



Supreme Court of India came into existence on 26th January, 1950 and is located on Tilak Marg, New Delhi. The Supreme Court of India comprises the Chief Justice and 30 other Judges appointed by the President

of India. The proceedings of the Supreme Court are conducted in English only. Supreme Court Rules, 1966 are framed under Article 145 of the Constitution to regulate the practice and procedure of the Supreme Court.

## WE TOO ARE IN MAINSTREAM SOCIETY



### The Supreme Court Judgement on Transgender Rights



## THE OPERATIVE PART OF THE JUDGEMENT

- Hijras, Eunuchs, apart from binary gender, be, treated as “third gender” for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.
- Transgender persons’ right to decide their self identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

- We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.
- Centre and State Governments are directed to operate separate HIV Sero surveillance Centres since Hijras/Transgenders face several sexual health issues.
- Centres and State Governments should seriously address problems being faced by Hijras/Transgenders such as fear shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma etc., and insistence for SRS for declaring one's gender is immoral and illegal.
- Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.
- Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.
- Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.
- Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

- We are informed an Expert Committee has already been constituted to make an in-depth study of the problems faced by the Transgender community and suggest measures that can be taken by the Government to ameliorate their problems and to submit its report with recommendations within three months of its constitution. Let the recommendations be examined based on the legal declaration made in this judgment and implemented within six months.

## FUNDAMENTAL RIGHTS

### Introduction

The Fundamental Rights in Indian constitution acts as a guarantee that all Indian citizens can and will live their lives in peace as long as they live in Indian democracy. They include individual rights common to most liberal democracies, such as equality before the law, freedom of speech and expression, freedom of association and peaceful assembly, freedom of religion, and the right to constitutional remedies for the protection of civil right.

Article-14. The state shall not deny to any person equality before the law or the equal protection of the laws with in the territory of India.

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

1. The State shall not discriminate against any citizen and only of religion, race, caste, sex, place of birth or any of these.

2. No citizen shall, on ground only of religion, race, caste, place of birth or any of them, be subject to any disability, liability, rest or condition with regards to
  - a. Access to shops; public restaurants, hotels and places of public entertainment ; or
  - b. The use of well, tanks, bathing ghats, and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.
3. Nothing in this article shall prevent the State from making any special provision for women and children.
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 citizen or the Scheduled Castes and the Scheduled Tribes.
16. (1) There shall be equality of opportunities for all the citizens in matters relating to employment or appointment to any office under the state.
  - (2) No citizen shall, on grounds, only of religion, caste, race, 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.
  - (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
  - (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.

21. No person shall be deprived of this life or personal liberty except according to procedure established by law.

“Article 21 is the heart and soul of the Indian Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the basic fundamental rights and not even the State has the authority to violate or take away that right.

Article 21 takes all those aspects of life which go to make a person’s life meaningful.

## UNIVERSAL DECLARATION OF HUMAN RIGHTS

### Introduction

Universal declaration of human right is a milestone document in the history of human rights Declaration was proclaimed by the United Nation General Assembly in Paris on 10th December 1948 it sets out, for the first time fundamental human rights to be universally protected.

### Article 1.

Human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and could act towards one another in a spirit of brotherhood.

### Article 2.

Everyone is entitle to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any limitation of sovereignty.

#### **Article 3.**

Everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self governing or under any other limitation of sovereignty.

Everyone has the right to life, liberty and security of person.

#### **Article 4.**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

#### **Article 5.**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

#### **Article 6.**

Everyone has the right to recognition everywhere as a person before the law.

### **Article 7.**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

### **Article 8.**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

### **Article 9.**

No one shall be subjected to arbitrary arrest, detention or exile.

### **Article 10.**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

### **Article 11.**

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was

committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

#### **Article 12.**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

#### **Article 13.**

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

#### **Article 14.**

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

#### **Article 15.**

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

### **Article 16.**

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

### **Article 17.**

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

### **Article 18.**

Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

### **Article 19.**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

### **Article 20.**

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

### **Article 21.**

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- 3) The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

### **Article 22.**

Everyone as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

### **Article 23.**

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24.**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25.**

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26.**

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and

fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally and higher education shall be equally accessible to all on the basis of merit.

- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27.**

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28.**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.



### **Article 29.**

- (1) Everyone has duties to the community in which alone the free and full development of the personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights, and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

### **Article 30.**

- (1) Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

## HIGHLIGHTS

- Transgenders are Third Gender



- Right to decide their identity (male/ female/ Thirdgender)



- Transgenders comes under Most backward class section



- Counseling centres to address fear, stigma, gender dysphoria, social pressure, depression, suicidal tendency, social stigma and instance for Sexual Reassignment Surgery



- **Quality Medical Care in Government hospitals**



- **Separate public toilets.**



- **Government introduced various welfare schemes.**



- **Create public awareness to accept them in the society.**





## VHS - MSA - DIVA (Diversity in Action) Project



- Supported by - United Nations Development Programme Asia-Pacific Regional Centre (UNDP APRC) under the Multi-Country South Asia (MSA) Global Fund HIV Programme (Phase 2).
- Guidance from - National AIDS Control Organisation (NACO), Ministry of Health & Family Welfare and State AIDS Control Societies (SACS).
- Goal - To reduce the impact of, and vulnerability to, HIV of men who have sex with men, Hijras and Transgender people through Community Systems Strengthening (CSS).

### **OBJECTIVES:**

- Improve the delivery of HIV prevention, care and treatment services.
- Improve the policy environment with regard to TGs and HIV-related issues.
- Improve strategic knowledge about the impact of HIV on TG/Hijra population.
- Implemented in - Six states (Tamilnadu, Kerala, Mumbai, UP, Delhi and Odisha).