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# Socio-Legal Future of Transgender Persons in India

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DEVASHISH<sup>1</sup>

## ABSTRACT

*Since childhood, we have been noticing a group of people who are dressed up as a female but their voices are more suitable to a male. As a child for me, they have always been someone whom I found very secretive. Something which all the time baffled me that why do the people laugh at them and tease them without any reason? As a grown-up person gradually, I could understand their real difficulties and the reason of that anathema associated with them and tabooed them as "Hijra". Hijra is the individual who we comprehended were some ways or another named as various. Even though they were ineffectively coordinated into society, Hijras in some cases came over when there was a promising occasion at home, for example, a marriage or the introduction of a kid.*

*It is also stated that getting the blessing from any Hijra is the matter of good fortune. It is very painful having seen that people in the society remember them only to grace the occasion for their benefits and afterwards they are treated misdemeanour.*

*In spite of being esteemed the harbingers of good karma, Hijras were frequently spotted asking for cash at traffic crossing points. While they were regularly treated with abhor, growing up, we didn't actually recognize what was unmistakable about them or why they were social outsiders. The strict English interpretation of Hijra is Eunuch, which could be misdirecting. In all actuality, "Hijra" is a name for an individual from the transgender network in North and Western India. Individuals from this network were relegated the male sexual orientation during childbirth however relate to the female sex, which as in wherever of the world, accompanies difficulties. As a major aspect of the MIT section of the Association for India's Development (AID), we were especially keen on finding out about the Hijras' socio-legal status.*

*Having been recognized them as third gender category, nothing has been changed. They are still the victim of molestation, eve-teasing, criminal force, acid attacks and other brutal offences. In this research paper, we will focus on the right of transgender persons under the purview of the Indian Constitution. We will also analyse their human rights and approach of India as a third world country for the protection of the rights of transgender persons.*

*Enacting the legislation is not only the change which is required to make the position of a*

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*transgender better in society but until the attitude of the society will be watertight against transgender persons no legislation will be working effectively in the absence of societal support.*

**Keywords:** *Gender justice, Human Rights, Police deviance, LGBTQIA+ protection, Laws against Gender discrimination, Third gender reservation, Violence against Transgenders.*

## I. INTRODUCTION

From the time immemorial, Transgenders community has been the substantial group in the sub-continent which has its own historical significance. The Hijra group has been a part to indispensable but often ignored sexual diversity in the indigenous culture, as over 4000 years of civilization as per the account of ancient texts. While the Indian law recognizes transgendered people as a third gender, including Hijras, other South Asian nations such as Bangladesh and Pakistan only recognized Hijras as a third gender. Even when there are serious legal disadvantages facing by the larger LGBTQIA+<sup>2</sup> community the government in power has been very lethargic to give due recognition to the community like Transgenders including other members of the community of LGBTQIA+.

In ancient literature, the Hijra community, most well known as the Kama Sutra is a Hindi text written between 40 and 200 BEC on human sexual behaviour. In some of the most important Hindu texts, including the Mahabharata and the Ramayana, the Hijra characters have significant roles. A major Hindu god Shiva is one of several forms that involve him merging with his wife, Parvati, into the Androgynous Ardhanari, which is particularly important to many people in Hijra. During the Mughal era of India, from the 16th to the 19th century, Hijras held important court posts and various facets of government. They also were considered religious and blessed, especially during religious ceremonies. They are considered religious.

In 19th century, however, when the Indian subcontinent became a colonial state, British authorities tried to eradicate the hijra community by means of different laws. After Indian independence, these laws were later repealed.

Having been recognised as Third gender, the Transgenders' community is still treated as group having serious problems related to their normal lives as binary gender, they are often victims of abuse and discrimination. It is also the matter of great frustration that the hate crimes and other communal teasing against the community are common. This has been addressed by the

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<sup>2</sup>Beatrice Howard, LGBTQIA+ - What do all the letters stand for? | Student Hut Student Hut (2018), <https://studenthut.com/articles/lgbtqia-what-do-all-letters-stand> (last visited Sep 23, 2019).

government, which raises urgent demand for introducing laws, protecting transgender persons, and fixes the criminal activities of the people who harasses Transgenders and put the concern person for such inhuman act in the prison and also put other penalties for offenders.<sup>3</sup>

### **(A) Evolution of Transgender Community in India**

For millennia, transgender people have been integral part of Indian culture. In early texts of old India there were historical proofs of "Third gender" acceptance or individuals that could not be confirmed by men or women. In the Hindu mythology, poetry, the poem, and the late Vedic, and Puranic literatures was the notion of "tritiyaprakriti" or "napumsaka." The word "napumsaka" was used to describe the lack of procreative capacities, representing a distinction between male and woman indicators.<sup>4</sup>

Some of the early texts thus dealt extensively with sexuality and the idea of a third sex, an established idea. In reality, the Jain paper even cites the notion of "psychological gender," which stresses the psychological composition of a person, different from their personal features. A story came into light through epic Ramayana that after 14 years of banishment from the kingdom, Lord Rama was leaving in the forest, turns to his disciples and asks all the "men and women" to return to the city. The hijras alone felt compelled by this path and decided to remain with him among his supporters. Rama, impressed with their allegiance, empowered them to give favours on favourable times like childbirth and marriage as well as at the appointment duties, which were intended to provide a setting for the Badhai practice where hijras sang, danced and blessed.<sup>5</sup>

