

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 7 | Issue 3

---

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Case Comment on NALSA v. UOI

---

MYTHRI RAJ<sup>1</sup>

## ABSTRACT

*Transgender rights achieved a major turning point in 2014 when the Supreme Court of India acknowledged transgender people as a third gender in the historic case of National Legal Services Authority v. Union of India. The right to equality (Article 14), freedom of speech (Article 19(1)(a)), and gender self-determination (Article 21) were all emphasized in this ruling. Referencing ancient writings and mythological themes, the judgment acknowledged the pervasive presence of transgender individuals in Indian history and culture. The verdict was criticized for treating some matters, like sexual intercourse and the need for separate detention facilities, superficially, despite the court's progressive approach. The decision mentioned international human rights frameworks, but it did not offer thorough instructions on how to implement these rights. The ruling highlighted the particular requirements of the transgender population and recommended affirmative discrimination and preferential treatment like to that given to women. It did not, however, address issues regarding the actual application of these rights, such as obtaining reservations for OBCs or establishing precise rules for the application of gender law. The ruling emphasized the need for medical care and social education for the transgender population, but it did not entirely accept the Yogyakarta Principles' recommendations for changes to the penal code. Despite its shortcomings, the NALSA judgment remains a pivotal moment in the fight for transgender rights in India, promoting their recognition and classification as a socially and educationally disadvantaged group deserving of positive discrimination.*

**Keywords:** *Transgender Rights, Positive Discrimination, Yogyakarta Principles, Gender Identity, National Legal Service Authority.*

## I. INTRODUCTION

CITATION: AIR 2014 SC 1863; (2014) 5 SCC 438

DECIDED ON: 15 April, 2014

BENCH: Justices K.S. Radhakrishnan, A.K. Sikri

PETITIONER: NATIONAL LEGAL SERVICES AUTHORITY

RESPONDENT: UNION OF INDIA

---

<sup>1</sup> Author is a student at Christ (Deemed to be University), India.

"No person should suffer injustice on the basis of their gender" said Laxmi Narayan Tripathi, the first transgender rights activist to represent Asia Pacific at the UN. Indians still have a difficult time understanding what "transgender" means because our society has only ever acknowledged male or female as the only two genders. Transgender individuals are a diverse and integral part of our global community. They are people whose gender identity differs from the sex assigned to them at birth. The experience of being transgender varies widely, but many face unique challenges in society, including discrimination, stigmatization, and unequal access to rights and opportunities. The fight for transgender rights is a critical component of the broader struggle for gender equality and social justice. The transgender laws of India stand in stark contrast to international human rights legislation, which is governed by the principles of equality, nondiscrimination, and universality.<sup>2</sup> The moral norms and societal judgments often influence an individual's sense of self. Those who attempt to challenge these norms with their personalities, sexual orientations, and preferences are often marginalized, abandoned, and labeled as outsiders. Human lives are intricate, but transgender individuals, in particular, face more than their fair share of hardship. Despite their susceptibility to harassment and violence, their struggles often go unnoticed. In India, the legal system traditionally recognizes only binary genders, determined by an individual's sex at birth, until the landmark Supreme Court decision in the *National Legal Service Authority vs. Union of India*<sup>3</sup> case. This ruling marked a significant milestone for the transgender community, thanks to the proactive stance of the Supreme Court, and has given a boost to transgender rights.

## II. BACKGROUND

The Supreme Court of India delved into ancient Indian texts to gain insights into the historical status of transgender individuals. Gender-diverse individuals, now often referred to as "transgender women," have been part of Asian cultures for centuries, and India is no exception. Notably, the *Kama Sutra* provides detailed descriptions of the sexual lives of those with a "third nature," known as "tritiya prakriti."<sup>4</sup> The presence of the third gender identity in Hindu mythology, Vedic and Puranic literature, and their significant roles in the courts of the Islamic world, among other aspects, all contribute to the historical context of the third gender identity in India. Within this context, individuals like Hijras, Kothis, Aravanis, Jogappas, and Shiv-Shakthis, who belong to the transgender community, have a deep-rooted history in Hindu

---

<sup>2</sup> Ritwik Mehta, *Analysing Transgender Rights in India*, 2 INDIAN J.L. & LEGAL Rsch. 1 (2021).

