

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 7 | Issue 5

---

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).

---

# Unseen and Unheard: A Socio-Legal Study on Intersectional Victimization and Violence Against Transgender

---

ANUJA BANSAL<sup>1</sup>

## ABSTRACT

*In a world that clings to just two labels, the lives of transgender individuals reflect the courage needed to live beyond these rigid definitions. Behind this courage lies a battle fought with the self and with society, where simply being themselves comes with a heavy price. From facing rejection by loved ones to battling discrimination at every turn, their fight for equality is far from over. In the contemporary world, one of the most pressing issues is the struggle for transgender rights, the lack of which leads to violence against such individuals. Even after consistent efforts for public awareness and legal protections, the transgender community faces violence, humiliation, inequality, and several other injustices that put a question mark on their human rights. This paper delves deeply into the diverse challenges faced by the transgender community and specifically focuses on the prevalent violence against transgender individuals that is rooted deeply in societal inequalities. Intersecting factors such as illiteracy, workplace discrimination, social status, dignity, and marginalization, along with various other social barriers that act as obstacles in a pathway to a more inclusive society also contribute to the cycle of victimization and violence. Individuals whose gender identity is different from the sex which they were assigned at the time of their birth are considered transgender individuals. Unfortunately, they witness a world that is hostile and is unacceptable to their existence. This hostility eventually leads to discrimination and social exclusion. Every single injustice creates a pathway for one of the most significant problems faced by them, that is the existence of a social stigma about them. Although there have been legal advancements in various countries where a third gender has been recognized and such individuals have the right to change their legal gender, yet transgender individuals are not treated equally and are denied their basic human rights. Lack of such recognition contributes to a society full of discrimination against transgender individuals which gives rise to transgender violence which is often overlooked. Such inequality promotes various other challenges, one of the major challenges being abandonment by the family, which is another critical issue that severely affects their life and turns it upside down.*

---

<sup>1</sup> Author is a student at Mangalayatan University Jabalpur, India.

*This paper also shows how various issues intersect with each other and create a compounding effect on an individual's life and eventually exacerbate the vulnerability of such individuals to violence and intersectional victimization. The paper also puts forward the contention that simply reforming the laws is insufficient and there is an urgent need for a holistic approach to address the root causes of intersectional victimization and violence against transgender.*

**Keywords:** *Transgender Rights, Intersectional Victimization, Violence, Marginalization, Discrimination, Social Stigma, Public Awareness, Legal Protection, Inclusion, Human Rights.*

## **I. INTRODUCTION**

Choices. It might be a simple term for many of us as we make choices on a daily basis – what to do, where to go, whom to talk to and many other choices are mere decisions for us. But there are individuals for whom making choices comes with a price. Making choices for them is not just mere decisions, but an act of courage, defiance, and most importantly survival. These individuals come from transgender communities where such choices have an existing but invisible price tag – a struggle for inequality, discrimination, social exclusion and the list is unending. Apart from the binary distinctions that society has created, exist transgender individuals who often remain unseen and unheard and end up being the victims of such atrocities.

“Transgender person means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, Hijra, aravani and jogta.”<sup>2</sup> Historically, trans individuals held respected positions and enjoyed equality. However, they now face marginalization, violence, and struggle for basic rights. Despite past inclusivity and recent legal advancements, their reality remains bleak. Marginalization exposes them to unseen victimization, extreme violence, and atrocities, necessitating immediate attention to address this crisis and ensure their basic human rights.

### **(A) Research objectives and question**

Despite the spread of public awareness in various sections of society, transgender individuals still face extreme forms of violence and end up being the victims of the same where

---

<sup>2</sup> The Transgender Persons (Protection of Rights) Act, 2019 S. 2 (k)

intersectionality plays a significant role. The paper aims to focus on a massive issue of intersectional victimization that eventually gives birth to extreme violence against transgenders. Intersectional identities such as gender, race, class, and sexuality have a compounding effect and increase such individuals' vulnerability towards violence against them.

The research will deal with certain questions but is not limited to:

1. What are the impacts of intersectional identities such as race, gender, sexuality, class etc. on victimization and violence against transgender individuals?
2. Are legal frameworks efficiently protecting trans people from any kind of violence and victimization?
3. To what extent do social exclusion and social stigma contribute to their marginalization and victimization?
4. What legal changes and policy reforms are required to safeguard the rights and address the root causes of intersectional victimization and violence against transgender individuals?

