

Sex Identity vs. Sexual Orientation: Understanding Transgender Category in India

–L.T. Om Prakash¹ and G. Karunanithi²

ABSTRACT

Emancipation and equality for the sexuality minorities in India is no longer a distant dream while taking into account the recent developments. The period of June- July 2009 drew the attention of academics, social activists and policy makers across India to the issues of sexuality minorities. During this period, their protests against discrimination were widely flashed in leading national dailies. The Delhi High Court legalized gay sex on July 2nd 2009 by declaring that the section 377, which criminalized some sexual acts of adults in private, though consensual in nature. It said that section 377 violated the fundamental right to live with freedom and equality guaranteed in the Indian constitution. It is indeed a landmark judgment enabling the third gender to exercise their rights. One can also understand that the Government of India is also cognizant of this trend. The Union Home Ministry claims that the section 377 of the Indian Penal Code defining 'unnatural sex' is an 'absurdity in the present day'. Besides, the Ministry of Health and Family Welfare and the Ministry of Law called for an extensive public debate on this issue and stressed the importance of making the public understand and accept the changes proposed in the law and its repercussions if any.

This paper attempts to analyze the conceptual problems in defining transgender and homosexual categories and tries to arrive at a conclusion based on a good deal of reasoning, which corroborates the claim that transgender people are to be differentiated from homosexuals and the liberation of the former would precede the latter.

Key Words: Transgender, Homosexuality, Hijras, Sex Identity, Sexual Orientation

1 Assistant Professor of Sociology at Christ University, Bangalore; India;
Email: ltomprakash@gmail.com

2 Visiting Professor of Sociology at Corvinus University of Budapest, Budapest;
Hungary

INTRODUCTION

Transgender is a tricky word to define, and it is often used as a “catch-all” category for a range of those who “play with or “transgress” gender norms, including *cross-dressers*³, *transvestites*⁴ and *transsexuals*⁵ (Jonathan, 2005). But, the term ‘transgender’ usually refers to individuals who identify themselves with a physical sex which is different from their biological one. It is common to think of the term “trans” in “transgender” as moving horizontally between two established gendered spaces, “man” and “woman,” or as a spectrum, or archipelago that occupies the space between the two (Stryker, 2008). Heyes used the term ‘transgender’ to describe those who live a gender that they were not perinatally assigned or that is not in the publicly recognized binary gender systems. He used the term ‘transsexed’ to describe people who undergo (or hope to undergo) any of a number of physical interventions to bring their sexed body more closely into line with their gender identity (Heyes, 2003). In India, the term ‘transgender’ was used as a broader connotation for ‘transsexuals’. But, since the 1980s, it was expanded to an umbrella term for uniting all those whose gender identity did not mesh with their assigned gender at birth. They are locally known as *Hijras*⁶ in India. They are males by birth but adopting female identity, clothing and roles later on. The term *Hajra* is used interchangeably with the term ‘transgender’ in India. Of the major sexuality minorities viz. gay, lesbian and transgender who come under the rubric of queer, transgender people are the most socially visible category in India. At the same time, common to each of these identities apart from their roots in sexuality is their questioning of the heteronormative ideal that claims that the only way in which two human beings can relate romantically, sexually, and emotionally is the heterosexual relation (Narain, 2004).

During the last decade of the 20th century, the hitherto private realm of sexuality emerged as a focal point and basis for various forms of political assertions. Now a days, India is increasingly witnessing people

3 Cross-dressers are those who wear clothes associated with the opposite sex.

4 In addition to cross-dressing, this word has extra physical connotation.

5 Those identify with a gender inconsistent with the biologically assigned sex. This word has a biological connotation than social. Sometimes used interchangeably with the word transgender.

