

# **RIGHTS OF THIRD GENDER IN INDIA AND RECENT DEVELOPMENTS: SPECIAL REFERENCE TO NLSA JUDGMENT**

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## **I. Introduction**

The recent controversies relating to Third Gender Community in India has raised a debate about the status and the rights of this section in our society. Societal ignorance of third gender people is historical and a well known concept. Violation of fundamental human rights, exclusion from social participation, arbitrary actions against their rights and police atrocities are the major areas of problem, which this group has been facing in their day to day life since long. Achievement of the equal status and separate sexual identity of third gender community in India is long pending. Considering the vulnerability of the this sexual minority group the demand of the hour should be to provide specific Constitutional guarantee of their rights; more specifically to ensure the upliftment of this long ignored community to the equal platform of social and political participation by developing rules and programs for affirmative action in favour of them. The need for treating third gender community as backward class and some affirmative action in employment and educational sector for securing their proportional representation was argued by the Apex Court in a recent decision in NLSA V. UNION OF INDIA<sup>2</sup>. The judgment declared that Hijras, Eunuchs and other transgender people, apart from male female binary, should be treated as “third gender”. They should be provided with the right to decide their self identified gender.

In contrast, another recent judgment in Suresh Kumar Khousal V. Naz Foundation<sup>3</sup>, the Apex Court has withdrawn the legal protection granted to LGBT's by the Delhi High Court decision in 2009. On December 11, 2013 the Indian Supreme Court issued the controversial ruling in which it upheld the Constitutional validity of Section-377 of the Indian Penal Code. This decision reversed the decision of Delhi High Court in Naz Foundation

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<sup>2</sup> Ibid.

<sup>3</sup> Suresh Kumar Koushal and another v NAZ Foundation and others Supreme Court of India: Civil Appeal No. 10972 of 2013 available at <http://judis.nic.in/supremecourt/imgs1.aspx?filename=41070>

V. NCT Delhi<sup>4</sup> case which held Section-377 unconstitutional in its application to consensual, private sexual acts among adults including homosexual intercourse. The Delhi High Court decision which provided some fresh air to the third gender community of India was straightway outlawed by the Supreme Court. The Apex Court rejected engagement of any non-Indian source for asserting the Constitutionality of any legislative provision. Secondly, it added another controversial assertion that the LGBT community constitutes only “miniscule fraction” of Indian population which implies that even if they form a class of sexual minority the class is too small and insignificant to warrant Constitutional protection.<sup>5</sup>

It has raised the real controversy in political and social realm regarding the rights of Transgender. Protest against this whimsical approach of the Apex Court arose in a large scale. On the other hand, on 15<sup>th</sup> April, 2014 the Apex Court in the NLSA decision strongly declared Transgender as “third gender” and argued for their rights and social inclusion. These two judgments have given the necessary influence to reopen the discussion on the status of third gender people under Indian Constitutional and legislative framing.

Before examining specific definition of the term third gender, it is important to define certain core terms. While we often correlate sex and gender, they are distinct. Sex identifies men and women based on biology while gender is determined by social construction.<sup>6</sup> Another way of looking at this is to consider sex as fixed and constant across culture (unless there are surgical or medical interventions) while gender is mutable and determined by dress and behaviour that identify the individual as male or female within his or her society.

The terms third gender and third sex describe individuals who are categorized (by their will or by social consensus) as neither male nor female, as well as the social category present in those societies who recognize three or more genders. The term “third” is usually understood to mean “other”; some anthropologists and sociologists have described fourth, fifth, and even some<sup>7</sup> genders. To different cultures or individuals, a third sex or gender may represent an intermediate state between men and women, a state of

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<sup>4</sup> Naz Foundation v. Govt. of NCT of Delhi, WP(C) No.7455/2001 (Del. H.C.) (2009) (India). Sighted from [www.equalrightstrust.org](http://www.equalrightstrust.org)>casenote.

<sup>5</sup> Insular and Inconsistent: India’s Naz Foundation Judgment in Comparative Perspective by Rehan Abeyratne & Nilesh Sinha; The Yale Journal of International Law Online, available at [www.yjil.org](http://www.yjil.org)>docs>pub...

<sup>6</sup> Julie A. Greenberg, Defining Male and Female: Intersexuality and the Collision between Law and Biology, 41 ARIZ. L. REV. 265, 271 (1999).

