

# Teleological Study of Transgender Inclusion: The Holistic Societal Significance Their “Juristic Personhood” Carries to the Societal Solidarity and the Role of Socio-Legal Institutions Played in Such Inclusion

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ARTICLE INFO	ABSTRACT
Received: 18 Dec 2024 Revised: 10 Feb 2025 Accepted: 28 Feb 2025	<p>In the polarized society of Masculinity and Femininity with majority of persons associating themselves with the ideal of gender perfection dividing society into male and female there exists one section of society that possess both these qualities of masculinity and femininity in equal proportion and acts as a bridge between these two radical ideals of gender perfection and keeps intact the social solidarity by enabling both the polarized genders of male and female to open themselves to understanding of the other gender.</p> <p>Teleological methodology which aims at studying the purpose of any phenomena has been employed in this research paper to study the purpose Transgenders can serve in holistic integration of society with special reference to the pivotal role played by the socio-legal institutions of law, education, economy etc.</p> <p>The juristic personhood of Transgenders which postulates them as being capable of holding rights and liabilities has been explored in this research paper in so far as it is conducive to bringing about social solidarity and social inclusivity.</p> <p>Lastly, it has been endeavored through this research paper to establish that “Transgenders indeed are the instrumentality that possess the ability to realize and manifest the constitutional objectives of “FRATERNITY assuring the DIGNITY of the individual and the UNITY and INTEGRITY OF THE NATION”.</p> <p><b>Keywords:</b> Transgender, Inclusivity, Juristic personhood, Masculinity, Femininity, Teleology, Fraternity.</p>

## INTRODUCTION

The Indian constitution envisages an all-inclusive society and the words "WE, the people" permeates across any sectarianism and it is for this " All-inclusiveness, certain values to be ever cherished were enshrined in the preamble itself - "**To secure** to all its citizens: -

**JUSTICE**, social, economic and political;

**LIBERTY** of thought, expression, belief, faith and worship;

**EQUALITY** of status and of opportunity; and **to promote** among them all

**FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation;

And TO PROMOTE AMONG them all **FRATERNITY**, assuring the Dignity of the individual and the UNITY and INTEGRITY of the NATION " (LAXMIKANT, 2020).

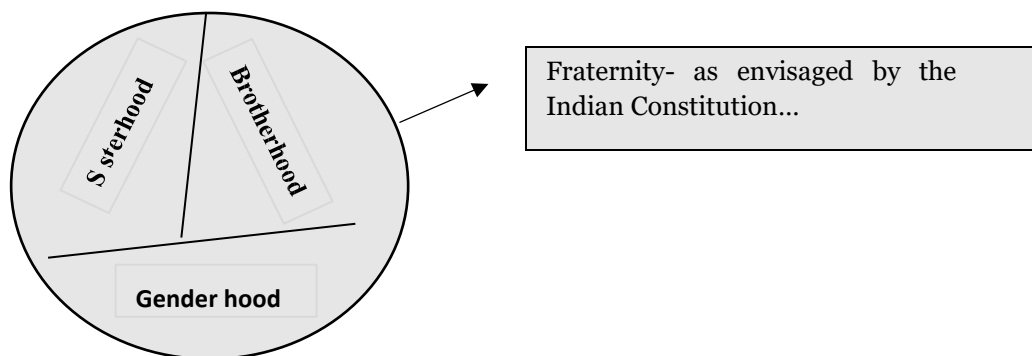
Upon close examination of these phrases in the preamble what comes to light is that

The constitution guarantees the security of Justice, Equality and Liberty but does not guarantee the security of Fraternity because fraternity cannot be secured but can only be promoted .

“Fraternity cannot be secured but can only be promoted”

As, to secure fraternity would imply that fraternity is an end but it can never be an end rather it is a process that has to be perpetually promoted to solidify unity in the society.

