

**A REPORT ON THE HUMAN RIGHTS
VIOLATIONS AGAINST
TRANSGENDERS
IN KARNATAKA, 2014**

**Compiled by
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and
Gowthaman Ranganathan**



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ONDEDE

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Violence faced by the transgender community is often invisible or under reported in mainstream media. Further, an insensitive criminal justice system makes reporting even more difficult. In this report, my effort has been to document instances of violence faced by the members of transgender community in the recent past by way of testimonies by the members from the transgender community. These testimonies speak volumes by themselves.

I would like to thank Gowthaman Ranganathan, Lawyer at the Alternative Law Forum (ALF). ALF is a collective of lawyers invested in an alternative practice of law through litigation and research to issues of social and economic injustice. I thank him for generously providing necessary material and time for the report, without which it would not have been possible. I would also like to thank Danish Sheikh from the Alternative Law Forum who made the accessible summary of the NALSA judgment and the Rights of the Transgender Persons Bill which are annexed with this report.

Needless to mention, I thank the members of the community who shared their experiences and have courageously spoken against the violence and injustice.

B.T.Ventakesh for making time from his busy schedule to help us to write the significant section of the report

Ondede, an organization working with children, women and sexual minorities focusing on dignity, voice, sexuality of these groups, for being a constant support. Last but not the least, Akkai Padmashali, for being the back bone who encourage and inspired me always.

PRERANA KODUR

1. INTRODUCTION

The Expert Committee on Transgender persons, a committee that was set up under the Ministry of Social Justice and Empowerment defines the term transgender as, “*all persons whose own sense of gender does not match with the gender assigned to them at birth. They will include trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormonal treatment or laser therapy, etc.), genderqueers and a number of socio cultural identities, such as kinnars, hijras, aravanis, jogtas, etc.*”¹ Transgender persons defy the binary of gender and sex and face persecution and prosecution at the hands of their family, police and others for being different.

The violation of the rights of Transgender persons have been documented in the year 2001 and 2003 by way of two reports by the People’s Union for Civil Liberties – Karnataka (PUCL-K)². This pioneering report has documented the harassment and violence faced by Transgender persons at the hands of the police, gundas and also their family and often the medical establishment. Discrimination over the years has resulted in disenfranchising Transgender persons to a great extent.

The Supreme Court, in the celebrated judgment of the *National Legal Services Authority v Union of India*³, at the very outset notes that, “*Seldom, our society realizes or cares to realize the trauma, agony or the pain which the members of the Transgender community undergo, nor appreciates the innate feelings of members of the community*”.

¹ Report of the Expert Committee on the Issues relating to Transgender Persons, <http://socialjustice.nic.in/transgenderpersons.php>, accessed on 10/08/2015.

² Human Rights Violations against Sexual Minorities in India, A PUCL-K fact finding report about Bangalore (2001), accessed from <http://sangama.org/files/sexual-minorities.pdf> on 05/08/2015 and Human Rights violations against the Transgender community: A study of Kothi and Hijra sex workers in Bangalore, India (September 2003), accessed from <http://ai.eecs.umich.edu/people/conway/TS/PUCL/PUCL%20Report.pdf> on 05/08/2015.

³ *NALSA v. Union of India*, Writ Petition (Civil) No. 400 of 2012

They are pushed to the margins of the society by making education, healthcare, housing and employment inaccessible to them. Most Transgender persons are unable to complete primary and secondary education due to hostile environment at school created by the insensitivity of fellow students and teachers. Being forced out of school, results in higher education becoming a distant dream for many members of the Transgender community. Lack of higher education forces them to stay out of the organized workforce and pushes them into sex work and begging as the only means of survival. Police harassment, violence from family and insensitive medical institutions makes matters far worse. In the case of female to male Trans-men, they are doubly marginalized as a result of being assigned female at birth and being a Transgender person.

However, thanks to the struggle of many Transgender persons over the years, there are many positive developments that have occurred. The Supreme Court of India, in its judgment in *National Legal Services Authority v Union of India*⁴ has affirmed and recognized the rights of Transgender persons under the Constitution and has directed the Central and State Governments to comply with the extensive recommendations made by the 'Expert Committee on Transgender persons'⁵. The report makes crucial recommendations to integrate members of the Transgender community into the mainstream. Further, a private members bill introduced in the Rajya Sabha by Tiruchi Siva, a Member of Parliament has been passed unanimously by the Upper House and is awaiting discussion and approval by the Lok Sabha⁶. All these developments hold promise to a better future. The appointment of Manobi Bandopadhyay as the first Transgender Principal in India⁷, the election of Madhu Bai Kinnar, a dalit Transwoman

⁴ *NALSA v. Union of India*, Writ Petition (Civil) No. 400 of 2012

⁵ Report of the Expert Committee on the Issues relating to Transgender Persons,

⁶ RS passes pvt member's bill on Transgender rights: First time in 45 years, <http://www.prsindia.org/media/articles-citing-prs/rs-passes-pvt-members-bill-on-transgender-rights-first-time-in-45-years-3760/> (April 24, 2015), accessed on 05/08/2015.

⁷ India's first Transgender principal takes charge, <http://www.thehindu.com/news/national/other-states/manobi-bandopadhyay-indias-first-transgender-college-principal-takes-charge/article7298708.ece> (June 09, 2015), accessed on 05/08/2015.

as the Mayor of Raigarh are landmarks in furthering the rights of Transgender persons⁸. Even in Karnataka, C.Anu has been appointed as a peon in the High Court, though a modest beginning, it gives hope to many Transgender persons. Further, a draft policy has been finalized in lieu of the implementation of the recommendations by the Expert Committee on Transgender persons in Karnataka.

On the one hand, these developments are welcome. However, violation of Transgender persons continues unabated. A young Transwoman was murdered in Telangana on January 16, 2015⁹. Further, more than 45 Transwomen were picked up by the police and illegally detained in the Beggar's Home in Bangalore¹⁰. There are also instances wherein false cases are filed against Transgender persons as in the case of an incident in Mysore where Transwomen were maliciously prosecuted for attempt to murder and were later acquitted. It is also to be noted that many of these violations are hardly reported in the mainstream media.

This report is an attempt to document and voice the struggles of members of the Transgender community. It also analyses the current legal frame work and demonstrates the stark realities of harassment, abuse and violence that has become a part of the day-to-day existence of the Transgender community.

⁸ India's first openly Transgender mayor in her own words, <http://blogs.wsj.com/indiarealtime/2015/01/07/indias-first-openly-transgender-mayor-in-her-own-words/> (January 07, 2015), accessed on 05/08/2015.

⁹ 3 held in Transgender's murder case, <http://www.thehindu.com/news/cities/Hyderabad/3-held-in-transgenders-murder-case/article6889404.ece> (February 13, 2015), accessed on 05/08/2015.

¹⁰ Buggery and Beggary, and Fergusons, <http://paper-bird.net/2014/11/28/buggery-and-beggary/> (November 28, 2014), accessed on 05/08/2015.

