



## STATE LEVEL CAPACITY BUILDING TRAINING – WEST BENGAL



Law Pertaining to Transgender Persons, Gender Non-Conforming Persons and Intersex Persons

Venue -

Kutchina Foundation Women  
Empowerment Centre, 10 C,  
Hungerford Street, Kolkata – 700 017



5th and 6th  
February 2020





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## Introduction



In the wake of a number of laws that affect Transgender lives and bodies drastically, which include the Transgender Persons (Protection of Rights) Act, 2019 and a number of bills and legislations that are in the pipeline such as the Surrogacy (Regulation) Bill, 2019 and the

Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, which though was passed by the Lok Sabha and lapsed due to the elections in 2019, is all set to be introduced in the parliament in the next session.

Though these are the three laws that are prima facie affect Transgender Persons and our bodies, there is an urgent need to change a number of laws to make them more inclusive of rights of Transgender Persons and take cognisance of the position of transgender persons both from a historical perspective and the present narrative from a position of providing recognition to



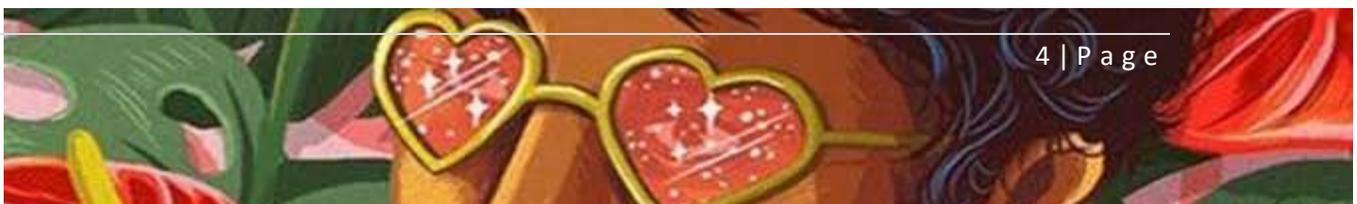


Transgender Persons through NALSA Judgement and then the number of issues that preceded the narrative while forming the Transgender Persons Act, 2019.

West Bengal is caught in a curious position, largely because the strength of the movement in the state stands unparalleled when compared to other states in the country. When contrasted with the narrative that state has chosen to take, where post the establishment of the Transgender Persons Welfare Board in West Bengal, there has been no action either by the welfare board or the state at large towards advancement of rights of Transgender Persons in the state.

In the wake of such government apathy, there is both a number of state induced violence that against which there is no action taken and there is violence by the society at large against which there is no action taken by the state. The state at every point has resisted in following through with cases wherein Transgender Persons have been assaulted, physically and sexually wherein the state has refused to take cognisance of such action. Even in cases wherein the state has taken cognisance, it has refused to proceed ahead with criminalising the perpetrators and taking action against them. In addition to this there are a number of instance when the police has forcefully asked Transgender Persons to strip to check if they were, Transgender or not. There are other cases wherein the police has forcefully felt up the torso of persons to check if they had breasts or not. These actions are not just illegal and unlawful but also are criminal acts of sexual harassment, assault and intimidation.

Furthermore in cases where violence has been inflicted by the rest of the society, the law enforcement agencies have stayed back and tried to carry out resolutions among between the





perpetrators and the victim and refused to translate the criminal act into FIRs and punitive action being taken against the perpetrators.

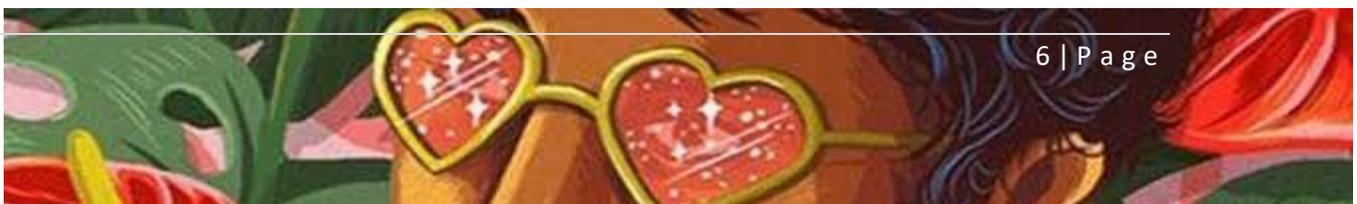
It is in this background that there was ascertained to be an urgent need to take a training for Transgender Persons and Groups across West Bengal on the laws that protect them and newer laws and legislations that would have an adverse impact on the lives of Transgender, Gender Non-Conforming and Intersex Persons. Both the knowledge about the laws and how to challenge the narrative of oppression and marginalisation was essential to carry out a meeting of such a scale.





State Level Consultation – 5<sup>th</sup> and 6<sup>th</sup> February  
Kolkata

**HRLN**  
HUMAN RIGHTS LAW NETWORK





## Day 1

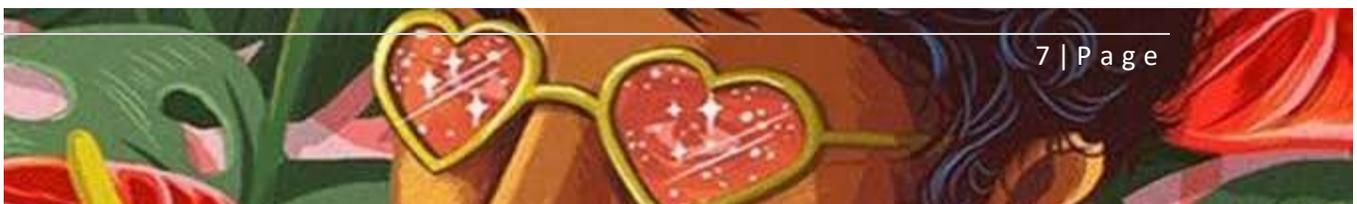
### Issues faced by Transgender Persons on the Ground

#### Family as the primary site of violence

##### Ranjita Sinha

She narrated the number of issues faced by Gender Non – Conforming children and the violence they face at home, with the family being the first state where violence begins. She went on to talk about the immense vulnerability faced by the community because of a legal non-recognition prior to the NALSA Judgement. She further talked about the number of statutes that have been passed by certain states such as Kerala, wherein the state has made the process of name and gender change in documents much easier through applying for the name and gender change online.

