

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2019  
(Under Article 32 of the Constitution of India)

**IN THE MATTER OF:**

Rachana Mudraboyina & Ors. ... Petitioners

Versus

Union of India ... Respondent

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

WITH:

I.A. No. \_\_\_\_\_ of 2019: Application for Permission to File

Lengthy Synopsis and List of Dates

I.A. No. \_\_\_\_\_ of 2019: Application for Interim Stay

Filed on:

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ADVOCATE FOR THE PETITIONERS: SATYA MITRA

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PROFORMA FOR FIRST LISTING

SECTION \_\_\_\_\_

The case pertains to (Please tick/check the correct box):

Central Act: Transgender Persons (Protection of Rights) Act, 2019.

Section: Sections 4, 5, 6, 7, 12 (3) and 18.

Central rule: N.A.

Rule no(s): N.A.

State Act: N.A.

Section: N.A.

State Rule: N.A.

Impugned Interim Order date: N.A.

Impugned Final Order/Decree Date: N.A.

High court name: N.A.

Name of Judges: N.A.

Tribunal/Authority(Name): N.A.

1. Nature of matter:  Civil  Criminal

2. (a) Petitioner/Appellant No.1: Rachana Mudraboyina

(b) E-mail ID:

(c) Mobile Phone Number: 9866717712

3. (a) Respondent No.1: Union of India

(b) E-mail ID: N.A.

(c) Mobile Phone Number: N.A.

4. (a) Main category classification: N.A.

(b) Sub classification: N.A.

5. Not to be listed before: N.A.

6. Similar/Pending matter: N.A.

a. Similar disposed of matter with citation, if any, & case details: No similar matter is disposed of.

b. Similar pending matter with case details: No similar case is pending.

7. Criminal matters:

a. Whether accused/convict has surrendered: Yes  No

b. FIR No.: N.A. Date: N.A.

c. Police Station: N.A.

d. Sentence Awarded: N.A.

e. Sentence Undergone: N.A.

8. Land Acquisition Matters:

a. Date of section 4 notification: N.A.

b. Date of section 6 notification: N.A.

c. Date of section 17 notification: N.A.

9. Tax Matters: State the tax effect: N.A.

10. Special Category (first petitioner/appellant only):

Senior citizen > 65 years  SC/ST  Woman/Child

Disabled  Legal Aid case  In custody

11. Vehicle No.(In case of Motor Accident Claim matters): N.A.

Date:

(Satya Mitra)

AOR for Petitioner

Registration No. 1852

E-mail id: satyamitra2003@yahoo.co.in

## **SYNOPSIS**

1. The instant writ petition has been filed to impugn Sections 4, 5, 6, 7, 12(3) and 18 of the Transgender Persons (Protection of Rights) Act, 2019, on the grounds that they are ultra vires Articles 14, 19 and 21, and are a priori void ab initio. While the Bill purports to protect the rights of transgender persons, it violates the most fundamental principles of dignity, the right to privacy and self-determination, and bodily-autonomy and integrity. The impugned sections, inter alia, infringe the fundamental right to self-determination as expounded by this Hon'ble Court in *NALSA v. Union of India*, snatches from transgender persons their fundamental right to choose their place of residence and forces them into "rehabilitation centres", and degrades the existence of transgender persons by treating sexual offences against them as a crime of much lesser consequence than sexual offences against cis persons. The impugned Act, therefore, further pushes transgender persons into a precarious position of statutorily sanctioned discrimination, stigma and harassment.

### **Introduction to the impugned Act**

2. The impugned Act was introduced in the Lok Sabha as the Transgender Persons (Protection of Rights) Bill, 2019, on 19<sup>th</sup>



July 2019 and was passed by the Lok Sabha on 5<sup>th</sup> August 2019. It was then introduced in and passed by the Rajya Sabha on 26<sup>th</sup> November 2019, and received the assent of the President of India and was published in the Gazette on 5<sup>th</sup> December 2019.

3. The relevant sections of the impugned Act are extracted hereunder:

Section 4:

- (1) A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act.
- (2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.

Section 5:

"A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed:

Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child.”

Section 6:

“(1) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.

(2) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).

(3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.”

Section 7:

“(1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an

application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.

(2) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.

(3) The person who has been issued a certificate of identity under section 6 or a revised certificate under sub-section (2) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person: Provided that such change in gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act."

Section 12:

"(1) No child shall be separated from parents or immediate family on the ground of being a

transgender, except on an order of a competent court, in the interest of such child.

(2) Every transgender person shall have— (a) a right to reside in the household where parent or immediate family members reside; (b) a right not to be excluded from such household or any part thereof; and (c) a right to enjoy and use the facilities of such household in a non-discriminatory manner.

(3) Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre.”

Section 18:

“(a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;

(c) forces or causes a transgender person to leave household, village or other place of residence; and  
(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.”

4. The Statement of Objects and Reasons of the impugned Act reads, *inter alia*, as under:

“3. The Hon'ble Supreme Court, vide its order dated 15th April, 2014, passed in the case of National Legal Services Authority Vs. Union of India, *inter alia*, directed the Central Government and State Governments to take various steps for the welfare of transgender community and to treat them as a third gender for the purpose of safeguarding their rights under Part III of the Constitution and other laws made by Parliament and the State Legislature.”

While the impugned Act sources its purpose and objects from this Hon'ble Court's order in *NALSA v. Union of India*, the

Petitioners seek to explain in later paragraphs exactly how the impugned Act violates every rule and principle expounded in *NALSA*.

### **Legislative History**

5. After this Hon'ble Court's final order in *National Legal Services Authority v. Union of India*, ("*NALSA*"), (2014) 5 SCC438, on 14<sup>th</sup> April 2014, a Private Members' Bill ("PMB") was introduced in the Rajya Sabha titled "The Rights of Transgender persons Bill, 2014" on 12<sup>th</sup> December 2014. This PMB was widely supported and accepted as progressive by the transgender community, and the PMB was passed by the Rajya Sabha on 24<sup>th</sup> April 2015, being the first PMB to be passed by any House of Parliament in over 40 years. The PMB was subsequently introduced in the Lok Sabha on 26<sup>th</sup> February 2016, after which a different Bill was introduced by the Government in the Lok Sabha on 2<sup>nd</sup> August 2016, titled the Transgender Persons (Protection of Rights) Bill, 2016. The Government Bill was a complete reversal and annulment of the rights based approach of *NALSA* and of the PMB, and formed the precursor of the impugned Act.
6. As a result of widespread and sustained opposition to the 2016 Government Bill by the transgender community, the Bill was referred to the Departmentally Related Parliamentary

Standing Committee on Social Justice and Empowerment on 8th September 2016. The Standing Committee submitted its report on 21<sup>st</sup> July 2017 strongly criticizing the Bill on various fronts, and made several crucial observations, some of which are as follows:

- i. The Committee noted that there are fundamental issues with the Bill's definition of "transgender persons" since it conflates intersex and transgender persons even though they are not the same in any jurisprudence.
- ii. The Committee was of the view that the Bill's definition of "transgender person" does not conform with the definition prescribed by this Hon'ble Court in NALSA.
- iii. The Committee noted that the Bill's definition of transgender person "not only not only takes away the right to self-determined gender identity which was guaranteed by the Hon'ble Supreme Court in NALSA judgement but also adversely effects significant part of the transgender population - specially pre-op/non-op transmen and transwomen, trans people who cannot or do not wish to undergo surgical interventions, gender fluid, gender neutral, and intergender persons."

iv. The Committee pointed out that that Bill is silent on granting reservations to transgender persons under the category of socially and educationally backward classes of citizens.

v. The Committee also noted that the Bill does not refer to important civil rights like marriage and divorce, adoption, etc. which are critical to transgender persons' lives and reality.

vi. The Committee noted that there were no provisions for separate public toilets, separate frisking zones in public spaces, counselling services to cope with trauma and violence, and census for transgender persons separate from the self-registration process.

### **Directions of this Hon'ble Court in**

#### ***NALSA v. Union of India***

7. At this juncture, it would be helpful to reiterate the specific directions of this Hon'ble Court in NALSA, which were to be implemented by the State Governments and the Central Government within a period of six months since the passing of the final order. These were as follows:



- a. Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.
- b. Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.
- c. Centre and the State Governments to take steps to treat them 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.
- d. Centre and State Governments directed to operate separate HIV Sero - surveillance Centres since Hijras/Transgenders face several sexual health issues.
- e. Centre and State Governments to seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.
- f. Centre and State Governments to take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.

- g. Centre and State Governments to also take steps for framing various social welfare schemes for their betterment.
- h. Centre and State Governments to take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.
- i. Centre and the State Governments to also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

8. It is submitted by the Petitioners that the Central Government as well as a majority of the State Governments continue to be in contempt of the aforesaid declaration and directives of this Hon'ble Court inasmuch that;

- a. State Governments other than the Kerala State Government have continuously failed to implement policies and rules in place that would legally grant Transgender Persons, their right to self-identified gender. In most cases the state functionaries continue to frustrate attempts by Transgender Persons to identify with their self-identified gender. Litigation in various courts including the Hon'ble High Court of Karnataka and Hon'ble High Court of Delhi point to the

state's attempts to frustrate attempts made by Transgender Persons to change their name and gender to their self-identified gender

- b. Other than Kerala and Bihar State governments which have released notifications treating Transgender Persons as socially and educationally backward citizens and extending reservations in cases of admission in educational institutions and public appointments, rest of the states and the central government continues to be contempt of the directives of this Hon'ble Court.
- c. Both the Central and most of the State Governments, have neither put into place an accessible been frustrating the attempts of Transgender Persons to access medical care in hospitals, reflected in the number of cases filed in various High Courts, such as the case filed by in Hon'ble High Court of Guwahati.
- d. Neither the Centre nor the State Governments have taken any active steps towards building separate public toilets for Transgender Persons, neither has it been included in any of the Central Schemes to build toilets.
- e. Other than a few state governments, such as Kerala, Tamil Nadu, Chhattisgarh, Manipur, Telangana, Andhra

Pradesh, which have performed the bare minimum with regard to including Transgender Persons within the various existing social welfare schemes and framing new social welfare schemes none have framed social welfare schemes for their betterment.

f. None of the states have made credible and meaningful attempts to create public awareness so as to have Transgender Persons feel that they are also part and parcel of the social life.

9. It is pertinent to reinforce that the Declarations and Directives in NALSA came to be passed on a PIL filed by the National Legal Services Authority which had taken cognisance of constant infringement of fundamental rights of Transgender Persons in the country.

**Rights-based legal framework:**

***NALSA, Puttaswamy and Navtej***

10. Jurisprudence for the fundamental rights of transgender persons has been extensively developed by this Hon'ble Court in its judgments in *NALSA v. Union of India*, parts of which have already been reproduced, in *Justice Puttaswamy (Retd.) & Anr. v. Union of India*, and in *Navtej Singh Johar v. Union of India*.

11. Relevant portions of this Court's judgment in NALSA, other than the ones already reproduced above, are as follows:

"21. ...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."

"22. ... 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.”

“62. Petitioners have asserted as well as demonstrated on facts and figures supported by relevant materials that despite constitutional guarantee of equality, Hijras/transgender persons have been facing extreme discrimination in all spheres of the society. Non-recognition of the identity of Hijras/transgender persons denies them equal protection of law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail, also by the police. Sexual assault, including molestation, rape, forced anal and oral sex, gang rape and stripping is being committed with impunity and there are reliable statistics and materials to support such activities...

