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CONSTITUTIONAL MORALITY AND TRANSGENDER STATUS: THE ROLE OF THE INDIAN JUDICIARY

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ABSTRACT

Constitutional morality is an essential principle of Indian constitutional jurisprudence which requires the State and its institutions to uphold the constitutional values such as liberty, equality, fraternity, dignity and justice. In India, the recognition and protection of transgender persons have developed significantly through judicial interpretation. Despite constitutional guarantees of equality and non-discrimination, transgender persons have historically experienced social exclusion, discrimination and denial of equal opportunities in different areas of life. The Supreme Court of India has played an important role in addressing these inequalities through affirmative judicial pronouncements. The Apex court has recognised gender identity, personal autonomy, privacy and dignity as essential constitutional values. The enactment of the Transgender Persons (Protection of Rights) Act, 2019 further provided a statutory framework for protecting transgender persons. The status of Transgender people in society requires social recognition and constitutional protection for their upliftment. It is very required that constitutional morality must operate not merely as a principle of judicial interpretation but also as a foundation for substantive equality and inclusive governance.

INTRODUCTION

The principles of justice, liberty, equality and brotherhood form the foundation of the Indian Constitution. These principles serve as the cornerstone of constitutional democracy and mandate that the state uphold each person's rights and dignity without exception. However, discrimination against those whose gender identification does not fit into traditional male and female classifications has long existed in Indian society. People who identify as transgender have experienced exclusion from public institutions such as healthcare, education, employment and social life. Due to their social marginalization, they have often been denied equal participation in society and basic human rights. The recognition of these rights has been revolutionized by the Indian judiciary. The Judiciary has determined through constitutional interpretation that gender identification is intimately related to personal liberty, autonomy and dignity. Constitutional morality becomes especially important in this situation. Constitutional values must triumph over discriminatory practices, stereotypes and social prejudices. The Indian judiciary has recognized and upheld transgender rights by applying constitutional morality in number of judgements.

Constitutional Morality

Constitutional morality is the observance of the core ideals, principles and true spirit of the Constitution. The principles upon which the constitutional system is based must be respected by people, public authorities and constitutional institutions. This view is not limited to the literal interpretation of constitutional provisions. Individual liberty, equality, fraternity, dignity and the rule of law are among the constitutional goals that must be upheld. The significance of constitutional morality in upholding constitutional government was emphasized by Dr. B.R. Ambedkar. He believed that its development was crucial to the effective operation of constitutional institutions. Constitutional morality is especially crucial for safeguarding marginalized people in India. The Supreme Court addressed constitutional morality as a crucial constitutional issue connected to democratic governance, constitutional values and institutional responsibility in case of Government of NCT of Delhi v. Union of India. Similar to this, the Supreme Court emphasized in Navtej Singh Johar v. Union of India that when individual rights and dignity are at risk, constitutional morality must take precedence over majoritarian social morality. As a result, constitutional morality offers a crucial framework for interpreting transgender rights and guaranteeing that everyone is equally protected by the constitution.

Constitutional Framework

The Indian Constitution contains several provisions that form the foundation of transgender rights. Everyone is guaranteed equal protection under the law and equality before the law under Article 14. The term 'person' is not limited to people who are either male or female. The Supreme Court acknowledged that transgender people are entitled to equal protection under Article 14 in NALSA v. Union of India. Further, Prohibition of discrimination on the basis of religion, ethnicity, caste, sex, or place of birth is forbidden by Article 15. In the same case, the Supreme Court construed the term 'sex' to encompass gender identity and as a result, discrimination against transgender people is prohibited by the constitution. As per Art. 16 which provide equal opportunity to public employment is available to transgender people who cannot be barred from public work. Freedom of speech and expression is safeguarded by Article 19(1)(a). A significant component of personal identity is gender expression through attire, appearance, behaviour and self-presentation. Transgender people are shielded from unwarranted interference with their identity by this provision's respect of gender expression.

The right to life and individual freedom are guaranteed under Article 21. This clause has been interpreted by Judiciary to encompass individual identity, autonomy, privacy and dignity.

Article 21 offers transgender people a crucial constitutional basis for their freedom to live in accordance with their gender identity without needless interference. Therefore, the legal foundation for transgender rights in India is established by these constitutional clauses taken together.

