

## Education Rights- Transgender

Miss Ekta Rose, Assistant Professor, Amity University, Lucknow, Uttar Pradesh  
[ektarose2@gmail.com](mailto:ektarose2@gmail.com)

**Education is the key to which the door to freedom and liberty can be unlocked. In the words of former American president Bill Clinton- "Education is not a privilege, it is a right"**

### Abstract

Education is critical for the boom and improvement of any democratic country. India is a Democratic country. According to Article 14 and 15 Indian Constitution is to offer identical possibility to each citizen to develop and acquire their potential, no matter caste, faith or gender. Now-a-days, Transgenders will have a look at in schools, schools and universities with all facility approving their admission below the class of "deprived group" described with the aid of using the Right to Education Act 2009. The Transgender network is part of the social order and that they have an identical right in the whole lot this is to be had to all others withinside the world. Transgenders are eligible for 25% reservation below the economically weaker phase deprived college students class for admission in schools, schools and universities. They are socially and economically backward.

Transgender may be allowed admission in schools, schools and universities and given employment on the premise that they belonged to the Transgenders. The Supreme Court stated they'll take delivery of instructional and employment Opportunities to Transgenders. The Transgenders network faces numerous demanding situations and discrimination and consequently has fewer possibilities in comparison to others. They are hardly ever knowledgeable as they're nor customary with the aid of using the society and consequently do now no longer get hold of right schooling. Even if they're admitted to an academic institute, they face harassment and are bullied each day and are requested to depart the faculty and schools

or they drop out on their own. It is due to this that they soak up begging and sex work.

**Keywords:** Education, transgenders, Article 14, discrimination, The Transgender Person (Protection of Rights) Act, 2019

### Introduction:

In India, according to a study by the National Human Rights Commission, 96% transgenders were denied jobs whereas 60% never attended schools. This reflects an educational emergency as several children from the transgender community have been out of the framework of schools. One of the major reasons behind this is the bullying and harassment that children from this community face due to the lack of gender sensitivity and awareness in our society. In a society where the 'ideal gender' is supposed to be either male or female, children from the transgender community become a victim of this stereotypical mindset which not only results in high school dropout rates but also shatters them mentally.

As per the CBSE press release of 2020, only 19 students from class 10 and 6 students from class 12 belonged to the transgender community.<sup>1</sup> This also further reflects a rising threat to the future of children from this community and calls for urgent measures to address these issues that exist within the educational framework.

### Who Are Transgenders?

Transgender are the person who have suffered discrimination for ages as earlier their gender identity was not recognized either in eyes of law or by the society and they were forced to write male or female against their gender. The Supreme Court of India recognized transgender as the third gender to eradicate the discrimination suffered by them and to safeguard their rights. The court asked the center to treat the transgender as socially and economically backward classes and to allow

---

<sup>1</sup> CBSE Result Analysis class x and xii

them to get admission in the educational institution and employment on the basis of their third gender category. In the landmark Judgment of National Legal Service Authority v Union of India<sup>2</sup> the third gender gained legal recognition in the eyes of law as the Hon'ble Supreme Court ruled that the fundamental rights should be available to the third gender in the same way as they were provided to the male and females. The Court provides the transgender

with equal rights and protection under the Article 14<sup>3</sup>, 15<sup>4</sup>, 16<sup>5</sup> and 21<sup>6</sup>. The court stressed out on the importance of right to dignity and gave due recognition to their gender identity which was based upon reassigned sex after undergoing Sex Reassignment Surgery as the person has a constitutional right to get recognized as a male or female. Thus the transgender were entitled to legal protection of

---

<sup>2</sup> AIR 2014 SC 1863

<sup>3</sup> 14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

<sup>4</sup> 15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to— (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. (3) Nothing in this article shall prevent the State from making any special provision for women and children. 1[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.] 2[(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether asupraed or unasupraed by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

<sup>5</sup> 16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, ressupraence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. (3) Nothing in this article shall prevent

Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office 1[under the Government of, or any local or other authority within, a State or Union territory, any requirement as to ressupraence within that State or Union territory] prior to such employment or appointment. (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. 2[(4A) Nothing in this article shall prevent the State from making any provision for reservation 3[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.] 4[(4B) Nothing in this article shall prevent the State from consupraering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be consupraered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.] (5) Nothing in this article shall affect the operation of any law which provsupraes that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

<sup>6</sup> 21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

law in all the spheres of state activity including the education and employment.