Discrimination on the ground of sexual orientation or gender identity, therefore, impairs equality before law and equal protection of law and violates Article 14 of the Constitution of India.”

“65...Article 16 not only prohibits discrimination on the ground of sex in public employment, but also imposes a duty on the State to ensure that all citizens are treated equally in matters relating to employment and appointment by the State.

“66. ... The discrimination on the ground of ‘sex’ under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity. The expression ‘sex’ used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male or female.

“69. ... Article 19(1) (a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one’s right to expression of his self-identified gender. Self-identified gender can be expressed through dress, words, action or behavior or any other form. No restriction can be placed on one’s personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution.”

“71. Principles referred to above clearly indicate that the freedom of expression guaranteed under Article 19(1)(a) includes the freedom to express one’s chosen gender identity through varied ways and means by way of expression, speech, mannerism, clothing etc.

“72. Gender identity, therefore, 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. A transgender’s personality could be expressed by the transgender’s behavior and presentation. State cannot prohibit, restrict or interfere with a transgender’s expression of such personality, which reflects that inherent personality. Often the State and its authorities either due to ignorance or otherwise fail to digest the innate character and identity of such persons. We, therefore, hold that values of privacy, self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the transgender community under Article 19(1)(a) of the Constitution of India and the



State is bound to protect and recognize those rights.”

“73...Article 21 is the heart and soul of the Indian Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the basic fundamental rights and not even the State has the authority to violate or take away that right. Article 21 takes all those aspects of life which go to make a person’s life meaningful. Article 21 protects the dignity of human life, one’s personal autonomy, one’s right to privacy, etc. Right to dignity has been recognized to be an essential part of the right to life and accrues to all persons on account of being human. Court held that the right to dignity forms an essential part of our constitutional culture which seeks to ensure the full development and evolution of persons and includes “expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings”.

“74. Recognition of one’s gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one’s sense of being as well as an

integral part of a person's identity. Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution.

"75. Article 21, as already indicated, protects one's right of self determination of the gender to which a person belongs. Determination of gender to which a person belongs is to be decided by the person concerned. In other words, gender identity is integral to the dignity of an individual and is at the core of "personal autonomy" and "self-determination". Hijras/Eunuchs, therefore, have to be considered as Third Gender, over and above binary genders under our Constitution and the laws.

"82. Article 14 has used the expression "person" and the Article 15 has used the expression "citizen" and "sex" so also Article 16. Article 19 has also used the expression "citizen". Article 21 has used the expression "person". All these expressions, which are "gender neutral" evidently refer to human-beings. Hence, they take within their sweep Hijras/Transgenders and are not as such limited to male or female gender. 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."

"83. We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of the members of the TG community."

"87....the issue is not limited to the exercise of choice of gender/sex. Many rights which flow from this choice also come into play, inasmuch not giving them the status of a third gender results in depriving the community of TGs of many of their valuable rights and privileges which other persons enjoy as citizens of this Country. There is also

deprivation of social and cultural participation which results into eclipsing their access to education and health services.”

“119. Therefore, gender identification becomes very essential component which is required for enjoying civil rights by this community. It is only with this recognition that many rights attached to the sexual recognition as ‘third gender’ would be available to this community more meaningfully viz. the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver’s license, the right to education, employment, health so on.

“120.... Further, there seems to be no reason why a transgender must be denied of basic human rights which includes Right to life and liberty with dignity, Right to Privacy and freedom of expression, Right to Education and Empowerment, Right against violence, Right against Exploitation and Right against Discrimination. Constitution has fulfilled its duty of providing rights to transgenders. Now it’s time for us to recognize this and to extend and interpret the Constitution in such a

manner to ensure a dignified life of transgender people. All this can be achieved if the beginning is made with the recognition that TG as third gender.”

12. Relevant portions of this Court’s judgment in *Puttaswamy*, which relate to the rights of persons whose rights and lives are impacted by the impugned Act are as follows:

“271...The pursuit of happiness is founded upon autonomy and dignity. Both are essential attributes of privacy which make no distinction between the birth marks of individuals.”

“297. .... Privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is

manifested in the ability to make decisions on matters intimate to human life. The autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The body and the mind are inseparable elements of the human personality. The integrity of the body and the sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop. Without the ability to make choices, the inviolability of the personality would be in doubt. Recognizing a zone of privacy is but an acknowledgment that each individual must be entitled to chart and pursue the course of development of personality. Hence privacy is a postulate of human dignity itself. Thoughts and behavioural patterns which are intimate to an individual are entitled to a zone of privacy where one is free of social expectations. In that zone of privacy, an individual is not judged by others. Privacy enables each individual to take crucial decisions which find

expression in the human personality. It enables individuals to preserve their beliefs, thoughts, expressions, ideas, ideologies, preferences and choices against societal demands of homogeneity. Privacy is an intrinsic recognition of heterogeneity, of the right of the individual to be different and to stand against the tide of conformity in creating a zone of solitude. Privacy protects the individual from the searching glare of publicity in matters which are personal to his or her life. Privacy attaches to the person and not to the place where it is associated. Privacy constitutes the foundation of all liberty because it is in privacy that the individual can decide how liberty is best exercised. Individual dignity and privacy are inextricably linked in a pattern woven out of a thread of diversity into the fabric of a plural culture.”

“298...Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that

does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary state action. It prevents the state from discriminating between individuals. The destruction by the state of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary state action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an



inviolable right to determine how freedom shall be exercised.

13. This Hon'ble Court in *Puttaswamy* concluded that:

“318. Life and personal liberty are not creations of the Constitution. These rights are recognised by the Constitution as inhering in each individual as an intrinsic and inseparable part of the human element which dwells within;

“320. Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy sub serves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty;

“323. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy

safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being;

14. The Court further held in *Puttaswamy* as under:

“635. Whereas this right to control dissemination of personal information in the physical and virtual space should not amount to a right of total eraser of history, this right, as a part of the larger right of privacy, has to be balanced against other

fundamental rights like the freedom of expression, or freedom of media, fundamental to a democratic society.”

15. Finally, this Court made crucial and fundamental observations in Navtej, especially regarding the policy of ‘Progressive Realization of Positive Rights’ and the Doctrine of Non-Regression. The Court noted that as the society evolves so does the social construct of things around it, and thereby there would be a progressive realization that new rights may emerge and once society recognizes such right to be true and valid, then it cannot retrospectively take it away. Following are the relevant portions of this Court’s judgment in Navtej:

“122. In the garb of social morality, the members of the LGBT community must not be outlawed or given a step-motherly treatment of malefactor by the society. If this happens or if such a treatment to the LGBT community is allowed to persist, then the constitutional courts, which are under the obligation to protect the fundamental rights, would be failing in the discharge of

their duty. A failure to do so would reduce the citizenry rights to a cipher.”

“178. When we talk about the rights guaranteed under the Constitution and the protection of these rights, we observe and comprehend a manifest ascendance and triumphant march of such rights which, in turn, paves the way for the doctrine of progressive realization of the rights under the Constitution. This doctrine invariably reminds us about the living and dynamic nature of a Constitution. Edmund Burke, delineating upon the progressive and the perpetual growing nature of a Constitution, had said that a Constitution is ever-growing and it is perpetually continuous as it embodies the spirit of a nation. It is enriched at the present by the past experiences and influences and makes the future richer than the present.”

“183... The rationale behind the doctrine of progressive realization of rights is the dynamic and ever growing nature of the Constitution under which the rights have been conferred to the citizenry.”

“188. The doctrine of progressive realization of rights, as a natural corollary, gives birth to the doctrine of non-retrogression. As per this doctrine, there must not be any regression of rights. In a progressive and an ever-improving society, there is no place for retreat. The society has to march ahead.

189. The doctrine of non-retrogression sets forth that the State should not take measures or steps that deliberately lead to retrogression on the enjoyment of rights either under the Constitution or otherwise.”

“248. 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.”

“250... Attitudes and mentality have to change to accept the distinct identity of

individuals and respect them for who they are rather than compelling them to 'become' who they are not. All human beings possess the equal right to be themselves instead of transitioning or conditioning themselves as per the perceived dogmatic notions of a group of people. To change the societal bias and root out the weed, it is the foremost duty of each one of us to —stand up and speak up|| against the slightest form of discrimination against transgenders that we come across...

#### "Q. Conclusions

253. In view of the aforesaid analysis, we record our conclusions in seriatim:-

(i) The eminence of identity which has been luculently stated in the NALSA case very aptly connects human rights and the constitutional guarantee of right to life and liberty with dignity. With the same spirit, we must recognize that the concept of identity which has a constitutional tenability cannot be pigeon-holed singularly to one's

orientation as it may keep the individual choice at bay. At the core of the concept of identity lies self-determination, realization of one's own abilities visualizing the opportunities and rejection of external views with a clear conscience that is in accord with constitutional norms and values or principles that are, to put in a capsule, — "constitutionally permissible".

...(v) Constitutional morality embraces within its sphere several virtues, foremost of them being the espousal of a pluralistic and inclusive society. The concept of constitutional morality urges the organs of the State, including the Judiciary, to preserve the heterogeneous nature of the society and to curb any attempt by the majority to usurp the rights and freedoms of a smaller or minuscule section of the populace. Constitutional morality cannot be martyred at the altar of social morality and it is only constitutional morality that can be allowed to permeate into the Rule of Law. The veil of social morality cannot be used to violate fundamental rights of even a single

individual, for the foundation of constitutional morality rests upon the recognition of diversity that pervades the society.

(vi) The right to live with dignity has been recognized as a human right on the international front and by number of precedents of this Court and, therefore, the constitutional courts must strive to protect the dignity of every individual, for without the right to dignity, every other right would be rendered meaningless. Dignity is an inseparable facet of every individual that invites reciprocative respect from others to every aspect of an individual which he/she perceives as an essential attribute of his/her individuality, be it an orientation or an optional expression of choice. including the right to express and choose without any impediments so as to enable an individual to fully realize his/her fundamental right to live with dignity.

... (x)Autonomy is individualistic. Under the autonomy principle, the individual has sovereignty over his/her body. He/she can



surrender his/her autonomy wilfully to another individual and their intimacy in privacy is a matter of their choice. Such concept of identity is not only sacred but is also in recognition of the quintessential facet of humanity in a person's nature. The autonomy establishes identity and the said identity, in the ultimate eventuate, becomes a part of dignity in an individual."

"338. We may hasten to add, that the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity discussed below, which were also referred to by Radhakrishnan, J. in NALSA (supra), conform to our constitutional view of the fundamental rights of the citizens of India and persons who come to this Court."

"389. This formalistic interpretation of Article 15 would render the constitutional guarantee against discrimination meaningless. For it would allow the State to claim that the discrimination was based on sex and another ground ('Sex plus') and hence outside the ambit of Article 15. Latent

in the argument of the discrimination, are stereotypical notions of the differences between men and women which are then used to justify the discrimination. This narrow view of Article 15 strips the prohibition on discrimination of its essential content. This fails to take into account the intersectional nature of sex discrimination, which cannot be said to operate in isolation of other identities, especially from the socio-political and economic context. For example, a rule that people over six feet would not be employed in the army would be able to stand an attack on its disproportionate impact on women if it was maintained that the discrimination is on the basis of sex and height. Such a formalistic view of the prohibition in Article 15, rejects the true operation of discrimination, which intersects varied identities and characteristics.”