2. ILLEGAL DETENTION OF TRANSGENDERS AT BEGGARS' HOME IN BANGALORE

On November 26th, 2014, more than 47 members of the Transgender community were picked up from various places across the city of Bangalore and were illegally detained at the Beggars' Home¹¹.

It was mentioned that a few members of the community misbehaved when a car of an IAS Officer passed by. It is believed that as a result of this, the then Police Commissioner Shri.M.N.Reddy ordered the rounding up of Transgender persons under the Karnataka Prohibition of Beggary Act, 1975 and to be taken to the Beggars' Colony.

Most of them were going about their daily chores and not begging but were arbitrarily picked up and taken away to the Beggars' Colony in Hoysalas. So, clearly the intention of the Police was not merely to pick up those who were begging, but in effect all persons who answered to the description of being a Hijra.

The reason behind such an act is unknown. Even if such information for the misbehavior is true, it is unfair that the entire Transgender woman community is punished for the alleged wrongs of few members of the community.

"There was a gross Human Rights Violations of the Transgender community who were taken away". Social Activist, Akkai Padmashali told that when she and her colleagues tried to intervene, the Officials at Beggars' Colony did not even let them in and they were also threatened that even they will also be locked up.

¹¹ *Supra* note 7.

End of November 26th, the Officials freed the prisoners, but with a warning that they should not be seen on the streets of Bangalore again.

Stories of few of the Transgender women who were detained have been documented below. We also spoke to few activists and their testimonies have been documents below.

2.1 Testimony of Harshini, community member

On November 24th, around 11:30 a.m., I got out for my work, i.e. begging. I was at the signal and that's when the constable signaled me and asked me to come near the car. He asked me to come to the station with him. He told me the Police wanted to talk to me. I asked why they wanted to talk only to me though they were so many people around. The police kept asking me to sit in the Police van. I told him, "I am not coming to the station. Why should I come? I am only begging and that is not wrong. We only do begging and sex work. And without these two, how do we eat and live? How do we support ourselves and our families?"

I also asked him if he wanted to have sex with me. He told me he did not want to have sex with me, and told me that 'bade sahab' wanted to meet us. I didn't want to go to the station without informing my mother and sisters. I did not call them from my phone, and I didn't have any balance. So I called from the police's phone. My mother and my sister were at home. The police called and informed them that I was with them and he called them to come. Until they came, I was surrounded by policemen as though I had committed something wrong. When my mother and sisters arrived, they asked all of us to sit in their van. We didn't want to sit in the van, so we caught two autos and followed the police van. We were taken to the Parappana Agarahara Police Station.

When we reached the station, we were asked to sign on the paper. We refused to sign until any of our older people came. But the police got angry and abused us. We were not allowed to speak and

our Guru also asked us not to speak. We were made to sit in one corner for about two hours without even letting us drink water. We were so scared and tensed.

Finally after two hours, a lady inspector told us that they were taking us to the Beggars' Colony. We all cried foul and asked why we were going there.

Then the lady inspector told us that a few community members had misbehaved and hence they had the orders from the higher authority to take them away to the Beggars' Colony.

We did not understand why we were taken to Beggars' Colony for the wrong done by someone else. We asked them to take those people who had done wrong to Beggars' Colony and punish them and let us go. We refused to go. But the police forced us and put us in their vans and took us to Beggars' Colony.

When we went there, they took our phones and money and also asked me to remove our clothes. While doing that, the police felt me up to see what I had. They touched my breasts and asked derogatory questions. I was so embarrassed and I couldn't even speak anything because I was scared they will not let me go from there. They told us they were going to keep us there for a year if we created a scene.

I could not even object the police. They had huge sticks when they asked us to take off our clothes. I was also scared that they would hit me if I tried stopping them, so I did not stop them. I have never been more scared and embarrassed.

All the Transgenders were put into a room. Our stay there was horrible. Firstly, I had no heart to eat and secondly, though I was hungry, the food there was so disgusting; it didn't go down my throat.

We got the same food what the beggars' got. Only after the beggars ate, we got their leftovers. We had to wash the plates they ate from and eat. The food given was not sufficient and I would still be hungry.

The Officials at the Beggars' Colony threatened us when we did not eat. They even told us not to speak to each other or they would beat us. So finally after two days, we were released. We were made into a group of five and asked to sign a paper. I did not know what was written in the paper, and nobody even read it out to us. I signed the paper and a group photo was taken.

While letting us go, the police threatened us to not beg and that they should not see us on the streets again.

I have a message for the Government, the Police and the society –

The Government keeps saying that they will give us, they will give us. What have they given the Hijras or the Transgenders? They only talk, but they do not give us anything. Everybody only talks. I do not respect them at all, I only curse them.

I also want to have a house of my own, or at least get a loan from the bank so I can build my own house. I want to get a mainstream job. We are forced to do sex work and begging only because we do not get a job. And now everybody tells me not to beg. How do I survive? I am not allowed to sit for an interview and I'm not allowed to beg. I have a family to support and I have to support myself. I am the only child for my parents. I have to send them money every month. So if I don't beg, who will give me money?

If any Hijra does wrong, punish them. But do not treat us badly and punish all of us for the wrong done by a few. When somebody commits a murder, the entire society or their families are not punished. So why punish all of us? You cannot discriminate or punish us only because we are Hijras. Nobody is high or low. All the men, women and Transgenders should be treated equally, because we are also humans at the end of the day.

2.2 Testimony of Anamika, community member

It was my birthday on November 25th. I was taking a bath and I got a call from my guru that we all have to go to Hosur road signal. When we reached there, the police asked us to go to the police station. We took one auto and went to the police station. They asked us to write our name and address and give them. Then they asked us to wait till the Commissioner came. They told us that they would leave us once the commissioner comes. They made us wait for two hours. Then they took us to Beggars' Colony. My guru cried and asked what we have done to take us to Beggars' Colony. They told few of our community members misbehaved in front of Commissioner's car and that's the reason they were arresting us. We reached Beggars' Colony.

They asked us to give our phone and money and asked us to remove our clothes. I begged and asked for my phone back because I knew I would get calls from my parents because it was my birthday. But they did not listen to me.

They took us inside and made us stay with the other beggars. They did not give us proper food. At night they gave us some rice and sambar which was really disgusting. They made us eat in the same plate in which the other beggars ate their food. I didn't want to eat even though I was really hungry. But, they made us eat it forcefully.

It was around 12 in the night, I was feeling really thirsty and I asked for some water. The Officer refused to give me water. He started shouting at me. He asked me not to be in that area and asked me to go back to Kerala. Whole night they did not give me water. By 5 in the morning they left us back. They had treated us like some street dogs. It was a very bad experience. Unforgettable experience of my life!

I have only one thing to ask to the society, what have we done to everyone to treat us like this? This has to be changed. We should be accepted in the society. We should get proper respect. Even we are human beings. We should be given proper jobs. Most of us are doing begging and sex work because we don't have any other option.

