



LEGAL AND SOCIO-ECONOMIC RIGHTS OF TRANSGENDER COMMUNITY - AN OVERVIEW

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ABSTRACT

Essential components of the legal system in various nations include the prohibition of discrimination against transgender people, which entails within its ambit verbal and physical abuse, and the protection of their human rights. Transgender persons are vulnerable since numerous laws have a limited reach and do not address social support, healthcare, education, or access to commodities and services. Their rights are not upheld, and they encounter prejudice in many different contexts. When a person's status as a third gender is not recognized, they are denied the right to equality and equal protection under the law given by Article 14 of the Constitution, which also breaches their rights under Article 21. The transgender community was pleased and gratified when the historic NALSA ruling was announced. Although results fall short of expectations, it was anticipated that society's perception of the community would change for the better. They continue to fight against prejudice and are not accepted in society because that judgement was not put into practice. The different types of prejudice experienced by the third gender will be examined in this research paper. The paper will also examine transgenderism in the current scenario, emphasizing the changes made because of the ruling. The article will also examine the different laws and programmes the government has implemented for the third genders.

Keywords: Transgender's rights, LGBTQ, Transsexual, Discrimination, Gender Identity, Violence, Human Rights



INTRODUCTION

“I am who I am, therefore, I accept who I am”, said Johann Wolfgang von Goethe. Philosophers previously said, “No one will escape their identity,” in a similar vein.

One of the most crucial and essential components of a person’s life is self-expression. Transgender persons are those who do not change who they are to fit their gender at birth. Persons who acknowledge themselves as transgender are ‘intersex variations and gender queer people whose gender does not match the gender they were given at birth.’ They are the persons that have either female or male anatomy at birth, but they believe that their bodily structure is different because of how they display their gender, who they identify as, or how they behave.

In 2018, the Apex Court of India issued a ruling on relationships between beings of the same sex, which drastically altered the lives of the LGBTQ community in India. At the end, Section 377¹ of the Indian Penal Code, 1860 was partially struck down.² LGBTQ people are now free after years of social and discriminatory battle. The lifting of the ban on gay interactions during colonial times may be the reason for freedom. The issue is not resolved, however. Although social constraints are still present in most of the Indian tribes and cultures, legal limits have been advocated. In the past, society has discriminated against trans community in a variety of ambits, including employment, education, and health care. This discussion and the subsequent shift in ideas, perspectives, and regulations are more crucial than ever in the modern world. Legal equality exists for transgender persons since they are also humans, but this must be done in the person’s psyche. To fulfil the remaining rights of transgender persons who face prejudice, an apparent solution is to implement systemic changes. Marriage, adoption, and divorce are only a few examples of essential rights of a human’s life. Logic dictates that social taboos and social prejudice should not be supported by the law and society.³

¹ The Indian Penal Code, 1860, Section 377, No. 45, Acts of Parliament, 1860 (India).

² Navtej Singh Johar v. Union of India, AIR 2018 SC 4321.

³ Justice K. S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

LEGISLATIVE FRAMEWORK

There are several socio-cultural groups for transgender people in India, including hijras/kinnars, as well as the jogappas, aradhis, shiv-shaktis, sakhi, jogtas, and others.⁴ But by all accounts, these socio-cultural groups are not the only places where transsexual persons can be found. There may also be transsexual people who do not belong to any of the groups but who identify as such anyway.⁵ Hence, it becomes important for us to understand the legislative framework of the country, to understand if the provisions of the laws, attain their basic purpose of protecting the rights of the transgender community.

CONSTITUTIONAL PROVISIONS

Every citizen must have social, economic, and political equality, according to the Preamble of the Constitution, and everyone should be equally treated before the law, according to the Constitution. However, transgender people have never been given access to their constitutional rights. The reason for this is because the past regulations of the Indian State exclusively acknowledged only two genders, i.e., male and female. They were denied many rights, including the right to vote, the right to marry, the right to own property, the right to assert a legal identity through a passport, etc., as well as many other rights, including the right to education, employment, health, and other things. According to the Indian Constitution, all citizens, including transgender people, are entitled to fundamental rights. Below mentioned are some constitutional provisions demonstrating the same:

i. Article 14: Equality before Law⁶

No person shall be denied equality before the law or the equal protection of the laws within the territory of India by the State and prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. Thus, the transgenders have been included within the purview of this article and are hence entitled to all rights granted by the State.

