

Indian Contitution and Transgender Persons in India; A Critical Anylasis

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ABSTRACT

The Indian Constitution has progressively recognized and protected the rights of transgender people. Establishing transgender rights has been much aided by fundamental constitutional clauses including Article 14 (equal before the law), Article 15 (prohibition of discrimination), Article 19 (freedom of expression), and Article 21 (right to life and personal liberty). The Transgender Persons (Protection of Rights) Act, 2019, which has drawn criticism for failing to sufficiently address issues including marriage rights and the application of anti-discrimination laws. Constitutional rights continue to be shaped by judicial rulings, including those allowing transsexual people to partake in election procedures and wed under personal laws. Emphasizing the need of inclusive policies, legislative changes, and society acceptance to ensure substantive equality for transgender people, this abstract explores the growing constitutional jurisprudence of transgender rights in India.

Individuals within the transgender community are denied fundamental human rights that every person is entitled to. While individuals from the other two genders are advancing in space exploration, robotics, and several professional domains, transgender individuals continue to seek equitable treatment within society

However, the harsh reality is that transgender individuals are often prohibited from marrying their loved ones, and if they do marry, they frequently become victims of assault and discrimination. This article will examine and evaluate the legal frameworks regarding transgender individuals employed by various governments worldwide. This will address societal injustices faced by the transgender population, constitutional provisions, legislation enacted by the Government of India to support transgender individuals, and certain international laws.

Keywords: Transgender, Fundamental Rights, Constitution, Human Rights, Discrimination.

1. INTRODUCTION

Locke said, "Man is naturally entitled to complete freedom and unimpeded enjoyment of all rights and privileges conferred by the law of nature, and possess a natural authority to safeguard his property namely, his life, liberty, and estate against the harms and encroachments of others." Since the age of natural law, the general belief is that human rights are inalienable for the evolution of human personality. Advocates of natural law have underlined the need of defending these inherent rights. Every person clearly has the entitlement to these rights as they are human beings. From the moment of birth, they are within reach to every human being. The State has an obligation to protect and respect these rights¹.

The concept of human rights protects people against State harassment. One can generally classify human rights as either civil and political or as economic and social. Our Constitution has them ingrained in Part III as Fundamental Rights and in Part IV as Directive Principles of State Policy. Safeguarding these rights makes sense as every person has basic liberties. Moreover, by including them within our Constitution, the legislature has taken them off the authority of political majorities².

Enshrine them in the Constitution if we are to stop their State-sponsored violation, intervention, or modification for whatever reason. As so many written constitutions have included them, India is not an exception. As parts of the Constitution, they could only be limited, suspended, or deleted using the due process of constitutional amendment instead of legislative modification. This expression of basic rights serves two purposes³:

¹ M.P. Jain, Indian Constitutional Law 846 (Lexis Nexis, Gurgaon, 7th ed., 2016).

² Id. at 840

³ Pandey J.N. , Constitution Law of Indian

- First of all, they are justifiable in that any harmed person could pursue court of law legal remedy against the State.
- Second, it prevents the government from acting administratively or legislatively violating basic liberties. No regular law may violate fundamental rights; otherwise, it would be declared unconstitutional. The modern democratic values are embodied in the concept of fundamental rights.

International human rights documents more especially, the Universal Declaration of Human Rights and its later covenants, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights have mostly shaped the inclusion of human rights in the Indian Constitution. The thorough growth of people depends on the protection of human rights, which finally helps the country to grow generally⁴.

2. INDIAN CONSTITUTION AND TRANSGENDER PERSON

Preamble under Indian Constitution

Our Constitution mixed equality with other values. Even the Preamble stresses as the fundamental characteristic of the Constitution: equality. Any alteration compromising the equality is void. The State legislature as well as the Central one cannot violate equality. The prelude to the Constitution, the Preamble is special in value.