Furthermore she went on to talk about the issues with the present Transgender Persons (Protection of Rights) Act, 2019 and the inability of it to protect the rights of Transgender Persons and fulfilling the directives of the NALSA judgement which looks at providing affirmative action for the community. It is critical to note that NITI Aayog also doesn't have a provision for recognising the identity of Transgender Persons, similarly the West Bengal Civil Services also excludes transgender persons by limiting the choice of gender to only male and female.





Even the procedure for getting the name and gender change by applying to the District Magistrate in the present Act is highly unclear and can be quite traumatic for the Transgender Community, furthermore highlighted the loop holes of the act and the failure of law makers about being sensitive to the concerns of the transgender community. Therefore pointing to a greater need for sensitisation for executive wing and a need for training and awareness programmes. She pointed to the fact of the Act violating the rights of transgender persons by not recognising self-declaration of one's own gender identity.

Furthermore the inefficacy of the central government is evident in how after the rush with which they had passed the Act, the central government has as of date not notified the state government and officials to implement the Act. Since, the rules have not been framed, therefore continuing to discriminate and ill treatment of people from the community.

There is a demand to digitise the application process to ease the process in obtaining a Transgender Certificate, but the government seems to lackadaisical in increasing digitalization to reach rural spaces and neither to educate people in villages about using internet. Passing of a number of Acts rights after the Transgender Persons (Protection of Rights) Act, 2019 which then include the Citizenship Amendment Act, 2019 and the Data Protection Bill along with an implementation of NRC have diverted the attention of the movement away from the rights of Transgender Persons, in every sphere whether it be job opportunities, housing, or social status. There is a need for proper networking within the Transgender Community so that each group and individual would be able to help and assist others as well as increased cooperation, sensitisation of state authorities. There is a focus on working towards the importance of





Transgender Certificates and the continuing ambiguity on documents to be provided to obtain Transgender Certificates from the District Magistrate.

## Marginalisation by Society

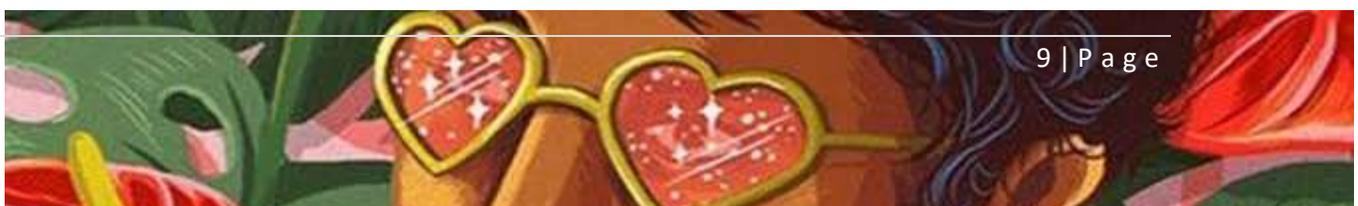
### Pallabi Chaaraborty

She talked about her experience of marginalisation when a transgender person takes up jobs such as driving cabs and the humiliation one has to go through while in their profession. The discrimination which Transgender Persons face come largely from families which add on to the societal stigma and work against equality in all domains.

She talked about her early childhood where she was forced to visit hospitals for medication. Since her family initially considered being Transgender to be a disease and a mental health condition, she also faced stigma from a Mental Health facility which stated transgenderism to be a disability. She talked about how her parents didn't understand any of her issues and concerns at all, forcefully imposing gender roles and went on to describe how transgender persons are highly vulnerable to bullying.

People from the mainstream, continue to use the word "Hijra" in an extremely demeaning fashion pointing to a lack of sensitisation among people at large. Both private industries and the government services refuse to provide reservation for Transgender persons. She went on to describe her personal experience of how she has been helped by HRLN and activists.

There are a number of verbal, sexual, moral, physical humiliation that Transgender Persons have to go through and it significantly affects their mental health. Protection of one's rights is not





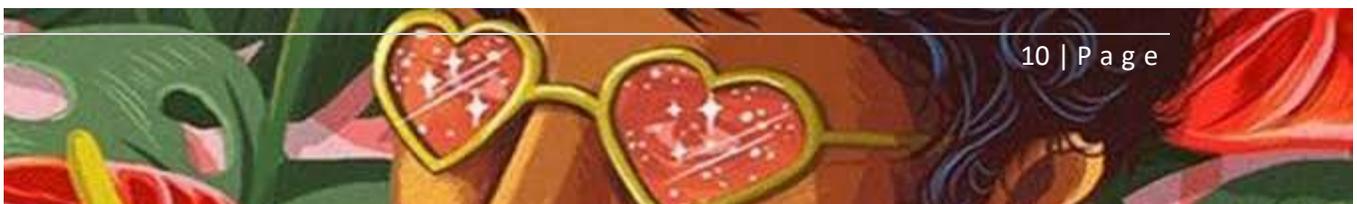
incumbent on one's gender but is based on equal treatment of human beings. She talked about how Kerala is quite progressive in this regard with a Transgender Person being a Sub Inspector, which should be seen as a source of inspiration for states such as West Bengal. The rules and guidelines that are coming up must specify the documents required there be clear on the time period in which Transgender Certificates would be issued by the District Magistrate.

There is also a need for laws preventing social stigmatisation of people based on their gender identity and a there needs to be a space for freedom and recognition of rights of Transgender Rights and therefore treated as equal members of the society. More and more industries need to be inclusive and open avenues for transgender persons to work in those industries, therefore increase awareness and sensitisation programmes to employers.

Sintu Bagui

Being a Lok Adalat judge her experience and story of how she encountered a number of instances of ill treatment of Transgender Persons. She gave an example of one instance of a Transgender Student who was rejected admission to a co-ed school because of their gender and lack of documents. Further going on talking about instance of verbal humiliation of Transgender Persons and use of words such as "Hijra" and "Chakka" in a derogatory sense translating into emotional and professional abuse.