<sup>7</sup> Roscoe, Will (2000). Changing Ones: Third and Fourth Genders in Native North America. Palgrave Macmillan (June 17, 2000) ISBN 0-312-22479-6

being both (such as “the spirit of a man in the body of a woman”), the state of being neither (neuter), the ability to cross or swap genders, another category altogether independent of male and female. Therefore, third gender is an inclusive term which includes within it various entities with irregular sexual orientation<sup>8</sup>. They are mainly known as hijras, intersex people and transgender people.

The term mainly has been used to describe Hijras of India, Bangladesh and Pakistan. Irregular male sex organs are central to the group's definition. The hijras include both ceremonially emasculated males and intersexed people whose genitals are "ambiguously male-like at birth."<sup>9</sup> In this respect inter-sex must be defined. Inter-sex people are those born with physical conditions that result in a typical internal or external reproductive anatomies or chromosomal anomaly.<sup>10</sup> Whereas transgender basically refers to a diverse group of individuals whose gender does not match their biological sex at birth. It is an umbrella term that describes a wide range of gender-variant groups and individuals, Feinberg used Trans-gender to refer to all people who were gender variant. It refers to not just those who identify themselves as transgendered, but to many different groups, including cross-dressers, Trans-sexuals, and rogyne, gender-queers and Indian hijras also who themselves proclaim to be third genders<sup>11</sup>.

## II. Constitutional and legal framework

The objectives of the Indian Constitution have been enshrined in the Preamble which mandates Justice - social, economic, and political, equality of status and opportunity. The goals of the preamble are working as a constant reminder of the achievable standard. Therefore justice and equality

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<sup>8</sup> According to The Preamble of The Yogyakarta Principles Sexual Orientation “refers to each person’s capacity for profound emotional, affectional and sexual relations with individuals of a different gender or the same gender or more than one gender.” As sighted in National Legal Services Authority V. Union of India and others, CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) NO.400 OF 2012 WITH WRIT PETITION (CIVIL) NO.604 OF 2013 SC reportable judgment. Available at <http://judis.nic.in/supremecourt>

<sup>9</sup> Rights of Transgender People – Sensitising Officers to Provide Access to Justice by Hon'ble Justice P. Sathasivam, Judge, Supreme Court of India; Lecture delivered on Refresher Course for Civil Judges (Junior Division)-I Batch at Tamil Nadu State Judicial Academy on 12.02.201, available at [www.trsj.a.tn.nic.in>article>rightsof\\_tg](http://www.trsj.a.tn.nic.in/article/rightsof_tg).

<sup>10</sup> Teaching Intersex issues, second Edition, Published by Intersex Initiatives Portland, Transgender Definition, introduction. Transgender Definition, page 1, <http://www.philosophyreligion.org/handouts/pdfs/Transgender.pdf>

<sup>11</sup> Transgender Definition, introduction. Transgender Definition, page 1, <http://www.philosophyreligion.org/handouts/pdfs/Transgender.pdf>

must be secured for all without any discrimination on the basis of sexual orientation.

The objectives of preamble are further clearly established in the fundamental rights chapter. Thus the first and foremost right that they are deserving of is the right to equality under Article 14. Article 14 provides that the state shall not deny to any person equality before law and equal protection of law. The interpretation of this right also introduces the concept of reasonable classification in favour of non-dominant classes of the country. Further use of the word person in art 14 secures equality status of everyone as in the NLSA decision it was expressly laid down by the apex court – “Article 14 does not restrict the word ‘person’ and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression ‘person’ and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country.”<sup>12</sup>

Article 15 and 16 speak about the prohibition of discrimination on the ground of religion, race, caste, sex or place of birth. Therefore any discrimination on the basis of sexual orientation would be violative of this provision. *The* expression ‘sex’ used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male or female”.<sup>13</sup> Article 21 ensures right to privacy and personal dignity to all the citizens. The expansion of the meaning of this article requires wide interpretation of the word life. Life of a human being is not equal to mere animal existence but to live with human dignity<sup>14</sup>. In this regard the Apex Court held in NLSA that –“Recognition of one’s gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one’s sense of being as well as an integral part of a person’s identity. Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution.”<sup>15</sup>

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<sup>12</sup> Ibid at page 54 as sighted in *The Third Gender and Gender Self-Identification in India: A Review* by Aakanksha Kumar; *Journal of Politics & Governance*, Vol. 3, No. 4, October - December 2014 at p. 34 available at [www.academia.edu>The\\_Third\\_Gender...](http://www.academia.edu/The_Third_Gender...)

