

to enter into the sphere of profession for which she is eligible and qualified, it is well-nigh impossible to conceive of equality. It also clips her capacity to earn her livelihood which affects her individual dignity. In the case of *"Vishaka v State of Rajasthan"*, AIR 1997 SC 3011 the Supreme Court referred to the Convention for Elimination of all forms of Discrimination Against Women, 1979 (for short, "CEDAW") which was ratified by the Government of India in 1993 and framed certain guidelines regard being had to the sexual harassment at work places.

Self-determination of identity has been held to be an essential facet of Article 21. The Supreme Court while declaring the "Hijra/Transgender" as "third gender" has held that:<sup>28C</sup>

(1) 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, (2) 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, (3) 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, (4) Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/Transgenders face several sexual health issues, (5) Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal, (6) 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, (7) Centre and State Governments should also take steps for framing various social welfare schemes for their betterment, (8) 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, (9) 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.

The Supreme Court has interpreted the law in consonance with the new social needs. This is the recognition of their right of equality as enshrined in Article 14, as well as their human right to life with dignity, which is the mandate of the Article 21 of the Constitution.

The philosophy contained in the Preamble, as explained in the foregoing pages, has been further highlighted by emphasising that each individual shall not only have the fundamental rights in Part III of the Constitution

**Fundamental Duties.** to ensure his liberty of expression, faith and worship, equality of opportunity and the like, but also a corresponding fundamental duty, such as to uphold the sovereignty, unity and integrity of the nation, to maintain secularism and the common brotherhood amongst all the people of India. This has been done by inserting Article 51A, laying down ten [now eleven]<sup>28A</sup> "Fundamental Duties", by the Constitution (42nd Amendment) Act, 1976 (see, further, under chapter 8, *post*).

A fitting commentary on the foregoing contents of the Preamble to our Constitution can be best offered by quoting a few lines from Prof Ernest Barker, one of the modern thinkers on democratic government.<sup>29</sup>

... there must be a *capacity* and a *passion* for the enjoyment of liberty—there must be a sense of personality in each, and of respect for personality in all, generally spread through the whole community—before the democratic State can be *truly achieved* . . . Perhaps it can be fairly demanded only in a community which has achieved a *sufficient*