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Do Transgenders, Intersex and Gender Fluids come under the Purview of Feminism and Women Rights?

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ABSTRACT

During one of the Human Rights debates, the question emerged was whether the gender fluids be able to qualify for women rights when they feel their sexual orientation is parallel to that of a woman. The following paper is research revolving around such question mulling over whether to include the LGBTQ+ community, namely intersex, transgenders and gender fluids, under the blanket of women rights and feminism or form a yet another group. The questions become pertinent since the already meagre benefits catered to the women gets abridged with inclusion of the LGBTQ+ in the feminist coterie. The Feminists movement has been around since 17th century while LGBTQ+ has been brewing since the late 1960s. In the Indian realm, since there is no concrete law to buttress the LGBTQ community's stand, this question owes an answer, making the fulcrum of which future laws could be made. The researcher seeks to answer the question in the title with a lens of the Indian landscape.

Keywords: *Feminism, Women rights, LGBTQ+, Transgender, Gender fluids.*

I. INTRODUCTION

The paper is set to answer the question, are transgenders in a position to take advantage of the feminist movement and its culmination in form of women rights. The readers would brush the notion of feminism, where did it come from, where it is now, entailing such would be an elucidation of the rights available to the women, with a lens of the Indian landscape. Succeeding an explanation of rights available to women, a brief history and introduction to the LGBTQ+ community would be done, with once the basic concepts set, the paper would go on to analyse whether the feminist movement and women's rights have an overlapping with the transgenders or not. Ensuing such a discussion would then be the suggestions to counter what the world is facing now. Since the world and India itself have close to no law for transgenders and the LGBTQ+ community as a whole, the question needs a prompt answer, so that what all laws are being made or would be made in near future does not endangers anyone's right while at the

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same time dispense justice to the citizens.

II. FEMINISM AND WOMEN RIGHTS

The first step in the quest for the answer is uncovering feminism and women rights. Albeit they sound similar, they have their own meaning. Both of them are women-centric ideologies; while one is a movement the latter is a culmination of the former.

(A) Feminism

Charles Fourier coined the term ‘feminism’ (as *féminisme*) back in 1837. With each upcoming year, feminism would mean a lot more than what Charles intended. Feminism for women meant a movement to uproot sexism aiming at achieving full gender equality in law and practice². ‘Women’s movement and feminist movements to which they feel accountable is neither an aggregation of organization nor aggregation of individual members but a discourse. It is a set of changing contested aspirations and understanding that provide conscious goals, cognitive backing and emotional support for each individuals evolving feminist identity.’³.

That was how feminism was perceived by the book ‘feminist organization’. Feminism commenced its spell in 1848 by the Seneca Falls Convention⁴, where one Elizabeth Cady Stanton spearheaded the convention drafting the declaration of sentiments women's grievances and demands, which then snowballed into passing of twelve resolutions pertaining to women rights (property rights, voting rights etc.).

a. First Wave

Sparked by the Seneca falls movement, the world saw the first wave formulating in the late 19th century to early 20th century. The first wave included newspaper publishing, organized debates, coming about of international women’s organization etc. Early 20th century witnessed women joining universities and having a professional life along with a personal. With the ultimate aim of integrating women in the political social and economic arena, the first wave bore its fruit in the form of ratification of the 19th amendment⁵ which empowered women to vote.

b. Second Wave

The saga of women’s rights gained momentum again in the 1960s majorly sparked by Simone

² Council of Europe, *Feminist and women's rights Movements*, <https://www.coe.int/en/web/gender-matters/feminism-and-women-s-rights-movements>, (last visited 12 March,2024).

³ Ferree, Myra Marx, and Patricia Yancey Martin, editors. *Feminist Organizations: Harvest of the New Women's Movement*. Temple University Press, 1995. *JSTOR*, <http://www.jstor.org/stable/j.ctt14bt498>. Accessed 12 Mar. 2024.

⁴ See McMillen, S. (2008). *Seneca Falls and the Origins of the Women's Rights Movement*. Ukraine: Oxford University Press, USA.