⁴ Available at <https://thewire.in>.

⁵ Available at <https://scroll.in>.

⁶ INDIA CONST. Art. 14.



ii. *Article 15: Prohibition of discrimination on grounds of religion, race, cast, sex, or place of birth*⁷

Article 15 of the Indian Constitution provides that no one should be discriminated based on caste, creed, sex, religion, or place of birth. This article also includes within its purview the people falling under the third gender. Since they also form part of the society and are citizens of India, they have the right not to be discriminated against on the above grounds.

iii. *Article 16: Equality of opportunity in matters of public employment*⁸

Equal opportunity is guaranteed to all citizens under Article 16 of the Indian Constitution in matters pertaining to employment in the public sector. According to Article 16(1), all citizens shall be afforded equal opportunity in matters relating to employment or appointment to any office under the State. Therefore, people who identify themselves as transgender also have the right to employment. Hence, equal opportunity should be provided in the hiring decisions so that they don't face prejudice because of their sexual orientation.

iv. *Article 21: Protection of life and personal liberty*⁹

No one should be deprived of his or her life or personal liberty unless in accordance with procedure established by law, according to Article 21, which deals with protecting life and personal liberty. Transgender people have been denied their right to life and personal liberty for decades. Being an Indian citizen, transgender people should have complete legal protection for their rights and liberties. By including gender identification within the ambit of Article 21, the Supreme Court has also acknowledged the right to their dignity.

⁷ INDIA CONST. art. 15.

⁸ INDIA CONST. art. 16.

⁹ INDIA CONST. art. 21.

¹⁰ The Indian Penal Code, 1860, Section 377, No. 45, Acts of Parliament, 1860 (India).

¹¹ (2018) 1 SCC 791.



OTHER STATUTORY PROVISIONS

Section 377 of the Indian Penal Code: Unnatural Offences¹⁰

This section's constitutional legitimacy was recently contested in the case of *Navtej Singh Johar v. the Union of India¹¹*. According to this Section, “voluntarily engaging in sexual intercourse with any man, woman, or animal contrary to the order of nature shall be punished with imprisonment for life, or with imprisonment which may extend to ten years along with a fine.” The petitioner, through a writ petition, sought that the right to sexuality, the right to

sexual autonomy, and the right to select a sexual partner be recognised as a part of Article 21 of the Indian Constitution.¹² The Hon'ble Supreme Court partially struck down Section 377,¹³ ruling that discrimination based on sexual orientation is incompatible with the rights to equality and privacy since sexual orientation is an integral part of one's identity, and it is a fundamental right that cannot be denied.

Despite the Supreme Court's decision that transgender people belong to the 'third gender,' there is no Section or provision in the Indian Penal Code that might shield the third gender from being sexually assaulted by a man or female or another transgender. Certain parts of the Indian Penal Code, 1860, such as Section 354A,¹⁴ which talks about outraging a woman's modesty, are construed to exclude transgender people who have been the victims of sexual harassment.

Therefore, certain IPC sections like Sections 354D¹⁵ and 509,¹⁶ which specify only women as victims, should be changed. Not only provisions of IPC, but there are also provisions in the IT Act of 2000 that are not gender neutral, because of which transgender people are often deprived of justice.

Domestic Violence Act, 2005: The Domestic Violence Act safeguards all women, including transgender women (regardless of the gender listed on their Certificate of Identity), from any form of abuse by any family member.

Immoral Traffic Prevention Act, 1956: This Act was amended in the year 1986. The new amended Act made it gender neutral. Under the ambit of this Act, along with male and female



sex worker those whose identity is not known is also included. Now male and hijra sex worker is also the criminal subject of this Act and it gives police officers legal basis for arrest and intimidation of the trans sex workers.

TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

The Transgender Persons (Protection of Rights) Act, 2019¹⁷ ('The Transgender Persons Act') aims to establish the individuality of transgender persons and outlaw discrimination in a variety of settings, including education, employment, healthcare, owning or disposing of property, holding public or private office, and gaining access to and using public services and benefits.

