

# A LONG JOURNEY TOWARDS LEGAL RECOGNITION: RIGHTS AND CHALLENGES OF TRANSGENDER PEOPLE

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## Introduction:

In 1992, the European court of Human Rights (ECHR) first recognized that a state's refusal to allow transgender people to change the gender markers on their official documents (e.g. birth certificate) who has undergone gender reassignment, and to recognize the "new" gender, constitutes a violation of Article 8 (right to respect for private and family life) of the European Convention of Human Rights.<sup>1</sup> However, more than 25 years later many transgender people in European continent continue to struggle to have their gender identity recognized.

Everyday tasks such as picking up a parcel, opening a bank account or simply using a personalized public transport ticket can become a daily source of difficulty if one's "gender identity"<sup>2</sup> does not match with the gender recorded in official documents such as an ID card, passport of birth certificate. Without official documents matching their gender identity, transgender persons can easily be suspected of using falsified documents. They may also have to reveal their transgender identity against their will. This makes them vulnerable to violation of their right to privacy as well as to discrimination and violence. As a result, transgender persons are excluded from their full participation in and contribution to society, including in the labour market. For instance, having educational or employment certificates that do not reflect their gender is a common cause of unemployment among transgender persons.

## Defining Transgender:

"Transgender" – a person whose self-identified gender does not correspond to the gender assigned to them at birth. Their gender identity may not conform to conventional binary notions of male and female, but rather as a third gender. The term transgender is not indicative of sexual orientation, hormonal makeup, physical anatomy, or how one is perceived in daily life.<sup>3</sup> According to the definition of the UN Commissioner for Human Rights, "transgender persons include persons who have a gender identity which is different from the gender assigned to them at birth and those people who wish to portray their gender identity in a different in a different way from the gender assigned at birth. It includes those people who feel they have to, prefer to or choose to, whether by clothing, accessories, mannerism, speech patterns, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth. This includes, among many others, persons who do not identify with the labels 'male' and 'female', transsexuals, transvestites and cross-dressers."<sup>4</sup>

No particular form of sexual orientation is meant through the term transgender. The way they behave and act differs from the "normative" gender - men and women. Leading a life as a transgender is not so easy because such people can be neither categorized as male nor female and this deviation is unacceptable to society's vast majority.

## Transgender Community in India

In India, transgender community comprises of Hijras, Eunuch, Kinnar, Kothis, Aravanis, Jogappas, Shiv-Shakthis. Transgender persons had been part of Indian society for centuries. There was historical evidence of recognition of "third sex" that not confirm to male or female gender in ancient India. The concept of "tritiyaprakriti" or "napumsaka" had been an integral part of the Hindu mythology, folklore, epic and early Vedic and Puranic literatures. Buddhism and Jainism also recognized three genders. The Vedas (1500 BC - 500 BC) describe individuals as belonging to one of three separate categories, according to one's nature or prakriti. A third sex is also discussed in ancient Hindu law, medicine, linguistics and astrology. In Vedic astrology, the nine planets are each assigned to one of the three genders; the third gender, tritiya-prakriti, is associated with Mercury, Saturn and in particular ketu. In the Puranas, there are also references to three kinds of devas of music and dance: apsaras (female), gandharvas (male) and kinnars (neuter). The fundamental work of Hindu law, the Manu Smriti (200 BC – 200 AD) explains the biological origins of the three sexes: "A male child is produced by a greater quantity of male seed, a female child by the prevalence of the female; if both are equal a third-sex child or boy and girl twins are produced; if either are weak or deficient in quantity, a failure of conception results."

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<sup>1</sup>. European Court of Human Rights, Case Nos. *B. v. France*, No. 13343/87, 1992; *Goodwin v. The United Kingdom* and *I. v. the United Kingdom*, Nos. 28957/95 and 25680/94 (2002).

<sup>2</sup>. Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including a personal sense of one's body and other expressions of gender, including dress, speech and mannerisms.

