

# Frame of Mind Towards Third Gender in Indian Society Today

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## **Abstract**

This paper will be focusing on how effective or ineffective the 3rd gender policy of Karnataka is. The understanding of the umbrella term transgender, the hardships they face and some solutions for there send it also explains the trans fill, section 377 meaning history and it's band. It also contains why the trans bill voice criticised. The case studies of few transgender people and then take r opinion on the trance gender policies in Karnataka. It also contains expert opinions bye doctor Mamata deputy director of Karnataka state aids prevention society.

## **Introduction:**

Today we are living in the so-called secular state of India, which is bounded by social barriers and stigmas. For the longestperiod of time women, children, and transgendered people have been subjected to oppression.

Transgender is an umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned to birth. *Gender identity* refers to a person's internal sense of being male, female, or something else; *gender expression* refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice, body characteristics. *Trans* is sometimes used as shorthand for transgender.

There are oftentimes when people misinterpret the identity of the transgender person. As they are not aware of distinct categories of transgender in this contemporary world. The bitter truth for these people is that being recognized in the Indian society is not easy

Despite India's advancements in the fields of medicine, business, and society, there are still a number of prejudices and taboos that affect how transgender persons are treated. The status of trans people became worse after colonization when they introduced the 377 section, The penal code which has the highest punishment. The legal aspect of uplifting the trans community in India. Through looking at the trans bill, ban of section 377 and Karnataka State third gender policy, and the controversy revolving around the trans bill.

## **who are trans people?**

The term "transgender" is used to refer to someone whose gender identification, or internal sense of being male, female, or something else, does not correspond to the sex to which they were biologically assigned. Contrarily, the term "cisgender" refers to those whose gender identity matches the sex to which they were born. A transgender person was assigned a male gender at birth but having a female gender identification. A transgender man who was born with female sex but considers himself to be male. Some transgender people might not solely identify with one gender. For instance, their gender identification may have both

male and female components, or they may not identify with any gender. These transgender individuals are frequently referred to as "non-binary." "Genderqueer" is another term that is occasionally used to refer to individuals in this category.

Sex, which is biologically determined at birth and designates a person as either male or female, is primarily determined by physical characteristics such as chromosomes, hormone levels, and exterior and internal anatomy. The socially constructed roles, behaviours, activities, and characteristics that a particular society deems proper for boys and men, or girls and women are referred to as gender. These affect how people behave, interact, and see themselves. While characteristics of gender may vary between cultures, aspects of biological sex remain universal. From antiquity to the present, transgender people have been reported in several indigenous, Western, and Eastern civilizations and societies. Gender nonconformity, however, might mean different things in different cultures.

The term "transgender" encompasses a wide range of identities. People whose gender identity differs from their assigned sex are referred to as transsexuals. Transsexuals frequently modify or seek to modify their bodies through hormones, surgery, and other techniques in order to make them as consistent as possible with their gender identities. Although more lately it has also been referred to as gender affirmation, this process of transition through medical intervention is frequently referred to as sex or gender reassignment. The term "transsexual males" or "transmen" (also known as "female-to-male" or "FTM") refers to people who were assigned as female but who identify as male, live as male, and alter or wish to alter their bodies through medical intervention to more closely mirror their gender identification.

Contrarily, those who were assigned male but identify as female and want to undergo medical treatment to change their bodies so that they more closely reflect their gender identity are referred to as transsexual women or transwomen (also known as male-to-female or MTF). Some people who change from one gender to another would rather be called a man or a woman than transgender.

Cross-dressers dress in ways that are customarily or predominately associated with another gender in their society. Their level of cross-dressing varies, ranging from one piece of clothing to full cross-dressing. The majority of transgender people are at ease with their assigned sex and do not want to change it.

Cross-dressing is a way to express one's gender and isn't always associated with erotic behaviour.

Cross-dressing is not a sign of sexual orientation (for more information on sexual orientation, see *Answers to Your Questions for a Better Understanding of Sexual Orientation & Homosexuality*).