### **(B) Research Methodology**

This paper uses doctrinal research. Characterized by its descriptive nature and at the same time relies on the information collected via secondary sources. The paper delves deep into the concept of intersectional victimization and violence against transgender individuals within a social-legal framework. The paper relies on information collected through secondary sources such as academic journals, legal databases, research papers and articles that continue to give an in-depth understanding of the role of intersectional identities which ultimately gives rise to multiple forms of discrimination and eventually exacerbates the vulnerability of transgender individuals to extreme forms of violence.

## **II. PRELUDE: VOICES UNHEARD**

In a society that gives just two labels to every individual and where everything appears black and white, a trans woman Mx Dhananjay Chauhan was born. Since childhood, she was judged by society which eventually seems inevitable in such a black and white world. Soon, she realized that her soul was female but her body was of a male. Before she could even express herself in front of her parents, she was exposed to black magic by her own parents to “take the evil out of her”. She was tortured immensely and beaten up until she agreed to act masculine. During her growing years, she was exposed to sexual harassment by her own loved ones and was ragged and bullied in the university until she decided to drop her studies.

It was in 2002 and then in 2004 that her world turned upside-down. While returning to home, she was gang-raped by 20 men. Not only this, she was again brutally gang-raped while working in a furniture company. These incidents could have silenced her for the rest of her life. But she did not give up. She raised her voice against these grave injustices and set an example for the entire LGBTQ community. She fought for the rights of trans individuals and protected them by starting an NGO named Saksham Trust. Furthermore, she did not restrain herself to contribute towards the landmark NALSA judgment<sup>3</sup>.

Her words “the trans community doesn’t need special rights; we just need acceptance” are a testament to the courage she has and the battle she fought not just for herself, but for the entire community.<sup>4</sup>

### **III. HISTORICAL CONTEXT**

The existence of transgender individuals is not a new phenomenon. Such individuals have been a part of society since the beginning of mankind. In fact, in India, if we go back centuries ago, our history depicts people having transgender identities and our culture treated them with the utmost respect and dignity. In fact, a few centuries ago, transgender individuals worked as political advisors and administered in empire. Hence, they were on high positions.<sup>5</sup>

If we put light on the Mughal period in India, trans individuals were a part of royal courts and were in well-known positions as administrators, guardians, advisors, etc. They had a good reputation as they were considered trustworthy and loyal. Thereby, playing a crucial role in politics. In fact, they had the power to influence the decisions of the state and were also wealthy as they were closest to kings and queens.

After enjoying such a dignified life in the pre-colonial era, the onset of colonial rule changed the entire picture for transgender community. At the beginning of the British rule, many transgender individuals sought to enter the Hijra community and accepted protection and benefits by some Indian states. The invasion of Britishism changed the entire situation drastically. When the early European travellers came to India, they were repulsed by the sight of transgenders and could not accept the fact that they were given and treated with so much respect in the royal courts and other institutions. Mid-nineteenth century brought new challenges for this community where the colonial administration sought to criminalize the Hijra

---

<sup>3</sup> National Legal Services Authority (NALSA) v. Union of India [AIR 2014 SC 1863]

<sup>4</sup> Shiva Chaudhary, Tashafi Nazir, ‘My Story: I Was A Victim Of Black Magic, Gang-Rape And Sexual Violence For Being A Transgender’ THE LOGICAL INDIAN (June 23, 2022), <https://thelogicalindian.com/my-story/my-story-dhananjay-chauhan-36171>

<sup>5</sup> Mohammed Atheeq PP and Rajathurai Nishanthi, ‘Marginalization of transgender community: A sociological analysis’ [2016] 2(9) IJAR

community and denied them civil rights. The Criminal Tribes Act, 1871<sup>6</sup> criminalized the Hijra community and specified that they were the ones who were concerned with kidnapping and castrating children and dressed like women to dance in public. In fact, section 27<sup>7</sup> of the said act permitted the arrest of such individuals without any warrant if found with a boy below 16 years of age. Such provisions promoted the society to build a stereotype of trans people to be criminals. The vulnerability that is faced by transgender individuals is due to a huge influence of pre-partition history. Although, the act was repealed in 1952 the prejudicial attitude against such individuals continues to date and contributes to intersectional victimization and violence against transgender people.<sup>8</sup>

#### **IV. THE ROLE OF INTERSECTIONALITY IN TRANSGENDER STRUGGLES**

“Intersectionality is a framework that describes how our overlapping social identities relate to social structures of racism and oppression. Intersectionality merges many identity markers, including race, class, gender, sexual orientation, age, ethnicity, religion, disability, and more, to create a more truthful and complex identity.

