

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can

bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



14th, 2019

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



methodology and teaching and learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

TRANSGENDER RIGHTS- A CRITICAL STUDY

*AUTHORED BY - ABHINAY PRIYADARSHI,
L.L.M., STUDENT, CHANAKYA NATIONAL LAW UNIVERSITY, PATNA*

Abstract

The identity of person is instead of their natural birth, it is determined by the society who judge you on the way you behave and they gives you, its own identity and accordingly, you recognised in the society. This transgender person has faced the same judgemental identity by the society. Being constitution provisions for the prohibition of discrimination, this community has long battle to get its recognition and identity in the society. A dream to that has been achieved through NALSA Judgement but really this community have in reality getting attention in the society. Through this research paper will try to shed light on the issues faced by the transgender community and the criticisms associated with the Transgender Persons (Protection of Rights) Act, 2019 and the government's initiative to protect the rights and curb the problem of the transgender community.

Key Words: - Gender's Right & Identity, Dignified Life, Opportunity & Adequate Representation.

TABLE OF CONTENTS

INDEX OF AUTHORITIES.....

CHAPTER 1.....

1.1 INTRODUCTION.....

1.2 REVIEW OF LITERATURE.....

1.3 SCOPE OF STUDY.....

1.4 RESEARCH AIMS &OBJECTIVES.....

1.5 RESEARCH METHODOLOGY.....

1.6 Research

Questions.....

1.7

Hypothesis.....

.....

1.8 Limitations of Research.....

CHAPTER 2.....

2.1 History of Trans-gender’s in India

2.2 transgender rights during the Colonial era.....

2.3 Condition of Transgender after Independence.....

2.4 Legal Visibility to Third Gender Rights.....

2.5 The NALSA Judgment: A Ray of Hope.....

CHAPTER 3.....

3.1 Legislations For Tran gender’s Rights In India.....

3.2 Drawbacks Of Transgender Person Act,2019.....

3.3 Global Position Of Transgender Rights.....

3.4 CRITICAL ANALYSIS.....

CHAPTER 4.....

CONCLUSION & SUGGESTIONS.....

BIBLIOGRAPHY.....

INDEX OF AUTHORITIES

LIST OF ABBREVIATIONS:-

- art. -Article
- s- Section

STATUES:-

- Constitution of India, 1950.
- The India Penal Code, 1860.
- The Transgender Person (Protection & Rights) Bill, 2016.
- The Transgender Act (Protection & Rights) 2019.

CASE LAWS:-

- *National Legal Services Authority v. Union of India & Ors*, (2014) 5 SCC 438.
- *Navtej Singh Johar.v.Union of India*, AIR 2014 SC 1863.

IJLRA

CHAPTER-1

1.1 INTRODUCTION

The biological construction of a person's genitalia is the only factor that is considered when determining whether a person is male or female according to traditional standards. Nevertheless, there are people who defy the biological binary and do not conform to this custom. These individuals exist in the real world. These individuals are referred to as "transgender." These transgender people, who are often mischaracterized as beggars who tap on the rolled-up windows of our cars at traffic signals or as dancers in local bars, have a difficult time breaking free of the negative stereotypes that surround them. The prefix "trans" can mean "beyond," "across," or "over" according to the definition given in the dictionary. However, the term "transgender" does not simply refer to a gender that straddles the line between two categories. The average person does not have a good grasp on the meaning of this term most of the time.

It is a broad term that encompasses all people who live a significant portion of their lives manifesting an innate sense of gender that differs from suppositions of their birth sex. These people are referred to as transgender individuals. In India, some of the regional terms are used to represent the community. For example, the term *kothi* signifies a range of feminine identified people, who have been assigned male gender at birth. Similarly, other prominent regional and trans-regional identities representing this community are *hijras*, *aravani*, *jogtas/jogappas*, and *shiv-shaktis*.¹ This rambling constitution of transgender subsumes many regional terms and identities. Hence, the desire for a rigid definition, set the platform for the NALSA judgment which defined the term in the following words, a transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behavior does not conform to their biological sex.² Thus, it can be said that the term transgender is not only limited to persons whose genitals are intermixed but it is a blanket term used to refer to persons with identities that do not get along with the strict dual categories of man and woman and whose gender identity and expression differs from the conventional norms expected from their birth sex. Transgenders have been part of Indian society for centuries. The rights of transgender

¹ Alina Bradford 'What does transgender mean', available at <<https://www.livescience.com/54949-transgender-definition.html>> (last seen on 14-09-2022).

² National Legal Services Authority v. Union of India & Ors, (2014) 5 SCC 438.

persons had been suppressed by the antiquated and anachronistic British era laws in India.³ After the enactment of the Constitution of India, sexual minority has waited long enough for recognition of their identity and rights. They have been subjected to discrimination, harassment and treated as second class citizens.

Transgenders are one of the more marginalized sections of society who have suffered much discrimination in their life. For them, life has never been easy. Our society, as advanced as it claims to be, fails to acknowledge different gender identities and expressions. There is an unwillingness to accept change and something that's different and the problem of these people starts from here. Society is not ready to accept them. The foremost thing the transgender people wants from society is respect and honour, values upon which basic human rights are based on. Every human being deserves that. To help transgender people overcome various discrimination government passed the Transgender Persons (Protection of Rights) Bill, 2019 on 26th November 2019. The Bill has subsequently become an Act with the President's assent on 5th December 2019. However, the Act has failed to meet the expectations of the trans people.

1.2 REVIEW OF LITERATURE

BOOKS

- Basu, Durga Das, Comparative Constitutional Law, Prentice Hall of India (P) Limited, New Delhi, 1984.
- Seervai, H.M., Constitutional Law of India, Vol. I, 4th edition; Universal Law Publishing Co. Pvt. Ltd., Delhi, 2013.
- Shukla, V.N., Constitution of India, M.P. Singh, revised by, 10th edition, Eastern Book Co., Lucknow, 2006.
- G B Reddy and Baglekar Akash Kumar, Transgender Persons and The Law: A Commentary, EBC Reader, 1st Edition, 2022.

ARTICLES

- Akanksha Mishra, Third Gender Rights: The Battle for Equality, Christ University Law Journal, 5, 2 (2016), 9-21 ISSN 2278-4322.