The only condition he had made was to spend his last night of life in marriage, Aravan, the son of Arjuna and Nagakanya in Mahabharata, offered sacrifices for Goddess Kalí for Pandavan's win in the Kurukshetra war.<sup>6</sup> Since none of the wives was prepared to meet a man sentenced to death, Krishna takes on the shape and has been marrying him as a lovely lady named Mohini. Aravan was the progenitor of Tamil Nadu and is called an Aravani.<sup>7</sup>

### **(B) Who is “Transgenders”**

There have always been people who stand against gender norms in every culture. However, the

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<sup>3</sup>Shane. Gannon, With Respect to Sex: Negotiating Hijra Identity in South India (review), 16 Journal of the History of Sexuality 328-330 (2007).

<sup>4</sup>*Id.*

<sup>5</sup>Trp.org.in (2019), <http://www.trp.org.in/wp-content/uploads/2015/10/ARSS-Vol.4-No.1-Jan-June-2015-pp.17-19.pdf> (last visited Sep 11, 2019).

<sup>6</sup>M. Michel raj, Historical Evolution of Transgender Community in India, 4 Asian Reviews of Social Sciences 17-19 (2015).

<sup>7</sup>A Anusha& Dr. Rashmi Ram Hunnur, A Review on Status of Transgenders from Social Exclusion to Social Inclusion in India, 21 IOSR Journal of Business and Management 29-34 (2019).

term "transgender," which dates from the mid-1990s, is relatively new. The general population often does not understand Transgender people well. The word "LGBTQIA+" is a helpful term that covers a range of individuals who reside significant parts of their life showing a feeling of sex other than that allocated at conception. This includes people who feel like their biological sex doesn't represent their real gender. Those who do not classify as gay can be called "cisgender," which means they associate with the born gender.<sup>8</sup>

Some transgender people say that they have been born in the wrong body. Therefore, some transgender people choose to have operation to use their required sex in physical shape. Sometimes this person is called a transsexual, after surgery. Somebody can also be preoperative (in this case she or he may be known as "no-op") or can never have an operation. Breast and facial hair, for example, are promoted through hormones to encourage secondary sex characteristics. The term "transition" is often used to define the time that you move back from the given gender. Physical transition may define operative, hormonal, or other bodily modifications. Social transition could include a legal change of title, requesting that mates use a selected pronoun, and other notification measures.

If it is essential to indicate someone is trans (though generally not): someone who has previously recognized him / her as a female and is now identifying himself as a male is regarded as an FTM transsexual, a trans man or a transgender man. Likewise, somebody who was once a man and now identifies as a woman may be labelled as a trans-sexual (MRT) or trans-sexual (MRT) or trans-sexual woman. Recalling that females are MTF, like FTM males, is highly crucial.<sup>9</sup>

The manner transgender people are handled (including their selected title and desired pronouns) exhibits honour. Some Transgender people may continue to use sexual neutral names, for example "ze / hir / hers etc. Transgender people may identify as lesbians, bisexuals, gay people, heterosexuals, etc. They associate commonalities with LGBTQIA+ individuals, who have suffered discrimination, bias, poverty, dread and disgrace. Like people from LGBTQIA+, aboriginal people must not conceal who they are to live safely and satisfactorily.

### **(C) Social Distress of Transgenders**

The Transgender be the class of LGBTQIA+ group. They belong to the marginalized cluster

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<sup>8</sup>Preeti Sharma, Historical Background and Legal Status of Third Gender in Indian Society, 2 International Journal of Research in Education and Science 44 (2012).

<sup>9</sup> Issues, National Centre for Transgender Equality (2019), <http://www.transequality.org/issues/resources/national-transgender-discriminationsurvey-full-report> (last visited Sep 10, 2019).

of the society that faces legal, social, cultural and economic difficulties. The issues faced by the Transgender community in India embody<sup>10</sup>

**1) Discrimination:** Discrimination is that the major drawback of Transgender. They're discriminated in terms of education, employment, diversion, justice etc.

**2) Disrespect:** They're disrespected in every and each facet of life except in few cases like once the birth of a baby for his or her blessings or to bless the new wed couple.

**3) Downtrodden:** These peoples are treated badly or laden by people in power. They're vulnerable to struggle for social justice thanks to their identity as Transgender.

**4) Child Nabbing:** This community invariably searches for those babies/ infants/ kids United Nations agency are born with this feature of Transgender. Once they are available to grasp, they struggle to nab the kid from their oldsters.

**5) Prostitution:** They're forced to enter the profession of prostitutions by their community, friends or relatives. Even, in some cases, it's seen that their oldsters are concerned in it.

**6) Forced to depart parental home:** Once their identity is known, they're forced and pressurize to depart the parental home by the society as they can't be a district and parcel of traditional community and sophistication.

**7) Unwanted attention:** People provide unwanted attention to the Transgender publicly. They struggle to form the scene by insulting, punishing, abusing or give tongue to them.

