

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

Constitutional Provisions

Regarding Transgender In India

Authored By - Pratibha Rai

Introduction

Scholar Locke define freedom as , “Man is born with a title to perfect freedom and uncontrolled enjoyment of all the rights and privileges of the law of nature and he has by nature a power to preserve his property- that is, his life, liberty, and estate against the injuries and attempts of other men.”¹

Human rights have been inalienable for the growth of human beings since the time of natural law. The natural law school philosophers have given importance upon the safeguard of these natural rights. Every human being is born with these rights and has the privilege of enjoying these rights. By birth these rights belong to every human being. The State must protect and safeguard these rights. It is the responsibility of the state to ensure that every person get these protections. The human right can be divided into two category:

- Civil and political rights
- Social and economical rights

Part III of the Indian constitution guarantees these rights in the form of fundamental rights and part IV of the constitution guarantees directive principles of state policies. The requirement for guaranteeing these rights to ensure basic freedom to every individual. Moreover, by putting them in our Constitution, the legislature has taken it from the control of political parties. It was necessary to incorporate them in the Constitution so that they may not be violated, interfered or tempered by the State For their agendas. Many countries constitution have these rights in constitution including India also. Being part of the Constitution, they can be deprived only after reasonable due process of constitutional amendments other than legislature amendment .the fundamental rights serve two agendas : First, this is being justiciable right aggrieved person can approach the court of law under article 32 and 226 for the remedy against the State. Second, it limits the government to implement such laws which are violative of these rights.

¹ M.P. Jain, Indian Constitutional Law 846 (LexisNexis, Gurgaon, 7th ed., 2016)

The Incorporation of human rights in Indian Constitution is due to international treaties relating to human rights i.e the Universal Declaration of Human Rights and its other covenants like the International Covenant of Economic, Social and Cultural Rights and the International Covenant on Civil & Political Rights². These rights are required for overall development of the human personality of an individual.

Constitutional provisions

Some salient's feature of Indian constitution-

1. The Constitution of India consists of 395 Articles with 22 Parts and 9 Schedules. After the Constitution 78th Amendment Act, 1995, the Constitution now consists of 443 Articles divided into 26 Parts and 12 Schedules.
2. Fundamental Rights under part III are guaranteed to the citizens under the Constitution of India. There are basically seven Fundamental Rights but removal of the Right to Property from the list of Fundamental Rights during the 44th Amendment Act 1979 there are only six fundamental rights left.
3. The Directive principle of state policy and fundamental rights are also mentioned in the Constitution of India. The part IV which is directive principle of state policy include live, equal wage for both men and women, free and necessary education, right to work, support to old age, unemployment, illness and, the organization of village Panchayat's, distribution of means so as to serve the common good, special care to the economically underprivileged groups in the country.³
4. The adult suffrage given by the Constitution of India gives each individual above 18 years the right to vote for a representative in the legislature. This enhances Indian democracy, keeping in mind that India has one of the largest democracies in the world.

² Anant Kalse, "Human Rights in Constitution of India", retrieve from <http://mls.org.in/books/H2537%20Human%20Rights%20in.pdf>

³ Arts 36-51 , part IV , of directive principle of state policies, the indian constitution

5. Indian state is classified as democratic, social, republic, secular. India is a secular state which means it will not interfere in religious matters. Article 25 to 28 of the Constitution guarantees every person the freedom of conscience and the right to profess, practice and propagate religion.⁴

6. In India there is a parliamentary form of government. There is both the central government and the state governments. The President is the Constitutional Head of the State; but, the real executive power is vested in the prime minister who heads the council of ministers. The Council of Ministers is collectively responsible to the Lok Sabha, the lower house. The members of the Lower House are elected directly by the people by adult suffrage usually for the period of five years. "The Upper House of the Parliament is the Council of States. The representatives of States are elected among members of the State Legislative Assemblies by means of single transferable vote.

7. The judiciary under the constitution is regarded as guardian of the constitution, there is a well developed system of court to ensure justice. The court put checks on the executive, administrative, judicial and quasi-judicial. It is entrusted to protect fundamental rights, and by means of this provision it is regarded as custodian of citizens. There are laws in the constitution which provide judiciary independence. The Supreme Court and the High Courts are expected to discharge their functions impartially.

The provisions in the constitution which mention for safeguard of transgender people are:

Article 14

Article 14 states that; "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."⁵ Article 14 of the Constitution, ensures equal protection of law which apply state responsibility to provide these rights. state shall make economic changes by keeping in mind these rights, the transgender people also come under the

⁴ Art 25-28 of Indian constitution

⁵ Art 14 of Indian constitution

Purview of Art 14. Article 14 provide 'person' which also include transgender community.