³ Amral Singh, Study on Transgender Rights, available at <https://www.probono-india.in/research-paper-detail.php?id=660>, (last seen on 14-09-2022).

- AMARAL SINGH, Critical Analysis of Transgender Persons (Protection of Rights) Act, 2019, available at www.probono-india.in, (last visited on 14-09-2022).
- Mugdha Dhar, Critical Analysis of Transgender Persons (Protection of Rights) Act, 2019, available at <https://www.law-order.org/post/critical-analysis-of-transgender-persons-protection-of-rights-act-2019>, (last visited on 12-09-2022).

1.3 SCOPE OF STUDY

The scope of this study to analyze the Transgender Persons (Protection of Rights) Act, 2019 and shed light on the critics as it has failed to identify and solve the problems of the community. The reference has been made with the prevailing law relating to research topic to find out that whether they are meeting the issues involved in the research.

1.4 RESEARCH AIMS & OBJECTIVES

- I. To study the social and legal position of the transgender community and the judicial treatment of the same
- II. To highlight the historical growth of the transgender people and analyzing their position in jurisdictions across the world.
- III. To critically analyze the Act and shed light on the critics as it has failed to identify and solve the problems of the community.
- IV. To study that after the recognition of the rights as well as creation of Act, still these communities rights are not recognized at public places, institutions and these communities are deprived from their basic rights and facilities.

1.5 RESEARCH METHODOLOGY

The methodology deployed will be doctrinal for which various sources such as books, internet, statutes, Articles & news papers will be referred for this research topic.

1.6 RESEARCH QUESTIONS

1. How these communities travel a lot in getting their rights recognized?
2. Is these communities are still fighting for the implementation of their basic rights?

3. Is these communities are still facing the discrimination in the societies and depriving from their basic rights even after the recognition as Third Gender?

1.7 HYPOTHESIS

The main aim of this research study is to find out that after the enactment of the Constitution of India, sexual minority has waited long enough for recognition of their identity and rights. They have been subjected to discrimination, harassment and treated as second class citizens. This research will also focus on highlighting the historical growth of the transgender people and analyzing their position in jurisdictions across the world. This research paper will also see how even after the recognition of rights and formation of separate acts, these communities are still facing the discrimination in the societies and depriving from their basic rights.

1.8 LIMITATIONS OF RESEARCH

The Present research has following below limitations:

1. The research study has been done from the books, articles, statues and the Internet.
2. The research focuses on analysis of laws relating to research topics and materials available on internet because of time limitation as well as not possible to collect data physically.
3. There is possibility of further study of this research paper with evolution of new circumstances as well as further amendment of law relating to research topic and fulfilling the gap because of present law not meeting the issues involved in the research topic.

CHAPTER 2

2.1 History of Trans-gender's in India

It is stipulated in Indian mythology, which provides glimpses of reality at times as well as a quick look at the reflections of the past, that transgender people, who are frequently stigmatised in today's society, were once venerated and appreciated to a significant degree.

The concept of a third gender can be traced back to Hindu mythology, which contains many examples of gods and goddesses switching genders, manifesting as an Avatar of the opposite sex, and so on. This is where the idea first emerged. It was common practise to think of gods as embodying both male and female characteristics at various points in history and in their varying incarnations. For instance, Ardhanarishvara is revered by many people because he was created by fusing Lord Shiva and his consort Parvati together.

Both the Mahabharata and the Ramayana were incredibly rich sources of information regarding transgender people. It is likely that Shikhandi, a character from the Mahabharata, holds the title of the most powerful transgender figure to be found in Hindu mythology.

Another minor but important transgender character is Aravan, also known as Iravan, who is the son of Arjuna. He is believed to have been the one who established the family lineage from which transgender people are born. Another scene in the Mahabharata that features the appearance of third genders is the one in which Arjuna is banished to the forest. There, he pretended to be a eunuch by the name of Brihandala and presided over rituals during important life events like weddings and births of children. The Ramayana is yet another literary work that has served as a source of motivation for the development of transgender people. While Rama was about to enter the forest for a period of fourteen years, he addressed his followers as "men and women" and requested that they return to the city.

The hijras did not consider themselves to be bound by the order, so they made the decision to stay with him. As a result of Rama's admiration for their unwavering devotion, he bestowed upon them the ability to bestow his blessings on joyous events.

In point of fact, during the time of the Mughal Empire (1526-1857), hijras were well-known for the positions they held in Royal Courts as political advisors, administrators, generals, and guardians of the harems. These jobs were among their many responsibilities. They even occupied high positions in the Islamic religious institutions and were also able to influence state decisions. Later, these benefits were removed through legislation in the British period.⁴

2.2 transgender rights during the Colonial era

The actions of transgender people were seen by the British as a form of solicitation for sexual services. Their slide from prominence began in the 18th century, when the British colonial government was in control. They were marginalised in Indian society and faced discrimination in the workplace, in jobs, in public places, and in services such as education and healthcare. They were always on the receiving end of negative behaviour and attitude due to the fact that they belonged to a sector that was marginalised and socially excluded. Due to the fact that the general public did not accept them, their social contributions were limited. This, in turn, led to a lack of self-confidence and self-respect, which ultimately resulted in their being excluded from society. The inhumane condition of transgender people became even more deplorable as a result of society's perception and treatment of them as "different" individuals who were unable to conform to the standards of morality that were established. As a result of being rejected by society due to their gender identity, they were forced to resort to beggary and prostitution as their only means of subsistence.

Due to the prevalent binary gender concept of being either male or female, the implementation of the rights that were guaranteed to them in an effort to improve the situation was fraught with insurmountable obstacles. However, the rights themselves were guaranteed to them. For instance, in 1994, transgender people were granted the right to vote; however, the process of issuing them voter identification cards became bogged down in.

In the 19th century, they criminalized all penile-non-vaginal and sexual acts through Section 377 of the Indian Penal Code, 1860. The purpose of the Britishers was to remove the visibility of the transgender community from social categorization so they legislated the Criminal Tribes Act 1871 (hereinafter CTA) which led the community under surveillance and control of

⁴M. Michel Raj, Historical Evolution of Transgender Community in India, 4 ASIAN REVIEW OF SOCIAL SCIENCES 18, 17-19 (2015).

