

B.Ed SEM IV

Transgender people are people who have a gender identity or gender expression that differs from their assigned sex. The term **transgender** can also be distinguished from intersex, a term that describes people born with physical sex characteristics that do not fit typical binary notions of male or female bodies.

RIGHTS GRANTED UNDER INDIAN LAW TO TRANSGENDER

The rule of law is supreme and everyone is equal in the eyes of law in India. Yet, the transgender community is in a constant battle as they have to fight oppression, abuse and discrimination from every part of the society, whether it's their own family and friends or society at large. The life of transgender people is a daily battle as there is no acceptance anywhere and they are ostracized from the society and also ridiculed.

However, the Supreme Court of India in its pioneering judgment by the division bench of *Justices K.S. Radhakrishnan and A.K. Sikri* in *National Legal Services Authority v. Union of India & Ors.* [Writ Petition (Civil) No.400 of 2012(NALSA)] **recognized the third gender** along with the male and female. By recognizing diverse gender identities, the Court has busted the dual gender structure of 'man' and 'woman' which is recognized by 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 and 21 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. 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, 15, 16 and 21.

The Court also protects one's gender expression invoked by Article 19 (1) (a) 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) 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 certain directions for the protection of the rights of the transgender persons by including of a third category in documents like the election card, passport, driving license and ration card, and for admission in educational institutions, hospitals, amongst others.

Human rights are basic rights and freedoms which are guaranteed to a human by virtue of him being a human which can neither be created nor can be abrogated by any government. It includes the right to life, liberty, equality, dignity and freedom of thought and expression.