While, the literal meaning of the word “ Fraternity” may imply “brotherhood” but the constitutional intent with which the word has been entrenched in the preamble is not just limited to “ brotherhood”( acceptance of all men of the country as brethren) and extends itself to cover sisterhood and even Sexhood/Genderhood<sup>1</sup>



The Constitution has striven to promote this “Fraternity” by means of certain provisions entrenched in it –

- An all-inclusive Citizenry;
- Fundamental Rights (Equality and dignity in particular);

Ergo, while the constitution strives to uphold and promote the “FRATERNITY” and shape a gender- egalitarian society it is impeded by the curse of ignorance that is –

“One cannot be fraternal with the other until one knows what the other is all about”

“Man cannot be fraternal with a woman until he knows what the women is all about”

&

“Woman cannot be fraternal with a man until she knows what the man is all about”

This is precisely where the Transgenders come in, as they are an embodiment of both the Masculine and feminine qualities and can thus act as a bridge between the both sexes fostering understanding between both the sexes, enabling both the sexes to gain access to a comprehensive understanding of the other sex not only their biological but also their psychological and emotional orientation.

### PERSONHOOD OF TRANSGENDERS

Personhood refers to the “capacity to possess rights and discharge duties”. In the contemporary times, any natural human being is a person and possess the personhood (Rights and duties) and one of the facets for being a natural human being is “SEX” which has commonly been “Male or female” but the differentiated presence of this facet of “sex” in Transgenders cannot discard them from being deemed as “Natural human beings” and by extension a natural person who is capable of possessing rights and duties.

<sup>1</sup> A self- coined term to include all gender related associations including but not limited to transgenderism

However, while the constitution treats them as natural persons for all purposes and intents the society does not and there has been a time and iteration of their personhood.

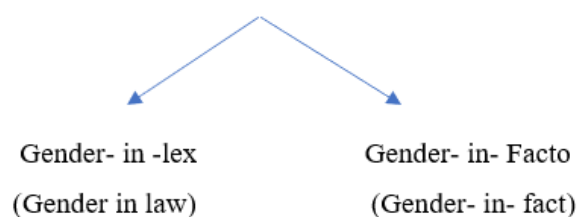
The major argument advanced against their natural personhood was the non- recognition of their sexual identification and the same was turned down by the judgement in the case of '*National Legal Service Authority vs. Union of India and Others* 15th April 2014 recognized Transgenders as 3<sup>rd</sup> gender in which a Transgender was defined as -

"Transgender is that being whose mind and body disown their biological sex"

(National legal services authority V. Union of India & ors, 2014)

Thus, the aforementioned case did away with the dichotomy between "Gender-in- law" and "Gender- in- fact".

### DICHOTOMY b/w



#### Gender-in-Lex:

Gender-in- Lex/Law refers to what the law recognizes as a gender. Law, prior to the judgment of NALSA V. UOI <sup>2</sup> recognized only gender ascribed at the time of birth and in the eyes of law there was no distinction between sex and gender. Thus, an individual if by birth was born with the biology of a

Male/Female was recognized as only Male/Female in the eyes of law regardless of "what that male/female sexually identified himself as" (Gender-in – fact).

#### Gender-in- Facto:

Gender-in- Facto/ Fact refers to which gender an individually actually subscribe to and this subscription when in non-conformity with the birth gender led to the emergence of Transgenders whose gender identity was not recognized by law but were treated in consonance with their birth gender.

Thus, Gender-in- lex prior to – "NALSA V. UOI"<sup>3</sup> was limited to the genders of "Male" and "Female" and Gender- in- facto included within its ambit "Male, Female and Transgenders".

However, Post the NALSA judgment the Gender-in-lex extended to include within its ambit the Transgenders too and put to the end the dichotomy between Genderin-lex and Gender-in- facto. It is very pertinent at this juncture to look at the allencompassing definition of Transgender given by this judgment.

"Transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behavior does not conform to their biological sex. TG may also take in persons who do not identify with their sex assigned at birth, which include Hijras/Eunuchs who, in this writ petition, describe themselves as "third gender" and they do not identify as either male or female. Hijras are not men by virtue of anatomy appearance and psychologically, they are also not women, though they are like women with no female reproduction organ and no menstruation. Since Hijras do not have reproduction capacities as either men or women, they are neither men nor women and claim to be an institutional "third gender". Among Hijras, there are emasculated (castrated, nirvana) men, non-emasculated men (not castrated/akva/akka) and inter-sexed persons (hermaphrodites). TG also includes persons who intend to