Britishers by referring to them as habitual offenders⁵. Despite the efforts of the Britishers to erase the community, the transgender community managed to survive and continue their public presence.

2.3 Condition of Transgender after Independence

Following India's achievement of its independence, the Criminal Tribes Act of 1871 was declared unconstitutional by the nation's first Prime Minister, Jawaharlal Nehru. Nehru believed that the Act should be repealed because it tainted the Constitution of India. The Criminal Tribes Act of 1871 was the basis for a new piece of legislation that was passed by the Indian government called the Habitual Offenders Act. This new law maintained the majority of its predecessor's provisions. Since the country's independence, the transgender community has been forced to endure an extremely precarious existence. As a result of the community's lack of legal recognition, they were unable to take advantage of the socio-economic benefits or participate in the political process, both of which require official identity that has been validated. Over the years the community has suffered harassment, violence from the community which has feared sexual and gender non-conformity⁶. In the year 2014, the Supreme Court of India in the case of *NALSA .v. Union of India*⁷ legally recognized transgenders as "third gender" and directed the government to formulate social welfare schemes for the community this decision was widely appreciated by the human rights activists across the globe.

Further, the Supreme Court of India in the case of *Navtej Singh Johar .v. Union of India*⁸, declared part of Section 377 of the Indian Penal Code 1860 as unconstitutional and decriminalized consensual sex between adults of the same gender.

2.4 Legal Visibility to Third Gender Rights

On April 15th, 2014, after years of discrimination and hostility, the transgender persons could finally wear the legal costume of a separate identity, after Supreme Court, in the landmark

⁵ Shruti Iyer, 'The Third Gender and Indian Law- A Brief history, available at '<https://blog.ipleaders.in/the-third-gender-and-the-indian-law-a-brief-history/>, (Last seen on August, 2022).

⁶ 'Third sex – Transgenders wants to be treated as a citizen in India Is this too much to ask for?' Economic and political weekly (India, 26 October 2013) 9.

⁷ National Legal Services Authority v. Union of India & Ors, (2014) 5 SCC 438.

⁸ Navtej Singh Johar.v.Union of India AIR 2014 SC 1863.

judgment of *National Legal Services Authority v. Union of India & Ors.*⁹, recognized the third gender category in the eyes of law. The Court finally busted the bubble of binary gender structure of „man“ and „woman“ and granted equal rights and protection to transgender persons under the constitutional principles of Art. 14, 15 and 16¹⁰. In Article 14 of the Indian Constitution, which deals with Equality before law, the term „person“ does not restrict itself to the dual concept of man and woman.

Thus, Hijras/transgender persons who are neither male nor female, also fall within the expression „person“ and are entitled to legal protection of laws in all spheres of State activity. Furthermore, Articles 15 and 16¹¹ are used to broaden the scope of sex to include psychological sex“ or gender identity“ and hence held that no one could be discriminated on the grounds of sexual orientation. The Court also made an effort to protect one’s gender expression which is majorly reflected through dresses, actions, behaviour and similar forms. The Supreme Court stressed on the importance of right to dignity by recognizing one’s gender identity within the ambit of Article 21 of the Indian Constitution. Further, beyond prohibiting discrimination and nuisance, the Court extended the global principles of dignity, freedom and autonomy to this unfairly marginalized and vulnerable community and met the norms of Universal Declaration of Human Rights and 1948, the International Covenant on Economic, Social and Cultural Rights, 1966, the International Covenant on Civil and Political Rights, 1966 as well as the Yogyakarta principles.¹²Based on proper pronouncements and philosophical ideologies as well, this landmark decision, for the first time, gave due recognition to gender identity based on the reassigned sex after undergoing Sex Reassignment Surgery (SRS) and explained that the person has a constitutional right to get the recognition as male or female after SRS, which was not only his/her gender characteristic but has become his/her physical form as well. In September 2014, Ministry of Social Justice and Empowerment followed up with an “Application of clarification/modification” to the Supreme Court, which sought to explain the implications of the judgment with regard to the recommendations of the aforementioned expert committee report.

⁹Supra at6.

¹⁰ The Constitution of India, 1950.

¹¹Ibid.

¹²Supra at 6.

2.5 The NALSA Judgment: A Ray of Hope

The NALSA judgment should certainly be lauded for condemning discrimination due to gender and for bringing hope and promise to a community which has always been far outside the ambit of legal framework. With immense faith and vision, the judges have given a legal identity to all those persons whose bodies which do not match up with the accepted gender standards at birth. One revolutionary aspect of the judgment came as a major implication for the current laws related to marriage, adoption, labour laws and inheritance which will now have to move away from the binary system of male and female in order to facilitate the legal rights of transgender persons. Further, it is impossible to ignore the irony that the judgment was delivered only a few months after the case of *Suresh Kumar Koushal and another v. NAZ Foundation and Others*¹³ which upheld the constitutionality of Section 377¹⁴ of the Indian Penal Code. The Court, accepting that Section 377 is discriminatory against the transgender persons, clarified that the judgment leaves the Koushal case uninterrupted and thus single-handedly focusing on the legal recognition of the trans-sexual community. One of the most innovative turn in the judgment was the involvement of fundamental rights directly from the Constitution, especially the application of Article 19, thus, acting as a bold motive in acknowledging the rights of a transgender being. The remedies that the Court awards are also exceptionally fascinating. Three mandates have, as of now, been mentioned: that hijras are currently perceived as the third sex, that trans-persons have the privilege to pick between being male, female or having a place with the third gender, and that trans persons are to be given benefits that are duly offered under governmental policies regarding minorities, since they would qualify as a socially disadvantaged, backward class. The Court goes ahead to give a large number of different bearings, including some particular orders like providing user friendly toilets and treatment for HIV affected trans-persons; some expansive ones like direction to furnish them with medical care in all doctor's facilities, to outline different social welfare plans for their advancement, and to find a way to create public awareness to guarantee their social consideration and some uncertain ones like the direction to truly address issues being faced by them and to take measures to guarantee a respectful place for them in social and cultural life.

¹³Suresh Kumar Koushal and Anr. v. NAZ Foundation, Civil Appeal No. 10972 of 2013 (Supreme Court, 11/12/2013).

