



TRANSFORMING COURTS

Court Decisions On
Transgender Rights In India



The Centre for Law & Policy Research is a not-for-profit organisation that is dedicated to making the Constitution work for everyone, through law and policy research, social and governance interventions and strategic impact litigation.

CENTRE FOR LAW & POLICY RESEARCH
D6, Dona Cynthia Apartments, 35
Primrose Road, Bangalore 560025,
www.clpr.org.in

ACKNOWLEDGEMENTS

PUBLISHED BY

Centre For Law & Policy Research (CLPR)

LEAD EDITORS & AUTHORS

Jayna Kothari, Executive Director, CLPR
Disha Chaudhari, Senior Researcher at CLPR.

CO-AUTHORS

Anjana Rajsri Anand, Naibedya Dash & Priya Chaudhary
All Research Associates at CLPR.

FUNDED BY

The Federal Republic Of Germany,
Through the Embassy in New Delhi, India.

This Resource Book has benefitted immensely from the inputs and feedback provided by community activists, lawyers, and academics through a one-day consultation held on September 14th at the Bangalore International Centre. We are grateful for the contributions made by:

Abeda Begum, Dr. Akkai Padmashali, Anindya Hajra, Anubhuti Banerjee, Arvind Narrain, Dr. Aqsa Shaikh, Bittu Kondaiah, Daniela Mendoca, Disha Pinky Shaikh, Kanmani Ray, Kunal Ambasta, Laishram Sopin, Manjunath K, Maula, Advocate Padmalakshmi, Poojitha B. P., R Chandra Shekhar, Raju, Rakshitha, Ritwik Dutta, Rohin Bhatt, Sahitya Gupta, Saral K, Sayantan Datta, Sitamsini Cherukumalli, Shubha Chacko, Swetha Shri, Uma Umesh, Vijay Kumari, Vyjayanti Vasanta Mogli & Yogesh

RESOURCE PARTNER

Manupatra

COVER & LAYOUT DESIGN

www.crackerandrush.com

INDEX

INTRODUCTION

- What are the Aims of this Resource Book?
- Who is this Resource Book for?
- How is this Resource Book structured?
- Legal Framework On Transgender Rights In India
- Key Definitions

JUDGMENT SUMMARIES

SELF-DETERMINATION PAGE 20–29

About the right to self-determination of gender identity

01. National Legal Services Authority (NALSA) v. Union of India
02. Justice K.S. Puttaswamy v. Union of India
03. Navtej Singh Johar v. Union of India
04. Anjali Guru Sanjana Jaan v. State of Maharashtra & Others
05. V. Vasanta Mogli v. State of Telangana

ACCESS TO PUBLIC EMPLOYMENT PAGE 30–53

About equal opportunity in public employment

06. Nangai v. Superintendent of Police
07. G. Nagalakshmi v. Director General of Police [Nangai-II]
08. T. Thanusu v. The Secretary to Government of Tamil Nadu [Nangai-III]
09. Jackuline Mary v. The Superintendent of Police, Karur
10. Sumita Kumari v. State of West Bengal

11. K. Prithika Yashini v. Chairman, Tamil Nadu Uniformed Services Recruitment Board
12. Atri Kar v. Union of India
13. Manju v. State of Tamil Nadu
14. Swapna & Others v. Chief Secretary & Others
15. Ganga Kumari v. State of Rajasthan
16. The Chairman v. Aradhana
17. Rano v. State of Uttarakhand
18. Pallabi Chakraborty v. State of West Bengal
19. Matam Gangabhavani v. State of A.P.
20. Saratha v. Tamil Nadu Uniformed Services Recruitment Board
21. Shanavi Ponnusamy v. Ministry of Civil Aviation & Another
22. Neha Singh v. Uttar Pradesh
23. Mrinal Barik v. State of West Bengal & Others
24. Rakshika Raj v. State of Tamil Nadu

CHANGE IN NAME & GENDER PAGE 54–67

About the legal recognition of change in name & gender

25. Mulla Faizal v. State of Gujarat
26. Vinod H.N v. State of Karnataka
27. Chanchal Bhattacharya v. State of West Bengal
28. K. Gowtham Subramaniam v. Controller of Examination, Anna University
29. Myra Grace Bandikalla v. Airport Authority of India & Others
30. Jeeva M. v. State of Karnataka, Department of Pre-University Education
31. Christina Lobo v. State of Karnataka

32. Chinder Pal Singh v. The Chief Secretary
33. Vihaan Peethambar v. Manipal University

MARRIAGE, RELATIONSHIPS & FAMILY PAGE 68–87

About the right to marriage, relationships & family

34. Shivani 'Shivy' Bhat v. State of NCT of Delhi
35. Sweety v. General Public
36. Tessy James v. The Director General of Police, Thiruvananthapuram
37. Mansur Rahman v. The Superintendent of Police & Another
38. Arunkumar & Other v. The Inspector General of Registration & Others
39. Chinmayee Jena v. State of Odisha & Others
40. Poonam Rani v. State of UP
41. S. Sushma and Ors. v. Commissioner of Police, Greater Chennai Police & Others
42. Supriyo & Ors. v. Union of India
43. Kantaro Kondagari v. State of Odisha
44. XXX v. The Health Secretary, Director of Health Services, Kerala
45. Devu G. Nair v. State of Kerala

CRIMINAL LAWS PAGE 88–97

About criminal law and transgender rights

46. Jayalakshmi v. State of Tamil Nadu
47. Pinki Pramanik v. State of West Bengal
48. Anamika v. Union of India

49. Ms. X v. State of Uttarakhand
50. Karan Tripathi v. NCRB
51. M Srinivasan v. State through The Inspector of Police & Anr.

ACCESS TO EDUCATION PAGE 98–107

About access to education for transgender persons

52. S. Tharika Banu v. Health & Family Welfare Department
53. Mx. Alia SK v. The State of West Bengal & Others
54. Mx. Sumana Pramanik v. Union of India
55. Queerythm v. National Medical Commission
56. National Cadet Corps v. Hina Haneefa @ Muhammed Asif Ali
57. Anamika v. State of Kerala

SOCIAL SECURITY PAGE 108–115

About the right to social security

58. Ashish Kumar Misra v. Bharat Sarkar
59. Jasmine Kaur Chhabra v. Union of India
60. Kabeer C alias Aneera Kabeer v. State of Kerala & Others
61. Veera Yadav v. The Chief Secretary, Govt. of Bihar



INTRODUCTION

Transgender rights in India are now gaining significance, and the courts have played an important role in bolstering the recognition of equality on the basis of gender identity.

The landscape of transgender rights has been shaped by the decision of the Supreme Court in *National Legal Services Authority v. Union of India* (“NALSA”) in 2014. The decision in NALSA was a watershed moment as this was the first instance where the Court recognised the right to self-determination of gender identity. The Court traced this right of self-determination to the the right to life, liberty and equality and the freedom of expression under Articles 21, 14 and 19 of the Constitution. NALSA was followed by the enactment of the Transgender Persons (Protection of Rights) Act, 2019.

Since then, transgender persons and civil society groups have approached High Courts and the Supreme Court on issues of the day-to-day challenges and constitutional rights violations faced by them, leading to several important decisions. These decisions play a significant role in shaping the jurisprudence on transgender rights and are an important resource for advocating for these rights. This resource book primarily contains case summaries of the final decisions of the courts along with the link to the judgments. Courts have also passed important interim orders in some ongoing cases which have been covered. The resource book includes decisions where the rights of transgender persons have been protected and upheld, and also a few cases where the court decisions have not been positive. This is to ensure that the resource book is comprehensive and covers all the significant court decisions that can help advance the rights of transgender persons, while also raising awareness about the negative rulings of the courts so that steps can be taken to overcome the barriers resulting from those decisions.

WHAT ARE THE AIMS OF THIS RESOURCE BOOK

This Resource Book aims to facilitate access to significant court decisions on transgender rights. It provides summaries of the important judgements in a simple and easy to understand manner. This Resource Book aims to serve a wide range of stakeholders responsible for protecting and promoting the rights of transgender persons in India. This includes transgender persons and communities, grassroots activists and organisations, as well as community-based organisations, NGOs, lawyers, students, researchers, public officials including legislators, policy makers and judges.



WHO IS THIS BOOK FOR?

The Resource Book has been developed as a tool for:



1 Community Members

Members of transgender communities to better understand their legal rights and entitlements.



2 Activists, Civil Society Groups

Activists, civil society groups and organisations working on the rights of transgender persons.



3 Students & Researchers

Students, researchers and groups seeking to address the challenges faced by transgender persons in accessing justice and the gaps in implementation of the laws.



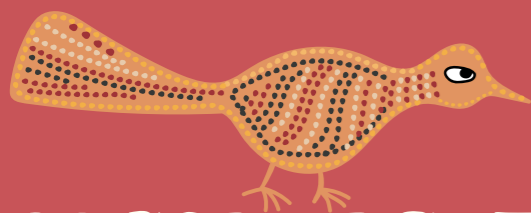
4 Public Officials & Government

Public officials and government functionaries who are responsible for ensuring that the rights of transgender persons are protected.



5 Lawyers, Judges & Researchers

Lawyers, judges and researchers who can use this resource book as a ready-reckoner on important judgments in their work on the rights of transgender persons.



HOW IS THIS BOOK STRUCTURED?

This Resource Book is structured to enable readers to easily identify the themes and topics they wish to engage with. The information is organized thematically and does not need to be read in any specific order.

1

INTRODUCTION TO THE LEGAL FRAMEWORK

An overview of the current legal framework on transgender rights in India to familiarise the audience with legislative developments and introduce the reader to the laws on the rights of transgender persons in India.

2

KEY DEFINITIONS

List of key terms and definitions that will be useful in helping readers understand how the law defines 'transgender persons' for the purpose of extending any rights, entitlements or benefits. The section also explains some of the legal terminologies and phrases that have been used in this Resource Book.

3

CASE BRIEFS ON TRANSGENDER RIGHTS

This section covers the judgments on the substantive rights and entitlements guaranteed to transgender persons, including equality and non-discrimination, right to self-determination, right to equality in marriage and consensual relationships, right to equal opportunities and reservations in employment, right to life and access to healthcare, right to freedom of expression, right to education and reservation in education, right to privacy and right to dignity. It also covers judgments on issues concerning the applicability of criminal laws to transgender persons as well as cases looking at access to social security benefits and welfare measures for transgender persons.

Case details – Title, Court, Judges and Citations. The Resource Book has Manupatra citations for all cases and neutral citations such as INSC citations from the official Supreme Court Reports where available.

Case summary – Discussing applicable right, facts, court's decision and the significance of the case in the panoply of transgender judgments

QR codes – Each case summary contains a QR code which gives the link to the entire judgement for those who wish to read them.

INTRODUCTION

LEGAL FRAMEWORK ON TRANSGENDER RIGHTS IN INDIA

The legal framework on transgender rights is largely framed by the decision of the Supreme Court in *National Legal Services Authority v. Union of India* ("NALSA") in 2014 where the Supreme Court recognised the right of transgender persons to self-determination of their gender identity as male, female or transgender. It was the decision in NALSA that enlarged the scope of the fundamental rights to include the right to non-discrimination on the ground of one's gender identity. Other decisions of the Supreme Court following NALSA have expanded the scope of fundamental rights to include the rights to sexual orientation and gender identity. The primary legislation offering protection to transgender persons is the Transgender Persons (Protection of Rights) Act, 2019 and the Transgender Persons (Protection of Rights) Rules, 2020.

01

CONSTITUTION OF INDIA, 1950

The Constitution of India is the founding document in which all the rights and protections for each individual are provided. Part III of the Constitution contains the fundamental rights. Article 14 guarantees equality and equal protection of the law and Article 15(1) prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. The Supreme Court for the first time in 2014 in its decision in the case of *National Legal Services Authority v. Union of India* ("NALSA") interpreted the ground of 'sex' under Article 15(1) to include gender and gender identity. The Court held that Article 15(1) would include prohibition of discrimination on grounds of gender identity and sexual orientation. This was a watershed moment for transgender rights, as the Supreme Court held that all persons have the right to self-determine their gender identity, as male, female or transgender and this right is protected under the right to equality guaranteed under Articles 14 and 15(1). The right to freedom of expression under Article 19(1)(a) and Article 21 of the Constitution guaranteeing the right to life and autonomy were also expanded to include the right to gender identity and gender expression. Thereafter in *Navtej Johar and Others v. Union of India*, the landmark decision decriminalising consensual same-sex relationships in India, the Supreme Court upheld the right to decisional autonomy and the freedom to decide one's sexual orientation and choice of partner. The constitutional jurisprudence that has emerged from these landmark decisions has laid the foundation for protection of transgender rights and has been significant in shaping the judicial discourse on the constitutional rights of transgender persons.

02

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019 AND TRANSGENDER PERSONS (PROTECTION OF RIGHTS) RULES, 2020

The Transgender Persons (Protection of Rights) Act, 2019 (The Transgender Persons Act) was enacted in 2019, and the Government of India subsequently notified the Transgender Persons (Protection of Rights) Rules, 2020. The Act was brought about as a special legislation to address the protection and advancement of the rights of transgender persons. The Transgender Persons Act and Rules were severely criticised by the trans community and activists as they do not recognise the right to self-determination of gender identity without medical intervention, as held by the Supreme Court in NALSA. Instead, they provide a two-step process for gender recognition, where a trans person first must apply for recognition as 'transgender' and thereafter, upon submission of medical documents can seek change of gender identity to 'male' or 'female'.

The main provisions under the law are:

Legal Recognition

The Act provides that a transgender person shall have a right to self-determination of gender identity and shall have the right to be recognised as transgender and can get a certificate of identity by making an application to the District Magistrate. Based on this certificate, the gender shall be recorded in all official documents. If, however a trans person wants their gender identity to be male or female, they have to make another application under Section 7. This application must be submitted to the District Magistrate along with a certificate issued by the Chief Medical Officer of the medical institution where the person has undergone surgery. It is only after this application for a revised certificate has been made that a they will be entitled to an identity card indicating the gender as male or female.

.....

Right Against Discrimination

The Act protects transgender persons from discrimination in matters of employment, education, and access to healthcare. It also prohibits discrimination against transgender persons in accessing public spaces, contesting for public office, or in matters concerning their right to reside, purchase, rent or otherwise occupy any property. The law adopts a protective framework for ensuring transgender persons can access or enjoy the use of any goods, service, facility, or benefit available to the public.

.....

Non-Discrimination In Employment

The law prohibits public and private employers from discriminating against transgender persons in employment, which includes recruitment and promotions. All establishments are also required to have an Equal Opportunities Policy and a grievance redressal mechanism to deal with the complaints by trans persons, while maintaining confidentiality as far as the gender identity of the employees is concerned (Rule 12).

.....

Education

The Act imposes an obligation on educational institutions to provide inclusive education, opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others. Under the Transgender Persons Rules, the government is required to facilitate access to education for transgender persons and sensitise teachers and faculty in educational institutions to promote equality and gender diversity. All educational institutions must also constitute a committee that can address harassment and discrimination faced by transgender persons (Rule 10).

.....

Welfare Measures

There is an obligation on the government to provide access to welfare schemes, to take steps for the rescue, protection and rehabilitation of transgender persons and to protect the right of transgender persons to participate in cultural and recreational activities, to support the livelihood of transgender persons and provide them access to avenues for vocational training and self-employment (Section 14).

Right to Healthcare

Section 15 of the Act obligates the State to setup HIV sero-surveillance centres, provide healthcare facilities including hormonal therapy and gender-affirmative surgery and counselling to transgender persons. It mandates the review of medical curriculum and research for doctors to address their specific health issues, to facilitate access to hospitals and healthcare institutions for transgender persons and provide coverage of medical expenses, including a comprehensive insurance scheme for sex reassignment surgery, hormonal therapy or any other treatment for transgender persons. The Rules mandate the State to develop the necessary infrastructure including separate wards and washrooms for transgender persons and to build capacity of healthcare professionals by sensitising them to the healthcare needs and concerns of transgender persons.

.....

Offences

The enactment of the Transgender Persons Act has also provided for the recognition of certain acts of violence against transgender persons as criminal offences. These include: compelling or enticing a transgender person to indulge in forced or bonded labour, denying transgender persons access to a public place, forcing a transgender person to leave their household, village or other place of residence, harming, injuring or endangering the life, safety, health or well-being, whether mental or physical, of a transgender person, including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. All these offences are punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine (Section 18).

.....

National Council for Transgender Persons

The law sets up a National Council for Transgender Persons to advise the Central Government on the formulation of policies and programmes for transgender persons, monitor the policies, review the activities of the Government and redress the grievances of transgender persons.

03

YOGYAKARTA PRINCIPLES, 2006

The Yogyakarta Principles are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity. The principles affirm binding international legal standards with which all States must comply. They promise a different future where all people are born free and equal with dignity and rights.

The Yogyakarta Principles were the outcome of a convening of human rights experts in Yogyakarta, Indonesia and were drafted as guiding principles to protect the rights of sexual and gender minorities. The Yogyakarta Principles provide some important definitions including the definition for gender identity and sexual orientation.

The principles are motivated by a range of human rights violations committed against persons because of their sexual orientation and/or gender identity. The Yogyakarta Principles address the broad range of human rights standards and their application to issues of sexual orientation and gender identity. These include extrajudicial executions, violence and torture, access to justice, privacy, non-discrimination, rights to freedom of expression and assembly, employment, health, education, immigration and refugee issues, public participation, the right to family and a variety of other rights. Each principle is accompanied by detailed recommendations to States. The principles also emphasise that all actors have responsibilities to promote and protect human rights. Additional recommendations are therefore addressed to the United Nations human rights system, national human rights institutions, the media, non-governmental organizations, and others.

The Supreme Court relied on the Yogyakarta Principles in its decisions in *NALSA v. Union of India* and *Navtej Johar and Others v. Union of India*.

