

Constitutional Empowerment of Distinct Identity: A Quest for Equality

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Abstract

The article addresses transgender rights in India, where transgender people enjoy the legal right to protection and the right to be recognised as a third gender. The Indian Constitution accords transgender people the same rights that it accords to all other Indian citizens in terms of justice and equality. The Transgender Person (Protection of Rights) Act, 2019, was passed by the government in order to prohibit discrimination against transgender people in the areas of employment, education, and health services. Welfare measures have also been adopted to safeguard transgender people's rights. The primary guiding principles of the government have been to guarantee justice, equality, and unity to its citizens. The article examines the legal protections that have fallen short of what is necessary to safeguard their rights, leading to a violation of those rights' most essential and basic requirements.

Keywords:- Transgender, Constitution, Empowerment, Rights, Equality, Discrimination.

Introduction

‘Transgender means a person who is— (A) Neither wholly female nor wholly male; or (B) A combination of female or male; or (C) Neither female nor male; and whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers. Since the beginning of time, transgender people have existed in every society, country, culture, and class. However, it is only recently that the rights of transgender people have begun to receive more attention. We all know that India has a very rich history and there are numerous religions and variety of cultures. The idea of transgender people is not a recent one in India. It is possible to trace transgender people who are known as "HIJRAS" in the past. There was many historical evidence of recognition of “third sex” or people not confirm to male or female gender in the writings of ancient India. They are also present in numerous Hindu literatures from antiquity, such as the epic Ramayana, Mahabharata and Mughals era.

Indian society had always accepted transgender people. The idea of "tritiyaprakriti" or "napumsaka" has been a significant component of Hindu mythology. The term "psychological sex," which focused on an individual's psychic makeup rather than their sexual traits, is also mentioned in the Jain literature. In the epic Ramayana, Lord Rama, who had been exiled from the kingdom for 14 years, turned to face his supporters and pleaded with them all to go back to the city. The hijras were the only members of his group who felt compelled by this route and chose to stick with him. . Rama was impressed by their commitment and devotion, granted them the authority to bestow blessings on individuals on auspicious moments like marriage and childbirth as well as at ceremonial gatherings that were meant to pave the way for the hijra tradition of badhai, during which they sing and dance. In the Mahabharata, Aravan, the son of Arjuna and Nagakanya, offered to be sacrificed to Goddess Kali in order to guarantee the Pandavas' victory in the Battle of Kurukshetra. His only request was that he spend his final night married. No woman wanted to wed a man who was destined to die, but Krishna took the form of Mohini, a stunning woman, and wed him. The Hijras of Tamil Nadu refer to themselves as Aravanis

and consider Aravan as their ancestor. In Mughal eras Hijras played a prominent role in the royal courts of the Islamic world. They became well-known generals, administrators, political consultants and harem guardians. Hijras were welcomed freely into all areas and demographic groups, and they were regarded as intelligent, trustworthy, and passionately loyal. The Hijras also had prominent roles in Islamic religious organisations, particularly in the capacity of person of trust in charge of guarding Mecca and Medina's holy sites. These individuals had the power to affect governmental decisions and were compensated well for their proximity to kings and queens.

Transgender people's circumstances, position, and everyday lives underwent dramatic change with the rise of colonialism in the 18th century. When it comes to Europeans, they were shocked to see how much respect transgender people received in the royal courts. Additionally, in the second half of the 19th century, the British colonial attempted to criminalise the HIJRA group by reclassifying them as a distinct caste. Since their gender identity was not accepted by society or the law, transgender people have suffered discrimination for years and have been compelled to use the genders male or female instead of their true gender. They primarily struggle with many issues such as illiteracy, unemployment, homelessness, a lack of access to healthcare, depression, alcoholism, and discrimination throughout their lives. The Indian Constitution recognises the rights of transgender people. Every person must have access to justice, including social, economic, and political equality, according to the constitution's preamble and the Supreme Court has granted them the right to be recognised as "Third Gender" and given them some social benefits. The court ordered the centre to treat transgender people as members of economically and socially marginalised classes and to grant them access to job and educational opportunities based on their third gender category. In the landmark decision of National Legal Service Authority v. Union of India, the Supreme Court determined that the third gender should have access to the same fundamental rights as other genders.

According to Articles 14, 15, 16, and 21, the court offers transgender people equal rights and protection. The court emphasised the significance of the right to dignity and accorded due respect to the individual's gender identity, which was based on reassigned sex following Sex Reassignment Surgery since the person had a fundamental right to be recognised as a man or female. As a result, transgender people have a right to legal protection under the law in all areas of governmental activity, such as in the workplace and in school. In India, the rule of law is absolute and considers everyone to be equal. The transgender community, however, is engaged in a never-ending conflict as they must contend with discrimination, abuse, and repression from all corners of society, including their own family, friends, and the general public. Transgender persons struggle every day to find acceptance because they are rejected by society and humiliated everywhere.

Right of Transgender Persons Bill, 2014

The Bill was introduced in Rajya Sabha on 12th December, 2014 which is passed on 24th April, 2015 unanimously, with cross-party support. This was a private member's bill introduced by the MP from Tamil Nadu, Tiruchi Siva. 24th April is celebrated as Transgender day following the passage of the Bill in the Rajya Sabha.

