



## TRANSGENDER RIGHTS BEFORE AND AFTER THE NALSA JUDGMENT

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### Abstract

‘Transgender’ is an umbrella term used to cover people who do not identify with the gender assigned to them at birth, have different sexual orientation and also people with inter-sex variations. They are shunned by the society and it has been a long struggle for them to gain recognition as a human being with rights. This paper traces the legal struggle of transgender community in India and the steps taken by various states to grant them legal recognition.

### I. INTRODUCTION

*Hijras*<sup>1</sup> have a recorded history of more than 4,000 years.<sup>2</sup> Every Indian native, especially from the North, is aware of the legendary narrative that people from *hijra* clan visit the house of a newly born child with a view to check its gender and shower their blessings if the baby doesn’t belong to their clan owing to its gender deformity. Studies reveal that as per the ancient myths, the *hijras* bestow the newly born with special powers to bring luck and fertility, however, at the same time, a child born with deformed genital is taken away and added into their own clan, which remains unopposed by the relatives of such deformed child. This practise, though apparently holds a sacrosanct space in the Indian culture, the *hijras* face grave hardships and harassment in enforcement of their rights because of the discrimination meted out to them owing to their gender. Biologically, the society recognizes only two sexes viz., male and female. The soundness of the practice of assigning rights on the basis of sex depends on two concepts:

- i. First, that sex is fixed at birth; and
- ii. Second, the assumption that everyone fits neatly into two boxes labelled as male and female.

The term ‘transgender’ has been derived from the Latin word ‘trans’ and the English word ‘gender’.<sup>3</sup> The dictionary defines ‘trans’ as beyond or over. In literal sense it means crossing over of a gender. The word transgender is a blanket term that defines a person who physically and mentally doesn’t correlate themselves with the assigned gender that is naturally

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<sup>1</sup> This term is used in Transgender Persons (Protection of Rights) Act, 2019, s. 2(k). *Hijras* are biological males who reject their ‘masculine’ identity in due course of time to identify either as women, or “not-men”, or “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 formalised through a ritual called “reet” (becoming a member of *Hijra* community). There are regional variations in the use of terms referred to *Hijras*. For example, Kinnars (Delhi) and Aravanis (Tamil Nadu). *Hijras* may earn through their traditional work: ‘Badhai’ (clapping their hands and asking for alms), blessing new-born babies, or dancing in ceremonies. Some proportion of *Hijras* engage in sex work for lack of other job opportunities, while some may be self-employed or work for non-governmental organisations.” A sociologist describes them as “man minus maleness” and “man plus woman”.

<sup>2</sup> Available at: <https://www.newstatesman.com/world-affairs/2008/05/hijras-indian-changing-rights> (last visited on October 4, 2019).

<sup>3</sup> Available at: <https://www.dictionary.com/browse/trans-visited> (last visited on October 3, 2019).

allocated to them at the time of their birth. As defined by H.M. Levitt and M.R. Ippolito, a transgender is a common word used to define people whose inner sense of gender identity and behaviour is different from what is assigned to them at birth.<sup>4</sup>

According to The Transgender Persons (Protection of Rights) Act, 2019 “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, gender- queer and person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*.”<sup>5</sup>

## II. HIJRAS: THE THIRD GENDERED PEOPLE

‘*Hijra*’ refers to the third gender which means eunuch. The *Hijra* is an Urdu word and mostly used in Asian countries whereas the term transgender is a wider term and it is being used universally. Transgender is a very new term that came into use in the nineties and denotes all the communities whose sexual orientation deviate from the conventional sex binary of male and female.<sup>6</sup>

The *hijras* base their clans’ third gender identity on an episode in the Ramayana where Lord Rama is banished. In the story, Lord Rama requests a tearful group of men and women, lamenting his banishment, to leave his company and return to the city/ respective homes. Legend has it that every man and woman, except for the *hijra* clan stayed at the very spot as they did not fall under the directive sphere of Lord Rama. On returning after 14 years of exile, Lord Rama was amazed to see the entire *hijra* clan waiting for him. Seeing this as a sign of loyalty, Lord Rama rewarded the *hijra* clan with special divine power of blessings on auspicious occasions such as marriage and child birth, which culminated into a custom. This story is mostly popular in north India.<sup>7</sup>

