



ABSTRACTS OF SESSIONS

PANEL 1 : CONSTITUTIONAL TRANSFORMATION

- **Arvind Narrain : Transforming the Constitution: Thinking through and beyond *NALSA v. UOI***

This presentation will focus on the contribution of *NALSA v. UOI* to inaugurating a transgender constitutional jurisprudence. *NALSA* has interpreted the Constitution to mean that the non-recognition of transgender persons violates key constitutional guarantees including the rights to equality, non-discrimination, life and expression. One of the jurisprudential contributions of *NALSA v. UOI* is to interpret the freedom of expression guaranteed in Article 19(1) (a) to include the right to express one's self identified gender through dress, words, action of behaviour. This expansive interpretation owes much to the Yogyakarta Principles on Sexual Orientation and Gender Identity which the judgment invokes liberally. With the adoption of the Yogyakarta Principles +10 documents, as well as the challenge to the constitutionality of Section 377, the question this paper will address is whether there are new directions in which the Constitution can be transformed?

- **Dr. Akkai Padmashali : *NALSA* & After**

This session will focus on the history of the Transgender community in India and the struggles faced by the trans rights movement from the stages of its inception leading to the pronouncement of the landmark decision of the Hon'ble Supreme Court in *National Legal Services Authority vs. Union of India (NALSA)*. The recognition of the third gender has brought the debates surrounding sexuality and gender identity to the mainstream public discourse and the avowed goal of the state seems to be the empowerment of the transgender community. However, such empowerment cannot take place without a radical disruption of gender hierarchies and undoing the very regulation of gender over our bodies, desires and autonomy? The session will also bring forth the challenges that lay ahead for the trans community in view of the *NALSA* decision and the lack of effective implementation of the same. The role of civil society organisations as well integration of members of the trans community in efforts to make to build a stronger legislative framework around rights of sexual minorities will also be discussed in this session.

PANEL 2: TRANSFORMING THE COURTS

- **Professor Carlos Zelada : Trans*legalities: A Case Study of the Records on Trans* identities within the Peruvian Judiciary (2003-2016)**

In Peru, there is no gender identity law. However, since the beginning of the 21st century, trans* individuals (most of them trans* women that went through genital surgery) have been presenting requests at Peruvian domestic tribunals looking for legal recognition of their social name and gender marks. Applying sociological methods of analysis, this session will focus on identified problematic discourses (such as pathologization and cis-sexism) within the trans* narratives articulated by Peruvian legal operators (petitioners and judges) involved in cases from 2003 to 2016. Petitioners in these cases have often argued (even without believing it by heart) that trans* identities are deviations that may be cured. Moreover, in many cases, judges look at genital surgery as the decisive factor to provide legal recognition of any trans* identity. In the past decade, these first two paradigms, rooted in a biomedical focus, have been deeply questioned by the sudden entrance of the human rights logic within legal reasoning. How do these narratives now co-exist? Has the human rights paradigm shifted the traditional view of petitioners and judges in Peru? It will be argued that, despite the recent visibility of LGTB issues in Peruvian juridical debate, it has not changed the views of most legal operators.

Moreover, would the recent Advisory Opinion 24/17 of the Inter-American Court of Human Rights, which explicitly demands OAS Member States the recognition of gender identity as a fundamental right, play a decisive role in these legal battles? What may happen in countries such as Peru, where there is no real possibility for passing a gender identity law?

- **Jayna Kothari : Survey of Trans* Rights Case Law in India**

NALSA was the first major decision of the Supreme Court recognizing transgender rights to equality, life, gender identity and gender expression. NALSA opened the floodgates for litigation by the trans* community in the High Courts and the Supreme Court. The range of litigation has been from challenges to criminal laws that target trans* persons and sexual minorities, seeking relief from violence and denial of basic rights, equal opportunity in public employment and change of name and gender identity in legal documents. This presentation will seek to give an overview of the pending and decided cases before the Supreme Court of India and the several High Courts which have provided the impetus for a more comprehensive dialogue on trans issues within the existent legal and policy framework.

- **Vyjayanti Vasanta Mogli : The Telangana Eunuchs Act Challenge - Experience as a Petitioner**

It is almost four years since the *NALSA vs Union of India* judgement of the Supreme Court. Ranging from something as basic as access to government ID cards, access to education, literacy, employment, livelihoods, inheritance, intimate partner violence, health care, housing, public accommodation/utilities, transgender people face denial of access and structural exclusions and are

constrained to go to the courts. While on the one hand the case against Aadhaar is *subjudice* in the Supreme Court, it is frustrating and ironic to note that the Public Interest Litigation (PIL) rules of the High Court of Judicature at Hyderabad mandate that any petitioner filing a PIL submit a copy of his/her/their Aadhaar card along with a quarterly bank statement balance of transactions of not less than one lakh rupees. Many transgender people are not on Aadhaar and some are principally opposed to it. The prerequisite of a minimum quarterly balance of one lakh rupees to file a PIL limits PILs as a preserve of the rich, quite contrary to its very purpose. Also, entering a High Court requires transgender people to furnish copies of a government ID proof that most transgender people do not have. Driving license and PAN card do not yet have the option transgender and for those who do not have Aadhaar find it very difficult.

