



## What The Supreme Court Clarification On Third Gender Means For LG...

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# What The Supreme Court Clarification On Third Gender Means For LGBTQ Indians



By Sandip Roy



ASSOCIATED PRESS

A participant shouts slogans as activists of India's LGBT (Lesbians Gays Bisexuals Transgenders) community and their supporters hold a candle light vigil condemning the mass shooting at the Pulse nightclub in Orlando, Florida as they gather in Bangalore, India, Tuesday, June 14, 2016. (AP Photo/Aijaz Rahi)

Once it was just called gay. Then it became gay and lesbian. Then LGBT. Then LBGTI. LGBTQI. LGBTQIA. As the alphabet soup thickened, so did the confusion. The recent ruling by the Supreme Court of India merely underscores that simple truth – we are just darn confused by sexuality and gender. There's sex as in your passport. And there's sex as in what happens in bed. And when the two collide, we get downright squeamish and terribly confused.

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transgender ruling and be considered a third category of gender and be treated as a socially and economically backward class. They cannot become an "un-minuscle minority" on the coattails of the T in LGBT.



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gay, bisexual out of LGBT umbrella

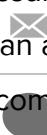


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It assumes there's only room for one umbrella. There can be an LGBT umbrella but there can also be a T umbrella or a G umbrella. It's not an either-or game. There are issues of commonality and issues of divergence.



Not exactly true. It assumes there's only room for one umbrella. There can be an LGBT umbrella but there can also be a T umbrella or a G umbrella. It's not an either-or game. There are issues of commonality and issues of divergence.



A lesbian does not worry about whether her passport matches her gender identity. A gay man does not think twice about which public bathroom he can use.

But the point is not that gays and lesbians were clamouring to use the NALSA ruling as a backdoor to secure their own rights. It's the government which was asking for clarification in this regard citing that confusion as a reason to delay the implementation of the ruling. The Court is trying to clarify matters but it ignores the far more complicated reality of our lives.

The Court had made it clear that its definition of transgender includes those who are "pre-operative, post-operative, non-operative" and affirms their right to self-identify in the gender of their choice and prohibits discrimination against transgender persons. But if someone chooses not to have sexual reassignment surgery but still identifies as trans and then gets into a relationship with a person of the same biological gender assigned to her, is she transgender (and protected under the 2014 ruling) or homosexual (and liable to criminal prosecution under the 2013 ruling)?



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*(Participants take part in a gay pride parade in New Delhi November 28, 2010. Thousands of people danced, sang and cheered through the streets of Delhi on Sunday in a colourful and vibrant celebration for the first gay pride parade since gay sex was made legal in India. REUTERS/B Mathur)*

Gender identity is gender identity and sexual orientation is sexual orientation but the twain can meet and when one part is criminalized while the other is not, it will lead to many such knotty situations. The court in its transgender ruling was not considering this. It was not thinking about sex as in the sexual act. The court was, in all likelihood, not thinking about transgender in its totality either. It was a historic judgement but an incomplete one.

As transman Satya wrote in Mint then "in the 130-page judgment of Justices K.S. Radhakrishnan and A.K. Sikri, not a single page carried any of the following words: FTM (Female to Male), Transman, Intergender, Bhaiya, Babu, Kotha, FTK (Female to Kotha), Thirunambi, Genderqueer, Gandabasaka -- some common terms used by members of the trans masculine, intersex and inter-gender communities for their identities and/or expressions."



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*(Participants dance under a rainbow flag as they attend the sixth Delhi Queer Pride parade, an event promoting gay, lesbian, bisexual and transgender rights, in New Delhi November 24, 2013. REUTERS/Mansi Thapliyal)*

The transgender ruling was not about Section 377 and the court took pains to clarify that. But Section 377 remains the elephant in that room that cannot be wished away. Sex is part of the package. Could a court uphold someone's right to identify as a heterosexual even as penile-vaginal intercourse remained criminalized by law?

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man. Just because you wear a saree doesn't mean you become a woman. Why do you



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And an embarrassing one. Just consider the knots India's MEA tied itself into in trying to explain why it voted in 2015 against the UN Secretary General's decision to extend marriage benefits to LGBT or same-sex couples, a vote that put India in the company of Saudi Arabia and Pakistan. With 377 on its books, India could hardly have voted for the decision without appearing hypocritical. But it tried to explain its vote by saying its opposition was not to LGBT rights but that the Secretary General took the decision on his "own accord" and "without consultations with member states." Clearly the government did not want to be labeled homophobic, a soul sister to Saudi Arabia.



*(A participant takes a selfie during Delhi Queer Pride Parade, an event promoting gay, lesbian, bisexual and transgender rights, in New Delhi November 30, 2014.  
REUTERS/Adnan Abidi)*

Now in the latest UN vote on the creation of an Independent Expert on Sexual Orientation and Gender Identity (SOGI) at the United Nations Human Rights Council, India chose to abstain.

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