Both males and females experience cross-dressing differently in terms of societal acceptance. In some societies, one gender may have more freedom than the other to dress in attire that is more appropriate for a different gender. Men who dress as women to amuse people at bars, clubs, and other gatherings are referred to as drag queens in most contexts. Women who dress as men to amuse people at bars, clubs, and other gatherings are referred to as drag kings. Some people refer to themselves as genderqueer if they believe their gender does not fit neatly into the categories of "male" and "female."

They may define their gender as completely different from these words or as existing somewhere along a continuum between male and female. Additionally, they may ask that pronouns that are neither masculine nor feminine be used, such as "zie" or "hir" in place of "he" or "she" or "his" or "her." Some genderqueers do not consider themselves to be transgender. Androgynous, multigendered, gender nonconforming, third gender, and two-spirit individuals are further subgroups of transgender persons. Although the definitions of these phrases can vary from person to person and across time, they frequently include blending or switching between genders. Some persons who identify with these names view the traditional, binary ideas of gender as constricting.

There is no one reason why some individuals identify as transgender. Any straightforward or comprehensive explanation is refuted by the multiplicity of transgender experiences and presentation. The development of transgender identities, in the opinion of many experts, may be influenced by biological variables including genetic influences, prenatal hormone levels, early experiences, and experiences later in adolescence or adulthood. The lack of population studies that totally and accurately take into consideration the variety of gender identity and gender presentation makes it impossible to estimate the number of transgender people.

Sexual orientation is distinct from gender identity. Gender identity refers to an individual's internal feeling of being male, female, or something else, whereas sexual orientation refers to an individual's long-term physical, romantic, and/or emotional connection to another person. Just like nontrans gender people, transgender people might be straight, lesbian, gay, bisexual, or asexual. Recent studies have suggested that during times of transition, partner attraction may change or enter a new phase of exploration. But most transgender people continue to feel the same level of attachment to their loved ones even after transitioning. Transgender people frequently refer to their gender when describing their sexual orientation. An example of a transgender woman who is attracted to other women is someone who is designated male at birth and transitions to female; this individual is known as a lesbian or gay woman. Similarly, a transgender guy who is drawn to other men would be classified as gay. A transgender man is a person who is assigned female at birth but changes to male. People who identify as transgender might experience their transgender identity in a variety of ways and can become aware of it at any age. Some people can go back to their earliest recollections to recall their transgender identities and sensations. They could have general emotions that they "don't fit in" with others of their assigned sex or specific desires to be someone or something else.

Others discover their transgender identities throughout adolescence or much later in life or start to experiment with and experience gender-nonconforming attitudes and behaviours. While some people embrace their transgender emotions, others suffer with confusion or feelings of shame. Those who transition later in life may have had trouble fitting in as their assigned sex, only to discover later that they were unhappy with their lives. Some transgender persons, transsexuals, have profound discontent with the sex they were born into, the physical traits of that sex, or the gender role that goes along with it. These people frequently look for gender-affirming medical care.

For a variety of reasons, parents may be concerned about a child who seems to be gender non-conforming. Some kids show a lot of anguish over the gender norms they are required to conform to or their natal sex. Due to their gender expression, some kids have trouble interacting socially with adults and their peers. When a "phase" that parents thought would pass on its own does not, they could start to worry. Working with schools and other institutions to meet their children's unique needs and secure their safety may be necessary for parents of gender nonconforming children. To decide how to effectively address these challenges, it is helpful to speak with mental health and medical experts who are knowledgeable with gender issues in children. The youngster should not be coerced into acting in a more gender-conforming manner. Support from other parents of children who identify as gender non-conforming might be beneficial. The process of changing from one gender to another can involve changing to a gender that is neither typically masculine nor conventionally female.

When transitioning, many people begin by expressing their desired gender in settings where they feel secure. They often make a lot of modifications little by little until they are fully residing as members of their preferred gender. While there is no one "correct" way to transition from one sex to the other, there

are some common social changes that transgender people go through that may include one or more of the following: changing one's appearance to match the desired sex through grooming and clothing changes; assuming a new name; changing the sex designation on identification documents (if possible); using hormone therapy treatment; and/or having medical procedures that change one's body to match one's gender identity. The transition or procedure for each transgender individual is unique. As a result, a variety of circumstances may affect how an individual chooses to display their gender identification. A crucial first step is locating a licenced mental health provider with experience in offering affirmative care to transgender people. A competent expert can offer advice and recommendations for further helpful professionals.