<sup>13</sup> Ibid at page 59

<sup>14</sup> *Francis Coralie Mullin V. Union of India* AIR 1978 SC 597

<sup>15</sup> *National Legal Services Authority V. Union of India and others*, CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) NO. 400 OF 2012 WITH WRIT PETITION (CIVIL) NO. 604 OF 2013 SC reportable judgment. At page 68, as sighted in *The Third Gender and Gender Self-Identification in India: A Review* by Aakanksha Kumar; *Journal of Politics & Governance*,

Further, Article 19(1) of the Constitution guarantees certain fundamental rights to freedom subject to reasonable restrictions imposed by state. Article 19(1) guarantees the natural rights inherent in the status of the citizen of a free country. Article 19(1) (a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one's right to expression of his self-identified gender. As observed in the NLSA case – “Self-identified gender can be expressed through dress, words, action or behavior or any other form. No restriction can be placed on one's personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution”.<sup>16</sup> Thus the freedom of expression guaranteed under Article 19(1)(a) includes the freedom to express one's chosen gender identity through varied ways and means by way of expression, speech, mannerism, clothing etc. Although several provisions of the Constitution of India proclaimed for equal status of all person, security of dignified living, freedom of expression of one's gender identity and non discrimination of the basis of sexual orientation but the third community of India continues to be ignored and deprived of their constitutional rights. But in the light of the Constitutional guarantees provided, there is no reason why Transgender Community should not get their basic rights, which include Right to Personal Liberty, Dignity, Freedom of Expression, Right to Education and Empowerment, Right against Violence, Discrimination and exploitation<sup>17</sup>. On the other hand, legislations of this country have not at any point of time recognized the rights of the third gender. Rather we can find examples of archaic laws since the time of British rule whereby the community has been subjected to restrictions and prohibitions.

The main example of such laws are – i. The Criminal Tribes Act of 1871 (repealed in August 1949), and ii. Section 377 of the IPC. Both these laws set the stage for harassment and surveillance by the police of the community. The 1871 law, by the sub-title “An Act for the Registration of Criminal Tribes and Eunuchs,” required the local government to keep a register of the names and residences of all eunuchs who were “reasonably

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Vol. 3, No. 4, October-December 2014 at page 34 available at <http://judis.nic.in/supreme-court>

<sup>16</sup> Ibid at p. 66

<sup>17</sup> Rights of Transgender People – Sensitising Officers to Provide Access to Justice by Hon'ble Justice P. Sathasivam, Judge, Supreme Court of India; Lecture delivered on Refresher Course for Civil Judges (Junior Division)-I Batch at Tamil Nadu State Judicial Academy on 12.02.2011.

suspected of kidnappings or castrating children or committing offences under Section 377 of the Indian Penal Code.”<sup>18</sup>

Section 26 of this Act specifically targeted Hijra practice by providing: Any eunuch so registered who appears, dressed or ornamented like a woman, in a public street or place, or in any other place, with the intention of being seen from a public street or place, or who dances or plays music, or takes part in any public exhibition, in a public street or place or for hire in a private house may be arrested without warrant, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Section 29 of the Act further eroded the legal identity of the group by prohibiting hijras from making a gift or a will. Although now repealed, the attitudes in this historical Act are reflected in the “contemporary perception of hijras as thieves as well as the brutal violence which is inflicted against them.”

Section 377 of the Penal Code, which criminalized non-procreative sexual acts, which makes carnal intercourse against the order of nature with any man, woman, or animal, punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. A general interpretation of this section also includes transgender persons as they were also typically associated with the prescribed sexual practices and practically these archaic laws have been used in a number of times to harass this vulnerable section.

As in **Queen Empress v. Khairati**,<sup>19</sup> the police suspected the victim of being a eunuch who dressed in women’s clothes and on occasions was found dancing and singing with women, and arrested him under Sec 377. The Court observed that the accused was a regular sodomite, due to the medical reports which showed a distortion of his anal orifice as well as his feminine behaviour. While the Court acquitted the victim, the entire process of investigation and trial ends up stigmatizing Khairati through an invasive process only on the basis of her gender non confirmative behaviour and identity.