There is a need for mainstreaming of Transgender Identity and a need for Corporates to assist in getting employment for Transgender Persons





## Shivansh Thakur

He shared his experience as a Trans Man and how he relocated to Kolkata from Gwalior as there was neither much of a resource nor awareness of Transgender Community in most parts of India. He shared his story of how it was difficult for him to relocate to Kolkata, due to a lack of awareness, job opportunities and most people from the transgender community were considered to be criminals or a threat to their security. Further he went into the trauma of how his immediate family and parents responded when he took the decision to shift to Kolkata and start a life there and their reaction to him being a trans man.

There was an instance wherein Shivansh, faced the trauma of a violent attack by a group of people at his house in Kolkata and the absolute apathy displayed by the Kolkata Police and the authorities. There was a complete disregard of the issues that people from the community go through as they are not allowed to take part in the Durga Puja Committee and various cultural programmes as well in their surrounding neighbourhood. The people who attacked him, called it a disease and a disorder and called him a criminal.

Furthermore the Transgender Community does not readily support each other, as there is quite a lot of work that is needed for reaching the goals of development and rights for all persons. This discord is precisely why even after the NALSA Judgement the community has not been able to move ahead in their fight for rights.





In addition there is a sever lacunae in the information and lack of awareness with regard to the Transgender Community and what is it that “Transgender” means, neither does the government doesn’t know the meaning of the word “Transgender”. Even through there are two categories of “Trans Men” and “Trans Women”, there is no specific difference made and both of them are lumped together. He is looking towards seeing what is it that the rules for the Transgender Act, 2019 would be

## State Inflicted Violence

### Raina Roy

Raina emphasised on the importance of NALSA Judgement and how important this judgement and how important it is for making guidelines and interpretation for further making statutes and highlighted the need of uplifting and recognising the needs of the Transgender Community.

She went on to talk about the Transgender Persons (Protection of Rights) Act, 2019 in which the State is violating the directives of the NALSA judgement and fails to embody the narrative of sensitisations and logically clarify the name and gender change procedure. With the government passing so many bills and making them Acts, is completely ignoring the urgent need of Transgender People and therefore work towards alienating them from them from political and economic spaces. This act is a “Lens on Sexuality” and works on “Physical Intimidation” because of the government’s ambiguous stand towards determining policies for transgender persons and





strong implementable policies. Equality before law and equal treatment have to be the foundation for the each of the statutes that are drafted for Transgender Persons.

The first step one is to take to increase awareness and sensitisation of persons about transgender persons and their issues is to increase the educational level of transgender persons and capacity building processes.

There is an urgent need of the Act to be reviewed because of the punitive provisions of the Act, where serious offences such as rape are not clearly mentioned in the Act. Whereas the words used in the Act under Section 18 (d) of Chapter VIII quotes that all acts that can or tend to cause physical abuse, Sexual abuse, verbal, emotional and economic abuse shall be punishable with a term which shall not be less than six months but which may extend to two years. The word abuse itself is not clearly mentioned. If one is to compare the punitive actions being taken for rape of cis-women it is a minimum of 7 years of imprisonment which can extend to life and is a non – bailable punishment under the IPC.

She went on to say there are a number of defects and legal flaws in the Act and an Act such as this which has not even been debated extensively in the houses of the parliament is clearly not taking into considerations the interests of Transgender Persons. She said that the matter regard insensitive treatment of transgender persons by the state officials in delaying the process and many times call them “Transistor” instead of “Transgender”



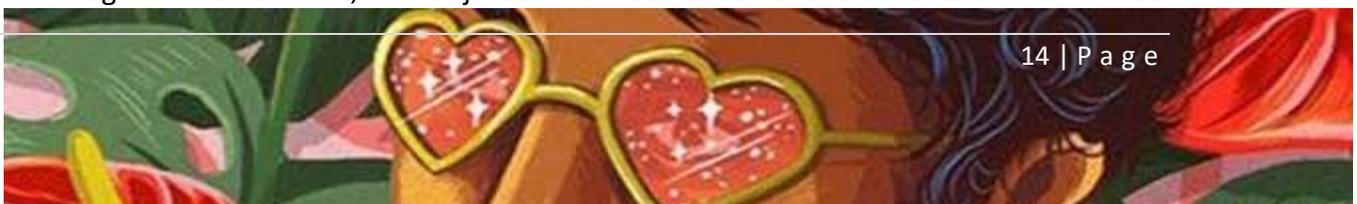


## Rachana Mudraboyina

She specifically said that it is not just the transgender movement but one has to make the movement wider by joining with other movements like the women's rights movement and the movement of the LGBTQ+ community at large as well. There is a obvious judgemental attitude of the society which observes only two gender and continues to refuse gender diversity, from schools to universities and government services everywhere the status quo is taking into account of things through a binary understanding.

NALSA Judgement was one that brought in a positive change to the attitude of the society by recognising genders other than the two binary genders. She went on to say that the present act as well as all interpretations have to clarify the ambiguity with regard to the definition of gender in such a way that it should not just be concentrated to the binary but should be as wide and accepting as possible. The politics of gender should be stopped neither should gender be a mandatory element for attaining education or another job. One of the largest issues of the trans community is their low numbers in terms of an electorate and the lack of recognition till they come forward and self-declare their identity

Prior to 2014 there were no rights such as voting rights or voter cards, identification cards like Aadhar, PAN and Passport, Ration Card, BPL Cards were not available to the Transgender Community, it is only because of the NALSA Judgement, that recognised the identity of transgender persons the paved a way towards recognition and accessing welfare schemes. The present Transgender Persons Act, 2019 is just a mild modification of the 2016 version which was





condemned by the movement across the country and protested by various communities.

Similarly the government has come up with the new Citizenship Amendment Act, 2019 and is also in the process of implementing NRC therefore there is a need to put a larger question to the legislators as to what is the position of Transgender Persons within the new Acts.