The transgender which do not belong to in any category of male and female shall have right to access equality and option of sex orientation. The ignorance of these rights would be responsible for the discrimination of third gender people in the society. The ignorance of equality of transgender in access to justice, education, employment and health service will lead to violation of this rights.

In *Maneka Gandhi v. Union of India*,⁶ Bhagwati, J., again quoted with approval the new concept of equality propounded by him in the *E.P. Royappa* case. He said :

“...Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence.”

Transgender are active victim of sexual assault; They are forced to have sex oral or anal. Discrimination as main problem faced by them by society including employment, education, health facility etc. there is also problem relating to access of toilet because there are not separate toilet for them they usually use male toilet. Thus, discrimination based on sexual preferences or gender identity is violative of Article 14. The Hon'ble Supreme Court, in *Legal Service Authority* decision mention⁷

“We are a country governed by the rule of law. Our Constitution confers certain rights on every human being and certain other rights only on citizens. Every person is entitled to equality before the law and equal protection of the laws.”

⁶ AIR 1978 SC 597

⁷ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438

Article 15 Prohibition Against Discrimination

Article 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."⁸

"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."⁹

The law never include transgender in sex the Indian penal code in definition of gender include male or female due to the recent change in law and the emerging bills. The constitution should not discriminate on basis of sex which shall also include transgender community in it.

Article 15 states that the state shall not discriminate any citizen on the basis of religion, race, caste, sex, place of birth. As sex is not clearly define under art 15. It is presumed that Article 15 people fall into the main categories of i.e male and female. It is the concept and nature of gender identity and sexual orientation. A person's sex is usually assigned or defined at birth. But certain people are born with identity, including male and female. In many cases, even genital anatomy is hard to tell if the individual is a girl or a boy. Also, in such cases, the feeling of person about themselves is not as per with the sex assigned to them at birth. The gender identity of a person is require for confidence as a male or female, the transgender is left to feel left out.

The Hon'ble Supreme Court has defined the term 'class' in Periakaruppan v. State of Tamil Nadu¹⁰,

"Who are sufficient in number so that they may be grouped in the single homogenous community". The transgender are that class of citizens, who are both socially and educationally backward, as given under Article 15(4). Hence, they are also entitled to enjoy protective discrimination.

⁸ Art 15(1) of Indian constitution

⁹ Art 15(2) of Indian constitution

• AIR 1971 SC 2303.

Article 16 Equality Of Opportunity

Article 16 says that

(1) "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."¹¹

(2) "No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."¹² according to article 16 the state shall discriminate on the basis of sex in the matter of employment.

As mentioned earlier that transgender are a group in the socially and educationally backward class. They still live under the pressure they used to live in the British era? The reservation policies have yet not extended to transgender people despite of being recognized as socially and educationally backward class. Transgender are denied benefit under section 16(2). The third gender has never had the benefit of 15(4). It will take a great amount of time to cure the defect regarding the provision. The state will have to work effectively to benefit from all the provisions of art 14, 15, 16. If the state employment is open to third gender it will help them to live with dignity and equal status as other citizens of the state. Article 16 along with art 15 make ensure that state shall not discriminate in employment on the basis of sex, place of birth, gender.

In *Peoples Union for Democratic Rights v. Union of India*¹³, the Hon'ble Supreme Court has held that when any fundamental right is violated by a private individual, it is a constitutional duty of the State to take necessary action to prevent such violation and to further ensure due regard for fundamental right by a private individual who was violating the same.¹⁴

Every individual is not equal by its nature; there must be no discrimination on person basis of such differentiation. The state must actively work ensure that no discrimination done to the transgender because having distinct identity.

¹¹ Art 16(1) of Indian constitution

¹² Art 16(2) of Indian constitution

¹³ AIR 1982 SC 1473

¹⁴ Narendra Kumar, Constitutional Law of India 157 (Allahabad Law Agency, Faridabad, 7th ed., 2008).

Art 19 Right To Freedom

Article 19 says that "(1) All citizens shall have the right

- (a) To freedom of speech and expression;
- (b) To assemble peaceably and without arms;
- (c) To form associations or unions;
- (d) To move freely throughout the territory of India;
- (e) To reside and settle in any part of the territory of India:
 - (g) To practice any profession. Or to carry on any occupation, trade or business.¹⁵Article 19 (1) (a) of the constitution says that every citizen shall have right to speech and expression.

