



Judicial Approach Towards Transgender Rights: An Analysis of the Nalsa Judgment and Beyond

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Abstract: With the historic National Legal Services Authority v. Union of India (NALSA) ruling in 2014, the Supreme Court upheld the constitutional rights of transgender people to self-identify their gender and live with dignity, marking a revolutionary change in the country's acceptance of transgender rights. The groundwork for comprehensive legal and social frameworks that address the marginalization and prejudice experienced by the transgender population was established by this ruling. Nevertheless, difficulties in implementing rights pertaining to social security, work, healthcare, and education continue despite progressive court rulings. This paper critically analyses the judicial approach towards transgender rights, examining the evolution from the NALSA judgment to subsequent legal developments such as the Arun Kumar and Chinmayee Jena cases, alongside legislative measures like the Transgender Persons (Protection of Rights) Act, 2019. It explores how judicial activism continues to shape gender justice and inclusivity in contemporary India.

Keywords: Transgender Rights, NALSA Judgment, Gender Identity, Judicial Activism, Human Dignity, Legal Recognition, Equality

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INTRODUCTION

Among the most noteworthy changes to India's legislative framework pertaining to human rights in the last ten years has been the affirmation of transgender rights. A turning point in the fight for transgender rights came in 2014 with the historic decision in National Legal Services Authority (NALSA) v. Union of India, which created a framework in law that recognized the transgender person's existence and dignity. Along with affirming transgender people's constitutional rights, this ruling acknowledged transgender people as a "third gender" in India. The path from official approval to actual execution, however, has been rocky and full with paradoxes and continuous battles.

The article delves into the current status of transgender rights, past and present legislative activities, and subsequent legal developments. It also examines the attitude of the Indian court towards transgender rights, highlighting the NALSA verdict as a pivotal moment. By delving into the historical context, legal justifications, and practical implications of these developments, we can unravel the complex web of influences that continues to shape the lives of transgender individuals in India, including judicial activism, legislative responses, and societal attitudes.

Historical Evolution of Transgender Community in India: Before attempting to grasp the significance of the NALSA decision, it is essential to learn about the origins of transgender communities in India. Allusions to transgender individuals in ancient texts and traditional practices demonstrate that they have been tolerated in Indian society for millennia.

Ancient and Medieval Period: In early Hindu literature, such as the Vedas and the Puranas, the idea of the "tritiyaprakriti" or "napumsaka" (third gender) is deeply ingrained. The Kama Sutra, an ancient Indian scripture from the fourth century AD, classified people into one of three groups based on their prakriti, or nature: pums-prakriti, stri-prakriti, and tritiya-prakriti. An essential text of Hindu law, the Manu Smriti (200 BC - 200 AD) elucidated the biological roots of the three genders. Hermaphrodites were also considered a third "neuter" gender in the Tolkappiyam, an early Tamil grammar text from the third century BC.

In the epic Ramayana, just before he set off for the forest, Lord Rama, who had been banished from the kingdom for fourteen years, called upon all of the "men and women" to come back to the city. Since they did not see this route as limiting, the hijras decided to stick with him. Rama, moved by their devotion, gave the hijras the power to bless people at happy occasions like marriage and birth, beginning the custom of badhai, in which they perform songs, dances, and blessings.

Mughal Period: Throughout the Mughal Empire, hijras served in high-ranking capacities inside the imperial courts, such as administrators, harem guardians, political advisors, and generals. Because of their reputation for being dependable, loyal, and crafty, they were able to freely reach any region or population. Because of this, they were able to have significant impacts on imperial politics. In Islamic religious institutions, hijras also held high positions, especially in regards to the defense of Mecca and Medina. Their proximity to the royal family gave them access to vast fortunes and significant say in policymaking.

British Colonial Period: There was a sea shift for transgender people in the 18th century, when colonial rule came into effect. The sight of hijras horrified early European explorers, who failed to understand the rationale for the great respect they received from royal courts and other organizations. British colonial authorities made a concerted effort to criminalize and deny civil rights to the Hijra people in the second part of the nineteenth century. Anyone practicing child abduction, castration, or public female impersonation was subject to the Criminal Tribes Act of 1871. Such offenses carried a maximum penalty of two years in jail and/or a fine. The complex contemporary plight of hijras is heavily influenced by events that occurred before partition.