2.3 Testimony of Amuda, community member

I live in Hosur road, Parappana Agrahara. I was at home that day. It was my daughter's (chela) birthday. I had bought new clothes, cake and ingredients for pooje. I was at home preparing for the party with my other daughters, which was in the evening. Only one daughter (Harshini) went out for begging. Around 11.30 am I got a call from an unknown number. It was a call from my daughter. She called from the police's phone. She told me that the police had caught her at the signal. So immediately I took my other daughters and left to see what had happened.

When we left home we were wearing our night clothes. We couldn't change as we left immediately. I reached there and asked the police what had happened and what the issue was. He told me that few community members had misbehaved, because of which we had to go the police station. The police told me it was just for a while as the Commissioner wanted to meet us. The police asked us to sit in their van but I refused to sit as I had a reputed name in that area. So I told the police that I would follow them in an auto. When we reached the station, I did not know who the Commissioner was as he was appointed newly. The minute they saw us, without even enquiring who we are or letting us speak the police just threw us in a corner. I was made to sit there for 2 hours along with the other people. Nobody even bothered to see who we were.

They asked us to write our names and address on a paper and we did as we were told. I was really scared and tensed as we did not know what was happening. After 2 hours, the police came and told that all of us should be sent to Beggars' Colony and nobody should be seen begging near Hosur Road.

When I reached Beggars' Colony, the Officials there took my money, phone and asked me to remove all my clothes. I kept telling them that it was my daughter's birthday and I had to be at home and I would be back next day. But nobody listened to me. When they asked me to remove my clothes I was crying and telling them not to do this. But again they wouldn't listen. They threw me in a room where the other beggar women stayed. These women were old and diseased. When they gave us the food, it was first served to the beggars, after which we were given to eat in

the same plate in which the beggars ate. It was so dirty and the food was disgusting. Though I was really hungry, I could not eat at all. But we were forced to eat as the Officer stood there with a stick threatening to beat us if we did not eat. I fell like throwing up while I was eating, but I had to swallow it as I was scared they would beat me. They gave us all old mats and cushions which were used by the beggars who were living there.

I had no idea what was happening outside neither did I know if anyone had come for us. We were locked inside with one Officer always standing there. I was not allowed to talk to anyone there. All we did was cry because we did not know what to do. We felt so helpless.

That night when we were sleeping, one of the police Officer came inside and woke my sister up with a stick to have sex. He was drunk too. That morning I had seen in his uniform while they were putting us in. But that night, he came in his civil dress. My sister got really scared and woke me up. I spoke really loud to the Officer which woke the other inmates. This embarrassed him and he went away. Thankfully she woke us up, otherwise may be she would have been forced for sex.

The next day when we were released, the Officials literally chased us with sticks till the office like we were dogs. When I reached the office, I was made to sign a paper and a photo was taken of all of us. I was also threatened not to be seen in and around that area. I was given back my phone and my money and they let me go.

The Beggars' Colony is a very horrible place. While we were being released, those women who were staying there begged us to take them with us. They all stayed in a pathetic condition.

I do not beg. I earn money by doing shows. I don't understand why I was taken and put in Beggars' Colony while I was at home. Is it only because I am a Hijra? I have been staying near Hosur Road for 5 years now. And I have changed my house six times. It is so difficult to find a home to stay as nobody is willing to give us a place to stay.

So many times the police call us vulgar names and verbally abuse us. It is so heartbreaking. I would like to have a house of my own, or at least get a loan so I can build my own house and live.

I do not want the society to look down upon us. We are human beings too. I want to be treated equally as everyone else is treated.

2.4 Testimony of Maanya, community member

My name is Maanya. As my sisters have told before, I went through the same thing. I was at home. I went out because my other sisters were taken by the police. We were thrown into Beggars' Colony. The stay and the food there was horrible. There are some things I would like to say. Taking us to Beggars' Colony is one situation. On daily basis, a lot of Hijras and Transgenders are put through a lot of difficult situations. I hold a BSc. Hotel Management Degree, yet I beg for my living.

What you people don't understand is that we are human beings too. Just because we belong to the Transgender community, we cannot be treated like trash. You all say India is a very progressive country, but I don't see how it is helping us progress. I also like to be treated as an equal. I have friends who are Transgenders abroad. They all work in the mainstream society and they aren't discriminated and ill treated the way we are in India.

I feel really bad that though I have a degree, I have to beg for my living. I am happy the way I am. But a little respect from the people and a job is what I ask for. I don't think I am asking for much.

If the Government and society gives us work and respects us equally for whom we are, you will not find us doing sex work and begging.

2.5 Testimony of Savitha, Community Activist - Payana, Bangalore

My name is Savitha. I work at Payana, an organization which works for the LGBT Community. I am the treasurer.

Before I joined Payana, I worked at the Beggars' Colony for three to four months. At Beggars' Colony, my work was to receive the beggars and the community people who were brought to the Home, to check for their belongings, and give it back to them when they were released. I also worked under the warden in the women's section.

When I reached there, I was not allowed inside. Only two to three of them were allowed, i.e., Sowmya, Suma and Rajshekhar. While we were standing outside, few other police vans with Hijras arrived. They all looked so scared. Since we couldn't do much from the outside, a few organizations and activists held a meeting at Samara discussing as to what actions we can take to release them. But we had to be very careful before taking any action as we were worried if the people inside Beggars' Colony would be affected.

So instead of taking any further actions by ourselves, we decided to meet the higher authorities. Akkai and others went to meet the DC and the Law Commissioner. In the mean time, Rajshekhar, Rashi, Suma and I went to meet the Officers at the Beggars' Colony. Since I had a few connections, I got to meet the community members who were inside. When I met them, they all were so scared and worried. They hadn't eaten food and so many of them were ill as well. There were diabetic, HIV, and BP patients whose needs were not catered for, and no health precautions were taken. I assured them that they would be out of it very soon as we all were working towards it.

On that day the Secretary of Beggars' Colony was changed, hence we were told that the Kothis would be released only the next day.

We were asked to go to Kamakshi Palya Police Station (Beggars' Colony jurisdiction). Mr. Alok Kumar gave orders to release the Kothis immediately. And after some time they were released.

All I would like to say is that the Police should follow the necessary procedures before taking any action. They must do what they are asked to do, but with proper evidence. Everybody cannot be punished for the wrongs done by few people.

The Transgender community must behave properly as well. They must realize that their actions will affect the rest of the community and they should be careful.

2.6 Testimony of Sowmya.S, Community Activist

My name is Sowmya, on November 25th; I suddenly started getting a lot of calls from my friends saying that they were randomly being picked up by the police.

The first call I got was from Madiwala from two of my friends. They were standing near the bus stop to have breakfast and they were randomly picked up by the Police to go to the station. They kept asking the police what had happened, but they were asked to stop eating and to go with the police. They kept telling the police that they were not there for collection but to eat. Even the hotel staff told the police that they didn't ask for any money. But the Police brushed away everything and did not listen to anyone.

I got really worried when I got a call from them. Within ten minutes I got a call from Parapana Agarahara and then I got a lot of calls where they told me that they were randomly being picked up and taken to the Beggars' Colony. These were the people who were at home, who had gone shopping, and who were eating, and bathing. I did not know why this was happening. Then I met up with other organizations and activists to see what we could do next. We decided that we had to meet the higher authorities.