For example, a queer black woman may experience the world on the basis of her sexuality, gender, and race — a unique experience based on how those identities intersect in her life.”<sup>9</sup>

Kimberlé Crenshaw, an American Civil Rights Advocate, first coined the term ‘intersectionality’ in her 1991 piece titled ‘Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Colour.’<sup>10</sup> One should know the term to understand how multiple marginalized identities pose several different kinds of challenges towards transgender individuals and how their struggles go far beyond their gender identity. Their challenges are highly influenced not just because of their gender identity but also due to various factors such as caste, class, religion, race, disability and socioeconomic status. Just like a Dalit transgender woman in India would face an intensified version of marginalization not merely because of her gender identity, but also because of her caste.

“The population of ‘other’ as per Census 2011 is 4,87,803.”<sup>11</sup> For such several individuals exists

---

<sup>6</sup> Repealed

<sup>7</sup> The Criminal Tribes Act, 1871 S. 27 (Repealed)

<sup>8</sup> M. Michelraj, ‘Historical Evolution of Transgender Community in India’ [2015] 4(1) ARSS

<sup>9</sup> Vice- President Finance and Operations Portfolio (VPFO), ‘Intersectionality: what is it and why it matters’ THE UNIVERSITY OF BRITISH COLUMBIA (March 8, 2021) <https://vpfo.ubc.ca/2021/03/intersectionality-what-is-it-and-why-it-matters/>

<sup>10</sup> Kimberle Crenshaw ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color’ [1991] 43(6) Stanford Law Review

<sup>11</sup> PIB Delhi, ‘Welfare of Transgenders’ MINISTRY OF SOCIAL JUSTICE & EMPOWERMENT, (June 25, 2019) <https://pib.gov.in/PressReleasePage.aspx?PRID=1575534>

a huge challenge of inequality in various sectors which is highly influenced by intersectionality and they end up being the victims of the same. “The recognition that multiple identities have an influence on one’s social position and lived experience is not novel in the Indian context. Caste is an overarching system of oppression and discrimination in India. When caste intersects with other identities such as sex, gender identity or disability, we find that the nature of discrimination experienced by people at the interstices is severe.”<sup>12</sup>

In the context of transgender people, the distinction regarding the discrimination and vulnerability they face is clearly visible. If we consider caste as one of the intersectional identities, a Dalit transgender person, based on their caste and gender identity, would face a compounded form of discrimination which often leads to violence against them in a more intensified manner.<sup>13</sup>

Access to education which is the most basic and yet important necessity for every individual comes with a price tag for transgender people. Many such individuals experience a scenario where they are forced to discipline their gender expression. They are not treated as other individuals are treated and are made to sit separately which creates and gives birth to a sense of untouchability within them. “Rashmi, a transgender Dalit respondent revealed that when her classmates and teachers found out she was transgender, they tried to make her quit school and imposed severe conditions on her if she were to remain in the same school. She was not allowed to talk to other children. Her application to a renowned university in Tamil Nadu was rejected on the ground that they had a “no trans policy.”<sup>14</sup>

Along with such marginalization, transgender individuals are exposed to sexual violence due to their intersectional identities and are eventually forced to do sex work. An intensified version of violence which they face while doing sex work exposes them to a society which shuts doors on the victim’s face while asking for help. This vicious cycle of victimization and violence due to intersectional identities keeps going on and hence, becomes unending.