The *hijras* include both ceremonially emasculated males and intersexed people whose genitals are “ambiguously male-like at birth.” All *hijras* have a female gender identity. There are no ambiguous females who identify as males in the group. Instead, all *hijras* dress and act as women even though they are not biological women.<sup>8</sup> Eunuchs are not male as they have imperfect or absent penis and they do not have sexual desire for women as men usually have. They walk like women, they have female names, and wear female clothing, jewellery, and bindi.<sup>9</sup>

<sup>4</sup> H.M. Levitt & M.R. Ippolito, “Being Transgender: The experience of transgender identity development”, 61(12) *Journal of Homosexuality* 1727-1758 (2014)

<sup>5</sup> *Supra* note 1.

<sup>6</sup> H. Boswell, “The Transgender Alternative”, available at: <https://www.ifge.org/?q=node/58> (last visited on October 4, 2019).

<sup>7</sup> *National Legal Services Authority v. Union of India*, III (2014) SLT 748: II (2014) CLT 248 (SC), para 13.

<sup>8</sup> Justice P. Sathasivam, *Rights of Transgender People – Sensitising Officers to Provide Access to Justice*, Refresher Course for Civil Judges (Junior Division)-I Batch at Tamil Nadu State Judicial Academy, December 12, 2011, available at: <http://www.hcmadras.tn.nic.in/jacademy/Article/PSJ-CJO-SPEECH-Royappetah.pdf> (last visited on October 5, 2019).

<sup>9</sup> Serena Nanda, *Neither Man nor Woman: The Hijras of India* 13 (Wadsworth Publishing Company, NYC, 1999).

### III. RIGHTS OF TRANSGENDER BEFORE NALSA JUDGMENT

Earlier, transgenders had minimal rights and were not recognised as separate gender under any Indian law. This denied them the right to own property, vote, and the right to claim formal individual identity through any official documents such as voting card, passport or driving licence, thereby rendering access to social welfare schemes frustrated. This promoted resorting to beggary and customary dancing rituals in marriages for earning livelihood among the *hijra* community.

Today, medical science is increasingly becoming skilled at altering a persons' birth sex through hormones and surgery and the prevalence of inter sexed individuals reveals the male-female binary as a social construct.<sup>10</sup> Legal scholar Upendra Baxi, in the foreword to the PUCL Report,<sup>11</sup> says: "The dominant discourse on human rights in India has yet to come to terms with the production/reproduction of absolute human sightlessness of transgender communities. At stake is the human right to be different, the right to recognition of different pathways of sexuality, a right to immunity from the oppressive and repressive labelling of despised sexuality. Such a human right does not exist in India."<sup>12</sup> India is also amongst many countries which recognize two sexes and thus, the third sex is marginalized.<sup>13</sup> In Indian scenario, a transgender cannot lead a life with dignity as the Indian society doesn't recognize transgenders as a part of the system, though such approach is contrary to the fundamental rights granted to a citizen.

As per the Indian Constitution, most of the protections under the Fundamental Rights' Chapter are available to all persons. However, the Constitution fails to elaborate safeguards for the rights of undetermined and uncategorized genders i.e. transgender. Without such distinction and categorization of an individual into a specific sex/ gender, deprives them of their civil state benefits which are guaranteed by the Indian constitution. For instance, there is no legal recognition in owning a property, solemnizing marriage (no special enactment to his effect), voting or contesting elections etc. The main problems that are being faced by the transgender community are of discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities like HIV care and hygiene, depression, hormone pill abuse, tobacco and alcohol abuse, penectomy and problems related to marriage and adoption.<sup>14</sup>

In India every citizen enjoys some Fundamental Rights, which do not discriminate on the ground of caste, sex and religion etc. But, the Transgender community is not lucky enough and does not have any support nor from the society and from the government as well. They are still struggling to get a basic support such as availing education, dignified jobs, and participation in society. There are cases in which the transgenders have even denied their

<sup>10</sup> Jennifer, Rellis, "Please Write 'E' in this Box - Toward Self-Identification and Recognition of a Third Gender: Approaches in the United States and India", *available at*: <https://ssrn.com/abstract=982609> (last visited on October 6, 2019).

