

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2026
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

IN THE MATTER OF:

LAXMI NARAYAN TRIPATHI & ANR. ...PETITIONER(S)

VERSUS

UNION OF INDIA & ANR. ...RESPONDENT(S)

WITH

I.A NO. OF 2026

APPLICATION FOR INTERIM RELIEF ALONG WITH AFFIDAVITS IN
SUPPORT

I.A NO. OF 2026

APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF
ANNEXURES P- TO P- ALONG WITH AFFIDAVITS IN SUPPORT

PAPERBOOK

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**AADHAR NAUTIYAL
ADVOCATE ON RECORD FOR THE PETITIONER**

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SECTION:- XV

PROFORMA FOR FIRST LISTING

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

<input type="checkbox"/>	Central Act (Title)	:	The Transgender Persons (Protection of Rights) Amendment Act, 2026 (No. 3 of 2026)
<input type="checkbox"/>	Section	:	
<input type="checkbox"/>	Central Rule (Title)	:	N/A
<input type="checkbox"/>	Rule No.(s)	:	N/A
<input type="checkbox"/>	State Act (Title)	:	N/A
<input type="checkbox"/>	Section	:	N/A
<input type="checkbox"/>	State Rule (Title)	:	N/A
<input type="checkbox"/>	Rule No.(s)	:	N/A
<input type="checkbox"/>	Impugned Interim Order (Date)	:	N/A
<input type="checkbox"/>	Impugned Final Order/Decree (Date)	:	N/A
<input type="checkbox"/>	High Court (Name)	:	N/A
<input type="checkbox"/>	Names of Judges	:	N/A
<input type="checkbox"/>	Tribunal/Authority (Name)	:	N/A

1. Nature of Matter: Civil Criminal
2. (a) Petitioner/Appellant No.1 : LAXMI NARAYAN TRIPATHI
(b) e-mail ID : Not Available
(c) Mobile Phone Number : N/A
3. (a) Respondent No.1 : UNION OF INDIA & ANR.
(b) e-mail ID : N/A
(c) Mobile Phone Number : N/A

4. (a) Main category classification :
 (b) Sub Classification :
5. Not to be listed before : N/A
- 6(a) Similar disposed of matter with citation, if any & case details) : No similar matter disposed of
 (b) Similar pending matter with case details : No similar relief
7. Criminal Matters :
- (a) Whether accused/convict has surrendered Yes No
 (b) FIR No. N/A Date N/A
- Police Station : N/A
- (c)
- (d) Sentence Awarded : N/A
- (e) Period of sentence undergone including period of detention /custody undergone : N/A
- (f) Whether any earlier case between the same parties is filed : N/A
- (g) Particulars of the FIR and Case : N/A
- (h) Whether any bail application was preferred earlier and decision thereupon : N/A
8. Land Acquisition Matters : N/A

(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) : N/A

<input type="checkbox"/>	Senior Citizen > 65 years	<input type="checkbox"/>	SC/ST	<input type="checkbox"/>	Woman/child	<input type="checkbox"/>	Disabled	<input type="checkbox"/>
<input type="checkbox"/>	Legal Aid case	<input type="checkbox"/>	In Custody					

11. Vehicle Number (in case of Motor Accident Claim matters) : N/A

12. Whether there was /is litigation on the same point of law, if yes, details thereof : No any other same point of law

DATE : 02.04.2026

AOR FOR PETITIONER

AADHAR NAUTIYAL

Code:

Email id:

SYNOPSIS

The Writ Petition challenges the constitutional validity of the Transgender Persons (Protection of Rights) Amendment Act, 2026 (No. 3 of 2026) [hereinafter "the Impugned Amendment Act"], which received the assent of the President of India on the 30th day of March 2026, and was published in the Gazette of India Extraordinary, Part II, Section 1, bearing reference CG-DL-E-31032026-271438.

The Impugned Amendment Act amends the Transgender Persons (Protection of Rights) Act, 2019 (No. 40 of 2019) [hereinafter "the Principal Act"], and in so doing, inflicts irreparable constitutional injury upon the fundamental rights of transgender persons under Articles 14, 15, 19, and 21 of the Constitution of India.

The present Petition raises what is, in essence, the most fundamental of all constitutional questions: whether the State, through the instrument of legislation, may define who a person is, and in so doing, substitute its own biological or socio-medical classification for the lived, autonomous, and self-perceived identity of a human being. The Amendment Act answers this question in the affirmative. This Court is called upon to answer it otherwise.

Petitioner No. 1, one of India's most celebrated transgender activists and the very person whose testimony and litigation helped produce the landmark judgment in *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 [hereinafter "NALSA"], and Petitioner No. 2, a corporate leader, UN advisor, and statutory member of the National Council for Transgender Persons, together file

this petition as a matter not merely of personal injury, but of constitutional fidelity. NALSA held that the right to self-identification of gender is a fundamental right under Article 21. The Impugned Amendment Act, by its plain terms, dismantles that right section by section. This Court is now called upon to protect what it gave.

Petitioner No. 1 was born on 13th December 1978 in Thane, Maharashtra. From her earliest years, she experienced herself as female — not through any act of will, but through the ineradicable fact of her inner life. Her immersion in Bharatanatyam — which, since the Natya Shastra, has recognised the fluidity of gender in its Lasya and Tandava polarities — provided the first sanctuary for her authentic identity. In the late 1990s, she underwent the sacred 'reet' ceremony under her Guru, Lata, formally entering the Hijra community, whose ancient sacred status was systematically demolished by the British Criminal Tribes Act, 1871, and its legacy of stigma.

Petitioner No. 1 channelled her lived experience into transformative activism. She founded the DAI Welfare Society in 2002 — the first registered transgender organisation in South Asia — and in 2007 established the Astitva Trust, Asia's first dedicated transgender welfare organisation, through which over 4,652 transgender persons have been registered across a network of 56 organisations in India. In 2006, she participated in the XVI International AIDS Conference in

Toronto, and in 2008 became the first transgender person from the Asia-Pacific region to address the United Nations General Assembly.

Petitioner No. 1 was one of the original petitioners in Writ Petition (Civil) No. 400 of 2012 before this Hon'ble Court, whose personal affidavit and testimony contributed directly to the NALSA judgment of 15th April 2014. She subsequently rose to become Acharya Mahamandaleshwar of the Kinnar Akhara, leading the first transgender participation in the Kumbh Mela. She is the author of 'Me Hijra, Me Laxmi' (Oxford University Press, 2015) and co-author of 'Red Lipstick: The Men in My Life' (Penguin, 2016), and recipient of the Indian of the Year and Rainbow Warrior awards (2017). She approaches this Hon'ble Court in the certain knowledge that the Constitution does not permit the legislature to do what Parliament has done.

Petitioner No. 2 was born on 14th January 1981 in Mumbai into a conservative Catholic family, assigned male at birth. Her declaration of her gender identity to her family led to rejection — she was compelled to leave home and, in the years that followed, experienced the harrowing ordeal of begging on Mumbai's streets, severe depression, and multiple attempts on her own life. It was her eventual entry into the Hijra community that restored to her a sense of identity and belonging. The very guru-chela relationship that gave Petitioner No. 2 a community and a future is now placed in constitutional jeopardy by the Impugned Amendment

Act's framing of transgender identity as something one can be 'compelled' to assume.

Petitioner No. 2 transformed her lived experience into institutional advocacy. She worked with the Humsafar Trust, one of India's leading LGBTQ+ advocacy organisations, and subsequently joined the United Nations Development Programme (UNDP), contributing to HIV/AIDS policy and LGBTQ+ inclusion work at the UNDP India office and the UNDP Regional Hub in Bangkok. Her international work brought a global human rights lens to the lived realities of transgender persons in South Asia. On 14th January 2016, she entered into a civil union with her partner in Cape Town, South Africa — a union that received full legal recognition there but remains unrecognised in India, a gap this Court is called upon to address. On 17th December 2017, she underwent gender reassignment surgery; her gender was subsequently updated to 'female' in her Aadhaar card and passport.

Today, Petitioner No. 2 serves as Director (Inclusion & Diversity) at KPMG India, where she leads diversity and inclusion initiatives for one of India's largest professional services organisations. She serves as a Member of the National Council for Transgender Persons (Western Region) — the statutory body constituted under Section 16 of the Principal Act — and leads the LGBTIA+ sub-committee of the FICCI Diversity Committee. In 2021, she filed Writ Petition (Civil) [WP(C)] 2021 before the Delhi High Court in *Zainab J. Patel v. Union of*

India, seeking recognition of her civil union under Indian law. The Impugned Amendment Act, which dismantles the legal framework of transgender rights that she has laboured for decades to build, directly threatens her dignity, her statutory functions, and her ongoing constitutional litigation.

In *NALSA v. Union of India*, (2014) 5 SCC 438, this Hon'ble Court, speaking through Justices K.S. Radhakrishnan and A.K. Sikri, delivered a judgment of transformative constitutional importance. The Court held, inter alia, that: (i) transgender persons have a fundamental right to be recognised as a third gender distinct from male or female; (ii) the right to self-determination of gender identity is a fundamental right under Article 21, flowing from the twin imperatives of personal autonomy and the right to live with dignity; (iii) discrimination against transgender persons on the ground of gender identity is prohibited under Articles 14, 15, and 16; (iv) transgender persons are to be treated as socially and educationally backward classes entitled to reservation in educational institutions and public appointments under Articles 15(4) and 16(4); and (v) the State is directed to take positive measures to address the social stigma and disadvantage faced by the transgender community.

The Court in *NALSA* explicitly and unequivocally repudiated the requirement of surgical intervention as a condition for legal gender recognition. It held, at paragraph 76, that "requiring surgery as a prerequisite for changing one's legal gender is a violation of the right to privacy and dignity." It further held that each

person's self-identification of their gender must be accepted as the foundation of their legal gender identity, without the state imposing medical, psychiatric, or bureaucratic gatekeeping.

Against this backdrop, Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019, which came into force on 10th January 2020. The Principal Act, in its original form, contained several provisions that partially complied with NALSA. The original Section 2(k) defined "transgender person" broadly as "a person whose gender does not match with the gender assigned to that person at birth" — a definition that captured the essence of gender non-conformity and embodied the self-identification principle. Section 4(2) expressly provided that "a person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity" — a direct codification of the NALSA mandate. Section 6 provided for the District Magistrate to issue a certificate of identity, and Section 7 provided that a post-surgery application for a revised certificate was permissive ("may" make an application), not mandatory.

Even the Principal Act, however, was widely criticised by the transgender community and legal scholars for several shortcomings: the continued role of the District Magistrate (a government official) in issuing identity certificates; the absence of the reservation directions from NALSA; the failure to address marriage, adoption, and intestate succession rights; the cap of two years on the punishment for offences including sexual abuse; and the absence of any

independent commission with quasi-judicial powers. These criticisms notwithstanding, the Principal Act, particularly through Sections 2(k) and 4(2), preserved the foundational principle of self-identification that NALSA had established. The Impugned Amendment Act now eviscerates even this.

The most profound constitutional injury wrought by the Impugned Amendment Act is the wholesale substitution of the definition of "transgender person" in Section 2(k) of the Principal Act. The original definition — which identified a transgender person as "a person whose gender does not match with the gender assigned to that person at birth" — was, by any measure, a faithful reflection of the NALSA principle: identity is determined by the person, not by biology, birth assignment, or state verification.

The new Section 2(k) as substituted by the Impugned Amendment Act is entirely different in character, tone, and constitutional effect. It now defines "transgender person" to mean:

"(i) a person having such socio-cultural identities as kinner, hijra, aravani and jogta, or eunuch, or a person with intersex variations specified below or a person who, at birth, has a congenital variation in one or more of the following sex characteristics as compared to male or female development — (a) primary sexual characteristics; (b) external genitalia; (c) chromosomal patterns; (d) gonadal development; (e) endogenous hormone production or response, or such other medical conditions; or

(ii) any person or child who has been, by force, allurements, inducement, deceit or undue influence, either with or without consent, compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise:

Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities."

This redefinition causes constitutional harm on multiple, distinct, and cumulative grounds. First, the original formulation located transgender identity in the subjective experience of the person — the mismatch between one's inner gender and the gender assigned at birth — which is precisely how contemporary medicine, psychology, and international human rights law understand transgender identity. The new formulation removes this self-identification basis entirely and replaces it with a list of objective, biologically verifiable conditions. Category (i) now requires either membership in specified socio-cultural groups (kinner, hijra, aravani, jogta, eunuch) or a medically diagnosable congenital variation in sex characteristics. A transwoman who does not belong to any of these socio-cultural groups and who does not have a medically diagnosable congenital variation would simply not qualify as a "transgender person" under this definition. She is erased.

Second, and even more alarmingly, Category (ii) of the new definition defines a subset of "transgender persons" as those who have been "compelled" to assume a transgender identity by procedures including "mutilation, emasculation, castration, amputation." This category does not describe transgender identity at all — it describes the victims of trafficking, forced surgery, and gender-based violence. By including these victims within the definition of "transgender person," the legislature has conflated two entirely distinct groups: on the one hand, persons who authentically identify as transgender; and on the other, persons who have been subjected to coercive medical procedures against their will. This conflation is not merely imprecise — it is deeply stigmatizing. It implicitly frames transgender identity as something done to a person by force or fraud, rather than something a person authentically is.

Third, the Proviso is perhaps the most constitutionally destructive provision of the entire Amendment Act. It states that the definition "shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities." The phrase "self-perceived sexual identities" is so broad and so vague that it would exclude precisely the category of persons who were at the heart of NALSA: those who self-identify as transgender on the basis of their own perception of their gender. NALSA explicitly held that self-perceived gender identity is a fundamental right. The Proviso explicitly excludes those with "self-perceived" identities. This is not a peripheral conflict — it is a

head-on collision between parliamentary legislation and a binding constitutional judgment of this Hon'ble Court.

The Proviso's retroactive dimension — "nor shall ever have been so included" — deserves special opprobrium. By declaring that self-perceived identities have never been included in the definition, Parliament purports to retrospectively narrow the scope of the Act back to its commencement in January 2020, potentially stripping persons who obtained certificates under the original Section 2(k) definition of their legal recognition. This is both arbitrary under Article 14 and contrary to the rule of law.

Section 3 of the Impugned Amendment Act simply omits sub-section (2) of Section 4 of the Principal Act. That sub-section read: "A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity." It was the most explicit statutory recognition of the NALSA principle. It is now gone. Parliament has, by the stroke of a legislative pen, repealed the statutory right that this Court held to be a fundamental right under Article 21. The impugned deletion does not even require elaborate constitutional analysis to expose its unconstitutionality: a provision that directly codifies a right declared fundamental by this Court cannot be omitted by ordinary legislation without violating Article 21 and the doctrine of non-retrogression of fundamental rights.

Section 4 of the Impugned Amendment Act amends Section 6(1) of the Principal Act to require that the District Magistrate shall now issue a certificate of identity

as a transgender person only "after examining the recommendation of the authority and, if he considers either necessary or desirable, after taking the assistance of other medical experts." The "authority" is defined by the newly inserted Section 2(aa) as "a medical board, headed by a Chief Medical Officer or a Deputy Chief Medical Officer."

This amendment re-introduces precisely the medical gatekeeping that NALSA proscribed. The Court in NALSA held at paragraph 76 that requiring medical certification as a condition for legal gender recognition violates the rights of transgender persons. The Court's direction, at paragraph 129(2), was that the State should legally recognise transgender persons' self-identification of their gender and issue identity documents accordingly. The amendment now interposes a medical board between a transgender person's application and the District Magistrate's decision. Before a person can receive even a certificate that identifies them as transgender — not as male or not as female, but merely as transgender — they must obtain a favourable recommendation from a government-appointed medical body. This is a regression of the most direct and egregious kind.

Section 5 of the Impugned Amendment Act makes three significant changes to Section 7 of the Principal Act. First, sub-section (1) of Section 7, which originally provided that a transgender person who undergoes surgery to change gender "may make an application" for a revised certificate, has been amended to read "shall" make such an application. The transformation of a permissive right into a

mandatory obligation is constitutionally significant. A person who undergoes gender-affirming surgery should retain the freedom to choose whether to seek a legal revision of their certificate. Compelling them to apply — and, by extension, compelling the reporting and registration of their surgery — converts a welfare provision into a coercive compliance mechanism.

Second, the newly inserted Section 7(1A) requires that "[t]he medical institution in which the person who has undergone surgery to change gender, either as male or female, shall furnish the details of such person to the concerned District Magistrate and the authority in such form and manner as may be prescribed." This provision creates a mandatory reporting regime: every hospital or surgical centre that performs gender-affirming surgery must report the patient's details to the government. This is nothing less than a medical surveillance regime, creating a state-maintained database of transgender persons who have undergone surgery, without the patient's consent, without independent oversight, and without any provision for data protection. It directly violates the right to privacy and medical confidentiality recognised as a fundamental right in *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, and the right to bodily autonomy under Article 21.

Third, Section 5(d) of the Impugned Amendment Act omits sub-section (3) and the proviso to Section 7 of the Principal Act. That sub-section guaranteed that a transgender person who obtained a revised certificate indicating change of gender would still "be entitled to change the first name in the birth certificate and all

other official documents" and, critically, the Proviso ensured that such a change "shall not affect the rights and entitlements of such person under this Act." The deletion of this Proviso is constitutionally alarming: it leaves open the question whether a transgender person who obtains a male or female certificate thereby forfeits the anti-discrimination protections and welfare entitlements available under the Act as a transgender person. This uncertainty is itself a violation of the principle of constitutional clarity and could be used to deny rights to persons who seek legal gender change.

Section 7 of the Impugned Amendment Act completely substitutes a new Section 18 in place of the original. The new Section 18 contains eight clauses. Sub-clauses (a) to (d) retain the offences from the original Section 18 — forced labour, denial of access to public places, forcible displacement, and physical/sexual/emotional/economic abuse — with the same maximum sentence of two years. Sub-clauses (e) through (h) introduce four entirely new offences targeting the kidnapping of persons and compelling them, through surgery or by coercion, to assume a transgender identity.

While the stated intention of the new Sections 18(e) through 18(h) is to combat trafficking and forced mutilation of persons — a legitimate and important legislative aim — the manner in which these provisions are drafted creates profound constitutional difficulties. Sections 18(e) and 18(f) penalise kidnapping an adult or a child and causing grievous hurt "with the intent of, or in the course

of, compelling such person to assume, adopt, or outwardly present a transgender identity." Sections 18(g) and 18(h) penalise compelling any person to "dress, present, or conduct themselves outwardly as a transgender person" and then employing them in begging, servitude, or bonded labour.

The constitutional problem with this drafting is that it treats the assumption of a transgender identity — the act of dressing, presenting, or conducting oneself as a transgender person — as the harm, rather than the coercion. The legislature has made "outwardly present[ing] a transgender identity" the object of a crime, which inevitably stigmatises transgender presentation itself. Sections 18(g) and 18(h) in particular make criminal the combination of (i) compelling transgender presentation and (ii) exploiting the person in begging or servitude. The offence could have been drafted to target coercion and exploitation alone. Instead, it anchors the offence to transgender presentation as though that presentation is inherently associated with harm. Read alongside the new definition in Section 2(k)(ii), which includes within the definition of "transgender person" those who have been "compelled" to present as transgender, these provisions collectively construct a legislative narrative in which transgender identity is primarily understood as a condition imposed by criminals upon victims — not as an authentic human identity freely chosen.

Furthermore, the retention in Section 18(a)-(d) of a maximum sentence of only two years for offences including sexual abuse and physical harm to transgender

persons — while the anti-trafficking provisions in Section 18(e)-(h) carry sentences ranging from ten years to life imprisonment — creates a troubling hierarchy that treats the protection of transgender persons from direct violence and abuse as less important than the prosecution of trafficking. A transgender person who is sexually abused by a private individual enjoys protection under Section 18(d) carrying a maximum of two years; the same person, if kidnapped and forcibly subjected to a surgical procedure, triggers Section 18(e) carrying a minimum of ten years. While the latter is undeniably a more grievous offence, the failure to enhance the punishment for direct abuse, sexual abuse in particular, reflects a continuing devaluation of the bodily integrity of transgender persons.

The constitutional challenge mounted in this Petition draws strength not merely from the text of the Indian Constitution but from a substantial and settled body of international human rights law and comparative constitutional jurisprudence. India is a signatory to the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966 (ICCPR), and the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). Article 51 of the Constitution obliges the State to foster respect for international law and treaty obligations. The Preamble to the Constitution, with its aspirations toward justice, liberty, equality, and fraternity, must be interpreted in light of these international obligations.

The Yogyakarta Principles, adopted in 2006 by a distinguished group of international jurists and human rights experts meeting at Yogyakarta, Indonesia, represent the authoritative statement of how existing international human rights norms apply to questions of sexual orientation and gender identity. Principle 3 of the Yogyakarta Principles is directly on point: "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. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity." The Yogyakarta Principles Plus 10, adopted in 2017, added Principle 31, which reaffirms the right to legal recognition free from abusive requirements. The Impugned Amendment Act, by requiring a medical board's recommendation for even the first step of legal recognition, violates Yogyakarta Principle 3 directly.

The European Court of Human Rights has produced a rich jurisprudence on legal gender recognition. In *Goodwin v. United Kingdom*, Application No. 28957/95, judgment of 11th July 2002, the Grand Chamber held that the failure to grant legal recognition to a transsexual person's post-operative gender constituted a violation of Articles 8 and 12 of the European Convention on Human Rights (right to respect for private life and right to marry). The Court observed that the stigma experienced by a person whose legal documentation does not reflect their

gender identity constitutes a continuing violation of their dignity and private life. In *Y.Y. v. Turkey*, Application No. 14793/08, judgment of 10th March 2015, the Court held that requiring a person to demonstrate "permanent infertility" as a condition for legal gender recognition violated Article 8 — a ruling directly applicable to the requirement of surgical intervention that the Impugned Amendment Act's Section 7(1) now makes mandatory. Most instructively, in *A.P., Garçon and Nicot v. France*, Applications Nos. 79885/12, 52471/13 and 52596/13, judgment of 6th April 2017, the Grand Chamber held that requiring sterilisation, surgical or hormonal procedures as conditions for legal gender recognition violates Article 8 of the ECHR. The mandatory surgical intervention requirement implicit in the amended Section 7(1) of the Principal Act runs afoul of this unequivocal international standard.

At the domestic comparative level, several jurisdictions have adopted models of legal gender recognition that reflect the self-identification principle, representing the global trajectory toward greater dignity and autonomy. The Argentine Gender Identity Law (Ley 26.743 of 2012) was among the first in the world to permit legal gender recognition entirely on the basis of self-declaration, without any requirement of medical certification, surgery, or psychiatric diagnosis. A person wishing to change their legal gender marker in Argentina need only submit a written application; no doctor, judge, or administrator may obstruct this process. The Maltese Gender Identity, Gender Expression and Sex Characteristics Act

(Act XI of 2015) similarly entrenches self-determination as the sole criterion for legal gender recognition, going further than Argentina by additionally prohibiting non-consensual surgical interventions on intersex children. Pakistan's Transgender Persons (Protection of Rights) Act, 2018 — a direct neighbour of India on the sub-continent — provides for self-perceived gender identity as the basis for legal recognition, without any medical gatekeeping requirement. The bitter irony is that the Impugned Amendment Act has, in a single stroke, moved India further from the standard represented by its own South Asian neighbour than from the progressive European or South American models.

The World Health Organization's International Classification of Diseases, 11th Revision (ICD-11), effective 1st January 2022, reclassified "gender incongruence" from the chapter on "Mental and behavioural disorders" to the new chapter on "Conditions related to sexual health." This reclassification was explicitly driven by the recognition that gender non-conformity is not a pathology. The UN Special Rapporteur on Torture, in Report A/HRC/22/53 (2013), found that forced or coerced medical interventions — including surgeries imposed on intersex persons and psychiatric treatments imposed on LGBTQ persons — may constitute torture or cruel, inhuman, or degrading treatment under the Convention Against Torture and the ICCPR. The Impugned Amendment Act's requirement of a medical board recommendation before even the issuance

of a transgender identity certificate runs counter to the global consensus that gender identity is not a medical condition requiring clinical verification.

The Impugned Amendment Act is challenged on the following principal grounds, which are elaborated in the body of the Writ Petition:

(i) The substituted Section 2(k) of the Principal Act, by replacing the self-identification-based definition with a biologized and medically conditioned classification, violates the right to identity and dignity under Article 21 and the principle of equality under Article 14, and directly overrides the constitutional holding in NALSA.

(ii) Category (ii) of the new Section 2(k), by including within the definition of transgender persons those who have been coerced into transgender identity by mutilation or surgical procedures, conflates victims of trafficking with persons of authentic transgender identity, creating a stigmatizing and arbitrary classification violative of Article 14.

(iii) The Proviso to Section 2(k), by expressly excluding "persons with... self-perceived sexual identities," directly repudiates the constitutional right to self-perceived gender identity affirmed in NALSA, violating Article 21, and its retroactive operation violates the rule of law and Article 14.

(iv) The deletion of Section 4(2) of the Principal Act, which expressly provided the right to self-perceived gender identity, amounts to legislative abrogation of a fundamental right declared by this Court, violating Articles 21 and 14.

(v) The mandatory medical board recommendation requirement in the amended Section 6(1), read with the new definition of "authority" in Section 2(aa), re-introduces the very medical gatekeeping that NALSA held to be unconstitutional, violating Article 21.

(vi) The amendment of Section 7(1) from "may" to "shall" converts a permissive right into a mandatory obligation for persons who have undergone gender-affirming surgery, violating Article 21.

(vii) The new Section 7(1A), which mandates medical institutions to report transgender surgery patients to government authorities without consent, violates the fundamental right to privacy under Article 21 as declared in *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

(viii) The omission of Section 7(3) and its protective Proviso, which had guaranteed that a change in gender certificate would not affect the rights and entitlements of transgender persons under the Act, creates a vacuum of protection violative of Articles 14 and 21.

(ix) The language of the new Section 18(e)-(h), by framing transgender identity as the object of criminal harm rather than targeting coercion and exploitation

alone, stigmatizes transgender identity and violates the dignity component of Article 21.

(x) The failure to increase the maximum punishment for offences under Section 18(a)-(d), including sexual and physical abuse, while introducing long sentences only for anti-trafficking offences, reflects a legislative hierarchy that continues to undervalue the bodily integrity of transgender persons, violating Articles 14 and 21.

(xi) The continued failure to implement the reservation directions in NALSA (paragraph 126-129) for transgender persons as socially and educationally backward classes under Articles 15(4) and 16(4), neither in the Principal Act nor in the Amendment Act, constitutes a continuing constitutional default.

(xii) The Amendment Act, taken as a whole, fails the proportionality test applicable to restrictions on fundamental rights under Articles 14 and 21, and constitutes manifestly arbitrary legislation under the standard in *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

LIST OF DATES AND EVENTS

Date	Particulars
1871	The Criminal Tribes Act, 1871, enacted by the British colonial government, criminalises certain communities including the Hijra community, destroying their centuries-old social standing and exposing them to systematic persecution by the colonial state.
10.12.1948	The United Nations General Assembly adopts the Universal Declaration of Human Rights. Article 1 affirms that all human beings are born free and equal in dignity and rights. Article 12 prohibits arbitrary interference with privacy and reputation. These foundational rights, affirmed by India as a member of the United Nations, undergird the constitutional challenge advanced in the present petition.
1952	The Criminal Tribes Act is repealed. However, the stigma and marginalisation of the transgender community entrenched by colonial legislation continues unabated. Transgender persons remain excluded from education, employment, and civic life.
15.04.2014	This Hon'ble Court delivers the landmark judgment in National Legal Services Authority v. Union of India, (2014) 5 SCC 438. The Court recognises (i) the right to self-identification of gender as a fundamental right under Article 21; (ii) legal recognition of the third gender; (iii) non-discrimination under Articles 14, 15, and 16; and (iv) reservation in education and public employment for transgender persons under Articles 15(4) and 16(4). Petitioner No. 1 was one of the original petitioners in this matter.

24.04.2015	The Rajya Sabha passes the Transgender Persons (Protection of Rights) Bill, 2015, introduced as a Private Member's Bill by Shri Tiruchi Siva (Member of Parliament, Rajya Sabha). This is the first occasion on which Parliament affirmatively legislates in favour of a comprehensive transgender rights framework, and demonstrates significant cross-party consensus in the Upper House in favour of the self-identification principle.
14.01.2016	Petitioner No. 2 enters into a civil union with her partner in Cape Town, South Africa. The union receives full legal recognition under South African law. This civil union, contracted by a person whose identity is female and who is a citizen of India, remains unrecognised under Indian law — a constitutional lacuna this Court is called upon to remedy.
2016–2017	The Transgender Persons (Protection of Rights) Bill, 2016 is introduced in the Lok Sabha. It is referred to the Standing Committee on Social Justice and Empowerment, which submits its 43rd Report recommending extensive amendments, including acceptance of the self-identification principle and removal of medical screening requirements. The Government does not fully accept these recommendations.
17.12.2017	Petitioner No. 2 undergoes gender reassignment surgery. Following the surgery, her gender is updated to 'female' in her Aadhaar card and her passport, in accordance with the procedure then available under the Principal Act. She is thus a person fully recognised as female by the Indian State — and yet the Impugned Amendment Act, by mandating reporting of surgical details to government authorities

	under the new Section 7(1A), would have exposed her medical records to state surveillance without consent.
2014–2019	Civil society, transgender organisations, and legal experts submit multiple representations to the Ministry of Social Justice and Empowerment for a comprehensive Transgender Persons Protection Bill in compliance with the NALSA directions. Parliament receives and considers several successive versions of the Bill (2014, 2015, 2016).
05.08.2019	The Transgender Persons (Protection of Rights) Bill, 2019 is passed by the Lok Sabha.
26.11.2019	The Transgender Persons (Protection of Rights) Bill, 2019 is passed by the Rajya Sabha.
05.12.2019	The Transgender Persons (Protection of Rights) Act, 2019 (Act No. 40 of 2019) receives the assent of the President of India and is published in the Gazette of India. The Principal Act, inter alia, defines "transgender person" as a person "whose gender does not match with the gender assigned to that person at birth" [Section 2(k)] and confers the right to self-perceived gender identity [Section 4(2)].
10.01.2020	The Transgender Persons (Protection of Rights) Act, 2019 comes into force, vide notification No. S.O. 135(E), dated 10th January 2020, published in the Gazette of India Extraordinary, Part II, sec. 2(ii).
2020–2025	Transgender organisations across India, including the Astitva Trust founded by the Petitioner, document ongoing barriers in implementation of the Principal Act: lack of accessible District Magistrate processes, continued medical gatekeeping in practice, absence of reservations in education and employment, and persistent

	<p>police harassment. Multiple representations are made to the Ministry of Social Justice and Empowerment.</p>
2025	<p>Parliament introduces the Transgender Persons (Protection of Rights) Amendment Bill, 2026, 2026. Civil society groups, transgender rights organisations, the Petitioner, and legal experts immediately flag that the proposed amendments are regressive, particularly the substitution of the definition in Section 2(k), the proposed deletion of Section 4(2), and the introduction of medical board requirements.</p>
2025–2026	<p>The Transgender Persons (Protection of Rights) Amendment Bill, 2026, 2026 is introduced and debated in both Houses of Parliament. The Petitioner and other transgender activists, legal scholars, and civil society organisations submit detailed representations opposing the Bill and calling for its withdrawal or substantial amendment. These representations are not addressed.</p>
30.03.2026	<p>The Transgender Persons (Protection of Rights) Amendment Act, 2026 (No. 3 of 2026) receives the assent of the President of India on 30th March 2026. It is published in the Gazette of India Extraordinary, Part II, Section 1, dated 30th March 2026/Chaitra 9, 1948 (Saka), bearing reference No. 8 and Gazette reference CG-DL-E-31032026-271438. The Amendment Act has not yet been notified to come into force, but its assent creates immediate legal uncertainty and chilling effect on the rights of transgender persons.</p>
02.04.2026	<p>The Petitioners, having exhausted all available means of representation and having no alternative efficacious remedy, file the present Writ Petition under Article 32 of the Constitution of India</p>

	before this Hon'ble Court, seeking declaration of unconstitutionality and interim stay of the Impugned Amendment Act.
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**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2026
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

IN THE MATTER OF:

1. Laxmi Narayan Tripathi

D/o Late Shri Chandradev Tripathi
Transgender Woman, Hijra Guru,
Acharya Mahamandaleshwar, Kinnar Akhara,
Founder, Astitva Trust,
R/o 303, Poonam Apartment, Pokharan road No. 1,
Sahak Nagar, Shastri Nagar, Thane, Maharashtra

2. Zainab Javid Patel

C/O Sebastian Noronha
Transgender Woman,
Director (Inclusion & Diversity), KPMG India,
Member, National Council for Transgender Persons (Western Region),
R/o 1/40, Iqbal Manzil (Wahid House),
Dr. Ambedkar Road, Parel, Mumbai, Maharashtra

...PETITIONER(S)

VERSUS

1. Union of India

Through the Secretary,
Ministry of Social Justice and Empowerment,
Government of India, Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi - 110001

2. Ministry of Law and Justice

Through the Secretary,
Government of India, Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi - 110001

...RESPONDENT(S)

**WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA CHALLENGING THE CONSTITUTIONAL VALIDITY OF THE
TRANSGENDER PERSONS (PROTECTION OF RIGHTS)
AMENDMENT ACT, 2026 (NO. 3 OF 2026)**

TO,

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

THE HUMBLE PETITION OF

THE PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. Petitioner No. 1 is a transgender woman, Hijra Guru, Acharya Mahamandaleshwar of the Kinnar Akhara, Bharatanatyam dancer, author, social activist, and Founder of the Astitva Trust. Petitioner No. 2 is a transgender woman, Director (Inclusion & Diversity) at KPMG India, and a Member of the National Council for Transgender Persons (Western Region) constituted under the Principal Act. Both Petitioners file the present Writ Petition under Article 32 of the Constitution of India challenging the constitutional validity of the Transgender Persons (Protection of Rights) Amendment Act, 2026 (No. 3 of 2026) [hereinafter "the Impugned Amendment Act"]. The Impugned Amendment Act amends the Transgender

Persons (Protection of Rights) Act, 2019 [hereinafter "the Principal Act"]. The Impugned Amendment Act received Presidential Assent on 30th March 2026 and was published in the Gazette of India Extraordinary, Part II, Section 1, CG-DL-E-31032026-271438. The Amendment Act is violative of and repugnant to Articles 14, 15, 19, and 21 of the Constitution of India, and is contrary to the binding constitutional directions of this Hon'ble Court in *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 [hereinafter "NALSA"].

2. The Petitioners do not dispute the legislative competence of Parliament to amend the Transgender Persons (Protection of Rights) Act, 2019. What is challenged is the substance, content, and constitutional effect of the Impugned Amendment Act, which: (i) replaces the self-identification-based definition of "transgender person" in Section 2(k) of the Principal Act with a biologized, medicalized, and stigmatizing definition; (ii) deletes Section 4(2) of the Principal Act, which expressly provided the right to self-perceived gender identity; (iii) requires a medical board recommendation as a condition precedent to the issuance of an identity certificate; (iv) creates a mandatory medical surveillance regime requiring medical institutions to report transgender surgery patients to government authorities without patient consent; and (v) frames transgender identity in the penal provisions as something criminally inflicted on victims, rather than as an authentic human identity. These amendments, individually and collectively, constitute an unconstitutional regression from the rights declared by this Court in NALSA.
3. The Petitioners' locus standi to maintain this Petition is beyond question on multiple independent bases:
 - a) Petitioner No. 1, born on 13th December 1978 in Thane, Maharashtra, is a transgender woman who has identified as female since childhood.

She was initiated into the Hijra community through the sacred 'reet' ceremony under her Guru, Lata, and has risen to become Acharya Mahamandaleshwar of the Kinnar Akhara, leading the transgender community's historic participation in the Kumbh Mela. Every provision of the Impugned Amendment Act directly affects her life, identity, and dignity.

- b) Petitioner No. 1 was one of the original petitioners in Writ Petition (Civil) No. 400 of 2012, which resulted in the NALSA judgment of 15th April 2014. Her personal testimony and legal arguments were instrumental in securing the rights recognised therein. She has a direct, personal, and subsisting interest in ensuring that the constitutional rights declared by this Court in NALSA are not nullified by legislative action.
- c) Petitioner No. 1 is the Founder and Director of the Astitva Trust, Asia's first dedicated transgender welfare organisation, registered since 2007, through which over 4,652 transgender persons have been registered and which networks with 56 organisations across India. She also served as President of the DAI Welfare Society, the first registered transgender organisation in South Asia, since 2002. She brings this Petition not merely on her personal behalf but as a representative of the transgender community of India.
- d) Petitioner No. 1 became the first transgender person from Asia-Pacific to address the United Nations in 2008 and has participated in international conferences on gender identity and human rights across five continents. She is the author of 'Me Hijra, Me Laxmi' (Oxford University Press, 2015) and co-author of 'Red Lipstick: The Men in My Life' (Penguin, 2016).

- e) Petitioner No. 2, born on 14th January 1981 in Mumbai, is a transgender woman whose gender is legally recognised as female in her Aadhaar card and passport, following her gender reassignment surgery on 17th December 2017. She is a Member of the National Council for Transgender Persons (Western Region), the statutory body constituted under Section 16 of the Principal Act. She has filed Writ Petition (Civil) [WP(C)] 2021 before the Delhi High Court in *Zainab J. Patel v. Union of India*, seeking recognition of her civil union under Indian law, which is pending. The Impugned Amendment Act, by amending Section 16(2)(f) and by framing transgender identity in terms wholly adverse to persons like Petitioner No. 2, directly prejudices her legal status, her statutory functions, and her ongoing constitutional litigation.
- f) Under the liberal test of locus standi established by this Hon'ble Court in *S.P. Gupta v. Union of India*, AIR 1982 SC 149, and *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802, both Petitioners have unimpeachable standing — individually as persons directly aggrieved and collectively as representatives of a highly vulnerable and marginalised community.

BRIEF FACTS AND BACKGROUND

4. That the Transgender persons, including the Hijra community, have been an integral part of Indian civilisation for millennia, with references in the Mahabharata, Ramayana, Kama Sutra, and Arthashastra. The Hijra community enjoyed sacred status in Mughal courts. Colonial legislation, particularly the Criminal Tribes Act, 1871, systematically destroyed this social standing by criminalising the entire community.
5. That this Hon'ble Court in *NALSA v. Union of India*, (2014) 5 SCC 438, delivered a landmark judgment recognising: (i) the right to self-identification

of gender under Article 21; (ii) legal recognition of the third gender; (iii) non-discrimination under Articles 14, 15, and 16; (iv) reservation in education and employment as socially and educationally backward classes (paragraphs 126-129). A true and correct copy of the Judgment of this Hon'ble Court in *NALSA v. Union of India*, (2014) 5 SCC 438 dated 15.04.2014 is annexed herewith and marked as **ANNEXURE P-1 (From Pages 38 to 109)**

6. That on 24.04.2015, the progressive private member's Bill by Shri Tiruchi Siva was passed unanimously by the Rajya Sabha. The Government's 2016 Bill departed from NALSA. The Standing Committee (Report No. 43, dated 21.07.2017) made 27 recommendations—mostly ignored. The Principal Act received Presidential Assent on 05.12.2019 and was immediately condemned. A true and correct copy of the Standing Committee Report No. 43 dated 21.07.2017 is annexed herewith and marked as **ANNEXURE P-2 (From Pages 110 to 239)**

A true and correct copy of the Transgender Persons (Protection of Rights) Act, 2019 (Principal Act) dated 05.12.2019 is annexed herewith and marked as **ANNEXURE P-3 (From Pages 240 to 247)**

7. That the Transgender Persons (Protection of Rights) Amendment Bill, 2026 was introduced in the Lok Sabha on 15.01.2026, passed by the Lok Sabha on 20.02.2026, passed by the Rajya Sabha on 12.03.2026, and received Presidential Assent on 25.03.2026. Key amendments include:
- (i) New Section 4A: Mandatory National Transgender Registry;
 - (ii) Amended Sections 5-6: Expanded District Screening Committee with biometric and "social verification";
 - (iii) Amended Section 7: Government Medical Board requirement for revised certificates;

- (iv) Amended Section 8: Exceptions for religious institutions and "public morality";
- (v) Amended Section 9: "Rehabilitation Committee" for living arrangements;
- (vi) Amended Section 12: Health insurance conditioned on certificate possession;
- (vii) Amended Section 18: Maximum penalty increased from 2 to 3 years;
- (viii) New Section 18A: "Impersonation of transgender identity" offence;
- (ix) New proviso to Section 15: Exemption for establishments with fewer than 100 employees;
- (x) Continued failure to provide for self-identification, reservations, marriage rights, or an independent commission.

A true and correct copy of the Transgender Persons (Protection of Rights) Amendment Act, 2026 dated 25.03.2026 is annexed herewith and marked as **ANNEXURE P-4 (From Pages 248 to 252)**

A true and correct copy of the Statement of Objects and Reasons of the Amendment Bill dated 15.01.2026 is annexed herewith and marked as **ANNEXURE P-5(From Pages 253 to 266)**

A true and correct copy of the Representations to the Ministry of Social Justice and Empowerment dated 28.03.2026 is annexed herewith and marked as **ANNEXURE P-6 (colly) (From Pages 267 to 271)**

A true and correct copy of the News Reports on Impact of the Amendment Act dated various dates in March 2026 is annexed herewith and marked as **ANNEXURE P-7 (colly) (From Pages 272 to 285)**

8. The Impugned Amendment Act was enacted against a backdrop of progressive international developments which India has defied:

- a) The Argentine Gender Identity Law (Ley 26.743, 23.05.2012) provides unconditional self-identification without medical requirements (Articles 2-4);
- b) The Maltese Gender Identity Act (Act XI of 2015, 01.04.2015) provides self-declaration and protects intersex minors (Articles 3, 14);
- c) Pakistan's Transgender Act (18.05.2018) provides self-perceived gender identity (Section 3);
- d) Denmark (01.09.2014), Ireland (15.07.2015), Belgium (2017), Luxembourg (2018), and Portugal (2018) have adopted self-identification;
- e) The ECHR in *Goodwin v. UK* (2002), *Y.Y. v. Turkey* (2015), and *A.P., Garçon and Nicot v. France* (2017) has progressively held that medical/surgical requirements for gender recognition violate fundamental rights;
- f) WHO ICD-11 (01.01.2022) depathologised gender identity;
- g) The UN Special Rapporteur on Torture (Report A/HRC/22/53, paragraph 88) has characterised forced surgery requirements as potentially constituting cruel, inhuman or degrading treatment.

A true and correct copy of the Yogyakarta Principles, 2006 and Yogyakarta Principles Plus 10, 2017 dated 09.11.2006 and 10.11.2017 is annexed herewith and marked as **ANNEXURE P- 8 (From Pages** 286

to 350)

A true and correct copy of the UN Human Rights Council Resolution 17/19 dated 17.06.2011 is annexed herewith and marked as **ANNEXURE P-9 (From Pages 351 to 352)**

A true and correct copy of the Expert Committee Report dated various dates is annexed herewith and marked as **ANNEXURE P-10 (From Pages 353 to 541)**

A true and correct copy of the Universal Declaration of Human Rights, 1948 dated 10.12.1948 is annexed herewith and marked as **ANNEXURE P-11 (From Pages 542 to 552)**

A true and correct copy of the International Covenant on Civil and Political Rights, 1966 dated 16.12.1966 is annexed herewith and marked as **ANNEXURE P-12 (From Pages 553 to 578)**

A true and correct copy of the Argentine Gender Identity Law (Ley 26.743) dated 23.05.2012 is annexed herewith and marked as **ANNEXURE P-13 (From Pages 579 to 581)**

A true and correct copy of the Maltese Gender Identity Act (Act XI of 2015) dated 01.04.2015 is annexed herewith and marked as **ANNEXURE P-14 (From Pages 582 to 591)**

A true and correct copy of the UK Gender Recognition Act, 2004 dated 01.07.2004 is annexed herewith and marked as **ANNEXURE P-15 (From Pages 592 to 629)**

A true and correct copy of the Goodwin v. United Kingdom, ECHR, Application No. 28957/95 dated 11.07.2002 is annexed herewith and marked as **ANNEXURE P-16 (From Pages 630 to 668)**

A true and correct copy of the A.P., Garçon and Nicot v. France, ECHR, Application Nos. 79885/12, 52471/13, 52596/13 dated 06.04.2017 is

annexed herewith and marked as **ANNEXURE P-17**(From Pages 669 to 722)

A true and correct copy of the Y.Y. v. Turkey, ECHR, HUDOC: 001-153134 dated 10.03.2015 is annexed herewith and marked as **ANNEXURE P-18** (From Pages 723 to 756)

A true and correct copy of the UN Special Rapporteur on Torture Report A/HRC/22/53 dated 01.02.2013 is annexed herewith and marked as **ANNEXURE P-19** (From Pages 757 to 779)

A true and correct copy of the statements and objects by other organisations against the Transgender Persons (Protection of Rights) Amendment Act, 2026 dated 25.03.2026 is annexed herewith and marked as **ANNEXURE P-20** (From Pages 780 to 814)

9. That the present Writ Petition raises the following substantial questions of law:
- a) Whether the Transgender Persons (Protection of Rights) Amendment Act, 2026, by further entrenching the bureaucratic certification mechanism, introducing a mandatory National Transgender Registry, and criminalising "impersonation," violates Articles 14, 15, 19, and 21 of the Constitution and the right to self-identification recognised in NALSA?
 - b) Whether new Section 4A (mandatory registry) violates the right to privacy under Puttaswamy (supra) and Article 17 of the ICCPR?
 - c) Whether new Section 18A (impersonation offence) is unconstitutionally vague under Shreya Singhal (supra) and violates Yogyakarta Principle 33 (YP+10)?
 - d) Whether the exceptions in amended Section 8 for religious institutions and "public morality" violate Navtej Singh Johar (supra) and Articles 14 and 15?

- e) Whether the 3-year maximum sentence under amended Section 18 is manifestly arbitrary under Shayara Bano (supra)?
- f) Whether the continued failure to provide reservations constitutes non-compliance with NALSA paragraphs 126-129?
- g) Whether the Act as amended violates the doctrine of non-retrogression under ICESCR General Comment No. 3?
- h) Whether amended Section 7 (requiring Government Medical Board certification for surgery) violates Article 21, the ECHR holdings in *Y.Y. v. Turkey* and *A.P., Garçon and Nicot v. France*, and the UN Special Rapporteur's finding at paragraph 88 of A/HRC/22/53?

10. That the present Writ Petition is filed on the following, amongst other grounds, each without prejudice to the other and taken in the alternative:

A. **FOR THAT** the Transgender Persons (Protection of Rights) Amendment Act, 2026 is unconstitutional in its entirety as it further curtails and diminishes the rights recognised in *NALSA v. Union of India*, (2014) 5 SCC 438. The Amendment Act constitutes a further legislative negation of a binding judicial pronouncement. As held in *Lily Thomas v. Union of India*, (2000) 6 SCC 224, the Legislature cannot overrule a judicial decision without removing the constitutional defect. The trajectory from NALSA (self-identification) to the Principal Act (certification) to the Amendment Act (registry, impersonation offence, fortified certification) is one of accelerating constitutional regression. Internationally, the doctrine of non-retrogression under ICESCR General Comment No. 3 provides that "any deliberately retrogressive measures would require the most careful consideration and would need to be fully justified." No such justification has been offered.

B. **FOR THAT** the new Section 4A, introducing a mandatory National Transgender Registry, violates Articles 14, 19, and 21 of the Constitution and the right to privacy as recognised by the nine-judge Bench in *Puttaswamy*, (2017) 10 SCC 1. No comparable provision exists in any transgender legislation in any democracy: Argentina's Ley 26.743 (Article 4) requires no registration beyond modification of existing documents; Malta's Act XI of 2015 operates through existing civil registration; Pakistan's 2018 Act provides for self-perceived identity on existing ID documents. The mandatory registry violates Article 17 of the ICCPR (right to privacy) and Yogyakarta Principle 6 (right to privacy). It fails the proportionality test in *Puttaswamy (Aadhaar)*, (2019) 1 SCC 1 on all four prongs: (i) no legitimate aim that cannot be achieved through less restrictive means; (ii) no rational nexus between a registry and protection of rights; (iii) not necessary; (iv) the burden on fundamental rights vastly outweighs any governmental interest. Historically, registries of marginalised communities—including the Criminal Tribes Register under the Criminal Tribes Act, 1871—have been instruments of surveillance and persecution.

C. **FOR THAT** Section 4 of the Principal Act, deliberately retained without amendment, conditions the right to recognition "in accordance with the provisions of this Act," converting a fundamental right into a statutory privilege. The deliberate retention when the Legislature had the opportunity to amend constitutes a conscious legislative choice. Article 2 of Argentina's Gender Identity Law defines gender identity as "the internal and individual way in which gender is perceived by persons"—no statutory condition is imposed. As this Court held in *NALSA* at paragraphs 68-72, self-identification is a facet of Article 21. The rule against superfluity

confirms that the untouched provisions reflect continuing legislative intent to persist with unconstitutional certification.

D. **BECAUSE** Sections 5 and 6, as amended with additional biometric verification and "social verification" requirements, and Section 7, as amended to require a "Government Medical Board" for revised certificates, are violative of Articles 14 and 21. The ECHR in *A.P., Garçon and Nicot v. France* (2017, Application Nos. 79885/12, 52471/13, 52596/13) held that conditioning legal gender recognition on compulsory sterilising surgery or treatment violates Article 8 of the European Convention. In *Y.Y. v. Turkey* (2015, HUDOC: 001-153134), the ECHR held that even the sterilisation requirement for authorising surgery violates the right to private life. The UN Special Rapporteur on Torture at paragraph 88 of Report *A/HRC/22/53* characterised forced surgical requirements as potentially constituting cruel, inhuman or degrading treatment. Argentina's Article 4 requires "no prior legal or medical intervention." Malta provides for self-declaration. The WHO ICD-11 (effective 01.01.2022) depathologised gender identity. The "social verification" requirement subjects transgender persons to invasive community scrutiny, violating dignity under Article 21 and UDHR Article 12 (right to privacy). The biometric requirement creates targeted surveillance infrastructure, violating *Puttaswamy* (*supra*).

E. **FOR THAT** Section 7, as amended, requiring a "Government Medical Board" certification for revised gender certificates, amounts to coerced medical intervention and forced sterilisation—a practice condemned as a human rights violation by: (i) the UN Special Rapporteur on Torture (*A/HRC/22/53*, paragraph 88); (ii) the ECHR in *Y.Y. v. Turkey* (2015) and *A.P., Garçon and Nicot v. France* (2017); (iii) the WHO; (iv) the OHCHR. It violates this Court's holding in *NALSA* at paragraph 20 that "any insistence for SRS for declaring one's gender is immoral and illegal." It

violates Article 21 (bodily autonomy as recognised in *Puttaswamy*, supra), Article 7 of the ICCPR (prohibition of cruel and degrading treatment), and Yogyakarta Principle 31 (YP+10) which provides that legal gender recognition must be available "without requirement of medical procedures, including SRS, sterilisation or hormonal therapy."

F. **BECAUSE** the amendment to Section 8 introducing exceptions for "institutions of a religious or denominational character" and "matters of public decency or morality" directly reverses this Court's holding in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 that "constitutional morality" must prevail over "societal morality." Justice Indu Malhotra held: "History owes an apology to the members of this community." The ECHR in *Goodwin v. UK* (2002, Application No. 28957/95) held that "society may reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity." The Yogyakarta Principles Principle 12 applies to ALL employment without exception. UDHR Article 2 prohibits discrimination "without distinction of any kind." The exceptions violate Articles 14, 15(1), and 15(2) of the Constitution and effectively license discrimination in education, employment, and public access—a direct legislative negation of the constitutional morality doctrine.

G. **BECAUSE** the amended Section 9 introducing a "Rehabilitation Committee" to determine living arrangements of transgender persons violates Articles 19(1)(d) (freedom of movement), 19(1)(e) (freedom of residence), and 21 (personal liberty). No comparable provision exists in any transgender legislation globally: Argentina, Malta, and Pakistan do not regulate residential choices through State committees. The provision fails to recognise the Guru-Chela system and Hijra Gharana as legitimate family structures—institutions that have provided belonging, protection, and livelihood for centuries. The potential for forced institutionalisation

violates UDHR Article 3 (right to liberty), ICCPR Article 9 (right to liberty and security), and Yogyakarta Principle 15 (right to adequate housing).

- H. **FOR THAT** the amended Section 12, conditioning "comprehensive health insurance" on possession of the identity certificate under Section 6, creates a constitutionally impermissible linkage between bureaucratic certification and access to healthcare—a fundamental right under Article 21 as held in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996) 4 SCC 37. Healthcare cannot be conditioned on identity certification. ICESCR Article 12 guarantees the right to the highest attainable standard of health. ICESCR General Comment No. 14 provides that healthcare must be "accessible to everyone without discrimination." Yogyakarta Principle 17 mandates access to the highest attainable standard of health without discrimination. The provision also perpetuates harmful stereotypes by reducing transgender healthcare to SRS and HIV surveillance.
- I. **FOR THAT** Section 10, retained without substantive amendment, fails to provide reservations in employment as directed in *NALSA* at paragraphs 126-129. The new proviso to Section 15 exempting establishments with fewer than 100 employees strips protection from the vast majority of transgender workers. The exemption creates an unreasonable classification under Article 14: the right not to be discriminated against does not depend on the size of one's employer. There is no rational nexus between establishment size and the right to non-discrimination. Yogyakarta Principle 12 applies to ALL employment without size-based exceptions. UDHR Article 23 guarantees the right to work "without any discrimination." Argentina's law imposes no such limitation. The exemption is manifestly arbitrary under *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

- J. **BECAUSE** Section 11, retained without amendment, fails to provide reservation in education as directed in NALSA. The literacy rate among transgender persons is only 46% (against the national average of 74%). ICESCR Article 13 guarantees the right to education. General Comment No. 13 mandates that education must be accessible to all without discrimination. Yogyakarta Principle 16 mandates the right to education without discrimination. The failure to provide reservations—twelve years after NALSA and seven years after the Principal Act—in a statute the Legislature chose to amend, constitutes wilful non-compliance with this Court's binding direction. As held in *Delhi Development Authority v. Skipper Construction Co.*, (1996) 4 SCC 622, non-compliance with judicial directions attracts contempt jurisdiction.
- K. **FOR THAT** Sections 13 and 14, retained without amendment, are mere declaratory restatements of existing rights under Articles 19(1)(a) and 19(1)(c) without substantive protection, enforcement mechanisms, or recognition of the Hijra community's cultural heritage. ICESCR Article 15 guarantees the right to participate in cultural life. Yogyakarta Principle 26 mandates the right to participate in cultural life without discrimination. The failure to provide substantive cultural protections demonstrates legislative indifference to the community's rich cultural contributions spanning millennia.
- L. **BECAUSE** Section 16, providing for complaint officers, is inadequate: no qualifications, training, independence, transgender representation, time-bound disposal, or retaliation protection are prescribed. With the new exemption for small establishments, the provision is rendered even more meaningless. Section 17, delegating grievance redressal to the Executive without guidance, violates the anti-delegation doctrine (*Hamdard Dawakhana v. Union of India*, AIR 1960 SC 554). The deliberate failure to

amend these provisions demonstrates continuing intent to deny effective remedies. As held in *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802, a right without a remedy is no right at all.

M. FOR THAT Section 18, as amended, prescribing a maximum of only 3 years for sexual abuse, physical abuse, verbal abuse, economic abuse, forced labour, and denial of services, is the most manifestly arbitrary penal provision in contemporary Indian law. Sexual assault under Section 65 BNS carries minimum 7 years. SC/ST Act offences carry minimum 6 months to 5 years. Sexual assault under Section 74 BNS carries 3-5 years. The one-year "enhancement" from 2 to 3 years is a legislative insult. There is no minimum sentence. The clubbing of diverse offences—from sexual abuse to denial of service—under a single maximum trivialises grave crimes. The Act does not recognise rape of a transgender person as a distinct offence. This creates a separate and inferior penal regime, communicating that transgender lives are worth less. The provision violates Article 14 (manifest arbitrariness per *Shayara Bano*), Article 15 (discrimination per *NALSA*), and Article 21 (right to life and dignity). Yogyakarta Principle 5 mandates "appropriate criminal penalties"—"appropriate" means comparable to penalties for similar offences against other persons, not a fraction thereof.

N. FOR THAT Section 18 further fails to recognise or criminalise: (i) forced conversion therapy—the UN Independent Expert on SOGI, Victor Madrigal-Borloz, has called for its global prohibition; (ii) forced marriage inconsistent with gender identity; (iii) non-consensual disclosure of transgender status ("outing"); (iv) medical procedures without informed consent; (v) hate crimes motivated by gender identity; (vi) police violence and custodial abuse; (vii) trafficking; (viii) online harassment and doxxing. Yogyakarta Principle 32 (YP+10) specifically addresses the right to bodily

and mental integrity, recognising that forced and coercive practices violate the prohibition against torture. The absence of these specific offences renders the penal framework constitutionally inadequate.

