

TRANSGENDER RIGHTS AND ARTICLE 14 OF THE INDIAN CONSTITUTION: LEGAL CHALLENGES AND PATHWAYS TO EQUALITY

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BEST CITATION – APRAJEETA KUMARI, TRANSGENDER RIGHTS AND ARTICLE 14 OF THE INDIAN CONSTITUTION: LEGAL CHALLENGES AND PATHWAYS TO EQUALITY, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (9) OF 2026, PG. 35-39, APIS – 3920 – 0001 & ISSN – 2583-2344. DOI – <https://doi.org/10.65393/IJLRV6I94>

Abstract

This paper examines the historical evolution and legal standing of transgender rights in India, with a focus on Article 14 of the Indian Constitution, which guarantees equality before law and equal protection to all citizens.

Transgender individuals, historically referred to as "Hijras," held respected positions in ancient Indian mythology and medieval royal courts. However, British colonial rule drastically altered their status through Section 377 of the IPC, 1860, which criminalized homosexuality, leading to widespread marginalization that persisted even after independence.

Over time, landmark judicial interventions reshaped the legal landscape. The *NALSA v. Union of India* judgment recognized transgender persons as a third gender and affirmed their fundamental rights under Articles 14, 15, 16, 19, and 21. The *Navtej Singh Johar v. Union of India* (2018) ruling decriminalized consensual homosexual acts, while *Arunkumar and Sreeja* (2019) expanded the definition of "bride" under the Hindu Marriage Act to include transgender women. The Transgender Persons (Protection of Rights) Act, 2019 further strengthened protections by prohibiting discrimination in employment, education, and healthcare, and providing legal gender identity through district-issued certificates.

Despite these legal advancements, the paper acknowledges that practical challenges remain. A National Human Rights Commission report cited that 99% of transgender individuals have faced rejection across family, education, employment, and healthcare, underscoring the gap between legal protection and lived reality.

The paper concludes that sustained efforts – including reservation policies, public awareness, and stronger governmental implementation – are essential to ensuring that transgender individuals enjoy equal dignity, opportunity, and respect as full citizens of India.

Introduction

The transgender rights in India have a rich history, it is deeply rooted in the ancient traditions and mythology, evolving through significant changes during different historical periods. Ancient Indian texts and religious traditions, such as Ramayana, Mahabharata and various Hindu deities reserved transgender individuals, the term "Hijras" has been used for

them acknowledging their unique identities. The respect for transgender continued till the medieval period, in medieval period transgenders held important positions in the royal courts.

However, the colonial rule in the 18th century marked the downfall in the treatment of transgender individuals. The introduction of the IPC 1860 criminalised homosexuality under

section 377, leading to wide spread discrimination and marginalization of the transgender communities. Even after the independence the struggle for the transgender continued, with IPC continuing to impact the transgenders.

In recent years, significant developments have been made in recognizing and protecting transgender rights. Through the judgement by the Hon'ble Supreme Court of India and legislative measures such as the Transgender Persons Act, 2019, have tried to ensure equality & non-discrimination for the transgender community in India. Article 14 which guaranteed equality before law and equal protection of the laws and Article 21 right to personal freedom and liberty has been a crucial weapon for fighting for transgender rights.

This paper delves into historical context and evolution of transgender rights in India, exploring key legal milestones, landmark judgement and the role of Article 14 in promoting equality and non-discrimination for transgender people. It also examines the current socio – political transformations the have affected the transgender rights. It highlights the ongoing efforts to ensure dignity, respect and equal opportunities for transgender individuals in India.

Historical context and evolution of transgender rights in India

The transgenders have been referred as "Hijra" in Hindu Mythology such as Ramayana and Mahabharata. Similarly, one of Lord Shiva's forms is "Ardhnari", depicted as half man and half woman, with statues of this manifestation still visible in numerous Hindu temples. Another god worshipped in the south India "Ayyappa" was the result of homosexual union between two male gods. The transgenders were given respect and important position in the ancient India.

