

NALSA Case - Important SC Judgements for UPSC

Many Supreme Court judgements have changed the face of Indian polity and society. These landmark SC judgements are very important segments of the [UPSC syllabus](#). In this series, we bring to you important SC judgments explained and dissected, for the benefit of IAS aspirants. In this article, you can learn all about the NALSA case (2014). Get a list of [landmark SC judgements for the UPSC exam](#) in the linked article.

NALSA Case

Case Summary - National Legal Services Authority V Union of India

Introduction

India as a society has always lacked gender awareness, and the same is reflected not only in the general attitude of the society but the law of the land too. Specific legislation and provisions are needed that will safeguard the rights of the individuals who do not identify as either male or female. The story of people who are generally referred to as transgender is a story of perpetual pain, misery and agony. Just because they do not fit with the “norms” that society has generally accepted, they have had to face not only the denial of rights but also constant physical and mental violence. They are considered to be outcasts and kept far away from participation in various societal activities be they social, religious or political. They are considered not only as untouchables, but also a curse on the society they live in.

- In India, the rights of these individuals mainly arise out of various Articles of Part III of the Constitution due to the lack of specific legislation to safeguard their rights.
- However, at the international level, their rights are well established in various international legal documents which include the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([UNCAT](#)), the Convention for Protection of Human Rights, the Yogyakarta Principles and Fundamental Freedoms (European Convention of Human Rights).

Background

There were two writs which were filed to protect and safeguard the rights of individuals that belong to the transgender community.

1. The [National Legal Services Authority](#), which is constituted under the Legal Services Authority Act, 1997, filed a writ petition (writ petition no. 400 of 2012).
2. It was followed by another writ petition (No. 604 of 2013) which was filed by Poojya Mata Nasib Kaur Ji Women Welfare Society, a registered association for the protection of the rights of the *Kinnar* (Transgender) community.
3. Laxmi Narayan Tripathi, who considered himself to be Hijra, also approached the court and was also impleaded in the present case. He claimed that being a hijra, his rights as guaranteed by Article 14 and 21 were being denied and the Court had to intervene so that he and other members of his community are not discriminated against anymore.

Issues involved

- At the core of the current petitions were the issues that revolved around gender identity and the protections that were necessary to safeguard the rights and interests of persons who identify themselves with the third gender.

- Another question was whether a person who is born male but has female orientation has the right to be identified as a female; the same question arises when an individual uses surgery to change his/her sex.
- One more issue that the petitioners raised was whether a person who does not identify either as a male or a female has the right to be categorized in a “third gender”.

Petitioners' arguments

The petitioners through their counsels vehemently argued that the concept of binary genders strikes at the core of Right to Equality (Article 14), Right to Life and Personal Liberty (Article 21) and Freedom of Expression (Article 19). The normalisation of binary genders has further victimised and alienated individuals that do not identify with either of the genders. They further argued that due to non-identification as the third gender, the basic human dignity of such individuals is violated which marginalises them and forces them to live on the fringes of society for no fault of theirs.

Respondents' arguments

The respondents, on the other hand, argued that the state had set up an “Expert Committee on Issues Relating to Transgender” which is considering all kinds of opinions in order to help transgender individuals live a more prosperous and dignified life. They also contended that the Committee will also consider the views of the petitioners so that a more robust policy is framed in this respect. Several states and union territories argued that they have taken a significant number of steps for the betterment of the lives of the transgender community.

NALSA Case Judgement

The judgement was delivered by a two-judge bench comprising of Justice K.S. Radhakrishnan and Justice A.K. Sikri on 15th April 2014 although Justice Sikri gave a different opinion with some additional comments.

- The court in its landmark judgement relied on various judgements from foreign courts like New Zealand, Australia, Malaysia, Pakistan and England.
- The Court made a distinction between *Biological sex* and *Psychological sex*.
- The Court said no to gender identification on the basis of *biological sex* and gave full importance to identification based on *psychological sex*.
- The Court ruled that all provisions in the international conventions including the Yogyakarta Principles must be recognised and followed provided they are in consonance with the fundamental rights guaranteed by Part III of the Constitution.
- The Court held that transgenders fall within the purview of the Indian Constitution and thus are fully entitled to the rights guaranteed therein.
 - Article 14 guarantees equality to “any person” which means man, woman and transgender and as such, they are also guaranteed equal protection of law.
 - They have equal rights in employment, health care, education, and civil rights.
 - Discrimination on the grounds of sexual orientation and gender identity represents inequality before the law and unequal protection of the law and violates Article 14.
 - The Court further added that transgender individuals have freedom of expression under Article 19 whereby they can talk, dress, act and behave in a manner they like.
 - They also have a right to live a life of dignity under Article 21.
- The Court held that the State and Central governments must grant transgenders full recognition in the eyes of the law so that they can get education and healthcare without being subjected to any kind of discrimination.
- The Court also decided that Hijras, Eunuchs are to be treated as the “third gender”.
- It made various declarations and directions to the Centre and State Governments such as to operate separate HIV Zero-Surveillance Centres, provision for separate public toilets and appropriate medical care in hospitals for transgenders.

Conclusion

This judgement came as a fresh ray of hope for the transgender community who have long suffered in silence in the face of large scale discrimination and social injustice. We cannot be naive to believe that this judgement will change the way society treats transgender individuals but it is a start to right the wrongs that have taken place against transgenders for centuries together. As for giving transgenders equal rights in our socio-religious and socio-political activities, there is a very long way to go; for now despite this judgement they are still either props in the mainstream society or outcasts that live on the fringes.