The 2014 NALSA judgement, where the supreme court placed emphasis on protecting and maintaining the rights of the transgender person under the principles of the Indian Constitution spelled out in Articles 14, 15, 16, and 21, gave consideration to transgender rights for the first time. While every

Indian citizen is guaranteed the right to equality under Articles 14, 15, and 16, and Article 21 guarantees the right to freedom, transgender people were denied these fundamental rights.

Article 14 addresses equality before the law or equal protection under the law on Indian territory. Article 14 categorically complies with the transgender person is entitled to legal protection under the Indian Constitution in all areas of state action because Article 14 clearly fits under the definition of "person" which covers the male, female, and third gender within its ambit. The third gender is included under the Article 15, which deals with the prohibition of discrimination on the basis of religion, race, caste, and sex. As citizens, they have the right to be free from discrimination based on their religion, caste, race, and sex. They are entitled to the protection of their gender expression, which is primarily expressed in the way they dress, act, and behave. Article 16 concerns with equal opportunity in areas of public employment since it expands the definition of sex to include "Psychological Sex" and gender identity. Indian people who identify as transgender have a right to employment and equal opportunity in hiring decisions, and they should not be subjected to discrimination because of their sexual orientation.

No one may be deprived of his or her life or personal liberty unless doing so is authorised by law, according to Article 21 of the Constitution, which deals with the protection of life and personal liberty. Transgender people have been denied of their lives and personal freedom for centuries. The transgender person should have full legal rights to safeguard their lives. Being an Indian citizen, the transgender person should have complete rights to safeguard their freedom. Additionally, the Supreme Court has acknowledged the right to dignity by incorporating gender identification under Article 21.

The case Navtej Singh Johar v. the Union of India concerns the decriminalisation of Section 377 of the Indian Penal Code. The constitutional validity of Section 377, which provided that: voluntary carnal intercourse against the order of nature with any man, woman, or animal shall be punished with imprisonment for life or with imprisonment which may extend to ten years with a fine, was at the centre of the case. It was claimed in the petition that Section 377 of the Indian penal code. Transgender people now have legal and constitutional rights as a third gender, according to the Supreme Court's ruling in the national legal services authority case. The legal acknowledgment of the transgender population is the primary emphasis of this ruling. According to a court order, the government must treat transgender people as a socially and educationally underprivileged population that is entitled to quotas in educational settings and in public employment as an exclusive subset of the "third gender". They will be granted full legal rights, including the ability to get married, have children, get a divorce, inherit property, and apply for welfare benefits. We don't observe this specific segment of society participating in a range of institutions and programs for a number of different reasons. Despite the necessity of banking, housing, work, health care etc. Transgender people are denied many of the freedoms and liberties that other inhabitants of this country take for granted. Transgender persons have major issues with their human rights, including violations in the areas of education, employment, health, care, voting and election-related activities, as well as personal freedom, legal protection, family and marriage. They are greatly exposed to harassment. They are discriminated against in many ways, and their rights are not upheld. Although everyone has a need for housing, banking, insurance, health care, work, and education, the availability of these services to transgender people under the current system seems to be constrained. However, it is crucial to acknowledge each segment's needs and work toward human growth if a society is to flourish in its whole. The basic rights of transgender people are

denied despite the 1948 promulgation of the Universal Declaration of Human Rights, which recognized the inherent worth, equality, respect, and rights of all people. It is necessary to take a human rights approach to transgender people, which may emphasize how a person interacts with their surroundings, emphasize society's involvement, and reduce the stigma associated with them. Thus transgender individuals face numerous challenges in society, including social and cultural inequalities, restricted access to education, healthcare, and employment, and being forced to conform to their assigned sex. They face health problems, limited employment opportunities, and high risk of HIV. The Protection of Rights of Transgender Persons Act was passed earlier, but activists argue the government is ignoring their requests. Mumbai-based Trans activist argues that Section 18 of the Act is contradictory, highlighting the need for improved rules.

Social media and awareness facilities are changing the situation for transgender people, promoting unity and understanding of their rights and responsibilities. Respect for these individuals is crucial, and the government should enforce laws and punish violators. Awareness programs and campaigns should be implemented, and they should be welcomed in society, healthcare, and education. Removing stereotypes and promoting love and care among all is essential for a better India. The National Law on Sexual Assault (NLSA) decision has initiated a new era of distinct identity for the transgender community in India. The Supreme Court recommended the government to implement the judgment's findings, include the transgender community as a backward class, and take affirmative action measures for them. The court also recommended the establishment of a commission to determine the actual status of the transgender population. However, the ground reality is that the transgender community's problems are deeply rooted in social exclusion. The Supreme Court's guidelines have the potential to shift thinking towards a rights-based approach, but society has not kept pace with this shift. To implement the judgment, the state must take steps for nationwide awareness programs, framing social welfare schemes, and ensuring equal participation in social life. The government of Tamil Nadu has already made efforts to rehabilitate the transgender community and achieve equality in society. The Central Government has taken positive steps, such as creating a committee for in-depth study of the situation of the third gender community and passing a private member bill regarding the rights of the third gender.

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