In the 2014 case of *National Legal Services Authority v. Union of India*,¹⁸ the Apex Court laid the groundwork for the protections of transgender people in India by acknowledging 'transgender' as the 'third gender' and prescribing several regulations for the elimination of unfair treatment against transgender people and protection of their rights. The ruling called for accommodations for transgender people in the workplace and educational institutions as well as the freedom for trans people to publicly express their gender identification without enduring sex reassignment operations.

¹² Supra 14.

¹³ Supra 15.

¹⁴ The Indian Penal Code, 1860, Section 354A, No. 45, Acts of Parliament, 1860 (India).

¹⁵ The Indian Penal Code, 1860, Section 354D, No. 45, Acts of Parliament, 1860 (India).

¹⁶ The Indian Penal Code, 1860, Section 509, No. 45, Acts of Parliament, 1860 (India).

¹⁷ The Transgender Persons (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019 (India).



A private member's bill was submitted in the Lok Sabha that same year. However, the Indian government, formulated and submitted its own edition of the Bill to the Parliament in 2016, while the private member's bill was already sitting. This version of the bill was then sent to a Standing Committee of the Parliament for additional recommendations. A revised version of the bill was filed in 2018 in response to the Committee's recommendations. Nevertheless, the proposal was revived in the Parliament in 2019 and was ultimately passed into law following the dissolution of the Parliament in 2018 and the establishment of a new central government in 2019.

The Transgender Persons Act has been enforced and therefore it's critical to comprehend its main points, successes and failures, and effects on employers, particularly in the private sector.

The following are some of the main aspects of the law pertaining to transgender people:

Definitions: Encompassing classifications have been given for 'inclusive education'¹⁹ to deter prejudice, abandonment, abuse, and bullying of transgender people at educational establishments; and 'institution'²⁰ for the safety, security and safeguarding of transgender people. These definitions of 'person with intersex variation'²¹ and 'transgender

¹⁸ National Legal Services Authority v. Union of India, AIR 2014 SC 1863.

¹⁹ The Transgender Persons (Protection of Rights) Act, 2019, Section 2(d), No. 40, Acts of Parliament, 2019 (India).

²⁰ The Transgender Persons (Protection of Rights) Act, 2019, Section 2(e), No. 40, Acts of Parliament, 2019 (India).

²¹ The Transgender Persons (Protection of Rights) Act, 2019, Section 2(i), No. 40, Acts of Parliament, 2019

person'²² have been provided to, among other things, include trans men and trans women (whether or not such person has undergone sex reassignment surgery).

Non-discrimination: It forbids unequal treatment against transgender people in social accommodations and privileges, medical treatments, job or vocational possibilities, and academic institutions. It also supports the freedom of transgender people to travel around, own estate, and hold public or private office.

Certificate of identity: This law establishes the freedom to self-perceive one's gender identification and requires the local authority, a recognized state representative, to grant a 'certificate of identity' to transgender people without any medical or physical examination. A person undergoing surgery to alter their gender to either male or female may apply for the issuing of a revised certificate showing the change in gender, in accordance with the law.

Equal opportunity policy for transgender people: According to the legislation, every institution is required to create an equal opportunity policy for transgender people. Every business must choose an individual to serve as a complaint officer who will deal with the concerns of the transgender people.

Welfare initiatives: The authorities are required to devise programmes and assistance plans that are inclusive of transgender people and free from humiliation and discrimination.

Medical care facilities: The establishment of separate HIV sero-surveillance centers to conduct HIV sero-surveillance for transgender people, the provision of medical care facilities, including sex reassignment surgery and hormonal therapy, and the provision of a comprehensive insurance scheme to cover medical costs for sex reassignment surgery and other therapies are all mandated by the government.

²² The Transgender Persons (Protection of Rights) Act, 2019, Section 2(k), No. 40, Acts of Parliament, 2019



The National Council for Transgender Persons (The NCT) was established with the goals of advising the government on policy development, monitoring, and redressing transgender's problems.