<sup>3</sup> *NALSA v. Union of India* AIR 2014 SC 1863

<sup>4</sup> UNDP (United Nations Development Programme), India, *A Report on "Hijras/Transgender Women in India: HIV, Human Rights and Social Exclusion"* (Dec. 2010).

mythology and religious writings in India.<sup>5</sup> Vedic and Puranic texts have mentioned the concept of "napunsaka" to describe those without procreative capability. In the Mahabharata, Aravan's sacrifice to Goddess Kali involved Lord Krishna assuming the form of a woman named Mohini. This event is honored by the Tamil Nadu Hijras, who call themselves Aravanis.<sup>6</sup> Historically, Hijras held significant roles in royal courts during the Ottoman and Mughal empires, participating in state religious ceremonies. However, British colonial rule criminalized and persecuted the Hijra community, treating them as a distinct and penalized group. In the modern era, international human rights treaties and the Yogyakarta Principles have recognized the rights of transgender individuals within the framework of human rights. The United Nations emphasizes the need to protect and promote the rights of sexual minorities, including transgender persons.

### III. FACTS

In the case of National Legal Services Authority v. Union of India, the National Legal Services Authority (NALSA) initiated a Public Interest Litigation with the aim of addressing the concerns of the transgender community. They requested a legal declaration that would allow individuals to define their gender identity beyond the traditional binary classification of male or female. The Supreme Court of India, in its ruling, acknowledged the legal recognition of transgender individuals and affirmed their right to self-identify as either male, female, or as a third gender. The judges considered the global legal landscape and the acknowledgment of transgender rights within international human rights agreements and legal forums. They highlighted the right to equality and fair treatment of individuals, which is enshrined in Article 14 of the Constitution. This article explicitly prohibits discrimination on the grounds of sex or gender, ensuring equal treatment for all persons.

### IV. ISSUES

The main issue in the case of National Legal Services Authority v. Union of India was whether transgender individuals should be recognized as a third gender and given legal protection under the Indian Constitution?

### V. LEGAL CONCEPT

Article 14<sup>7</sup>: Right to equality and equal treatment of persons. It specifically provides that no

---

<sup>5</sup> A Brief History of Transgenders in India, Indian Institute of Legal Studies, <https://www.iilsindia.com/blogs/brief-historytransgenders-india/>

<sup>6</sup> M.Michelraj, Historical Evolution of Transgender Community in India, Asian Review of Social Sciences Vol. 4, No. 1 (2015), pp. 17-19.

<sup>7</sup> Constitution of India, 1950, Art. 14 Act No. 1 of 1950

‘person’ shall be discriminated on the basis of sex/gender.

Article 19 (1)(a)<sup>8</sup>: Article 19(1)(a) of the Indian Constitution guarantees the right to freedom of expression, which includes one’s right to express their self-identified gender.

Article 21<sup>9</sup>: Article 21 of the Indian Constitution safeguards those parts of life that go to make a person’s life meaningful, including a person’s right to self-determination of gender.

## VI. RATIO

The Supreme Court of India has declared that gender identity and sexual orientation include transgender people, and that each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity, and freedom. The Court has also cited numerous judicial pronouncements such as *Van Kuck v. Germany*<sup>10</sup>, *Christine Goodwin v. United Kingdom*<sup>11</sup>, *Bellinger v. Bellinger*<sup>12</sup> and relevant international legislations. The Court concluded that "transgender persons who are neither male nor female fall within the expression ‘person’ and, thus, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education, as well as equal. The Supreme Court of India has ruled that Article 19(1)(a) of the Constitution guarantees the right to freedom of expression, which includes one’s right to express their self-identified gender. The Court also stated that no restriction can be placed on one’s personal appearance or choice of dressing, except for legitimate exceptions under Article 19(2) of the Constitution. Furthermore, the Court held that Article 21 safeguards those parts of life that go to make a person’s life meaningful, including a person’s right to self-determination of gender. As a result, the Court decided that Hijras/Eunuchs, over and beyond binary genders, must be recognized as third Gender under our Constitution and laws.