In the medieval period, the transgender community has a significant role in the royal courts of the Islamic world, The transgenders

were given important position as political advisors, administrators, in the medieval world They were considered to be clever, loyal and they could go anywhere, thereby they played an generals etc.

important role in the politics of Mughal's empire building. The transgenders were also given prestigious positions in Islamic religion, such as guarding the Mecca and Madina. The transgender were close allies of the ruler and played a major role in the decision and policy making for the state.¹

After the 18th century, when the colonial rule started in India the conditions of the transgenders changed drastically. When the colonial rule introduced Indian Penal code in 1860, they declared homosexuality as crime under section 377 of the Indian penal Code 1860. This deteriorated the state of the transgenders. Once the transgenders enjoyed important roles in the royal courts were later labelled as criminals. The law framed by the Britishers remained same for the next 149 years.

Post Independence, still the transgenders faced criticism. The Indian people Code 1860, was still applicable and it affected the people of transgender community leading to harassment and ill treatment. The section 377 of IPC was struck down by the Supreme court of India in 2018². The Transgender Persons (Protection of Rights) Act, 2019 was formed so as to protect transgender individuals from discrimination in education, employment, healthcare and access to other services. The condition of transgender is still not that good in India but Government and other organisations are trying to improve the situation of transgender in India.

Article 14 and the Constitutional Guarantee of Equality

Article 14 of the Indian Constitution gives right to equality to all the citizens of the nation. The use of the term citizen shows the gender-neutral approach of the constitution. Article 14 comprises mainly of two different sections which are equality before law, means that every

person irrespective of the gender, caste or creed are equal before law and equal protection of the laws, the state has to treat all the individuals equally and to provide equal protection of rights to all the citizens regardless of their caste, creed, gender etc³.

Article 14 prohibits against discrimination extends to the citizens of the nation, it ensures that no person is unfairly treated based on arbitrary classification.⁴ As Article 14 allows for certain reasonable classification based on intelligible differentia and must have a rational nexus with the objective sought to be achieved.⁵ Intelligible differentia means that the classification should be rational and clearly distinguish the grouped individuals or items from those not included, while maintaining a logical connection to the intended objective. Rational nexus means there must be a balance between the basis of classification and the result sought to be achieved by the law. The national human right commission report says that 99% of transgender people have faced rejection multiple areas of life including family, education, employment and healthcare. The shows the drastic need for safeguarding the transgender individuals under article 14.

The government has come up with The Transgender Persons Act, 2019 for safeguarding the transgender rights. Several states have established transgender welfare boards to address the needs of the transgender people. Several states have also come up with reservation policies for the transgender people for upliftment of transgender community.

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Landmark judgement

After the arrival of colonial rule, the condition of transgender deteriorated in society. The community who enjoyed important position felt a setback, the condition of the transgender has been improved to the fullest the courts of India through its several important judgements has tried to provide the important rights to transgenders.⁶

National legal service authority of India (NALSA) v. Union of India⁷

In this landmark judgement the Hon'ble Supreme Court recognised transgender as the third

gender, affirming their fundamental rights affirming their fundamental rights. It was also held that the fundamental rights guaranteed under the article 14, 15, 16, 19 and 21 will apply to the transgenders without any exception. This judgement marked a significant step towards inclusion and equality; it mandated for the government to ensure transgender individuals are not discriminated in the society. It emphasised for the upliftment of the socio-economic condition of the transgender community.

Naz Foundation vs Government of Nct of Delhi and Others⁸

In this landmark case a writ petition was filed by Naz foundation, an NGO. Naz foundation contended that the article 377 of the IPC "whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished". Violates the fundamental rights guaranteed under the article 21 of the constitution, it includes right to life and personal liberty.

Naz foundation contended that the criminalization of the consensual homosexual acts between two adults is discrimination against LGBTQ+ individuals, leading them to be excluded and more likely to face health problems, including HIV/AIDS. The NGO argued that Section 377 hindered the HIV prevention efforts by driving the LGBTQ+ community underground, away from essential health services and support. the Delhi High Court in its landmark judgement decriminalized consensual homosexual acts between two adults by striking down the article 377 of the IPC.