**8) Rejection of entry:** they're rejected to urge enter in non-secular places, public places like hotels, restaurants, theatres, parks etc.

**9) Rape and verbal and physical abuse:** this is often the foremost Transgender people face. They're vulnerable to face rape followed by physical and verbal abuse.

**10) Lack of instructional facilities:** Like traditional Transgenders, they're not entitled to require education in colleges and faculties. Even in terms of education, they're treated otherwise.

**11) Problems with STI and HIV/AIDS:** The term "MSM" is used to describe men with men. As a result, the majority of transgenders have socio-economic problems like STI and HIV/AIDS and are low in literacy. It aims at inadequate medical care.

**12) Trafficking in human beings:** Transgender is among the most neglected groups and is

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<sup>10</sup>Dr. Khushboo R. Hotchandani, Problems of Transgender in India: A Study from Social Exclusion to Social Inclusion, 4 *International Research Journal of Human Resources and Social Sciences* 73-80 (2019}.

therefore also prone to the problem of trafficking in human beings.

**13) Social Exclusion:** The main issue in all the process is the social exclusion from society. They are excluded from social, cultural and economic participation. In brief they are departed from following perspectives: <sup>11</sup>

- Economy, jobs and livelihoods
- Exclude the right to abuse
- Limited access to schooling, medical care and private care
- Limited access to government space, collectively
- Citizenship Rights
- Excluded from decisions
- Failed to provide a social safety framework
- Limited access to community services

## **II. INDIAN CONSTITUTIONAL JURISPRUDENCE AND TRANSGENDERS**

Fundamental rights were initially conceptualized in the American Constitution's Bill of rights<sup>12</sup> of and adopted in the Indian Constitution. Indian Constitution Preamble<sup>13</sup> mandates justice social, economic, and political equality of status. Essentially, the Indian Constitution is sex blind, which is that the fundamental principle of equality is founded on a constitutional mandate that the sex of an individual does not matter unless special arrangements are required by the constitution.

### **(A) Right to Equality**

The Constitution gives every individual equivalent status before the law and equal protection of laws within India. Here the term "any person"<sup>14</sup> implies each individual, without discrimination depending on any of the categories that include caste, creed, religion, sex, etc. A transgender in India is included in the words "any person" and is given equal status to that of any cis-gender in India. The transgender community cannot be discriminated against on the grounds of non-application of any law within the country because of its distinctions and on the basis of any voluntary category.<sup>15</sup>

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<sup>11</sup>*Id* at 4.

<sup>12</sup>Constitution of U.S.A, (1791).

<sup>13</sup> Indian Constitution, (1950).

<sup>14</sup>D. D Basu, Introduction to the Constitution of India 36 (2008).

<sup>15</sup> Hannah Van Borm&StijnBaert, What drives hiring discrimination against transgenders?, 39 International Journal of Manpower 581-599 (2018), <https://biblio.ugent.be/publication/8539582/file/8539583.pdf> (last visited Sep 9, 2019).

In *National Legal Service Authority vs. Union of India*,<sup>16</sup> The interpretation of the word person was extended and held that Article 14 of the Indian Constitution does not restrict the word "person" and its application to male or female only. Hijras / transgender people who are not male and female, have been subject to the term "person," and therefore are entitled to law-making security in all areas of state activity, including employment, health care, education, and the similar constitutional and civil liberties embraced by another citizen of the country.<sup>17</sup>

### **(B) Equal opportunities and rights against all types of discrimination**

The main term in regard to the protection of Transgenders' is the term "sex." These societies, regardless of whether they fall under the classification of masculine or female, are included in the definition of the term "sex." The Indian Apex Court in a historic case<sup>18</sup> observed that both gender and biological characteristics are separate elements of sex. Genetic features encompass private parts, genes and other sexual features. However, gender features have included a self-image, a deep mental and social sense of sexual orientation and appearance.<sup>19</sup> The term "gender" is not restricted to masculine or woman biological sex, but is designed to include individuals who do not believe them to be masculine or female. Articles 15(2) and 16(4) have also been defined as providing for cultural equality in these societies, such as equality in public employment, providing that States have the authority to create any space available to them.

### **(C) Basic Freedom**

The basic and fundamental rights secured by the representatives of the transgender society under Article 19(1)(a) of the Constitution of India, are all fundamental principles of security, identity and independence and private integrity and must be protected, respectively, and recognized by the State as a citizen, in compliance with article 19(1) of the Constitution of India. Neither of the requirements stated as a condition of the acquisition of citizenship requires a certain sex or sexual identity. Therefore, a transgender has the correct and the obligation of protecting his emotions, conduct and character to culture. This expression cannot be restricted by the state as a basic freedom.<sup>20</sup>

### **(D) Live the Life Hassle-free**

The freedom to choose one's own name, under this Article, is one of the most essential contributions to existence with integrity. This element is discussed and shielded by this essay,

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<sup>16</sup>National Legal Services v. Union of India &Ors, 5 438 (2014).

<sup>17</sup>*Id.*

<sup>18</sup>*Id* at 5.

<sup>19</sup>M Ramaswamy & Arthur Berriedale Keith, *The law of the Indian constitution* 85 (1938).