04

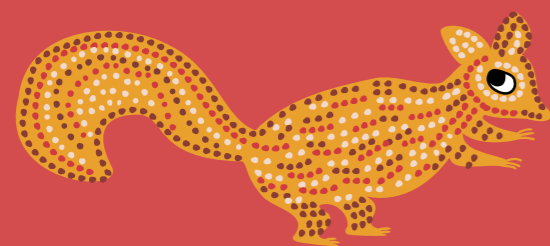
YP + 10 PRINCIPLES, 2017

These are Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles.

The YP plus 10 were adopted on 10 November 2017 to supplement the Yogyakarta Principles. The YP plus 10 emerged from the developments in international human rights law with the emerging understanding of violations suffered by persons on grounds of sexual orientation, gender identity, gender expression and sex characteristics.

The YP+10 contain 9 additional principles and 111 additional state obligations and offer definitions of previously not included terms such as 'gender expression'. The additional State obligations are related to areas such as torture, asylum, privacy, health and the protection of human rights defenders.





KEY DEFINITIONS

In the table below, some of the main terms relating to transgender rights are defined. This is provided for a better understanding for persons who may not be very familiar with these terms. There are also some definitions for legal terms that may be used in this Resource Book.

<u>GENDER BINARY</u>	A system in which gender is constructed into two strict categories of male or female. Gender identity is expected to align with the sex assigned at birth and gender expressions and roles fit traditional expectations.
<u>GENDER EXPRESSION</u>	Each person's presentation of their gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references, and further noting that gender expression may or may not conform to a person's gender identity;
<u>GENDER IDENTITY</u>	Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms. Gender identity, therefore, refers to an individual's self-identification as a man, woman, transgender or other identified category.
<u>HABEAS CORPUS</u>	The writ of habeas corpus is used to challenge an unlawful detention or illegal imprisonment. In a habeas corpus petition, a High Court or the Supreme Court can require that a person who is in illegal custody be produced before the Court.
<u>PERSON WITH INTERSEX VARIATIONS</u>	A person who at birth shows variation in their primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body.
<u>SEX CHARACTERISTICS</u>	Each person's physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty.
<u>SEXUAL ORIENTATION</u>	Each person's capacity for emotional, affectional and sexual attraction to, and intimate and sexual relations with, persons of a different gender or the same gender or more than one gender;
<u>TRANSGENDER PERSON</u>	A person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta. While "transgender" or "transgender person" or even "trans person" is generally a good term to use, term such as "transgenders" should be avoided
<u>TRANSMAN</u>	A transman is a transgender person who was assigned gender of a female at birth but whose gender identity is that of a man.
<u>TRANSWOMAN</u>	A transwoman is a transgender person who was assigned gender of a male at birth but whose gender identity is that of a woman.
<u>WRIT PETITION</u>	A writ petition is a formal written request or a petition to a High Court or the Supreme Court to direct a government body to either do something or stop doing something. A writ petition is filed when a citizen's fundamental or legal rights are violated.



JUDGMENT SUMMARIES

01

**THE RIGHT TO
SELF-DETERMINATION
OF GENDER IDENTITY**

ABOUT

THE RIGHT TO SELF-DETERMINATION OF GENDER IDENTITY

The right to equality has been the foundational basis for the development of the law on transgender rights in India, as the landscape of transgender rights has been significantly shaped by Court rulings on issues of equality and non-discrimination based on an individual's gender identity.

The decision of the Supreme Court in National Legal Services Authority (NALSA) v. Union of India in 2014 (“NALSA”) marked a watershed moment for equality jurisprudence on transgender rights in India. In NALSA, the Court granted legal recognition to transgender persons and held that the right to self-determine one’s gender identity was a key facet of an individual’s right to equality and non-discrimination under Articles 14 and 15 of the Constitution.

Where NALSA laid the foundation of recognition for transgender rights in India, in 2017, the Supreme Court in Retd. Justice K S Puttaswamy v. Union of India held that the right to privacy was a constitutionally protected right. Relying on the decision in NALSA, the Court held that an individual has the right to decisional autonomy over personal and intimate matters including one’s sexual orientation, gender identity and choice of partner, among other personal matters. The privacy decision in Justice K S Puttaswamy paved way for the decriminalisation of same-sex relations in India where the Supreme Court, in Navtej Johar v. Union of India held that Section 377 of the Indian Penal Code was unconstitutional to the extent that it criminalised same-sex relations between consenting adults.

The Supreme Court’s ruling in NALSA on an individual’s right to self-determination of their gender identity has been the foundation for most of the decisions of the Supreme Court and High Courts in the subsequent cases.

01

RIGHT IN QUESTION

The right to self-determination of gender identity as male, female or transgender.

CASE NUMBER

W.P. (C) No. 400 of 2012 & W.P. (C) No. 604 of 2013, decided on April 15, 2014.

COURT

Supreme Court of India

JUDGES

K. S. Radhakrishnan & A. K. Sikri, JJ.

CITATION

MANU/SC/0309/2014; 2014 INSC 275



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

FACTS

This was a public interest litigation filed by the National Legal Services Authority of India (NALSA) seeking the recognition of constitutional rights for transgender persons.

COURT DECISION AND REASONING

This was a landmark decision where for the first time the Supreme Court articulated the right to one’s gender identity. It defined “gender identity” to be the core of one’s personal self and based on self-determination and not surgical or medical procedures. No citizen can be discriminated on the ground of gender identity and all persons have the right to self-determine their gender identity as male, female or transgender. Any discrimination on the basis of gender identity would fall under discrimination on the basis of ‘sex’ under Article 15(1) of the constitution. The Court ruled that the freedom of expression protected under Article 19(1)(a) includes the right to freely express one’s gender through dress, words, actions or behaviour, and the right to life and autonomy under Article 21 of the Constitution protects one’s right of self-determination of gender. An individual’s gender identity is integral to their dignity and is at the core of “personal autonomy” and “self-determination”. No person should be subjected to any medical examination or biological test which would invade their right to privacy and their fundamental right to dignity under Article 21.

The Supreme Court laid down the following directions: 1. Transgender persons have the right to decide their self-identified gender and should get legal recognition of their gender identity, 2. They should be treated as a socially and educationally backward class of citizens and get reservation in education and public employment and 3. The Government should provide medical care, separate public toilets and frame social welfare schemes for transgender persons.

SIGNIFICANCE

For the first time the Supreme Court held that one’s gender identity can be self-determined, even in the absence of any medical intervention, and recognised the right to legal recognition of one’s gender identity as male, female or transgender. This case laid down the foundation for recognition of transgender rights in the country.

“ Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom and no one shall be forced to undergo medical procedures, including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity.”

“ Gender identity as already indicated forms the core of one’s personal self, based on self-identification, not on surgical or medical procedure. Gender identity, in our view, is an integral part of sex and no citizen can be discriminated on the ground of gender identity, including those who identify as third gender.”

JUSTICE K.S. RADHAKRISHNAN

National Legal Services Authority v. Union of India

02

Justice K.S. Puttaswamy v. Union of India

RIGHT IN QUESTION

Whether the right to privacy is a fundamental right under the Constitution.

CASE NUMBER

W.P. (C) No. 494 of 2012, decided on August 24, 2017.

COURT

Supreme Court of India

JUDGES

J. S. Khehar, C.J. & J. Chelameswar, S.A. Bobde, R. K. Agrawal, R.F. Nariman, A. M. Sapre, D.Y. Chandrachud, S. K. Kaul & S. Abdul Nazeer, JJ.

CITATION

MANU/SC/1044/2017; 2017 INSC 801



FACTS

Justice K.S. Puttaswamy, a retired judge of the Madras High Court, challenged the constitutional validity of the Aadhaar scheme and Act. He argued that the scheme in collecting and storing an individual's personal and biometric data violated the right to privacy. At the time that the case was presented before the Court, there were conflicting decisions on whether privacy was a fundamental right under the Constitution and the question was accordingly referred to a 9 Judge Bench for deliberation.

COURT DECISION AND REASONING

The 9 Judge Bench unanimously held that privacy was a constitutionally protected fundamental right under Articles 14, 19 and 21. The Court held that privacy is an attribute of human dignity. The right to privacy safeguards one's freedom to make personal choices and make decisions with respect to significant aspects of their life including personal intimacies (marriage, procreation and family) and sexual orientation which are at the core of an individual's dignity. The Court referred to the decision in NALSA to note that the right to privacy was a key facet of the right to equality and dignity and was an expression of an individual's autonomy, dignity and identity. Such a right was protected at the intersection of Articles 15 and 21. The Court then took this opportunity to critique the decision in Suresh Kumar Koushal v. Naz Foundation (2013), where the Supreme Court had rejected a challenge to Section 377 of the Indian Penal Code. It was observed that discrimination based on one's sexual orientation was deeply offensive to an individual's dignity and self-worth. The Supreme Court in Koushal had erred as a majoritarian opinion could not determine the exercise of fundamental rights. Additionally, the Court held in Koushal, the use of "so-called rights of LGBT persons" had been inappropriate. It noted that LGBT rights were founded on the right to life, privacy, and dignity and the identity of all individuals must be protected without discrimination because sexual orientation is an essential component of one's identity.

SIGNIFICANCE

This was a landmark case where the right to privacy was given recognition as a fundamental right under the Constitution. This was also the first instance where the rights of queer persons were given explicit recognition by the Court as the decision noted that the right to privacy protected one's autonomy when it came to determining their sexual orientation.

03

Navtej Singh Johar v. Union of India

RIGHT IN QUESTION

Whether Section 377 of the Indian Penal code violates the constitutional rights and is discriminatory on the ground of sexual orientation and gender identity.

CASE NUMBER

W.P. (CrI) No. 76 of 2016, decided on September 6, 2018.

COURT

Supreme Court of India

JUDGES

Dipak Misra, C.J. & A. M. Khanwilkar, Rohinton Fali Nariman, D. Y. Chandrachud, Indu Malhotra, JJ.

CITATION

MANU/SC/0947/2018; 2018 INSC 790



FACTS

This was a challenge to Section 377 of the Indian Penal Code (IPC) which criminalised sexual acts against the order of nature. Although the constitutionality of Section 377 of the IPC had previously been unsuccessfully challenged before the Supreme Court in 2013 Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors, the observations made in the privacy decision in Puttaswamy led to several fresh petitions being filed before the Court for the decriminalisation of same-sex relations.

COURT DECISION AND REASONING

A 5 Judge bench of the Supreme Court tested the constitutionality of Section 377 against the principles of equality, liberty, dignity under Articles 14, 19 and 21. The Court observed that Section 377 arbitrarily punishes individuals who engage in same sex relationships. Further, the Court held that Section 377 is manifestly arbitrary as it does not distinguish between consensual and non-consensual sexual acts between adults. It targeted people exercising certain choices and treated them as “less than humans” and encouraged prejudices and stereotypes which violates Article 14 guarantee of equality. The Court acknowledged that all persons, including LGBTQI individuals, had the right to express their choices without any fear and that Section 377 violates the fundamental right to freedom of expression. The Court also found Section 377 in violation of human dignity, decisional autonomy and the fundamental right to privacy. Every individual has the liberty to choose their sexual orientation, seek companionship and exercise it within their private space. As Section 377 inhibits the exercise of personal liberty to engage in voluntary sexual acts, it violates Article 21. Denying the right to determine one’s sexual orientation curtails the right to privacy of an individual. The Court upheld the right to equal citizenship of all members of the LGBTQI community and read down Section 377 to exclude consensual sexual relationships between adults, whether between same-sex individuals or otherwise.

SIGNIFICANCE

The five-judge bench unanimously read down Section 377 and decriminalised same-sex relations between consenting adults. It applies to all citizens, and not just to the LGBT community.

“ Bigoted and homophobic attitudes dehumanize the transgenders by denying them their dignity, personhood and above all, their basic human rights. It is important to realize that identity and sexual orientation cannot be silenced by oppression. Liberty, as the linchpin of our constitutional values, enables individuals to define and express their identity and individual identity has to be acknowledged and respected. The very existence of Section 377 IPC criminalising transgenders casts a great stigma on an already oppressed and discriminated class of people. This stigma, oppression and prejudice has to be eradicated and the transgenders have to progress from their narrow claustrophobic spaces of mere survival in hiding with their isolation and fears to enjoying the richness of living out of the shadows with full realization of their potential and equal opportunities in all walks of life.”

CHIEF JUSTICE DIPAK MISRA

Navtej Singh Johar v. Union of India

04

Anjali Guru Sanjana Jaan v. State of Maharashtra & Others

RIGHT IN QUESTION

Right to political participation for transwomen contesting for elections from wards reserved for women.

CASE NUMBER

W.P. (Stamp) No. 104 of 2021 decided on January 2, 2021

COURT

Bombay High Court (Aurangabad Bench)

JUDGE

Ravindra V. Ghughe, J.

CITATION

MANU/MH/0004/2021



FACTS

The Petitioner, Anjali Guru Sanjana Jaan, was a transwoman. She submitted her nomination form to contest for a seat in the village panchayat from a ward reserved for women-general category. The Returning Officer rejected her nomination because she was a transwoman. It was stated that there was no ward reserved for transgender persons in the village elections. The Petitioner approached the High Court seeking directions to the Returning Officer to accept her nomination and to assert her right to self-determination of her gender identity.

COURT DECISION AND REASONING

The Court held that the Constitution provided the right to self-identify one's gender, as recognised in NALSA. It also cited Section 4(2) of the Transgender Persons Act, 2019 which permitted a transgender person to have a right to self-perceived gender identity. In the present case, the Court recognised that the Petitioner identified as female and wanted to be legally recognised as a woman. The Court found that the Returning Officer was ignorant of the law and therefore directed that the Petitioner's nomination form be accepted, and she be permitted to contest the election from the ward and category under which she filed the nomination form.

SIGNIFICANCE

The judgment reiterated the right to self-determine one's gender, and the right of a transwoman to contest elections reserved for women. However, in its reasoning, the Court seemed to place some reliance on a statement by the Petitioner that she would 'not switch over to the male gender under any circumstances anytime in future during her lifetime' which can be problematic.

05

V. Vasanta Mogli v. State of Telangana

RIGHT IN QUESTION

Constitutional validity of the Telangana Eunuchs Act and whether it violates the fundamental rights of transgender persons.

CASE NUMBER

W.P. (PIL) Nos. 44, 355 of 2018 and 74 of 2020, decided on July 6, 2023

COURT

High Court of Telangana

JUDGES

Ujjal Bhuyan, C.J. & C. V. Bhaskar Reddy, J.

CITATION

MANU/TL/0911/2023



FACTS

The Petitioner challenged the constitutionality of the Telangana Eunuchs Act, 1329 Fasli, a 1919 legislation that mandated maintenance of a register of "eunuchs" as they are "suspected of kidnapping or emasculating boys or of committing unnatural offences or abetting the same" and also permitted the arrest of transgender persons without a warrant and made it a criminal offence for a transgender person to be found in female clothing in a public place.

COURT DECISION AND REASONING

The Court held that the provisions of the Telangana Eunuchs Act, 1329 Fasli were identical to the provisions of the Criminal Tribes Act, 1871 which was repealed in 1952. Under the Criminal Tribes Act, 1871 people were declared as criminal tribes and were put under continuous surveillance. Following the decisions of the Supreme Court in NALSA, Puttaswamy and Navtej Singh Johar, the Court found the Telangana Eunuchs Act was completely contrary to constitutional philosophy and was manifestly arbitrary as it criminalised the entire transgender community. The law was held to be violative of the human rights of the transgender community and an intrusion into their private sphere and their dignity. The Court held that the law was violative of Article 14 and Article 21 of the Constitution and declared it as unconstitutional. The Court also observed that despite the directions given in NALSA, no reservation has been provided to the transgender community for admission to educational institutions and for recruitment to public services. It held that until the Telangana Legislative Assembly enacts such a law, the State of Telangana should issue necessary government orders/administrative instructions providing for reservation to transgender persons. In a connected petition seeking coverage of transgender persons under the Aasara Pension Scheme, the Court held that transgender persons were one of the most deprived and neglected communities in the state and if widows, disabled persons, beedi workers, single women and persons living with HIV were entitled coverage under the Aasara Pension Scheme, transgender persons could not be excluded. The Court accordingly directed the government to ensure transgender persons should be covered under the Aasara Pension Scheme

SIGNIFICANCE

This judgement is significant in declaring the Telangana Eunuchs Act as being unconstitutional. It is also significant because the Court directed the state to provide reservations for transgender persons in education institutions and public employment, in addition to providing pension benefits.

02

**EQUAL OPPORTUNITY
IN PUBLIC
EMPLOYMENT**

ABOUT

EQUAL OPPORTUNITY IN PUBLIC EMPLOYMENT

The right to equal opportunity in public employment for transgender persons, including reservations, was laid down by the Supreme Court in *NALSA v. Union of India*. The Supreme Court, specifically in the context of public employment, directed that the Centre and the State Governments should take steps to treat trans persons as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.

This led to several instances where transgender persons approached the courts to seek access to public employment and for reservations. The cases under this section are broadly divided under the following three categories:

Discrimination due to Gender Identity:

In a number of cases, petitioners in seeking public employment, were discriminated against due to their gender identity. In many cases, petitioners did not have the option of applying as transgender persons. In some cases, after selection, they were asked to undergo medical tests and were then removed on account of their gender identity. They were not permitted legal recognition of their gender identity. Courts have come to the rescue and protected their right to equal opportunity in public employment.

Reservations in employment for transgender persons:

A large chunk of the cases relates to reservations for transgender persons. Despite the Supreme Court holding that reservations should be extended, the same has not been implemented by the central and state governments. While the Supreme Court held that trans persons be recognised as socially and educationally backward classes, which would amount to vertical reservations, the demand from the trans community has been for horizontal reservations so that their caste identity can also be recognised. This has been done by Karnataka which has provided 1% horizontal reservation for transgender persons in public employment. Many High Courts have directed State Governments to consider reservations. Despite these directions, reservations have not been implemented.

Concessions:

Some of the decisions relate specifically to concessions being provided to transgender persons in selection for employment, such as relaxations in age, physical exam standards, etc. This is important as it enables them to compete with others on an equal footing.

06

RIGHT IN QUESTION

Right to recognition of gender identity in public employment.

CASE NUMBER

W.P. No. 587 of 2014 and M.P. Nos. 1 and 2 of 2014, decided on April 17, 2014.