Arunkumar and Sreeja v. The Inspector General of Registration and Ors. (2019) ⁹

In this case, the Madras High court upheld the marriage between a man and transwomen valid under HMA 1955. The court extended the scope of marriage to include transwomen under Hindu Marriage Act. The judgement interpreted the term bride to include a transgender-women.

Navtej Singh Johar v. Union of India (2018)¹⁰

in this landmark judgement the Hon'ble Supreme Court reaffirmed the decriminalization of consensual homosexual acts. In this case the court overturned the decision of Suresh Kumar Koushal v. Naz Foundation (2013) which had reinstated section 377. The court held that article 377 violates the fundamental rights under Article 14, 15, 19 and 21. The judgement gave importance to the right to privacy given under article 21 of the constitution. The judgement also emphasised that all citizen irrespective of their sexual orientation, are entitled to equal protection according to the law.

Transgender Persons (Protection of Rights) Bill, 2019

Transgender are also a part and citizen of country. As a citizen of India, the transgender community also has the right to equality, right to freedom, right to dignity etc. The transgender community since long has been devoid of their rights. The government for the protection of transgender came up with The Transgender Persons Bill, 2019. The bill was presented in the Lok Sabha by Mr. Gehlot on July 19, 2019, and subsequently passed on August 5, 2019 the primary objective of the bill is to protect the rights of the transgender community in India. The law was passed after reviewing the previous two bills, the transgender persons bill, 2018 and Transgender persons bill, 2016. ¹¹

The bill acknowledges the rights of a transgender individual as an individual whose gender doesn't match the gender which was naturally at the time of birth. It includes transmen, transwomen, and individuals with intersex

variations, genderqueer identities, and those with socio-cultural identities such as kinnars and hijras. This Act bans discrimination against transgender individuals based on the denial of employment and healthcare. The Acts mandates transgender individual to be provided with certificate of identity by the DM's office to provide them with rights to gender identity. This Act provides extreme punishments

for the violation of transgender rights. A penalty of 7 years for rape, assault, or the use of criminal force and a punishment of 2 years for any kind of violence against transgender individual.

Conclusion

For a very long time, the transgender people enjoyed freedom and equality in the society. They were seen as special. Stories from old times like the Ramayana and Mahabharata talk about them. But the situation changed when British people came to India. They made a law that criminalised homosexuality. This made life very difficult for transgender people. They were treated badly and not allowed to do many things.

Even after India became Independent, things didn't change much for transgender people. But people started to fight for their rights. The government also made some new laws to help the transgender community. The most important law said that transgender people have the same rights as everyone else. Even though there are laws to protect transgender people, life is still hard for many of them. They face problems in finding jobs, getting education, and being accepted by society.

We need to keep working to make sure that transgender people have the same opportunity as everyone else. The transgender people need to be given reservation for education and jobs. We need to teach people to be kind and accepting. We also need to make sure that the government does everything it can to help transgender people. It's important to remember that transgender people are also someone among us. They need to be treated with respect and dignity.

ENDNOTES

¹ Shivi Chaddha & Akash, *Status of Transgenders in India: A Historical and Legal Approach*, 4 Indian J.L. & Legal Rsch. 1 (2022). ² AIR 2018 SUPREME COURT 4321

³ Aditi Maurya, *Transgenders Right and Challenges*, 25 SUPREMO AMICUS [13] (2021). ⁴ Article 14 in Constitution of India

<https://indiankanoon.org/doc/367586/> ⁵ Indian Constitution authors by – DR. JN Pandey and V N Shukla

⁶ Shubhanshi Suman, *Transgender: Identity and Rights*, 2 JUS CORPUS L.J. 539 (2022). 77 ⁸ 2009 (6) SCC 712,

⁹ W.P. (MD) No. 4125 of 2019 ¹⁰ AIR 2018 SUPREME COURT 4321 ¹¹ Sidhartha Yadav, *Transgender Persons (Protection of Rights) Act, 2019*, 4 INT'L J.L. MGMT. & HUMAN. 813 (2021)