens of India to grow to their potential as well. The transgender policy has been a foot in the door for the people of the LGBTQ and in hope of a progressive India the door needs to stay open. As per the suggestions made by the Chief Justice of India, the matter of recognition and inclusion of the LGBTQ community must be debated in parliament. India must take into account the presence of homosexuality in its own historical records and the right of each individual to freedom of expression while taking steps towards repealing Section 377. The biggest road block for the LGBTQ community is the lack of public awareness. Due to lack of information, there are many misconceptions which have lead to hate crimes against the community. By accepting the transgender community, there is hope that the people would realize that the suffering faced by the LGBTQ community is almost the same and despite having different underlying issues of gender and sexuality both communities are citizens of India. Civil society must work towards informing the citizens about the struggle of both of the groups so they can make informed decisions while electing their representatives.

**Prepared by:**  
Wamika Kapur

## Lead Essay

### References:

<sup>i</sup> 'Kerala becomes first state to unveil transgender policy', *The Indian Express*, November 12, 2015. Available at <http://indianexpress.com/article/india/india-news-india/kerala-becomes-first-state-to-unveil-transgender-policy/>  
Date Accessed : 7.13.2016

Michael Lambert, 'India Supreme Court Refuses Challenge to Anti-Gay Law', *Out*, June 29, 2016. Available at <http://www.out.com/news-opinion/2016/6/29/india-supreme-court-refuses-challenge-anti-gay-law>  
Date Accessed : 7.13.2016

'Rajya Sabha passes historic private Bill to promote transgender rights', *The Indian Express*, April 25, 2008, Available at <http://indianexpress.com/article/india/india-others/rajya-sabha-passes-private-bill-to-protect-the-rights-of-transgenders/99/>  
Date Accessed : 7.14.2016

'On the classified ad pages of a Kashmir paper, a sign of how violence has upturned Valley life', *Scroll*, July 12, 2016, Available at: <http://scroll.in/article/811611/on-the-classified-ad-pages-of-a-kashmir-paper-a-sign-of-how-violence-has-upturned-valley-life>  
Date Accessed : 7.14.2016

The Relationship between LGBT Inclusion and Economic Development : Analysis of Emerging Economies , *Williams Institute*, November 2016, Available at : <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-inclusion-and-development-november-2014.pdf>  
Date Accessed : 7.15.2016

Vishnupriya Bhandaram, 'No room in democracy for Section 377: The Shashi Tharoor podcast on LGBT rights', *First Post*, February 3, 2016, Available at : <http://www.firstpost.com/living/no-room-for-section-377-in-a-democracy-shashi-tharoor-weighs-in-on-lgbt-rights-2608212.html>,  
Date Accessed : 7.15.2016

Shashi Tharoor, 'I'm Not Giving Up On Fighting Section 377', *NDTV*, Available at : <http://www.ndtv.com/opinion/im-not-giving-up-on-fighting-section-377-1266079?browserpush=true>  
Date Accessed : 7.15.2016

J. VENKATESAN, 'Supreme Court sets aside Delhi HC verdict decriminalising gay sex', *The Hindu*, December 11, 2013, Available at <http://www.thehindu.com/news/national/supreme-court-sets-aside-delhi-hc-verdict-decriminalising-gay-sex/article5446939.ece?homepage=true>  
Date Accessed : 7.15.2016

## Headlines

### **SC Right on AFSPA Abuse in Manipur**

*(Deccan Chronicle, July 10, 2016)*

While ordering an investigation on Friday into the allegedly more than 1,500 “extra-judicial killings” in Manipur in the past decade, the Supreme Court has come down hard on the state and the Centre, questioning some of the key principles under which the Indian state has operated.

ReadMore: <http://www.deccanchronicle.com/opinion/dc-comment/100716/sc-right-on-afspa-abuse-in-manipur.html>.

Date Accessed: 11.7.2016

## Governance & Development

### *POLITICS AND GOVERNANCE*

#### **Statehood Issue Root of Rocky Centre-AAP relationship**

(Maria Akram, *The Hindu*, July 11, 2016)

Chief Minister Arvind Kejriwal's equation with the L-G, the Delhi Police and bureaucrats sums up Delhi's political scene under his rule. But at the root of the escalating political tussle between the AAP and the BJP at the Centre is Delhi's peculiar administrative status. A democratically elected government in Delhi doesn't have control over administrative appointments and civic agencies like the DDA and Municipal Corporations, and the police do not come under their direct control. Its power is shared between the Centre and the Delhi government. While the government has been able to deliver on their promises in education, health, power and water, the increasing public spats between the AAP government and the L-G (read the Centre) over control on the three subjects have left citizens in the middle of crossfire. And every issue boils down to full statehood

Read More: <http://www.thehindu.com/news/cities/Delhi/statehood-issue-root-of-rocky-centreaap-relationship/article8833130.ece>

Date Accessed: 11.7.2016

## Society

### ***GENDER***

#### **Women's Duty is to Follow Her Man: Rajasthan Text Book**

(The Huffington Post, July 18, 2016)

A team of experts has determined that various illustrations and chapters in school textbooks in Rajasthan "reinforce male dominance," with stories of courage and bravery revolving around male characters, while relegating women to the "domestic sphere." Earlier this year, academics determined that school textbooks in Bharatiya Janata Party-ruled Rajasthan were being saffronised. Now, a report prepared by academics based in Delhi and Jaipur says women are introduced in reference to men in school textbooks.