- O. **BECAUSE** the new Section 18A criminalising "impersonation of transgender identity" is unconstitutionally vague, overbroad, and violative of Articles 14, 19(1)(a), and 21. In *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, this Court struck down Section 66A of the IT Act for vagueness and overbreadth. "Impersonation" is not defined—it can encompass transgender persons without certificates, non-binary persons, gender-fluid persons, and those whose expression does not conform to stereotypes. The provision directly violates Yogyakarta Principle 33 (YP+10, 2017): "No one may be subject to arrest, detention, or charged with, or convicted of, any criminal offence, based on actual or perceived sexual orientation, gender identity, gender expression or sex characteristics." No comparable offence exists in any progressive jurisdiction. The provision will be weaponised as a tool of police harassment—extending the legacy of Section 377 IPC and the Criminal Tribes Act, 1871. It creates a chilling effect on gender expression, violating Article 19(1)(a).
- P. **FOR THAT** Section 19, deliberately retained unchanged, providing that no court shall take cognizance except on a complaint by the aggrieved person, creates an insurmountable barrier to justice. The deliberate retention when amending the penalty provision confirms conscious legislative intent. The SC/ST Act imposes no such restrictions. The provision effectively makes offences non-cognizable, shifts the entire burden onto the most vulnerable victims, and violates Article 14 by treating offences against transgender persons differently from offences against other vulnerable groups.

- Q. **BECAUSE** Section 20 ("good faith" protection), retained unchanged, immunises State actors administering the unconstitutional certification mechanism, registry, expanded Screening Committee, and Government Medical Board from accountability for arbitrary denial of rights. This violates Article 14 and the principle of State accountability articulated in *Common Cause v. Union of India*, (2018) 5 SCC 1.
- R. **FOR THAT** the Impugned Amendment Act violates Article 15 of the Constitution. NALSA held that "sex" under Articles 15 and 16 includes gender identity. The Amendment Act, by creating an even more restrictive regime with surveillance, fortified certification, narrowed anti-discrimination protections, and grossly inadequate penalties, discriminates against transgender persons on the ground of sex/gender identity, violating Articles 15(1) and 15(2). The new exceptions to Section 8 expressly license discrimination. The Act fails the "substantive equality" standard mandated in *Navtej Singh Johar* (supra) and *Joseph Shine v. Union of India*, (2019) 3 SCC 39. ICCPR Article 26 and ICESCR General Comment No. 20 prohibit discrimination on the ground of gender identity.
- S. **BECAUSE** the Impugned Amendment Act continues the failure to provide reservation, despite NALSA's express direction at paragraphs 126-129: "Centre and State Governments are directed to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation." The omission—now twelve years after NALSA and in a statute the Legislature chose to amend—is no longer inadvertent. It is a conscious legislative choice violating Articles 15(4), 15(5), and 16(4). As held in *Indra Sawhney v. Union of India*, (1992) Supp (3) SCC 217, the State is constitutionally obligated to identify and provide for backward classes. This Court may take judicial notice that continued non-compliance constitutes contempt of its NALSA directions.

- T. **FOR THAT** the Impugned Amendment Act violates the right to freedom of expression under Article 19(1)(a). Gender expression is a fundamental aspect of free expression. The new Section 18A criminalises gender expression not conforming to State-certified identity. The fortified certification restricts expression to approved identities. The mandatory registry creates self-censorship. As held in *Shreya Singhal (supra)*, chilling effect on expression is constitutionally impermissible. Yogyakarta Principle 19 mandates freedom of expression including "the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means."
- U. **BECAUSE** the Impugned Amendment Act violates the Directive Principles of State Policy: Article 38 (just social order), Article 39(a) (adequate livelihood), Article 41 (right to work and education), Article 42 (just conditions of work), Article 46 (promotion of weaker sections), Article 47 (standard of living and health). The small-establishment exemption, certification-conditioned healthcare, absence of reservations, and surveillance registry violate each. As held in *Minerva Mills v. Union of India*, (1980) 3 SCC 625, directive principles are fundamental to governance and legislation contrary to them is suspect.
- V. **FOR THAT** the Act continues to fail to provide for marriage, civil union, adoption, inheritance, and succession rights. NALSA recognised "equal civil and citizenship rights." UDHR Article 16 guarantees the right to marry without any limitation. ICCPR Article 23 protects the family as the fundamental unit. Yogyakarta Principle 24 mandates the right to found a family. Argentina, Malta, and Denmark address these issues comprehensively. The failure renders the Indian statutory regime incomplete and discriminatory, violating Articles 14, 15, and 21.

W. **BECAUSE** the Amendment Act violates the Yogyakarta Principles (2006) and YP+10 (2017), which this Court relied upon in NALSA. Specifically: Principle 3 (self-defined gender identity—violated by certification mechanism); Principle 6 (privacy—violated by mandatory registry); Principle 12 (right to work—violated by small establishment exemption); Principle 17 (health—violated by certification-conditioned insurance); Principle 19 (expression—violated by impersonation offence); Principle 31 (YP+10: legal recognition without medical procedures—violated by surgery requirement); Principle 32 (YP+10: bodily integrity—violated by surgical requirements); Principle 33 (YP+10: freedom from criminalisation—violated by Section 18A). This Court in *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, held that international norms must be read into domestic law.

X. **FOR THAT** the Amendment Act violates India's obligations under the UDHR (Articles 1, 2, 3, 5, 7, 12, 22, 25), the ICCPR (Articles 2, 3, 7, 17, 26; General Comment No. 18), the ICESCR (Articles 2, 12; General Comments Nos. 3, 14, 20), and the Convention against Torture (Articles 1, 16). The mandatory registry violates ICCPR Article 17. The surgery requirement may constitute cruel, inhuman or degrading treatment under ICCPR Article 7 and CAT Article 1, as found by the Special Rapporteur (A/HRC/22/53, paragraph 88). The OHCHR's reports have specifically expressed concern with India's transgender legislative framework. The UN Independent Expert on SOGI has called for legal gender recognition based on self-determination.

Y. **BECAUSE** the Amendment Act fails to establish an independent National Commission for Transgender Persons with investigatory and quasi-judicial powers. Both NALSA and the Standing Committee recommended such a body. The National Council established under the Principal Act is merely

advisory. Argentina's Ley 26.743 operates through existing administrative mechanisms that are accessible and effective. The absence of an independent commission leaves the community without institutional advocacy, monitoring, or enforcement—constitutionally inadequate given the community's extreme marginalisation.

Z. **FOR THAT** the Amendment Act was enacted without meaningful consultation with the transgender community, violating the principle of "nothing about us without us." The Bill was rushed through Parliament. The Standing Committee was not consulted. Community representations were ignored. This process deficit is relevant to assessing reasonableness under Article 14 (*Indian Hotel and Restaurant Association v. State of Maharashtra*, (2019) 3 SCC 429). The pattern of deliberate exclusion—repeated from the Principal Act to the Amendment Act—constitutes systematic marginalisation of the community from the legislative process affecting its own rights. Internationally, the UN Convention on the Rights of Persons with Disabilities (Article 4(3)) mandates consultation with affected communities—a principle equally applicable to transgender rights legislation.

AA. **BECAUSE** the Amendment Act fails the test of "transformative constitutionalism" articulated in *Navtej Singh Johar* (supra). Chief Justice Misra held that the Constitution "envisions a society based on the dignity of the individual." Justice Chandrachud held that constitutional morality requires the Court to be "the sentinel on the qui vive." The Amendment Act does not transform—it fortifies the status quo of discrimination under the guise of protection. The trajectory from NALSA to the Amendment Act is one of progressive constitutional regression that this Court must arrest. As Justice Malhotra held in *Navtej Johar*: "History owes an apology to the members of this community."

BB. **FOR THAT** the Amendment Act violates the doctrine of non-retrogression. ICESCR General Comment No. 3 provides that "any deliberately retrogressive measures would require the most careful consideration and would need to be fully justified by reference to the totality of the rights." NALSA established a baseline. The Principal Act fell below it. The Amendment Act falls further below. This constitutes continuing and deepening retrogression. The UN Committee on Economic, Social and Cultural Rights in General Comment No. 20 (UN Doc. E/C.12/GC/20, 2009) specifically prohibits retrogressive measures in non-discrimination. In the context of Article 21, where life and dignity are non-derogable, any retrogression is per se unconstitutional.

CC. **BECAUSE** the Amendment Act, tested against global comparative jurisprudence, is among the most regressive transgender legislation in any democracy. Argentina (2012): unconditional self-identification. Malta (2015): self-declaration, intersex protection. Pakistan (2018): self-perceived identity. Denmark (2014), Ireland (2015), Portugal (2018), Belgium (2017), Luxembourg (2018): self-identification. The ECHR in *Goodwin v. UK* (2002), *Y.Y. v. Turkey* (2015), and *A.P., Garçon and Nicot v. France* (2017) has progressively eliminated medical requirements. India's 2026 Amendment introduces mandatory registration, fortified medical gatekeeping, and an impersonation offence—provisions that exist in no progressive jurisdiction. This places India among the most regressive jurisdictions globally, inconsistent with its status as the world's largest democracy and the guardian of a Constitution that promises justice, liberty, equality, and fraternity. The comparative analysis demonstrates that the restrictions are neither necessary nor proportionate, and that less restrictive alternatives exist and function effectively.

PRAYER

In the light of the facts and circumstances stated above, and the grounds urged herein, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Issue an appropriate writ, order or direction, declaring the Transgender Persons (Protection of Rights) Amendment Act, 2026 as unconstitutional, ultra vires, null and void ab initio, being violative of Articles 14, 15, 19, and 21 of the Constitution of India, the Yogyakarta Principles, the ICCPR, the ICESCR, the UDHR, and the jurisprudence of the European Court of Human Rights;
- b) In the alternative, issue an appropriate writ, order or direction declaring the newly inserted Sections 4A and 18A, the amended Sections 5, 6, 7, 8, 9, 12, 15, and 18, and the proviso to Section 8 and the proviso to Section 15, as unconstitutional, ultra vires, and void;
- c) Issue an appropriate writ, order or direction declaring relevant provisions of the Principal Act (Transgender Persons (Protection of Rights) Act, 2019), as they stand after amendment, including Sections 4, 5, 6, 7, 8, 12, 18, and 19, as unconstitutional to the extent they violate Articles 14, 15, 19, and 21;
- d) Issue an appropriate writ, order or direction declaring that the right to self-identification of gender, as recognised by this Court in NALSA, (2014) 5 SCC 438, is a fundamental right under Article 21 that no statute may condition upon any bureaucratic certification, medical procedure, surgical intervention, or registration requirement;
- e) Issue a writ of mandamus directing the Respondent No. 1 to enact fresh comprehensive legislation in conformity with NALSA, the Yogyakarta Principles (2006 and YP+10, 2017), and international best practices, including self-identification, reservations, comprehensive anti-

discrimination protections with proportionate penalties, marriage and civil rights, and an independent commission, within a time-bound period;

- f) Issue a writ of mandamus directing the Respondent No. 1 to implement paragraphs 126-129 of NALSA, including reservation to transgender persons in education and public employment as Other Backward Classes;
- g) Issue appropriate interim directions, pending final hearing, directing: (i) stay of Sections 4A (registry) and 18A (impersonation offence); (ii) stay of the amended certification provisions; (iii) stay of the proviso to Section 8 (anti-discrimination exceptions); (iv) recognition of self-identified gender of all transgender persons pending fresh legislation; (v) immediate measures to protect transgender persons from violence;
- h) Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

AADHAR NAUTIYAL

ADVOCATE FOR THE PETITIONER

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2026
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

IN THE MATTER OF:

LAXMI NARAYAN TRIPATHI & ANR. ...PETITIONER(S)

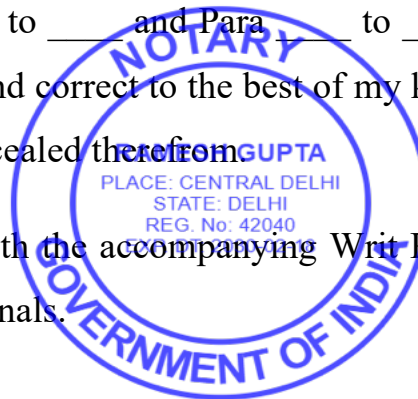
VERSUS

UNION OF INDIA & ANR. ...RESPONDENT(S)

AFFIDAVIT

I, Laxmi Narayan Tripathi, D/o Late Shri Chandradev Tripathi, Transgender Woman, Hijra Guru, Acharya Mahamandaleshwar, Kinnar Akhara, Founder, Astitva Trust, R/o 303, Poonam Apartment, Pokharan Road No. 1, Sahak Nagar, Shastri Nagar, Thane, Maharashtra – 400606, the Petitioner No. 1 in the accompanying Writ Petition, do hereby solemnly affirm and state as under

1. That I am the Petitioner No. 1 in the accompanying Writ Petition and am well acquainted with the facts and circumstances of the case and, as such, competent and authorized to swear this Affidavit.
2. That I have read the contents of the Synopsis and List of Dates (Pages ____ to ____), Writ Petition (Pages ____ to ____ and Para ____ to ____) and the contents of the same are true and correct to the best of my knowledge, and nothing material has been concealed therefrom.
3. That the Annexures filed along with the accompanying Writ Petition are true copies of their respective originals.



Registry No: ENOTARY/ 02.04.2026/ 94gjnr

Date: Thu, 02 Apr, 2026, 10:51:46 am IST

I Identify the deponent(s) who have electronically signed this document using Aadhaar esign.
Digitally Notaried in Delhi.

4. That no part of the contents of the accompanying Writ Petition is false and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

I, the Deponent above named, do hereby verify the contents of the abovementioned petition as being true and correct to the best of knowledge and belief, and state that nothing material has been concealed therefrom.

Verified at New Delhi on this Day of April, 2026

DEPONENT



Registry No: ENOTARY/ 02.04.2026/ 94gjnr

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The Notaries Rules, 1956
FORM XV - NOTARIAL REGISTER

[(See rule 11(2)]

Register Serial No.	ENOTARY/ 02.04.2026/ 94gjnr
Enotary Document No.	ENOTARY/ 02.04.2026/ 94gjnr
Date	2026-04-02
Name of Notarial Act	AFFIDAVIT OR ADMINISTERING OATH
Name of Executant / Person Concerned	LAXMI NARAYAN TRIPATHI
Address of Executant / Person Concerned	303, Poonam Apartment, Pokhran roan no. 1, Sahak Nagar, Shastri Nagar, Thane, Maharashtra 400606
Contents of Document	Affidavit writ petition Supreme Court
Notarial Fee-Stamp Affixed	NIL
Prescribed Fee	INR 35/-
Fee Charged	INR 35/-
Sl. No. of Receipt Book	ENOTARY/ 02.04.2026/ 94gjnr
Signature of Person Concerned:	_____
Signature of Notary:	_____



Registry No: ENOTARY/ 02.04.2026/ 94gjnr

Date: Thu, 02 Apr, 2026, 10:51:46 am IST

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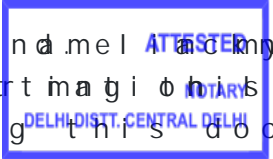
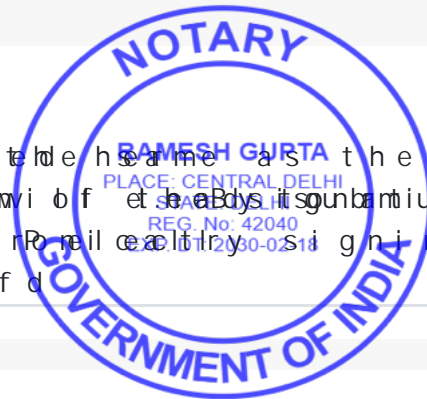
LAXMI NARAYAN TRIPATHI
 pa*****91@gmail.com
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Signed document hash

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RAMESH GUPTA

ra*****10@gmaxixkxddm1

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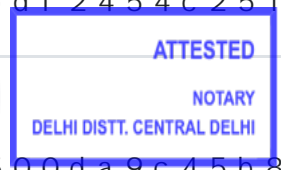
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Aadhaar Details Extracted information Matched

Registry No: ENOTARY/0204.2026/94gjh

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History

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Signer Invited	LAXMI AYA R TARTI HPI pa*****91@gmail.com	02 Apr 2026 10:45 IST (+05:30)
Signer Invited	RAMESH GAUPT ra*****10@gmail.com	02 Apr 2026 10:49 IST (+05:30)
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Document Signed	RAMESH GAUPT ra*****10@gmail.com	02 Apr 2026 10:51 IST (+05:30)
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Date: Thu, 02 Apr, 2026, 10:51:46 am IST

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**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2026
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

IN THE MATTER OF:

LAXMI NARAYAN TRIPATHI & ANR. ...PETITIONER(S)

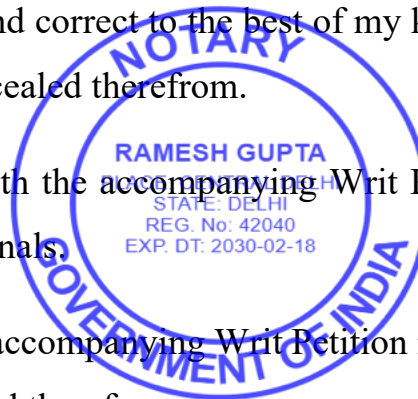
VERSUS

UNION OF INDIA & ANR. ...RESPONDENT(S)

AFFIDAVIT

I, Zainab Javid Patel, C/o Sebastian Noronha, Transgender Woman, R/o 1/40, Iqbal Manzil (Wahid House), Dr. Ambedkar Road, Parel, Mumbai, Maharashtra, Petitioner No. 2 in the accompanying Writ Petition, do hereby solemnly affirm and state as under:

1. That I am the Petitioner No. 2 in the accompanying Writ Petition and am well acquainted with the facts and circumstances of the case and, as such, competent and authorized to swear this Affidavit.
2. That I have read the contents of the Synopsis and List of Dates (Pages ____ to ____), Writ Petition (Pages ____ to ____ and Para ____ to ____) and the contents of the same are true and correct to the best of my knowledge, and nothing material has been concealed therefrom.
3. That the Annexures filed along with the accompanying Writ Petition are true copies of their respective originals.
4. That no part of the contents of the accompanying Writ Petition is false and nothing material has been concealed therefrom.



Registry No: ENOTARY/ 02.04.2026/ tadsa2

Date: Thu, 02 Apr, 2026, 11:04:00 am IST

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DEPONENT

VERIFICATION

I, the Deponent above named, do hereby verify the contents of the abovementioned petition as being true and correct to the best of knowledge and belief, and state that nothing material has been concealed therefrom.

Verified at New Delhi on this Day of April, 2026

DEPONENT



Registry No: ENOTARY/ 02.04.2026/ tadsa2

Date: Thu, 02 Apr, 2026, 11:04:00 am IST

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The Notaries Rules, 1956
FORM XV - NOTARIAL REGISTER

[(See rule 11(2))]

Register Serial No.	ENOTARY/ 02.04.2026/ tadsa2
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Date	2026-04-02
Name of Notarial Act	AFFIDAVIT OR ADMINISTERING OATH
Name of Executant / Person Concerned	zainab Javid Patel
Address of Executant / Person Concerned	1/40, Iqbal manzil, dr. Ambedkar road, Parel, Mumbai, Maharashtra
Contents of Document	affidavit for SLP
Notarial Fee-Stamp Affixed	NIL
Prescribed Fee	INR 35/-
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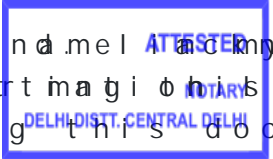
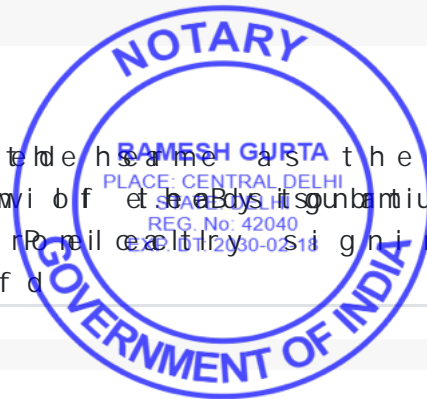
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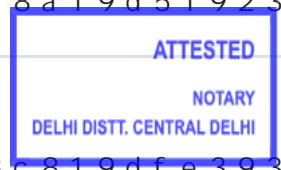
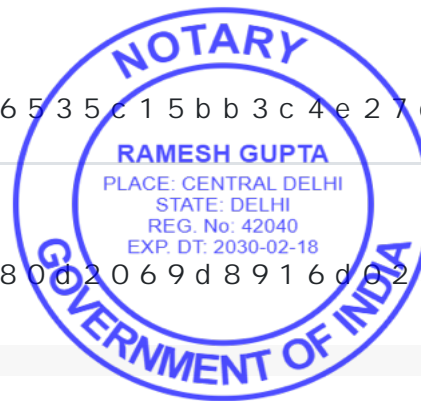
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which Rs 5000 crores to be deposited before this Court and for the balance a bank guarantee of a nationalised bank be furnished in favour of SEBI and be deposited before this Court. On compliance, the contemnors be released forthwith and the amount deposited be released to SEBI. a

43. We make it clear that this order is passed in order to facilitate the contemnors to further raise the balance amount so as to comply with the Court's orders mentioned above.

Court Masters

(2014) 5 Supreme Court Cases 438

(BEFORE K.S.P. RADHAKRISHNAN AND DR A.K. SIKRI, JJ.)

NATIONAL LEGAL SERVICES AUTHORITY Petitioner;

Versus

UNION OF INDIA AND OTHERS Respondents. c

Writ Petitions (C) No. 400 of 2012[†] with No. 604 of 2013,
decided on April 15, 2014

A. Constitution of India — Arts. 14 to 16, 19 and 21 — Gender identity — Right of Transgender Community (TG) to seek gender identity alternate to the one assigned, male or female, at the time of birth — More so, when such person has undergone surgical procedure to change sex (transsexuals) — Regard to sexual orientation which is distinct from gender identity — Psychological and not biological test to be applied to transsexuals — Discrimination and denial of equality in matters of access to education, healthcare, employment, licences, etc. and to rights and privileges as persons and as citizens of India — Denial of right to live with dignity — Historical background of the community (paras 14 to 20) and situation in other countries examined (paras 38 to 45) — Stance of UN and other human right bodies examined (paras 23 to 27) — Yogyakarta Principles endorsed — *Per curiam*, held, non-recognition of gender identity and equality of TGs violates Arts. 14, 15, 16, 19 and 21 — These articles are not restricted to males or females and also cover hijras/TGs — In the absence of any Indian law on TGs, in view of Arts. 253 and 51 of the Constitution, municipal courts in India must respect international law in respect of TGs — Right to gender identity also flows from India being a democracy d

— Impact on rights of transsexuals after undergoing sex reassignment surgery (SRS) historically considered with regard to issue of marriage of TGs — Regard to the psyche and psychological factor/aspect — Right of transsexuals to personal development and to physical and moral security in the full sense e

B. Constitution of India — Arts. 14 to 16, 19 and 21 and Pt. IV — Gender identity — Right of Transgenders (TGs) (hijras/eunuchs) who are neither male nor females to be identified and categorised as third gender with legal and constitutional protection, upheld (*per curiam*) — Flows from natural law also (*per Sikri, J.*, para 122) — Right to live a life with dignity — f

[†] Under Article 32 of the Constitution of India

Claim to be treated as SEBCs/OBCs, upheld (*per curiam*) — Directions issued to Central and State Governments in this regard, to extend all benefits available to SEBCs/OBCs, to TGs — Jurisprudence — Natural Law

a C. Constitution of India — Arts. 21 and 14 — Gender identity — Fundamental importance to intrinsic sense of self — Distinguished from sexual orientation (*per Radhakrishnan, J.*) — Gender identity, right to choose, held, is a human right from which many other rights flow (*per Sikri, J.*) — Words and Phrases — “Gender identity” and “Sexual orientation” (Paras 21, 22, 13, 69 to 75, 87 and 90 to 93)

b D. Constitution of India — Art. 14 and Art. 21 — “Person” — Meaning, scope and extent — Held, term “person” is gender neutral and also covers hijras/TGs who are neither male nor female — Hence, they are entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of India — Directions issued to Central and State Governments, in this regard — Words and Phrases — “Person” (Paras 61, 82 and 135)

c E. Constitution of India — Arts. 15 and 16 — Prohibition of discrimination based on “sex” — Held, expression “sex” not limited to biological sex of male or female and covers hijras/TGs who consider themselves neither male nor female — Thus Arts. 15 and 16 prohibit discrimination based on gender identity — TGs have been denied rights under Arts. 15(2) and 15(4) as also Art. 16(2) and Art. 16(4) — They are legally entitled and eligible to get benefits available to socially and educationally backward classes (SEBCs) for admission in educational institutions and in public employment — Directions issued to Central and State Governments in this regard — Jurisprudence — Natural Law (Paras 66 & 67 and 135.3)

d F. Constitution of India — Art. 19(1)(a) — Scope and extent — Held, extends to citizen’s right to expression of his self-identified gender as in the case of TGs — That can be expressed through varied ways and means by way of expression, speech, mannerisms, clothing, etc. and through dress, words, action or behaviour or any other form — Directions issued to Central and State Governments in this regard (Paras 69, 71 and 135)

e G. Constitution of India — Arts. 19(1)(a) & (2) — “Expression” — Held, covers right to choose one’s personal appearance or dress subject to Art. 19(2) — Hence, TGs have right to express their self-identified gender through their speech, dress, appearance and mannerisms (Paras 69 and 71)

f H. Constitution of India — Art. 21 — Scope and extent — Fundamental right to live a life with dignity — Held, right to dignity has been recognised to be an essential part of the right to life and accrues to all persons on account of being humans — It covers “personal autonomy” and “self-determination” — It extends to recognition of one’s gender identity as sought to be expressed by TGs — Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of

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personal liberty guaranteed under Art. 21 — The self-identified gender can be either male or female or a third gender — Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under Constitution of India — Directions issued to Central and State Governments in this regard — Jurisprudence — Natural Law

a

(Paras 73 to 76, 87, 90 to 93 and 135)

I. Constitution of India — Arts. 15, 16 and 19 — “Citizen” — Meaning, scope and extent — Held, term “citizen” is gender neutral and also covers hijras/TGs who are neither male nor female

(Para 82)

b

J. Constitution of India — Art. 14 — Classification — Under classification — Classification restricted to limited choices thereby excluding certain categories, held, amounts to discrimination — Binary notion of gender in IPC and other laws recognising only male or female gender, held, discriminates against TGs — Penal Code, 1860, Ss. 8, 10 and 11

(Paras 81 and 35)

c

K. Constitution of India — Arts. 253 and 51 — International law held applicable where Indian law absent to deal with the situation — Absence of Indian law on TGs — Held, municipal courts to follow international law on the subject

— Universal Declaration of Human Rights, 1948 — Arts. 1, 3, 5, 6 and 12 — International Covenant on Civil and Political Rights, 1966 (ICCPR) — Arts. 6, 16 and 17 — International Commission of Jurists and the International Service for Human Rights — Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity — United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (dated 24-1-2008) — Para 21 — United Nations Committee on Economic, Social and Cultural Rights (Report of 2009) — General Comment No. 2 of the Committee on Torture — Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 2008 — Art. 2 — General Comment No. 20 of the Committee on the Elimination of Discrimination against Woman, responsible for the implementation of the Convention on the Elimination of All Forms of Discrimination against Woman, 1979 and 2010 Report — Convention for Protection of Human Rights and Fundamental Freedoms, 1997 — Arts. 6, 8, 13 and 14 — Equality Act, 2010 (UK) — Sex Discrimination Act, 1984 (Australia) as amended by Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act, 2013 — Recital 3 of the Preamble to the Directive 2006/54/EC of the European Parliament and the Council of 5-7-2006 — Equal Treatment and the Promotion of Equal Opportunities Act, 2003 (Hungary) — Hate Crimes Prevention Act, 2009, which expands the scope of the 1969 United States Federal Hate Crime Law — Alteration of Sex Description and Sex Status Act, 2003 (South Africa) — German Civil Statutes Act, Art. 22, S. 3

d

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g

h

a L. Words and Phrases — “Transgender” — Meaning and scope — Persons of different identities and experiences covered by the expression and included in transgender community, explained (*Radhakrishnan, J.*, para 13) (*Sikri, J.*, paras 113 to 115) — Human and Civil Rights — Gender equality

b M. Constitution of India — Arts. 32, 226, 14 to 19 and 21 — Judicial activism — Absence of any law to safeguard rights covered by Arts. 14 to 19 and 21 — Held (*per Radhakrishnan, J.*), constitutional court cannot remain a mute spectator when such rights are violated, especially when such rights have gained universal recognition and acceptance, as in the case of TGs — Held (*per Sikri, J.*), judicial role in a democracy is not only to decide the dispute before the Court, but to uphold the rule of law and ensure access to justice to the marginalised sections of society like TGs — By recognising TGs as a third gender Supreme Court is only bridging the gap between the law and life and that is the primary role of the Court in a democracy —
c Amounts to giving purposive interpretation to Arts. 14 to 19 and 21 — Constitutional Interpretation — Purposive interpretation — Rule of Law
(Paras 53, 124 and 127)

d N. Human and Civil Rights — Nature of — Held, human rights are rights that “belong” to every person — Not dependent on specifics of the individual — They are moral, pre-legal rights and cannot be granted by people or taken away by them — Human rights have been recognised by the Universal Declaration of Human Rights and adopted as fundamental rights in the Constitution of India — TGs being humans have every right to enjoy their human rights — Constitution of India — Pt. III and Art. 21 — Jurisprudence — Natural Law — Natural rights and human rights
(Paras 94 to 97 and 129)

e O. Constitution of India — Art. 14 — Equality — Test — What is not reasonable, just and fair is not treated to be equal and is, therefore, violative of Art. 14 (*per Sikri, J.*) — Words and Phrases — “Equality” (Para 99)

P. Constitution of India — Art. 21 — Nature and scope — Art. 21 guarantees enjoyment of life by all citizens of this country with dignity, viewing this human right in terms of human development (*per Sikri, J.*)
(Para 104)

f Q. Constitution of India — Preamble — Democratic Republic — Democracy is based on the recognition of the individuality and dignity of man — Hence citizens have a right to gender identity (*per Sikri, J.*)
(Para 106)

g R. Constitution of India — Preamble and Pts. III & IV — Social justice — Social justice does not mean equality before law on paper but to translate the spirit of the Constitution, enshrined in the Preamble, the Fundamental Rights and the Directive Principles of State Policy into action — Includes granting recognition to TGs (*per Sikri, J.*)
(Paras 132 to 134)

h S. Jurisprudence — Justice — Conceptions of — Aristotle, Kant, Locke, Goodman and Rawls’ views considered — Conception of justice as fairness combined with distributive justice considered in granting due recognition to TGs (*per Sikri, J.*) — Constitution of India, Preamble, Pts. III, IV and Art. 14
(Para 133)

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Members of the Transgender Community which includes hijras, eunuchs *Kothis, Aravanis, Jogtas, Jogappas, Shiv-Shakthis*, etc. and kinnars filed a writ petition seeking legal declaration of their right to choose their gender identity other than the one assigned to them, male or female, at the time of birth and their prayer was that non-recognition of their gender identity violates Articles 14 and 21 of the Constitution of India. Linked to their claim for a particular gender identity, male or female, was their predominant male or female orientation more so on having undergone surgical procedure (sex reassignment surgery, “SRS”, for short) for change of sex. They submitted that the right to choose one’s gender identity is integral to the right to lead a life with dignity, which is undoubtedly guaranteed by Article 21.

The other facet of the issue of gender identity was of Transgenders (TGs), the hijras and eunuchs, who are neither males nor females, to have a right to be identified and categorised as a “third gender” with all legal and constitutional protection.

The petitioners brought to the fore the traumatic experiences faced by the members of the TG community and submitted that every person of that community has a legal right to decide their sex orientation and to espouse and determine their identity. Since TGs are neither treated as male or female, nor given the status of a third gender, they are being deprived of many of the rights and privileges which other persons enjoy as citizens of this country. TGs are deprived of social and cultural participation and hence restricted access to education, healthcare and public places which deprives them of the constitutional guarantee of equality before law and equal protection of laws. Further, the community also faces discrimination to contest election, right to vote, employment, to get licences, etc. and, in effect, treated as outcasts and untouchables. Moreover, the State cannot discriminate them on the ground of gender, violating Articles 14 to 16 and 21 of the Constitution of India.

They sought socio-economic benefits accorded to others. They further sought to be declared as Socially and Educationally Backward Classes of citizens and to be accorded all benefits available to that class of persons.

Furthermore, there was a duty to follow international conventions on TGs in India.

Their cause was advocated by the National Legal Services Authority and a writ for similar reliefs was filed by Poojaya Mata Nasib Kaur Ji Women Welfare Society. One *LNT*, a hijra (a transgender person), also got themselves impleaded so as to effectively put across the cause of the members of the transgender community.

After looking into the historical background of TGs and considering the views held in other countries and UN Declarations and Covenants and other international conventions and reports, as well as *Yogyakarta Principles*, the Supreme Court upheld the transgenders’ claims, and

Held :

Per Radhakrishnan, J.

(1) Seldom, our society realises or cares to realise the trauma, agony and pain which the members of the transgender community undergo, nor appreciates the innate feelings of the members of the transgender community, especially of those whose mind and body disown their biological sex. Our society often ridicules and abuses the transgender community and in public places like railway stations, bus-stands, schools, workplaces, malls, theatres, hospitals, they are side-

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lined and treated as untouchables, forgetting the fact that the moral failure lies in the society's unwillingness to contain or embrace different gender identities and expressions, a mindset which we have to change. (Para 1)

a

(2) Transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to their biological sex. TG may also take in persons who do not identify with their sex assigned at birth, which include hijras/eunuchs who, in this writ petition, describe themselves as "third gender" and they do not identify as either male or female. Hijras are not men by virtue of anatomical appearance and psychologically, they are also not women, though they are like women with no female reproduction organ and no menstruation. Since hijras do not have reproduction capacities as either men or women, they are neither men nor women and claim to be an institutional "third gender". Among hijras, there are emasculated (castrated, nirvana) men, non-emasculated men (not castrated/akva/akka) and inter-sexed persons (hermaphrodites). TG also includes persons who

b

intend to undergo sex reassignment surgery (SRS) or have undergone SRS to align their biological sex with their gender identity in order to become male or female. They are generally called transsexual persons. Further, there are persons who like to cross-dress in clothing of opposite gender i.e. transvestites. Resultantly, the term "transgender", in contemporary usage, has become an umbrella term that is used to describe a wide range of identities and experiences, including but not limited to pre-operative, post-operative and non-operative transsexual people, who strongly identify with the gender opposite to their biological sex: male and female. (Para 13)

c

(3) Historically right from the Epics until the advent of the British, TGs enjoyed due recognition and respect but were harassed and deemed as innately criminal under British rule by enactment of a draconian legislation, namely, the Criminal Tribes Act, 1871 and Section 377 IPC. (Paras 14 to 20)

d

Queen Empress v. Khairati, ILR (1884) 6 All 204; *Suresh Kumar Koushal v. Naz Foundation*, (2014) 1 SCC 1 : (2013) 4 SCC (Cri) 1, referred to

e

Currently transgender people, as a whole, face multiple forms of oppression in this country. Discrimination is so large and pronounced, especially in the field of healthcare, employment, education, leave aside social exclusion. Social exclusion and discrimination on the ground of gender for one who does not conform to the binary gender (male/female) does prevail in India. Discussion on gender identity including self-identification of gender of male/female or as transgender mostly focuses on those persons who are assigned male sex at birth, whether one talks of hijra transgender, woman or male or male to female transgender persons, while concern voiced by those who are identified as female to male transsexual persons is often not properly addressed. Female to male unlike hijra/transgender persons are not quite visible in public unlike hijra/transgender persons. Many of them, however, do experience violence and discrimination because of their sexual orientation or gender identity. (Paras 47, 48 and 50)

f

(4) Gender identity is one of the most fundamental aspects of life which refers to a person's intrinsic sense of being male, female or transgender or transsexual person. A person's sex is usually assigned at birth, but a relatively small group of persons may be born with bodies which incorporate both or certain aspects of both male and female physiology. At times, genital anatomy problems may arise in certain persons such that their innate perception of

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themselves is not in conformity with the sex assigned to them at birth and may include pre- and post-operative transsexual persons and also persons who do not choose to undergo or do not have access to operation and also include persons who cannot undergo successful operation. Gender identity, therefore, refers to an individual's self-identification as a man, woman, transgender or other identified category. (Paras 21 and 69 to 75)

Sexual orientation, on the other hand, refers to an individual's enduring physical, romantic and/or emotional attraction to another person. Sexual orientation includes transgender and gender-variant people with heavy sexual orientation and their sexual orientation may or may not change during or after gender transmission, which also includes homosexuals, bisexuals, heterosexuals, asexual, etc. Gender identity and sexual orientation are different concepts. 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, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. (Para 22)

(5) Several foreign decisions are related to transsexuals, who, whilst belonging physically to one sex, feel convinced that they belong to the other, seek to achieve a more integrated unambiguous identity by undergoing medical and surgical operations to adapt their physical characteristic to their psychological nature. While considering the rights of such transsexual persons, who have undergone SRS, the test to be applied is not the "biological test", but the "psychological test", because psychological factor and thinking of transsexual has to be given primacy rather than the binary notion of gender of that person. Seldom people realise the discomfort, distress and psychological trauma, they undergo and many of them undergo "gender dysphoria" which may lead to mental disorder. Discrimination faced by this group in our society, is rather unimaginable and their rights have to be protected, irrespective of chromosomal sex, genitals, assigned birth sex, or implied gender role. Rights of transgenders, pure and simple, like hijras, eunuchs, etc. have also to be examined, so also their right to remain as a third gender as well as their physical and psychological integrity. (Para 37)

Corbett v. Corbett, 1971 P 83 : (1970) 2 WLR 1306 : (1970) 2 All ER 33; *R. v. Tan*, 1983 QB 1053 : (1983) 3 WLR 361 : (1983) 2 All ER 12 (CA); *Attorney General v. Otahuhu Family Court*, (1995) 1 NZLR 603; *Kevin (Validity of Marriage of Transsexual)*, *In re*, 2001 Fam CA 1074 (Aust); *Attorney General for the Commonwealth v. "Kevin and Jennifer" & Human Rights and Equal Opportunity Commission*, 2003 Fam CA 94 (Aust); *Dept. of Social Security v. "SRA"*, (1993) 118 ALR 467 : (1993) 43 FCR 299 (Aust); *R. v. Harris & McGuinness*, (1988) 17 NSWLR 158; *AB v. Western Australia*, 2011 HCA 42 (Aust); *Bellinger v. Bellinger*, (2003) 2 AC 467 : (2003) 2 WLR 1174 : (2003) 2 All ER 593 (HL); *JG, In re, JG v. Pengarah Jabatan Pendaftaran Negara*, (2006) 1 MLJ 90 (Malaysia); *Norrie v. NSW Registrar of Births, Deaths and Marriages*, 2013 NSWCA 145 (Aust); *Collector of Customs v. Pressure Tankers Pty. Ltd.*, 1993 FCA 322 : (1993) 43 FCR 280 (Aust); *Hope v. Bathurst City Council*, 1980 HCA 16 : (1980) 144 CLR 1 (Aust); *Christine Goodwin v. United Kingdom*, (2002) 35 EHRR 18 : Application No. 28957/95, decided on 11-7-2002; *Pretty v. United Kingdom*, 2002 ECHR 427 : Application No. 2346/02, decided on 29-4-2002; *Mikulic v. Croatia*, 2002 ECHR 27 : Application No. 53176/99, decided on 7-2-2002; *Van Kuck v. Germany*, 2003 ECHR 285 : Application No. 35968/97, decided on 12-9-2003, *considered*

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a (6) The various judicial pronouncements and legislations in the international arena highlight the fact that the recognition of “sex identity gender” of persons, and “guarantee to equality and non-discrimination” on the ground of gender identity or expression is increasing and gaining acceptance in international law and, therefore, is to be applied in India as well. (Para 46)

Christine Goodwin v. United Kingdom, (2002) 35 EHRR 18 : Application No. 28957/95, decided on 11-7-2002, *considered*

b The various international human rights instruments which are being followed by various countries in the world are aimed to protect the human rights of transgender people since it has been noticed that transgenders/transsexuals often face serious human rights violations, such as harassment in workplace, hospitals, places of public conveniences, market places, theatres, railway stations, bus-stands and so on. (Para 52)

c The Indian law, on the whole, only recognises the paradigm of binary genders of male and female, based on a person’s sex assigned by birth, which permits gender system, including the law relating to marriage, adoption, inheritance, succession and taxation and welfare legislations. Despite UN Declarations and Covenants and the Yogyakarta Principles, unfortunately we have no legislation in this country dealing with the rights of transgender community. Due to this absence of suitable legislation protecting the rights of the members of the transgender community, there is the necessity to follow the international conventions to which India is a party and to give due respect to other non-binding international conventions and principles. The Constitution-makers could not have envisaged that each and every human activity be guided, controlled, recognised or safeguarded by laws made by the legislature. Article 21 has been incorporated to safeguard those rights and a constitutional court cannot be a mute spectator when those rights are violated, but is expected to safeguard those rights knowing the pulse and feeling of that community, though a minority, especially when their rights have gained universal recognition and acceptance. (Para 53)

d Keeping Article 253 of the Constitution in view a legislation is required for implementing the international conventions. Courts in India would apply the rules of international law according to the principles of comity of nations, unless they are overridden by clear rules of domestic law. If Parliament has made any legislation which is in conflict with the international law, then Indian courts are bound to give effect to the Indian law, rather than the international law. However, in the absence of a contrary legislation, municipal courts in India would respect the rules of international law. The principles discussed hereinbefore on TGs and the international conventions, including *Yogyakarta Principles*, which are not inconsistent with the various fundamental rights guaranteed under the Indian Constitution, must be recognised and followed, which has sufficient legal and historical justification in our country. (Paras 23 to 26, 54, 55, 58 and 60)

e
f
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h *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*, (1984) 2 SCC 534 : 1984 SCC (Cri) 313; *V.O. Tractoroexport v. Tarapore & Co.*, (1969) 3 SCC 562; *Mirza Ali Akbar Kashani v. United Arab Republic*, AIR 1966 SC 230 : (1966) 1 SCR 319; *Jolly George Varghese v. Bank of Cochin*, (1980) 2 SCC 360; *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225; *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759 : 1999 SCC (L&S) 405; *Githa Hariharan v. RBI*, (1999) 2 SCC 228; *R.D. Upadhyay v. State of A.P.*, (2007) 15 SCC 337 : (2010) 3 SCC (Cri) 704; *People’s Union for Civil*

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Liberties v. Union of India, (2005) 2 SCC 436; *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932, *relied on*

(7) Article 14 of the Constitution ensures equal protection and hence imposes a positive obligation on the State to ensure equal protection of laws by bringing in necessary social and economic changes, so that everyone including TGs may enjoy equal protection of laws and nobody is denied such protection. Article 14 does not restrict the word “person” and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression “person” and, hence, are entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of India.

(Para 61)

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. Further, non-recognition of identity of hijras/transgender persons results in them facing extreme discrimination in all spheres of society, especially in the field of employment, education, healthcare, etc. Hijras/transgender persons face huge discrimination in access to public spaces like restaurants, cinemas, shops, malls, etc. Further, access to public toilets is also a serious problem they face quite often. Since, there are no separate toilet facilities for hijras/transgender persons, they have to use male toilets where they are prone to sexual assault and harassment. 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.

(Para 62)

(8) Articles 15 and 16 prohibit discrimination on the basis of sex, recognising that sex discrimination is a historical fact and needs to be addressed. The Constitution-makers gave emphasis to the fundamental right against sex discrimination so as to prevent the direct or indirect attitude to treat people differently, for the reason of not being in conformity with stereotypical generalisations of binary genders. Both gender and biological attributes constitute distinct components of sex. The biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one’s self-image, the deep psychological or emotional sense of sexual identity and character. 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 nor female.

(Para 66)

TGs have been systematically denied the rights under Article 15(2), that is, not to be subjected to any disability, liability, restriction or condition in regard to access to public places. TGs have also not been afforded special provisions envisaged under Article 15(4) for the advancement of the socially and educationally backward classes (SEBCs) of citizens, which they are, and hence

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a legally entitled and eligible to get the benefits of SEBCs. The State is bound to take some affirmative action for their advancement so that the injustice done to them for centuries could be remedied. TGs are also entitled to enjoy economic, social, cultural and political rights without discrimination, because forms of discrimination on the ground of gender are violative of fundamental freedoms and human rights. TGs have also been denied rights under Article 16(2) and discriminated against in respect of employment or office under the State on the ground of sex. TGs are also entitled to reservation in the matter of appointment, as envisaged under Article 16(4) of the Constitution. The State is bound to take affirmative action to give them due representation in public services. (Para 67)

b Articles 15(2) to (4) and Article 16(4) read with the directive principles of State policy and various international instruments to which India is a party, call for social equality, which TGs could realise, only if facilities and opportunities are extended to them so that they can also live with dignity and equal status with other genders. (Para 68)

c (9) Article 19(1) guarantees those great basic rights which are recognised and guaranteed as the natural rights inherent in the status of the citizen of a free country. Citizen's right to freedom of speech and expression under Article 19(1)(a) would include one's right to expression of his self-identified gender. The self-identified gender can be expressed through varied ways and means by way of expression, speech, mannerism, clothing, etc. and through dress, words, action or behaviour 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. (Paras 69 and 71)

d 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 behaviour and presentation. The 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. It is therefore held 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 recognise those rights. (Paras 72 and 21)

City of Chicago v. Wilson, 75 Ill 2d 525 : 389 NE 2d 522 (1978); *Doe v. Yunits*, 2000 WL 33162199 (Mass Super Ct 2000), *relied on*

e (10) 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 recognised to be an essential part of the right to life and accrues to all persons on account of being humans. (Para 73)

f *Francis Coralie Mullin v. UT of Delhi*, (1981) 1 SCC 608 : 1981 SCC (Cri) 212, *relied on*

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The recognition of one's gender identity lies at the heart of the fundamental right to dignity. Gender 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. Article 21 guarantees the protection of "personal autonomy" of an individual. Personal autonomy includes both the negative right of not to be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in. Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India. (Paras 74 and 75)

Anuj Garg v. Hotel Assn. of India, (2008) 3 SCC 1, *relied on*

(11) Regarding legal recognition of third transgender identity, the self-identified gender can be either male or female or a third gender. Hijras are identified as persons of third gender and are not identified either as male or female. Gender identity, as already indicated, refers to a person's internal sense of being male, female or a transgender, for example hijras do not identify as female because of their lack of female genitalia or lack of reproductive capability. This distinction makes them separate from both male and female genders and they consider themselves neither man nor woman, but a "third gender". Hijras, therefore, belong to a distinct socio-religious and cultural group and have, therefore, to be considered as a "third gender", apart from male and female. (Para 76)

Article 21 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. (Para 80)

We may remind ourselves of the historical presence of the third gender in this country as well as in the neighbouring countries. (Para 79)

Sunil Babu Pant v. Nepal Govt., (2008) 2 NJA LJ 262 : WP No. 917 of 2007, decided on 21-12-2007 (Nepal); *Mohd. Aslam Khaki v. Senior Supt. of Police (Operation)*, Constitution Petition No. 43 of 2009, decided on 22-3-2011 (Pak), *referred to*

(12) It is therefore to be seen that Articles 14, 15, 16, 19 and 21 do not exclude hijras/transgenders from their ambit, but the Indian law on the whole recognise the paradigm of binary genders of male and female, based on one's biological sex. The Corbett principle of "biological test" is not acceptable, rather preference is to follow the psyche of the person in determining sex and gender and prefer the "psychological test" instead of "biological test". Binary notion of gender reflects in the Penal Code, 1860 for example, Sections 8, 10, etc. and also in the laws related to marriage, adoption, divorce, inheritance, succession and other welfare legislations like NREGA, 2005, etc. Non-recognition of the identity of hijras/transgenders in the various legislations denies them equal protection of law and they face widespread discrimination. (Para 81)

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a Article 14 has used the expression “person” and 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 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. (Para 82)

b 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 various directions are being issued to safeguard the constitutional rights of the members of the TG community. (Para 83)

Per Sikri, J. (concurring)

(1) Indubitably, the issue of choice of gender identity has all the trappings of a human rights. That apart, 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. (Para 87)

e (2) Now, regarding the right of a person to have the gender of his/her choice, it may be noted that when a child is born, at the time of birth itself sex is assigned to him/her. A child would be treated with that sex thereafter i.e. either a male or a female. However, some persons, though relatively very small in number, may be born with bodies which incorporate both or certain aspects of both male or female physiology. It may also happen that though a person is born as a male, because of some genital anatomy problems his innate perception may be that of a female and all his actions would be female oriented. The position may be exactly the opposite wherein a person born as female may behave like a male person. (Para 89)

f Society has started accepting, though slowly, the behavioural norms of such persons without treating them as abnormal. Further, medical science has leaped forward to such an extent that even physiological appearance of a person can be changed through surgical procedures, from male to female and vice versa. In this way, such persons are able to acquire the body which is in conformity with the perception of their gender/gender characteristics. In order to ensure that law also keeps pace with the aforesaid progress in medical science, various countries have come out with legislation conferring rights on such persons to recognise their gender identity based on reassigned sex after undergoing sex reassignment surgery (SRS). The law and the judgments given by the courts in other countries are relevant to their recognition, the genesis of which lies in the acknowledgment of another fundamental and universal principle viz. “right of choice” given to an

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individual which is the inseparable part of human rights recognised by the UN Charter, 1945 and the Universal Declaration of Human Rights (1948). The underlined message was the acknowledgment that human rights are individual and have a definite linkage of human development, both sharing common vision and with a common purpose. Respect for human rights is the root for human development and realisation of full potential of each individual, which in turn leads to the augmentation of human resources with progress of the nation. The empowerment of the people through human development is the aim of human rights. (Paras 90, 91 and 93)

There is thus a universal recognition that human rights are rights that “belong” to every person, and do not depend on the specifics of the individual or the relationship between the right-holder and the right-grantor. Moreover, human rights exist irrespective of the question whether they are granted or recognised by the legal and social system within which we live. They are devices to evaluate these existing arrangements: ideally, these arrangements should not violate human rights. In other words, human rights are moral, pre-legal rights. They are not granted by people nor can they be taken away by them. (Para 94)

The Universal Declaration of Human Rights recognises that all human beings are born free and equal in dignity and rights and, since the Covenant’s provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognised in the Covenant. Moreover, the requirement contained in Article 2 of the Covenant that the rights enunciated will be exercised without discrimination of any kind based on certain specified grounds or other status clearly applies to cover persons with disabilities. (Para 96)

The above recognition of human rights influenced the adoption of fundamental rights in the Constitution of India. (Para 97)

The basic spirit of our Constitution is to provide each and every person of the nation equal opportunity to grow as a human being, irrespective of race, caste, religion, community and social status. To foster social reforms it is necessary to ensure that each and every citizen of this country is able to exploit his/her potentials to the maximum. In keeping with this, the concept of equality in Article 14 so also the meaning of the words “life”, “liberty” and “law” in Article 21 have been considerably enlarged by judicial decisions. Anything which is not “reasonable, just and fair” is not treated to be equal and is, therefore, violative of Article 14. And the common thread which passes through all the pronouncements of the Supreme Court of India is that Article 21 guarantees enjoyment of life by all citizens of this country with dignity, viewing this human right in terms of human development. (Paras 98, 99 and 104)

State of Karnataka v. Ranganatha Reddy, (1977) 4 SCC 471; *Sheela Barse v. Union of India*, (1986) 3 SCC 596 : 1986 SCC (Cri) 337; *M.C. Mehta v. Union of India*, (1987) 4 SCC 463; *Kali Dass v. State of J&K*, (1987) 3 SCC 430; *Vincent Panikurlangara v. Union of India*, (1987) 2 SCC 165 : 1987 SCC (Cri) 329; *Raghubir Singh v. State of Bihar*, (1986) 4 SCC 481 : 1986 SCC (Cri) 511; *Aeltemesh Rein v. Union of India*, (1988) 4 SCC 54 : 1988 SCC (Cri) 900; *Parmanand Katara v. Union of India*, (1989) 4 SCC 286 : 1989 SCC (Cri) 721; *Kishen Pattnayak v. State of Orissa*, 1989 Supp (1) SCC 258; *Reliance Petrochemicals Ltd. v. Indian Express Newspapers Bombay (P) Ltd.*, (1988) 4 SCC 592; *Kehar Singh v. State (Delhi Admn.)*, (1988) 3 SCC 609 : 1988 SCC (Cri) 711;

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Vikram Deo Singh Tomar v. State of Bihar, 1988 Supp SCC 734 : 1989 SCC (Cri) 66; *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598; *Shantistar Builders v. Narayan Khimalal Totame*, (1990) 1 SCC 520; *Ramsharan Autyanuprasi v. Union of India*, 1989 Supp (1) SCC 251; *State of H.P. v. Umed Ram Sharma*, (1986) 2 SCC 68; *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666; *Unni Krishnan, J.P. v. State of A.P.*, (1993) 1 SCC 645; *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 : 1984 SCC (L&S) 389; *Sher Singh v. State of Punjab*, (1983) 2 SCC 344 : 1983 SCC (Cri) 461; *Buffalo Traders Welfare Assn. v. Maneka Gandhi*, 1994 Supp (3) SCC 448, referred to

The concepts of justice social, economic and political, equality of status and of opportunity and of assuring dignity of the individual incorporated in the Preamble, clearly recognise the right of one and all amongst the citizens of these basic essentials designed to flower the citizen's personality to its fullest. The concept of equality helps the citizens in reaching their highest potential. Thus, the emphasis is on the development of an individual in all respects. (Para 105)

The basic principle of the dignity and freedom of the individual is common to all nations, particularly those having democratic set-up. Democracy requires us to respect and develop the free spirit of human being which is responsible for all progress in human history. Democracy is also a method by which we attempt to raise the living standard of the people and to give opportunities to every person to develop his/her personality. It is founded on peaceful co-existence and cooperative living. If democracy is based on the recognition of the individuality and dignity of man, as a fortiori we have to recognise the right of a human being to choose his sex/gender identity which is integral to his/her personality and is one of the most basic aspect of self-determination, dignity and freedom. In fact, there is a growing recognition that the true measure of development of a nation is not economic growth; it is human dignity. (Para 106)

In fact, the recognition that every individual has fundamental right to achieve the fullest potential, is founded on the principle that all round growth of an individual leads to common public good. After all, human beings are also valuable asset of any country who contribute to the growth and welfare of their nation and the society. A person who is born with a particular sex and is forced to grow up identifying with that sex, and not a sex that his/her psychological behaviour identifies with, faces innumerable obstacles in growing up. (Para 109)

If a person has changed his/her sex in tune with his/her gender characteristics and perception, which has become possible because of the advancement in medical science, and when that is permitted by/in medical ethics with no legal embargo, there is no impediment, legal or otherwise, in giving due recognition to the gender identity based on the reassigned sex after undergoing SRS. (Para 111)

So even in the absence of any statutory regime in this country, a person has a constitutional right to get the recognition as male or female after SRS, which was not only his/her gender characteristic but has become his/her physical form as well. (Para 112)

(3) Regarding the right of TGs to be identified and categorised as "third gender" it may be clarified that the term "transgender" is used in a wider sense, in the present age. Even gays, lesbians, bisexuals are included within the descriptor "transgender". Etymologically, the term "transgender" is derived from two words, namely, "trans" and "gender". Former is a Latin word which means

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“across” or “beyond”. The grammatical meaning of “transgender”, therefore, is across or beyond gender. This has come to be known as an umbrella term which includes gay men, lesbians, bisexuals, and cross-dressers within its scope. However, while dealing with the present issue we are not concerned with this aforesaid wider meaning of the expression “transgender”. (Para 113)

It is to be emphasised that transgender in India have assumed distinct and separate class/category which is not prevalent in other parts of the world except in some neighbouring countries. In this country, the TG community comprise of hijras, eunuch, Kothis, Aravanis, Jogappas, Shiv-Shakthis, etc. In Indian community transgender are referred as hijra or the third gendered people. There exists wide range of transgender-related identities, cultures, or experience — including hijras, Aravanis, Kothis, Jogtas/Jogappas, and Shiv-Shakthis. (Hijras: They are biological males who reject their masculine identity in due course of time to identify either as women, or “not men”. Aravanis: Hijras in Tamil Nadu identify as “Aravani”. Kothi: Kothis are heterogeneous group. Kothis can be described as biological males who show varying degrees of “femininity”. Jogtas/Jogappas: They are those who are dedicated to serve as servant of Goddess Renukha Devi whose temples are present in Maharashtra and Karnataka. Sometimes, Jogti hijras are used to denote such male-to-female transgender persons who are devotees of Goddess Renukha and are also from the hijra community. Shiv-Shakthis: They are considered as males who are possessed by or particularly close to a goddess and who have feminine gender expression.) The way they behave and act differs from the normative gender role of a man and woman. For them, furthering life is far more difficult since such people are neither categorised as men nor women and this deviation is unacceptable to the society’s vast majority. Endeavour to live a life with dignity is even worse. Obviously transvestites, the hijra beg from merchants who quickly, under threat of obscene abuse, respond to the silent demands of such detested individuals. On occasion, especially festival days, they press their claims with boisterous and ribald singing and dancing. (Para 114)

Laurence W. Preston: *A Right to Exist: Eunuchs and the State in Nineteenth Century India*, Modern Asian Studies, Vol. 21, No. 2 (1987), pp. 371-87, *relied on*

So while discussing the question of conferring distinct identity, the meaning given to TG community is restricted to hijras as explained above. (Para 115)

Historically, though in the past TGs in India were treated with great respect, that does not remain the scenario any longer. Attrition in their status was triggered with the passing of the Criminal Tribes Act, 1871 which deemed the entire community of the hijra persons as innately “criminal” and “adapted to the systematic commission of non-bailable offences”. This dogmatism and indoctrination of the Indian people with aforesaid presumption, was totally capricious and nefarious. There could not have been more harm caused to this community with the passing of the aforesaid brutal legislation during the British Regime with the vicious and savage mind-set. To add insult to the irreparable injury caused, Section 377 of the Penal Code was misused and abused as there was a tendency, in British period, to arrest and prosecute TG persons under Section 377 merely on suspicion. To undergo this sordid historical harm caused to TGs of India, there is a need for incessant efforts with effervescence.