It captures the way the founders of the Constitution thought. It clarifies the main goals of the Constitution. Examining the Preamble helps one to learn about the polity of the nation they want to construct. The enactment clause reveals its acceptance. To relates to the Constitutional wellspring. Finally, it guarantees the fundamental liberties and rights it usually covers for its people⁵.

"WE, THE PEOPLE..." starts our Preamble; the first word "WE" is taken loosely to incorporate third gender as well as man and woman. Like men and women, the transgender individual is among Indians. Thus, the phrase "WE" in the Preamble refers to transgender people, and further Preamble tries to guarantee them fundamental values ingrained the render.

Declaring to its people justice, liberty, and equality, the Preamble promises security. Only when everyone in society earns what his is due will justice be achievable. A just society is one whereby everyone has liberty and equality of position and opportunity. The liberties of people are not unduly restricted. Furthermore absent are prejudice and discrimination. Liberty and equality then run side by side. Equality cannot exist without liberty; liberty without equality is useless⁶.

3. FUNDAMENTAL RIGHTS UNDER PART III OF INDIAN CONSTITUTION

The Indian Constitution's Part III captures every essential freedom accessible to every person. The basic liberties and freedoms are quite significant in the growth of human identity. Article 14, 15, 16, 19 and 21 guarantee rights to equality, right against discrimination, right to freedom with reasonable constraints and right to life and personal liberty to all people in the society comprise constitutional requirements. Using the phrase "person" or "citizen," as used in these very Articles impliedly encompass transgender as well as binary gender. Together with the clauses pertaining to education and forced labour, these clauses have been thoroughly explored as under:

Right to Equality (Art 14)⁷

Equality is a foundational component of Indian democracy. The right to equality is enshrined in the Constitution within Articles 14 to 18. The primary aim of Article 14 is to ensure that all individuals' citizens and non-citizens are afforded equality of status and opportunity, a principle also enshrined in the preamble of the Constitution. Article 14 delineates overarching principles to address discrimination, with particular provisions detailed in subsequent Articles (i.e., 15-18)⁸. Article 14 represents the genus, whereas Articles 15 and 16 denote its species. The Supreme Court has often affirmed that equality is the most valued characteristic of a democratic system. In *Nagaraj v. Union of India*,⁹ the Honourable Supreme Court affirmed that equality is a fundamental element of democracy and constitutes a component of the Constitution's basic framework. "Equality is an essential element of the Constitution of India, and any unequal treatment of equals or equal treatment of unequal's constitutes a violation of its fundamental structure."

It is noteworthy that predominantly written constitutions incorporate the phrase 'equality before the law,' whereas the Constitution of the United States contains 'equal protection of the laws.' The Indian Constitution encompasses both meanings under Article 14. Article 14 encompasses two notions. The initial notion of 'equality before the law' is

⁴ Anant Kalse, "Human Rights in Constitution of India",

⁵ M.P. Jain, *Indian Constitutional Law* 877 (Lexis Nexis, Gurgaon, 7th ed., 2016).

⁶ P.K Majumdar and R.P Kataria (ed.), *Commentary on the Constitution of India* 171-172 (Orient Publishing House, Allahabad, 10th ed., 2009).

⁷ The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India.

⁸ *NAZ Foundation v. NCT Delhi*, 160 DLT 277.

⁹ AIR 2007 SC 1.

articulated in a negative form. It denotes the lack of benefit or preferential treatment for any individual¹⁰. All individuals must be treated equitably and subjected to the regular laws of the nation, irrespective of their rank or status. No individual is exempt from the law. It is not absolute, as there are numerous exceptions, such as the President, Governor, and Diplomat, delineated in Article 361 of the Indian Constitution¹¹.

This parallels Dicey's principle of the rule of law. The rule of law signifies that no individual, regardless of their status or rank, is above the law; all are subject to the legal framework of the state and remain answerable to the judiciary.