¹⁴The India Penal Code, 1860.

CHAPTER 3

3.1 LEGISLATIONS FOR TRANSGENDER RIGHTS IN INDIA

As per the 2011 census, 4,87,803 persons do not identify them as male or female¹⁵. The first move to recognize the rights of legislation was made by Tiruchi Siva, Member of Parliament from Dravida Munnetra Kazhagam party when she introduced a private member bill in the Lok Sabha¹⁶. The aforesaid bill was unanimously passed by the Council of States but was never debated in the Lok Sabha.

Key Highlights of the Transgender Persons Bill 2014

- Offered remedies against violence and harassment;
- Provided for right such as equality, the right to live in society and freedom of speech;
- Provision for equipping transgender with skill development and providing them jobs for their rehabilitation and social security; and
- Establishments of transgender's commission at National and State levels and transgender right courts.

After the aforesaid NALSA judgement, where the Supreme Court of India recognized the transgenders as *the third gender*, the Transgender Person Bill (Protection & Rights) was introduced by Thaawarchand Gehlot Minister of Social Justice and empowerment. The bill was strongly opposed by the opposition was referred to the Standing Committee and was passed on 17th December 2018 in the Lok Sabha. The salient features of *Transgender Person Bill 2016*, are enumerated below¹⁷ -

- The bill defined transgender as a person who is partly male or female, neither male nor female. Further, the person's gender should not match the gender assigned at birth includes trans-women, trans-men, gender queer and person with intersex variations;

¹⁵ Primary Census data for others (Indian & States UT's), Census 2011.

¹⁶ Rohan Abhram 'All you need to know about transgender Bill 2016' available at <<https://www.thehindu.com/news/national/all-you-need-to-know-about-the-transgender-persons-bill-2016/article21226710.ece>> (last seen on 13-09 2022).

¹⁷ The Transgender Person (Protection & Rights) Bill, 2016.

- The transgender will have to obtain a certificate of proof of identity as transgender to enjoy rights under this bill;
- The District magistrate will be conferred with the power to grant the certificate of proof of identity on the recommendation of the screening Committee which consisted of a medical officer, psychologist, District welfare officer, and transgender person.
- The bill prohibited discrimination against transgenders in institutions such as healthcare, education, and employment. It further directed the state government to make welfare schemes for the community.
- It also provided for two years imprisonment and fine for offences like compelling transgender to beg and denying them access to public places.

The Transgender person Bill 2016 was vehemently opposed by the transgender community as it violated their right to self-identity which is a fundamental right under the Constitution of India. After the Navtej Singh Johar judgement in 2018, the Minister of Social Justice and welfare another *Transgender Persons Bill (Protection & Rights) Bill, 2019*, which later became an Act as it received president assent on 5th December 2019. The key highlights of the Act are listed below¹⁸-

- It defines transgenders as one who does not match the gender assigned to him at birth. It includes persons with an intersex variation, gender queers, trans-men, trans-women and persons with intersex variations;
- The district magistrate is empowered to give a certificate of identification to identify the person as transgender;
- Prohibits discrimination against transgender and unfair treatment in an institution like healthcare, employment, education and access to public facilities;
- Recognizes the right to residence of a transgender person;
- Provides for the formulation of schemes by the government like vocational training programs and self-employment for their social welfare;
- It states that the government must take steps to provide health care facilities to transgenders which includes HIV surveillance centers and sex reassignment surgeries;
- It also recognizes offenses such as bonded labour, physical and sexual abuse and provides for a minimum penalty as six months imprisonment and maximum for two years with a fine; and

¹⁸ The Transgender Act (Protection & Rights) 2019.

- The Act also provides for the establishment of the National Council for Transgender to monitor the impact of policies and legislation for transgender.

The Act which was passed to address the needs of the community has left many problems unanswered. It had led to a nationwide outcry by the transgender community criticizing the Act¹⁹.

Furthermore, in 2020 the Transgender person (Protection of Rules) 2020 was introduced to explain certain terms used in the 2019 Act. The draft Rules was released in April 2020 and in August 2020, and finally, on 25th September, the government notified the Rules.

The Transgender Protection Rules 2020, was passed mainly to explain the 2019 Act in a broader sense. The Rules seems to have tried to bridge the gap between the Act and the directions given by the Supreme Court in NALSA Vs Union of India. It basically contains the manner and specifics in which the certificate will be issued to them. The salient features of the Rules are –

- a. The application for a certificate of identity that is to be sent to DM should be accompanied by an affidavit and psychologist report.
- b. The certificate must be issued to the applicant only if he has been a resident for one year under the jurisdiction of that district magistrate.

3.2 Drawbacks Of Transgender Person Act,2019.

There are several problems in the legislation which are needed to address by the government. The Act is problematic from the fact that it was passed in the Rajya only just after three days of debate and discussion without any amendment and additions to the Act. It ignores the Right of self-determination of identity as stated in the NALSA judgement²⁰. It stated that a person has a right to self-identify himself as transgender contrary to the rule of law laid down in the judgement. The Act confers the power on the district magistrate to issue the Certificate of identification to claim benefits under this Act. If the District magistrate denies the certificate, it does not provide for a redressal mechanism. The Transgender Bill, 2016 provided for a

¹⁹ 'Why India's Transgender people are protesting against a bill that claims to protect their rights, available at <<https://scroll.in/article/944882/why-indias-transgender-people-are-protesting-against-a-bill-that-claims-to-protect-their-rights>>(last seen on 10-09-2022).

²⁰ 'Critical Analysis of transgender Bill 2019', available at <<https://www.jatinverma.org/a-critical-analysis-of-the-transgender-persons-bill>>(last seen on 10-09-2022).

screening committee to make recommendations to the District Magistrate to prevent any misuse. However, the provision was removed in Transgender Bill, 2019.

Few Major Drawbacks:-

- **Recognition of transgender under existing laws**

The civil and criminal laws India identifies only two types of genders man and woman. The Act does not specify whether they would also be recognized as transgenders under the same category²¹.