⁵ U.S. Const. amend. XIV.

de Beauvoir's book "The Second Sex"⁶. On the foundation of Simone's thinking, Betty Friedan published her work "The Feminine Mystique"⁷ revolving around feminism and women's rights. With over three million copies sold, Betty fueled the women's movement, which culminated in the second wave.

Eventually, the women's drive was propelled by a series of major victories, Equal Pay Act of 1963, Civil Rights Act of 1964, and the *Griswold v. Connecticut*⁸ Supreme Court ruling of 1965. Title VII of the Civil Rights Act of 1964 prevented employers from discriminating against employees on the basis of race, religion, sex, or national origin. This landmark case⁹ laid the groundwork for the *Roe v. Wade*¹⁰ decision in 1973, which established a woman's right to choose an abortion. The already going Civil Rights Movement help catapult the feminist, and with the abovementioned legal victories the second wave of feminist movement came to rest, before being revitalized in the form of the third wave¹¹.

At the same time taking leverage of the ongoing movement, Gay Movement took its shape marking first gay rights demonstrations held in 1965 at Philadelphia and Washington.

c. Third Wave

It was Rebecca Walker, who in 1992 kicked off the third wave while declaring "I am the Third Wave" (Walker 2006a, 5)¹² hence coining the term. It all came on the table after the Anita Hill Senate hearing in 1991 where Hill stated that Clarence Thomas, who was being considered for the US Supreme Court, had subjected her to sexual harassment. Despite her claims, he was confirmed to the position. However, the high visibility of the proceedings signaled the beginning of a new period of activism and change aimed at eradicating gender-based exploitation and bias.

The key issue the third wave had to it were firstly, Intersectionality i.e. layers of oppression within the women fraternity, secondly, Reproductive rights which were in furtherance of the *Roe V. Wade*¹³ judgement, Thirdly, Sexual liberation was another one of the aims of the third wave among others.

Sexual liberation which had already been seeded during the second wave found a central stage

⁶ Beauvoir, S. d. (1997). *The Second Sex*. United Kingdom: Vintage.

⁷ Friedan, B. (2001). *The Feminine Mystique*. United Kingdom: W. W. Norton.

⁸ *Griswold V Connecticut* 381 U.S. 479 (1965).

⁹ *Ibid*

¹⁰ 410 U.S. 113 (1973).

¹¹ See <<https://www.womenshistory.org/exhibits/feminism-second-wave>>.

¹² *The Women's Movement Today: An Encyclopedia of Third-wave Feminism*. (2006). United Kingdom: Greenwood Press.

¹³ *Ibid*

in the third wave, and hence the gay rights got in line with the women's right from the point on. Does this parallel nature depicted by the gay and women rights movement brings transgenders and others from the LGBTQ+ community under the ambit of women rights? The researcher seeks to answer the same question and would present his version in the later parts of the paper.

d. Indian landscape

Indian feminist movement was directed the rampant discriminatory practices stemming out of diverse religions of the nation. At the same time, it aimed at, like the world's feminist movement, at social, political and economic equality.

The Indian feminist movement found itself divided into two waves. The first phase (1850-1915) had at its center vices like *Sati*, widow remarriage, illiteracy etc., and the baton of the campaign was held by the men. During this period, women, alongside lower castes, were seen primarily as targets for social reforms and welfare initiatives, rather than being acknowledged as independent agents capable of driving change.

The second phase (1915-1947) found itself paralleled with the national struggle; organizations exclusively for women, such as All India Women's Conference (AIWC) and the National Federation of Indian Women (NFIW) came into existence. Women's participation in the Civil Disobedience movement and the national struggle as a whole helped them achieve their long-drawn objective of political participation, voting rights, leadership etc. Women in India did not only had to counter the gender marginalization as even in women stratum, religion and caste were other factors adding to women's woe, this is where concept of intersectionality emerged¹⁴. Since independence, the women are still standing tall in their quest for equality most of which they have earned. But for complete equality, India still has a long way to go.