COURT

Madras High Court

JUDGE

S. Nagamuthu, J.

CITATION

MANU/TN/0759/2014



Nangai v. Superintendent of Police

FACTS

The Petitioner was assigned and registered as female at birth and all documents, including her birth certificate, medical records, family card and census data and the records of the all-girls' school and women's college she attended, identified her as female. She appeared and cleared the selection process of Grade II Police Constable (Women) and as part of her training, she underwent a medical examination. In the medical examination, she was declared as "transgender" and was forced to undergo a series of medical examinations intermittently totalling to 121 days of medical leave. The Board declared that she had missed her training, 'falsely' applied under the women's quota, and failed to appear in the final exams and terminated her. The Petitioner challenged this order of termination in the High Court.

COURT DECISION AND REASONING

The Court held that the Petitioner had been made to undergo medical examinations to prove that she is female and the same is unreasonable. It held that not treating the Petitioner as a female would be a violation of the right to equality, non-discrimination, freedom of speech and expression, life, and personal liberty guaranteed in the Constitution of India (Articles 14, 15, 16, 19(1)(a), 21) as upheld in *NALSA*. It held that Nangai was a woman and eligible for the post of a woman police constable. Noting that the Petitioner had not misled the Board about her gender, the Court set aside the order terminating Nangai's service and directed the Superintendent to reinstate her as a woman police constable.

SIGNIFICANCE

The Court recognised that compelling a person to undergo a medical examination of gender violated Article 21. It upheld a person's right to self-identify their own gender. It disregarded medical proof of gender and noted the consistent emphasis on binary gender identities in Indian and international documents.

07

G. Nagalakshmi v. Director General of Police [Nangai-II]

RIGHT IN QUESTION

Forced resignation due to discrimination based on gender identity can be set aside.

CASE NUMBER

W.P. No. 15223 of 2014, decided on June 24, 2014

COURT

Madras High Court

JUDGE

S. Nagamuthu, J.

CITATION

MANU/TN/2160/2014; (2014) 7 MLJ 452



FACTS

Nangai (name changed) was assigned female at birth. She was selected for the post of a woman police constable. She went through a medical check-up which included a gender test during her training. The results declared her as a "transsexual". Consequently, the Vice Principal of the Police Recruitment School asked her to submit a letter of resignation. She approached the court against her dismissal from the police constable post.

COURT DECISION AND REASONING

The Court had to decide whether the results of Nangai-II's medical test should supersede her self-declared gender identity. In its decision, the Court delved into literature by medical and mental health professionals to understand "transsexualism". The Court relied on the NALSA judgement to uphold the Petitioner's right to self-determine her gender. The Court also considered whether the Police Recruitment School responded to Nangai-II's resignation letter or had discriminated against her based on her gender identity. The Petitioner argued that she was forced to resign and that the letter was written involuntarily. This was based on her Scheduled Caste status and the lack of medical interventions. Furthermore, relying on the decision in Nangai v Superintendent of Police, the Court upheld the Petitioner's gender identity as "female". It set aside the order terminating her services and reinstated her in the same position.

SIGNIFICANCE

The case is crucial because the Court took into account how the Petitioner was forced to write a letter of resignation and overturned the termination order. It highlights the recognition by the Court of the Petitioner's transgender identity and Scheduled Caste status.

08

T. Thanusu v. The Secretary to Government of Tamil Nadu [Nangai-III]

RIGHT IN QUESTION

Right to equal opportunity, Right to self-determination.

CASE NUMBER

W.P. No. 16539 of 2014, decided on July 3, 2014.

COURT

Madras High Court

JUDGE

S. Nagamuthu, J.

CITATION

MANU/TN/0972/2014



FACTS

Nangai was selected for the post of Grade II woman police constable. Before her deputation, the recruitment board (Board) asked her to undergo a medical examination. The examination revealed the absence of a uterus in her body. Based on the medical examination report, the Board declared Nangai as a transgender person and revoked her employment. Nangai claimed that she identified as a woman, and this was reflected in all her identity documents. She sent repeated representations to the respective authorities to issue her appointment order and after receiving no response, approached the Madras High Court in a writ petition.

COURT DECISION AND REASONING

Nangai argued she identified as a woman and found being labelled as a transgender person unjust and humiliating. The Secretary of State refuted Nangai's argument, referring to a community certificate where her gender identity was listed as 'selvan' (male) instead of 'Selvi' (female). Further, they also referred to the medical report to declare that Nangai was a transgender person. The Court considered the question as to "who is a transgender person" and relied on the decision of the Madras High Court in Nangai v Superintendent of Police to explain the meaning of "transsexualism" and its relationship to the employment in the police. Further, the Court referred to the Supreme Court's decision in NALSA to affirm each individual's right to self-determine their gender identity. The Court suspended the order of termination issued by the Board and directed them to appoint Nangai as woman police constable within six weeks.

SIGNIFICANCE

The Court highlighted that the absence of uterus should be considered only as a congenital defect. Further, affirming one's right to self-determine their gender, it stated that medical examinations should not be the deciding factor for a person's gender identity.

09

Jackuline Mary v. The Superintendent of Police, Karur

RIGHT IN QUESTION

Right to self-determined gender identity in employment.

CASE NUMBER

W.P. No. 587 of 2014 & M.P. No. 1 & 2 of 2014, decided on April 17, 2014

COURT

Madras High Court

JUDGE

S. Nagamuthu, J.

CITATION

MANU/TN/0427/2014



FACTS

The Petitioner was recruited for the post of a woman police constable. During the initial medical examination after selection, the medical officer recorded her gender as “transgender”. The subsequent medical reports also noted that “she is transgender by birth”. Consequently, the State terminated her appointment on the ground that she concealed her gender and took unauthorised leave. The termination was challenged by the Petitioner in the High Court.

COURT DECISION AND REASONING

The Court observed that no statute, including the Registration of Births and Deaths Act, 1969, laid down a medical procedure to identify the sex of an infant at birth and the entry made in the register is based entirely on physical characteristics. Thus, there was no reason for the State to subject the Petitioner to a medical test to determine her sex/gender. If such a test was used for the purposes of recruitment, then entries in the birth register would also require such tests. The Court noted that all persons had the fundamental right to self-identify their gender under Article 19(1)(a). Since the Petitioner had declared her gender identity as female, she ought to be treated as female for all purposes. Treating her as not female based on medical examinations amounts to constraining her gender identity, which would be a violation of Articles 14, 15, 16, 19(1)(a) and 21 and held that she was eligible for the post of woman police constable.

SIGNIFICANCE

The Court affirmed the Petitioner’s self-determined gender identity as a woman. It recognised her right to self-identify her gender. The Court directed state authorities to ensure that they take steps to provide requisite separate facilities for transgender and intersex persons.

10

Sumita Kumari v. State of West Bengal

RIGHT IN QUESTION

Right to recognition of gender identity in employment.

CASE NUMBER

W.P. 8911 (W) of 2015, decided on April 17, 2014.

COURT

Calcutta High Court

JUDGE

Biswanath Somadder, J.

CITATION

MANU/WB/1489/2015



FACTS

Sumita Kumari was a transwoman who had applied to be an ASHA Karmee/social worker. Her application to be enrolled as an ASHA worker was rejected and Sumita accordingly approached the Court to challenge the rejection.

COURT DECISION AND REASONING

The Court considered whether Sumita faced any discrimination on the basis of her gender identity. It relied on a memo by the National Health Mission. According to the memo, only females who were married, divorced, or widowed were eligible to be ASHA Karmees/social workers. In other words, single women and single men were not eligible to apply. The Court held that there was no discrimination against transgender persons as the eligibility requirements were gender specific. It also stated that the criteria could have been discriminatory if men were allowed to apply, and only transgender persons were not allowed to apply. Thus, the Court held that Sumita’s ineligibility for employment as an ASHA Karmee was not discriminatory treatment.

SIGNIFICANCE

This is a negative judgment as it failed to recognise transwomen as “women” for the sake of employment as ASHA workers.

11

K. Prithika Yashini v. Chairman, Tamil Nadu Uniformed Services Recruitment Board

RIGHT IN QUESTION

Right to equal opportunity and concessions in public employment.

CASE NUMBER

W.P. No.15046 of 2015,
decided on November 3, 2015

COURT

Madras High Court

JUDGES

Sanjay Kishan Kaul, C.J. &
Pushpa Sathyanarayana, J.

CITATION

MANU/TN/4017/2015



FACTS

K. Prithika Yashini was a transwoman who applied for the post of Sub-Inspector. Despite the Supreme Court's judgment in NALSA, the application form for the selection did not account for "third gender" applicants. Prithika approached the Court to appear for the written examination as a transgender person.

COURT DECISION AND REASONING

The Court gave favourable interim orders allowing the Petitioner to participate in the written examination but even after this she was not called to the second stage of physical endurance test. Once again, the Petitioner obtained favourable orders to proceed further in the selection test process. Thereafter the Petitioner qualified in the physical measurement test, but in the physical endurance test, she completed the distance of 100 metres in 18.61 seconds, as against the benchmark of 17.50 seconds, i.e. had a delay of 1.11 seconds.

The Court held that the discrimination suffered by transgender persons would be difficult for any of the other two genders to realise. The Respondent failed to provide for the third gender in the application form and thus, the Petitioner had to rush to the Court to assert her rights. The Court held that in the physical endurance test, a difference of 1.11 seconds should not come in the way of the Petitioner in being considered for recruitment, especially as no other transgender person was selected as a candidate. Thus, even if one person is recruited under this category, it would be the Petitioner.

SIGNIFICANCE

This is an important case where the Court noted the significance of public employment opportunities for the transgender community. The Court held that the social impact of allowing the Petitioner to be appointed as a Sub-Inspector would strengthen the case of transgender persons who may avail these opportunities in the future.

12

Atri Kar v. Union of India & Others

RIGHT IN QUESTION

Right to participate in the employment process as a transgender person.

CASE NUMBER

W.P. No. 6151(W) of 2017,
decided on March 16, 2017.

COURT

Calcutta High Court

JUDGE

Debangsu Basak, J.

CITATION

MANU/WB/1684/2017



FACTS

Atri Kar was a transgender person who wished to participate in the selection process conducted by the State Bank of India ("SBI") to recruit Probationary Officers. However, the application form did not contain an option for transgender applicants. The Petitioner approached the High Court to be allowed to participate in the selection process as a transgender person.

COURT DECISION AND REASONING

The Court deliberated on whether SBI was an instrument of Central or State Government and whether the directions in NALSA are binding on SBI. It also considered whether not including "third gender" in the gender column in the application form violated Atri's fundamental rights. The Bank argued that NALSA is applicable only to the Central and State Governments. As SBI is neither, the directions in NALSA would not be applicable to it. Hence, SBI is not required to provide a separate column for third gender applicants. The Court held that the directions issued to the Centre and State Governments in NALSA would extend to an authority understood to be 'State' within the meaning of Article 12 of the Constitution of India, 1950. Hence, the directions would also bind SBI. Further, it observed that transgender persons cannot be discriminated based on their gender identity and failure to provide a separate column for third gender persons amounts to discrimination under Article 15. The Court directed SBI to allow the Petitioner to participate in the selection process as a transgender person and to extend the benefits of the directions in NALSA to the Petitioner.

SIGNIFICANCE

This Court held that the directions and ruling in NALSA bind the instrumentalities of the State, and not just the Central and State Governments. It clarified that the directions also apply to the State Bank of India.

13

Manju v. State of Tamil Nadu

RIGHT IN QUESTION

Right to concession in physical test eligibility in public employment.

CASE NUMBER

W.P. 22551 of 2017, decided on August 23, 2017.

COURT

Madras High Court

JUDGE

S.M. Subramaniam, J.

CITATION

MANU/TN/5373/2017



FACTS

Manju, a transwoman had applied for the post of a police constable. She had passed the written test and successfully completed most of the activities in the physical test. However, she did not complete the 100-meter sprint within the required time limit and was disqualified. She approached the Madras High Court challenging the disqualification and seeking concessions.

COURT DECISION AND REASONING

The Petitioner sought for some leniency in the physical race timings and sought to be considered for appointment. The government argued that the minimum required eligibility fixed in the recruitment rules cannot be compromised as any compromise in the eligibility criteria will dilute the very purpose of the services. The Court dismissed the petition and held that a concession was already shown to the Petitioner as she was allowed to participate in the 100 m running event, along with the women candidates. Such being the case, no further concession is required to be shown in respect of the minimum time limit prescribed for completion of the 100 m run.

SIGNIFICANCE

This is a negative judgement, and the Madras High Court was not willing to consider providing any further concessions to the Petitioner, as it held that she was already given concessions as provided to women. In subsequent decisions of the Madras High Court it has been held that concessions should be provided to trans persons on par with the concessions provided to destitute women and persons from other categories, and the courts have taken a far more trans friendly view after this judgement.

14

Swapna & Others v. Chief Secretary & Others

RIGHT IN QUESTION

Right to reservation in public employment.

CASE NUMBER

W.P. No. 31091 of 2013, decided on July 5, 2016.

COURT

Madras High Court

JUDGES

Sanjay Kishan Kaul, C.J. & R. Mahadevan, J.

CITATION

MANU/TN/4374/2016



FACTS

Swapna, Grace, Selvi, Living Smile Vidya & Selvam filed a petition for reservation in employment and education in Tamil Nadu. This petition prayed for the Respondents to permit transgender persons to appear in all examination under the category of female and transman under the category of male and create a separate class or group for transgender persons in all education and employment opportunities. It also sought for 3% reservation in the field of education and employment for transgender persons.

COURT DECISION AND REASONING

The issue before the court was of beneficial consideration for the employment of the members of the transgender community. The Petitioners submitted that the State Government had issued a G.O. (Ms.) No.28, dated 06.04.2015, including transgender persons under the Most Backward Class ("MBC") category. They submitted that only 3328 transgender persons in Tamil Nadu have been issued identity cards. Thus, instead of giving reservation as part of MBC category, it may be useful by giving a percentage or a post-based reservation, i.e. say at least one post be made available in different categories. The Court was of the view that the plea of the Petitioners merits consideration and directed the Respondents to look into the same and take a decision in this matter within six months from the date of the judgment.

SIGNIFICANCE

This order recognised the shortfalls of including transgender persons under the MBC category and the government was directed to consider giving transgender persons a percentage or post-based reservation in public employment. Following this judgement, other orders have also been passed by the Madras High Court to the state government directing them to consider providing horizontal reservation to the transgender community in public employment.

15

Ganga Kumari v.
State of Rajasthan

RIGHT IN QUESTION

Right to
non-discrimination in
public employment.

CASE NUMBER

S.B Civil Writ Petition No.
14006 of 2016, decided on
November 13, 2017.

COURT

High Court of Rajasthan

JUDGE

Dinesh Mehta, J.

CITATION

MANU/RH/1466/2017



FACTS

The Petitioner, a transgender person, had applied for the post of a woman police constable. Despite being qualified and successfully clearing the written examination and the physical efficiency tests, she was denied an appointment letter because her medical report termed her a “hermaphrodite”. This was challenged by her in the High Court.

COURT DECISION AND REASONING

The Court held that in the light of the Supreme Court verdict in NALSA, the Petitioner could not be denied her fundamental rights merely because of gender identity. It held that transgender persons are human beings, irrespective of their gender identity, that they are persons and by virtue of Article 5 of the Constitution, they are citizens. The Constitution is meant for all persons, which means all living beings of the human race and the Petitioner being transgender is also a citizen of India. It held that the Petitioner cannot be denied her right of appointment, which is protected and guaranteed by Articles 16 (2) and 21 of the Constitution and that the denial of appointment and refusal to provide place of posting to the Petitioner is clearly contrary to Articles 14 & 16 of the Constitution. It stated that the Petitioner has the right to self-identify her gender as female and directed the Respondents to issue an order of appointment to the Petitioner and permit her to join duties within a period of six weeks and on failure to do so, it directed that she will be entitled to all the emoluments such as salary, dearness allowance etc. The Court directed that the Petitioner shall be entitled to notional benefits from the date when the candidate immediately lower to her had joined.

SIGNIFICANCE

The Court observed that asking candidates to disclose their ‘sex’ in the application amounted to a violation of the right to privacy under Article 21 and also held that unless the job requires information on the ‘sex’ of a person, the relevant column in forms should be titled ‘gender’. Due to this judgement, Ganga Kumari became the first transgender constable in the Rajasthan police force.

16

The Chairman v. Aradhana

RIGHT IN QUESTION

Right to concessions
and relaxations in
age to be provided to
transgender persons in
public employment.

CASE NUMBER

W.A 330 of 2018, decided on
February 22, 2018.

COURT

Madras High Court

JUDGES

C.T. Selvam &
N. Sathish Kumar, JJ.

CITATION

MANU/TN/7842/2018



FACTS

Aradhana, a transwoman, filed a petition before Madras High Court against an advertisement inviting applications for the post of Grade II constable. She argued that the advertisement did not allow a relaxation in the age limit of applications submitted by transgender persons. A Single Judge had passed an interim order, directing the Chairman of the Tamil Nadu Uniformed Services Recruitment Board (“Board”) to keep one post vacant for Aradhana. The Chairman filed an appeal against the order in the Madras High Court.

COURT DECISION AND REASONING

The issue before the Court was whether the interim order passed by the single Judge was permissible. The Court referred to the Supreme Court’s judgement in NALSA to argue that transgender persons were eligible for reservations in education and public employment. It held that in light of the NALSA decision, reservations in age permissible to destitute widows and Ex-Servicemen and the like should be extended also to transgender persons and also that every concession, relaxation of conditions made in any form of public employment which is made to other categories should be made available to transgender persons. Thus, it disposed the appeal and upheld the single judge’s interim order to keep one post vacant for Aradhana.

SIGNIFICANCE

This case was significant in relaxing the conditions for public employment for transgender persons. In addition, the Court emphasised the social exclusion and oppression faced by transgender persons which limits their access to opportunities.

17

Rano v. State of Uttarakhand

RIGHT IN QUESTION

Implementation of the directions of the Supreme Court in NALSA.