In most of the cases when a transgender child is born and when they realize that they are not entirely a male or a female, they are exposed to family abandonment which invites situations promoting violence against them. Zero family support exacerbates their vulnerability towards extreme forms of violence and they are eventually pushed towards an ugly society where they

---

<sup>12</sup> Jayna Kothari, ‘Intersectionality: A Report on Discrimination based on Caste with the intersections of Sex, Gender Identity and Disability in Karnataka, Andhra Pradesh, Tamil Nadu and Kerala’ (CLPR, Bangalore, 2019)

<sup>13</sup> Gee Imaan Semmalar, ‘Unpacking Solidarities of the Oppressed: Notes on Trans Struggles in India’ [2014] 42(286) *Women’s vStudies Quarterly*

<sup>14</sup> Jayna, *Supra* note 12

are ill-treated.

Several other intersectional identities contribute towards creating a hostile world for transgender individuals where there is no room for accessing education, a good lifestyle, and living a dignified life.

## **V. GENDER NEUTRALITY OF INDIAN LAWS- A MYTH OR REALITY**

“Gender neutrality is a term that emphasizes equal treatment of men, women and people of any other gender legally with no discrimination.”<sup>15</sup> The term Gender Neutrality is crucial to understand that no statutes, regulations or legal principles shall discriminate among different individuals based on their gender. When laws are gender neutral, it helps in ensuring equality and the non-existence of gender stereotypes as the same causes perpetuation of discrimination. Even after significant strides towards gender inclusivity in Indian laws, the gendered characteristics of several legal provisions has not been eradicated yet, which leads to the exclusion of transgender persons with respect to many important provisions.

It has been evident for long that Indian laws cater to only two genders in most of the legal provisions and have been gender-specific. This exacerbates the marginalization and leads to the exclusion of transgender individuals. Even after the introduction of the Transgender Persons (Protection of Rights) Act, 2019, the issue of gender neutrality has not been solved yet as it is not truly gender-neutral which gives rise to inequality.

One of the most important landmark judgments which focused on the transgender community and highlighted the issue of gender neutrality is the National Legal Services Authority (NALSA) versus Union of India<sup>16</sup>. The challenge before the court was regarding the recognition of persons who do not fit into binary distinctions and whether they can be legally recognized as ‘third gender’ persons. The judgment delved deep into the question of whether disregarding such gender identities is a breach of fundamental rights guaranteed by the Constitution of India. This was a significant judgment wherein the Supreme Court legally recognized ‘third gender’ or transgender persons for the first time and explained the concept of gender identity. The Court also stated that gender identity does not merely refer to biological characteristics but is rather referred to “an innate perception of one’s gender.” Thus, the Court held that it would be illegal if any ‘third gender’ is subjected to any medical examination or biological test. However, this judgment also sheds light on the fact that existing laws have limitations and are not well-equipped to address the needs of transgender individuals adequately.

---

<sup>15</sup> Ditsha Dhar, ‘A Critical Study of the Gender Neutral Rights in India’ [2020] 2(1) IJLSI

<sup>16</sup> NALSA v. UOI, supra note 3



In the last few years, society has witnessed various extreme forms of violence against transgender individuals taking place, which include sexual violence, physical and emotional abuse, and many more. Yet, the new laws which include Bharatiya Nyaya Sanhita<sup>17</sup>, are silent on such violence faced by this vulnerable population of India.

“A Control+F on the BNS document reveals the mention of transgender only in the definition – section 2(10) which refers to section 2(k) of the Transgender Persons (Protection of Rights) Act, 2019 for a definition of ‘transgender.’ Surely more was expected than a mere inclusion in the definition section?”<sup>18</sup>

If we talk about sexual and gender-based violence against transgender individuals, the punishment provided for the same in Transgender Persons Act of 2019 is six months to two years imprisonment<sup>19</sup> which is far less than the provisions of sexual and gender-based violence against women in BNS. “The BNS fails to stand up as a legal system for this day and age”.<sup>20</sup>

## **VI. VIOLENCE AGAINST TRANSGENDER INDIVIDUALS**

However, the advent of the NALSA<sup>21</sup> judgment which focused on the rights of transgender persons and decriminalization of homosexuality through Navtej Singh Johar vs Union of India<sup>22</sup> in 2018 sought to solve many issues involving such a marginalized section of society. Yet, even after such advancements, violence against transgender individuals didn’t decrease. But the bigger problem is are these cases regarding violence against transgender even reported?