<sup>2</sup> National Legal Service Authority vs. Union of India and Others 15th April 2014

<sup>3</sup> ibid

undergo Sex ReAssignment Surgery (SRS) or have undergone SRS to align their biological sex with their gender identity in order to become male or female. They are generally called transsexual persons. Further, there are persons who like to cross-dress in clothing of opposite gender, i.e transvestites. Resultantly, the term “transgender”, in contemporary usage, has become an umbrella term that is used to describe a wide range of identities and experiences, including but not limited to pre-operative, postoperative and non-operative transsexual people, who strongly identify with the gender opposite to their biological sex; male and female”<sup>4</sup>.

Definition of Transgender as per THE TRANSGENDERPERSONS (PROTECTION OFRIGHTS) ACT, 2019

2(k) “transgender person” means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta<sup>5</sup>.

It is an indisputable fact that all rights and duties are enjoyed and discharged by “PERSONS” and for the enjoyment of certain rights and discharge of certain duties one of the crucial requirements is the “Gender”. For instance, Marriage – (An institution that provides for certain rights and duties) envisages a pre requisite of 2 opposite genders and Transgenders still do not enjoy the rights and duties provided for by this institution as the gender pre requisite disqualifies the transgenders from this institution and the consequential rights and duties conferred by this institution.

Thus, even today the juristic personhood of transgenders is not at par with that of the other 2 genders. However, their role is not any less significant than that of the other two genders in the society and is constantly on the rise.

### **ROLE OF TRANSGENDERS IN ELIMINATION OF GENDER BIAS**

Gender bias is a result of the feeling of oneness that members of particular gender hold onto and cherish, it is a feeling among the members of a particular gender that they all share common experiences, notions , responses in their interaction with the society which culminates into “ A common gender consciousness”.

This “Common gender consciousness” gives rise to gender bias and clouds a person from seeing through matters with the lens of impartiality.

The transgenders can play a significant role in elimination of this gender bias as they either don’t share any ‘common gender consciousness’ or they have access to ‘common gender consciousness’ of both the genders of male and female.



Ergo, for the reason that Transgenders either don’t share any ‘common gender consciousness’ or they have access to ‘common gender consciousness’ of both the genders of male and female, they can be best judges in “Trials of offences in which possibilities for gender biasness exists “example – Rape, Outraging modesty of a women, Offences committed by women against men and vice versa.

Transgenders also possess the potential to be best mediators between circumstances involving a deadlock due to pervicacious male and female ego.

Since the ancient times, Transgenders have been assigned roles to play in the society taking into view their distinct potentialities like –

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<sup>4</sup> Para-11 of NALSA V. UOI, 2014.

<sup>5</sup> Section- 2(k) of the Transgender Persons (Protection of Rights) Act,2019

- Ancient times- Guard the queens' Palaces and as Spies as they had access everywhere;
- Mughal times- Political advisors and administrators; (M.Michelraj, 2015)

It is to be noted that even in the contemporary times, they can be assigned roles in consonance to their distinctive capabilities including but not limited to posts prone to gender biasness.

By being instrumental in eliminating gender- biasness Transgenders play a positive role in promoting FRATERNITY and keeps the judicial integrity intact and unblemished.

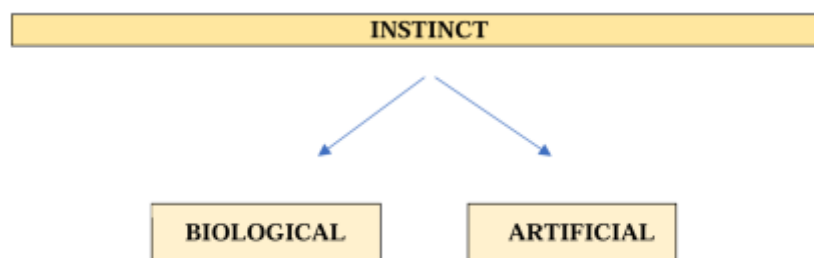
### CULTURE AND TRANSGENDERISM

Yuval Noah Harari in his book

Sapiens defines culture as – **“A network of artificial instincts”** or rather an

**“Imagined construct sustaining other imagined orders”**. (Harari, 2011)

Thus,



Natural and not acquired Learnt and acquired

Ex: - Hunger, Instinct of Ex: - Instinct to not hit back when hit but rather to

Protection, Sex etc. resort to proper authorities, follow a law etc.