<sup>11</sup> People's Union of Civil Liberties-Karnataka, "Human Rights Violations against the Transgender Community: A Study of Kothi and Hijra Sex Workers in Bangalore" (September, 2003), *available at*: [https://queeramnesty.ch/docs/HR\\_Vioaltion\\_Transgender\\_India\\_PUCL2003\\_text.pdf](https://queeramnesty.ch/docs/HR_Vioaltion_Transgender_India_PUCL2003_text.pdf) (last visited on October 5, 2019).

<sup>12</sup> Siddarth Narrain, "Being a Eunuch", *Frontline*, 14 October, 2003, *available at*: <http://www.countercurrents.org/gen-narrain141003.htm>. (last visited on April 12, 2019).

<sup>13</sup> *Supra* note 2.

<sup>14</sup> *Supra* Note 7.

political rights as well. For example, in the year 2002, Kamla Jaan<sup>15</sup> became the first *hijra* to be elected as a Mayor of Katni but her election was challenged on the ground that she has contested the election on the seat reserved for women. The Madhya Pradesh High Court in 2003 upheld the order of an election tribunal which nullified the election of a hijra, Kamala Jaan, to the post of Mayor of Katni on the ground that it was a seat reserved for women and that Kamala, being a “male”, was not entitled to contest the seat. The High Court verdict came despite a direction from the Election Commission (E.C.) in September 1994 that hijras can be registered in the electoral roles either as male or female depending on their statement at the time of enrolment. This direction was given by the E.C. after Shabnam, a hijra candidate from the Sihagpur Assembly constituency in Madhya Pradesh, wrote to the Chief Election Commissioner enquiring about which category *hijras* were classified under.<sup>16</sup>

The other fields where this community feels neglected are inheritance of property or adoption of a child. They are often pushed to the periphery as a social outcaste and many may end up begging and dancing. They usually get sexually abused and eventually end up working as sex workers.<sup>17</sup>

#### IV. ACCESS TO JUSTICE

Around 4% of the world’s population is transgenders. In spite of various legislations in their favour, they continue to suffer mental, physical and social abuse in the society because the social stigma does not allow them to come to the main stream of the society<sup>18</sup> The health and well-being of transgender people suffers great harm by attitudes of intolerance and hatred toward diverse gender expression.<sup>19</sup>

#### V. CONSTITUTIONAL PROVISIONS

India is a country where we have codified framework of Fundamental Rights embedded in the Constitution, irrespective of gender. There are four basic rights which are necessary for one’s survival and existence, *viz.*,

- i. Article 14 – Which states that the State shall not deny any person equality before the law or the equal protection of laws within the territories of the State.<sup>20</sup>
- ii. Article 15 – The State shall not discriminate against any citizen on the grounds of race, caste, religion, sex, place of birth or any of them.<sup>21</sup>
- iii. Article 19 – All citizens shall have rights of –
  - Freedom of speech and expression;
  - Freedom of assemble peaceably and without arms;
  - Freedom to reside and settle in any part of the territory of India;

<sup>15</sup> Available at: <https://www.dailyo.in/politics/kamla-jaan-to-kankar-munjare-eunuch-politicians-you-need-to-know-to-understand-what-s-at-stake-in-madhya-pradesh-assembly-elections-bjp-congress/story/1/27674.html> (last visited on August 8, 2019).

<sup>16</sup> *Supra* note 10.

<sup>17</sup> *Supra* note 11.

<sup>18</sup> *Supra* note 7.

<sup>19</sup> *Supra* note 11.

<sup>20</sup> The Constitution of India 1950, art. 14.

<sup>21</sup> *Id.*, art. 15

Freedom to practice any profession or to carry on any occupation, trade or business.<sup>22</sup>  
 iv. Article 21– Right to his life or personal liberty.<sup>23</sup>

## VI. 12TH FIVE YEAR PLAN AND TRANSGENDER <sup>24</sup>

The Twelfth Five Year Plan (2012-2017) proposed empowerment of the third gender by providing them education, housing, access to healthcare services, employment, skill development and financial assistance. In addition to this, it also proposed that separate column must be incorporated in all government and non-government records for the third gender. Besides social upliftment, it had an ancillary benefit in determining the exact number of Transgender in India, which would have further benefitted their community in allocation of budget in the following Annual plans. The Ministry of Social Justice and Empowerment along with Ministry of Statistics and Programme Implementation will map their socio- economic status to create a better environment for them by improving their living standards.<sup>25</sup> A proper execution is yet to be seen in this direction as funds are being unutilized and lying dormant with the concerned state welfare departments. There is a need to fast track the execution process so as to address the social problems faced by the *hijra*/transgender community.