Offenses and penalties: According to the Transgender Persons Act, offences such as subjecting transgender people to forced or bonded labour, denying them access to public spaces, or abusing them physically, emotionally, or sexually are punishable for a minimum of six months and a maximum of two years in prison, as well as a fine.

Regulations for private employers: According to the Transgender Persons Act, there should be no discrimination against the transgenders, a safe workplace must be created, and all transgender people must be treated equally in all employment matters, including infrastructure modifications, hiring practices, employment benefits, promotions, and other relevant matters in both public and private institutions.

Equal opportunity policy: An equal opportunity policy for transgender people must be prominently announced across the workplace and on the corporate website. Infrastructure (such as gender-neutral restrooms), safety and security indicators (such as guards on duty) and facilities (such as sanitary items) must be made available to transgender people for them to perform their jobs effectively, application of all rules and regulations of the employer regarding working conditions, and preservation of the secrecy of the transgender employee's gender identities.

Organizations are obliged to appoint a grievance officer to address concerns pertaining to violations of the provisions of the Transgender Persons Act. The director of the organization is obligated to act on the grievance officer's inquiry report within the specified time frame.

From the above discussion, it is advised that the companies should review and modify their current HR practices and aim to educate and equip their staff, particularly the Human Resource department.



CASE LAWS

Landmark judgement of NALSA v. Union of India

The National Legal Services Authority of India (NALSA) petitioned the Apex Court of India in 2012 in response to many statements detailing the harassment transgender people experience.²³ The applicants alleged that individual's rights had been denied in some way (such as the right to vote and participate in elections, access healthcare and employment, and own property).²⁴ In April 2014, a Divisional bench composed delivered their ruling. It broadened the definition of sex under the Constitution while addressing whether people had the right to be accepted according to how they considered their gender to be.²⁵ Now, discrimination based on gender identity will indeed be added in the list of unlawful sex-based discrimination under Articles 15²⁶ and 16²⁷. Transgender people were expected to be ordinary citizens with access to all constitutional freedoms. It was decided that because gender identification reflects an individual's inherent self and nature, it ought to be safeguarded under Article 19(1)(a) of the Constitution.²⁸ The decision also noted that transgender people are protected under the Constitution's provisions, which are gender neutral. They are not restricted to precise definitions of the genders of men or women. The petitioners received a wide range of remedies in response to these findings. The court ordered the Central and State governments to abide by orders that were both specific (to provide healthcare centres) and general (to raise public awareness to ensure social inclusion) as well as vague (to address the issues that transgender people face and guarantee that they have a respectful place in social and cultural life).²⁹

²³ Serena Nanda, *Neither man nor woman: The hijras of India* (Wadsworth Publication 1990); Chakrapani and others (n 11); T Laxmi, S Gauri, K Payal, and others, "Transgender-hijra strategy" [2011] India: NACO, NACP IV working groups Hijras TG 1.

²⁴ NALSA v. Union of India, Written Submission by Anand Grover, Sr Advocate for the intervenor, Laxmi Narayan Tripathi (Supreme Court of India 2013).

The court recognised the difficulties transgender people confront in practising their property and inheritance rights, notwithstanding the fact that the matter at hand did not compel it to do so. This was linked to two causes:

1. *Sexist laws:* In general, legislations in India, including the laws governing marriages, adoption, inheritance, and succession, only accepts the binary genders of male and female, determined by a person's given sex at birth. Hijras/- Transgender people do not have equal protection under the law since numerous laws do not recognise their gender identification, and they are frequently discriminated against.³⁰
2. *Identity:* For members of this group to exercise their civic rights, gender identification has become crucial. Only then would the community have more meaningful access to the rights associated with being recognised as a 'third gender,' such as the ability to vote, the right to own property, the right to marry, and the opportunity to assert a legal identity. Unsurprisingly, the judgement is imperfect and frequently ambiguous when it comes to determining gender. In other cases, the court makes the assumption that

²⁵ See the concurring opinion of Dr Sikri, J for a discussion on the questions before the court. See also, Tarunabh Khaitan, "Reading Swaraj into Article 15: a new deal for all minorities" (2009) 2 NUJS L Rev 419; Bret Boyce, "Sexuality and gender identity under the Constitution of India" (2015) 18 J Gender Race & Just 1.