There is a continued fear amongst the Transgender Community since there is no actual legislation that can grant them the rights and position that they seek from the law. The CAA puts an additional pressure on identification documents which are in itself a struggle as there is no such explanation in the Act as to how is one to produce the documents before the District Magistrate, neither is there any clarity on what are the documents that are to be given to the District Magistrate for the Transgender Certificate.

The Hijra community is not socially fabricated, and there is a high chance that once NRC is implemented it would bring in a great number of hardships for the Transgender Community. Furthermore Rehabilitation Homes are also spaces that can become detention homes, the question therefore is that will there be shelter homes for Transgender Persons. Furthermore the government is completely avoiding the narrative that which can be brought up because of the Trafficking Act, where Transgender Persons are not mentioned at all. It is at this risky juncture that one is to approach the judiciary and the hope is that litigation should be done to get the issues magnified and bring in proper statutes.

The NRC – CAA combination seem extremely similar to Hitler's Holocaust, as the first step of fascism where there is no inclusion of Transgender Persons and their rights, and how between the period of 1933 – 45 there was a mass detention and genocide of homosexual persons in



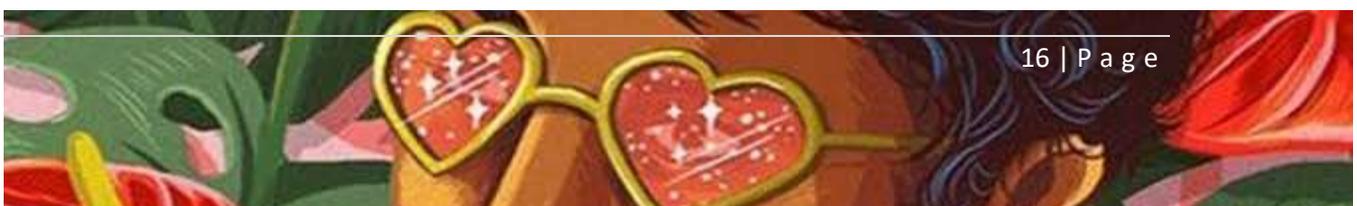


Germany. Referring to the German Penal Code, where there was a criminalisation of Transgender Persons, as well as the Argentinian LGBTQ+ scenario which also is a risky space to manoeuvre. The state is operating both internally and externally on the matter of Transgender Persons, externally they are not taking appropriate statutory action and internally they are delaying court judgements, commissions being set up are also not providing the picture on ground and therefore the state is in control of everything.

She pointed to the need of a collaborative understanding from all sections of the society, greater inclusion of minorities and the transgender community must come together and show their presence in various political spaces, either supporting or opposing fascist rules so that their presence in society is also felt and that other communities would come ahead for the rights of Transgender Persons.

She shared the experience of going to Shaheen Bagh, where she addressed the people there where concerns of the Transgender Community were welcomed and encouraged by the people there. Furthermore the Telangana Joint Committee which was formed is an initiative that was taken by the groups there which work in association with women's issues so that the two groups are working together. She further went on to talk about the rape case of the doctor in Hyderabad, which is now called the Disha encounter, where this joint committee questioned the encounter in court as the due process of law wasn't followed, and there was complete anarchy in actions taken by the police.

She suggested that there were a few critical solutions that one should look at like regular meetings of the Transgender Community so that more members know each other and there have





to be protests to let the government know what is it that the community wants and litigation and pressure needs to be applied to solve the pending cases. She ended with thanking HRLN for the support and work it has done for the community

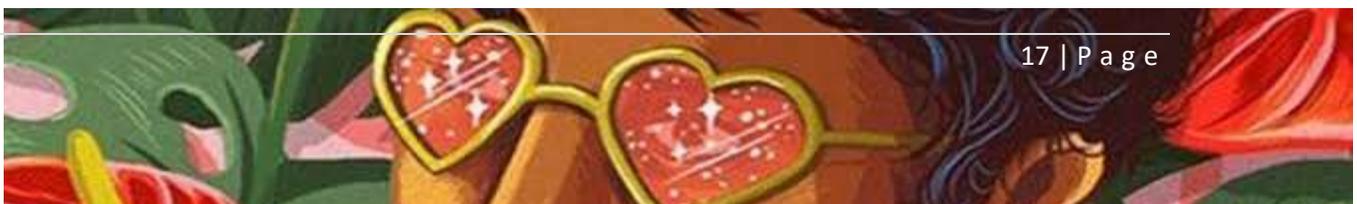
## Transgender Persons (Protection of Rights) Act, 2019

### Plain Reading of the Act

#### Payal Roy Chowdhury

She did a plain reading and interpretation each of the sections of the act, stating that there are 9 Chapters and 23 Sections. Wherein while reading she said that Section 3 does no discussion on rights, it only consists of definitions in clauses (c), (d), (l) and (k) of the act are both ambiguous and poorly drafted. The whole act violates the rights of Transgender Adults, but there is no mention of Transgender Children in the Act, portending to the fact that the Act is clearly patriarchal.

The extremely narrow definition of family in the Act, under Section 2(c), completely rejects the manner of forming families through adoption and simply crafting it through a legal language. The identity of a Transgender Person is seen as a disability and there has been no effort towards greater inclusion into mainstream industries. Neither are there any clear guidelines or suggestions on SRS or hormone therapy. The overall tone of the Act is extremely monotonous and reflects that there has been no attention paid in even displaying a genuine concern for the rights of Transgender Persons, Section (3) from clause (a) to (l) also reflect the lack of interest by the state in taking into cognisance of the rights of Transgender Persons.





There have been no efforts in order to provide positive rights or taking affirmative steps. The act completely skirts around issues of inheritance of property, reservation in jobs and education and various other major mandates.

Section 4 of the Act, which talks about self – determination in the following sections of 5, 6 and 7 takes away the right and power is granted to the District Magistrate, who is just a judicial organ without any reasonable thought or guidelines. There is no mention of the qualifications of capability of the District Magistrate. The act itself gives more value to medical examinations and obtaining reports and a greater emphasis on SRS pointing to the insensitivity of the law makers.