It is absolutely suspicious to note that National Crime Record Bureau data shows extremely low crime rates against transgender individuals. Several activists have asserted that it is not something to celebrate but is a gross underreporting.<sup>23</sup>

There have been several instances of violence against transgender individuals, but the reports published show a completely different picture. On January 1, 2024, a trans woman named Heena was the victim of contract killing by 5 people<sup>24</sup>. Just a month later in February, Raju, a 50-year-old transgender was lynched<sup>25</sup> by a mob after rumours of child kidnapping spread.

---

<sup>17</sup> Bharatiya Nyaya Sanhita, 2023

<sup>18</sup> Saumya Uma, ‘Why the Bharatiya Nyaya Sanhita Is a Missed Opportunity for Gender Justice’, THE WIRE, July 1, 2024) <https://thewire.in/law/bharatiya-nyaya-sanhita-women-gender-trans-queer-justice>

<sup>19</sup> Transgender Persons (Protection of Rights) Act, 2019 S. 18(d)

<sup>20</sup> Saumya, supra note 17

<sup>21</sup> NALSA v UOI, supra note 3

<sup>22</sup> Navtej Singh Johar vs Union of India (AIR 2018 SC 4321)

<sup>23</sup> Huda Ayisha, ‘If only transgender lives were as rosy as depicted in NCRB data’ THE LEAFLET, (May 26, 2024) <https://theleaflet.in/>

<sup>24</sup> Harveer Singh, ‘5 held for plotting to kill transgender’, TIMES OF INDIA, (Jan 1 2024) <https://timesofindia.indiatimes.com/india/5-held-for-plotting-to-kill-transgender/articleshow/106458869.cms>

<sup>25</sup> CJP Team, ‘Telangana: Transgender person killed in mob lynching in Nizamabad’ CJP, (February 14, 2024,

It seems like very few fractions of cases come in front of public eyes while there is a huge number of instances of violence against transgender individuals occurring on a daily basis. It is a big concern that even after such a huge rise in crime rates against them, many of them go unreported. It is evident due to various reasons which involve lack of documentation, social stigma, lack of education and lack of sensitivity which is displayed by police when any such individual seeks help from them. Such underreporting seems to be the result of the prevailing stereotypes in our society against the transgender community.

At the same time, they are also subjected to intersectional victimization wherein they fear the lack of confidentiality during the reporting process. This is the main reason why many of them are silenced because they are afraid of their gender identity being exposed which adds to their vulnerability.

“National Crime Record Bureau (NCRB)’s report Crimes in India: 2022<sup>26</sup> released in December last year, recorded only nine transgender persons as victims of murder out of a total of 29,356. Only one transgender victim was identified among the 11,0140 cases recorded for adult victims of kidnapping and abduction. NCRB data registered no cases of rape, sexual or physical assault or mob lynching in which transgender persons were victims.”<sup>27</sup>

“A total of 1,10,140 (21,278 males, 88,861 females and 1 transgender) victims were reported kidnapped or abducted during 2022, out of which 76,069 (13,970 males and 62,099 female) victims were children and 34,071 (7,308 males, 26,762 females and 1 transgender) victims were adult.”<sup>28</sup>

Section 18 of The Transgender Act of 2019 states about offences and penalties in relation to transgender community. The provision is quoted as below:

“Whoever,

(a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;

---

<https://cjp.org.in/telangana-transgender-person-killed-in-mob-lynching-in-nizamabad/>

<sup>26</sup> NCRB, ‘Crime in India 2022 Vol. 1’ NCRB (December 1, 2023) <https://ncrb.gov.in>

<sup>27</sup> Huda, supra note 23

<sup>28</sup> ANI, “Only one case registered under Transgender Persons (Protection of Rights) Act in 2022”, says NCRB’ ANI, December 5, 2023 <https://www.aninews.in/news/national/general-news/only-one-case-registered-under-transgender-persons-protection-of-rights-act-in-2022-says-ncrb20231205140816/>

(c) forces or causes a transgender person to leave household, village or other place of residence; and

(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.”<sup>29</sup>

Despite the fact that the Transgender Persons (Protection of Rights) Act was passed, evidence shows that it has only been used in one case, hence it is unknown how many transgender people actually benefit from it. One of the main causes of this issue is the general lack of understanding among the public, particularly among stakeholders like government officials and police personnel.