Article 14 talks about not negative but good equality. Article 14 requires that everyone put under the same conditions respect one other equally. It does not refer to mechanical equality since some persons may be differently positioned depending on the type or context. Mechanical equality would lead to injustice. Different treatment is needed for the diverse demands of different types of people. The different nature of human connections means that the legislature has to handle several requirements or requests of people¹².

It must thus be empowered to create different laws together with the ability to discriminate, classify and choose people and objects over which law would apply. Aimed to shield a similar class of person against unfair treatment is Article 14. The legislator is thus enabled to classify; but, it must be reasonable to offer equal treatment or treat all on the same footing. Apart from the assurance of providing equality of laws, Article 14 imposes a positive obligation on the State to modify the laws in line with social and economic developments and to guarantee equality of protection so that all people inclusive of transgender can enjoy the protection of laws. Article 14 nowhere restricts the use of the word "person" to be used only for male or female. Additionally fitting the phrase "person" are the transgender individuals who neither fit male nor female classification¹³.

Therefore, they are entitled to enjoy, in all State operations, the legal protection of laws same as any other male or female. In the field of health care, education, employment, and other rights and advantages, they also have equal entitlement to enjoy them just like other people. Commonly speaking, it is evident that people are deprived of the fundamental equality and legal protection when their gender identification is ignored. They start to be targets of violence and harassment in modern culture.

Most likely to be sexually assaulted are transgender people; they experience forced anal or oral sex and even rape. Their non-recognition causes them prejudice in all sectors of life, including work, education, social responsibility, etc. Using toilet facilities presents several challenges since they have to use male toilets where they are harassed and sexually abused and there is no specific toilet. Discrimination based on sexual preferences or gender identification is thereby against Article 14¹⁴.

Article 19 (Protection of Certain Rights regarding Freedom of Speech and Expression etc.)

Every democratic society depends on the vital and required freedom of speech and expression. In the running of democracy, it is indispensable. The democratic government demands that its people participate actively and logically in society operations. Every free person should be entitled to express their ideas in front of others. People should be free to voice their personal ideas. Any attempt to restrict this liberty is like dictatorial control. Examining the value of this right, the Supreme Court has declared that "God has bestowed speech upon mankind." Speaking allows one to communicate to others ideas, concepts, and feelings¹⁵.

Every person carries an inherent natural right from birth: freedom of speech and expression. It's a basic human entitlement. Article 19(1) grants liberty whereby one may express and share their ideas via several media, including spoken, written, printed, visual, or other means. It marks the act of freely spreading, communicating, or exposing ideas and feelings without control. The phrase "expression" in Article 19(1) suggests the presence of another entity to which thoughts are shared.

Article 19(1) assures fundamental liberties. Considered natural rights, they are something every person possesses. Non-citizens cannot enjoy these freedoms. These liberties are limited and not unqualified as any civilized society depends on such restrictions the unbridled power results in oppression for unfettered will results in lawlessness and anarchy. Article 19(1) gives people certain liberties that are absolutely vital for the operation of a democratic government and personal development. Article 19(1)(a) covers the freedom to communicate one's thoughts or sentiments, so implicitly include the right to declare one's gender identity, particularly self-identified gender¹⁶.

¹⁰ MG Badappanavar v. State of Karnataka, AIR 2001 SC 260.

¹¹ M.P. Jain, Indian Constitutional Law 378 (Lexis Nexis, Gurgaon, 7th ed., 2016).

¹² Narendra Kumar, Constitutional Law of India 106 (Allahabad Law Agency, Faridabad, 7th ed., 2008).

¹³ L.M. Singhvi (ed.), Constitution of India 357 (Modern Law Publication, New Delhi, 2nd ed., 2008).

¹⁴ National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

¹⁵ National Human Rights Commission v. State of Arunachal Pradesh, AIR 1996 SC 1234

¹⁶ Durga Das Basu, Commentary on Constitution of India 1752 (Wadhwa Law Agency, Nagpur, Vol. I, 8th ed., 2007).