- **No Reservation for transgender persons**

The Act does not provide for reservation for transgender persons. The Transgender Persons Bill, 2014 provided for 2% reservation for transgender in government and government-aided schools for primary, secondary, and higher education. It further provided for 2% reservation for transgender in government establishment. After the pronouncement of NALSA judgement which stated that the transgender community should be treated as socially and economically backward and reservations should be provided to them under the category. Various petitions were filed across different High Courts in the country to implement the reservation scheme. The High Court of Madras in the case of *Swapna .v. Chief Secretary*²² directed the State government to form a scheme for reservation of transgender within 6 months, which is yet to be complied with.

- **Does not recognize same-sex marriages**

The decriminalizing of Section 377 of the Indian Penal Code 1860 itself has not been able to end the discrimination against homosexual couples. The need of the hour is to legally recognize the same sex as heterosexual marriages for which the Act is silent. The compelling and pragmatic reason to legalize same-sex marriages is that benefits such as maintenance, succession, and pension rights that are only available to married couples. Many of the same-sex couples desire acceptance and recognition of their relationship.²³

²¹ 'Issues for consideration' <<https://www.prsindia.org/node/842865/chapters-at-a-glance>> accessed 22 June 2020.

²² Writ Petition No. 31091/2013 5th July 2016.

²³ Mary L. Bonaut 'Goodridge in Context'(2005) 40 Harv. C.R.-C.L. L. Rev. 1.

- **Punishment for sexual abuse against transgender not adequate.**

A report by National Coalition of Violence Group in 2012 stated that transgender people are two times more likely to get harassed and abused in intimate relationship²⁴. The Act provides only 6 months minimum and maximum for 2 years with fine. In the Indian Penal Code 1860, the minimum punishment for assault or criminal force used against women with intent to disrobe a woman is minimum for three years²⁵. To maintain minimum security keeping in consideration the history of sexual abuse and suffering against the transgenders. The punishment should be increased to a minimum of three years and 7 years of maximum imprisonment with fine.

The rule of law prescribes that law should not place undue cognitive or behavioral command on people. It should be stable and according to the demands of society. The law should be consistent and solve the contradiction legally which may arise²⁶. The law proposed for the rights of transgender ignores their needs and places undue command as it is not according to the needs and demands of the community.

The judgment of NALSA was definitely a constructive step towards humanization of the judicial system and was a major step towards eliminating the injustice done to almost five million people who were running from one place to another without any identity. Still there are some of the problems that were associated with this act which are:-

- 1) Firstly the Act was drafted and passed without taking any suggestions or approaching anyone from the community. The assumptions were made based on decades-old data and stereotypes.
- 2) They are required to have a sex reassignment surgery and approach a district magistrate who will further decide whether they are transgender or not. This is a clear violation of their privacy and it contradicts the 2014 NALSA (National Legal Services Authority of India) judgement by the Supreme Court. It violates their right to self-identification.
- 3) The NALSA v. Union of India is a landmark judgement of Supreme Court which declared transgender people as the 'third gender'. Further, the judgement held that transgender persons were entitled to fundamental rights under articles 14, 15, 16,

²⁴ Darrick Ing & Tiffany Woods 'Why Talking About Domestic Violence in the Transgender Community Matters, Transgender Law Center', available at <<https://transgenderlawcenter.org/archives/9392>> (last seen on 11-09-2022).

²⁵ Indian Penal Code, 1860, s 354 B.

²⁶ Naomi Choi 'Rule of law', available at <<https://www.britannica.com/topic/rule-of-law>> (last seen on 11-09-2022).

19(1)(a) and 21 of the Constitution. It was a landmark judgement because it was the first of its kind to uphold the fundamental rights of transgender persons in India.

- 4) One of the major drawbacks of this Act was that it used the terms transgender and intersex interchangeably. Both terms have a different meaning. By doing this, the government is striking out the intersex identity. As per Section 2(i) of the Act, intersex or person with intersex variations means a person who at birth shows variations in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from the normative standard of the male and female body. As per Section 2(k) of the Act, 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.
- 5) The Act criminalises sexual abuse of a transgender as a punishable offence but it fails to clear as to what constitutes sexual abuse.
- 6) If a person sexually abuses a transgender, he/she is punishable for a maximum of 2 years which is way less of a punishment for such a heinous act when compared to a crime against a cisgender woman the punishment for which may extend up to life imprisonment. The Act makes it compulsory for trans children to be with their family. If their family does not want them or unable to take care of them then they will be sent to a rehabilitation centre. Instead of sending them to their own community where they will feel safe with their own people, they are being sent to a rehabilitation centre.
- 7) It doesn't provide any reservation for transgenders, who are a marginalized community.
- 8) The Act doesn't mention anything about civil rights like marriage rights, adoption rights, and property rights, etc.
- 9) Though the Act incorporates the fundamental human rights principle of non-discrimination and self-perceived gender identity, but, the Act seems to fail to portray the same sentiments as that of the decision rendered in NALSA judgment.
- 10) The Act provides under Section 6 that the district magistrate has to issue a certificate of identity as a transgender person. Further, Section 7 states that if after the issue of a certificate under sub-section (1) of section 6, a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery,

to the District Magistrate for revised certificate, in such form and manner as may be prescribed, then, the District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and the manner and within such time, as may be prescribed. This seems to put an unnecessary procedural requirement in the form of having a certificate issued specifically for the purpose of being identified as a transgender. This goes against the very dicta of the court in the past and the nature of rights to be guaranteed to the transgenders in form of having an identity irrespective of any affirmations from any authority against self-determination.

- 11) The Act also nowhere encompasses or focuses on reservations in educational institutions and public employment, but only talks about all-inclusive education for transgenders and non-discrimination in matters related to employment in any establishment.
- 12) The Act fails to focus on the very primary socio-legal issues surrounding transgenders and their rights in the country.
- 13) The Act very superficially and hypothetically deals with very sensitive issues related to transgenders. The Act though provides for coverage of medical expenses by a comprehensive insurance scheme for Sex Reassignment Surgery, hormonal therapy, laser therapy or any other health issues of transgender persons but fails to specify any mode or mechanism for the same.
- 14) The Act at many instances refer to welfare schemes, but there is no clarity with regard to the implementation and distribution of funds for the same.
- 15) The Act fails to address the very primary and fundamental issues regarding having a gender-inclusive society guaranteeing the rights and liberties of transgenders. It only seems to be a very hastily the drafted document which is based on the utopian state of affairs when it comes to transgender rights in the country. Even after the Supreme Court and various High Court decisions, the socio-legal issues seems to be a huge impediment in the fight by transgenders and there is still a long way to go for achieving the end-goal of having a sensitive society and legal system in place, where transgenders need no longer have to raise their voices or suffer in anguish for the protection of their Constitutionally guaranteed basic fundamental rights.
- 16) The aforesaid act came to force on 10th January, 2020, however, to add on to their woes, the Government recently released the draft rules under the Act. The draft was

initially released on 18th April, 2020 and the last date of receiving comments and public reviews was kept on 30th April, 2020, however, later they extended it till 18th May, 2020.