CASE NUMBER

W.P. (CrI.) No. 1794 of 2018 & W.P. (CrI.) 1785 of 2018, decided on September 28, 2018

COURT

High Court of Uttarakhand

JUDGES

Rajiv Sharma, C.J. & Manoj Kumar Tiwari, J.

CITATION

MANU/UC/0784/2018



FACTS

Rano and Rajni Rawat Kinnar were transgender persons who filed separate petitions before the High court of Uttarakhand for protection of the rights of transgender persons in line with the decision in NALSA. The Court adjudicated both the cases together as the issues were similar. The Petitioners sought protection for their right to life and liberty from the court.

COURT DECISION AND REASONING

The Court cited the Supreme Court decision in NALSA to state that transgender persons had a right to equality under the Constitution in Article 14 and the rights to life, non-discrimination, liberty, and privacy. It noted the discrimination and marginalisation faced by transgender persons in seeking social services, education, and employment. The Court noted that the government of Uttarakhand had failed to implement the Supreme Court's directions and had not put in place any social welfare measures to protect transgender rights. Thus, the Court passed several directions for the protection of rights of transgender persons and some of the directions are as follows:

- Implementing reservations in education & public employment and to frame a scheme within 6 months.
- Providing free access to public spaces.
- Providing free medical and housing facilities in 6 months
- Registering cases against any persons forcibly removing transgender persons from their family.
- Forming a state transgender welfare board within six months of the judgment.

SIGNIFICANCE

This was the first judgement that affirmed the rights of transgender persons in Uttarakhand and provided detailed directions for their realisation. Despite these detailed directions, many are still not complied with, especially providing reservations in public employment.

18

Pallabi Chakraborty v. State of West Bengal

RIGHT IN QUESTION

Right to participate in public employment as a transgender person.

CASE NUMBER

W.P. 3962 of 2021, decided on February 11, 2021

COURT

Calcutta High Court

JUDGE

Rajashekhar Mantha, J.

CITATION

MANU/WB/0097/2021



FACTS

The Petitioner in this case was assigned male at birth. Later, by an affidavit before the Judicial Magistrate, the Petitioner identified as a transgender person. The Petitioner filed this petition to participate in the selection process of police constables instituted by the West Bengal Police Directorate and sought for posts to be provided for the transgender category.

COURT DECISION AND REASONING

The High Court held that the Petitioner had joined public employment as a 'lady' with the Maidan Police Station. It held that having joined public employment although on a contractual basis as a lady civic volunteer, the Petitioner cannot be permitted to turn around and now claim the status of transgender. However, the Court noted that there was no Grievance Redressal Mechanism set up either in the State or the police force and directed the Chief Secretary of the State to take immediate steps to set it up, as required by Section 11 of the Transgender Persons (Protection of Rights) Act 2019.

SIGNIFICANCE

This is a negative judgement as it went against the principles of the Supreme Court in NALSA which held that a person is legally entitled to determine their gender identity as male, female or transgender. The Court erroneously held that the Petitioner could not claim her identity as a transgender person once she had claimed employment as a woman. However, this is one of the first cases under the Transgender Persons Act that ordered the setting up of a Grievance Redressal Mechanism under the Act.

19

Matam Gangabhavani v. State Of Andhra Pradesh

RIGHT IN QUESTION

Right to reservations for transgender persons in public employment.

CASE NUMBER

W.P. No. 16770 of 2019, decided on January 21, 2022

COURT

High Court of Andhra Pradesh

JUDGE

M. Satyanarayana Murthy, J.

CITATION

MANU/AP/0085/2022



FACTS

A petition was filed challenging a recruitment notification issued the Government of Andhra Pradesh for being violative of Articles 14, 15, 19 and 21 as it did not provide for separate reservation for transgender persons.

COURT DECISION AND REASONING

The Court held that not providing separate categorisation for transgender persons was arbitrary on the part of the State, and therefore went against the mandate of Article 14. The Court adopted the dicta of NALSA, which directed the Centre and States to take steps to treat transgender persons as a socially and educationally backward class (SEBC) of citizens and extend the benefits of reservations in educational institutions and public employment to them. Reservation as a SEBC is vertical reservation, while reservation based on gender identity is horizontal reservation. Many High Court decisions have directed the government to provide reservation to transgender persons based on their gender identity and not for being SEBC. The Court here disagreed with this approach and reiterated that in NALSA the Supreme Court had asked for transgender persons to be treated as a SEBC and should therefore be receiving vertical reservation. The Court also held that after NALSA, neither the Transgender Persons (Protection of Rights) Act 2019 Act nor the Rules provided any reservation to transgender persons, except providing access to employment. Therefore, in the absence of any steps taken by the State, failure of its instrumentalities to provide reservation to transgender persons does not make the notification invalid because the obligation to provide reservations was on the Centre and State.

SIGNIFICANCE

This is once again a negative judgement as it did not consider the claim for horizontal reservations for transgender persons, which has been provided for by Karnataka and did not impose any accountability on the State government for its failure to provide reservations.

20

Saratha v. The Member Secretary, Tamil Nadu Uniformed Services Recruitment Board

RIGHT IN QUESTION

Right to reservations and concessions for trans persons in public employment.

CASE NUMBER

W.P. Nos. 15316, 15376 of 2020, W.P. Nos. 32618, 15911, 16549, 15920, 1163 and 33320 of 2019, decided on March 2, 2022

COURT

Madras High Court

JUDGE

M. S. Ramesh, J.

CITATION

MANU/TN/1651/2022 579



FACTS

A writ petition was filed challenging the concessions and relaxations granted by the Tamil Nadu Uniform Services Recruitment Board (TNUSRB) for transgender candidates in the notifications calling for applications to the post of Grade-II Police Constables.

COURT DECISION AND REASONING

The High Court distinguished reservations from concessions and relaxations noting that concessions and relaxations, are tools to enable reserved category candidates to compete and seek the benefit of reservation. The Government had provided reservations to include transwomen under the 30% quota for women but had said that transmen would only be considered under the general category. The Court held that the failure of the State to provide special reservation for transgender persons violated the directions in NALSA. It also held that the relaxation of upper age limit in applying for the posts cannot be termed to be a 'reservation' but was a concession. Depriving transmen from availing the benefit of relaxations was a violation of their right to self-determination as well as the rights under Articles 14 and 16(1) and therefore unconstitutional. The Court quashed the disqualification of the petitioners and passed the following directions:

- The TNUSRB was directed to immediately subject the petitioners to the necessary physical tests in accordance with the relaxed norms applicable for women candidates and complete the process within 8 weeks.
- Government of Tamil Nadu was recommended to provide special reservations for transgender persons in future public employments.
- Government of Tamil Nadu was also recommended to provide relaxations in the physical measurement tests, endurance tests and physical efficiency tests for transmen and transgender persons on par with the concessions extended to women candidates and other socially and economically backward classes.

SIGNIFICANCE

This is an important ruling where the Court distinguished the need for affirmative action benefits for transmen and ruled that transgender persons must be given a separate category of reservation.

“ The failure to provide any kind of reservation for the TGs in the male category and placing them on par with the general category candidates, is violative of Articles 14 and 16(1) and is not only unconstitutional, but is also illegal since it defies the direction to provide reservation in public employment, as ordered in NALSA; Deprivation of the relaxations and concessions offered to female candidates in the physical measurement tests, endurance tests and physical efficiency tests to the TGs, who recognise themselves as Male or Third Gender, is arbitrary and unreasonable, apart from infringing their fundamental right under Article 16(1).”

JUSTICE M.S. RAMESH

Saratha v. The Member Secretary, Tamil Nadu Uniformed Services Recruitment Board

21

RIGHT IN QUESTION

Right to equal opportunity in public employment.

CASE NUMBER

W.P. (C) 1033 of 2017, Order dated September 8, 2022

COURT

Supreme Court of India

JUDGES

D. Y. Chandrachud & Hima Kohli, JJ.

CITATION

MANU/SCOR/99343/2022



Shanavi Ponnusamy v. Ministry of Civil Aviation & Another

FACTS

The Petitioner sought employment as a member of the cabin crew in Air India based on an advertisement for recruitment in the ‘female category’. She passed the Preliminary Medical Examination and participated in the Group Dynamics (GD) and Personality Assessment Test (PAT) but was not selected as she did not get the minimum qualifying marks for the SC category. The Petitioner challenged this under Article 32 of the Constitution.

COURT DECISION AND REASONING

The Supreme Court recognised that the petition raised broader issues beyond the immediate claim for employment by the Petitioner. The Court emphasised that the Transgender Persons Act, 2019 under Section 9, prohibits discrimination against transgender persons in matters of employment, by both public and private establishments. The law also mandates the State to introduce measures for reasonable accommodation and inclusive policies in matters of employment. It referred to the decision in NALSA and the provisions under Section 16 and 17 of the Transgender Persons Act, 2019 and directed the Central Government to collaborate with the National Council for Transgender Persons to devise a policy framework to provide reasonable accommodation for transgender persons in employment. The Court noted that the policy should cover all establishments under the 2019 Act and ensure non-discrimination in recruitment, promotion, and other employment-related issues. The Union Government was instructed to frame a policy and to consult with stakeholders in doing so.

SIGNIFICANCE

The decision in Shanavi’s case is significant as it led to the Court addressing the issue of employment opportunities for transgender persons and equality of opportunity beyond just the individual case of the petitioner and the Court directed the Government to take the necessary steps to devise a framework for providing employment.

“ Transgender persons routinely face multiple forms of oppression, social exclusion and discrimination, especially in the field of healthcare, employment and education. Gender diverse persons, including transgender persons, continue to face barriers in accessing equal employment opportunities, especially in the formal sector, due to the operation of gender stereotypes. Gender stereotypes in the workplace disproportionately impact transgender persons for not subscribing to societal norms about appropriate ‘feminine’ and ‘masculine’ appearances and mannerisms.”

JUSTICE D. Y. CHANDRACHUD

Shanavi Ponnusamy v. Ministry of Civil Aviation & Another

22

RIGHT IN QUESTION

Right to undergo sex reassignment surgery during employment.

CASE NUMBER

Civil Appeal No.5178 of 2004 decided on August 11, 2004.

COURT

Supreme Court of India

JUDGES

Dr. Arijit Pasayat & C. K. Thakker, JJ.

CITATION

2004 INSC 438; (2004) 6 SCC 708



Neha Singh v. State of Uttar Pradesh

FACTS

The Petitioner who was employed as a woman constable in the UP Police, identified as male. Having been diagnosed with gender dysphoria by an authorised medical practitioner, the Petitioner was desirous of undergoing sex reassignment surgery (SRS) and applied to the Director General of Police for sanction but received no response and therefore was constrained to file the petition.

COURT DECISION AND REASONING

It was argued that in view of the direction of the Supreme Court under NALSA, the Respondents are not justified in withholding the application of the Petitioner. It was also argued that Section 15 of the Transgender Persons (Protection of Rights) Act, 2019, deals with health care facilities including Sex Reassignment Surgery and hormonal therapy. The Court held that if a person suffers from gender dysphoria, such a person does possess a constitutionally recognised right to get his/her gender changed through surgical intervention. It held that if this vested right in a person is not acknowledged, it would only encourage ‘gender identity disorder syndrome’ and at times such a problem may be fatal as such a person may suffer from disorder, anxiety, depression, negative self-image and dislike of one’s sexual anatomy. Thus, it held that there was no justification for the Director General of Police to withhold the application of the petitioner and directed him to consider the application and dispose of it.

SIGNIFICANCE

Not only did the Court recognise the constitutional right to get sex reassignment surgery, it also asked the State government whether it has framed any law in compliance with directions issued by the Supreme Court in NALSA and directed it to frame such rules Act at par with the Central legislation that has been referred to hereinabove and file a comprehensive affidavit as to what steps have been taken in compliance.

23

Mrinal Barik v. State of West Bengal & Others

RIGHT IN QUESTION

Right to reservation in public employment.

CASE NUMBER

WPA 21508 of 2023, decided on June 14, 2024.

COURT

Calcutta High Court

JUDGE

Rajasekhar Mantha, J.

CITATION

MANU/WB/1431/2024



FACTS

The Petitioner, a transgender person, appeared for the Teacher Eligibility Test (TET) in West Bengal. The Petitioner alleged that the recruitment process for the TET was discriminatory and did not accommodate the needs and rights of transgender candidates and argued that the lack of provisions for transgender persons in the TET recruitment process was in violation of their fundamental rights under the Constitution and the Supreme Court's directives in the NALSA.

COURT DECISION AND REASONING

The Court noted that in terms of the judgement in NALSA, reservation had not yet been made in the State for transgender persons. In those circumstances, the Court directed the Chief Secretary of the Government of West Bengal to ensure 1% reservation for transgender persons in all public employment in the State. It also directed the Secretary, West Bengal Board of Primary Education to arrange for interview and counselling of the Petitioner as a special case and recruit her as an Assistant Teacher in the primary section and held that the Petitioner's appointment shall be made against present and future vacancies and appropriate relaxation to be made in the instant case for the petitioner by the Principal Secretary, School Education Department to ensure her appointment.

SIGNIFICANCE

This is an important case for securing the right to equal opportunities for transgender persons and pursuant to this case, the state of West Bengal has been mandated to provide 1% reservation in all public employment opportunities for transgender persons.

24

Rakshika Raj v. State of Tamil Nadu

RIGHT IN QUESTION

Right to horizontal reservations.

CASE NUMBER

W.P. No. 6967 of 2022 & W.M.P. No. 7002 of 2022, decided on April 8, 2024

COURT

Madras High Court

JUDGE

G. K. Ilanthiraiyan, J.

CITATION

MANU/TN/3176/2024



FACTS

The state of Tamil Nadu issued a government order granting reservations to transgender persons under the Most Backward Class (MBC) category. As per the order, transgender persons were to be treated as a separate category and could avail vertical reservations rather than categorising them as per their self-determined gender identity and giving them the benefit of horizontal reservations. A petition was filed challenging this order.

COURT DECISION AND REASONING

The Court held that NALSA clearly establishes the transgender identity as a separate gender identity. Therefore, it was held that it was manifestly arbitrary to then not grant horizontal reservations to transgender persons. The impugned order was struck down in violation of Articles 14, 15, 16, 19 and 21.

SIGNIFICANCE

This case marked an important development for the rights of transgender persons in the state of Tamil Nadu as the Court recognised that in order for affirmative action benefits to be an effective means or addressing the historical discrimination and marginalisation faced by transgender persons, reservation policies must adopt an intersectional approach.

03

**LEGAL RECOGNITION
OF CHANGE IN
NAME & GENDER**

ABOUT

LEGAL RECOGNITION OF CHANGE IN NAME & GENDER

One of the biggest hurdles that transgender persons face is the change of name and gender in their legal documents such as their birth certificates, passport, PAN Card, Aadhaar and educational documents. This right is recognised by the Supreme Court in the NALSA judgement, where the Court upheld transgender persons' right to self - determine their gender identity and directed the Centre and State Governments to grant legal recognition of their gender identity as male, female or as third gender.

In addition to this, The Transgender Persons (Protection of Rights) Act, 2019 in Section 7(3) also provides that a person who has been issued a certificate of identity as transgender under Section 6 or a revised certificate as male or female under Section 7 shall be entitled to change their name in their birth certificate and all other official documents relating to the identity of such person.

Despite these legal provisions, transgender persons often have to run from pillar to post to get their name and gender changed and recognised in legal documents and are compelled to approach the courts when authorities do not carry out such change. Allowing transgender persons to easily change their gender marker and name on government-identification (ID) documents is an important change for trans persons as they face frequent mistreatment and discrimination and legal gender affirmation is critical. Thus, there is a need to increase structural support for trans individuals, including enactment of state policies easing legal gender affirmation.

The issue of name and gender change has been raised before the courts by transgender and intersex persons for change of their educational certificates, change in birth certificates and changes in their service records. In *Mulla Faizal v. State of Gujarat*, the Court made distinction between intersex persons and transgender persons and placed an obligation on the authorities to change name and gender in birth certificates. In *Vihaan Peethambar v. Manipal University*, the Karnataka High Court took the opportunity to address the issue of barriers to change of name and gender in educational documents for transgender persons so that they are not driven to courts in every case. The cases included in this chapter illustrate some of the systemic barriers and bureaucratic delays that continue to plague transgender persons in their attempts to seek legal recognition of their gender identity.

25

Mulla Faizal v. State of Gujarat

RIGHT IN QUESTION

Right to change name and gender in one's birth certificate.

CASE NUMBER

Special C.A. No. 1202 of 1999, decided on February 16, 2000.

COURT

High Court of Gujarat

JUDGES

D. M. Dharmadhikari, C.J. & C. K. Thakker, J.

CITATION

MANU/GJ/1098/2000



FACTS

Mulla Faizal was assigned and recorded as female in his birth certificate, despite having intersex variations. As an adult, he obtained medical and psychological certificates confirming his gender as male and underwent surgical procedures for the same. When he approached the District Registrar (Births and Deaths) to change his name & gender on his birth certificate, his application was rejected. Faizal filed a civil suit against the Registrar, which was dismissed by a Single Judge. He then filed an appeal before the High Court of Gujarat.

COURT DECISION AND REASONING

The Court had to decide whether Mulla Faizal was entitled to change his name and gender in his birth certificate. The District Registrar (Births and Deaths) argued that under Section 15 of The Registration of Births and Deaths Act, 1969, changes are only allowed in case of erroneous entries. The Court held that Section 15 of the Act must be read with the Rules which impose an obligation on the Registrar to make any necessary changes to correct an erroneous entry. The Court held that the change in the entries in the Register is sought not on the basis of change of sex, but on the basis that the Appellant was born as a natural male although with some deformity in his sexual organ and that it would not be proper for the Court to relegate the Appellant to an onerous remedy of civil suit. The Court directed the Respondent to hold an enquiry on the application made by the Appellant for change of entry of sex in the Register of Births after giving him notice and to complete it within three months and pass orders of granting change in the entry regarding sex in the Register of Births and issue the new certificate to the Appellant.

SIGNIFICANCE

This case was significant because the Court made a distinction between intersex persons and transgender persons and placed an obligation on the authorities to change name and gender on birth certificates.