²⁶ INDIA CONST. art. 15.

²⁷ INDIA CONST. art. 16.

²⁸ INDIA CONST. art. 19, cl. 1.

²⁹ Danish Sheikh, "A Tale of Two Judgments: The Afterlives of a Defeat and Victory for Queer Rights in India" (2018) 8 Harvard Kennedy School LGBTQ Policy Journal.

³⁰ Danish Sheikh, "A Tale of Two Judgments: The Afterlives of a Defeat and Victory for Queer Rights in India" (2018) 8 Harvard Kennedy School LGBTQ Policy Journal.

transgender people must have genital anatomical issues.³¹ Even while the court's main duty is to interpret the Constitution, which it does, undoubtedly, effectively, it frequently falls short of becoming a judicial authority that is instructional. The ruling passes the responsibility for recognition to governments and leaves room for arbitrary behaviour. It also provides inconsistent and vague instructions that cannot be fulfilled.³² Nevertheless, it is the only time a governmental authority has acknowledged the weak property rights of transsexual people.

Other Note-worthy Case Laws

In *S. Swapna v. State of Tamil Nadu*,³³ the petitioner was a transsexual who had previously been a man and had transformed to a woman. The dean of the school rejected her requests for SSLC and HSC endorsement when he came to know of his transformation surgery. After then, this matter was sent to the Madras High Court for further ruling. According to the court, this case should be reconsidered, and she should get the declaration within a month following the ruling. This instance demonstrates what it means for a transgender person to enroll themselves in educational institutions. In *Ganga Kumari v. State of Rajasthan*,³⁴ Ganga Kumari was selected for the position of female police constable. She participated in every capacity test, clinical trial, and real test that was conducted. She was then contacted to appear for an arbitrary clinical examination that would ultimately determine her selection. She was found to be a transsexual and therefore, she was rejected by the voters on the basis of the clinical trial and was hence not qualified for the job.

³¹ Dipika Jain and Kimberly M Rhoten, “Epistemic Injustice and Judicial Discourse on Transgender Rights in India: Uncovering Temporal Pluralism” (2020) 26(1) *Journal of Human Values* 30.

³² Dipika Jain and others, “Bureaucratization of Transgender Rights: Perspectives from the ground” (2018) 14 *Socio-Legal Rev* 98.

³³ W.P. 10882/2014.

³⁴ 2017 (4) WLN 554.

choose the sexual orientation of their choice. It also referred to the *NALSA v. Union of India case*,³⁵ in which transsexuals sought protection under the Indian Constitution.

She argued in court that the reason she was fired was because of sex discrimination, which is unethical. Articles 14, 16, and 21 of the Constitution were all ignored in this instance. The court ruled that no one is authorised to take anyone's constitutional rights away from them and that she cannot be rejected on the account of her sex-based orientation personality during the recruitment exam. The court observed that everyone has the right to express themselves and The court ruled that Article 21³⁶ is limited to the phrase 'sex' until the recruitment requires sex determination. The court also ruled that Ganga Kumari should be re-employed for the job because she has the right to attain 'self-identity' with regards to her sexual orientation. The court ruled that it was crucial for people to understand the differences between 'sex' and 'sexual orientation personality' and provided the context-specific definition of 'transsexual' under the NALSA case.

In the *Naz Foundation case*,³⁷ Lucknow police forayed a recreation centre and imprisoned two men on the allegation that they were homosexuals in an attempt to bring charges under Section 377 of the IPC.³⁸ The police also apprehended nine individuals linked with 'Bharosa Trust,' a non-governmental organisation striving to spread awareness of sexually transmitted diseases and safe sexual practises. They were then accused of conducting a prostitution ring, and their bail was denied. When the claims against these individuals were ultimately presented, The Lawyers Collective, a legitimate legal aid organisation, proved that they were untrue.

After the event in Lucknow, the Lawyers Collective and the NGO Naz Foundation challenged the recognised legitimacy of Section 377 of IPC³⁹ before the Delhi High Court in 2001. The candidate claimed that Section 377 of the IPC violated the fundamental rights to life, right to liberty, freedom of expression, protection and dignity, health, justice, etc. In addition, it was said that the Act failed in its attempt to enhance public health in an effort to reduce the risk of HIV/AIDS transmission since individuals were apprehensive of being prosecuted under the Section, preventing them from being upfront about their sexual orientation and lifestyle.