It can show up in clothes, behaviour, words, gestures, or another way. Article 19(2) permits no limits on an individual's appearance or their choice and style of dressing. Transgender people can communicate their identity by their appearance and actions. Such expression that embodies the core of their identity cannot be hampered by the State¹⁷.

Ignorance or a lack of awareness causes state and society often to struggle to grasp the nature of transgender identities. Still, the State must protect and guarantee their basic autonomous self-identity from all angles. Sixty-six Furthermore, as citizens, transgender people ought to be let to enjoy other liberties including the ability to organize, gather, and travel freely. Actually, transgender people often go through harassment, abuse, and humiliation and lack these rights. They ought to be let to really embrace their identities as human beings and citizens¹⁸.

Article 21 (Right to Life and Personal Liberty) ¹⁹

The greatest human right is found in Article 21. Any activity endangering human life calls for quick correction. Article 21 seeks to stop State intervention into the field of personal liberty. It acts as a storehouse of every human right. The State has to create surroundings where people of several religions can live peacefully. Though it's negative phrasing, Article 21 covers two basic rights: life and personal liberty. Furthermore given great importance by the court are these liberties. Expensive notions like personal liberty and the right to life cover a spectrum of rights. These twin traits control all other political and social systems. As so, the State gives this right top priority above other facets of daily life²⁰.

The expression 'Life' in Article 21 is liberally and broadly interpreted from time to time by the Supreme Court. The term 'life' does not mean mere animal existence but includes quality of life. The right connotes a reasonable level of comfort and dignity. Undoubtedly, it means the right to live a dignified life as a member of civilised society.²¹

Right to Privacy

One may describe privacy quite concisely as the "right to solitude." The fundamental right to life and liberty is naturally accompanied with a right to privacy. Nobody has the right to meddle with the personal affairs of another; so, private relationships might result from politics, marriage, business, or contracts. Still, even this right is not unqualified. One can control it to guarantee medical safety, prevent crime or disturbance²².

A society that lets its people choose their own way of life has to likewise value their privacy. It calls for both great state action and isolation from the public realm. The Constitution clearly does not give one any right to privacy. Though it was not declared a basic right, court interpretation along with guiding ideas of state policy revealed it²³.

According to modern judges, Article 21's established right to life and liberty naturally incorporates the right to privacy. These days, the right to privacy is a basic one assured by the Constitution. People are free to protect among other things their personal privacy, family affairs, and marital relationships. In the Puttuswamy case²⁴, justice Abhay Manohar Sapre said that "the right to privacy of every individual is fundamentally a natural right, inherent in every human being from birth." It is indeed untransferable and indivisible. Born with mankind, it dies with humanity. The knowledge of this right is developing and widening with time. The right to live depends on private; hence transgender people have equal entitlement to seek safety for their private.

Right to Personal Liberty

The term 'personal liberty' has been broadly construed. It encompasses not only the safeguarding of the body against unlawful detention, arrest, and confinement but also includes other rights constituting an individual's personal liberty, save those addressed by other provisions of Article 19(1). Liberty is an expansive concept that encompasses not only the freedom of unimpeded movement but also the freedom of conduct and choice as permitted and protected by law²⁵.

The concept of 'liberty' encompasses, firstly, autonomous governance over the development and articulation of one's preferences, interests, and identity; secondly, the freedom to make choices regarding fundamental decisions such as marriage, divorce, procreation, and education; and thirdly, the absence of physical constraints, along with the liberty to prioritize one's health and well-being. Recognizing one's gender identity is central to the fundamental right to dignity²⁶.

¹⁷ L.M. Singhvi (ed.), Constitution of India 554-555 (Modern Law Publication, New Delhi, 2nd ed., 2008).