26

Vinod H.N v. State of Karnataka

RIGHT IN QUESTION

Right of an intersex person to change their name and gender marker in identity documents.

CASE NUMBER

W.P. 32978 of 2013, decided on October 8, 2013.

COURT

High Court of Karnataka

JUDGE

A. S. Bopanna, J.

CITATION

MANU/KA/3949/2013



FACTS

Vinod H.N., the Petitioner, was born with intersex variations. In his birth documents, this was listed as a medical condition called "severe perianal hypospadias". Vinod identified as male and wanted to change his name to Vinod H.N in all identity documents. He filed a writ petition before the High Court seeking a name change. He also submitted his medical records with details of all medical procedures he had undergone for medical transition.

COURT DECISION AND REASONING

The issue before the Court was whether Vinod's request for name and gender change on the documents can be accepted. The Court referred to the decision in Mulla Faizal v. State of Gujarat, which dealt with an intersex person's right to change their name and gender in the birth register. The High Court held that it is for the authorities before whom such request is made by the Petitioner to make necessary enquiries keeping in view the medical records relied on by the Petitioner. Thus, it directed the Respondents to consider the representations made by the Petitioner along with the necessary documents and after enquiry to carry out the necessary changes in the appropriate registers and the other documents maintained by the Respondents within three months.

SIGNIFICANCE

The Court maintained that an intersex person could have their identity documentation changed to reflect their self-identified gender.

27

Chanchal Bhattacharya v. State of West Bengal

RIGHT IN QUESTION

Right to change name and gender identity in educational certificates.

CASE NUMBER

W.P. No. 30295W of 2015, decided on January 28, 2016.

COURT

Calcutta High Court

JUDGE

Dipankar Datta, J.

CITATION

MANU/WB/1699/2016



FACTS

The Petitioner's son identified as male but had been assigned female at birth. He then underwent gender affirmative surgery and got his name and gender changed. When his father applied for a change of his name and gender in his educational certificates from the Council of Higher Secondary Education, it was rejected. Thereafter his father challenged this rejection.

COURT DECISION AND REASONING

The Petitioner relied on the Supreme Court decision in NALSA and the decisions of the Madras High Court to challenge the Council's order of rejection. The Council argued that it was not mandated to issue new educational certificates under any statute. The Court held that the Petitioner's son would in his future life have to rely on the certificates issued in his previous name and therefore there was a need for proper directions being passed to pre-empt any inconvenience to him. It also noted that the change of his name in his certificates would always be viewed with suspicion as how could a boy study in a girls' school. Despite these concerns, the Court held that the relief could not be denied to the Petitioner and that the absence of any statutory regime would not stand as an impediment and due recognition should be given to his gender identity. No one had argued that 'Tamal' and 'Tamali' is not one and the same individual. Once there is no dispute about his identity, the Board ought to have given recognition to the choice exercised by the child of the petitioner in tune with his constitutional right by directing to make changes on the certificates so as to enable him to obtain all facilities/benefits flowing from such certificates. Thus, The Court revoked the order of the Council and directed them to issue revised certificates to Tamal reflecting his self-determined gender identity and chosen name within 4 weeks from the date of the Court order.

SIGNIFICANCE

This case upheld the right to get name and gender identity in one's educational certificates and also highlighted that the absence of legislation cannot be a ground for denial of rights to transgender persons.

28

K. Gowtham Subramaniam v. Controller of Examination, Anna University & Others

RIGHT IN QUESTION

Right to get name and gender changed in educational certificates.

CASE NUMBER

W.P. No. 7536 of 2017, decided on June 1, 2017

COURT

Madras High Court

JUDGE

Pushpa Sathyanarayana, J.

CITATION

MANU/TN/2324/2017



FACTS

Gowtham, a transman had been assigned female sex at birth had subsequently undergone gender affirmation surgery and changed his name and gender identity in all identity documents. He then approached the Respondents requesting revised school and college certificates reflecting his chosen name and gender identity, but the Respondents failed to revise his certificates. Gowtham then approached the Madras High Court.

COURT DECISION AND REASONING

This case was litigated before the Transgender Persons Act 2019 was passed, and the Respondents held that there was no legislation mandating them to change the certificates. The Court observed that merely because the Petitioner belongs to the transgender community, he cannot be made to run from pillar to post on the ground that there are no rules available permitting such changes. The Court relied on the counselling and medical certificates which stated that the Petitioner had undergone sex re-assignment, and also the Aadhar Card in his present name to state that the Petitioner had produced sufficient documents to prove his identity, and the authorities ought to have considered his application. The Court then directed the Respondents to make appropriate changes in all the relevant records of the Petitioner within 8 weeks.

SIGNIFICANCE

The Court upheld the Petitioner's right to seek change of name and gender in his educational certificates, even in the absence of any rules or legislation.

29

Myra Grace Bandikalla v. Airport Authority of India & Others

RIGHT IN QUESTION

The right of a transgender person to seek change of name and gender in service records.

CASE NUMBER

W.P. (L.) No. 1976 of 2018, decided on July 4, 2018

COURT

Bombay High Court

JUDGES

Naresh H. Patil & G. S. Kulkarni, JJ.

CITATION

MANU/MH/4127/2018



FACTS

The Petitioner Myra Grace Bandikalla, a transwoman had been working as an Air Traffic Controller for the Airport Authority of India. The Petitioner had proposed to have sex reassignment surgery, and she had got her name and gender changed in the official gazette and Aadhar Card and Pan Card. She wanted to have her changed name and gender reflected in her service records and also required a No Objection Certificate (NOC) from her employer to apply for a passport.

COURT DECISION AND REASONING

The Court relied on the decision in NALSA to reiterate that the term 'transgender' must be understood as an umbrella term encompassing diverse identities and experiences. Medical intervention in the form of surgery is not the basis on which an individual's transgender identity must be determined. A person's gender identity must be guided by principles of self-determination, dignity and freedom and no one can be compelled to undergo medical or surgical procedures to determine their gender identity. The Court issued ad-interim relief to the Petitioner by directing the Respondents to incorporate her chosen name and gender in their employment records and to issue any NOC she may require for her application for issuance of a Passport or a visa

SIGNIFICANCE

This case re-affirmed the right to self-identification for transgender persons and non-requirement of a surgical or any other medical interventions to change their name and gender identity in legal documents, especially government service records.

30

Jeeva M. v. State of Karnataka, Department of Pre-University Education

RIGHT IN QUESTION

Right to change of name and gender in educational certificates.

CASE NUMBER

W.P. No. 12113 of 2019, decided on March 26, 2019

COURT

High Court of Karnataka

JUDGE

S. Sujatha, J.

CITATION

MANU/KA/1975/2019



FACTS

The Petitioner was a transman who wanted to change his name and gender from female to male in his educational certificates, specifically his SSLC and Pre-University certificate. He had made representations to the respondents requesting them to change his name and gender in his educational certificates, but the Department of Pre-University Education had refused to take any action. The Petitioner then approached the High Court of Karnataka.

COURT DECISION AND REASONING

The Court cited the precedents where under similar circumstances, the relevant authorities had been directed to issue revised documentation to a transgender person. Further, the Court reiterated the dicta in NALSA to uphold the right to self-determination and observed that it is for the state and central governments to take the steps to protect this right. It is therefore mandatory for the State of Karnataka represented by the Principal Secretary of the Educational Department to issue instructions to the authorities / institutions concerned to act in accordance with the decision in NALSA. The Court accordingly directed that the Principal Secretary, Education Department, State of Karnataka shall consider Jeeva's application and carry out necessary changes in the certificates and records, which reflects the Petitioner's gender identity. It further directed the State of Karnataka to issue a Circular to all educational authorities directing them to provide revised documents to transgender persons, reflecting changes in the name and self-identified gender in accordance with the guidelines in NALSA.

SIGNIFICANCE

This decision is important because the Court passed an order directing the Education Department of the State to issue a Circular to all authorities to carry out the change of name and gender in the educational certificates of transgender persons as per their self-identified gender so that transpersons are not compelled to approach the courts. Thereafter, a Circular to direct such change of name and gender was indeed issued making it easier for changes to be made in educational certificates.

31

Christina Lobo vs.
State of Karnataka

RIGHT IN QUESTION

Right to seek change of name and gender in educational certificates when change of gender identity done prior to the Transgender Persons (Protection of Rights) Act 2019.

CASE NUMBER

W.P. No. 8024 of 2020, decided on October 1, 2020.

COURT

High Court of Karnataka

JUDGE

John Michael Cunha, J.

CITATION

MANU/KA/3968/2020



FACTS

The Petitioner approached the respondent authorities to seek change of her name and gender change in her CBSE, Pre-university and her MBBS records. She had undergone gender affirmative surgery and legally changed her name and gender prior to the Act being enacted. The Respondents had rejected her request and hence she approached the High Court.

COURT DECISION AND REASONING

It was argued by the Respondents that the Petitioner must first obtain a certificate of identity under the Act and only thereafter she can seek change of name in her legal documents. The Court held that as ruled in the NALSA judgement, transgender persons have the right to decide their self-identity. It reiterated that gender, constitutes the core of one's sense of being as well as an integral part of a person's identity and that Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution. Self- determination of gender is an integral part of personal autonomy, self-expression and personal liberty guaranteed under Article 21 of the Constitution of India. The Court also relied on Rule 3 of the Transgender Persons (Protection of Rights) Rules, 2020 which provides that transgender persons who have officially recorded their change in gender, prior to the coming into force of the Act shall not be required to apply for a certificate of identity. Since the identity of the Petitioner was officially recorded in her Aadhaar card and passport, she is not required to make an application for certificate of her identity. The Court allowed the petition and directed the Respondents to issue the revised pre-university, CBSE and MBBS certificates

SIGNIFICANCE

The decision is significant as the Court held that persons who had undergone change of name and gender identity prior to the coming into force of the Act would not be required to seek an identity card to change their name and gender in legal documents.

32

Chinder Pal Singh v. The
Chief Secretary, Govt. of
Rajasthan

RIGHT IN QUESTION

Right to change name and gender in service records.

CASE NUMBER

S.B. Civil Writ Petition No. 14044 of 2021, decided on May 25, 2023

COURT

High Court of Rajasthan (Jaipur Bench)

JUDGE

Anoop Kumar Dhand, J.

CITATION

MANU/RH/0646/2023



FACTS

The Petitioner was assigned female at birth, and was employed as a Physical Training Instructor, under the General Female category. The Petitioner underwent sex reassignment surgery (SRS) and changed his documents to reflect his identity as male and sought a change in his service records which was not done. The Petitioner therefore approached the High Court.

COURT DECISION AND REASONING

In this case the Respondents argued that if the Petitioner has changed his gender after undergoing surgery, then he should get a declaration from the Civil Court and only thereafter the name and gender of petitioner can be changed in the service record. The Court held that the very purpose of bringing in force the 2019 Act was to give recognition to transgender persons as they perceived themselves and to provide them appropriate changed certificates and identity documents. Thus it held that Section 7 is required to be interpreted in a manner that transgender persons who are issued a certificate under Section 6 or who had undergone gender reassignment procedure prior to coming into force of the Act, both are entitled to a certificate indicating change in gender. Denying such a right to a person who had already undergone gender reassignment would frustrate the very purpose of the Act and held that the Petitioner was entitled to get the change of his name and gender in his service record. As he was also married and had a child if the identity of Petitioner is not corrected in his service record, it would be difficult for his family to get service benefits. Thus, the Court directed the Petitioner to apply before the District Magistrate who should issue the required certificate to the Petitioner within 60 days and thereafter get the change done in his service record.

SIGNIFICANCE

The High Court directed the Chief Secretary of the State to instruct all District Magistrates to ensure implementation of the provisions and guarantees provided by the Transgender Persons (Protection of Rights) Act, 2019 including the establishment of a grievance redressal mechanism forum in each district.

33

Vihaan Peethambar v. Manipal University & Others

RIGHT IN QUESTION

Right to seek change of name and gender in degree certificates.

CASE NUMBER

W.P. No. 12606 of 2023, dated January 5, 2024.

COURT

High Court of Karnataka

JUDGE

Ravi V. Hosmani, J.

CITATION

MANU/KA/0824/2024



FACTS

The Petitioner in this case was a transman who wanted to change his name and gender in his degree certificate which was denied by the Respondent University. Therefore, he filed a petition seeking direction for such change in name and gender in educational records.

COURT DECISION AND REASONING

Before the High Court the Respondent University argued that applications for changes in degree certificates would be considered only if made within a short span of time, and since the Petitioner had approached the university after several years it had rejected it. The Court rejected the Respondent's contentions and held that there is no dispute about the Petitioner having undergone gender change surgery, his change of gender and name and that he had already obtained change of name and gender in his bachelor's degree Certificate and other public records. Relying on the judgement of the Supreme Court in NALSA and the Karnataka High Court in Christina Lobo's case, where it was held that the right to legal recognition of gender identity was guaranteed under Article 21 of the constitution, it directed the Petitioner to submit his original marks cards and degree certificate to the University and directed the University to take action within 4 weeks to issue the revised degree certificate.

SIGNIFICANCE

This case is significant because the Court held that as there are innumerable instances of change of name and gender awaiting consideration before Universities and Educational Institutions, it would be appropriate for the authorities to process applications for change of name and gender upon receipt of requests.

04

**RIGHT TO MARRIAGE,
RELATIONSHIPS &
FAMILY**

ABOUT

RIGHT TO MARRIAGE, RELATIONSHIPS & FAMILY

The right to marry and enter into relationships with a partner of one's choice is a key facet of the right to privacy, as was held by the Supreme Court in Justice K.S Puttaswamy v. Union of India. Such rights confer on an individual autonomy and freedom over matters that concern their intimate and personal lives and there are several cases where Courts have elaborated on the nature of these rights for transgender persons.

Courts have upheld the right to self-determination of gender identity and that even where the law is limited in its understanding of marriages as a union between a man and a woman, it must recognise marriages between transgender persons in line with their self-determined gender. The decision of the High Court of Madras in Arunkumar & Other v. The Inspector General of Registration was the first case in India where the right to marry under Article 21 of the constitution has been affirmed for transgender persons and holding that 'bride' under the Hindu Marriage Act would cover transwomen.

Further, Courts have also offered protection against violence from natal families as done in the case of Shivani 'Shivy' Bhat v. State of NCT of Delhi and recognised of family and kinship like the guru-chela system which are distinct to transgender communities when deciding questions of inheritance and succession.

In *Sweety v. General Public*, the High Court of Himachal Pradesh reiterated transgender persons' entitlements to legal and constitutional protection to uphold the property inheritance customs within the Guru-Chela system, regardless of a person's religious identity. More recently, the case of *Supriyo v. Union of India*, decided by the Supreme Court is among the most significant cases to have been decided by the Supreme Court on the rights of LGBTQI+ persons in India. Although the Court rejected the argument that the Constitution of India protects a fundamental right to marry for all persons, it did uphold the rights of transgender persons in heterosexual relationships to have their marriage recognised under the existing laws. The cases dealing with marriage, property and familial rights have given Courts the opportunity to expansively interpret the provisions under personal laws to ensure that a technical and restricted reading of the law from a binary lens is not perpetuated to defeat the rights of transgender persons.

34

Shivani 'Shivy' Bhat v.
State of NCT of Delhi

RIGHT IN QUESTION

The right of trans persons not to be wrongfully confined by their family and subjected to harassment due to their gender identity.

CASE NUMBER

W.P. (Cri) 2133 of 2015, decided on October 5, 2015.

COURT

Delhi High Court

JUDGE

Siddharth Mridul, J.

CITATION

MANU/DE/2912/2015



FACTS

The Petitioner, an Indian-origin citizen of the USA, was pursuing his further studies there. When Shivy was visiting his ancestral home in Uttar Pradesh (UP) his passport and green card were confiscated, he was beaten and harassed by his family and forcibly enrolled in a local college to "cure" Shivy's gender non-conformity. When Shivy managed to contact a local NGO and get temporary shelter, his mother registered a complaint of kidnapping at the New Agra Police Station. The UP and New Delhi police harassed Shivy and the persons who were providing him support and Shivy then approached the High Court.

COURT DECISION AND REASONING

The Court had to determine whether Shivy's family was appropriate in confining him. It held that Shivy had been subjected to illegal confinement, harassment and rebuke by his family and the police of UP and Delhi. In response to an interim order of the Court, Shivy's parents had retracted their police complaint and agreed to support his return to the US to continue his studies. The Court appreciated the parents' changed stance. Further, it issued an order to the UP and Delhi police to refrain from harassing transgender persons. The Court upheld the right of all persons to certain inalienable rights. It also placed sexual orientation and gender identity as essential aspects of the fundamental right to self-determination, dignity and freedom.

SIGNIFICANCE

This judgment emphasised the marginalisation and exclusion of transgender persons in society. Activists considered the judgement significant for its affirmation of the rights of transgender men and recognition of the diversity of the transgender community. However, groups also noted that the judgement used female pronouns and not male pronouns to refer to Shivy.

35

Sweety v. General Public

RIGHT IN QUESTION

Right of trans persons under the Guru-Chela system to inherit property.

CASE NUMBER

R.S.A. No. 17 of 2016, decided on June 22, 2016

COURT

High Court of Himachal Pradesh

JUDGE

Tarlok Singh Chauhan, J.

CITATION

MANU/HP/1242/2016



FACTS

The Appellant in this case had filed a suit for declaration as the only successor in interest for property left behind by the deceased Rajia alias Ratni Nani who was her chela. It was claimed that the Appellant was her Guru and the only legal heir and hence the property should devolve to her. The lower court dismissed the suit, and so did the appellate court. The appeal finally came to the High Court.

COURT DECISION AND REASONING

The High Court had to decide the question of succession for transgender persons who are part of the Guru-Chela system. The lower courts had dismissed her claim on the ground that such a claim was not valid under the Hindu Succession Act, 1956. However the High Court held as there was no religion of the Appellant stated in her suit, the lower courts could not have invoked the Hindu Succession Act. The Court relied on the judgement in NALSA and held that transgender persons enjoy legal and constitutional protection. It held that the Appellant had clearly established and proved that the deceased was her chela and in all the documents like ration card, bank account etc. the name of the Appellant had been reflected as the Guru. Since there was evidence produced to show that the Appellant was the Guru of the deceased and all of them are belonging to the 'Kinner' society, it held that the Courts below had wrongly dismissed the suit. Therefore in light of the guru-chela system, the property in issue would devolve upon the Appellant.