The rule of regulation is ultimate and anybody is same withinside the eyes of regulation in India. Yet, the transgender network is in a regular struggle as they should combat oppression, abuse and discrimination from each a part of the society, whether or not it's their family and buddies or society at large. The existence of transgender human beings is a each day struggle as there may be no reputation everywhere and they may be ostracized from the society and additionally ridiculed.

However, the Supreme Court of India in its pioneering judgment through the department bench of Justices K.S. Radhakrishnan and A.K. Sikri in *National Legal Services Authority v. Union of India & Ors.*<sup>7</sup> identified the third gender together with the male and female. By spotting numerous gender identities, the Court has busted the twin gender shape of 'man' and 'woman' that's identified through the society.

"Recognition of Transgenders as a third gender is not a social or medical issue but a human rights issue," Justice K.S. Radhakrishnan told the Supreme Court while handing down the ruling.

The right of equality before law and equal protection of law is guaranteed under Article 14<sup>8</sup> and 21<sup>9</sup> of the Constitution. The right to chose one's gender identity is an essential part to lead a life with dignity which again falls under the ambit of Article 21<sup>10</sup>. Determining the right to personal freedom and self determination, the Court observed that "the gender to which a person belongs is to be determined by the person concerned." The Court has given the people of India the right to gender identity.

Further, they cannot be discriminated against on the ground of gender as it is violative of Articles 14<sup>11</sup>, 15<sup>12</sup>, 16<sup>13</sup> and 21<sup>14</sup>.

The Court also protects one's gender expression invoked by Article 19 (1) (a)<sup>15</sup> and held that "no restriction can be placed on one's personal appearance or choice of dressing subject to the restrictions contained in article 19(2)<sup>16</sup> of the Constitution".

The Court recognized the right to as to how a person choose to behave in private, personhood and the free thought process of the human being, which are necessary for the fullest development of the personality of the individual. The Court further noted that a person will not realize his dignity if he is forced to mature in a gender to which he does not belong to or he cannot relate to which will again hinder in his development.

The Supreme Court has given positive instructions for the safety of the rights of the transgender humans with the aid of using along with of a 3rd class in files just like the election card, passport, riding license and ration card, and for admission in academic institutions, hospitals, among others. Human rights are primary rights and freedoms that are assured to a human with the aid of using distinctive feature of him being a human that could neither be created nor may be abrogated with the aid of using any government. It consists of the right to life, liberty, equality, dignity and freedom of notion and expression.

The Supreme court in *National Legal Service Authority v the Union of India*<sup>17</sup> was concerned with the grievances and suffering of the Transgender Community as they seek a legal declaration of their gender identity rather than the identity of male/ female that was assigned to them at the time of their birth and their prayer

<sup>7</sup> [Writ Petition (Civil) No.400 of 2012(NALSA)]

<sup>8</sup> Supra4

<sup>9</sup> Supra 7

<sup>10</sup> id

<sup>11</sup> Supra 4

<sup>12</sup> Supra 5

<sup>13</sup> Supra 6

<sup>14</sup> Supra7

<sup>15</sup> (1) All citizens shall have the right— (a) to freedom of speech and expression;

<sup>16</sup> [(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 5[the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.]

<sup>17</sup> [Writ Petition (Civil) No.400 of 2012(NALSA)]

was that non- recognition of their gender identity is violation of Article 14<sup>18</sup> and 21 of the Indian constitution.

The Hon'ble court interpreted the meaning of Article 14<sup>19</sup> and held that the article provides protection to 'any person,' and "person" here includes the transgender person as well and hence, they are all entitled to legal protection of law in all the spheres of state activity like any other citizen of this country. The court also held that Article 15<sup>20</sup> and 16<sup>21</sup> is not just limited to biological sex of male or female but it intended to include those people too who consider themselves to be neither male nor female. Further the court referred to Article 19(1)(a)<sup>22</sup> and 19(2)<sup>23</sup> and concluded that transgender personality can be expressed by transgender's behavior and presentation and it cannot be restricted or prohibited. Lastly, the court referred to Article 21<sup>24</sup> and held that "Hijras/ Eunuchs have to be considered as third gender, over and above binary gender under our constitution and the laws".

The Supreme Court in its final judgment declared that transgender apart from binary gender, should be treated as "third gender" for the purpose of safeguarding their rights under Part III of Constitution of India and the laws made by the parliament and State legislature. The Court further directed the state government to grant legal recognition to their third gender identity. The Hon'ble apex court further ordered the government to remove social stigma and to promote specific health programs and equal protection to the transgender person.

