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About Us

International Journal of Legal Enforcement is an online peer review journal dedicated to express views on legal and socio legal aspects. This platform also shall ignite the initiative of the young students. We do not charge any publication charge for online publications. We process to bring out the analysis and thoughts of every socio legal and legal matters from the young powerful minds. With this thought we hereby present you, International Journal of Legal Enforcement.

“Dharma is to protect the Needy”

Case commentary on

NATIONAL LEGAL SERVICE AUTHORITY

V.

UNION OF INDIA

Vaishnavi Kaishav

- **Student, CHANDERPRABHU JAIN COLLEGE OF HIGHER STUDIES AND SCHOOL OF LAW, AFFILIATED TO GGSIPU**

CITATION:

AIR 2014 SC 1863

COURT:

SUPREME COURT OF INDIA

JUDGES:

K S RADHAKRISHNAN & A K SIKRI

BRIEF FACT:

Transgender people want a legal declaration of their gender identity. Hijras/Eunuchs, who are also members of that group, seek legal recognition as a third gender. The National Legal Services Authority, which offers free legal services to the poor, has stepped forward to support their cause.

The Poojaya Mata Nasib Kaur Ji Women's Welfare Society, which works with kinnars, a transgender group, filed a petition before the Supreme Court in 2013 in connection with this case. On behalf of Ms Laxmi Narayan Tripathy, a Hijra/transgender activist, the Lawyers Collective filed an intervention requesting acknowledgement of people's self-identified gender, whether male, female, or third gender, depending on their preference.

The Applicants have stated unequivocally that the State's complete failure to recognise the identity of hijras/transgender people has resulted in a violation of their fundamental rights.

ISSUE

Is it true that non-recognition of various gender identities violates Articles 14 and 21 of the Indian Constitution?

Whether discrimination is based on gender-based identities under article 15?

CONTENTION OF THE PETITIONER

1. According to the petition, every member of the transgender community has the legitimate obligation to choose their sexual orientation. Transgender people are not classified as males or females, nor are they classified as a third gender.

Transgender are denied social and cultural involvement, resulting in limited access to literacy, health care, and public spaces, robbing them of the constitutional right to equality before the law and equal protection under the law.

2. It was also pointed out that the community experiences prejudice when it comes to contesting elections, exercising the right to vote, finding work, obtaining permits, and so on, and is effectively considered as an outcast and untouchable.

The State cannot discriminate against people based on gender, according to learned senior counsel, infringing Articles 14 to 16 and 21 of the Indian Constitution.

3. Transgender people must be labelled a class of socially and educationally backward individuals, and they must be given all of the advantages that are available to that class of people, including those that are accessible to both male and female genders.

As a result, learned counsel argued that subject to such rules/regulations, transgender people should be allowed to choose whether they want to be classified as male, female, or transgender.

THE RESPONDENT'S POINTS OF VIEW:

- The Union of India's learned Additional Solicitor General, Shri Rakesh K. Khanna, argued that the transgender community's difficulties are a sensitive human issue that requires significant consideration
- He noted that a committee dubbed the "Expert Committee on Issues Relating to Transgender" has been established under the auspices of the Ministry of Social Justice and Empowerment (MOSJE) to undertake an in-depth examination of transgender-related concerns and provide suitable suggestions to MOSJE.
- It was also proposed that the applicants, who came before this Court in the Committee, would be provided adequate representation so that their opinions might be heard as well.

Provision related to this case:

Article 14- Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. This Article ensures that all rights are protected equally. It is the responsibility of the state to effect necessary changes in the social, economic, and political spheres. Hijras/transgender people who are neither male nor female fall under the definition of "person" and are thus entitled to legal protection under the law in all areas of State activity, including economic, social, and political rights.

Article 15 and 16- All forms of gender inequality and gender-based discrimination are prohibited under these Articles. Discriminating against transgender people based on their gender identity in any way is a violation of these articles. It must be understood that the term "sex" as used in Articles 15 and 16 includes people who are neither male nor female.

Article 21-Article 21 is subject to the Golden Triangle Rule, which every law must follow. Recognizing one's gender identity is also an essential component of the fundamental right to dignity. Gender is at the heart of one's sense of self and an essential component of one's identity. Legal recognition and support for gender identity is thus an essential component of the right to Dignity.

Section 377 of the Indian penal code-The sexual orientation or sexual practises of transgender people were criminalised under this section of the Indian Penal Code, 1860. It was stated that such a Section was required to be resurrected.

JUDGMENT:

Transgender is a catch-all term for people whose gender identity, gender expression, or behaviour differs from their biological sex. TG may also accept people who do not identify with the gender assigned to them at birth. During British rule, legislation was enacted to monitor the activities of the Hijras/TG community. For the transgender community, the beginning of colonial rule marked times of great discrimination and trauma. The Court relied extensively on various international judicial pronouncements and legislation to highlight the fact that recognition of "sex

identity gender" of persons is increasing and gaining acceptance in international law, and thus should be applied in India.

The Supreme Court traced the history of the Transgender Community in India. It observed "12 pivotal moments in history when the world began to recognize the rights of transgender people" and the world was created to accept their rights to equality and non-discrimination in society.

OTHER COUNTRIES LEGISLATION ANALYSIS:

The United Nations has been a strong advocate for the protection and promotion of the rights of sexual minorities, including transgender people. There are two Acts in Australia that address gender identity. Act 2013 modifies the 1984 Sex Discrimination Act. The Act of 2013 defines gender identity as a person's appearance, mannerisms, or other gender-related characteristics. The United Kingdom, Netherlands, Germany, Australia, Canada, Argentina, and other countries recognise the rights of transsexual people.

CASE COMMENTARY:

Transgender people are human beings just like anyone else, but society treats them as if they are aliens. Discrimination and abusive language directed at them violates their fundamental rights and human rights.

This case made history as a landmark decision that brought a ray of hope into the lives of transgender people. The court also ordered the state to take steps to help them financially and to protect the rights of transgender people. This is one example of how history owes an apology to the transgender community.

For the longest time, society has exploited, oppressed, and treated the transgender community inhumanely. According to the author, they are subjected to a great deal of stress and trauma. They are not only mistreated by society but they are also abused by their own families. In today's society, there is a lack of awareness. He believes that sex education is necessary to make people more aware and liberal.

But when we put light on the judgment of [nalsa v. UOI](#) then we found that the court only clarifies the difference and their origin but not illegalizes theirs discriminately among people. hence this judgment is vague itself. Moreover, the decision does not provide a long-term solution to the problems that transgender people face. Nonetheless, this was a long-awaited decision that recognised the rights of the transgender community.