Read more: [http://www.huffingtonpost.in/2016/07/18/womans-duty-is-to-follow-her-man-says-rajasthan-textbook/?utm\\_hp\\_ref=politics](http://www.huffingtonpost.in/2016/07/18/womans-duty-is-to-follow-her-man-says-rajasthan-textbook/?utm_hp_ref=politics)

Date Accessed: 18.7.2016

### ***REGIONALISM***

#### **Nagaland is in Process of Banning Dog Meat**

(Indian Express, July 10, 2016)

The State Cabinet has not yet taken any decision on the matter but the government through a letter issued by Joint Secretary Obangla Jamir, has asked the Joint Director of Directorate of Municipal Affairs to issue an order to all the ULBs to give wide publicity to care for animals and also to issue an order to stop capture of dogs for the purpose of slaughter and meat, an official said. The Municipal Affairs Department (MAD) have also been requested to stop the bazaars meant for selling live dogs and its meat, besides giving wide publicity to treat animals with care and love, the Joint Secretary said.

Read More: <http://indianexpress.com/article/india/india-news-india/nagaland-is-in-process-of-banning-dog-meat-2904974/>.

Date Accessed: 11.7.2016

### ***LANGUAGE AND CULTURE***

#### **In 14 Years, Little Boost for Bodhgaya**

(The Telegraph, July 18, 2016)

Bodhgaya, which Unesco listed as a World Heritage site in 2002, has not been able to cash in on the global honour. "The Unesco tag and the Dalai Lama's popularity can catapult Bodhgaya into the world's most sought-after tourist destination. Alas, neither the government nor the local people have the vision to harness its potential," Bultrini said.

Read more: [http://www.telegraphindia.com/1160718/jsp/frontpage/story\\_97245.jsp#.V4ybjf197IU](http://www.telegraphindia.com/1160718/jsp/frontpage/story_97245.jsp#.V4ybjf197IU)

Date Accessed: 18.7.2016

## India and World

### INDIA IN THE WORLD

#### **US Lawmakers Introduce Bill to Prevent Indian Firms from Hiring on H-1B, L1 Visas** (*The Wire*, July 9, 2016)

A bipartisan group of two US lawmakers has introduced in the House of Representatives a legislation, which if passed by the Congress would prevent Indian companies from hiring IT professionals on H-1B and L1 work visas. Since the revenue model of majority of big Indian IT companies is heavily dependent on H-1B and L1 visas in the US, such a bill is likely to have a major impact, if not sound a death knell, on their businesses.

Read More: <http://thewire.in/50277/us-introduces-bill-to-bar-indian-companies-from-hiring-on-h-1b-visas/>.

Date Accessed: 11.7.2016

### INTERNATIONAL AFFAIRS

#### **Is it Time to Celebrate Democracy in Turkey?** (*Mustafa Akyol*, *The New York Times*, July 17, 2016)

It is not the old Turkey anymore, where tanks could take the streets and the military could scare people into bowing down, as it did in 1960, 1971, 1980 and again in 1997, when its leaders decided that elected governments were not in line with the country's founding vision. No, this time people took to the streets and confronted the rebellious soldiers. Perhaps more decisive was the fact that a majority of the military, the police and other state institutions didn't go along with the plot.

Read more: <http://www.nytimes.com/2016/07/17/opinion/is-it-time-to-celebrate-democracy-in-turkey.html?ref=opinion>

Date Accessed: 18.7.2016

#### **Salvaging the War on Terror** (*The Hindustan Times*, July 18, 2016)

To bring the war on terror back on track, it has become necessary to initiate a sustained information campaign to discredit the ideology of radical Islam that is fostering "jihad factories" and promoting self-radicalisation. Blaming the Isis for the recent strikes, just as most attacks after 9/11 were pinned on al-Qaeda, creates a simplistic narrative that obscures the factors behind the surging Islamist terror.

Read more: <http://www.hindustantimes.com/analysis/salvaging-the-war-on-terror/story-1zdLo9qDTBjtkorNykcTwN.html>

Date Accessed: 18.7.2016

### AMERICAS

#### **Brazil: Slower, Lower, Weaker** (*The Livemint*, July 18, 2016)

The Brazilian economy has lost its tailwind between 2007, when it threw its hat in the Olympic ring, and 2016, when it will host those Games, raising the stakes for it that much more. How Brazil has been challenged on eight economic indicators in the last decade and how it compares with India.

Read more: <http://www.livemint.com/Politics/3QHya6h71HXCCIzof8dIvK/Brazil-slower-lower-weaker.html>

Date Accessed: 18.7.2016

## Opinions/ Books

### OPINIONS

#### Is Protectionism a Problem?

(Barry Eichengreen, The Livemint, July 18, 2016)

Unilateral resort to trade restrictions, by making diplomatic cooperation more difficult, complicated efforts to mobilize a coalition of the willing to contain the Nazi threat. Tariff protection may not be bad macroeconomic policy in a liquidity trap. But this doesn't make it good foreign policy—for Trump or anyone else.

Read more: <http://www.livemint.com/Opinion/r0Wp3EoEuyHlgeTdZoRNQP/Is-protectionism-a-problem.html>

Date Accessed: 18.7.2016

Issue Coordinator: Ms. Garima Sharma

Connect with RGICS at: [info@rgics.org](mailto:info@rgics.org); [www.rgics.org](http://www.rgics.org)



**Disclaimer:** This document has been prepared by the RGICS staff and has not been seen by the Trustees of the Rajiv Gandhi Foundation (RGF). Further, the views presented in this document in no way reflect the views of the RGF Trustees.

To unsubscribe, please write to us at [info@rgics.org](mailto:info@rgics.org)