### **What Legal Rights Do Transgender Students Have?**

Students have the right now no longer to be disciplined or be dealt with in a different way due to the fact they're transgender or gender non-conforming. Students have the right to be dealt with with admire and now no longer stressed or bullied due to the fact they're transgender. Educational establishments have a

obligation to save you and treatment illegal sexual harassment, together with harassment on the premise of gender identification. Schools are required to have complaint processes through which college students can whinge of alleged +ex discrimination, together with transgender harassment. Such harassment ought to be reported, investigated, and remedied. Students have the right to same instructional possibilities together with the right to apply locker rooms and restrooms which can be regular with a student's gender identification, and to take part similarly in athletic or extracurricular sports and different faculty events. Students do now no longer ought to offer clinical documentation of a gender transition to have get admission to such centers and programs

Students have the right to transition at educational institute, this means that that scholars have the right to explicit their transitioned gender. Students have the right to be referred to as with the aid of using their favored names and pronouns. Students have the right to get dressed in line with their gender identification as long as they comply with suitable get dressed guidelines that observe to all college students. Students have the right now no longer to be pressured to offer private and clinical statistics to highschool officers, and faculty officers have to now no longer expose private statistics approximately a transgender student, together with statistics approximately the student's sex assigned at birth, clinical history, gender identification, or gender transition with out the student's consent.

### **Education And Discrimination**

Transgender people have suffered from discrimination for ages in the matters of housing, health, education and employment. The discrimination suffered by them emanates from the social stigma and isolation that they suffer from lack of resource which were provided for Transgender people. To safeguard the rights of transgender people and to protect them from the discrimination, The Transgender

<sup>18</sup> Supra 4

<sup>19</sup> Supra 4

<sup>20</sup> Supra 5

<sup>21</sup> Supra 6

<sup>22</sup> Supra 15

<sup>23</sup> Supra 16

<sup>24</sup> Supra 7

Person (Protection of Rights) Act, 2019 includes the prohibition against discrimination which most importantly includes important sectors like employment, education and health care sectors.

The education of transgender person is equally important like other male or female gender but the social stigma that transgender person faces breaks their interest and focus towards their learning and they develop a feeling of being avoided, ignored and disgraced and the transgender students are often denied to be admitted in educational institution as the educational institution does not recognize their gender identities. To protect their right, The Transgender Person (Protection of Rights) Act, 2019 provides that the educational institution that are funded or recognized by government shall provide education, recreational facilities and sports for transgender person without discrimination.

#### Recent Developments

Inclusion of transgender children in the disadvantaged group comes on the heels of Delhi University's decision to acknowledge transgender students by introducing a third gender category in its application form.<sup>25</sup> With the inclusion, transgender children will now be eligible for 25 per cent reservation under the economically weaker section (EWS) and disadvantaged students for admission into city schools.<sup>26</sup>

Kinnar Vidyalaya, a school operated by the nonprofit organization Shri Mahashakti Charitable Trust, the central state of Maharashtra. The campus is located in Palghar,

a town of nearly 70,000 people located 70 miles away from Mumbai, Maharashtra's largest city.<sup>27</sup>

"In exercise of the powers conferred by Clause D of Section 2 of the Right of Children to Free and Compulsory Education Act 2009 (35 of 2009) (RTE Act), the Lt-Governor of Delhi is pleased to notify inclusion of a 'transgender' child within the meaning of 'child belonging to disadvantaged group' as defined in the said section of the RTE Act applicable to all schools situated within the National Capital Territory of Delhi," the notification issued by the Directorate of Education (DoE) reads.<sup>28</sup>

In February 2019, the Maharashtra government set up a "Transgender Welfare Board" to conduct health programs and provide formal education and employment opportunities to transgender people. The board provides skill development programs to help transgender people find a job and free accommodation for those seeking scholarships. A similar board was also set up in the neighboring state of Gujarat that same month. The Gujarat board provides various welfare programs for employment and education and coordinates with state departments to ensure that the transgender community can take advantage of government schemes. An educational campaign was also established to sensitize the public

#### The Transgender Persons (Protection Of Rights) Act, 2019 - Chapter VI

Sections 13<sup>29</sup>, 14<sup>30</sup>, 15<sup>31</sup> talks about Education, Social Security and Health of Transgender Persons. There should be provisions for

<sup>25</sup><https://indianexpress.com/article/cities/delhi/reserved-seats-for-transgender-children-in-schools/>  
<sup>26</sup> jd

<sup>27</sup><https://www.them.us/story/india-opens-groundbreaking-school-provsupraes-free-education-transgender-people>

<sup>28</sup> Sharma Shikha, The Indian Express, New Delhi, October 14, 2014 1:28:14 am

<sup>29</sup> 13. Obligation of educational institutions to provide inclusive education to transgender persons.—Every educational institution funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities to

transgender persons without discrimination on an equal basis with others.