Post-Independence Period: Even after its repeal in 1952, the Criminal Tribes Act's effects persisted, and other local statutes maintained their discriminatory treatment of some tribes, most notably the Hijras. A 2012 amendment to the Karnataka Police Act brought forth the registration and monitoring of hijras who were believed to be involved in unnatural crimes, child abduction, and similar offenses, reminiscent of the Criminal Tribes Act of 1871.

Section 36-A of the Karnataka Police Act, 1964 granted the power to compile a list of all Eunuchs residing in a certain area who were "reasonably suspected" of kidnapping or emasculating boys, perpetrating unnatural crimes, or providing assistance in the commission of such crimes. The list would include their names and addresses. If an unhappy eunuch objected to having their name added to the registry or wanted it removed for grounds documented in writing, they may do so under this rule.

Transgender people in India had a privileged status before colonization, but they were criminalized and marginalized by the colonizers after independence. This historical context helps to understand their struggle. A major intervention against this discriminatory backdrop occurred with the NALSA verdict.

THE NALSA JUDGMENT: A LANDMARK DECISION

Background of the Case: The National Legal Services Authority of India (NALSA) has taken legal action by filing a writ lawsuit in order to recognize those who do not identify with the binary gender system, such as individuals who identify as "third gender." Prominent among the petitioners was NALSA, an organization established under the Legal Services Authority Act of 1997. The same decision was made by the Supreme Court in two separate appeals, one by the Poojaya Mata Nasib Kaur Ji Women Welfare Society and the other by another transgender minority group, the Kinnars, who were seeking similar relief. In her statement before the Court, transgender advocate Laxmi Narayan Tripathy detailed the suffering transgender people go through since the third gender category does not recognize their gender identity. Tripathy argues that the denial of transgender people's freedom to practice their sexual orientation due to the lack of recognition as a third gender violates their constitutional rights to equality (Article 14) and dignity (Article 21).

The Bench and Judgment

Two justices, Justice Arjan Kumar Sikri and Justice K.S. Panicker Radhakrishnan, made up the Supreme Court panel that considered the matter. Gender equality in India has taken a giant leap ahead with the announcement of the ruling on April 15, 2014.

Key Findings and Directions

The Court made several groundbreaking declarations and directions in its judgment:

Legal Recognition of Third Gender: The Supreme Court of India has ruled that transgender people constitute a "third gender" that has equal constitutional protections under the Indian Constitution. The proclamation states that hijras and eunuchs want to be recognized as a "third gender" so that they may exercise their rights as outlined in Part III of the Constitution.

Self-Identification of Gender: Gender identification is a personal choice, and the Court has upheld this right. In contrast to biological traits, it argued that "an innate perception of one's gender" best describes a person's gender identity. Thus, the Court determined that no third-gender person's private rights should be violated by conducting a medical examination or biological test.

Fundamental Rights: The Supreme Court has held that, in accordance with its reading of "dignity" in Article 21 of the Constitution, an individual may maintain their dignity by freely expressing themselves in a number of ways. Within the framework of Article 21's fundamental right to dignity, it placed gender identity. The Court went on to say that the gender-neutral terminology used in Article 19(1)(a) and the right to equality in Article 14 (referring to "all persons") ensure that transgender people are protected.

Discrimination Based on Sex: Articles 15 and 16 make it clear that "sex" is not an acceptable reason for

discrimination. "Sex" in this sense, says the Court, includes both biological traits (such chromosomes and genitalia) and subjective "gender" (as one perceives it). Thus, the prohibition against discrimination based on "sex" encompasses gender identity discrimination as well.

Socio-Economic Rights: Transgender people are a "socially and educationally backward class of citizens," according to the Court, who ordered the federal and state governments to provide accommodations for them in public schools and workplaces. The transgender population has endured significant disadvantages throughout history, and its acknowledgment was vital in overcoming those obstacles.