<sup>20</sup>Ashutosh Gupta, *Whether Section 377 of IPC Violates the Fundamental Rights*, Volume-2 International Journal of Trend in Scientific Research and Development 962-967 (2018).



as it symbolizes the most significant natural obligation, the freedom to reside, which the State needs to safeguard from violation.<sup>21</sup> Gender identification recognizes their obligation to privacy and non-recognition violates the freedom of them to communicate and to reside their lives without worry.<sup>22</sup>

The obligation to privacy also applies to the privacy of them. Transgenders were not seen with regard in our community, are often abused and torn up by the police that have degraded their standing in culture and their meaning in culture.

### **(E) Protection against Exploitation**

Different inhumanities are proclaimed to be an offender and punishable under the law, including human trafficking and beggary. Article 23 of India's Constitution has a very broad range since it contains all forms of prohibited discrimination. In culture, immoral actions like slavery are generally seen. Everyone has a right to private growth, and this can only be ensured if reproduction is allowed to create a safe atmosphere for a person. Due to their decreased financial position, transgender people are the biggest victim of exploitation and are often considered to be taboo in the community as a result of prostitution and other immoral operations.<sup>23</sup> The aim of this Article is to ensure the independence of an employee status by not allowing people to be exploited.

## **III. TRANS “GENDER IDENTITY”**

Transgenders need a combination of freedoms that other individuals hold for granted—key freedoms that acknowledge their legitimate person hood—to be recognized as natural humans. As noted out by the Global Commission on HIV, "Transgender people are refused legal recognition in many nations, from Mexico to Malaysia by law or by practice. A fundamental component of their identities—sex—is unknown this awareness of their gender is essential to respecting their inherent dignity and the right to health, including HIV protection. Trans individuals experience serious obstacles when refused access to adequate health knowledge and care. Recognizing a cis-person's gender requires respect of the person's ability to recognize—regardless of sex at conception a "third" gender, as demonstrated by many traditional trans-collections, such as hijras, in India, as men, women or girls who do not blend into male–female

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<sup>21</sup>Id at 6.

<sup>22</sup>Aparna Rayaprol&Sawmya Ray, Understanding Gender Justice, 17 Indian Journal of Gender Studies 335-363 (2010).

<sup>23</sup>SribasGoswami&SushwetaKarmakar, Transgender in India: Identified by Law Discriminated by the Society, 9 European Researcher 109 (2018), [https://www.researchgate.net/publication/325742658\\_Transgender\\_in\\_India\\_Identified\\_by\\_Law\\_Discriminated\\_by\\_the\\_Society](https://www.researchgate.net/publication/325742658_Transgender_in_India_Identified_by_Law_Discriminated_by_the_Society). [last visited September 21, 2019].

binaries.

For Transgenders to achieve complete individuality and citizenship, this is a key necessity. Granting sex recognition in formal government papers—visas and other identity cards needed for banking reports, education, accommodation or other agreements, employment, ballots, trips, social facilities or government grants—allows access to a variety of operations that are otherwise refused while being given for gender acceptance in formal government papers. This acceptance leads to a fuller public involvement of and by the Transgenders.<sup>24</sup>

This represents a concrete move towards social integration, progress in the economy and official recognition of legal equality. It can promote and behave unbeatably as recognition of its status and personal value, altering the manner their homes, the community in particular, and the cops, public performers and health care workers are viewed in their everyday lives.<sup>25</sup> This essential freedom for Transgenders to be recognized has been recognized by the UN treaty bodies. The UN High Commissioner for Human Rights suggested that States ' promote legal acceptance of the desired sexes of LGBTQIA+ people and create provisions for the reissue, without violating other civil affairs, of appropriate identification papers depicting the desired sex and names'<sup>26</sup>

#### **IV. NALSA JUDGEMENT “DAWN OF JUSTICE”**

In its historical decision, given for the benefit of Transgenders, the Supreme Indian Court granted extensive rights and safeguards for transgendered persons in the case of National Legal Services v. Union of India &Ors.<sup>27</sup> This Social ruling was appreciated not only because it was the first of its kind globally, but also because it was a significant comparison with the 2013 judgment of the Indian Supreme Court in Naz Foundation v. Govt. Delhi's NCT, which efficiently re-criminalized homosexuality and seemed to show a change to a more liberal view of the justice system on LGBT problems.

In the event of NALSA<sup>28</sup>, representatives of the transgender group who attempted legal confirmation of their gender identity were taken before the Indian courts. Since transgendered

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<sup>24</sup>Manoj Kumar Pathak, Srishti Rai & Madhu Upadhyay, Social, Medical And Human Rights Issues Related To Transgenders In India, 19 *Journal of Punjab Academy of Forensic Medicine & Toxicology* 5 (2019).

<sup>25</sup>Dr. Ashwani Rana & Ms. Ritika Rana, A Study of the Plight of Transgenders – A Life No Less Than A Living Hell, Volume-3 *International Journal of Trend in Scientific Research and Development* 621-625 (2018), [https://www.researchgate.net/publication/333689119\\_A\\_Study\\_of\\_the\\_Pligh\\_of\\_Transgenders\\_-\\_A\\_Life\\_No\\_Less\\_Than\\_A\\_Living\\_Hell](https://www.researchgate.net/publication/333689119_A_Study_of_the_Pligh_of_Transgenders_-_A_Life_No_Less_Than_A_Living_Hell) (last visited Sep 15, 2019).