6 *Hijras* in India and other South Asian countries are physiological males who adopt feminine gender identity, women's clothing and other feminine gender roles. They form a religious community of ascribed intersexual. Their major source of income is derived mostly from the practice of homosexual prostitution, begging in market places and trains and also singing and sexually suggestive dancing.

who assert their right to be different as sexual beings in terms of their sexual orientation, gender identity, and sexual practices (Narrain, 2004). In this context, it is important to understand the difference between the transgender category and the homosexual category. But, most often the gender identity and expression are wrongly thought of in the context of sexual orientation. Hence, it is important to distinguish the concept of gender identity from that of the concept of sexual orientation. On the one hand, the gender identity indicates a person's internal sense of masculinity or femininity or something other than these two explicit gender identities. On the other hand, sexual orientation refers to the sex of a person to whom one is physically or emotionally attracted. This clarity in the conceptualization also warrants the differentiation of those who have a particular gender identity from those who have a particular sexual orientation. Thus, homosexuality refers to a kind of sexual orientation, i.e. the sexual attraction between two persons of the same sex, whereas the transgender refers to a sex identity that deviates from the dichotomous sexual classification. This difference in the conceptualization of the concepts has to be drawn to differentiate transgender from lesbians⁷, gays⁸ and bisexuals⁹ (LGB) who are primarily homosexuals. Thus, only through carefully looking at the issues of gender identity, one can address the issues of transgender, whereas the sexual orientation is a decisive factor of sexual relationship, which determines the identity of lesbians, gays and bisexuals. Moreover, unlike the LGB, the transgender people need not be referred to as homosexuals¹⁰ as they can undergo Sexual Reassignment Surgery (SRS). From this point of view, why can not the transgender people claim their heterosexual status as they are bodily compatible for heterosexual relations after the SRS. But, there is no need on the part of the transgender people to identify themselves with the heterosexuals for two major reasons. They are: (i) It may show a wrong direction to the hitherto struggle of the sexuality minorities because the claim for heterosexual status by the transgender people gives the heterosexuals a status over the homosexuals, which is contradicting the ongoing debate placing both in the same status. (ii) There is no need in any civilized

7 The term 'lesbian' refers to sexual and romantic desire between females.

8 At present the noun form of 'gay' often designates only male homosexuals. When the term 'lesbian', came into vogue, several writers started referring the term 'gay' to male homosexuals.

9 The term 'bisexuality' refers to behavior or orientation involving physical or romantic attraction to both males and females.

10 Homosexuality refers to romantic or sexual attraction or behavior among members of the same sex.

society to prove one's personal sexual status even if it confronts with the socially defined 'natural sex identity'.

From the discussion, it is clear that conceptually the problems and prospects of the transgender category need not be clubbed with that of the LGB since the issue of transgender people has come out of their 'ambiguous' sex identity, whereas the issue of LGB has originated from their 'disputed' sexual orientation outside the established cultural norms of the society. At the same time, it is quite common among the scholars (Benditt et. al., 2009; Ekins & King, 2006; Marks, 2006; Narrain, 2004) to combine the transgender category with the LGB. It is also believed that such a mixing would give numerical strength to the former under the rubric of 'sexuality minorities'. But it is too early to predict to what extent their alliance with the LGB would strategically provide strength to the transgender community in India. The following sections of the paper explain this.

TRANSGENDER PEOPLE IN INDIA

The Indian social system has made the transgender people conceal their identity in public places. Usually they live as ostracized communities mostly in urban slums segregated from the main residential areas. At present, in India, according to unofficial reports (as of now, no enumeration of transgender people has been done by the Indian government), the transgender population is estimated as one million and has also been increasing. This community has a long recorded history in India. For instance, *Tolkappiam*, an ancient Tamil grammar text, refers to them as *pedu*. Various ancient poets and religious leaders also refer to them as *Ali*¹¹. In some parts of India, the term '*Aravani*' has been used to refer to them. Ancient literatures also portrayed them in various ways. For instance, *Ramayana*, the great epic of India, describes that when Rama, the reincarnation of Vishnu, a Hindu Vedic God, returned from the forest after the exile of fourteen years happened to see the skeletons of people at the riverbanks of *sarayu* in *Ayotya* situated in north India. When he rejuvenated the skeletons, he understood that they are the transgender people who accompanied the people of *Ayotya* to send him off while leaving the forest fourteen years ago. Then he realized his mistake that he asked the men and women of *Ayotya* to return home and forgot the love of accompanying transgender people. This is depicted as an example of