(B) Women Rights

With each concluding phase of the feminist movement, the brigade of women studded more medals to their chest. The dawn of women rights came for the first time in the form of right to vote. Voting means the inclusion of women in the running of the state. New Zealand became the first country to entrust women with voting rights in 1893. The victory acted as a catalyst to the movement moving towards complete gender equality. Catapulting oneself to the current era, women are empowered with bundles of rights, reservations, concessions and what not but even after leaping over every hinderance, women continue to make her place at the same pedestal as

¹⁴ Dwijendra Nath Thakur, *Feminism and Women movement in India*, 3 Research J. Humanities and Social Sciences, 458-464 (2012).

men.

a. **The Law**

In the Indian realm, women enjoy bountiful privileges. The very foundation of women rights is in the preamble of the Indian Constitution, with use of phrase ‘EQUALITY of status an opportunity and to promote among them all fraternity assuring the dignity of the individual’¹⁵ which gives a base to other women-centric laws and rights. The fundamental rights under the constitution is another link in the chain bolstering women’s stand. The article 14¹⁶, 15¹⁷, 16¹⁸ resonates with the notion of equality while shunning the idea of gender parity, while article 15(3)¹⁹ avers how special provisions can be created.

Further, articles succeeding the fundamental rights, stand upright in holding similar position. Article 42²⁰ lays down how working conditions especially for females be humane and maternity relief be provided. Article 51 A (e)²¹ requires citizens, as a dispensation of their fundamental duties, to promote harmony and renounce any derogatory practice against dignity of women. The reservations provided for women are yet another privileges to women. Under article 243²² at least 1/3 seats are to be reserved for women in panchayats and municipal corporation which was added to the constitution by the 73rd and the 74th amendment. Women in governance is a step ahead in the battle of equal status, in furtherance of which the 106th amendment²³ to the constitution took place reserving one-third of all seats for women in Lok Sabha, State legislative assemblies, and the Legislative Assembly of the National Capital Territory of Delhi, including those reserved for SCs and STs. Such reservation ensures that women are represented equally as men in politics. The true picture is however far from the aim, a study²⁴ shows how India stands dismally in women representation in politics. India holds 110th position among the countries for women representation in 2022 with a score of .88 (‘1’ being the most equitable representation) with 62% relative increase in 77 years. The amendment inserted article 330A²⁵,

¹⁵ The Constitution of India, 1950, Preamble (Equality).

¹⁶ The Constitution of India, 1950, Ar. 14.

¹⁷ The Constitution of India, 1950, Ar. 15.

¹⁸ The Constitution of India, 1950, Ar. 16

¹⁹ The Constitution of India, 1950, Ar. 15 cl (3).

²⁰ The Constitution of India, 1950, Ar. 42.

²¹ The Constitution of India, 1950, Ar. 15 cl (A) sub cl. (e).

²² The Constitution of India, 1950, Ar. 243.

²³ The Constitution (One Hundred Sixth Amendment) Act, 2023.

²⁴ V-Dem (2023) – with major processing by Our World in Data. “Best estimate” [dataset]. V-Dem, “Democracy and Human rights, OWID based on Varieties of Democracy (v13) and Regimes of the World v13” [original data].

²⁵ The Constitution of India, 1950, Ar. 330 cl. A.

332A²⁶, 239AA²⁷ and 334A²⁸ making women wield reservation to stand beside men.

The directives for the State enshrined in the part III²⁹ under article 39 (a)³⁰ and (d)³¹ of the constitution mentions equality in pay for both men and women and the right to adequate means of livelihood.

Certain women-specific laws took shape such as the Immoral Traffic (Prevention) Act³², Sati Prevention Act³³, Dowry Prohibition Act³⁴ and Indecent Representation of Women (Prevention) Act³⁵ protect women from the more "traditional" crimes such as rape, abduction, dowry, torture, molestation, sexual harassment and selling of girls into slavery.