“390... The Court recognized that traditional cultural norms stereotype gender roles. These stereotypes are premised on assumptions about socially ascribed roles of

gender which discriminate against women. The Court held that "insofar as governmental policy is based on the aforesaid cultural norms, it is constitutionally invalid." In the same line, the Court also cited with approval, the judgments of the US Supreme Court in *Frontiero v. Richardson*, and *United States v. Virginia*, and Justice Marshall's dissent in *Dothard v. Rawlinson*, The Court grounded the anti-stereotyping principle as firmly rooted in the prohibition under Article 15."

"415. Privacy creates "tiers of 'reputable' and 'disreputable' sex", only granting protection to acts behind closed doors.<sup>141</sup> Thus, it is imperative that the protection granted for consensual acts in private must also be available in situations where sexual minorities are vulnerable in public spaces on account of their sexuality and appearance.<sup>142</sup> If one accepts the proposition that public places are heteronormative, and same-sex sexual acts partially closeted, relegating 'homosexual' acts into the private sphere, would in effect

reiterate the “ambient heterosexism of the public space.” It must be acknowledged that members belonging to sexual minorities are often subjected to harassment in public spaces. The right to sexual privacy, founded on the right to autonomy of a free individual, must capture the right of persons of the community to navigate public places on their own terms, free from state interference.”

“419. An individual’s sexuality cannot be put into boxes or compartmentalized; it should rather be viewed as fluid, granting the individual the freedom to ascertain her own desires and proclivities. The self-determination of sexual orientation is an exercise of autonomy. Accepting the role of human sexuality as an independent force in the development of personhood is an acknowledgement of the crucial role of sexual autonomy in the idea of a free individual.<sup>160</sup> Such an interpretation of autonomy has implications for the widening application of human rights to sexuality.<sup>161</sup> Sexuality cannot be construed as something

that the State has the prerogative to legitimize only in the form of rigid, marital procreational sex.<sup>162</sup> Sexuality must be construed as a fundamental experience through which individuals define the meaning of their lives.<sup>163</sup> Human sexuality cannot be reduced to a binary formulation. Nor can it be defined narrowly in terms of its function as a means to procreation. To confine it to closed categories would result in denuding human liberty of its full content as a constitutional right. The Constitution protects the fluidities of sexual experience. It leaves it to consenting adults to find fulfilment in their relationships, in a diversity of cultures, among plural ways of life and in infinite shades of love and longing.”

“425. Individuals belonging to sexual and gender minorities experience discrimination, stigmatization, and, in some cases, denial of care on account of their sexual orientation and gender identity. However, it is important to note that ‘sexual and gender minorities’ do not constitute a homogenous group, and experiences of social exclusion, marginalization, and discrimination, as well

as specific health needs, vary considerably. Nevertheless, these individuals are united by one factor - that their exclusion, discrimination and marginalization is rooted in societal heteronormativity and society's pervasive bias towards gender binary and opposite-gender relationships, which marginalizes and excludes all non-heteronormative sexual and gender identities. This, in turn, has important implications for individuals' health-seeking behaviour, how health services are provided, and the extent to which sexual health can be achieved."

"430. The right to health is not simply the right not to be unwell, but rather the right to be well. It encompasses not just the absence of disease or infirmity, but "complete physical, mental and social well being",<sup>196</sup> and includes both freedoms such as the right to control one's health and body and to be free from interference (for instance, from non-consensual medical treatment and experimentation), and entitlements such as the right to a system of healthcare that gives everyone an equal

opportunity to enjoy the highest attainable level of health.”

**Impugned Sections 4, 5, 6 and 7 &  
the right of self determination**

16. It is submitted that the play envisaged between section 4, 5, 6 and 7 is misleading to say the least inasmuch that while Section 4 emphasises that a trans person can have the right to a self-perceived gender identity such rights are available only if, the Trans Person is recognised as one under the act, for in the subsequent Sections, particularly Section 5, 6 and 7 the prescription makes self-determination of gender a near impossibility for most trans-persons.

17. A reading of the law makes it clear that the framers of the present statute have failed to grasp the fundamental difference between gender and sex, is reinforced by a reading of Section 7, in as much that the Section walks on the prescription that one undergoes surgery to change gender.

18. That though this court in *NALSA*, held that a person is entitled to their self-perceived identity. Section 5 seeks to issue fetters by;

- i. introducing a certification process at the discretion of the District Magistrate.

ii. Restricting the identity of one such certificate as one of a "Transgender"

19. That once this Court has already held that every transperson is entitled to their decide their self-identified gender, the prescription proposed at Section 5 amounts to violating the doctrine of non-retrogression.

20. Furthermore not only does Section 7 pre-mandate a surgery to change one's gender it also requires a person to

a. first register themselves as a transgender under Section 6(1)

b. obtain a certificate from a medical superintendent or a Chief Medical Officer of a Medical Institution certifying that one has undergone such a surgery to be able to apply for a change in the gender and

c. only after the magistrate is satisfied with the correctness of such an assertion can a certificate indicating a change in gender as requested be issued.

21. That once this Court has already held that Surgery cannot be made mandatory for a transperson to undergo to assert a gender identify of their choice, the prescription at Section 7 amounts to violating the doctrine of non-retrogression.



22. Section 7(3) offends further by restricting the rights of any person to change their first names to bring it in conformity with the gender of their choice, unless such person has had a surgery and has followed the procedure set out in Section 7(1) and Section 7(2)

23. The aforesaid provision pre mandating a surgery goes against the letter and spirit mandated in NALSA and while the notion of privacy and self-determination has been reiterated in judgement after judgement by this court, as enunciated in *NALSA, Navtej* and *Puttaswamy*.

**Impugned Section 12 (3) & the right against being  
forced into rehabilitation centres**

24. The Petitioners submit that Section 12, inasmuch that it provides for a Transgender Person to be placed in a rehabilitation centre, when any parent or a member of the transgender person's immediate family is unable to take care of the transgender person by the order of a competent court is patently arbitrary and therefore in violation of Article 14, and is further violative of the Right to Life enshrined in Article 21 of the Constitution of India.

25. Since the present Act doesn't describe the form or function of "Rehabilitation Centres" one is then forced to look for the meaning of rehabilitation in other Acts and Rules available. After a careful collation a the term rehabilitation is present in three forms.

- i. A person is rehabilitated when they are in conflict with law, as in the case in Juvenile Justice Act.
- ii. A person is a victim of trafficking or of Bonded Labour wherein the person who is rehabilitated is a "victim" of oppression and exploitation by another specific entity. As described in Bonded Labour Act and Immoral Trafficking Prevention Act
- iii. A person is separate from society and can cause damage to themselves or to the external society as in the case of persons in the Mental Health Act and the meaning of rehabilitation understood in the aforesaid act

26. In each of these cases the person is either an offender or is someone who has gone through trauma because of their rights being taken away by a singular institution or a person. Whereas through *NALSA* this Hon'ble Court have in no clearer terms said that Transgender Persons are being discriminated and oppressed by the society as a whole, and neither is

Gender Incongruence a concern which is a harm to society or to themselves. Keeping in mind that American Psychiatric Association, in their Diagnostic and Statistical Manual of Mental Disorders (DSM-5) has changed the terminology from Gender Identity Disorder as a disorder to Gender Incongruence. Therefore in all interpretations of "rehabilitation" present in law, it is a process to get a person back into the fold of society. Whereas with Transgender Persons, it is the society that has to progress ahead and a societal change ought to be made. Therefore it is not a Transgender Person who is to be rehabilitated in order to adhere to societal norms and mores that are discriminatory.

27. If there is any action that ought to be taken, then it is that protective measures that should be in place in order to protect Transgender Persons from the discrimination in society and not Transgender Persons who are to be forced into a mould to fit them into society.

28. In essence the Rehabilitation Centres as they exist would then form a part of "correctional homes" which is rampant with procedures of "conversion therapy" wherein the person is forced to give up their identity with regard to their sexuality and gender. The history of "conversion therapy" has been a traumatic history for Transgender Persons and

persons with alternate sexualities with the attempt of erasing their identity as protected under Article 19, and elaborated in *NALSA* and *Navtej*. The “therapy” and “rehabilitation procedures” used thereby constitute a continuation of violence that has been inflicted on members of the Transgender Community since time immemorial.

29. The only rationale therefore that would sustain with regard to maintaining “rehabilitation centres” specific for Transgender Persons would be to exclude them from society and continue to treat them in a manner as external to society, therefore continuing the incarceration against them or to forcefully “convert” Transgender Persons to give up their identity.

30. It is also of consequence to point to this Hon’ble Court the terrible living conditions in the present “Shelter Homes” and “Protection Homes”, where persons are relegated to a position of that worse than animalistic existence. Where these “Homes” function in a form that is much worse than prisons and very strategically deny persons living in them their right to life. Neither does the impugned provision have any regard to the consent of the Transgender Person before they are forcefully put into rehabilitation homes.

## **Impugned Section 18 & sexual violence against transgender persons**

31. That Section 18 identifies a broad range of offences against transgender persons, ranging from bonded labour and denial of the right of passage, to physical abuse and sexual violence, etc. While most of the offences are also provided for in the Indian Penal Code, 1860, they are gender/sex neutral. Certain offences in the IPC are not gender/sex neutral, for instance:

- a. Section 354- Assault or criminal force to woman with intent to outraging the modesty of a woman, which is punishable with imprisonment for up to 5 years with fine.
- b. Section 354D- Stalking, which is punishable with imprisonment for up to 5 years with fine.
- c. Section 354C- Voyeurism, which is punishable with imprisonment for up to 7 years with fine.
- d. Section 354A- Sexual harassment at workplace, which is punishable with imprisonment for up to 3 years with fine.

e. Section 354B- Assault or use of criminal force to woman with intent to disrobe, which is punishable with imprisonment for up to 7 years with fine.

32. By providing a quantum of two years for sexual offences in the nature of sexual abuse against transgender persons, which is lower than what is provided for other cis-gendered counterparts, Section 18 of the impugned Act is in violation of not only Article 14 but also Article 21 of the Constitution.

33. The anomaly that Section 18 seeks to create is borne out by the following illustrations:

a. An individual who undergoes a sex reassignment surgery to be legally recognised as a woman will get the protection of Section 354 of the IPC for which punishment is imprisonment for up to 5 years. Whereas the same offence committed against an individual who has not undergone a surgery and is recognised as a transgender person, the punishment is restricted at imprisonment for up to 2 years under the impugned Act.

b. Similarly, an individual who undergoes a surgery to be legally recognised as a man during transition (required

under the act to be a transgender prior to a gender change) will be entitled to the protection of Section 18 of the impugned Act with a punishment for the offence which is imprisonment for up to two years, but after having undergone the surgery the individual will not get any protection of Section 354 of the IPC.

34. That such a relegation to a weaker protection of the law, when this Hon'ble Court has taken cognizance of the transphobic mores in our society manifesting in penal law and struck them down, the impugned Act will only reinforce society's prejudices by enshrining a second class citizenship status onto transgender persons.

35. That Section 18 is not only violative of the Right to Equal Protection of the Law as enshrined in Article 14 of the Constitution but also of the Right to Life as enshrined at Article 21 of the Constitution of India.

36. That this relegation of transgender persons to a position below cis-gender persons negates the very premise that was taken by this Hon'ble Court on the violence and inhuman existence that transgender persons undergo due to the bigoted, homophobic and transphobic attitudes of the society.

