

Equality And Identity: Fundamental Rights of Transgender Person in India

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Abstract—The Battle for equality and self-respect between transgender people in India has been shaped by a long history of being ignored, judged and not officially recognised. Even though ancient Indian traditions acknowledged the different gender identities in today's society has pushed transgender individuals to the edges. This paper looks at understanding of transgender identity, rights of transgender in India, focusing on new laws, how people see transgender individuals, and how constitution enhance their own identities. It is closely looked at important court decisions like the NALSA v. Union ¹ the Transgender Persons (Protection of Rights) Act ² and local government programs meant to help transgender people be or became part of society. The study shows that what has improved and what still needs to change to achieve true equality and acceptance. It suggests that although laws now started to recognise transgender identities real inclusion is still difficult because of old biases, lack of understanding, and problems with how institutions work. Our finding of study suggests ideas for better policies and the need to educate people at the community level to help make the gap between legal rights and real life smaller.

Index Terms—Equality, Identity, Protection, Rights, Transgender.

I. INTRODUCTION

In a diverse and democratic nation like India, the principles of equality, dignity, and inclusion are enshrined under Constitution as fundamental rights for all citizens. The Indian Constitution stands as a testament to do value of justice, liberty, equality, and fraternity. These principles enshrined under its preamble and operationalized through its Fundamental Rights, guarantee civil, political, social, and cultural

rights to all individuals. However, for decades these rights remained largely remote to one of India's most marginalized and vulnerable communities the transgender population. Despite of being citizens of the country transgender individuals are deprived of equal treatment under the law where they get social acceptance, and institutional support. This systemic approach took marginalization into deeply rooted in a binary understanding of gender which historically excluded non-binary and gender-diverse identities from legal and social recognition. Although ancient Indian scriptures and cultural traditions acknowledge and even venerate gender-diverse individuals such as hijras, jogappas and shiv-shaktis the arrival of colonial rule brought with it a Western, heteronormative, and binary gender framework that dismissed these identities as deviant. The introduction of laws like the Criminal Tribes Act³ criminalized entire communities, including hijras, under vague charges of habitual sodomy and public nuisance, leading to centuries of exclusion. One of the most critical milestones in this track was the Supreme Court's judgment in (NALSA) v. Union of India (2014). That landmark judgment acknowledged the right of individuals to self-identify their gender as male, female, or third gender and affirmed that transgender persons are entitled to all the Fundamental Rights guaranteed under Part III of the Indian Constitution. The judgment interprets Articles 14, 15, 16, 19, and 21 in a manner that includes transgender individuals thereby take apart the longstanding legal invisibility they meet. For instance, Article 14 of constitution which guarantees equality before the law expanded to include the transgender community where Article 15 and 16 that prohibit

¹ National Legal Services Authority V. Union of India AIR 2014 SC18

² 2019

³ 1871

discrimination on the grounds of sex were interpreted to include gender identity and sexual orientation and Article 21 ensures the right to life and personal liberty was invoked to highlight the dignity and autonomy of transgender person.

II. UNDERSTANDING GENDER IDENTITY AND THE TRANSGENDER COMMUNITY

Gender identity refers to an individual's greatly held sense of being male or female, a blend of both, neither, or falling outside the traditional binary classifications. It encompasses personal conception, internal experiences, and external expressions of gender. Unlike the biological or anatomical sex assigned at birth, gender identity is a psychological. While traditional societies including India historically imposed dual gender roles of male and female the evolution of social, psychological, legal, and philosophical thought has led to broader recognition of non-dual and genderqueer identities. This includes transgender, non-dual, genderqueer, intersex, agender, and genderfluid identities, among others. The concept of self-identification upheld in the NALSA judgment that became revolutionary.

It marked a going away from prior legal and medical practices that required individuals to undergo surgery or psychological assessment to be legally recognized as transgender. However, this principle faced a problem with the Act of the Transgender Persons Protection of rights Act, 2019. This Act mandates that transgender individuals must obtain a certificate from a District Magistrate to have their identity recognized thereby revive institutional gatekeeping.

