



# Discussion on Transgender Equally Entitled Human Rights

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## Abstract

The judgment was definitely a constructive step towards humanization of the judicial system and was a major step towards eliminating the injustice done to almost five million people who were running from one place to another without any identity. The Supreme Court's ruling acted as the conformity to basic human rights and people's dignity, finally assigning the true meaning to Right to life and human dignity guaranteed under Article 21 of the Constitution of India.

**Keywords:** Expert committee; Rajya sabha; Executors; Citizenship; Hijra; Rights

## Introduction

The first stream of development was seen with the constitution of an Expert Committee to make an in-depth study of all the difficulties faced by the transgender community and further suggest measures to mitigate their problems and finally submit the report along with the suggestions and recommendations within three months of its establishment. The cloak of invisibility of transgender persons was first seen to wear out successfully in Tamil Nadu, with inclusion of special third gender category for them on ration cards. Further, government orders were issued announcing unfettered access to education and counselling services. More recently, the state's social welfare department announced the constitution of a separate welfare board for transgender people. Taking inspiration from Tamil Nadu, Maharashtra became the second state to set up a welfare board for transgender persons and also took an initiative to set up the cultural institute dedicated to their community [1]. Late in April 2015, MP, Tiruchi Siva introduced a private members bill, the Rights of Transgender Persons bill, in the Rajya Sabha. In late 2015, MSJE published a draft bill which definitely includes very confusing and problematic changes. Even though the bill gives OBC status to the transgender people, there is a huge question mark surrounding affirmative action. In addition to this, the bill does not explicitly specify how reservations would be allocated as trans-people can come into the category of dalit too, hence, it was not clear whether they would get two sets of reservations or not. Another controversial aspect in the bill, according to the author, is that there is no reservation for education even though there is one for employment. Now, the question that arises is how anyone will access employment without going through the process of proper education. Hence, it is felt that the change in the intention of law has not been adequately achieved and the law is not given enough sensitization among the executors [2].

## Discussion

Even if the NALSA judgment acknowledges transgender people, the society is still trans-phobic and patriarchal. It is the government task to properly sensitize people, otherwise it is very tough for such individuals to avail things [3]. Encouragement is required at every level. The Author would like to enumerate the position of transgender rights in various countries like Nepal, Pakistan, Bangladesh, etc. Nepal was the first country to establish a third gender category on citizenship documents, following the Supreme Court's ruling in the country's landmark decision in the case of Sunil Babu Pant and Others v. Government of Nepal, which ordered the government to scrap all the discriminatory laws and recognized the fundamental rights of transgender persons. Trans-sexual people were given the right to vote since 2009, but true meaning to its implementation was given in November 2013, with the government recognition of hijra as third

gender category in all national documents and passports. Further west, Germany was the first European country to officially recognize a third gender category on birth certificates. A new law on 5th November, 2013 allowed parents to register the sex of the children as not specified in the case of children with intersex variation. Taking inspiration from Germany, France became the second country in Europe to recognise the identity of third gender by moving away from the rigid biological determinism of man and woman [4]. The case was brought by a 64-year-old plaintiff, who was assigned male at birth, despite genitalia that presented as neither completely male nor female. It is distinctly clear from the above observations that transgender individuals with different sexual orientation face intolerance, discrimination and exclusion in the society. This isolation varies from private reasons to the most common social incomprehension. While judiciary has taken a significant step to remove the stigma attached to the third gender, it is our turn to recognize the true implication of this judgment and prioritize its enforcement. While throwing money at hijras to spurn them away, we are not just insulting these individuals, but are relegating the very basic principle of humanity; even curs are better treated by the love of humanity. Such actions will only lead the transgender community to toil and struggle in the same quagmire of indignity that they have been facing for generations together. In this country where there is a galaxy of reasons to grand reservations, the community which is synonymous to social backwardness is seldom thought about. It is hence necessary to not only pen down laws, but also bring them to action for the upbringing of the transgender community to the basic rostrum of human dignity. Indian Mythology offers glimpses of reality at times and a brief look at the reflections of the past, stipulate that the transgender persons who are often denigrated today were once venerated and appreciated to a great extent. The starting point of the concept of third gender can be traced from the Hindu Mythology which has many examples of deities changing gender, manifesting as an Avatar of opposite sex etc [5]. Gods were often considered to be represented as both male and female at different points and in various incarnations. For example, Ardhanarishvara, formed by integrating Lord Shiva and his consort, Parvati, is widely worshipped. Mahabharata and Ramayana

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were the treasure boxes for references to transgender people. Shikhandi from Mahabharata is probably the most powerful transgender figure found in the Hindu mythology. Aravan or Iravan, son of Arjuna is another minor, yet crucial transgender character who is believed to have laid down the lineage from which the transgender persons are born. Another episode in the Mahabharata which witnesses the presence of third genders includes the time when Arjuna was sent to exile. There, he assumed the identity of Brihandala, a eunuch and performed rituals during occasions of weddings and childbirths. Ramayana is another source inspiration for the emergence of transgender people. Rama, while leaving for the forest for fourteen years, asked his followers, addressing them as men and women, to return to the city. Among them, the hijras did not feel bound by the order and decided to stay with him. Impressed with the devotion, Rama conferred powers on them to give blessings on auspicious occasions. Indeed, during the Mughal Empire, hijras were known for positions held in Royal Courts as political advisors, administrators, generals as well as guardians of the harems [6]. They even occupied high positions in the Islamic religious institutions and were also able to influence state decisions. Later, these benefits were removed through legislation in the British period. Conventional distinction of human gender into male and female is exclusively based on the biological design of their genitalia. However, in reality, there are people who do not fit into this custom and defy the biological binary. These are the transgender people. Stereotyped as the mendicants who knock on the rolled up windows of our cars at traffic signals or as dancers in a local bar, these transgender persons live a life fraught with troubles. The dictionary meaning of the prefix Trans means beyond, across, or over. However, transgender does not simply signify a gender that crosses the borderline. Often, this term is not properly understood by the general population. It is a broad term to circumscribe all individuals who live a major portion of their lives manifesting an innate sense of gender which deviates from suppositions of their birth sex. In India, some of the regional terms are used to represent the community. For example, the term kothi signifies a range of feminine identified people, who have been assigned male gender at birth. Similarly, other prominent regional and trans-regional identities representing this community are hijras, aravani, jogtas/jogappas, and shiv-shaktis [7]. This rambling constitution of transgender subsumes many regional terms and identities. Hence, the desire for a rigid definition, set the platform for the NALSA judgment which defined the term in the following words, a transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to their biological sex. Thus, it can be said that the term transgender is not only limited to persons whose genitals are intermixed but it is a blanket term used to refer to persons with identities that do not get along with the strict dual categories of man and woman and whose gender identity and expression differs from the

conventional norms expected from their birth sex. The identity of an individual is often determined by the moral dictates and judgments of the society [9]. However, individuals who seek to challenge these with their personalities, sexual orientations and inclinations are often shunned, abandoned and treated as the other. Abandoned by families and ridiculed by negative stigmas, they are usually left with no other option, than resorting to begging or singing in weddings, to make a living. Even with such vulnerability to harassment and violence, their agony mostly remains unnoticed. This only indicates the extent of helplessness and neglects this community faces [10].

## Conclusion

Various rights granted to this community are seldom potent and welfare measures hibernate on paper. Though the Indian Constitution makes mighty promises prohibiting discrimination of all sorts, there exists ambiguity concerning the concept of gender and the effects that such a prohibition can have on third gender rights.

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## Conflict of Interest

None

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