¹⁸ M.P. Jain, Indian Constitutional Law 933 (Lexis Nexis, Gurgaon, 7th ed., 2016).

¹⁹ "No person shall be deprived of his life or personal liberty except according to a procedure established by law."

²⁰ Durga Das Basu, Commentary on Constitution of India 3102-3103 (Wadhwa Law Agency, Nagpur, Vol. I, 8th ed., 2007).

²¹ M.P. Jain, Indian Constitutional Law 1128 (Lexis Nexis, Gurgaon, 7th ed., 2016).

²² Durga Das Basu, Commentary on Constitution of India 3137-3139 (Wadhwa Law Agency, Nagpur, Vol. I, 8th ed., 2007).

²³ Id. at 3138-3139.

²⁴ (2017) 10 SCC 1.

²⁵ M.P. Jain, Indian Constitutional Law 1125 (Lexis Nexis, Gurgaon, 7th ed., 2016).

²⁶ Durga Das Basu, Commentary on Constitution of India 3145 (Wadhwa Law Agency, Nagpur, Vol. I, 8th ed., 2007).

The self-determination of gender constitutes an aspect of human freedom and expression, aligning with the scope of personal liberty protected under Article 21 of the Constitution. Article 21 unequivocally ensures the safeguarding of personal liberty and autonomy. The Supreme Court, in *Anuj Garg v. Hotel Association of India*²⁷, noted that "there are two facets of the right to personal liberty."

Firstly, positivity entails that individuals possess the autonomy to make decisions regarding their lives, self-expression, and the activities they wish to engage in; secondly, negativity signifies that individuals are not exposed to unwarranted interference from others. Consequently, transgender individuals are entitled to enjoy freedoms regarding partner selection, healthcare, education, and other matters. In actuality, people are not experiencing delight but are contending for the realization of their rights²⁸.

The aforementioned laws clearly indicate that our constitutional framework for guaranteeing equality and freedom does not exclude transgender individuals; yet, Indian law recognizes only the binary genders of male and female based on biological sex. It is significantly evident even in family law. The failure to recognize transgender identification infringes against the fundamental right to equality and exposes individuals to discrimination²⁹.

Article 21A (Right to education)³⁰

An individual's personality is much shaped by education, which also determines the course of a country. Realizing all other human rights depends on education, a basic and most important human right. For economically and socially underprivileged groups, it is a great tool for helping them to rise from poverty and participate fully as citizens. Article 45 in Part IV included the education clause under Directive Principles of State Policy during the drafting of the Indian Constitution. The rule mandated that until the age of fourteen, the State provide free and obligatory education³¹.

The directive principles described in Article 37 have non-justifiable character, thus the application of this educational mandate is insufficient. Following the publication of two Public Interest Litigations (*Mohini Jain v. State of Karnataka*³² and *Unni Krishnan J.P. v. State of Andhra Pradesh*³³) to determine the constitutional status of the right to education, the Supreme Court intervened in 1990 to offer relief due to the legislative and executive failure to properly implement the mandate. Expressing its displeasure at the disrespect for Article 45's mandate, the Hon'ble Supreme Court has observed that Article 21 (right to life and personal liberty) grants one their right to education. Furthermore, the court underlined how important the rights ingrained in the guiding ideas of state policy are not only for state administration but also greatly influence the way fundamental rights are interpreted.

Thus, campaigns started to establish the right to education as a basic one. Article 21A was included into Part III by the eighty-sixth amendment in 2002, so establishing the fundamental right to education. Article 45 also has been changed to say, "The State shall endeavor to provide early childhood care and education for all children until they reach the age of six years." Under Article 51(k), parents or guardians have basic responsibility to give their children aged six to fourteen years access to educational possibilities³⁴.

"The Right to Education Act, 2009" was passed and most recently changed in 2019 concerning its "No-Detention Policy," so improving the efficacy of implementation and enforcement of this right." This law has proved effective in preserving the basic right to education. Now acknowledged as a fundamental right, the right to education honours that everyone, regardless of caste, gender, religion, etc., has a privilege from which to draw³⁵.