In 2009, the Delhi High Court referred to *Naz Foundation Govt v. NCT of Delhi*,⁴⁰ and found that Section 377 of the IPC imposed an arbitrary limitation on the consensual intercourse

between any man, woman or animal contrary to the order of nature. Articles 14, 15, 19 and 21 of the Indian Constitution guarantee them constitutional rights, which were violated in this case.

³⁵ Supra 23.

³⁶ INDIA CONST. art. 21.

³⁷ Naz Foundation Govt v. NCT of Delhi, (2014) 1 SCC 1.

³⁸ The Indian Penal Code, 1860, Section 377, No. 45, Acts of Parliament, 1860 (India).

³⁹ Ibid.

⁴⁰ 2010 CRLJ 94.

Different individuals and religious groups vehemently opposed decriminalizing gay sex marriage in the landmark case of *Suresh Kumar Koushal v. Naz Foundation*⁴¹, stating that India's extensive history impart values. The court considered that the issue concerning the validity of Section 377 would be settled by the Supreme Court of India.

A positive outcome of the *Suresh Kumar Koushal v. Naz Foundation*⁴² decision was that activism was re-ignited in India rather than being suppressed. Hard criticism followed the Supreme Court's erroneous decision to take away basic freedoms from LGBTQ people nationwide. As a result, India's political debate on LGBTQ rights has intensified.

In the case of *Navtej Singh Johar v. Union of India*,⁴³ the plaintiff was Navtej Singh Johar, where the Supreme Court determined that Section 377 violated Article 19(1)(a) of the Constitution because 'consensual carnal intercourse between adults, whether homosexual, lesbian, or heterosexual, does not affect public morals or decency.' The LGBTQ community is a sexual minority in the country, but the court ruled that, as citizens, they cannot be denied the same fundamental rights as everyone else under Articles 14, 15, 19 and 21.



In the case of *State of West Bengal & Others v. Pallabi Chakraborty*,⁴⁴ the petitioner, who identifies as a transgender, is requesting a mandamus against the police to allow participation in the West Bengal Police Directorate's selection procedure for police constables. At the time of his birth, the petitioner was identified as a man. Later, he declared her transgender identity in an affidavit before the Judicial Magistrate. But afterwards when the Transgender Persons (Protection of Rights) Act was passed and put into effect, the petitioner was hired by the State and given the name Pallabi Chakraborty and was also posted to the Maidan Police Station.

The Petitioner had already started working for the government as a 'woman', according to the High Court. Thus, they could not be allowed to change their mind and claim to be transgender. The Court ruled that the primary relief prayed for in the writ petition could not be given. The Court did point out that neither the State nor the police had established a grievance redressal mechanism. As a result, the Court ordered the Chief Secretary of the State to set it up immediately in accordance with Section 11 of the Trans Act.

⁴¹ (2014) 1 SCC 1.

⁴² Ibid.

⁴³ (2018) 1 SCC 791.

⁴⁴ WPA 3962 of 2021.

The Calcutta High Court directed that transgender applicant in the joint CSIR-UGC NET examinations receives all facilities and perks. In addition, the Bihar High Court has directed the state government to give precedence to transgender candidates for the professions of constable and sub-inspector.



First State to Reserve Jobs for Transgender Persons

The first state in India to reserve positions in the public sector for transgender people is Karnataka. The Karnataka Civil Services (General Recruitment) Rules, 1977 were revised by the State Government to provide a 1% horizontal reservation⁴⁵ for transgender people. The proposed change to Rule 9 Sub Rule (1D) was inserted to ensure that transgender applicants from each category, including general, Scheduled Castes, Scheduled Tribes, and Other Backward Classes, be considered for 1% of open positions in any service or post.