Historical view of transgenders

The existence and acknowledgment of transgender persons in India can be traced back thousands of years, as Indian civilization has a rich and diverse history that embraces a variety of gender identities and expressions beyond the male-female binary. Ancient Indian scriptures, religious texts, and mythologies not only recognized but also revered the presence of individuals whose gender identities did not conform to traditional norms. For instance, the epic Mahabharata introduces Shikhandi, born as a woman but later assumes a male identity to fulfill a divine destiny.

Another notable character, Brihannala, is the identity adopted by Arjuna during his exile where when he lived as a transgender person. These characters were not just passively tolerated but played critical roles in the unfolding of divine narratives, indicating a cultural acceptance of gender variance. In the Ramayana, another foundational Indian epic, the hijra community is acknowledged during the episode where Lord Rama, on his way to exile, instructs his male and female followers to return to the city. The hijras, who did not fit neatly into either category, stayed behind. Rama, touched by their devotion, is said to have granted them the power to bless people on auspicious occasions. This mythological portrayal lays the foundation for the continued cultural relevance of hijras in contemporary Indian society, particularly during life events such as childbirth and weddings, where they are invited to perform rituals that are believed to invoke fertility and good fortune.

III. TRANSGENDER FUNDAMENTAL AND BASIC RIGHTS GRANTED IN INDIA

In India Transgenders granted both fundamental (which are protected by constitution) as well as the basic human rights for their survival

3.1. Fundamental rights –

Right to equality⁴

Article 14 of the Indian Constitution guarantees equality before law and equal protection of laws within the territory of India. The article mandates that all individuals, regardless of their social, cultural, economic, or personal characteristics, must be treated equally under the law. While the right to equality is enshrined in Article 14, its real-world application is often complex, requiring interpretation and judicial analysis to address the nuances of different forms of inequality and discrimination. In the case of transgender persons, Article 14 has become an essential tool in the battle for legal recognition, social inclusion, and equal treatment. In the landmark case of Supreme court (NALSA v. Union of India) said that the word under Article 14 "Person" is not limited to male or female: The court explicitly stated that the word "person" under Article 14 involve ("The State shall not deny to any person equality before the law...")

⁴ India const.art.14

is not restricted to the binary gender of male and female. Therefore, transgender people are entitled to legal protection and equality in all spheres of state activity, such as employment, healthcare, and education. This shows that transgenders have equal rights as all men and women are getting in India.

Right to Against discrimination ⁵

Article 15 of the Indian Constitution is a censorious provision in safeguarding the rights of individuals against discriminations where it prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth thus ensuring equal treatment and opportunities for all the citizens. The importance of article 15 cannot be overstated. It offers transgender persons a powerful legal tool to challenge discriminatory practices and policies that have historically marginalized them. By including "sex" as a prohibited ground of discrimination, Article 15 ensures that transgender persons cannot be discriminated against simply for identifying as a gender that does not conform to the traditional male-female binary. However, the road to realizing the full potential of this provision has been marked by legal battles, societal resistance, and challenges in policy implementation. Furthermore, gender studies programs and LGBTQ+ advocacy organizations can play a critical role in challenging stereotypes and promoting a more inclusive society. By fostering understanding and empathy for transgender persons, these programs can help combat the societal attitudes that perpetuate discrimination.

Right to life and Personal liberty ⁶

Article 21 of the Indian Constitution is most important fundamental rights granted to every citizen. The Judicial Interpretation of article 21 is relevant to Transgender Person. Over time the Indian judiciary has expanded the extent of article 21 secure that it covers a broad spectrum of rights essential to an individual's dignity and personal freedom where landmark decisions such as Maneka Gandhi ⁷ case have fundamentally transformed the understanding of this right. In this case the SC held that the right to life involve right to live with dignity and any action that

deprives of individual of their dignity constitutes a violation of article 21. This interpretation has laid the groundwork for protecting individuals from arbitrary state actions and has been instrumental in securing human rights including the rights of transgender persons. The Court emphasis dignity and personal liberty in the Maneka Gandhi case that has been significant for transgender persons as it affirmed that their right to live with dignity and freedom from discrimination is protected under article 21. Transgender who often face violence, discrimination and marginalization can invoked article 21 to claim the right to live a life free from any kind harassment and violence. This principle is critical as it allows transgender individuals to challenge discriminatory practices that violate their rights including forced gender transfer lack of access to gender-affirming healthcare and societal disgrace.

