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## Rights to Life in Context with Transgender

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### 1 INTRODUCTION

Every person deserve to be respected in the country despite being of any religion , caste , and gender. This study will take your attention towards the rights of transgender people and how they are and were treated in the world. Transgender society over the year has been facing lot of trouble in the society .We are not consider part of the society . They were aside from general society . You would never found transgender society study same school as you are or same university or offices all the problem in at large lot of social discrimination with them . Ultimately violation of fundamental rights . We have never consider them as a part of society .

Conventional distinction of human gender into male and female in exclusively based on the biological design of their genitalia. However, in reality , there are people who do not fit into this custom and defy the biological binary. These are the “TRANSGENDER”.

Transgender persons are people whose identities are different from the stereotypical gender norms. Society has failed to accept their gender identity due to which they have suffered from discrimination ,social oppression and physical violence.

Stereotyped as the mendicants who knock and on the rolled up windows of our cars at traffic signals or as dancers in local bar. These transgender person live a life like fraught with troubles. There are certain socio cultural groups of transgender people who are identified as “Hijras , Jogapas , Sakhi , Aradhis .”

In the recent controversies relating to the third gender community in India has raised a debate about the status and the rights of this section in our society . Social ignorance of third gender people in historical and a well known concept. Violation of fundamental human rights , exclusion from social participation , arbitrary actions against their rights and police atrocities are the major areas of problem , which this group has been facing in their day to day life since

long . Achievement of the equal status and separate sexual identity of third gender community in India in long pending. Considering the vulnerability of this sexual minority group the demand of the hour should be provide specific constitutional guarantee of their rights , more specifically to ensure the upliftment of this long ignored community to the equal platform of social and political participation by developing rules and programs for affirmative action in favor of them.

The need for treating their third gender community as backward class and some affirmative action in employment and educational sector for securing their proportional representation was argued by the Apex court in a recent decision in NLSA V. union of India .<sup>1</sup> The judgment declared that Hijras , Eunuchs and other transgender people , apart from male and female binary , should be treated as “Third Gender .” They should be provided with the right to decide their self identified gender .

Hence , the desire for rigid definition set the platform for the NALSA judgment which defined the term in the following words “Transgender is generally described as an umbrella term for person whose gender Identity ,gender expression or behavior does not confirm to their biological sex .”<sup>2</sup>

Thus it can be said that term TRANSGENDER is not only limited to person whose genitals are intermixed but it is a blanket term used to refer to person with identities that do not get along with identities that do not get along with the strict dual categories of man and woman and whose gender

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<sup>1</sup> Ibid

<sup>2</sup> National legal services Authority v . Union of India & Ors , (2014) 5 scc 438 .

identity and expression differ from the conventional norms expected from their birth sex. The article deals with the transgender have the right to be recognized as a third gender and are entitled to legal protection under law.

The government has enacted the Transgender person {Protection of Right} Act 2019 to provide prohibition against discrimination in the matters employment , education and health services to the transgender person and welfare measures have been adopted to protect the rights of the transgender person .

Transgender people try to express their gender behavior , identity in many ways as some use their behavior , dress or mannerism to live like the gender they feel in right for them as they reject the traditional understanding of gender that in just divided between male and female . So they identify themselves as TRANSGENDER / THIRDGENDER .

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## 2 HISTORY

The very concept of hijras and other transgender in India in not a new concept , they have been recognized in our ancient history as well . Transgender community comprises of Hijras , kothis , Aravanis , Jogappas , Shiv Shakti etc ... and they as a group , have got a strong historical presence in our country in the Hindu Mythology and other religious texts .

The literature named KAMA SHASTRA the ancient Hindu text in which they been referred as NAPUNSAKA ,TRITYAPAKRITI or third gender has been an integral part of Vedic and Puranic literatures , it categories men who desire other men as a “ Third Nature.”

In Hindu mythology , Bahuchara Mata who is a Hindu goddess in considered as the patronage of the Hijra Community in India . According to Hindu Mythology of India offers Glimpse of reality at times and brief look at past reflections , stipulate that Transgender person who are often Denigrated today were once venerated and appreciated to a great extent . At the beginning point of the concept of their genders can be traced in a Hindu Mythology which has given so many examples of deities changing gender or also a manifesting as an Avatar of opposite sex.

The greatest example of the integrating Lord Shiva and her Consort , Parvati which formed the ARADHANARISHVARA is widely worshiped . Mahabharata and Ramayana were the treasures of boxes of references to transgender people . In Mahabharata Sikkhandi is the most powerful transgender which is found in Hindu Mythology .

Son of Arjuna Iravan and Aravan another minor , Yet crucial transgender / third gender character Believed to have laid down the lineage from which the person of transgender are born . Mahabharata also witness the another episode the present of Transgender / Third gender include at the time when arjuna was sent to exile . He assumed the identity of Brihandala , eunuch and all the rituals performed during the different occasions of childbirth , marriage etc...