The Indian Penal Code has to itself, some provisions which are made to protect women, section 306³⁶ can punish the suicide victim's husband with up to 10 years imprisonment if found guilty while the sec. 509³⁷ pertains to outraging the modesty of a woman which can also become actionable under sec. 354³⁸.

b. International efforts

International efforts towards women rights includes the United Nation's initiative the CEDAW³⁹ or 'The Convention on Elimination of All Forms of Discrimination Against Women' ratified by India on 9th July 1993. The 30 articles of the CEDAW make its signatories responsible for shunning away gender discrimination by way of instituting, in the state, women-aiding reforms⁴⁰. CEDAW directs the party states to: -

- Eliminating gender discrimination by appropriate legislative actions.
- Instituting such spirit in respective constitutions.
- Adopting temporary special measures moving towards de facto equality.

²⁶ The Constitution of India, 1950, Ar. 332 cl. A.

²⁷ The Constitution of India, 1950, Ar. 239 cl. A sub cl. (A).

²⁸ The Constitution of India, 1950, Ar. 334 cl. A.

²⁹ INDIA. CONST. Part 3.

³⁰ INDIA. CONST. art. 29 cl. (a).

³¹ INDIA. CONST. art 39 cl. (d).

³² Immoral Traffic (Prevention) Act, 1956.

³³ Sati Prevention Act, 1987.

³⁴ Dowry Prohibition Act, 1961.

³⁵ Indecent Representation of Women (Prevention) Act, 1986.

³⁶ Indian Penal Code, 1860, Sec. 306.

³⁷ Indian Penal Code, 1860, Sec. 509.

³⁸ Indian Penal Code, 1860, Sec. 354.

³⁹ Convention on the Elimination of All Forms of Discrimination against Women

⁴⁰ See Women's Rights in India; An Analytical Study, The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) The Indian Constitution, Legislations, Schemes, Policies & Judgements, 2021.

- Bridging political, social and economic gaps in men and women.

Complementing the CEDAW, other international efforts to shape including The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa or "Maputo Protocol", Declaration on the Elimination of Violence against Women in the Association of Southeast Asian Nations, Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence etc.⁴¹

c. Initiatives

India has witnessed several initiatives underlining women's rights, majority of them being a good step to tread upon. Kicking off with The Committee on the Status of Women in India, 1971 with 'The National Commission for women' set up in 1992 with the sole objective of being the premier women's rights body and govern everything revolving around women.

2001 witnessed several.

III. LGBTQ+

LGBTQ+ is commonly used as an umbrella term or an acronym which directly means Lesbians, Gays, Bisexual, Transgenders, Queers and the '+' refers to other non-definable entities to be considered a deviation from the normal heterosexual attitude. The researcher would not include a detailed description of the terms but a basic introduction so that major emphasis could be put on the researcher's question to answer.

Lesbians are females who feel a sexual affinity towards other females, while Gays are males who feel a sexual affinity towards other males; sometimes, the term 'Gays' is used collectively for gays and lesbians. Queer is a contested term with no concrete meaning, it is an umbrella term to denote sexual identity within a particular community and could include Gays, Lesbians, Transgenders etc. The definitions of the remaining relevant words would be given in the following sections.

(A) Transgenders

Transgender as a term applies to individuals whose sexual orientation differs from the one traditionally associated with the biological gender. In other words, males or females who identify themselves respectively as females or males. The term 'Transsexual' is often confused with transgender, transsexual is a part of transgender and are those individuals who feel like the

⁴¹ See *Treaties and conventions promoting women's rights: An overview (2023) Focus 2030*. Available at: <https://focus2030.org/Treaties-and-conventions-promoting-women-s-rights-an-overview> (Accessed: 12 March 2024).

opposite sex but do not undergo sex-reassignment surgeries⁴².

For the discussion of the inclusivity of transgenders in feminism and women's rights, the researcher finds the subset of the term, males who feel themselves as females, as the most relevant topic for the discussion.

(B) Intersex

Intersex is not related to how a person feels about himself or herself but rather is a biological trait. Intersex means "an organism having physical characteristics intermediate between a true male and a true female of its species."⁴³ It is generally caused by a hormonal abnormality or an extra chromosome. In such an organism both male and female organs are found.