¹¹ It refers to the person who is neither a male nor a female. Used interchangeably with the terms 'eunuch' and 'transgender'.

social isolation that the transgender people underwent. Anyhow, Lord Rama assured them of better treatment in his next reincarnation of Krishna. Accordingly they were born as singers praising the Lord (Somasundaram, 2009). Thus, in India, the practice of transgender people singing for the good health of newborn babies also came into vogue.

The depiction of *Sikandi*, a transgender in another great epic, *Mahabharata*, is also worth mentioning here. In the battle between the *Kauravas* and *Pandavas*, *Arjuna*, a great warrior of the latter, was not able to conquer his opponent, *Bhishma*, who fought for the former. Therefore, *Arjuna* sought out a plan to defeat him tactfully by placing *Sikandi* in front of him. Then *Bhishma* put down his weapons saying that he did not want to enter combat with a person who is neither a male nor a female. *Arjuna* who was waiting for this chance shot him down with a row of arrows. In another context in *Mahabharata*, due to the curse of *Urvashi*, a celestial danseuse, *Arjuna* himself lived as a transgender in disguise for one year during the exile of *Pandavas* (Narayan, 1978).

On the other hand, it is also noted that the presence of transgender (*Hijras*) in certain family functions is considered auspicious. For instance, in some states of North India, parents invite *hijras* to see their newborn child and to attend to the rituals associated with the naming ceremony. The reason is that the former believe that the blessings of the latter in exchange for gifts or money would bring health and wealth to children and also their parents. Similarly, it is also believed that the blessings of the *Hijras* would bring good luck and fertility to newly wedded couples. Though these references about the transgender people in the epics and the social treatment met out by them are the testimony for the recognition of their presence in the ancient time, they also exhibit the social stigma associated with them.

At the same time, it is indeed a welcome change that in contemporary India, the transgender people are in pursuit of civil rights by collective mobilization and representation outside the umbrella of LGBT. Moreover, discussions and debates on sexual rights have also been frequent features in the academic as well as public forums for the recognition and empowerment of the transgender people in India. Their public appearance and active participation independent of the LGB in India to get their rights remains to be an evidence to comprehend their subjective understanding of their position in relation to that of heterosexuals¹² and homosexuals. For instance, the transgender people in Tamilnadu, a southern state of India,

12 Heterosexuality refers to sexual behavior, practices, and identity based on primary preference or desire for the opposite sex.

made a path breaking adventure in the beginning of 2009 by stepping out of their masked modesty to celebrate a week-long festival of 'good neighbors' at Madurai, the temple city of southern Tamilnadu. This was indeed a healthy trend set by them to demonstrate that they want to get into the mainstream of society. Unlike the LGB carnival in the West, the participants in the festival were only the transgender people from various parts of India.

Though the existence of transgender over centuries is obvious especially in India, a large section of people are rather reluctant to recognize them because they are still obsessed with the idea of gender dichotomy and not prepared to accept the existence of a third gender category. Therefore, in the absence of public support, the transgender people in India have been confronting serious socio-economic problems and somehow sustaining their livelihood mostly by begging and prostitution. They are often subject to sexual exploitation and sexual harassment because of their vulnerable position in the society. Consequently they get infected by HIV/AIDS and other sexually transmitted diseases. In this line, it highlights certain crucial issues keeping in mind the importance of mainstreaming the transgender people. It also brings out the differences between the transgender and the LGB in order to develop a comprehensive formula to bring the former into the mainstream social life. The following section claims with a great deal of reasoning that the separation of the transgender category from the LGB category is of paramount importance for the mainstreaming of the former.

Is LGBT a Relevant Solution?