## VII. LEGAL PROVISIONS AT STATE LEVEL

The state of Tamil Nadu and Kerala were the first states to introduce transgender welfare policies and as mentioned by the Researcher in Chapter IV that South India is always and more progressive towards the transgender community. As per the policies introduced , transgender has given a free access for SRS in govt. hospitals, but it is only for male to female, free housing schemes, providing citizenship documents, admission in govt. colleges and also provides the scholarship for higher studies, various other skilled programmers and providing monetary help for the same.<sup>26</sup> Tamil Nadu was the first state which forms a transgender welfare board, along with the representative of transgender community. Kerala also followed the paths of Tamil Nadu and stated providing free SRS surgeries in govt. run hospitals.<sup>27</sup>

West Bengal also followed the path and in year 2015 set up a transgender welfare Board. But, the West Bengal govt. did not clarify many things about the board such as funding and who all were the part of the board and what will be the qualification and criteria to choose them.<sup>28</sup> This board was called as a failure.

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<sup>22</sup> *Id.*, art. 19.

<sup>23</sup> *Id.*, art. 21.

<sup>24</sup> Available at: <http://socialjustice.nic.in/writereaddata/UploadFile/Binder2.pdf> (last visited on August 8, 2019).

<sup>25</sup> Available at: [https://mhrd.gov.in/sites/upload\\_files/mhrd/files/document-reports/XIIFYP\\_SocialSector.pdf](https://mhrd.gov.in/sites/upload_files/mhrd/files/document-reports/XIIFYP_SocialSector.pdf) (last visited on August 9, 2019).

<sup>26</sup> Available at: <https://www.firstpost.com/india/tamil-nadu-once-a-pioneering-state-for-welfare-of-transgenders-now-shuns-the-third-gender-3476538.html> (last visited on August 8, 2019).

<sup>27</sup> Available at: <https://scroll.in/article/804496/why-keralas-free-sex-change-surgeries-will-offer-a-new-lifeline-for-the-transgender-community> (last visited on August 8, 2019).

<sup>28</sup> Available at: <https://clpr.org.in/blog/the-transgender-welfare-development-board-west-bengal-a-wasted-potential-2/> (last visited on August 18, 2019).

In 2016, Odisha also enlarged some benefits to the transgender community, who were living their life below poverty line.<sup>29</sup> In 2019, 5 transgender persons have been appointed as security guards at Odisha Hospital.<sup>30</sup>

Himachal Pradesh also set up medical boards at district and state level for the transgender persons. Government has further initiated certain schemes such as scholarship, skill development programme and financial support for the transgender's parents.<sup>31</sup>

In 2017, The Ministry of Drinking water and sanitation issued certain guidelines for the Swach Bharat Mission and to follow this principle the ministry advised all the states that transgenders should be allowed to use the public toilets of their identity choice.<sup>32</sup>

Chandigarh also established the transgender welfare board with 14 members to ensure that the transgender community will not face any discrimination.<sup>33</sup> This step was taken when a local trust who was working for the welfare wrote to the Govt. to take steps for welfare of the transgender community.

Karnataka also issued policies for transgenders in 2017, with aim to spread awareness about the transgenders in Educational institutions. A Committees followed, which dealt with the problems and discrimination faced by the transgenders.<sup>34</sup>

Andhra Pradesh also formed a policy to provide pension benefits to the Transgender community. As per the policy 1,500 Rupees was announced to be given to Transgender person above the age of 18 years as a social security pension. The policy further included ration cards.<sup>35</sup> Andhra also proposed the welfare board named as "Andhra Pradesh *Hijra* Transgender Welfare Board'. The Board was in line of the NALSA judgment.<sup>36</sup>

In 2018, Jammu and Kashmir government recognized the needs of the Transgender community. As per the policy they would be provided free life and medical insurance and monthly pension schemes for the old age transgenders.<sup>37</sup>

Delhi is lagging behind in the area of welfare of the transgender community. In May 2018, the government established a committee to review the transgender community problems including sexual abuse, discrimination at work and other social problems.<sup>38</sup> The Transgender Welfare board of Delhi government is still on papers and no positive steps have been taken so far.