<sup>30</sup> 14. Vocational training and self-employment.—The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

<sup>31</sup> 15. Healthcare facilities.—The appropriate Government shall take the following measures in relation to transgender persons, namely:— (a) to set up separate human immunodeficiency virus Sero-surveillance Centres to conduct serosurveillance for such persons in accordance with the guidelines issued by the National AIDS

inclusive education for transgender persons in every educational institution and welfare schemes to support their livelihood through vocational training and self-employment by the appropriate governments. " Healthcare facility measures including separate HIV sero-surveillance centres, medical care facilities and medical expense coverage for sex reassignment surgery, hormonal therapy, laser therapy or any other health issues of transgender persons are to be taken by the appropriate Government

### Cases - Education of 3<sup>rd</sup> gender

Although the exact number of trans women attending women's colleges nationwide is unknown, responses to the revised admissions policies have garnered mixed reactions over the past four years. Mills College, the first women's college to welcome trans students, reports approximately 8% of over 700 undergraduate students to identify as transgender. Despite the low visibility of trans women at women's colleges, these institutions continue to face backlash and criticism, specifically from alumnae, who often believe the policies disregard and veer away from the core mission and purpose of women's colleges. Although the majority of alumnae, current students and the institutions themselves agree women's colleges were created to educate and empower women, the discrepancies in defining and labeling womanhood fuel the differences in opinions and the revised policies themselves. Furthermore, with the introduction and adoption of trans-inclusive admissions policies on these campuses, additional challenges include the day-to-day implementation of the policy, such as adequately providing academic and residential resources for trans students

---

Control Organisation in this behalf; (b) to provide for medical care facility including sex reassignment surgery and hormonal therapy; (c) before and after sex reassignment surgery and hormonal therapy counselling; (d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines; (e) review of medical curriculum and research for doctors to address their specific health issues; (f) to facilitate access to transgender persons in hospitals and other healthcare institutions and centres; (g) provision for coverage

while ensuring a welcoming and inclusive collegiate environment. Trans students even face the possibility of potential physical harassment and other forms of discrimination on traditional college campuses.

### Conclusion

Each being on this Universe is certainly unique, and an vital a part of Nature. It might hence be incorrect to choose and discriminate individuals who can be exclusive from the stereotype, which once more is man-made. It is time that India realised that each character on this country has identical rights and privileges, and comply with the coverage of "live and let live." Thus the primary and the most right transgender are deserving of is the Right to Equality under Article 14<sup>32</sup>. Article 15<sup>33</sup> speaks approximately the prohibition of discrimination at the floor of religion, caste, sex or area of birth. Article 21<sup>34</sup>, guarantees right to privacy and private dignity to all of the residents and article 21 (A)<sup>35</sup> guarantees schooling is a essential right to each Indian.

By seeing the growing number of cases related to the demand of transgender to be admitted in school and colleges. colleges are changing their policies and granting them their fundamental right which is right to a dignified life and the right to education. Our present social and schooling structures aren't in shape to teach transgender youngsters because of loss of tremendous mind-set and their social acceptance. Without sensitization of instructors and community, changes in content material and pedagogic place and without converting the getting to know surroundings and mind-set of schools/ colleges/ or every other corporations they couldn't be included. adequate getting to

of medical expenses by a comprehensive insurance scheme for Sex Reassignment Surgery, hormonal therapy, laser therapy or any other health issues of transgender persons.

<sup>32</sup> Supra 4

<sup>33</sup> Supra 5

<sup>34</sup> Supra 7

<sup>35</sup> 21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.]

know surroundings for transgender youngsters's schooling need to be assured, instructors also are to be sensitized to cope with elegance which has transgender youngsters, except content material and pedagogic primarily based totally amendment need to be changed to position transgender youngsters in normal schooling system

Providing reservations in public education and employment as socially and educationally backward class of citizens. Every transgender has right to know about their rights to education and job. It's the role of the government to bring the norms and opportunities to the public by adopting various ways. It will be more useful if the educational institutions conduct periodical programmes- if possible by the transgender –to make the students and the teachers to understand about the third gender. Media both electronic and print must highlight the educational status of the transgender persons and bring them in the forefront rather than portraying them in poor light. States and Central governments should plan social welfare schemes for third gender community and run a public awareness campaign to erase social stigma.