The Right to Privacy and its Impact on Transgender Persons has Another landmark judicial decision that has strengthened the rights of transgender persons under article 21 is the case K.S. Puttaswamy ⁸ which affirmed the right to privacy as a fundamental right. This judgment expanded the interpretation of article 21 stating that privacy is an essential component of personal liberty which includes the autonomy to make personal decisions about one's identity body and relationships.

Under Indian Constitution Article 19(1)(A), Article 16, Article 21 A, Article 32 and 266 are also granted to transgender as a fundamental right where these rights [provide gender equality and identity to transgender.

3.2. Basic Rights of transgender-

The Protections under the Transgender Persons (Protection of Rights) Act 2019 provides legislative account to the court rulings by codifying the rights and protections of transgender individuals.

- Prohibition from discrimination- The law prohibits discrimination against transgender people in field.
 1. Education
 2. Employment
 3. Healthcare services
 4. Access to public goods and facilities

⁵ India const.art.15

⁶ India const.art.21

⁷ Maneka Gandhi v. Union of India, AIR 1978 SC 597

⁸ Justice K.S. Puttaswamy (Retd.) and others v. Union of India and Others, AIR 2017 10 SCC 1 or AIR 2017 SC 4161

- Right of residence- Transgender have the right to reside in their household without being removed and discriminated against by their family.
- Welfare measures- The act of it mandates that the government formulate transgender-sensitive welfare schemes and programs that will be non-discriminatory. This includes provisions of rescue, rehabilitation, vocational training and self-employment.
- Identity certificates- The law provides a process for a transgender person to obtain a certificate of Identity from a District Magistrate affirming their self-perceived gender identity without mandatory medical or physical examination.
- Protection against abuse- The law makes it a punishable offense to engage in any physical, sexual, verbal, emotional or economic abuse against of transgender person.

Recognition of family and partnership rights-

- Marriage- The Madras High Court ruled in 2019 that the term "bride" under the Hindu Marriage Act, 1955 includes transgender women allowing them for their marriages to be legally registered include case of Arun Kumar v. Inspector General of Registration⁹
- Live-in relationships- Indian courts have acknowledged the right of transgender people to enter into live-in relationships and the Supreme Court in 2022 included LGBTQ live-in couples within the definition of "family" extending benefits.
- Adoption: While same-sex couples do not have adoption rights where single transgender individuals can adopt.

IV. JUDICIAL RECOGNITION: EMBARKING EQUALITY AND IDENTITY TO TRANSGENDER

The Supreme Court landmark case (NALSA) v. Union of India 2014 was a major turning point towards transgender and their rights in India. For the first time here, top court officially admit transgender people as a separate third gender and protects their basic rights

⁹ Arun Kumar v. Inspector General of Registration W.P. (MD) No. 4125 of 2019

¹⁰ Navtej Singh Johar v. Union of India, AIR 2018 10 SCC 1 or AIR 2018 SC 4321

under the Indian Constitution. Here decision was a big step because it showed a growing understanding of the Indian Constitution and a strong commitment to fairness and justice. The ruling was more than just symbolic it was a real change that helped and include a group that has been ignored for a long time in the legal system. This confirms the Indian legal system dedication to equality, respect and human rights.

The ruling outlined several important directives firstly transgender individuals must be admit as a third gender on all official records where secondly they should be given reservations in education and employment under the socially and educationally disadvantaged category thirdly the government is required to establish special welfare boards for transgender people to address their unique needs fourth access to medical services for transgender individuals including sex reassignment surgery must be enhanced.

The SC decision under Navtej Singh Johar v. Union of India ¹⁰ marked as significant moment in India's constitutional law especially when it comes to supporting LGBTQ+ rights and protecting the right to personal freedom in sexual matters. This important ruling went beyond just removing the criminal punishment for homosexuality it also changed how the law which sees morality, dignity, and personal liberty. It showed the judiciary's role in protecting the rights of minorities and helped improve the standing of both homosexual people and transgender individuals who have faced discrimination and lack of respect for a long time because of old laws and social attitudes. In recent cases like Anjali Guru Sanjana Jaan v. State of Maharashtra and Others ¹¹ .The Bombay High Court said that a transgender person can choose to see themselves as female when voting in village panchayat elections.

