BLOGS

National Legal Service Authority (NALSA) v. Union of India

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Introduction

In the landmark case of NALSA v. Union of India, the Supreme Court recognized the rights of transgender individuals and affirmed their fundamental rights under the Indian Constitution. The court held that gender identity is integral to the dignity of an individual and is protected under the right to life and personal liberty guaranteed by Article 21 of the Constitution.

Facts of the Case

The National Legal Services Authority of India (NALSA) initiated the case, advocating for the legal recognition and rights of transgender individuals. The central issue before the court was the legal recognition of individuals outside the traditional male/female binary, including those identifying as transgender or “third gender.” The court assessed whether the absence of recognition for non-binary gender identities violated fundamental rights guaranteed by the Indian Constitution.

To give its judgment, the Court referred to an “Expert Committee on Issues Relating to Transgender” established under the Ministry of Social Justice and Empowerment, gathering insights and recommendations.

The Supreme Court’s ruling in the NALSA case marked the first legal recognition of “third gender” or transgender persons in India. In its extensive deliberations, the Court discussed the concept of “gender identity” and affirmed transgender individuals’ entitlement to fundamental rights under both Indian and international law.

It upheld individuals’ right to self-identify their gender, recognizing hijras and eunuchs as legally belonging to the “third gender” category. Moreover, the Court clarified that gender identity was an innate perception rather than solely determined by biological characteristics, safeguarding individuals’ privacy rights by prohibiting medical or biological tests to ascertain gender identity.

Various provisions of the Indian Constitution, including **Article 21 (right to life and personal liberty)**, **Article 14 (right to equality)**, **Article 15 (prohibition of discrimination)**, **Article 16 (equality of opportunity in public employment),** and **Article 19(1)(a) (freedom of expression)**, were interpreted to include transgender individuals within their scope. The Court also recognized the widespread discrimination faced by transgender individuals and held that discrimination based on gender identity constitutes discrimination on the ground of "sex" under Articles 15 and 16 of the Constitution.

In addition to constitutional provisions, the Court referred to core international human rights treaties and the **Yogyakarta Principles** to affirm the human rights of transgender individuals.

Issues of the Case

1. Recognition of Gender Identity: The primary issue centered on gender identity and the necessity to protect the rights of individuals identifying as the third gender. This encompassed questions regarding the acknowledgment of individuals who do not conform to traditional binary gender norms and ensuring their legal recognition and protection.
2. Gender Transition and Identification: Another significant issue raised was the right of individuals undergoing gender transition, either through surgery or self-identification, to be legally recognized according to their affirmed gender. This included deliberations on whether individuals born as one sex but transitioning to another should be identified accordingly.
3. Inclusion of Third Gender: The petitioners further contested the necessity of including a "third" gender category to accommodate individuals who do not identify exclusively as male or female. This raised questions regarding the recognition and categorization of the transgender community within legal frameworks.

Arguments Advanced

Petitioners' Arguments:

The petitioners strongly asserted that the concept of binary gender, entrenched in societal norms, directly infringes upon fundamental rights enshrined in the Indian Constitution. They argued that under Articles 14 (Right to Equality), 21 (Right to Life and Personal Liberty), and 19 (Freedom of Expression), individuals who do not conform to binary gender identities face discrimination and marginalization. By failing to recognize a third gender, these individuals are denied their basic

human dignity, forcing them to exist on the fringes of society through no fault of their own.

Respondents' Arguments:

In response, the respondents pointed to the establishment of an "Expert Committee on Issues Relating to Transgender" by the state, which aims to address the concerns of the transgender community comprehensively. They emphasized that the committee is inclusive, considering various perspectives, including those of the petitioners, to formulate effective policies. Additionally, the respondents highlighted the efforts made by several states and union territories to improve the lives of transgender individuals, demonstrating a commitment to advancing their rights and dignity within society.

Judgement of the Case

The judgment in NALSA v. Union of India recognizes the rights of transgender individuals in India, emphasizing their constitutional right to equality and non-discrimination. It acknowledges the historical and present-day discrimination faced by the transgender community, including harassment, violence, and exclusion in various spheres of society. The judgment highlights the importance of protecting the dignity and freedom of individuals, regardless of their gender identity.

The NALSA case judgment, delivered on April 15, 2014, by a two-judge bench led by Justice K.S. Radhakrishnan, with additional comments by Justice A.K. Sikri, stands as a landmark in Indian jurisprudence. Drawing upon international precedents, the court distinguished between Biological Sex and Psychological Sex, emphasizing the latter for gender identification. It declared transgenders and eunuchs as the "Third Gender," entitled to full constitutional rights, including equality under Article 14, freedom of expression under Article 19, and the right to dignity under Article 21.

The judgment mandated the State and Central Governments to grant legal recognition to transgender individuals, ensuring access to education, healthcare, and protection against discrimination. Various directives were issued, such as establishing separate HIV Sero-Surveillance centers and providing appropriate medical care and public facilities. This ruling signifies a pivotal moment in recognizing non-binary gender identities and upholding the fundamental rights of the transgender community in India.

Key points from the judgment include:

1. Acknowledgment of the trauma and discrimination faced by transgender individuals from childhood.
2. Recognition of the distinct identity of transgender individuals, including hijras, eunuchs, kothis, Aravanis, Jogappas, and Shiv-Shakthis.
3. Emphasis on the constitutional right of transgender individuals to self-identify their gender and seek legal recognition without undergoing medical procedures like sex reassignment surgery.
4. Reference to international laws and precedents recognizing gender identity and equality.
5. Criticism of past legislation, such as the Criminal Tribes Act of 1871, which stigmatized and criminalized transgender individuals.
6. Highlighting the need for affirmative action and social welfare schemes to address the specific needs of the transgender community, including healthcare, employment, and housing.
7. Recognition of discrimination based on sexual orientation and gender identity as a violation of fundamental rights guaranteed by the Constitution.
8. Emphasis on the role of the judiciary in upholding the rule of law, protecting human rights, and ensuring access to justice for marginalized groups like transgender individuals.

Conclusion

The NALSA v. Union of India case stands as a significant judicial pronouncement which affirms the rights of transgender individuals, including the recognition of a third gender category, and calls for legal and societal reforms to address discrimination and ensure equality for all citizens.