(Para 116.1)

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a There may have been marginal improvement in the social and economic condition of TGs in India. It is still far from satisfactory and these TGs continue to face different kinds of economic blockade and social degradation. They still face multiple forms of oppression in this country. Discrimination qua them is clearly discernable in various fields including healthcare, employment, education, social cohesion, etc. (Para 116.2)

b TGs are also citizens of this country. They also have equal right to achieve their full potential as human beings. For this purpose, not only are they entitled to proper education, social assimilation, access to public and other places but employment opportunities as well. (Para 116.3)

c By recognising such TGs as third gender, they would be able to enjoy their human rights, to which they are largely deprived of for want of this recognition. The issue of transgender is not merely a social or medical issue but there is a need to adopt human right approach towards transgenders which may focus on functioning as an interaction between a person and their environment highlighting the role of society and changing the stigma attached to them. TGs face many disadvantages due to various reasons, particularly for gender abnormality which in certain level leads to physical and mental disability. (Para 117)

Hijras/Transgender Women in India: HIV, Human Rights and Social Exclusion, UNDP Report on India Issue: December 2010, *relied on*

d Some of the common and reported problem that transgenders most commonly suffer are: harassment by the police in public places, harassment at home, police entrapment, rape, discriminations, abuse in public places, et al. The other major problems that the transgender people face in their daily life are discrimination, lack of educational facilities, lack of medical facilities, homelessness, unemployment, depression, hormone pill abuse, tobacco and alcohol abuse, and problems related to marriage and adoption. (Para 118)

f In spite of the adoption of the Universal Declaration of Human Rights (UDHR) in the year 1948, the inherent dignity, equality, respect and rights of all human beings throughout the world, the transgender are denied basic human rights. This denial is premised on a prevalent juridical assumption that the law should target discrimination based on sex (i.e. whether a person is anatomically male or female), rather than gender (i.e. whether a person has qualities that society consider masculine or feminine by defining sex in biological terms, the law has failed to distinguish sex from gender, and sexual differentiation from sex discrimination). Transgender people are generally excluded from the society and people think transgenderism as a medical disease. But transgenderism is not a disease at all, but a benign normal variant of the human experience akin to left-handedness. (Para 118)

g Katherine M. Franke, “The Central Mistake of Sex Discrimination Law: The Disaggregation of Sex from Gender”, (1995) 144 *University of Pennsylvania Law Review* 1, 3, *relied on*

h 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

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through a passport and a ration card, a driver's licence, the right to education, employment, health and so on. (Para 119)

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. The Constitution has fulfilled its duty of providing rights to transgenders. Now it is time for us to recognise this and to extend and interpret the Constitution in such a manner to ensure a dignified life for transgender people. All this can be achieved if the beginning is made with the recognition of TG as third gender. (Para 120)

In order to translate the aforesaid rights of TGs into reality, it becomes imperative to first assign them their proper "sex". At the time of birth of a child itself, sex is assigned. However, it is either male or female. In the process, the society as well as law, has completely ignored the basic human right of TGs to give them their appropriate sex categorisation. Up to now, they have either been treated as male or female. This is not only improper as it is far from truth, but undignified to these TGs and violates their human rights. (Para 121)

Though there may not be any statutory regime recognising "third gender" for these TGs. However, there is enough justification to recognise this right of theirs in natural law sphere. Further, such a justification can be traced to the various provisions contained in Part III of the Constitution relating to "Fundamental Rights". (Para 122)

TGs belong to the unprivileged class which is a marginalised section. Judicial role in a democracy is not only to decide the dispute before the Court, but to uphold the rule of law and ensure access to justice to the marginalised section of the society. (Para 124)

The role of the Court is to understand the central purpose and theme of the Constitution for the welfare of the society. Our Constitution, like the law of the society, is a living organism. It is based on a factual and social reality that is constantly changing. Sometimes a change in the law precedes societal change and is even intended to stimulate it. Sometimes, a change in the law is the result in the social reality. When we discuss about the rights of TGs in the constitutional context, we find that in order to bring about complete paradigm shift, law has to play more predominant role. As TGs in India, are neither male nor female, treating them as belonging to either of the aforesaid categories, is the denial of these constitutional rights. It is the denial of social justice which in turn has the effect of denying political and economic justice. (Para 125)

While recognising that the Supreme Court shall not disown social justice and that the life of law is renewable based on experience and logic, which adapted law to the new social reality, the directive principles are required to be given new and dynamic meaning with the inclusion of rights of TGs as well. In this process, the first and foremost right is to recognise TGs as "third gender" in law as well. This is a recognition of their right to equality enshrined in Article 14 as well as their human right to life with dignity, which is the mandate of Article 21 of the Constitution. This interpretation is in consonance with new social needs. By doing so, the Supreme Court is only bridging the gap between the law and life and that is the primary role of the Court in a democracy. It only amounts to

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a giving purposive interpretation to the aforesaid provisions of the Constitution so that it can adapt to the changes in reality. Law without purpose has no *raison d'être*. The purpose of law is the evolution of a happy society. (Para 127)

Dattatraya Govind Mahajan v. State of Maharashtra, (1977) 2 SCC 548, *relied on*
Avin Nagaria: Justice Krishna Iyer: Our Heritage, relied on

b Since the Constitution is a living character, its interpretation must be dynamic. It must be understood in a way that intricate and advances modern reality. The judiciary is the guardian of the Constitution and by ensuring to grant legitimate right that is due to TGs, the Supreme Court is simply protecting the Constitution and the democracy inasmuch as judicial protection and democracy in general and of human rights in particular is a characteristic of our vibrant democracy. (Para 128)

c Our Constitution inheres liberal and substantive democracy with the rule of law as an important and fundamental pillar. It has its own internal morality based on dignity and equality of all human beings. The rule of law demands protection of individual human rights. Such rights are to be guaranteed to each and every human being. These TGs, even though insignificant in numbers, are still human beings and therefore they have every right to enjoy their human rights. (Para 129)

d By recognising TGs as third gender, the Supreme Court is not only upholding the rule of law but also advancing justice to the class, so far deprived of their legitimate natural and constitutional rights. It is, therefore, the only just solution which ensures justice not only to TGs but also justice to the society as well. Social justice does not mean equality before law in papers but to translate the spirit of the Constitution, enshrined in the Preamble, the Fundamental Rights and the Directive Principles of State Policy into action, whose arms are long enough to bring within its reach and embrace this right of recognition to TGs which legitimately belongs to them. (Para 132)

e There is jurisprudential basis for doing justice to the vulnerable groups which definitely include TGs. Once it is accepted that TGs are also part of vulnerable groups and marginalised section of the society, we are only bringing them within the fold of the aforesaid rights recognised in respect of other classes falling in the marginalised group. This is the minimum riposte in an attempt to assuage the insult and injury suffered by them so far as to pave way for fast-tracking the realisation of their human rights. (Para 133)

f *Nelson Goodman: Fact, Fiction and Forecast* (1955); *John Rawls: A Theory of Justice, relied on*

Hence there are enough reasons for treating TGs as “third gender” for the purposes of safeguarding and enforcing appropriately their rights guaranteed under the Constitution. (Para 134)

g ***Per curiam***

Thus, it is declared that:

(1) Hijras, eunuchs, apart from binary genders, be treated as “third gender” for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by Parliament and the State Legislature.

h (2) 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.

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(3) We direct the 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. a

(4) The Centre and State Governments are directed to operate separate HIV serosurveillance centres since hijras/transgenders face several sexual health issues.

(5) The Centre and State Governments should 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. b

(6) The Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.

(7) The Centre and State Governments should also take steps for framing various social welfare schemes for their betterment. c

(8) The Centre and State Governments should 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.

(9) The Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life. d
(Paras 135.1 to 135.9)

Moreover, an expert committee has already been constituted to make an in-depth study of the problems faced by the transgender community and suggest measures that can be taken by the Government to ameliorate their problems and to submit its report with the recommendations within three months of its constitution. Let the recommendations be examined based on the legal declaration made in this judgment and implemented within six months. e
(Para 136)

T. Constitutional Law — Rule of law — Concept of — Words and Phrases — “Rule of law”

Held :

The rule of law is not merely public order. The rule of law is social justice based on public order. The law exists to ensure proper social life. Social life, however, is not a goal in itself but a means to allow the individual to live in dignity and development himself. The human being and human rights underlie this substantive perception of the rule of law, with a proper balance among the different rights and between human rights and the proper needs of society. The substantive rule of law “is the rule of proper law, which balances the needs of society and the individual”. This is the rule of law that strikes a balance between society's need for political independence, social equality, economic development, and internal order, on the one hand, and the needs of the individual, his personal liberty, and his human dignity on the other. It is the duty of the Court to protect this rich concept of the rule of law. f
(Para 131) g

National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742, *relied on*

M/53098/C h

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Advocates who appeared in this case :

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- b*
- c*

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The Judgments* of the Court were delivered by

c **K.S.P. RADHAKRISHNAN, J.** (*Sikri, J. concurring*)— Seldom, our society realises or cares to realise the trauma, agony and pain which the members of transgender community undergo, nor appreciates the innate feelings of the members of the transgender community, especially of those whose mind and body disown their biological sex. Our society often ridicules and abuses the transgender community and in public places like railway stations, bus-stands, schools, workplaces, malls, theatres, hospitals, they are side-lined and treated
d as untouchables, forgetting the fact that the moral failure lies in the society’s unwillingness to contain or embrace different gender identities and expressions, a mindset which we have to change.

e 2. We are, in this case, concerned with the grievances of the members of transgender community (for short “TG community”) who seek a legal declaration of their gender identity than the one assigned to them, male or female, at the time of birth and their prayer is that non-recognition of their gender identity violates Articles 14 and 21 of the Constitution of India. Hijras/eunuchs, who also fall in that group, claim legal status as a third gender with all legal and constitutional protection.

f 3. The National Legal Services Authority, constituted under the Legal Services Authority Act, 1997, to provide free legal services to the weaker and other marginalised sections of the society, has come forward to advocate their cause, by filing Writ Petition No. 400 of 2012. Poojaya Mata Nasib Kaur Ji Women Welfare Society, a registered association, has also preferred Writ Petition No. 604 of 2013, seeking similar reliefs in respect of kinnar community, a TG community.

g 4. Laxmi Narayan Tripathy, claimed to be a hijra, has also got impleaded so as to effectively put across the cause of the members of the transgender community and Tripathy’s life experiences also for recognition of their identity as a third gender, over and above male and female. Tripathy says that non-recognition of the identity of hijras, a TG community, as a third gender, denies them the right of equality before the law and equal protection of law

h * **Ed.:** Sikri, J. completely agrees with Radhakrishnan, J. (para 88), and has also delivered a concurring judgment.

guaranteed under Article 14 of the Constitution and violates the rights guaranteed to them under Article 21 of the Constitution of India.

5. Shri Raju Ramachandran, learned Senior Counsel appearing for the petitioner, the National Legal Services Authority, highlighted the traumatic experiences faced by the members of the TG community and submitted that every person of that community has a legal right to decide their sex orientation and to espouse and determine their identity. The learned Senior Counsel has submitted that since TGs are neither treated as male or female, nor given the status of a third gender, they are being deprived of many of the rights and privileges which other persons enjoy as citizens of this country. TGs are deprived of social and cultural participation and hence restricted access to education, healthcare and public places which deprives them of the constitutional guarantee of equality before law and equal protection of laws. Further, it was also pointed out that the community also faces discrimination to contest election, right to vote, employment, to get licences, etc. and, in effect, treated as an outcast and untouchable. The learned Senior Counsel also submitted that the State cannot discriminate them on the ground of gender, violating Articles 14 to 16 and 21 of the Constitution of India.

6. Shri Anand Grover, learned Senior Counsel appearing for the intervenor, traced the historical background of the third gender identity in India and the position accorded to them in the Hindu mythology, Vedic and Puranic literatures, and the prominent role played by them in the royal courts of the Islamic world, etc. Reference was also made to the repealed Criminal Tribes Act, 1871 and explained the inhuman manner by which they were treated at the time of the British Colonial rule. The learned Senior Counsel also submitted that various international forums and UN bodies have recognised their gender identity and referred to the Yogyakarta Principles and pointed out that those principles have been recognised by various countries around the world. Reference was also made to few legislations giving recognition to the transsexual persons in other countries. The learned Senior Counsel also submitted that non-recognition of gender identity of the transgender community violates the fundamental rights guaranteed to them, who are citizens of this country.

7. Shri T. Srinivasa Murthy, learned counsel appearing in IA No. 2 of 2013, submitted that transgender persons have to be declared as a socially and educationally backward classes of citizens and must be accorded all benefits available to that class of persons, which are being extended to male and female genders. The learned counsel also submitted that the right to choose one's gender identity is integral to the right to lead a life with dignity, which is undoubtedly guaranteed by Article 21 of the Constitution of India. The learned counsel, therefore, submitted that, subject to such rules/regulations/protocols, transgender persons may be afforded the right of choice to determine whether to opt for male, female or transgender classification.

a 8. Shri Sanjeev Bhatnagar, learned counsel appearing for the petitioner in Writ Petition No. 604 of 2013, highlighted the cause of the kinnar community and submitted that they are the most deprived group of transgenders and calls for constitutional as well as legal protection for their identity and for other socio-economic benefits, which are otherwise extended to the members of the male and female genders in the community.

b 9. Shri Rakesh K. Khanna, learned Additional Solicitor General, appearing for the Union of India, submitted that the problems highlighted by the transgender community is a sensitive human issue, which calls for serious attention. The learned ASG pointed out that, under the aegis of the Ministry of Social Justice and Empowerment (for short “MOSJE”), a committee called “Expert Committee on Issues Relating to Transgender”, has been constituted to conduct an in-depth study of the problems relating to transgender persons to make appropriate recommendations to MOSJE. Shri Khanna also submitted that due representation would also be given to the applicants appearing before this Court in the Committee, so that their views also could be heard.

c 10. We also heard the learned counsel appearing for various States and Union Territories who have explained the steps they have taken to improve the conditions and status of the members of TG community in their respective States and Union Territories.

d 11. Laxmi Narayan Tripathy, a hijra, through a petition supported by an affidavit, highlighted the trauma undergone by Tripathy from Tripathy’s birth. Rather than explaining the same by us, it would be appropriate to quote in Tripathy’s own words:

e “That the applicant has born as a male. Growing up as a child, she felt different from the boys of her age and was feminine in her ways. On account of her femininity, from an early age, she faced repeated sexual harassment, molestation and sexual abuse, both within and outside the family. Due to her being different, she was isolated and had no one to talk to or express her feelings while she was coming to terms with her identity. She was constantly abused by everyone as a ‘chakka’ and ‘hijra’. Though she felt that there was no place for her in society, she did not succumb to the prejudice. She started to dress and appear in public in women’s clothing in her late teens but she did not identify as a woman. Later, she joined the *hijra* community in Mumbai as she identified with the other *hijras* and for the first time in her life, she felt at home.

f g That being a *hijra*, the applicant has faced serious discrimination throughout her life because of her gender identity. It has been clear to the applicant that the complete non-recognition of the identity of *hijras*/transgender persons by the State has resulted in the violation of most of the fundamental rights guaranteed to them under the Constitution of India....”

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12. Siddarth Narrain, eunuch, highlights Narrain’s feeling, as follows:

“Ever since I can remember, I have always identified myself as a woman. I lived in Namakkal, a small town in Tamil Nadu. When I was in the 10th standard I realised that the only way for me to be comfortable was to join the hijra community. It was then that my family found out that I frequently met hijras who lived in the city. One day, when my father was away, my brother, encouraged by my mother, started beating me with a cricket bat. I locked myself in a room to escape from the beatings. My mother and brother then tried to break into the room to beat me up further. Some of my relatives intervened and brought me out of the room. I related my ordeal to an uncle of mine who gave me Rs 50 and asked me to go home. Instead, I took the money and went to live with a group of hijras in Erode.”

Sachin, a TG, expressed his experiences as follows:

“My name is Sachin and I am 23 years old. As a child I always enjoyed putting make-up like ‘vibhuti’ or ‘kum kum’ and my parents always saw me as a girl. I am male but I only have female feelings. I used to help my mother in all the housework like cooking, washing and cleaning. Over the years, I started assuming more of the domestic responsibilities at home. The neighbours started teasing me. They would call out to me and ask: ‘Why don’t you go out and work like a man?’ or ‘Why are you staying at home like a girl?’ But I liked being a girl. I felt shy about going out and working. Relatives would also mock and scold me on this score. Every day I would go out of the house to bring water. And as I walked back with the water I would always be teased. I felt very ashamed. I even felt suicidal. How could I live like that? But my parents never protested. They were helpless.”

We have been told and informed of similar life experiences faced by various others who belong to the TG community.

13. Transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to their biological sex. TG may also take in persons who do not identify with their sex assigned at birth, which include hijras/eunuchs who, in this writ petition, describe themselves as “third gender” and they do not identify as either male or female. Hijras are not men by virtue of anatomy appearance and psychologically, they are also not women, though they are like women with no female reproduction organ and no menstruation. Since hijras do not have reproduction capacities as either men or women, they are neither men nor women and claim to be an institutional “third gender”. Among hijras, there are emasculated (castrated, nirvana) men, non-emasculated men (not castrated/akva/akka) and inter-sexed persons (hermaphrodites). TG also includes persons who intend to undergo sex reassignment surgery (SRS) or have undergone SRS to align their biological sex with their gender identity in order to become male or female. They are generally called transsexual persons. Further, there are persons who like to cross-dress in clothing of

a opposite gender i.e transvestites. Resultantly, the term “transgender”, in contemporary usage, has become an umbrella term that is used to describe a wide range of identities and experiences, including but not limited to pre-operative, post-operative and non-operative transsexual people, who strongly identify with the gender opposite to their biological sex: male and female.

Historical background of transgenders in India

b 14. TG community comprises of *hijras*, eunuchs, *Kothis*, *Aravanis*, *Jogappas*, *Shiv-Shakthis*, etc. and they, as a group, have got a strong historical presence in our country in the Hindu mythology and other religious texts. The concept of *tritiya prakrti* or *napunsaka* has also been an integral part of Vedic and Puranic literatures. The word “*napunsaka*” has been used to denote absence of procreative capability.

c 15. Lord Rama, in the epic *Ramayana*, was leaving for the forest upon being banished from the kingdom for 14 years, turns around to his followers and asks all the “men and women” to return to the city. Among his followers, the *hijras* alone do not feel bound by this direction and decide to stay with him. Impressed with their devotion, Rama sanctions them the power to confer blessings on people on auspicious occasions like childbirth and marriage, and also at inaugural functions which, it is believed set the stage for the custom of *badhai* in which *hijras* sing, dance and confer blessings.

d 16. Aravan, the son of Arjuna and Nagakanya in *Mahabharata*, offers to be sacrificed to Goddess Kali to ensure the victory of the Pandavas in the Kurukshetra war, the only condition that he made was to spend the last night of his life in matrimony. Since no woman was willing to marry one who was doomed to be killed, Krishna assumes the form of a beautiful woman called Mohini and marries him. The *hijras* of Tamil Nadu consider Aravan their progenitor and call themselves *Aravanis*.

e 17. Jain texts also make a detailed reference to TGs which mention the concept of “psychological sex”. *Hijras* also played a prominent role in the royal courts of the Islamic world, especially in the Ottoman empires and the Mughal rule in the Medieval India. A detailed analysis of the historical background of the same finds a place in the book of Gayatri Reddy, *With Respect to Sex: Negotiating Hijra Identity in South India*, Yoda Press (2006).

f 18. We notice that even though historically, *hijras/transgender* persons had played a prominent role, with the onset of Colonial rule from the 18th century onwards, the situation had changed drastically. During the British Rule, a legislation was enacted to supervise the deeds of *hijras/TG* community, called the Criminal Tribes Act, 1871, which deemed the entire community of *hijra* persons as innately “criminal” and “addicted to the systematic commission of non-bailable offences”. The Act provided for the registration, surveillance and control of certain criminal tribes and eunuchs and had penalised eunuchs, who were registered, and appeared to be dressed or ornamented like a woman, in a public street or place, as well as those who danced or played music in a public place. Such persons also could be arrested

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without warrant and sentenced to imprisonment up to two years or fine or both. Under the Act, the Local Government had to register the names and residence of all eunuchs residing in that area as well as of their properties, who were reasonably suspected of kidnapping or castrating children, or of committing offences under Section 377 IPC, or of abetting the commission of any of the said offences. Under the Act, the act of keeping a boy under 16 years in the charge of a registered eunuch was made an offence punishable with imprisonment up to two years or fine and the Act also denuded the registered eunuchs of their civil rights by prohibiting them from acting as guardians to minors, from making a gift deed or a will, or from adopting a son. The Act has, however, been repealed in August 1949.

19. Section 377 IPC found a place in the Penal Code, 1860, prior to the enactment of the Criminal Tribes Act that criminalised all penile non-vaginal sexual acts between persons, including anal sex and oral sex, at a time when transgender persons were also typically associated with the proscribed sexual practices. Reference may be made to the judgment of the Allahabad High Court in *Queen Empress v. Khairati*¹, wherein a transgender person was arrested and prosecuted under Section 377 on the suspicion that he was a “habitual sodomite” and was later acquitted on appeal. In that case, while acquitting him, the Sessions Judge stated as follows: (ILR pp. 204-05)

“... ‘This case relates to a person named Khairati, over whom the police seem to have exercised some sort of supervision, whether strictly regular or not, as a eunuch. The man is not a eunuch in the literal sense, but he was called for by the police when on a visit to his village, and was found singing dressed as a woman among the women of a certain family. Having been subjected to examination by the Civil Surgeon (and a subordinate medical man), he is shown to have the characteristic mark of a habitual catamite—the distortion of the orifice of the anus into the shape of a trumpet—and also to be affected with syphilis in the same region in a manner which distinctly points to unnatural intercourse within the last few months.’ ”

Even though, he was acquitted on appeal, this case would demonstrate that Section 377, though associated with specific sexual acts, highlighted certain identities, including *hijras* and was used as an instrument of harassment and physical abuse against *hijras* and transgender persons.

20. A Division Bench of this Court in *Suresh Kumar Koushal v. Naz Foundation*² has already spoken on the constitutionality of Section 377 IPC and, hence, we express no opinion on it since we are in these cases concerned with an altogether different issue pertaining to the constitutional and other legal rights of the transgender community and their gender identity and sexual orientation.

1 ILR (1884) 6 All 204

2 (2014) 1 SCC 1 : (2013) 4 SCC (Cri) 1

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Gender identity and sexual orientation

- a* **21.** Gender identity is one of the most fundamental aspects of life which refers to a person's intrinsic sense of being male, female or transgender or transsexual person. A person's sex is usually assigned at birth, but a relatively small group of persons may be born with bodies which incorporate both or certain aspects of both male and female physiology. At times, genital anatomy problems may arise in certain persons, their innate perception of themselves, is not in conformity with the sex assigned to them at birth and
- b* may include pre- and post-operative transsexual persons and also persons who do not choose to undergo or do not have access to operation and also include persons who cannot undergo successful operation. Countries, all over the world, including India, are grappled with the question of attribution of gender to persons who believe that they belong to the opposite sex. Few
- c* persons undertake surgical and other procedures to alter their bodies and physical appearance to acquire gender characteristics of the sex which conform to their perception of gender, leading to legal and social complications since official record of their gender at birth is found to be at variance with the assumed gender identity. Gender identity refers to each
- d* 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.
- e* **22.** Sexual orientation refers to an individual's enduring physical, romantic and/or emotional attraction to another person. Sexual orientation includes transgender and gender-variant people with heavy sexual orientation and their sexual orientation may or may not change during or after gender transmission, which also includes homosexuals, bisexuals, heterosexuals, asexual, etc. Gender identity and sexual orientation, as already indicated, are
- f* different concepts. 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, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity.
- g* ***United Nations and other human rights bodies — On gender identity and sexual orientation***
- h* **23.** The United Nations has been instrumental in advocating the protection and promotion of rights of sexual minorities, including transgender persons. Article 6 of the Universal Declaration of Human Rights, 1948 and Article 16 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) recognise that every human being has the inherent right to live and this right shall be protected by law and that no one shall be

arbitrarily denied of that right. Everyone shall have a right to recognition, everywhere as a person before the law. Article 17 of the ICCPR states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation and that everyone has the right to protection of law against such interference or attacks. The International Commission of Jurists and the International Service for Human Rights on behalf of a coalition of human rights organisations, took a project to develop a set of international legal principles on the application of international law to human rights violations based on sexual orientation and sexual identity to bring greater clarity and coherence to the State's human rights obligations.

24. A distinguished group of human rights experts has drafted, developed, discussed and reformed the principles in a meeting held at Gadjah Mada University in Yogyakarta, Indonesia from 6-11-2006 to 9-11-2006, which was unanimously adopted as the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. Yogyakarta Principles address a broad range of human rights standards and their application to issues of sexual orientation and gender identity. Reference to few Yogyakarta Principles would be useful.

Yogyakarta Principles

25. Principle 1 which deals with the right to the universal enjoyment of human rights, reads as follows:

“1. The right to the universal enjoyment of human rights.—All human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights.

States shall:

(a) embody the principles of the universality, interrelatedness, interdependence and indivisibility of all human rights in their national constitutions or other appropriate legislation and ensure the practical realisation of the universal enjoyment of all human rights;

(b) amend any legislation, including criminal law, to ensure its consistency with the universal enjoyment of all human rights;

(c) undertake programmes of education and awareness to promote and enhance the full enjoyment of all human rights by all persons, irrespective of sexual orientation or gender identity;

(d) integrate within State policy and decision making a pluralistic approach that recognises and affirms the interrelatedness and indivisibility of all aspects of human identity including sexual orientation and gender identity.

2. The rights to equality and non-discrimination.—Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall

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a prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination.

Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.

b

States shall:

c

(a) embody the principles of equality and non-discrimination on the basis of sexual orientation and gender identity in their national constitutions or other appropriate legislation, if not yet incorporated therein, including by means of amendment and interpretation, and ensure the effective realisation of these principles;

d

(b) repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity;

e

(c) adopt appropriate legislative and other measures to prohibit and eliminate discrimination in the public and private spheres on the basis of sexual orientation and gender identity;

(d) take appropriate measures to secure adequate advancement of persons of diverse sexual orientations and gender identities as may be necessary to ensure such groups or individuals equal enjoyment or exercise of human rights. Such measures shall not be deemed to be discriminatory;

f

(e) in all their responses to discrimination on the basis of sexual orientation or gender identity, take account of the manner in which such discrimination may intersect with other forms of discrimination;

(f) take all appropriate action, including programmes of education and training, with a view to achieving the elimination of prejudicial or discriminatory attitudes or behaviours which are related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or gender expression.

g

3. The right to recognition before the law.—Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. 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. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall

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be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.

States shall:

(a) ensure that all persons are accorded legal capacity in civil matters, without discrimination on the basis of sexual orientation or gender identity, and the opportunity to exercise that capacity, including equal rights to conclude contracts, and to administer, own, acquire (including through inheritance), manage, enjoy and dispose of property;

(b) take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity;

(c) take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex—including birth certificates, passports, electoral records and other documents—reflect the person's profound self-defined gender identity;

(d) ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned;

(e) ensure that changes to identity documents will be recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy;

(f) undertake targeted programmes to provide social support for all persons experiencing gender transitioning or reassignment.

4. The right to life.—Everyone has the right to life. No one shall be arbitrarily deprived of life, including by reference to considerations of sexual orientation or gender identity. The death penalty shall not be imposed on any person on the basis of consensual sexual activity among persons who are over the age of consent or on the basis of sexual orientation or gender identity.

States shall:

(a) repeal all forms of crime that have the purpose or effect of prohibiting consensual sexual activity among persons of the same sex who are over the age of consent and, until such provisions are repealed, never impose the death penalty on any person convicted under them;

(b) remit sentences of death and release all those currently awaiting execution for crimes relating to consensual sexual activity among persons who are over the age of consent;

(c) cease any State-sponsored or State-condoned attacks on the lives of persons based on sexual orientation or gender identity, and ensure that all such attacks, whether by government officials or by any individual or group, are vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished.

* * *

6. The right to privacy.—Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including with regard to their family, home or

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a correspondence as well as to protection from unlawful attacks on their honour and reputation. The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one's sexual orientation or gender identity, as well as decisions and choices regarding both one's own body and consensual sexual and other relations with others.

States shall:

b (a) take all necessary legislative, administrative and other measures to ensure the right of each person, regardless of sexual orientation or gender identity, to enjoy the private sphere, intimate decisions, and human relations, including consensual sexual activity among persons who are over the age of consent, without arbitrary interference;

c (b) repeal all laws that criminalise consensual sexual activity among persons of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity;

(c) ensure that criminal and other legal provisions of general application are not applied de facto to criminalise consensual sexual activity among persons of the same sex who are over the age of consent;

d (d) repeal any law that prohibits or criminalises the expression of gender identity, including through dress, speech or mannerisms, or that denies to individuals the opportunity to change their bodies as a means of expressing their gender identity;

(e) release all those held on remand or on the basis of a criminal conviction, if their detention is related to consensual sexual activity among persons who are over the age of consent, or is related to gender identity;

e (f) ensure the right of all persons ordinarily to choose when, to whom and how to disclose information pertaining to their sexual orientation or gender identity, and protect all persons from arbitrary or unwanted disclosure, or threat of disclosure of such information by others.

* * *

f **9. The right to treatment with humanity while in detention.**—Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person's dignity.

States shall:

g (a) ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse;

h (b) provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired;

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(c) ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity;

a

(d) put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population;

(e) ensure that conjugal visits, where permitted, are granted on an equal basis to all prisoners and detainees, regardless of the gender of their partner;

b

(f) provide for the independent monitoring of detention facilities by the State as well as by non-governmental organisations including organisations working in the spheres of sexual orientation and gender identity;

(g) undertake programmes of training and awareness raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

c

* * *

18. Protection from medical abuses.—No person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity. Notwithstanding any classifications to the contrary, a person's sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.

d

States shall:

e

(a) take all necessary legislative, administrative and other measures to ensure full protection against harmful medical practices based on sexual orientation or gender identity, including on the basis of stereotypes, whether derived from culture or otherwise, regarding conduct, physical appearance or perceived gender norms;

(b) take all necessary legislative, administrative and other measures to ensure that no child's body is irreversibly altered by medical procedures in an attempt to impose a gender identity without the full, free and informed consent of the child in accordance with the age and maturity of the child and guided by the principle that in all actions concerning children, the best interests of the child shall be a primary consideration;

f

(c) establish child protection mechanisms whereby no child is at risk of, or subjected to, medical abuse;

g

(d) ensure protection of persons of diverse sexual orientations and gender identities against unethical or involuntary medical procedures or research, including in relation to vaccines, treatments or microbicides for HIV/AIDS or other diseases;

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a (e) review and amend any health funding provisions or programmes, including those of a development-assistance nature, which may promote, facilitate or in any other way render possible such abuses;

(f) ensure that any medical or psychological treatment or counselling does not, explicitly or implicitly, treat sexual orientation and gender identity as medical conditions to be treated, cured or suppressed.

b **19. The right to freedom of opinion and expression.**—Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.

c **States shall:**

(a) take all necessary legislative, administrative and other measures to ensure full enjoyment of freedom of opinion and expression, while respecting the rights and freedoms of others, without discrimination on the basis of sexual orientation or gender identity, including the receipt and imparting of information and ideas concerning sexual orientation and gender identity, as well as related advocacy for legal rights, publication of materials, broadcasting, organisation of or participation in conferences, and dissemination of and access to safer-sex information;

d (b) ensure that the outputs and the organisation of media that is State-regulated is pluralistic and non-discriminatory in respect of issues of sexual orientation and gender identity and that the personnel recruitment and promotion policies of such organisations are non-discriminatory on the basis of sexual orientation or gender identity;

e (c) take all necessary legislative, administrative and other measures to ensure the full enjoyment of the right to express identity or personhood, including through speech, deportment, dress, bodily characteristics, choice of name or any other means;

f (d) ensure that notions of public order, public morality, public health and public security are not employed to restrict, in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities;

(e) ensure that the exercise of freedom of opinion and expression does not violate the rights and freedoms of persons of diverse sexual orientations and gender identities;

g (f) ensure that all persons, regardless of sexual orientation or gender identity, enjoy equal access to information and ideas, as well as to participation in public debate.”

h **26.** The UN bodies, regional human rights bodies, national courts, government commissions and the Commissions for Human Rights, Council of Europe, etc. have endorsed the Yogyakarta Principles and have considered them as an important tool for identifying the obligations of the States to respect, protect and fulfil the human rights of all persons, regardless of their

gender identity. The United Nations Committee on Economic, Social and Cultural Rights in its Report of 2009 speaks of gender orientation and gender identity as follows:

“32. Sexual orientation and gender identity.—‘Other status’ as recognised in Article 2 para (2), includes sexual orientation. States parties should ensure that a person’s sexual orientation is not a barrier to realising Covenant rights, for example, in accessing survivor’s pension rights. In addition, gender identity is recognised as among the prohibited grounds of discrimination, for example, persons who are transgender, transsexual or intersex, often face serious human rights violations, such as harassment in schools or in the workplace.”

27. In this respect, reference may also be made to the General Comment No. 2 of the Committee on Torture and Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2008 and also the General Comment No. 20 of the Committee on the Elimination of Discrimination against Woman, responsible for the implementation of the Convention on the Elimination of All Forms of Discrimination against Woman, 1979 and the 2010 Report.

SRS and foreign judgments

28. Various countries have given recognition to the gender identity of such persons, mostly, in cases where transsexual persons started asserting their rights after undergoing SRS of their reassigned sex. In *Corbett v. Corbett*³, the Court in England was concerned with the gender of a male to female transsexual in the context of the validity of a marriage. Ormrod, J. in that case took the view that the law should adopt the chromosomal, gonadal and genital tests and if all three are congruent, that should determine a person’s sex for the purpose of marriage. The learned Judge expressed the view that any operative intervention should be ignored and the biological sexual constitution of an individual is fixed at birth, at the latest, and cannot be changed either by the natural development of organs of the opposite sex or by medical or surgical means. Later, in *R. v. Tan*⁴, QB pp. 1063-64, the Court of Appeal applied *Corbett*³ approach in the context of criminal law. The Court upheld convictions which were imposed on Gloria Greaves, a post-operative male to female transsexual, still being in law, a man.

29. *Corbett*³ principle was not found favour by various other countries, like New Zealand, Australia, etc. and also attracted much criticism, from the medical profession. It was felt that the application of the *Corbett*³ approach would lead to a substantial different outcome in cases of a post-operative intersexual person and a post-operative transsexual person. In New Zealand in *Attorney General v. Otahuhu Family Court*⁵, Ellis, J. noted that once a transsexual person has undergone surgery, he or she is no longer able to operate in his or her original sex. It was held that there is no social advantage

3 1971 P 83 : (1970) 2 WLR 1306 : (1970) 2 All ER 33

4 1983 QB 1053 : (1983) 3 WLR 361 : (1983) 2 All ER 12 (CA)

5 (1995) 1 NZLR 603

- a in the law for not recognising the validity of the marriage of a transsexual in the sex of reassignment. The Court held that an adequate test is whether the person in question has undergone surgical and medical procedures that have effectively given the person the physical conformation of a person of a specified sex. In *Kevin (Validity of Marriage of Transsexual)*, *In re*⁶, an Australian case, Chisholm, J., held that there is no “formulaic solution” to determine the sex of an individual for the purpose of the law of marriage.
- b It was held that all relevant matters need to be considered, including the person’s life experiences and self-perception. The Full Court of the Federal Family Court in the year 2003 approved the abovementioned judgment holding that in the relevant Commonwealth marriage statute the words “man” and “woman” should be given their ordinary, everyday contemporary meaning and that the word “man” includes a post-operative female to male transsexual person. The Full Court also held that there was a biological basis for transsexualism and that there was no reason to exclude the psyche as one of the relevant factors in determining sex and gender. The judgment is reported in *Attorney General for the Commonwealth v. “Kevin and Jennifer” & Human Rights and Equal Opportunity Commission*⁷.

- c **30.** Lockhart, J. in *Deptt. of Social Security v. “SRA”*⁸, and Mathews, J. in *R. v. Harris & McGuinness*⁹, made an exhaustive review of the various decisions with regard to the question of recognition to be accorded by the courts to the gender of a transsexual person who had undertaken a surgical procedure. The Courts generally in New Zealand held that the decision in *Corbett v. Corbett*³ and *R. v. Tan*⁴ which applied a purely biological test, should not be followed. In fact, Lockhart, J. in *SRA*⁸ observed that the development in surgical and medical techniques in the field of sexual reassignment, together with indications of changing social attitudes towards transsexuals, would indicate that generally they should not be regarded merely as a matter of chromosomes, which is purely a psychological question, one of self-perception, and partly a social question, how society perceives the individual.

- d **31.** *AB v. Western Australia*¹⁰ was a case concerned with the Gender Reassignment Act, 2000. In that Act, a person who had undergone a reassignment procedure could apply to Gender Reassignment Board for the issue of a recognition certificate. Under Section 15 of that Act, before issuing the certificate, the Board had to be satisfied, inter alia, that the applicant believed his or her true gender was the person’s reassigned gender and had adopted the lifestyle and gender characteristics of that gender. Majority of

6 2001 Fam CA 1074 (Aust)

7 2003 Fam CA 94 (Aust)

8 (1993) 118 ALR 467 : (1993) 43 FCR 299 (Aust)

9 (1988) 17 NSWLR 158

h 3 1971 P 83 : (1970) 2 WLR 1306 : (1970) 2 All ER 33

4 1983 QB 1053 : (1983) 3 WLR 361 : (1983) 2 All ER 12 (CA)

10 2011 HCA 42 (Aust)

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Judges agreed with Lockhart, J. in *SRA*⁸ that gender should not be regarded merely as a matter of chromosomes, but partly a psychological question, one of self-perception, and partly a social question, how society perceives the individual. a

32. The House of Lords in *Bellinger v. Bellinger*¹¹ was dealing with the question of a transsexual. In that case, Mrs Bellinger was born on 7-9-1946. At birth, she was correctly classified and registered as male. However, she felt more inclined to be a female. Despite her inclinations, and under some pressure, in 1967 she married a woman and at that time she was 21 years old. Marriage broke down and parties separated in 1971 and got divorce in the year 1975. Mrs Bellinger dressed and lived like a woman and when she married Mr Bellinger, he was fully aware of her background and throughout had been supportive to her. Mr and Mrs Bellinger since marriage lived happily as husband and wife and presented themselves in that fashion to the outside world. Mrs Bellinger's primary claim was for a declaration under Section 55 of the Family Law Act, 1986 that her marriage to Mr Bellinger in 1981 was "at its inception valid marriage". The House of Lords rejected the claim and dismissed the appeal. Certainly, the "psychological factor" has not been given much prominence in determination of the claim of Mrs Bellinger. b c

33. The High Court of Kuala Lumpur in *JG, In re, JG v. Pengarah Jabatan Pendaftaran Negara*¹², was considering the question as to whether an application to amend or correct gender status stated in the National Registration Identity Card could be allowed after a person has undergone *SRS*. It was a case where the plaintiff was born as a male, but felt more inclined to be a woman. In 1996 at Hospital Siroros she underwent a gender reassignment and got the surgery done for changing the sex from male to female and then she lived like a woman. She applied to the authorities to change her name and also for a declaration of her gender as female, but her request was not favourably considered, but still treated as a male. She sought a declaration from the Court that she be declared as a female and that the Registration Department be directed to change the last digit of her identity card to a digit that reflects a female gender. The Malaysian Court basically applied the principle laid down in *Corbett*³, however, both the prayers sought for were granted, after noticing that the medical men have spoken that the plaintiff is a female and they have considered the sex change of the plaintiff as well as her "psychological aspect". The Court noticed that she feels like a woman, lives like one, behaves as one, has her physical body attuned to one, and most important of all, her "psychological thinking" is that of a woman. d e f

34. The Court of Appeal, New South Wales was called upon to decide the question whether the Registrar of Births, Deaths and Marriages has the power under the Births, Deaths and Marriages Act, 1995 to register a change of sex g

⁸ *Dept. of Social Security v. "SRA"*, (1993) 118 ALR 467 : (1993) 43 FCR 299 (Aust)

¹¹ (2003) 2 AC 467 : (2003) 2 WLR 1174 : (2003) 2 All ER 593 (HL)

¹² (2006) 1 MLJ 90 (Malaysia)

³ *Corbett v. Corbett*, 1971 P 83 : (1970) 2 WLR 1306 : (1970) 2 All ER 33

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a of a person and the sex recorded on the register to “non-specific” or “non-specified”. The appeal was allowed and the matter was remitted back to the Tribunal for a fresh consideration in accordance with law, after laying down the law on the subject. The judgment is reported as *Norrie v. NSW Registrar of Births, Deaths and Marriages*¹³. While disposing of the appeal, the Court held as follows:

b “The consequence is that the Appeal Panel (and the Tribunal and the Registrar) were in error in construing the power in Section 32DC(1) as limiting the Registrar to registering a person’s change of sex as only male or female. An error in the construction of the statutory provision granting the power to register a person’s change of sex is an error on a question of law. *Collector of Customs v. Pressure Tankers Pty. Ltd.*¹⁴ FCR at p. 287. This is so notwithstanding that the determination of the common understanding of a general word used in the statutory provision is a question of fact. The Appeal Panel (and the Tribunal and the Registrar) erred in determining that the current ordinary meaning of the word “sex” is limited to the character of being either male or female. That involved an error on a question of fact. But the Appeal Panel’s error in arriving at the common understanding of the word “sex” was associated with its error in construction of the effect of the statutory provision of Section 32DC (and also of Section 32DA), and accordingly is of law: *Hope v. Bathurst City Council*¹⁵ CLR at p. 10.”

e 35. In *Christine Goodwin v. United Kingdom*¹⁶, the European Court of Human Rights examined an application alleging violation of Articles 8, 12, 13 and 14 of the Convention for Protection of Human Rights and Fundamental Freedoms, 1997 in respect of the legal status of transsexuals in UK and particularly their treatment in the sphere of employment, social security, pensions and marriage. The applicant in that case had a tendency to dress as a woman from early childhood and underwent aversion therapy in 1963-1964. In the mid-1960s she was diagnosed as a transsexual. Though she married a woman and they had four children, her inclination was that her
f “brain sex” did not fit her body. From that time until 1984 she dressed as a man for work but as a woman in her free time. In January 1985, the applicant began treatment at the Gender Identity Clinic. In October 1986, she underwent surgery to shorten her vocal chords. In August 1987, she was accepted on the waiting list for gender reassignment surgery and later underwent that surgery at a National Health Service Hospital. The applicant
g later divorced her former wife. She claimed that between 1990 and 1992 she was sexually harassed by colleagues at work, followed by other human rights

13 2013 NSWCA 145 (Aust)

h 14 1993 FCA 322 : (1993) 43 FCR 280 (Aust)

15 1980 HCA 16 : (1980) 144 CLR 1 (Aust)

16 (2002) 35 EHRR 18 : Application No. 28957/95, decided on 11-7-2002

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violations. The Court after referring to various provisions and conventions held as follows:

“Nonetheless, the very essence of the Convention is respect for human dignity and human freedom. Under Article 8 of the Convention in particular, where the notion of personal autonomy is an important principle underlying the interpretation of its guarantees, protection is given to the personal sphere of each individuals, including the right to establish details of their identity as individual human beings (*see, inter alia, Pretty v. United Kingdom*¹⁷ and *Mikulic v. Croatia*¹⁸). In the twenty-first century the right of transsexuals to personal development and to physical and moral security in the full sense enjoyed by others in society cannot be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved. In short, the unsatisfactory situation in which post-operative transsexuals live in an intermediate zone as not quite one gender or the other is no longer sustainable.”

36. The European Court of Human Rights in *Van Kuck v. Germany*¹⁹ dealt with the application alleging that German Court’s decisions refusing the applicant’s claim for reimbursement of gender reassignment measures and the related proceedings were in breach of her rights to a fair trial and of her right to respect for her private life and that they amounted to discrimination on the ground of her particular “psychological situation”. Reliance was placed on Articles 6, 8, 13 and 14 of the Convention for Protection of Human Rights and Fundamental Freedoms, 1997. The Court held that the concept of “private life” covers the physical and psychological integrity of a person, which can sometimes embrace aspects of an individual’s physical and social identity. For example, gender identifications, name and sexual orientation and sexual life fall within the personal sphere protected by Article 8. The Court also held that the notion of personal identity is an important principle underlying the interpretation of various guaranteed rights and the very essence of the Convention being respect for human dignity and human freedom, protection is given to the right of transsexuals to personal development and to physical and moral security.

37. The judgments referred to above are mainly related to transsexuals, who, whilst belonging physically to one sex, feel convinced that they belong to the other, seek to achieve a more integrated unambiguous identity by undergoing medical and surgical operations to adapt their physical characteristic to their psychological nature. When we examine the rights of transsexual persons, who have undergone *SRS*, the test to be applied is not the “biological test”, but the “psychological test”, because psychological factor and thinking of transsexual has to be given primacy than binary notion of gender of that person. Seldom people realise the discomfort, distress and

17 2002 ECHR 427 : Application No. 2346/02, decided on 29-4-2002

18 2002 ECHR 27 : Application No. 53176/99, decided on 7-2-2002

19 2003 ECHR 285 : Application No. 35968/97, decided on 12-9-2003

- a psychological trauma, they undergo and many of them undergo “gender dysphoria” which may lead to mental disorder. Discrimination faced by this group in our society, is rather unimaginable and their rights have to be protected, irrespective of chromosomal sex, genitals, assigned birth sex, or implied gender role. Rights of transgenders, pure and simple, like hijras, eunuchs, etc. have also to be examined, so also their right to remain as a third gender as well as their physical and psychological integrity. Before
- b addressing those aspects further, we may also refer to few legislations enacted in other countries recognising their rights.

Legislations in other countries on TGs

- c **38.** We notice, following the trend, in the international human rights law, many countries have enacted laws for recognising rights of transsexual persons, who have undergone either partial/complete SRS, including the United Kingdom, Netherlands, Germany, Australia, Canada, Argentina, etc. The United Kingdom has passed the General Recommendation Act, 2004, following the judgment in *Christine Goodwin*¹⁶ passed by the European Court of Human Rights. The Act is all-encompassing as not only does it
- d provide legal recognition to the acquired gender of a person, but it also lays down provisions highlighting the consequences of the newly acquired gender status on their legal rights and entitlements in various aspects such as marriage, parentage, succession, social security and pensions, etc. One of the notable features of the Act is that it is not necessary that a person need to have undergone or in the process of undergoing a SRS to apply under the Act. Reference in this connection may be made to the Equality Act, 2010 (UK)
- e which has consolidated, repealed and replaced around nine different anti-discrimination legislations including the Sex Discrimination Act, 1986. The Act defines certain characteristics to be “protected characteristics” and no one shall be discriminated or treated less favourably on grounds that the person possesses one or more of the “protected characteristics”. The Act also imposes duties on public bodies to eliminate all kinds of discrimination,
- f harassment and victimisation. Gender reassignment has been declared as one of the protected characteristics under the Act, of course, only the transsexuals i.e. those who are proposing to undergo, is undergoing or has undergone the process of the gender reassignment are protected under the Act.

- g **39.** In Australia, there are two Acts dealing with the gender identity, (i) the Sex Discrimination Act, 1984; and (ii) the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act, 2013 (the 2013 Act). The 2013 Act amends the Sex Discrimination Act, 1984. The 2013 Act defines gender identity as the appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not) with or without regard to the person’s designated sex at birth.

- h ¹⁶ *Christine Goodwin v. United Kingdom*, (2002) 35 EHRR 18 : Application No. 28957/95, decided on 11-7-2002

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40. Sections 5-A, 5-B and 5-C of the 2013 Act have some relevance and the same are extracted hereinbelow:

“5-A. Discrimination on the ground of sexual orientation.—(1) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person’s sexual orientation if, by reason of:

(a) the aggrieved person’s sexual orientation; or

(b) a characteristic that appertains generally to persons who have the same sexual orientation as the aggrieved person; or

(c) a characteristic that is generally imputed to persons who have the same sexual orientation as the aggrieved person;

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who has a different sexual orientation.

(2) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person’s sexual orientation if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons who have the same sexual orientation as the aggrieved person.

(3) This section has effect subject to Sections 7-B and 7-D.

5-B. Discrimination on the ground of gender identity.—(1) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person’s gender identity if, by reason of:

(a) the aggrieved person’s gender identity; or

(b) a characteristic that appertains generally to persons who have the same gender identity as the aggrieved person; or

(c) a characteristic that is generally imputed to persons who have the same gender identity as the aggrieved person;

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who has a different gender identity.

(2) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person’s gender identity if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons who have the same gender identity as the aggrieved person.

(3) This section has effect subject to Sections 7-B and 7-D.

5-C. Discrimination on the ground of intersex status.—(1) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person’s intersex status if, by reason of:

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- a (a) the aggrieved person's intersex status; or
 (b) a characteristic that appertains generally to persons of intersex status; or
 (c) a characteristic that is generally imputed to persons of intersex status;

b the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who is not of intersex status.

(2) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the aggrieved person's intersex status if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of intersex status.

c (3) This section has effect subject to Sections 7-B and 7-D.”
 (emphasis supplied)

Various other precautions have also been provided under the Act.

d **41.** We may in this respect also refer to the European Union legislations on transsexuals. Recital 3 of the Preamble to the Directive 2006/54/EC of the European Parliament and the Council of 5-7-2006 makes an explicit reference to discrimination based on gender reassignment for the first time in the European Union Law. Recital 3 reads as under:

e “(3) The Court of Justice has held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex. In view of this purpose and the nature of the rights which it seeks to safeguard, it also applies to discrimination arising from the gender reassignment of a person.”

f **42.** The European Parliament also adopted a resolution on discrimination against transsexuals on 12-9-1989 and called upon the member States to take steps for the protection of transsexual persons and to pass legislation to further that end. Following that Hungary has enacted the Equal Treatment and the Promotion of Equal Opportunities Act, 2003, which includes sexual identity as one of the grounds of discrimination. The 2010 Paper on Transgender Persons' Rights in the EU Member States prepared by the Policy Department of the European Parliament presents the specific situation of transgender people in 27 Member States of the European Union. In the United States of America some of the laws enacted by the States are inconsistent with each other. The Federal Law which provides protection to transgenders is the Matthew Shepard and James Byrd., Jr. Hate Crimes Prevention Act, 2009, which expands the scope of the 1969 United States Federal Hate Crime Law by including offences motivated by actual or perceived gender identity. Around 15 States and District of Columbia in the United States have legislations which prohibit discrimination on grounds of gender identity and expression. Few States have issued executive orders prohibiting discrimination.

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43. The Parliament of South Africa in the year 2003, enacted Alteration of Sex Description and Sex Status Act, 2003, which permits transgender persons who have undergone gender reassignment or people whose sexual characteristics have evolved naturally or an intersexed person to apply to the Director General of the National Department of Home Affairs for alteration of his/her sex description in the birth register, though the legislation does not contemplate a more inclusive definition of transgenders. a

44. The Senate of Argentina in the year 2012 passed a law on gender identity that recognises right of all persons to the recognition of their gender identity as well as free development of their person according to their gender identity and can also request that their recorded sex be amended along with the changes in first name and image, whenever they do not agree with the self-perceived gender identity. Not necessary that they seemed to prove that a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychological or medical treatment had taken place. Article 12 deals with dignified treatment, respecting the gender identity adopted by the individual, even though the first name is different from the one recorded in their national identity documents. Further laws also provide that whenever requested by the individual, the adopted first name must be used for summoning, recording, filing, calling and any other procedure or service in public and private spaces. b
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45. In Germany, a new law has come into force on 5-11-2013, which allows the parents to register the sex of the children as “not specified” in the case of children with intersex variation. According to Article 22, Section 3 of the German Civil Statutes Act reads as follows:

“If a child can be assigned to neither the female nor the male sex then the child has to be named without a specification.” e

The law has also added a category of X, apart from “M” and “F” under the classification of gender in the passports.

Indian scenario

46. We have referred exhaustively to the various judicial pronouncements and legislations on the international arena to highlight the fact that the recognition of “sex identity gender” of persons, and “guarantee to equality and non-discrimination” on the ground of gender identity or expression is increasing and gaining acceptance in international law and, therefore, be applied in India as well. f

47. The historical background of transgenders in India has already been dealt in the earlier part of this judgment indicating that they were once treated with great respect, at least in the past, though not in the present. We can perceive a wide range of transgender related identities, cultures or experiences which are generally as follows: g

“**Hijras**: Hijras are biological males who reject their ‘masculine’ identity in due course of time to identify either as women, or “not-men”, or “in-between man and woman”, or “neither man nor woman”. Hijras can be considered as the western equivalent of transgender/transsexual h

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a (male-to-female) persons but hijras have a long tradition/culture and have strong social ties formalised through a ritual called “reet” (becoming a member of Hijra community). There are regional variations in the use of terms referred to hijras. For example, Kinnars (Delhi) and Aravanis (Tamil Nadu). Hijras may earn through their traditional work: ‘badhai’ (clapping their hands and asking for alms), blessing new-born babies, or dancing in ceremonies. Some proportion of hijras engage in sex work for lack of other job opportunities, while some may be self-employed or work for non-governmental organisations. [See UNDP India Report (December, 2010).]

b **Eunuch:** Eunuch refers to an emasculated male and intersexed to a person whose genitals are ambiguously male-like at birth, but this is discovered the child previously assigned to the male sex, would be recategorised as intersexed — as a Hijra.

c **Aravanis and Thirunangi:** Hijras in Tamil Nadu identify themselves as “Aravani”. Tamil Nadu Aravanigal Welfare Board, a State Government’s initiative under the Department of Social Welfare defines Aravanis as biological males who self-identify themselves as a woman trapped in a male’s body. Some Aravani activists want the public and media to use the term ‘Thirunangi’ to refer to Aravanis.

d **Kothi:** Kothis are a heterogeneous group. ‘Kothis’ can be described as biological males who show varying degrees of ‘femininity’ — which may be situational. Some proportion of Kothis have bisexual behaviour and get married to a woman. Kothis are generally of lower socio-economic status and some engage in sex work for survival. Some proportion of Hijra-identified people may also identify themselves as ‘Kothis’. But not all Kothi identified people identify themselves as transgender or hijras.

e **Jogtas/Jogappas:** Jogtas or Jogappas are those persons who are dedicated to and serve as a servant of Goddess Renukha Devi (Yellamma) whose temples are present in Maharashtra and Karnataka. ‘Jogta’ refers to male servant of that Goddess and ‘Jogti’ refers to female servant (who is also sometimes referred to as ‘Devadasi’). One can become a ‘Jogta’ (or Jogti) if it is part of their family tradition or if one finds a ‘Guru’ (or ‘Pujari’) who accepts him/her as a ‘Chela’ or ‘Shishya’ (disciple). Sometimes, the term ‘Jogti Hijras’ is used to denote those male-to-female transgender persons who are devotees/servants of Goddess Renukha Devi and who are also in the Hijra communities. This term is used to differentiate them from ‘Jogtas’ who are heterosexuals and who may or may not dress in woman’s attire when they worship the Goddess. Also, that term differentiates them from ‘Jogtis’ who are biological females dedicated to the Goddess. However, ‘Jogti Hijras’ may refer to themselves as ‘Jogti’ (female pronoun) or hijras, and even sometimes as ‘Jogtas’.

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Shiv-Shakthis: Shiv-Shakthis are considered as males who are possessed by or particularly close to a goddess and who have feminine gender expression. Usually, Shiv-Shakthis are inducted into the Shiv-Shakthi community by senior gurus, who teach them the norms, customs, and rituals to be observed by them. In a ceremony, Shiv-Shakthis are married to a sword that represents male power or Shiva (deity). Shiv-Shakthis thus become the bride of the sword. Occasionally, Shiv-Shakthis cross-dress and use accessories and ornaments that are generally/socially meant for women. Most people in this community belong to lower socio-economic status and earn for their living as astrologers, soothsayers, and spiritual healers; some also seek alms.” [See *Serena Nanda*, Wadsworth Publishing Company, 2nd Edn. (1999).]

