**Transgender Identity and the Law in India**

**Course Description:**

This course explores the interaction between transgender identity and the law in India. In 2014 the Supreme Court in *National Legal Services Authority v. Union of India* recognized the right of individuals to choose a ‘third gender’ which debate around transgender rights in India has entered mainstream public discourse. The avowed goal of the state seems to be the empowerment of the transgender community. However, can such empowerment take place without a radical disruption of gender hierarchies and undoing the very regulation of gender over our bodies, desires and autonomy? Can the transgender movement go beyond demands of formal equality to challenge the dominant understanding of gender? Such an analysis will require the exploration of the ‘transgender identity’, that is at the centre of political and legal discourses, the narratives that constitute it, and the exclusions that this leads to.

In the past, it was only within the framework of identity politics that social justice movements have been able to articulate marginalization, stigma, harassment and discrimination experienced uniquely by a particular group of people. It is only recently that the debates on transgender identity are entering the realms of law.  This course will explore how the transgender identity debates shape the discourse on rights, equality and non-discrimination and the role of the law in achieving social justice for trans individuals.

**Course Objectives:**

1. An informed and critical understanding of gender and identity in India
2. To critically assess legal frameworks and be able to apply them to contemporary debates on transgender rights
3. Develop an structural analysis of gender by using an interdisciplinary approach to  investigate gender
4. An understanding of the debates around law reform and transgender rights

**Teaching and Evaluation Framework:**

You are expected to read the assigned materials in advance of each class and be prepared to engage in a discussion of the readings. Evaluation in the course shall be based on your class participation and written work assigned to you during the course. This evaluation break-up will be-

1. Class Participation - 20%
2. Response Papers - 20%

Students will be expected to respond intelligently to the readings of at least one week with a written submission of 800-1200 words on the Monday before the class by 5P.M.

1. Essay Submission - 60%

Students are expected to write an essay of 2500 words in response to a topic to be shared at the 5th Session of the course. Submissions will be due on 27th September 2017 by 11:59 PM by email.

**Session 1:**

**Understanding Transgender Identity**

This session will focus on a theoretical understanding of gender, gender identity and transgender. It will introduce the student to different transgender identities, the transgender umbrella v. gender galaxies, construction of gender as immutable v. as a choice and civil rights based on conduct v. identity. The student will also be introduced to the cultural histories of *Hijras* and various Indian transgender identities.

**Mandatory Readings**

* Arundhati Roy, “*The Ministry of Utmost Happiness”* (Penguin UK, 2017) Selected excerpts
* Paisley Currah, *“Gender Pluralisms under the Transgender Umbrella”,* Chapter 1 in *Transgender Rights,* (ed) Paisley Currah, Richard M. Juang and Shannon Price Minter 3-31 (University of Minnesota Press, 2006)
* Gayatri Reddy, “*Cartographies of Sex and Gender*”, Chapter 3 in *With Respect to Sex- Negotiating Hijra Identity in India* 44-77 (University of Chicago Press, 2005)

**Further Materials**

* FAQs on transgender terms - Paisley Currah, Shannon Mitner, Jamison Green, *“Transgender Equality- A handbook for Activists and Policy makers”* 1-12 (The Policy Institute of the National Gay and Lesbian Task Force; National Center for Lesbian Rights; available here:<http://www.thetaskforce.org/static_html/downloads/reports/reports/TransgenderEquality.pdf> )
* Letter by Transmen to the MSJE. Available here:<https://roundtableindia.co.in/index.php?option=com_content&view=article&id=7185:open-letter-by-trans-men-to-ministry-of-social-justice-and-empowerment&catid=129&Itemid=195>

**Session 2:**

**Constitutional Status of Transgender Identity**

This session will focus on Indian Constitutional framework viz a viz transgender identity. Focussing on *NALSA*, and the reasoning of the Court, it will explore the Fundamental rights guaranteed to individuals, such as the Rights to Equality, Freedom of Speech and Expression, Life and Personal Liberty and the Right to Privacy. There will be a comparative analysis with countries such as Nepal and South Africa.

