

TRANSGENDER: THE EQUAL HUMAN AND GENDER IDENTITY

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Abstract

The right to live is given to every citizen by birth but not all are privileged to live by it. Our society is divided based on gender, sex, race etc. despite of several efforts made to make it one. Transgender is one most such section in the society which had been excluded from society from ancient times up to an extent that their existence is felt like no one else. Laws were made to give them equal human rights, to accept them equally as part of society. Legislations were passed by different countries but ironically it can never be enough to subside the years of neglect and disgrace, but they have implemented for the improvement of transgender. Prevention still exists in the hearts and mindset of people at a large level; they still question their dignity and identity. Collaborative efforts by state authorities, citizens and opening opportunities will lead to fresh path of no discrimination, gender equality, liberty, and expression. This paper aims to explore the notion of transgender individuals as equal participants in society, emphasizing.

Keywords: Gender identity, ICCPR, Humanitarian law, Violence, Gender inclusivity, Third gender.

Introduction

The introduction part effectively sets the strongest and most mindful being that exists on earth are humans. That is how transgender people is treated by the society in negative mind sets but they are born to form a family, society, nation, and world. The one who created this universe, and this place has bestowed upon them the most exquisite blessing and gift in their life. Everyone is unique in terms of their appearance, name, gender,

sexual orientation, and skin tone, yet they are all united by a single, fundamental aspect of society: we are all human, having been born onto this planet, sharing its atmosphere, living under its shadow, and surviving on the kindness and love of others. Although transgender people have coexisted with other genders since the beginning of human history, many have been unaware of their identity for several years. They have been a part of every culture, society, and class from the beginning of time, but their social standing is currently under doubt. It's difficult to process the fact that just having a gender other than the socially acceptable one can lead to living a life of non-existent while born by the same humans and under same cloud. It has been a long journey to accept the simple fact that humans should be treated as humans, their gender or sexual orientation does not disapprove of their basic rights i.e. right to life and liberty. Before the law existed, we humans were formed who had full control on our actions, words, style, gestures, and thoughts. To create a just and peaceful society, we established some rules among ourselves and began to live by them. Thus, it was incumbent upon us all to recognize and embrace each other without discounting others based on their gender. Though cautious decisions must be made since our perceptions shape the norms that govern our lives and the lives of others. Nevertheless, no action was taken that would lead to the mistreatment of other humans who share the goal of establishing social harmony and leading happy lives. It all began with our small-mindedness and lack of insight and vision.

However, the research objectives are somewhat implicit and could be stated more explicitly to reflect the scope and aims of the study more clearly. Ironically no one is

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aware that we together have made others, lives difficult and made them think that they do not belong here. We made them feel out of place easily but did not give them a positive to think how unworthy we were to do so. What right did we all have to act like that, why do they have to feel this way, what makes us superior, we never in past and in present give it a thought and that's us. Things have changed by providing them with legal status and giving them basic rights but still what remains the same is humans and society. The same society still looks down, treating them as different being either in workplace or schools or streets or railway stations forgetting that all are governed by same constitution and same law and that human rights applies to every human not to genders. The value of every human life is precious and does not decrease or increase by a cent just because it belongs to a particular gender.

The interrogation leftovers so that only conferring right and giving the name to transgender, does it illuminate the humanity within the so-called recognized and favoured genders and grants them the same standing in our society as other genders? Gender and human coexist as terms that can be used interchangeably depending on convenience.

Human Existence and Human Rights

Social Stigma in the Society

While the manuscript is thorough in exploring legal frameworks, it could benefit from more existing material data or case studies to illustrate the real-world impacts of these laws on transgender communities. Everywhere in the world human right violations are perpetrated sometimes due to cultural or religious or political environment. Some countries have formulated legislation to stop any sort of discrimination and criminalize expression of gender identity. This is done by legitimizing human rights violation against transgendered citizens.³ They must put up with societal stigma, having experienced repeated instances of social and political

marginalization, and are not eligible for social benefits. They occasionally make up a weak social group that is invisible rather than the result of poverty or helplessness. Human rights are not restricted based on one's gender identity. All people, regardless of gender, are entitled to the freedoms and human rights that stem from the equal protection of the law and the inherent dignity of the human person.