48. Transgender people, as a whole, face multiple forms of oppression in this country. Discrimination is so large and pronounced, especially in the field of healthcare, employment, education, leave aside social exclusion. A detailed study was conducted by the United Nations Development Programme (UNDP — India) and submitted a report in December 2010 on hijras/transgenders in India: “HIV Human Rights and Social Exclusion”. The Report states that the HIV human immunodeficiency virus and sexually transmitted infections (STI) is now increasingly seen in hijras/transgenders population. The estimated size of men who have sex with men (MSM) and male sex workers population in India (latter presumably includes hijras/TG communities) is 23,52,133 and 2,35,213 respectively. It was stated that no reliable estimates are available for hijras/TG women. HIV prevalence among MSM population was 7.4% against the overall adult HIV prevalence of 0.36%. It was stated recently hijras/TG people were included under the category of MSM in HIV sentinel serosurveillance. It is also reported in recent studies that hijras/TG women have indicated a very high HIV prevalence (17.5% to 41%) among them. Study conducted by NACO also highlights a pathetic situation. The Report submitted by NACI, NACP IV Working Group Hijras/TGs dated 5-5-2011 would indicate that transgenders are extremely vulnerable to HIV. Both the reports highlight the extreme necessity of taking emergent steps to improve their sexual health, mental health and also address the issue of social exclusion.

49. UNDP in its report has made the following recommendations, which are as under:

“Multiple problems are faced by hijras/TGs, which necessitate a variety of solutions and actions. While some actions require immediate implementation such as introducing hijra/TG-specific social welfare schemes, some actions need to be taken on a long-term basis changing the negative attitude of the general public and increasing accurate knowledge about Hijra/TG communities. The required changes need to be reflected in policies and laws; attitude of the Government, general public and healthcare providers; and healthcare systems and practice. Key recommendations include the following:

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a 1. *Address the gap in NACP-III*: establish HIV sentinel serosurveillance sites for hijras/TGs at strategic locations; conduct operations research to design and fine-tune culturally relevant package of HIV prevention and care interventions for hijras/TGs; provide financial support for the formation of CBOs run by hijras/TGs; and build the capacity of CBOs to implement effective programmes.

b 2. Move beyond focusing on individual-level HIV prevention activities to *address the structural determinants of risks and mitigate the impact of risks*. For example, mental health counselling, crisis intervention (crisis in relation to suicidal tendencies, police harassment and arrests, support following sexual and physical violence), addressing alcohol and drug abuse, and connecting to livelihood programmes all need to be part of the HIV interventions.

c 3. *Train healthcare providers to be competent and sensitive* in providing healthcare services (including STI and HIV-related services) to hijras/TGs as well as develop and monitor implementation of guidelines related to gender transition and sex reassignment surgery (SRS).

d 4. Clarify the ambiguous legal status of sex reassignment surgery and provide *gender transition and SRS services* (with proper pre- and post-operation/transition counselling) for free in public hospitals in various parts in India.

e 5. Implement *stigma and discrimination reduction measures* at various settings through a variety of ways: mass media awareness for the general public to focused training and sensitisation for police and healthcare providers.

f 6. Develop action steps toward taking a position on *legal recognition of gender identity of hijras/TGs* need to be taken in consultation with hijras/TGs and other key stakeholders. Getting legal recognition and avoiding ambiguities in the current procedures that issue identity documents to hijras/TGs are required as they are connected to basic civil rights such as access to health and public services, right to vote, right to contest elections, right to education, inheritance rights, and marriage and child adoption.

7. Open up the existing *Social Welfare Schemes* for needy hijras/TGs and create specific welfare schemes to address the basic needs of hijras/TGs including housing and employment needs.

8. Ensure *greater involvement of vulnerable communities including hijras/TG women* in policy formulation and program development.”

g (emphasis supplied)

h 50. Social exclusion and discrimination on the ground of gender stating that one does not conform to the binary gender (male/female) does prevail in India. Discussion on gender identity including self-identification of gender of male/female or as transgender mostly focuses on those persons who are assigned male sex at birth, whether one talks of hijra transgender, woman or male or male to female transgender persons, while concern voiced by those who are identified as female to male transsexual persons often not properly

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addressed. Female to male unlike hijra/transgender persons are not quite visible in public unlike hijra/transgender persons. Many of them, however, do experience violence and discrimination because of their sexual orientation or gender identity. a

India to follow International Conventions

51. International conventions and norms are significant for the purpose of interpretation of gender equality. Article 1 of the Universal Declaration of Human Rights, 1948, states that all human beings are born free and equal in dignity and rights. Article 3 of the Universal Declaration of Human Rights states that everyone has a right to life, liberty and security of person. Article 6 of the International Covenant on Civil and Political Rights, 1966 affirms that every human being has the inherent right to life, which right shall be protected by law and no one shall be arbitrarily deprived of his life. Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (dated 24-1-2008) specifically deals with protection of individuals and groups made vulnerable by discrimination or marginalisation. Para 21 of the Convention states that States are obliged to protect from torture or ill-treatment all persons regardless of sexual orientation or transgender identity and to prohibit, prevent and provide redress for torture and ill-treatment in all contests of State custody or control. Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights state that no one shall be subjected to “arbitrary or unlawful interference with his privacy, family, home or correspondence”. b
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52. The abovementioned international human rights instruments which are being followed by various countries in the world are aimed to protect the human rights of transgender people since it has been noticed that transgenders/transsexuals often face serious human rights violations, such as harassment in workplace, hospitals, places of public conveniences, marketplaces, theatres, railway stations, bus-stands and so on. f

53. The Indian law, on the whole, only recognises the paradigm of binary genders of male and female, based on a person’s sex assigned by birth, which permits gender system, including the law relating to marriage, adoption, inheritance, succession and taxation and welfare legislations. We have exhaustively referred to various articles contained in the Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights, 1966, the International Covenant on Civil and Political Rights, 1966 as well as the Yogyakarta Principles. Reference was also made to the legislations enacted in other countries dealing with rights of persons of transgender community. Unfortunately, we have no legislation in this country dealing with the rights of transgender community. Due to the absence of suitable legislation protecting the rights of g
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a the members of the transgender community, they are facing discrimination in various areas and hence the necessity to follow the international conventions to which India is a party and to give due respect to other non-binding international conventions and principles. The Constitution-makers could not have envisaged that each and every human activity be guided, controlled, recognised or safeguarded by laws made by the legislature. Article 21 has been incorporated to safeguard those rights and a constitutional court cannot
b be a mute spectator when those rights are violated, but is expected to safeguard those rights knowing the pulse and feeling of that community, though a minority, especially when their rights have gained universal recognition and acceptance.

c **54.** Article 253 of the Constitution of India states that Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention. Generally, therefore, a legislation is required for implementing the international conventions, unlike the position in the United States of America where the rules of international law are applied by the municipal courts on the theory of their implied adoption by the State, as a part of its own municipal law. Article VI clause (2) of the US Constitution reads as follows:

d “... all treaties made, or which shall be made, under the authority of the United States, shall be the *supreme law of the land*, and the Judges in every State shall be bound thereby, *anything in the Constitution or laws of any State to the contrary notwithstanding.*” (emphasis supplied)

e **55.** In the United States, however, it is open to the courts to supersede or modify international law in its application or it may be controlled by the treaties entered into by the United States. But, till an Act of Congress is passed, the court is bound by the law of nations, which is part of the law of the land. Such a “supremacy clause” is absent in our Constitution. Courts in India would apply the rules of international law according to the principles of comity of nations, unless they are overridden by clear rules of domestic law. (See *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*²⁰, *V.O. Tractoroexport v. Tarapore & Co.*²¹ and *Mirza Ali Akbar Kashani v. United Arab Republic*²².)

f **56.** In *Jolly George Varghese v. Bank of Cochin*²³, this Court applied the above principle in respect of the International Covenant on Civil and Political Rights, 1966 as well as in connection with the Universal Declaration of Human Rights. India has ratified the abovementioned covenants, hence, those
g covenants can be used by the municipal courts as an aid to the interpretation of statutes by applying the doctrine of harmonisation. But, certainly, if the Indian law is not in conflict with the international covenants, particularly

20 (1984) 2 SCC 534 : 1984 SCC (Cri) 313

h 21 (1969) 3 SCC 562

22 AIR 1966 SC 230 : (1966) 1 SCR 319

23 (1980) 2 SCC 360

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pertaining to human rights, to which India is a party, the domestic court can apply those principles in the Indian conditions. The interpretation of international conventions is governed by Articles 31 and 32 of the Vienna Convention on the Law of Treaties of 1969. a

57. Article 51 of the directive principles of State policy, which falls under Part IV of the Indian Constitution, reads as under:

“**51. Promotion of international peace and security.**—The State shall endeavour to—

(a) promote international peace and security; b

(b) maintain just and honourable relations between nations;

(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and

(d) encourage settlement of international disputes by arbitration.”

58. Article 51, as already indicated, has to be read along with Article 253 of the Constitution. If Parliament has made any legislation which is in conflict with the international law, then Indian courts are bound to give effect to the Indian law, rather than the international law. However, in the absence of a contrary legislation, municipal courts in India would respect the rules of international law. In *Kesavananda Bharati v. State of Kerala*²⁴, it was stated that in view of Article 51 of the Constitution, the Court must interpret language of the Constitution, if not intractable, in the light of the United Nations Charter and the solemn declaration subscribed to it by India. In *Apparel Export Promotion Council v. A.K. Chopra*²⁵, it was pointed out that domestic courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. Reference may also be made to the judgments of this Court in *Githa Hariharan v. RBI*²⁶, *R.D. Upadhyay v. State of A.P.*²⁷ and *People’s Union for Civil Liberties v. Union of India*²⁸. c

59. In *Vishaka v. State of Rajasthan*²⁹, this Court under Article 141 laid down various guidelines to prevent sexual harassment of women in workplaces, and to enable gender equality relying on Articles 11, 24 and General Recommendations 22, 23 and 24 of the Convention on the Elimination of All Forms of Discrimination against Women. Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into those provisions e.g. Articles 14, 15, 19 and 21 of the Constitution to enlarge the meaning and content thereof and to promote the object of constitutional guarantee. d

²⁴ (1973) 4 SCC 225

²⁵ (1999) 1 SCC 759 : 1999 SCC (L&S) 405

²⁶ (1999) 2 SCC 228

²⁷ (2007) 15 SCC 337 : (2010) 3 SCC (Cri) 704

²⁸ (2005) 2 SCC 436

²⁹ (1997) 6 SCC 241 : 1997 SCC (Cri) 932 e

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60. The principles discussed hereinbefore on TGs and the international conventions, including *Yogyakarta Principles*, which we have found not inconsistent with the various fundamental rights guaranteed under the Indian Constitution, must be recognised and followed, which has sufficient legal and historical justification in our country.

Article 14 and Transgenders

61. Article 14 of the Constitution of India states that the State shall not deny to “any person” equality before the law or the equal protection of the laws within the territory of India. Equality includes the full and equal enjoyment of all rights and freedom. Right to equality has been declared as the basic feature of the Constitution and treatment of equals as unequals or unequals as equals will be violative of the basic structure of the Constitution. Article 14 of the Constitution also ensures equal protection and hence a positive obligation on the State to ensure equal protection of laws by bringing in necessary social and economic changes, so that everyone including TGs may enjoy equal protection of laws and nobody is denied such protection. Article 14 does not restrict the word “person” and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression “person” and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country.

62. The 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. Further, non-recognition of identity of hijras/transgender persons results in them facing extreme discrimination in all spheres of society, especially in the field of employment, education, healthcare, etc. Hijras/transgender persons face huge discrimination in access to public spaces like restaurants, cinemas, shops, malls, etc. Further, access to public toilets is also a serious problem they face quite often. Since, there are no separate toilet facilities for hijras/transgender persons, they have to use male toilets where they are prone to sexual assault and harassment. 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.

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Articles 15 and 16 and Transgenders

63. Articles 15 and 16 prohibit discrimination against any citizen on certain enumerated grounds, including the ground of “sex”. In fact, both the Articles prohibit all forms of gender bias and gender-based discrimination. a

64. Article 15 states that the State shall not discriminate against any citizen, inter alia, on the ground of sex, with regard to

“**15. (2)(a)** access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.” b

The requirement of taking affirmative action for the advancement of any socially and educationally backward classes of citizens is also provided in this Article.

65. Article 16 states that there shall be equality of opportunities for all the citizens in matters relating to employment or appointment to any office under the State. Article 16(2) of the Constitution of India reads as follows: c

“**16. (2)** No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.” d

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. Articles 15 and 16 sought to prohibit discrimination on the basis of sex, recognising that sex discrimination is a historical fact and needs to be addressed. The Constitution-makers, it can be gathered, gave emphasis to the fundamental right against sex discrimination so as to prevent the direct or indirect attitude to treat people differently, for the reason of not being in conformity with stereotypical generalisations of binary genders. Both gender and biological attributes constitute distinct components of sex. The biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one’s self-image, the deep psychological or emotional sense of sexual identity and character. 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 nor female. e
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67. TGs have been systematically denied the rights under Article 15(2), that is, not to be subjected to any disability, liability, restriction or condition in regard to access to public places. TGs have also not been afforded special provisions envisaged under Article 15(4) for the advancement of the socially and educationally backward classes (SEBC) of citizens, which they are, and h

a hence legally entitled and eligible to get the benefits of SEBC. State is bound to take some affirmative action for their advancement so that the injustice done to them for centuries could be remedied. TGs are also entitled to enjoy economic, social, cultural and political rights without discrimination, because forms of discrimination on the ground of gender are violative of fundamental freedoms and human rights. TGs have also been denied rights under Article 16(2) and discriminated against in respect of employment or office under the State on the ground of sex. TGs are also entitled to reservation in the matter of appointment, as envisaged under Article 16(4) of the Constitution. State is bound to take affirmative action to give them due representation in public services.

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c **68.** Articles 15(2) to (4) and Article 16(4) read with the directive principles of State policy and various international instruments to which India is a party, call for social equality, which TGs could realise, only if facilities and opportunities are extended to them so that they can also live with dignity and equal status with other genders.

Article 19(1)(a) and Transgenders

d **69.** Article 19(1) of the Constitution guarantees certain fundamental rights, subject to the power of the State to impose restrictions from (*sic* on) exercise of those rights. The rights conferred by Article 19 are not available to any person who is not a citizen of India. Article 19(1) guarantees those great basic rights which are recognised and guaranteed as the natural rights inherent in the status of the citizen of a free country. 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. The self-identified gender can be expressed through dress, words, action or behaviour 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.

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f **70.** We may, in this connection, refer to a few judgments of the US Supreme Court on the rights of TGs' freedom of expression:

70.1. The Supreme Court of the State of Illinois in *City of Chicago v. Wilson*³⁰ struck down the municipal law prohibiting cross-dressing, and held as follows:

g “the notion that the State can regulate one's personal appearance, unconfined by any constitutional strictures whatsoever, is fundamentally inconsistent with values of privacy, self-identity, autonomy and personal integrity that ... the Constitution was designed to protect”.

70.2. In *Doe v. Yunits*³¹, the Superior Court of Massachusetts, upheld the right of a person to wear school dress that matches her gender identity as part of protected speech and expression and observed as follows:

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30 75 Ill 2d 525 : 389 NE 2d 522 (1978)

31 2000 WL 33162199 (Mass Super Ct 2000)

“by dressing in clothing and accessories traditionally associated with the female gender, she is expressing her identification with the gender. In addition, plaintiff’s ability to express herself and her gender identity through dress is important for her health and well-being. Therefore, plaintiff’s expression is not merely a personal preference but a necessary symbol of her identity”.

71. The 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 behaviour 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 recognise those rights.

Article 21 and the Transgenders

73. Article 21 of the Constitution of India reads as follows:

“21. **Protection of life and personal liberty.**—No person shall be deprived of his life or personal liberty except according to procedure established by law.”

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 recognised to be an essential part of the right to life and accrues to all persons on account of being humans. In *Francis Coralie Mullin v. UT of Delhi*³² (SCC pp. 618-19, paras 7 and 8), this 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. The 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.

32 (1981) 1 SCC 608 : 1981 SCC (Cri) 212

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

b **75.** Article 21, as already indicated, guarantees the protection of “personal autonomy” of an individual. In *Anuj Garg v. Hotel Assn. of India*³³ (SCC p. 15, paras 34-35), this Court held that personal autonomy includes both the negative right of not to be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in. Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India.

Legal recognition of Third/Transgender Identity

c **76.** The self-identified gender can be either male or female or a third gender. Hijras are identified as persons of third gender and are not identified either as male or female. Gender identity, as already indicated, refers to a person’s internal sense of being male, female or a transgender, for example hijras do not identify as female because of their lack of female genitalia or lack of reproductive capability. This distinction makes them separate from both male and female genders and they consider themselves neither man nor woman, but a “third gender”. Hijras, therefore, belong to a distinct socio-religious and cultural group and have, therefore, to be considered as a “third gender”, apart from male and female. The State of Punjab has treated all TGs as male which is not legally sustainable. The State of Tamil Nadu has taken lot of welfare measures to safeguard the rights of TGs, which we have to acknowledge. Few States like Kerala, Tripura, Bihar have referred TGs as “third gender or sex”. Certain States recognise them as “third category”. Few benefits have also been extended by certain other States. Our neighbouring countries have also upheld their fundamental rights and right to live with dignity.

f **77.** The Supreme Court of Nepal in *Sunil Babu Pant v. Nepal Govt.*³⁴, spoke on the rights of transgenders as follows:

g “the fundamental rights comprised under Part II of the Constitution are enforceable fundamental human rights guaranteed to the citizens against the State. For this reason, the fundamental rights stipulated in Part III are the rights similarly vested in the third gender people as human beings. The homosexuals and third gender people are also human beings as other men and women are, and they are the citizens of this country as well.... Thus, the people other than ‘men’ and ‘women’, including the people of ‘third gender’ cannot be discriminated. The State should recognise the existence of all natural persons including the people of third gender other than men and women. And it cannot deprive the

h 33 (2008) 3 SCC 1

34 (2008) 2 NJA LJ 262 : WP No. 917 of 2007, decided on 21-12-2007 (Nepal)

people of third gender from enjoying the fundamental rights provided by Part III of the Constitution.”

78. The Supreme Court of Pakistan in *Mohd. Aslam Khaki v. Senior Supt. of Police (Operation)*³⁵ had occasion to consider the rights of eunuchs and held as follows:

“Needless to observe that eunuchs in their rights are citizens of this country and subject to the Constitution of the Islamic Republic of Pakistan, 1973, their rights, obligations including right to life and dignity are equally protected. Thus no discrimination, for any reason, is possible against them as far as their rights and obligations are concerned. The Government functionaries both at Federal and Provincial levels are bound to provide them protection of life and property and secure their dignity as well, as is done in case of other citizens.”

79. We may remind ourselves of the historical presence of the third gender in this country as well as in the neighbouring countries.

80. 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.

81. Articles 14, 15, 16, 19 and 21, above discussion, would indicate, do not exclude hijras/transgenders from their ambit, but the Indian law on the whole recognise the paradigm of binary genders of male and female, based on one’s biological sex. As already indicated, we cannot accept the Corbett Principle of “biological test”, rather we prefer to follow the psyche of the person in determining sex and gender and prefer the “psychological test” instead of “biological test”. Binary notion of gender reflects in the Penal Code, 1860 for example, Section 8, 10, etc. and also in the laws related to marriage, adoption, divorce, inheritance, succession and other welfare legislations like NREGA, 2005, etc. Non-recognition of the identity of hijras/transgenders in the various legislations denies them equal protection of law and they face widespread discrimination.

82. Article 14 has used the expression “person” and 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.

³⁵ Constitution Petition No. 43 of 2009, decided on 22-3-2011 (Pak)

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.

DR A.K. SIKRI, J. (concurring).—I have carefully, and with lot of interest, gone through the perspicuous opinion of my Brother Radhakrishnan, J. I am entirely in agreement with the discussion contained in the said judgment on all the cardinal issues that have arisen for consideration in these proceedings. At the same time, having regard to the fact that the issues involved are of seminal importance, I am also inclined to pen down my thoughts.

85. As is clear, these petitions essentially raise an issue of “gender identity”, which is the core issue. It has two facets viz.:

(a) Whether a person who is born as a male with predominantly female orientation (or vice versa), has a right to get himself to be recognised as a female as per his choice more so, when such a person after having undergone operational procedure, changes his/her sex as well;

(b) Whether transgenders (TGs), who are neither males nor females, have a right to be identified and categorised as a “third gender”?

86. We would hasten to add that it is the second issue with which we are primarily concerned in these petitions though in the process of discussion, the first issue which is somewhat interrelated, has also popped up.

87. Indubitably, the issue of choice of gender identity has all the trappings of human rights. That apart, as it becomes clear from the reading of the judgment of my esteemed Brother Radhakrishnan, J., 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. Radhakrishnan, J. has exhaustively described the term “transgender” as an umbrella term which embraces within itself a wide range of identities and experiences including but not limited to pre-operative/post-operative transsexual people who strongly identify with the gender opposite to their biological sex i.e. male/female. Therein, the history of transgenders in India is also traced and while doing so, there is mention of the draconian legislation enacted during the British Rule, known as the Criminal Tribes Act, 1871 which treated, per se, the entire community of hijra persons as innately “criminals”, “addicted to the systematic commission of non-bailable offences”.

88. With these introductory remarks, I revert to the two facets of pivotal importance mentioned above. Before embarking on the discussion, I may clarify that my endeavour would be not to repeat the discussion contained in the judgment of my Brother Radhakrishnan, J., as I agree with every word written therein. However, at times, if some of the observations are renarrated, that would be only with a view to bring continuity in the thought process.

(1) *Re: Right of a person to have the gender of his/her choice*

89. When a child is born, at the time of birth itself sex is assigned to him/her. A child would be treated with that sex thereafter i.e. either a male or a female. However, as explained in detail in the accompanying judgment, some persons, though relatively very small in number, may be born with bodies which incorporate both or certain aspects of both male or female physiology. It may also happen that though a person is born as a male, because of some genital anatomy problems his innate perception may be that of a female and all his actions would be female oriented. The position may be exactly the opposite wherein a person born as female may behave like a male person.

90. In earlier times though one could observe such characteristics, at the same time the underlying rationale or reason behind such a behaviour was not known. Over a period of time, with in-depth study and research of such physical and psychological factors behaviour, the causes of this behaviour have become discernable which in turn, has led to some changes in societal norms. Society has started accepting, though slowly, the behavioural norms of such persons without treating them as abnormal. Further, medical science has leaped forward to such an extent that even physiological appearance of a person can be changed through surgical procedures, from male to female and vice versa. In this way, such persons are able to acquire the body which is in conformity with the perception of their gender/gender characteristics. In order to ensure that law also keeps pace with the aforesaid progress in medical science, various countries have come out with legislation conferring rights on such persons to recognise their gender identity based on reassigned sex after undergoing sex reassignment surgery (SRS). The law and the judgments given by the courts in other countries have been exhaustively and grandiloquently traversed by my learned Brother in his judgment, discussing amongst others, the Yogyakarta Principles, the relevant provisions of the Universal Declaration of Human Rights, 1948 and highlighting the statutory framework operating in those countries.

91. The genesis of this recognition lies in the acknowledgment of another fundamental and universal principle viz. “right of choice” given to an individual which is the inseparable part of human rights. It is a matter of historical significance that the 20th century is often described as “the age of rights”.

92. The most important lesson which was learnt as a result of the Second World War was the realisation by the Governments of various countries about human dignity which needed to be cherished and protected. It is for this

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a reason that in the UN Charter, 1945, adopted immediately after the Second World War, dignity of the individuals was mentioned as of core value. The almost contemporaneous Universal Declaration of Human Rights (1948) echoed same sentiments.

b **93.** The underlined message in the aforesaid documents is the acknowledgment that human rights are individual and have a definite linkage of human development, both sharing common vision and with a common purpose. Respect for human rights is the root for human development and realisation of full potential of each individual, which in turn leads to the augmentation of human resources with progress of the nation. The empowerment of the people through human development is the aim of human rights.

c **94.** There is thus a universal recognition that human rights are rights that “belong” to every person, and do not depend on the specifics of the individual or the relationship between the right-holder and the right-grantor. Moreover, human rights exist irrespective of the question whether they are granted or recognised by the legal and social system within which we live. They are devices to evaluate these existing arrangements: ideally, these arrangements should not violate human rights. In other words, human rights
d are moral, pre-legal rights. They are not granted by people nor can they be taken away by them.

e **95.** In international human rights law, equality is found upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination
f occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of the TGs, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation.

g **96.** Nevertheless, the Universal Declaration of Human Rights recognises that all human beings are born free and equal in dignity and rights and, since the Covenant’s provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognised in the Covenant. Moreover, the requirement contained in Article 2 of the Covenant that the rights enunciated will be exercised without discrimination of any kind based on certain specified grounds or other status clearly applies to cover persons with disabilities.

h **97.** India attained Independence within two years of adoption of the aforesaid UN Charter and it was but natural that such a Bill of Rights would assume prime importance insofar as thinking of the members of the Constituent Assembly goes. It in fact did and we found chapter on

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fundamental rights in Part III of the Constitution. It is not necessary for me, keeping in view the topic of today's discussion, to embark on detailed discussion on Part III. Some of the provisions relevant for our purposes would be Articles 14, 15, 16 and 21 of the Constitution which have already been adverted to in detail in the accompanying judgment. At this juncture what also needs to be emphasised simultaneously is that in addition to the fundamental rights, the Constitution-makers also deemed it proper to impose certain obligations on the State in the form of "Directive Principles of State Policy" (Part IV) as a mark of good governance. It is this Part which provides an ideal and purpose to our Constitution and delineates certain principles which are fundamental in the governance of the country. Dr Ambedkar had explained the purpose of these directive principles in the following manner (see *Constituent Assembly Debates*):

"The directive principles are like the Instruments of Instructions which were issued to the Governor General and the Governors of Colonies, and to those of India by the British Government under the 1935 Government of India Act. What is called "directive principles" is merely another name for the Instrument of Instructions. The only difference is that they are instructions to the legislature and the executive. Whoever capture power will not be free to do what he likes with it. In the exercise of it he will have to respect these instruments of instructions which are called directive principles."

98. The basic spirit of our Constitution is to provide each and every person of the nation equal opportunity to grow as a human being, irrespective of race, caste, religion, community and social status. Granville Austin while analysing the functioning of the Indian Constitution in the first 50 years has described three distinguished strands of the Indian Constitution: (i) protecting national unity and integrity, (ii) establishing the institution and spirit of democracy; and (iii) fostering social reforms. The strands are mutually dependent, and inextricably intertwined in what he elegantly describes as "a seamless web". And there cannot be social reforms till it is ensured that each and every citizen of this country is able to exploit his/her potentials to the maximum. The Constitution, although drafted by the Constituent Assembly, was meant for the People of India and that is why it is given by the People to themselves as expressed in the opening words "We the People". What is the most important gift to the common person given by this Constitution is "fundamental rights" which may be called Human Rights as well.

99. The concept of equality in Article 14 so also the meaning of the words "life", "liberty" and "law" in Article 21 have been considerably enlarged by judicial decisions. Anything which is not "reasonable, just and fair" is not treated to be equal and is, therefore, violative of Article 14.

100. Speaking for the vision of our Founding Fathers, in *State of Karnataka v. Ranganatha Reddy*³⁶, this Court speaking through Krishna Iyer, J. observed: (SCC p. 496, paras 44-45)

36 (1977) 4 SCC 471 : AIR 1978 SC 215

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a “44. The social philosophy of the Constitution shapes creative judicial vision and orientation. Our nation has, as its dynamic doctrine, economic democracy *sans* which political democracy is chimerical. We say so because our Constitution, in Parts III and IV and elsewhere, ensouls such a value system, and the debate in this case puts precisely this soul in peril.

b 45. ... Our thesis is that the dialectics of social justice should not be missed if the synthesis of Part III and Part IV is to influence State action and court pronouncements. Constitutional problems cannot be studied in a socio-economic vacuum, since socio-cultural changes are the source of the new values, and sloughing off old legal thought is part of the process of the new equity-loaded legality. A Judge is a social scientist in his role as constitutional invigilator and fails functionally if he forgets this dimension in his complex duties.” (emphasis in original)

c **101.** While interpreting Article 21, this Court has comprehended such diverse aspects as children in jail entitled to special treatment (*Sheela Barse v. Union of India*³⁷); health hazard due to pollution (*M.C. Mehta v. Union of India*³⁸); beggars’ interest in housing (*Kali Dass v. State of J&K*³⁹); health hazard from harmful drugs (*Vincent Panikurlangara v. Union of India*⁴⁰);
d right to speedy trial (*Raghubir Singh v. State of Bihar*⁴¹); handcuffing of prisoners (*Aeltemesh Rein v. Union of India*⁴²); delay in execution of death sentence; immediate medical aid to injured persons (*Parmanand Katara v. Union of India*⁴³); starvation deaths (*Kishen Pattnayak v. State of Orissa*⁴⁴); the right to know [*Reliance Petrochemicals Ltd. v. Indian Express Newspapers Bombay (P) Ltd.*⁴⁵]; right to open trial (*Kehar Singh v. State (Delhi Admn.)*⁴⁶ and inhuman conditions in after-care home (*Vikram Deo Singh Tomar v. State of Bihar*⁴⁷).

e **102.** The most remarkable feature of this expansion of Article 21 is that many of the non-justiciable directive principles embodied in Part IV of the Constitution have now been resurrected as enforceable fundamental rights by
f the magic wand of judicial activism, playing on Article 21 e.g.:

37 (1986) 3 SCC 596 : 1986 SCC (Cri) 337

38 (1987) 4 SCC 463

g 39 (1987) 3 SCC 430

40 (1987) 2 SCC 165 : 1987 SCC (Cri) 329

41 (1986) 4 SCC 481 : 1986 SCC (Cri) 511

42 (1988) 4 SCC 54 : 1988 SCC (Cri) 900 : AIR 1988 SC 1768

43 (1989) 4 SCC 286 : 1989 SCC (Cri) 721

44 1989 Supp (1) SCC 258 : AIR 1989 SC 677

h 45 (1988) 4 SCC 592 : AIR 1989 SC 190

46 (1988) 3 SCC 609 : 1988 SCC (Cri) 711 : AIR 1988 SC 1883

47 1988 Supp SCC 734 : 1989 SCC (Cri) 66 : AIR 1988 SC 1782

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(a) Right to pollution-free water and air (*Subhash Kumar v. State of Bihar*⁴⁸).

(b) Right to a reasonable residence (*Shantistar Builders v. Narayan Khimalal Totame*⁴⁹). a

(c) Right to food, clothing, decent environment; and even protection of cultural heritage (*Ramsharan Autyanuprasi v. Union of India*⁵⁰).

(d) Right of every child to a full development (*Shantistar Builders v. Narayan Khimalal Totame*⁴⁹). b

(e) Right of residents of hilly areas to access to roads (*State of H.P. v. Umed Ram Sharma*⁵¹). b

(f) Right to education (*Mohini Jain v. State of Karnataka*⁵²), but not for a professional degree (*Unni Krishnan, J.P. v. State of A.P.*⁵³). c

103. A corollary of this development is that while so long the negative language of Article 21 and use of the word “deprived” was supposed to impose upon the State the negative duty not to interfere with the life or liberty of an individual without the sanction of law, the width and amplitude of this provision has now imposed a positive obligation (*Vincent Panikurlangara v. Union of India*⁴⁰) upon the State to take steps for ensuring to the individual a better enjoyment of his life and dignity e.g.:

(i) Maintenance and improvement of public health (*Vincent Panikurlangara v. Union of India*⁴⁰). d

(ii) Elimination of water and air pollution (*M.C. Mehta v. Union of India*³⁸).

(iii) Improvement of means of communication (*State of H.P. v. Umed Ram Sharma*⁵¹). e

(iv) Rehabilitation of bonded labourers (*Bandhua Mukti Morcha v. Union of India*⁵⁴). e

(v) Providing human conditions in prisons (*Sher Singh v. State of Punjab*⁵⁵) and protective homes (*Sheela Barse v. Union of India*³⁷).

(vi) Providing hygienic condition in a slaughterhouse (*Buffalo Traders Welfare Assn. v. Maneka Gandhi*⁵⁶). f

48 (1991) 1 SCC 598 : AIR 1991 SC 420

49 (1990) 1 SCC 520 : AIR 1990 SC 630

50 1989 Supp (1) SCC 251 : AIR 1989 SC 549

51 (1986) 2 SCC 68

52 (1992) 3 SCC 666

53 (1993) 1 SCC 645

40 (1987) 2 SCC 165 : 1987 SCC (Cri) 329

38 (1987) 4 SCC 463

54 (1984) 3 SCC 161 : 1984 SCC (L&S) 389

55 (1983) 2 SCC 344 : 1983 SCC (Cri) 461 : AIR 1983 SC 465

37 (1986) 3 SCC 596 : 1986 SCC (Cri) 337

56 1994 Supp (3) SCC 448

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a **104.** The common golden thread which passes through all these pronouncements is that Article 21 guarantees enjoyment of life by all citizens of this country with dignity, viewing this human right in terms of human development.

b **105.** The concepts of justice social, economic and political, equality of status and of opportunity and of assuring dignity of the individual incorporated in the Preamble, clearly recognise the right of one and all amongst the citizens of these basic essentials designed to flower the citizen's personality to its fullest. The concept of equality helps the citizens in reaching their highest potential. Thus, the emphasis is on the development of an individual in all respects.

c **106.** The basic principle of the dignity and freedom of the individual is common to all nations, particularly those having democratic set-up. Democracy requires us to respect and develop the free spirit of human being which is responsible for all progress in human history. Democracy is also a method by which we attempt to raise the living standard of the people and to give opportunities to every person to develop his/her personality. It is founded on peaceful co-existence and cooperative living. If democracy is based on the recognition of the individuality and dignity of man, as a fortiori *d* we have to recognise the right of a human being to choose his sex/gender identity which is integral to his/her personality and is one of the most basic aspect of self-determination, dignity and freedom. In fact, there is a growing recognition that the true measure of development of a nation is not economic growth; it is human dignity.

e **107.** More than 225 years ago, Immanuel Kant propounded the doctrine of free will, namely, the free willing individual as a natural law ideal. Without going into the detailed analysis of his aforesaid theory of justice (as we are not concerned with the analysis of his jurisprudence) what we want to point out is his emphasis on the "freedom" of human volition. The concepts of volition and freedom are "pure", that is not drawn from experience. They are independent of any particular body of moral or legal rules. They are *f* presuppositions of all such rules, valid and necessary for all of them.

g **108.** Over a period of time, two divergent interpretations of the Kantian criterion of justice came to be discussed. One trend was an increasing stress on the maximum of individual freedom of action as the end of law. This may not be accepted and was criticised by the protagonist of "hedonist utilitarianism", notably Bentham. This school of thought laid emphasis on the welfare of the society rather than an individual by propounding the principle of maximum of happiness to most of the people. Fortunately, in the instant case, there is no such dichotomy between the individual freedom/liberty we are discussing, as against public good. On the contrary, granting the right to choose gender leads to public good. The second tendency of the *h* Kantian criterion of justice was found in reinterpreting "freedom" in terms not merely of absence of restraint but in terms of attainment of individual

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perfection. It is this latter trend with which we are concerned in the present case and this holds good even today. As pointed out above, after the Second World War, in the form of the UN Charter and thereafter there is more emphasis on the attainment of individual perfection. In that united sense at least there is a revival of the natural law theory of justice. Blackstone, in the opening pages in his “Vattelian Fashion” said that the principal aim of society “is to protect individuals in the enjoyment of those absolute rights which were vested in them by the immutable laws of nature....”

109. In fact, the recognition that every individual has fundamental right to achieve the fullest potential, is founded on the principle that all round growth of an individual leads to common public good. After all, human beings are also valuable asset of any country who contribute to the growth and welfare of their nation and the society. A person who is born with a particular sex and is forced to grow up identifying with that sex, and not a sex that his/her psychological behaviour identifies with, faces innumerable obstacles in growing up. In an article appeared in the magazine *Eye* of the *Sunday Indian Express* (March 9-15, 2014) a person born as a boy but with trappings of female (who is now a female after SRS) has narrated these difficulties in the following manner:

“The other children treated me as a boy, but I preferred playing with girls. Unfortunately, grown-ups consider that okay only as long as you are a small child. The constant inner conflict made things difficult for me and, as I grew up, I began to dread social interactions.”

Such a person, carrying dual entities simultaneously, would encounter mental and psychological difficulties which would hinder his/her normal mental and even physical growth. It is not even easy for such a person to take a decision to undergo SRS procedure which requires strong mental state of affairs. However, once that is decided and the sex is changed in tune with psychological behaviour, it facilitates spending the life smoothly. Even the process of transition is not smooth. The transition from a man to a woman is not an overnight process. It is a “painfully” long procedure that requires a lot of patience. A person must first undergo hormone therapy and, if possible, live as a member of the desired sex for a while. To be eligible for hormone therapy, the person needs at least two psychiatrists to certify that he or she is mentally sound, and schizophrenia, depression and transvestism have to be ruled out first. The psychiatric evaluation involved serious questions on how Sunaina felt, when she got to know of her confusion and need for sex change, whether she is a recluse, her socio-economic condition, among other things.

110. In the same article appearing in *Eye* referred to above, the person who had undergone the operation and became a complete girl, Sunaina (name changed) narrates the benefit which ensued because of change in sex, in harmony with her emotional and psychological character, as is clear from the following passage in that article:

“Like many other single people in the city, she can spend hours watching *Friends*, and reading thrillers and *Harry Potter*. A new

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a happiness has taken seed in her and she says it does not feel that she ever had a male body. “I am a person who likes to laugh. Till my surgery, behind every smile of mine, there was a struggle. Now its about time that I laughed for real. I have never had a relationship in my life, because somewhere, I always wanted to be treated as a girl. Now, that I am a woman, I am open to a new life, new relationships. I don’t have to hide anymore, I don’t feel trapped anymore. I love coding and my job. I love cooking. I am learning French and when my left foot recovers fully, I plan to learn dancing. And, for the first time this year, I will vote with my new name. I am looking forward to that,” she says.

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c **111.** If a person has changed his/her sex in tune with his/her gender characteristics and perception, which has become possible because of the advancement in medical science, and when that is permitted by/in medical ethics with no legal embargo, we do not find any impediment, legal or otherwise, in giving due recognition to the gender identity based on the reassigned sex after undergoing SRS.

d **112.** For these reasons, we are of the opinion that even in the absence of any statutory regime in this country, a person has a constitutional right to get the recognition as male or female after SRS, which was not only his/her gender characteristic but has become his/her physical form as well.

(2) Re: Right of TG to be identified and categorised as “third gender”

e **113.** At the outset, it may be clarified that the term “transgender” is used in a wider sense, in the present age. Even gay, lesbian, bisexual are included by the descriptor “transgender”. Etymologically, the term “transgender” is derived from two words, namely, “trans” and “gender”. Former is a Latin word which means “across” or “beyond”. The grammatical meaning of “transgender”, therefore, is across or beyond gender. This has come to be known as an umbrella term which includes gay men, lesbians, bisexuals, and cross-dressers within its scope. However, while dealing with the present issue we are not concerned with this aforesaid wider meaning of the expression
f “transgender”.

g **114.** It is to be emphasised that transgender in India have assumed distinct and separate class/category which is not prevalent in other parts of the world except in some neighbouring countries. In this country, the TG community comprise of hijras, eunuch, Kothis, Aravanis, Jogappas, Shiv-Shakthis, etc. In Indian community transgender are referred as hijra or the third gendered people. There exists wide range of transgender-related identities, cultures, or experience — including hijras, Aravanis, Kothis, Jogtas/Jogappas, and Shiv-Shakthis. (Hijras: They are biological males who reject their masculine identity in due course of time to identify either as women, or “not men”. Aravanis: Hijras in Tamil Nadu identify as “Aravani”. Kothi: Kothis are heterogeneous group. Kothis can be described as biological
h males who show varying degrees of “femininity”. Jogtas/Jogappas: They are those who are dedicated to serve as servant of Goddess Renukha Devi whose

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temples are present in Maharashtra and Karnataka. Sometimes, Jogti hijras are used to denote such male-to-female transgender persons who are devotees of Goddess Renukha and are also from the Hijra community. Shiv-Shakthis: They are considered as males who are possessed by or particularly close to a goddess and who have feminine gender expression.) The way they behave and act differs from the normative gender role of a man and woman. For them, furthering life is far more difficult since such people are neither categorised as men nor women and this deviation is unacceptable to the society's vast majority. Endeavour to live a life with dignity is even worse. Obviously transvestites, the hijra beg from merchants who quickly, under threat of obscene abuse, respond to the silent demands of such detested individuals. On occasion, especially festival days, they press their claims with boisterous and ribald singing and dancing. [*A Right to Exist: Eunuchs and the State in Nineteenth Century India*, Laurence W. Preston, *Modern Asian Studies*, Vol. 21, No. 2 (1987), pp. 371-87.]

115. Therefore, we make it clear at the outset that when we discuss about the question of conferring distinct identity, we are restrictive in our meaning which has to be given to the TG community i.e. hijra, etc., as explained above.

116. Their historical background and individual scenario has been stated in detail in the accompanying judgment rendered by my learned Brother Radhakrishnan, J. A few things which follow from this discussion are summed up below:

116.1. Though in the past TGs in India were treated with great respect, that does not remain the scenario any longer. Attrition in their status was triggered with the passing of the Criminal Tribes Act, 1871 which deemed the entire community of hijra persons as innately "criminal" and "adapted to the systematic commission of non-bailable offences". This dogmatism and indoctrination of the Indian people with aforesaid presumption, was totally capricious and nefarious. There could not have been more harm caused to this community with the passing of the aforesaid brutal legislation during the British Regime with the vicious and savage mind-set. To add insult to the irreparable injury caused, Section 377 of the Penal Code was misused and abused as there was a tendency, in the British period, to arrest and prosecute TG persons under Section 377 merely on suspicion. To undergo this sordid historical harm caused to TGs of India, there is a need for incessant efforts with effervescence.

116.2. There may have been marginal improvement in the social and economic condition of TGs in India. It is still far from satisfactory and these TGs continue to face different kinds of economic blockade and social degradation. They still face multiple forms of oppression in this country. Discrimination qua them is clearly discernable in various fields including healthcare, employment, education, social cohesion, etc.

116.3. TGs are also citizens of this country. They also have equal right to achieve their full potential as human beings. For this purpose, not only are

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a they entitled to proper education, social assimilation, access to public and other places but employment opportunities as well. The discussion above while dealing with the first issue, therefore, equally applies to this issue as well.

b **117.** We are of the firm opinion that by recognising such TGs as third gender, they would be able to enjoy their human rights, to which they are largely deprived of for want of this recognition. As mentioned above, the issue of transgender is not merely a social or medical issue but there is a need to adopt human rights approach towards transgenders which may focus on functioning as an interaction between a person and their environment highlighting the role of society and changing the stigma attached to them. TGs face many disadvantages due to various reasons, particularly for gender abnormality which in certain level leads to physical and mental disability. Up till recently they were subjected to cruelty, pity or charity. Fortunately, there is a paradigm shift in thinking from the aforesaid approach to a rights-based approach. Though, this may be the thinking of human rights activist, the society has not kept pace with this shift. There appears to be limited public knowledge and understanding of same-sex sexual orientation and people whose gender identity and expression are incongruent with their biological sex. As a result of this approach, such persons are socially excluded from the mainstream of the society and they are denied equal access to those fundamental rights and freedoms that the other people enjoy freely. (See *Hijras/Transgender Women in India: HIV, Human Rights and Social Exclusion*, UNDP Report on India Issue: December 2010.)

e **118.** Some of the common and reported problem that transgenders most commonly suffer are: harassment by the police in public places, harassment at home, police entrapment, rape, discriminations, abuse in public places, et al. The other major problems that the transgender people face in their daily life are discrimination, lack of educational facilities, lack of medical facilities, homelessness, unemployment, depression, hormone pill abuse, tobacco and alcohol abuse, and problems related to marriage and adoption. In spite of the adoption of the Universal Declaration of Human Rights (UDHR) in the year 1948, the inherent dignity, equality, respect and rights of all human beings throughout the world, the transgenders are denied basic human rights. This denial is premised on a prevalent juridical assumption that the law should target discrimination based on sex (i.e. whether a person is anatomically male or female), rather than gender (i.e. whether a person has qualities that society consider masculine or feminine (Katherine M. Franke, *“The Central Mistake of Sex Discrimination Law: The Disaggregation of Sex from Gender”*⁵⁷) (arguing that by defining sex in biological terms, the law has failed to distinguish sex from gender, and sexual differentiation from sex discrimination). Transgender people are generally excluded from the society and people think transgenderism as a medical disease. Much like the disability, which in earlier times was considered as an illness but later on

57 (1995) 144 University of Pennsylvania Law Review 1, 3.

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looked upon as a rights-based approach. The question whether transgenderism is a disease is hotly debated in both the transgender and medical-psychiatric communities. But a prevalent view regarding this is that transgenderism is not a disease at all, but a benign normal variant of the human experience akin to left-handedness.

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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 licence, the right to education, employment, health and so on.

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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. The Constitution has fulfilled its duty of providing rights to transgenders. Now it is time for us to recognise this and to extend and interpret the Constitution in such a manner to ensure a dignified life for transgender people. All this can be achieved if the beginning is made with the recognition of TG as third gender.

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121. In order to translate the aforesaid rights of TGs into reality, it becomes imperative to first assign them their proper “sex”. As is stated earlier, at the time of birth of a child itself, sex is assigned. However, it is either male or female. In the process, the society as well as law, has completely ignored the basic human right of TGs to give them their appropriate sex categorisation. Up to now, they have either been treated as male or female. This is not only improper as it is far from truth, but undignified to these TGs and violates their human rights.

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122. Though there may not be any statutory regime recognising “third gender” for these TGs, however, we find enough justification to recognise this right of theirs in natural law sphere. Further, such a justification can be traced to the various provisions contained in Part III of the Constitution relating to “Fundamental Rights”. In addition to the powerful justification accomplished in the accompanying opinion of my esteemed Brother Radhakrishnan, J., additional *raison d’être* for this conclusion is stated hereinafter.

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123. We are in the age of democracy, that too substantive and liberal democracy. Such a democracy is not based solely on the rule of people through their representatives, namely, formal democracy. It also has other precepts like rule of law, human rights, independence of judiciary, separation of powers, etc.

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124. There is a recognition to the hard reality that without protection for human rights there can be no democracy and no justification for democracy. In this scenario, while working within the realm of separation of powers

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a (which is also fundamental to the substantive democracy), the judicial role is not only to decide the dispute before the Court, but to uphold the rule of law and ensure access to justice to the marginalised section of the society. It cannot be denied that TGs belong to the unprivileged class which is a marginalised section.

b **125.** The role of the Court is to understand the central purpose and theme of the Constitution for the welfare of the society. Our Constitution, like the law of the society, is a living organism. It is based on a factual and social reality that is constantly changing. Sometimes a change in the law precedes societal change and is even intended to stimulate it. Sometimes, a change in the law is the result in the social reality. When we discuss about the rights of TGs in the constitutional context, we find that in order to bring about complete paradigm shift, the law has to play more predominant role. As TGs c in India, are neither male nor female, treating them as belonging to either of the aforesaid categories, is the denial of these constitutional rights. It is the denial of social justice which in turn has the effect of denying political and economic justice.

126. In *Dattatraya Govind Mahajan v. State of Maharashtra*⁵⁸ this Court observed: (SCC p. 570, para 22)

d “22. ... Our Constitution is a tryst with destiny, preambled with lucent solemnity in the words ‘Justice — social, economic and political’. The three great branches of Government, as creatures of the Constitution, must remember this promise in their functional role and forget at their peril, for to do so will be a betrayal of those high values and goals which e this nation set for itself in its Objectives Resolution and whose elaborate summation is in Part IV of the Paramount Parchment. The history of our country’s struggle for Independence was the story of battle between the forces of socio-economic exploitation and the masses of deprived people of varying degrees and the Constitution sets the new sights of the nation. ... Once we grasp the dharma of the Constitution, the new orientation of f the karma of adjudication becomes clear. Our Founding Fathers, aware of our social realities, forged our fighting faith and integrating justice in its social, economic and political aspects. While contemplating the meaning of the articles of the Organic Law, the Supreme Court shall not disown social justice.”

g **127.** Oliver Wendell Holmes said: “The life of law has not been logic: it has been experience.”* It may be added that “the life of law is not just logic or experience. The life of law is renewable based on experience and logic, which adapted law to the new social reality”. Recognising this fact, the aforesaid provisions of the Constitution are required to be given new and dynamic meaning with the inclusion of rights of TGs as well. In this process, the first and foremost right is to recognise TGs as “third gender” in law as

h 58 (1977) 2 SCC 548

* Ed.: Oliver Wendell Holmes: *The Common Law*, p. 5

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well. This is a recognition of their right to equality enshrined in Article 14 as well as their human right to life with dignity, which is the mandate of Article 21 of the Constitution. This interpretation is in consonance with new social needs. By doing so, this Court is only bridging the gap between the law and life and that is the primary role of the Court in a democracy. It only amounts to giving purposive interpretation to the aforesaid provisions of the Constitution so that it can adapt to the changes in reality. Law without purpose has no *raison d'être*. The purpose of law is the evolution of a happy society. As Justice Krishna Iyer has aptly put it:

“The purpose of law is the establishment of the welfare of society — and a society whose members enjoy welfare and happiness may be described as a just society. It is a negation of justice to say that some members, some groups, some minorities, some individuals do not have welfare: on the other hand they suffer from ill-fare. So it is axiomatic that law, if it is to fulfil itself, must produce a contented, dynamic society which is at once meting out justice to its members.”*

128. It is now very well-recognised that the Constitution is a living character; its interpretation must be dynamic. It must be understood in a way that (*sic* is) intricate and advances modern reality. The judiciary is the guardian of the Constitution and by ensuring to grant legitimate right that is due to TGs, we are simply protecting the Constitution and the democracy inasmuch as judicial protection and democracy in general and of human rights in particular is a characteristic of our vibrant democracy.

129. As we have pointed out above, our Constitution inheres liberal and substantive democracy with the rule of law as an important and fundamental pillar. It has its own internal morality based on dignity and equality of all human beings. The rule of law demands protection of individual human rights. Such rights are to be guaranteed to each and every human being. These TGs, even though insignificant in numbers, are still human beings and therefore they have every right to enjoy their human rights.

130. In *National Human Rights Commission v. State of Arunachal Pradesh*⁵⁹, this Court observed: (SCC p. 751, para 20)

“20. We are a country governed by the rule of law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws.”

131. The rule of law is not merely public order. The rule of law is social justice based on public order. The law exists to ensure proper social life. Social life, however, is not a goal in itself but a means to allow the individual to live in dignity and development himself. The human being and human rights underlie this substantive perception of the rule of law, with a proper balance among the different rights and between human rights and the proper needs of society. The substantive rule of law “is the rule of proper law, which

* Ed.: Avin Nagaria: *Justice Krishna Iyer: Our Heritage.*

59 (1996) 1 SCC 742 : AIR 1996 SC 1234

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a balances the needs of society and the individual”. This is the rule of law that strikes a balance between society’s need for political independence, social equality, economic development, and internal order, on the one hand, and the needs of the individual, his personal liberty, and his human dignity on the other. It is the duty of the Court to protect this rich concept of the rule of law.

b **132.** By recognising TGs as third gender, this Court is not only upholding the rule of law but also advancing justice to the class, so far deprived of their legitimate natural and constitutional rights. It is, therefore, the only just solution which ensures justice not only to TGs but also justice to the society as well. Social justice does not mean equality before law in papers but to translate the spirit of the Constitution, enshrined in the Preamble, the Fundamental Rights and the Directive Principles of State Policy into action, whose arms are long enough to bring within its reach and embrace this right of recognition to TGs which legitimately belongs to them.

c **133.** Aristotle opined that treating all equal things equal and all unequal things unequal amounts to justice. Kant was of the view that at the basis of all conceptions of justice, no matter which culture or religion has inspired them, lies the golden rule that you should treat others as you would want everybody to treat everybody else, including yourself. When Locke conceived of individual liberties, the individuals he had in mind were independently rich males. Similarly, Kant thought of economically self-sufficient males as the only possible citizens of a liberal democratic State. These theories may not be relevant in today’s context as it is perceived that the bias of their perspective is all too obvious to us. In post-traditional liberal democratic theories of justice, the background assumption is that humans have equal value and should, therefore, be treated as equal, as well as by equal laws. This can be described as “Reflective Equilibrium”. The method of Reflective Equilibrium was first introduced by Nelson Goodman in *Fact, Fiction and Forecast* (1955). However, it is John Rawls who elaborated this method of reflective equilibrium by introducing the conception of “Justice as Fairness”. In his *A Theory of Justice*, Rawls has proposed a model of just institutions for democratic societies. Herein he draws on certain pre-theoretical elementary moral beliefs (“considered judgments”), which he assumes most members of democratic societies would accept. “Justice as fairness [...] tries to draw solely upon basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime and the public traditions of their interpretations. Justice as fairness is a political conception in part because it starts from within a certain political tradition.” Based on this preliminary understanding of just institutions in a democratic society, Rawls aims at a set of universalistic rules with the help of which the justice of present formal and informal institutions can be assessed. The ensuing conception of justice is called “justice as fairness”. When we combine Rawls’ notion of Justice as Fairness with the notions of Distributive Justice, to which Noble Laureate Prof. Amartya Sen has also subscribed, we get jurisprudential basis for doing justice to the vulnerable groups which

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definitely include TGs. Once it is accepted that TGs are also part of vulnerable groups and marginalised section of the society, we are only bringing them within the fold of the aforesaid rights recognised in respect of other classes falling in the marginalised group. This is the minimum riposte in an attempt to assuage the insult and injury suffered by them so far as to pave way for fast-tracking the realisation of their human rights. a

134. The aforesaid, thus, are my reasons for treating TGs as “third gender” for the purposes of safeguarding and enforcing appropriately their rights guaranteed under the Constitution. These are my reasons in support of our Constitution to the two issues in these petitions. b

ORDER OF THE COURT

135. We, therefore, declare:

135.1. Hijras, eunuchs, apart from binary genders, be treated as “third gender” for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by Parliament and the State Legislature. c

135.2. 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.

135.3. We direct the 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

135.4. The Centre and State Governments are directed to operate separate HIV serosurveillance centres since hijras/transgenders face several sexual health issues.

135.5. The Centre and State Governments should 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. e

135.6. The Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities. f

135.7. The Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.

135.8. The Centre and State Governments should 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. g

135.9. The Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

136. We are informed an expert committee has already been constituted to make an in-depth study of the problems faced by the transgender community and suggest measures that can be taken by the Government to h

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a ameliorate their problems and to submit its report with the recommendations within three months of its constitution. Let the recommendations be examined based on the legal declaration made in this judgment and implemented within six months.

137. The writ petitions are, accordingly, allowed as above.

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b (BEFORE K.S.P. RADHAKRISHNAN AND DR A.K. SIKRI, JJ.)
DHARAM DEO YADAV .. Appellant;

Versus

STATE OF UTTAR PRADESH .. Respondent.