## LIST OF DATES

DATE	PARTICULARS
14.4.2014	Final order and judgment of this Court in National Legal Services Authority v. Union of India, (" <i>NALSA</i> "), (2014) 5 SCC438.
12.12.2014	Private Members' Bill introduced in the Rajya Sabha titled "The Rights of Transgender persons Bill, 2014".
24.4.2015	Private Members' Bill titled "The Rights of Transgender persons Bill, 2014" passed by the Rajya Sabha.
26.2.2016	Private Members' Bill titled "The Rights of Transgender persons Bill, 2014", as passed by the Rajya Sabha, introduced in the Lok Sabha.
2.8.2016	Transgender Persons (Protection of Rights) Bill, 2016 introduced by the Government in the Lok Sabha.
8.9.2016	Transgender Persons (Protection of Rights) Bill, 2016 referred to the Departmentally Related Parliamentary Standing Committee on Social Justice and Empowerment.
21.7.2017	The Departmentally Related Parliamentary Standing Committee on Social Justice and Empowerment submitted its report on the



	Transgender Persons (Protection of Rights) Bill, 2016.
19.7.2019	Transgender Persons (Protection of Rights) Bill, 2019 introduced by the Government of India in the Lok Sabha.
5.8.2019	Transgender Persons (Protection of Rights) Bill, 2019 as introduced by the Government, passed by the Lok Sabha.
26.11.2019	Transgender Persons (Protection of Rights) Bill, 2019 as passed by the Lok Sabha, introduced in and passed by the Rajya Sabha.
5.12.2019	Transgender Persons (Protection of Rights) Act, 2019 as passed by the Lok Sabha the Rajya Sabha, received the assent of the President of India.
	Hence this Petition.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2019

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

**In the Matter of :**

1. Rachana Mudraboyina,

D/o Late Shri M. Venkatrao,

R/o Flat No. 110, Palace C, Happy Homes,

Upparapally, Attapur, Rajendranagar,

Rangareddy, Hyderabad,

Telangana- 500048.

...Petitioner No. 1

2. Meera Sangamitra,

D/o, Vyjayanthi Mala,

R/o, Flat No. 205, Raintree Abode Apartment,

Serilingampally, Hyderabad,

Telangana- 500019.

...Petitioner No. 2

3. Shume Banerjee,

S/o Shri Ashish Banerjee,

R/o 330/6, Ashok Nagar, Allahabad,

Uttar Pradesh- 211001.

...Petitioner No. 3

4. Santa Khurai,

D/o Late Th. Modhu Singh,

R/o Khurai Thoidingjam Leikai,

Imphal East District, Manipur- 795010.

...Petitioner No. 4

5. Kiran Nayak,

D/o Badhru,

R/o Ward No. 1, Near Lokyotha Office,

Vapasandra Chikkaballapura Town,

District Thaku, Karnataka- 562101.

...Petitioner No. 5

6. Rajagopalan R. @ Ray R.,

D/o R. Ramachandran,

R/o 342, Type-IV Flats, Laxmbibai Nagar,

New Delhi- 110023.

...Petitioner No. 6

7. Matam Gangabhavani,

D/o M. Rudraiah,

R/o Rayalacheruvu Village, Radiki Mandal,

Ananthapur Dirstrict,

Andhra Pradesh- 515455.

...Petitioner No. 7

8. Vikram Ramesh Shinde @ Vicky Shinde,

D/o Ramesh Tayyapa Shinde,

R/o Worli BDD Chawl No. 82,

Room No. 28, Worli, Mumbai,

Maharashtra- 400018.

...Petitioner No. 8

Versus

Union of India,

Through its Secretary,

Ministry of Law and Justice, Shastri Bhawan,

"C" Wing, New Delhi- 110001.

...Respondent

**WRIT PETITION FOR VIOLATION OF ARTICLES 14, 19 AND  
21 OF THE CONSTITUTION OF INDIA UNDER ARTICLE 32  
SEEKING QUASHING AND SETTING ASIDE OF SECTIONS 4,  
5, 6, 7, 12(3) AND 18 OF THE TRANSGENDER PERSONS  
(PROTECTION OF RIGHTS) ACT, 2019.**

TO,

THE HON'BLE CHIEF JUSTICE AND HIS

OTHER COMPANION JUSTICES OF THE HON'BLE

SUPREME COURT OF INDIA

THE HUMBLE PEITION OF

THE PETITIONER HEREIN

**MOST RESPECTFULLY SHOWETH THAT:**

1. The instant writ petition has been filed to impugn Sections 4, 5, 6, 7, 12(3) and 18 of the Transgender Persons (Protection of Rights) Act, 2019, on the grounds that they are ultra vires Articles 14, 19 and 21, and are a priori void ab initio. While the Bill purports to protect the rights of transgender persons, it violates the most fundamental principles of dignity, the

right to privacy and self-determination, and bodily-autonomy and integrity. The impugned sections, inter alia, infringe the fundamental right to self-determination as expounded by this Hon'ble Court in *NALSA v. Union of India*, snatches from transgender persons their fundamental right to choose their place of residence and forces them into "rehabilitation centres", and degrades the existence of transgender persons by treating sexual offences against them as a crime of much lesser consequence than sexual offences against cis-gender persons. The impugned Act, therefore, further pushes transgender persons into a precarious position of statutorily sanctioned discrimination, stigma and harassment.

- 1A. The Petitioners have not approached any other authority for the same reliefs.

### **Array of Parties**

2. Petitioner No. 1 is an independent Human Rights Activist, who works on a number of issues including rights of gender minorities, sex workers, Dalits, Bahujan and Muslims, among a range of other issues and concerns. She co-founded Telangana Transgender Hijra Intersex Samiti (THITS), National Trans Peoples Movement (NTPM) and is associated with a number of organisations including National Network of Sex Workers (NNSW), All India Network of Sex Workers

(AINSW), NAPM and WSS. She identifies as Trans female and has represented the Indian LGTQIA+ communities in various international and National Forums, including the Trans - INCLO, UN AIDS - LGBT Think Tank, UN Women and UNODC for the Anti Trafficking in Persons Platform. She has also worked as resource person for National Police Academy, National Institute of Rural Development and Panchayati Raj, National Social Defence Institute, National Council of Churches of India on carrying out workshops for members from the civil society and Transgender Community.

3. Petitioner No. 2 self identifies as a woman, has had an abiding interest in human rights, environmental and social justice issues, where she had co-founded a small group called Grassroots and has since then associated with various collectives and campaigns in Andhra Pradesh and Telangana. She has also been actively involved with various activities of NAPM, in different capacities, including as a National Organizer and Member of the National Convening Team and has facilitated processes on dialogues and actions among youth (Yuva Samvad) and women, nationally and across different states. She serves on the Governing Board of pro-people organizations like the Humsafar Trust, Support Centre for Women (Lucknow), Bindrai Institute for Research, Study and Action (BIRSA), Ranchi and is also associated with other alliances including campaigns for judicial accountability, right

to education, women's and transgender rights, social justice etc. She is a member of the Telangana Hijra Intersex Transgender Samiti (THITS) and National Transgender People's Movement (NTPM). She is a recipient of Girish Sant Memorial Fellowship and studied the social and environmental regulatory governance aspects of Thermal Power Plants in Telangana between. She is also recipient of the Gorrepati Narendranath Memorial Fellowship (2018) given by Centre for Equity Studies. She is also recipient of the Bhasha Memorial Award for Best Social Activist, 2019 and Born2Win Social Activist Award, 2019. She is actively associated with the NAPM process in the states of Telangana and Andhra Pradesh and is working on strengthening learnings, solidarities and actions between various groups across the country on diverse issues with focus on preservation of constitutional values, human rights, natural resource rights, conserving eco-systems and social justice.

4. Petitioner No. 3 is a Law Graduate working for a Non-Governmental Organisation currently residing in Delhi for a fellowship of two years. They identify as a male and currently undergoing hormone therapy, they wish to subsequently change their gender legally in all their identity documents which at the current instance describe the petitioner as female. They have been involved in Transgender Rights Activism since 2016, they have been a part of various press

conferences specifically the one that was held right after the Rajya Sabha passed the Bill and been a part of a number of interviews by news channels and news portals to talk about Transgender Persons Rights, issues and the very specific concerns with the Bill.

5. Petitioner No. 4 is a Nupi Maanbi from Manipur. Nupi Maanbi is best translated as indigenous Meitei Transwoman. She is an artist and activist. She works with the All Manipur Nupi Maanbi Association (AMANA). She has been working on Gender and Sexual Minorities rights based issues for the past 15 years. She was a Committee Member from 2013 to 2017 for North East at the South East Asian Human Rights Association on Gender and Sexual Minorities (SAHRA). She represented LGBTQIA+ persons from the North East of India in the United Nations universal Periodic Review 2010 and 2013, where she presented issues of indigenous Transgender Persons (Nupi Maanbi), their culture, politics and specific challenges to the United Nations Special Rapporteur on Violence Against Women. She provided critical assistance to form the Transgender Welfare Board, Manipur and continues to work closely with Manipur State Legal Services Authority to increase accessibility to quality legal aid to Transgender Communities in Manipur. In the late 1990s she led a 7 member Nupi Maanbi dance ensemble called Seven Sisters, representing a critical element of trans culture of Manipur.



The petitioner also started a Nupi Maanbi beauty parlour which paved the path for access to livelihood and social mobility for Transgender Persons in Manipur. In 2010 she organised the Miss Trans Queen Contest to consolidate and increase awareness of issues of Transgender Persons in Manipur. In addition she has done research on Nupa amaibi (Meitei Transgender Shaman) and Meeteilon (earlier Manipuri languages). She has made a film called 'The Unheard Voice' on the Nupi Amaibi of Manipur. The English Translation of her first book Sendraang Hangampaan/ Yellow Sparrow is going to be released soon.

6. Petitioner No. 5 is a Disabled Adivasi Transman who is on a fellowship from Solidarity Foundation, Bangalore for the past two years to work on issues of disability and sexuality. He has been involved immensely in strengthening the work of Karnataka Vikalachetanra (a Chikkaballapur based organisation of People with Disabilities that the petitioner co-founded in 2012) which works for the rights of People with Disabilities in Chikkaballapur, Kolar, Tumkur and rural districts in Bangalore. Similarly he has worked actively towards the advancing activities of Nisarga (a Chikkaballur based organisation on Sexual and Gender Minorities co-founded by the petitioner in 2010) which does crisis intervention and advocacy for the rights of Sexual and Gender Minorities. He also co-founded Society for Transmen Action

and Rights (STAR), a support group of Transmen for Transmen in Andhra Pradesh, Telangana and Karnataka and an Intersex Group (KTM) a support group for Transmen and Intersex Persons in Karnataka. Additionally in his individual capacity he continues to assist Transmen and persons with disability with family and career counselling, personal crisis management and personal development. At present he is working in Mumbai as a part of his fellowship with Chikkaballapura Disability issues.