The question arises whether such people are considered male or female or altogether given a different identity. Giving a different identity means giving a fresh set of rights and obligations while including them in the traditional gender identities is distributing the already vested rights to a much larger population of the concerned gender.

(C) Gender Fluids

Gender fluid simply means, changes over time in one's gender identity or expression. The term is notoriously used by people who switch genders every day. A gender fluid can become a male, a female or any other depending upon his/ her will. There are individuals who identify themselves as "gender-fluid". This identity generally falls under the transgender and nonbinary umbrella, which is used to describe people whose gender identity does not align with the sex they were assigned at birth. Nonbinary means that a person's gender identity does not conform to the traditional cultural categories of male or female⁴⁴.

It becomes especially important for a nation to categorize such people by putting them in the ambit of male and female and oscillating them frequently from one to another. This would not only obfuscate administrative processes and at the same time would not do justice to people already falling under such heads.

Both pieces of literature had starkly different views; there is very little literature available on the intersection of women's rights and the LGBTQ+ community, hence the researcher's idea to

⁴² Tauches, Kimberly. "transgender". Encyclopedia Britannica, 19 Apr. 2024, <https://www.britannica.com/topic/transgender>. Accessed 23 April 2024.

⁴³ Britannica, The Editors of Encyclopaedia. "intersex". Encyclopedia Britannica, 6 Mar. 2024, <https://www.britannica.com/science/intersex>. Accessed 23 April 2024.

⁴⁴ Sabra L. Katz-Wise, S.L.K.-W. (2020) *Gender fluidity: What it means and why support matters*, Harvard Health. Available at: <https://www.health.harvard.edu/blog/gender-fluidity-what-it-means-and-why-support-matters-2020120321544> (Accessed: 24 April 2024).

write on the said topic. Feminist movement

(D) Movement

The 'Gay Movement' saw the sun as early as the 1920s. The major hurdle gay people faced was that sourced out of religions which brazenly led to the shunning of such people. It all started in late 1800s and early 1900s when the community was given voice by the *Wissenschaftlich-humanitäres Komitee* (WhK), a humanitarian committee when it unsuccessfully furnished a petition for repealing paragraph 175 from the Imperial Penal Code⁴⁵ which criminalized homosexual intercourse. The Stonewall Inn riots marked a major event which brewed up into an uprising for the community. Stonewall Inn, a gay bar, was raided by New York police on June 28, 1969. In 1957, a commission headed by Sir John Wolfenden made a groundbreaking report⁴⁶ in the UK to legalize private homosexual relations between consenting adults. It took a decade for Parliament to turn this recommendation into law through the Sexual Offences Act. This was followed by a series of victories for the gay movement around Europe and America. The movement is still in momentum and working towards absolute in equality and inclusivity for the LGBTQ+ community.

India, as compared to the European nations, was much more relaxed towards the members of the gay community. But the supreme law of Hindu the Manu smriti opposed the idea of homosexuality and other sexual orientations highlighting homosexual procreation. Such was echoed by the Britishers and imposed on the Indian land by the sec. 377 of IPC⁴⁷ which criminalized homosexual activities. India saw Gay movements materializing around 1999 when the first gay pride parade took place in Kolkata. The movement was brewing from independence but the Naz foundation's petition in 2001 marked a major turnaround for the LGBTQ community which was later dismissed by the Hon'ble High Court of Delhi in 2004. After a series of legal battles fought for the decriminalization of sec 377 finally the Hon'ble Supreme Court in the Navtej Singh Johar V. Union of India Ministry of Law⁴⁸ ruled in favor of the LGBTQ+ community repealing the impugned section. The battle was won but the war was still to be fought, this was followed by a campaign and legal battle to recognize same-sex marriage in Supriyo V. Union of India⁴⁹ where the Supreme court ruled in against same sex marriage. The Gay movement journey was majorly a legal battle with a series of victories and defeats

⁴⁵ German Criminal Code, 1874, Para. 175.