Public Health and Sanitation: It was mandated that both the federal and state governments must take the required measures to guarantee transgender people's access to healthcare facilities, including gender-separate toilets and other facilities. The Court also mandated that transgender people be subject to separate HIV/Sero monitoring regimens.

Stigma and Public Awareness: The Supreme Court has ordered the federal and state governments to increase public knowledge of transgender individuals so that they might be better assisted in assimilating into society and eliminating their position as untouchables. It highlighted the need of treating transgender people's challenges, such as societal pressure, depression, suicide ideation, gender dysphoria, anxiety, shame, and stigma.

LEGAL REASONING AND INTERNATIONAL PRINCIPLES

The Court relied on many previous decisions from other jurisdictions, such as those in England, Australia, Malaysia, and New Zealand, to support its claims. The Yogyakarta principles, which are based on landmark human rights agreements and stand as legally binding standards for sexual orientation and gender identity, were also mentioned.

There is a clear difference between biological sex and psychological sex, and the Court disregarded the former and assigned full weight to the latter. Consistent with evolving international human rights standards, this approach represented a radical departure from traditional binary gender roles.

POST-NALSA DEVELOPMENTS: LEGISLATIVE RESPONSE

The Transgender Persons (Protection of Rights) Act, 2019: Multiple efforts to establish transgender rights legislation followed the NALSA decision. After being proposed in 2014 as a private member's bill, the Rights of Transgender Persons Bill was finally enacted by the Rajya Sabha in April 2015. Still, the legislation that became law was the Transgender Persons (Protection of Rights) Act, 2019.

Definition of Transgender: According to the Act, a person is deemed transgender if their gender does not match the gender given at birth. It includes not just transgender persons but also individuals who identify as kinnar, hijra, aravani, or jogta, as well as those who are gender-queer or intersex.

Prohibition Against Discrimination: Regarding access to services, healthcare, work, education, and other opportunities, the Act forbids discrimination against transgender individuals.

Right to be Recognized as Transgender: It is everyone's right to be accepted as transgender. The District

Magistrate will issue a certificate of identification based on the suggestion of the District Screening Committee.

National Council for Transgender Persons: The Act calls for establishing a National Council for Transgender Persons (NCTP).

Right of Residence: No transgender person shall be separated from parents or immediate family on the grounds of being transgender.

Healthcare: The Act aims to provide transgender people access to health care, including sex reassignment surgery and specialized HIV monitoring centers. Additionally, it declares that the government would offer comprehensive medical insurance plans for transgender individuals and evaluate medical curriculum to accommodate their health concerns.

Penal Provisions: Begging, forced or bonded labor, denying transgender people access to public spaces, denying them a place to live in the home or community, and committing physical, sexual, verbal, emotional, and financial abuse are all prohibited under the Act.

CHALLENGES AND CRITICISMS OF THE ACT

Notwithstanding its goals, the transgender community and rights advocates have strongly criticized the Transgender Persons (Protection of Rights) Act, 2019:

1. **Inadequate Definition:** Contrary to the NALSA ruling's focus on self-identification, transgender people are not properly defined, and the Act has no provisions for self-determination of gender.
2. **Absence of Reservations:** Despite the Supreme Court's 2014 NALSA ruling acknowledging transgender reservations' social and educational backwardness, the Act does not address them.
3. **Criminalization of Begging:** Without alternative social security measures, the prohibition of begging affects transgender people who depend on it for money, such as via singing or dancing.
4. **Lighter Penalties for Crimes:** Compared to cisgender persons, transgender people face less severe penalties under the Act for violence and discrimination. For example, sexual abuse of transgender individuals has a maximum penalty of two years in jail and a fine, whereas sexual assault of women carries a maximum penalty of life in prison.
5. **Victimization Narrative:** The Act treats transgender individuals as victims rather than empowered subjects with rights.
6. **Unaddressed Rights:** The Standing Committee's concerns about recognizing rights in marriage, divorce, and adoption of transgender persons have not been addressed.
7. **Violation of Right to Freedom of Residence:** The Act violates the transgender's constitutional Right to Freedom of Residence under Article 19, as they must either stay with their parents or approach a court.