SIGNIFICANCE

This case is important as it recognised succession and inheritance rights within the Guru-Chela system of the transgender community.

36

Tessy James v. The Director General of Police, Thiruvananthapuram

RIGHT IN QUESTION

Right of transgender persons to not be compelled to reside in their parental home.

CASE NUMBER

W.P. (Cri.) No. 215 of 2018, decided on June 12, 2018

COURT

High Court of Kerala

JUDGES

V. Chitambaresh & K. P. Jyothindranath, JJ.

CITATION

MANU/KE/1319/2018



FACTS

Tessy James, the mother of an adult transwoman filed a writ of habeas corpus, claiming that some members of the transgender community had taken away her "son". The issue before the High Court was whether Tessy James' daughter, who was a transwoman, could be directed to be produced and handed over to her mother.

COURT DECISION AND REASONING

Tessy James' daughter appeared before the Court. She claimed that she was a transwoman and did not suffer from any mental aberrations. As her mother alleged that she had a history of psychiatric treatment, the Court directed that her daughter to undergo a medical examination. The report stated that she was suffering from gender dysphoria and is a transgender person. Along with the medical reports, the Court also took note of her self-determined gender identity, speech, mannerisms, and clothing to affirm her gender identity. The Court held that all persons were entitled to freedom of speech and expression under Article 19(1)(a) of the Constitution of India, recognised that "gender identity lies at the core of one's personal identity, gender expression and presentation and, therefore, it will have to be protected under Article 19(1)(a) of the Constitution of India." The Court held that Tessy James' daughter had the right to associate with like-minded people and that she could not be compelled to reside at her parental home. Thus, it dismissed the mother's habeas corpus petition.

SIGNIFICANCE

This is a significant case where the Court rejected the parental authority over a transgender person in circumstances where such authority was being used to deny them their right to self-determination and their freedom of expression of their gender. It took note of the transgender person's circumstances to uphold their autonomy and protect them from any coercion by the natal family.

37

Mansur Rahman v. The Superintendent of Police & Another

RIGHT IN QUESTION

Right of trans couples to get protection from family other persons.

CASE NUMBER

CRL. O.P. No. 25269 of 2018, decided on October 30, 2018.

COURT

Madras High Court

JUDGE

P.N. Prakash, J.

CITATION

MANU/TN/7837/2018



FACTS

The Petitioner was in love with Janifer, a transwoman and married her on 25 July 2018. The Petitioner's parents and persons belonging to a political outfit were harassing the petitioner and threatening him because of his marriage to a transgender person. Thus, the Petitioner was seeking police protection.

COURT DECISION AND REASONING

The primary issue before the Court was whether police protection for couples should include couples consisting of transgender persons. The Court relied on the judgement of the Supreme Court in *Lata Singh v. State of Uttar Pradesh & Anr.* (2006), which noted that the instrumentalities of the State should encourage inter-caste and inter-religious marriage and give such couples sufficient police protection. The Court believed that the *Lata Singh* precedent must not only be applicable to inter-caste/inter-religious couples but also transgender couples as well. The Court directed the Petitioner to submit a representation to the Superintendent of Police seeking protection. Once such a representation was submitted, the Court directed the Superintendent to conduct an enquiry and provide protection to the couple

SIGNIFICANCE

The Court affirmed the marriage of the Petitioner with Ms. Janifer and extended the application of *Lata Singh* case to couples consisting of transgender persons. This way the Court sought to give police protection to couples facing harassment and intimidation from families for marrying a person outside the 'socially acceptable' binary gender identity.

38

Arunkumar & Other v. The Inspector General of Registration & Others

RIGHT IN QUESTION

Right of a transwoman to be recognised as a woman, and have the right to marry under the Hindu Marriage Act, 1955.

CASE NUMBER

W.P. (MD) No. 4125 & W.M.P (MD) No. 3220 of 2019, decided on April 22, 2019

COURT

Madras High Court (Madurai Bench)

JUDGE

G. R. Swaminathan, J.

CITATION

MANU/TN/1403/2019



FACTS

Arunkumar got married to Sreeja, a transwoman, on 31 October 2018 at a temple in Tuticorin, as per Hindu rites and customs. When they submitted a memorandum for registration of marriage to the Joint Registrar No. II of Tuticorin, the Registrar refused to register the same. The Petitioners challenged this decision before the District Registrar, who rejected it. This decision was challenged before the Madras High Court.

COURT DECISION AND REASONING

The question in this case was whether 'bride', as mentioned in Section 5 of the Hindu Marriage Act (HMA) included transwomen as well. The Court stated that a marriage solemnised between a male and a transwoman, both professing Hindu religion, was a valid marriage. Transgender persons had the right to determine their self-identified gender, as upheld by the Supreme Court in NALSA and could not be excluded from the scope of the provisions of the HMA. The Court also held that the expression 'bride' in the HMA cannot have a static meaning and must be interpreted considering the legal system as it exists today. Sreeja has chosen to express her gender identity as that of a woman and this falls within the domain of her personal autonomy and involves her right to privacy and dignity and it is not for the State authorities to question her self-determination of gender. Therefore it held that 'bride' under the HMA would include transwomen and also intersex persons. The Court held that refusal to register the marriage of Ms. Sreeja would amount to a violation of her fundamental rights under Articles 14, 19(1) (a), 21 and 25 of the Constitution of India and directed the Joint Registrar No. II to register the marriage of the Petitioners.

The Court also addressed a second issue on sex reassignment surgery (SRS) or Intersex Genital Mutilation (IGM) of intersex children and held that no one shall be forced to undergo medical procedures as a requirement for legal recognition of their gender identity and directed the Government of Tamil Nadu to issue a Government Order to ban SRS on intersex infants and children.

SIGNIFICANCE

This is the first case in India where the right to marry has been affirmed for transgender persons and it has been held that 'bride' under the Hindu Marriage Act would cover transwomen. The court also noted that since the first Petitioner was Dalit, they were entitled to obtain financial incentives for Inter-Caste Marriages.

“ This is the first case in India where the right to marry has been affirmed for transgender persons and holding that ‘bride’ under the Hindu Marriage Act would cover transwomen. The court also noted that since the first Petitioner was Dalit, they were entitled to obtain financial incentives for Inter-Caste Marriages.

“ Seen in the light of the march of law, the expression ‘bride’ occurring in Section 5 of the Hindu Marriage Act, 1955 will have to include within its meaning not only a woman but also a transwoman. It would also include an intersex person/transgender person who identifies herself as a woman. The only consideration is how the person perceives herself.”

JUSTICE G.R. SWAMINATHAN

Arunkumar & Other v. The Inspector General of Registration & Others

39

Chinmayee Jena v. State of Odisha & Others

RIGHT IN QUESTION

Right of trans persons to be in a live-in relationship and to seek the production of one's partner when forcibly taken away.

CASE NUMBER

W.P. (Cri.) No. 57 of 2020, decided on August 24, 2020

COURT

High Court of Orissa

JUDGES

S. K. Mishra & Savitri Ratho, JJ.

CITATION

MANU/OR/0200/2020



FACTS

The case concerned the Petitioner, a transman who had been in a consensual relationship with his romantic partner since 2017 and chose to be in a live-in relationship together at their apartment in Bhubaneswar. After his partner's mother and uncle, the Respondents came to the couple's apartment and forcibly took her away, the Petitioner filed a complaint before the local police and also filed the present petition for habeas corpus before this Court.

COURT DECISION AND REASONING

The issue before the Court was whether the Petitioner had the right to be in live-in relationship with a person of his choice of the same gender and to seek a writ of habeas corpus when she was taken away by her parents. The Court in an interim order directed the SP of Jaipur to ascertain the wishes of his partner and his partner was present before the Court via video conference and categorically stated that she wanted to re-join her life with the Petitioner without any further delay. The Court cited the decision in NALSA and the Yogyakarta Principles and unequivocally upheld the Petitioner's right to self-determination of gender identity and held that the couple has the right to decide their sexual preferences including the right to stay as live-in partners as consenting adults. The Court also relied on the decision in Navtej Johar v. Union of India to hold that the petitioner had the right to have a live-in relationship with a partner of his choice. Consequently, the Court allowed the petition and directed that Rashmi's mother should not prevent them from living together and granted the couple police protection.

SIGNIFICANCE

This judgment is extremely important as the first judicial decision in India that explicitly recognises the rights of transgender persons to enter into a live-in relationship with the partner of their choice, regardless of the gender identity of the partner.

40

Poonam Rani v. State of Uttar Pradesh

RIGHT IN QUESTION

The right of two women in a relationship to seek protection from the police.

CASE NUMBER

W.P. (C) No. 1213 of 2021, decided on January 20, 2021

COURT

Allahabad High Court

JUDGES

Mahesh Chandra Tripathi & Sanjay Kumar Pachori, JJ.

CITATION

MANU/UP/0110/2021



FACTS

The Petitioners, two women aged 21 and 22, were in a live-in relationship for a few years in the state of Uttar Pradesh. They faced opposition from their families who were threatening to use coercive measures. They sought protection from their families to continue living peacefully.

COURT DECISION AND REASONING

The issue before the court was of the protection of the same-sex couple who faced resistance at the hands of their family members regarding their sexual orientation. The Petitioners referred to Navtej Singh Johar v. Union of India and Sultana Mirza v. State of U.P. to depict the difference between the law and societal reality. The prayer sought was not to adopt any coercive process against the petitioners and for a further direction to family members not to interfere in the peaceful living of the petitioners. The Court, relied on the decision in Navtej Johar where it was held that sexual orientation is an intrinsic element of liberty, dignity, privacy, individual autonomy and equality. An individual has the right to love and to a partner, and to find fulfilment in a same-sex relationship is essential to a society which believes in freedom. Giving due consideration to the circumstances of the couple, the Court directed the Senior Superintendent of Police to extend suitable protection to them if they approach the Police Station.

SIGNIFICANCE

This case enforces the law laid down in Navtej Johar with respect to same-sex relationships. It recognised the negative and positive obligations on the State. By allowing for the protection of same-sex couples by the police, the Court directed the State to carry out its positive obligation.

RIGHT IN QUESTION

Right of same sex couples to protection from police harassment.

CASE NUMBER

W.P. No. 7284 of 2021,
decided on June 7, 2021

COURT

Madras High Court

JUDGE

N. Anand Venkatesh, J.

CITATION

MANU/TN/3963/2021



S. Sushma & Others. v. Commissioner of Police, Greater Chennai Police & Others

FACTS

The petitioners in this case were a lesbian couple aged 22 and 20 years whose parents opposed the relationship and filed missing complaints with the police when their daughters fled. Facing harassment by the police, the petitioners approached the Madras High Court seeking a direction seek protection.

COURT DECISION AND REASONING

The Court went beyond the scope of the issue faced by the Petitioners to use this opportunity to raise awareness on the rights of LGBTQI persons. A series of interim orders that were passed in the case, and the Court directed the police to ensure the safety and protection of the Petitioners and not harass them. Subsequently, the Court directed the Petitioners and their parents to undergo counselling and also directed the parents to withdraw the missing persons complaints. The Court observed that any meaningful attempt to eliminate discrimination must be informed by constitutional values of personal autonomy, privacy, liberty and dignity. The Court held that until the legislature comes up with a law on the issue, the LGBTQIA+ community cannot be left vulnerable and laid down the following guidelines on partners in live-in relationships: The police should close complaints for missing persons once they find that they are in a consensual relationship.

- The Ministry of Social Justice and Empowerment must enlist and publicise NGOs which would be able to help people from the LGBTQIA+ community. It must also provide shelter in existing government short-stay homes for people from the community who need it. Any person who faces an issue by virtue of belonging to the LGBTQIA+ community may approach any of the enlisted NGOs which must maintain confidential records of such person, providing aggregate data to the Ministry every 6 months.
- Members of the LGBTQIA+ community should be supported either by providing monetary support or legal assistance through the District Legal Services Authority.
- There should be sensitisation programs on the rights of LGBTQIA+ persons for the police, legal services authorities, the lower judiciary, health professionals, educational institutions, public and private workplaces, and parents of LGBTQIA+ persons.
- The Tamil Nadu government must have consultations and draft a state policy for LGBTQIA+ persons which should consider the recognition to a Deed of Familial Association to protect the right to relationships.

SIGNIFICANCE

The Court upheld the rights of LGBTQI+ persons of legal capacity to enter into consensual relationships and express their sexual orientation and gender freely without any coercion or arbitrary interference by families or the State.

“A law cannot be effective without it being acknowledged by the society and such an awakening in the society is not going to happen overnight. It requires regular deliberation, and it has to necessarily fall out very strongly from the constitutional institutions and I believe that the judiciary and particularly the constitutional courts have a major role to play in spreading this awareness and awakening the society. I sincerely hope that the legislature also starts evincing more interest on this very important issue. This is more so since people, especially the present generation have started talking more about it and they are desperately wanting to find a solution at least to the extent that persons of the LGBTQIA+ community are left to live peacefully. Till the legislature comes up with an enactment, the LGBTQIA+ community cannot be left in a vulnerable atmosphere where there is no guarantee for their protection and safety.”

JUSTICE ANAND VENKATESH

S. Sushma & Others

V. Commissioner of Police, Greater Chennai Police & Others

42

Supriyo & Ors. v.
Union of India

RIGHT IN QUESTION

Right to marry for all persons irrespective of one's sexual orientation and gender identity.

CASE NUMBER

W.P. (C) No. 1011 of 2022,
decided on October 17, 2023

COURT

Supreme Court of India

JUDGES

D. Y. Chandrachud, C.J. &
S. K. Kaul, Ravindra Bhat,
Hima Kohli & P. S. Narasimha, JJ.

CITATION

MANU/SC/1155/2023; 2023
INSC 920



FACTS

There were a series of petitions filed before the Supreme Court challenging the constitutional validity of the Special Marriage Act, 1954 ("SMA") on the ground that Section 4(c) of the Act only recognises marriages between a male and a female and this amounts to discrimination as it denies transgender persons and persons of the same sex getting married. The petitions sought that the Supreme court should read the SMA to include marriage for all 'persons' irrespective of sexual orientation and gender identity.

COURT DECISION AND REASONING

The case was decided by a 5-Judge Bench. The majority and minority opinions unanimously held that there is no fundamental right to marry guaranteed by the Constitution. The Court held that the right to marry could only be a statutory right guaranteed under the Special Marriage Act and not a fundamental right. Justice D Y Chandrachud, the Chief Justice in his minority opinion held that queer couples have the right to form civil unions, holding that each person's right to intimate associations is protected under the right to freedom of speech and expression under Article 19(1)(a) of the Constitution. Justice S.K. Kaul concurred with the Chief Justice in his separate opinion, noting that the right to form a union is available to all individuals regardless of their sexual orientation and gender identity. The majority however, while noting that individuals have the right to form relationships with a partner of their choosing, held that such right could not read to include a civil right to union as ordering a social institution would require a separate legal framework which would include a bouquet of other rights that are ancillary to marriage. However, the Court ruled positively on the right of transgender persons to marry. Transgender and intersex persons who identify as male or female, have the right to marry members of the opposite sex under the Special Marriage Act and all other laws. The laws must be harmoniously interpreted, especially in view of the enactment of the Transgender Persons Act, 2019 and the provisions of the laws on marriage must not be read to exclude transgender and intersex persons as that would amount to discrimination.

SIGNIFICANCE

This is among the most significant cases to have been decided by the Supreme Court in the recent years on the issues of rights of LGBTQI+ persons in India paving way for legal recognition of marriages between transgender persons and also granting them access to the ancillary benefits including adoption, insurance benefits and social security benefits that a spouse may be entitled to as per law.

“ The laws governing marriage are framed in the context of a heterosexual relationship. Since a transgender person can be in a heterosexual relationship like a cis- male or cis-female, a union between a transwoman and a transman, or a transwoman and a cisman, or a transman and a ciswoman can be registered under Marriage laws. The transgender community consists of inter alia transgender men and transgender women. A transgender man has the right to marry a cisgender woman under the laws governing marriage in the country, including personal laws.

Similarly, a transgender woman has the right to marry a cisgender man. A transgender man and a transgender woman can also marry. Intersex persons who identify as a man or a woman and seek to enter into a heterosexual marriage would also have a right to marry. Any other interpretation of the laws governing marriage would be contrary to Section 3 of the Transgender Persons Act and Article 15 of the Constitution.”

CHIEF JUSTICE D.Y. CHANDRACHUD

Supriyo Supriya Chakraborty & Anr. v. Union of India

43

Kantaro Kondagari v.
State of Odisha & Others

RIGHT IN QUESTION

Right of transgender persons to claim family pension on the death of a parent.

CASE NUMBER

W.P. (C) No. 4779 of 2022, decided on May 20, 2022

COURT

The High Court of Orissa

JUDGE

A. K. Mohapatra, J.

CITATION

MANU/OR/0292/2022



FACTS

The Petitioner's father was employed with the Rural Development Department, Government of Odisha, and after his death, the pension benefits were disbursed to his wife. After her death, the Petitioner being the unmarried daughter, had claimed the pension benefits under Rule 56 of the Odisha Civil Services (Pension) Rules 1992. The Petitioner's request was granted at the Department level; however, the Principal Accountant General (A&E) did not take the necessary steps to release the pension funds on the grounds that the Petitioner did not meet the criteria for being an unmarried daughter to whom the funds could be disbursed. The Petitioner had accordingly approached the High Court.

COURT DECISION AND REASONING

The High Court of Orissa acknowledged the Petitioner's right to receive the family pension as an unmarried daughter under Rule 56(5)(d) of the Odisha Civil Services (Pension) Rules, 1992. The Court referenced the NALSA judgment upholding the rights of transgender individuals to self-identify their gender and mandates legal recognition and protection of these rights by the state and central governments. The Court noted that the discriminatory treatment of the Petitioner violated Articles 14 and 21 of the constitution and ordered the Principal Accountant General to process and disburse the family pension to the Petitioner within six weeks.