The transgender community has not, however, maintained this basic right. Lack of legal recognition of their identity and society intolerance caused them to be unable to register in educational institutions for fear of abuse, humiliation, or discrimination. Because of their different sexual identities, the transgender community has been excluded to such a degree that they cannot exercise their basic right on par with others in Indian society.

Article 23 (Right Against Exploitation)

The Indian conservative society has been set hierarchically, and different kinds of exploitation are always there. Establishing a guarantee against such exploitation became absolutely crucial. Article 23 forbids human trafficking and forced labour, so codifying the right against exploitation. This right preserves personal dignity from within. Stated

²⁷ AIR 2013 SC 2569.

²⁸ Narendra Kumar, *Constitutional Law of India* 340 (Allahabad Law Agency, Faridabad, 7th ed., 2008).

²⁹ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

³⁰ "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

³¹ Manmeet Singh, "Right to Education", retrieved from <http://www.legalservicesindia.com/article/1925/Right-to-Education>.

³² AIR 1992 SC 1858

³³ AIR 1993 SC 2178.

³⁴ Vijayashri Sripati and Arun K. Thiruvengadam, "Constitutional amendment making the right to education a fundamental right", retrieved from <https://watermark.silverchair.com/020148.pdf>

³⁵ <https://blog.ipleaders.in/right-exploitation-articles-23-24-indian-constitution/>

differently, every person has autonomy of choice; none of anyone can force another to work against their will or without pay. Any citizen, regardless of sex, caste, religion, etc., has this right.

It ensures that none one is compelled to work under demanding circumstances. In *Peoples Union for Democratic Rights v. Union of India*³⁶, The Hon'ble Supreme Court defined 'force' to include not only physical or legal coercion but also economic pressure that compels an individual to provide services for minimal remuneration. Many laws have been passed in order to properly enforce this right: the Equal Remuneration Act of 1976, the Minimum Wages Act of 1948, and the Immoral Trafficking (Prevention) Act of 1956. Still, the situation differs among the transgender community. Frequently driven to engage in prostitution, transgender people also experience sexual assault in public areas on a regular basis. Daily violations of transgender people's rights against exploitation abound.

There are recorded cases of transgender people ending their own lives due to extreme sexual violence. With the exception of required service for public purposes, Section 18(a) of the recent legislation, "The Transgender Persons (Protection of Rights) Act 2019," notes specifies a penalty for the imposition of forced or bonded labor on transgender people³⁷.

4. DIRECTIVE PRINCIPLES OF STATE POLICY UNDER PART IV OF INDIAN CONSTITUTION

Given pre-independence India's socioeconomic situation, the writers of the Constitution claimed that without economic democracy political democracy would be useless. The criteria were included into Part IV of the Constitution as Directive Principles of State Policy to improve the general socioeconomic level of the population.

These ideas forward the concept of a welfare state by defining particular socioeconomic goals that every government seeks to reach. It orders the State to act forcefully to improve the welfare of the people and finally reach economic democracy. Unlike basic rights, which place a negative obligation on the State to refrain from any damaging activities against a person, the directive principles differ. Fundamental rights guarantee everyone's freedom and help to build a fair society. The guiding ideas hope to produce a welfare state. Both ideas support the framework of the constitution. The triptych of the Indian Constitution consists in the Preamble, Fundamental Rights, and Directive Principles of State Policy. Though they tangentially help people, the guiding ideas of state policy are clearly obligations of the State. Many guidelines set forth in Articles 37 through 51 of the Indian Constitution. Article 39 requires the State to create laws ensuring fair access to enough resources of livelihood independent of gender. Policies also have to aim to pay fairly for equal effort put in by a person, regardless of gender. These rules deal with salary and equality in employment possibilities. It seeks to bring the binary sexes of society into parity, therefore rejecting the third gender overtly. Article 39A contains a clause designed to ensure that no citizen loses their capacity to get justice for any cause.