Contribution of the Judiciary

National Legal Services Authority v. Union of India (2014)

A significant advancement in Indian constitutional law is represented by the ruling in National Legal Services Authority v. Union of India. The legal acceptance of transgender people and their freedom to choose their own gender identification were the main issues in this case. The Court decided that gender identity is a crucial component of an individual's personality and dignity and acknowledged transgender people as a third gender. Additionally, the Supreme Court ruled that under Articles 14, 15, 16, 19 and 21, transgender people are entitled to fundamental rights. Significantly, the Court recognized the freedom to self-identify one's gender and ordered the governments to take the necessary steps in the areas of social assistance, healthcare, education and reserves for transgender people. The ruling showed that traditional gender categories cannot limit constitutional rights.

Union of India v. Justice K.S. Puttaswamy (2017)
A nine-judge Constitution Bench of Supreme Court acknowledged privacy as a fundamental constitutional right in Justice K.S. Puttaswamy v. Union of India. The Court established a tight relationship between privacy and individual freedom, autonomy and dignity. It is relevant to transgender rights because it acknowledges that choices about identity, personal life and bodily autonomy are protected facets of individual liberty. This judgment further strengthened the constitutional basis for providing protection to transgender people from unnecessary interference in their personal life and self-respect.

Navtej Singh Johar v. Union of India (2018)
Section 377 of Indian Penal Code was overturned by the Supreme Court in the Navtej Singh Johar v. Union of India. The Court emphasized the significance of equality, personal autonomy, individual dignity and constitutional morality. The ruling's constitutional reasoning is pertinent to transgender rights even though it mainly addressed sexual orientation because it acknowledges that the State cannot discriminate against people just because their identities or relationships deviate from accepted social norms. The judgment strengthened the constitutional protection of LGBTQ persons and reaffirmed the importance of individual liberty over discriminatory social morality.

Arunkumar v. Inspector General of Registration (2019)
In Arunkumar v. Inspector General of Registration (2019), the Madras High Court examined whether the Hindu Marriage Act of 1955 recognized a transgender woman as a bride. The Court acknowledged that for the purposes of the relevant marriage statute, a transgender woman is entitled to be recognized as a woman. The ruling emphasized the connection between family rights, dignity and gender identification.

Supriyo v. Union of India (2023)
The Supreme Court examined applications requesting legal recognition of same-sex marriage in Supriyo v. Union of India. The Court declined to use judicial interpretation to establish a comprehensive framework for same-sex marriage. Nonetheless, it acknowledged that, subject to the relevant circumstances, transgender people in heterosexual relationships may get married under the current statutory marriage legislation.

Jane Kaushik v. Union of India (2025)
A significant recent advancement in transgender rights law is the Supreme Court's judgement in Jane Kaushik v. Union of India. Due to her gender identification, the petitioner who was qualified teacher and transgender woman was subjected to prejudice in private schools. The Transgender Persons (Protection of Rights) Act, 2019's efficacy and the authority's inability to carry out its protective provisions were scrutinized by the Supreme Court. The Court emphasized the need for both State and non-State institutions to avoid discrimination as well as substantive equality and reasonable accommodations. Additionally, it acknowledged the idea of 'omissive discrimination' which holds that discrimination may result from a state's inaction or failure to enact legal safeguards. The Court issued directives pertaining to equal-opportunity policies, welfare boards, transgender protection cells and grievance-redressal procedures. This shows that formal legal recognition alone is insufficient to uphold constitutional morality. It calls for doable steps to guaranty true equality and eliminate systemic obstacles.

Legislative Framework: Transgender Persons (Protection of Rights) Act, 2019
The Transgender Persons (Protection of Rights) Act, 2019 was passed by Parliament in response to the NALSA judgement and offering a legal framework for defending transgender people's rights. The Act aims to advance equality and stop prejudice in various spheres of social and economic life. Various provisions deal with discrimination against those who identify as transgender, it also acknowledges transgender people's right to be recognized as such. It describes the process for identification certificates. It also prohibit discrimination in employment. The Act also provide remedial measures for transgender people. It also mention the national council for transgender persons and state penalties for offences against such persons. However, appropriate enforcement, administrative accountability and public knowledge are necessary for effective implementation.

Recent Legislative Development
Significant amendments have been made to the statutory provisions by the Transgender Persons (Protection of Rights) Amendment Act, 2026 especially with regard to the definition of transgender persons and the procedure for obtaining legal recognition of gender identity.