Except these two archaic laws there is no Central legislation in India for recognition of the third gender. However, some administrative actions of the Government at times recognized the community. In the year 1994, the passport Authority of India proposed to include third gender as distinct gender identity. Passport can be issued to anybody who is eligible, regardless of gender. Gender-sensitivity within the Indian bureaucracy took

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<sup>18</sup> The Third Gender and Gender Self-Identification in India: A Review by Aakanksha Kumar; Journal of Politics & Governance, Vol. 3, No. 4, October-December 2014 at page 34.

<sup>19</sup> (1884) ILR 6 All 204

a small step, with “eunuchs” being given the option to enter their sex as 'E' instead of either 'M' or 'F' in passport application forms on the internet, in 2005.<sup>20</sup> Later, the Election Commission of India on 12 Nov. 2009 gave transsexuals and eunuchs a distinct identity. Instead of faking themselves as male or female, they can identify themselves in electoral roles as ‘Others’. Except this the Govt. for the first time in 2011 took initiatives to count the third gender people in census. The form for census 2011 has a room for third gender as it asks the person to specify whether the respondent is a male, female or falls in the ‘Other’ category. However, until the NLSA decision, there was no other express acknowledgement of their legal status as a third gender except in a few states. State of Tamil Nadu is one such state that has taken several positive steps for their welfare. Few States like Kerala, Tripura, and Bihar have referred to trans-genders as “third gender or sex”. Certain other states recognize them as “third category.”<sup>21</sup>

### III. Judicial journey towards NLSA decision

Approach of judiciary has remained traditional and ignorant towards the problems of transgender. While applying the archaic laws of British regime judiciary passed discriminative judgments. It is only recently in two cases that the Delhi High Court and the Supreme Court recognized transgender community of India as a distinct sexual identity and tried to protect them from the oppressive application of the age old discriminative laws. But on the other hand Supreme Court in the controversial judgement in **Naz Foundation case**<sup>22</sup> overruled the judgment given by Delhi High Court in 2009 and again held that Section 377 is not violative of Constitution. Hope for the transgender community is that the Supreme Court recently after the decision of the Naz case in another case viz., NLSA case recognized transgender community as distinct sexual minority group and also directed the Government to take measures to protect their rights. Recently the Government of India has also shown concern on the matter. Following the guidelines of the judgment a private member bill on transgender rights has already been passed.

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<sup>20</sup> The Telegraph, 2005 as sighted in The Third Gender and Gender Self-Identification in India: A Review by Aakanksha Kumar; Journal of Politics & Governance, Vol. 3, No. 4, October-December 2014 at page 32.

<sup>21</sup> National Legal Services Authority V. Union of India and others, CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) NO. 400 OF 2012 WITH WRIT PETITION (CIVIL) NO.604 OF 2013 SC reportable judgment. At page 70.

<sup>22</sup> Suresh Kumar Koushal and another v NAZ Foundation and others Supreme Court of India: Civil Appeal No. 10972 of 2013 Link to full court judgement: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=41070>

But as we discussed earlier, most of the judgments were against the social recognition of Transgender Community rather for the implementation of the discriminative laws of British era. Cases like **Queen Empress v. Khairati**<sup>23</sup>, or **Jayalakshmi v. State of Tamil Nadu**<sup>24</sup>, are the examples of age old discriminative view of the Indian judiciary.

However in the **Naz foundation** case the Delhi High Court for the first time in 2009 had tried to bring some positive aspects in favour of the transgender community of the country. The Court evaluated the constitutional validity of Section 377 of the IPC, examining its compatibility with Articles 14, 15, 19 and 21. Considering the matter that sexual preferences fall within the right to dignity and privacy of the individual, the court held that Section 377 constituted a direct infringement of the aforementioned right and as a consequence, violates the substance of Article 21. Further, while interpreting the term “sex” in Article 15 the Court held that the term not only denotes gender, but to have a wider periphery inclusive of ‘sexual orientation’. Moving on this perception, the court ruled that Section 377 is prima facie discriminatory towards the sexual minorities and is therefore, in violation of Article 15 as well.

The judgment provided some relief to the transgender community of India. But at the same time we should keep in mind that the neighboring Countries already did a lot to secure the rights of transgender people. We can take note of two landmark judgments. One pronounced by the Nepal Supreme Court in the Sunil Babu pant case another of the Supreme Court of Pakistan.