As mentioned earlier, the mixing of the transgender category with that of the LGB would result in a conceptual problem because it could amount to identity crisis of the transgender whose sexual orientation need not be identical with that of the LGB. Ever since the incorporation of the issues of transgender for research and debate, they have been considered part and parcel of the homosexual society. Moreover, homosexuality is rather a hidden phenomenon in India. Only a limited number of the total homosexual population admit and reveal their homosexual orientation. But it is presumed that a significant proportion of them might have, in one way or another, experienced or became exposed to homosexual activities at least once in their lifetime. But, they are heterosexual persons in the society because of their alliances with the accepted social institutions viz. marriage, family, law and other host of factors. In India, the hegemony of

Western programmes and policies related to the liberation of the LGBT also do not separate the transgender from the homosexuals. Moreover, the collective mobilization and campaigns of the transgender against discriminations are largely supported by the multinational funding organizations mainly to prevent HIV/AIDS (Kole, 2007). The Local Bodies, Civil Service Organizations and NGOs working for them also seem to be donor-driven agencies trying to integrate the transgender and the LGB.

On the other hand, some scholars consider homosexuality as a 'Western disease'. In several parts of the world, including India, the LGBT are in one way associated with the Western discourse and still considered as an embodiment of the 'Western disease'. They claim that only the notion of Western hegemony ushered by globalization in India has combined the LGB with the transgender category. Donald Donham (2005) argues that it is important to explore how sexuality identifications have been transmitted across space and to understand how such an apparently global identity matrix operates within the local context. This approach also necessitates the importance of understanding how sexual 'liberation' may be imagined locally and how such sexuality practices may have little to do with the claim for explicit identities or rights (Boyce, 2006). These considerations are much more important in the Indian cultural setting comparing to the Western one. However, the objective of this section is neither to explore the impact of the Western approach on homosexuality in India nor to analyze the postmodern concept of plurality of sex and gender. But, it aims at understanding why the liberation movements of LGB in India are different from that of their counterparts in the West. It also looks into the differences in the nature of protests across regions comparing to India.

In the 1950s, the situation of the LGBT in the United States was more or less similar to that of the present situation of their Indian counterparts. During that period, LGBT in United States launched a collective mobilization to bring about changes in the attitude of people who humiliated them and also described them as sinful, sick and criminals (Larry Gross, 2005). LGBT in the United States are the forerunners in terms of organizing several protests to get their civilian rights. A similar trend was noticed in Canada and Western Europe almost during the same period. Though a similar situation is prevailing in India for the transgender excepting LGB, there are differences between those countries and India in terms of the perception of people on such mobilization. This also owes to the value systems in India that cherish heteronormativity, and in turn

sustain because of the same. In addition, unlike the issues of the LGBT that touched the consciousness of common men in those countries, the issues of them in India are yet to touch their consciousness. In this context, it is vital to take into account the frequent explicit lesbian and gay marriages in the Western countries. One can attribute the driving force behind such marriages when homosexuality can be practiced in hidden. The reason is that, LGBT in the Western world apart from gratifying their sexual needs also seeks social recognition. Aligning homosexuality with the established social institutions like marriage and family is a way to achieve social recognition. It is also cognizable that more than sexual gratification, their sense of togetherness and need for public recognition have gone to the extent of liberating their homosexual consciousness by breaking the existing heteronormative systems. But in India, as mentioned earlier, such a need has not yet arisen as homosexuality is still a hidden phenomenon lacking the need for systemic intervention. Moreover, unlike in the West, explicit gay and lesbian marriages are rarely happening even among the elitist sections of people in India.