7. Petitioner No. 6 is a trans woman. She has been addressed as 'male' in all her education certificates presently, even though she identifies as a woman. She is pursuing LL.B. in University of Delhi since 2018. She is a postgraduate in public administration from IGNOU and a graduate in political science from Amity University. She has been a member of Ambedkar University Delhi Queer Collective since October 2016 and is working on queer persons' issues & organising around them in student-led spaces. She has also been part of several panels in Miranda House, Dyal Singh College, Lady Shri Ram College, Ambedkar University, Jawaharlal Nehru University as well as in other departments & colleges of DU as well as the British Council. She has also been part of the Faculty Development Programme in Faculty of law, University of Delhi, where she was a resource person for gender sensitisation. Her experiences were covered as part of a

photo exhibition in Jamia Millia Islamia University on surviving as a queer femme person. She has been campaigning on the need for Gender neutral washrooms in higher education spaces. She also spoke on the intersection of law & gender identity at Jamia Hamdard on a conference on transgender persons' healthcare. At Campus Law Centre, Faculty of Law she is striving for a more trans inclusive & friendlier campus by attempting to point out instances of transphobia, exclusion & violence.

8. Petitioner No. 7 is an intersex person who has been addressed as male in all her education certificates, even though she identifies as female. In 2003 she underwent Sexual Reassignment Surgery and identifies as a Transgender Woman. IN 2017 she legally changed her name from Gangadhar to Gangabhavani in various Identity documents and has received an official certificate declaring her as transgender from the Government of Andhra Pradesh. She has worked as a village accountant in the Velugu Department. She has worked with various departments of the government including Indirakranthi Pathakam (IKP, DRDA) and the Yadiki Primary Health Centre. As of now she is working as a Research Assistant at the National Institute of Rural Development and Panchayati Raj (NIRD&PR).

9. Petitioner No. 8 is a part of the Jogti Community and identifies herself as female. She has been working as an activist voicing out concerns of Transgender Persons across the country for the past 6 years. She is also the founder of Shiv Shakthi Foundation which works for rights of Transgender Persons in education, employment and health and carries out awareness and sensitisation programmes on gender and sexuality rights. She has been a part of various press conferences on rights of transgender persons and the issues and concerns faced by the community. In addition she engages with various organisations such as Aravani Art Project on running programmes on increasing awareness and sensitisation of the larger public with regard to Transgender Persons.

### **FACTS**

10. The impugned Act was introduced in the Lok Sabha as the Transgender Persons (Protection of Rights) Bill, 2019, on 19<sup>th</sup> July 2019 and was passed by the Lok Sabha on 5<sup>th</sup> August 2019. It was then introduced in and passed by the Rajya Sabha on 26<sup>th</sup> November 2019, and received the assent of the President of India and was published in the Gazette on 5<sup>th</sup> December 2019.

11. The relevant sections of the impugned Act are extracted hereunder:

Section 4:

- (3) A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act.
- (4) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.

Section 5:

"A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed:

Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child."

Section 6:

"(1) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within

such time, as may be prescribed indicating the gender of such person as transgender.

(2) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).

(3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.”

#### Section 7:

“(1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.

(2) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer,

and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.

(3) The person who has been issued a certificate of identity under section 6 or a revised certificate under sub-section (2) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person: Provided that such change in gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act.”

#### Section 12:

“(1) No child shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such child.

(2) Every transgender person shall have— (a) a right to reside in the household where parent or immediate family members reside; (b) a right not to be excluded from such household or any part thereof; and (c) a right to enjoy and use the

facilities of such household in a non-discriminatory manner.

(3) Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre.”

Section 18:

“(a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;

(c) forces or causes a transgender person to leave household, village or other place of residence; and

(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse,



shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.”

12. The Statement of Objects and Reasons of the impugned Act reads, *inter alia*, as under:

“3. The Hon'ble Supreme Court, vide its order dated 15th April, 2014, passed in the case of National Legal Services Authority Vs. Union of India, inter alia, directed the Central Government and State Governments to take various steps for the welfare of transgender community and to treat them as a third gender for the purpose of safeguarding their rights under Part III of the Constitution and other laws made by Parliament and the State Legislature.”

While the impugned Act sources its purpose and objects from this Hon'ble Court's order in *NALSA v. Union of India*, the Petitioners seek to explain in later paragraphs exactly how the impugned Act violates every rule and principle expounded in *NALSA*.

True copy of the final order and judgment of this Court in National Legal Services Authority v. Union of India, ("*NALSA*"), (2014) 5 SCC438, is attached herewith as **Annexure P-1 at page no. \_\_\_\_\_ to \_\_\_\_\_.**

### **Legislative History**

13. After this Hon'ble Court's final order in National Legal Services Authority v. Union of India, ("*NALSA*"), (2014) 5 SCC438, on 14<sup>th</sup> April 2014, a Private Members' Bill ("*PMB*")

was introduced in the Rajya Sabha titled "The Rights of Transgender persons Bill, 2014" on 12<sup>th</sup> December 2014. This PMB was widely supported and accepted as progressive by the transgender community, and the PMB was passed by the Rajya Sabha on 24<sup>th</sup> April 2015, being the first PMB to be passed by any House of Parliament in over 40 years. The PMB was subsequently introduced in the Lok Sabha on 26<sup>th</sup> February 2016, after which a different Bill was introduced by the Government in the Lok Sabha on 2<sup>nd</sup> August 2016, titled the Transgender Persons (Protection of Rights) Bill, 2016. The Government Bill was a complete reversal and annulment of the rights based approach of *NALSA* and of the PMB, and formed the precursor of the impugned Act.

True copy of the Private Members' Bill titled "The Rights of Transgender persons Bill, 2014" passed by the Rajya Sabha on 12.12.2014 is attached herewith as **Annexure P-2 from page no. \_\_\_\_\_ to \_\_\_\_\_.**

14. As a result of widespread and sustained opposition to the 2016 Government Bill by the transgender community, the Bill was referred to the Departmentally Related Parliamentary Standing Committee on Social Justice and Empowerment on 8th September 2016. The Standing Committee submitted its report on 21<sup>st</sup> July 2017 strongly criticizing the Bill on various fronts, and made several crucial observations, some of which are as follows:

- i. The Committee noted that there are fundamental issues with the Bill's definition of "transgender persons" since it conflates intersex and

transgender persons even though they are not the same in any jurisprudence.

ii. The Committee was of the view that the Bill's definition of "transgender person" does not conform with the definition prescribed by this Hon'ble Court in NALSA.

iii. The Committee noted that the Bill's definition of transgender person "not only not only takes away the right to self-determined gender identity which was guaranteed by the Hon'ble Supreme Court in NALSA judgement but also adversely effects significant part of the transgender population - specially pre-op/non-op transmen and transwomen, trans people who cannot or do not wish to undergo surgical interventions, gender fluid, gender neutral, and intergender persons."

iv. The Committee pointed out that that Bill is silent on granting reservations to transgender persons under the category of socially and educationally backward classes of citizens.

v. The Committee also noted that the Bill does not refer to important civil rights like marriage and divorce, adoption, etc. which are critical to transgender persons' lives and reality.

vi. The Committee noted that there were no provisions for separate public toilets, separate frisking zones in public spaces, counselling services to cope with trauma and violence, and census for transgender persons separate from the self-registration process.

True copy of the report of the Departmentally Related Parliamentary Standing Committee on Social Justice and Empowerment on the Transgender Persons (Protection of Rights) Bill, 2016 submitted on 21.7.2017 is attached herewith as **Annexure P-3 from page no. \_\_\_\_\_ to \_\_\_\_\_.**

True copy of the Transgender Persons (Protection of Rights) Act, 2019 (the impugned Act) is attached herewith as **Annexure P-4 at page no. \_\_\_\_\_ to \_\_\_\_\_.**

### **Directions of this Hon'ble Court in**

#### ***NALSA v. Union of India***

15. At this juncture, it would be helpful to reiterate the specific directions of this Hon'ble Court in NALSA, which were to be implemented by the State Governments and the Central Government within a period of six months since the passing of the final order. These were as follows:

- a. Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.
- b. Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

- c. Centre and the State Governments to take steps to treat them 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.
- d. Centre and State Governments directed to operate separate HIV Sero - surveillance Centres since Hijras/ Transgenders face several sexual health issues.
- e. Centre and State Governments to seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.
- f. Centre and State Governments to take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.
- g. Centre and State Governments to also take steps for framing various social welfare schemes for their betterment.
- h. Centre and State Governments to take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.
- i. Centre and the State Governments to also take measures to regain their respect and place in the

society which once they enjoyed in our cultural and social life.

16. It is submitted by the Petitioners that the Central Government as well as a majority of the State Governments continue to be in contempt of the aforesaid declaration and directives of this Hon'ble Court inasmuch that;

a. State Governments other than the Kerala State Government have continuously failed to implement policies and rules in place that would legally grant Transgender Persons, their right to self-identified gender. In most cases the state functionaries continue to frustrate attempts by Transgender Persons to identify with their self-identified gender. Litigation in various courts including the Hon'ble High Court of Karnataka and Hon'ble High Court of Delhi point to the state's attempts to frustrate attempts made by Transgender Persons to change their name and gender to their self-identified gender

b. Other than Kerala and Bihar State governments which have released notifications treating Transgender Persons as socially and educationally backward citizens and extending reservations in cases of admission in educational institutions and public appointments, rest

of the states and the central government continue to be in contempt of the directives of this Hon'ble Court.

- c. Both the Central and most of the State Governments, have neither put into place an accessible been frustrating the attempts of Transgender Persons to access medical care in hospitals, reflected in the number of cases filed in various High Courts, such as the case filed by in Hon'ble High Court of Guwahati.
- d. Neither the Centre nor the State Governments have taken any active steps towards building separate public toilets for Transgender Persons, neither has it been included in any of the Central Schemes to build toilets.
- e. Other than a few state governments, such as Kerala, Tamil Nadu, Chhattisgarh, Manipur, Telangana, Andhra Pradesh, which have performed the bare minimum with regard to including Transgender Persons within the various existing social welfare schemes and framing new social welfare schemes none have framed social welfare schemes for their betterment.
- f. None of the states have made credible and meaningful attempts to create public awareness so as to have

Transgender Persons feel that they are also part and parcel of the social life.

17. It is pertinent to reinforce that the Declarations and Directives in NALSA came to be passed on a PIL filed by the National Legal Services Authority which had taken cognisance of constant infringement of fundamental rights of Transgender Persons in the country.

**Rights-based legal framework:**

***NALSA, Puttaswamy and Navtej***

18. Jurisprudence for the fundamental rights of transgender persons has been extensively developed by this Hon'ble Court in its judgments in *NALSA v. Union of India*, parts of which have already been reproduced, in *Justice Puttaswamy (Retd.) & Anr. v. Union of India*, and in *Navtej Singh Johar v. Union of India*.

19. Relevant portions of this Court's judgment in *NALSA*, other than the ones already reproduced above, are as follows:

"21. ...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."

"22. ... 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."

"62. Petitioners have asserted as well as demonstrated on facts and figures supported by relevant materials that despite constitutional guarantee of equality,

Hijras/transgender persons have been facing extreme discrimination in all spheres of the society. Non-recognition of the identity of Hijras/transgender persons denies them equal protection of law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail, also by the police. Sexual assault, including molestation, rape, forced anal and oral sex, gang rape and stripping is being committed with impunity and there are reliable statistics and materials to support such activities...

Discrimination on the ground of sexual orientation or gender identity, therefore, impairs equality before law and equal protection of law and violates Article 14 of the Constitution of India.”

“65...Article 16 not only prohibits discrimination on the ground of sex in public employment, but also imposes a duty on the State to ensure that all citizens are treated equally in matters relating to employment and appointment by the State.