Efforts by International Organizations

The United Nations Human Rights Council⁴ and regional courts and several UN treaty bodies have taken steps towards contributing to the protection of the rights of persons as well as developing arguments based on the international legal framework. Legal issues are not restricted to just international human rights law such as non-discrimination, equality before the law and right to private life, but it is related to all kinds of human rights and fundamental freedoms available to human beings. At the same time, the International Court of Justice (ICJ)⁵ works in increasing the legal protection of victims who are deprived of their right due to gender identity and developed international law to provide better recognition and protection. "It all started by a joint meeting of ICJ and International Service for Human rights comprising of legal experts which took place in Nov 2006, in Yogyakarta (Indonesia), with participation of twenty-nine human right law experts and jurist. The results of the joint meeting were that they agreed on statement of Principles on the Application of International Human Rights Law in relation to Sexual orientation and Gender identity, called Yogyakarta Principles, which was later officially launched in March 2007."⁶

"According to the definition of the Yogyakarta Principle⁷, Gender identity, refers to each person's deeply felt experience of gender which may or may not correspond to sex as per birth including the sense of the body." The sense of body can be freely chosen to be modified either of the body appearance or function by

3. Peoples' Union for Civil Liberties, Karnataka (PUCL-K), *Human Rights Violations Against the Transgender Community* (Sept. 2003).
4. United Nations Human Rights Council, *International Human Rights Law* (2006).
5. Int'l Court of Justice (1945).
6. United Nations Free, *International Human Rights Law and Sexual Orientation & Gender Identity* (2022), <https://www.unfe.org/wp-content/uploads/2017/05/International-Human-Rights-Law.pdf> (last visited Sept. 20, 2024).
7. U.N. Charter art. 1(3) (1945).

medical, surgical, or other means. These principles were the authoritative interpretation of international human rights law on the subject and include statements of rights as well as obligations of States. Later, ICJ initiated a series of studies with the aim of providing clarification of the nature and scope of existing state obligations and a Practitioners guide was introduced. This guide included legal arguments for human rights protection but does not include the right to be a person under the law, to family, to work, to social protection, to education or to adequate housing.

International Laws Based on Principle of Non- Discrimination

“The principle of non-discrimination, Article 1(3)⁸ and 55⁹ of the United Nations Charter, Article 7¹⁰ of the Universal Declaration of Human Right and Article 2¹¹, 4(1)¹² and 26¹³ of the International Covenant on Civil and Political Rights (ICCPR)¹⁴, And Right to be Equal before law, Article 7¹⁵ of the Universal Declaration of Human rights, Article 26¹⁶ of ICCPR are universally recognized under International Law. According to the UN Human Rights Committee, the fundamental tenet of the preservation of human rights is non-discrimination combined with equality before the law and equal protection under it. According to the principles, the governmental defends citizens against discrimination committed by private parties as well as by governmental agents.” Discrimination refers to any kind of differentiation, exclusion, limitation, or preference based on factors such as gender, ethnicity, or color. Since they serve as the foundational law for the entire legal system, these two ideas are known as the *jus cogens*.

In ICCPR prohibits any unlawful or arbitrary interference with person’s privacy, home, family, or corre-

spondence. Similar standard is repeated under International Convention on the Protection of the Rights of all Migrant workers¹⁷, and Convention on the Rights of the Child¹⁸. This right to private life is a broad spectrum that covers the integrity of the home, body, family, personal identity, and interpersonal relationships. Human rights committee have outlines additional scope of right to privacy by pointing out that it also refers to person’s life in which he/she can freely express his or her identity, be it by entering relationship with others or alone. International law also recognizes the right to liberty and protects any kind of deprivation of liberty like police custody, administrative detention, house arrest and others. Right to liberty is closely connected to Right to security of person and protected by Article 3 of the Universal Declaration of Human Rights¹⁹. UNDHR protects from anyone subjecting to torture or to cruel, inhuman or degrading treatment for punishment. UN Code of Conduct of Law enforcement Officials have if terms cruel, inhuman, degrading treatment must be interpreted in its widest possible protection against abuse, physical or mental. UNDHR and ICCPR safeguard the right to peaceful assembly, freedom of association and freedom of expression. Freedom of expression is the cornerstone of the democratic society and country. It helps in enabling the community to be well informed for a better dialogue and public opinion. It also gives the right to seek and enjoy asylum.