<sup>26</sup>Glynn Custred, Individual rights and equality before the law, 10 *Academic Questions* 15-17 (1997), <https://link.springer.com/article/10.1007%2Fs12129-997-1061-9> (last visited Sep 20, 2019).

<sup>27</sup>Supra note at 13.

<sup>28</sup>Orinam.net (2014), [http://orinam.net/content/wp-content/uploads/2014/04/nalsa\\_summary\\_danish.pdf](http://orinam.net/content/wp-content/uploads/2014/04/nalsa_summary_danish.pdf) (last visited Sep 28, 2019).

persons are not regarded as masculine or woman, nor as being of a third sex, they are stripped many of the freedoms and benefits other individuals receive as nationals of the state of origin. Articles 14 (guarantying freedom before law) and 21 (guarantying protection of life and personal liberty) are efficiently infringed by such oppression.

In the Apex Court, it asserted that transgender people had performed a powerful historical role in Indian culture, people lore and spiritual texts,<sup>29</sup> that a wealth of global tools are required to protect the freedoms of transgendered individuals and that foreign decisions and legislation have provided respect to the transgendered person's sexual identity. In response, the Court reviewed the many types of repression experienced by transgendered individuals in India, including discrimination, prejudice and elevated levels of HIV infection.

Turning to the statutory obligations of India, the Court discovered that the present repression and discrimination confronted by representatives of the transgendered group conflicted with the provisions set in Articles 14 (Equality before the law), 15 and 16 (Prohibition of discrimination on grounds of sex), Article 19 (guaranty of certain basic freedoms) and 21 (preservation of personal dignity, personal autonomy and right to privacy) The Court ruled that their self-determined gender identity should be covered by state to ensure that transgendered persons benefit from these legislative provisions.

Thus the Court ordered that the Government view transgendered people, among other things, as a 'third gender' so that its freedoms can be safeguarded and some requests for entry to education establishments and public meetings extended to third sex individuals.<sup>30</sup> The Court also instructed the state to tackle the cultural and safety issues facing third-gender participants specifically, including the provision of focused medical treatment, social protection programs, public distinct bathrooms and other amenities.

All in all, it was a comprehensive judgement that reverberated in Indian society and could lead to modifications in Indian criminal, marriage and municipal laws. The NALSA decision,<sup>31</sup> however, poses at least as many concerns as it responds. Tension is mainly that: if people of the third gender (as well as homosexuals) can still be sued for having engaged in "carnal exchange against nature" (which the Naz Foundation Court considered to include sexual gender), and such criminalization promotes non-heterosexual stigmatization, how can the state

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<sup>29</sup> Supra note at 5.

<sup>30</sup> Anuja Agrawal, *Gendered Bodies: The Case of the 'Third Gender' in India*, 31 *Contributions to Indian Sociology* 273-297 (1997), <https://journals.sagepub.com/doi/10.1177/006996697031002005> (last visited Sep 17, 2019).

<sup>31</sup> Suresh Kumar Koushal & Anrvs Naz Foundation & Ors, 106 277 (2013).

expect to fulfil its legislative rig requirement?

### **(A) Important Points of NALSA Judgement**

1. Identifying as third gender.
2. Recognition of people who identify in the opposite sex based on self-identification. Includes female identifying as male and male identifying as female.
3. Non-recognition of gender identity amounts to discrimination under Articles 14, 15 and 16.
4. Discrimination based on sexual behaviour and gender identification would be deemed as sex-underlying discrimination Article 15.
5. No Sexual reassignment surgery required for recognition of gender identity.
6. Persons' gender identity based on their choice is protected under the constitution.
7. A series of directions have been given to the Centre and States based on the above.

### **(B) Margin of Satisfaction and NALSA Judgement**

In fact, the much-hyped NALSA decision<sup>32</sup> has caused a lot of confusion. Although the judgement was celebrated by mainstream media and civil society, many transgender critics pointed out its intrinsic issues and contradictions.

The fact that transgender is a word used to defines a variety of behavioural aspects like Kothi, transman, trans-woman, aravani, genderqueer, for people whose sex identity and/or expression differs from the sex that they are given at birth, especially in India.

Orinam has published an extensive roster of reactions from critics and collectives. In one, the decision is critically analysed in depth and its potential consequences by Gee Imaan Semmalar. The judgement which he calls "puzzled and awkward" brings together a range of trans-gender stereotypes, e.g., all hijras being called "third sex."<sup>33</sup>

The judgment does not address the issues of Trans-men and continually uses offensive phrases such as eunuch to outlaw transgender communities. Transgender organizations are not always the same. Gee Iman Semmalar<sup>34</sup> anticipated many of the conceptualization and execution issues that are now evident with the draft transgender rights law, such as the problem of accreditation or permits: "Would it be mandatory for trans women to obtain third gender identity to benefit

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<sup>32</sup>*Idat* 10.

<sup>33</sup> *Supra* note at 27.