<sup>3</sup>. Trans Students Educational Resources, Trans and Queer Definitions, available at <http://www.transstudent.org/definitions> (last Visited 7 October 2017).

<sup>4</sup>. Discrimination on grounds of sexual orientation and gender identity in Europe, Commissioner for Human Rights, Council of Europe Publishing, 2011, p. 132.

*Hijras*<sup>5</sup> played a key role in the royal courts of the Islamic world, particularly in the Mughal rule in the medieval India. They rose to well known positions as political advisors, administrators, generals as well as guardians of the harems. *Hijras* were considered clever, trustworthy and fiercely loyal and had free access to all spaces and sections of population, and thereby playing a crucial role in the politics of empire building in the Mughal era in India. In the beginning of British rule in India, *hijra* used to accept protections and benefits by some Indian states through entry into the *hijra* community. However, the benefits incorporated the provision of land, rights of food and smaller amount of money from agricultural households in exact area which were ultimately removed by the British through legislation as because they were not inherited land through blood relations.

On the onset of colonial rule from the 18<sup>th</sup> century onwards, the situation changed drastically. In the second half of the 19<sup>th</sup> century, the British colonial administration vigorously sought to criminalize the *hijra* community and deny them to enjoyment of the civil rights. *Hijras* were considered to be separate caste or tribe in different parts of India by the colonial administration. The *Criminal Tribes Act*, 1871,<sup>6</sup> criminalized all *hijras* who were involved in kidnapping and castrating children and dressed like women to dance in public places and punished with imprisonment up to two years and fine or both. This pre-independence history is also a key factor for vulnerable condition of *hijras* in independence India.

At present, the law terrorize transgender community are Section 377 of the *Indian Penal Code*, 1860 and the *Immoral Traffic Prevention Act*, 1956 (amended in 1986). *Immoral Traffic Prevention Act*, 1956 is the key instrument of the Indian state's regulation of prostitution which mandates to prevent the traffic of women and children into prostitution. With the 1986 amendment, the title was modified to "*Immoral Traffic Prevention Act*", and it became gender neutral. Now the Act could apply to both male and female sex workers and also to those whose gender identity was indeterminate. It is with the 1986 amendment that both male and *hijra* sex workers became criminal subjects of the ITPA. It provided the legal basis for arrest and intimidation of the transgender sex workers.

Section 377 – "Offence affecting the Human Body" provides sanction for the prosecution of certain kinds of sexual acts deemed to be unnatural. It is important to mention that regardless of consent these sexual acts are liable for prosecution provided they are seen as carnal intercourse against the order of the nature, with man, woman, or animal and, thus satisfy the requirement of penetration. To be a homosexual or a *hijra* is to draw the presumption that the *hijra* or the homosexual is engaging in carnal intercourse against the order of nature.

Section 377 has been extensively used by the law enforcers to harass and exploit homosexuals and transgender persons. From the various instances of abuse and violence against homosexuals and transgender, it is evident that Section 377 has been grossly misused.<sup>7</sup>

It is due to movement against the repressive and oppressive nature of Section 377 grew exponentially and it was finally on July 2, 2009, for the first time any Indian court pronounced that the oppression meted out to the transgender community and the homosexuals in the country is violative of Right to Equality under Article 14, Right to Discrimination under Article 15, and Right to Privacy and Personal Dignity under Article 21 of the Indian Constitution.<sup>8</sup>

### Legal Recognition of Gender Status

States can legally recognize a transgender person's gender identity by allowing for the change of name and gender in official documents and registries. This process is called legal gender recognition. From a legal point of view, it allows transgender persons to live in accordance with their experienced gender identity. In late 20<sup>th</sup> century, some transgender activists and western NGOs have lobbied to officially recognized *hijras* as a third gender or third sex apart from other two sexes who are already recognized as male and female.