Next morning, we went to the Commissioner's office. After a short wait, the Commissioner arrived. When we asked him what was happening and why they were being sent to Beggars' Colony, he said that there were a lot of reports about the nuisance caused and hence this action was taken.

We told him that Hijras were randomly being picked up. He denied these accusations and defended his Officers, saying that they wouldn't do something like that. But we had proof that such incidents were taking place. So after negotiations and talks, he said he would look into the matter.

We were asked to meet Mr. Alok Kumar, the Additional Commissioner, regarding this issue. He told us that he would also look into the issue and he vaguely knew of the police misbehavior. After series of meetings and negotiations, our people were finally released.

2.7 Mallappa Kumbar, Activist, Karnataka Sexual Minorities Forum, Bangalore

What happened in November 2014 was a very tragic incident. First we need to find out 'Who is a beggar?', 'Why he/she begs, and under what circumstances they beg?'

Without finding out what had happened, one entire community cannot be targeted. Personally I feel that the Hijra community was targeted. Whatever may be the reason, it is wrong and disheartening.

2.8 Ms Umesh. P. (Uma), Founder of Jeeva

On the 25th morning, around 7am, I started getting calls. By 12 pm, the Police had arrested about 40 members of the community. All the activists and organizations met at Samara to discuss the plan of action. At the meeting we decided to go about this in four steps viz. i) to communicate with the media; ii) one team to communicate with the Officials in the Beggars' Colony; iii) one team to meet and communicate with the District Commissioner; iv) to protest.

I communicated with the media and prepared for the protest and simultaneously actions were taken by us.

On 25th evening, we started the protest at Town Hall. When we all sat there the Police riot vans came and asked us to vacate, but we didn't move. We protested by shouting slogans to sought relief, to release the Transgender persons and held placards that read – Remove Beggar's Acts etc.

On 26th, everyone was released by evening and they joined us. There were around 300 people in the protest. This did not hinder the traffic or public. The media response was great too. We are the minorities; we have not been given any privileges, be it education, housing or employment. Even the society disrespects us and discriminates us.

Though the Supreme Court judgment was out, it was not being implemented. Instead, the Beggar's Act was implemented. How is that fair?

People who were not begging were also arrested. So I don't think even the Beggar's Act was implemented. We were just targeted.

I'm not saying that everyone is right, but only because we belong to the community, we cannot be treated this way. The elite and educated society looks down upon us. The Police don't follow any procedures, doesn't investigate, or take correct evidence when it comes to the community.

Nobody understands that all this affects us mentally and emotionally. We will be instigated to do something wrong because we are punished either ways. Who will be responsible for this?

3. MALICIOUS PROSECUTION AGAINST THE TRANSGENDER COMMUNITY

Transgender persons are invisible in civil law wherein their right to property, matrimony, adoption and other such rights has never been acknowledged. However, they are hyper visible in criminal law where they are perceived as criminal by their mere existence. On the one hand, the Transgender community is unable to access criminal justice system to remedy the wrongs done to them and on the other hand they are persecuted by using the criminal justice system against them.

Many arbitrary and illegal detention of Transgender person happens on a daily basis and goes unreported. For instance, Transgender persons are asked to come to police station for no reason and are made to stay for long hours before they are asked to leave. Such actions amount to illegal detention and violate fundamental rights of Transgender individuals. Testimonies of members of the communities demonstrate that when they are arrested they are ill-treated and abused. Such treatment is in direct conflict with the *DK Basu guidelines*¹² of the Supreme Court of India and the Right to Life guaranteed to every person under the Constitution.

Further, false and frivolous charges are slapped against the members of the Transgender community. The testimonies below illustrate the same.

3.1 Testimony of Richa, community member

It was Gowri festival and I went to gift a saree to my mother. Since it was Gowri Ganesha festival, locals from Banignahalli Post requested four of us to dance in their procession. After the dance, at around 11:00-11:30 pm, we started heading back home. When we were walking, two

¹² *D.K. Basu v State of West Bengal*, (1997) AIR 1997, SC 610

boys on the bikes saw us and they stopped. One of them asked us where we stay, I told them we are Mangala Mukhi and we stay very close by. After which we headed home. They followed us. I don't know who they were. We went home and we were having dinner. Ten minutes later there was a knock on the door. The boy introduced himself saying that we just met him on the road. It was very late, so I asked him from the window, what he wanted? He told me that he wanted to have sex with us and how much it would cost for the same. I told him that we were really tired after the dance and asked him not to have such intentions. He stood there for a while begging, and also told that he would give Rs. 500. After he begged, I took the money and asked my friend to have sex with him. He went away after his work was done. Sometime later, he returned asking us to have sex with his friend. It was really late and I asked him to go away and not to disturb. They went away and sat in the nearby dhaba. We kept looking at them from our window. Suddenly, about six to seven boys came to our house and threatened us to open the door. They came with rods and knives. He asked me to give him back the five hundred and I did. Even after that, he didn't go. So I gave all the eight thousand rupees that we had. We were really scared when they started breaking the doors and the windows. We went inside and switched off all the lights and hid. They broke the doors and windows and barged in shouting for me. We were totally four of us, and one among us was physically disabled. The minute they entered the house, one ran as she was hiding behind the door.

The boys pulled out the two Kothis who were hiding under the bed, and started beating them. I was hiding next to the cupboard and they found me also as they switched on all the lights. They pulled me by my hair and started beating me on my breasts. I requested them not to do that as I had undergone surgery. One of the boys asked me to give all the valuables we had. I asked them to take everything we had, which was kept in the cupboard. They broke open the cupboard and took a gold chain, Rs. 40,000 and they let me go. I ran out to seek help. In the meantime, they ransacked and broke everything in the house.

I bought help and called a few locals who knew us. They caught hold of two boys out of the six, the others for ran away. We took these two to the Police Station to register a complaint. It was around 12:30 am and the constable plainly refused to register a complaint. I asked him if he

would do the same if any other girl came to register a complaint. Even then he refused to register the complaint and asked to come back in the morning. As the boys had to attend a wedding, the constable let them go by taking their bike keys and phones.

Next day, all of us went to the station at around 10 a.m. The boys did not turn up at all. I don't know what had happened between the constable and the boys. We waited till 1pm and after that the police asked us to go home and come in the evening. Though we went in the morning, the police did not register any complaint.

Just when we were leaving, the boys came. They begged us not to register any complaint as they were students. They told that whatever happened, was because they were told to do so by the dhaba people. So we just let it be. We were really upset when we heard that the dhaba people had done it. We went home and we cursed those who did it. We did not take anyone's name while cursing. But Pavan, the dhaba owner's son came and asked us why we were abusing them. I told him not to fight as we were not referring to anyone, so he went away.