17) However, the constitutional validity of the Act has been challenged before the Supreme Court, on the loopholes mentioned above, the challenge thus, rests on the grounds of self-determination, equality, non-discrimination, right to privacy amongst others. Though the Supreme Court has sought response from the Central Government on the aforementioned issue, it is yet to seen that how the Apex Court of the country reacts to this regressive piece of legislation which suffers from the vice of arbitrariness and vagueness and tries to deliberate on the nuances surrounding rights of transgenders in the country, no doubt, it will have a much bigger challenge/impediment in form of NALSA judgment.

3.3 Global Position of Transgender Rights

In the year 1980 American Psychiatric Association had removed the word “*homosexuality*” from the Diagnostic and Statistical Manual for Psychological disorder bypassing and resolution. The Association opined that attraction towards the same – sex is a natural condition²⁷. There are many countries that have also adopted a progressive approach towards gender recognition as reform such as Denmark, Argentina and the United States. The position of transgender rights in these countries allude below –

United States of America

The U.S Supreme Court in Lawrence²⁸ had relied on the statement of the amicus curiae which stated that homosexuality and heterosexuality both form a normal part of sexual identity. Transgenders in the United States of America enjoy civil and basic constitutional rights. The employer who has more than 15 employees is prohibited to discriminate against people based on sex and gender identity or gender orientation²⁹. There is also a ban on discrimination by schools based on gender identity and also recognizes rights to access to separate sex programs

²⁷ Elliot Kozuch ‘Today in 1973, the APA removed homosexuality from list of Mental Illnesses’, available at <<https://www.hrc.org/blog/flashbackfriday-today-in-1973-the-apa-removed-homosexuality-from-list-of-me>> (last seen on 12-09-2022).

²⁸ 2003 SCC online US SC.

²⁹ Civil Rights Act 1964, Title VII.

and facilities which are consonance with their gender identity³⁰. There is also a Federal Fair Housing Act which prohibits discrimination on the basis of sex by the landlords. The courts have also interpreted this law in such a manner to protect the LGBTQ community³¹. The United States is far ahead in terms of providing safety and protecting the rights of transgenders from India.

Denmark

In Denmark, an amendment was passed in 2014 regulating the Danish Population register which allowed people to obtain new official documents changing their gender identity by a few simple administrative steps³². Many countries require the people to go through a procedure conducted by Medical experts and psychologists for obtaining a change in their gender status which is an outdated concept of gender identity. Denmark is the first country that has come with the right approach to enforce the right of self-identity.

Argentina

Argentina is one of the most progressive when it comes to LGBTQ rights. The people of the country have always advocated for minorities' rights. In the year 2010, Argentina became the first country in Latin America to legalize same sex-marriage³³. As a result, more than 15,000 couples had been married in Argentina in the year 2010. The Gender identity law was passed in Argentina which made sex-change surgery a legal right³⁴. Transgender persons can opt for sex transition surgery without the fear of being diagnosed with psychological abnormality³⁵. Even before the law was passed recognizing same-sex marriage, there were many judgments passed by the provincial courts in Argentina³⁶. One of the famous cases in Argentina *Freyre and Di Bello* the decision, in this case, was approved and it was overturned. The couple finally

³⁰ Education Amendments 1972, Title IX.

³¹ 'Know Your Rights, available at <<https://www.aclu.org/know-your-rights/lgbtq-rights/>> (last seen on 10-09-2022).

³² 'Landmark Transgender Law enforced in Denmark, available at <<https://www.equalrightstrust.org/news/landmark-transgender-law-enforced-denmark>> (last seen on 10-09-2022).

³³ 'Argentina approves Gay marriage, in a first for Region', available <<https://www.nytimes.com/2010/07/16/world/americas/16argentina.html>> (last seen on 10-09-2022).

³⁴ Gender Identity Law, 2018, available at <<https://tgeu.org/argentina-gender-identity-law/>> (last seen on 10-09-2022).

³⁵ 'A look at Progressive LGBTQ rights in Argentina', available at <<https://theculturetrip.com/south-america/argentina/articles/an-lgbtq-guide-to-living-in-argentina/>> (last seen on 10-09-2022).

³⁶ 'Argentina LGBT resources, available at <<http://www.refugeelegalaidinformation.org/argentina-lgbti-resources>> (last seen on 10-09-2022).

managed to get married at the discretion of the governor in Tierra del Fuego where same-sex marriage was allowed at that time³⁷.

The transgender persons are increasingly gaining legislative protection around the globe. These laws are still not successful when it comes to protecting them from the social stigma which exists in society. The supporter of Human rights Transgender had reported 2,264 killings of transgender persons worldwide between January 1, 2008, to September 30, 2016³⁸. There is still a lot that needs to be done to protect the freedom and rights of the transgender community around the globe.