Nevertheless, in the West, apart from conceptual differences, transgender people form a part of LGB because both the categories of people are viewed together by the public. Moreover, unlike their counterparts in India, the LGB in the West are socially visible. Therefore, their unity would also yield strength to their mobilization. In this context, it is important to note the emergence of the term 'queer' in the West that organized LGBT under one umbrella. 'Queer' means anyone not fitting into the society's restrictive sexual rules. According to Helperin (2003), the core tenets of queer theory are: (i) all gender categories are falsifications, especially if they are dichotomy and descriptive of sexuality, (ii) all claims of reality are socially constructed, (iii) all human behavior can be read as textual signification, (iv) text shapes discourses that are exercised in power/knowledge revealing the relationships of dominance within the established system of regulation and (v) deconstruction of all categories of normality and deviance, which can be accomplished by queer readings of performative texts ranging from literature to other cultural expressions. Rather than focusing on the individual sex identity of a person, queer theories, instead, examine the social construction of sex identity, its multiplicities, its historical construction, and the ways sexuality disrupts and reinforces power relations (Foucault, 1990; Fuss, 1991). Moreover, Queer theories make visible the ways heterosexuality becomes normalized as natural (Britzman, 1995). It is important to note

that this theory arose as an attempt to overcome the problems relating to the notion of identity faced by the gay and lesbian theory. In contrast to gay or lesbian, it is argued that queer does not refer to an essence, whether of a sexual nature or not. Instead it is relational, standing as an undefined term that gets its meaning precisely by being that which is outside of the norm. It is, therefore, an identity without an essence. Since specific conceptualizations of sexuality are avoided, it allows more freedom for self-identification. Kole (2007) mentions that this term does not confine to the sexual identities in the fixed LGBT categories, but allows more space and ambiguities for diverse sexualities to be included. Moreover the queer theory tries to deny the very validity of gender dichotomy and goes to the extent of questioning the stable attributes of human nature, i.e. homosexual and heterosexual identities.

Though queer theory is a framework to accommodate all sexuality minorities under one umbrella irrespective of their categorization in terms of gender identity or sexual orientation, its relevance in India as a liberal framework for the emancipation of them is rather limited. One major reason is that unlike that of it in the West, such a discourse in India has not yet occupied a prominent place in the minds of people. Therefore, the mindset of Indians will not allow them to support or fight for the rights of sexuality minorities. Nevertheless, in India, the need for collective mobilization of them has not yet arisen owing to the reasons that: (i) Homosexuality in India is still a hidden phenomenon which does not require public acceptance and are able to completely enjoy the status of citizenship to exercise their civil rights, (ii) the sexual 'consciousness liberation' has not yet arose among the common LGB in India except their elite counterparts; and (iii) Though, both the transgender and the LGB people are coming under the same umbrella term sexuality minorities, the former category of people are often subject to more harassment than the latter as they are socially more visible in India. Likewise, the transgender people are in need of social identity for accreditation, whereas the LGB do not need it as it is more a hidden phenomenon in India. The fact is that a number of individuals in India gratify their sexual needs through homosexual relations, but they are rarely notified or rather don't like to be identified as a gay or lesbian. Besides, there is no need on their part to reveal publically their identity as a gay or lesbian to engage in homosexual acts.

Another important approach which clubbed the transgender category with the homosexual category is the marginalization approach which relies

on minority-majority model. In the West, considering LGBTs as (sexuality) minorities came into existence in the 1950s with the writings of Cory (1951) that placed the LGBTs in opposition to the heterosexuals to claim their rights. It is observed that a similar sort of approach is emerging in contemporary India as well. Though, this approach of attempting to assign minority status to the LGBTs by paralleling them with other minorities in India seems good at its outlook, it will not provide favorable results to the transgender category for the reasons mentioned in the previous paragraph. Besides, the orthodox approach of the public over homosexuality would also add fuel to the opposition on gender neutral approach. Therefore, in a hurry to get the rights of the homosexuals for their sexual orientation, there is a possibility that the desired rights of the transgender category of people by virtue of their sex identity get spoiled/delayed. Moreover, the status of transgender people in India is less than that of the status of other minorities. They are underprivileged and often subject to humiliation and discrimination. Even among the sexuality minorities, unlike the LGBs, the transgender people are deprived of basic civil rights like right to marriage, right to vote, right to adopt children etc. It is, therefore, important to differentiate the transgender category from the LGB category in India.