Vyjayanti Vasanta Mogli Alias M. Vijay v. The State of Telangana and 5 Others ¹²: The Supreme Court remind everyone about important rights like the right to choose your own gender, protection from unfair treatment and the right to keep your personal life private especially for transgender people.

¹¹ Anjali Guru Sanjana Jaan v. State of Maharashtra & Ors Writ Petition (Stamp) No. 104 of 2021

¹² Vyjayanti Vasanta Mogli Alias M. Vijay vs. The State of Telangana and 5 Others, AIR 2023 SCC TS 1178

V. THE TRANSGENDER PERSONS [PROTECTION OF RIGHTS] ACT, 2019

5.1. Legislative context

The Transgender Persons (Protection of Rights) Act¹³ the major law in India that focuses on the rights of transgender. When this law was made there were a lot of discussions held and conflict occur into governments where they talk with people from civil society and changes to earlier versions of the law that were criticized by transgender rights groups. There were challenges in balancing political goals with what the courts said should be done. Even though the NALSA court decision set clear rules to protect transgender rights turning these into real laws was hard because of different opinions from various groups and that complicates government process. The law shows both how far society has come in accepting transgender rights and how some misunderstandings about gender still exist. The final law is a result of different opinions being considered but it also follows the basic rights that the Supreme Court protected.

5.2. Key provisions and protection

People who have different gender from the one they were given at birth are considered transgender under the provision of Act. This includes transgender men, transgender women people with intersex conditions and those whose identify as gender-queer. This broad definition recognizes the different ways which people experience genders while also helping to make the law clear and easier to follow. A key part of the Act is that it stops unfair treatment in areas like work, school, medical care and public places. The law says transgender people should be treated the same as others and stops any kind of discrimination or harm against them. These rules aim to fight injustice that has kept transgender people on the edges of society for a long time. Even though some parts of the Act like the process for getting identity certificates have been criticized for making things harder with too many steps the Act is still active. The law also covers healthcare rights, making sure that people can get the medical care they need including treatments that help with gender confirmation without facing any unjust restrictions.

¹³ 2019

VI. RECOMMENDATIONS AND SUGGESTIONS

Suggestions-

1. Expanding Social Welfare and Support Services-

Here is an urgent need to design and implement targeted welfare programs for transgender individuals including housing, skill development, entrepreneurship and health insurance. A universal basic income scheme or targeted financial assistance program for economically sensitive transgender individuals should be considered.

2. Awareness Campaigns -

A deep social stigma against transgender can only be addressed through lasting public awareness campaigns. Here Mass media, educational institutions, workplaces, and government bodies must be used to conduct gender sensitization action.

3. Inclusive education and employment policies -

They are important for helping people feel free part of society. The schools and workplaces should have rules that include everyone like having restrooms that work for all genders and groups to help students who feel different and training for teachers and students to understand and respect each of them better.

Recommendation –

1. Strengthening legal framework-

A key recommendation is for changing the Transgender Persons (Protection of Rights) Act 2019. Right now, people need a certificate of identity from the district magistrate which should be replaced with a system where people can identify themselves as transgender without needing medical or government approval.

2. Improving Access to Justice-

Legal aid and access to justice continue to pose major challenges for transgender individuals. The Legal Services Authorities at the national, state, and district levels should create special units which address the legal needs of transgender. The fast-track courts or special benches should be set up to handle cases related to crimes against transgender individuals. Police personnel should get regular training on

managing cases involving transgender complainants in a dignified and sensitive manner.

VII. CONCLUSION

In India the understanding of a person's equality and identity reflects a complicated and changing reality navigates between strong constitutional protections and ongoing societal issues. Although the legal system offers a solid base for equal rights and admissions of varied identities deeply rooted social classes, biases and economic gaps still hinder the complete attainment of these principles for number of individuals and groups.

To ensure effective implementation of the legal provision here the central and state governments should establish dedicated Transgender Welfare Boards in each state. These boards must oversee the implementation of the Act offer support to transgender individuals and secure access to government welfare schemes. There should also be a standardized process for issuing identity certificates with defined timelines and reduced bureaucratic barriers training programs for law enforcement, healthcare professionals and educators on transgender rights and inclusion should be prioritized to minimize discrimination and enrich service delivery.

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