<sup>34</sup> Gee ImaanSemmalar, Unpacking Solidarities of the Oppressed: Notes on Trans Struggles in India, 42 *WSQ: Women's Studies Quarterly* 286-291 (2014).

from advantages like OBC reservation in employment and education? The method is not evident, nor is it their decision. What does a blanket OBC reservation imply for a society with many Dalit transgender individuals? What is OBC classification for inner hierarchies?

He also claims that it is not evident from NALSA's judgement whether sex reassignment surgery is essential to legitimize the state's gender identity. In a published criticism of NALSA's judgement, Aniruddha Dutta<sup>35</sup> also notes out that the decision on gender identity is far from straightforward.<sup>36</sup> "At one stage, it mentions the Argentine model that enables self-identification without needing medical clearance, a model that many Transgender protesters praised. But at other times it seems to suggest that 'psychological exams' would be essential, which is possibly very difficult considering the limitations of how gender dysphoria treatment operates in psychiatry and medicine.

## V. EDUCATIONAL RIGHTS OF TRANSGENDERS

The 'third gender' nomenclature is in itself a problem: it treats sexuality like a ladder in which the queering community takes over the lowest class. It does not alleviate their exact conditions, although it gives them legal recognition, since they remain part of the oppressed section of society and are considered not equal to the other indigenous people.<sup>37</sup> The inclusive principle, which has long been hoped for but has not acted on, is finally successfully adopted by India, which is important also to highlight the various forms of failure, and will be regarded as OBCs for the third sex person. The Indian Supreme Court said that they will receive reservations for education and work as OBCs. Special toilets and departments have to be set up to address their special medical issues by the Supreme Court.<sup>38</sup>

Transgender involvement in schools is a major challenge. It is so difficult to ensure that transgender education offers equal opportunities since there is an inclusion problem with gender students. An environment in which transgender feels safe is needed. Inclusion can have an important role for teachers and community workers. India faces a severe lack of skilled workforce in various industries. Professors and other school members must be provided with professional education and training.<sup>39</sup> The transgender should be given professional training at secondary and high secondary levels in the preparation of their job.

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<sup>35</sup>AniruddhaDutta, Dissenting Differently: Solidarities and Tensions between Student Organizing and Trans-Kothi-Hijra Activism in E, South Asia Multidisciplinary Academic Journal (2019).

<sup>36</sup>KruttikaSusarla, Trans rights in India : A policy brief , Kruttika.com (2019), <http://kruttika.com/work/transrights/> (last visited Sep 29, 2019).

<sup>37</sup>Romi Jain, Education for TheHijras: Transgender Persons of India, 6 Knowledge Cultures 51 (2018).

<sup>38</sup>Selladurai M, Empowering Transgenders Community through Education, SSRN Electronic Journal (2017).

<sup>39</sup>*Id.*

## **VI. FREEDOM FROM VIOLENCE AND DISCRIMINATION**

There are various stages of systemic approaches to decrease violence against trans-person, including accountability of offenders, enhanced legal or political reforms to eliminate crime, and overall support to make the uninformed awareness of Transgenders' problems. Increasing Transgender communities and activist groups' capacity to uphold their liberties can also counters legal protection from harassment. When Transgender individuals receive legal assistance and entry to legal proceedings, accountability can be enforced against offenders. It can be essential to sensitize the police to turn them into associates. When political will is present in extremely negative environments to promote such efforts, trans-organizations and partners may suggest using global human rights mechanisms, such as secondary reports on UN human rights procedures such as the Universal Periodic Review, to concentrate on problems of anti-trans aggression and other social rights crimes against trans-people.

It is essential to ensure that transgenders are considered equal in the provision of equitable entry to houses, schools, public facilities and job opportunities, the development and implementation of non-discrimination legislation and interventions to protect transgenders in these circumstances, including their protection.

## **VII. TOUGH ROAD TO BE WALKED AS “THIRD GENDER”**

The Supreme Court of India issued a commonly praised decision recognizing Transgenders' right and stating that they should appreciate all the basic freedoms enshrined in the Indian constitution. The judgement–National Legal Services Authority v. Union of India,<sup>40</sup> commonly called the NALSA judgement–offered the central and government authorities' wide guidance on affirmative intervention, government hygiene, personal security and other enforcement to be created accessible to LGBTQIA+ individuals.

Following the judgement, the Trans woman came to a local tribunal in her town as a first move towards altering the sex mentioned in her formal papers. According to most records, the Supreme Court acknowledged that they have the right to identify themselves according to whatever they think fit for themselves. Thus, it is illegal denying authorities their identities based on whether or not they had surgery as per medical certificate. As she quit, disappointed, she felt her laugh. Other events have occurred since the NALSA decision was adopted in April 2014.