LAW AND RIGHTS

The construction of homosexuality as a ‘delinquent behavior’ has been a reality and also an enduring phenomenon in India since distant times. In this construction, the State plays a crucial role. For instance, according to the Section 377 of the Indian Penal Code (IPC) the carnal intercourse ‘against the order of nature’ will be punished with life imprisonment or imprisonment for a period up to 10 years accompanied with a fine. In principle, though this section is a heteronormative expression of the State, it does not have any reference to the gender identity or the transgender category. Moreover, it categorizes the LGB and the transgender under the same umbrella based on the concept of ‘unnatural sex’. But the law has been seldom enforced against the LGB as they normally conceal their identity and do not publically disclose their sexual orientation. Nevertheless, one cannot be punished by this law for identifying and proclaiming himself/herself as a homosexual unless his/her homosexual act is proved. For instance, the Government of India in an affidavit submitted to the Delhi High Court in January 2003 specified that “In India, Section 377 of the Indian Penal Code has been basically used to punish those involved in

sexual abuse of children and to compliment lacunae in the rape laws. According to it, it has rarely been used to punish homosexual behaviour” (Sify News, 2003).

Moreover, the Government of India informed the Delhi High Court during a public petition challenging the Section 377 of the IPC that “the state will turn a blind eye, if homosexuality is practiced between two consenting adults in private” (Sify News, 2003). Later on July 2, 2009, the Delhi High Court had decriminalized homosexuality in private. This shows that the government does not prohibit homosexual activity between two consenting adults in private, but very much concerned about the act of compelling an individual for homosexual activity. It is thus clear that the Indian government is not in conformity with the Section 377 of the IPC prohibiting ‘unnatural sex’ but considers it as a supplementary section for other sections which protect women and children from sexual harassment. At the same time, it is also meaningful to mention here that the approval or denial of some sexual rights by the law is applicable to both homosexuals and heterosexuals. For instance, the heterosexuals can also be punished under the Section 377 for ‘unnatural sex’ (e.g. sodomy and oral sex). Therefore, the ambit of Section 377 need not be reduced to the homosexuals alone.

A section of people demand to revoke this section because its very essence denies the freedom of sexual expression of people including the transgender category. They claim that this section makes the transgender people feel that they are isolated by the law and also discriminated by the law enforcing mechanisms. At the same time, there is no need to consider the sexual expression of transgender people as essentially homosexual. However it is obvious that they are not fitting into the framework of dichotomous classification of gender based on the heteronormal constructions of sexuality. But their demand to repeal the Section 377 defining ‘sexual normality’ lies in the fact that it had already paved the way for misinterpreting their behavior, thereby subjecting them to punishment. In the 172nd Report (2000), the Law Commission of India has recommended the Government to repeal this section. It has also recommended the Government to legalize sex work and homosexuality (Times of India, 2005, Kole, 2006). However the objective behind these recommendations to repeal the Section 377 was not to liberate the transgender people, but it is to prevent the spreading of HIV/AIDS and other sexually transmitted diseases. It also facilitates the access of homosexuals to health care services so that they can prevent themselves

from the onslaught of such diseases.

After considering the situation of transgender people, the Government of India informed the Delhi High Court in 2003 that the State needs to tolerate homosexuality between two consenting adults in private. But, it also mentioned that “Indian society by and large disapproves homosexuality”. In the same year, the Home Ministry also apprehended the revoking of the Section 377 of IPC fearing that its repeal would in a way facilitate ‘delinquent behavior’. Moreover, the State maintains homosexuality as a ‘disease’ responsible for spreading HIV/AIDS and also as ‘immoral and a reflection of a perverse mind’. Thus it upholds the logic of Section 377 saying that it reflects the ‘will of the people’ according to an editorial in the *Economic and Political Weekly* of 2008. The 172nd Report of Law Commission of India also maintains that the law is for the interest of the people in India and is also a vital measure to protect women and children from sexual abuse and harassment. It is clear from this that the stand of Government is rather uncertain with regard to legal question of homosexuality. On the one hand, it is not in support of this section criminalizing the homosexual activity of consenting adults in private. On the other hand, it is more serious about the consequences of homosexual act. At this point, it is important to mention that though the concerned section is against homosexual activities, it does not disapprove various sexual identities. At the same time, certain reports support the fact that this Section of IPC is misinterpreted at field level by the police mainly to harass the transgender people. Therefore, the government while considering the interest of the large section of population shall also look into the violation of human rights by punishing the people with alternative sexual identities.