⁴⁶ Britannica, The Editors of Encyclopaedia. "Wolfenden Report". Encyclopedia Britannica, 11 Jan. 2019, <https://www.britannica.com/event/Wolfenden-Report>. Accessed 26 April 2024.

⁴⁷ Indian Penal Code, 1860, sec. 377.

⁴⁸ AIR 2018 SUPREME COURT 4321.

⁴⁹ W.P.(C) No. 1011/2022 Diary No. 36593/2022.

with a long way to go⁵⁰.

IV. INCLUSIVITY

With the basic background set and meaning of the prevalent words set, the researcher could move on to the actual answer to the question of whether to include the abovementioned community under the umbrella of feminism and grant them the fruit of the feminist movement i.e. the rights conferred upon women. The researcher would first try to connect and overlap Feminism and Transgender and later women's rights and Transgender.

(A) Feminism inclusivity

In this section researcher seeks to find the answer to the first question, DOES TRANSGENDER, INTERSEX & GENDER FLUIDS COME UNDER FEMINISM. Even though feminism was majorly directed towards women's rights and securing an equal position for women in the patriarchal world, the latter part of the movement did include, in a passive manner, the Gay movement.

A paper by *Isabelle Rojek*⁵¹ propounded the representation of LGBTQ+ in the feminist movement. The paper says that the feminist movement was majorly paving the way for women's equality and notoriously left marginalized minorities including the LGBTQ+ group. For the sole reason of Heteronormativity, the trans community is often left out of the feminist movements. "Heteronormativity is defined by culture creating a societal "norm" of heterosexuality placing it above all other sexual identities by making them 'weird' or 'unnatural'."⁵² The first wave completely ignored gender orientation and did not care for anyone who was not white. Betty Freidin who played a major role in the Second wave was an avid proponent of anti-gay anti-lesbian propaganda. By creating the term "lavender menace," Freidan openly expressed her disapproval of homosexuality and her intention to keep lesbians out of the feminist movement. The contemporary wave of feminism recognizes trans rights and such marginalized finds a place in contemporary feminism. Intersectionality, coined by Kimberlé Crenshaw, in feminism finds LGBTQ in the envelope of feminism in an extended version of the said intersectionality.

Yet another article by Dr Jeff Meek of the University of Glasgow⁵³ shows a varied stance. To

⁵⁰ Hena Khatun, *LGBT Movement in India*, 5 Journal of the Department of Sociology of North Bengal University, 217, (2018).

⁵¹ Rojek, Isabelle (2021) "The Past, Present, and Future Feminism: LGBTQ+ Representation Matters," *The Mall: Vol. 5*, Article 13.

⁵² Ibid

⁵³ Meek, D.J. (2022) *Feminism and sexuality: LGBT activism in the UK and the US in the long 1970s*, *FutureLearn*. Available at: <https://www.futurelearn.com/info/courses/a-global-history-of-sex-and->

the author, LGBT rights and feminism have been intertwined in the West since the 1960s, the period of the onset of the second wave. Both the movements were parallel and influenced each other like the gay movement took the concept of patriarchy from the feminists.

With what little material available on such overlapping between feminism and LGBTQ+, it can be concluded that feminism in its nascent stage (the 1900s) was centred around white women, which later included the idea of intersectionality which then took into its ambit, coloured women and later included LGBTQ. "The future of feminism must include the struggles of all women. We cannot be divided by the artificial lines of race, class, or sexual orientation."⁵⁴, a quote penned by Kimberlé Crenshaw that reiterates how modern feminism had under it folds different sexual orientations. Hence, the LGBTQ movement came in line with feminism in the later stage of the feminist movement, primarily in third wave.