Recognizing Gender Identities

Recognition of Gender Equality in India

Gender equality, according to UN Women, is the idea that men and women, as well as girls and boys, have the same rights, obligations, and opportunities. Gender

8. U.N. Charter art. 55 (1945).

9. Universal Declaration of Human Rights art. 7 (1948).

10. Universal Declaration of Human Rights 1948, Art. 7, ‘equality before the law’.

11. International Covenant on Civil and Political Rights art. 2 (1976).

12. International Covenant on Civil and Political Rights art. 4(1) (1976).

13. International Covenant on Civil and Political Rights art. 26 (1976).

14. ICCPR, *supra* 11.

15. International Covenant on Civil and Political Rights art. 26 (1976).

16. *Id.*

17. International Convention on the Protection of the Rights of all Migrant Workers, 2003.

18. Convention on the Rights of the Child, 1989.

19. Universal Declaration of Human Rights 1948, Art. 3, ‘Right to life, liberty and security of person’.

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equality does not imply a homogeneous society for men and women. Rather, it aims to eliminate gender inequality by stating that men and women will have equal rights, duties, and opportunities regardless of their gender. In addition to being viewed as a human rights concern, gender equality is also seen as a need for and a sign of sustainable people-centered development.²⁰

With time people did not evolve much, for them transgender people are those known as Hijra or those who can be found in traffic signals begging. They are disowned by their families, neighbors, school, or universities. The landmark judgment was passed by Supreme Court of India in case *NALSA vs. Union of India*²¹. The first transgender person to accept parenthood was Gauri Sawant. In India, this represented a first step toward gender equality. It all started in 2009 when the Election Committee voted to allow transgender people who identify as third gender to vote in elections, however this was limited to those elections. Thus, this matter was brought up in 2012, and a petition was submitted to obtain the historical ruling that recognized transgender persons as a third gender and was passed in 2014. Men are represented by the letter M, women by the letter F, and transgender people by the letter X.

Later, the Indian parliament enacted the transgender persons (Protection of Rights) Act²². It defines transgender to and includes all individuals whose gender does not match or conform to with they are born and includes the trans-man and woman whether have gone through surgery or not and all individuals as well with identities such as Kinner, Hijra, Aravani, and Jogta²³. Through this Act, they will have the ability to get a certificate of identity and proof of recognition from the appropriate state authorities; programs, welfare measures, education, healthcare, social security, and involvement in society; mobility; the chance to run for or be appointed

to public office; and the ability to buy, rent, or occupy property, among other rights.

“The Transgender Persons (Protection of Rights) Act, 2019 Apart from the safeguards provided by the Constitution, the Transgender Persons (Protection of Rights) Act, 2019 recognizes transgender individuals’ rights to obtain healthcare, including reproductive healthcare.” The Act provides that “...the Government shall take measures to ensure that transgender persons have equal access to healthcare, including gender-affirming healthcare, and that they are not discriminated against in the provision of healthcare...”²⁴

The Gender Inclusivity Around the World

Some countries have allowed people to opt for an “X” gender marker under at least circumstances though the legal battle was lengthy. In the United States, non-binary state identification documents are available in 15 States, also the Gender Inclusive Passport Act²⁵ was introduced which requires the State Department to issue X passport to those who apply based on self-attestation. But all this does raise the question of whether these markers are a justifiable act.

In 2016, a group of international experts developed the “Yogyakarta Principles+ 10”. This takes a progressive expansion of codified rules in 2006. Its principle 31²⁶ says that everyone has the right to legal recognition without disclosing of sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Identity documents and birth certificate are their right to obtain without mentioning sexual orientation or gender expression.