It is indeed a difficult task of the government to differentiate homosexuals from that of the transgender people. As a first step forward, it needs to acknowledge the identity of transgender people as a third gender category, which is different from that of the identity of homosexuals. Since the transgender people are identified with the third gender category, it may be relevant to exclude their sexual activities from the purview of homosexuals. Therefore, it is relevant to do necessary modifications in this section to deal with the transgender people as a separate category from that of homosexuals. It has to be ensured that such modifications in the section would provide the transgender people with all civil rights on a par with that of their fellow citizens. If necessary, amendments may be carried out in the section to extend the fruits of reservation policy to the third gender as well.

It is concluded from the above discussion that the Section 377 takes a stringent approach to deal with the homosexual activity for various reasons. At the same time, it is understandable that there is no need to enforce this section on people with a particular sex identity. Nevertheless it may not be effective in the case of transgender people as they do not come under the purview of dichotomous classification of gender. Moreover, from the administration point of view, the major aim of the Section 377 is to overcome the lacunae in the laws related to women and child protection. But, in the case of transgender people, the question of going against the 'natural sex' does not arise for two reasons as mentioned earlier: firstly they belong to the third gender category and secondly if they are believed to be the creation of nature, the 'unnatural sex' as defined by the Section 377 may be treated as 'natural sex' for them.

Path of Inclusion

In spite of all these facts, the transgender people occupy an ambiguous position in society, thereby facing a host of problems such as denial of civil rights, humiliation, discrimination, harassment, marginalization and also third degree approaches by the police. Besides, they meet their needs inadequately by begging, dancing and through prostitution. It is also reported that, within their community, a large section of those who have not undergone the Sexual Reassignment Surgery (SRS) are subject to discrimination by a limited number of their counterparts who had already undergone the SRS. Nevertheless, it does not mean that the former are not opting for the surgery, but they cannot afford to spend a large sum of money for this.

All over the world the issues relating to the LGBT have been discussed and debated. Moreover a section of people are critical of sexual systems and are representing the problems of LGBT to the administrators to get them equal rights. Such discussions and debates do take place in institutional, community, domestic, and intimate contexts as they play a vital role in the formation and communication of individuals and group identity (Gross, 2005). In the same line, as pointed out by Subir K.Kole (2007), the global south is also, at present, experiencing the LGBT mobilization and sex identity politics raising fundamental questions addressed to citizenship and human rights. It warrants that the modifications in the law must be substantiated by a suitable policy intervention from the government side. As Surya Manro (2003) mentions the transgender people are posing problems to policy makers because the former have already started challenging the

mainstream norms concerning gender and sexuality, looking for a more complex conceptualization of gender and seeking for a suitable social policy and practice. Evidence from India also show that addressing the problems of transgender people has become an issue for the policy makers at Central and State levels.

Under the umbrella of sexuality minorities, both the transgender people and the LGBs may jointly fight for their civil rights and inclusive and non-discriminatory laws. But unlike the former, the latter are not deprived of such rights for two reasons: firstly homosexuality in India is still a hidden phenomenon and secondly the homosexuals do not reveal their identity in public. As it is being practice in a concealed way, there is no need for the homosexuals to disclose their identity. However they are denied those rights and are often subject to humiliation, discrimination and harassment owing to their obvious public presence and the stigma associated with them. Though the denial of civil rights is the manifestation of direct discrimination on the basis of sex identity, their inaccessibility to housing, social services, healthcare, employment, and participation in social activities, police protection and the like are the results of both the direct and indirect discrimination. Therefore, the policy intervention promoting a transgender inclusive society has to be two-dimensional, viz. one dimension concentrating on eliminating the direct form discrimination by inclusive laws and the other one focusing on decreasing the indirect form of discrimination including symbolic violence against them.