In India the position becomes unique and inimitable as compared to the rest of the world, where the society has accepted the third gender for a long time, but there was no initiative for legal recognition of this community. Due to increasing demand and *hijras* community's social movements campaigned for legal recognition to a third sex, in 2005 Indian passport application form was updated with three gender – M, F, and E (male, female, and eunuch respectively). In 2009, with the intention of ensuring and make further recognition of third gender, India agreed to enlist eunuchs and transgender people as third gender, distinct from male and female, in voter identity cards. Though the Government of India made some efforts to integrate the third gender in Indian society, yet these were not enough for full legal recognition to get third gender status and for enjoyment of all other rights as per the other genders in the society.

The year 2014 has been significant for the transgender history in India. The apex court of India legally recognized the transgender person as subjects of citizenship and rights. In January 2013, the Ministry of Social Justice and Empowerment (hereinafter MSJE) brought out a report on "issues relating to transgender persons" drafted by an "expert committee" that it had constituted after consultations with representatives from the transgender community.<sup>9</sup> Subsequently, on April 15, 2014, in *National Legal Service Authority (NALSA) v. Union of India*,<sup>10</sup> the Supreme Court

<sup>5</sup>. Hijras are biological males who reject their "masculine" identity in due course of time to identify either as women, or "not-men", of "in between man and woman", or "neither man nor woman". Hijras can be considered as the western equivalent of transgender/transsexual (male-to-female) persons but hijras have a long tradition/culture and have strong social ties formalized through a ritual called "reet" (becoming a member of hijras community). There are regional variations in the use of terms referred to hijras, e.g., Kinnars (Delhi), and Aravanis/Thirunangai (Tamil Nadu).

<sup>6</sup>. The Act was repealed in 1952 but its legacy continues and many local laws reflected the prejudicial attitudes towards certain tribes, including Hijras. For example, the *Karnataka Police Act* was amended in 2012 to "provide for registration and surveillance of Hijras who indulged in kidnapping of children, unnatural offences and offences of this nature" (section 36A), in a similar vein to the *Criminal Tribes Act*, 1871.

<sup>7</sup>. For instance, in *Jayalakshmi v. State of Tamil Nadu*, Pandian, a transgender, was arrested by the police on charges of theft. He was sexually abused in the police station which ultimately led him to immolate himself in the premises of the police station.

<sup>8</sup>. *Naz Foundation v. NCT Delhi*, (2009) 160 DLT 277

<sup>9</sup>. Ministry of Social Justice and Empowerment, *Report of the Expert Committee on Issues Relating to Transgender Persons*, January 27, 2013, available at <<http://socialjustice.nic.in/transgenderpersons.php>> (last visited 9 September 2017).

<sup>10</sup>. (2014) 5 SCC 438.

of India proclaimed that transgender persons have equal rights as guaranteed by Articles 14, 15, 16, 19, and 21 of the Indian Constitution. The Court held that the Constitution requires equal treatment of all persons regardless of their gender identity or expression. The Court stated that the Centre or State governments must grant legal recognition of gender identity as male, female or third gender. The Court further held that transgender persons should be treated as a third category of gender and as a socially and economically “backward” class entitled to as proportional access to and representation in education and jobs. The apex court also stated that if a person surgically changes his/her sex, then he or she is entitled to identify as their changed sex and cannot be discriminated against. The Court clarified that its verdict pertains only to transgender persons and not to other sections of society, such as gay, lesbian and bisexuals who are also considered by some under the umbrella term “transgender”.

It has seen that while the directions of the Supreme Court are comprehensive and wide-ranging, it can be observed that they are ambitious in their scope, particularly in the light of given time scheduled. The implementation of these directions will largely depend on how they are interpreted by the Central and State governments, suggesting that implementation of the Court’s directions may still take some time to be realized while the practicalities are worked out.<sup>11</sup> In its verdict, although, the apex court acknowledges the existence of different transgender communities in India, yet only refers to *hijras* and eunuchs in its first direction. For instance, the court acknowledges the struggle of Female to Male (FTM) transgender persons in paragraph 46 of the judgment and distinguishes them from *hijras*. It is not clear whether FTMs and other identified groups are all intended to fall under the “third gender” category recognized in the court’s direction.

