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Case Comment: National Legal Services Authority v Union of India & Ors

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INTRODUCTION

The transgender community, often known as the TG community or the group for whom the term ‘transgender’ serves as an aegis term, has long been marginalised by the public and subject to abuse and discrimination.¹ Because they do not fit into the categories of the two genders that are generally accepted, male and female, they are always the targets of abuse and violence. They undergo torture and are denied the same freedoms and rights as citizens. They are regarded as untouchables and are shunned and denigrated by society. They are viewed as a burden and responsibility for the country. The primary petitioner in this case was the National Legal Services Authority, an organization dedicated to providing free legal assistance to marginalized and disadvantaged segments of society, aiming to address their grievances. The organization filed a petition advocating for the legal recognition of transgender individuals as a distinct third gender, alongside the traditional male and female genders. Additionally, another petition supporting this cause was submitted by the Poojaya Mata Nasib Kaur Ji Women Welfare Society

¹ *National Legal Services Authority v Union of India* (2014) 5 SCC 438

and prominent Hijra activist, Laxmi Narayan Tripathy. As part of India's republic, this case saw a formal deposition of their gender identification. It came to the conclusion that Articles 14², 15³, 16⁴, 19⁵, and 21⁶ of the Indian Constitution are violated when a person's gender identification is not acknowledged.

FACTS OF THE CASE

In this case, there were three parties on the petitioner's side i.e. National Legal Service Authority (Primary petitioner), Poojaya Mata Nasib Kaur Ji Women Welfare Society and Laxmi Narayan Tripathy. The transgender population currently endures a lot of shame and dishonour. They are not permitted in hospitals, schools, etc. People take advantage of them and harass them. These are all breaches of our nation's basic rights as well as the other international human rights treaties mentioned above. This ultimately resulted in the petition being filled out. Due to the same, your gender determined how the rules controlling marriage, succession, inheritance, adoption, taxation, and welfare were all applied. It's interesting to note that the gender is always decided at birth. Because there were no legal protections for people of the third gender, they were subject to discrimination in all spheres of life. As a result, the National Legal Services Authority and other petitioners launched a Public Interest Litigation, which brought the case before the court.⁷

ISSUES

1. Whether the transgender community comes in the purview of 'any person' of article 14.
2. Whether the discrimination faced by transgender/hijras is in violation of Article 15 of the Indian constitution.

² Constitution of India 1950, art 14

³ Constitution of India 1950, art 15

⁴ Constitution of India 1950, art 16

⁵ Constitution of India 1950, art 19

⁶ Constitution of India 1950, art 21

⁷ Anand Swaroop Das, 'NALSA Versus Union of India: The Supreme Court has started the Ball Rolling' (2015) 5(1) Chanakya National Law University Journal 115-121 <<https://cnlu.ac.in/storage/2022/08/Volume-5-2015.pdf>> accessed 14 November 2023

3. Whether the right to talk about a person's identified gender falls under Article 19(1)(a) guarantee of freedom of speech and expression in the Indian Constitution.
4. Does the deprivation of recognition of the transgender community's gender identity constitute a violation of the basic rights guaranteed by Articles 14 and 21 of the Indian Constitution?
5. Whether the 'right to equality and freedom of expression' would extend to transgender persons.
6. Whether someone who is born a man but leans more towards the female gender (or vice versa) has the right to ask for recognition as a woman when they so want, especially if they subsequently alter their sex after undergoing the requisite procedures.

RULES

1. Article 14 of the Indian Constitution.⁸
2. Article 15 of the Indian Constitution.⁹
3. Article 16 of the Indian Constitution.¹⁰
4. Article 19 of the Indian Constitution.¹¹
5. Article 21 of the Indian Constitution.¹²

ANALYSIS

In order to adequately preserve and safeguard transgender people's constitutional rights, the court's ruling acknowledged their rights as a third gender distinct from the gender dualistic. The Court went on to say that gender identity was a fundamental component of self-determination, dignity, and independence as well as an essential component of personality. The importance of psychological gender over biological gender should be underlined, and medical procedures cannot be a requirement for the legal acknowledgment of gender characteristics.¹³

⁸ Constitution of India 1950, art 14

⁹ Constitution of India 1950, art 15

¹⁰ Constitution of India 1950, art 16

¹¹ Constitution of India 1950, art 19

¹² Constitution of India 1950, art 21

¹³ *National Legal Services Authority v Union of India* (2014) 5 SCC 438

The Court stated in deliberating the judgment's scope that 'transgender is generally described as an umbrella term for persons whose gender identity, gender expression, or behaviour does not conform to their biological sex and that it has become an umbrella term that is used to describe a wide range of identities and experiences, including but not limited to pre-operative, post-operative, and non-operative transsexual people, who strongly identify with the gender opposite to that of their biological sex.

IMPLICATION ON CONSTITUTIONALISM

People mistreat and take advantage of them. Each essential right was fought for and demonstrated as being infringed by the petitioners. No one may be discriminated against on the basis of their sex, religion, or any other factor, as stated in **Article 14** of the Indian Constitution (right to equality). On Indian territory, the State cannot refuse someone the same treatment as others in front of the law.¹⁴ It is not only for men and women. In accordance with **Article 15** of the Indian Constitution, no individual should be denied access to public services such as wells, stores, or restaurants because of their race, sex, religion, or other characteristics. Additionally, they shouldn't be limited to using roads, wells, etc. It shouldn't stop the government from establishing particular provisions for women and children.¹⁵

One of the most significant rights being infringed is likely **Article 19** of the Indian Constitution, which presents citizens with the ability to congregate peacefully without the use of force, join groups or unions, and engage in free expression.¹⁶ We frequently observe that transgender people aren't allowed to dress whichever they choose since it goes against our nation's culture. The ability to express one's self-identified gender is a part of this right. This statement can be made in a variety of ways, including through clothing, words, actions, and behaviour. **Article 16**, which ensures equal opportunities for all individuals, is being violated. Discrimination solely