(B) Women's Rights inclusivity

The primary question of the paper will be answered in the section by the researcher. The question has become a need of the hour since the contemporary era, viewing it with the Indian Landscape, is witnessing a surge in population affiliating the groups. Since under the Universal Declaration of Human Rights⁵⁵, article 1 stipulates that all humans are to be given rights. This makes the signatories, including India, to confer rights upon the LGBTQ as well. While conferring of such rights the hurdle that comes in parliament's way is under which head to put LGBTQ. Putting the community cumulatively under males and female or making a collective new entity would be cumbersome and would leave room for misadministration. That is why the subgroups i.e. gender fluids, transgenders and intersex needs to be catered individually to the groups.

a. Transgender People

Transgenders, in a sentence, are people who do not align with the biological gender and can be bifurcated into two subgroups, that is, transsexuals, who go through a gender reassignment surgery and become biologically aligned with the expressed sex. The other group consists of transgenders who do not go through any surgery and remain unparalleled with the biological gender. For the sake of such discussion, the researcher divides the discussion into two subheads.

i. Transsexual (Surgery)

gender/0/steps/168436 (Accessed: 24 April 2024).

⁵⁴ Crenshaw, K. (1989). *Demarginalizing the intersection of race and sex: A black feminist critique of feminist legal theory*, 140 (6), University of Chicago Law Review, 139–167.

⁵⁵ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc.

The people falling under the transsexual group are biologically of that gender, that is, have the genitals of the desired and expressed gender. Since such population are biologically and mentally aligned towards the sex, they indubitably identify as a female. Therefore, transsexual qualifies for being benefitted for the women rights discussed in heading 1.2.

Thinking otherwise would bring injustice to the transsexuals since making a new gender would be unwise since they possess all the essentials to be called a particular sex. Therefore, they are identified as that sex and would enjoy the rights of that sex.

ii. **Without Surgery**

The question becomes perplexing to answer since people who merely feel and express gender as a different one than biologically assigned and are not biologically in line with such expression fall under this category. The three available options to deal with the situation are to put such people into a different group altogether or give them a fixed gender according to their expression and sexual orientation. The third one, a more extreme one, is to deny them the rights conferred to the desired gender, but rather let them enjoy the rights of the biologically consonant group.

The first way out, which is to form a new group, is again a cumbersome solution. Even though the government of India has started to recognize transgender as a sex and make it available in government forms, they have not vested in them rights of their own, other than the basic human rights. But employing such would help represent transgenders as a group which would facilitate the law-making process. Further explanation of a new group is under 3.2.3.

The second solution is to give them the rights of the desired gender. Such would give people a chance to change their gender to merely benefit from the rights of the desired gender. Answering a question whether allowing transgender and intersex women to compete with cisgender women in athletic competition unfair? Dr. Bradley Anawalt, an endocrinologist and professor of medicine at the University of Washington School of Medicine, answered- “people born with XY sex [male] chromosomes and who have exposure to testosterone as a developing fetus, infant and during puberty have an unfair biological advantage if they participate in sports as females.”⁵⁶. Another way is when a male start identifying himself as a female in order to get reservation in government institutions. Since such a solution is riddled with flaws and loopholes it is bound to get rejected.

The final solution is to give no rights other than the one biologically assigned to them. This may

⁵⁶ Donohue, B. (2023) *Expert: Science won't resolve debates about trans athletes - UW medicine, Newsroom.* Available at: <https://newsroom.uw.edu/blog/expert-science-wont-resolve-debates-about-trans-athletes> (Accessed: 27 April 2024).

be a harsh step and on the face of it, it may look like they are denied justice, but it is the only way out. Transgender, if denied rights of the gender one found sexual orientation towards would be helping in the administration of transgenders. The solution and its theory have their own flaws since not all people have enough money to get sex-reassignment surgery done. This would deny them the right to be treated as the gender they are sexually oriented towards. Even though it is not without flaws, it is the best available option since, it not only increases complexity in the already complex administrative process it does not deny the transgenders to get the rights of desired gender since after the surgery one could get the rights of the desired gender. To make such surgery easy, the government could intervene to make such surgeries accessible and affordable.

b. Intersex

The intersex people show biological similarity with both males and females due to presence of both genitals. Similar sets of solutions are available for intersex as available to transgenders.