Unlike the apex court, the high courts are more pro-active (revolutionary) in transgender issues. Since the same issue was raised in *Jackeline Mary v. The Superintendent of Police, Karur*,<sup>12</sup> where the Madras High Court confirmed that the right of transgender persons to decide their self-identified gender, and the governmental obligation to grant legal recognition of their gender identity, is also available to FTMs.

Even though for the implementation of the NALSA’s judgment is surrounded by some problems, such as whether transgender persons’ self-identification (i.e. the ability to elect one’s legal gender identity without having to meet external criteria such as surgery or hormonal transition) will be enough to warrant legal protection under the third gender category, or whether they will first have to be officially identified by a designated body e.g., a regional transgender welfare board, i.e. bureaucratic adjudication and imposition of gender identities.<sup>13</sup> It is not made clear in the judgment.

So far, except Tamil Nadu none of the state governments has made provision for changing transgender people’s birth name and sex in official gazette and official identity documents either after realizing their gender identity or undergoing sex transition surgeries. The Tamil Nadu government through its Transgender Welfare Board (TGWB) constituted a district level screening committee<sup>14</sup> in each district to certify “aravanis” after screening and provide an identity card.

### Challenges Faced by Transgender People

*Hijras* and other transgender people in India face a variety of challenges. Till date, they have been excluded from effectively participating in social and cultural life; economy, politics and decision-making processes. There are also complexities when it comes to the arena of civil rights. Since the transgender are neither treated as male or female, nor given the status of a third gender, they are being deprived and devoid of many of the rights and privileges which a citizen enjoy in their country. In a country like India where there are strong affirmative action policies for women, there are serious questions as to under what condition a male-to-female transgender person is entitled to be recognized as a women as per the law.

A primary reason of the exclusion is the lack of and also ambiguity of legal recognition of the gender status of *hijras* and other transgender people. It is a key bulwark that prevent them in exercising their rights related to marriage with a person of their desired gender, child adoption, inheritance, wills and trusts, employment, and access to public and private health services, and access to and use of social welfare and health insurance schemes.

The problems faced by the transgender persons as mentioned in the PIL filed by the NALSA that transgender persons are deprived of the fundamental rights available to the other sexes – male and female, and are not considered as the third sex. They are deprived of many of the rights and privileges which other persons enjoy as citizens of India. The transgender are deprived of social and cultural participation, are shunned by family and society, have only restricted access to education, health services and public spaces, restricted rights available to citizens, such as right to marry, right to contest elections, right to vote, employment and livelihood opportunities, obtaining Passport, driving license, ration card, Identity Card, etc.

In Indian society, transgender people are treated as unnatural and generally as object of ridicule and even fear on account of superstition. They suffers a whole lot of mental, physical and sexual oppression in the society. The health and well-being of transgender people suffers great harm by attitude of intolerance and hatred toward diverse gender expression. Virtually they have no safe place in the society and discrimination translated into violence, often of a brutal, vile and vicious nature. The most awful and heartening part is that they are being discriminated by the people who have given birth to them, by the people whom they have confided and unburdened their heart to their family members. The extreme

<sup>11</sup> . The Hindu Centre, Rights in Review – The Supreme Court in 2014, p.3, available at <[http://www.thehinducentre.com/multimedia/archive/02259/Rights in Review - 2259174a.pdf](http://www.thehinducentre.com/multimedia/archive/02259/Rights_in_Review_-_2259174a.pdf)> (last visited 9<sup>th</sup> October 2017).

<sup>12</sup> . W.P. No. 587 of 2014.

<sup>13</sup> . Aniruddha Dutta, *Contemporary Tendencies: The Supreme Court’s NALSA Judgment on Transgender Recognition and Rights*, Journal of Indian Law and Society, vol.5, 2015 (Monsoon), pp. 225-236. See also The Supreme Court NALSA Judgment – where now? A Brief Critique, May 2015, available at <<http://orinam.net/content/wp-content/uploads/2015/06/25-sc-nsa-tg-petition-verdict-gap-analysis-wbnujs-fnl.pdf>>.