The Hon'ble Supreme Court in *Dinesh Trivedi MP & others v. Union of India*,¹⁶ while examining the importance of freedom has observed, "Democracy requires openness and openness is parallel to free society and sunlight is the best disinfectant"¹⁷.

Article 19(1) gives to the citizens some necessary and most cherished freedoms which are very important for the overall development of personality and maintaining a democratic setup. Article 19(1) (a) mentions the right to express one's opinion or sentiments which also includes the right to express one's gender identity i.e. self-identified gender. It can be expressed through dressings, behavior, action, words or in other manner. Keeping in mind the provisions of Article 19(2), no restriction can be put on a person's look or his choice and way of dressing. So, third gender people can express his personality through behavior and appearance. The State cannot interfere or prohibit such expression which forms the basis of their identity. Due to unawareness or lack of knowledge of State and society usually find it difficult to accept the character of transgender personality. But it takes an hour for their primary identity to be protected and guaranteed by the State. Apart from this, transgender, being citizens, should be entitled to the enjoyment of other freedoms also like the formation of an association, right to assembly or to move freely. But it is unfortunate that reality is different, transgender does not enjoy these rights and are subject to harassment, abused and embarrassed.

¹⁵ Art 19(1) of Indian constitution

¹⁶ (1997) 4 SCC 306

¹⁷ M.P. Jain, Indian Constitutional Law 1024 (Lexis Nexis, Gurgaon, 7th ed., 2016).

Art 21 Right To Life and Personal Liberty

Article 21 is one of the important human rights. Any act or action which endangers human life needs necessary action. The motive of Article 21 is to prevent state encroaching into the sphere of personal liberty. It is a backbone of all human rights. The State must make available such an environment to its citizens where every member of various faiths can live together. Article 21, it talks of two important rights (i.e.) life and personal liberty. Importance to these rights has been mentioned by the judiciary also. Right to life and personal liberty are two wide terms which include within its various rights. These rights enjoy superintendence over all other political and social order. However, the State gives these rights superiority over other attributes of daily life.

Article 21 says that "No person shall be deprived of his life or personal liberty except according to the procedure established by law."¹⁸ Everybody has the right to life, freedom and security. The right to life is the most important key of all rights. Every other right is supported to the life and relies upon the presence of life itself for its operation. The right is beyond just being alive, but also having a dignified life. A right of life found in **Bandhua Mukti Morcha v. Union of India** Portraying Article 21 as the core of major rights, the Court gave it an extended understanding.¹⁹

Article 21 ensures human life, and independence. One's entitlement to security, and so being human is perceived to be a basic piece of the privilege to live and collect all people because of being people in **Menaka Gandhi v. Union of India** the Supreme Court held that the expression of personal liberty in Article 21 has extensive scope and it covers various other rights.²⁰

¹⁸ Art 21 of Indian Constitution

¹⁹ 1997 10 SCC 549 para no. 15

²⁰ 1978 AIR 597, 1978 SCR (2) 621

▪ Right to Life

The expression 'Life' in Article 21 is broadly interpreted by the Supreme Court from time to time. The term 'life' is more than mere animal existence but also includes quality of life. The right confirms a reasonable level of comfort and dignity. Without having any doubt, it means the right to live a dignified life as a member of civilized society. The right to life also comprises the right to protection of everything that gives meaning to life. Transgender must then be awarded protection to embrace their self-identity so that they can also live and in peace. They can also live with dignity. They are also eligible to enjoy these rights in the initial stage and rather by disagreeing with their gender identity, they cannot live with peace.

In Sunil Batra v. Delhi Administration,²¹ the Hon'ble Supreme Court has observed that "Right to life includes right to live a healthy life as to enjoy all faculties of the human body in their prime conditions

▪ Right To Privacy

In simple language privacy means "right to be alone"²². Right to privacy is part of the basic right of life and liberty. No person can interfere within private affairs of others and in private relationships. The relation can be the outcome of contract marriage, commerce or politics. But the right is not absolute. It can be curtailed for the prevention of crime, disorder or medical safety. The society which gives its members to choose the way they want to live a life must also respect the privacy of its members. It not only includes isolation and evasion from the public sphere but also limits interference from the State. Our Constitution expressly does not grant any right to privacy. It did not come under a fundamental right but it is the result of judicial interpretation along with directive principles of state policy. For the first time in 1963 in the case of **Kharak Singh v. State of UP**²³, a question was raised regarding impliedly including the right to privacy in Article 21 and Article 19(1) (d) & (e). The judge at that time answered it in negative stating that our Constitution does not confer any such guarantee.²⁴ the transgender are eligible to these rights.