It also helps to connect with other transgender individuals through peer support groups and transgender community organisations. The Standards of Care, published by the World Professional Association for Transgender Health (WPATH), a professional association focused to the care of transgender people, include recommendations for the provision of gender affirming procedures and services. Only when a psychological condition results in severe distress or handicap is it deemed to be a mental disorder. The fact that many transgender people do not find their gender to be upsetting or disabling suggests that being transgender is not a mental illness. Finding cheap services, such as psychotherapy, hormone therapy, medical procedures, and the social support required to express their gender identification openly and reduce discrimination, is a major issue for transgender people.

Distress can be caused by a variety of other factors, such as being rejected by society, experiencing prejudice directly or indirectly, or being attacked.

## **TRANS BILL**

On July 19, 2019, Mr. Thaawarchand Gehlot, the Minister for Social Justice and Empowerment, introduced the Transgender Persons (Protection of Rights) Bill, 2019 in the Lok Sabha. The Bill defines a transgender person as someone whose gender does not correspond to the gender assigned at birth. It encompasses those who identify as transgender, intersex, genderqueer, and with socio-cultural identities like kinnar and hijra. A person who exhibits intersex variants is one whose primary sexual traits, external genitalia, chromosomes, or hormones differ from the typical male or female body at birth.

**Prohibition against discrimination:** The Bill forbids discrimination against transgender people in the following areas: (i) education; (ii) employment; (iii) health care; (iv) access to or enjoyment of goods, facilities, or opportunities available to the public; (v) freedom of movement; (vi) freedom to live on, rent, or otherwise occupy property; (vii) freedom to hold public or private office; and (viii) access to a government facility.

**Right of residence:** Every transgender person has the right to live with and be a part of his or her household. A competent court may order the placement of the transgender person in a rehabilitation facility if the individual's immediate family is unable to care for them.

**Employment:** It is unlawful for a public or commercial organisation to discriminate against a transgender person in hiring decisions or promotion decisions. Every establishment must appoint a representative to handle complaints pertaining to the Act as the complaint officer.

**Education:** Transgender people must have access to inclusive educational, sporting, and recreational opportunities at institutions of higher learning that are supported or recognised by the relevant government.

**Health services:** such as specialised HIV surveillance centres and sex reassignment surgery, must be made available to transgender people by the government. The government must revise medical education to

address transgender people's health challenges and offer them complete health insurance programmes. Transgender identity certificate: A transgender person may apply to the District Magistrate for a certificate of identity with the gender designation "transgender." Only if the person has surgery to change their gender, either as a man or a female, is a new certificate possible.

Government welfare actions: According to the bill, the appropriate government will take actions to guarantee the full inclusion and involvement of transgender people in society. Additionally, it must take action to rescue and rehabilitate them, provide them with self-employment and vocational training, develop transgender-sensitive policies, and encourage their involvement in cultural events. The following offences against transgender people are recognised by the Bill, along with their associated penalties: I refusal to utilise public spaces, (ii) eviction from one's home or village, (iii) removal, and (iv) physical, sexual, verbal, emotional, or financial abuse. This does not include forced or bonded labour. These offences include fines and prison sentences that range from six months to two years.

NCT, the National Council for Transgender People: The NCT will be made up of the following individuals: I the Union Minister for Social Justice (Chairperson); (ii) the Minister of State for Social Justice (Vice-Chairperson); (iii) the Secretary of the Ministry of Social Justice; and (iv) a representative from each of the following departments: Health, Home Affairs, and Human Resources Development. Representatives from the National Human Rights Commission and NITI Aayog are among the other participants. Additionally, state governments will be represented. Five representatives from the transgender community and five specialists from non-governmental organisations will also be included on the Council. The Council will provide recommendations to the federal government and keep tabs on the results of transgender-related projects, laws, and regulations. Additionally, it will allay the complaints of transsexual people.

### **CRITICISM OF THE BILL:**

The Bill is being criticised mostly because it does not recognise the right to gender identity. Till they undergo sex reassignment surgery and request for a new certificate, the Bill only permits the certificate to describe a person as "transgender." Activists said that this violated the 2014 ruling of the Supreme Court. "How will district magistrates understand what the transgender community goes through?" said Banu. "We know it takes many months to get a simple government identity card."