3.4 CRITICAL ANALYSIS

A considerable measure of confusion has really emerged from the judgment. Indeed, even as the omnipresent media and civil society was commending the judgment, numerous transgender people were pointing out its innate issues and inconsistencies. It can be stated that the judgment is "confusing and confounding," conflates various transgender personalities, for instance referring to all hijras as 'third gender', when in reality there exists differences between the two. It is also observed that the judgment oscillates between broad and narrow interpretations of the term transgender and between self-determination of identity and its biological requirements. Justice Radhakrishnan's wide definition of transgender was further narrowed down by Justice Sikri's section of the definition which explicitly leaves out Lesbian, Gay and Bisexual (LGB) people from the ambit of transgender. Justice Sikri's definition clearly acts out in contradiction to specific parts in the judgment, which states that LGB people also come under the umbrella of gender variant people. Moving further to the nine important directives given by the Court in the judgment, at some points, these orders seemed to confuse „transgender“ with hijra by repeatedly using the phrase transgender/hijra, especially in the fourth and the fifth directive. This led to the judgment being perceived as pertaining to just the recognition of hijras as third gender, thus, eliminating the recognition of the umbrella term, which includes other gender variants too. One of the biggest flaws in the judgment, according to the author, is that the entire principle, upon which the judgment of Koushal v. Naz was raised, collapsed along with the NALSA case. When we focus on sexual orientation, one's identity has no meaning if he can't express it. A statute/law that targets on the conduct, which is the very expression of identity,

³⁷Marcela Vainte, 'Latin America: First same-sex marriage in Latin America, available at <<https://www.globalissues.org/news/2009/12/29/4060>> (last seen on 10-09-2022).

³⁸ 'Transgender 2016 Press Release, available at <<https://tgeu.org/tdor-2016-press-release/>> (last seen on 10-09-2022).

thereby targets the identity itself. Therefore, when Sec. 377 prohibits homosexuals from engaging in same-sex intercourse, it doesn't just illegalize a set of acts – in prohibiting the most basic expression of one's sexuality, it criminalizes sexuality – and thereby, identity itself. Further, the judgment is unclear and even contradictory about the requirement of medical transition procedures for self-identification of gender. At first, Justice Radhakrishnan based the judgment on Argentinean model of gender recognition which does not involve any kind of medical procedure and yet, at other times, he suggested psychological tests for self-identity of transsexual persons. Such conflicting propensities imply that the elucidation and execution of the judgment can be varied and irregular restricting its affirmative action.



CHAPTER -4

CONCLUSION & SUGGESTIONS

It is distinctly clear from the above observations that transgender individuals with different sexual orientation face intolerance, discrimination and exclusion in the society. This isolation varies from private reasons to the most common social incomprehension. While judiciary has taken a significant step to remove the stigma attached to the third gender, it is our turn to recognize the true implication of this judgment and prioritize its enforcement. While throwing money at hijras to spurn them away, we are not just insulting these individuals, but are relegating the very basic principle of humanity; even curs are better treated by the love of humanity. Such actions will only lead the transgender community to toil and struggle in the same quagmire of indignity that they have been facing for generations together. In this country where there is a galaxy of reasons to grand reservations, the community which is synonymous to social backwardness is seldom thought about. It is hence necessary to not only pen down laws, but also bring them to action for the upbringing of the transgender community to the basic rostrum of human dignity. Hence, the hypothesis stands proved.

The journey of transgender people has always been a challenging one and has never been easy. They are struggling and fighting to make their own way in this society. Although as compared to earlier, there has been some improvements in the mindset of the people in society but still there is a long distance to cover. Government is also working towards promoting awareness about them and their rights through the 2019 Act. However, there are a lot of loopholes present in the Act which needs to be corrected to help the community thrive and feel protected. The provisions given in the Act are not enough for the people and acts as a great source of disappointment. The Transgender Persons (Protection of Rights) Rules 2020 has also not been helpful as it was only provided to justify the Act of 2019. Since during the time of the Rules, the suggestions of the people were taken so naturally, the community has expectations from the government yet the present Rules serve as a great source of discontent yet again.

The struggle doesn't stop here as there are still a lot of changes which needs to be implemented in the Act. It is hoped that the government will try its best to provide the community with a society where they can feel safe and empowered. The most important thing for the people along

with the Act and lawfulness is to be acceptance and respect in the society. For this, society needs to change its perspective and accept them as normal human beings.

SUGGESTIONS

A comparative analysis of Indian Transgender Person Act .2019 with Argentina, USA and Denmark legislation for transgender indicates that there are various shortcomings in the Act and the government needs to rework the entire legal framework for transgender rights. Various provisions need to be added following the footsteps of the countries that have already adopted a progressive approach towards transgenders. The various recommendation which is required as suggestions to be kept in mind by the Indian government are listed below –

1. Employment and Housing

There are several companies like KPMG, Infosys and Accenture who introduced new policies to help the community to move into a formal workplace. The new startup likes Perriferry and is also helping to set up employment for the community. The Chief Operating Officer of Perriferry had estimated that in India only 5% of the transgenders can get employment³⁹. The appropriate solution is to provide a reservation for transgender in both government and private corporations. If the transgender persons secure financial stability, it will be the first step to their welfare.

Another problem faced by the transgender is that they are discriminated by the landlords and singled out⁴⁰. If this problem continues the majority of them will be forced to stay on the streets. A separate provision prohibiting the landlords to discriminate against transgenders is therefore, required.

2. Change in Educational Curriculum

As suggested by the Expert Committee to the Ministry of Social Justice and Empowerment that, there should be a compulsory education about gender identity and sexuality at schools⁴¹. There is a need for sensitization of the students and also make

³⁹'India Inc opens door to transgender employees', available at <<https://economictimes.indiatimes.com/news/company/corporate-trends/india-inc-opens-doors-to-transgender-employees/articleshow/73237262.cms>> (last seen on 10-09-2022).

⁴⁰'Hunting for a home is not easy for transgender, available at <<https://www.hindustantimes.com/real-estate/hunting-for-a-home-not-easy-for-transgenders/story-eKnNNU4ZYdlbCkPt0ZCtRM.html>>(last seen on 10-09-2022).

⁴¹<<https://www.hindustantimes.com/cities/govt-to-frame-norms-to-make-schools-inclusive-for-transgender-students/story-sbbqdvwnBDMJ2ps7aEV58H.html>> (last seen on 10-09-2022).

them aware of the problems faced by the transgender. This will remove transphobia from the root levels of the country. Thus, the government should recommend the inclusion of gender identity education in both government and private schools.

3. Recognizing same-sex marriage

The consensual intercourse between the same gender was decriminalized in 2018. There is no legal recognition of same-sex marriage which leads to the discrimination of transgender couples at various fronts such as inheritance of property, adoption and tax planning⁴². Thus, there is discrimination between heterosexual and homosexual couples with respect to rights available to them.