<sup>29</sup> Available at: <https://in.reuters.com/article/india-odisha-lgbt-poverty/odisha-becomes-first-state-to-give-welfare-to-transgender-community-idINKCN0YO1S7> (last visited on August 8, 2019).

<sup>30</sup> Available at: <https://www.shethepeople.tv/news/five-transgenders-odisha-hospital> visited on November 2019.

<sup>31</sup> Available at: <https://indianexpress.com/article/india/india-news-india/himachal-pradesh-to-bring-transgenders-under-social-security-net-3018937/> (last visited on November 8, 2019).

<sup>32</sup> Available at: <https://www.indiatoday.in/fyi/story/transgender-public-toilets-ministry-of-drinking-water-and-sanitation-969945-2017-04-06> (last visited on August 8, 2019).

<sup>33</sup> Available at: <https://indianexpress.com/article/india/chandigarh-gets-its-first-transgender-welfare-board-with-14-members-4820148/> (last visited on September 8, 2019).

<sup>34</sup> Available at: <https://indianexpress.com/article/india/transgender-policy-cleared-by-karnataka-cabinet-4909196/> (last visited on August 8, 2019).

<sup>35</sup> Available at: <https://news.abplive.com/india-news/cm-naidu-announces-pension-scheme-for-state-s-transgenders-609165/amp> (last visited on August 8, 2019).

<sup>36</sup> *Supra* note 7.

<sup>37</sup> Available at: <https://scroll.in/article/865317/for-the-first-time-government-recognises-needs-of-kashmirs-transgender-community-is-it-enough> (last visited on April 2, 2019).

<sup>38</sup> Available at: <https://www.hindustantimes.com/delhi-news/delhi-commission-for-women-to-have-a-dedicated-transgender-cell/story-qOsSY7Rpey21J8KyHlMU3J.html> (last visited on August 8, 2019).

Rajasthan Transgender Welfare Board announced that they will be issuing ‘multi purpose identity cards’ to 75,000 transgender in the state to avail the govt. schemes.<sup>39</sup>

In Uttarakhand, the High Court of Uttarakhand on September 28, 2018 directed the state govt. to provide reservation in education and jobs.<sup>40</sup> The Court further asked the government to form the policies for the welfare of the Transgender community.

On 2nd march 2019, Assam social welfare department published a draft policy which provides transgenders access to education, shelter, issuing identity documents and further raising awareness etc. Later on the definition which was provided in the Bill was criticised as the term includes the ‘intersex variations’ as transgenders.<sup>41</sup>

In February 2019 Gujarat announced setting up a Transgender Welfare Board, with main aim to provide various welfare schemes such as employment, education and other issues. The board was set up with an aim to ensure that the Transgender community can avail the benefit of the Govt. Schemes for the Transgender welfare.<sup>42</sup>

In July 2019 Bihar Govt. also announced establishment of Transgender Welfare Board named as ‘Bihar Rajya Kinnar Kalyan Board’ and further to provide 1.5 lakh Rupees for the SRS operation.<sup>43</sup> As per the policy no one can refuse to give house on rent to the Transgender.

Madhya Pradesh Govt. in August 2019 also announced that they are going to set up Transgender welfare board and they will be providing monthly allowances to parents of intersex children, reservation in jobs and separate public toilets.<sup>44</sup>

## VII. LEGAL PROVISIONS AT NATIONAL LEVEL

The report of Peoples’ Union for Civil Liberties (PUCL) recommends that “Civil rights under law such as the right to get a passport, ration card, make a will, inherit property and adopting children must be available to all regardless of change in their gender.”<sup>45</sup> Such recommendations are yet to see a proper execution, though there have been implementation in bits and pieces, as certain legal aspects with respect to inheritance, adoption and employment in certain govt sector such as Indian armed forces are yet to be codified and regulated.