**Mandatory Readings:**

* *National Legal Services Authority v. Union of India and Ors*. [(2014) 5 SCC 438; paras- 1-4, 11, 19-20, 43-46, 54-77]
* *Justice K. S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors.,* [W.P.(C) 494/2012 SC, paras-  84-85, 124-128 (Justice Dr. D Y Chandrachud’s decision), 80 (Justice Sanjay Kishan Kaul)]
* Jayna Kothari - “*The Promise for full recognition of Transgender rights”*, available at: <http://orinam.net/privacy-verdict-transgender-rights/>
* The Transgender Persons (Protection of Rights) Bill 2016 (Chapter III), available at: [http://www.prsindia.org/uploads/media/Transgender/Transgender%20Persons%20Bill,%202016.pdf](http://www.prsindia.org/uploads/media/Transgender/Transgender%20Persons%20Bill%2C%202016.pdf)
* Busisiwe Deyi, **“***First Class Constitution, Second Class Citizen: Exploring the Adoption of the Third Gender category in South Africa”*, Chapter 6 in “*Protecting the Human Rights of Sexual Minorities in contemporary Africa*”, (ed) Sylvie Namwase and Adrian Jjuuko 128-150 (Pretoria University Law Press, 2017);available at:<http://www.pulp.up.ac.za/component/edocman/protecting-the-human-rights-of-sexual-minorities-in-contemporary-africa>

**Further Materials:**

* *Sunil Babu Pant v. Government of Nepal & Ors.* [Translated copy available at:<https://www.icj.org/wp-content/uploads/2012/07/Sunil-Babu-Pant-and-Others-v.-Nepal-Government-and-Others-Supreme-Court-of-Nepal.pdf> ; pg. 1, 5, (last para)9-20, 22-25]
* *Ashish Kumar Misra v. Bharat Sarkar* [ AIR 2015 All. 124; para 4-7]
* Aniruddha Dutta, “*Contradictory Tendencies: The Supreme Court’s NALSA Judgement on Transgender Recognition and Rights*”, available at:<http://jils.ac.in/wp-content/uploads/2016/01/105-jils_vol-5_monsoon_2014.pdf>
* Dipika Jain and Kimberly Rhoten, “*A comparison of legal rights of gender non-conforming persons in South Asia”* 52 E.P.W. 10 (2013).

**Session 3:**

**Transgender Identity and the Criminal Law**

The transgender community is criminalised in two dominant ways. One, Section 377 criminalises consensual sexual relations of the community, terming them unnatural. Two, they are prosecuted based on their gender identity and gender expression, with the State monitoring and maintaining their records. In this session, we will seek to identify the penal frameworks in India which prosecute and discriminate against Transgender persons in the country.

**Mandatory Readings:**

* *Suresh Kumar Koushal v. Naz Foundation & Ors.* [(2014) 1 SCC 1; paras. 2, 9-14, 39-54]
* Section 36A of The Karnataka Police Act, 1963, available at: [http://www.finance.kar.nic.in/gos/othactrul/THE%20KARNATAKA%20POLICE%20ACT,%201963.pdf](http://www.finance.kar.nic.in/gos/othactrul/THE%20KARNATAKA%20POLICE%20ACT%2C%201963.pdf)
* *Karnataka Sexual Minorities Forum v. State of Karnataka and Ors.*, available at: <http://clpr.org.in/karnataka-sexual-minorities-forum-v-state-of-karnataka-ors/>
* The Telangana Eunuchs Act, 1329F, available at: <http://nyaaya.in/law/939/the-andhra-pradesh-telangana-area-eunuchs-act-1329-f/>
* Siddharth Narrain, “*Persecuting Difference: The Drive against Bangalore’s Transgender Community”*, in *Law like Love- Queer Perspectives on Law*, ed. Arvind Narrain and Alok Gupta, 535-553 (Yoda Press, 2011)
* *Jayalakshmi v. State of Tamil Nadu* [MANU/TN/8598/2007]
* The Transgender Persons (Protection of Rights) Bill 2016 (Section 19), available at: [http://www.prsindia.org/uploads/media/Transgender/Transgender%20Persons%20Bill,%202016.pdf](http://www.prsindia.org/uploads/media/Transgender/Transgender%20Persons%20Bill%2C%202016.pdf)