On Tuesday in Rajya Sabha, opposition MPs claimed that the Bill simply increased the penalties for "sexual abuse" and did not offer severe punishments for crimes like rape against transgender people. "The message is, rape a woman; yes, very bad; rape a child, worse; but, the transgenders, these people are on streets, they are begging, they are under high risk, and what is this Bill that we are passing?" asked Trinamool Congress MP Derek O'Brien.

Banu further emphasised that the Bill contains no language on reservations in employment and education for the community. "Everyone is aware that we beg and do sex work and pay taxes from that money," they said. "If there are no reservations then how do we uplift ourselves?"

### **DEFINITION AND DESCRIPTION OF SECTION 377**

The Indian Penal Code's Section 377 has become a crucial topic to bring up and address while speaking about homosexual problems in India. It is not just the law that contributes to their underprivileged situation in society, as is the case with all communities that are oppressed in society, as we have seen in the prior units. There are also more reasons, including societal taboo, ideas about tradition, culture, etc. Law is a



component of this collection of instruments that are used to oppress a variety of individuals. No oppressed community in the history of humanity has defied this rule because laws either expressly deny some people or communities certain rights or grant some groups more authority than others. In either case, the overall result is unchanged. It is hardly an overstatement to argue that laws are frequently a tool in the oppression of people. Laws are designed to maintain equality amongst all animals, human and otherwise, hands of the powerful. Law is a tool that can be used to uphold current systems that might be repressive as well as gain additional power in terms of social standing or financial wealth.

Due to Section 377 of the IPC, the prosecution of same-sex conduct has been one of the main problems for LGBT people. Marginalizations of numerous kinds result from this criminalization. The framework of heteronormativity is intended to be preserved in the case of Section 377. Heteronormativity is the idea that being heterosexual, getting married, having kids, and other traditional life events are THE ONLY ways to live a normal life. Any alternative manner of life is observed to be non-normative, or in some situations, abnormal.

The "normative" and the "non-normative" will be discussed once again in Unit 4 of Block 5. This suggests that in addition to prosecution due to Sec 377, those who want to live lives that deviate from heteronormative social norms are denied a number of civil rights.

A law passed in 1860 known as Section 377 (Unnatural Offenses) of the Indian Penal Code states the following:

“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for term which may extend to ten years, and shall also be liable to fine.

Explanation. -Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

As you can see, this statute calls for one of the harshest penalties allowed by the Indian penal code, one that is quite severe. The exact meanings of the terms "carnal intercourse" and "against the order of nature" are not specified in the written legislation, and the language of the law is ambiguous. The justification provided for penetration is one that is included in the majority of legislation that regulate sexual actions. Even there, it is not made clear what is meant specifically when the term "penetration" is used. There is uncertainty about this that affects not just Section 377, but the majority of sexual conduct laws. Thus, it is crucial to keep in mind that the statute in question was poorly drafted from the outset. There has been a particular interpretation of this law over the years, which is currently the accepted interpretation of it. 'Carnal intercourse,' in effect Any sexual activity that is "against the order of nature" is meant figuratively. action that is not directly related to the wider objective of reproduction. Due to this hypothetically, it would be easy to penalise a lot of people even those who might not be interested in the same sex.

It should go without saying that this law has no bearing on whether one or more of the parties involved in the sexual act gave their consent. All people have a variety of sexual behaviours. Since it is a part of every person's private world, there is no means to fully capture this array and no need to. However, this regulation can be interpreted to mean that the only sexual activity that is legal is penile-vaginal sex, which can result in procreation. The absurdity of this law is such that since contraception prevents reproduction, many government initiatives, including it, would be considered "against the order of nature" by this definition!