Criminal Appeal No. 369 of 2006[†], decided on April 11, 2014

c **A. Criminal Trial — Proof — Ocular evidence vis-à-vis scientific or forensic evidence — Both types of evidence compared and discussed by exploring the meaning of science — Weaknesses of, and difficulty in obtaining ocular evidence pointed out (that is, its dependence on observation, external influences, forgetfulness, etc.) — Comparative accuracy and lack of such infirmities in scientific and forensic evidence, indicated — Clarified that scientific/forensic evidence may not be the surest test but necessity of promoting scientific evidence in the interest of criminal justice system, stressed — In a case based on circumstantial evidence, pivotal role of scientific and technical evidence pointed out — Evidence Act, 1872, Ss. 3 to 5**

e **B. Criminal Trial — Circumstantial Evidence — Clues and Tell-Tale Signs/Forensics — Crime scene management — Need of precautions during collection, packing and forwarding of incriminating materials — Importance of forensics in a case based on circumstantial evidence, stated — In present case, skeleton and some cloth were properly packed and there were no procedural lapses — No skin was found, the dead body being buried for about a year — Non-compliance with Ss. 100(4) & (5) CrPC found inconsequential — Criminal Procedure Code, 1973, Ss. 100 and 174**

f **C. Criminal Trial — Identification by DNA test — Meaning and importance thereof — Sources from which DNA can be taken, pointed out — Reliability of DNA test, discussed**

g **D. Criminal Trial — Identification of dead body/corpus delicti — Identification of skeleton of deceased as daughter of complainant father, whether proved — (a) Inquest proceedings having been properly conducted by PW 16 and inquest memo prepared by PW 15, (b) skeleton of deceased properly kept in sealed wooden box, (c) sample for DNA test (bones and teeth extracted from the skeleton) being sent in sealed cover and PW 21 being satisfied about its authenticity, (d) post-mortem tests conducted by doctors, PW 19 and others, (e) superimposition test and blood group test**

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[†] From the Judgment and Order dated 30-9-2005 of the High Court of Judicature of Allahabad in CrI. A. No. 1000 of 2003

STANDING COMMITTEE ON SOCIAL JUSTICE AND
EMPOWERMENT (2016-17)

(SIXTEENTH LOK

MINISTERS OF SOCIAL JUSTICE AND EMPOWERMENT
(DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT)

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS)

FORTY-THIRD REPORT



LOK SABHA SECRETARIAT
NEW DELHI

July 2017 (Shardha 1993)

F O R T-Y H I R E P O R T

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COMPOSITION OF THE STANDING COMMITTEE
JUSTICE AND EMPOWERMENT (2016)

SHRI RAMESH BHARPERSON

MEMBERS

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New Delhi ;
19 July, 2017
28 Ashad (As, a k 1 a 9) 3

RAMESH BAIS,
Chaperrson
Standing Committee on
Social Justice and Em

REPORT

PART A

A CONSEICLAN

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R 2 É F J K K c L J y B L T B U É J P F 2 y J K K c L . J É u o J l B L É K J R R T

u F y B R L 2 0 L 1 T R T 1 p J P F 2 y L F y L É J R T R L F 2 0 y L R J B e F I

J y B L 0 2 1 L h U . K F É L L J h h 2 F y P e T y P R M

DFLpIT y P 1 T L Jy B L G P J P T L 5 2 p T 1 y e T y P R L P 23L 2 h T 1
 R U 1 p T F K K J y É T L I T y P 1 T R L R F y É T L W F n 1 J R b C 1 J y I
 R T Ü U J K L 1 T J K P 1 L F R R U T R M
 DpL: I T y P 1 T L Jy B L G P J P T L 5 2 p T 1 y e T y P R L R 1 2 U K B L
 h 1 2 . K T E R J L a L 0 J É T B L . c L W F n 1 J R b C 1 J y R a T y B T 1
 a T y B T 1 L B c R h 1 2 1 F J r L R 2 É F J K L h 1 T R R U 1 T r L B T h
 R 2 É F J K L R P F a e J r L T P É M L Jy B L Jy c L F y R F R P T y É T I
 a T y B T 1 L F R L F e e L 1 J K L Jy B L F K K T a J K M
 Dp F : L I T y P 1 T L L Jy B L G R J P 2 T U L K B L p T u d T y l e F y P R T 1 L e T
 h 1 2 p F B T L e T B F É J K L É J I T L P 2 L C 5 R L F y L P 1 T L 1 2
 R T h J I J P T L h U . K F É L P 2 F K E P R L Jy B L 2 P 1 T 1 L 0 J É F K I
 DpIFIF y P 1 T L Jy B L G P J P T L 5 2 p T 1 y e T y P R L R 1 2 U K B L J K
 p J I F 2 U R L R 2 É F J K L o T K 0 J I T P R É L E F y R M 0 2 1 L P 1 T F
 DpEIF y P 1 T L Jy B L G P J P T L 5 2 p T 1 y e T y P R L R 1 2 U K B L P
 J o J I T y T R R L L R 2 L P 1 J P L C 5 R L 0 T T K L P 1 J P L P 1 T c L J
 R 2 É F J K L K F 0 T L Jy B L . T L y 2 P L P 1 T J P T B L J R L U y P 2 U
 DFLÜIT y P 1 T L Jy B L P 1 T L G P J P T L 5 2 p T 1 y e T y P R L P 22U
 1 T a J F y L P 1 T F 1 L 1 T R h T É P L Jy B L h K J É T L F y L P 1 T L
 F y L 2 U 1 L É U K P U 1 I K L Jy B L R 2 É F J K L K F 0 T M

L

L L C 1 T L W 2 y v . K T L I 2 U 1 P L L B F 1 T É P T B L P 1 T L 1 T h 2
 T Ü J e F y T B L F y L P 1 T L K F a 1 P L 2 0 L U K E a t J K B y B I E F K J R J P F
 l É 2 e e T y B J P F 2 y L . T L F e h K T e T y P T B L o F P 1 F y L J L 1
 m É É 2 1 B F y h K c l r P L I 2 e e F P P T T v R L 1 T É 2 e e T y B J P F 2 y
 F e h K T e T y P T L B É P 2 . L T l s r L i g t s M L Y T J y o 1 F K T r L J L É K J I F 0
 o J R L 0 F K T B L Y F y c H L R P 0 1 L c G 2 É F J K L ' U R P F É f T L y F y B L P - 1 e T L 2
 G U h 1 T e T L I 2 U 1 P L 1 F r y l i g G B h R T i T n u t h e y r l r É K J I F 0 F É J P F 2 y
 B T 0 F y F P F 2 y L 2 0 L P 1 J y R a T y B T d U M B a C T L E T P y W B g y v . K T L
 ' U y T r L L i g J R L É K J I F 0 F T B L P 1 J P L K T R . F J y r L a J e L 2 1 L . F
 F y L P 1 T L É J P T a 2 1 c L 2 0 L C 1 J y R a T y B T 1 M L L

L
 M L m L d 1 F p J P T L Y T e . T 1 L (F K K L P F P K T B L & C 1 r E L O F a
 i g t s & L o J R L F y P 1 2 B U É T B L F y H S O h T e J L G J . r L J g t 2 s L L t e i L
 C F 1 U É 1 F I M G C p J L L Y (d F K K L o J R L h J R R T B É l m h L i g t k f l M L G J . 1

L
 N L m L d 1 F p J P T L Y T e . T 1 L (F K K L o J R L J K R 2 L F y P 1 2 B U É
 C 1 T L (F K K L F R r L 1 2 o T p T 1 r L h L T y B F y a L 0 2 1 L É 2 y R F B T

L
 O L m R L P 1 T L d 1 F p J P D 2 Y I E G . 1 T F L C F K R I É 0 C T L I G T F B J r D Y
 R 2 e H y 0 F h E F J R L y T R L L h 2 R R F . K T I 2 0 2 I G I 2 É F T K L Y F U y R P R F H
 - e h 2 o T I L E T y P a 1 T T L P 2 L J K K L P 1 T L h 1 2 p F R F 2 y R L 2 0
 t o I p B) M L D F : L G h T É F J K L - e h K 2 c e T y P L - Ü É 1 J y a T L 0 2

GP JPTL I2 e e FRRF 2 y RL I0d2T1IR 2 y R yIR DF y BTL C1 Jy Ra
 I2 U1 PR4 L Jy BLDF p : LOTRT1 p JPF 2 y LF y Ld1 Fe JI c rL C
 Ay R FERMUCYFTLFR 0 IIG2 É FJKL ' URPF É TLBJy B P y a 1L 2 o T
 BFRÉURRF 2 y LF y LOJn c JL GJ. 1 JrL 2RUMKBTByLaPL1 JPIR 2
 (HKKy L p FT o L 2 0 L P 1 T L - Üh T 1 P L I2 e e F P PMLT v R L
 mÉ É 2 1 BFLyBal K10 HLIJ15 y2 0 PTLy (F KKL o JR L Uh K2 JB TBL 2 y L F
 o T. RFP TL 2 y L " Mt iMig t f L R T T u F y a L É 2 e e T y P R L 2
 h 13KT a F R KJP F p T L É 2 y R U KP JPF 2 y L eJR II É 2 y B U É F P B L
 t 8 Mg t Mig t 7 ML G U .SR J0 Z P U F y a H K12 d eJIE P P T T L o JR L É 2 y
 YF y FRP 1 c L P 2 L 0 F y JKF) T L P 1 T L B1 J0 PSI (0FPKKyMa Lm
 I2 e e F P P L T P 1 T L 2 y U Jg t 7LL Jy B P C T . 1 U Jg t 7LrL P 1 T (LF BKKI0 P L
 o JR 0 F y JKF) c T BPL1 TKJPwFTyaHFLR y L P 1 cigt R P Lmh 1 F KrL ig t 7 ML C
 II. F y T P L Jh h 1 (2 H2KKB P 1 LPU Kc LrL lig t 7 M

L

PL C1 TL 5 2 p T1 y e T y P L L F y P 1 2 B U HÉ y T B w P u l I T G J. H KIKI2
 i y P m U a U R g R d L M

L

QL C1 2 U a 2 R P L 2 0 L P 1 T L h 1 2 p F R F 2 y R L 2 0 I L 0 I I T E L d
 CF1 UÉ 1 F L G P p T J i L . Y T L y L JÉ É 2 e e 2 B I P T T R B T L y R K L L T P Ü I É T L h
 h 1 2 p F R F 2 y R L 0 2 1 L - Ü É K U R F p T L C 1 J y R a T y B T 1 L O F a
 R T É 2 y B J I c L J y B L 1 F a 1 T 1 L T B U É J P F 2 y J K L F y R P F P U P

h 1 F p JP T L R T É P 2 1 rL TRyhPTLÉ F ÜKÉL1TJye dh KR & eJy B L JP F 2 y J

I2 e e F R R F 2 y R L 0 2 1 L C 1 Jy R a T y B T 1 L d T 1 R 2 y R M

L

R L G 2 e T L R J K F T y P L 0 T C J P UylRTaRTLy B C L P d T L R 2 y R L D d

O F a 1 P R : L U F T K K J R Ig U y B T 1 /

DE : C 1 Jy R a T y B T F B C D F R T y B L J R L J L h T 1 R 2 y L o 1 2 L F R

0 T e J K T I L y o 1 2 K K c L e J K T 4 L 2 1 L D F F : L J L É 2 e . F y J P F

y T F P 1 T 1 L 0 T e J K T L y 2 1 L e J K T 4 L Jy B L o 1 2 R T L R T y

o F P 1 L P 1 T L a T y B T 1 L J R R F a y T B L P 2 L P 1 J P L h T 1

F y É K U B T R e L T y P L Jy R B L 3 o P 2 l e Jy R r L h T 1 R 2 y R L o F P 1 L

p J l F J P F 2 y R L Jy B L T L T R y M I T 1

DEF : 2 y L B F R É 1 F e F y J P F 2 y L J a J F y R P L J L C 1 Jy R a T y B

F y R P F P U P F 2 y R r L T e h K 2 c e T y I P r L 1 T J K P 1 É J l T L R T

D H L F C T : É 2 a y F P F 2 y L 2 0 L F B T y P F P c L 2 0 L C 1 Jy R a T y B

P 1 T e L 1 F a 1 P L P 2 L R T K C F I B H T y I P É T P F e p M B L a T y B T

D H L p d : 1 2 p F R F 2 y L 2 0 L É T 1 P F 0 F É J P T L . c L P 1 T L S F R P

d T 1 R 2 y L 2 y L P 1 T L 1 T É 2 e e T y B J P F 2 y L 2 0 L L J L S

U y B T 1 L I I F T 0 L Y T B F É J K L N 0 0 F É T 1 M

D p : d 1 2 p F R F 2 y L 0 2 1 L C 1 Jy R a T y B T 1 L d T 1 R 2 y R L F

É 2 y R T Z U T É y 1 É J y a P 2 P 1 T L 0 F 1 R P L y J e T L F y L P 1 T L

2 P 1 T 1 L 2 0 0 F É F J K L B 2 É U e T y P R L 1 T K J P F y a L P 2 L P

D pLFd: 1 2 p F R FF2ay1LP2L02L0L O T R F B T y É T L o F P 1 L h J l T y P F
e T e . T l l R M

D pIFdFl: 2 p F R F 2 y L 0 2 1 L 0 2 1 e U K J P F 2 h y L 2 a 0 l L J e f K R l l T L
T B U É J P F 2 y r L R 2 É F J K L R T É U 1 F P c L J y B I L 1 T J K P 1 L 2 0

D p IEdF1F2: p F R F 2 y L 0 2 1 L J P F 2 y J K L I 2 U y É F K L 0 2 1 L C 1 J
e 2 y F P 2 1 L J y B L T p J K U J P T L e T J R U 1 T R L 0 2 1 L P 1 T L h

D FLÜd: 1 2 p F R F 2 y R L 0 2 1 L h R T L y a J K P f R R L 0 2 J y I R 2 a 0 l L J e f K R l l T L
L

THE PRESENT POSITION OF TRANSGENDER P
COUNTRY AND THE LIKELY IMPACT ON THE
ENACTMENT OF THE BILL:

S L C 1 J y R a T y B T 1 L É 2 e e U y F P c L F R L J e 2 y a L 2 y T L 2
É 2 e e U y F P F T R L F y L P 1 F L T É c 2 I U B P y c P L T É P U R F T L P 2 L
É J P T a 2 1 F T R L 2 0 L a T y B T 1 L 2 0 L v e T y v L 2 1 L v o 2 e T y
1 J y a F y a L 0 1 2 e L R 2 É F J K L T Ü É K U R F 2 y L P 2 L B F R É 1 F e
U y T e h K 2 c e T y P r L K J É u L 2 0 L e T B F É J K L 0 J É F J K F P f T R L
. J R T B L 2 y L P 1 T F 1 L É K J R R L J y B L a T y B T 1 L e J u T R L P 1 T
2 0 L P 1 T L e 2 R P L B F R T e h 2 o T 1 T B L J y B L B L T h 1 F p T B L a

L
T L C 1 T L h 1 T R T y É T L 2 0 L P 1 T L C 1 J y R a T y B T 1 L d T 1 F
R É J P P T 1 T B L J y B L P 1 T c L J l T L U y T p T y K c L R T P P K T B M L
P 1 T L O T a F R P 1 J l L 5 T y T 1 J K L 2 0 L A y B F J L D O 5 A: L & I T y F
B J P J L R h T É F 0 F É J K K c L 2 y L I d l 2 J h R U a K J P y F B T y l L R M L U S e U T l l F P y

IT y R URL ig t t rL P 1 1 T T L É 2 B T. RELJKT IL TÓIT 63IKTJp B B T B L
 NP 1 FIML Ay L É JR T L P 1 T L 1 T R h 2 y B T y P L o F R 1 T B L P 2 L
 T y U e T 1 J P 2 1 L o J R L F y R P 1 U É P T B L P 2 L 1 T É 2 1 B L R T Ü L
 P 1 T L É J P c T I a 2 0 L v NP 1 T 1 v L o 2 U K B L y 2 P L 2 y K c L F y É K
 h T 1 R 2 y L o 1 2 L B T R F 1 T B L P 2 L 1 T É 2 1 B L R T Ü L U y B T 1
 h 2 R R F . K T L P 1 J P L P 1 J y R a T y l B T T a l F R R L P o T T U F K B I L K K R R L T F p
 e J K T L 2 1 L 0 T e J K T L B T h T y B F y R E L 2 P y 1 L T R L h T l F T I É L F Í R I T L F y É U
 P 1 J y R a T y B T 1 L h T 1 R 2 y R L F y L P 1 T L É 2 U y P 1 c L F R L y
 2 0 L A y B F J L ig t t rL F P L F R L R P J P T B L P 1 J P L h 2 h U K J P F 2 y
 v 2 P 1 T 1 R v L J R L P 1 T F 1 L a T y B T 1 L D T F P 1 T 1 L e J K T L
 C U 1 P I P T I T r L T L o J R L y 2 L T y U e T 1 J P F 2 y L 2 0 L B J P J L 2 y L
 P 1 J y R a T y B T 1 L T y a I a T B b T e h K 2 c T B M

L

U L C 1 F R L o F K K L . T y T 0 F P L J L K J l a T L y U e . T 1 L 2 0 L P 1
 R P F a e J r L B F R É 1 F e F y J P F 2 y L J y B L J. U R T L J a J F y R P L P
 . 1 F y a L P 1 T e I F F y R P 1 I T P e 1 L T 2 L 0 L R 2 É F T P c M L C 1 F R L o F
 J y B L o F K K L e J u T L P 1 T L P 1 J y R a T y B T 1 L h T 1 R 2 y R L h 1 2
 C 1 1 2 U a 1 L P 1 F R L (F K K r L P 1 T L I T y P 1 J K L 5 2 p T 1 y e T y P
 T Ü P T y B L R U h h 2 1 P L 0 2 1 L 0 F y J y T É K P J K L R L T o É T U K I O B I P T c L r U y l B
 y T T B R L 2 0 L C 1 J y R a T y B T 1 L d T 1 R 2 y R r L e J u T L J p J
 B T p T K 2 h e T y P L 2 0 L P 1 T F 1 L h 2 P T y P F J K r L R T T u L h J l P
 P 1 J P L P 1 T c L É J y L F e h 1 2 p T L P 1 T L Z U J K F P c L 2 0 L P 1

a 1 T J P T 1 L JÉ É 2 U y P J. K T L 0 2 1 L U h 1 2 K B F y a L M 1 T L h 1 F y É F h
5 2 p T 1 y e T y P R b E y F 2 y L C T 1 1 F P 2 1 c L m B e F y F R P 1
C 1 J y R a T y B T 1 L h T 1 R 2 y R M L C 1 T L (F K K L o F K K L e J u T L
J y B L JÉ É 2 U y P J. K T L 0 2 1 L U h 1 2 K B F y a L M 1 T L h 1 F y É F h

The Transgender Persons (Protection

L
V L C 1 T L C 1 J y R a T y B T 1 L d T 1 R 2 y R L D d 1 2 P T É P F 2 y L 2
0 2 1 L h 1 2 P T É P F 2 y L 2 0 L 1 F a 1 P R L 2 0 L P 1 J y R a T y B T
e J P P T 1 R L É 2 y y T É P T B L P 1 P H T b H P 2 L J y B J R E y É P B T y B
G J. 1 J L 2 y J m U i a H i g P 7 M L C 1 T L R P J P T e T y P L 2 0 L 2 . n T É P
(F K K L R P J P T R L J R L U y B T 1 /

C 1 J y R a T y B T 1 L É 2 e e U y F P c L F R L 2 y T L 2 0 L
É 2 e e U y F P F T R L F y L P 1 T L É 2 U y P 1 c L . T É J U R T L P
É J P T a 2 1 F T R L 2 0 L a T y B T 1 L 2 0 L v e J K T v L 2 1 L v 0 T
h 1 2 . K T e R L 1 J y a F y a L 0 1 2 e L R 2 É F J K L T Ü É K U R F 2
T B U É J P F 2 y L 0 J É F K F P F T R r L U y T e h K 2 c e T y P r L K J É u
2 y L M

L
C 1 2 U m l H F É K T L t s L 2 0 L P 1 T L L a y U R I P J y P U P R 2 y P I 2 L
h T 1 R 2 y R L T Z U J K F P K J U R T R 0 2 D t L K m y B E É D K T I L 2 f I L J y
I K J U R T L D i m l P F É K T I n t a f i l h a 2 1 F . F P L F y L T Ü h 1 T
B F R É 1 F e F y J P F 2 y L 2 y L P 1 T U 3 É I K J U R y B L I D K J y R c T 1 0 L 2 0 L
D t : L 1 2 P O F L É r K T L t V L T y R U R I h T R I L É 0 1 I L T J y B 2 f Ü 2 0 T R R F
É F P F) T y R r L c T P L P 1 T L B F R É 1 F e F y J P F 2 y L J y B L J
h T 1 R 2 y R L É 2 y P F y U T L P 2 L P J u T L h K J É T M

L
C 1 T L W 2 y v . K T L G U h 1 T e T L I 2 U 1 P r L m p H B T K L F i g P t R s L 2
h J R R T B L F y L P 1 T L É J R T L 2 0 L J P F 2 y R K M L w E T y a F K L y G L T 2
A y B F i J m t e r r L B H l i T a É P T B L P 1 T L I T y P 1 J K L 5 2 p T 1 y
5 2 p T 1 y e T y P R L P 2 L P J u T L p J I F 2 U R L R P T h R L 0 2
É 2 e e U y F P c L J y B L P 2 L P 1 T J P L P 1 T e L J R L J L P 1 F 1

R J0 T a U J l B F y a L P 1 T F 1 L 1 F a 1 P R E U y B F 2 y L d J y B L 2
K J o R L e J B T L . c L P 1 T L d J l K F J e T y P L y B L P 1 T L G P J P 7

L

W.L C 1 T L C 1 J y R a T y B T 1 L d T 1 R 2 y R L D d 1 2 P T É 3 P F 2 y L 2

D J L B T 0 F y T L J L P 1 J y R L T y B T 1 L h T 1 R 2 y 4

D.L: h 1 2 1 F . F P L B F R É 1 F e F y J P F 2 y L J a J F y R P L P 1 J y

D É : É 2 y 0 T I U h 1 2 F y a L P R U y R a T y B T 1 L h T 1 R 2 y L P 2 L . T

J y B L J L 1 F a 3 h P L É 2 T F R T B O L a T L y B T 1 L F B T y P F P c 4

D B : F R R U T L 2 0 L É T 1 P F 0 F É J P T L 2 0 L E B T y P F P c L P

D D : h 1 2 p F B T L P 1 J P L y 2 L T R P J. K F R 1 e T y P L R 1 J

P 1 J y R a T y B T 1 L h T 1 R 2 y L a H y P 2 e L J P T e T h K R L c e l T T

1 T É 1 U F P e T y P r L h 1 2 e 2 P F 2 y L J y B L 2 P 1 T 1 L 1 T

D a L : h 1 2 p F B T L 0 2 1 L a 1 F T p J y É T L 1 T B 1 T R R J K L

T R P J. K F R 1 e T y P 4

D L : T R P J. K F R 1 e T y P L 2 0 L L J L C 1 J P y R 2 a y T L K I B I T U 4 É F K L C

D E : h U y F R 1 e T y P L 0 2 1 L É 2 y P 1 J p T y P F K M y R L 2 0 L P

L C 1 T L (F K K L R T T u R L P 2 L J É 1 F T p T L P 1 T L J. 2 p T

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PART B
CHAPTER
PRELIMINARY

Title of the Bill

THE CREDIT PROTECTION (FAMILY & CHILDREN)
OF ACT 1987 (MIGRATION & EMPLOYMENT)
BY THE MINISTER OF LABOUR & EMPLOYMENT
IN CONSULTATION WITH THE ATTORNEY GENERAL
AND THE SECRETARY OF DEFENCE
AND THE SECRETARY OF STATE FOR
INDUSTRY AND TRADE
AND THE SECRETARY OF STATE FOR
SCIENCE AND TECHNOLOGY
AND THE SECRETARY OF STATE FOR
THE ENVIRONMENT

L

THE CREDIT PROTECTION (FAMILY & CHILDREN)
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AND THE SECRETARY OF STATE FOR
THE ENVIRONMENT

& CHILDREN (FAMILY & CHILDREN)
ACT 1987 (MIGRATION & EMPLOYMENT)

L

THE CREDIT PROTECTION (FAMILY & CHILDREN)
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AND THE SECRETARY OF STATE FOR
THE ENVIRONMENT

¹Please see Appendix (i)

D e f i n i t i o n s

t ML IKJUR T L i D É : L 2 0 L P 1 T L (F K K L B T 0 F y T R L v F y É K U F
 T B U É J P F 2 y L o 1 T 1 T F y L P 1 J y R a T y B T 1 L R P U B T y P R L
 P 2 a T P 1 T 1 L J y B L P 1 T L R c R P T e L 2 U E P J T K É c 1 L F J B á h I P J y B I
 e T T P L P 1 T L K T D y E R W É y I I C B U B T y P R & M

L

t ML C 1 T L I 2 e e F P P T T L F y P T 1 J É P T B L T Ü P T y R F p T K c
 R P J u T 1 2 K B T 1 R L R 2 L J R L P 2 L J R É T 1 P J F y L P 1 T F 1 L p F
 I 2 e e F P P T T L 0 F y B L P 1 J P L P 1 J y R a T y B T 1 L h T 1 R 2 y R
 B F R É 1 F e F F y L P T F R 2 y F L y a L T B U É J P F 2 y i L h T F l e I l a F T K c B T 2 l o I F
 É 2 y 0 2 I L e F P c M L

L

t ML 7 C 1 T L I 2 e e F P P T T L 0 T T K L P 1 J P L P 1 T L P T 1 e L v P 1 J y
 J L e F R y 2 e T 1 L R F y É T L É 1 F K B É T y I L P 1 1 e 2 H U y a a l r L á T P B F I
 . T L F y L J L h 2 R F P F 0 y L P R 2 L L v F P B J y R a T y B T 1 L P h I I L R 2 y
 h 1 1 J R T I y v R a T y B T 1 L J y B É L 2 a y T 0 y 2 B T e I F I y a L e y R c P L U . B T T I y U R T V B L
 F y R P T I V B P L 1 2 J 0 R á R T P y U B T I M y P R v

L

t ML 9 C 1 T L I 2 e e F P P T T L J K R 2 L 0 T T K L P 1 J P L J y c L y 2 P F 2 y
 P 2 L P J u T L F y P 2 L J É É 2 U y P L P 1 T L R h T É F 0 F É L É 2 y
 1 J I J R R e T y F I B R U C C L P 1 1 T I 3 á 2 y O B F I l e L F y 2 H y L R P U B T y P R M

L L

1.8L The Committee, therefore, may recommend reframed as under:

"inclusive education" means a system trans-gendered and gender-conformant students along with other students without the fear of singling out and othering. The teaching and learning is suitably adapted to the needs of such students.

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tML IKJUR TL iDB : L 2 0 L P 1 T L (F KKL B T 0 F y T R L v F y R P F I
h U . K F É L 2 1 L h 1 F p J P T r L 0 2 1 L P 1 T L 1 T É T h P F 2 y r L É J
l T 1 J . F K F P J P F 2 y L 2 1 L J y c L 2 P 1 T 1 L R T 1 p F É T L 2 0 L P 1
L
tM g S U l F y a L P 1 T F 1 L F y P H Ju JÉ P F K By T L l o R Fr P B L E lly 2 d e R F
F y 0 2 1 e T B L P 1 J P L L P 1 T L o 2 1 B L v 1 T 1 J . F K F P J P F 2 y v L
K JÉ u L 2 0 L Ja T y É c L 0 2 1 L P 1 T L L P 1 J y R a T y B T 1 L h T 1
R U . R P F P U P T B L o F P 1 L P 1 T L o 2 1 B L v 1 2 U R F y a v L F y
R 1 K P T 1 L y T T B R L 2 0 L P 1 T I L P 1 J y R a T y B T 1 L h T 1 R 2 y R M
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1.1 The Committee, therefore, desire that
'rehabilitation' be replaced with the
care of the pressing shelter needs of t

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tM LIKJUR T L iDF : L 2 0 L P 1 T L (F KKL B T 0 F y T R L P 1 T L L
v P 1 Jy R a T y B T 1 L h T 1 R 2 y v L3e T Jy R L JL h T 1 R 2 y L o 1 2 L F
mM y T F P 1 T 1 L o 1 2 KKc L 0 T eLJKT L y 2 1 L o 1 2 KKc L e JKT
(M JL É 2 e . F y JP F 2 y L 2 0 L 10 T e JKT L 2 1 L e JKT 4 L 2 1
IML y T F P 1 T 1 L 0 T e JKT L y 2 1 L e JKT rL Jy B L
o 1 2 R T L R T y R T L 2 0 IP aL T e y J B H 1 IL B E P R IL R y 2 T L a T y B T
P 1 T L h T 1 R 2 y L JP L P 1 T L P F e T L æ OTIy L F y l P B P L Jy B L
o 2 e T y rL h T 1 R 2 y R R L Ü b L F p P J l E F P y F 2 T y B K U T y T B L R a M y B T 1

tM tLC 1 T L I 2 e e F P P K L P IL P 1 T L B T 0 F y F P F 2 y l o F K K L v . P T l Jy
P 1 T L 0 U K É t U K T a 10 R K J P F 2 y L 2 y L P 1 Jy R a T y B T 1 L 1 F a
o 1 2 K T L K J B L B L T y h I T y B T L R É 2 h T L 2 0 U P e l F R L B T T D I F y F T
P 1 JP L h H 1 2 T h 1 2 R T B L L B T 0 F y F P F 2 y L L 2 0 L v F P y l Jy R R P a J T u y I B
É 2 y P 1 J R P L P 2 L a K 2 . JKL B T p T K 2 B h T e l T L y h P T R l r I R a y R L T l U p P T
a 1 Jy P T B L P 1 T L 1 F a 1 P L P 2 L R T K 0 L B T P T 1 e F y T L Jy B L
F B T y P F P c b T Ü h 1 T R R E y K c M L p Y E 2 1 K J L R R L e L P F I P T I L y 0 2 U P y I B J e
T Z U J K F P c rL B F a y F P c rL J U P 2 y 2 e c L L . U P L J K R 2 L 0 1 T
a U J l Jy P y B B L U m 1 P F É K T R L t srL t V L Jy M L I L i t L 2 0 L P 1 T L I
L
tM s L m P P T y P F 2 y L 2 0 L P 1 T L . Y c F l y F R P I L E 2 I E a R R L B T R T L L y I L T
K Jy B e J l n u U L B a T l e 2 T 0 y L P W 2 y v . K T L G U h 1 T e T L I 2 U 1 P L F y
2 M s g g b i g t i L 0 F K T B L . c L JP F 2 y JKL w T a JKL G T 1 p F É T

2 0 L Ay B F J: ñ ta d IR É JPLT B L P 1 J P L & T p T 1 c L h T 1 R 2 y L e U
B T É F B T L 1 F R b 1 T 1 L a T y B T 1 L T Ü h 1 T R R F 2 y L J y B L I
P 1 J y R a T y B T 1 r L 1 F n 1 J R L J y B L R 1 2 U K B L 1 J p T L 1 F a 1 P
F B T y P F P c L J y B B R I I L B 2 1 F H L Ü M & L

L

t M L C 1 T L Y F y F R P 1 c l L T e T B B I P T p P T L y P 1 T L J. 2 p T L B T É F
W 2 y v . K T L G U h 1 T e J K R M L É I T A P B B R L L . Ü h L T H P T L I 2 e e F P P
É 2 y R P F P U P T B L L o d E I É T É L & F T F B J P B & C 1 J y R a T y B T 1 L
. T L B T É K J I T B L J R L P 1 T L P y R á B y B T y B H T H R J 2 B L R P 2 U
2 h P F 2 y L P 2 L É 1 2 2 R T L T F P 1 T 1 L v e J y v r L L o 2 e T y v L 2

L

t M 7 L 1 T y L P 1 T L Y F y F R P 1 c L o T 1 T L É 2 y 0 1 2 y P T B L L P
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2 l v I P 1 J y R a T y B T 1 v L J R L o T K K L J R L 1 J p T L P 1 T L 1 F a 1 P
F y B T h T y B T y P L 2 0 L B J U B h 2 l y d b o l 1 2 J P É 2 y J T H R R L P 1 T L E
v P 1 J y R a T y B T 1 L h T 1 R 2 y v L 1 J R L . T T y L 0 1 J e T B L F y L I
y 2 P T L R P J P T B L L J R L U y B T 1 L

& m y L - Ü 2 h e T e l F P P L P T T L o J R L É 2 y R P F P U P T B L F y L P 1
i g t “ L U y B T 1 L P 1 T L É 1 J F 1 e J y R 1 F h L 2 0 L m B B F P F
J y L B y h P 1 L R P U B c L 2 0 L P 1 T L h 1 2 . K T e R L . T F y a
I 2 e e U y F P c M L C 1 T L I 2 e e F P P T T L 1 J R L É R J y U H F c P P T B
i g t M 1 T L I 2 e e F P P T T L 1 J R L 1 T É 2 e e T y B T B L P 1 J P L
B T É K J I T B L J R L P 1 T L P 1 F 1 B L a T y B T 1 r L J y B L J L C 1 J y
P 1 T L 2 h P F 2 y L P 2 L É 1 2 2 R T L T F P 1 T 1 L v e J y v r L v o
1 J p T L P 1 T L 1 F a 1 P L P 2 L É 1 2 2 R T L J y c L 2 0 L P 1
R U 1 a T 1 c b 1 2 1 e 2 y T R M L N y K c P L I B y 1 R F a L T y y 2 B e T T y w H K R P 1 U
U R T B L J y B L y 2 e T y É K J P U 1 T R L K F u T L v 2 P 1 I 1 v L 2

C 1 T-LÜh TIE ß E F P P T T L L 0 U1 P 1 T1 L 1 T É 2 e e T y B T
v P 1 Jy R a T y B T 1 v L D y 2 P L P 1 Jy R : L o F K K L . II L U R T
É 2 p T 1 L p J l F 2 U R L a T y B T 1 L F B T y P ß P T F y T I R P 1 J y B R L T
o 2 e T y r L e J K T L P 2 L 0 T e J K T L P 1 Jy R h T 1 R 2 y R r L 0 T e
P 1 Jy R R T Ü U J K R r L a T y B T 1 Z U T T 1 r L h T 1 R 2 y R L o F P 1
y 2 P L . T L É 2 y 0 F y T B L P 2 L Jy c I 2 3 É U K P L U 2 0 K L P F 1 B T T L y
a 1 2 U h R r L R U É 1 L J R L 1 F n 1 J R r L u 2 P 1 F R r L T P É L . U
o 1 2 L 0 J K K L U y B T 1 L P 1 T L a T y T 1 F É L B T 0 F y F P F 2
0 2 K K L o R /
L

C 1 Jy R a T y B T 1 L d T 1 R 2 y R / L m K K L h T 1 R 2 y R L o 1
B 2 T R L y 2 P L e J P É 1 L o R P á y P B II P 2 II P B T é L J R L .
o F K K L F y É K U B y T L B P 1 Jy R e T y L D o 1 T P 1 T 1 L 2 1 L
1 Jp T L U y B T 1 a 2 y T L R T Ü L 1 T J R R F a y e T y P L
P 1 T J P e T y P L 2 1 L K J R T 1 L P 1 T R I h Jy ß II P L é M : e L a T
R 2 É F U K P L U I B J K y P F P F T R r L R U É 1 L J R L H F y y J l R
n 2 a P J R r L T P É M L C 1 T L P T 1 e L v P 1 Jy R a T y B T
J É É 2 1 B & y a K c M

L

t M L G U . R T Z U T y P K c r L P 1 T L B T 0 F y F P F 2 y L 2 0 L C 1 Jy
l T p F R F P T B L o F P 1 L 1 T R h T É P L P 2 L F y P T 1 y F J P F 2 y J K L
m e T y B e T y P L D G T Ü U J K L N 1 F T y P J P F 2 y r L 5 T y B T 1 r L A B T
m U R P 1 J K F J r L i g t “ M L L A y P T 1 R T Ü L R P J P U R L e T Jy R L P
1 2 1 e 2 y J K L 2 1 L a T y T P F I É L 0 T J P U 1 T R L P 1 J P L J l T L /
D J L F y T F P 1 T 1 L o 1 2 K K c L 0 T e J K T L y 2 1 L o 1 2 K K c L e J K T 4 L
D . L : J L É 2 e . F 2 J P I F U T y d J K T L J y L B L e J K T 4 L 2 1
D É : y T F P 1 T 1 L 0 T e I J K T L y 2 1 L e J K T M

L

t M L C 1 T L B T 0 F y F P F 2 y L 2 0 L P 1 T L C 1 Jy R a T y B T 1 L d T 1
i D F : L I I 3 A L P 2 0 1 L P 1 T L (F K K M L W 2 o T p T 1 r L J R I h h T T I 1 R I 2 G y T L É P

1 T É 2 h B y IF JR L C 1 Jy R a T y BRTI É LUFy 2ByTDFt la: RUP1LJR 2 L R T K0 L h
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L
t tMLmy L 2 0 0 F É F JKL 2 0 L P 1 T L Y F y F R P 1 c L B U 1 F y a L P

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P 1 T L - Ü h T 1 P L I 2 e e HLP y IEC TBMILL,ÉÉLT 1 P JF y L É KJIL FP01FTÉLJP

B T 0 F y F P F 2 y L a F p T y L . cLL P 1 T L - Ü h T 1 P L I 2 e e F P P T

L
t MgLC 1 T L I 2 e e F P P T T L JKR 2 L y 2 2 F 2 R T BILB T 0 F y F P F 2

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e T y P F 2 y T BÉIKFUyRIT R U .D m: L P 2 L D I: Hh 8 I PHLK 2 L É P U R T L R R

ψ s y c h o l o g M I c a l m w G n a x ' 1 J R L T Ü h K F É F P K c L K J F B L

ψ s y c h o l o g y B l a y b 2 i P o l e v o t y ' i r L c o a l l T l t T e F s y t L' P 1 T L h R c É 1 2 K

Jy B L P 1 F y u F y a L 2 0 L P 1 J P L h T 1 R 2 y L 1 J R L P 2 L . T L a F

2 0 L a T y B T 1 I L R 2 0 y L M U A y L h JÉ P rL P 1 T L n U 1 F R h 1 U B T y É T

e 2 R P L h J l P R L 2 0 L P 1 T L o 2 1 K B L 1 J R L 1 T n T É P T B L P 1 T

1 J R L a F p T y L 2 F J B T y 2 E R H K B L a T y B T 1 L 0 2 1 L P 1 T L h U 1

C 1 U R rL Jy c L B T 0 F y F P F 2 y L 2 0 K c v I P R Jy 2 R U a K B y L B T I K I P H T L 1

F B T y P F P c L Jy B L y 2 P L P 2 L . FL2 K2 a F É JKL R T Ü L 2 0 L P 1 J

L
t MLCU 1 P 1 T 1 rL P 1 T h e i h t l h e R T R W h v o l l y f e m a l a v e n o r

c o m b i n a t i o n o f L f J y B n l a v e t h o e r r n f a e l n e a l J e T L n o r

U y R É F T y P F 0 F É L Jy B L h I B E 2 F y H L F P p 1 T T r L J y y B L T I l K L F y R a T L J

biological rLdE M E M r h i J K K I s m ' T 1 R 2 y R L J l T L . 2 1 y
 F e e U P J . K T L . F 2 K 2 a F É J K L J P P 1 F . U P T R r L F M T M r L É 1 1
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 e Jy chLT 1 R ð y T L L 2 1 y L o F P 1 I P . æ h F á J K L R R Ü Ø J K L 2 1 a Jy R
 T Ü P T 1 y J K L 2 1 L F y P T 1 y J K r L Jy B L F B T y P F 0 c L P 1 T e R T K
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 t ï M L A y L p F T o L 2 0 L P 1 T L 0 2 1 T a 2 F ÷ h H ÷ R P T y F B T L É I K T J I I
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 0 1 2 e L P 1 T F 1 L a T y B T 1 L J R R F a y T B L J P L . F 1 P 1 r L F y É
 2 1 L v P 1 F 1 B L a T y B T 1 v L D É J U K K U R B K L T F L B 2 T 0 y I P B I P R F R ÷
 1 F n 1 J R r L u F y y J l R r L J l J p Jy F R L Jy B L l n 2 a J h h J R r L J e 2 y a R
 L
 t M L C 1 T L I 2 e e F P P T T L o 2 U K B L T p T y L K F u T L P 2 L 1 T e F
 (F K K L o 1 F É 1 L P 1 T c L 1 J B L T U h R K E 2 P B T L F l y 2 y S I T É I T E F I T I L r L i g
 0 2 K K 2 o F y a L B T 0 F y F P F 2 y 3 L 2 0 L v P 1 Jy R a T y B T 1 L h T 1
 & C 1 Jy R a T y B T L d T d J y R I R 2 l y h T 1 R 2 y r L o 1 2 R T L a T y B
 e J P É 1 L o F P 1 L P 1 T L a T y B T 1 L J R R F a y T B L P 2 L P 1 J
 P 1 B e R y L Jy B B o 2 l e Jy R L D o 1 T P 1 T 1 L 2 1 L y 2 P L P 1 T c
 R T Ü L 1 T J R R F a y e T y P L R U 1 a T 1 c L 2 1 L 1 2 1 e 2 y T L l
 a T y B 3 T U T T 1 R L Jy B L J L y U É . U K P U 1 2 J K L R B É y B F P F T R
 u F y y J l R r L 1 F n 1 J R r L J l J l Jy F R r L n 2 P a P J R r L T P É M
 L

t M L C 1 T L I 2 e e F P P T T L 0 F y B L P 1 J P L P 1 T 1 T L J l T L 0 U
 B T 0 F y F P F 2 y L R F y É T L F P L É 2 y 0 K J P T R L F y P T 1 R T Ü L

v F y P T 1 R T Ü v L Jy B L v P 1 Jy R a T y B T 1 v L J l T L y 2 P L P 1 T
 R P J P U R L e T Jy R L P 1 T L R P J P U R L 2 0 L 1 Jp F y a L h 1 c R F É .
 P 1 J P L J l T L / D J : L y T F P 1 T 1 L o 1 2 K K c L 0 T e J K T L y 2 1 L o 1
 0 T e J K T L Jy B L e J K T 4 I L 2 1 0 I I D É K T I L y y 2 H H l e J K T M L C 1 T L I 2 e e
 P 1 J P L . c L É 2 y 0 K J P F y a L P 1 T R T L B T 0 F y F P F 2 y R r L P
 P 1 Jy R L F B T y P F P F T R L Jy B L R T p T 1 T K c L 1 T R P 1 F É P R L
 P 1 Jy R a T y B T 1 L h T F 1 B R T 2 y y P R F L 0 R 2 L L o R I T F K Ó 1 L T K B M G m I L J L 1 J R
 P 1 Jy R a T y B T 1 L h T 1 R 2 y L o 1 2 L F B T y P F 0 F T R L J R L J L o 2
 U y B T 1 L P 1 F R L (F K K L J R L J L É 2 e . F y J P F 2 y L 2 0 L e J K T L 2
 Jy B L P 1 T L K J o L o 2 U K B L P 1 U R L É 2 e h K T P 3 H T K t É D H F p K L B P
 F B T y P F P c L J R L 0 T e J K T M

IL

t M L C 1 T L I 2 e e F P P T T r L P 1 T 1 T 0 2 1 T r L J l T L 2 0 L P 1 T L
 B T 0 F y F P F 2 y L 2 0 L v P 1 Jy R a T y B T 1 L h T 1 R 2 y v L B 2 T
 h 1 T R É 1 F . T B L . c L P 1 T L W 2 y v . K T L G U h 1 T e T L I 2 U 1 P I
 O T h 2 1 P L Jy B L y F I P H I I T L p K T I y F O T F P É F J P F 2 y L 0 F K T B L . c L P 1
 . T 0 2 1 T L P 1 T L W 2 y v . I I K T L G U h 1 T e T L I 2 U 1 P M

L

t M L C 1 T L I 2 e e F P P T T H L P I 2 0 I I É 2 y R F L B I P I L T P B I L T p L F h T l o 2 L h 2
 B T 0 F y F P F 2 y L 2 0 L P 1 Jy R a T y B T 1 L h T 1 R 2 y L y 2 P L 2
 B T P T 1 e F y T B L a T y B T 1 L F B T y F B E P c L Ø 1 H É W 2 y J R . L K T U
 I 2 U 1 P L F y h U B w G l m W y P J K R 2 L J B p T 1 R T K c L T 0 0 T É P R L R

P 1 Jy R a T y B T 1 L ~~BL2RhUtkÉPFJK2~~ ~~IL b 02hYL~~ P 1 Jy R e T y L Jy

P 1 Jy R o 2 e T y rL P 1 Jy R L h T 2 h K T L o 1 2 L É Jy y 2 P L 2 1 L B 2

F y P T 1 p T y P F 2 y R rL a T y B T 1 L 0 K U F B rL a T y **B** T 1 L y T U P

1.27 In view of the above, the Committee recommends that transgender persons should have the options 'woman' or 'transgender' as well as have the options independent of each other. Therefore, the Committee recommends that the following be included under :

"transgender person" means a person whose gender does not match with the gender assigned to him/her and includes trans-women (whether or not they have undergone sex reassignment surgery or laser therapy etc.), a gender number and cultural identities such as, aravan

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CHAPTER

PROHIBITION OF CERTAIN ACTS

iMē Ay L IKJUR T L “ L 2 0 L P 1 T L (F K K r L P 1 T 1 T L J I T L V L I K J
 T K J . 2 1 J P T L h 1 2 1 F . F P F 2 y L 2 0 L B F R É 1 F e F y J P F 2 y L J
 “ L R P I P T R /

& “ M 2 L h T 1 R 2 y L R 1 J K K L B F R É 1 F e F y J P T L J a J F y R P
 2 0 L P 1 T L 0 2 K K 2 o F y a L L a 1 2 U y B R r L y J e T K c /
 L

D J : P 1 T L B T y F J K r L 2 1 L B F R É 2 y P F y U J P F 2 y L 2 0 r
 T B U J P F 2 y J K L T R P J . K F R 1 e T y P R L J y B L R T 1 p F É T
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D L : P 1 T L U y 0 J F 1 L P 1 T J P e T y P L F y r L 2 1 L F y L 1 T
 2 É É U h J P F 2 y 4
 L

D É : P 1 T L B T y F J K L 2 0 r L 2 1 L P T 1 e F y J P F 2 y L 0 1 2 e r L
 L

D B : P 1 T L B T y F J K L 2 1 L B F R É 2 y P F y U J P F 2 y L 2 0 r
 1 T J K P 1 É J I T I L R T 1 p F É T R 4
 L

D T : P 1 T L B T y F J K L 2 1 L B F R É 2 y P F y U J P F 2 y L 2 0 r L 2
 P 2 r L J É É T R R L P 2 r L 2 1 L h 1 2 p F R F 2 y L 2 1 L T y n 2
 J É É 2 e e 2 B J P F 2 y r L R T 1 p F É T r L 0 J É F K F P c r L .
 2 h h 2 1 P U y F P c L B T B F É J P T B L P K I L h P U . T K F É R T L
 É U R P 2 e J I F K c L J p J F K J L K T L P 2 L P 1 T L h U . K F É 4
 L

D D : P 1 T L B T y F J K r L 2 1 r L B F R É 2 y P F y U J P F 2 y L 2 0 r L U
 P 1 T L 1 F a 1 P L 2 0 L e 2 p T e T y P 4
 L

D a : P 1 T L B T y F J K L 2 1 L B F R É 2 y P F y U J P F 2 y L 2 0 r L 2
 P 2 L P 1 T L 1 F a 1 P L P 2 L 1 T I R I F B P T h L T h U I F É R I T J R T É L É
 h 1 2 h I I 1 P c 4
 L

D I L : P 1 T L B T y F J K L 2 1 L B F R É 2 y P F y U J P F 2 y L 2 0 r L
 2 h h 2 1 P U y F P c L P 2 L R P J y B L 0 2 1 I L 2 1 L 1 2 K B L h U

DE : P 1 T L B T y F JKL 2 0 L JÉ É T R R L P 2 rL 1 T e 2 p JKL 0 1 2
5 2 p T l y e T y P L 2 1 R h e H y J P I E y T R P J . 2 K F T L É J l T L
JL P 1 Jy R a T y B T 1 L h I 1 R 2 y L e Jc L . T M &

L

iM L C 1 T L I 2 e e F P P T T L 0 F y B L P 1 J P L I K J U R T L “ L 2 0 L P 1
B F R É 2 y P F y U J P F 2 y L 2 0 rL 2 1 L U y 0 J F 1 L P 1 T J P e T y P
T e h K 2 c e T y P rL 1 T J K P 1 É J l T rL Jy B L P 1 T L I 2 F e a e 1 F P P L P T T F
1 2 o T p T 1 rL L B 2 L y 2 P L 0 F y B L Jy c L B T 0 E y F P F 2 y L 2 0 L

L

iM L A P L F R L Jy L 2 h T y L 0 JÉ P L P 1 J P L C 1 Jy R a T y B T 1 L L h T
l Jy a T L 2 0 L B F R É 1 F e F y J P F 2 y L L o t E É 1 l T l X G I P J P T T c L 2 Jy B
É J P T a 2 1 F T R L T y U P F É K P T R B L t H y D l t m L Jy B L t f Ó 2 i : l I L 2 0 L
T Ü J e h K T rL P 1 Jy R a T y B T 1 L h T 1 R 2 y R L 1 2 U P F y T K c L 0
T B U É J P F 2 y rL T e h K 2 c e T y P rL 1 T L K P T I É J 2 t e L F J y B T T 2 U R
P 1 T L p F T o L P 1 J P L o F P 1 2 U P L J L B T 0 F y h F 2 P F T 2 L y 2 0 2 I 0 E l v
m É P b K J o rL F P L o 2 U K B L . T L J K e 2 R P L F e h 2 R R F . K T L
Jh h 1 2 h 5 F p P T T l y e L T y P R M

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iM L C 1 T L L I 2 e e F P P T T L J K R 2 L 0 F y B L P 1 J P L P 1 T L (F
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. c L B 2 p T l y e T y P L L 2 1 L . c L J L h 1 F p J P T L T R P J . K F R 1 e
K F J . K T M L A y L 2 P 1 T 1 L o 2 1 B R rL F 0 L J L P 1 Jy R a T y B T 1 L h
P 1 T L K F R P T B L 0 F T K B R rL P 1 T 1 T L F R L y 2 L 1 T e I T B c L h 1

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iM L AP L F R L o T KKL u 3B F d Ry É l F le JP y L J P y F P 2 F y L K T a F R K J P F 2 y I
 P 1 T L R h T É F 0 F É L J É P R P L 2 P L 1 B F I R É 2 U K B F L y J P 2 F U 2 y y P L J y B L P 1
 . 1 F y a F y a L J L É K J F e L 2 0 L B F R É 1 F e F y J P F 2 y L . c L J
 h 1 2 p F B F y a L 0 2 1 L J L h 1 T R U e h P F 2 y L F F B y U L J K L J L 2 P U 1 1 J P
 1 T b R 1 T b P 1 T c L 1 J p T L . T T y L B F R É 1 F e F y J P T B L 2 y L P
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2. The Committee recommends that the definition of 'discrimination' be included, in Chapter a range of violations that transgress under Government can utilize the definition Yogyakarta Principles that it is applicable Rights Law in relation to Sexual Orientation which the Supreme Court also mentioned in the NALSA judgement.

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iM C 1 T L I2 e e F P PPTITJE ly 1KPUTR T L “ L 2 0 L P 1 T L (F KKL

B F R É 1 F e F y JP FID:vyIML c L v h T 1 R 2 y

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iM C 1 T L I2 e erIF y P P T F R LrÉ 2Ty yURHIBL 3 yT y T 1 JKL IKJU R T R

t 8 WÉ É 2 1 B F y a L P 2 L RnTÉPPPF12TyLLP“TLI 2e LLv h ITT R 2 y v L c

y JP U1 JKL h T 1 R 2 y R L JyKB R h d F y PPRILLFTMRTPMrL É 2 e h Jy F T

Jy B L . 2 B F T R L 2 0 L F y B F p F B U J K R L L D o 1 T P 1 T 1 L F y É 2

T R P J. K F R 1 e T y P R L JI T L T Ü É K U B T B L T y P F 1 Kc L 0 1 2 e

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29 The Committee feel that discrimination
 may be faced not just from private industry
 but also from the Committee, too. Herebefore,
 extensive provisions (s) but also all
 establishments (public and private) sea
 By the Committee see comment the word 'or' est
 be added after the word 'and' use

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iM gC 1 T L I2 e e P P R T T T H p 1 D P L P 1 T 1 T L F R L y 2 L a 1 F T p
 e T É 1 Jy F R e L h 1 2 h 2 R T B L F y L P 1 T L (F K K L . c L 3 1 F É 1 I
 É K J U R T R L D J : L P 2 L D F : L F y L I K J U R T L “ r L F 0 L É 2 e e F P F
 h 1 F p J P T L T R P J . K F R 1 e T y P r L É J y L . T L e J B T L K F J . K T M

L

iM LC 1 T L I2 e e F P P P T T I P . L T K F T p C L Jy R a T y B T 1 L d T 1 R 2 y
 0 2 1 e J K L 1 T É 2 a y F P 3 B 2 0 y E L y 2 1 0 B L L P a 1 T T y F B T L 5 R L T F K B 1 T y y e P F y P R e R I I
 J I T L 2 . K F a J P T B L P 2 L 1 T R h T É P L P 1 F R I L Ü h F I G É I P M R I C 1 T
 P 2 L & P J u T L J K K L y T É T R R J I c L K T a F R K I J P L F L p e T F L J R I B J d F T y R L R
 0 K K c L 1 T R h T É P L J y B L T K T B J K K c L L h 1 T T I B R 2 2 a 0 y F H y) I T B I T K O T y B
 F B T y I C H T L M G U h 1 T e T L I 2 U 1 P L 1 J R L J K R 2 L É K J I F 0 F T B L
 1 J p T L J L 1 F a 1 P L I P L 2 R E T B K I O É y P B T I E H I B T a E v G m B É J R M L r I A y 1 T L I 2
 1 U K T B L B E I J P H F y K O F 2 y L 2 0 L a T y B T 1 L 0 K 2 o T B L 0 1 2 e
 T Ü h 1 T R R F 2 y L J y B L h T 1 R 2 y J K L K F . T 1 P c L U y B T 1 L m 1 I
 2 0 L A y B F J M L T A H I P 1 1 U T K T I B 0 / 2 L I & T , r P B T y É R K a I T T y I B P T 1 1 J E M M M R 2 y R
 B T É F B T L B F 1 B T T F y 1 P I F R 0 T F K O B R L 2 a L T y h B I T T I K B L R y L B K L P 1 T L I T y P 1
 5 2 p T 1 y e T y P R L J I T L B F 1 T É P T B L P 2 L a 1 J y P L K T a J K L 1
 R U É 1 L J R L e J K T r L 0 T e J K T L L I I L L J R L P 1 F 1 B L a T y B T 1 M &

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iMíL,1 T y L P 1 T L Y F y F R P 1 c L o T 1 T L J R u T B L J R L P 2 L o
1 T B 1 T R R J K L e T É 1 J y H R l e T L F Y H y P F 1 R T P L 1 (c H K K y L P 1 T F 1 L c
R P J P T B L J R L U y B T 1 /

&I1 Jh P T 1 L j A A L 2 0 L P 1 T L (F K K L h 1 2 p F B T R L 0 2 1 L J
d T 1 R 2 y R L o 1 F É 1 L R 1 J K K L h T 1 0 2 1 e L 0 U y É P F 2 y R
,1 F K T L 0 1 J e F y a L P 1 T L 1 U K T R r L h 1 L p y F I R É 2 R y T I L É 2
h T 1 R 2 y L p F 2 K J P T R L P 1 T L h 1 2 p F R F 2 y R L É 2 y P J F y
J a a 1 F T p T B L C 1 J y R a T y B T 1 L d T 1 R 2 y L e J c L J h h 1 2
C 1 J y R a T y B T 1 L d T 1 R 2 y R L 0 2 1 L 1 T B 1 T R R J K L 2 0 L
P 1 T L e T É 1 J y F R e L 2 0 L A y B F 2 y. I U ' R U P L F 0 É 2 F I J K I P R u c R y P a T
J y c L p F 2 K J P F 2 y R L 2 0 L P 1 T L m É P L T F P 1 L 1 L . c L J L
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2.31 The Committee note that Clause 3 of provisions prohibiting of certain acts transgender persons. However, it is noted that the mechanism provided in the Bill by which proposed Clause 3 is to be established can be made liable in case of violation. Committee also notes that the National Commission for Women is not empowered to address or prevent establishment in case of violation of Clause 3. The nature and powers of the National Commission for Women have not been defined under the National Commission for Women Act, 1990. Clause 3 of the Bill provides a mechanism by which the proposed Clause 3, if enacted, Government or any individual can be made liable in case of violation.