## VII. EXPLORING LEGAL LANDSCAPE AND THE NEED FOR SOCIAL CHANGE

From the pre-independence era to today’s contemporary India, there have been significant changes in the situation of transgender individuals in India. Despite progress, societal recognition and inclusion remain ongoing processes, and Indian laws continue to grapple with transgender rights and challenges.

After turning the pages of history, it is shocking to know that ancient India where the transgender community was treated with utmost respect and their existence was valued turned into India where not only their existence was ignored but they were labelled as ‘criminals by birth,’ The Criminal Tribes Act of 1871 (repealed in 1952) which has its roots in the colonial-era, criminalized the entire communities including Hijra which is a traditional transgender community in India and labelled their existence as a crime. Such actions against them ostracized and planted the stereotypes with which transgender individuals are dealing even today.

Although the Criminal Tribes Act of 1871 which criminalized transgender communities was repealed in 1952, that is after independence, but still several decades after independence, the government of India did not focus on such individuals and ignored their recognition. It was not until the Supreme Court in 2014 gave a landmark judgment recognizing them as third gender in the case of **NALSA v Union of India**. The judgment also talks about the presence of transgender community in Hindu mythology as stated below-

“TG Community comprises of Hijras, eunuchs, Kothis, Aravanis, Jogappas, Shiv-Shakthis etc.

---

<sup>29</sup> Transgender Persons (Protection of Rights) Act, 2019 S. 18

and they, as a group, have got a strong historical presence in our country in the Hindu mythology and other religious texts. The Concept of tritiya prakrti or napunsaka has also been an integral part of vedic and puranic literatures. The word ‘napunsaka’ has been used to denote absence of procreative capability.”<sup>30</sup>

In this judgment, the Supreme Court shed light on the fact that transgender persons are also human beings and have all the rights that other individuals enjoy that are given by the Constitution of India. They have all the rights which are given to every citizen of India such as the right to life and personal liberty, the right to freedom of speech and expression, the right to equality, the right to privacy, and all other various rights.

Similarly, when we talk about Section 377 of the Indian Penal Code which criminalized any kind of sexual relationship between homosexuals and due to which transgender persons had to be punished for any sexual relation they enter. There were various legal advancements which led to the decriminalization of the said section and promoted the inclusivity of transgender individuals. Along with promoting inclusivity, the decriminalization of Section 377 focused on gender-neutrality.

The first step towards the decriminalization of section 377 of Indian Penal Code was taken by the landmark judgment of the Delhi High Court in the case of **NAZ Foundation vs Government of NCT of Delhi**<sup>31</sup>, wherein the court held that sexual relationship between homosexuals is not a crime and hence the said section if not held unconstitutional would violate the fundamental rights of persons. After this verdict, an appeal was filed against the judgment of the Delhi High Court in the Supreme Court of India.

Unfortunately, in the appeal **Suresh Kumar Koushal and Another vs NAZ Foundation and Others**<sup>32</sup>, the Supreme Court overruled the judgment of the Delhi High Court and held that section 377 of IPC is valid and constitutional. The judgment held that sexual relationships between homosexual individuals shall be criminalized and favored the constitutionality of section 377 after which a fresh petition was filed in the Supreme Court.

In the writ petition of **Navtej Singh Johar and Others vs Union of India and Others**<sup>33</sup>, a five-judge constitutional bench decriminalized homosexuality under section 377 but the portion of the said provision apart from homosexuality remained in force which is related to sex with minor or non-consensual sexual act.

---

<sup>30</sup> NALSA v UOI, supra note 2

<sup>31</sup> NAZ Foundation vs Government of NCT of Delhi [2009 (6) SCC 712]

<sup>32</sup> Suresh Kumar Koushal & Anr vs Naz Foundation & Ors [AIR 2014 SC 563]

<sup>33</sup> Navtej Singh Johar, supra note 21

Even after such legal advancements, transgender individuals were not treated with equality and dignity as they were extremely vulnerable to social exclusion. Subsequently, in the year 2019, finally, the Parliament passed Transgender Persons (Protection of Rights) Act, 2019. The Act focused on the prohibition of discrimination, certificate of identity, and other various rights which gave transgender individuals inclusivity to some extent. However, when looked closely the act seems insufficient regarding the offences which take place against transgender individuals as the act did not provide for gender-neutrality in laws which is quite evident from the punishment mentioned for any kind of offences against transgender individuals in section 18<sup>34</sup> of the said act.