Forming a different sex altogether, out of the available options, is the best approach to efficiently administer for such group, as letting them come under the envelope of males or females would not only create ambiguity but would hinder dispensation of justice. Firstly, the administration would face difficulty in assigning a particular gender to the intersex people, and even if they did not everyone would be satiated by such a definition. Such would lead to arising of conflicts. To skew such anticipations away, making intersex as a different gender is the most feasible option. Since the population of the 'others' is about 4 lakhs according to the 2011 census of India⁵⁷, awarding a fresh gender would help vesting them with intersex-specific rights and at the same time administer them in the ideal way.

c. Gender Fluids

It has always been a herculean task to administer and make laws for something which is not constant, as in the case with gender fluids. The other groups found a concrete affiliation to a gender hence the only question to answer was whether they benefit from the rights vested in the affiliated gender, on the other hand discussion of gender fluids does not only asks whether they get rights of the gender affiliated to, but also whether they could switch such benefit as per their expression ? or how would such a change in expression be identified, recorded or administered. The gender fluids find themselves in a position where they keep oscillating their gender as per their feelings, this makes mists the glass and obscures their concrete gender identity. The three

⁵⁷ Census (2011) Government of India. <http://censusindia.gov.in>.

available solutions to the situation could be conferring the rights of the sex they feel aligned with, and which would change as per the expression of the individuals. This is but a preposterous solution as this would not only bring ambiguity in the process of administration but not feasible since identifying and recording of such a change is an arduous assignment. This is hence rejected by the researcher for not being feasible.

The next way out of the impasse is to make a different gender out of them, thus would add another checkbox to the government's to-do list but would facilitate the administration process. But only identification would get easier, the conferring of rights still poses as a hurdle. Making a separate group out of them will help conferring them with sexual-orientation specific rights which could further the equality agenda.

Letting Gender fluids under the blanket of the biologically assigned sex and benefits of the same gender is yet another solution. This would save legislatures time following such would be perpetuating the status quo i.e. letting a gender fluid express his/her gender as per the volition but the rights would be genitally decided. Furthermore, employing such a strategy would ensure no person starts identifying oneself as a gender fluid merely to benefit from women's rights. This would Loopholes does tag along with the solution as it would be a challenge to make specific laws for the gender fluids.

Hence, the researcher without tinting the solution with bias, leaves it to the readers to choose what could be the best solution by weighing the available alternatives.

V. CONCLUSION

The paper highlighted how feminism came about and the fruits of the long feminist movement the rights conferred upon the women fraternity. The paper concludes with an answer to the two major questions i.e. whether intersex, gender fluids and transgender come under feminism and whether they get the benefit of women's right.

To answer the first question, the researcher took the readers through the timeline of the feminist movement and its waves. The researcher made clear in the latter part of the paper, overlapping of the feminist movement and the gay movement. The extensive study of both the movements made it evident that some kind of overlapping was present in the contemporary versions of the respective movements.

The next question the researcher sought to answer was whether these groups qualify to receive the benefit of women's rights. The researcher answered the question with respect to each group and simultaneously gave the solution to take the bulls by the horns. Therein, the transsexuals

were allowed by the researcher to come under the fold of the desired gender while, transgenders enjoyed biologically assigned rights, intersex were allowed to make an altogether new gender, gender fluids, like transgenders, were allowed to be benefitted from the biologically assigned rights.

With such observations the paper comes to its concluding part. The LGBTQ+ population has been on a surge not only in India but the whole globe. The community has come a long way in the long-fought battle for rights and justice. In this contemporary world where the world is coming closer than ever to complete equality, the LGBTQ+ community's hand must be held. Applying Kelsen's school of jurisprudence to the current situation, it can be held that Human Rights enshrined in the UDHR⁵⁸ are the Grund norm i.e. the legal entity which derives its own validity and hence it must be put before every law. In pursuance of the above the LGBTQ+ are rightful owners of not only the human rights but of the gender-specific rights to promote equality. Therefore, the authority with the onus to administer for the said group must bear in mind- humanity and patriotism, in that order.

⁵⁸ Supra note 55