CHAPTER I

RECOGNITION OF IDENTITY OF TRANSGEND

“ M t I K J U R T L P I L S 2 0 L P 1 T L h 1 2 h 2 R T B L T (É F 2 K K L H P E p y B T O D
 2 0 L P 1 J y R a T y B T 1 L h T 1 R 2 y R L J K 2 y a L o F P 1 L K J c F y a L
 2 0 L É T 1 P F 0 F É J P T L 2 0 L F B T y P F P c L . c L J L S F R P 1 F É
 U y B T 1 L I K J U R T L s r J L P 1 J y R a T y B T 1 L h T 1 R 2 y L R 1 J K K L 1 J
 J R L R U F É y I L L J É É 2 1 B J y É T L o F P 1 L P 1 T L h 1 2 p F R F 2 y R L 2 0
 . T L B T K 0 É T F p T B L a T y B T 1 L F B T y P F P c M L I K J U R T L f L
 É T 1 P F 0 F É J P F 2 y r L o 1 T 1 T F y L J L P 1 J y R a T y B T 1 L h T 1 R
 S F R P 1 F É P L Y J a F R P 1 J P F 0 É J P L T H R 2 R O U L F P y l a J y R L a É T y I B T 1
 0 2 1 e L J y B L B 2 É U e T y P R L P I L J P L e J c L . T L h 1 T R É 1 F . T F
 L
 “ M i C 1 T L I 2 e e F P P T T L J K R 2 L y 2 P T L P 1 J P L B T P J F K F y a
 h 1 2 p F B T R L P 1 J P L P 1 T L S F R P 1 F É P L Y J a F R P 1 J P T L D v
 R 1 J K K L 1 T 0 T 1 L H L S E R R I T L É P L G H 1 T T y F y a L I 2 e e F P P
 J h h 1 2 h 1 5 E P T T I L y e T y P L 0 2 1 L P 1 T L h U 1 h 2 R T L 2 0 L 1 T
 h T 1 R 2 y R M L C 1 T L I 2 e e F P P T T L o 2 U K B L É 2 e h 1 F R T L
 S F R P 1 F É P L G 2 É F J K L , T K 0 J I T L N 0 0 F É T 1 r L R L T d y R P c J É H p K T
 2 0 L P 1 J y R a T y B T 1 L É 2 e e U y F P c L J y B I 5 2 y p L T 2 l 0 y 0 e F T É y T P I M L
 I K J U R T L 9 L e J y B J P T P R 2 I R U T L L S J Y I É T 1 P F 0 F É J P T L 2 0 L P 1

. JRTBL 2 y LP 1 TL 1 TÉ 2 e e Ty B JPF 2 y L 2 0 LP 1 TL I2 e e F
F y L JKKL 2 0 0 F É F JKL B I2 ÉLU h IT z P QIL 2 y 0 BL L 1 . T É 2 a y F P F 2 y
F B T yLP F P c M

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“ M “C 1 T L I2 e e F P P T T L y 2 P T L P 1 J P L P 1 T L (F K K L e J u T R
P 1 J y R a T y B T 1 L h T 1 R 2 y R L É 2 y P F y a T y P L 2 y L P 1 T
P 1 J y R a T y B T 1 L F B T y P F P c r L h U 1 R U J y P L P 2 E É P H I L 1
G É 1 T T y F y a L I2 e e F P P T T r L F y L P U 1 y L É 1 J y a F y a L P
v F B T y P F 0 F É J P F 2 y v L 2 0 L P 1 J y R a T y B T 1 L h T 1 R 2 y
h T 1 R 2 y R L F y L K J o v M L , 1 T y L P 1 T L Y F y F R P 1 c L o T 1 T L
1 T a J l B r L P 1 T L Y F y F R R P U . c e L F F R y R L F P 2 1 y T L F R I P L I B T B E J R T L y U l y B T

& C 1 T L I2 y R P F P U P F 2 y L B 2 T R L y 2 P L B F R É 1 F e F y J
C 1 T L I2 y R P F P U P F 2 y L 2 0 L A y B F J L F R L v R T Ü L . K
h 1 T e F R T L 2 0 L T Z U J K F P c L . T 0 2 1 T L P 1 T L K J o L J y B
. J R T B L 2 y L J I P É z y R J K E É U y B J P T L P 1 J P L P 1 T L R T Ü L
F 1 1 T K T p J y P L R J p T L o 1 T 1 T L P 1 T L I2 y R P F P U P F
h 1 2 p F R F 2 y R L P 2 L . T L e J B T L 0 2 1 L o 2 e T y L § m
a U J l J y P T T R L P 2 L J K K L h T 1 R 2 y R L T Z U J K F P c L . T O
T y R U 1 T R L 0 2 I 0 I J K K L B É 2 F e P L F 2) 0 T L y R R h T T É 1 L J y B L T Ü h 1
a U J l J y P T T R L K F 0 T L 2 0 L B F a y F P c L P 2 L J K K L h T 1
t 7 D i: L F y L T Ü h 1 T R R L P T 1 e R L h 1 2 1 F . F P L B F R É
O T É 2 a y F P F 2 y L 2 0 L F B T y P F P c L 2 0 L C 1 J y R a T y
É 2 y P F z y E P P I L F R R U J y É T L 2 0 L É T 1 P F 0 F É J P T L 2
P 1 T F 1 L 1 T É 2 a y F P F 2 y L J p J F K F y a L 2 0 L B F 0 0 T 1
P 1 T 1 T . c L e J F y R P L T J e F y a L P 1 T e & M

“ M s A y L P 1 F R L É 2 y P T Ü P r Ü É F y I I B l e l e P P P I I O I I h 2 1 P L 2
I2 e e F P P T T L 2 y L P H H y L a F I R R U I I R L J y R K J T y B T 1 M L A P L R J
1 T 0 T 1 R L P 2 L J L h T 1 R 2 y v R L F y P T 1 y J K r L B T T h K c L 0 T

o 2 e Jy rL 2 1 L R 2 e T P 1 F y a L 2 P 1 T 1 L 2 1 L F y L . T P o T T y
 F y P T 1 y JKL Jy B L h T 1 R 2 y JKKc L B T 0 F y T B rL IF JRIP FLRJL y 2
 h T 1 R 2 y v RL &a T y B T 1 L T Üh 1 T R R F 2 y &L F R L T Ü P T 1 y
 T Üh 1 T R R F 2 y L 1 T 0 T 1 R L P 2 L JKKL 2 0 L P 1 T L T Ü P T 1 y JF
 JI T L R 2 É F JKKc L B T 0 F y T B L JR L T F P 1 T 1 L e JR É UKF y T
 e Jy y T 1 F R e R rL R h T T HR 2LÉhFJKL T flyyPRIL JYÉP F 2 y R M

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“ MfCL1 T L I2 e e F P P T T L JKR 2 L 0 F y B L P 1 JP L P 1 T L W2 y v
 É KJI F 0 F T B L P 1 JP L P 1 Jy R a T y B T 1 L h T 1 R 2FyBRIly IPJF G E JL
 a T y B T 1 ML Ay L P 1 T L mw G mL L É JR BBIT P IT T E E2yUJ P P 2 y
 a T y B T 1 L 0 K2 o T vBLE a011P2ReLL PH22IG 0 L ITÜTh B 2TeR R F 2 y L Jy B L
 KF . UlyPBcT 1 L m1 P F É KTR L t VL Jy B L it L 2 0 L P 1 T L I2 y R P
 P 1 T 1 T 0 2 1 T rL B T É KJI T L P 1 JP MMMP 1 Jy R a T y B B1 L h T 1
 F B T y P F 0 F T B L a T y B T 1 L F R L JKR 2 L Uh 1 T KBL Jy B L P 1 T
 B F 1 T É P T B L P 2 L a 1 Jy P L KT a JKL 1 T É 2 a y F P F 2 y L 2 0 L
 0 T e JKT L 2 1 L JR L PL1YF211BILLaRT2yrB P 11 M& 1 T Z U F 1 T e T y P D
 h 1 2 É TRRL1 Uy RL É 2 Uy P T 1 L P 2 L h 1 2 a L TRRF p T L F y P

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“ M7C 1 T L I2 e e F P P T T L 2 . R T 1 p 2 P P IF P L y P 11 RHL T KKKKLUB
 Jy B L É 2 y É 1 T P T L h 1 2 É T B U 1 T L P 2 L . T L L 0 2 KK2 o T B L C
 F R L KF u T Kc L P 2 L p F 2 KJP T L P 1 F R L 1 F a 1 P ML F P L B 2 T F
 G É 1 T T y F y a L I2 e e F P P T T L P 2 L e Ju T L F P R L 1 T É 2 e e T

YJaF R P 1 JP T L P 2 L 0 2 KK2 o L P 1 T e ML C 1 T L h 1 T R E y E T L
 h Jy T KL F y É 1 T JR T R L P 1 T L 1 F R u L P 1 JP L P 1 T L 1 T É 2 a y
 Jh h KF É Jy P L o F KKL . T L . JR T B L 2 y L R 2 e T L u F y B L 2 0 L J
 2 1 L h R c É 1 2 K2 a F É JKLLvoT2Kf KBFL 1FFKf P f P h Jf R L K2BaTFyRPFyP
 Jy B L p F 2 KJP T L P 1 T L 1 F a 1 P L 2 0 L P 1 Jy R a T y B T 1 L h T 1
 n U B a T e T y P L Jy B L F y P T 1 y JP F 2 y JKL 1 Uf JyLL11Jf T IL P R T L
 R T3Kf T y P F 0 F T B L a T y B T 1 L 1 T É 2 a y F) T B M

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“ ML9C 1 T L I2 e e F P P T TILKR P112Jy Ia KccLL0hTl 2 É T B U1 T L 0 2 1
 P 1 Jy R a T y B T 1 L h T 1 R 2 y R v L 3F B H é P E f F É RPLF.2Ty crI2 Jy B IL
 F y p 2 Kp T L Jy L T KT e T y P L 2 0 L e T B F É JKrL . F 2 K2 a F É JK
 p F 2 KJP T L P 1 Jy R a T y B T 1 L h T 1 R 2 y R v L 1 F a 11PTRL Uy
 I2 y R P F ILUP F 2 y M

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“ ML8C 1 T L I2 e e F P P T T L JKR Q E2KfKf T Lh P 2 Jf P E B T R IL 0 2 1 L Jf
 1 T É T F p T L F B T y P F P c L É T 1 P F 0 F É JP T R L JR L P 1 Jy R a T y
 P 2 L 1 T É 2 a y F P F 2 y L 2 0 L P 1 T F 1 L a T y B T 1 L F B T y P F F
 I2 U 1 P L hL P KfJy R L h T 1 R 2 y R L e UR P L . T L J. K T L P 32 L R T É
 F B T y P F 0 F T B L a T y B T 1 L JR L e JKC hLT0LT(eFJKKfL 2 lc IL R1P Jf P
 h T 1 R 2 y R L o 1 2 L 1 T É T F p T L F B T y P F P c L É T 1 P F 0 F É JP
 y Je T R rL JKR 2 L F e h KF T R L P 11 RP2LyR1LJy R KKLyB2TH IL .h T L J.
 P 1 T F 1 L KJR P L y Je T R L 2 y L 2 0 0 F É F JKL F B T y P F P c L B 2

É Jy L 2 0 0 F É F JKKc L É 1 Jy a T L . 2 P 1 L P 1 T F 1 L 0 F 1 R P L J
 É 1 T J P T L J L B F R É 1 F e F y J P 2 1 c L 1 T R L P 1 F É P F 2 y L J a J F y R
 L
 “ ~~W~~ C 1 ~~T~~ L e e F P P T T L J K R 2 L B 2 L y 2 P L 0 F y B L J y c L É K J I F
 G É 1 T T y F y a L I 2 e e F P P T T L 2 1 L P 1 T L y J P U 1 T L 2 0 L J R R
 . T T y L K T 0 P L P 2 L P 1 T L 5 2 p T 1 y e T y P L P 2 L 0 1 J e T L 1 U
 . J R F R L P 1 T L I 2 e e F P P T T L o 2 U K B L e ~~J~~ P T I I I ~~S~~ É R P ~~d~~ F
 Y J a F R P 1 J P T r L J y B L o 1 T P 1 T 1 L P 1 T L I 2 e e F P P T T L
 1 T É 2 e e T y B J P F 2 y R L 2 1 L 1 L T n T É P L J y c L J h h K F É J P F 2 y I
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3.01 The Committee after examining the p
 and 4(2) thoroughly are of the firm v
 to explicitly define the terms 'gender
 since the right to self determination
 in the directions given in NALSA judge
 upholds the ~~identified~~ ~~gender~~ ~~made~~ or
 gender in absolute terms. The ~~Committee~~
 such key de ~~gender~~ ~~may~~ ~~be~~ ~~adopted~~ Bill
 "' gender ~~identifies~~ to each person's inte
 experience of ~~gender~~, ~~which~~ ~~not~~ ~~correspond~~
 assigned at birth, including the perso
 may involve, ~~choice~~, ~~remedy~~ ~~modification~~ of bo
 and/or functions by medical, surgical
 expressions ~~such~~ ~~as~~ ~~dress~~, ~~mannerisms~~,
 and social ~~interactions~~

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“ MEG1 T L I2 e e F P P T T L 0 U1 P 1 T 1 L y 2 P T L P 1 J P L . c L J L É
 F P L F R L y 2 P L É K T J I L J R L P 2 L o 1 J P L L 1 T É 2 a y F P F 2 y L I
 P 1 J y R a T y B T 1 L h T 1 R 2 y L 2 1 L J R L J L e J K T b 0 T e J K T b P
 a T y B T 1 L J R R F a y T B L J P L . K K L B 2 M B B Q U T P R R I L T P H L T H 1 F T R L R C
 P 1 2 R I T J y R a T y B T 1 L h T 1 R 2 y R L o 1 2 L F B T y P F 0 c L F y L
 J y B L 2 L y 2 P L o J y P L J L É T 1 P F 0 F É J P T L 2 0 L P 1 J y R a T y B T
 F B T y P F 0 F T B L J R L v e J K T v L 2 1 L L v 0 T e J K T v L T P H Y O L J É
 a T y B T 1 L J y B L y 2 P L F y L a T y B T 1 L J R R F a y T B L J P L . F 1 I
 P 1 T L B T 0 F y F P F 2 y L 2 0 L v P 1 J y R a T y B T 1 L h T 1 R 2 y R v
 v e J K T v L 2 1 L L v 0 T e J K T v M

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“ M L , 1 T y L P 1 T L Y F y F R P 1 c L o T 1 T L J R u T B L P 2 L É 2 e e T
 P 1 T c I h 1 J p 2 T h 2 R T B L P 1 T L B T 0 F y F P F 2 y L 2 0 L C 1 J y R a T y

& m L h T 1 R 2 y L d 1 2 L F R L /

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D m : y T F P 1 T 1 L o 1 2 K K c L 0 T e J K T L y 2 1 L o 1 2 K K c L

L

D (L : J L É 2 e . F y J P F 2 y L 2 0 L 0 T e J K T L 2 1 L e J K T 4 L 2

L

D I L y T F P 1 T 1 L 0 T e J K T I L y 2 1 L e J K T 4 L J y B

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o 1 2 R T L R T y R T L 2 0 L a T y B T 1 L B 2 T R R L R y F 2 a P y L T e B J L É 2

P 1 J P L h T 1 R 2 y L J P L P 1 T L P F e T L 3 e 2 0 y L L . J y B B P I L J y R

o 2 e T y r L h T 1 R 2 y R L o F P 1 L F y P T 3 Z R T Ü I L R M & J P F 2 y

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“ M L C ' 1 T L Y F y F R P 1 c L 0 U 1 P 1 T 1 L É K J I F 0 F T B L P 1 J P L & F

F y L D I : L J . 2 p T L F R L 1 T H K J R T B L É J y I L v H 2 H l v 2 J É y l c I L P h 1 T L

I 2 e e F P P T T L 0 2 1 L a T P P F y a L P 1 T L É T 1 P F 0 F É J P T L 2

P 1 T F 1 L a T y B T 1 L F R L y 2 P L e J P É 1 F y a L o F P 1 L P 1 T F
 B F 0 0 F É U K P L 0 2 1 L P 1 T L G É 1 T T y F y a L I 2 e e F P P T T L P
 C l y J R a T y B T 1 L d T 1 R 2 y M L d 1 2 p F R F 2 y R L F y L I K J U R T R I
 0 2 1 L B T 0 F y F y a L J L C 1 J y R a T y B T 1 L d T 1 R 2 y M L C 1 T
 l T h K J É F y a L P 1 T L o 2 1 B L v J y B v L . c L v 2 1 v L o 2 U K B L o
 h T 1 R 2 y L F y L P 1 T L B T 0 F l y L F P F 2 R 2 y 2 L 0 J y B L J y R h T y U B
 e F R U R T B & M

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3.41 The Committee concur with the content by replacing the word 'and' by 'or' would of any person in the definition of Transgender be missed. The Committee, however, recommend may be redrafted indicating clearly that as a 'transgender person', not as a 'male' word 'only' may be inserted. Clause 7(1) may be redrafted as under:

"The District Magistrate shall issue applicant under Section 5 on the basis made by the District Screening Commission in such manner, as may be prescribed, gender of such person only as 'transgender'."

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“ MLC 1 T L I2 e e F P P T T L 2 . R T 1 p T2L0PL11JHÉ Q a ly IE P F T ly H U
JL h 1 2 p F R F 2 y L 0 2 1 L É 2 y R P F P U P F 2 y L 2 0 L J L S F R P 1 F
(KML IKJUR T L 7 D t : L Jy B L Di: L h 1 2 p F B T R L P 1 T L B T P
I2 e e F P P T T L J R L 0 2 K K 2 o R /

7 L D & N y L P 1 T L 1 T É T F h P L 2 0 L Jy L Jh h K F É J P F 2 y L U
Y Ja F R P 1 J P T L R 1 J K K L 1 T 0 T 1 L R U É 1 L Jh h K F É J P F
I2 e e F P P T T L P 2 L .. TcLLÉP21yTRLPJF P I U P H B E J P T L 5 2 p
P 1 T L h U 1 h 2 R T L 2 0 L 1 T É 2 a y F P I F 2 y L 2 0 L P 1 Jy
L
D iL & C 1 T L S F R P 1 F É P L G É 1 T T y F y a B R I T É P F E P Y T D L
R 1 J K K L É 2 L h 1 F R T L
L

D J L P 1 T L I I F T 0 L Y T B F É J K L N 0 0 F É T 1 4
D . L : S F R P 1 F É P L G 2 É F J K L , T K 0 J I T L N 0 0 F É T 1 4
D É : J L d R c É a 1 F 2 R K L 2 1 L d L R c É 1 F J P 1 F R P 4
D B : J L 1 T h 1 T R T y P J P F p T L 2 0 L P 1 J y R a T y B T 1 L É
D T : Jy L 2 0 0 F É T 1 L 2 0 L P 1 T L Jh h 1 2 h 1 F J P T L 5 2 p
. c L P 1 J P L 5 2 p T 1 y e T y P M &

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“ MLC 1 T L I2 e e F P P T T L J K R 2 L y 2 P T L P 1 J P L P 1 T 1 T L F R L
G É 1 T T y F y a L I2 I P t F P P Y T P T U 1 2 T I L 2 0 L J R R T R R e T y P L . c L
. T T y L K T 0 P L P 2 L P 1 T L 5 2 p T 1 y e T y P L P 2 L 0 1 J e T L 1 U
. J R F R L P 1 T L I2 e e F P P T T L o 2 U K B L e J u T L 1 T É 2 e e T
Y Ja F R P 1 J P T r L Jy B L o 1 T P 1 T 1 L P 1 T L I2 e e F P P T T L
1 T É 2 e e T y B J P F E P Y R T É P L Jy L c L Jh h K F É J P F 2 y M

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“ MLC 1 T L I2 e e F P P T T L 2 . R T 1 p T L P 1 J P L I K J U R T L 9 D i: L J
2 0 0 F É F J K L L B 2 É U e T y P R L J I T L . T F y a L 1 T 0 T 1 1 T E
P 1 Jy R a T y B T 1 L h T 1 R 2 y R L o 2 U K B L . T L 1 T É 2 1 B T B L F y

T B U É J P F 2 y P L T É R I L I P P 2 F 2 0 r E É É M T M r L I K J R R L ũ L 2 1 L ũ A A L 2 1 L E 2
 e T J y L P 1 J P L 0 2 K K 2 o F y a L P 1 T L É T 1 P F 0 F É J P T L F R R U
 2 P 1 T 1 L G P J P T L J U P 1 2 1 F P F T R L K F u T L d J R R h 2 1 P L r
 A y É 2 e T L Y C J Ü H R H P É L o 2 U K B L J U F É 2 J P F I É K K C T I L P 1 J y R
 F B T y P F P c L 2 0 L h T 1 R 2 y R L F y L P 1 T F 1 L B 2 É I U e T y P R L
 L

“ M L C U 1 P 1 T 1 r L I K J U R T L 9 D “ : L F R L U y J . K T L P 2 L R h T
 1 T É 2 a y F P F 2 y L J R L J L P 1 J y R a T y B T 1 L h T 1 R 2 y L F R L 0
 B F p 2 1 É T r L y B r L h y P 1 T 1 F P J y É T r L É 1 F e F y J K L K J o r L T P É L 2
 2 0 L P 1 J y R a T y B T L L F B T y P F P c L 2 y K c M

L
 “ M L S U 1 F y a L P 1 T L . 1 F T 0 F y a L 2 0 L P 1 T L I 2 e e F P P T
 I 2 e e F P P T T L o T 1 T L F y 0 2 1 e T B L P 1 J P L L & P 1 T L G P J P T
 0 J É F K F P J P T L P 1 T L 1 3 F T É T 2 y a P y H F O P H T 2 B y I L a 2 T 0 y L B R T I K I 0 2 0 L h T
 e J K T r L 0 T e J K T L 2 1 L P 1 J y R a T y B T L L r h 1 U É T É U y l y T 2 L P P L 1 h J P
 J a J F y R P L P 1 T L h 1 B y T É F H K T F R y L J P 2 F 0 3 E y B R I T y K O B F L 0 F T É K I 0 F 2 y &
 J K R 2 L R U a a T R P T B L P 1 J P L & 0 2 1 L 1 T É 2 a y F P F 2 y L 2 0 L
 G É 1 T T y F y a L I 2 e e F P P T T L e J c L É 2 e h 1 F R T L 2 y K c
 1 T h 1 T R T y P J P F p T Y L J K T I L 2 P e 2 I L P C T e J K T L D Y C C : L P 1 J y R L
 1 T h 1 T R T y P J P F p T L 0 1 2 e L P 1 T L C T e J K T L P 2 L Y J K T L D C
 0 1 2 e L P 1 T L G 2 Y É F y J K R M P K 0 c J l T L

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“ML,1 TyLP1TL YFyFRP1cLoT1TLÉ2y012yPTBL2y
 &P1TLSFRP1FÉPLGÉLFRITyHyalyI2É2yFRPHHUP TBL
 C1JyRaTyBT1L ,TK0JlTL(2JlBLÉ2yRPFPUPTBL.cL
 FyL21BT1LP2L1TKhLP1TLC1JyRaTyyBIFlyIRhPTl1TRl2ly
 P1TeLFyP2LP1TLR2ÉFTPcMLAyL21BT1LP2LTy
 eTeT1RL20LP1TLC1JyRaTyBT1L ,TK0JlTL(2JlBL
 eTJRUI TRrLP1TL52pT1yeTyPL1JRLÉ2yRPFPUPTBL
 I2eeFPPTTRMLC1TLSFRP1FÉPLwTpTKLGÉ1TTyFya
 I2KKTÉP21LJRLP1TLIIJF1hT1R2LyTLBJyBJKIS TyhBULP@UL
 WTJKP1LGT1pFÉTRrLP1TLSFRP1FÉPLG2ÉFJKL ,TK0J
 dRcÉ1FJP1FRPL JyBL JL1Th1TRTyPJPfpTL20LP
 y2eFyJPTBL.cLP1TLSFRP1FÉPLI2KKTÉP21LJRLe
 I2eeFPPTTL TÛJeFyFRrLyPBITTLChlTJlR2yRLJyBLÉTI
 C1JyRaTyBT1MLm0PT1LÉTI PF0FÉJPF2yL.cLP1TL
 P1TcLJlTL1TaFRPT1TBLoFP1LC1JyRaTyBT1L ,TK0
 ÉJlBML(cL1TÉ2ayF)FyalyLP1TeLJRLC1JyRlaLTyBT1
 lJPF2yLÉJlBRrL1TJKP1LFyRUIJyÉTLÉJlBRrL12URTL
 TPÉMLC1FRLh12ÉTBUI TLFRLRUÉÉTRR0UKLFyLCJe

321The Committee, after a careful exam
recommen d that process of obtaining a c
Commi ttee made s e i m p l e p o s s i b l e f r e e a n d
f r i e n d l y . A s t r i c t a n d r e a s o n a b l e f o r m
i s s u a n c e o f a c e r t i f i c a t e o f i d e n t i t y .
m a y a l s o b e i n t r o d u c e d t o e n s u r e t h a t
b e c o m e s a n a r b i t r a r y a f f a i r n o r a s o u r c e
t r a n s g e n d e r p e r s o n s .

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“ MLmRL 1 TrL JIPB RL h 1 TRTy É TL 2 0 L P 1 TL II FT 0 L Y
 GÉ 1 T Ty F y a L I2 e e F P P T T L Jy B L e T B F É JKL T Ü JcLF y JP F 2
 H T L I2 e e FyP2PTTL~~LP~~ II THLLR É 1 T Ty F y a L h 1 2 É T B U 1 T L Ty
 h 1 2 h 2 R T B L h 1 2 p F R F 2 y L R T T e R L P 2 L F y p 2 Kp T L JL
 F y P 1 U R F p T L Jy B L B T e T Jy F y a L Jy B L R U . n T É P R L I
 U y y T É T R R J l c L R É 1 U BÉ 2 y y c I F 2 0 E P a I I Æ I I y B 2 ly ML C 1 F
 v R É 1 T Ty F y a v L 2 0 L P 1 Jy R a Ty B T 1 L h T 1 R 2 y R L F R L h
 2 0 L 0 U y B Je Ty P JKL 1 F a 1 P R L P 2 2 L e T Z I U J K B L c L B B F K c y L F F P y c
 0 1 T T B 2 e L 2 0 L a Ty B T 1 L T Ü h 1 T R R F 2 y L a U J l Jy P T T B L
 P 1 T L I2 y R P F P U P F 2 y rL J R L J 0 0 F 1 e T B L . c L P 1 & L G U h 1

“ ML,1 Ty L P 1 T L I2 e e F P P T T L h T 1 U R T B L P 1 T L mw G m L
 0 2 U y B L T P l I G P U h R I I e T L I2 U 1 P L J K R 2 L e J B T L F P L Je h K c L
 P 1 J P L T JÉ 1 L h B B R O Fy yw R B L R R T K Ö U JKL 2 1 F T y P J P F 2 y L Jy
 F y P T a 1 JKL P 2 L P 1 T F 1 L h T 1 R 2 y J K F P c L Jy B L F 3 R L 2 y T
 B T P T 1 e F y J P F 2 y rL B F a y F P c L Jy B K L 0 I T L T O B 2 e É I T J B B P 2 y D
 e T B F É JKL h 1 2 É T B U 1 T R L F y É K U B F y a L G O G rL R P T 1 F K
 1 T Z U F 1 T e T y P L 0 2 1 L K T a JKL 1 T É 2 h y F P F 2 y L 2 0 L P 1 T

“ ML,1 Ty L P 1 T L Y F y F R P 1 c L o T 1 T L J R u T B L P 2 L 2 0 0 T l
 Y F y F R P 1 c L R P P J P T B l e F B H P É F K L F h o I I JÉ F R L y 2 P L F y p 2 Kp
 P 1 J P L É T 1 P F 0 F É J P T L e J c L . T L e F R U R T B M L C 1 T 1 T
 h 1 JÉ 2 F y F T 1 L F I y 2 l e B F P P T T L 0 2 1 L B T É F B F y a L J L a Ty B
 T R R T y L P F J K & M

325The Committee are in agreement with the Ministry and feel that the role of Scr in declaring a person as transgender and Officer too is equally important while transgender person would without difficulty misuse of the certificate. As the role Medical Officer has not been defined Committee, the Committee recommend that Medical Officer be defined clearly

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“ MLC 1 T L I2 e e F P P T T L 2 . R T 1 p T L P 1 J P L F y L I K J U R T I
e T y P F 2 y T B L P 1 J P L P 1 T L S F R P 1 F É P L G É B R I T T É y P F F y 2 a y L L I 2
D t : L R 1 J K K L É 2 e h 1 F R T r L J e 2 y a L 2 P 1 T 1 L e T e . T 1 R r
N 0 0 M É T 1 v

L

“ M L , 1 T y L J R u T B I I P R I 2 T y I R L 0 F l y M L J S F R P y P É P L , T K 0 J I T L N
P 1 T L G É 1 T T y F y a L I 2 e e F P P T T L J y B L y 2 P L h 1 T R É 1 F .
Y F y F R P 1 c L B U I F y a L P 1 T F 1 L T p F B T y É T L . I I 0 2 1 T L P

& M M M J L S F R P 1 F É P L G 2 É F J K L , T K 0 J L K 2 2 N B 0 F É T O I P L T
R 2 É F J K L o T K 0 J I T L 2 0 L J K K L P 1 T L h T 2 h K T L F y L P 1
J h h 2 F y P T B L S F R P 1 F É P L G 2 É F J K L , T K 0 J I T L N 0 0 F
I 2 e e F P P T T M M M L S F R P 1 F É P L G 2 É F J K L , T K 0 J I T L N 0 0 F
B T R F a y J P F 2 y L F y L P 1 F I R T L h I 2 F R F y P P J P F M I T h 2 I O I L P
É 2 e e U y F P c L F R L J K I T J B c L P 1 T 1 T L F y L P 1 T L S F R
y 2 P L y T É T R R J I c L P 2 L 1 T h K J É T L P 1 T L S F R P 1 F É P
1 T h 1 T R T y P J P F p T L 2 0 L P 1 J y R a T y B T 1 L I É 2 e e U y F
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3.82 The Committee felt that the membership of Welfare Officer is only by virtue of his Committee feel that he should be District Social Officer in the Screening Committee. The considered view that it is a District Social Welfare Officer should have at least five years experience working with/among transgender persons knowledge about their specific needs acquainted with the temperament and aptitude persons

3.29 The Committee are also aware that it State Government to find a person with nominated as a District Social Welfare Officer Committee, therefore, recommend that membership of a District Welfare Officer of welfare of transgender persons in the a member of the District Screening of Social Welfare Officer.

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“ MĚC2 1 L Jh h Kc F y a L 0 2 1 L É T 1 P F 0 F É J P T L 2 0 L F B T y P
h 1 2 p F B T B L P 1 J P /

&f ML mL P 1 Jy Ra Ty BT 1 L h T 1 R 2 y L e Jc L e Ju T L Jy L
YJa FRP 1 J P T L 0 2 1 L F R U L F y B a T L y J P É P t P R O L F I É P H T y R a
F y L R U É 1 L 0 2 1 e L Jy B L e Jy y T 1 rL Jy B L JÉ É 2 e h Jy F T B
e Jc L . T L h 1 T R É 1 F . T B /

L

d 1 2 p F B T B L P 1 J P L F y L P 1 T L É J R T L 2 0 L J L e F y 2 1 L
e J B T L . c L J L h J I T y P L 2 1 L a U J I B F Jy L 2 0 L R U É 1 L É 1
L

“ MĚIKJUR T L R D J P : T I R L J R I L 0 2 K K 2 o R /

&9 DG 1: T M L S F R P 1 F É P L YJa FRP 1 J P T L R 1 J K K L F R R U
R T É P F 2 y L f L J L É T 1 P F 0 F É J P T L 2 0 L F B T y P F P c L J
2 0 L P 1 T L 1 T É 2 e e T y B J P F 2 y R L e J B T L . c L P 1 T L S F
R U É 1 L 0 2 1 e L Jy B L e Jy y L T F a L T o L F J R L F e y J d L R U É I L h 1 T I
F y B F É J P F y a L P 1 T L a T y B T 1 L 2 0 I L R U É 1 L h T 1 R 2 y L

L

“ MĚIKJUR T L 8 L R P J P T R L J R L 0 2 K K 2 o R /

&8 Dnt 0: P M 1 L P 1 T L F R R U T L 2 0 B R J L É P T H P y F I O D t é : J P L T 2 L O U
9 rL F 0 L P 1 T 1 T L F R L Jy c L É 1 Jy a T L F y L P 1 T I L a T y B
R 1 J K K L e J u T L Jy L Jh h K F É J P F 2 y L P 2 L P 1 T L S F R P 1
É T 1 P F D F É J P T M &

L

&8 DG: 1 M L S F R P 1 F É P L YJa FRP 1 J P T L R 1 J K K r L 2 y L 1 T
R U 3 R T É P F 2 y L D t : rL Jy B L 2 y L P 1 T L 1 T É 2 e e T y B J P
G É 1 T T y F y a L I 2 e e F P P T P T I L F R y B U F T É L J P I F é y T I L H É F I O y F a É T
F y L R U É 1 L 0 2 1 e L Jy B L e Jy y T 1 L Jy B L o F P 1 F y L
h 1 T R É I L F . T B M &

L

“ MĚmR u T B L P 2 L T K J . 2 1 J P T L Jy B L É K J I F 0 c L P 1 T L h 1 2 É
É T 1 P F 0 F É J P T r L P 1 T L Y F y F R P 1 c L F y I L P 1 T F 1 L o 1 F P P

&G T Ü 3 R O R T F a y e T y P L G U 1 a T 1 c L D G O G : L o 2 U K B L y
h T 1 R 2 y L P 2 L . T L B T É K J I T B L J R L J L P 1 Jy R a T y B T 1
C 1 T F 1 L a T y B T 1 L R 1 J K K L . T L 1 T É 2 1 B T B L F y L J K K L
1 J P F 2 y L É J I B r L p 2 P T 1 L É J I B r L m J B 1 J I L T É L J I F E R I R T U P T É B N
. c L P 1 T L S F R P 1 F É P L YJa FRP 1 J P T M L W 2 o T p T 1 r L

IKJUR TL 8 Dt : rL F 0 L P 1 Jy R a T y B Bel TLy HLT2 1RB2 y R Ly B
o 2 e Ty : LBTRF1 TLP 2 LÉ 1 Jy a TLP 1 TF1 L a Ty BT1 L
0 2 1 L P 1 TL RTÉ 2 y BL P F e TrL e Jc L e LSTFIR Fyl LF HhPh
YJa FRP1 JPTL 0 2 1 LP 1 TL1 Tp FRTBLÉ T1 PF 0 FÉ JP T
JL É 2 e h TPTy PL YTB FÉ JKL N 0 0 FÉ T1 L 1 T a JI B F y
YJa FRP1 JPTL L u F o J K K r F R R U T L P 1 T e L P 1 T L 1 T p F R
1 T a JI B F y a L P 1 T F 1 L . Te F Jy la 2 1 Fy B P 2 1 e T Jy L JL y B I T Jy R
IKJUR TL 8 Dt : L 2 0 L P L T L h 1 2 h 2 R T B L (F K K & M

L

“ MLC 1 T L Y F y F R P 1 c L 0 U 1 P 1 T 1 L R U . e F P P T B L P 1 J P L

IKJUR TL 8 Di: L p F) L v C 1 T L S F R P 1 F É P L YJa FRP1 JPTL
U y B T 1 3 R R É U P F 2 y L L y B L 2 y L P 1 T L 1 T É 2 . e c e L T R y I P I L F S É F P R L e
GÉ 1 T T y F y a L I 2 e e F P P T T rL F R R U T L J L É T 1 P F 0 F É J P T
R U É 1 L 0 2 1 e L J y B L e J y y T 1 L J y B L o F P 1 F y L R U É 1 L P F e
B T K T P T B L 0 1 I 2 e L P 1 T L (F K K M &

L

335 The Committee, after going through Ministry on one hand and hearing the Commission on the other hand, observe that the candidates are reluctant to undergo physical examination by the Screening Committee for obtaining a licence. A person in the first instance. The Commission would apply again for a licence by the same procedure which he went earlier. In the Ministry, the Commission has recommended that the Commission should be deleted from the Bill.

3.36 The Committee also desire that the decision of the Screening Committee may be final. Bill itself.

CHAPTER IV

WELFARE MEASURES BY THE GOVERNMENT

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sML IKJUR T L V L 2 0 L P L T L (F K K L R P J P T R /

L & V D t : 1 T L J h h 1 2 h 1 F J P T L 5 2 p T 1 y e T y P L R 1 J K K L P J u
T 0 0 T É P F p T L h J I P F É F h J P F 2 y L 2 0 L P 1 J y R a
F y É K U R F 2 y L F y L R 2 É F T P c M

L

D i L C 1 T L J h h 1 2 h 1 F J P T L 5 2 p T 1 y e T y P L R 1 J K K L P J u
. T L y R É J I c L P 2 L h 1 2 P T É P L P 1 T L 1 F a 1 P R I
P 1 J y R a T y B T 1 L h T 1 R 2 y r L J y B L 0 J É F K F P J P T L
R É 1 T e T R L 0 1 J e T B L . c I L P 1 J P L 5 2 p T 1 y e T y P M

L

D ' L : C 1 T L J h h 1 2 h 1 F J P T L 5 2 p T 1 y e T y P L R 1 J K K L 0 2
J y B L h 1 2 a 1 J e e T R L o 1 F É 1 L J I T L P y 1 2 J y R a T y I
R P F a e J P F R F 3 B F R É 1 B L e y 2 y J P 2 1 c M

L

D s L C 1 T L J h h 1 2 h 1 F J P T L 5 2 p T 1 y e T y P L R 1 J K K L P J u
h 1 2 P T É P F 2 y L J y B L 1 T 1 J . F K F P J P F 2 y L 2 0 L P 1
P 1 T L y T T B R L 2 0 L L R U É 1 L h T 1 R 2 y M

L

D f L : C 1 T L J h h 1 2 h 1 F J P T L 5 2 p T 1 y e T y P L R 1 J K K L P J u
P 2 L h 1 2 e 2 P T L J y B L h 1 2 P T É P L P 1 T L 1 F a 1 P L
h J I P F É F h J P T L F y L É U K P U 1 J K L I J y B L 1 T É 1 T J P F 2

L

sML C 1 T L I 2 e e F P P T T L 2 . R T 1 p T L P 1 J P I 2 I K K F R a T L F V 2 L y h L I 2

P 1 T L J h h 1 2 h 1 F J P T L 5 2 p T 1 y e T y P L R 1 J K K L P J u
F y É K U B F h J I L P F É E h R J P É U y T

P 1 J y R a T y B T 1 L h T 1 R 2 y R L F y L R 2 É F T P c r L P J u T L e T

P 1 J y R a T y B T 1 L h T 1 R 2 y R L J y B L 0 J É F K F P J P T L P 1 T F 1 L

J I T L 3 R 2 P y F a e J P F) F y 3 B H R J É B E e y 2 y J P 2 1 c r L J y B L P 2 L P J u

1 T R É U T r L h 1 2 P I T T É I P J F E K H L P J P F I 2 y L 2 0 L P 1 J y R a T y B T 1

2 P 1 T 1 R M

L

sMÉ C 1 T L I2 e e F P P T T L 0 F y B L P 1 J P L o T K0 JI T L e T J R U 1
v Jh h 1 2 15 2 p TPI TyLe T y P v rL o F P 1 2 U P R É K U I F B E (F Q y I L P y I P T
Uy É K T JI L Jy B L U y B T 0 F y T B L B F p T F P R o F T 2 T y y I L 2 P 0 1 L T I L T I R y h 2 ly .
G P J P T L 5 2 p R T I L Iy æ 2 T y K B L K T J B L P 2 u I L h 2 J R R F y É a 1 I L P 2 I P T I L T . 1 U L É
F y L B T K J c R L F y L F e h K T e T y P J P F 2 y L 2 0 L o T K 0 JI T L e
h T 1 R 2 y R L . T R F B T R L B F K U Y P F ly B I L R 2 1 r L P J É T É 1 2 T U ly P R L F y K
2 y L P 1 T L e 5 T y p T L 1 P y 2 L 1 T B 1 T R R L P 1 T L a 1 F T p Jy É T R L 2
É J R T L 2 0 L p F 2 K J P F 2 y L 2 0 L I y c L h 1 2 p F R F 2 y L 2 0 L P 1 T
L

L

sMÉ , F P 1 L 1 T R h T É P L P 2 L I K J U R T L V D s : rL P 1 T L I 2 e e F P P
F y R P F P U P F 2 y J K F) J P F 2 y L 2 0 L e JI a F y J K F R T B I L F y B F
o 2 e T y rL 2 1 L P 1 2 R T L É 1 JI a T B L o F P 1 L . T a a F y a L
F y P T K K T É P U J K b e T y P J K L L B F R J . F K F P F T R rL Je 2 y a R P
1 T J B o J c L 2 p T 1 L P 1 T L K J R P L 7 f L c T JI R L F y L A y B F J M L
B T y U B T R L h T 2 h K T L 2 0 L P 1 T F e l R L T a K F y É L I y P B 2 L I P 2 T L É K F B T
B F a y F P c L Jy B L 1 T R h T É P M L C 1 T L P 1 Jy R a T y B T 1 L
1 T 1 J . F K F P J P T B L . c L P 1 T L G P J P T rL . U P L y T T B L h 1 2 P
P 1 T L I 2 y R P F P U P F 2 y L J R L o T K K L J R L 1 T B 1 T R R J K L 2 0
B F R É 1 F e l p F y 2 J K F y É T L 2 1 L 0 I F y Jy É F J K L h T y U 1 c M

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sME ,1 Ty L Ty Z UF 1 TBL 0 1 2 e LP 1 TL YF y FRP2ly d I2 JRL P 2
P 152Lp T1 ye Ty P LP 2 L1 TB1 TRRL P 1 TL a 1 IfyTBpLJy É T RL 2
Rh T É F 0 F É L o TK0 JI TL e TJRU1 TRL P 2 L . TL Uy BT1 P Ju T
P 1 TL 52JP T1 ye Ty P RL 1 Jp TL y 2 PL . T Ty L KJF BL B 2 o y I
YF y FRP 1 c L 1 Th KF TBL P 1 JP rL &F PL FRL Fy 0 2 1 e TBL 1
P 1 TL ITy P 1 TL JRL o T KKL JRL GP JP TL 5 2 p T1 ye Ty P rL B 2
2 y LP 1 TL . JRF RL 2 0 LP 1 TF KKL RTTyTBuTRILMPL2CL1TILFhPI TI RH
Jy BL FRL JL RP Th L Fy L h 1 2 P T É P F 2 y L 2 0 LP 1 TF 1 L 1 F
o 1 F É 1 L h T 1 P JF y LP 2 L o TK0 JI TL e TJRU1 TRL . c LP 1 T
P 2 L Jh h 1 2 h 1 F JP TL 5 2 p T1 ye Ty P RL 0 2 1 LP JulFTyMIL Rh
mRL 0 JI L JRL 1 TB1 TRR JKL 2 0 LP 1 TF 1 L a 1 FT p Jy É TL FR
h 1 2 p FBTRL 0 2 1 L JP F 2 y JKL I2 Uy É F KL 2 0 LC1 Jy Ra Ty E
0 Uy É P F 2 y RL JRR Fa y TBL P 2 L FPL Uy BT1 LP 1 TL mÉ P M
0 Uy É P F 2 y RL 2 JKL 2 Uy É F KML2C 1 TL I2 Uy É F KL FRL JL .
Fy É KUBFy a L 1 Th 1 TRTy P JP F p TRL 0 1 2 e LP 1 Jy Ra Ty B
P 1 TF 1 L a 1 FT p Jy É TRL R 1 JKKL . TL JBB1 TRRTBL . c LP
h 1 2 p FBTRL h Ty JKP FTRL 0 2 1 LP 1 TL 2 0 DJR JRT RL Dy BIL
RTÉ U1 Fy a LP 1 TL 1 Fa 1 PRL 2 0 LP 1 Jy Ra Ty BT1 Lh T1 R
o T KKL . TFy a L TP É ML C 1 TL GP JP TL KJo L Jy BL 2 1 BT1 L e
F e e TBF JP TL É 2 y É T 1 y R & M
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46 The Committee find that the division of responsibilities between the Central Government and State Governments as well as other authorities where relevant is not clearly demarcated. The Commission has considered opinion that this lack of clarity in responsibilities would lead to confusion, delays, added regulatory costs, apart from the implementation of the provision in Clause 9. The Commission recommends that the responsibilities of the Central Government and State Governments be clearly demarcated to avoid any delays.

4.7 As there are no provisions in the Bill for the State Governments and civil society to generate awareness and sensitization, there should be a clause in the Central Government Bill for the State Governments and civil society to generate awareness at various levels such as schools/colleges, offices, police stations, etc. for the benefit of the person.

4.8 The Commission is of the view that there should be a provision in the Bill for the State Governments to provide any

required from general courses schemes provided to
public should provide an option for 'trans
' other '

CHAPTER V

OBLIGATION OF ESTABLISHMENTS AND OTH

f Mt IKJUR TRR3L il gh 1 2 p F B T L 0 E 2 y IP 2 TL TRKH.aKPR 1 e Ty P
 52 p T1 y e Ty P L 2 1 L h 1 F p JP TrL P 2 L Ty R U1 TL P 1 JP L
 B F R É 1 F e F y JP T B L F y L Jy c L e JP P T 1 L 1 T K J D E y d L I P R 2 L
 R T P P F y a IL2UehhLK2F0yIPJL É T 1 L F y L T p T 1 c L T R P J. K F R 1 e T
 h T 1 R 2 y R : M

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 f Mi AP L F R I E I L J D E É e P 2 R P L P 1 Jy R a T y B T 1 L h T 1 R 2 y R L T F
 1 Jp T L P 2 L K T Jp T L P 1 T F 1 L n 2 . R rL 2 o F y a L P 2 L B F p T
 h T 1 R 2 y R rL U K y l L r h B I T J F É Jy B B o 2 l e Jy R rL B 2 L y 2 P L T p T y L
 n 2 . R rL 2 y L J É É 2 U y P L 2 0 L B F R É 1 T h Jy É c L . T P o T T y
 T B U É J P F 2 y J K L É T 1 P F 0 F É J P T R L Jy B L P 1 T F 1 L a T y B T
 2 P 1 T 1 R L J I T L 0 2 1 É T B L P 2 L K T Jp T L n E y d R L 2 o l 1 L T J O I P T
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 f M " C 1 T L I 2 e e F P P T T L 2 . R T 1 p T L P 1 J P L y 2 L h 1 2 h T 1
 e T É 1 Jy F R e L T Ü F R P R L F y L P 1 T L (F K K L P 2 L e Ju T L P 1
 h 1 2 p F R F 2 y R L 2 0 L P 1 T L (F K K M L A y L 0 J É P rL P 1 T L 2 y K
 e 2 1 T y P t l g g L v h T 1 R 2 y R 2 L P R J N O F O R É . T K F M R L I C L I J I T L (F K K I
 y 2 P c L L K B 2 o y L P 1 T L T Ü J É P 2 L e h h 2 K J N O M P R L É 2 T O I L P 2 1 1 T L L o I 1 J P L J É
 . T L P Ju T y L . c L R U É 1 L Jy L 2 0 0 F É T 1 rL F y L É J R T L 2 0 L B

h T 1 R 2 y ML C U 1 P 1 T 1 r L P 1 T L (F K K L B 2 T R L y 2 P L R h T É
 T R P J. K F R 1 e T y P R L o F P 1 L K T R R L P L 1 J y L t g g L T e h K 2 c T
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 f M s, 1 T y L P 1 T L I 2 e e F P P T T L É 2 y J R L P y P H B L R (I F T K K I Y B y
 y 2 P L R h T É F 0 c L J y c L 2 . K F a J P F 2 y L o 2 F y P L 1 P L 1 K T R R L P d J R y
 T e h K 2 c T T R b h B 1 1 P 2 1 y T R L I B J y B F y F P F 2 y L 2 0 L T R P J. K F R
 (F K K L K T J p T R L 2 U P L R É 2 1 T R L 2 0 L U y 2 1 a J y F) T B L R T
 2 1 a J y F) J P F 2 y L o F P 1 L K T R R L P 1 J y L t g g L T e h K 2 c T T
 U y B I 1 /

& P 2 T K F a J P F 2 y L P 2 L T y R U 1 T L É 2 e h K F J y É T L o F P 1
 0 2 1 L J K K L T R P J. K F R 1 e T y P R L F y É K U B F y a L o 1 F É 1
 W 2 o T p T 1 r L I K J U R T L t i L L h B 2 P F a y T R E D y L J L h T 1 R 2
 I 2 e h K J N y P H É T 1 L 0 2 1 L T R P J. K F R 1 e T y P y R J p F y h L
 B T J K L o F P 1 L P 1 T L É 2 e h K J F y P R L 1 T K J P F y a L P 2 L p
 m É P M L A P L F R L y 2 P L h 1 J É I P R É J K K F I R O 1 E J R y P K T P Q 2 L E
 J L D e h K J N y P E É T 1 M L W 2 o T p T 1 r L P 1 T L e T É 1 J y F R e
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 f M f C 1 T L Y F y W R P 1 T E I L L R U . e F R J P R B L P J c J P L & P 1 F R 2 I E
 T p T 1 c L T R P J. K F R 1 e T y P L R 1 J K K L B T R F K J N y P H É J L h I P
 B T J K L o F P 1 L P 1 T L É 2 e h K J F y P R L 1 T K J P F y a L P 1 2 L p F 2 K J
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56 The Committee take note of the fact obligation to set up grievance redressal institutional level to establishments employees might potentially leave transactions harassment with no recourse. The Committee therefore the desirability of an Officer in an institution is in the same measure, this requirement should be established under the Act. Therefore, recommend that it should be clearly mentioned in establishments, including Government and number of employees, Complaint Officer to investigate the complaints relating to the violation of

57 The Committee note that the Bill it has functions of the Officer or vest the authority powers. To ensure effective action, it is recommended to specify the powers which the Officer can look and the kinds of orders it can pass. The Committee desire that duties and responsibilities of the Officer be specified as of complaints and remedies be provided for the same.

Harassment of Women at Workplace (Pre-
Research Act, 2013).

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f ~~ML~~ IKJUR T L t “ L 2 0 L P L T L (F K K L G P J P T R L /

&t “IDt : 2 L P 1 Jy R h T y ~~B~~ T y L R 1 J K K L . T L R T h J l J P T B l
 2 1 L F e e T B F J P T L 0 J e F K c L 2 y L P 1 T L a 1 2 U y B l
 T Ü É T h P L 2 y L J y L 2 1 B T 1 L 2 0 L J L É 2 e h T P T y P L É
 h T 1 R L 2 y M

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D i l - p T 1 c L P 1 Jy R a T y B T 1 B L h T 1 R 2 y L R 1 J K K L 1 J p T L
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D J L I L 1 F a 1 P L P 2 L 1 T R F 3 B 2 T K B E y I L T P L 1 F I L T y P U R
 L F e e T B F J P T L 0 J e F K c L e T e . T 1 R L 1 T R F B T 4
 D . L : J L 1 F a 1 P L y 2 P L P 2 L . T L T Ü É K U K B T L B U (L 1 J y e
 h J l P L P L T 1 T 2 0 4

D É : J L 1 F a 1 P L P 2 L T y n 2 c L J y B L U R T 3 L P K B I L F 0 y J É L F
 J L y 2 B y F R É 1 F e F y J P L 1 c L e J y y T 1 M

L

D ‘ L : , 1 T 1 T L Jy c L h J l T y P L 2 1 E R I L e F e e . T B I F I P 2 T 0 L L 0 J e l
 U y J . K T L P 2 L P J u T L É J l T L 2 0 L J L P 1 Jy R a T y B T 1 r
 . c L Jy L 2 1 B T 1 L B F 1 T É P L R U É 1 L h T 1 R 2 y L P 2
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f ~~ML~~ m R L e J e L . T L R T T y r L I K J U R T L t “ L h 1 2 p F B T R L 0

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y 2 P L P 2 L . T L R T h J l J P T B L 0 1 2 e L h J l T y P R L 2 1 L F e e

T Ü É K U B T B L 0 1 2 e L R U É 1 L 1 2 U R T 1 2 K B L 2 1 L 1 F a 1 P L

0 J É F K E P F T R M L

L

f ~~ML~~ C 1 T L I 2 e e F P P T T r L F y L 2 P 1 T 1 I R R U l e F R r L Ø F y B L Ø J e

J R L J L h 1 2 P T É P F 2 y L U y F P L 0 2 1 L P 1 Jy R a T y B T 1 L h T

e 2 R P L P 1 Jy R a T y B T 1 L h T 1 R 2 y R L 0 J É T L R T p T 1 T L J . U I

2 0 L P 1 T F 1 L L 0 J e F K c b F e e T B F J P T L 1 T K J P F p T ~~ML~~ F y É I

Ay L 0 J É R P L r P F F L Ø J e F K c L P 1 J P L F R L P 1 T L R T J P L Ø 0 L p F

F B TcyIP (P 1 L c 23U y h R P y M LRC2 1 L P 1 Jy Ra Ty BT1 L E 1 F KE
0 Je F Kc L Jy B L P 1 T L y JP JKL 1 2 e T L . T É 2 e T L h KJÉ T R L o 1
a Ty BT1 L Jy B L P 2 L T Ü h 1 T R R II F 2 JP R La e T y B R h LLJP T L R U
É U1 P JFCKTIBcML 1 Jp T L P 2 L 2 0 P Ty L KT Jp T L P 1 T F 1 L 1 2
B 2 e T R P F É L J. U R T L Jy B L 1 Jp T L y 2 o 1 T 1 T L L P 2 L a 2 rL F
B 2 e T R P F É ILQ IF 2 IK T y K c T M I T É 2 U 1 R T L 0 2 1 L R U É 1 L P 1 J
1 U y L Jo Jc IL G L y JPLJRL 1 2 e T M L C 2 1 L P 1 T e v L J E I J F V R W E n 1 J L
B 2 1 e F P J 2 T E F KJÉ T R L 2 0 W F f D IL a P I K B I T F I I R L J B 2 h P F p T L h
P 1 W E n 1 J L É 2 P e l U T y F H F L c 0 Je F K c L C U y T B L (O F I K K I T F y B R M I T R L P
J R h T É P L 2 0 L L P 1 Jy Ra Ty B T 1 L h T 1 R 2 y R v L L K F p T R M L
L
If M I C 1 T L I 2 e e F P P T T L J K R 2 L 2 . R T 1 p T L P 1 J P L I K J U R T
1 T 1 J. F K F P J P F 2 y L 2 0 L P 1 Jy Ra Ty B T 1 L h T 1 R 2 y R r L
P 1 Jy Ra Ty B T 1 L h T 1 R 2 y L . T H y R a L I T U y P J I K E I A R Q I F T R I U Y R I F I
É K T J I L o 1 J P L P 1 T L y J P U 1 T L 2 0 L P 1 T R T L v 1 T 1 J. F K F
1 T 1 J. F K F P J P F 2 y L 2 0 L P 1 Jy Ra Ty B R L L F R 3 L y o R T 2 K K L L o
0 Je F K F T R L T F P 1 T 1 L J. Jy B 2 y L P 1 Jy Ra Ty B T 1 L h T 1 R 2
. T 1 Jp T I L T F F y l L L P a Ty B T 1 L J R R F a y T B L J P L . F 1 P 1 M L m R L J
2 0 P T y L K T Jp T L P 1 T F 1 L 0 Je J B K K T R U á T F y R P 2 b F y a R P P I L R y P
Jy B L B F R É 1 F e F y J P F 2 y rL Jy B L B 2 L y 2 P L y T T B L 1 T 1 J.
J R R F R y É T L P 2 L 1 T . U F H K B P I P I I T F h L I K H P T U É r P F 2 y L 2 1 L
C 1 T c L 1 T Z U F 1 T L h 1 2 P T É P F 2 y L Ja J F y R P L B 2 e T R P

p F 2 K T y É T L 0 J É T B L . c L P 1 J y R a T y B T 1 L h F T B T R y 2 P y F R O L F F T R

a T y B L T 1 M L

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f M L C 1 T L I 2 e e F P P T T r L 0 U 1 P 1 T 1 r L 0 e F T y y B P L E P 2 I y J P L P 1 T L

F y 1 T 1 F P J y É T L 1 F a 1 P R L 2 0 L P 1 J y R a T y B T 1 L h T 1 R

B F R F y 1 T 1 F P T B L 0 1 2 e L P 1 T F 1 L T I F R a c l I P 2 y J K I P R T L a T L

a T y B T 1 M T y P F P c

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f M L 1 T y L J R u T B L 1 2 o L P 1 T L Y F y F R P 1 c L h 1 2 h 2 R T L

F R R U T R L J y B I 2 1 0 L 2 P 1 K y R R T y B T 1 L h T 1 R 2 y R r L P 1 T L Y

R U . e F R R F 2 y L R P L J P T B L J R L U y B T 1 /

& I K J U R T L t “ L D t P 2 L “ : L o J R L h 1 F e J l F K c L J F e T B L
É 1 F K B 1 T y L o F P 1 F y L P 1 T F 1 L F e e T B F J P T L 0 J e F
É 1 J h P T L J L T j L A A Ü h T É P T B L P 2 R L T . R I L F 2 y 0 a L L B B 2 2 e o T y R L P É J É b
p F 2 K T y É T M L C 1 (F I K K h F R I E P 2 2 0 y L P T a T L J R I L y L B P L J y R a
É 2 e e U y F y P P 2 L P 1 T L R 2 É F T P c L 1 J P 1 T 1 L P L J y L P 2
A 0 L o T L J K K 2 o L P o 2 L h J l J K K T K L R c R P T e R L P 2 L T Ü
e T J y F y a L 0 2 h I P y B T L P É y e R e U y F P c M L W 2 o T p T 1 r L
2 1 L J L e T e . T 1 L 2 0 L 1 F R L F e e T B F J P T L 0 J e F K c L F
P 1 J y R a T y B T 1 r L P 1 T L É 2 e h T P T y P L É 2 U 1 P L R 1 J K K I
P 2 L . T L h K J É T B L F y L 1 I 1 J . F K F P J P F 2 y L É T y P 1 T & M

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f M L C 1 T L Y F y F R P 1 c L 0 U J P P & T R I L L K 2 y . a d L H P I P C T I B J y R a T y B

J L É 1 F K B r L 1 T b R 1 T L R 1 2 U K B L y 2 P L 1 J p T L J L É 1 2 F É T L P

o 1 T 1 T L h J l T y P L 2 1 L F e e T B F J P T L 0 J e F K c L 1 T R F B T L

2 0 L 1 F R L h 1 c R F É J K L J y B L R T Ü U J K L J . U R T M L G U É 1 0 I L É 1

h 1 2 h T 1 L T B U É J P F 2 y M L A P L o 2 U K B r L P 1 T 1 T 0 2 1 T r L . T

o F P 1 L 1 F R b 1 T 1 L 0 Je F Kc ML mL C1 Jy R a T y B T 1 L d T 1 R
1 Jp T L 1 F R L É 1 2 F É T L 2 0 L L 1 T R F B F y a L Jy c o 1 T 1 T & M
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5.51 The Committee, in throwing out the
13 (c) are fully aware of the reasons
justification by them. The Committee
Clause (may be read as: a) f t e d

" No child whose gender shall be separ
her parent's race, color, or national origin, or being a
transgender except a competent court, be
interstate child. "

5.61 Further, Committee feel that it is im
family structure recognized, especially in
transgender persons. Accordingly, the
alternate support structures in the
Committee's report is a need to define
that the community elders,
transgender children and the judicial
system's criminal committee, therefore
that abuse may be defined in the Bill
giving appropriate definition of the word
people related by blood, marriage or
person.

5.1 The Committee further recommend that reworded as under:

"When any parent or a member of a family is unable to take care of the child does not want it with them, competent shall make effort need to be by a person or his extended family, the community or the rehabilitation center"

5.81 The Committee find that there are no States to establish rehabilitation center. Committee feel that general rehabilitation for female and children would not cater to trans gender person. The Committee, therefore, directions should be given to the States to establish specific rehabilitation center for trans which would cater to their specific need.