Constitutional concerns of equality, self-identification, bodily autonomy and dignity have been brought up by the amendment. The Supreme Court has received petitions contesting the amendment in Laxmi Narayan Tripathi v. Union of India. Although notice was given, the Court initially refused to grant an interim stay. Therefore, it is still up to the judiciary to decide whether the contested elements are constitutional or not. The connection between constitutional morality and legislative authority is especially crucial in light of this evolution.

Constitutional Morality versus Social Morality
It is necessary to distinguish between constitutional morality and societal morality in order to defend transgender rights. In general, social morality is a reflection of the attitudes, habits, traditions and beliefs that are prevalent in society. Communities and historical eras may have different beliefs. Conversely, constitutional morality is based on the principles that the Constitution specifically recognizes. Social customs cannot take precedence over fundamental rights in a democratic society. Constitutional institutions have an obligation to defend equality and individual liberty when prevailing social attitudes lead to discrimination against vulnerable groups. This distinction has been emphasized by the judiciary on numerous occasions. Therefore, an inclusive constitutional system where everyone has the right to equality and dignity is based on constitutional morality.

Critical Assessment of the Role of the Indian Judiciary
The constitutional recognition of transgender people has been greatly aided by the Indian judiciary. But its function must also be evaluated in terms of real-world results, institutional constraints and ongoing difficulties.

By acknowledging gender identity as a crucial component of an individual's personality, the NALSA ruling created a significant constitutional foundation. It disproved the notion that a strict male-female classification is the only way to define legal identity. The judiciary has created a fundamental conception of dignity that goes beyond physical existence through Articles 14 and 21. With the recognition of privacy, autonomy and gender expression, transgender people can now claim protection against arbitrary interference with their identity. Substantial equality has steadily replaced the judiciary's understanding of equality based only on equal treatment. The Jane Kaushik judgment is very important because it acknowledges that transgender people may need institutional support and appropriate arrangements to participate equally in society. The obligation of government agencies, employers and educational institutions to stop discriminatory practices has also been brought to light by judicial action. There are still a number of issues in spite of progressive court rulings.

First, prejudice and social stigma are not always eradicated

by judicial acknowledgment. Second, executive authorities and administrative institutions have a major role in carrying out judicial directives. Third, transgender people are still impacted by the lack of sufficient job prospects, educational resources and medical facilities. Fourth, new problems about the extent of gender identity that is protected by the constitution may arise as a result of legislative changes and administrative obligations. Therefore, real social involvement, administrative accountability and legislative reform are necessary to sustain judicial activism.

Challenges & Suggestions

Despite legal and constitutional protections, transgender people nonetheless encounter a number of real-world challenges that include social exclusion, educational discrimination, employment inequality, healthcare challenges, Legal recognition, Lack of awareness and weak enforcement of protective measures in society. All these challenges are still prevailing in the society which make feel the transgender people that they are different from others.

The following actions are recommended in order to bolster constitutional protection and guaranty the efficient implementation of constitutional morality. Government officials ought to carry out the directives given in Jane Kaushik and NALSA in their entirety. Schools should implement anti-discrimination guidelines and offer secure classrooms. It is important to create inclusive recruitment strategies and appropriate affirmative-action measures. Accessible, reasonably priced and non discriminatory healthcare facilities must to be made available. Transgender protection systems and complaint officers should be operational and easily available. To inform the public, public servants and private employers about transgender rights, awareness campaigns should be held. The constitutional guaranties of equality, dignity, privacy and autonomy should be upheld in laws pertaining to transgender people. Transgender people should actively participate in institutional and governmental decisions pertaining to their rights. By taking these steps, constitutional ideals can be transformed into significant legal and social protections.

CONCLUSION

The rights and dignity of transgender people in India are fundamentally protected by constitutional morality. Even in situations where dominant social views conflict with the values of equality, liberty, fraternity and individual autonomy, constitutional institutions must protect these principles. These rulings have established gender identity as a crucial component of constitutional protection and broadened the concept of equality and dignity.

However, equality in daily life is not always guaranteed by court rulings and constitutional guaranties. Social discrimination, employment exclusion, inadequate healthcare and weak implementation of statutory protections continue to create difficulties for transgender persons. Therefore, the primary duty of constitutional democracy goes beyond simply acknowledging transgender identity to include establishing circumstances that allow transgender people to exercise their rights without facing prejudice. Therefore, it may be said that the protection of transgender rights in India must be guided by constitutional morality. The contribution of the Indian judiciary to the transformation of constitutional recognition into substantive equality, social inclusion and human dignity should be the final measure of its success.

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