<sup>14</sup> . District screening is functioning under the Chairmanship of District Collector and members included Deputy Director of Medical and Rural Health Services, District School Welfare Officer, a clinical psychologist, a psychiatrist, and a transgender community representative. The committee assesses psychological (Transgenderism) status and emasculation status (that is, whether or not the person has undergone emasculation or sex change operation). The role of the community representative is to assess whether the person belongs to the transgender community (irrespective of self-identify of the person).



stigmatization surrounding transgressions and misdemeanors around make it extremely difficult and thorny for families to accept and acknowledge their children. The family instead of protecting and shielding a child from the outside world, out of fear, mortification and humiliation neglects and overlook the child and also due to constant tortures, beating, spankings, the only hope, consolation and solace left to the child is the hijra community which is considered to be a family.<sup>15</sup> Until the Naz Foundation case<sup>16</sup> humiliation, torture and cruelty with the sexual minorities were mostly unnoticed in Indian society.

All human beings are free and equal in dignity<sup>17</sup> and ought to be entitled to enjoyment of human rights without discrimination on the basis of sexual orientation or gender identity. Everyone is entitled to equality before law and equal protection of law without any discrimination. Transgender are also part of society and they are entitled to enjoy equal rights as are available to other persons. However, the discrimination based on their class and gender makes the transgender community one of the most disempowered and deprived groups in India society.

Transgender, though human beings are not recognized as persons in violation of human rights as they are deprived of their fundamental rights and other civil rights. The lack of recognition isolates transgender in the matter of civil rights. Since gender is taken to mean only male and female, the transgender cannot effectively avail the benefits of constitutional rights.

### Progressive Development of Transgender Rights in India

The legal obligations of States to safeguard the basic rights of transgender people are well established in national and international human rights laws. For trans people, their very recognition as human beings requires a guarantee of a composite of entitlements that others take for granted – core rights that recognized their legal personhood. As the United Nations High Commissioner for Human Rights has affirmed that human rights treaty bodies have stated repeatedly that States have an obligation to protect all people from discrimination on the ground of gender identity. The fact that someone is trans, it does not limit that person's entitlement to enjoy the full range of human rights.<sup>18</sup> The right to development entitles every human being and all peoples "to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."<sup>19</sup> For transgender people, this vision is not yet reality in any region of the world.

India has a well-established legal framework of fundamental rights incorporated in the Constitution of India. In *Naz Foundation* case, a new precedent to discern transgender rights being recognized by the Constitution. Until Naz decision all non-penovaginal sexual relationships among consensual adults were a criminal offence under section 377 of the Indian Penal Code entrusting a maximum punishment of life imprisonment. The said provision is inconsistent with Articles 2(1) and 17 of the International Covenant on Civil and Political Rights, 1966.<sup>20</sup> Now the Naz decision has brought Indian jurisprudence into conformity with international law by decriminalizing all consensual same sex activity between adults. The Court stated:

"In our view, Indian Constitutional law does not permit the statutory criminal law to be held captive by the popular misconceptions of who the LGBTs are. It cannot be forgotten that discrimination is antithesis of equality and that it is the recognition of equality which will foster the dignity of every individual."<sup>21</sup>

The importance of the Naz verdict is that it gave a new interpretation to the existing framework of Fundamental Rights of the constitution. What the Naz decision did was that to apply the Constitutional rights to a minority group of population which had never been deemed worthy of rights protection or judicial consideration here before. The Court interpreted Article 21 to include protection for both zonal and decisional privacy of individuals and also the dignity of LGBT individuals. The Court stated:

"In the Indian Constitution, the right to live with dignity and the right of privacy both are recognized as dimensions of Article 21. Section 377 IPC denies a person's dignity and criminalizes his or her core identity solely on account of his or her sexuality and thus violates Art.21 of the Constitution. As it stands, Section 377 IPC denies a gay person a right to full personhood which is implicit in notion of life under Art. 21 of the Constitution."<sup>22</sup>

The Court stated that the criminalization of private sexual relation between consenting adults absent any evidence of serious harm deems the provision's objective both arbitrary and unreasonable. If the objective of the legislation is irrational, unjust and unfair, necessarily the

<sup>15</sup> . Dr. Neelu Mehra & Dr. Shivani Goswami, Third Genders: Their Agonies and the Demand for Legal Recognition, Global Journal of Interdisciplinary Social Sciences, January-February, 2016, pp. 19-20.