Article 1 of the United Nations covenant of Civil and Political Rights and UDHR clearly speak of equality for everyone . Chapter V of the Act on “Right to residence” has to be questioned as Section 13 of the Act says that if the immediate family of members of the immediate family is unable to take care of a Transgender Person then then through an appropriate court order they will be put in a Rehabilitation Home, making them extremely vulnerable to abuse and violence.

There is no clarity on the funds that are to be disbursed for the protection of the rights of transgender persons, issues of social security, SRS and other medical and health services also receive no funds. Chapter VIII on offences and penalties is not in consonance with the Indian Penal Code, as it offers a punishment of a minimum of 6 months and a maximum of 2 years for physical or sexual abuse, since the maximum punishment is less than 2 years it is an offence which is both non-cognisable and bailable.





The Act is a joke that is made to the Civil Society and cannot be considered to be an Act at all and should be criticised. Rights cannot be taken away from a community and are not to be divided amongst people, most of all rights already given cannot be abrogated.

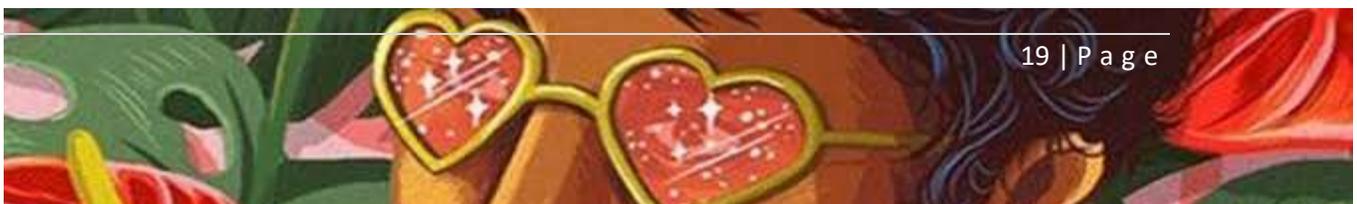
## Clarifying issues with the Act in contestation of NALSA and Transgender

### Jurisprudence since 2014

#### Somabha Bandhopadhyay

Having been a researcher in this field, she has been working with the community since she was a child and would love to extend her support in whichever way she can. She saw the day NALSA judgement was passed in 2014 as a historic day and one that is to be remembered and cherished. From Ramayana to the Mahabharata, most Hindu Mythological literature gave a prominent position to members of the Transgender Community, the criminalisation of such an identity came only after colonial invasion.

The judgement by Justice Radhakrishnan Iyer and Justice Sikri are essential for the progress of rights of members of the Transgender Community. Human Rights are unchallengeable and the state ought to make a statute or use their sovereign power to protect rights of persons through it. Various ministries must take administrative steps towards the execution of basic rules and measures that safeguard the rights of Transgender Persons and protect them from discrimination and humiliation.





## Dealing with issues faced by LGBTQIA+ persons in the context of the present Day Law

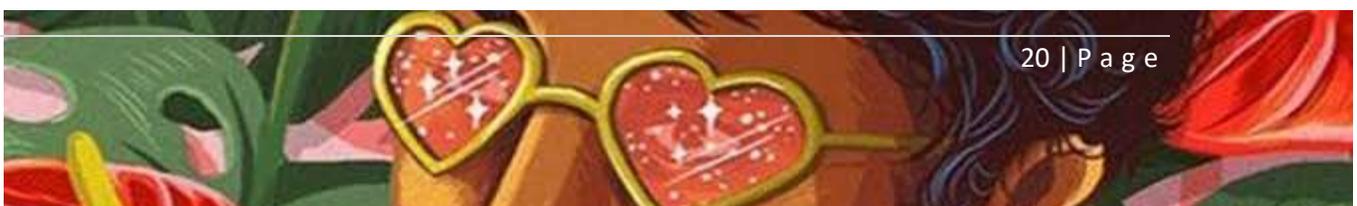
Indrajeet Dey

The government comes up with new laws and regulations every month without repealing obsolete laws, such as the Police Regulations Bengal, 1943. There is a need for the government to frame the rules as soon as possible and also details of the documents that need to be produced in front of the District Magistrate for the issuance of Transgender Certificates.. Approaching the High Court and filing appeals can turn out to be extremely expensive for the Transgender Community, there is a need for providing urgent relief for the Transgender Community and cases should not be put to a pending status.

It is imperative that the apex court interprets the Act of 2019, since the act is silent on a number of issues specifically about issues of trans men. The transgender community should not be afraid to come forward to litigate and bring about the concerns in court through a judicial process. Appendix XXXIII regulation 636 of the Police Regulations Bengal, 2943 deals with the classes of criminals to be photographed and the exhaustive list of communities which are regarded as criminals thus in contravention of Article 14, 19 and 21 of the Constitution.

Sagnik Mukherjee

The community must take their grievances together to the courts so that one can get a greater number of landmark judgements, if not historic that would look into and use these are precedents for future litigation. The NALSA judgement, has been of great help in cases where the





judges have quoted directly from NALSA as in the recent case where the court order Calcutta University to reprint its form by putting in the option for Transgender Persons.

The community must come together and have the courage to take the issues to the court, the petition against the Act has been filed in the Supreme Court. It is important to protest but at the same time one should move to court therefore the importance of filing Class Action suits is needed. In April 2014, the Supreme Court of India held in *NALSA vs Union of India* that the rights and freedom of transgender persons in India are protected under the Constitution .

Furthermore in *Navtej Singh Johar vs Union of India*, the Supreme Court read down Section 377 of the Indian Penal Code for violating Articles 14, 19(1)(a) and 21 of the Constitution. The court grounded its reasoning in constitutional morality and placing it above social morality. These judgements are considered a landmark both in terms of their expansive reading of constitutional rights and in empowering LGBTQIA+ persons. Both judgements mark an important moment for the rights of LGBTQIA+ persons, not only reversing a relic of British imperial rule but also ordered that persons from LGBTQIA+ Indians be accorded all the protections of the constitution. These judgements would form the base for filing petitions in Courts and make it easier to file cases and get positive orders.