Often, the Artificial instinct (Culture) superimposes itself on the biological instinct and there is always a conflict between Biological instinct and Artificial instinct. An individual is trained to let the artificial instinct prevail over the biological instinct.

For instance, The most biological instinct to satiate hunger is to pluck out whatever is nearby and gorge on the same but Artificial instinct instead infuses us with the notion that gorging on what is nearby, if that is not ours amounts to thievery and hence, it is nobler to die of starvation rather than live off by thievery.

These cultivated artificial instincts over years have superimposed on our biological instincts and has not been fully successful in such superimposition. This is evident from the fact that we are perennially in conflict between “Biological Instinct” & “Artificial Instinct” as our biological instinct has not been unlearned by us completely and pop up every now and then.

Thus, upon assigning such a definition to culture it is pertinent to understand that Transgenderism is as much a culture as it is a biological instinct. The reason for this statement –

‘Transgenderism is as much a culture as it is a biological instinct’

- An Individual is born with biological instincts of a Transgender but his/her artificial instinct (culture) may be that of any of the 2 genders, this artificial instinct (culture) puts that individual in conflict between his/her biological instinct and artificial instincts. It is when the individual allows his/her biological instinct to prevail over his/her artificial instinct that individual emerges forth as a – Transgender.

- Any personality is created in the following manner: - sensual impressions from within and without begin to assume a certain distinctive pattern within a person. This pattern slowly shapes itself into behavioral tendencies. A cluster of tendencies hardens itself into what we call a “PERSONALITY”. (Sadhguru, 2021)

Thus, constant act of heeding out to biological instincts results in creation of a certain distinctive pattern, which shapes into behavioral tendencies and this cluster of tendencies hardens into a “PERSONALITY”.

### **LAW AND TRANSGENDERISM**

The protection of Transgenders in

India is ensured by the following laws: -

- Fundamental rights and their protection by virtue of Article- 32 and 226;
- Minority rights- (Transgenders are sexual minorities)
- The TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019;

Law – as an instrument of state strives to protect the Transgenders like it strives to protect any other citizens but the Need for such special protection has been generated by the society itself as it is the society, which through its culture (network of Artificial instincts) that has dictated and ostracized the Transgenders because of the society’s perceived uncommonness.

The state has given recognition to them, it is time the society gave recognition to them and understood their utility and strived to cherish and preserve them for the inclusivity they can bring about

### **CONCLUSION**

The position of Transgenders in India has been attempted to be studied through the employment of the Teleological method which aims at studying a subject-matter for the purposes it serves. In the subject- matter of Transgenders it has been noted that they possess the potential to serve the purpose of bringing about “FRATERNITY” in the Indian society by acting as a bridge between the radical ends of Masculinity and Femininity as they are a symbolic signification of the possibility of possessing both the qualities in equal proportions. Further, it is to be noted that transgenders can eliminate gender bias which emerges from common gender consciousness owing to the fact that they either don’t share any ‘common gender consciousness’ or they have access to ‘common gender consciousness’ of both the genders of male and female which makes them the most suitable judges for presiding over Criminal trials trying offences of Rape, offences committed by men against women and women against men. The juristic personhood of transgenders has been enlarged to a great extent but nevertheless, it still falls short of the personhood granted to Male and female. The role played by culture in respect to Transgenderism has been explored in the light of it(culture) being an impediment or hurdle to the development of transgenderism. It is pertinent to make mention of the role played by socio-legal institutions in developing and nurturing inclusivity of transgenders into the society.

However, it is to be borne in mind that while law - as an instrumentality of state grants protection to Transgenders and recognizes them and strives to preserve them for their uniqueness, the society still has a long way to travel to understand the pivotal role that the Transgenders can play in promoting social solidarity and unification and the need to preserve them at the same time accept them and offer them the fullest facilities to enable them develop their capabilities which can indeed be used by the society for its development and growth.

This paper aims to foster that acceptance and understanding of the transgenders in the society.

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