A legal challenge against the state government's recruitment of police constables on the grounds that it did not include a distinct category for transgender individuals on par with men and women led to the state government's revision of its recruitment guidelines. The state government aimed to fill 2,672 positions, including 252 Bandsmen positions and 2,420 Special Reserve Constable Force positions. Age, weight, and other requirements for these positions were mentioned in the notice calling for applicants, completely ignoring transgender people

Nations that Support Transgender's Human Rights

The transgender community is denied their fundamental human rights not just in India but all around the globe. Nevertheless, now that civil society is speaking up in favour of this minority, we are also witnessing some shifts in the standing of this community on a global scale. Few nations provide them the freedom to live their lives as they choose and respect their sexual orientation.

Argentina: This nation passed the first transgender rights laws across the entire globe. Sex-change operations were allowed in Argentina in 2012 when the Gender Identity Law was adopted by the Senate on a consensual basis. Both public and private health care programmes cover the surgery.

⁴⁵ SCC Online, <https://www.sconline.com>.



Denmark: In 2010, the Council of Europe passed a motion urging its nations to protect transgender people's rights to acquire federal identification reflecting their preferred gender identity without the need for further treatments like sterilization, operation, or hormones change. Four years later, Denmark became the first nation in Europe to permit individuals to declare their new gender on their identity card and seek for a formal gender transition.

USA: On May 13, 2016, the Affordable Care Act's Section 1557 was signed into law, outlawing discrimination based on gender identity. The regulation covers all health programmes managed by the Department of Health and Human Services, all health programmes managed under Title I of the Affordable Care Act, and discrimination in medical facilities that receive federal financial assistance. A comprehensive coverage exclusion or limitation for all health treatments linked to gender change must not be used by an insurance company, according to the rule.

Germany: The Federal Social Court there decided in 1987 that gender reassignment procedures for transgender people must be paid for. Only once the medical need of the corresponding therapy has been established in each individual case are the costs for gender-modifying or gender-adjusting procedures paid by health insurances.

Sweden: The Swedish government offers transgender and gender nonconforming individuals health treatment that is gender affirming. They have interdisciplinary care teams to provide individualized, patient-centered treatment that takes into account each person's particular medical needs. Additionally, all expenses for medical care and pharmaceutical treatment—aside from face surgery—are covered by the national health insurance.

South Asian nations Recently, several south Asian nations have recognised transgender people as the third gender and granted them all the same legal rights as the rest of the population. Among them are:

a. **Pakistan:** In 2009, Pakistan became one of the first nations to formally accept the existence of a third sex.

b. **Nepal:** In 2013, Nepal added a transgender category on citizenship certificates—the country's equivalent of an ID card.

c. **Bangladesh:** Transgender persons may now register to vote as a third gender in the country's neighbor from 2018.

CONCLUSION

India being a democratic country consists of long road which combines variety of people in it with various problems. Religion, caste is ongoing matter in which India is already struggling and it cannot manage to afford Gender as another problem. Although this problem is already in motion and acquired a long way in the country. Earlier Gay and Lesbians struggled with the same problem because of their sexual orientation and know the transgender are struggling for their rights being a normal human. Everyone is individual and is born with the rights decide by the country by their birth. A gender transformation is not entitled to take away those rights as human. Our constitution also states that everyone is free to live in whatever manner they like so no law can take that right away. The evolution of transgender from exclusion to inclusion in the society is pretty commendable and challenging. These people have managed to establish their place in the society but this has always been questionable. The problems faced by them are

unique and so that settlement wouldn't be easy in for the society to accept them. Article 14 of the constitution states that equality for all which is seen diminished in the case of transgender. In spite not being untouchables they have been treated untouchables by the society. India consists of more than 1 million transgenders as its population and it is not fair to neglect 1 million at the same time. These people already face the problem of the changes that occur in their body like puberty because of the change of organs. They took a real risk to live the life of their choice and do not regret it later. There is no wrong in this way of living their life in the way they like. We as normal people need to broaden our minds and accept them the way they are. Government should focus on arranging orientations regarding transgender so that people get aware of the third gender community in the world. These people have come long way of harassment, family rejections and society discrimination they deserve to get a proper place like



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normal people in the society. A nationwide campaign should be arranged among the people to create a scope of awareness for these people and acceptance. People should open their hearts and mind to accept these beautiful creations as humans in the world.