The primary purpose of ID cards is to ensure who they say they are. Activists argue that time is now to stop this gender marker. Netherlands had issued the policy to remove gender markers from its national identity

20. *Women Empowerment and Gender Equality in India*, <https://www.nextias.com/blog/women-empowerment/>.

21. *NALSA vs. Union of India*, AIR 2014 SC 1863.

22. Transgender Persons (Protection of Rights) Act, 2019 [Act No. 40 of 2019].

23. *Sexual Orientation, Gender Identity and International Human Rights Law*, PRACTITIONERS GUIDE NO. 4, <https://www.refworld.org/pdfid/4a783aed2.pdf>.

24. *Bridging the Gap: Legal Issues and Policy Recommendations for Third Gender Inclusion in Indian Sport*, 12 INT’L J. CREATIVE RSCH. THOUGHTS, <https://www.ijcrt.org/papers/IJCRT2403128.pdf>.

25. Equality Act, H.R. 5962, 116th Cong. (2020).

26. *The Right to Legal Recognition*, Principle 31.

documents.²⁷ It is the first country to promote inclusion of transgender and non-binary people. Argentina broke the ground which is considered the gold standard for legal gender recognition. It says that anyone over the age of 18 can choose their gender identity, revise the documents without judicial or medical approval and for children only legal representative consent is required.²⁸ Columbia, Denmark, Ireland, and Malta also excluded legal gender recognition barriers.²⁹ But this is just the single grain of the pot. There are several other countries still left to give them recognition freely without any condition like surgery required, forced sterilization, psychiatric evaluation.³⁰

Challenges for the Third Gender

Discriminatory Social Norms: Due to historical legacies, many Indian regions, particularly the rural ones, still have discriminatory sociocultural norms for men and women. Women are supposed to be quiet, composed, and soft-spoken, but men are permitted to be “loud.” **Role Stereotyping:** A significant portion of Indian culture still holds the belief that women should only perform domestic duties. All financial obligations and outside labor are regarded as being exclusively the domain of men. **Low Literacy:** Due to customs like as dowries and other issues, many households cannot afford to send their girls to school. As a result, India’s female literacy rate is still low, particularly in rural areas. **Safety Concerns:** Women in India are still silent victims of gender-based violence, including honor killings, rape, forced prostitution, domestic abuse, female

feticides, and sexual harassment at work. For transgender persons, not much has changed in spite of several initiatives and adjustments.

They have a new set of problems to face with the changing mode of law, society and authorities. In some countries for legal recognition one must undergo a mandatory in-patient psychiatric evaluation lasting for 45 days to confirm or reject the diagnosis of trans sexualism.³¹ They are also made to go through numerous medical tests, coerced sterilization, and a humiliating in-person procedure by a government commission to further confirm the diagnosis.³² These procedures expose them to various health issues and fail to respect right to health and expose them to inhuman or degrading treatment.

They are turned down for jobs and housing frequently. Children and young adults face abuses in school settings from sexual assault to bullying, to force to attend a single-sex school.³³ When in detention cells they are often placed with gender they do not identify with exposing them to abuse and sexual violence, basic right of movement, and freedom of expression are still on papers, but execution is far from future. Workplaces are not well educated about the gender inclusivity and gender acceptance for innate character hence discrimination and humiliation carry on.³⁴ The organizations need to educate them about assimilation in workplace and personality of transgender individuals in the corporate environment.

According to article 26³⁵ of the ICCPR prohibits discrimination and gives equal protection to all sex and this was interpreted as inclusive of transgender per-

27. *Countries that allow transgender people easy status change*, FRANCE 24 (Jun 29, 2022, 17:46),

<https://www.france24.com/en/live-news/20210629-countries-that-allow-transgender-people-easy-status-change>

28. *Id.*

29. *Id.*

30. *Supra* 23.