Reports revealed in June 2014 that a transgender person died after an accident as doctors

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<sup>40</sup> Supra note at 24.

couldn't identify which unit –masculine or woman–to use for therapy. Telangana Hijra Transgender Samiti recorded 40 assaults on transgender people within six months in February 2015.<sup>41</sup>

In 2015, Human Rights Watch publish information several cases of police mistreatment of transgender people. A latest survey by National research institute was conducted on 60,000 transgender participants in 17 countries has found that police and other law enforcement officials are the greatest perpetrators of transgender violence.<sup>42</sup>

All this, and more, indicates that the alleged paradigm shift that occurred when the April 2014 NALSA decision was adopted has not yet transformed into fact. As the International Commission of Jurists (ICJ) training document on the application of NALSA's judgement states, "Indian Central and State Governments have not yet enacted some of the key instructions laid out in the judgement."<sup>43</sup>Aniruddha Dutta, an educational and transgender rights activist, told that "Leave alone the application of concrete measures, even NALSA's essence."<sup>44</sup>

## **VIII. THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2016**

The National Legal Services Authority v. Union of India<sup>45</sup> is a landmark decision of the Supreme Court of India, which proclaimed transgender people a 'third gender,' stated that the fundamental rights given under India's Constitution will be similarly relevant to transgender individuals and grants them the opportunity to self-identify their gender as masculine, woman or third-gender. Navtej Singh Johar and other Indian vs. Secretary Ministry of Law<sup>46</sup> and Justice is another landmark decision paving the community's freedoms. This situation decriminalized all consensual sex among personal individuals, including homosexual sex, reaffirming LGBTQIA+ group freedoms. It retained Indian Penal Code Sec 377 as unreasonable, and hence hit.<sup>47</sup>

This decision paved the path for society rights and privacy. Only after these two significant decisions, the legislature gave some time and adopted the 2016 Transgender Person Protection

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<sup>41</sup>RamyaJawahar, Why transgender community is struggling in spite of NALSA judgment Dailyo.in (2019), <https://www.dailyo.in/politics/transgender-nalsa-judgment-aadhar-card-gender-rights-self-identification/story/1/15462.html> (last visited Sep 22, 2019).

<sup>42</sup>National Center for Transgender Equality (2015), <https://transequality.org/blog/gender-based-violence-against-trans-women-claims-more-lives> (last visited Sep 29, 2019).

<sup>43</sup>AniruddhaDutta, Contradictory Tendencies: The Supreme Court's NALSA Judgment on Transgender Recognition and Rights, 5 *Journal Of Indian Law And Society* 225-236 (2014).

<sup>44</sup>AniruddhDutta, Gender, Women's and Sexuality Studies Clas.uiowa.edu (2019), <https://clas.uiowa.edu/gwss/people/aniruddha-dutta> (last visited Sep 29, 2019).

<sup>45</sup>Supra note at 34.

<sup>46</sup>Navtej Singh Johar v. Union of India, 76 14961/2016 (2018).

<sup>47</sup>RatanlalRanchhoddas. et al., Ratanlal&Dhirajlal's The Indian penal code 1541 (32 ed.).

Bill. This Bill also encountered much disagreement as the concept of the word transgender itself was derogatory and guidelines provided by the Supreme Court were not fulfilled in the NALSA judgement. This proposal was written very poorly. After 27 changes, Lok Sabha passes the Transgender Person Protection of Rights Bill 2018 and is proceeding before Rajya Sabha. This Bill had attempted to rectify the entire 2016 Bill's errors and lacunas, even though the Bill requires much enhancement.<sup>48</sup> The revised definition omits the reference to a 'neither male nor female' formulation and covers any person whose gender does not match the gender assigned at birth, as well as trans men, transwomen, those with intersex variations, genderqueer, and those who designate themselves on the basis of socio-cultural identities such as hijra, aravani, kinner, and jogta. There are all 8 sections in the Bill, but even then, this proposal is not farsighted, hardly sufficient to meet society expectations. This issue required severe scrutiny and transparent legislation, but the legislature succeeded.

#### **(A) Major Drawbacks of the Bill**

There is a need to render a glimpse of new introduced Bill on Transgenders rights and also have a discussion related to the chapters which have some textual problems or errors related to their interpretation.

Chapter II talks about "Prohibiting certain acts" it suggests that transgender should be treated equally in terms of public work, education, but it does not mention how to accomplish this objective. So, this section has neglected to address the larger query as to how equality can be established.

Chapter III talks of "Recognition of Transgender Persons identity" to be recognized as a Transman / Woman, it recommends a complicated, tedious method. A compulsory sex reassignment surgery must be performed to recognize someone as a man / woman. This is a breach of NALSA's judgement policy.

Chapter V talks about "Obligation of Establishment and Other Person," this section has curtailed transgender liberty of motion, rendering it mandatory to live with relatives at home. Transgender Persons ' battle is not only against the state, but sometimes also against their own relatives who hesitate to recognize and object them to physical and sexual abuse.

The Bill also discriminates on offenses and punishments at Chapter VIII. Severe discrepancies exist in penalties for sexual violence against transgender individuals and females.<sup>49</sup> Where IPC

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<sup>48</sup> Danish Sheikh, The New Transgender Bill Fails the Community The Wire (2019), <https://thewire.in/gender/failures-of-the-new-transgender-bill> (last visited Sep 17, 2019).