“66. ... The discrimination on the ground of ‘sex’ under Articles 15 and 16, therefore, includes

discrimination on the ground of gender identity. The expression 'sex' used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male or female.

"69. ... Article 19(1) (a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one's right to expression of his self-identified gender. Self-identified gender can be expressed through dress, words, action or behavior or any other form. No restriction can be placed on one's personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution."

"71. Principles referred to above clearly indicate that the freedom of expression guaranteed under Article 19(1)(a) includes the freedom to express one's chosen gender identity through varied ways and means by way of expression, speech, mannerism, clothing etc.

"72. Gender identity, therefore, 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. A transgender's personality could be expressed by the transgender's behavior and presentation. State cannot prohibit, restrict or interfere with a transgender's expression of such personality, which reflects that inherent personality. Often the State and its authorities either due to ignorance or otherwise fail to digest the innate character and identity of such persons. We, therefore, hold that values of privacy, self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the transgender community under Article 19(1)(a) of the Constitution of India and the State is bound to protect and recognize those rights."

"73...Article 21 is the heart and soul of the Indian Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the basic fundamental rights and not even the State has the authority to violate or take away that right. Article 21 takes all those aspects of life which go to make a person's

life meaningful. Article 21 protects the dignity of human life, one's personal autonomy, one's right to privacy, etc. Right to dignity has been recognized to be an essential part of the right to life and accrues to all persons on account of being human. Court held that the right to dignity forms an essential part of our constitutional culture which seeks to ensure the full development and evolution of persons and includes "expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings".

"74. Recognition of one's gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one's sense of being as well as an integral part of a person's identity. Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution.

"75. Article 21, as already indicated, protects one's right of self determination of the gender to which a person belongs. Determination of gender to which a person belongs is to be decided by the person concerned. In other

words, gender identity is integral to the dignity of an individual and is at the core of "personal autonomy" and "self-determination". Hijras/Eunuchs, therefore, have to be considered as Third Gender, over and above binary genders under our Constitution and the laws.

"82. Article 14 has used the expression "person" and the Article 15 has used the expression "citizen" and "sex" so also Article 16. Article 19 has also used the expression "citizen". Article 21 has used the expression "person". All these expressions, which are "gender neutral" evidently refer to human-beings. Hence, they take within their sweep Hijras/Transgenders and are not as such limited to male or female gender. 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."

“83. We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of the members of the TG community.”

“87....the issue is not limited to the exercise of choice of gender/sex. Many rights which flow from this choice also come into play, inasmuch not giving them the status of a third gender results in depriving the community of TGs of many of their valuable rights and privileges which other persons enjoy as citizens of this Country. There is also deprivation of social and cultural participation which results into eclipsing their access to education and health services.”

“119. Therefore, gender identification becomes very essential component which is required for enjoying civil rights by this community. It is only with this recognition that many rights attached to the sexual recognition as ‘third

gender' would be available to this community more meaningfully viz. the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's license, the right to education, employment, health so on.

"120.... Further, there seems to be no reason why a transgender must be denied of basic human rights which includes Right to life and liberty with dignity, Right to Privacy and freedom of expression, Right to Education and Empowerment, Right against violence, Right against Exploitation and Right against Discrimination. Constitution has fulfilled its duty of providing rights to transgenders. Now it's time for us to recognize this and to extend and interpret the Constitution in such a manner to ensure a dignified life of transgender people. All this can be achieved if the beginning is made with the recognition that TG as third gender."

20. Relevant portions of this Court's judgment in *Puttaswamy*, which relate to the rights of persons whose



rights and lives are impacted by the impugned Act are as follows:

"271...The pursuit of happiness is founded upon autonomy and dignity. Both are essential attributes of privacy which make no distinction between the birth marks of individuals."

"297. .... Privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life. The autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The body and the mind are inseparable elements of the human personality. The integrity of the body and the

sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop. Without the ability to make choices, the inviolability of the personality would be in doubt. Recognizing a zone of privacy is but an acknowledgment that each individual must be entitled to chart and pursue the course of development of personality. Hence privacy is a postulate of human dignity itself. Thoughts and behavioural patterns which are intimate to an individual are entitled to a zone of privacy where one is free of social expectations. In that zone of privacy, an individual is not judged by others. Privacy enables each individual to take crucial decisions which find expression in the human personality. It enables individuals to preserve their beliefs, thoughts, expressions, ideas, ideologies, preferences and choices against societal demands of homogeneity. Privacy is an intrinsic recognition of heterogeneity, of the right of the individual to be different and to stand against the tide of conformity in

creating a zone of solitude. Privacy protects the individual from the searching glare of publicity in matters which are personal to his or her life. Privacy attaches to the person and not to the place where it is associated. Privacy constitutes the foundation of all liberty because it is in privacy that the individual can decide how liberty is best exercised. Individual dignity and privacy are inextricably linked in a pattern woven out of a thread of diversity into the fabric of a plural culture.”

“298...Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary state action. It prevents the state

from discriminating between individuals. The destruction by the state of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary state action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised.

21. This Hon'ble Court in *Puttaswamy* concluded that:

"318 Life and personal liberty are not creations of the Constitution. These rights are recognised by the Constitution as

inhering in each individual as an intrinsic and inseparable part of the human element which dwells within;

“320 Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy sub serves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty;

“323 Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary

from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being;

22. The Court further held in *Puttaswamy* as under:

“635. Whereas this right to control dissemination of personal information in the physical and virtual space should not amount to a right of total eraser of history, this right, as a part of the larger right of privacy, has to be balanced against other fundamental rights like the freedom of expression, or freedom of media, fundamental to a democratic society.”

23. Finally, this Court made crucial and fundamental observations in *Navtej*, especially regarding the policy of ‘Progressive Realization of Positive Rights’ and the Doctrine of Non-Regression. The Court noted that as the society evolves so does the social construct of things around it, and

thereby there would be a progressive realization that new rights may emerge and once society recognizes such right to be true and valid, then it cannot retrospectively take it away. Following are the relevant portions of this Court's judgment in Navtej:

"122. In the garb of social morality, the members of the LGBT community must not be outlawed or given a step-motherly treatment of malefactor by the society. If this happens or if such a treatment to the LGBT community is allowed to persist, then the constitutional courts, which are under the obligation to protect the fundamental rights, would be failing in the discharge of their duty. A failure to do so would reduce the citizenry rights to a cipher."

"178. When we talk about the rights guaranteed under the Constitution and the protection of these rights, we observe and comprehend a manifest ascendance and triumphant march of such rights which, in turn, paves the way for the doctrine of progressive realization of the rights under the Constitution. This doctrine invariably reminds us about the living and dynamic

nature of a Constitution. Edmund Burke, delineating upon the progressive and the perpetual growing nature of a Constitution, had said that a Constitution is ever-growing and it is perpetually continuous as it embodies the spirit of a nation. It is enriched at the present by the past experiences and influences and makes the future richer than the present.”

“183... The rationale behind the doctrine of progressive realization of rights is the dynamic and ever growing nature of the Constitution under which the rights have been conferred to the citizenry.”

“188. The doctrine of progressive realization of rights, as a natural corollary, gives birth to the doctrine of non-retrogression. As per this doctrine, there must not be any regression of rights. In a progressive and an ever-improving society, there is no place for retreat. The society has to march ahead.

189. The doctrine of non-retrogression sets forth that the State should not take measures or steps that deliberately lead to retrogression on the enjoyment of rights either under the Constitution or otherwise.”



"248. 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."

"250... Attitudes and mentality have to change to accept the distinct identity of individuals and respect them for who they are rather than compelling them to become who they are not. All human beings possess the equal right to be themselves instead of transitioning or conditioning themselves as per the perceived dogmatic notions of a group of people. To change the societal bias and root out the weed, it is the foremost duty of each one of us to —stand up and speak up|| against the slightest form of discrimination against transgenders that we come across...

## “Q. Conclusions

253. In view of the aforesaid analysis, we record our conclusions in seriatim:-

(i) The eminence of identity which has been lucently stated in the NALSA case very aptly connects human rights and the constitutional guarantee of right to life and liberty with dignity. With the same spirit, we must recognize that the concept of identity which has a constitutional tenability cannot be pigeon-holed singularly to one's orientation as it may keep the individual choice at bay. At the core of the concept of identity lies self-determination, realization of one's own abilities visualizing the opportunities and rejection of external views with a clear conscience that is in accord with constitutional norms and values or principles that are, to put in a capsule, — “constitutionally permissible”.

...(v) Constitutional morality embraces within its sphere several virtues, foremost of

them being the espousal of a pluralistic and inclusive society. The concept of constitutional morality urges the organs of the State, including the Judiciary, to preserve the heterogeneous nature of the society and to curb any attempt by the majority to usurp the rights and freedoms of a smaller or minuscule section of the populace. Constitutional morality cannot be martyred at the altar of social morality and it is only constitutional morality that can be allowed to permeate into the Rule of Law. The veil of social morality cannot be used to violate fundamental rights of even a single individual, for the foundation of constitutional morality rests upon the recognition of diversity that pervades the society.

(vi) The right to live with dignity has been recognized as a human right on the international front and by number of precedents of this Court and, therefore, the constitutional courts must strive to protect the dignity of every individual, for without the right to dignity, every other right would be rendered meaningless. Dignity is an

inseparable facet of every individual that invites reciprocal respect from others to every aspect of an individual which he/she perceives as an essential attribute of his/her individuality, be it an orientation or an optional expression of choice. including the right to express and choose without any impediments so as to enable an individual to fully realize his/her fundamental right to live with dignity.

... (x)Autonomy is individualistic. Under the autonomy principle, the individual has sovereignty over his/her body. He/she can surrender his/her autonomy wilfully to another individual and their intimacy in privacy is a matter of their choice. Such concept of identity is not only sacred but is also in recognition of the quintessential facet of humanity in a person's nature. The autonomy establishes identity and the said identity, in the ultimate eventuate, becomes a part of dignity in an individual."

"338. We may hasten to add, that the Yogyakarta Principles on the Application of International Human Rights Law in relation

to Sexual Orientation and Gender Identity discussed below, which were also referred to by Radhakrishnan, J. in NALSA (supra), conform to our constitutional view of the fundamental rights of the citizens of India and persons who come to this Court.”

“389. This formalistic interpretation of Article 15 would render the constitutional guarantee against discrimination meaningless. For it would allow the State to claim that the discrimination was based on sex and another ground (‘Sex plus’) and hence outside the ambit of Article 15. Latent in the argument of the discrimination, are stereotypical notions of the differences between men and women which are then used to justify the discrimination. This narrow view of Article 15 strips the prohibition on discrimination of its essential content. This fails to take into account the intersectional nature of sex discrimination, which cannot be said to operate in isolation of other identities, especially from the socio-political and economic context. For example, a rule that people over six feet

would not be employed in the army would be able to stand an attack on its disproportionate impact on women if it was maintained that the discrimination is on the basis of sex and height. Such a formalistic view of the prohibition in Article 15, rejects the true operation of discrimination, which intersects varied identities and characteristics.”

“390... The Court recognized that traditional cultural norms stereotype gender roles. These stereotypes are premised on assumptions about socially ascribed roles of gender which discriminate against women. The Court held that “insofar as governmental policy is based on the aforesaid cultural norms, it is constitutionally invalid.” In the same line, the Court also cited with approval, the judgments of the US Supreme Court in *Frontiero v. Richardson*, and *United States v. Virginia*, and Justice Marshall’s dissent in *Dothard v. Rawlinson*, The Court grounded the anti-stereotyping principle as firmly rooted in the prohibition under Article 15.”