²¹ AIR 1978 SC 1675

²² Dudgeon v. United Kingdom, [1981] 4 EHRR 149.

²³ 1963 AIR 1295.

²⁴ M.P. Jain, Indian Constitutional Law 1125 (Lexis Nexis, Gurgaon, 7th ed., 2016)

▪ Right to Personal Liberty

The word 'personal liberty' has also been liberally interpreted. It is not limited to protection of the body from unlawful detention, arrest, confinement but extends to include all the rights that make up personal liberty of a man other than those covered under different provisions of Article 19(1).²⁵

Finally, in **Maneka Gandhi v. Union of India**²⁶ The Supreme Court has not only overruled Gopalan's case but has widened the scope of the words 'personal liberty' considerably. Bhagwati, J. (as he then was) observed:

"The expression 'personal liberty' in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19."²⁷

The Court said that the provision relating to fundamental rights should be interpreted widely; Bhagwati, J., said:

"The attempt of the Court should be to expand the reach and ambit of the Fundamental Rights rather than to attenuate their meaning and content by a process of judicial construction".²⁸

It is evident from the foregoing provisions that our constitutional guarantee equality and freedom and it does not exclude transgender from its ambit but Indian law only identify the binary gender of male and female based upon birth sex. The non recognition is violative of art 21.

Art 21A Right To Education

Education always plays an important role in shaping the personality of an individual which would ultimately help in shaping the future of the Nation. Education is a basic and most important human right which is very necessary for the enjoyment of all other human rights. It is a powerful tool in the hands of economically and socially backward classes to raise themselves out of poverty

²⁵ M.P. Jain, Indian Constitutional Law 1125 (LexisNexis, Gurgaon, 7th ed., 2016).

²⁶ AIR 1978 SC 597

²⁷ J.N. Pandey, Indian constitution law, CLA 49th ed,2012.

²⁸ J.N. Pandey, Indian constitution law, CLA 49th ed,2012.

And lead them to fully participate as citizens. When the Indian Constitution was formed, the provision relating to education was mentioned under Article 45 in Part IV of Directive principles of state policy. It was a directive for the State to provide free and compulsory education up to the age of fourteen years. As the directive principles provided by Article 37 are non-justiciable so it cannot be enforced by the court. Due to the failure on the part of legislature and executive in effectively implementing this mandate, the Supreme Court in 1990, when two PIL's (**Mohini Jain v. State of Karnataka**²⁹ and **Unni Krishnan J.P v. State of Andhra Pradesh**³⁰) were filed before it for the constitutional status of the right to education. The Hon'ble Supreme Court while expressing its view over the failure to provide Article 45 has observed that the right to education comes from Article 21 (right to life and personal liberty). The court further expressed that the rights mentioned under directive principles of state policy are significant not only in the governance of the State but necessary even in the interpretation of fundamental rights. The eighty-sixth amendment in the year 2002 inserted Article 21A³¹ in Part III thereby making the right to education a fundamental right. To have implementation and enforcement of this right "The Right to Education Act, 2009" has been enacted by the government which was recently amended in 2019. This legislation has proved effective in enforcing the fundamental right to education.

Right to education, being fundamental right, ensures that education is a privilege to be enjoyed by all irrespective of one's caste, sex, religion etc. But the transgender community has failed to enjoy this right. As their identity was not legally recognized and due to bad attitude of the society, they could not join educational institutions due to discrimination, torture etc. The transgender community, being discriminated, cannot exercise this basic right as other citizens in Indian society due to their sexuality. The latest "National Education Policy, 2020", provisions have been made to include education, scholarships, hostel facility etc., for the transgender students till higher education.

²⁹AIR 1992 SC 1858.

³⁰AIR 1993 SC 2178.

³¹ "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." "who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

Art 23 Right Against Exploitation

According to Article 23 "Human being trafficking, begging and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law."³² Article 23 forbids human trafficking of individuals for purpose of beggary and other types of forced labour and any violation of these rights might be an offense as per law. The Constitution provides the rights to ensures that no discrimination on the grounds of sex, faith or religion. The Constitution likewise ensures political rights and other benefits to each native. Yet, the third group keeps on being discriminated against.

Article 14 and 15 of the Indian Constitution, the transgender person in India does not have equal right and protection accordingly, before the law. These have resulted in extreme discrimination in all aspect of life. This is described in Article 16, 19, and 21 above, as they are not given equal opportunity and freedom of speech and expression and right to life and liberty respectively, the other country UK, USA. And in Canada these rights are given to third gender people. The same thing applies to Article 23 mention human trafficking, begging and other forced labour.

