

Is the Transgender Community Adequately Represented in the Indian Constitution?

A Critique of the Terminology Used in Article 15's Grounds for Equality

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ABSTRACT

Article 15 of the Indian Constitution aims at creating an equal society. It lays down grounds on which it believes that there is unreasonable differentiation and looks into preventing discrimination on those grounds. Amongst other grounds, it prohibits discrimination based on one's 'sex' and not 'gender'. The usage of 'sex' refers to the biological difference between men and women and Article 15 only protects them from inequality.

This paper argues that in Article 15, the term 'gender' should be used while talking about discrimination because the transgender community is one of the worst-hit communities due to the societal norms that do not look at the world with an inclusive lens. To make the Constitution a progressive document, justice and equality should no longer be delivered on the whims of privileged men who have a predominant role to play in the making of law and order. Though India did take a step further with the NALSA judgment, its implementation in society is limited. Thus, the first step of emancipation for the non-binary in India has to be an amendment in Article 15 of the Constitution. We prove this by bringing in examples of various Constitutions around the world like that of Argentina, Ecuador, Bolivia and more.

Keywords: Transgender, Article 15, NALSA, Transgender Persons Act 2019, Comparative Constitution

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