In the Ramayan is also the source of great inspiration for the transgender people . Lord Rama , in the epic Ramayana , was leaving for the forest upon being banished from the kingdom for 14 years turns around to his followers and ask all the Men and Women to return to the city . Among his followers , the hijras alone do not feel bound by this direction and decide to stay with him .<sup>3</sup>

Impressed with their devotion Rama sanctions them the power to “ Confer blessings on people on auspicious occasions like child birth and marriage , and also at inaugral functions .” Which it is believed set the stage for the custom of BADHAI in which hijras sing , dance , and confer blessings .

In the Mughal empire during (1526-1857) in royal courts hijras known for the position as Administrators , Generals , Political advisors and also the guard of the harems . Hijras Occupied a higher positions in Islamic Religion and it can also affect the influence of decisions of state . But , after some time all the benefits are taken back by the British period .<sup>4</sup>

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## 3 MERITS OF TRANSGENDER RIGHTS

1. The Discrimination which is includes denial or discontinuation of access to or enjoy of , or unfair treatment of the Right of movement , healthcare services , employment , educational establishments , opportunity to stand for or hold public office so , the government gives the right to live the transgender on their own terms due to that bill the transgender people dream comes true .
2. Recognition of transgender individuals identity and conferring the right and entitlement to obtain a certificate of identity as proof of recognition from the relevant state authorities .

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<sup>3</sup> Siddarth Narrain , Being A Eunuch ( Oct. 14,2003 ) , <http://www.contercurrents.org/gen-narrain141003.htm>.

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

3. The welfare measures schemes , education programs , participation in the society functions & occasion facilitating the access to these welfare measures by the appropriate government of state .
4. The rehabilitation measures and the rescue also including the right of residence conferred by the state government .
5. Everyone respect the person physically integrity and their private life but people do not treat the transgender in a good manner and they feel like someone put them in a box but after the passing of transgender bill people treat the transgender in a good manner .
6. Establishment to ensure compliance with the Act and provide facilities as may be prescribed by the act from time to time .
7. Those people who forcefully removes the transgender person from the household , village or other place from residence , denies a transgender person to the right of public passages or use of public places and also causing physical , sexual , verbal , emotion , or economic harm or abuse against a transgender person shall be punished with imprisonment .

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#### 4 RIGHTS OF TRANSGENDER

Transgender people are individuals who differ the stereotypes and existence of only two gender that in man & women they are having a different appearance personal characteristics and behavior . The main problem which they suffer are lack of education , unemployment , homelessness , lack of health care facilities , depression , alcohol abuses & discrimination through out their life . To protect their rights and also resolve their problems , INDIAN CONSTITUTION has provided them with their own rights & also the Supreme court has given them rights to recognized as “THIRD GENDER” and provided those people to some welfare measures .

1. The Supreme Court of India recognized the transgender as third gender to eradicate the discrimination suffered by them and to safeguards their rights .
2. The court asked the center to socially and economically backward classes of the transgender allow them to get admission and take classes in the educational institutes and also also the employment on the basis of their respective gender .
3. The court stressed out on the importance of right to dignity and gave the recognition to their gender identity which is completely based on reassigned sex after the going under reassignment sex surgery as the person has a constitutional rights to get recognized as female and male .
4. The fundamental rights should be available to the third gender in the same way as they were provided to male and female by the rules of Honorable Supreme Court .
5. The restriction can not be placed on the appearance of personal or the dressing subject .
6. The dignity of person will not be realized if he is forced to mature in a gender to which he does not belong and also he cannot relate to which will again hinder in his development the court noted .
7. The rights of human are the basic rights and also the freedom which are guaranteed to a human by virtue of him being a human which can not be created and also nor be destroyed by any government . It includes liberty , dignity , right to life , freedom of thought and expression . So it includes the transgender person as well .
8. The rights of transgender person which includes the protection by including of a transgender in the official document like Election voter Id-card , Driving license , Passport , Ration card for the hospitals , to own property , and for admission in educational institutes .
9. In article 14 , 15 , 16 provides right to the equality and equality of opportunity in the matters of public employment and broaden includes the concept of sex which refers to “ Psychological sex ” and gender identity .

10. At the last the Court said that “ hijras / Eunuchs ” considered as third gender and also above the binary gender under the constitution .

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## 5 LEGAL STATUS

2009 Election commission decide transgender as life when they go ahead vote for election acknowledgement as third gender as male or female during the election this is only for purpose of election . 2012 Petition by Poojya Mata Nasib kaur ji “ Women Welfare Society and Laxmi Narayan Tripathy along with National Legal Service Authority Of India ” NALSA . Finally, 2014 Judgement have come Transgender acknowledge as third gender of the society . They are accepting in the society as generally all the men and women are .

- **In this Case - National legal services authority union of India .**

Recognized the third gender category in the eyes of law . The court finally hasted the bubble of binary gender structure of man and women and granted equal rights and protection to transgender person under Constitution of Article 14 , 15 , 16 .

In Article 14 Of Indian Constitution which deals with equality of law . the person does not restrict itself to the concept of man and women thus , Hijras / Transgender person and are entitled to legal protection of laws in all state activity .