4. Simple Administrative steps to change gender in official documents

To change the gender in official documents transgenders have to deal with a lot of harassment⁴³. The transgenders have to give a proof of sex reassignment surgery which also violates their right of self-identification. A step by step procedure should be declared by the government which is simple and free of red-tapism.

5. Enabling ways for transgender to live according to their genders

Studies show that social stigma regarding gender nonconformity affects the health and well-being of transgender persons⁴⁴. Social support and affirmation are constant support to the person. The choice of wearing clothes, playing a certain type of game must be left to a transgender person.

6. State subsidies for Sex- Reassignment surgeries.

The cost to get sex reassignment usually costs in lakhs especially in private hospitals⁴⁵. Thus, most of the transgender live claustrophobic life and desire to convert themselves to the gender they feel that they conform to. The state should provide subsidies for sex reassignment surgeries which will also become a path for transgenders to achieve self-

⁴²Shamyita Chakarboty, 'Despite social marriage, gay couples still yearn for legal rights, available at '<<https://timesofindia.indiatimes.com/life-style/spotlight/is-gay-marriage-a-reality-in-india/articleshow/69928813.cms>> (last seen on 12-09-2022).

⁴³Nikhila Henry, 'Gender change on paper turns nightmare for Transgender, available at '<<https://www.thehindu.com/news/cities/Hyderabad/Gender-change-on-paper-turns-nightmare-for-transgenders/article13981945.ece>> accessed 25 June 2020.

⁴⁴'Adult development and Quality of life of Transgender and Gender Nonconformity People <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4809047/>> (last seen on 10-09-2022).

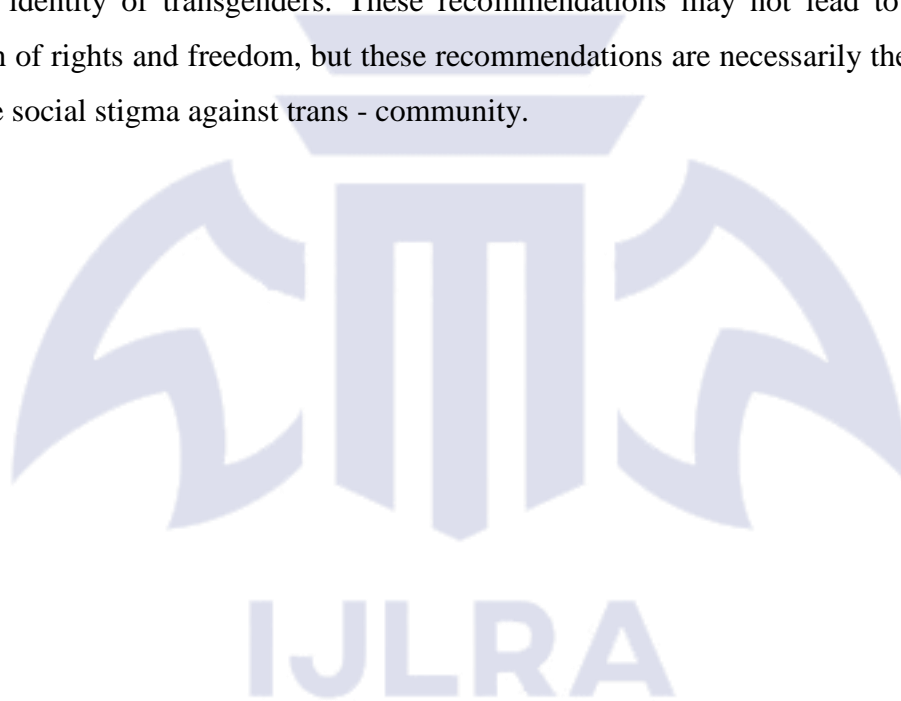
⁴⁵Somrita Ghosh 'Battle for the right body: The realities of sex re-assignment in India', available at <<https://www.newindianexpress.com/cities/delhi/2020/feb/24/battle-for-right-body-the-reality-of-sex-reassignment-surgeries-in-india-2107686.html>>. (last seen on 10-09-2022).

actualization.

7. Increase in Punishment for Discrimination against transgenders.

There is a need for a law that imposes strict punishment for discrimination against transgenders. The punishment should set an example for others. The transgender community in India has suffered more than 100 years of discrimination thus, this is a crucial step for the welfare of the community.

Apart from these recommendations, there are a lot of steps that are required to be taken by the government like *differential treatment of transgenders in prisons* and sensitization of police personnel to deal with transgenders. The state's responsibility is much higher to recognize the rights and identity of transgenders. These recommendations may not lead to an absolute recognition of rights and freedom, but these recommendations are necessarily the first step to remove the social stigma against trans - community.



BIBLIOGRAPHY

BOOKS

- Basu, Durga Das, Comparative Constitutional Law, Prentice Hall of India (P) Limited, New Delhi, 1984.
- Seervai, H.M., Constitutional Law of India, Vol. I, 4th edition; Universal Law Publishing Co. Pvt. Ltd., Delhi, 2013.
- Shukla, V.N., Constitution of India, M.P. Singh, revised by, 10th edition, Eastern Book Co., Lucknow, 2006.
- G B Reddy and Baglekar Akash Kumar, Transgender Persons and The Law: A Commentary, EBC Reader, 1st Edition, 2022.

ARTICLES

- Akanksha Mishra, Third Gender Rights: The Battle for Equality, Christ University Law Journal, 5, 2 (2016), 9-21 ISSN 2278-4322.
- AMARAL SINGH, Critical Analysis of Transgender Persons (Protection of Rights) Act, 2019, available at www.probono-india.in, (last visited on 14-09-2022).
- Mugdha Dhar, Critical Analysis of Transgender Persons (Protection of Rights) Act, 2019, available at <https://www.law-order.org/post/critical-analysis-of-transgender-persons-protection-of-rights-act-2019>, (last visited on 12-09-2022).

WEBSITES:

- <https://www.law-order.org/post/critical-analysis-of-transgender-persons-protection-of-rights-act-2019>.
- <https://legiteye.com/critical-analysis-of-transgender-persons-protection-of-rights-act-2019-by-neha-tripathi-and-soumya-rajsingh/>.
- <http://socialjustice.nic.in>.
- www.thehindu.com.
- <https://scroll.in>.
- <https://www.prsindia.org>.
- <https://transgenderlawcenter.org>.