CHAPTER VI

EDUCATION, SOCIAL SECURITY AND HEALTH
TRANSGENDER PERSON

7 M t I K J U R T L t s L 2 0 L P I L T L (F K K L R P J P T R /

& t I s M K K L T B U É J P F 2 y J K L F y R P F P U P F 2 y R L 0 U y B T
J h h 1 2 h 1 F J P T L 5 2 p T 1 y e T F y É K R R K K I I h I T B U É B P T F L
2 h h 2 1 P U y F P F T R L 0 2 1 L R h 2 1 P R r L 1 T É 1 T J P F 2 y
B F R É 1 F e F y J P F 2 y L 2 y L J y L T Z U J K L . J R F R L o F P 1 L 2

L

7 M i C 1 T L e e F P P T T L y 2 2 P I I P I K I U I R T L h 1 2 p F B T R L 2 .

T B U É J P F 2 y J K L F y R P F P U P F 2 y R L P 2 y L h P 2 p F P I T J y L R F a y T

h T 1 R r 2 y R L P 1 T 1 T L F R L K J É u L 2 0 L É K J I F P J R L u 2 T y B I L F P y 2 É L K U

É 2 e e T R y I P T L L Y F F y y F L R P P 1 I T c F L 1 L o 1 F P P I P y L L & y K J U P R T L I R i P I D É T : B I L

h 1 2 h 2 R T B L (F K K L B T 0 F y T R L & F y É K U R F p T L T B U É J P

o 1 T 1 T F y T L y P I T J y R a R P U B T y P R L J K 2 y a L o F P 1 L 2 P 1 T 1 L R

P 1 T L R c R P T e L 2 0 L P T J É 1 F y a L J y B L K T J I y F y a L F R L

K T J I y F y a L y T T B R L 2 0 L R U É 1 L R P U B T y P R M L W 2 o T p T

1 F a 1 P L J R L 2 P 1 T 1 R M L W 2 o T p T 1 r I P F F y 2 L y 2 I I B 2 T É H J K I 2 R T h F

J y B L 1 T J K P 1 L É J I T L 2 0 L P 1 J y R a T y B T L I t H T L 1 I P 2 T y I R r L T I

J B B T B L J R I a J U R I B & M

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7 M " C 1 T L I 2 e e F P P T T L o 2 y B T 1 L o 1 T y L J L P 1 J y R a T y B T

1 F a 1 P R L J R L T y n 2 c T B L . c L 2 P 1 T 1 L y 2 1 e J K L É 1 F K B 1

. 1 F y a L P 1 F R L K T a F R K J P F 2 y L 0 2 1 L h 1 2 P T É P F 2 y L 2

P 1 F R L IKJUR T L B 2 T R L y 2 P KTFLe h .2 RFTaLJPJF 2 Ly P Jy y E P 1 T
 F y R P F LUP F 2 y R M
 L L
 7 MsC 1 T L I2 e e F P P T T L JKRB2ULÉ0FF fy 2ByLLP11 TR rJF y RRLP2Ly T L
 JÉ É T R R F . K T L 2 h P F 2 y R L 0 2 1 L P 1 T L P 1 Jy R a T y B T 1 L h
 F y É K U B F y a L . U K K c F 3 y 2 y L 0 0 2 2 1 1 e L F a P T c y I B F T y L I 2 1 0 É 1 y 2 T 2 É K 2 R a r L y K J
 2 0 L a T y B É T 2 y L 0 y 2 2 1 y e F y a L É 1 F K B 1 T y L F y L P 1 T L O F a 1
 I 2 e h U K R 2 1 c L - B U É J P F 2 y L m É P r L i g g V r L 1 T É 2 1 B F y a L
 T B U É J P F 2 y J K L É T 1 P F 0 F É J P T R r L o 1 F É 1 L J I T L F e h 2 R I
 R P F a e J L Jy B L B É R É I F K K F y T P R L Jy B L U y F p T 1 R F P c L É
 a T y B T I 3 É L 2 y y 2 0 y 2 1 e F y a L . T 1 J p F 2 U I T R y U K E F y ü h L F R R 1 0 2
 B 1 2 h L 2 U P R L Jy B L B F R É 2 y P F Ly U J P F 2 y L 2 0 L T B U É J P F 2
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65 The Committee states that a provision for on private educational institutions in line with Right to Education Act, 2009 should be also be a responsibility on the Government in the formulation of educational and communication policies. It is suggested that the provisions are appropriate, ensuring that they are not discriminatory'.

66 The Committee also urge the Ministry to consider the following Clauses under Clause 14 of the Bill:

"14(1) It is unlawful for an educational institution to discriminate against a person on the following grounds:

(a) by refusing or failing to accept an application for admission as a student;

(b) in the terms on which it is providing education to a person as a student.

14(2) It is unlawful for an educational institution to discriminate against a student on the following grounds:

(a) by denying the student access to any benefit or facility of the educational authority, or

(b) by expelling the student or subjecting the student to any other "detriment".

7 ~~ML~~ C 1 T L d e F P P T L É I I J D ~~PHU~~ K K c U R F y a L ~~h~~ ~~R~~ ~~J~~ ~~D~~ ~~R~~ ~~T~~ ~~y~~ ~~I~~ ~~2~~ ~~P~~ ~~L~~ ~~0~~ ~~F~~ ~~y~~ ~~B~~ ~~L~~
R É 1 T e T R L J y B L h 1 2 a 1 J e e T R L o 1 F É 1 L J I T L . T F y a L h
R U h h 2 1 P L K F p T K F 1 2 2 B L 2 0 L P 1 T e L T P J y B y y R a a 0 T U y K B K F p T K
2 h P F 2 y R L 0 2 1 L p 2 É J P F ~~T~~ y ~~J~~ K K 2 R e ~~L~~ ~~E~~ ~~2~~ ~~y~~ ~~L~~ ~~F~~ ~~R~~ ~~y~~ ~~h~~ ~~T~~ ~~L~~ ~~2~~ ~~H~~ ~~I~~ ~~L~~ ~~J~~ ~~R~~ ~~R~~ ~~a~~ ~~K~~ ~~O~~
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7 ~~ML~~ C 1 T L I 2 e e F P P T T L o F R 1 L P 2 L B 1 J o L P 1 T L J P P T y P F
0 J É P L L P 1 J P L p T 1 c L 0 T o L P 1 J y R a T y B T 1 L h T 1 R 2 y R
R c R P T e y r ~~h~~ ~~2~~ ~~P~~ ~~E~~ ~~L~~ K J É u L 2 0 L ~~3~~ ~~E~~ ~~Z~~ ~~R~~ ~~U~~ ~~E~~ ~~K~~ ~~L~~ ~~F~~ ~~J~~ ~~y~~ ~~B~~ ~~L~~ ~~J~~ ~~P~~ ~~2~~ ~~y~~ ~~c~~ ~~L~~ ~~T~~ ~~B~~ ~~U~~ ~~É~~ ~~J~~
T e h K 2 c e T y P L 2 h h 2 1 P U y F ~~F~~ ~~F~~ ~~É~~ ~~R~~ ~~y~~ ~~J~~ ~~R~~ ~~I~~ ~~L~~ ~~U~~ ~~T~~ ~~y~~ ~~K~~ ~~R~~ ~~L~~ ~~J~~ ~~B~~ ~~L~~ ~~B~~ ~~T~~ ~~y~~ ~~B~~ ~~H~~
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7 ~~ML~~ , 1 T y L P 1 T L Y F y F R P 1 c L o T 1 T L J R u T B L J R L P 2 L o
h 1 2 a 1 J e e T R L 1 J p T L . T T y L h 1 2 p F B T ~~h~~ ~~K~~ ~~F~~ ~~F~~ ~~T~~ ~~y~~ ~~B~~ ~~L~~ ~~P~~ ~~I~~ ~~T~~ ~~L~~ ~~(~~ ~~&~~ ~~F~~
y 2 P L h 2 R R F . K T L P 2 L h U P L T p T 1 c P 1 F y a L F y L P 1 T
y J P U L T & M

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610 The Committee observe that with regard to employment of the transgender persons, Clause 15 is too vague and limited a meaningful livelihood option that it is important that the Government provide appropriate vocational and technical training to those whom are interested in fields like fashion photography, interior designing, etc. sufficient and effective to lack of discrimination in educational and employment opportunities, incongruent identity documents, very few part of formal employment system. It is further that adequate facilities for vocational training for transgender persons should be provided.

611 Further, separate provisions should be laid down in the directions issued under the Act to take specific measures like counselling, career guidance and sensitivity towards concerns of transgender persons, as suggested by the Expert Committee constituted by the Government relating to transgenders.

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7 MLIKJURH 7 L 2 0 L P 1 T L (F KKL R P JP T R L /

&t IZCM T L Jh h 1 2 h 1 F JP T L 5 2 p T 1 y e T y P L R 1 JKKL P Ju
F y L 1 T KJP F 2 y L P 2 L P 1 T L P 1 Jy3R a T y B T 1 L h T 1 R 2 y F
L

D JL IL R T h JI JP T L 1 U e Jy L F e e U y 2 B TROUFI KKTy É É L p
IT y P 1LT R 4

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D .L: PL2 L h 1 2 p F B T L 0 2 1 LceLTByF É KKB É Jy a TL R T ÉÜFLKIF P J
R U 1 a T 1 c L Jy B L 1 2 IL e 2 y JKL P 1 T 1 Jh c 4

L

D ÉL: hL 1 T L Jy B L h 2 R P L R T Ü L 1 T JR RF a y e T y P L R U 1 a
É 2 U y R TLKKF y a 4

L

DBL: .Ll F y a L 2 U P L JL WT JKP 1 L Y Jy U JKL 1 T KJP T B L P 2 L
F y L JÉ É 2 1 B Jy É T L o F P 1 L P 1 T L ,2 1 K B 12 ld IL 2 0
C 1 Jy R a T y B T 1 L WT JKP 1 L a U F B T KF y T R 4

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D TL: 1LT p F T o L 2 0 L e T B F É JKL É U 1 1 F É UKU e L Jy B L
J B B 1 T R R L P 1 T F 1 L R h TLÉ F 0 F É L 1 T JKP 1 L F R R U T

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D Q: PL2 L 0 JÉ F KF P JP T L JÉ É T R R L P 2 L P 1 T L P 1 Jy R a T y
Jy B L 2 P 1 T 1 L 1 T JKP 1 É JI T L F y R P F P U P F 2 y R L Jy

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D aL: hL 1 2 p F R F 2 y L 0 2 1 L É 2 p T 1 Ja T L 2 0 L e T B F
É 2 e h 1 T 1 T y R F p T L F y R U 1 Jy É T L R É 1 Te T L 0 2 1

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7 MII2 e e T y P F y a L 2 y L P 1 T L h 1 2 p F R F 2 y R L e J B T L F y

R P JP T B L P 1 JP L & M M M I K J U R T L t 7 L h 1 2 p F B T R L 0 2 1 L P J

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6. The Committee notes that the measures which have been recommended by the Expert Group for the welfare of transsexuals have not been explicitly incorporated in the Bill, and that the policies/guidelines which have been developed by the transgender persons can have barrier to funding research for promoting transgender health. The Committee urges the Ministry to ensure that transgender persons and health activists are part of the development of guidelines for SRS health care and to incorporate the same into medical curricula.

6. The Committee also notes that these measures have not been incorporated in the Bill.

6.16 The Committee notes that under Clause 16(c), Limited Sex Reassignment Surgery, there is no provision for psychological related treatment. Therefore, the Bill does not contain measures on counselling, review of medical records, and explicitly incorporate mental health services for transgender persons.

617 Further, the Committee find that Cl a
clear if the comprehensive insurance
Reassignment Surgery (SRS) and hormonal
issues. Therefore, ectome 0 a C t t a i u t s t e e 1 6 (g) m
ber e d r a f t f o d l a o s w s :

" provision for coverage of medic
comprehensive insurance scheme for
and other health issues. "

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CHAPTER VII

NATIONAL COUNCIL FOR TRANSGENDER P

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7.4 The Committee are dismayed to find National Council for Transgender Equality and Human Rights Commission in their written submissions on the Bill. The Committee do not intend to be involved in the grievance redressal process. The Committee are satisfied with the Ministry's recommendation that the National Council be reduced merely to an advisory body and enforcement powers. The Committee are of the view that the Council should be created and its functions should be as recommended in Clause 18 of the Bill, indicating clearly the function of redressal of grievances as "to redress grievances of transgender persons" under clause 18 of the Bill. The mechanism for enforcement should be clearly explained in the Bill. A provision for the orders of such nature should be included which attract penalties.

7.5 The Committee also recommend that a State Council for Transgender Equality and Human Rights

so that enforcement bodies must be set

State nGnoevretrs .

CHAPTER I I

OFFENCES AND PENALTIES

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8.8 The Committee concurs with the suggestion that beggary/beggary syndicates and must be discouraged being a crime under any gender. The Committee strongly recommends that these offences as crimes against transsexuals be treated as offences under Clause 19 provided in the same for offences are varied in nature and in which the principle of proportionality under Article 14 of the Constitution of India. The Committee recommends that be graded punishment for different offences and those involving transsexuals must be higher. Further, the Indian Penal Code may be used as a guideline while determining punishment for transsexuals/abuses/crimes so that principle of proportionality is maintained.

8.9 The Committee further recommends that specifically, read and provide appropriate measures that transgender persons face from educational institutions, healthcare institutions, remand homes and other places of custody.

8. 1A] though be g arri mii sal act but the community does not enjoy parity with other alternative modes of employment. The Central Government has directed the Ministry to issue directions providing alternative opportunities for transgender persons, recruitment as drivers, conductors, Central and State Departments. To provide more avenues to transgender persons, the Government has directed States to introduce courses designed according to their ability and skill development of transgender persons.

CHAPTER IX

MISCELLANEOUS

9. The Committee further mentions that it should consider suitably incorporating the provisions of the Transgender Persons (Protection of Rights) Bill, 2019. The Committee feels that the provisions of the Bill are evidence of a prior and important bearing on the welfare of transgender persons:

- (1) In *NALSA*, the Supreme Court directed the Central Government and the State Governments to treat transgender persons as socially and educationally backward classes of citizens and to provide reservations in education and employment for public appointments. The Court also directed that reservations to transgender persons should be made in socially and educationally backward classes.
- (2) The Bill does not refer to important issues such as marriage, adoption, etc., which affect transgender persons' lives and require to be engaged in marriage like relationships. The Bill does not provide for recognition from the State.

- (3) There should be separate public toilets for transgender persons since the public toilets operated by Centre and State Government should be used by transgender persons.
- (4) There should be a provision to provide separate public toilets for transgender persons.
- (5) There should be a provision to provide separate public toilets for transgender persons to cope up with the transgender persons on the ground and Crisis Intervention Centre should be established.
- (6) Helping for career guidance and other facilities should be established.
- (7) At the end of Clause B (the), it should be changed to "Persons who at birth show variable sexual characteristics, external genitalia and hormonal levels from normative standard of body are referred as persons with intersex characteristics".
- (8) A provision providing penal action against those who force intersex fetuses and forced surgical operations on intersex infants should be there in the Bill.
- (9) A provision for separate public toilets for transgender persons at public places such as

- private office complex, etc. should
purpose, transgender persons should
- (10) Transgender persons remain at risk
under Section 377. It must at the very
the rights of transgender persons
marriage.
- (11) The Bill must recognize transgender
marriage, partnership, divorce and
by their personal laws as well as their
(12) A census for transgender persons
from the drafting of the guidelines.
Census can be proceeded with indepen-

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New Delhi;
19 July, 2017

28 Ashadha, 1939 (Saka)

RAMESH BAIS,
Chairperson

Standing Committee on
Social Justice and Em-

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AS INTRODUCED IN LOK SABHA

Bill No. 210 of 2016

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS)
BILL, 2016

A

BILL

to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5 **1.** (1) This Act may be called the Transgender Persons (Protection of Rights) Act, 2016. Short title,
extent and
commencement.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- 10 **2.** In this Act, unless the context otherwise requires,— Definitions.
- (a) "appropriate Government" means,—
- (i) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government;
- 15 (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, the State Government;

(b) "establishment" means—

(i) any body or authority established by or under a Central Act or a State Act or an authority or a body owned or controlled or aided by the Government or a local authority, or a Government company as defined in section 2 of the Companies Act, 2013, and includes a Department of the Government; or 5

18 of
2013.

(ii) any company or body corporate or association or body of individuals, firm, cooperative or other society, association, trust, agency, institution;

(c) "inclusive education" means a system of education wherein transgender students along with other students learn together and the system of teaching and learning is suitably adapted to meet the learning needs of such students; 10

(d) "institution" means an institution, whether public or private, for the reception, care, protection, education, training, rehabilitation or any other service of transgender persons;

(e) "local authority" means the municipal corporation or municipality or Panchayat or any other local body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction; 15

(f) "National Council" means the National Council for Transgender Persons established under section 17;

(g) "notification" means a notification published in the Gazette; 20

(h) "prescribed" means prescribed by rules made by the appropriate Government under this Act;

(i) "transgender person" means a person who is—

(A) neither wholly female nor wholly male; or

(B) a combination of female or male; or 25

(C) neither female nor male; and

whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.

CHAPTER II 30

PROHIBITION OF CERTAIN ACTS

Prohibition
against
discrimination.

3. No person shall discriminate against a transgender person on any of the following grounds, namely:—

(a) the denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof; 35

(b) the unfair treatment in, or in relation to, employment or occupation;

(c) the denial of, or termination from, employment or occupation;

(d) the denial or discontinuation of, or unfair treatment in, healthcare services;

(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public; 40

(f) the denial, or, discontinuation of, unfair treatment with regard to the right of movement;

(g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;

(h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office;

5 (i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be.

CHAPTER III

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

10 **4.** (1) A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act. Recognition of identity of transgender person.

(2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.

15 **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: Application for certificate of identity.

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

20 **6.** (1) On the receipt of an application under section 5, the District Magistrate shall refer such application to the District Screening Committee to be constituted by the appropriate Government for the purpose of recognition of transgender persons. District Screening Committee.

(2) The District Screening Committee referred to in sub-section (1) shall comprise—

(a) the Chief Medical Officer;

(b) District Social Welfare Officer;

(c) a Psychologist or Psychiatrist;

25 (d) a representative of transgender community; and

(e) an officer of the appropriate Government to be nominated by that Government.

30 **7.** (1) The District Magistrate shall issue to the applicant under section 5 a certificate of identity as transgender person on the basis of the recommendations made by the District Screening Committee in such form and manner, within such time, as may be prescribed, indicating the gender of such person as transgender. Issue of certificate of identity.

(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.

35 **8.** (1) After the issue of a certificate under sub-section (1) of section 7, if there is any change in the gender of a transgender person, he shall make an application to the District Magistrate for revised certificate. Change in gender.

40 (2) The District Magistrate shall, on receipt of an application under sub-section (1), and on the recommendation made by the District Screening Committee, 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 revised certificate shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:

45 Provided that such change in gender and the issue of revised certificate under sub-section (1) shall not affect the rights and entitlements of such person under this Act.

CHAPTER IV

WELFARE MEASURES BY GOVERNMENT

- Obligation of the appropriate Government.
- 9.** (1) The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.
- (2) The appropriate Government shall take such measures as may be necessary to protect the rights and interests of the transgender person, and facilitate their access to welfare schemes framed by that Government. 5
- (3) The appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.
- (4) The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such person. 10
- (5) The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities.

CHAPTER V

OBLIGATION OF ESTABLISHMENTS AND OTHER PERSON

- Non discrimination in employment 15
- 10.** No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.
- Obligations of establishments. 20
- 11.** Every establishment shall ensure compliance with the provisions of this Act and provide such facilities to the transgender person as may be prescribed.
- Grievance redressal mechanism.
- 12.** Every establishment consisting of one hundred or more persons shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act.
- Right of residence. 25
- 13.** (1) No transgender person 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 person.
- (2) Every transgender person shall have—
- (a) a right to reside in the house-hold where parent or immediate family members reside;
- (b) a right not to be excluded from such house-hold or any part thereof; 30
- (c) a right to enjoy and use the facilities of such house-hold 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. 35

CHAPTER VI

EDUCATION, SOCIAL SECURITY AND HEALTH OF TRANSGENDER PERSON

- Obligation of educational institutions to provide inclusive education to transgender persons. 40
- 14.** All educational institutions funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities without discrimination on an equal basis with others.

15. The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

Vocational training and self-employment.

16. The appropriate Government shall take the following measures in relation to the transgender persons, namely:—

Health care facilities.

(a) a separate human immunodeficiency virus Sero-surveillance Centres;

(b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;

(c) pre and post sex reassignment surgery and hormonal therapy counselling;

(d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;

(e) review of medical curriculum and research for doctors to address their specific health issues;

(f) to facilitate access to the transgender persons in the hospitals and other healthcare institutions and centres;

(g) provision for coverage of medical expenses by a comprehensive insurance scheme for transgender persons.

CHAPTER VII

NATIONAL COUNCIL FOR TRANSGENDER PERSONS

17. (1) The Central Government shall by notification constitute a National Council for Transgender to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

National Council for Transgender.

(2) The Council shall consist of—

(a) the Union Minister in-charge of the Ministry of Social Justice and Empowerment, Chairperson, *ex officio*;

(b) the Minister of State, in-charge of the Ministry of Social Justice and Empowerment in the Government, Vice-Chairperson, *ex officio*;

(c) Secretary to the Government of India in-charge of the Ministry of Social Justice and Empowerment, Member, *ex officio*;

(d) one representative each from the Ministries of Health and Family Welfare, Home Affairs, Housing, Urban and Poverty Alleviation, Development, Human Resources Development, Rural Development, Labour and Employment and Departments of Legal Affairs, Pensions and Pensioners Welfare and NITI Ayog, not below the rank of Joint Secretaries to Government of India, Members, *ex officio*;

(e) one representative each from the National Human Rights Commission and National Commission for Women, not below the rank of Joint Secretaries of Government of India, Members, *ex officio*;

(f) representatives of the State Governments and Union territories by rotation, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members, *ex officio*;

(g) five representatives of transgender community, by rotation, from the State Governments and Union territories, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members;

(h) five experts, to represent non-governmental organisations or associations, working for the welfare of transgender persons, to be nominated by the Central Government, Members;

(i) Joint Secretary to the Government of India in the Ministry of Social Justice and Empowerment dealing with the welfare of the transgender persons, Member-Secretary, *ex officio*.

(3) A Member of National Council, other than *ex officio* member, shall hold office for a term of three years from the date of his nomination. 5

Functions of
the Council.

18. The National Council shall perform the following functions, namely:—

(a) to advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to transgender persons;

(b) to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of transgender persons; 10

(c) to review and coordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to transgender persons;

(d) to perform such other functions as may be prescribed by the Central Government. 15

CHAPTER VIII

OFFENCES AND PENALTIES

Offences and
penalties.

19. Whoever,—

(a) compels or entices a transgender person to indulge in the act of begging or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government; 20

(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 house-hold, village or other place of residence; 25

(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. 30

CHAPTER IX

MISCELLANEOUS

Grants by
Central
Government.

20. The Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the Council as may be necessary for carrying out the purposes of this Act. 35

Act not in
derogation of
any other law.

21. The provisions of this Act shall be in addition to, and not derogation of, any other law for the time being in force.

Protection of
action taken
in good faith.

22. No suit, prosecution or other legal proceeding shall lie against the appropriate Government or any local authority or any officer of the Government in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and any rules made thereunder. 40

Power of
appropriate
Government
to make rules.

23. (1) The appropriate Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

- (a) the form and manner in which an application shall be made under section 5;
- 5 (b) the form and manner in which a certificate of identity is issued under sub-section (1) of section 7;
- (c) the form and manner in which an application shall be made under sub-section (2) of section 8;
- (d) facilities to be provided under section 10;
- (e) other functions of the National Council under section 18;
- 10 (f) any other matter which is required to be or may be prescribed.

(3) Every rule made by the Central Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or 15 both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one house, before that house.

24. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may make such order or give such directions, by order published in the Official 25 Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Power to
remove
difficulties.

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid 30 before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

Transgender community is one of the most marginalized communities in the country because they do not fit into the general categories of gender of 'male' or 'female'. Consequently, they face problems ranging from social exclusion to discrimination, lack of education facilities, unemployment, lack of medical facilities and so on.

2. Though article 14 of the Constitution of India guarantees to all persons equality before law, clauses (1) and (2) of article 15 and clause (2) of article 16, *inter alia* prohibit in express terms discrimination on the ground only of sex and sub-clause (a) of clause (1) of article 19 ensures freedom of speech and expression to all citizens, yet the discrimination and atrocities against the transgender persons continue to take place.

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 the Parliament and the State Legislature.

4. The Transgender Persons (Protection of Rights) Bill, 2016 seeks to—

- (a) define a transgender person;
- (b) prohibit discrimination against transgender person;
- (c) confer right upon transgender person to be recognised as such, and a right to self-perceived gender identity;
- (d) issue of certificate of identity to transgender persons;
- (f) provide that no establishment shall discriminate against transgender person in matters relating to employment, recruitment, promotion and other related issues;
- (g) provide for grievance redressal mechanism in each establishment;
- (h) establishment of a National Council for Transgender;
- (i) punishment for contraventions of the provisions of the Bill.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 27th July, 2016.

THAAWARCHAND GEHLOT.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117
OF THE CONSTITUTION OF INDIA

[Copy of D.O. No. 13011/5(11)/2014-DP.III dated 29 July, 2016 from Shri Thaawarchand Gehlot, Minister of Social Justice and Empowerment to the Secretary General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Transgender Persons (Protection of Rights) Bill, 2016 recommends introduction of the Bill in the House under article 117(1) of the Constitution of India.

FINANCIAL MEMORANDUM

Sub-clause 2 of clause 9 of the Bill states that the appropriate Government shall take such measures as may be necessary to protect the rights and interests of the transgender person, and facilitate their access to welfare schemes framed by that Government.

2. Sub-clause 3 of clause 9 of the Bill states that the appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.

3. Clause 15 of the Bill states that the appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

4. Clause 16 (1) (g) of the Bill contains provision for coverage of medical expenses by a comprehensive insurance scheme for transgender persons.

5. Clause 17 of the Bill proposes to constitution of a National Council for Transgender.

6. Clause 20 of the Bill provides that the Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the Council as may be necessary for carrying out the purposes of this Act.

7. For the current financial year, an amount of 15 crore rupees has been allocated as budgetary expenditure for the transgender scheme. It is not possible at this juncture to estimate the full financial burden likely to be incurred if all the provisions of the proposed legislation if enacted were implemented. The above expenditure will be met from the budgetary allocation of the Plan Scheme for transgenders.

8. The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 23 of the Bill empowers the appropriate Government to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made are— (a) the form and manner in which an application shall be made under section 5; (b) the form and manner in which a certificate of identity is issued under sub-section (1) of section 7; (c) the form and manner in which an application shall be made under sub-section (2) of section 8; (d) facilities to be provided under section 10; (e) other functions of the National Council under clause (d) of section 18; (f) any other matter which is required to be or may be prescribed.

The matters in respect of which rules and regulations may be made under the aforesaid provisions are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

LOK SABHA

A

BILL

to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

(Shri Thaawarchand Gehlot, Minister of Social Justice and Empowerment)

MINUTES OF THE SECOND SITTING OF THE STANDING
JUSTICE AND EMPOWERMENT HELD AT CHANDNĀBADE, NEW DELHI, 15
JUNE 2016

The Committee met from 1430 hrs. to 1620
Parliament House Annexe, New Delhi.

PRESENT

SHRI RAMESH BAI SHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Kantilal Bhuria
3. Shri Sher Singh Ghubaya
4. Shri Bhagwant Khuba
5. Shri Sadashiv Lokhande
6. Smt. K. Maragatham
7. Shri Kariya Munda
8. Kunwar Bharatendra Singh

RAJYA SABHA

9. Shri Ahamed Hassan
10. Dr. Narendra Jadhav
11. Smt. Vijila Sathyananth
12. Smt. Chhaya Verma
13. Shri Ramkumar Verma

LOK SABHA SECRETARIAT

1. Shri Sukhi Chand Choudhary Secretary
2. Shri Ashok Sajwan Director
2. Smt. Mamta Kemwal Additional Director

Sl. No.	Name	Designation and Organization
1.	Smt. Anita Agnihotri	Secretary, Department of Social Justice and Empowerment
2.	Shri Arun Kumar	Special Secretary, Department of Social Justice and Empowerment
3.	Ms. Ghazala Mehta	Joint Secretary, Social Justice and Empowerment
4.	Shri Rajesh Kataria	Director, NISD

2. At the outset, the Chairperson welcomed the members of the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) to the sitting of the Committee of the Ministry of Social Justice and Empowerment. She requested the members to keep the proceedings of the sitting confidential. The Chairperson asked the Secretary, Department of Social Justice and Empowerment to give an overview of the Bill.

3. The Secretary accordingly briefed the Committee on the background, recommendations of the Expert Committee and the decision of the Hon'ble Supreme Court on the Bill. He also presented the major recommendations and explaining the key points of the Bill.

(i) Need to conduct more research work by the Government to understand the issues regarding Transgender persons and finalising the Bill.

(ii) Forced conversion of small children to Hindu religion by the persons of Transgender community.

(iii) Requirement of a provision for medical

Transgender Persons before issuing certifi

(iv) Provisions for rights and facilities for

there in the Bill, such as, right to inh

(v) Need to conduct a further the means of I

Transgender Persons and their involvemen

4. The representatives of the Department of S

responded to the queries by the Members of

directed the Secretary to furnish written re

Members to the Secretariat at the earliest.

5. The Chairperson then thanked the Secreta

Department of Social Justice and Empowerment f

Committee on the subject and expressing thei

various issues raised by the Members.

6. A copy of the verbatim proceedings of the

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE THIRD SITTING OF THE STANDING
JUSTICE AND EMPOWERMENT HELD ON 16.03.2015

The Committee met on 16.03.2015 at 11.35 hrs. in Committee Room, Parliament House Annexe, New Delhi.

PRESENT

SHRI RAMESH BAI SHAIRPERSON

MEMBERS
LOK SABHA

14. Shri Kantilal Bhuria
15. Shri Santokh Singh Chaudhary
16. Shri Sadashiv Lokhande
17. Smt. Makr. gatham
18. Prof. Seetaram Ajmeera Naik
19. Sadhvi Savitri Bai Phule
20. Kunwar Bharatendra Singh
21. Smt. Mamta Thakur
22. Shri Tej Pratap Singh Yadav

RAJYA SABHA

11. Smt. Jharna Das Baidya
12. Dr. Narendra Jadhav
13. Smt. Vijila Sathyananth
14. Smt. Wansuk Syiem
15. Smt. Chhaya Verma

LOK SABHA SECRETARIAT

1. Shri S. C. Chaudhary, Secretary
2. Shri Ashok Sajwan, Director
3. Smt. Mamta Kemwad, Additional Director

LIST OF FINANCIAL WITNESSES

Sl. No.	Name	Organization
1.	Ms. Namrata Mukherjee	Ministry for Legal Policy
2.	Dr. Kaveri Rajauram	Transgender Activist and Gender Transgender boy
3.	Ekta Guru	All India Hijra Transgender S

2. At the outset, Hon'ble Chairperson welcome of the organizations/stakeholders appearing in connection with examination of "The Transgender Persons (Protection of Rights) Bill, 2016". I implore the witnesses to keep the proceedings 'confidential', the Chairperson requested the witnesses to raise issues related with the Transgender Persons (Protection of Rights) Bill regarding various clauses of

3. The representatives of the organizations raised their views/suggestions on the various provisions of the Bill. Stakeholders suggested the following changes in the Bill that

- (i) More inclusive definition of Transgender
- (ii) Absolute right of transsexuals may be given to
- (iii) Inclusion of definition for 'discrimination' in the Bill.
- (iv) Implementation of the Transgender Persons (Protection of Rights) Bill in Government establishments also.

- (v) Grievance Redressal Mechanism should be established in all establishments where Transgender Persons are employed, in proportion to the strength of the establishment.
- (vi) Division of responsibilities between Governments and State Governments to fix accountability.
- (vii) Specified steps for educational upliftment should be there.
- (viii) Specified steps for the health benefits should be there.
- (ix) Reservation should be provided for Transgender Persons.
- (x) Provision of Third Gender option in forms should be there in Government and private forms.
- (xi) Inclusion of different crimes against Transgender Persons, such as, deliberate violence against Transgender Persons, should be there in court premises where Transgender Persons are present. Provision of security measures should be there in court proceedings.
- (xii) Exclusive Chapter on 'Rights' of Transgender Persons should be added in the Bill.
- (xiii) Inclusion of gender sensitization in the curriculum of schools and colleges.
- (xiv) Separate provision to deal with employment of Transgender Persons.
- (xv) Certificate of education should also be provided to Transgender Persons. Certificate of gender should be provided to Transgender Persons by the District Magistrate.

(xvi) Chapter VIII Clause 19(c) in the B
Penalties for a person who "forces or
leave household, village or other place
village or place of residence, 'school'

(xv) Complaint Officer should be a neutral p
the same organization where complaint h

(xvi) Acts/Provisions for dra~~pe~~o a gain~~a~~ applic~~iv~~
Transgender Persons.

(xi) Provision for atrocities against Transg
of atrocities.

(xx) Freedom of choice of residence.

4. The stakeholders also responded to the que
extent possible

5. The Chairperson thanked the stakeholders f
appreciated the work being done by them.

The witnesses then withdrew.

A copy of the verbatim proceedings was kep

The Committee then adjourned.

MINUTES OF THE FIFTH SITTING OF THE STANDING
JUSTICE AND EMPOWERMENT HELD ON 14.07.2016 AT
1628

The Committee met from 1130 hrs. to 1430 hrs.
Floor, Parliament House Annexe, New Delhi.

PRESENT

SHRI RAMESH BAI SHAIRPERSON

MEMBERS
LOK SABHA

23. Shri Santokh Singh Chaudhary
24. Shri Sadashiv Lokhande
25. Shri Kariya Munda
26. Prof. Seetaram Ajmeera Naik
27. Sadhvi Savitri Bai Phule
28. Smt. Satabdi Roy (Banerjee)
29. Kunwar Bharatendra Singh
30. Shri Mansukhbhai Dhanjibhai Vasava

RAJYA SABHA

10. Shri Chuni bhai Kanjibhai Gohel
11. Shri Ahamed Hassan
12. Dr. Narendra Jadhav
13. Smt. Vijila Sathyananth
14. Smt. Chhaya Verma
15. Shri Ramkumar Verma

LOK SABHA SECRETARIAT

1. Shri A. K. Singh Additional Secretary
2. Shri Ashok Sajwan Director
3. Smt. Mamta Kemwad Additional Director

LIST OF FINANCIAL WITNESSES

Sl. No.	Name	Organization
1.	Shri Satya Rana	Samprada Working Group
2.	Shri Anand Grewal	Lawyers Collective
3.	Ms. Sindhuja Arora	Amity International India
4.	Ms. Subiksha	South Indian Transgenders Federation
5.	Ms. Seeta	Kinnar Bharti

2. At the outset, Hon'ble Chairperson welcomed the organizations/stakeholders appearing in connection with examination of "The Transgender Persons (Protection of Rights) Bill, 2016". In presence of witnesses to keep the proceedings 'confidential', the Chairperson requested the representatives of the organizations to discuss the issues related with the Transgender Persons (Protection of Rights) Bill, 2016 regarding various clauses of the Bill.

3. The representatives of the organizations discussed their views/suggestions on the various provisions of the Bill. Stakeholders suggested the following changes in the Bill:

(xxN) The Supreme Court judgement should be followed in a matter relating to Transgender Persons.
 (xxM) Medical Practitioner should be excluded from the definition of Transgender Persons.
 (xxI) Inclusion of provision for reservation for Transgender Persons.

(xxE) Every clause should indicate transmen and transwomen also in the Bill while providing facilities for Transgender Persons.

(xxv) 'Workplace' should be defined more appropriate definition of workplace provided in the Bill.

(xxvi) Inclusion of provision for facilities for Transgender Persons/intersex in hospitals and provision for Transgender Persons/intersex.

(xxvii) Clause of criminalization of 'beggary'

(xxviii) Inclusion of a provision in the Bill for recognition of 'persons' and 'intersex'

(xxix) Definition of the 'Transgender Persons' and 'Intersex' should be given. Definition of 'Transgender Persons' and 'intersex' should be given.

(xxx) Inclusion of provision for prevention of violence in society or within the systems of State.

(xxxi) Inclusion of a provision for prevention of violence and discrimination against transgender persons.

4. The stakeholders also responded to the questions to the extent possible.

5. The Chairperson thanked the members who participated and appreciated the work being done by them.

The witnesses then withdrew.

A copy of the verbatim proceedings has been prepared.

The Committee then adjourned.

MINUTES OF THE FOURTEENTH SITTING OF THE COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT

The Committee met from 1145 hrs. to 1245
Basement, Parliament House Annexe, New Delhi.

PRESENT

SHRI SANTOKH SINGH-CHANDHARY CHAIR

MEMBERS
LOK SABHA

31. Shri Sadashiv Lokhande
32. Smt. Satabdi Roy (Banerjee)
33. Smt. Mamata Thakur

RAJYA SABHA

34. Shri Chuni bhai Kanjibhai Gohel
35. Shri Ahamed Hassan
36. Smt. Sarojini Hembram
37. Smt. Vijila Sathyananth
38. Smt. Wansuk Syiem
39. Smt. Chhaya Verma
40. Shri Ram Kumar

LOK SABHA SECRETARIAT

1. Shri Sukhi Chand Choudhary Secretary
2. Shri Ashok Sajwan Director
3. Smt. Mamta Kemwal Additional Director

REPRESENTATIVES OF STATE OF SOCIAL JUSTICE AND
EMPOWERMENT (DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT)

Sl. No.	Name	Designation and Office
1.	Shri N. S. Kang	Secretary in Charge, Department of Social Justice and Empowerment
2.	Smt. Ghazala Mehmood	Joint Secretary, Department of Social Justice and Empowerment
3.	Shri Khagesh Garg	Director, Department of Social Justice and Empowerment

2. As the Chairperson could not attend the meeting on the above mentioned circumstances, the Members of the Committee of the Ministry of Social Justice and Empowerment, MP and a Member of the Committee, to act as the Chairperson. The Rules of Procedure and Business in Lok Sabha. The meeting welcomed the Members and the representatives of the Department of Social Justice and Empowerment. The Committee convened with the Ministry on the subject of "Persons (Protection of Rights) Bill, 2016". The proceedings of the Committee are 'Confidential'. The Secretary in Charge, Department of Social Justice and Empowerment, Government of India, was present and over-

3. As the Secretary of Department of Empowerment was given the additional charge of the Secretary of Department of Empowerment, he accompanied the members of the Committee of Social Justice and Empowerment. However, the Joint Secretary of Department of Empowerment briefed the Committee on the Bill. The proceedings of the meeting are as follows:

(vi) Census of transgender persons.

(vi) Definition of transgender persons.

(vii) Recognition of identity of transgender persons.

(ix) Right to identify self as transgender by the transgender persons.

(x) Constitution and role of District Screening Committee.

(xi) Anti-discriminatory provisions for transgender persons.

(xii) Meaning and definition of 'rehabilitation'.

4. The representatives of the Department of Social Justice and Empowerment responded to the queries by the Members to the Committee. The Members directed the Secretary to furnish written replies to the queries of the Members to the Secretariat at the earliest.

5. The Chairperson then thanked the Secretary of the Department of Social Justice and Empowerment for the response of the Committee on the subject and expressing their appreciation to the Members.

6. A copy of the verbatim proceedings of the meeting was distributed to the Members.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE SEVENTEENTH SITTING OF THE SOCIAL JUSTICE COMMITTEE HELD ON WEDNESDAY, 20.11.79

The Committee met from 10.00 a.m. to 1.00 p.m. in Room No. 113, First Floor, Parliament House Annex Extension

PRESENT

SHRI RAMESH BAI SHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Santokh Singh Chaudhary
3. Shri Sher Singh Ghubaya
4. Shri Sadashiv Lokhande
5. Smt. K. Maragatham
6. Dr. (Prof.) Azmeera Seetaram Naik
7. Sadhvi Savitri Bai Phule
8. Dr. Udit Raj
9. Smt. Satabdi Roy (Banerjee)
10. Kunwar Bhartendra Singh
11. Smt. Mamata Thakur

RAJYA SABHA

12. Smt. Jharna Das Baidya
13. Shri Chuni bhai Kanji bhai Gohel
14. Smt. Sarojini Hembram
15. Dr. Narendra Jadhav
16. Smt. Vijila Sathyananth
17. Smt. Wansuk Syiem
18. Smt. Chhaya Verma
19. Shri Ramkumar Verma

LOK SABHA SECRETARIAT

1. Shri Chaudhary Joint Secretary
2. Shri Ashok Sajwan Director
3. Smt. Mamta Kemwad Additional Director

2. At the outset, the Chairperson welcomed the Committee.

3. The Committee then took up ^{r d} ~~the~~ ~~Report~~ ~~on~~ ~~the~~ ~~topic~~ ~~of~~ ~~"~~ ~~The~~ ~~Transgender~~ ~~Persons~~ ~~(~~ ~~Protection~~ ~~of~~ ~~Right~~ ~~s)~~ ~~"~~.

4. The Chairperson then requested the Members to submit a draft Report, if any. The Report, thereafter modified ^{by} ~~the~~ ~~Committee~~ then authorized the Chairperson to submit the Report in the light of consequential changes to the draft Report and to present the same to the Council.

The Committee then adjourned.

ANNEXURE P-3

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

ARRANGEMENT OF SECTIONS

SECTIONS

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

PROHIBITION AGAINST DISCRIMINATION

3. Prohibition against discrimination.

CHAPTER III

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

4. Recognition of identity of transgender person.
5. Application for certificate of identity.
6. Issue of certificate of identity.
7. Change in gender.

CHAPTER IV

WELFARE MEASURES BY GOVERNMENT

8. Obligation of appropriate Government.

CHAPTER V

OBLIGATION OF ESTABLISHMENTS AND OTHER PERSONS

9. Non-discrimination in employment.
10. Obligations of establishments.
11. Grievance redressal mechanism.
12. Right of residence.

CHAPTER VI

EDUCATION, SOCIAL SECURITY AND HEALTH OF TRANSGENDER PERSONS

13. Obligation of educational institutions to provide inclusive education to transgender persons.
14. Vocational training and self-employment.
15. Healthcare facilities.

CHAPTER VII

NATIONAL COUNCIL FOR TRANSGENDER PERSONS

16. National Council for Transgender Persons.
17. Functions of Council.

CHAPTER VIII

OFFENCES AND PENALTIES

18. Offences and penalties.

CHAPTER IX
MISCELLANEOUS

SECTIONS

19. Grants by Central Government.
20. Act not in derogation of any other law.
21. Protection of action taken in good faith.
22. Power of appropriate Government to make rules.
23. Power to remove difficulties.

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

ACT NO. 40 OF 2019

[5th December, 2019.]

An Act to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Transgender Persons (Protection of Rights) Act, 2019.

(2) It extends to the whole of India.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means, —

(i) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government;

(ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, the State Government;

(b) "establishment" means—

(i) any body or authority established by or under a Central Act or a State Act or an authority or a body owned or controlled or aided by the Government or a local authority, or a Government company as defined in section 2 of the Companies Act, 2013 (18 of 2013), and includes a Department of the Government; or

(ii) any company or body corporate or association or body of individuals, firm, cooperative or other society, association, trust, agency, institution;

(c) "family" means a group of people related by blood or marriage or by adoption made in accordance with law;

(d) "inclusive education" means a system of education wherein transgender students learn together with other students without fear of discrimination, neglect, harassment or intimidation and the system of teaching and learning is suitably adapted to meet the learning needs of such students;

(e) "institution" means an institution, whether public or private, for the reception, care, protection, education, training or any other service of transgender persons;

(f) "local authority" means the municipal corporation or Municipality or Panchayat or any other local body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;

(g) "National Council" means the National Council for Transgender Persons established under section 16;

(h) "notification" means a notification published in the Official Gazette;

1. 10th January, 2020, *vide* notification No. S.O. 135(E), dated 10th January, 2020, *see* Gazette of India, Extraordinary, Part II, sec. 2(ii).

(i) "person with intersex variations" means a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body;

(j) "prescribed" means prescribed by rules made by the appropriate Government under this Act; and

(k) "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*.

CHAPTER II

PROHIBITION AGAINST DISCRIMINATION

3. Prohibition against discrimination.—No person or establishment shall discriminate against a transgender person on any of the following grounds, namely:—

(a) the denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof;

(b) the unfair treatment in, or in relation to, employment or occupation;

(c) the denial of, or termination from, employment or occupation;

(d) the denial or discontinuation of, or unfair treatment in, healthcare services;

(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public;

(f) the denial or discontinuation of, or unfair treatment with regard to the right of movement;

(g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;

(h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; and

(i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be.

CHAPTER III

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

4. Recognition of identity of transgender person.—(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.

5. Application for certificate of identity.—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.

6. Issue of certificate of identity.—(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.

7. Change in gender.—(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.

CHAPTER IV

WELFARE MEASURES BY GOVERNMENT

8. Obligation of appropriate Government.—(1) The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.

(2) The appropriate Government shall take such welfare measures as may be prescribed to protect the rights and interests of transgender persons, and facilitate their access to welfare schemes framed by that Government.

(3) The appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.

(4) The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such persons.

(5) The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities.

CHAPTER V

OBLIGATION OF ESTABLISHMENTS AND OTHER PERSONS

9. Non-discrimination in employment.—No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.

10. Obligations of establishments.—Every establishment shall ensure compliance with the provisions of this Act and provide such facilities to transgender persons as may be prescribed.

11. Grievance redressal mechanism.—Every establishment shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act.

12. Right of residence.—(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.

CHAPTER VI

EDUCATION, SOCIAL SECURITY AND HEALTH OF TRANSGENDER PERSONS

13. Obligation of educational institutions to provide inclusive education to transgender persons.—Every educational institution funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others.

14. Vocational training and self-employment.—The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

15. Healthcare facilities.—The appropriate Government shall take the following measures in relation to transgender persons, namely:—

(a) to set up separate human immunodeficiency virus Sero-surveillance Centres to conduct sero-surveillance for such persons in accordance with the guidelines issued by the National AIDS Control Organisation in this behalf;

(b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;

(c) before and after sex reassignment surgery and hormonal therapy counselling;

(d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;

(e) review of medical curriculum and research for doctors to address their specific health issues;

(f) to facilitate access to transgender persons in hospitals and other healthcare institutions and centres;

(g) provision for coverage of medical expenses by a comprehensive insurance scheme for Sex Reassignment Surgery, hormonal therapy, laser therapy or any other health issues of transgender persons.

CHAPTER VII

NATIONAL COUNCIL FOR TRANSGENDER PERSONS

16. National Council for Transgender Persons.—(1) The Central Government shall by notification constitute a National Council for Transgender Persons to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

(2) The National Council shall consist of—

(a) the Union Minister in-charge of the Ministry of Social Justice and Empowerment, Chairperson, *ex officio*;

(b) the Minister of State, in-charge of the Ministry of Social Justice and Empowerment in the Government, Vice-Chairperson, *ex officio*;

(c) Secretary to the Government of India in-charge of the Ministry of Social Justice and Empowerment, Member, *ex officio*;

(d) one representative each from the Ministries of Health and Family Welfare, Home Affairs, Housing and Urban Affairs, Minority Affairs, Human Resources Development, Rural Development, Labour and Employment and Departments of Legal Affairs, Pensions and Pensioners Welfare and National Institute for Transforming India Aayog, not below the rank of Joint Secretaries to the Government of India, Members, *ex officio*;

(e) one representative each from the National Human Rights Commission and National Commission for Women, not below the rank of Joint Secretaries to the Government of India, Members, *ex officio*;

(f) representatives of the State Governments and Union territories by rotation, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members, *ex officio*;

(g) five representatives of transgender community, by rotation, from the State Governments and Union territories, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members;

(h) five experts, to represent non-governmental organisations or associations, working for the welfare of transgender persons, to be nominated by the Central Government, Members; and

(i) Joint Secretary to the Government of India in the Ministry of Social Justice and Empowerment dealing with the welfare of the transgender persons, Member Secretary, *ex officio*.

(3) A Member of National Council, other than *ex officio* member, shall hold office for a term of three years from the date of his nomination.

17. Functions of Council.—The National Council shall perform the following functions, namely:—

(a) to advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to transgender persons;

(b) to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of transgender persons;

(c) to review and coordinate the activities of all the departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to transgender persons;

(d) to redress the grievances of transgender persons; and

(e) to perform such other functions as may be prescribed by the Central Government.

CHAPTER VIII

OFFENCES AND PENALTIES

18. Offences and penalties.—Whoever,—

(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.

CHAPTER IX

MISCELLANEOUS

19. Grants by Central Government.—The Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the National Council as may be necessary for carrying out the purposes of this Act.

20. Act not in derogation of any other law.—The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

21. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the appropriate Government or any local authority or any officer of the Government in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and any rules made there under.

22. Power of appropriate Government to make rules.—(1) The appropriate Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which an application shall be made under section 5;

(b) the procedure, form and manner and the period within which a certificate of identity is issued under sub-section (1) of section 6;

(c) the form and manner in which an application shall be made under sub-section (1) of section 7;

(d) the form, period and manner for issuing revised certificate under sub-section (2) of section 7;

(e) welfare measures to be provided under sub-section (2) of section 8;

(f) facilities to be provided under section 10;

(g) other functions of the National Council under clause (e) of section 17; and

(h) any other matter which is required to be or may be prescribed.

(3) Every rule made by the Central Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one House, before that House.

23. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.



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असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 8]

नई दिल्ली, सोमवार, मार्च 30, 2026/चैत्र 9, 1948 (शक)

No. 8]

NEW DELHI, MONDAY, MARCH 30, 2026/CHAITRA 9, 1948 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

**MINISTRY OF LAW AND JUSTICE
(Legislative Department)**

New Delhi, the 30th March, 2026/Chaitra 9, 1948 (Saka)

The following Act of Parliament received the assent of the President on the 30th March, 2026 and is hereby published for general information:—

**THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS)
AMENDMENT 5 7 2026**

(No. 3 OF 2026)

[30th March, 2026]

An Act to amend the Transgender Persons (Protection of Rights) Act, 2019.

BE it enacted by Parliament in the Seventy-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Transgender Persons (Protection of Rights) Amendment Act, 2026. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

40 of 2019.

2. In section 2 of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as the principal Act),— Amendment of section 2.

(i) for clause (a), the following clause shall be substituted, namely:—

' a) " a p p r e G o v e r n m e n t " m e a n s —

(i) i n r e l a t i o n t o t h e C e n t r a l G o v e r n m e n t e s t a b l i s h m e n t w h o l l y o r s u b s t a n t i a l l y f i n a n c e d t h a t G o v e r n m t , t h e C e n t r a l G o v e r n m e n t ;

(i) i i n r e l a t i o n t o t h e S t a t e G o v e r n m e n t e s t a b l i s h m e n t w h o l l y o r s u b s t a n t i a l l y f i n a n c e d b y t h a t a u t h o r i t y w i t h i n a S t a t e , t h e S t a t e G o

(i) i i i n r e l a t i o n t o t h e U n i o n t e r r i t o r y e s t a b l i s h m e n t w h o l l y o r s u b s t a n t i a l l y f i n a n c e d b y t h e C e n t r a l G o v e r n m t t h a t U n i o n t e r r i t o r y , t h e n d e A d m i n i s t r a t i o n a r t i c l e 2 3 9 o f t h e C o n s t i t u t i o n u s o m a y o r b e s p e c i f i e d b y t h e C e n t r a l G o v e r n m e n t ; ' ;

(i) i a f t e r a) c l a u s e f o l l o w i n g c l a u s e

' a) " a u t h o r i t y " m e a n s a m e d i c a l O f f i c e r C h i e f M e d i c a l O f f i c e r C e n t r a l G o v e r n m e n t , S t a t e G o v e r n m e n t o r A d m i n i s t r a t i o n

(i) i c l a u s e s h a l l b e o m i t t e d ;

(i) v f o r k) , a u t h o r i t y (f o l l o w i n g c l a u s e

' k) " t r a n s g e n d e r p e r s o n " m e a n s

(i) a p e r s o n h a v i n g u s u a l c h a r a c t e r i s t i c s s u c h a s h i j a r a a v a n n i o g t a r , o r u n u a c h p e r s o n w h o s e v a r i a t i o n s s p e c i f i e d a t b e l o w c o n g e n i t a l v a r i a t i o n i n o n e o f t h e f o l l o w i n g c h a r a c t e r i s t i c s a s c o m p a r e d

(a) p r i m a r y s e x u a l c h a r a c t e r i s t i c s ;

(b) e x t e r n a l g e n i t a l i a ;

(c) c h r o m o s o m a l p a t t e r n s ;

(d) g o n a d a l d e v e l o p m e n t ;

(e) e n d o c r i n e h o r m o n e p r o d u c t i o n o r s u c h o t h e r m e d i c a l c o n d i t i o n ;

(i) i a n y p e r s o n o r c h i l d w h o i s i n d u c e d , d e c e i t o r i n t e n d e d o r c o n s e n t , c o m p e l l e d t o a s s u m e t r a n s g e n d e r i d e n t i t y , b y m e m b e r s o f t h e f a m i l y , a m p u t a t i o n , o r a n y s u r g i c a l o r o t h e r w i s e ;

P r o v i d e d t h a t i t s h a l l n o t b e i n c l u d e d , p e r s o n s w i t h d i f f e r e n t s e x u a l i d e n t i t i e s . ' .

A m e n d m e n t o f s e c t i o n 3 A m e n d m e n t o f s e c t i o n 4

3. I n s e c t i o n 4 o f t h e p r i n c i p a l

4. I n s e c t i o n 6 o f t h e p r i n c i p a l

(a) i n s e c t i o n 1) o n t h e w o r d s " D i s t r i c t M a g i s t r a t e , a f t e r e x a m i n e s t h e c a s e a n d , i f h e c o n s i d e r s e i t h e r n e c e s s a r y o r o t h e r m e d i c a l e x p e r t s " s h a l l b e

(b) after section 10 on the following shall name—

" 4) The person who has been subjected and is so declared as definition under this Act shall birth certificate and all other of such person. "

5. In section 7 of the principal

Amendment section

(a) in sub-section 1 for the words " such person shall be substituted

(b) after section 10 on the following shall name—

" 1) The medical institution undergone surgery to change gender furnish the details concerned and the authority in such form

(c) for section 10 on the following shall name—

" 2) A person referred to in sub-section 1 shall apply to the District Magistrate along with the certificate issued by the Medical Officer, and on being satisfied with the certificate, in such manner and within such time, as

(d) sub-section 3 and the proviso shall

6. In section 16 of the principal Act the following clause shall be substituted

Amendment section

" 1) representatives of the State Administration, by rotation, in the Northern regions, not below the rank of Department, to be nominated officials

7. For section 18 of the principal Act substituted, namely:

Substitution of new section

" 18. Whoever,

Offences and penalties

(a) compels or enforces at or near a place of forced or bonded labour or other purposes imposed by Government or imprisonment for a term which which may extend to two years

(b) denies a transgender person access to or obstructs such person access to any place to which other members of the community are entitled to have access, punishable with imprisonment for a term which may extend to

(c) forces or causes a transgender person to reside in a village or other place of residence or imprisonment for a term which which may extend to two years

(d) harms or injures or endangers the well-being, whether mental or physical, or to do acts including causing physical, emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than two years and with fine

(e) kidnaps or abducts—any adult

(i) grievous hurt to such person, emasculation, amputation or hormonal procedure; or

(ii) permanent or severe impairment of functions of such person,

with the intent of, or in the course of, or with a view to, or for the purpose of, or with the consent of, or under the influence of, or by force, or by undue influence shall be punishable for a term which shall not be less than two lakh rupees;

(f) kidnaps or abducts any child

(i) grievous hurt to such person, emasculation, castration, or hormonal procedure; or

(ii) permanent or severe impairment of functions of such child,

with the intent of, or in the course of, or with a view to, or for the purpose of, or with the consent of, or under the influence of, or by force, or by undue influence shall be punishable with imprisonment for a term which shall not be less than five years;

(g) by force, or by threat, or by undue influence

(i) compels any person, whether a transgender person, to dress or outwardly as a transgender person

(ii) employs, uses, or causes any person to engage in begging, solicitation, servitude, or bonded labour while so present shall be punishable with imprisonment for a term which shall not be less than three years and shall also be liable to fine which shall not be less than one lakh rupees;

(h) by force, or by threat, or by undue influence

(i) compels any child, whether a transgender person, to dress or outwardly as a transgender person

(ii) employs, uses, or causes any child to engage in begging, solicitation, servitude, or bonded labour while so present

shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to fourteen years, and shall also be liable to fine which s

8. In section 22 of the principal Act, in sub-section (2),—

Amendment of section 22.