The Supreme Court of Nepal in **Sunil Babu Pant & Ors. v. Nepal Government**<sup>25</sup> spoke on the rights of Transgenders as follows:

“The fundamental rights comprised under Part III of the Constitution are enforceable fundamental human rights guaranteed to the citizens against the State. For this reason, the fundamental rights stipulated in Part III are the rights similarly vested in the third gender people as human beings. The homosexuals and third gender people are also human beings as other men and women are, and they are the citizens of this country as well.... Thus, the people other than ‘men’ and ‘women’, including the people of ‘third gender’ cannot be discriminated. The State should recognize the existence of all natural persons including the people of third gender other than the men and women. And it cannot

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<sup>23</sup> (1884) ILR 6 All 204

<sup>24</sup> (2007) 4 MLJ 849.

<sup>25</sup> (Writ Petition No. 917 of 2007 decided on 21<sup>st</sup> December, 2007),

deprive the people of third gender from enjoying the fundamental rights provided by Part III of the Constitution.”

The Supreme Court of Pakistan in **Dr. Mohammad Aslam Khaki & Anr. V. Senior Superintendent of Police (Operation) Rawalpindi & Ors.**<sup>26</sup> had occasion to consider the rights of eunuchs and held as follows:

“Needless to observe that eunuchs in their rights are citizens of this country and subject to the Constitution of the Islamic Republic of Pakistan, 1973, their rights, obligations including right to life and dignity are equally protected. Thus no discrimination, for any reason, is possible against them as far as their rights and obligations are concerned. The Government functionaries both at federal and provincial levels are bound to provide them protection of life and property and secure their dignity as well, as is done in case of other citizens.”

However, as discussed earlier the Delhi High Court decision by which Section 377 of IPC was held to be unconstitutional gave some fresh air to the transgender community. But the situation did not remain same. The controversial judgment of the Supreme Court in the **Suresh Kumar Koushal and another v NAZ Foundation and others**<sup>27</sup> upheld the validity of Section 377 overruling the Delhi High Court Judgment. The panel of two Supreme Court judges deciding the case allowed the appeal and overturned the High Court’s previous decision, finding its declaration to be “legally unsustainable”. The Supreme Court ultimately found that Section 377 IPC does not violate the Constitution and dismissed the writ petition filed by the Respondents. Further, the court held that: “Those who indulge in carnal intercourse in the ordinary course and those who indulge in carnal intercourse against the order of nature constitute different classes and the people falling in the latter category cannot claim that Section 377 suffers from the vice of arbitrariness and irrational classification<sup>28</sup>”.

While reviewing the judgment given by the High Court in Naz case, the Supreme Court stated that the High Court had overlooked the fact that “a miniscule fraction of the country’s population constitute lesbians, gays, bisexuals or transgenders” and that over the last 150 years, fewer than 200 persons had been prosecuted under Section 377, concluding from this that “this cannot be made sound basis for declaring that section ultra vires the provisions of Articles 14, 15 and 21 of the Constitution.<sup>29</sup>” With this

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<sup>26</sup> (Constitution Petition No.43 of 2009) decided on 22nd March, 2011,

<sup>27</sup> Link to full court judgement: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=41070> at p. 6

<sup>28</sup> Ibid at p. 6

<sup>29</sup> Ibid

decision the situation for the transgender community becomes worse. Protest rose from various sectors against the judgment of the Supreme Court. But ultimately some hope was created by the recent decision of the Apex Court in **NLSA V. Union of India**<sup>30</sup> case. In the case Supreme Court firmly declared that gender identity is integral to the dignity of an individual and is at the core of “personal autonomy” and “self-determination”. Hijras/Eunuchs, therefore, have to be considered as Third Gender, over and above binary genders under our Constitution and the laws.<sup>31</sup> This judgement includes persons both who want to identify with the third gender as well as persons who want transition from one identity to another, i.e. to male to female or vice versa. The Court has directed Centre and State Governments to provide legal recognition of gender identity to third gender. The Court recognizes that fundamental rights are available to the third gender in the same manner as they are to males and females. Further, non-recognition of third gender in both criminal and civil arena such as those relating to marriage, adoption, divorce, etc is discriminatory to the third gender. As for how the actual procedure of recognition will happen, the Court merely states that they prefer to follow the psyche of the person and use the "Psychological Test" as opposed to the "Biological Test"<sup>32</sup>.