<sup>16</sup> . *Naz Foundation* case, *supra* note8.

<sup>17</sup> . Article 1, the Universal Declaration of Human Rights, 1948.

<sup>18</sup> . Office of the High Commissioner for Human Rights (2011), Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, A/HRC/19/41, pars.16, available at <[www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-41\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-41_en.pdf)> (last visited 12 October 2017).

<sup>19</sup> . United Nations General Assembly (1996), Article 1.1, Declaration on the Right to Development, A/RES/41/128, available at [www.un.org/documents/ga/res/41/a41r128.htm](http://www.un.org/documents/ga/res/41/a41r128.htm) (last visited 12 October 2017).

<sup>20</sup> . Art. 2(1) states, "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as , race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Art. 17 states, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

See *Toonen v. Australia*. Communication No. 488/1992, U.N. Doc.CCPr/C/50/D/488/1992 (1994). Paras. 8.6 and 8.7 for the interpretation of the ICCPR state that anti-sodomy laws violated both the right to privacy clause and non-discrimination clause, available at <http://hrlibrary.ngo.ru/undocs/html/vws488.htm> (last visited 12 October, 2017).

<sup>21</sup> . *Naz Foundation* case, *supra* note 8, para. 131.

<sup>22</sup> . *Naz Foundation* case, *ibid.* para.41.

classification will have to be held as unreasonable. For the same reason, Section 377 of IPC is inconsistent with Article 14 of the Constitution.<sup>23</sup> The Court held that, “We hold that sexual orientation is a ground analogous to sex and that discrimination on the basis of sexual orientation is not permitted by Article 15. Further Article 15(2) incorporates the notion of horizontal application of rights. In other words, it even prohibits discrimination of one citizen by another in matters of access to public spaces. In our view, discrimination on the ground of sexual orientation is impermissible even on the horizontal application of the enshrined under Article 15.”<sup>24</sup>

Court affirmed that human beings of all sexual orientation and gender identities are entitled to the full enjoyment of all human rights, including right to privacy, regardless of their sexual orientation or gender identity. Every citizen has a right to take part in the conduct of public affairs including the right to stand for elected office, to participate in the formulation of policies affecting their welfare and to have equal access to all levels of public service and employment in public functions, without discrimination on the basis of sexual orientation and gender identity.<sup>25</sup>

In a landmark judgment, the Supreme Court of India, in 2014, has recognized trans people as third gender and it is expected to bring transgender in the main stream of society, who were deprived for centuries from availing various rights as other genders enjoyed in a given society. A Bench comprising Justice K.S. Radhakrishnan and justice A.K. Sikri, in separate but concomitant judgments, stated that “eunuch, be treated as a ‘third gender’ for the purpose of safeguarding their rights under our Constitution and the laws made by Parliament and State Legislature.”<sup>26</sup> The Bench observed, “recognition of transgender as a third gender is not a social or medical issue but a human rights issue.”<sup>27</sup> Transgender are also citizens of India. The spirit of the Constitution is to provide equal opportunity to every citizen to grow and attain their potential, irrespective of caste, religion or gender.” The judgment notes that Articles 15 and 16 of the Constitution, prohibiting discrimination on the grounds of sex, should extend to transgender and *hijra* people as well.<sup>28</sup> The Bench held that it is only by gender identification and recognition the rights incorporated in the Constitution and other rights including right to vote, right to own property, right to marry, etc. will be meaningful and carry great weight. For protecting the rights of these people, the Bench directed the Centre and States to take steps to treat them as socially and economically backward classes and extend reservation for admission in educational institutions and for public appointments.<sup>29</sup> The Court stated that “TGs have been hitherto excluded from constitutional measures to counteract the patterns of discrimination against disadvantaged group, but such measures for affirmative action should be available to them as well. TGs have also not been afforded special provisions envisaged under Article 15(4) for the advancement of the socially and educationally backward class (SEBC) of citizens, which they are, and hence legally entitled and eligible to get the benefits of SEBC. State is bound to take some affirmative action for their advancement so that the injustice done to them for centuries could be remedied.”<sup>30</sup> This has largely been interpreted to mean that transgender and hijra people should be given the benefits of affirmative action accorded to the OBC category.<sup>31</sup>