The Hon'ble Supreme Court in Peoples Union for Democratic Rights v. Union of India³³ has interpreted the term 'force' to include not only physical or legal force but also the economic force that forces an individual to provide his services even at a nominal amount of remuneration. To enforce this right, many legislations have been made such as Minimum Wages Act, Equal Remuneration Act, 1976, Immoral Trafficking (Prevention) Act, 1956, etc. The third gender are forced to involve in prostitution and are even sexually abused at public places in every day of life. The transgender right against exploitation is violated every day. Section 18(a) of the recent legislation "The Transgender Persons (Protection of Rights), Act 2019" imposes a penalty in case of forced or bonded labour on transgender person but with an exception of compulsory service for public purposes.

³²Art 23 of the Indian constitution .

³³ AIR 1982 SC 1943.

Directive Principle Of State Policy

Because of the socio-economic status of pre-independent India, the founding fathers of the Constitution have supported the claim that political democracy would be a waste without economic democracy. Accordingly, the provisions were embodied in Part IV of the Constitution in the form of Directive Principles of State Policy to provide the socio-economic status of the people. These principles support the concept of a welfare State by giving a certain socio-economic agenda which every government seeks to accomplish. It imposes an obligation upon the government to act towards these directions in a proper manner to promote the welfare of large groups of people and ultimately attain economic democracy. The directive principles are different from fundamental rights which have a negative obligation on part of the State to prohibit from committing any unlawful action against an individual. Fundamental rights have to provide equitable society while ensuring liberty for all. The directive principles, on the other hand, have to establish a welfare State. Both these principles are the basis of the constitutional framework. The Preamble, Fundamental rights and Directive principles of state policy are the trilogy of Indian Constitution. Studying the relationship between fundamental rights and directive principles of state policy, the Hon'ble Supreme Court in **I.R Coelho v. State of Tamil Nadu**³⁴.

“By enacting the fundamental rights and directive principles which are negative and positive obligations of the States, the Constituent Assembly made it the responsibility of the government to adopt a middle path between public good and individual liberty. Fundamental rights and directive principles have to be balanced. That balance can be tilted in favor of the public good. The balance, however, cannot be overturned by completely overriding individual liberty. This balance is an essential feature of the Constitution.”

The directive principles of state policy are the obligations on the part of the State. Different types of directives laid under Article 37 to 51 of the Indian Constitution. Article 39 obligates the State to make such policies which provide equal access to adequate means of livelihood irrespective of one's sex.³⁵ the, policies should aim to provide equal pay for equal work done by an individual

³⁴ AIR 2007 SC 861

³⁵ “Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing”

Irrespective of one's sex.³⁶ The provisions mention equality in employment opportunities and wages. It even seeks to establish equality between the dual genders of society neglecting the third gender of the society. In order to ensure that no citizen shall be denied an opportunity for justice due to any cause; a provision has been made under Article 39A.

Conclusion

Our Constitution, having supreme law, can be elaborated keeping in view the dynamic nature of society. The main motive of constitutional democracy is to progressively and bring change in society. Our Constitution is transformative in the sense that the provisions need not be given strict interpretation; rather it must be interpreted by having real intent and purpose besides the present requirements of society. It must not only recognize the right and dignity of an individual but also have a conducive environment for the overall development of personality. The constitutional protection of the right to life includes the right to live with dignity. To protect dignity requires that the State must acknowledge the importance of every individual as a member of society. The framers of the Constitution while drafting the constitution were influenced by the stereotypical conception of binary gender. It is very necessary to protect the dignity of an individual for peaceful coexistence in society. The violation of dignity can lead to a crucial drawback not only upon the harmony of an individual but on the society as a whole. This chapter answers the research question, "How far the transgender in India have provided rights at par with other genders? It is clear that due to lack of legal recognition of identity is cause of discrimination. They do not have any legal identification as they do not come in strict binary Norms. Equality enshrined under Article 14, 15, 16, 19 and 21 of the Indian Constitution, transgender are not treated at par with other citizens even after 75 years of independence. Neither are they expressly included nor are they expressly excluded under the phrase person or citizen in these Articles. These provisions are nothing but mere words for transgender.

³⁶ (a) that the citizens, men and women equally, have the right to an adequate means of livelihood." "The State shall, in particular, direct its policy towards ensuring that there is equal pay for equal work for both men and women."