Because of what happened, two of my Kothi friends came to visit us. One of the Kothi went and asked Pavan why he asked those boys to harass us. This angered Pavan as they raised a finger at him. When the Kothis were waiting at the bus stop, Pavan, his mother, and his two sisters attacked the two Kothis with iron rods. Pavan's father, who was the owner of the dhaba, was a crippled man and a heart patient. When the old man saw the scene he fell off the chair and shouted for the son. When the family saw the old man collapse, they ran towards him. One Kothi was hit on her head and the other was bleeding from one ear by then. One Kothi ran away and the other came home to us. We were inside the house watching everything and were terrified to go out. There were close to thousand people gathered there to see the incident but nobody came to help. When they were taking the old man to the hospital, Pavan locked us from outside and went away. We were locked inside the house. We had no idea what had happened. After an hour or so, the police came home and asked us to come to the station, so we went along.

When we went to the station, the police inspectors Mallesh and Uday Ravi asked us to sit down and asked us what exactly had happened. We told that we did not do anything and the old man already had heart related issues. The inspectors came and told us that the man had died of a heart attack and that we wouldn't be in trouble. Uday Ravi sir called me into the room and told me that it disgusts him to see us. He actually asked me if I would suck penises for five or ten rupees. I was really offended on hearing this. I told him I am a woman and just to prove it, I took off all my clothes and showed myself to him. He looked away ashamed and asked me to wear my clothes I don't think, being a police inspector, he can ask me such derogatory questions so I had to show him. After all this, he told us to stay back at the station, as the public was furious and told us that they would let us go in the morning.

It was a nightmare. Firstly, we had no blankets and it was really cold. Secondly, when we would sleep, the police pricked me with sticks on my breasts and vagina. They asked us if what we had was real and asked if they could touch our breasts. We didn't know what else to do as we just wanted to go out. Next day we came to know that there was an FIR filed under IPC Section 307, attempt to murder. All we did was cry because we were so upset.

My father was suffering from blood cancer, when he got to know about this, he passed away. I couldn't even meet him or see his body. I was even more upset. So from Bilikere Police Station, they took us to Mysore Central Jail. The police told us that they were taking us to Bangalore, but they took us to Mysore Jail instead. When we went there, everyone came out to see. They laughed at us. They pointed at us and passed comments. The Officials at the Central Jail made us sit out as they did not know where to put us. While we sat there, the Police laughed at us by passing comments.

If Divyashree Ma'am (Superintendent) was there, she wouldn't have let this happen. But she wasn't there that day. We waited for some time, and the Police came and told us that they had to check us. We agreed. We were taken behind the bushes to be checked. We had to strip outside. Weren't there any rooms to do this?

After checking us, they finally put us in women's cell. This is the first Transgender case in Mysore Central Jail. Divyashree Ma'am took good care of us, though we were really upset, we weren't harassed. She made sure we were respected and taken care of. Finally after three months, on December 12th, 2014, we were released, thanks to the judgment of the court. A 'B Report' was made where it stated that the old man died of heart attack, and not due to any physical attacks, according to the hospital post mortem report.

3.2 Testimony of Bindu, community member

I was sent to the Mysore Central Jail for 3 months for no fault of mine. We were charged with a false murder case by Pawan and his family. His old father died of heart attack, but no enquiry or investigation was done regarding this. Only because they filed a complaint against us saying we punched their father on the chest and killed him, we cannot be sentenced to imprisonment for 3 months. We tried reasoning with the police and find out properly, but we were asked to shut up! The media was called where we were forced to say that we killed the old man. Why should we confess for some crime which we have no committed?

That night at the station, the Officers tortured us. They kept pricking us with sticks and asking us to show what we have. Would they have done something like that if it was any other woman? They felt our breasts and harassed us the whole night. The next morning instead of letting us go as they promised, they took us to the Mysore Central Jail. The minute we entered the jail, all the people there came out to see us. I felt like a zoo animal. They called us 'chakka,' 'gandu,' 'ombattu' and they all verbally abused us. We were made to remove our clothes to check us. Why couldn't they take us inside a room? Were there no any female inspectors to check us? After finishing all these "formalities," they put us in the women cell.

What hurt me the most was not that I wasted 3 months in the jail, but because I was punished for a crime I did not commit? It was humiliating.

Finally after 3 months, the court released us by stating that the allegations against us were false and that we were innocent.

3.3 Testimony of Shivaram, Community Activist

When I got to know about the fight that took place between the kothis and the dhaba people the previous night, I went to the police station to enquire and seek help. Since the inspector was not there, the police there asked me to wait there. But since the hamam was close by, instead of waiting at the station, I went to the hamam. There, the 2 kothis were attacked by Pawan and his family. They were badly beaten up. After his, again I went to the police station and requested the police to come and stop the fight. Instead of coming and helping us, he told me that he had better work to do and he did not come. I went back o the scene, by then the old man had passed away. The police came and took us to the station. They did not even talk to us properly. Apparently there was a false eye witness who told the police not to release us, so they took us all to the Mysore Central Jail. We were there for 3 months. I was only trying to help my friends and was not even present when the incident took place, but I was punished only because I was associated with the kothis. Because the media was called, my family was attacked too. It was so unnecessary.

No legal help or support was given. And no legal procedure was followed. Thankfully the judgment was on our behalf and we were released.

3.4 Testimony of Nandana, Community Activist

I think the Mysore Case is one of the worst incidents that have taken place, where the rights of the Kothis and Hijras have been violated over and over again. Firstly, no legal support from any of the organizations or lawyers of the State. Secondly, without following up or going through the legal process, the media cannot be called. We are the hidden community and publicizing us becomes really hard for us.

For example: - Pranati has adopted a daughter and her daughter had to face the consequences. Shivaram's family was even attacked because of this.

When the community members questioned the ACP, Mysore regarding the case, he only said following words- "you people must have done some karma in your previous lives. Do not do anything now to suffer more." I do not see how that is an answer for all our questions. Yet again, our voices went unheard!

4. POLICE HARASSMENT OF TRANSGENDERS

Harassment and violence by the police is a harsh reality for the Transgender community. Very few cases of harassment by the police are reported and even if reported, there are fewer cases in which any action is taken against the police. One of the few cases in which police were held responsible for their excesses was in the case of *Jayalakshmi v State of Tamil Nadu*¹³. This was a case in which a Transgender person by the name Pandian was subjected to repeated sexual violence by the police. When the violence did not stop, Pandian took the extreme measure of setting himself ablaze and dying outside the police station. The Madras High Court held the police Officers *viz.* Chinnapandian, Thirunavukkarasu, Kumar, Ravi and Sampath responsible for the suicide of Pandian and directed disciplinary action and ordered a compensation of Rs.5,00,000 (Rupees Five Lakhs Only).

There are many instances of police violence that go unreported. The testimony of Sana, a community activist illustrates the nature of such violence:

4.1 Testimony of Sana

My name is Sana (28 years). I was born and brought up in Bangalore. I am a degree drop out from Mission Degree College, Bangalore.

At the age of 9 or 10 years I started noticing physical, mental and emotional changes in me. I felt feminine. I liked doing house hold jobs. I liked how my sister used to dress and secretly I observed my mother and my sister.

¹³ *Jayalakshmi v State of Tamil Nadu*, 2007 4 MLJ 849.

Due to my feminine characteristics, I was teased and ragged in school. But since I used to study well and I was a rank student, a few of them spoke to me only to get notes from me. Otherwise I did not have many friends.

