



EMBRACING THE THIRD GENDER IN INDIA

BY REBECCA JOHNSON



“By giving a third gender option to its citizens, India has empowered its people and advanced its country”

Indian transgender women, or hijra, caught up in a moment of joy after hearing news of the recent Indian Supreme Court decision that allowed for the creation and recognition of a third gender.

The history of transgender women in India, typically referred to as *hijras*, goes back 400 years. These women once held positions of great respect, prestige, and cultural significance. However, the turnover of power to the British in the middle of the 19th century caused the lifestyle of *hijras* to become illegal and their existence within Indian culture to become taboo through the passage of the Criminal Tribes Act in 1871.¹ As a result, many members of the *hijra* community were, and continue to be, discriminated against, and they remain one of the most marginalized groups in India today. Recent landmark legislation, however, may play a role in reversing this trend and improving the quality of life for India’s transgender community. Within a larger international context, this kind of progressive action will have a profound impact on the general populace of India as well.

Why is it so important to consider the rights of transgender women in India? The transgender community alone in India numbers over 3 million members.² This large transgender community faces oppression and discrimination, on the scale of human rights violations, in almost every area of their lives, including “sexual assault, molestation, rape, forced anal and oral sex, gang rape and stripping.”³ While at first it may seem like an increased police presence would help protect these *hijra* communities, police officers are often responsible for much of the harassment themselves.⁴ Common origins of many of the other harassment claims occur in public men’s bathrooms. Because *hijras* are not allowed to access women’s bathrooms they are especially vulnerable to sexual assault. As a result of this discrimination and assault, *hijras* are not able to reach their full potential, let



Worshippers celebrating the patron goddess of the hijra, Bahuchara Mataji, at a festival

alone live a secure life. Something clearly must be done to protect the transgender community in India.

Forced adherence to binary gender roles, an approach the Indian government has historically favored, is not the answer to this discrimination. Classifying *hijras* as women will not solve any issues. Many *hijras* consider themselves to be a third gender, as they see themselves as neither men nor women, while simultaneously both men and women.⁵ Therefore, forcing *hijras* to subscribe to a set of binary gender roles forces them to denounce an essential part of who they are and sacrifice their identity.

This forced adherence is incredibly apparent when filling out government paperwork. For example, until recently *hijras* were required to select one of the binary genders for their official documentation. This pressure to identify as biologically male or female left *hijras* at a serious disadvantage with regards to healthcare, education, and employment. Most

hijras never undergo full sex reassignment, and rather opt for an 'emasculated operation', or voluntary castration.⁶ As a result, they often receive less than comprehensive medical care, as many doctors are not versed in transgender medicine or treatments. In addition to a lack of comprehensive health care, *hijras* face discrimination within gender specific occupations as an in-between gender. Lastly, it is a common practice for *hijras* to be expelled from their homes by relatives offended by their transgender status before schooling can be completed. As a result, left with few other options, *hijras* are often forced to become performers, mystics, or prostitutes to support themselves and their *hijra* community group led by a veteran 'guru'.⁷

On April 15 2014, in response to the mounting issues facing the Indian transgender community, the Supreme Court of India determined that India, in addition to having a male and female gender, would now have the option for a third gender in all official government

documentation. The ruling championed the idea that transgender persons now had the right to “decide their self-identified gender,” and that the Centre (national) and State Governments must legally recognize this. The ruling also provided that the *hijra* community be treated “as socially and educationally backward classes of citizens,” which therefore entitled *hijras* to various reservations in educational institutions and public appointments.^{8,9} To combat the rising rate of HIV among transgender women, the Supreme Court also directed the Centre and State Governments to operate additional HIV surveillance centers.¹⁰ Lastly, it was decreed that the government “provide separate public toilets and other facilities” for transgender women, in order to avoid potentially dangerous situations in the public men’s bathrooms.¹¹

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While this landmark decision will work towards destigmatizing transgender identity in India, as well as providing new opportunities in education, health, and employment, there is still controversy regarding the ruling of the case. One of the greatest problems that people have with the current ruling is that it comes on the heels of the Indian Supreme Court’s reversal of the Delhi High Court’s ruling on Section 377 of the Indian Penal Code. In 2010, the Delhi High Court overturned Section 377, decriminalizing homosexual sex.¹² Three years later, however, the Indian Supreme Court recriminalized homosexual sex, after determining that its legality should be determined by Parliament,

not the judicial system. Because *hijras* are now classified as a third gender under the April 2014 ruling, sex between a transgender individual and a man is not a criminal act, because they are not considered the same gender. Thus, some LGBT activists are upset as rights were granted unevenly across the community.