The three laws that address sexual offences include Section 377 both Sections 375 and 376 (rape). The primary application of this law has sex abuse of children has occurred. Studies have revealed that overall 60% of the 46 cases reported under Section 377 included men who were sexually assaulted. 20 of the incidences of child abuse included male children, and 10 involved female children. This is the main reason for this is that there is no other provision in our statute books to discussion on the subject of child sexual abuse. This reveals a significant legal gap. In addition, this law has been used to threaten those who desire same sex with harassment, blackmail, and occasionally actual assault. Although there have only been six reported examples of consensual same-sex acts (Gupta, 2006), it is nevertheless true that Section 377 is the tool that both the police and goons can use to harass people because of their sexual orientation or gender identity.

The background of the It has also been employed in legislation, as you shall see in Section 3.4 below. Today is to an oral or anal sex act with a person of the same or similar contrasting sex. Despite the fact that this is the word's literal meaning, historically, it has been used to describe homosexual behaviour, particularly in the legal setting.

The law, however ambiguous it may seem, effectively criminalises Same-sex relationships, mostly between men (because of the justification provided regarding "penetration," which takes on the meaning of "penile," penetration). The criminalization of the behaviour has improved the lives of same-sex people. People who want something are also criminalised. The law has already been mentioned in its current form and agreed definition. The history of this law both internationally and in India will be examined in this section. Instead than concentrating on legislation that exactly mirror Section 377, we will examine laws that criminalise same-sex sexual actions and/or restrict fundamental rights to same-sex seeking or gender transgressive individuals more broadly. In a similar vein, we'll check the legal situation, of the civic rights to gender identity and same-sex desire on a global scale, Transgressive individuals, or the absence of them.

We shall then discuss the development of this law in India. It is crucial to comprehend the global viewpoint for a variety of reasons. Then, each There are laws pertaining to the topic in every country, region, and part of the world, which draw from its own past. Therefore, if we were to fully comprehend. It is crucial to understand Section 377's colonial origins given that it applies to India, the several other nations that have a shared history of colonisation and us. In a same vein, we must comprehend this law in the nations that formerly were the colonisers.

Second, numerous modifications to these statutes were vulnerable to external pressures in addition to internal pressures. In the past, it might have been brought on by modifications to colonialism's status, entire world. Over the past few years, pressures from international forums including . Those forums, like the United Nations, that have been established to uphold. All people's human rights have also been important. It's crucial to comprehend how complicated the law is regarding same-sex relationships, seeking out transgender individuals worldwide to combat simple generalisations. Some people will try to convince you that Western countries had a straightforward method for decriminalising behaviour and granting rights, while others some didn't. Although this appears to be the case, the history of the Conflicts over the legislation and the modifications are more complicated than that. Others would lead you to assume that the grant of the same legal rights People who violate gender norms and/or engage in sexual behaviour are indicators of a nation's "Development," but history teaches us that the problem is more nuanced and must be considered in light of regional history, current issues, and, There are international power equations at work.

So, let's keep in mind that laws as well as struggles have shaped many nations before we praise one group of nations and disparage another as being "primitive" or "backward." develop from particular experiences and, as a result, to have a broad viewpoint would be mistaken. It's crucial to keep in mind that numerous nations hailed. Currently, these laws are seen as progressive because they are the ones where in the first place, these laws were made. numerous others, all of the same sex. Despite continued criminalization, desire and gender insensitivity are those that received from the colonial rulers who drafted these laws.

Any modifications to the laws granting same-sex lovers and partners legal status and privileges. People who violate gender norms should not reside in any country in the globe, in their environments. These modifications ought to be pertinent to regional conditions as well. The antecedents of Indian law can be seen in its antebellum origins. Not a lot of instances have been brought under this section and the few others that we are aware of focus exclusively on children. However, there is ample evidence to conclude that this section has previously been employed to harass a variety of various same communities that violate gender norms and are sex-oriented. However law is now banned in Karnataka and other states of India.

### THIRD GENDER POLICY OF KARNATAKA

Karnataka becomes the first state in India to provide reservation for transgenders in all government services. On Tuesday, the Karnataka government announced a 2% reservation for transgender people in all services and positions across all job categories, to be filled through a direct recruitment procedure. Each category of general merit, Scheduled Caste, Scheduled Tribe, and each category among the other backward groups would be eligible for the 1% reservation. To accommodate transgender people, Rule 9 of the 1977 Karnataka Civil Services (General Recruitment) Rules has been modified.