My feminine characteristics became very obvious and my parents found it very odd that I did not enjoy playing with boys, playing outside or wearing pants and shirts. Instead, I enjoyed cooking, helping my mother and playing with my sister.

Even when I joined college, I had no friends and I was teased and made fun of. I started bunking college and going to Cubbon Park. There I saw people who were like me. This is where I met Akkai (activist); while I was studying, but I was hesitant to talk to her. I used to sit at a distance and observe them. One day Akkai came and spoke to me and told me about the community people. This is when I got to know that there were people who felt like me or rather who are like me.

I started bunking college more often and started meeting the community people on daily basis.

Around this time, I told my parents about how I felt and they did not accept. They were angry and they abused and beat me up. They got to know that I was meeting the community people. They got me out of the college and house arrested me for 6 months. They thought I was mentally ill and took me to NIMHANS, did black magic etc.

I was abused by my parents every day and they asked me to stop behaving like a woman and to be more like a man.

I could not take the torture anymore, so I left home when I was 20 years and joined the community.

I started begging and doing sex work. I did not have any option. I had to do it for my bread and butter. I did sex work for 5 years. I got my Sex Re-construction Surgery when I was 23 years.

Doing sex work is not easy. We have police interactions almost every day, as sex work is prohibited. I was forced into anal oral sex. I used to get 50 to 100 rupees per client. And make about 500 rupees a day. We do not have any privacy while having sex. I had to have sex in the open parks, behind trees and bushes, in cars.

We used to be attacked by the gundas or the local thugs who used to grab all our money or have free forced sex.

For instance, one day as usual, I was working. I was on Mahatma Gandhi Road. I had already earned 3000 rupees. I got my 4th client. We had sex in his car. While we were having sex, he had taken the money from me and paid me from my own money. After a while, I realized that he was a fraud and I asked for my money. We were arguing and police approached the car and questioned the client. We were taken to the police station. I was made to sit near the toilet, pushed and treated like trash. The man accused me of stealing his money. I tried explaining to the cop, but I was not allowed to speak at all. A false charge sheet was made stating that I stole the money, phone and assaulted the client. The man paid off the inspector and left. There were no female inspectors, they would not hear me out and I was kept in the male cell.

The police themselves verbally abused and mocked me. I called Sangama, an organization for the rights of the community. They got me released and a petty case was filed with the fine of rupees 300/-.

Another incident of violence was when I was just standing on the road and a policeman passed by. They stopped when they realized I was a transgender. I was asked to sit in the jeep and was taken to the police station. I was abused verbally throughout. When I got into the police station, I was asked to clean the toilet as punishment.

One more incident was when I was waiting at the bus stop to take the bus home. The police, who was not wearing his uniform, saw me at the bus stop, came and grabbed me by my hair. He put me in an auto and made me sit at his feet. I kept asking him why he was taking me to the police station. Instead, he kept verbally abusing me and calling me names. He took me to the Cubbon park police station where I was further verbally and physically abused. They did not hear me out when I tried talking to them. I called Sangama as I did not know what to do. They came and bailed me out. After which, I started working at Sangama. (A sexual minority's organization) I worked there for a year and I also worked at Samara for 2 years.

I even worked at Food World for a while. When I was offered a job at Food World, they did not know about my identity. But slowly, people there started getting suspicious. The manager interrogated me and forced me to reveal my identity and I had to succumb. They asked me to leave when I told them that I was Transgender.

Finally, I got a job at equations and I am currently working there. I also got my admission at St. Josephs Evening College to complete my degree. I am currently pursuing BA. Journalism, Political Science and Sociology.

5. NEED FOR A SOCIALLY INCLUSIVE SOCIETY

5.1 Akkai Padmashali - Social Activist and the Founder Member of Ondede

These two incidents i.e., eviction and the malicious prosecution of the Transgenders are one of the most horrendous incidents that has taken place which is very disheartening and this, they underwent only because of their gender identity and gender orientation. It is a black mark on our community.

Who has the right or authority to directly target the community members when it is not their fault? They were put into the jails where they were raped, sexually abused and harassed by the authorities and what is the law doing?

The assumption that we do not have anyone to back us up and that we can be put through anything, is wrong and hence I feel the system is disrespecting the Supreme Court judgment.

The Hon'ble Supreme Court delivered a judgment when the National Legal Services Authority filed a petition which was called the "Social Justice Litigation." It delivered a judgment in favor of the Transgenders, where it recognized the status of the "third gender." Yet, because of the existence of the patriarchal norms, people are unable to accept us.

The main reason for such rejection and marginalization is because of non-recognition of sex work and begging. But hey! Here we are talking about our bread-butter and our identity and we cannot be denied of this basic right just because begging and sex work is a stigma. Also the assumption that Transgenders are meant only for begging and sex work is also untrue and this phobic attitude must be changed. People need to understand why we are pushed to begging and sex work it is because of lack of opportunities. It is not easy to be on the streets begging for 1 rupee, 5 rupees and 10 rupees and this they are doing only to fulfill the basic necessities of food clothing and shelter.

Being a Transgender, you are rejected by your family, friends, the State and even the laws are against you. We are the people looking for safer space and acceptance. When we are not getting that safer space and acceptance, where do we go?

There are people who are educated, talented and skilled. But due to lack of opportunities, we are pushed to sex work and begging.

Who is responsible for this?

Society should take up the moral responsibility for rejecting an entire community. And without taking this moral responsibility, you cannot blame us. The transphobic attitude of the society must definitely go. Unless this attitude changes, we will not leave sex work and begging. Also, if education and employment is provided, few of them will not indulge in sex work and begging.

In the same way, I do not support the violence within or outside the community. I do not support those harassing and misbehaving in the public or those who commit crimes. They can be punished according to the law and the procedures.

We do not want separate colonies and housing. We want to be a part of the main stream society. A society that is socially inclusive.

But without the State implementing the policy and educating the society, our fight for acceptance will not stop.

6. CONCLUSIONS AND RECOMMENDATIONS

A confusing canvas has been painted in front of us with regard to the rights of transgender persons. On the one hand, the NALSA judgment affirms the rights of transgender persons and on the other violence against the community continues unabated. Further, the *Suresh Kumar Koushal v Naz Foundation*¹⁴ judgment of the Supreme Court has upheld the constitutional validity of section 377 of the Indian Penal Code. Section 377 is an archaic colonial provision that penalizes certain sexual acts and has been often used to persecute members of the transgender community. Thus, the NALSA judgment extends and affirms rights and the Suresh Kumar Koushal judgment curtails certain rights. A combined reading of the two judgments would leave us confused.

Few other colonial remnants continue to trouble the transgender community. The Criminal Tribes Act, a pre colonial law that deemed certain tribes to criminal merely by virtue of them belonging to a particular tribe has been re introduced into our law books by way of section 36 A of the Karnataka Police Act. This section gives the police the power to regulate 'Eunuchs'. It puts the transgender community under surveillance and threat of illegal detention which is violative of the fundamental rights guaranteed to transgender persons and is antithetical to the principles upheld in the NALSA judgment.