Implementation Measures Following the enactment of the Transgender Persons (Protection of Rights) Act, 2019, several implementation measures were taken:

1. **Transgender Persons (Protection of Rights) Rules, 2020:** These rules were framed under the Act to provide procedural guidance.
2. **National Portal for Transgender Persons:** This site, which was introduced in 2020, enables transgender individuals to apply online for an identification card and certificate from any location in the nation, eliminating the need for in-person meetings with authorities. It ensures process transparency by assisting them in monitoring the progress of applications, rejections, grievance redressal, etc.
3. **National Council for Transgender Persons (NCTP):** This statutory body was established in 2020 to advise the government on policies and legislation related to transgender persons.
4. **Garima Greh:** Shelter homes for transgender people were established to provide safe accommodation.
5. **Advisory to Prisons:** In 2022, the Ministry of Home Affairs sent an advisory to Heads of Prisons in the States/UTs to ensure the privacy and dignity of third-gender inmates.

JUDICIAL DEVELOPMENTS POST-NALSA

Supreme Court of Nepal and Delhi High Court Other South Asian countries have also issued progressive verdicts comparable to the NALSA case, which was a landmark decision in India. Both the Delhi High Court and the Supreme Court of Nepal have made positive references to the Yogyakarta Principles in their landmark decisions protecting the human and constitutional rights of LGBT persons.

Section 377 of the Indian Penal Code forbade adults from participating in private, consenting sexual relations with one another, according to the Delhi High Court's 2009 ruling in *Naz Foundation v. Government of the National Capital Territory of Delhi*. This led to the decriminalization of such actions. *Suresh Kumar Koushal v. Naz Foundation* (2013) led to the Supreme Court overturning this judgment, but *Navtej Singh Johar v. Union of India* (2018) restored it.

Andhra Pradesh High Court Ruling (2025): In a landmark decision from June 2025, the Andhra Pradesh High Court ruled that transgender people in India cannot be denied their legal identity as women solely on the basis of their inability to reproduce. It is "legally unsustainable" and contradicts the identity, equality, and dignity principles of the Indian Constitution, claims Justice Venkata Jyothirmai Pratapa, to link femininity only with the ability to procreate.

The court highlighted that this acknowledgment is codified in the constitution in Articles 14, 15, and 21, which, in that order, safeguard the right to life and individual liberty, forbid gender discrimination, and provide equality under the law. Section 498-A of the Indian Penal Code, 1860, which deals with cruelty perpetrated by a spouse or his family, provides equal safeguards for transgender women and cisgender women, according to the court.

Viswanathan Krishnamurthy and his parents had petitioned to dismiss a dowry harassment case against transgender lady Pokala Sabhana, and the court agreed with their request. By maintaining her gender identity, the court has created a precedent that transgender women will have access to important safeguards against domestic violence.

Other Significant Cases: Several other cases have contributed to the evolving jurisprudence on

transgender rights in India:

1. **Chinmayee Jena v. State of Odisha (2020):** This case further affirmed the rights of transgender individuals to self-identify their gender.
2. **Arun Kumar v. Inspector General of Registration (2019):** This case addressed issues related to the registration of transgender individuals.
3. **Chanchal Bhattacharya v. State of West Bengal (2015):** This case dealt with discrimination against transgender persons in education.

These cases demonstrate the ongoing judicial engagement with transgender rights issues, building upon the foundation laid by the NALSA judgment.

INTERNATIONAL PERSPECTIVES AND THE YOGYAKARTA PRINCIPLES

The Yogyakarta Principles: In 2006, a panel of global human rights specialists drafted the Yogyakarta Principles to clarify how to apply human rights treaties to issues of sexual orientation and gender identity. Legal views on transgender rights have been influenced by these concepts worldwide, particularly in India. Notably, the NALSA verdict made reference to the Yogyakarta Principles, noting that they constitute internationally binding standards concerning sexual orientation and gender identity derived from significant human rights treaties. The Court has ruled that international treaties and the Yogyakarta Principles must be followed to the letter if they do not infringe upon the fundamental rights guaranteed by Part III of the Indian Constitution.