While the *NALSA* judgement was delivered, its state and district counterparts viz. SLSA and DLSA have unfortunately been ineffective and indifferent to hold Know Your Rights (KYR) workshops for transgender people and offer translations of the *NALSA* judgement in regional languages despite many representations made by the transgender community. While RTIs were filed to obtain information on the Eunuchs Act 1329F and on the statistics on intersex and transgender people, crimes by and against transgender people, data and responses have seldom come in despite RTI escalations on first and second appeals. In this presentation, Vyjayanti will present some of these hurdles she faced as a Petitioner in her challenge to the Telangana Eunuchs Act in the Andhra Pradesh High Court.

PANEL 3 : TRANS* FAMILIES

- **Prof. Siddharth Swaminathan : Intimate Relations, Sexual Orientation & Gender Identity: Survey Evidence**

This study presents public opinion on intimate same-sex relations using survey data collected from 12 States in India during 2017-2018. While evidence from case studies points to attitudes on same-sex relations, systematic cross-State evidence - either descriptive or inferential - is unavailable. This study examines public attitudes on same-sex relations across a variety of socio-economic and demographic categories including caste and religious identity, class, levels of education, and space. He also suggests and provides statistical tests for tentative hypotheses that likely explain variation in public opinion on intimate same-sex relations.

- **Uma (Umesh P) : Growing up Trans in the Family**

Gender having been defined along binary lines, the social classification of individuals too has focussed on categorisation of persons as male or female as determined at the time of their birth, disregarding any other gender-nonforming identities that an individual may attach to themselves. Such rejection, when experienced by gender non-conforming people within the realm of the family, has often led to their social ostracism and physical, verbal and emotional harassment. This session will draw from the speaker's experiences of growing up as a trans individual in a family setup where gender is only understood in terms of its binary polarisation as well as the experience and the shaping of

interpersonal relationships of the members of the family living with a trans individual.

- **Mona Lisa**

The transgender *hijra* community has a unique subculture which exists alongside the ubiquitous heterosexual family. The understanding of 'family' for trans* persons residing within hijra communities in a Guru-chela system is unique. Relationships are based on the kinship shared between the guru and chela, where the guru sponsors chelas, who are then accepted into the community. Mona will be speaking on how the family is conceptualised within the hijra gharanas and her personal experience.

PANEL 4 : RIGHT TO LEGAL IDENTITY

- **Audrey Mbugua: Removal of Gender Markers, the Experience in Kenya**

Gender markers in identification and academic documents present deep problems for gender minorities such as transgender persons and people born with intersex conditions. Kenya has a binary gender system (male and female) that is featured in birth certificates, hospital records, academic certificates, national identity cards, driving licences, health insurance cards and passports. Legal gender/sex assignment is done at birth, guided by the appearance of external genitalia of an infant, and all assignments of gender in subsequent documents and occasions are based on this record. This binary gender system, based on repealed British colonial laws, pose challenges to gender minorities whose self-gender identity, gender presentation and gender expression does not conform with the legal and social genders they were assigned at birth. An analysis of the challenges posed by these gender markers among Kenya's gender minorities will be discussed in this session. Additionally, an in-depth analysis of 3 judgments from Kenya's courts (filed by transgender and intersex persons) and other advocacy work challenging the presence of these gender markers will be done. The third part of this session, will be dedicated to a presentation on advocacy and litigation work currently taking place in Kenya about removal of gender markers in identification and academic documents and avenues for collaborative efforts among stakeholders from the global movement on removal of gender marks, transgender communities and their allies.

- **Vikramaditya Sahai : Anxiety of Identities**

This presentation will seek to study the present moment in the trans community's struggle for legal identity and such identification being ridden with anxiety. The attempt is less to state the anxiety of anyone entering the legal bureaucracy for recognition rather than to emphasise the ways in which the current trans experience with identity reveals the anxiety of the State regime around the concept of gender. Some of these anxieties are common to the earliest forms of legal documents under colonialism and the imagination of the law's ways of delivering justice.