Additionally, some government officials question the validity of the Supreme Court ruling, due to a vague and ambiguous definition of ‘transgender persons.’¹³ One of the government’s concerns stems from the fact that a transgender person has full freedom to “decide their self-identified gender.”¹⁴ This leaves room for controversy, as individuals can self-identify apart from any medical opinion. One such example people find controversial is that a transgender individual could claim to be a woman and compete ‘unfairly’—according to critics—on a women’s sports team without needing medical clearance.¹⁵

On the other hand, proponents of this ruling believe that this decision is only the beginning of more expansive changes for the LGBT community as a whole. In regard to the issues associated with selecting one’s own gender, the Supreme Court made clear in its analysis prior to the ruling the important distinction between sex and gender: while “it is the right of every human being to choose their gender,” people do not have the opportunity to choose their biological sex.¹⁶ However, if a “person surgically changes his/her sex, then he or she is entitled to her changed sex and can not be discriminated” against.¹⁷ Still some citizens of India are not yet comfortable with the idea of a biologically male person performing a female job, such as an airport security guard in charge of female pat downs.

In reality change has been slow, as the bureaucracy has largely resisted the Supreme Court ruling. As a direct result of the decision,

however, “all identity documents such as birth certificates, passports and driver’s licenses will now have a third gender box.”¹⁸ This addition to government documents increases employment opportunities, access to healthcare services, and educational opportunities. The expansion of the current medical system has been crucial in helping the transgender community, especially in the treatment and prevention of HIV. In India, the overall adult HIV prevalence is less than 1%, while the transgender community’s HIV prevalence is somewhere between 17.5% and 41%.¹⁹ Thus, it is very promising that there is increased awareness and empathy towards transgender women within the medical community, and that access to medical facilities for transgenders has increased since the Supreme Court ruling.²⁰ “While previously transgenders were dependent on physicians facilitated by the AIDS Control Societies, now they [are] able to consult qualified physicians

of their choice,” marking a dramatic shift in the quality of medical treatment for transgenders in India.²¹

Nevertheless, it appears that change has been much more dramatic at the Indian state level of governance than at the national level. For example, in the state of Karnataka, legislation has been drafted to create support units for transgender people that include grants for education, self-employment, and sex reassignment surgery.²² While the Karnataka policies have not yet been implemented, they have been sent to the Cabinet for approval by the Education and Health departments, among others.²³ In addition, the state of Tamil Nadu has recently started distributing ration cards to transgender citizens as well as pensions of 1,000 rupees (\$16) a month, and “financial assistance to start self-employment ventures.”²⁴ State governments are seen as being more responsive to the people. They are therefore more swift in



Indian hijra women pose proudly with their newly distributed government identification listing their gender as ‘other’

their adoption of policy changes, especially with regards to human rights, as they are held more accountable than the Centre. While the Centre is stuck in a gridlock between the Supreme Court and the government, the states of India have been busy creating positive change.

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It is clear that the Indian Supreme Court ruling regarding the third gender has impacted every level of the country’s infrastructure, albeit to varying degrees. However, that is not the only way the ruling has influenced India; the decision has been key in preserving and expanding the diversity of Indian citizens. People that were cast aside for hundreds of years, who were considered on par with the lowest class of Dalits, are finally getting the recognition they deserve to preserve their culture and customs. India finds strength in diversity and therefore, this act of the Supreme Court has strengthened India as a whole by increasing access to higher quality medical care and extending support to an entire community.

This ruling has not only made a domestic impact, but also served as a global example for other countries with similar, discriminated against, transgender communities. Other countries would do well to mirror India’s third gender policy in their own official documents. Gender is often viewed as a binary system, but many who study gender view it as a spectrum. Thus, it would be more accommodating to those

who don’t fit into traditional gender molds if there was an option available similar to India’s third gender. In the words of Judge K.S. Panicker Radhakrishnan, every person has the right to “decide their self-identified gender.”²⁵ They should be able to live by that regardless of the sex with which they were born. By giving a third gender option to its citizens, India has empowered its people and advanced its country.

Rebecca Johnson is a Finance major at Boston College, Class of 2017

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Image 2: <http://news.asiaone.com/news/asian-opinions/when-will-we-discuss-third-gender-our-classrooms>

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