Through this pronouncement some important advances have been made in transgender rights without much fanfare in some ways amounting to a silent revolution. The NALSA judgment reflects a sense of conscience and empathy towards the sexual minorities emotions that were hitherto unknown.

### Conclusion:

Recognition of a trans person’s gender identity is key element to attain full personhood and citizenship. It is a concrete step in ensuring their social integration, economic advancement, and a formal acceptance of their legal equality. It can immeasurably support their empowerment and act as an acknowledgement of their dignity and human worth, changing the way they are perceived by their families, by society in general, and by law enforcement officers, government actors, and healthcare personnel whom they encounter in daily life. Systematic strategies to reduce the violence against trans people need to occur at multiple levels, including making perpetrators accountable, facilitating legal and policy reforms that removes criminality, and general advocacy to sensitize the ill-informed about trans issues and concerns. Strengthening the capacity of trans collectives and organizations to claim their rights can also act as a counter to the impunity of violence. When trans people are provided legal aid and access to justice processes, accountability can be enforced against perpetrators. Sensitizing the police to make them partners in this work can be crucial. In absent of political will, to support such attempts in highly adverse settings, trans organizations and allies can consider using international human rights mechanisms, such as Universal Periodic Review, to bring focus to issues of anti-trans violence and other human rights violations against transgender people.

It is heartening to see that when a transgender person is treated like an unequal or is humiliated by the ordinary people, there are not a lot of redressed mechanisms that are available to him. To put an end to all the inhuman behavior towards the transgender community it is an urgent requirement to reform the existing laws, and to sensitize the law enforcement officers to adapt a complete humanitarian approach while dealing with a person of transgender community and also the society should get rid of the century old bias and realize that transgender behavior is a normal and natural as their own feeling towards their sexual orientation.

Although there are few examples of human rights progress for transgender people, much of this change is isolated, non-systematic, and insufficient. Transgender people continue to live in extremely hostile environment. What is required is change and progress at scale. The

<sup>23</sup> . Ibid. para. 92.

<sup>24</sup> . Ibid. para. 104.

<sup>25</sup> . Ibid. para.44.

<sup>26</sup> .Ibid. p. 127.

<sup>27</sup> . Ibid. pp. 46 & 53.

<sup>28</sup> . Ibid. pp. 74, 75.

<sup>29</sup> . Ibid. p. 128.

<sup>30</sup> . Ibid. p. 75.

<sup>31</sup> . Dhananjay Mahapatra, Supreme Court Recognizes Transgenders as Third Gender, Times of India, 15-4-2014.

international community's recent commitment towards Sustainable Development Goals (SDGs) presents an opportunity to catalyze and expand positive interventions.<sup>32</sup>

There has to be togetherness. They should be brought under the common umbrella, where people from mainstream society enjoy certain rights and benefits. They could be accorded security and further benefits through social, political and legislative intervention. Separate law is needed to ameliorate the condition of transgender community, and ensure that they could enjoy the rights granted to every citizen.



<sup>32</sup>. See Transforming our world: the 2030 Agenda for Sustainable Development: Sustainable Development Knowledge Platform, available at <<http://sustainabledevelopment.un.org/post2015/transformingourworld>> (last visited 12 October, 2017).