



## RIGHTS OF TRANSGENDER PERSONS RIGHTS

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### ABSTRACT:

Human rights are defined as the freedoms of life, liberty, equality, and dignity that are either enshrined in international treaties or guaranteed by the Indian constitution and upheld by Indian courts. Furthermore, all people have the inherent and unalienable right to human rights, regardless of their nationality, sex, ethnicity, race, religion, language, or any other status. However, transgender people are not granted these rights because of their gender identity and sexual orientation. All human rights are intrinsic, indivisible, interconnected, and interdependent; nonetheless, transgender people have historically suffered greatly and are frequently denied these rights. Dynamic modifications have been made to the legal position and rights of the transgender people, yet it still doesn't work. The rights that transgender people have and how they apply to them are the topics of my topic, Rights of Transgender Person.

### INTRODUCTION:

Human rights and constitutional rights are universal for all people, yet transgender people frequently do not have access to these rights, which leads to their exploitation, abuse, and torture, as well as their awful living conditions on the streets. Although these rights are now applicable to transgender people, the ladder's ability to get them is impaired, and it will take additional years for the ladder to develop. The UN Women Report estimated that it will take at least 300 years to achieve gender equality, and that it will take an additional 300 years for women. What does this mean for the third gender, then? Let's talk about transgender people's rights.

### WHO IS TRANSGENDER PERSONS?

A person who does not identify as the gender assigned to them at birth is considered transgender, as defined by Section 2(K) of The Transgender Persons (Protection of Rights) Act, 2019. This category includes transgender men and women (regardless of whether they have had sex reassignment surgery, hormone therapy, laser therapy, or other therapies), people with intersex variations, genderqueer

people, and people with sociocultural identities such as kinner, hijra, aravani, and jogta.<sup>1</sup>

### WHAT IS GENDER IDENTITY?

Gender identity is the deeply felt internal and unique experience of gender that each person has, which may or may not match the sex assigned at birth. Other expressions of gender include speech, mannerisms, and dress. Personal sense of the body may also involve making choices about one's physical appearance or function through surgery, medicine, or other means.<sup>2</sup>

In simple terms gender identity means a internal sense of being belonging to a particular gender.

### LEGAL STATUS OF A TRANSGENDER RIGHTS:

1. In 2009 Election commission for the purpose voting modified the registration form with the option of other in the gender column for the transgender.
2. In 2009 **Naz Foundation vs NCT Delhi**,<sup>3</sup> the two judge bench of Delhi high court decriminalized the 150 year old 377 section of IPC.
3. In 2013 **Suresh Kumar Koushal vs Naz**



**Foundation**<sup>4</sup> the Supreme court overturned the Naz Foundation judgement and criminalises the Section 377 of IPC.

4. In 2014 Landmark Judgement **NALSA vs UOI**<sup>5</sup> the SC recognized the transgender as third gender and also held they entitled to the constitutional right of Article 14, 15, 21

5. In 2017 **K. S. Puttaswamy vs Union of India**<sup>6</sup> The nine-judge Supreme Court bench ruled that the right to privacy is an essential freedom that is ingrained in Article 21's right to life and liberty. The right to one's own sexual orientation and gender identity, as well as the right to an intimate relationship of one's choosing, are all included in the right to privacy.<sup>7</sup>

6. In 2018 **Navtej Singh Johar vs UOI**,<sup>8</sup> The Supreme Court upholds the Naz Foundation decision, decriminalises Section 377 of the IPC, and declares that transgender people are entitled to all constitutional protections.

7. In 2019 **Mrs X vs State of Uttarakhand**<sup>9</sup> The court upheld the NALSA ruling and declared that a person's right to life and liberty would be violated if their gender identity was denied.

#### YOGYAKARTA PRINCIPLES:

These Principles have been formulated by a group of human rights experts. The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity were unanimously adopted by 29 eminent experts from 25 countries who attended an expert meeting at Gadjah Mada University in Yogyakarta, Indonesia, from November 6–9, 2006, and had a variety of backgrounds and areas of expertise relevant to issues of human rights law.