Article 15 and 16 are used to the scope of sex to includes psychological sex or gender identity and hence , held that no one discriminated on the ground of sexual orientation . The Supreme Court stressed on the importance of right to dignity by recognizing ones gender identity within the Article 21 of the Indian Constitution .

- **Suresh kumar khousal V. Naaz foundation .<sup>1</sup>**

The Apex court has withdrawn the legal protection granted to LGBT’s by the delhi high court . The Supreme court issued the controversial ruling in which it upheld the constitutional validity of section- 377 of the Indian Penal code . The decision reversed of delhi high court in Naz Foundation .<sup>1</sup>

- **Navtej Singh Johar V. Union of India**

The judgment overruled the judgment passed in Suresh Kumar Kaushal case .<sup>5</sup>In this judgment declared Section 377 of IPC as unconstitutional . LGBT Community people are also the citizen of India who have the rights which are guaranteed under the Constitution of India was violating fundamental rights of LGBT Community . It also declared that section 377 will be governing only men - consensual sexual acts committed against any abduct and minor .

### **Protection of Transgender right Act 2019**

The bill defines a transgender person as one whose gender does not match the gender assigned at birth . It includes trans-men and trans-women , person with intersex variations , gender queers and person will sociocultural , identities such as Kiner and Hijra certificate of identity . A transgender a person may make an application to the District Magistrate for a certification of identity indicating the gender as transgender .

The Bill predicts discrimination against a transgender person includes denial of service or unfair treatment in relation to education , employment , health care . Access to employment of goods facilities , opportunities available to the public right to movement , right to reside , rent or otherwise occupy property opportunity to held public or private office . Access to a government or private establishment in whose care or custody a transgender person is -

Healthcare - The bill also seeks to provide rights of health facilities to transgender person including separate HIV surveillance centre and Sex reassignment surgery . It also states that government shall review medical curriculum to address health issues of transgender person and provide

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<sup>5</sup> Suresh kumar koushal and another V. Naz Foundation and others Supreme Court of India ; Civil Appeal No. 10972 of 2013 available at <http://judis.nic.dupremecourt/imgs1.aspx?filename=41070>

comprehensive medical insurance for them . It calls for establishing a National council for transgender persons . It states that the Offences against transgender person will attract imprisonment between six months to two years in addition to a fine .

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## 6 ISSUES

Regressive and violation of NALSA Judgment the bill , Does not have any provisions for self determination of gender . The transgender community has questioned certificate of identity . In adequate punishment for crime against transgender person the bill sets out lighter sentence for several criminal offences such as , several abuse and physical abuse when they are committed against transgender people .

### PROBLEM FACED BY TRANSGENDER

The transgender communities are discriminated at all levels -

- Rejected by society as well as the family .
- They are forced to begging and the entire community is forced in sex work . The one reason for being forced into one work because unavailability of livelihood resources .
- They are highly vulnerable for fatal disease that can lead to death of the person .
- The transgender have No education , No employment opportunities , No social recognition and unable to enjoy equal rights and opportunities like other normal people .
- Living in poverty due to lack of education and no employment .
- Excluded from society and cultural function celebrations .
- Subjected to Sexual Harassment and humiliation .
- Unable to enjoy the fundamental rights like other citizens .
- In many cases people are forced to go profession of prostitution this was insisted in their community by their own friends and own relatives .
- Transgender have to fight for their recognition . They were not treated in the third gender community and were treated as Hijras by the people .
- Transgender people face lots of rape instigation verbal and also physical violence by the men of the society . They call someone a Non-Human transaction and beat them just for the same reason .
- They were treated more badly than backward classes and were given no place socially and economically both .
- They were not even provided the protection for the violence . It was happening every day .
- People use to give them unwanted attention by insulting and abusing them in public places , punishing them for no reason and execrate them .
- Transgender have no access to bathrooms / toilets and public spaces .
- They have face homelessness and lack of medial facilities like HIV cure , hygiene and depression .

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## 7 CONCLUSION

Everyone is individual and is born with the rights decide by the country by their birth . A gender transformation not take any those rights giving equal protection to transgender because our constitution is secular . He includes everyone . Not recognizing the transgender caste is also an insult to the constitution and also an insult to the human race . People do not treat their gender as like that male or female . People call them with different names so which result their moral down .

So , Everyone respect the person physically integrity and their private life . We have seen various major to protect the rights of transgender but we have seen various challenge in implements in the schemes so what has to be done special attention from the society at large have to given this community . It is not only state but judicially has taken a significant step to remove the stigma attached to third gender . But , also the society at large responsible to protect the rights of transgender .

It also bring them to action for the up bringing of the transgender community to stand of human dignity . So , government should be ensure that changing a person gender and name are transparent and accessible . It is not possible to close our eyes and ignore their existence . It must be noted that the third gender their existence is evident in our country .

The required changes need to be reflected and policies and laws . People need to understand and accept them . People have the right to be what they are and what they want to be for transgender people the same right held .