SIGNIFICANCE

This is a significant ruling as it recognised the right of transgender persons to avail the benefits of pension schemes, and the Court held that no discrimination could be made against a transwoman who would also be considered a 'daughter' as a beneficiary for this purpose.

44

XXX v. The Health Secretary,
Director of Health Services

RIGHT IN QUESTION

Right to self-determination and parental rights for intersex children.

CASE NUMBER

W.P. (C) No. 19610 of 2022, decided on August 7, 2023

COURT

High Court of Kerala

JUDGE

V. G. Arun, J.

CITATION

MANU/KE/2253/2023



FACTS

A petition was filed by a parents of a child born with intersex variations seeking mandamus to conduct a genital reconstructive surgery to bring the child up as female. Though the Karyotype Report-46XX was indicative of the child being female, no doctor was willing to conduct the surgery without direction from a competent court.

COURT DECISION AND REASONING

The Court held that as the parents were looking for permission to conduct non-consensual sex affirmative surgery, the Karyotype Report-46XX was not sufficient, as it does not rule out the possibility of the child developing male tendencies later in life. The Court found that medical intervention was not immediately necessary and pointed to previous judgements that have dealt with gender affirmative surgery for intersex children, with the Tamil Nadu government even issuing a ban against sex reassignment surgeries for intersex children.

SIGNIFICANCE

In this case, the Court upheld the right of a minor to be protected from non-consensual medical interventions, even by the parents or guardians and thus upheld the right to self-determination.

45

Devu G. Nair v. State of Kerala

RIGHT IN QUESTION

Guidelines for habeas corpus petitions in case of same-sex couples.

CASE NUMBER

SLP (Cri.) No. 1891 of 2023, decided on March 11, 2024

COURT

Supreme Court of India

JUDGES

D. Y. Chandrachud, C.J.,
J. B Pardiwala & Manoj Misra,
JJ

CITATION

MANU/SC/0232/2024; 2024
INSC 228



FACTS

This was a case where a same-sex couple in an intimate relationship had been separated and the appellant had filed a writ of habeas corpus before the High Court of Kerala on the ground that X was forcibly kept in custody of their parents despite their wishes to stay with the Appellant. The Appellant had approached the Supreme Court after the interim order of the Kerala High Court after a report was filed before the High Court in which the Court directed that X undergo counselling.

COURT DECISION AND REASONING

The Supreme Court noted the apprehensions of counselling in being used to overcome the will of the person with regards to their sexual orientation. The Court issued the following guidelines in cases of habeas corpus petitions:

1. Habeas Corpus petitions and petitions for protection can be filed by a partner, friend or natal family member and Court must not enquire about the nature of relationship between Appellant and person concerned.
2. The Court while dealing with police protection for partners, be it same-sex, transgender, inter-faith or inter-caste, must grant ad-interim measure before establishing the threshold requirement of being at grave risk of violence and abuse.
3. Role of courts is limited to ascertaining will of person and the Court should not issue directions for counselling or parental care to change the mind of the Appellant or detained person.
4. Courts must ensure an environment that is conducive for free and non-coercive dialogue to ascertain the will of the person and adopt a compassionate demeanour to ensure that the detained person can freely express their wishes.
5. Being a minor must not be the threshold for dismissing habeas corpus petitions where there is illegal detention by the natal family.
6. Where a detained person expresses their desire to not go back to the alleged detainer, they must be released.
7. Courts must take note of the social stigma that queer couples face and grant immediate police protection as an interim measure where the same is sought.

SIGNIFICANCE

The Supreme Court recognised the harmful nature of conversion therapy, and took steps to ensure that courts embrace queer-affirmative approach to habeas corpus petitions involving police protection. It paved the way in recognising that persons belonging to one's chosen family may also approach the Court in the interest of ensuring that one's right to safety, dignity and privacy is given precedence.

“Sexual orientation and gender identity fall in a core zone of privacy of an individual. These identities are a matter of self-identification, and no stigma or moral judgment must be imposed when dealing with cases involving parties from the LGBTQ+ community. Courts must exercise caution in passing any direction or making any comment which may be perceived as pejorative.”

CHIEF JUSTICE D. Y. CHANDRACHUD

Devu G. Nair v. State of Kerala

05

**CRIMINAL LAW
& TRANSGENDER
PERSONS**

ABOUT

CRIMINAL LAW & TRANSGENDER PERSONS

One of the key issues that is often raised before courts is that of the application of the provision of criminal laws to cases involving transgender persons. This is because the penal laws in India are framed within the gender-binary and offences under the same are gender specific, thus resulting in instances where transgender persons are denied protection under such laws.

The Transgender Persons Act, 2019 recognises certain offences and penalises physical, emotional, sexual and other forms of abuse. Courts have time and again ruled that the right to self-determination of gender identity as upheld in NALSA must be protected and the gender-specific nature of laws must not result in transgender persons being excluded from their purview, particularly where instances of sexual violence and harassment are concerned.

Further, the State must also maintain a record of the numbers of transgender persons that are incarcerated by ensuring that they are a distinct category in the process of data collection. The applicability of penal provisions and their implication for the rights of transgender persons has been raised before Courts especially in cases of sexual violence and harassment.

In *Ms. X v. State of Uttarakhand*, the High Court of Uttarakhand was dealing with the issue whether a trans-woman who had been subjected to sexual assault could have her complaint registered under Section 376 of the IPC for the offence of rape.

Similarly, in *M. Srinivasan v. State*, the High Court of Madras addressed the issue whether a transwoman would be covered under the provisions of the Tamil Nadu Prohibition of Harassment Act, 2002. These cases are illustrative of the challenges that are presented by the binary framing of penal laws and courts have relied on the right to self-determination as upheld in NALSA to ensure that transwomen are offered the protection of the law without discrimination based on their gender identity.

46

RIGHT IN QUESTION

Compensation for harassment at the hands of the police.

CASE NUMBER

W.A. No. 1130 of 2006 and W.P. No. 24160 of 2006, decided on July 10, 2007

COURT

Madras High Court

JUDGES

Ajit Prakash Shah, C.J. & P. Jyothimani, J.

CITATION

MANU/TN/8598/2007



Jayalakshmi v. State of Tamil Nadu

FACTS

A transgender person, Pandian who identified as a woman, was routinely interrogated and harassed by the police for her alleged involvement in a case of theft over a period of one month. Upon questioning, her sister revealed that the police had been physically and sexually assaulting Pandian and when she and their mother tried to intervene, the whole family was subjected to criminal intimidation, harassment, and torture by the police officers including beating Pandian's mother when she tried to make a complaint. When this harassment did not stop, Pandian immolated herself outside the police station and succumbed to her injuries. Her sister then approached the High Court against the police officers seeking justice for the death of her sister.

COURT DECISION AND REASONING

The Court ruled unequivocally that this was a case of custodial violence and there is no doubt that the physical and sexual abuse suffered by Pandian at the hands of the police officers led to her suicide. The Court also noted the attempts of the police to fabricate and tamper with evidence i.e., hiding the dying declaration of Pandian and misleading the Court about the nature of Pandian's interrogation. Based on a report developed by an enquiry commission, statements of doctors and acquaintances and Pandian's dying declaration, the Court directed disciplinary action against the perpetrating police officers and directed the Government of Tamil Nadu to provide Rs. 5 lakhs in compensation to her sister Jayalakshmi.

SIGNIFICANCE

In this case, the Court recognised that custodial violence, which violates a person's right to dignity, is one of the worst crimes and granted compensation for Pandian's death.

47

Pinki Pramanik v. State of West Bengal

RIGHT IN QUESTION

Non-applicability of sexual crimes against the Petitioner based on her gender identity.

CASE NUMBER

CRR 2848 of 2013, decided on September 12, 2014.

COURT

Calcutta High Court

JUDGE

Subrata Talukdar, J.

CITATION

MANU/WB/0640/2014



FACTS

Pinki Pramanik was a national-level female athlete who had been cohabiting with a friend of hers whose husband had abandoned her. After 3 years of living together, the woman brought a complaint of sexual assault and rape against Pinki for inducing her into sexual activity on the pretext of marriage and exploiting her vulnerable situation. Upon her arrest, Pinki was forced to undergo multiple medical examinations to 'determine' her gender. The tests declared her to be a "male pseudo-hermaphrodite" (sic.) suffered a "disorder of sexual development". According to the results, Pinki was 'deemed' to be an intersex person. The Court had to decide whether Pinki had and could be considered capable of committing the offence of rape.

COURT DECISION AND REASONING

Given that under the IPC, the sexual offences against an adult are gender-specific i.e., complaints of sexual offences can only be made against men by women, the Court thought it necessary to determine whether Pinki was a "man" for the purposes of this offence. After invasive and extensive analysis of the medical reports attained to through the medical examinations of Pinki, the court concluded that since she is not capable of "penetrative intercourse" she cannot be accused of rape. The Court also held that the allegation of inducement on the pretext of marriage did not stand since the complainant was already married and she was acquitted.

SIGNIFICANCE

This case highlights the indignity and humiliation that gender non-conforming persons and intersex persons are subjected to at the hands of authorities including courts and police. Pinki was forced to undergo innumerable medical tests, held in a men's prison cell during the trial and subjected to harassment and denied her right to dignity and life in the determination of her gender.

48

Anamika v. Union of India

RIGHT IN QUESTION

Right of transgender persons to file complaints against sexual harassment under Section 354-A of the IPC.

CASE NUMBER

W.P. (CrI.) 2537 of 2018, decided on December 17, 2018

COURT

Delhi High Court

JUDGES

Siddharth Mridul & Sangita
Dhingra Sehgal, JJ.

CITATION

MANU/TN/8598/2007



FACTS

This Petition was filed challenging the constitutionality of S.354 of the IPC, the provision dealing with the offence of sexual harassment of women, in so far as it excludes victims of sexual harassment who are transgender persons. It was argued that S.354A is ultra vires of Articles 14, 15 and 21 of the Constitution.

COURT DECISION AND REASONING

The petition was dismissed by the Court as during the course of the hearings, because it was submitted on behalf of the Commissioner of Police, Delhi that if a cognizable offence was made out under S.354A IPC in the complaint, the same shall be registered even if the complainant is a transgender person, in line with the Supreme Court's decision in NALSA.

SIGNIFICANCE

This is a significant order as it records that the police recognised the coverage of the criminal law against sexual harassment in the IPC to be applicable to transgender persons.

49

Ms. X v. State of Uttarakhand

RIGHT IN QUESTION

Right to be treated as a woman under Sections 375 and 376 of the IPC.

CASE NUMBER

W.P. (Cri) No. 28 of 2019, decided on May 31, 2019

COURT

High Court of Uttarakhand

JUDGE

Ravindra Maithani, J.

CITATION

MANU/UC/0448/2019



FACTS

The Petitioner was a transwoman who had been repeatedly raped and blackmailed by the accused. She lodged an FIR and the FIR and chargesheet was filed under Sections 377 and 385 of the Indian Penal Code. The Petitioner claimed that she has identified herself as a woman and had also undergone gender reassignment surgery and therefore she should be treated as female.

COURT DECISION AND REASONING

The Petitioner argued that she had undergone surgery and the Doctor conducting the surgery has given a certificate to her that she may be addressed as a “female”. Since she had the right to self-determination of her gender, the FIR and chargesheet ought to have been filed under Section 376 of the IPC. The State government argued that the provision of section 375 and 376 of the IPC get attracted only if sexual assault is upon a woman and in this case, since the biological sex of the Petitioner is not female, the provisions of Section 375 IPC are not attracted. The Court relied on the ruling in the NALSA, where the Supreme Court had upheld an individual’s right to self-determination of their gender identity and the other decisions of the Supreme Court including the Yogyakarta Principles. The Court held that gender and sex, including for the purposes of laws such as the Indian Penal Code, 1860, had to be based on the ‘psyche’ of the person and how they felt, rather than their biological sex. The Court came down heavily on the State and the Investigating Officer for ignoring the principles held in NALSA and held that as the Petitioner had self-identified herself as female, she had to be treated for all purposes as a female.

SIGNIFICANCE

This case is significant since it is one of the first cases that affirmed the right to self-determination based on the ‘psyche’ of the individual even in the context of criminal law and the recognition of the application of the offences of rape against transwomen.

“ In view of the foregoing discussion, this Court is of the view that after the judgment of Hon’ble Supreme Court in the NALSA’s case, petitioner’s right to determine her sex and gender has to be respected and honoured. The petitioner has identified herself as a ‘female’, therefore, ‘she’ has to be treated as a female for all the purposes, whatsoever without any further confirmation from any authority.”

JUSTICE RAVINDRA MAITHANI

Ms. X v. State of Uttarakhand

50

Karan Tripathi v. NCRB

RIGHT IN QUESTION

Inclusion of data related to transgender persons in prisons by the National Crime Records Bureau.

CASE NUMBER

W.P. (C) No. 9596 of 2020, decided on December 7, 2020

COURT

Delhi High Court

JUDGES

D. N. Patel, C.J. & Prateek Jalan, J.

CITATION

MANU/DE/3663/2020



FACTS

The National Crime Records Bureau (NCRB) publishes an annual Prison Statistics India (PSI) report in which the composition of the prisoners is released. One of these categories is that of gender which only classifies persons within the gender binary of male and female thus excluding any data on transgender persons who may be incarcerated. The Petitioner, Karan Tripathi, approached the Delhi High Court to include a third category of “transgender” in these reports so that there may be documented data on the number of transgender persons in prisons.

COURT DECISION AND REASONING

The issue before the Court was the representation of transgender persons in the official documentation. The petition was closed, as during the course of the hearings the NCRB in a letter to all states and union territories had notified that the authorities shall include details of transgender persons in the gender classification of prisoners’ forms in the future Prison Statistics India reports from 2020 onwards. The NCRB had also stated that it would organise a two-day sensitivity workshop for the inclusion of transgender persons in the gender classification in the prison system records.

SIGNIFICANCE

This is a very important case as it illustrates the need for accurate data on transgender persons so that their needs can be accounted for in prisons and prison related policies. This data can be useful to ensure there is adequate infrastructure to address the needs of transgender persons in prisons and that their rights are protected.

51

M. Srinivasan v. State through The Inspector of Police & Another

RIGHT IN QUESTION

Right to self-determination, right to equal protection of law.

CASE NUMBER

Crl.O.P. (MD) No. 11848 of 2020, decided on October 28, 2020

COURT

Madras High Court (Madurai Bench)

JUDGE

G. R. Swaminathan, J.

CITATION

MANU/TN/7740/2020



FACTS

The case originated from an incident involving the second respondent, a transwoman named Neka, who was abused by the Petitioner, and she had filed a complaint under the Tamil Nadu Prohibition of Harassment of Women Act, 2002 and under the IPC. The Accused filed a petition under section 482 of the Criminal Procedure Code on the ground that the Act should not apply because Neka is a transgender person.

COURT DECISION AND REASONING

The Court referenced the Supreme Court’s decision in the NALSA and Arunkumar Srija v. Inspector General of Registration affirming the right to self-determination of transgender persons. It therefore ruled that the petition could not be quashed as it could not be said that the Tamil Nadu Prohibition of Harassment of Women Act, 2002 would not be applicable in the present case in view of Neka’s self-determined gender identity as a woman and thus refused to quash the FIR.

SIGNIFICANCE

This is an important case where the Court addressed a gap in the laws on sexual harassment as these are gender-specific laws framed with a binary understanding of gender identity being limited to male and female. The Court thus addressed the limitation of the law by upholding the right to self-determination and ruling that the application of sexual harassment laws must extend to anyone who identifies as a woman and not be limited to cis-gender women.

06

ACCESS TO
EDUCATION FOR
TRANSGENDER
PERSONS

ACCESS TO EDUCATION FOR TRANSGENDER PERSONS

Judgements related to the right to education for transgender persons mainly concern access and non-discrimination in higher education.

Section 3 of the Transgender Persons Act, 2019 prohibits discrimination against transgender persons in educational establishments and Section 13 obligates educational institutions funded or recognised by the State to provide inclusive education. In NALSA, the Supreme Court also directed that transgender persons have the right to legal recognition of their gender identity such as male, female or as transgender. It directed the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and provide reservation in cases of admission in educational institutions.

Despite these provisions, there have been very few facilities provided for transgender persons to have equal access to education.

The Central and State governments have still not provided reservations to transgender persons in educational institutions. The few instances in which transgender petitioners have approached the courts shows that access to higher education for transgender persons is very limited. Even where they do have the qualifications and the means to apply for higher educational courses, there is no legal recognition of their gender identity, nor are they provided reservations and other relaxations and fee concessions that would enable them to seek admissions.

Through these judgements we can see that courts have played a key role in ensuring that transgender persons are not discriminated against when seeking admissions in educational institutions and that they are granted the necessary concessions and relaxations, that would facilitate access to higher education. The case law on right to education for transgender persons encompasses a range of issues ranging from legal recognition of gender identity in educational institutions to removal of discriminatory and stigmatising language in educational curricula.

52

RIGHT IN QUESTION

Right to concessions in qualifying marks for transgender persons.

CASE NUMBER

W.P. No. 26628 of 2017 and W.M.P. Nos. 28349 and 28350 of 2017, decided on November 29, 2017

COURT

Madras High Court

JUDGE

N. Kirubakaran, J.

CITATION

MANU/TN/4046/2017



Tharika Banu v. Health & Family Welfare Department

FACTS

Tharika Banu was not able to qualify for the undergraduate degree course in Siddha Medicine and Surgery (BSMS) as she could not meet the qualifying score of 50% by a small margin. She then approached the High Court challenging the disqualification.