## Philip C. Philip

Previously the name and gender change procedure was a simple procedure of getting an affidavit attested, after which one would publish it in two newspapers and with these two documents get it published in the Gazette. These three documents were enough to get one's name and gender changed in all their government documents and Identity Cards. Since this was a mode of self –

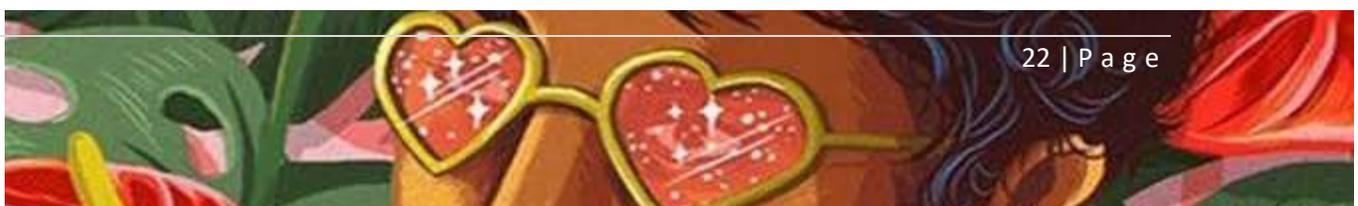




declaration of one's own gender, it was following the guidelines of the NALSA judgement but it was an extremely cumbersome process with a large number of government officials not agreeing to follow the process. The present act the primary ambiguity is with the nature and kind of documents one is to produce in front of the District Magistrate for obtaining a Transgender Certificate.

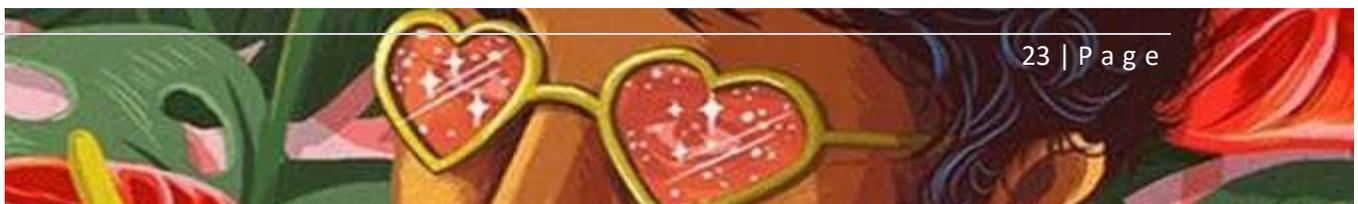
The centre must provide a notification to the state authorities to clarify the issues with the act, furthermore the legislature must frame the rules clarifying the points as early as possible such that the Act is in consonance and agreement with NALSA Judgement. Furthermore the notification, notifying the Act should be made public so that if members from the community have issues with it they would be able to challenge it. Therefore in such a looming environment persons from the trans community must start with the name and gender change process in all the documents as soon as possible since there is no confirmation as to what is it that the rules could be. Moreover due to this ambiguity, there is a chance that District Magistrates of different Districts and of different States would ask for different documents creating chaos in the whole process of gaining documents.

There are of course states such as Kerala where there is a well laid out process for applying online for the name and gender change in a transgender person's documents, which then goes to the ministry and then forwarded to the Local Departments. Sensitisation of ground level government officials is of utmost necessity to stop the incessant harassment of Transgender Persons. There is a Karnataka High Court, judgement that has asked the state to set up a process by which transgender persons would be able to change their name and gender in their 10<sup>th</sup> and 12<sup>th</sup>





Certificates and Marksheets and their Birth Certificates. Furthermore through using more digital resources to file complaints such as mailing the District Magistrates and Police Stations should be used as much as possible as there is a more immediate response to this. There should be a sustained increase in litigation and approaching High Court for the community's and personal rights. Furthermore there is a Rajasthan High Court Judgement which talks about eliminating the need to provide one's gender in job applications unless it is a specific requirement of the job. There is therefore a need to streamline the process of name and gender change and also strengthen alliances with other movements.





## Day 2

### Intersection of Transgender Persons with other Laws

Philip C. Philip

In looking at the manner in which the state has dealt with implementing the directives in NALSA judgement, there are multiple methods that different states have chosen. Some states, such as Bihar, Odisha, Kerala and Karnataka have come out with State Policies that deal with rights of Transgender Persons. None of the other states have come up with such a narrative. In West Bengal there are a number of issues with the name and gender change process which Rajita has elaborated on the previous day in her sessions. Furthermore West Bengal has a Transgender Welfare Board in place, through a government notification but there has been no action that either the state or the welfare board has taken after its constitution. Therefore the Transgender Welfare Board seems to be performing no active function.

It is critical to take into account the constitution of Welfare Boards, such that it includes Transmen, Genderqueer Persons, Intersex Persons and persons with indigenous gender non-binary identity. Prior to any action that is being taken by the state there needs to be an advisory body set up by the welfare board that would provide for the rights of transgender persons.

In some cases such as Chandigarh, the Welfare Board was set up by members from the community, and not by the state. In other cases there are matters wherein the state starts



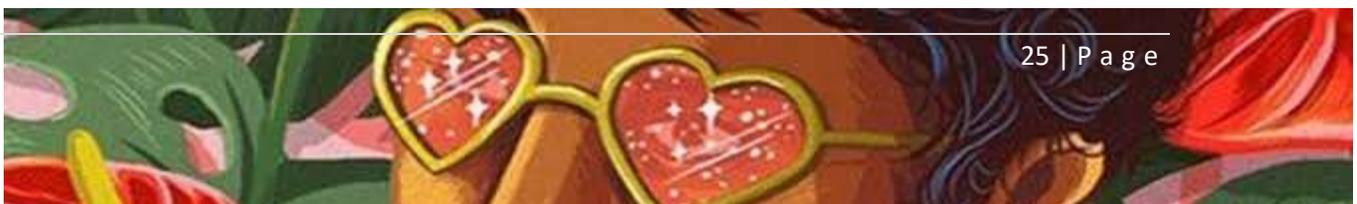


providing rights through passing Government Orders, such as the case of Andhra Pradesh, wherein G.O.s 16, 20 and 34 were released. G.O.s 20 and 34 listed a number of rights which Transgender Persons have and G.O. 16 enumerated how a person could declare themselves as Transgender, which according to G.O. 16 was supposed to be done through a medical examination and with doctors of various specialisations being involved in the screening process.