<sup>39</sup> Available at: <https://www.hindustantimes.com/jaipur/in-rajasthan-transgenders-to-get-identity-cards-soon-to-avail-of-scheme-benefits/story-p5PpZy10QUX5eHoHLBwleM.html> (last visited on August 8, 2019).

<sup>40</sup> Available at: <https://www.jagranjosh.com/current-affairs/uttarakhand-hc-directs-state-to-provide-reservation-to-transgenders-in-educational-institutions-1538381858-1> (last visited on August 8, 2019).

<sup>41</sup> Available at: <https://nenow.in/north-east-news/assam/assam-government-criticized-giving-bad-definition-transgender.html> (last visited on August 8, 2019).

<sup>42</sup> Available at: <https://thelogicalindian.com/news/gujarat-transgender-board/> (last visited on August 8, 2019).

<sup>43</sup> Available at: <https://thelogicalindian.com/story-feed/get-inspired/bihar-transgender-rights> (last visited on August 7, 2019).

<sup>44</sup> Available at: <https://www.hindustantimes.com/bhopal/madhya-pradesh-to-roll-out-welfare-policy-for-transgenders/story-dewBj0EdfPaokkokMy1vzN.html> (last visited on August 8, 2019).

<sup>45</sup> Supra note 9.

### VIII. SUPREME COURT JUDGMENT

#### ***The National Legal Service Authority v. Union of India***<sup>46</sup>

The National Legal Services Authority<sup>47</sup> (NALSA) was formed under the Legal Services Authorities Act, 1987 and it aimed to provide free Legal Services to the weaker sections of the society and to organize Lok Adalats for amicable settlement of disputes. It has been actively involved in addressing the difficulties faced by transgender persons, one of them being fighting for securing provisions for legal adoption of children.

The case pertained to addressing the grievances faced by the transgender community and whether they should be recognized as a third sex and if yes, whether such recognition would be *ultra vires* the Indian Constitution. Existing laws only safeguarded rights of a male and a female and hence, such discrimination by the state laws required a speedy redressal.<sup>48</sup> Hence a writ petition was filed before the Supreme Court of India praying for the legal recognition of transgender persons as the third gender.

The Hon'ble Supreme Court has declared that:

- 1) *Hijras*, eunuchs, apart from binary gender, be treated as 'third gender' for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.
- 2) Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.
- 3) We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.
- 4) Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since *hijras/transgenders* face several sexual health issues.
- 5) Centre and State Governments should seriously address the problems being faced by *hijras/transgenders* such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.
- 6) Centre and State Governments should take proper measures to provide medical care to transgenders in the hospitals and also provide them separate public toilets and other facilities.
- 7) Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.
- 8) Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.
- 9) Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life."<sup>49</sup>

<sup>46</sup> III (2014) SLT 748.

<sup>47</sup> Available at: <https://nalsa.gov.in/> (last visited on November 8, 2019).

<sup>48</sup> *Ibid.*

<sup>49</sup> *Supra* note 7 at 109-110.

## **IX. TRANSGENDER COMMUNITY AND HIGHER EDUCATIONAL INSTITUTIONS**

On 29th October 2014, the University Grant Commission (UGC) issued a circular to all the Universities requesting them to include a separate column for transgender community in all application forms. The said circular emphasized upon taking affirmative steps by the Universities in providing the transgender community a safe and holistic environment where they can pursue their respective education, devoid of any harassment, threat, stigma, shame or embarrassment. The circulars further emphasized upon holding gender sensitization programmes and offering them a transgender friendly infrastructure. For the MBA Maharashtra Common Entrance Test - 2017, Out of 363413 applicants, 9000 applicants belonged to other gender means neither male nor female.<sup>50</sup> The column of ‘others’, other than male and female was incorporated in the form specifically.

Post the NALSA judgment, the Parliament of India introduced the, Rights of Transgender Persons Bill, 2014. On 24th April 2016, a private member’s Bill titled as “The Rights of Transgender Persons Bill, 2014” was passed by the Rajya Sabha and introduced in the Lok Sabha. The Bill deals with the different aspects like Social inclusion of transgender, their rights and entitlements, financial and legal aids, empowerment through education and skill development and prevention of abuse, violence and exploitation of transgender community.