"415. Privacy creates "tiers of 'reputable' and 'disreputable' sex", only granting protection to acts behind closed doors.<sup>141</sup> Thus, it is imperative that the protection granted for consensual acts in private must also be available in situations where sexual minorities are vulnerable in public spaces on account of their sexuality and appearance.<sup>142</sup> If one accepts the proposition that public places are heteronormative, and same-sex sexual acts partially closeted, relegating 'homosexual' acts into the private sphere, would in effect reiterate the "ambient heterosexism of the public space." It must be acknowledged that members belonging to sexual minorities are often subjected to harassment in public spaces. The right to sexual privacy, founded on the right to autonomy of a free individual, must capture the right of persons of the community to navigate public places on their own terms, free from state interference."

"419. An individual's sexuality cannot be put into boxes or compartmentalized; it should rather be viewed as fluid, granting the individual the freedom to ascertain her own desires and proclivities. The self-determination of sexual orientation is an exercise of autonomy. Accepting the role of human sexuality as an independent force in the development of personhood is an acknowledgement of the crucial role of sexual autonomy in the idea of a free individual.<sup>160</sup> Such an interpretation of autonomy has implications for the widening application of human rights to sexuality.<sup>161</sup> Sexuality cannot be construed as something that the State has the prerogative to legitimize only in the form of rigid, marital procreational sex.<sup>162</sup> Sexuality must be construed as a fundamental experience through which individuals define the meaning of their lives.<sup>163</sup> Human sexuality cannot be reduced to a binary formulation. Nor can it be defined narrowly in terms of its function as a means to procreation. To confine it to closed categories would result in denuding human liberty of its full content



as a constitutional right. The Constitution protects the fluidities of sexual experience. It leaves it to consenting adults to find fulfilment in their relationships, in a diversity of cultures, among plural ways of life and in infinite shades of love and longing.”

“425. Individuals belonging to sexual and gender minorities experience discrimination, stigmatization, and, in some cases, denial of care on account of their sexual orientation and gender identity. However, it is important to note that ‘sexual and gender minorities’ do not constitute a homogenous group, and experiences of social exclusion, marginalization, and discrimination, as well as specific health needs, vary considerably. Nevertheless, these individuals are united by one factor - that their exclusion, discrimination and marginalization is rooted in societal heteronormativity and society’s pervasive bias towards gender binary and opposite-gender relationships, which marginalizes and excludes all non-heteronormative sexual and gender identities. This, in turn, has important implications for individuals’ health-seeking

behaviour, how health services are provided, and the extent to which sexual health can be achieved.”

“430. The right to health is not simply the right not to be unwell, but rather the right to be well. It encompasses not just the absence of disease or infirmity, but “complete physical, mental and social well being”,<sup>196</sup> and includes both freedoms such as the right to control one’s health and body and to be free from interference (for instance, from non-consensual medical treatment and experimentation), and entitlements such as the right to a system of healthcare that gives everyone an equal opportunity to enjoy the highest attainable level of health.”

### **Impugned Sections 4, 5, 6 and 7 & the right of self determination**

24. It is submitted that the play envisaged between section 4, 5, 6 and 7 is misleading to say the least inasmuch that while Section 4 emphasises that a trans person can have the right to a self-perceived gender identity such rights are available only if, the Trans Person is recognised as one under

the act, for in the subsequent Sections, particularly Section 5, 6 and 7 the prescription makes self-determination of gender a near impossibility for most trans-persons.

25. A reading of the law makes it clear that the framers of the present statute have failed to grasp the fundamental difference between gender and sex, which is reinforced by a reading of Section 7, in as much that the Section walks on the prescription that one undergoes surgery to change gender.

26. That though this court in *NALSA*, held that a person is entitled to their self-perceived identity. Section 5 seeks to issue fetters by;

i. Introducing a certification process at the discretion of the District Magistrate.

ii. Restricting the identity of one such certificate as one of a "Transgender"

27. That once this Court has already held that every trans-person is entitled to their decide their self-identified gender, the prescription proposed at Section 5 amounts to violating the doctrine of non-retrogression.

28. Furthermore not only does Section 7 pre-mandate a surgery to change one's gender it also requires a person to:

a. first register themselves as a transgender under Section 6(1)

- b. obtain a certificate from a medical superintendent or a Chief Medical Officer of a Medical Institution certifying that one has undergone such a surgery to be able to apply for a change in the gender and
- c. only after the magistrate is satisfied with the correctness of such an assertion can a certificate indicating a change in gender as requested be issued.

29. That once this Court has already held that Surgery cannot be made mandatory for a transgender person to undergo to assert a gender identify of their choice, the prescription at Section 7 amounts to violating the doctrine of non-retrogression.

30. Section 7(3) offends further by restricting the rights of any person to change their first names to bring it in conformity with the gender of their choice, unless such person has had a surgery and has followed the procedure set out in Section 7(1) and Section 7(2)

31. The aforesaid provision pre mandating a surgery goes against the letter and spirit mandated in *NALSA* and while the notion of privacy and self-determination has been reiterated in judgement after judgement by this court, as enunciated in *NALSA, Navtej and Puttaswamy*.

## **Impugned Section 12 (3) & the right against being forced into rehabilitation centres**

37. The Petitioners submit that Section 12, inasmuch that it provides for a Transgender Person to be placed in a rehabilitation centre, when any parent or a member of the transgender person's immediate family is unable to take care of the transgender person by the order of a competent court is patently arbitrary and therefore in violation of Article 14, and is further violative of the Right to Life enshrined in Article 21 of the Constitution of India.

38. Since the present Act doesn't describe the form or function of "Rehabilitation Centres" one is then forced to look for the meaning of rehabilitation in other Acts and Rules available. After a careful collation a the term rehabilitation is present in three forms.

iv. A person is rehabilitated when they are in conflict with law, as in the case in Juvenile Justice Act.

v. A person is a victim of trafficking or of Bonded Labour wherein the person who is rehabilitated is a "victim" of oppression and exploitation by another specific entity. As described in Bonded Labour Act and Immoral Trafficking Prevention Act

vi. A person is separate from society and can cause damage to themselves or to the external society as in the case of persons in the Mental Health Act and the meaning of rehabilitation understood in the aforesaid act

39. In each of these cases the person is either an offender or is someone who has gone through trauma because of their rights being taken away by a singular institution or a person. Whereas through *NALSA* this Hon'ble Court have in no clearer terms said that Transgender Persons are being discriminated and oppressed by the society as a whole, and neither is Gender Incongruence a concern which is a harm to society or to themselves. Keeping in mind that American Psychiatric Association, in their Diagnostic and Statistical Manual of Mental Disorders (DSM-5) has changed the terminology from Gender Identity Disorder as a disorder to Gender Incongruence. Therefore in all interpretations of "rehabilitation" present in law, it is a process to get a person back into the fold of society. Whereas with Transgender Persons, it is the society that has to progress ahead and a societal change ought to be made. Therefore it is not a Transgender Person who is to be rehabilitated in order to adhere to societal norms and mores that are discriminatory.

40. If there is any action that ought to be taken, then it is that protective measures that should be in place in order to protect Transgender Persons from the discrimination in

society and not Transgender Persons who are to be forced into a mould to fit them into society.

41. In essence the Rehabilitation Centres as they exist would then form a part of "correctional homes" which is rampant with procedures of "conversion therapy" wherein the person is forced to give up their identity with regard to their sexuality and gender. The history of "conversion therapy" has been a traumatic history for Transgender Persons and persons with alternate sexualities with the attempt of erasing their identity as protected under Article 19, and elaborated in *NALSA* and *Navtej*. The "therapy" and "rehabilitation procedures" used thereby constitute a continuation of violence that has been inflicted on members of the Transgender Community since time immemorial.
42. The only rationale therefore that would sustain with regard to maintaining "rehabilitation centres" specific for Transgender Persons would be to exclude them from society and continue to treat them in a manner as external to society, therefore continuing the incarceration against them or to forcefully "convert" Transgender Persons to give up their identity.
43. It is also of consequence to point to this Hon'ble Court the terrible living conditions in the present "Shelter Homes" and "Protection Homes", where persons are relegated to a position of that worse than animalistic existence. Where these "Homes" function in a form that is much worse than prisons

and very strategically deny persons living in them their right to life. Neither does the impugned provision have any regard to the consent of the Transgender Person before they are forcefully put into rehabilitation homes.

### **Impugned Section 18 & sexual violence against transgender persons**

44. That Section 18 identifies a broad range of offences against transgender persons, ranging from bonded labour and denial of right of passage, to physical abuse and sexual violence, etc. While most of the offences are also provided for in the Indian Penal Code, 1860, they are gender/sex neutral. Certain offences in the IPC are not gender/sex neutral, for instance;

- a. Section 354- Assault or criminal force to woman with intent to outraging the modesty of a woman, which is punishable with imprisonment for up to 5 years with fine.
- b. Section 354D- Stalking, which is punishable with imprisonment for up to 5 years with fine.
- c. Section 354C- Voyeurism, which is punishable with imprisonment for up to 7 years with fine.
- d. Section 354A- Sexual harassment at workplace, which is punishable with imprisonment for up to 3 years with fine.



e. Section 354B- Assault or use of criminal force to woman with intent to disrobe, which is punishable with imprisonment for up to 7 years with fine.

45. By providing a quantum of two years for sexual offences in the nature of sexual abuse against transgender persons, which is lower than what is provided for other cis-gendered counterparts, Section 18 of the impugned Act is in violation of not only Article 14 but also Article 21 of the Constitution.

46. The anomaly that Section 18 seeks to create is borne out by the following illustration;

f. An individual who undergoes a sex reassignment surgery to be legally recognised as a woman will get the protection of Section 354 of the IPC for which punishment is imprisonment for up to 5 years. Whereas the same offence committed against an individual who has not undergone a surgery and is recognised as a transgender person, the punishment is restricted at imprisonment for up to 2 years under the impugned Act.

g. Similarly, an individual who undergoes a surgery to be legally recognised as a man during transition (required under the act to be a transgender prior to a gender

change) will be entitled to the protection of Section 18 of the impugned Act with a punishment for the offence which is imprisonment for up to two years, but after having undergone the surgery the individual will not get any protection of Section 354 of the IPC.

47. That such a relegation to a weaker protection of the law, when this Hon'ble Court has taken cognizance of the transphobic mores in our society manifesting in penal law and struck them down, the impugned Act will only reinforce society's prejudices by enshrining a second class citizenship status onto transgender persons.

48. That Section 18 is not only violative of the Right to Equal Protection of the Law as enshrined in Article 14 of the Constitution but also of the Right to Life as enshrined at Article 21 of the Constitution of India.

49. That this relegation of transgender persons to a position below cis-gender persons negates the very premise that was taken by this Hon'ble Court on the violence and inhuman existence that transgender persons undergo due to the bigoted, homophobic and transphobic attitudes of the society.