<sup>49</sup> Annie Banerji, India's transgender community says new bill violates their rights OPENLY (2018), <https://www.openlynews.com/i/?id=4044cfb5-ce3f-4b82-b00e-63adc9758468> (last visited Sep 20, 2019).



inflicts severe penalty for crimes against females, on the other side it only offers for a two-year penalty for transgender people, which is far less (e.g., Section 376 IPC offers for 7 years of rape penalty).<sup>50</sup>

Adding to its faults, the Bill criminalizes Begging's deed. Many transgender groups operate and maintain by praying, which is also a usual social ritual. It's their way of lives to dance, sing, and gain cash.<sup>51</sup>

## **IX. SUGGESTIONS & RECOMMENDATIONS**

The third gender group of India needs to be reformed urgently. Reforms are needed to guarantee that India's third gender is correctly reasoned and free to reside. For their betterment, the suggestions are as follow:<sup>52</sup>

1. The Government and Society must plan and adopt an inclusive attitude to Transgender. Policies are, however, structured but not enforced adequately.
2. There should be a focused strategy to ensure that their issues are addressed.
3. Legal system in relation to problems of the transgender group must be enabled and sensitized.
4. The persons who commit violence towards Transgender should be punished by criminal and judicial intervention.
5. Parents should be rigorously tackled who for their biological distinction neglect, accuse or abandon their Trans kids.
6. For the Transgender society the provision of free legal assistance must be assured and made easily accessible.
7. Schools and Universities must serve an important and positive part in offering transgender education and value.
8. It is necessary to ensure the provision of social rights.
9. It must be enabled to establish a career planning and advice helpline, professional options and an online investment scheme.
10. Liberal loan and economic support must be assured to begin up your profession as a merchant or entrepreneur.
11. In all personal and government schools and clinics separate health service strategies must be formulated and conveyed.

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<sup>50</sup> Supra note at 41.

<sup>51</sup> *Id* at 14.

<sup>52</sup> Anitha Chettiar, Problems Faced by Hijras (Male to Female Transgenders) in Mumbai with Reference to Their Health and Harassment by the Police, 5 *International Journal of Social Science and Humanity* 752-759 (2015).

12. In the society awareness programs must be organized at a mass stage on or for Transgenders.
13. The school curriculum and university curriculum should include a comprehensive sex education program for learners at beginning stage.

## **X. CONCLUSION: “FUTURE OF TRANSGENDER IN NEW INDIA”**

The LGBTQIA+ community in India had an historic moment in September 2018. Section 377 was struck down by the Supreme Court and enabling sexual relations between adult people of the same sex. It was unlawful before that. That’s why for New India doing so was important. It shows a change in the belief and set principles of the society.

This is the first step towards countries that are more integrated and tolerant. Present government emphasized the importance of including the many groups and identities of India, which remained on the fringe under the previous ruling parties in India. More importantly, the present government has recognized that society is changing rapidly and that nobody should be isolated. The Transgenders has gradually but certainly acquired more tolerance and recognition in India over the last five years as part of the new government.

As of 2014, Transgenders started identifying themselves as "Third Gender". On 6 September 2018, with the reference to Section 377 of the Indian Penal Code, the group was legally accepted. Under Indian Law it is not forbidden to make symbolic same sex marriage.

By 2019 Transgender women have the right to record their marriage according to the 1955 Hindu Marriage Act, through the decision of Madras High Court. The Ruling party upheld the Supreme Court's ruling on the decriminalization of homosexuality.

It could be believed that the Transgender community will see greater inclusion, tolerance and eventually normality rapidly with the new government. Since it is a rule of law, people know and must honour the diverse community and group in the society. Those who do not "accord" are still needed by law to do so.

The stigma of the Transgender group will therefore be diminished. The movies are right source to ascertain the mind-set of the society. In early cinema Transgenders were rendered in comic and hatred character whereas in present cinema, many movies presented true agony of the Transgenders. These movies can be deemed as the changing perspective in the society towards Transgenders or can be considered as right medium to change the outlook of the society towards this community.

Credit must be given to the judgment of Section 377; the society is becoming far more aware

and aware of what it speaks for. Transgender groups and alliances for their justice have been found in schools, colleges and universities and are recognized.

The young people of India are the key players to remove this stigma. The enhanced availability, visibility and consciousness of young individuals that did not occur before are of course more respectful. With most of India made up of young people, it does not take long to increase tolerance and respect for this group.

At the end of the day, if we tolerate all groups and diverse identities, New India can really make progress to its fullest potential. Only with regard can tolerance arise. It is up to citizens to understand and respect the Transgenders community as much as any other group, as the Supreme Court establishes the foundation for respect for this community. Contacts with highly different groups and identities have given me a tremendous feeling of tolerance for someone like myself who has been in several cities worldwide. The researcher knows that tolerance for others may not be so straightforward. This disclosure is the easy way to achieve this. The differences among other groups and identities must be learned to our citizens.

In short, New India can only advance to its fullest potential by recognizing, tolerating and respecting all groups of New India likely Transgenders are now included.

Researcher is not in favour of people having to take on accessible weapons distinctions. We must, however, be aware of the differences of each other and show respect. Human beings come in with rigid, uncomfortable mind-sets are the harmful thing that can happen in New India. As we witness in our democracy, when times are changing, it's important for us to positively adapt changes. Change is worthy of development, to accept and embrace transition. It begins by the person. It extends to a group, then to a society, then to a country.

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