The Court argued that non-recognition of the identity of Hijras/Transgenders in the various legislations denies them equal protection of law and they face wide-spread discrimination. Article 14 has used the expression “person” and the Article 15 has used the expression “citizen” and “sex” so also Article 16. Article 19 has also used the expression “citizen”. Article 21 has used the expression “person”. All these expressions, which are “gender neutral” evidently, refer to human-beings. Hence, they take within their sweep Hijras/Transgenders and are not as such limited to male or female gender<sup>33</sup>. The judgment has pointed out other problems of the third gender community and said, “Some of the common and reported problem that transgender most commonly suffer are: harassment by the police in public places, harassment at home, police entrapment, rape, discriminations, abuse in public places et.al. The other major problems that the transgender people face in their daily life are discrimination, lack of educational facilities, lack of medical facilities, homelessness, unemployment, depression, hormone pill abuse, tobacco and alcohol abuse, and problems related to marriage and adoption”<sup>34</sup>

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<sup>30</sup> NLSA V. UNION OF INDIA, IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) NO.400 OF 2012 WRIT PETITION (CIVIL) NO.604 OF 2013 SC reportable.

<sup>31</sup> Ibid at p. 72

<sup>32</sup> Ibid at p.73

<sup>33</sup> Ibid at p.73

<sup>34</sup> Ibid at p. 98

To cure these problems gender identification becomes very essential as with this recognition various civil and political rights can be conferred to this community and they can meaningfully enjoy the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's license, the right to education, employment, health so on. Further the Court argued that "there seems to be no reason why a transgender must be denied of basic human rights which includes Right to life and liberty with dignity, Right to Privacy and freedom of expression, Right to Education and Empowerment, Right against violence, Right against Exploitation and Right against Discrimination. Constitution has fulfilled its duty of providing rights to transgenders"<sup>35</sup>.

Finally the Court observed that "now it's time for us to recognize this and to extend and interpret the Constitution in such a manner as to ensure adignified life of transgender people. All this can be achieved if the beginning is made with the recognition that TG as third gender"<sup>36</sup>.

#### **IV. Conclusion**

With the NLSA decision a new era of distinct identity for transgender community has begun. The Supreme Court recommended the Government to implement the findings of this judgment, further directed to include transgender community as backward class and to take appropriate measures for affirmative action in favour of them. Court also recommended for establishment of a commission to find out the actual status of the transgender population. We can hope that after this judgment the Government will take appropriate measures for the development of the Transgender community.

Although the Supreme Court strongly argued for the rights of transgender community but the ground reality is different. The problem of the transgender people is deep rooted in the event of social exclusion and unless by implementing the guidelines of the Supreme Court the transgender community is provided with the opportunity of social inclusion their problem cannot be solved. In this regard it is mentionable that in the second part of this judgment Justice Sikri while sighting the 'Hijras/Transgender Women in India: HIV, Human Rights and Social Exclusion', (UNDP report on India Issue: December, 2010) pointed out the core problem of TG community and reiterated that, though the decision has emerged with the potential of paradigm shift in thinking towards a rights based approach. But this maybe the thinking of human rights activist, the society has not kept

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<sup>35</sup> Ibid at p. 100

<sup>36</sup> Ibid at p. 100

pace with this shift. There appears to be limited public knowledge and understanding of same-sex sexual orientation.<sup>37</sup>

To implement the judgment it becomes necessary that the state shall take steps for nationwide awareness programs describing the rights of third gender, Centre and State Governments should also take steps for framing various social welfare schemes for their betterment and also try to ensure their equal participation in every facet of social life by appointing officer, granting NGO's with necessary help in this regard. It is very appreciable that very laudable efforts have already been taken by the government of Tamil Nadu by constituting a Board for transgender community under the Social Welfare Department with an aim to rehabilitate the transgender and to achieve equality for them in the community and security in the society. To implement the NLSA judgment the Central Government has already taken some positive steps. A committee for the in depth study of situations of the third gender community of India has been created. A private member bill regarding the rights of third gender has also been passed by the parliament recently<sup>38</sup>. These are the welcome steps towards the social inclusion of third gender community. There are so many problems in implementing the NLSA judgment and create an environment of equal participation for transgender community. But the very primary steps have already been taken by the Apex Court and soundly followed by the policy makers.

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<sup>37</sup> Ibid at p. 97

<sup>38</sup> Rajya Sabha passes bill on transgenders. —The Hindu—  
m.thehindu.com>news>article7138056