## **GROUNDS**

Hence the Petitioner moves before this Hon'ble Court by way of this petition on, inter alia, the following grounds:

- A. Because Sections 4, 5, 6 and 7 of the impugned Act are ultra vires Articles 14, 19 and 21 of the Constitution of India, and infringe the fundamental right of transgender persons to self-determination as expounded by this Hon'ble Court in *NALSA v. Union of India*.
- B. Because the impugned Act violates the most fundamental principles of dignity, the right to privacy and self-determination, and bodily-autonomy and integrity.
- C. Because Section 12 (3) of the impugned Act is ultra vires Article 14, 19 and 21 of the Constitution of India since it snatches from transgender persons their fundamental right to choose their place of residence and forces them into "rehabilitation centres", which is an euphemism for imprisonment.
- D. Because Section 18 of the impugned Act is ultra vires Article 14 of the Constitution of India and degrades the

existence of transgender persons by treating sexual offences against them as a crime of much lesser consequence than sexual offences against cis-gender persons.

E. Because this Hon'ble Court has held in *NALSA v. Union of India* as follows:

"21. ...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."

"22. ... 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.”

“71. Principles referred to above clearly indicate that the freedom of expression guaranteed under Article 19(1)(a) includes the freedom to express one’s chosen gender identity through varied ways and means by way of expression, speech, mannerism, clothing etc.

“72. Gender identity, therefore, 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. A transgender’s personality could be expressed by the transgender’s behavior and presentation. State cannot prohibit, restrict or interfere with a transgender’s expression of such personality, which reflects that inherent personality. Often the State and its authorities

either due to ignorance or otherwise fail to digest the innate character and identity of such persons. We, therefore, hold that values of privacy, self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the transgender community under Article 19(1)(a) of the Constitution of India and the State is bound to protect and recognize those rights.”

F. Because this Hon’ble Court has held in *Justice Puttaswamy (Retd.) & Anr. v. Union of India* as follows:

“(E) Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy sub serves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty;

“(F) Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being;

G. Because this Hon’ble Court has held in *Navtej Singh Johar v. Union of India* that as the society evolves so does the social construct of things around it, and thereby there would be a progressive realization that new rights may emerge and once society recognizes

such right to be true and valid, then it cannot retrospectively take it away.

H. Because this Hon'ble Court also held in *Navtej Singh Johar v. Union of India* as follows:

"183... The rationale behind the doctrine of progressive realization of rights is the dynamic and ever growing nature of the Constitution under which the rights have been conferred to the citizenry."

"188. The doctrine of progressive realization of rights, as a natural corollary, gives birth to the doctrine of non-retrogression. As per this doctrine, there must not be any regression of rights. In a progressive and an ever-improving society, there is no place for retreat. The society has to march ahead.

"189. The doctrine of non-retrogression sets forth that the State should not take measures or steps that deliberately lead to retrogression on the enjoyment of rights either under the Constitution or otherwise."



"248. 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."

"250... Attitudes and mentality have to change to accept the distinct identity of individuals and respect them for who they are rather than compelling them to become` who they are not. All human beings possess the equal right to be themselves instead of transitioning or conditioning themselves as per the perceived dogmatic notions of a group of people. To change the societal bias and root out the weed, it is the foremost duty of each one of us to —stand up and speak up|| against the slightest form of discrimination against transgenders that we come across..."

50. That the Petitioners have not filed any similar petition seeking similar reliefs before any High Court or this Hon'ble Court.

## **PRAYERS**

In light of the facts and circumstances of this case, the Petitioners pray before this Hon'ble Court as under:

- a. For a writ of declaration or any other order, writ or direction declaring Section 4 of the Transgender persons (Protection of Rights) Act, 2019 as null and void as being ultra vires Article, 14, 19 and 21 of the Constitution of India, for reasons set out in paragraphs \_\_\_\_ to \_\_\_\_ of this Writ Petition.
  
- b. For a writ of declaration or any other order, writ or direction declaring Section 5 of the Transgender persons (Protection of Rights) Act, 2019 as null and void as being ultra vires Article, 14, 19 and 21 of the Constitution of India, for reasons set out in paragraphs \_\_\_\_ to \_\_\_\_ of this Writ Petition.
  
- c. For a writ of declaration or any other order, writ or direction declaring Section 6 of the Transgender persons (Protection of Rights) Act, 2019 as null and void as being ultra vires Article, 14, 19 and 21 of the Constitution of India, for reasons set out in paragraphs \_\_\_\_ to \_\_\_\_ of this Writ Petition.
  
- d. For a writ of declaration or any other order, writ or direction declaring Section 7 of the Transgender persons (Protection of Rights) Act, 2019 as null and void as being ultra vires Article,

14, 19 and 21 of the Constitution of India, for reasons set out in paragraphs \_\_\_\_ to \_\_\_\_ of this Writ Petition.

- e. For a writ of declaration or any other order, writ or direction declaring Section 12 (3) of the Transgender persons (Protection of Rights) Act, 2019 as null and void as being ultra vires Articles 14, 19 and 21 of the Constitution of India, for reasons set out in paragraphs \_\_\_\_ to \_\_\_\_ of this Writ Petition.
- f. For a writ of declaration or any other order, writ or direction declaring Section 18 of the Transgender persons (Protection of Rights) Act, 2019 as null and void as being ultra vires Articles 14, 19 and 21 of the Constitution of India, and for the classification of offences against transgender persons and setting of penalties for the same in accordance with companion offences penalised by the Indian Penal Code, 1860, as set out in paragraphs \_\_\_\_ to \_\_\_\_ of this Writ Petition.
- g. For a writ of mandamus or any other writ, order or direction, directing the Central and State Governments to implement the directions of this Hon'ble Court in the matter of National Legal Services Authority vs. Union of India & Anr. in its judgment dated 15.4.2014, particularly the following directions regarding self-identification and the bar on

insistence on Sexual-Reassignment Surgery, as set out in Paragraphs \_\_\_\_\_ to \_\_\_\_\_ of this Writ Petition:

i. "Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender."

ii. "Centre and State Governments to seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal."

h. For any other order/ direction that this Hon'ble Court may deem fit.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER BE GRATEFUL

Drawn on:

Drawn by: Kranti LC and Siddharth Seem

Filed on:

Filed by:

SATYA MITRA

Advocate for the Petitioners

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
I.A. No. \_\_\_\_\_ OF 2019  
IN  
WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2019  
(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

Rachana Mudraboyina & Ors. ... Petitioners

Versus

Union of India ... Respondent

**Application for Interim Stay**

TO

THE HON'BLE CHIEF JUSTICE AND  
HIS HON'BLE COMPANION JUSTICES OF  
THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF  
THE PETITIONERS ABOVENAMED.

MOST RESPECTFULLY SHOWETH:

1. The Petitioners have filed the above writ petition in wide public interest.
2. The instant writ petition has been filed to impugn Sections 4, 5, 6, 7, 12(3) and 18 of the Transgender Persons (Protection of Rights) Act, 2019, on the grounds that they are ultra vires Articles 14, 19 and 21, and are a priori void ab initio. While the Bill purports to protect the rights of transgender persons,

it violates the most fundamental principles of dignity, the right to privacy and self-determination, and bodily-autonomy and integrity. The impugned sections, inter alia, infringe the fundamental right to self-determination as expounded by this Hon'ble Court in *NALSA v. Union of India*, snatches from transgender persons their fundamental right to choose their place of residence and forces them into "rehabilitation centres", and degrades the existence of transgender persons by treating sexual offences against them as a crime of much lesser consequence than sexual offences against cis persons. The impugned Act, therefore, further pushes transgender persons into a precarious position of statutorily sanctioned discrimination, stigma and harassment.

3. For the sake of brevity, the detailed grounds of the petition are not repeated in the present application. The Petitioners however crave leave to refer to and rely on the same at the time of the hearing of the present application as if the same formed part and parcel of the present application.
4. The Petitioners have a strong prima facie case and the purpose of the present petition will be frustrated if the implementation of the Transgender Persons (Protection of Rights) Act, 2019 is not stayed during the pendency of the present writ petition.

## **PRAYER**

It is therefore most respectfully prayed that pending the final orders this Hon'ble Court may be pleased to:

- (i) Stay the impugned Transgender Persons (Protection of Rights) Act, 2019 and any steps of the Government of India or State Governments based on the impugned Amendment Act.
- (ii) In the interim direct the Government of India and State Governments to implement the directions of this Hon'ble Court in NALSA v. Union of India in full letter and spirit.
- (iii) Pass any other or further orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER BE GRATEFUL

Drawn on:

Drawn by: Kranti LC and Siddharth Seem

Filed on:

Filed by:

**SATYA MITRA**

Advocate for the Petitioners

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. No. \_\_\_\_\_ OF 2019

IN

WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2019

(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

Rachana Mudraboyina & Ors. ... Petitioners

Versus

Union of India ... Respondent

**Application for Permission to File Lengthy**

**Synopsis and List of Dates**

TO

THE HON'BLE CHIEF JUSTICE AND

HIS HON'BLE COMPANION JUSTICES OF

THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF

THE PETITIONERS ABOVENAMED.

MOST RESPECTFULLY SHOWETH:

1. The Petitioners have filed the above writ petition in wide public interest.



2. The instant writ petition has been filed to impugn Sections 4, 5, 6, 7, 12(3) and 18 of the Transgender Persons (Protection of Rights) Act, 2019, on the grounds that they are ultra vires Articles 14, 19 and 21, and are a priori void ab initio. While the Bill purports to protect the rights of transgender persons, it violates the most fundamental principles of dignity, the right to privacy and self-determination, and bodily-autonomy and integrity. The impugned sections, inter alia, infringe the fundamental right to self-determination as expounded by this Hon'ble Court in *NALSA v. Union of India*, snatches from transgender persons their fundamental right to choose their place of residence and forces them into "rehabilitation centres", and degrades the existence of transgender persons by treating sexual offences against them as a crime of much lesser consequence than sexual offences against cis persons. The impugned Act, therefore, further pushes transgender persons into a precarious position of statutorily sanctioned discrimination, stigma and harassment.

3. The Petitioners are filing the present application seeking permission to file detailed Synopsis and List of Dates as the contents of the same are material and necessary to accommodate the facts and circumstances leading to the filing of the instant writ petition.

4. The balance of convenience lies in favour of the Applicant and he has every likelihood of succeeding in this case.
5. That the present application is bona fide and made in the interest of justice.

### **PRAYER**

It is therefore most respectfully prayed that pending the final orders this Hon'ble Court may be pleased to:

- (i) Pass an order allowing the Petitioner to place on record the lengthy Synopsis and List of dates filed by the Petitioners along with the present Writ Petition.
- (ii) Pass any other or further orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER BE GRATEFUL

Drawn on:

Drawn by: Kranti LC and Siddharth Seem

Filed on:

Filed by:

**SATYA MITRA**

Advocate for the Petitioners

## **Appendix**

### **Transgender Persons (Protection of Rights) Act, 2019**

#### Section 4:

- (1) A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act.
- (2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.

#### Section 5:

"A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed:

Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child."

#### Section 6:

"(1) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.

(2) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).

(3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.”

#### Section 7:

“(1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.

(2) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.

(3) The person who has been issued a certificate of identity under section 6 or a revised certificate under sub-section (2) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person: Provided

that such change in gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act.”

Section 12:

“(1) No child shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such child.

(2) Every transgender person shall have— (a) a right to reside in the household where parent or immediate family members reside; (b) a right not to be excluded from such household or any part thereof; and (c) a right to enjoy and use the facilities of such household in a non-discriminatory manner.

(3) Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre.”

Section 18:

“(a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;

(c) forces or causes a transgender person to leave household, village or other place of residence; and

(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.”