If we focus towards reservations for transgender individuals, the NALSA judgment of 2014 directed the government to treat them as socially and educationally backward classes - "...the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments."<sup>35</sup> Eventually, both the Central and the State governments failed to implement the directions of the Supreme Court.

Although the Transgender Act of 2019 does not specifically mentions about reservations in education and employment, but it laid down provisions which ensure non-discrimination and equal opportunity to transgender persons.

However, several individual states have taken the initiatives to provide reservations to transgender persons. Tamil Nadu government in 2015 took an initiative to categorize only trans women under the Most Backward Classes (MBC) category. Karnataka became the first state to offer 1% horizontal reservation to transgender persons in 2021 after **Sangama vs. State of Karnataka**<sup>36</sup> case. In fact, in Madhya Pradesh also, trans individuals were included in the OBC category in 2023.

If we focus on international laws "Article 26 of the ICCPR<sup>37</sup> prohibits discrimination and gives equal protection to all persons before the law has been interpreted to include transgender persons under the category of "sex".

Article 9 of the ICCPR<sup>38</sup> has interpreted that the right to liberty is available to "everyone" which includes all persons of LGBTQ identity. Article 12 of the ICESCR<sup>39</sup> has been interpreted to

---

<sup>34</sup> TPA, supra note 29

<sup>35</sup> NALSA v. UOI, supra note 3

<sup>36</sup> Sangama vs. State of Karnataka [W.P. No.8511/2020]

<sup>37</sup> International Covenant on Civil and Political Rights, 1966, Article 26

<sup>38</sup> Ibid at Article 9

<sup>39</sup> International Covenant on Economic, Social and Cultural Rights, 1966, Article 12

recognize the right to health of transgender persons as a vulnerable group that requires positive State protections.

Transgender individuals in India deserve more than just legal protections - they need societal acceptance and understanding. We must challenge illogical gender norms, promote inclusive education and employment, and foster empathy to eradicate the violence and marginalization they face.

## **VIII. RECOMMENDATIONS AND INITIATIVES**

As we have come across with various forms of discrimination against transgender individuals which eventually lead to their intersectional victimization and violence, hence there is a need to take initiatives that can eradicate the same.

1. Transgender-related cases should be specifically dealt in Fast-Track Courts just like the functioning of Family Courts or Consumer Courts. Such courts which are specifically for them shall prioritize cases related to such individuals.
2. Although there has been recognition of the third gender in the NALSA judgment, yet India's legal framework remains binary in several aspects and hence there is a need to push for legal recognition of non-binary identities which will give them the access to rights without getting classified into binary identities.
3. There should be government-run shelters and rehabilitation centers that specifically cater to the injustices faced by the transgender individuals who are victims of extreme violence and homelessness. Such centers should provide medical, psychological, and legal assistance to this vulnerable section of society and help them with their social inclusivity.
4. Most of the societal problems begin when people are not educated since the beginning of their education and they eventually end up accepting the socially accepted norms which can sometimes prove to be extremely harmful. Hence legal and social education on gender identity issues can help in eradicating the violence against such individuals and by educating the students we can make them aware of the rights of transgender individuals which will result in early behavioral changes.
5. There is an urgent need of increasing sensitivity by police officials who are involved in the matters related to transgender individuals as their insensitivity leads to underreporting of cases due to which such individuals end up being deprived of justice.

## **IX. CONCLUSION**

The journey of transgender individuals in India has been like a roller coaster. From historical marginalization to facing violence due to intersectional victimization and the struggles they endure with legal advancements that strive towards gender neutrality, this community still struggles to lead their lives with equality, dignity, and respect. There is a pressing need for social change to ensure that such individuals can live freely in a society which is not just limited to two labels.

In conclusion, such a transformation requires a holistic approach that focuses towards legal reforms and changes in social attitudes parallelly. As the historical marginalization has left a legacy of violence and discrimination which continues to affect such individuals even today, it is essential to address these issues in a comprehensive manner to achieve true equality and a society that respects their identity and rights.

\*\*\*\*\*