The government through this act, is both discriminating people based on their sexuality and gender as well as misinterpreting words and further digressing from terms when the Act is translated. After the Act has come into force the District Magistrate has all an inordinate amount of powers and also plays a major role in deciding whether to provide transgender persons with Transgender Certificates, putting Transgender Persons at a significant risk.

Prithika Yashini judgement which provides for the police forces to hire transgender persons is a critical judgement which can be used for the rights of obtaining gainful employment in government services. In *Arunkumar and Ors vs The Inspector General of Registration and Ors*. clarification on marriage of transgender persons is delved into the aspect of marriage of Transgender Persons and banning surgeries on intersex persons.

Furthermore, rules and laws on Criminal Acts against Transgender Persons in specific those of sexual violence are those that are limited to cis-women and are extremely gender specific laws. Therefore the gender specific laws need to be changed so that they are more inclusive and take into account sexual, physical and emotional violence against transgender persons especially those which are gendered in nature and the violence faced by transgender persons is because of their gender.





Transgender persons, as of now are not provided with any security under law other than Section 377 of the IPC, therefore there is a critical need for make the IPC more inclusive to protect the rights of transgender persons.

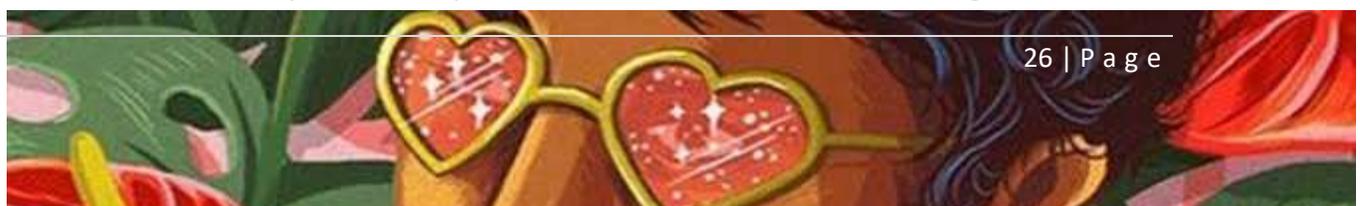
The terms used for transgender persons in regional languages is quite derogatory and illogical, therefore there needs to be a greater involvement of Transgender Persons from states to frame rules and policies while they are being formed for Transgender Persons. Similarly there is no horizontal reservation that is being provided to Transgender Persons within this law. Furthermore every ministry has to be involved in taking into consideration the rights of transgender persons. Other than the Social Justice Ministry, more ministries have to be involved while making laws on transgender persons .

In the chapter that opposes discrimination against Transgender Persons, there is no way one can enforce the law there is neither a punitive component, nor a retributive component nor a component that looks at compensation in case the rights of Transgender Persons are violated.

## Identity and Validation of Identity by the State

Ankan Biswas

He shared his experience of being a trans man and the following social pressure and discrimination. The name and gender change procedure before the Act was an extremely convenient, the present act is an extremely ambiguous piece of law. By giving District Magistrate powers to ask whatever they want and open the chances of harassment of Transgender Persons





by the District Magistrate on the basis on demanding medical or psychiatric reports. This Act therefore is a complete violation of the Puttuswamy Judgement which guarantees privacy to all persons. There are no schemes or benefits that are offered by the West Bengal Transgender Board, neither is selection or composition of the board made very clear or transparent and open. Furthermore after the publishing the gender and name change in the gazette changing the details in PAN/Aadhar/ or other government documents is an extremely cumbersome task.

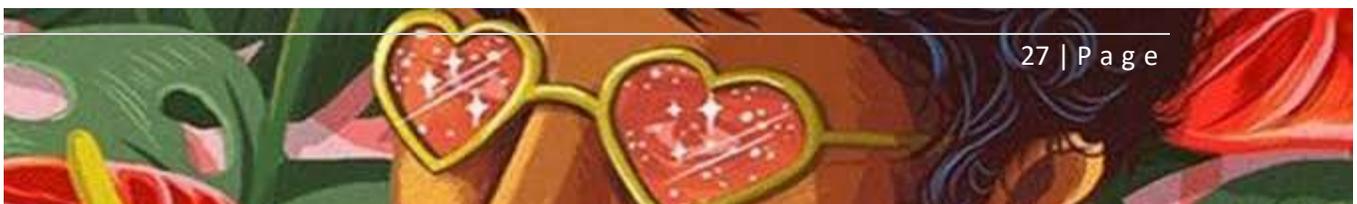
## Transgender Persons Act, 2019 in contrast to NALSA

### Judgement

#### Dr. Sambhu Prasad Chakraborty

There is a need to respect one's identity, one's own feeling therefore there is no need for transgender persons to disrespect themselves by hiding themselves behind a veil, rather one should boldly and courageously accept one's own identity. He talked about his friends' story from California about how she had fought for the rights of LGBTQIA+ Community rights and represented in the legislature.

Events of the manner in which HRLN has conducted the State Level Consultations have to be encouraged to increase awareness, further people from the mainstream should be encouraged to increase awareness among themselves. There is a need to increase the support one would get from the mainstream population and support the movement and give inputs, this would put therefore put pressure on law makers. He talked about Lord Macaulay's code that was so entrenched that it replaced the Napoleon code on Homosexuality. Colonial rule in particular was





responsible for the large scale criminalisation of members of the LGBTQIA+ communities, but it also opened a pathway for various statutes that came in later for the community.

He therefore went on to explain legal definitions of sodomy as well as issues with Section 377, misinterpretations of the Biblical stories are therefore to be held responsible for these discriminatory laws in place. There is at least 8% of the population who do not have sex for procreation but for extremely irrational reasons these persons are considered unnatural by the law.