## VII. ANALYSIS

The judgment delivered by Justice Radhakrishnan provided a detailed analysis of the status of transgender individuals, considering international and Indian legal and cultural history. While it addressed various issues and challenges faced by the transgender community, there were some important issues that it touched upon only superficially. Justice Sikri’s concurring opinion was equally comprehensive, exploring the rights of the transgender community from a jurisprudential perspective. He examined various philosophical theories but found them

---

<sup>8</sup> Constitution of India, 1950, Art. 19 (1)(a) Act No. 1 of 1950

<sup>9</sup> Constitution of India, 1950, Art. 21 Act No. 1 of 1950

<sup>10</sup> Van Kück v. Germany, 35968/97, Eur. Ct. H.R. (2003).

<sup>11</sup> Christine Goodwin v. The United Kingdom, 28957/95, Eur. Ct. H.R. (2002).

<sup>12</sup> Bellinger v. Bellinger, [2003] UKHL 21, [2003] 2 All ER 593.

irrelevant in the present context, acknowledging that they were products of different times and societies. Justice Sikri also took into account the Directive Principles of State Policy, recognizing the state's duty to take affirmative action for the upliftment of the transgender community. He understood the complex web of rights associated with self-recognized gender and highlighted the lack of basic human rights access for transgender individuals, such as education, medical care, voting rights, property ownership, marriage rights, and formal identity. The judgment, while a significant step, was criticized for not providing a comprehensive, long-term solution to the challenges faced by the transgender community. It didn't offer detailed guidelines. The unique needs and vulnerabilities of the transgender community were emphasized, suggesting the necessity of special treatment akin to women in India. This includes provisions for counseling and interrogation. Although the issue of separate public toilets was addressed, the need for separate detention facilities and addressing police brutality against the transgender community was not fully considered. Additionally, the matter of sexual intercourse, though briefly touched upon, wasn't explored in-depth. The judgment's reliance on the Yogyakarta Principles was noted, but their call for amendments to criminal law for sexual and reproductive rights was not fully embraced. The judgment did recognize the transgender community as socially and educationally backward, which is a positive discrimination for their upliftment. Special medical attention and efforts to educate society and the transgender community itself were also commendable solutions presented. However, the judgment left certain questions unanswered, such as whether transgender individuals need to obtain third-gender identities to access privileges like OBC reservations in jobs and education. The decision received both praise and criticism, with some transgender individuals pointing out inherent flaws and contradictions in the judgment. The ruling wavered between broad and limited interpretations of the term "transgender" and the question of self-determination of identity versus biological criteria. The boundary between sexual orientation and gender identity was briefly mentioned, but societal taboos make open discussion challenging. To address these issues effectively, it's essential to create a free and safe environment for children to explore their gender identity, including parental gender sensitization training. The transgender community's underrepresentation in parliament was also highlighted, along with the need for clear and straightforward guidelines, techniques, and processes for the application of gender laws. The judgment's implementation and its impact may vary due to these contrasting perspectives and could be unpredictable, potentially limiting its positive influence.

## **VIII. CONCLUSION**

In the case of National Legal Services Authority v. Union of India, the Supreme Court of India

delivered a groundbreaking judgment in April 2014, marking a significant milestone in the recognition of transgender rights in the country. The court's decision addressed the long-overdue acknowledgment of the rights of the transgender community in India. The judgment underscored the crucial role of gender in the application of various human rights, such as the right to vote, the right to marry, the right to own property, and the right to obtain formal identity documents like passports and ration cards. In arriving at their decision, the judges considered international legal frameworks, including the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966, ICCPR), and the Yogyakarta Principles. The primary issue raised in the writ petition was the recognition of gender identities as self-identified by the transgender community. The verdict not only recognized the transgender community but also classified them as a socially and educationally disadvantaged group. This classification amounted to positive discrimination aimed at their upliftment. However, it's worth noting that the judgment, while addressing several issues and challenges faced by the transgender community, left some critical matters addressed only superficially. For example, the matter of sexual intercourse, which is intricately linked with the rights of the transgender community, received limited attention. In conclusion, the *NALSA v. UOI* judgment represented a pivotal moment in recognizing transgender rights in India. However, it fell short of providing comprehensive guidelines to address the full range of challenges and issues encountered by transgender individuals.

\*\*\*\*\*