31. Sandra Smiley, *Out of Sight, out of mind? Transgender people in humanitarian emergencies*, INTERNATIONAL COMMITTEE OF RED CROSS HUMANITARIAN AND LAW POLICY (Jun 11, 2024, 10:45 AM), <https://blogs.icrc.org/law-and-policy/2020/03/31/out-sight-mind-transgender-people-humanitarian-emergencies/>

32. *Id.*

33. J. Lester Feder, Jeremy Singer –Vine, *THIS IS HOW 23 COUNTRIES FEEL ABOUT TRANSGENDER RIGHTS*, BUZZ FEED NEWS (May 28, 2024, 07:48 PM), <https://www.buzzfeednews.com/article/lesterfeder/this-is-how-23-countries-feel-about-transgender-rights>

34. Lus Ladoris, *The ‘Third Gender’ and transforming the workplace in India*, TRANSGENDER RIGHTS (July 24, 2022, 06: 14 PM) <https://iuslaboris.com/insights/transgender-rights-the-third-gender-and-transforming-the-workplace-in-india/>

35. *Supra* 11.

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sons as well. Similarly in Article 9³⁶ right to liberty to everyone is interpreted as including persons of LGBTQ identity. The committee on Anti torture convention³⁷ requires special measures to protect transgender persons from torture under Article 2³⁸. All these are interpretations given in response to the petitions made under respective human right treaties, not express inclusion is still made. Putting the fate of transgender in the hands of system which takes years to recognize and yet cannot give an express right to them robs them from basic human rights under international law.

A Way Forward

In the time of difficulties like as COVID -19 pandemic the biggest threat was to poorest and transgender persons because they are the most vulnerable community.³⁹ For this independent Expert developed a groundbreaking set of guidelines to help states in fulfilling their obligations. The ASPIRE guidelines⁴⁰ was formed based on six actions namely, acknowledgement, support, protection, indirect discrimination avoidance, representation, and evidence- gathering. The report was discussed in the 75th session of the General Assembly and huge progress was made. Such efforts together by the countries and citizens are needed to overcome the crises of social stigma and provide them with the space and environment that they have right to. There still exclusion from acceptance of their gender leads to life threatening issues like denial of access to temporary shelters at the time of tsunami and excluded from humanitarian assistance.

Transgenderism⁴¹ is regarded as a mental disorder despite World Health Organization clarifying it, showing how ignorant we are from the world while living amongst the people, how we see the world from a single

glass frame and easily degrade what we think is below us. It's high time that we realize that our sex, gender or race does not define us or make us human. Being a human means having incorporated humanity within, living with it, spreading it and serving it and this can only be done when we see each color for its own value, existence and importance and understand the power and strength of its togetherness.

Some Major Recommendations

- Enumeration and estimates of Transgenders Peoples
- To mechanism and Schemes to Address the Stigmas
- Sensitization of Society & Parents
- Sensitization of Police
- Access to 'Gender Segregated Space' for the Transgender
- Campaigns and awareness Programmes based on ICT
- Documents for transgender
- National Policy on Transgender
- New Legal Frameworks guidelines
- Sex or Re-assignments Surgery relating services to Gender
- Gender Recognition Certificate
- Employment and Livelihood Opportunities
- School Education and Vocational training courses
- Housing and Accommodations

36. International Covenant on Civil and Political Rights 1976, Art. 9, 'Right to Liberty'.

37. Convention against Torture and other cruel, Inhuman or Degrading Treatment or Punishment, 1987.

38. Convention Against Torture and other cruel, Inhuman or Degrading Treatment or Punishment, 1987, Art. 2, 'Reinforce jus cogens'.