PANEL 5 : CURRENT DEBATES ON TRANSGENDER EQUALITY

- **Prof. Stephen Whittle : The Future of Transgender Equality: A Rainbow Revolution: Transgender Law, then, now and in the Future**

This presentation will initially review responses to the appearance of the African-American Trans Actress, Laverne Cox, on the cover of Time Magazine. This will introduce a quick overview of the context to trans people's lives, from the early 1950s to the present day, a context in which trans lives were stigmatized, ridiculed, criminalized and disregarded. It will then consider the findings of the House of Commons Trans Inquiry [2015] which brought to light the large numbers of trans people who identified as non-binary, or non-gendered. By looking at why this was not a surprise to himself, the presentation considers the gender theorising contained in the publications of trans activists and academics over the last 25 years. This will be followed by a short consideration of the backlash trans theorists received from Radical Separatist Feminists, and how these have transformed into today's Trans Exclusionary Radical Feminists. who argue that they are the one's promoting true gender transgressions. This will lead into a discussion of the Facts of legal Gender Recognition, followed by consideration of how crucial it is to retain human rights at the core of gender identity law, and gender reassignment treatment, and in particular how systems should never become coercive. The conclusions will address the slippery slope of the huge social changes we are seeing amongst trans identified people, and address what equality and social justice mean in relation to trans rights now and in the future.

- **Prof. Sudhir Krishnaswamy : Affirmative Action and Transgender Rights: Transgender Equality in a Caste and Sex Frame**

While in *Naz* the Supreme Court denied that transgender identity is a constitutionally recognized ground for discrimination, in *NALSA* the court recognized it under the rubric of sex under Article 15. However, the reasons offered in the case analogize transgender experience more to caste exclusion than to sex discrimination. The Karnataka and Kerala State policies for transgender groups further develop an approach that analogizes transgender group identity to caste identity, particularly through the use of quota based reservation strategies. In this paper I review whether transgender equality must be shaped within a multiple ground discrimination framework and what this means for Indian constitutional law and public policy.

- **Grace Banu: Response from a Trans Dalit Perspective**

The central focus on this session will be the question of affirmative action policies in favour of transgender persons as a separate and distinct category. Drawing from the discussions on the interaction between caste, gender identity and sexuality, the speaker wishes to engage the audience in the debate surrounding the allocation of quotas to trans persons under the OBC category pursuant to the decision in *NALSA* wherein the Hon'ble Supreme Court has held that persons belonging to the third gender must be treated as an educationally and socially backward class for the purpose of availing State welfare benefits. However, the class divide between the trans community and other gender binary groups, as well as the caste distinctions within sexual minorities necessitate that persons belonging to these categories be granted a separate and distinct quota outside of the reservations granted in favour of Other Backward Classes (OBCs).

PANEL 6 : GLOBAL TRENDS IN TRANS-LAW MOVEMENTS

- **Busisiwe Deyi : Third Gender or No Gender:Its impact on the achievement of Equality in Post-Apartheid South Africa**

This session aims to problematise Busisiwe's work in

- a. Class Constitution
- b. Class Citizen: Exploring the Adoption of the Third-Gender Category in South Africa.

During the course of the presentation, Busisiwe will seek to determine how her conceptualisation and the work of gender markers would change, if at all, when she centres the proprietary nature of gender. Using the work of intersectional and critical race feminist theorist's conceptualisations of identity as material property she attempts to exhume the liberatory potential of the third-gender category. Through a linking of gender identity, property and law, Busisiwe will argue that gender can operate as legal property in the same way as material objects can. To avoid the trap simple constructions of equality as legal recognition, we must consider the ways in which gender operates as economic access.

- **Siddharth Narrain : From Gender Identity to Gender Expression: Expanding rights under The Yogyakarta Plus 10 Framework**

The Yogyakarta Plus 10 (YP10) Principles adopted in 2017 foreground gender expression in their framing of principles and obligations in international human rights law. In this presentation, he will examine the implications of the use of the term gender expression, relying on existing academic and legal material in the global context. He will link this shift to discussions around the framing of 'expression' in discussions around free speech, as well as in contemporary debates around legal and policy reform in India.

- **Aparna Banerjee: "Trans Bill: is this the future, or do we need a separate legislation?"**

This talk focusses on the proposed Transgender Persons (Protection of Rights) Bill, 2016 with respect to *NALSA v. Union of India*. It proposes to understand the journey of the verdict in *NALSA* through the legislature, while trying to unearth the reason for the differences between the two. This talk will also suggest measures for a better law for the protection of transgender individuals.

- **Vihaan Peethambar : Kerala Model of Inclusion: A critical examination of the Kerala Transgender Policy**

In November 2015, the Kerala government unveiled the very progressive Transgender Policy giving hope to many Malayali transgender and intersex people across the world. This policy was developed based on the *NALSA* judgement issued by the Supreme Court in 2014 and on the findings of surveys conducted in the state. This talk will delve into the highlights and challenges of this policy based on my personal experiences of fighting the system to change gender markers legally and serving in a district transgender justice board in Kerala and what the rest of the states can learn from the same.