The first step to realize a transgender inclusive society is to eliminate certain forms of direct discriminations. Though it is a complicated issue under the circumstances discussed above, certain points need to be focused. For instance, as enacted in certain developed countries, the discriminations based on gender identity have to be strictly forbidden. As discussed already, there is no need of repealing the Section 377, but it has to be modified to exclude the transgender people from its purview so as to safeguard their interests from all sorts of discriminations and harassments.

Besides, taking into consideration their employability, all the public and private sector enterprises need to be advised to adapt the transgender non-discrimination law. In the absence of such a law, jobs have to be given to them under the disability non-discrimination law. In fact, such an opportunity would serve to be an important factor for their social inclusion. Therefore, the provision of non-discriminatory employment is to be extended to them in order to empower them economically. At the same time, the Sex Reassignment Surgery is to be legalized and

medical certificates are to be issued to those who had the surgery so that they can make use of them as evidence for their sex identity for legal purposes. Other essential aspects such as marriage, adoption and property inheritance rights are also to be addressed optimistically as those would enable them to become full-fledged citizens and also would lead them to join the mainstream society.

However, in order to achieve the above mentioned suggestions, the government's stand should be clear with regard to addressing their issues. In this regard, two possibilities are identified: one is to consider them as third gender category and the other one is to adapt a gender neutral stand. Of these two, as a matter of fact, the former is more viable than the latter for certain reasons. For instance, the rights and full-fledged citizenship would be accomplished only by changing the fundamental conceptualization of gender in terms of male and female. Incidentally any policy aiming at the construction of transgender people different from that of other gender categories can attract desirable results. But it is still doubtful as to what extent the legislation and society in India support the inclusion of third gender in the legal framework of gender dichotomous system.

As mentioned, certain forms of direct discriminations faced by them are partly due to the lacunae in legal measures. However this can be rectified with the help of government policies and interventions. But, at the same time, the task of empowering transgender people at societal level is rather challenging because of the prevalence of indirect forms of discriminations against them. It is necessary to understand that the enduring social and cultural prejudices are also the root causes of some discriminatory laws and vice versa. Their rights and full-fledged citizenship can be realized only when the rest of the society understand their plight and problems sympathetically. In this regard, the network of NGOs and Civil Service Organizations has to play a crucial role in working out strategies. As Surya Monro (2003) mentioned, the inclusion of transgender people requires fundamental changes in the present system of sex and gender categorization that needs to be framed in terms of rights and social inclusion. What they need now is social support and political backing to overcome their problems.

CONCLUSION

The above discussion brought to our attention the need for distinguishing the transgender category from that of the LGB. This separation is essential both conceptually and practically. The conceptual clarity about

the differences between sex identity and sexual orientation as mentioned earlier may get be reflected in the attitude of people toward the transgender people. Such clarity is more important in a country like India which is culturally more sensitive. It does not mean that the authors are insensitive toward the plight of homosexuals. But, we want to prioritize the rights of the transgender people taking into consideration the issues discussed.

From the analysis of certain conceptual issues in the terms ‘transgender’ and ‘LGB’ the authors support the queer theorist perspective that ‘genders’ is neither a dichotomy nor a continuum, but a sphere where ‘maleness’ and ‘femaleness’ constitute an infinite number of possible points. It is also argued that the transgender people may be considered as third gender category instead of mixing them with the LGBs. As Bornstein (1994) advocates, gender flexibility is the ability to become a part of one or many of a limitless number of genders at any length of time and at any rate of change. Therefore, it is better to take the debate on the empowerment of transgender people outside the dichotomous boundaries of gender. Anyway, in history, it is acknowledged that different patterns of sexual discourses have legitimized different sexual imageries at different points of time. But, why do we decline to accept different patterns of sexual expressions, interests and identities together still remain a question.

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