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# INCLUSION OF TRANSGENDER – IN THE INCLUSIVE SOCIETY

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Vishal Gautam, Amity Law School Patna

## ABSTRACT

The word trans gender is an umbrella term that is used for people whose gender identity does not match the sex they were assigned at the birth. Thus by this explanation too does not classifies the group to be discriminated ,One of the pillar of our constitution and as well as our nation is equality which has been enshrined in our constitution by fundamental rights, article 14 of the Indian constitution talks about equality before law and equal protection of law to each and every individual and it no-where explicitly or impliedly justifies the Inequality which was faced by the transgender community in our nation, even article 15 of the constitution protect against discrimination on the basis of sex, religion , race, caste or place of birth , but the discrimination which the trans gender group faced was not questioned by anyone before the hon'ble Supreme court took the matter and pronounced that trans group is also entitled to all the fundamental rights just like any other individual and there should be no discrimination or inequality in the celebrated judgement of *National legal services authority v. Union of India*,<sup>1</sup> .The rights in our constitution have neither been modified nor added by this judgement it is just that these rights were recognised even for the transgender after this judgement, they have their existence from the epic era of Mahabharat and Ramaayan ,it is just that their rights and identity was not recognised in the society, we need to understand that existence and recognition are just like two sides of a coin and we can't just move away without considering the other side, they were in existence they are in existence and will be in existence, so now it is our duty to recognise their rights ,their identity and help them live a normal life.

With this article the author tries to explain the main aim of framing laws because be it judiciary, executive or legislature all these organs can only help the society to change but the real and effective change has to be brought by the people itself, if people are ready to evolve then the question of rights and identity of the third gender will never be a challenging issue in future.

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<sup>1</sup> <https://indiankanoon.org/doc/193543132/>

***Transgender- third gender just like the other two present***

The trans gender community of the society is something which is not understood by the society, and if there is lack of understanding and knowledge then the point of recognition will be of no use, as if you understand something first and then recognise the particular thing, our very first initiative should be to spread as much knowledge and awareness as we can about the trans gender community, and to understand who is a trans gender or what does transgender means we must understand first that gender and sex are two different words, have distinct meaning and we should never confuse gender with the sex assigned, it is very much possible that a girl by sex may have masculine characteristics and a boy by sex may have feminine behaviour, thus sex and gender are two different phenomena, sex is something which is biological but gender is something which we develop, so the confusion should be cleared that sexual orientation is about with whom you are attracted sexually and gender means who you are, it is very normal to be a male, a female then in the same manner it should be accepted normally that a person is trans gender. So, people who experience difference in their sex and gender are termed as gender dysphoria in medical terminology and call themselves as trans gender.

***Analysing rights with the lens of transgender***

Law is like an organism, it grows evolves and adapts the changes in the environment, for the recognition of the rights of transgender the honbl'e Supreme court of India in the judgement of ***National legal services authority v. Union of India***<sup>2</sup> opined that the trans gender will be given an identity as third gender in the society and will enjoy all the rights which are available to all the person in the country this judgement has shown a ray of hope and now it is our duty and responsibility that we as people of the country should also accept the third gender with open hands, the Indian framers drafted the constitution with a futuristic view and they incorporated articles which are neutral, just and fair, article 14 of the constitution talks about equality before law and equal protection of law to all the person, the trans gender people are also entitled for protection against discrimination but unfortunately they were not protected rather the society alienated the group, and before this celebrated judgement the trans community were seen as criminals or culprit and because of this mentality many people feared to accept that they are trans gender, not only article 14 but article 15 of the Indian constitution which explicitly mentions that there should be no discrimination on the basis of caste, creed, race, religion,

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<sup>2</sup> <https://indiankanoon.org/doc/193543132/>

colour or sex having such clear and strong articles it was still not enough to protect the vulnerable group because the society was not ready to accept them, article 21 of the constitution which is the quintessential of all the rights i.e. right to life and personal liberty and with the judgement in the *Maneka Gandhi v. union of India*<sup>3</sup> the apex court reiterated that right to life does not mean mere animal existence it covers a wider ambit of life which means to live with dignity and respect, the trans gender group was devoid of the said right as well, fundamental and human rights are rights which are available to every human being by virtue of being human but the trans group is deprived of all the rights, after the said judgment the parliament passed a bill *Transgender person protection of rights act 2019* with the aim and objective to protect and uplift the vulnerable class of our society.<sup>4</sup> It took years for the government to recognise the rights and identity of the third gender which is not at all a taboo, but we should fasten up and realise that their lives will be eased out if the people accept them as normal human beings, there is nothing abnormal in being a third gender or trans gender, they are similar as any other individual of the society and should get all the facilities and advantages which a normal human being enjoys, they are also capable to get representation in each and every sector of the environment, and this change is possible only when the so called normal people who are either male or female accept a trans as a co-worker, as a friend, as a neighbour, the hype which is created about the third gender is because of the society so it is the onus of the society itself to erase the hype, and normalise their lives.

### *Atrocities against the group*

The executive body is responsible for protection of people in the country but it is the executive, the police who in reality have thrashed, humiliated and assaulted the third gender the third gender was forced to think that from whom do they need protection from the people or the police. The need of the hour is not only to frame laws and regulation for their welfare but also to scrutinise the framed legislation, the court has expressed that sec 377 of the Indian Penal Code is decriminalised<sup>5</sup> but this is one of the means to achieve the goal which we all aspire for and more importantly which the third gender requires by decriminalising we are accepting the relationships among the third gender but we are not legitimising their marriage under any statute or law so this void should be filled by making a clear law for their marriage, for adoption then

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<sup>3</sup> <https://indiankanoon.org/search/?formInput=maneka+gandhi+v+union+of+india>

<sup>4</sup> <https://blog.ipleaders.in/legal-rights-of-transgender-india/>

<sup>5</sup> <https://indiankanoon.org/doc/168671544/>

only the baby steps which the country is taking towards recognising and facilitating the third gender will be complete.

***Amending law is not enough, people following it should also change***

The third gender is as normal as the other two gender which are prevalent in our society, with time and years we have come to a state where the judiciary and parliament has recognised and validated the existence of the group, now it is the people who are responsible for enacting those framed laws is they also change their mentality and attitude towards the third gender then only the laws proposed would be successful in its true spirit, the social stigma, torture , depression which is witnessed by the group is just because of the society at large, they are not guilty of anything but are treated as aliens or rather culprits, thus I would like to conclude my article on this note that if being masculine or feminine is not a crime then in the same manner if a person belongs to the third gender then he too is not an alien and as normal as the other too gender, if we don't stop this thought process of treating them differently then the machinery of the government will fail in toto.