The welcome recommendations by the expert committee on transgender persons need to become a reality. Though the central and state governments had to comply with the recommendations of the committee within a period of six months from the date of judgment, it has not been done so by many states. The time period mentioned has come to an end. However, the central government has by way of a clarification petition sought for an extension which needs to be decided by the Apex Court.

¹⁴ *Suresh Kumar Koushal v. NAZ Foundation, AIR 2014 SC 563.*

The legal processes and the machinery will set in motion in due course. Meanwhile efforts for social inclusivity also continue. The following recommendations ought to see the light of the day in order to ensure the integration of the transgender community into the mainstream.

RECOMMENDATIONS:

- 1) Immediate implementation of the NALSA judgment and the Expert Committee on the Issue relating to Transgender Persons;
- 2) Coming into effect of the 'Rights of the Transgender Persons Bill';
- 3) Repeal of Section 36A of the Karnataka Police Act;
- 4) Reading down of Section 377 of the Indian Penal Code;
- 5) Strict adherence to the DK Basu guidelines and the Code of Criminal Procedure Code in the event of arrest of a transgender person;
- 6) Strict action against police officers harassing, torturing and inflicting violence on members of the transgender community.

7. ABOUT ONDEDE

Ondede

Ondede is a Kannada word for “convergence” which recognizes and acknowledges the existing movements like child rights, women’s’ rights, sexual minority rights and other vulnerable sections and various community media platforms; Ondede endeavours to link these different groups through areas of dialogue, research and action on Dignity-Voice-Sexuality.

Vision

Ondede envisions a society that provides access to non-discrimination and gender-just.

Mission

To create a space for dialog, support and strengthen action to visibilize issues of Dignity-Voice-Sexuality in relation to children, women and sexual minorities.

Objectives

1. To develop a knowledge hub- research and capacity building
2. To establish linkage between different social movements in three inter-connected areas.
3. To campaign and advocate for awareness and influencing policies.

Approach

We believe in rights based and inclusive approach.

For more information- contact

Ondede

C/o Radio Active CR 90.4 MHz

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8. ANNEXURES

8.1 ANNEXURE I - RIGHTS UNDER THE CONSTITUTION, Cr.P.C AND THE JUDICIAL DECISIONS

1. FIR: You are entitled to the copy of the FIR which you register free of charge.
2. Arrest: No use of handcuffs without the permission of the judge.
3. Police arresting you must wear clear and visible name tags and uniform.
4. You must be told why you are arrested, your right to bail and a lawyer of your choice.
5. Memo of arrest must be made on time and date of arrest and to be signed by your family member or respectable member of neighborhood.
6. The police must inform any person interested in your welfare about your arrest and the location of the place where you are kept after the arrest.
7. An accurate list of things seized from you must be prepared and you are entitled to a copy immediately. If you are poor, you have the right to demand a competent counsel at State expense.

Legal advice

1. If you are poor, you have the right to demand a competent counsel at State expense.
2. If your lawyer is not competent, you have the right to change your lawyer.
3. You have the right to interviews, visits and confidential communications with your lawyer.
4. Get your lawyer/organization/friends to keep calling the Police Station wherein you are detained. If such calls are made, the police know that there is somebody to support you and you are less likely to be mistreated.

Search

1. Two independent witnesses (Panchas) should always be present when you or your premises are being searched.
2. Call two witnesses (not from your family) to witness the search.

Bail

1. Apply to the court for release on bail immediately.
2. Keep the following ready for production on grant of bail (ration card, salary slip, bank pass book and proof of identity).
3. Even if you do not have any sureties, you can be released by paying some sum of money in the court.
4. If you are refused bail, you have the right to get bail if:
 - a. The charge sheet is not filed within 60 days of arrest, if the offence is punishable for a period of less than 10 years.
 - b. The charge sheet is not filed within 90 days of arrest, if the offence punishable for a period more than 10 years.
 - c. If your bail is set too high, apply for reduction.

Interrogations

1. You can consult your lawyer when you are being interrogated, whether you are arrested or not.
2. You cannot be forced to make a confession before the police or the magistrate

Torture

1. Torture is illegal. No solitary confinement, hard labor, changes in diet or transfer without the permission of the judge.
2. If a confession is taken after torture, inform the judge and retract it, and ask for medical examination immediately. The State must pay compensation for any illegal torture or detention.

Protection in court

1. You have the right to get legible copies of all documents filed by the prosecution against you.
2. You can demand food and other basic necessities while in the custody of the court.
3. You have to be brought before the Magistrate within 24 hours of arrest.
4. You cannot be remanded into custody in your absence.

Medical examination

1. Request immediate examination after arrest. The medical examiner must record all the injuries on a written form. Only sign an accurately filled form.
2. Ask for three copy of the form.
3. Ask the Magistrate to send you to the hospital before police custody are granted.
4. A medical examination every hours when in custody.
5. If you are under the age of 18 and your age is recorded wrongly, and there is no documentary proof of your age, insist on medical examination to determine your age.
6. Make an application for medical treatment in case of sickness.

(Human Rights Legal Networks, Lawyers' Collective)

8.2 ANNEXURE II – SUMMARY OF NATIONAL LEGAL SERVICES AUTHORITY v UNION OF INDIA¹⁵

The Subject Matter of the Judgment

This judgment covers persons who want to be recognized as third gender as well as persons who want to change from one identity to another, for example, males wanting to be recognized as females, and females wanting to be recognized as males.

Parties to the Judgment

The **National Legal Services Authority of India (NALSA)** was the main petitioner. It was started mainly to provide free legal aid services to the disadvantaged sections of the society.

The other petitioners in the matter were **Poojya Mata Nasib Kaur Ji- Women Welfare Society**, a registered society and NGO, and **Laxmi Narayan Tripathy**, a noted Hijra activist.

The Bench

The case was heard before a two-judge bench of the Supreme Court, comprised of **Justice K.S. Panicker Radhakrishnan**, and **Justice Arjan Kumar Sikri**.

Justice Radhakrishnan had been a Standing Counsel for a number of educational and social organizations and been a judge in the High Courts of Kerala, Jammu and Kashmir and Gujarat before appointment to the Supreme Court.

¹⁵ *NALSA v. Union of India*, Writ Petition (Civil) No. 400 of 2012]. Summary prepared by Danish Sheikh, Lawyer, Alternative Law Forum, Bangalore accessed from http://orinam.net/content/wp-content/uploads/2014/04/nalsa_summary_danish.pdf accessed on 05/08/2015.

Justice Sikri began legal practice in Delhi, specializing in Constitutional cases, Labor - Service matters and Arbitration Matters. Before his appointment to the Supreme Court he was a judge in the Delhi High Court and Punjab and Haryana High Court.

The Ruling

The Court has required Centre and State Governments to legally recognize gender identity, whether it is third gender, or if it is of persons changing their gender from male to female or from female to male.

Legal Recognition for Third Gender

The Court recognizes that fundamental rights are available to the third gender in the same way as they are available to males and females. Also, not recognizing third gender in both criminal and civil laws like marriage, adoption and divorce laws is a form of discrimination against the third gender.