Global Recognition and Implementation: Even outside India, the Yogyakarta Principles are felt. Courts, legislatures, and executive agencies from all around the world have brought them up. One organization that has used the principles in favor of LGBT rights is the United Nations High Commissioner for Refugees, who has said that the "Yogyakarta Principles reflect binding international legal standards."

The Yogyakarta Principles have a strong supporter in European Commissioner for Human Rights Thomas Hammarberg, who has fought tirelessly for their full execution. The standards have also been used by the Asia Pacific Forum of National Human Rights Institutions to evaluate local laws that deal with LGBT people.

CURRENT STATUS AND CHALLENGES

Implementation Gaps: Significant gaps still exist in India's implementation of transgender rights, notwithstanding the progressive court rulings and legislative actions.

Lack of Legal Protection: Transgender people still experience brutality in detention, official neglect, and general indifference to their problems with work, housing, education, and health care.

Poverty and Economic Marginalization: For transgender persons, the absence of legal protection results in unemployment. In addition to facing high rates of marginalization, housing instability, and unemployment, they are refused assistance.

Harassment and Stigma: Society often mocks transgender people, who are seen as mentally sick, socially

abnormal, and sexually predatory.

Violence: They experience forced marriages, forced gender conformity, aversion-based therapy, violence, stripping, and even coercion from family members to become prostitutes.

Healthcare Barriers: Due to medical personnel' indifference and lack of transgender healthcare expertise, they have little access to primary healthcare.

Recent Initiatives Some recent initiatives aim to address these challenges:

1. **Healthcare Clinics:** India's first transgender healthcare clinic, the Mitr Clinic (later renamed Sabrang Clinic), was established to provide specialized, stigma-free medical services to the transgender community. Although it faced funding challenges, corporate support has enabled its continued operation.

2. **Legal Challenges:** Transgender individuals and advocates continue to challenge discriminatory laws and policies. For instance, a same-sex couple recently petitioned the Bombay High Court to challenge provisions of India's Income Tax Act that only exempt gifts between heterosexual spouses from taxation.

3. **Sports Inclusion:** Transgender athletes like Anaya Bangar are challenging bans on transgender women in female sports teams, using scientific evidence to advocate for inclusion based on physiological profiles rather than gender assigned at birth.

CONCLUSION

A sea shift has occurred in India's judicial attitude toward transgender rights with the historic NALSA verdict of 2014. This verdict recognized transgender persons as a "third gender" and confirmed their fundamental rights under the Indian Constitution, marking a watershed moment in the struggle for transgender equality. It emphasized the freedom to self-identify as gender nonconforming and directed the government to see transgender individuals as a socially and educationally backward class entitled to reservations.

But, many feel that the 2019 Transgender Persons (Protection of Rights) Act fails to address the concerns raised by the NALSA decision. A District Magistrate's certification after a screening committee's recommendation is required for gender recognition under the Act, which is at odds with the NALSA ruling's focus on self-identification. The fact that transgender persons face less severe punishments for crimes than cisgender individuals raises concerns about equal protection under the law.

The Andhra Pradesh High Court's 2025 ruling that transgender people are legally women regardless of their potential to bear children is one example of how transgender rights jurisprudence in India has been steadily expanding in recent years. International human rights norms, such the Yogyakarta criteria, had an influence on these shifts, and they are currently shaping the legal landscape around transgender rights.

These advancements are not enough to remove the many difficulties that exist in the real implementation of transgender rights. Poverty, abuse, discrimination, and barriers to healthcare and education persist for transgender persons. To solve these problems, we need solid legal frameworks, but we also need societal changes and effective policy implementation.

Efforts to fully acknowledge and safeguard transgender people in India are ongoing. More court action, legislative reforms, policy implementation, and societal change are necessary to ensure that transgender individuals may live with dignity, equality, and without discrimination. The NALSA verdict was a good first step, but transgender individuals in India still need more legal recognition to live their lives as they see fit.

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