¹⁴ Constitution of India 1950, art 14

¹⁵ Constitution of India 1950, art 15

¹⁶ Constitution of India 1950, art 19

based on factors such as religion, race, caste, sex, ancestry, place of birth, or residence is prohibited. However, transgender individuals face unequal treatment within the job market.¹⁷

Finally, the right to personal life and liberty is protected by our Constitution's most comprehensive article, **Article 21**, which states that no one may be deprived of these rights unless with the authority of the law. Transgender people are entitled to a decent and respected way of life. The right to live in dignity is also included. Article 21 emphasises the importance of gender expression in self-recognized identities.¹⁸

The Respondents argued that the Ministry of Social Justice and Empowerment should take into account the serious human rights issue raised by the transgender community through these petitions. They emphasised that a committee known as the 'Expert Committee on Issues Relating to Transgender Persons' had already been established to study the matter and that the opinions of the petitioners and others would be taken into account throughout the consultation process.

DECISION

During a concise overview of the evolution of transgender rights in India, the court examined various traditional transgender groups such as Hijras, Eunuchs, Kothis, Aravanis, Jogappas, and Shiv-Shakthis. The court acknowledged the historical bias and discrimination these communities have faced. Additionally, the court considered firsthand accounts from transgender individuals, including an intervenor, shedding light on the systemic discrimination they encountered in various aspects of life such as employment, healthcare, and more. The Court went into further detail about the effects of accepting gender identity and sexual orientation. Because it dealt with a person's innate perception of their own gender, it was categorised as a basic part of existence. The Yogyakarta Principles, which address the rights of people with various sexual orientations and gender identities, were one international document that the Court called particular attention to as it took this into consideration. The Principles go through several human rights norms and give nations instructions on how to protect the rights of people

¹⁷ Constitution of India 1950, art 16

¹⁸ Constitution of India 1950, art 21

with different identities. 'The right to privacy is applicable regardless of sexual orientation or gender identity, as stated in Principle 6. The Court also cited private rights found in Article 12 of the Universal Declaration of Human Rights¹⁹ and Article 17 of the International Covenant on Civil and Political Rights²⁰. The Court ruled that the provisions of these international agreements must be used to protect and preserve the community's rights in the absence of any special legislation pertaining to the recognition of a third gender in India and in the absence of any domestic law to the contrary.'

The Court emphasised the necessity for third-gender recognition in law as well as transgender people's right to self-identification. The Court directed the State to recognize transgender individuals based on their self-identification and to make efforts to acknowledge them as a socially and educationally disadvantaged group, warranting affirmative action such as reservations. Furthermore, the Court mandated the State to establish HIV Sero-surveillance Centres due to the array of sexual health issues faced by transgender individuals. Additionally, the Court emphasized the importance of addressing the mental health challenges within the transgender community, encompassing issues like depression, gender dysphoria, societal pressure, and related concerns. Raising public awareness, developing social welfare programs, improving medical treatment, and other directives were also included. The Court additionally ordered that the government-established Expert Committee review the ruling and put its recommendations into action within six months.

IMPACT ON THE SOCIETY

This case had a transformative impact on Indian society, particularly for transgender individuals and the broader LGBTQ+ community. Some of the impacts are as follows:

Recognition and Dignity: The recognition of transgender individuals as a third gender affirmed their identity and existence, providing them with a sense of dignity and acceptance in society. It

¹⁹ Universal Declaration of Human Rights, 1948, art 12

²⁰ International Covenant on Civil and Political Rights 1976, art 17

challenged traditional norms and prejudices, fostering a more inclusive and understanding society.

Reduced Stigmatization and Discrimination: The judgment played a vital role in reducing societal stigma and discrimination against transgender individuals. It raised awareness about the rights and struggles of the transgender community, encouraging a more empathetic and tolerant society.

Increased Accessibility to Opportunities: With legal recognition, transgender individuals gained improved access to education, employment, healthcare, and public spaces, reducing the barriers they faced in these areas due to discrimination.

Legal Safeguards and Rights: The judgment laid the foundation for legal protections and rights for transgender individuals, bolstering their ability to seek justice and assert their rights in various spheres of life. It encouraged further legal reforms and policies to safeguard their rights.

Public Discourse and Awareness: The case sparked public discourse on LGBTQ+ rights, encouraging a more open dialogue about diverse gender identities and sexual orientations. It led to increased awareness and understanding of LGBTQ+ issues, challenging prejudices and promoting acceptance.

CONCLUSION

In conclusion, the National Legal Services Authority of India v Union of India case is regarded as a landmark ruling in Indian legal history since it marked a major shift in the defence and recognition of transgender rights. This important case tackled a wide variety of complex issues, such as gender identity and equality under the Indian Constitution, and finally resulted in a ruling that had profound social effects. The decision acknowledged that Articles 14 and 21 of the Indian Constitution safeguard the basic rights of transgender individuals. It is well known that denying someone's gender identity is a violation of their constitutional rights. The court also affirmed that gender identity is a crucial aspect of one's autonomy and freedom to express oneself, both of which are protected by Article 21. The judgement further broadened the

definitions of equality, non-discrimination, and affirmative action in order to safeguard the rights of the transgender community. To recognise the unique importance of hijras and other Muslims in society and culture, In the past, transgender people in India required the legal recognition of a third gender category.

The court's decision is consistent with current jurisprudential tendencies that favour protecting transgender people's rights to equality. It created a significant precedent for appreciating both gender diversity and individual sovereignty.