Legal Recognition for Persons transitioning within male/female binary

For recognizing gender change from male to female or female to male, the Court says it prefers to follow "psychological test", instead of a "biological test", which means they want to put less importance on medically deciding gender, and more importance on the person's own identification. They also say that insisting on Sex Reassignment Surgery (SRS) as a condition for changing one's gender is illegal.

We don't know exactly what procedures will be followed by the government for recognizing gender identity. We might find a useful guide in the Ministry of Social Justice and Empowerment's (MSJE) Expert Committee Report on Issues Relating to

Transgender persons. The NALSA judgment says that its declarations will be put into place based on the recommendations of this report. This report itself allows people to choose any gender without requiring surgery or hormone treatment.

According to the judgment, the government has a six month time period to make the legal changes recommended by the Court.

Other declarations in the judgment

Public Health and Sanitation: Centre and State Governments have been directed to take proper measures to provide medical care to Transgender people in the hospitals and also provide those separate public toilets and other facilities. They have also been directed to operate separate HIV/ Sero-surveillance measures for Transgenders.

Socio-Economic Rights: Centre and State Governments have been asked to give the community various social welfare schemes and to treat the community as socially and economically backward classes. They have also been asked to give reservation in educational institutions and for public appointments.

Stigma and Public Awareness: Centre and State Governments are asked to take steps to create public awareness so that Transgender people will feel that they are also part and parcel of the social life and not be treated as untouchables; take measures to regain their respect and place in society; and seriously address the problems such as fear, shame, gender dysphasia, social pressure, depression, suicidal tendencies and social stigma.

Again, these declarations should be seen along with the Ministry of Social Justice and Empowerment Expert Committee Report. Since the report is quite broad, these already broad declarations can be seen side by side to push the government to do things that are not specifically mentioned in the judgment but are mentioned in the report. For

example, recommendations in the Report like setting up of crisis centers, and gender sensitization in institutional settings can easily be seen as part of the NALSA judgment's broad declarations.

The Legal Reasoning

Equality

The Court says the right to equality under Article 14 of the Constitution includes Transgender persons. Not recognizing gender identity will be violative of the right to equality. To fully provide equality, the State has to act to make sure there are equal protections of the laws.

Non Discrimination

Articles 15 and 16 ban discrimination against on any citizen on a number of grounds, one of which includes "sex". The Court reads 'sex' in these articles to include 'gender identity'. It says that "sex" was included in these articles to prevent different treatment of people simply because they do not behave in the way that is expected of their gender.

Freedom of Speech and Expression

The Court reads the right to freedom of speech and expression under Article 19 (1) a to include the right to expression of one's self identified gender. Self-identified gender can be expressed through dress, words, action or behavior or any other form. A Transgender's personality, they note, could be expressed by the individual's behavior and presentation. The State thus cannot prohibit, restrict or interfere with a Transgender's expression of such personality, subject to restrictions in Article 19(2) (which include 'public order, decency and morality).

Dignity

In the past the Court has held that the right to dignity, an important part of the right to life, includes expressing one's self in different ways, freely moving about and mixing with fellow people. The Court says that gender is a very important part of a person's identity and that recognition of gender identity is part of the fundamental right to dignity.

8.3 ANNEXURE III – PRIMER ON THE RIGHTS OF TRANSGENDER PERSONS BILL, 2014¹⁶

Whom does it cover?

Clause 2 (t) defines 'Transgender person' as a person, whose gender does not match with the gender assigned to that person at birth and includes trans-men and Transwomen (whether or not they have undergone sex reassignment surgery or hormone therapy or laser therapy etc.), gender-queers and a number of socio-cultural identities such as – Kinnars, Hijras, Aravanis, Jogtas etc.

What are the rights guaranteed under the Bill?

Chapter II of the Bill looks at Rights and Entitlements across eight clauses. Most deal with substantive rights such as the right to equality, life, free speech, community, integrity, family, along with rights against torture and abuse. One clause specifically provides for Transgender children.

Education, Employment and Social Security and Health are then covered in successive chapters. The chapter on education mandates the Government to provide for inclusive education for Transgender students. It also places an obligation on the Government towards ensuring participation of Transgender persons in adult education programs.

With the employment chapter, the Government is mandated to formulate schemes for vocational training and self-employment of Transgender persons. The chapter also prohibits discrimination against Transgender persons in any establishment, thus encompassing private actors.

¹⁶ The Rights of Transgender persons Bill, 2014 accessed from <http://164.100.47.4/BillsTexts/RSBillTexts/asintroduced/trangder-E.pdf> accessed on 05/08/2015.

In the social security and health chapter, the Government is asked to promulgate a range of schemes for promoting the rights of Transgender persons to an adequate standard of living. These include schemes for community centers and access to safe drinking water and sanitation. Health care facilities are to be provided in the form of separate HIV clinics and free sex reassignment surgery. Transgender rehabilitation programs, particularly in the areas of health, education and employment are also provided for. Measures to promote cultural life are also to be undertaken, which include sponsoring of Transgender film, theatre, and music and dance festivals.

There is a limited provision for reservations in this chapter as well. Government educational institutions, as well those receiving aid from the Government, are asked to reserve two percent of the total seats in each course for Transgender persons, while Government establishments are asked to provide for the same percentage of reservation in vacancies. As far as the private sector is concerned, the Bill asks for the Government to provide incentives to employers to ensure that at least two percent of their work force is comprised of Transgender persons within a five year period from the commencement of the Act.

Who are the duty bearers under the law?

For most provisions, it is the State. The term “appropriate government” is used throughout the act, which encompasses establishments owned or financed by the Government. Private persons are included within the legislative scheme in a clause prohibiting discrimination against Transgender persons in any establishment. An establishment is defined under the Act to include a range of authorities including companies, firms, etc that provide certain services. These services are defined broadly to mean services provided by members of any profession or trade, which includes services relating to banking, education, health, entertainment, etc.

What is the enforcement mechanism?

The Bill sets up a number of authorities and forums. Chapter VII provides for National and State Commissions for TransgenderPersons, echoing existing bodies such as the National Commission for Women. The mandates of these Commissions are largely in the nature of inquiry or recommendations, relating to inconsistencies in the application of the law or violations of rights of Transgender persons. Commissions are given the powers of a civil court with respect to their process of operation - summoning witnesses, receiving evidence, etc.

For adjudicating suits filed on behalf of a Transgender person regarding infringement of their rights based on their identity under this or any other law, special Transgender courts are prescribed under the law. There are to exist at two levels. First, it is optional for a court in each sub-division to be designated as a Special Transgender Rights Court for hearing matters related to Transgender persons alongside its other matters. Second, it is optional with respect to each district, and compulsory with respect to each city with a population above 10 lakh, to provide an exclusive Transgender Rights Court.

Finally, Chapter IX deals with Offences and Penalties, and provides for treatment of discrimination by establishments as a criminal offence as opposed to a civil one. Further, there is penalty by way of imprisonment for up to a year for hate speech, which the Bill understands to be any offence

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