Overview on transgender policies according to the trans people today:

Navya is 29 year old trans woman resides in Bangalore, She is currently working as a project manager in panna NGO. This NGO works for the equal rights and treatment of trans gender community. Her opinion on joining the trans community is that instead of undergoing surgeries it is better to just be like a man wearing pant and shirt and achieve something. She wants the younger ones not to suffer after getting their surgeries as just hormone check-ups would suffice.

She wanted to be educated but she completed 2 years of bcom degree in government first grade College in Vijay Nagar but as she underwent a lot of harassment in the final year she discontinued the course. When she went to the same college to complete her degree the principal wouldn't allow her to. She plans to apply for constable post in Police Department under 2% reservation under Karnataka 3rd gender policy. Her solution for improving the condition of trans community is by spreading awareness to the society such that they are welcomed and also treated equally with respect.

Pavithra's opinion on the policy is that even though there is provision of them being protected by the law. The government officials aren't taking the bill seriously. This shows that the society is still biased towards this community. It is mandatory for them to have a legal aid to assist and protect them in case of violation. Deepak who is a manager working for Payana is aware of the existing bills and policies. His opinion on these policies are that it's slowly progressing. For example before the reservation under Karnataka 3rd gender policy was 1% but recently it has changed to 2%. The pension given to the trans community individuals is increasing slowly from Rupees 500 initially to now around 800. There is allotment of houses in slum areas. Currently around 17 houses have been allotted says Deepak. His solution for the better improvement of the community is that the outside world which is the Indian society should accept them. His suggestion is that we should make more programs and educate children from school level about



the transgender and their problems, and how to be gender sensitive. He also suggested that at the grass root level in government institutions the officials shouldn't be biased towards the trans community only if they accept them as individuals then we can make a difference.

### **Experts overview on the bill:**

Dr Mamatha's, Deputy Director Karnataka state aids prevention society opinion is that there should be more awareness of these policies and the provisions under it. All of the trans people should know how to use these policies for their protection and for their freedom. Her suggestion for the trans people is that they should mingle with the society and they themselves should behave ethically and not make gestures as they are a trans woman or a trans men. She is happy that from past 10 years trans people are coming out from their caves and being brave enough to try and be a part of the society. We have to respect them equally as we respect any women.

### **CONCLUSION**

India is a vast country which has its own uniqueness. According to the Indian constitution it says that it is a socialist Republic secular state. There is no discrimination on anyone on the basis of their caste creed or gender. But discrimination has been existing from a very long time. There are many instances from historical times which support discrimination on gender or otherwise. Gender is very sensitive in nature many people have been discriminated on the basis of once on gender. Women have been succumbed to discrimination and throughout the history through mini feminist movements which fought for the rights women have been progressive. Despite women of the society being discriminated people often don't think much about the trans community. They have been neglected and pushed down from the society from the British rule. The section 377 which states that any sexual act which goes against the nature will be criminalised. This law also held the highest punishment. This became a hindrance for the trans community. Having sexual acts between 2 men was criminalised. Due to this law the Indian society started discriminating the trans community by pushing them underground. Nobody treated them equally. And for survival they started begging, doing practicing prostitution and becoming a criminal gang.

In today's contemporary world the trans community is fighting for their equal rights. There only motive is to be treated as a human being with respect. The government have been considered of this community and have also implemented laws. They've banned section 377 and also implemented Karnataka 3rd gender policy which consists of 2 percentage of reservation in all government sectors. But is it helping them to come up in the society? The trans community have been discriminated a lot in the past and it still exists today even though the government have passed and criminalised whoever who goes against it. Then what is the point of policies? Even though the law states that there should be punishment and justice for the trans community who has underwent discrimination or sexual abuse. But whenever a trans person goes for help they shut them away. There is no acceptance of this community in the Indian society.

The only solution for this problem is that everyone should accept and respect the trans community as part of our lives. There should be awareness about their community and their hardships, we need to be considered and gender sensitive towards the community as mentally they would have underwent a lot. Including CHS in the school textbooks, the parents should educate their children as the family is the basic unit of the society the parents should educate their children about the trans community and how to treat them. Because the change will be only seen when it starts from the grass root level. The mindsets of Indian citizens should be changed.