## **X. THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019**

In spite of having a long history and introduction of a lot of Transgender Bills, none of them could make it to becoming an Act. The Minister of Social Justice and Empowerment, Thawar Chand Gehlot, introduced the 2019 Bill in light of 2018 Bill, which had lapsed. The Transgender Persons’ (Protection of Rights) Bill, 2019 was passed in Lok Sabha and Rajya Sabha on 5<sup>th</sup> of August 2019 and 25<sup>th</sup> November 2019 respectively.

The Bill received strong opposition by the members including a demand to send the Bill back to the Standing Committee for review and some of the member demanded to send back the bill again for the scrutiny before the standing committee. One of the members, a Member of Parliament from Dravida Munnetra Kazhagam, Tiruchi Siva, called for a vote to send the bill for scrutiny but the motion was defeated and after a lot of debate the bill was passed.

The 2019 Bill finally received the assent of the President on 5<sup>th</sup> December 2019 and became an Act. The First Section of the Act says that it extends to the whole of India, which includes Jammu and Kashmir as well.

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<sup>50</sup>Available at:

[https://www.academia.edu/33006703/Problems\\_Of\\_Transgender\\_In\\_India\\_A\\_Study\\_From\\_Social\\_Exclusion\\_To\\_Social\\_Inclusion](https://www.academia.edu/33006703/Problems_Of_Transgender_In_India_A_Study_From_Social_Exclusion_To_Social_Inclusion) (last visited on August 8, 2019).

The transgender definition<sup>51</sup> is the replica of the Transgender Persons Bill, 2018, which is also similar to the definition as proposed by the Standing Committee.<sup>52</sup> No changes were made to the definition which stays the same as in 2018 Bill although interestingly the definition of intersex variation was removed. The said Act also does not include the National and State Commissions for the transgender. However, after a lot of criticism the screening committee section was deleted as it is against the various provisions of the constitution of India.

There are many provisions of the Act which are welcome and give hope to the transgender. The Bill clearly prohibits the discrimination against a transgender person, including denial of service or unfair treatment with respect to: (i) education;<sup>53</sup> (ii) employment;<sup>54</sup> (iii) healthcare;<sup>55</sup> (iv) right to movement;<sup>56</sup> (v) right to reside, rent, or otherwise occupy property;<sup>57</sup> (vi) opportunity to hold public or private office;<sup>58</sup> and (vii) access to a government or private establishment in whose care or custody a transgender person is.<sup>59</sup>

## XI. CONCLUSION

In Indian society and in any other civilised society there is a general perception that every individual possesses some fundamental rights for social upbringing of the person. With a holistic approach an individual can flourish in a society and a duty is cast upon the state to ensure such parity among various communities of the society. The transgender community is forced to live in seclusion without dignity. In India, people are getting representation on the basis of castes, religion and tribes but transgenders are never looked upon as they not even considered as humans. They have been treated as if they don't exist. That is why they live a secluded life among their own kinds with least interference from the society. Since the year 1994, the election commission of India has given them right to vote and contest as per their self-identified gender, but this has also been a pint of contentions in many cases. Finally, in the year 2014 (with the verdict of the NALSA Judgment), transgender persons were recognized as the third sex and the traditional binaries of male and female was finally demolished. This community was guaranteed by the Hon'ble Supreme Court of their fundamental rights and this has now taken the shape in the form of legislation being passed by the Indian Parliament.

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<sup>51</sup> *Supra* note 1. The Act defines transgender as '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, gender- queer and person having such socio-cultural identities as *kinner, hijra, aravani* and *jogta*."

<sup>52</sup> Government of India, "Standing Committee report on Transgender Persons (protection of Rights Bill), 2016", (Ministry of Social Justice and Empowerment, July 2017).

<sup>53</sup> *Supra* note 1 at s. 3(a).

<sup>54</sup> *Id.*, s. 3(b).

<sup>55</sup> *Id.*, s. 3(d).

<sup>56</sup> *Id.*, s. 3(f).

<sup>57</sup> *Id.*, s. 3(g).

<sup>58</sup> *Id.*, s. 3(h).

<sup>59</sup> *Id.*, s. 3(i).