**Further Materials:**

* *Shivani Bhat v. State of NCT* [MANU/DE/2912/2015]
* Kalpana Kannabiran, “*The Law, Gender and Women”*, 44(44) E.P.W. 33 (2009).
* Report by Centre for American Progress and Movement Advancement Project titled “*Unjust: How the Broken Criminal Justice System Fails Transgender People”* 1-26, available at:  <http://www.lgbtmap.org/file/lgbt-criminal-justice-trans.pdf>

**Session 4:**

**Transgender Identity and Equality**

In this session, we will analyse transgender identity through the lense of a struggle for equality. We will explore the legislative and jurisprudential frameworks with regard to the recognition of gender identity in legal documents, and civic representation, the right against discrimination at the workplace and labour discrimination laws (Minimum Wages Code 2017, Title VII of the Civil Rights Act, 1964), the right against discrimination in education (Transgender Persons (Protection of Rights) Bill, 2016), etc.

**Mandatory Readings:**

* *Jackuline Mary v. The Superintendent of Police* [MANU/TN/0427/2014]
* Paisley Currah and Shannon Minter, “*Unprincipled Exclusions: The Struggle to Achieve Judicial and Legislative Equality for Transgender People”*, 7 Wm. & Mary J. Women & L. 37 (2000) available here:<http://scholarship.law.wm.edu/wmjowl/vol7/issI/4>
* Iina Sofia Korkiamaki, "*Legal Gender Recognition and (Lack of) Equality in the European Court of Human Rights*", 13 Equal Rights Review 20-50 (2014) available here: <http://www.equalrightstrust.org/ertdocumentbank/ERR%2013%20-%20Korkiamaki.pdf>
* Mark Bell, “*Gender Identity and Sexual Orientation: Alternative Pathways in EU Equality Law”*, 60(1) American J. of Comp. L. 127 (2012)
* *P v. S and Cornwall County Council*, available here: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61994CJ0013&from=EN>
* *Ulane v. Eastern Airlines,*742 F.2d 1081 (1984) available here: <http://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/ulane_v_eastern_airlines_edited.pdf>
* *Jane Doe v. Boeing Company,* 121 Wn. 2d. 8 (1993) available here: <http://law.justia.com/cases/washington/supreme-court/1993/59117-2-1.html>

**Further Materials:**

* *K. Prithika Yashini v. The Chairman* [MANU/TN/4017/2015]
* *Atri Kar v. The Union of India & Ors*. [Calcutta High Court, W.P. No. 6151 of 2017]
* Heath Fogg Davis, “*Sex-Classification Policies as Transgender Discrimination: An Intersectional Critique”*, available here:<https://doi.org/10.1017/S1537592713003708>
* Anzu Augustine, “*Third Gender and the Crisis of Citizenship- Migration from Kerala to Tamil Nadu”*, 51(2) E.P.W. (2016).

**Session 5**

**Transgender Identity and the Right to Sex Reassignment Surgery/ Right to Health**

We will explore the rulings of the Supreme Court of India and of the European Court of Human Rights to understand the right of access to public health for the transgender community. We will explore gender reassignment surgeries, hormonal therapy, and the legal frameworks within which these operate.

**Mandatory Readings**:

* *National Legal Services Authority v. Union of India and Ors*. [(2014) 5 SCC 438;  Paras 19, 22, 25-42, 45, 129]
* The Transgender Persons (Protection of Rights) Bill 2016 (Section 16), available at: [http://www.prsindia.org/uploads/media/Transgender/Transgender%20Persons%20Bill,%202016.pdf](http://www.prsindia.org/uploads/media/Transgender/Transgender%20Persons%20Bill%2C%202016.pdf)
* *Van Kuck v. Germany*, ( App. No. 35968/97, ECHR 2003; paras. 8-28, 38, 46-66, 73-86, Order), available at: <http://www.dgti.org/tsgrecht/allesrecht/91-vankueckvsgermany.html>
* *L. v. Lithuania*, (App. No. 27527/03, ECHR 2007; part I, III, Order), available at: <https://genderidentitywatch.files.wordpress.com/2013/12/l-v-lithuania.pdf>
* Noa Ben Asher, “*The Necessity of Sex Change: A Struggle for Intersex and Transsex Liberties*” available at:

<http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1583&context=lawfaculty>

* [Greta R.Bauer, Rebecca Hammond, Robb Travers, Matthias Kaay, Karin M. Hohenade,  Michelle Boyce](http://www.sciencedirect.com/science/article/pii/S1055329009001071#!), “*I Don't Think This Is Theoretical; This Is Our Lives: How Erasure Impacts Health Care for Transgender People*”, 348-361 JANAC 2009, available at : <https://www.researchgate.net/publication/26791765_I_Don%27t_Think_This_Is_Theoretical_This_Is_Our_Lives_How_Erasure_Impacts_Health_Care_for_Transgender_People>

**Session 6:**

**Transgender Rights and the Family**

In this session, we will look at the creation and development of transgender family law and the largely oppressive or discriminatory jurisprudence on the topic. We will explore transgender rights in relation to marriage, parenthood, adoption, etc. We will study this within the Indian framework and context, with reference to the *Hijra* community and South Indian identities, and their interactions within the community.

**Mandatory Readings:**

* Malta Gender Identity, Gender Expression and Sex Characteristics Act, 2015, Section 3 available at: <http://tgeu.org/wp-content/uploads/2015/04/Malta_GIGESC_trans_law_2015.pdf>
* *X, Y and Z  v. UK* [1997 ECHR 75/1991/581/667; paras. 20, 25-26, 29, 32-52, Order] available at: [http://www.pfc.org.uk/caselaw/X,%20Y%20and%20Z%20v.the%20United%20Kingdom.pdf](http://www.pfc.org.uk/caselaw/X%2C%20Y%20and%20Z%20v.the%20United%20Kingdom.pdf)
* *Christine Goodwin v. The United Kingdom* (2002) 35 EHRR 18; paras 94-104  available at: <http://www.amicuscuriae.it/attach/superuser/docs/goodwin.pdf>
* Taylor Flynn, *“The Ties that Don’t Bind: Transgender Family Law and the Unmaking of Families.”* Chapter 2 in *Transgender Rights,* (ed) Paisley Currah, Richard M. Juang and Shannon Price Minter 32-50 (University of Minnesota Press, 2006)
* Gayatri Reddy, “*Our People- Kinship, Marriage and the Family*, Chapter 7 in *With Respect to Sex- Negotiating Hijra Identity in India”,* 142-185 (University of Chicago Press, 2005)
* The Transgender Persons (Protection of Rights) Bill 2016 (Section 13), available at: [http://www.prsindia.org/uploads/media/Transgender/Transgender%20Persons%20Bill,%202016.pdf](http://www.prsindia.org/uploads/media/Transgender/Transgender%20Persons%20Bill%2C%202016.pdf)

**Further Material:**

* Ruthann, *“Re-inscribing Normality? The Law and Politics of Transgender Marriage”* Chapter 15 in *Transgender Rights,* (ed) Paisley Currah, Richard M. Juang and Shannon Price Minter 299-309 (University of Minnesota Press, 2006)
* *Joanne Cassar v. Malta*, [2013 ECHR Appl. No. 36982/11; Circumstances, the law, Outcome]

**Session 7 :**

**The Future of Transgender Law and Politics**

In this final session, we will look at the transgender rights movement and study it contextually with several predominant movements. We will analyse it with regard to the broader human rights movement, the feminist movement, as well as within the sexual orientation movement. We will further look at the way these movements interact and are applicable to the Indian native narrative and context.

**Mandatory Readings:**

* Kendall Thomas, “*Afterword: Are Transgender Rights Inhuman Rights?”*, in *Transgender Rights,* (ed) Paisley Currah, Richard M. Juang and Shannon Price Minter 310-326 (University of Minnesota Press, 2006)
* The Transfeminist Manifesto, available at: <http://eminism.org/readings/pdf-rdg/tfmanifesto.pdf>
* Taylor Flynn, “*Transforming the Debate: Why we need to include Transgender Rights in the struggle for Sex and Sexual Orientation Equality”*, 101 (2) Colum. L. Rev. 392-420 (2001)
* Aniruddha Dutta and Raina Roy, “*Decolonising Transgender in India: Some Reflections”*, 3(3-4) Transgender Studies Quarterly 333-356 (2016)