COURT DECISION AND REASONING

The issue before the court was whether Tharika should be granted admission to the BSMS course. The Court considered Tharika's background and circumstances that she belonged to an SC community, had run away from her home and faced severe social stigma for being a transwoman. The Court held that though the Supreme Court had directed the Respondents to provide a separate column for transgender persons, the Respondents have not provided separate column for them in the prospectus. The Petitioner's application under the SC category and transgender was not considered. The court held that it was for the first time that a transgender person had approached the courts seeking to consider her candidature for admission in BSMS course and it is a welcome change that they have come forward to get higher education. Therefore, the Petitioner's claim for admission to the BSMS course could not be denied stating that the Petitioner has not obtained the minimum marks of 50%. The court held that 50% of minimum marks holds good only for "males" and "females" and the prospectus has no reference about transgender applicants. Therefore, leniency should be shown to transgender persons and directed that admission should be given to her. It also held that the Respondents are guilty of not implementing the order of the Hon'ble Supreme Court and this Court, by providing a separate reservation for them.

SIGNIFICANCE

This is a significant ruling as it provided concessions in education. The Court also observed that that the State Government should conduct a survey/ census of transgender persons so that if any benefit or scheme is extended by the Government, the same could reach them.

53

Mx. Alia SK v. The State of West Bengal & Others

RIGHT IN QUESTION

Whether public universities are required to include a Transgender Category in their application forms.

CASE NUMBER

W.P. No. 21587 (W) of 2019, decided on November 27, 2019

COURT

Calcutta High Court

JUDGE

Tapabrata Chakraborty, J.

CITATION

MANU/WB/3264/2019



FACTS

The Petitioner was a transgender person and wanted to apply for an M.Phil programme in University of Calcutta. The Petitioner filed the petition as the authorities did not provide any option to apply as 'Third Gender'. The Petitioner also prayed to be treated as belonging to the Socially and Educationally Backward Class and that the authorities should extend all kinds of reservation facilities in cases of admission.

COURT DECISION AND REASONING

An interim order was issued in the case and during the course of the hearings, the University rectified the application form to include a "Third Gender" category. In view of this, the Court held that the Petitioner would be at liberty to fill up the application form and submit it and that the University authorities shall accept the application of the Petitioner.

SIGNIFICANCE

The judgment is important because it led to the University providing the 'transgender' category in admission applications for higher education, thus ensuring that the gender identity of transgender persons is recognised and that they are provided access to educational facilities.

54

Mx. Sumana Pramanik @ Suman Pramanik v. Union of India & Others

RIGHT IN QUESTION

Right to reservations, age relaxations and fee concessions in education.

CASE NUMBER

W.P.A. No. 9187 of 2020, decided on January 22, 2021

COURT

Calcutta High Court

JUDGE

Sabyasachi Bhattacharya, J.

CITATION

MANU/WB/0060/2021



FACTS

The Petitioner applied to the Court to grant reservations for transgender people in the Joint CSIR-UGC NET examination and for age relaxations and fee concessions be granted for transgender persons as they are for other reserved categories.

COURT DECISION AND REASONING

The Court held that there was no reason for there being no reservation, age relaxation and fee concessions for the transgender community in the Joint CSIR-UGC NET Examination, despite approval for this having been granted by the UGC. It held that such reservation and benefits have been given in the CSIR-UGC NET examinations, which stands on more or less equal footing. The Court held that the Supreme Court in the NALSA judgement categorically upheld transgender persons' right to decide their self/identified gender and the Central and State Governments were directed to grant legal recognition of their gender identity, such as male, female or as third gender. Transgender communities are required to be accorded equal status as the other prevalent genders of society and contravention of fundamental rights of transgender persons not only hits at Article 14 of the Constitution but the right to life as enshrined in the Constitution itself. It held that the non-grant of such reservation, age relaxation and fee concession to transgender persons in the Joint CSIR-UGC NET examinations is unacceptable and violative of Articles 14 and 21 of the Constitution of India. The Court directed the Respondents to immediately provide for reservation, age relaxation and fee concession for the category of transgender persons along with the other reserved categories, for the Joint CSIR-UGC NET Examinations at all levels.

SIGNIFICANCE

The judgment reiterated the importance of not just reservations for transgender persons but also age relaxations and fee concessions for them in their examinations, which has not been done before.

55

Queerythm & Anr. v. National Medical Commission & Others

RIGHT IN QUESTION

Right of LGBTQIA+ persons against discrimination and removal of stigmatising references in medical textbooks and curricula.

CASE NUMBER

W.P. (C) No. 18210 of 2021, decided on September 7, 2021

COURT

High Court of Kerala

JUDGES

S. Manikumar, C.J. & Shaji P. Chaly, J.

CITATION

MANU/KE/2037/2021



FACTS

The Petitioners filed a writ petition being aggrieved by the discriminatory remarks and inhuman references used in the medical textbooks prescribed for medical courses in India against the LGBTQI community. Their argument was that the language used negative stereotypes and categorised sexual orientation and gender identity as a mental disorder or perversion. It was argued that such remarks infringe the rights of the LGBTQIA+.

COURT DECISION AND REASONING

The High Court of Kerala directed the Under-Graduate Medical Education Board, New Delhi, to consider the representations of the Petitioners in the context of the grievances expressed regarding queer-phobic contents in medical textbooks, which were stated to be violative of the rights guaranteed under Article 21 of the Constitution. It also directed the Under-Graduate Medical Education Board, New Delhi to obtain the remarks and views of the Kerala University of Health Sciences, Thrissur and directed that this exercise shall be completed within 8 weeks.

SIGNIFICANCE

This case is significant because it directed the medical education authorities to review the offensive and discriminatory content in medical curricula which is used to refer to the LGBTQI community and take steps to remove the same. However, it is not clear if such steps were indeed taken.

56

National Cadet Corps v. Hina Haneefa @ Muhammed Asif Ali

RIGHT IN QUESTION

Right of transwomen to be included under the Girls Division of the National Cadet Corps.

CASE NUMBER

WA 654 of 2021, decided on February 22, 2024

COURT

High Court of Kerala

JUDGES

Amit Rawal & C.S. Sudha, JJ.

CITATION

MANU/KE/0636/2024



FACTS

The Petitioner, Hina Haneefa, a transwoman had undergone gender affirmative surgical procedures and procured a transgender identity card as a female. She had enrolled as a student in the B.A History course and under the transgender category and had applied for recruitment to the National Cadets Corps (NCC). She approached the High Court of Kerala after she was refused admission to the Girls Divisions as she was a transgender person. A Single Judge Bench of the High Court had granted the relief sought by the petitioner and directed the University to take the necessary steps to enroll the petitioner in the NCC while giving the government 6 months' time to amend the law and include transgender persons within its scope. This decision was appealed before a Division Bench of the same High Court.

COURT DECISION AND REASONING

The issue before the Court was whether Section 6 of the National Cadet Corps Act, 1948 ('NCC Act') barred transwomen from being admitted to the NCC Girls Unit. Under the NCC Act, Section 6 stated that the recruitment to the Girls Division was to be made from female students at any university or school. In appeal before the Division Bench, the Respondents had also argued that the Single Judge could not have issued a writ of Mandamus directing the Government to amend Section 6 of the NCC Act as this was a matter of policy to be decided by the Central Government. The Petitioner reiterated that the exclusion from enrolment was in violation of the provisions of the Transgender Persons (Protection of Rights) Act, 2019 and the decision in NALSA. The Division Bench of the High Court relied on the definitions of 'inclusive education' under Section 2(d) and 'transgender person' under Section 2(k) as well as the provisions on self-determined gender identity under Sections 4 to 7 of the Transgender Persons (Protection of Rights) Act, 2019 to hold that the Petitioner was entitled to be enrolled in the NCC under the girls' division. The Court observed that the Petitioner had met all the conditions stipulated under the Transgender Persons (Protection of Rights) Act, 2019, Section 7 to identify as female, including having undergone surgical intervention. The Division Bench noted that the Single Judge Bench had erred to that extent as no constitutional court can mandate the legislature to enact a particular law. The Court issued a recommendation to the government to take necessary steps to include transgender persons within the scope of Section 6 of the NCC Act.

SIGNIFICANCE

This was a positive judgement with respect to inclusion of trans persons under the NCC, and while the Division Bench upheld the inclusion of the trans student into the NCC, it ought not to have set aside the direction of the Single Judge to amend the NCC Act to include trans persons.

57

Anamika v. State of Kerala

RIGHT IN QUESTION

Right of a transwoman to compete in the woman's category in sports.

CASE NUMBER

W.P. (C) No. 24571 of 2022 (V),
decided on July 29, 2022

COURT

High Court of Kerala

JUDGE

V. G. Arun, J.

CITATION

MANU/KE/2684/2022



FACTS

A transwoman who had undergone gender affirmative surgery and hormone replacement therapy and thereby completed medical transition sought to participate in the District Level Judo competition organised by the State of Kerala. An active sportsperson with experience in athletics, judo, and wrestling at the University level in the transgender category, Anamika's application to participate was initially rejected on the grounds that transgender persons were not allowed to compete in the women's category. Citing the Supreme Court's decision recognising the right to gender identity in NALSA, Anamika argued for her right to compete in the women's category.

COURT DECISION AND REASONING

The Kerala High Court recognised the equal rights of transgender individuals to participate in sports. Here in the absence of any category for transgender persons, the Petitioner was seeking to participate in the female category given her identity as woman. Since there was an absence of a separate category of transgender persons, the Court directed that the Petitioner must be permitted to participate in the chosen category.

SIGNIFICANCE

In this case, not only did the Court uphold the right to equality of opportunity for transgender persons as far as competing in sports and other competitions were concerned, but also ensured that in the absence of a separate category for transgender persons, the Petitioner was allowed to participate in the female category, respecting her right to self-determination.

07

**THE RIGHT TO
SOCIAL SECURITY**

THE RIGHT TO SOCIAL SECURITY

The Supreme Court in the NALSA judgement directed the centre and the state governments to frame social welfare schemes for the betterment of the transgender community. Thereafter under Section 8 of the under the Transgender Persons (Protection of Rights) Act 2019, there was an obligation on the government to put in place welfare measures to protect the rights and interests of transgender persons, and to facilitate their access to welfare schemes.

The Rules under the 2019 Act also mandate that the state governments shall constitute a welfare board for transgender persons for the purpose of facilitating access to schemes and welfare measures. The government shall review all existing educational, social security, health schemes, welfare measures, vocational training and self-employment schemes to include transgender persons to protect their rights and interests. In some states, Transgender Welfare Boards have been set up, but access to welfare schemes has been minimal. In many states, there are no welfare schemes apart from pension schemes for vulnerable persons, and even the inclusion of the transgender community within such pension schemes has taken place only through court intervention.

In recent years, due to the COVID-19 pandemic, many petitions were also filed in the High Courts to seek access to rations, medicines and monetary assistance for the trans community, and courts have provided relief.

58

Ashish Kumar Misra v. Bharat Sarkar

RIGHT IN QUESTION

Right to food security and inclusion of transgender persons in ration cards.

CASE NUMBER

Misc. Petition No. 2993 of 2015, decided on April 15, 2015

COURT

Allahabad High Court (Lucknow Bench)

JUDGES

D. Y. Chandrachud, C.J & S. N. Shukla, J.

CITATION

MANU/UP/0332/2015



FACTS

A public interest litigation (PIL) was filed regarding food security of transgender persons. It challenged Section 13 of The National Food Security Act, 2013 (NFSA) which considered the “head of the household” as being the eldest female, or in her absence, the eldest male, above the age of 18 years.

COURT DECISION AND REASONING

The issue before the Court was whether ration cards under the NSFA could be issued to transgender persons as head of families. The petitioner argued that section 13 of the NFSA failed to address families which do not have female members. This argument was rejected by the Court noting that Section 13(2) of the NSFA does provide for eldest male members to be treated as head of the household for the purpose of ration cards where there is no eligible female. The Court held that a ration card is an important document issued by public authorities to enable the holder and her family to gain access to subsidised foodgrain and that food security means no less to a transgender person than to other segments of society. It also recognised that impoverishment and marginalisation have been endemic to the transgender population. It recognised a positive obligation of the State to provide access to social security and food security. The Court held that that the form prescribed by the State Government for submitting applications under the Act includes the gender of the applicant as ‘female/male/other’ and hence it would necessarily include a transgender person. The object and purpose of Section 13 of the NFSA Act was empowerment of women and to recognise women as the head of every household and its object was not to exclude transgender persons. This purpose of Section 13 can be furthered by recognising transgender persons as heads of households since the form for obtaining a ration card already includes transgender persons.

SIGNIFICANCE

The Court upheld the fundamental right to food security for transgender persons and that they can be considered as head of households under the NFSA.

59

Jasmine Kaur Chhabra v. Union of India

RIGHT IN QUESTION

Right to separate toilets and washrooms for transgender persons.

CASE NUMBER

W.P. (C) 2997 of 2021, decided on May 13, 2024

COURT

Delhi High Court

JUDGES

Manmohan Actg. C.J., & Manmeet Pritam Singh Arora J.

CITATION

MANU/DE/3444/2024



FACTS

The Petitioner was a law student who had approached the Court seeking appropriate orders for the construction of separate public toilets for transgender persons. The Petitioner's plea was rooted in the argument that the State must provide for basic facilities like public toilets for transgender persons to ensure equal protection of their rights in view of the decision of the Supreme Court in NALSA.

COURT DECISION AND REASONING

The Court issued notice in the case after which the Government of NCT of Delhi filed periodic status reports on the steps taken for construction of separate toilets for transgender persons. As per the status report filed in January 2024, a total of 143 separate toilets had already been constructed and 223 more were in process. The New Delhi Municipal Corporation also filed three action reports. The Petitioner then agreed to the case being closed praying that the Respondents be bound by their statements and undertakings in the petition. The Court issued directions to this effect and closed the petition.

SIGNIFICANCE

This was a significant case before the Delhi High Court where the Court took measures to ensure that the State was taking proactive steps to protect the rights of transgender persons by providing them access to public infrastructure (toilets) and delivering on their basic needs and necessities.

60

Kabeer C alias Aneera Kabeer v. State of Kerala

RIGHT IN QUESTION

Right to food, medicines and relief during COVID.

CASE NUMBER

W.P. (C) No. 9980 of 2020 (S), decided on June 8, 2020

COURT

High Court of Kerala

JUDGES

S. Manikumar, C.J & Shaji P. Chaly J.

CITATION

MANU/KE/1377/2020



FACTS

A Public Interest Litigation was filed in the Kerala High Court by the Petitioner, a transgender rights activist seeking various reliefs for transgender persons during the COVID-19 pandemic, including food rations, medication, healthcare services and other facilities for transgender persons in Kerala. The Petitioner had stated that many transgender persons had not been able to access rations and relief measures during the lockdown of COVID-19 and this was in violation of their constitutional rights under Articles 14, 15 and 21.

COURT DECISION AND REASONING

The Court was informed of several initiatives taken by the Government of Kerala pursuant to the decision in NALSA, including implementation a transgender policy for the empowerment of community. There were several schemes granting scholarships, self-employment benefits, marriage assistance for legally married transgender persons and financial aid which also covered gender affirmative care and procedures. The government also informed the Court of a 24x7 helpline that was set up for addressing the grievances and concerns of transgender persons, as well as the unique identity cards that were being issued to ensure that transgender persons could access all the welfare benefits. Efforts had been made during the pandemic to ensure safe shelter, rations and medical facilities to transgender persons and only those without valid prescriptions had not received hormone replacement therapy (HRT) through the District Transgender Justice Committee. The Petitioner on the other hand had not pointed to any particular instances of the discrimination alleged in the petition and had subsequently filed a list with evidence from 5 individuals who had been denied access to necessities. The Court accordingly issued the following directions in the case of those 5 individuals:

1. If persons approach the concerned District Authority, their grievances would be addressed.
2. The Respondents were directed to ensure that medicines are supplied free of cost whenever any member of the transgender community approaches the concerned statutory authority with medical prescriptions.
3. If and when any member of the transgender community approaches the District Authority or Nodal Officer appointed for the purpose of issuing gender identity card and the ration card, immediate steps should be taken to issue identity card and ration card to such persons.

SIGNIFICANCE

This is an important case relating to provision of ration cards, medicines and identity cards to the trans community during the COVID-19 pandemic.

61

Veera Yadav v. The Chief Secretary, Government of Bihar

RIGHT IN QUESTION

Right to rations and food during COVID.

CASE NUMBER

Civil Writ Jurisdiction Case No. 5627 of 2020, decided on August 17, 2022

COURT

Patna High Court

JUDGES

Sanjay Karol, C.J. & S. Kumar, J.

CITATION

MANU/BH/1009/2022



FACTS

A petition was filed highlighting the plight of the transgender community in the state of Bihar during the COVID-19 pandemic where no rations were provided to transgender persons.

COURT DECISION AND REASONING

The Court noted that the State is under a constitutional as well as statutory obligation to protect the transgender community from discrimination. It traced these rights to the golden triangle of the Constitution (Articles 14, 19 and 21) as recognised in NALSA, as well as statutory provisions like Section 8 of the Transgender Persons Act as per which the State is obligated to secure full and effective participation of transgender persons and Chapter IV of the Act under which the Government is obligated to initiate welfare measures. The Court had in an interim order directed the State to consider providing a one stop centre to address all the grievances of the transgender community and also directed the government to consider recruitment of transgender persons in the police force by creating a separate unit. A separate unit for transgender persons was subsequently created at the district level. While the case was ongoing, the State government began providing rations even where there was no ration card and began the process of setting up facilitation centres at the district level which would engage 2 members of the transgender community as a way of providing them some avenue for employment. The government also filed a detailed affidavit noting the steps taken for the welfare of transgender persons in the state including reservations in public employment and education, sensitisation, and awareness programs, setting up of HIV sero-surveillance centres, though it was observed that the sero-surveillance centres were yet to be established and there was no clarity as to the steps that had been taken to provide the benefit of reservation in education.

SIGNIFICANCE

This is an important ruling which drew attention to the State's responsibilities to introduce and implement welfare schemes for transgender persons, particularly in times of crises.



**CENTRE FOR
LAW & POLICY
RESEARCH**

D6, Dona Cynthia Apartments,
35, Primrose Road, Ashok Nagar,
Bengaluru 560 025.
T 080 4091 2112 | www.clpr.org.in



Embassy
of the Federal Republic of Germany
New Delhi