1. The human rights is universally applicable to all irrespective of their sexual orientation and gender identity and they should not be discriminated by any one.<sup>10</sup>

2. Every individual should be recognised as a person before law irrespective of their sexual orientation and gender identity and also no one should force any person to undergo any medical procedures as required for the legal recognition of the gender identity.<sup>11</sup>

#### Nangai vs Superintend of Police 2014:

The court ruled that it is against Article 21 of the constitution for someone to be forced to undergo a medical examination in order to determine their gender. The transgender individual is free to choose their own identity.<sup>12</sup>

3. The Yogyakarta principles also states that every person has the right to life, liberty, security and privacy irrespective of their sexual orientation and gender identity and everyone entitled to non discrimination in ensuring these rights.<sup>13</sup>

4. Everyone is entitled to fair trial, Freedom from torture, cruel inhuman or degrading treatment as other irrespective of their sexual orientation and gender identity<sup>14</sup>

5. Every person has the right to protection from sale, trafficking, exploitation and abuse.<sup>15</sup>

6. All human beings has the Economic, Social and Cultural rights.<sup>16</sup>

7. Everyone has the right to freedom of speech and expression, right to freedom of assembly and association.<sup>17</sup>

8. Everyone has the right to movement, right to reside.<sup>18</sup>

9. Everyone has the right to family and one cannot be separated from their family and has the right to live with the parents and also participate in public life.<sup>19</sup>

these rights are applicable to all people without discrimination irrespective of the sexual orientation and gender identity and also every person has the right remedy also under principle 27 of Yogyakarta.



### **Arun Kumar v Inspector General 2019:**

The court ruled that where both parties are Hindu in the sense that they are able to marry under Hindu law, the transgender person also has the right to a family. Marriage laws that apply to regular individuals also apply to transsexual people.<sup>20</sup> there are also 10 other yogyakarta principles relating to the rights of legal recognition, freedom from criminalisation and sanctions, right to truth etc.

### **Transgender persons (Protection of Rights) Act, 2019:**

The transgender persons act is consist of 9 chapters and 23 sections. The object of this act for the protecting the rights of transgender and for their welfare measures. The some of the rights of transgender persons are,

1. **Non-discrimination** in education, employment, healthcare, movement etc.
2. **Change in gender**, they have the right change their gender of their choice.
3. **Right to residence**, They have the right to reside with their family, parents or where the immediate house member resides. they also has the right to rent a house.
4. **Inclusive Education**, They have the right to inclusive education in the sense can included with other students, resonable arrangements should be made.<sup>21</sup>

### **Alia S. K v The State of West Bengal 2019:**

The Court upheld the transgender person has the right to seek admission in the university.

5. Right to Vocational training and self employment.
6. Right to health care facilities.

Other rights:

7. Right to Marriage.
8. Right to reservation.
9. Entitled to all constitutional right.

### **Anjali Guru Sanjana Jaan v State of Maharastra and ors 2021:**

An application from a transgender person who wanted to vote in the village panchayat election was denied. The Bombay High Court ruled that a transgender person has the freedom to self- identify as their gender.<sup>22</sup>

### **Conclusion:**

After centuaries there is now only separate law for the right of transgender person but there is lacking in the administration and it is not effective to the transgender persons still there are so many transgenders are roaming for begging and other illicit works. The implementation of the act was not effective it is not reaching the transgender persons. Still needed more policies and regulations to structure their life.

### **References**

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- 3 Naz Foundation v NCT Delhi
- 4 Suresh Kumar Koushal v Naz Foundation
- 5 NALSA V UOI
- 6 K.S. Puttaswamy v UOI
- 7 Justice Puttaswamy v UOI
- 8 Navtej Sing Johar v UOI
- 9 Mrs x. v State of Uttarakhand
- 10 Yogyakarta principles 2006, Principle 1 and 2
- 11 Yogyakarta principles 2006, Principle 3
- 12 Nangai v Superintendent of Police
- 13 Yogyakarta principles 2006, Principle 4-7
- 14 Yogyakarta principles 2006, Principle 8-10



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- 17 Yogyakarta principles 2006, Principle 19-21
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- 22 Anjali Guru Sanjana Jaan v State of Maharashtra