While reading through the Transgender Persons (Protection of Rights) Act, 2019 from Sections 2 to 23 , there is a repeated use of the word “discrimination”. Statutes are to be read as a whole and within its context. Homosexuality till date was considered to be an error of nature and the law has reduced the self to a nullity as one is not true to one self or one’s profession therefore leading to such insensitivity which is reflected in the Act.

There is no reasoning for one to agree to social certification, the present Act is based on the doctrine of “cautious omission” wherein certain critical issues are not dealt with at all. The law on victim compensation is to be expanded by involving Transgender Persons within it. NALSA judgement did not rule on constitutionality by laid a set of guidelines which was more powerful before the Act came into being, now it has become a weak source of law.

Therefore the constitutionality of the Act has to brought up in front of a larger bench. Furthermore there has to be a separate law for civil unions between persons of genders other than heteronormative cis-gendered unions. This is another concern that the NALSA Judgement





does not cover. Furthermore there has to be an expansion of the meaning of the word “family”.

There is thus a greater need for legal and gender education in schools, biology textbooks need to be updated keeping the present requirements in mind. Activists should look at educational institutions and health institutions to bring in greater access and equality within these spaces and institutions.

## National Register of Citizens and Citizenship Amendment Act

### Somabha Bandopadhyay

The implementation of NRC was done in Assam as there were a number of refugees that had entered Assam after independence, furthermore there were a number of people who entered after the liberation of Bangladesh in 1971. National Register of Citizens is needed to recognise citizens. The movement came from students, which put in place the Assam Accord recognising those residing in Assam before 1971 to be citizens and otherwise they would be excluded from the NRC.

But since the constitution says that after independence in 1947 all persons residing in India are citizens of the country. According to Government Policies there will be detention camps to keep people who are excluded from the NRC.

### Surajabaladhikari

The Transgender Act, looks like a formality that has been completed by the government and a way to take control over the process of name and gender change process in one’s documents. Furthermore there has to be a uniformity in the rules that are framed. There has to be a proper





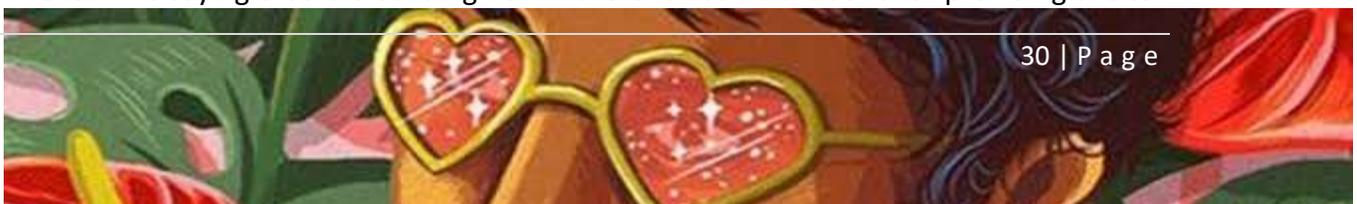
procedure that is to be followed along with what should be modified at regular intervals at par with other statutes. Section 18 of the Act is an extremely problematic element of the Act which is not only unconstitutional but blatantly discriminatory. The Act lacks both support for the victim and the criminalisation of the the perpetrator of discrimination. The term “Rehabilitation” for the transgender community should not be defined in such a loose manner but has to be clearly explained.

There should be more provisions and opportunities that open up pathways for Transgender Persons for employment. The rules and regulations are to be prepared keeping in mind a time limitation, i.e. the actions that the state is to take after submission of a complaint or an application has to be time bound. There should be a clear description of the scope and nature of compensation on violation of the rights of Transgender Persons. There have to be more effective surveys, particularly those taking into account the Socio-Economic position of transgender persons. There needs to be a more inclusion with regard to the penal code.

The enormous amount of burden on the judicial system has led to a number of slow and pending cases, the executive needs to be trained well for delegation of the legislation. The administration therefore needs to be put into a perspective wherein they base their decisions on justice.

### Raina Roy and Debangana

The Act must be read in conformity with other statutes too and all laws and statutes must be made compatible with inclusion of members from the Transgender Community. The bill was passed without any consideration of the needs of the Trans community and their rights. The government while saying that it is building “Garima Graha” as an initiative for providing shelter





homes for transgender persons, but it is important to ask what the scope of these “Garima Grahas” are going to be after the implementation of NRC, whereas it is mentioned as “Rehabilitation Centre” therefore there is a lot of fear in each and every member of the Transgender Community.

There is a need for increased dialogue between community members and an increased union of all people is necessary for a success of this movement. In school curriculum though we have studied the history of Indian independence movement, recent Acts and rules that have come up like the NRC, CAA and NPR it is important to read the historical background of British and Pakistan to get a neutral and exact information as a whole.

## Ranjta Sinha

The Act in itself reflects the history of patriarchy and that there is a need to change perception of society in order to treat transgender people from the community as fellow members of the society. The suffering would be ameliorated to an extent if they have some financial security which can be achieved through more industries opening up for employment of Transgender persons, the corporate also must come forward to hire transgender persons, like what WOW MOMO is doing.

For cis-men and cis-women there are rights of marriage, job and adoption but for transgender persons there are no such rights, even their citizenship would come under question under the NRC. Even though there was no right for Transgender Persons to open a bank account earlier, now such rights are being allowed. The state should involve themselves in providing financial and





monetary assistance for doing SRS but there shouldn't be an insistence of SRS, both the consent of the person and dignity of the person should be maintained at all costs.

Police recruitment and other government services should be open to more people other than cis-gendered persons, transgender persons should be allowed to take exams but in the present system it is extremely difficult for such a process to take place.

### Radhakant Sir

The main issue with because of which the community is facing issues is because of the low population, there needs to be an increase in litigation and there are more cases that are to be filed in courts. There is a need for greater efficiency amongst people and young energies should join the movement and bring new ideas towards bringing about constructive change. There is a need for a National Commission, furthermore education is to be mandatory with sensitisation programmes for people from all sections.

