

ASIA 16 APRIL 2014

## India's Supreme Court recognises a third gender

The Supreme Court in India has issued a new law allowing transgender people to change their gender on official documents to reflect their gender identity – why are so many European countries still several steps behind?

BY **SOPHIE MCBAIN**



AN INDIAN HIJRA DANCES IN MUMBAI. PHOTO: GETTY.



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**T**he Supreme Court in India has issued a new law allowing transgender people to change their gender on

official documents to reflect their gender identity. Many newspapers yesterday reported this as India officially recognising a “third gender” – because until the law was passed, transgender people had to register as either male or female. The law is actually more wide-ranging than this because it means anyone can change their gender on official documents to male, female or transgender depending on their self-identity. The term self-identity is crucial here: transgender people in India don't need to undergo any surgical or medical intervention to change their gender on official documents.

These new laws alone won't change the **discrimination** that many transgender people (often called hijra in India) face: many are excluded from mainstream employment and society – to the extent that some hospitals have reportedly refused to treat them – and are regularly harassed by police. It is however an important step in the right direction, because legal recognition can underpin greater social acceptance and community integration. The Supreme Court is also introducing quotas to increase the representation of transgender people in employment and education.

So how does India now compare to other countries in terms of transgender rights? It is hard to find reliable, comprehensive data on laws protecting transgender people worldwide, but **Amnesty International** and the **International Lesbian, Gay, Bisexual, Trans and Intersex Association** both publish detailed reports on the situation in Europe: and they suggest that European countries have some catching up to do when it comes to establishing a legal framework to protect and recognise the rights of transgender and intersex people.

Last year, Germany became the first country in Europe to allow babies to be **registered as “indeterminate sex”** when they are born with characteristics of both sexes: until then (as in other European countries) parents were forced to assign a gender to their baby, a decision that is often accompanied by surgery to make the child's physical characteristics conform more closely to either male or female.

Several countries worldwide allow individuals to register as a third gender on their passport applications including New Zealand (2012), Bangladesh (2011) and Australia (2011) , while Nepal has allowed people to register as a third gender on its census since 2007 and Pakistan on identity cards since 2011. In the UK, individuals who are born intersex (around one in 2000 of the population) must be registered as male or female, and often undergo surgery as young babies to “enforce” this assigned gender.

European countries have also been too slow to allow individuals to change their gender on official documents to reflect their self-identity. In 1992 the European Court of Human Rights ruled that refusing to allow people to change their gender markers on official documentation was a violation of human rights – but still many European countries are lagging behind. The ILGA has published a summary of trans rights across 49 countries in Europe and found that in 16 countries there is no procedure for people to change their gender on official documents. In 24 countries in Europe, trans people must undergo sterilisation before their gender identity is recognised. In other countries they must first be diagnosed as suffering from a mental health disorder and in 19 countries you must be single to change your gender

identity. Why should people be forced to make such stark choices?

While the legal system in many European countries fails to recognise individuals' gender identity, many transgender people are also subject to abuse and discrimination in other areas of life: 35 per cent of respondents to Amnesty International's survey of transgender rights said they had experienced violence or the threat of violence in the past five years.

The Supreme Court ruling in India is good news for the country's transgender population, and its impact could be even greater if it forces European countries to face up to some uncomfortable home truths.

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