39. Neela Ghoshal, *Human Rights Watch Transgender, Third Gender, No Gender: Part II*, HUMAN RIGHTS WATCH (Aug 8, 2024, 9:18 PM), <https://www.hrw.org/news/2020/09/08/transgender-third-gender-no-gender-part-ii>

40. *UNHR An LGBT-inclusive response to COVID-19*, UNHCR, (May 29, 2024, 01:04 PM) <https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/lgbt-inclusive-response-covid-19>

41. Neela Ghoshal, "*Human Rights Watch Making Legal Recognition for Transgender People a Global Priority*", HUMAN RIGHTS WATCH (May 29, 2024, 11:09 AM),

<https://www.hrw.org/world-report/2016/country-chapters/africa-americas-asia-europe/central-asia-middle-east/north-0>

- Sustainable goals recognitions rights of transgenders peoples

Also, The Transgender Persons (Protection of Rights) Bill, 2016 highlighted some positive issues of transgender.⁴²

Suggestions

- The government and society must organize and adopt a comprehensive response to transgender issues. Strategies have been established, but they have not been sufficiently implemented.
- To provide a protective barrier against their problems, a focused approach should be present.
- Law enforcement and legal frameworks should be strengthened to address the concerns of the transgender community.
- Those who act barbaric toward transgender people must face criminal charges and disciplinary action.
- Given their biological differences, parents who ignore, abuse, or abandon their children must face harsh consequences.
- Free legal guidance must be made available to the transgender community at the local level.
- Schools and colleges must play a consistent and empowering role in providing transgender people with training and a foundation for their worth.
- Social privilege arrangements must be ensured.
- It is necessary to enable the foundation of a helpline for career planning and guidance, job vacancies, and an online situation framework.
- They must be provided access to financial assistance and liberal credit offices in order to further their career as business experts or visionaries.
- All open and private emergency clinics and centres must confine and communicate distinct approaches associated with medical services.

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- In order to reach this network, mindfulness programs need to be created at a large scale.
- To raise awareness among ground-level students, a comprehensive sex-training program should be included into the school's instructional plan and prospectus.⁴³

Conclusion

While the conclusion touches on the need for greater acceptance and inclusion in the society, it is evident that transgender people who identify as different sexually from others face prejudice, rejection, and bigotry from the public. This solitude shifts from personal causes to the most well-known social incomprehension. Every year, we observe the International Day of Transgender Visibility, although many people are still in the dark about their existence. A lot of decision-makers function under the assumption that transgender individuals are too little to be important. Many things about us have changed from the ancient to the modern day. We developed an awareness of technology, information sources, and rational thought processes. We also occasionally tried to be reasonable, but our prejudice toward the transgender population persisted. The Indian Constitution gives the right to equality and equal protection of laws to all its citizens.⁴⁴ It also guarantees the right to life and liberty⁴⁵ which not only relies on legislation to force on us but as fellow humans we must try to ensure it in every other human in our vicinity. It can only be possible if we consciously consider all as one and trust that every right exists and can survive only when everyone is equally entitled to it. A thoughtful humanitarian approach needs to be taken to serve the needs of most. This approach will validate the experience of transgender people and other people as well belonging to sexual and gender minority groups. Offering them the chance to share their true identities and ensuring that their dignity and right to privacy will be respected and protected should they choose to. which, in addition to being imposed upon us by law, requires us as fellow beings to make every effort to guarantee it for every

42. *The Transgender Persons (Protection of Rights) Bill, 2016*, PRS India, <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2016> (Sept. 9, 2024).

43. *Bridging the Gap: Legal Issues and Policy Recommendations for Third Gender Inclusion in Indian Sport*, 12 INT'L J. CREATIVE RSCH. THOUGHTS, <https://www.ijcrt.org/papers/IJCRT2403128.pdf>.

44. INDIA CONST. art. 14.

45. INDIA CONST. art. 21.

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other person around. It is only feasible if we deliberately view everyone as one and believe that every right only exists because everyone has an equal claim to it. To meet the needs of the majority, a considerate humanitarian approach must be used. This strategy will provide voice to the experiences of transgender individuals as well as other members of sexual and gender minority groups. Giving people the option to reveal their genuine identities and guaranteeing that, should they so choose, their privacy and dignity will be upheld. By adopting new recommendation as cited above may change life of transgender peoples.

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3. France 24, *Countries that allow transgender people easy status change, 2021*, <https://www.france24.com/en/live-news/20210629-countries-that-allow-transgender-people-easy-status-change>
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