It is mandatory of the State to provide everyone in need free legal aid. Moreover, it forces the State to create suitable policies and laws to forward the ideas of social justice and free legal aid. The National Legal Services Authority Act of 1987 was intended to include thorough clauses for the provision of competent and free legal aid. To monitor and evaluate the operation of free legal-aid programs, several authorities national, state, district, taluk levels have been formed.

The statute defines the range of people qualified for benefits under the Act; it has excluded transgender people from the list of those judged needy and qualified, nevertheless. Article 39A seeks to guarantee fair access to justice for underprivileged groups of people in society. Transgender people are suggested to be a neglected segment of society and so need Article 39A safeguards. Article 46 mandates the State to safeguard people of Scheduled Castes and Scheduled Tribes from social injustice and all kinds of exploitation as well as to advance their educational and financial interests. Social injustice and exploitation have long been directed at the transgender population.

Neither have they been able to take use of their rights to employment nor to education. Furthermore, within the modern constitutional framework, their absence from the category of the underprivileged section of society keeps them facing injustice and exploitation. The needs of this community must first take front stage. "The Transgender Persons (Protection of Rights) Act, 2019," the latest law, has clauses allowing transgender people employment and inclusive education.

5. CONCLUSION

Being living document, our Constitution can be enlarged with consideration for society's dynamic character. Constitutional democracy serves primarily to bring about inclusive and progressive social change. Our Constitution is said to be transforming in the sense that its clauses must be understood considering their actual design and purpose apart from the current needs of society rather than strictly construed. It should not only acknowledge an individual's right and dignity but also create a favorable surroundings for general personality development. The constitutional protection of the right to life covers the right to live with dignity.

This protection of dignity calls on the State to recognize the worth of every person functioning within society. It is reasonable to note here that the stereotyped view of binary gender affected the writers of the Constitution while they were developing the clauses of this Grundnorm. Under Article 39 of the direction principles of state policy, for example, they

³⁶ AIR 1982 SC 1943

³⁷ <https://journals.indexcopernicus.com/api/file/viewByFileId/465766.pdf>

have utilized the particular phrase like man and woman in various clauses. The moment has come when the Constitution has to be changed in line with society's current need. All constitutional clauses should have the word transgender inserted alongside male and woman. Furthermore clearly acknowledged and respected within the constitutional framework should be the transgender population. Only if they get legal recognition can the transsexual enjoy a respectable life. Moreover, dignity rests on the personal autonomy of choice and behaviour. Human dignity is based on the awareness of physical and spiritual unity of human being independent of his use for society. The Indian Constitution's Preamble discusses an individual's dignity as well. For harmonious co-existence in society, one must safeguard the dignity of every person. The breach of dignity can have significant effects not only on the harmony of a person as an individual but also on the society at large. This chapter addresses the study issue, "How far the transgender in India are accorded rights at par with other genders?". It is abundantly evident that prejudice results from the lack of legal acceptance of identity. They do not have any legal identification since different sexual orientation or gender identity does not follow clear binary rules. It even supports the theory that transgender people are not treated equally with other citizens even after 73 years of freedom, notwithstanding Article 14, 15, 16, 19 and 21 of the Indian Constitution. Neither are they neither excluded specifically nor included explicitly under the phrase person or citizen in these Articles. These clauses are not more than terms for transgender. It is recommended that the idea of stereotyped binary gender in society should be extended to include the transgender community together with man and woman. Realizing that being transgender is a natural sexual variety over which a person has no control is more important than personal preference. Denying them their legal existence or ignoring their identification is only punishment. How may someone be penalized for an act beyond of his control? Moreover, the State emphasizes their already existing issue by depriving them of their legal life. The State must rather offer them solutions.

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