(a) in clause (c) , after the word, section (1) c the words, brackets, figure and letter " and the for be furnished by the medical institution under sub-section (1) A , " s | inserted;

(b) in clause (d) , the word " revised " s |

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DR. RAJIV MANI,
G e c r m t o t h a e r i o v o t = ' n d i a "

ANNEXURE P-5

PARLIAMENT OF INDIA

The Transgender Persons (Protection of Rights) Amendment Bill,
2026

PARLIAMENTARY RECORD AND BILL TEXT

Source: PRS India Legislative Research (prsindia.org) and Official Gazette of India

PARLIAMENTARY TIMELINE

Parliament:	Seventy-Seventh Year of the Republic of India
Bill No.:	Bill No. 79 of 2026
Ministry:	Ministry of Social Justice and Empowerment
Introduced in Lok Sabha:	13th March 2026
Lok Sabha passed:	24th March 2026
Rajya Sabha passed:	25th March 2026
Presidential Assent:	30th March 2026
Gazette Reference:	CG-DL-E-31032026-271438
Act No.:	No. 3 of 2026

KEY CHANGES IN THE BILL

The Bill amends the Transgender Persons (Protection of Rights) Act, 2019 (No. 40 of 2019) in the following respects:

- DEFINITION (Section 2):** Substitutes a new definition of 'transgender person' — removing the self-identification based definition ('person whose gender does not match gender assigned at birth') and replacing it with biological/socio-cultural categories. Expressly excludes persons with self-perceived sexual identities. Also defines 'authority' as a government-appointed medical board.
- SELF-IDENTIFICATION RIGHT (Section 4):** Omits Section 4(2) of the Principal Act, which provided the statutory right to self-perceived gender identity.
- IDENTITY CERTIFICATE (Section 6):** Requires the District Magistrate to examine the recommendation of the authority (medical board) before issuing a certificate. Adds Section 6(4) enabling name change in official documents.
- GENDER CHANGE (Section 7):** Changes 'may' to 'shall' in Section 7(1) — making post-surgery application mandatory. Inserts new Section 7(1A) requiring medical institutions to report surgery patients to the District Magistrate and authority. Omits Section 7(3) and its protective proviso.

5. NATIONAL COUNCIL (Section 16): Raises minimum rank of State Government representatives to Director level.

6. OFFENCES (Section 18): Completely substitutes Section 18 with enhanced anti-trafficking provisions — 10 years to life for forced identity change on adults; life imprisonment for children. New offences for forced begging/servitude while presenting as transgender.

NOTE: The full text of the Bill (as passed) is set out in the following pages, reproduced from the Official Gazette of India Extraordinary (CG-DL-E-31032026-271438).

Bill No. 79 of 2026

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS)
AMENDMENT BILL, 2026

A

BILL

to amend the Transgender Persons (Protection of Rights) Act, 2019.

BE it enacted by Parliament in the Seventy-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Transgender Persons (Protection of Rights) Amendment Act, 2026.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

40 of 2019.

2. In section 2 of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as the principal Act),—

Amendment of section 2.

(i) for clause (a), the following clause shall be substituted, namely:—

' d) " appropriate — Government "

(i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, the Central Government;

(ii) in relation to a State Government or any establishment wholly or substantially financed by that Government, or any local authority within a State, the State Government;

(iii) in relation to a Union territory or any establishment wholly or substantially financed by the Central Government in that Union territory, the Administrator thereof appointed under article 239 of the Constitution or such authority as may be specified by the Central Government; ' ;

(ii) after clause (a), the following clause shall be inserted, namely:—

' d) " authority " means a medical Officer or a Deputy Chief Medical Officer, as may be appointed by the Central Government, State Government or Union territory Administration; ' ;

(iii) clause (i) shall be omitted;

(iv) for clause (k), the following clause shall be substituted, namely:—

' k) " transgender person " means a

(i) a person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*, or eunuch, or a person with intersex variations specified below or a person who, at birth, has a congenital variation in one or more of the following sex characteristics as compared to male or female development:—

(a) primary sexual characteristics;

(b) external genitalia;

(c) chromosomal patterns;

(d) gonadal development;

(e) endogenous hormone production or response, or such other medical conditions; or

(ii) any person or child who has been, by force, allurement, inducement, deceit or undue influence, either with or without consent, compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise:

Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities. ' .

Amendment
of section 4.

Amendment of
section 6.

3. In section 4 of the principal Act, sub-section (2) shall be omitted.

4. In section 6 of the principal Act,—

(a) in sub-section (1), for the words " District " District Magistrate, after examining and, if he considers either necessary or desirable, after taking the assistance of other medical experts " shall be

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

5 " 4) The person who has been issued a certificate of identity under sub-section (1) and is so declared as a transgender person within the definition under this Act shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person. "

5. In section 7 of the principal Act,—

10 (a) in sub-section (1), for the words " such person " substituted; shall be

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

15 " 1A) The medical institution in which the person who has undergone surgery to change gender, either as male or female, shall furnish the details of such person to the concerned District Magistrate and the authority in such form

(c) for sub-section (2), the following sub-section shall be substituted, namely:—

20 " 2) A person referred to in sub-section (1) shall also make an application to the District Magistrate who 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, a

25 (d) sub-section (3) and the proviso shall be omitted.

6. In section 16 of the principal Act, in sub-section (2), for clause (f), the following clause shall be substituted, namely:—

30 " f) representatives of the State Governments and Union territories Administration, by rotation, one each from North, South, East, West and North-East regions, not below the rank of Director in the concerned Ministry or Department, to be nominated by the Central Government, Members, *ex officio*; " .

7. For section 18 of the principal Act, the following section shall be substituted, namely:—

35 " 18. W h o e v e r ,

(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, 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;

40 (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, 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;

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

Amendment of section 7.

Amendment of section 16.

Substitution of new section for section 18.

Offences and penalties.

(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; 5

(e) kidnaps or abducts any adult person and causes—

(i) grievous hurt to such person, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or 10

(ii) permanent or severe injury to the body or bodily functions of such person,

with the intent of, or in the course of, compelling such person to assume, adopt, or outwardly present a transgender identity against the will or consent of such person, whether by force, allurements, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than two lakh rupees; 15

(f) kidnaps or abducts any child and causes— 20

(i) grievous hurt to such child, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or

(ii) permanent or severe injury to the body or bodily functions of such child, 25

with the intent of, or in the course of, compelling such child to assume, adopt, or outwardly present a transgender identity, whether by force, allurements, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees;

(g) by force, threat, coercion, allurements, deception, inducement, or undue influence— 30

(i) compels any person, whether or not such person is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person against the will of such person; and

(ii) employs, uses, or causes such person to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting, 35

shall be punishable with rigorous imprisonment for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine which shall not be less than one lakh rupees; and 40

(h) by force, threat, coercion, allurements, deception, inducement, undue influence or otherwise—

(i) compels any child, whether or not such child is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person; and 45

(ii) employs, uses, or causes such child to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting,

shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to fourteen years, and shall also be liable to fine which s

8. In section 22 of the principal Act, in sub-section (2),—

Amendment of section 22.

5 (a) in clause (c) , after the word, section (1) c the words, brackets, figure and letter " and the for be furnished by the medical institution under sub-section (1A) , " s | inserted;

(b) in clause (d) , the word " revised " s |

STATEMENT OF OBJECTS AND REASONS

It is the legislative policy to recognise a specific class of transgender persons, who face social issues and to create a regime for their protection. The legislative policy was and is intended to protect only those who face severe social exclusion due to biological reasons for no fault of their own and no choice of their own.

2. Over the course of time, during the implementation of this enactment, certain doubts and difficulties have arisen and are likely to arise with regard to the expanse of the definition of transgender persons and how the identification of such persons is to be done under the existing definition. This is critical to the implementation of the Act, as it is of prime importance that the enactment is utilised and works towards only those who are in actual need of such protection.

3. The intent, object and purpose of the Act is and was to protect a specified class of persons socially and culturally known as transgender people who face societal discrimination of an extreme and oppressive nature. The purpose was and is not to protect each and every class of persons with various gender identities, self-perceived sex/gender identities or gender fluidities.

4. The existing vague definition of the expression **WUDMJHGHUSHUVR** only makes it impossible to identify the genuine oppressed persons to whom the benefits of the Act are intended to reach, but also makes the operation and enforcement of several provisions under penal, civil and personal laws unworkable. Such a vague and broad definition of the expression **WUDMJHGHUSHUVR** to have created complex issues in the working of statutory enactments, as this vague definition is not compatible with several statutory provisions of several enactments enacted both by the Parliament and the State Legislatures. Any enactment conferring rights, privileges and protections cannot have a definition clause whereby the status entitling such rights, privileges and protections can be acquired.

5. It is therefore imperative to give a precise definition for proper and definitive identification and protection of transgender persons to whom the benefits of the Act must reach. The protection and benefits that are provided under the Act are vast in nature, and therefore, care has to be taken that such identification cannot be extended on the basis of any acquirable characteristics or personal choice or claimed self-perceived identity of an individual.

6. The Bill also contains provisions for designation of an authority and provisions providing the relevant authorities the option to seek expert advice if required. The Bill also seek to empower the transgender persons to make consequential changes in official documents. The Bill further provides for a change in the constitution of the National Council ensuring that persons, not below the rank of Director, form a part of the same as representatives of the State Governments and Union territories administration, by rotation, one each from North, South, East, West and North-East regions.

7. The Transgender Persons (Protection of Rights) Act, 2019 prohibits discrimination and abuse against transgender persons but its penal provision under section 18, as presently enacted, addresses only general wrongs and criminal offences and prescribes a maximum of two years imprisonment. It does not adequately address offences of exceptional gravity that have been documented in practice. The abduction of adults and children, the infliction of reversible or irreversible bodily harm upon them through mutilation, emasculation, castration, hormone therapies / other similar therapies or chemical alteration, and their forced assumption of a transgender identity, frequently as a prelude to economic and other forms of exploitation including but not limited to begging or servitude has been observed. While scattered provisions of the Bharatiya Nyaya Sanhita, 2023 and the Juvenile Justice (Care and Protection of Children) Act, 2015 address individual

elements of these wrongs, no existing provision treats this conjunction of abduction, permanent bodily harm, and forced identity as a unified penal approach.

8. The Bill, therefore, also proposes to substitute section 18 of the principal Act, creating specific offences with graded punishments that reflect the gravity of the harm, the irreversibility of the injury, and the particular vulnerability of child victims. The proposed provisions operate cumulatively with the general criminal law and give legislative expression to the constitutional guarantees that every person's bodily integrity is inviolable, that no person may be subjected to forced labour or traffic in human beings.

9. The Bill seeks to achieve the above objectives.

NEW DELHI;

The 12th March, 2026.

DR. VIRENDRA KUMAR.

FINANCIAL MEMORANDUM

The Transgender Persons (Protection of Rights) Amendment Bill, 2026, if enacted, is not likely to involve any expenditure of recurring or non-recurring nature from and out of the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to insert sub-section (1A) in section 7 of the Transgender Persons (Protection of Rights) Act, 2019. The aforesaid sub-section of the said section empowers the appropriate Government to make rules to provide for the form and manner of details of a person who has undergone surgery to change gender, either male or female, to be furnished by the medical institutions.

The matters in respect of which rules may be made and notification issued are matters of procedure and administrative detail, and it is not practicable to provide for them in the proposed legislation itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019
(40 OF 2019)

* * * * *

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) " appropriate —Government " me

(i) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government;

(ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, the State Government;

* * * * *

(i) " person with intersex varia variation in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body;

* * * * *

(k) " transgender person ~~gender does not match~~ with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*.

* * * * *

CHAPTER III

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

Recognition of identity of transgender person.

4. (1) * * * * *

(2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.

* * * * *

Issue of certificate of identity.

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.

* * * * *

Change in gender.

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.

* * * * *

CHAPTER VII

NATIONAL COUNCIL FOR TRANSGENDER PERSONS

16. (1) * * * * *

National Council for Transgender Persons.

(2) The National Council shall consist of—

* * * * *

(f) representatives of the State Governments and Union territories by rotation, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members, *ex officio*;

* * * * *

CHAPTER VIII

OFFENCES AND PENALTIES

18. Whoever,—

Offences and penalties.

(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.

* * * * *

22. (1) * * * * *

Power of appropriate Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

* * * * *

(c) the form and manner in which an application shall be made under sub-section (1) of section 7;

(d) the form, period and manner for issuing revised certificate under sub-section (2) of section 7;

* * * * *

LOK SABHA

A

BILL

to amend the Transgender Persons (Protection of Rights) Act, 2019.

(Dr. Virendra Kumar, Minister of Social Justice and Empowerment)



ANNEXURE P-6

267

INDIAN ASSOCIATION OF AESTHETIC PLASTIC SURGEONS

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PAN No: AAAAI0401J

Dr. Medha Bhave

President

Thank you, Maharashtra IAAPS congratulates for a scientific, oath-taking ceremony of the president of IAAPS under the health care with global impact. The objective is to ensure safety and dignity of our patients and persons.

Dr. Venkata Ramana Yamani

Vice President

Hyderabad

vice president

in a view of, we are a qualified and experienced:

1. To withhold a signed letter of the Constitution

Bill of Rights and medical ethics.

2. To ensure the conclusion of the health care and the implementation of the health care.

We remain committed to the highest standards of medical practice and the rights of our patients.

Yours sincerely

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 Comparison of NALSA judgment, transgender bill 2019 and 2026 showing progressive deviation from the NALSA judgment
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Annexure 1

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Issue	NALSA judgment 2014	Rights Transgender Persons: 2014	Transgender Persons: (Protection of Rights) Amendment Bill, 2019
National	Supreme Court judgment: NALSA v. Union of India, 15 April 2015	Private Member introduced, passed by P. Sabha in 2019	Amendment to the 2019 Bill introduced in P. Sabha on 2026 and passed in both Houses on 25 March 2026
Saha Core group	Constitutional recognition of transgender persons as "gender" affirming equal dignity and autonomy	Rights-based statute for equality, social security and institutional enforcement	Narrows categories under the law and rewording recognition penalties amendment
Definition covered	Covers people whose gender identity/behaviour conform to biological	A transgender is one whose identity differs from their birth including trans women and other diverse identities	Narrows the definition categories: sexual orientation and self-identifiers, focusing on socio-cultural identities, medically intersex people



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Self-ide	Recognises of transge persons to identify a female or gender.	Uses self mismatch gender as birth and require s recogniti	Transgen Persons (Protect Rights) Amendmen 2026
Legal re mechanis	Court dir recogniti central a governmen	No detaile screening-structure the 2014 E provided.	Introduces/r formal recogni reporting in medical board verification certification of pure self.
Saha Reserv	Directs gc to treat t persons as and educat backward c and extenc reservatic educationa institutic public app	Explicitl 2% reserv education instituti reservati under gov establish	Search result any new reser guarantee cor NALSA or the
Anti-disc	Directs gc to address and discri and protec fundamenta	Expressly discrimina covers edu employment community dignity, i and family	Continues th framework of but current i focused more recognition; penal provisi expansion of discriminati



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<p><u>Dr. J. Amritha Kanjoor</u> Immediate Past President Coimbatore</p> <p><u>Dr. Raj Gupta</u> Secretary New Delhi nationalsecretary@iaaps.net</p>	<p>Welfare</p>	<p>Directs welfare and incl education employment public</p>	<p>Provides security, unemploy allowance reassignm surgery, rehabilit inclusive concessio and incen private e</p>	<p>Current summ emphasize pr criminal-law do not show expansion on the 2014 Bil</p>
<p><u>Dr. Mahesh Nair</u> Joint Secretary Kochi, Kerala iaapsmembership@gmail.com</p> <p><u>Dr. Shivi Angi</u> New Delhi</p>	<p>Institut commiss</p> <p>Saha</p>	<p>Judicial not a ful commissio structure</p>	<p>Creates Na State Com for Transg Persons an transgende courts.</p>	<p>Retains the Council fra the 2019 Act composition according to reporting</p>
<p><u>Dr. Viral Desai</u> Treasurer Maharashtra Drviral@drviral.com</p> <p><u>Dr. Dinesh Saham</u> Editor</p>	<p>Offence penalt</p>	<p>No separa code crea judgment.</p>	<p>Provides p offences b establishm speech, an furnish in also creat rights cou</p>	<p>Introduces gr punishments, mentioning se penalties up imprisonment offences such and forced ic alteration, v style lower p remain for sc offences.</p>
<p><u>Executive</u> Transgender Committee Dr. Narendra Members Dr. Nitin Dr. Vikram S Dr. Jayan</p>	<p>Overall positi</p>	<p>Most expa constitut determina affirmati</p>	<p>Most expa statutory architect the three here.</p>	<p>Stronger on p provisions, t reported as r identity rec less aligned self-determi</p>

ANNEXURE P- 7 (Colly)

News Reports and Public Coverage of the Transgender Persons (Protection of Rights) Amendment Act, 2026

Parliamentary Passage and Presidential Assent

The Transgender Persons (Protection of Rights) Amendment Bill, 2026 was introduced in the Lok Sabha on March 13, 2026. Following expedited parliamentary procedures, the bill was passed by the Lok Sabha on March 24, 2026, and subsequently approved by the Rajya Sabha on March 25, 2026. President Droupadi Murmu granted Presidential assent on March 30, 2026, formally enacting the Transgender Persons (Protection of Rights) Amendment Act, 2026.

Source: Bar and Bench News / DD News

Major Provisions of the Amendment Act

The Amendment Act substantially restructures how transgender identity is defined and recognized in India. Key changes include: (1) Redefined Definition - The legislation narrows the definition of "transgender person" by removing self-identification as a standalone basis, recognizing instead socio-cultural trans identities such as kinner, hijra, aravani, and jogta, while excluding individuals based on different sexual orientations; (2) Medical Certification Requirement - The amended law mandates medical board certification for recognition, with district magistrates issuing identity certificates following designated board recommendations; (3) Enhanced Penalties - The bill introduces new criminal offenses with significantly increased penalties. "Abduction and grievous harm to force transgender identity carries minimum 10 years imprisonment, extendable to life," with harsher sentences for offenses involving children.

Source: PRS India / Bar and Bench

Human Rights Watch Assessment

Human Rights Watch characterized the Amendment Act as "a huge setback" for transgender rights in India. The organization emphasized that the act represents a reversal of gains from the landmark 2014 Supreme Court judgment (NALSA v. India), which recognized self-declared identity as the basis for legal recognition. HRW noted that the mandatory medical certification requirement contradicts international human rights standards. The organization highlighted that despite the census recording approximately 487,803 transgender persons in India, only about 32,500 currently possess identity cards essential for accessing social security measures. HRW also expressed concern about criminalization provisions that could criminalize support systems for vulnerable populations.

Source: Human Rights Watch

Civil Society and Activist Opposition

Prominent activists and civil society organizations protested the Amendment Act. Notable figures including Kanmani Ray stated "No one wins in this law." The National Council of Transgender Persons experienced high-profile resignations in protest. A Supreme Court-appointed committee headed by retired Justice Asha Menon requested the government reconsider the measure, citing serious concerns about multiple provisions. Opposition to the bill was characterized as coming from stakeholders who argued they received no prior notice before parliamentary introduction and that the legislation contradicted court precedent and excluded self-identified trans men, trans women, and gender non-binary individuals from legal recognition.

Source: The Tribune / Bar and Bench / Human Rights Watch

Constitutional and Legal Concerns

Legal scholars and organizations raised concerns that the Amendment Act conflicts with principles established in the 2014 National Legal Services Authority (NALSA) Supreme Court judgment. The Centre for Law and Policy Research published analysis characterizing the amendment as a "roll-back of constitutional rights." The legislation has been criticized for introducing new criminal offenses that could criminalize support systems for vulnerable populations. Critics contend that the mandatory medical certification requirement violates principles of bodily autonomy and self-determination. The lack of meaningful consultation with transgender communities and civil society before parliamentary introduction was highlighted as a procedural concern.

Source: Centre for Law and Policy Research / Legal Analysts

Community Impact and Advocacy Response

The Right to Food Campaign and other civil society organizations characterized the Amendment Act as "unconstitutional, exclusionary and a threat to survival" for transgender persons. Advocacy groups emphasized the practical barriers created by the narrowed definition and medical certification requirements. Organizations working with transgender communities noted that the legislation would exclude many individuals who previously qualified for legal recognition and related social welfare benefits. The timing of the amendment, coming during a period of heightened activism around transgender rights, intensified organized community opposition and calls for judicial review.

Source: Right to Food Campaign / Countercurrents



Sanchit Khanna/Hindustan Times via Getty Images

31 March 2026

India: Presidential approval of regressive Transgender Bill a major step backward for human rights

The decision by the President of India, Droupadi Murmu, to give assent to the Transgender Persons (Protection of Rights) Amendment Bill, 2026, which denies transgender and gender diverse people the right to self-identify, is a serious setback for human rights in India,” said Amnesty International.

The amendment means that transgender people in India will now have to go through a series of official checks for their identity to be verified and approved by the authorities.

“This regressive law dilutes safeguards and deepens state intrusion into the lives of transgender people,” said Aakar Patel, Chair of Board, Amnesty International India.

“This law is not just a bureaucratic overreach; it is a fundamental shift in how the state views transgender people. Identity is no longer treated as something inherent, but as something to be checked, certified, and controlled. That is a dangerous precedent.”

“

This regressive law dilutes safeguards and deepens state intrusion into the lives of transgender people

Aakar Patel, Chair of Board, Amnesty International India

The law provides a restrictive definition of ‘transgender’, limiting recognition to certain socio-cultural categories or biological variations. It also removes the separate definition of intersex persons and instead groups them with transgender persons, blurring the distinction between sex characteristics and gender identity.

At the core of the law is the explicit removal of the right to self-identification – a right that was firmly recognized by the Supreme Court in 2014 in the landmark **NALSA v. Union of India ruling**. The court made it clear: gender identity is a personal choice, about dignity, autonomy, and the freedom to define oneself. It categorically held that no individual should be compelled to undergo medical procedures including “sex reassignment surgery, sterilization or hormonal therapy” as a prerequisite for legal recognition of their gender identity.

The new amendment ignores the Supreme Court ruling entirely, replacing self-identification with a system where identity must be verified by a medical board and thereafter recognized by the District Magistrate. This shifts the recognition of gender identity from a matter of personal autonomy and lived experience to one governed by the state through medical and biological criteria, undermining international human rights standards and the Supreme Court judgement.

The law also raises serious concerns about state overreach, particularly in relation to privacy and unlawful surveillance. The law allows medical institutions to share details of gender-affirming procedures with authorities. For a community already facing stigma and discrimination, this opens the door to surveillance and misuse of deeply personal data, potentially leading to harassment and abuse. It could also discourage people from seeking essential healthcare for fear of privacy infringements.

“International standards call for legal gender recognition to be a quick, accessible and transparent administrative process based on a person’s self-determination. Instead of simplifying processes, this amendment adds more bureaucratic and medical layers, approvals, and verifications which pave the way for prejudice,” said Aakar Patel.

In addition, the amendment places transgender persons and their allies at further risk by introducing a sweeping criminal framework. Specifically, it penalizes “compelling”, “forcing” or “alluring” a person or a child to outwardly present as transgender, with penalties extending up to life imprisonment. These criminal provisions coupled with the narrow definition of transgender persons, which excludes self-perceived gender identity, potentially allow for the targeting of traditional kinship systems, civil society, medical professionals and parents.

The law was passed despite clear objections from a **Supreme Court-appointed expert committee** on transgender rights and opposition members of the Parliament. The committee had explicitly asked the government to withdraw the bill and engage in meaningful consultation with transgender communities, which they failed to do.

The judiciary has also raised red flags. The Rajasthan High Court yesterday **warned** that legal changes cannot dilute constitutional guarantees, especially those already recognized

under the NALSA judgement. This is a clear signal that the law may not stand against constitutional scrutiny. **276**

“A law that directly affects fundamental rights was pushed through without consulting with the very people it affects most,” said Aakar Patel.

“We stand in solidarity with the transgender rights activists protesting the amendment and urge the government of India to urgently pause and reconsider this law. At the very least, implementation should be halted, and the law revisited through genuine, inclusive consultation. Transgender voices must be at the center of any decision-making process that affects their lives”, said Aakar Patel.

Background

The Transgender Persons (Protection of Rights) Amendment Bill, 2026, was passed by voice vote in the Lok Sabha (lower house) on Tuesday 24 March, and subsequently cleared by the Rajya Sabha (upper house) on Wednesday 25 March, completing its passage through parliament. The bill was approved despite sustained criticism from opposition parties. Opposition leaders raised concerns over the government’s haste in passing the legislation and urged that it be referred to a standing committee to allow for broader consultation with stakeholders.

Home > Opinion



When State stamps identity: The quiet erosion of trans rights

The rTanes rre rPsonēc (t P rōn b f) R A lgnē r t c A t , 2e Q 26 s d l h y o r f p r e t b n s t i t u t i o n p r i n c i p l e s . I a o i v d y b l e h S e p e r C b u o d n r i s d o s i g n u l a r o v n g a i n s .

Ra th I Ba lja a j d b e p i 2:9 M ā h r 2026, I S O T O : 50

Fol dw U s 0

The rTanes rre rPsonēc (t P rōn b f) R A lgnē r t c A t , 2e Q 26 l, y r p l a y s s t e f a f i a m , e p d a s s h y o r f p r e t b n s t i t u t i o n s a l l a p i v d y b l e h S e p e r C b u o d n r i s d o s i g n u l a r o v n g a i n s .

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I t t f a u r e c o g n i d s e t h a t t e r m i a s i s r e n s n a y o o f r y s o n a l o f r e s p o n d w i t e h s t e h e d s a i t t g h n i d n t h o a t c i e h a n e b d i s c r e d m a g r a i t n s t o o m . t h e r s o d y n , e t c h o n s t i o e c t t i s e r t h i p o t b o n e m l y e t r h i t o p e .

The 2026 r e m t o v e s i e t o p s p e t e d t r i o n t o d u e s i a e d i a c l o a l - a a u n b r i t y a s l e a p i g a i t e n p o c e s s e y f a l e c o g n i t i o n . T h a r e n i a s a h e d i n e t h 2019 l e a f e w t (i a n s p i t e a s v a s o v e d e r i g d l s e l p e c e i e d e r l i t y t h e n d r e r t o o d i t i e c o g n i r t i o n o n i a n s i t d a t u i t o r o n a l v

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wi tne uun e pa eu yov pgn a n r s t o u g s i r u n e r i e n e q u e n a s s e m s . u c a e i e g n e s , e a r u s t f a c i l g t e a s t s i , n e r o f d i n e o d s o c f l u e s i e o r n s w i t h s d a i r e s q u e t i r l y r t p i l e i s e a u s e e d i t f e d i a d b o a d s o a p d t e d i r t f a q a p e s , e s u l g i n e s e a r p s e e i r g i n d e i f t f d i s a b e l n i a e g y e s t p e t n c h e a n i t b i r e d h a d o m i t i o n . e a h l i e s i d n f a s u e s o f e t d i n v i d u a t a c t i o n d a l e h a y n e r i c p s e c t s , e a b s t b a i r c e s a s o e g a l o e p t i o n s .

The g u r n e n t t h a d s t i e s o f r e d i o t j u s t i f e s a s o c i e s o n s i b i l i t y t o e s i e r m i e s u b o r d i n a t i o n e r P e r s o n s e s i v e u e h s o r e s t a h m r t i g h t h e a e r t t b e f i e s t o e s o f a k t e d a n c l i u e s i d e a c t i o n n , - n d i s c r i o n y i n o k t p a e s , d a n e s s o t p l u i b c e s p a e o r i s o a s t o a d e n t s d a h w a t m i s u e s e o f a s t i e i r e s t o c o u r y b t i u r e o e d i a d l m y e s e d n s e e r i f i d i o n o e d e t r r e i n d s t y

Eve n a s s g u n t i h n a t m i s u s e n o d e s r n a , e i n d i t s h a b i t e l x i t t e y \$ o b p e r C b u h a s a p e s t d e y e a n d e d i w l o g i c d e u r y g e g a l o v e s t h a e m a t k e e r o m m u n i t y e r s u f a c i t s e e t h y a e b s e o i n k a c k e e p h l a n s h v i K u m a r . W n i d n i c r u s e r C o m m i s s i o n s , s u t h e w e n s e r p s o n s w i t h s d w o s t a b e l a t h i b t a r e d i s a b i c o u d l a e s s a e s d m i b e x a m i n a t i o n s .

O r e g u r n e n t r a d i s a g a i n s t t h i s e o p a s i l i t y t y v a e s f t h e j o e d e t h e a t s h o m i r e t e n e o p s i b i m i s u s e n o t j u s t y i g h t e n l f b a n t k e e n c l a s s m i d e f a t e a h t s o , u y p u n e s a b i t d e a t o u y o n t b o n p s u c h e c o u n s o m i t i o n s y o o n t e h a t e x a m i n a t i e c o m e s i t i s e a s i e b b e t h c b u e d f a v i v o g y l : e a n e n o t e q u e r a l l e r i s s o u e r c o m o t a l o c t l h i m e n e y h o m e o f e x a m s c a j u s e t e s w o n e m t i t g o l e a l c h i t s e i i n o t e s h e a r t o s h e h o w e a h t e a d u l y e p u n i s h

F u t h e r m e , e t a x i g e t a i n e w a k m a d d y o r i e m p a e t q u e d u r a l e g u s a f , s u e t h i f a t s i a c c e s s e d e n r t h 2 0 d t h A w h e a b r e d k b a n v a f f d a t s t e i o n e s i s e t a b t v i e i w r s a o i t h s t i e a r d a p d e b o f a d m i r e i r g t n e s h e e s g a f a l s ? o l t f , h y n w i o m p e a d d i y e i r o n a o l f y l s a t h u e i r m a n d i g n d t a y o t a n y ?

T h i s e a l m e r t e f e t s a m i s t r e s t i f o f o n s . p l a s t i a d r s i - g o t a s f e e w o n k w i t e l y u a o a y t e n h e v e i e l r i t y e d i s e d t m o h u r g h e d i n a d d a r e a u c r a t i o v a l a p p r

T h e o m i s e o f N A L S e a y a s o u h i m p v e a t d i n v i d u a l e h t a s t e d e n d i h v n o e r d i t y a n l a w t d i l e s u t t h o n i s p o e s o n t e n l y f o a t l ; d i v e s m a s b a d e s k o v i a n n c e i r t h u b e t t h r o a r n s a f e i w i s i o r c o n s t i t u t i o n e a n d e j o a r t e a i r t s p i r n e d t n a l i o s t o l i . c e T e 2 0 2 6 r e n m i , i n e i r t o s f n e , a c e s k e d h e a r t t l m a y s t o t l e l o d n e a t o r e c t o u r s e .

D i s c l e a r i e n T h i e w a s s e x o v b e a r e t h a a t s h w n . e y h o d o n t e c e s s a r e f a y t e r t h r i e w s o f D H .

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Nikhil . S . Nair
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Legislative changes and constitutional protections are crucial in the context of the Transgender Persons Act and the 2026 Amendment Bill. The struggle for transgender rights in India has been long, marked by systemic discrimination and exclusion. Historically, the legal system criminalised transgender identities, a stance that has only recently, and with some hesitation, shifted towards recognition. The Transgender Persons (Protection of Rights) Act, 2019, was largely seen as a way to put progressive court decisions into law. However, the recently introduced Transgender Persons (Protection of Rights) Amendment Bill, 2026, could potentially reverse this fragile progress.

Also Read - From Regulator to Exploiter: A Critical Analysis of the Transgender Persons (Protection of Rights) Amendment Bill, 2026 (<https://www.livestackexchange.com/india-news/amendment-bill-2026-528>)

To understand how bad this new law could be, we need to refer to the important case National Legal Services Authority (NALSA) v. Union of India (2014 INSC 275). The Supreme Court didn't merely make a decision, it profoundly changed how Article 14 is understood by saying that "person" encompasses transgender people. One of the most important things to take away from NALSA was its unambiguous rejection of old-fashioned biological testing in favour of a psychological examination. The highest court made it clear that gender identity is an inherent, intrinsic sense of self. It made it clear that no one should have to undergo medical exams, operations, or biological tests only to be acknowledged by the law, which says these kinds of tests constitute a serious violation of privacy under Article 21.

Also Read - 1st of Two Supreme Court Verdicts on Articles 14 and 21 - Legal and Political Analysis (<https://www.livestackexchange.com/india-news/articles-14-21-legal-political-analysis-528485>)

The *Nartej Singh Udohra* (<https://www.livestackexchange.com/india-news/nartej-singh-udohra-528485>) verdict, which eventually read down Section 377 of the Indian Penal Code, made this foundation even stronger. The Court agreed that hiding someone's sexual orientation or gender identity is a direct violation of their right to life and privacy in making decisions. In *Jane Kaushi*

Union of India (<https://www.livestackexchange.com/india-news/jane-kaushi-union-of-india-528485>) as a transgender person's case, the court further reinforced its stance on the right to privacy and self-determination.

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l o g i n = 3 0 7 2 9 0 7 m - f r W E B E N L O P H 0 1 G A F F P E V X M A A Q 8 I K N K , T H E N)
Supreme Court went even further and said that employers that don't safeguard transgender employees are essentially guilty of "omissive discrimination." Justice Asha Menon led an Advisory Committee that developed an Equal Opportunity Policy. This made reasonable accommodation a constitutional requirement instead of just business talk. But even while courts are making more progressive decisions, the situation on the ground is still bad.

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Section 4(2) of the 2019 Act guaranteed self-perceived gender identity, but the bureaucratic system has been painfully sluggish and restrictive. The 2011 Census projected that there were over 4.8 lakh transgender people in India. However, official records reveal that just about thirty thousand identity cards and certificates have been granted so far. The system is still bogged down by red tape, and officials often misclassify people, which makes people lose faith in the government. A poll by the National Human Rights Commission (NHRC) found that more than 92% of transgender people are unable to participate in formal economic activities. Reports from the United Nations Development Programme (UNDP) show that 60% of transgender adolescents drop out of school because they are bullied. And even though the Supreme Court made it very plain in 2014 that affirmative action should be used, India still doesn't have a clear federal policy for horizontal reservation. Only a few states, like Karnataka, have a horizontal quota of just 1%. The 2026 Amendment Bill was introduced against this background of state indifference, which led to significant protests.

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The Statement of Objects and Reasons that goes along with the Bill is very worrisome. The government clearly says that it would only safeguard persons who

are being discriminated against because of "biological conditions beyond their control." It does this on purpose to leave out people who say they are who they

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say they are. The Bill takes away the right to self-identification by trying to do away with the provisions of Section 4(2) of the 2019 Act. Even worse, it narrows the legal definition of a transgender person to include only historically accepted socio-cultural groups (such as hijra or kinner) and intersex individuals. This decision makes it illegal for trans men, trans women, and genderqueer people who don't fit into these standard moulds to exist. Trans guys, who don't often have these historical cultural identifiers in India, are basically left out of the legislation altogether. In addition, a scary medical gauntlet is taking the place of the relative dignity of a self-declaration affidavit.

The new Bill says that in order to be legally recognised, a person must have had surgery or hormones and have been cleared by a medical board led by a Chief Medical Officer. This takes away people's freedom and gives it to the government, forcing them to have invasive treatments and converting their private medical choices into official surveillance files. The new penalties in Section 18 make things worse by making it a crime to "force" someone to identify as transgender and punishable by life in prison. This unclear writing undermines the community's traditional selected families, shelters, and gharana structures, even if it says it would combat exploitation. This leaves vulnerable youth who are fleeing hostile households completely alone. This repeal of the law isn't happening in a vacuum. The Bharatiya Nyaya Sanhita (BNS), 2023, India's new criminal code, has certain big gaps that make things much worse. The country lost the only law that made it a crime to rape adult men and transgender people without their consent when Section 377 of the IPC was completely removed. Because the BNS's definition of rape in Section 63 is entirely female-centric, transsexual victims of sexual assault have almost no legal options. A trans person who is sexually abused must now rely on Section 18(d) of the Transgender Persons Act, which irresponsibly groups sexual abuse with verbal and economic abuse and sets the maximum punishment at only two years. The BNS says that raping a cisgender woman will get you at least ten years in prison. The law is sending a loud, unconstitutional message, a transgender person's body is worth less. This backward trend is embarrassing for the whole world.

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The Yogyakarta Principles, which the Supreme Court decided must be read Indian law, plainly say that no one should have to undertake medical treatments to have their gender recognised. Look at Argentina, for example. Their Gender Identity Law from 2012 lets people change their gender on official records just because they want to, without any psychological or medical gatekeeping. It sees care that affirms gender as a basic entitlement, not a bureaucratic barrier. The 2026 Bill does not follow these progressive patterns. Instead, it puts India in line with a scary, global tide of anti-trans laws that are already spreading across places like the United States and Eastern Europe. India is at a very important point in its history.

The progressive legal system that has grown over the past 10 years, based on self-determination, privacy, and equality, is being attacked directly. The 2026 Amendment Bill deletes names, puts people under strict medical surveillance, and might make the community's most important support networks illegal. The Bharatiya Nyaya Sanhita's obvious omissions make the situation worse, and the state is intentionally pushing away the people it says it is protecting. To protect the Constitution's spirit, the legislature must immediately take back the 2026 Bill, put in place broad horizontal reservations, and change the BNS to make sure that rape laws apply to both men and women. Human dignity cannot be dichotomous.

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Next Story

ANNEXURE P24

News Reports and Public Coverage of the Transgender Persons (Protection of Rights) Amendment Act, 2026

Parliamentary Passage and Presidential Assent

The Transgender Persons (Protection of Rights) Amendment Bill, 2026 was introduced in the Lok Sabha on March 13, 2026. Following expedited parliamentary procedures, the bill was passed by the Lok Sabha on March 24, 2026, and subsequently approved by the Rajya Sabha on March 25, 2026. President Droupadi Murmu granted Presidential assent on March 30, 2026, formally enacting the Transgender Persons (Protection of Rights) Amendment Act, 2026.

Source: Bar and Bench News / DD News

Major Provisions of the Amendment Act

The Amendment Act substantially restructures how transgender identity is defined and recognized in India. Key changes include: (1) Redefined Definition - The legislation narrows the definition of "transgender person" by removing self-identification as a standalone basis, recognizing instead socio-cultural trans identities such as kinner, hijra, aravani, and jogta, while excluding individuals based on different sexual orientations; (2) Medical Certification Requirement - The amended law mandates medical board certification for recognition, with district magistrates issuing identity certificates following designated board recommendations; (3) Enhanced Penalties - The bill introduces new criminal offenses with significantly increased penalties. "Abduction and grievous harm to force transgender identity carries minimum 10 years imprisonment, extendable to life," with harsher sentences for offenses involving children.

Source: PRS India / Bar and Bench

Human Rights Watch Assessment

Human Rights Watch characterized the Amendment Act as "a huge setback" for transgender rights in India. The organization emphasized that the act represents a reversal of gains from the landmark 2014 Supreme Court judgment (NALSA v. India), which recognized self-declared identity as the basis for legal recognition. HRW noted that the mandatory medical certification requirement contradicts international human rights standards. The organization highlighted that despite the census recording approximately 487,803 transgender persons in India, only about 32,500 currently possess identity cards essential for accessing social security measures. HRW also expressed concern about criminalization provisions that could criminalize support systems for vulnerable populations.

Source: Human Rights Watch

Civil Society and Activist Opposition

Prominent activists and civil society organizations protested the Amendment Act. Notable figures including Kanmani Ray stated "No one wins in this law." The National Council of Transgender Persons experienced high-profile resignations in protest. A Supreme Court-appointed committee headed by retired Justice Asha Menon requested the government reconsider the measure, citing serious concerns about multiple provisions. Opposition to the bill was characterized as coming from stakeholders who argued they received no prior notice before parliamentary introduction and that the legislation contradicted court precedent and excluded self-identified trans men, trans women, and gender non-binary individuals from legal recognition.

Source: The Tribune / Bar and Bench / Human Rights Watch

Constitutional and Legal Concerns

Legal scholars and organizations raised concerns that the Amendment Act conflicts with principles established in the 2014 National Legal Services Authority (NALSA) Supreme Court judgment. The Centre for Law and Policy Research published analysis characterizing the amendment as a "roll-back of constitutional rights." The legislation has been criticized for introducing new criminal offenses that could criminalize support systems for vulnerable populations. Critics contend that the mandatory medical certification requirement violates principles of bodily autonomy and self-determination. The lack of meaningful consultation with transgender communities and civil society before parliamentary introduction was highlighted as a procedural concern.

Source: Centre for Law and Policy Research / Legal Analysts

Community Impact and Advocacy Response

The Right to Food Campaign and other civil society organizations characterized the Amendment Act as "unconstitutional, exclusionary and a threat to survival" for transgender persons. Advocacy groups emphasized the practical barriers created by the narrowed definition and medical certification requirements. Organizations working with transgender communities noted that the legislation would exclude many individuals who previously qualified for legal recognition and related social welfare benefits. The timing of the amendment, coming during a period of heightened activism around transgender rights, intensified organized community opposition and calls for judicial review.

Source: Right to Food Campaign / Countercurrents

THE YOGYAK PRINCIPLES

Principles on Protection
international human
in relation to sexual
and gender i

the english version is the authoritative text.
translations are available in
russia, india, china, japan, and south africa.

march 2007

Principles on the application of international law
in relation to sexual orientation and gender identity

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INTRODUCTION TO THE YUGYAKA

all human beings are born free and equal in rights and dignity. They are interdependent, indivisible and inalienable. No one shall be subjected to torture or abuse. Integral to every person's dignity and human rights is the right to be free from discrimination or abuse.

many advances have been made toward ensuring that gender identities can live with the equal dignity and respect that all human beings deserve. States now have laws and constitutions that prohibit discrimination without distinction on the basis of gender identity.

nevertheless, human rights violations targeting perceived sexual orientation or gender identity remain serious threats. They include extra-judicial killings, rape, invasions of privacy, arbitrary detentions, and serious discrimination in employment, housing, and other areas. These violations are often compounded by hatred, discrimination and exclusion, such as on the basis of economic, social or other status.

many states and societies impose gender and sexual orientation stereotypes through custom, law and violence and seek to control relationships and how they are lived. The use of force behind continuing gender-based violence is a violation of the rights of all individuals.

the international system has seen great strides against violence in society, and many mechanisms and treaties have been developed to protect the rights of all persons from discrimination. However, the international response to human rights and gender identity has been fragmented and inconsistent.

1) Sexual orientation is understood to refer to each person's emotional, affectional and sexual attraction to, and intimate relationships with, other persons of different gender or the same gender or more than one gender.

2) Gender identity is understood to refer to each person's internal and external sense of gender, which may or may not correspond with the sex assigned at birth, sense of the body (which may involve, if freely chosen, medical or surgical means) and gender role and expression (including speech and mannerisms).

to address these deficiencies a consistent under-
of international human rights law and its appli-
gender identity discrimination as a violation of
international human rights law, in order to pro-
persons on the basis of equality and without d-

the internationalisation of international human rights, on
behalf of a coalition of human rights organisa-
a set of international legal principles on the
rights violations based on sexual orientation.
coherent state human rights obligations.

a distinguished group of human rights experts
refined these Yogyakarta Principles. The Yogyakarta
in Yogyakarta, Indonesia from November 2006, 29 distinguish-
countries with diverse backgrounds and expertise
unanimously adopted the Yogyakarta Principles on the Appli-
Rights Law in relation to Sexual Orientation a-

the rapporteur of the Yogyakarta Principles, Professor
contributions to the drafting and implementation of
efforts have been critical to the successful o-

the Yogyakarta Principles address a broad range
application to issues of sexual orientation and
primary obligations to implement the Yogyakarta
detailed recommendations. The Yogyakarta Principles
have responsibilities to parliamentarians, judges, the
addressed to other national and international
institutions, the media, non-governmental organ-

the experts of the Yogyakarta Principles reflect the
human rights law in relation to issues of sexual
recognised that states may incur additional obligations
evolve.

the Yogyakarta Principles affirm binding states
must commit to a different future where all
and rights can flourish that precious birthright.

Sonia Onufer Corrêa
co-chair person

Vitit Muntarbhorn
co-chair person

we, the **International Protocol on the Right of Inter-national Human Rights on Sexual Orientation and Gender Identity**

P R E A M B L E

RECALLING that all human beings are born free and everyone is entitled to the enjoyment of human rights as race, colour, sex, language, religion, political opinion, property, birth or other status;

DISTURBED that violence, harassment, discrimination and prejudice are directed against persons in all sexual orientation or gender identity, that these acts on grounds including gender, race, age, religion, that such violence, harassment, discrimination and prejudice undermine the integrity and dignity of those persons, their sense of self-worth and belonging to their community, their identity and to live lives of fear and

AWARE that historically people have experienced discrimination if they are or are perceived to be lesbian, gay, bisexual, transsexual, transgender or intersex or by some societies by sexual orientation or gender identity

UNDERSTANDING that 'sexual orientation' to refer to emotional, affectional and sexual attraction to individuals of a different gender or the same

UNDERSTANDING that 'gender identity' to refer to each individual's experience of gender, which may occur at birth, including the personal sense of the body, modification of bodily appearance or function, and other expressions of gender, including dress,

OBSERVING that international human rights law affords rights, that the application of existing human rights, that the specific situations and experiences of people, identities, and that in all actions concerning a primary consideration and a child who is capable to express those views freely, such views being and maturity of the child;

NOTING that international human rights law prohibits discrimination in regard to the full enjoyment of political and social, that respect for sexual orientation is integral to the realisation of equality, and that measures to seek to eliminate prejudices and combat the superiority of one sex or on stereotyped roles, that the international community has recognised its responsibility on matters related to their sexual orientation, free from coercion, discrimination, and violence;

RECOGNISING that there is significant value in art and culture, international human rights law as applicable to diverse sexual orientations and gender identities;

ACKNOWLEDGING that this articulation must rely on international human rights law and will require revision on future developments in that law and its application to persons of diverse sexual orientations and gender identities and countries.

followed by the meeting
held in Yogyakarta, Indonesia
from 9-11 November 2006,
hereby adopted as the Principles

PRINCIPLE

1 THE RIGHT TO THE UNIVERSAL HUMAN RIGHTS

All human beings are born free and equal of all sexual orientations and gender identity of all human rights.

States shall:

A. embody the principles of the universality, indivisibility of all human rights in their legislation and ensure the practical realization of all human rights;

B. amend any legislation, including criminal law, to ensure the enjoyment of all human rights;

C. undertake programmes of education and awareness to ensure the enjoyment of all human rights by all persons, regardless of their sexual orientation and gender identity;

D. integrate a human rights approach into all policy and decision-making and affirms the interrelatedness and indivisibility of all human rights, including sexual orientation and gender identity.

PRINCIPLE

2 THE RIGHTS TO EQUALITY AND NON-DISCRIMINATION

Everyone is entitled to enjoy all human rights on the basis of sexual orientation or gender identity, equality before the law and the equal protection of the law without discrimination whether or not the enjoyment of these rights is affected. The law shall prohibit any such discrimination and ensure equal and effective protection against it.

Discrimination on the basis of sexual orientation or gender identity, any distinction, exclusion, restriction or denial of rights on the basis of sexual orientation or gender identity which has the purpose or effect of nullifying equality before the law or the equal protection of the law is prohibited.

enjoyment or exercise, on an equal basis, freedoms. Discrimination based on sexual may be, and commonly is, compounded by including gender, race, age, religion, dis

States shall:

- A. embody the principles of equality and non-discrimination and gender identity in their national constitutions yet incorporated therein, including by means ensure the effective realisation of these principles;
- B. repeal criminal and other legal provisions that prohibit consensual sexual activity among people with consent, and ensure that an equal age of consent for same sex sexual activity;
- C. adopt appropriate legislative and other measures in the public and private spheres on the basis of equality;
- D. take appropriate measures to secure adequate recognition of sexual orientations and gender identities as may be necessary for equal enjoyment or exercise of rights without any form of discriminatory;
- E. in all their responses to discrimination on the basis of sexual orientation or gender identity, take account of the manner in which such discrimination occurred;
- F. take all appropriate action, including programs and policies, to achieving the elimination of prejudicial or discriminatory practices that are related to the idea of the inferiority of people based on their gender identity or gender expression.

THE RIGHT TO RECOGNITION PRINCIPLE 3

Everyone has the right to recognition even if they are different. Persons of diverse sexual orientations and gender identities have the capacity in all aspects of life. Each person's gender identity is integral to their personal identity and all aspects of self-determination, dignity and well-being. No one should undergo medical procedures, including sex

or hormonal therapy, as a requirement for identity. No status, such as marriage or to prevent the legal recognition of a person subjected to pressure to conceal, suppress gender identity.

States shall:

- A. ensure that all persons are accorded legal capacity on the basis of sexual orientation or gender capacity, including equal rights to conclude (including through inheritance), manage, enjoy
- B. take all necessary legislative, administrative, and legal measures to legally recognise each person's self-defined
- C. take all necessary legislative, administrative, and legal measures to ensure that identity papers which exist where they are issued identity papers which include, including birth certificates, passports, etc., reflect the person's profound self-defined gender identity
- D. ensure that such procedures are efficient, free of stigma, and respect the dignity and privacy of the person concerned;
- E. ensure that changes to identity documents will not result in identification or disaggregation of persons based on
- F. undertake targeted programmes to provide support for gender transition or reassignment.

PRINCIPLE

4 THE RIGHT TO LIFE

Everyone has the right to life. No one shall be deprived of life, including by reference to consideration of sexual orientation or gender identity. The death penalty shall not be applied to consensual sexual activity among persons on the basis of sexual orientation or gender identity.

States shall:

- A. repeal all forms of crime that have the purpose of punishing activity among persons of the same sex who are engaged in consensual sexual activity, and, where appropriate provisions are repealed, never impose the death penalty on them;
- B. remit sentences of death and release all those currently imprisoned relating to consensual sexual activity among persons of the same sex;
- C. cease state-sponsored or condoned attacks on the rights of persons on sexual orientation or gender identity, and ensure that government officials or by any individual or organization where appropriate evidence is found, those responsible are punished.

THE RIGHT TO SECURITY OF PERSON

PRINCIPLE 5

Everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection from physical or psychological harm, whether inflicted by government officials or by private individuals or entities.

States shall:

- A. take all necessary policing and other measures to prevent and respond to all forms of violence and harassment related to sexual orientation or gender identity;
- B. take all necessary legislative measures to prevent and respond to violence, threats of violence, incitement to violence, and harassment related to sexual orientation or gender identity of any person, including the family;
- C. take all necessary legislative, administrative and judicial measures to prevent, orientate or gender identity of the victims, and to mitigate such violence;
- D. ensure that perpetrators of such violence are held accountable where appropriate evidence is found, those responsible are punished, and that victims are provided with appropriate compensation;
- E. undertake campaigns of awareness-raising, directed at the public, to actual and potential perpetrators of violence, and to address the underlying violence related to sexual orientation or gender identity.

6 THE RIGHT TO PRIVACY

Everyone, regardless of sexual orientation, has the right to the enjoyment of privacy without arbitrary interference by the State with regard to their family, home or correspondence, and protection from unlawful attacks on their honour and dignity. Privacy ordinarily includes the choice to disclose or not disclose information to one's sexual orientation or gender identity to others, and regarding both one's own body and consent to sexual activity with others.

States shall:

- A. take all necessary legislative, administrative, and judicial measures to protect the right of each person, regardless of sexual orientation, to privacy in their personal sphere, intimate decisions, and human relationships, and to protection among persons who are over the age of consent;
- B. repeal all laws that criminalise consensual sexual activity between persons who are over the age of consent, and ensure that laws protect same-sex and different-sex sexual activity;
- C. ensure that criminal and other legal provisions do not criminalise consensual sexual activity between persons over the age of consent;
- D. repeal any law that prohibits or criminalises self-expression through dress, speech or mannerisms, or that prohibits or criminalises change their bodies as a means of expressing their gender identity;
- E. release all those held on remand or on the basis of a conviction who are related to consensual sexual activity and whose conviction is related to gender identity;
- F. ensure the right of all persons ordinarily to control the disclosure of information pertaining to their sexual orientation or gender identity to persons from arbitrary or unwanted disclosure by others.

THE RIGHT TO FREEDOM FROM DEPRIVATION OF LIBERTY

No one shall be subjected to arbitrary arrest or detention on the basis of sexual orientation or gender identity. Any arrest or detention, including the elimination of vague or discriminatory application or otherwise provided in law, is arbitrary. All persons arrested or detained on the basis of sexual orientation or gender identity, are to be informed of the reasons for arrest and detention and to be brought promptly before a judicial authority to determine the lawfulness of detention, where appropriate.

States shall:

- A. take all necessary legislative, administrative and judicial measures to ensure that no person on the basis of sexual orientation or gender identity may be subjected to arbitrary arrest or detention, including the elimination of vague or discriminatory application or otherwise provided in law;
- B. take all necessary legislative, administrative and judicial measures to ensure that all persons arrested or detained, regardless of their sexual orientation or gender identity, are to be informed of the reasons for arrest or detention, and whether charged or not, to be brought promptly before a judicial authority to determine the lawfulness of detention, where appropriate;
- C. undertake programmes of training and awareness raising for law enforcement personnel regarding the arbitrary arrest or detention of a person's sexual orientation or gender identity;
- D. maintain accurate and up to date records of all arrests, detentions, and detentions by bodies that are adequately mandated to handle detentions that may be motivated by the sexual orientation or gender identity of the person.

THE RIGHT TO A FAIR AND PUBLIC TRIAL

Everyone is entitled to a fair and public trial and impartial tribunal established by law, and obligations in a suit at law and of access to justice without prejudice or discrimination on the basis of sexual orientation or gender identity.

States shall:

- A. take all necessary legislative, administrative and judicial steps to prevent and eliminate any prejudicial treatment on the basis of sexual orientation or gender identity at any stage of the judicial process, in civil and administrative proceedings which determine one's credibility or character as a party, and by reason of their sexual orientation or gender identity;
- B. take all necessary and reasonable steps to prevent and eliminate any discrimination in civil proceedings that are motivated wholly or partly on the basis of sexual orientation or gender identity;
- C. undertake programmes of training and awareness for judges, prosecutors, lawyers and others regarding the principles of equality and non-discrimination and gender identity.

PRINCIPLE

9 THE RIGHT TO TREATMENT WHILE IN DETENTION

Everyone deprived of liberty shall be treated with respect for the inherent dignity of the human person. The rights and interests of all persons whose identity are integral to each person's dignity shall be protected.

States shall:

- A. ensure that placement in detention avoids further discrimination on the basis of sexual orientation or gender identity or suffering from physical, mental or sexual abuse;
- B. provide adequate access to medical care and services for those in custody, recognising any particular needs on the basis of sexual orientation or gender identity, including where necessary, appropriate information and therapy and access to gender-reassignment treatments where desired;
- C. ensure, to the extent possible, that all persons in detention are placed in a place of detention appropriate to their sexual orientation or gender identity;
- D. put protective measures in place for all persons in detention on the basis of their sexual orientation, gender identity or expression, as is reasonably practicable, that such protection is no less than that of their rights than is experienced by the general population.

- E. ensure that conjugal visits, where permitted, and detainees, regardless of the gender of the
- F. Provide for the independent monitoring of detained non-governmental organisations including orientation and gender identity;
- G. undertake programmes of training and awareness other officials in the public and private sector regarding international human rights standards discrimination, including in relation to sexual

PRINCIPLE THE RIGHT TO FREEDOM FROM CRUEL, INHUMAN OR DEGRADING OR PUNISHMENT

Everyone has the right to be free from degrading treatment or punishment, including orientation or gender identity.

States shall:

- A. take all necessary legislative, administrative protection from torture and cruel, inhuman or perpetrated for reasons relating to the sexual as well as the incitement of such acts;
- B. take all reasonable steps to identify victims treatment or punishment, perpetrated for reasons identity, and offer appropriate remedies including appropriate, medical and psychological support;
- C. undertake programmes of training and awareness all other officials in the public and private prevent such acts.

PRINCIPLE

1 THE RIGHT TO PROTECTION FROM OF EXPLOITATION, SALE AND TRAFFICKING HUMAN BEINGS

Everyone is entitled to protection from exploitation, including but not limited to actual or perceived sexual orientation or gender identity. Measures to prevent trafficking shall address the root causes, including various forms of inequality and discrimination, including actual or perceived sexual orientation or gender identity, of these or other identities. Such measures shall protect the human rights of persons at risk of being

States shall:

- A. take all necessary legislative, administrative, and judicial protective nature regarding the trafficking of human beings, including but not limited to sexual orientation or gender identity;
- B. ensure that any such legislation or measures do not stigmatise, or in any other way, exacerbate existing discriminatory practices;
- C. establish legal, educational and social measures to address factors that increase vulnerability to trafficking, but not limited to sexual exploitation, on the basis of sexual orientation or gender identity, including social rejection by families or cultural communities, and discriminatory social attitudes leading to discrimination in access to housing, accommodation, and employment.

PRINCIPLE

1 2 THE RIGHT TO WORK

Everyone has the right to decent and productive conditions of work and to protection from discrimination on the basis of sexual orientation or gender identity.

States shall:

- A. take all necessary legislative, administrative and judicial measures to eliminate discrimination on the basis of sexual orientation in private employment, including in relation to dismissal, conditions of employment and remuneration;
- B. eliminate any discrimination on the basis of sexual orientation to ensure equal employment and advancement opportunities, including all levels of government service and public service, including serving in the police and military, and provide training and awareness programmes to counter discriminatory attitudes.

PRINCIPLE THE RIGHT TO SOCIAL SECURITY AND SOCIAL PROTECTION

Everyone has the right to social security and social protection without discrimination on the basis of sexual orientation or gender identity.

States shall:

- A. take all necessary legislative, administrative and judicial measures to ensure social security and other social protection measures (including sick leave, unemployment benefits, health insurance, maternity and parental leave, modifications related to gender identity), other social security benefits, pensions and benefits with regard to social security as the result of illness or death;
- B. ensure that children are not subject to any form of discrimination in the social security system or in the provision of social security benefits on the basis of sexual orientation or gender identity, or that children are not subject to any form of discrimination in the provision of social security benefits on the basis of sexual orientation or gender identity;
- C. take all necessary legislative, administrative and judicial measures to ensure that poverty reduction strategies and programmes, including social security and social protection, do not discriminate on the basis of sexual orientation or gender identity.

PRINCIPLE

1 4 THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

Everyone has the right to an adequate standard of living, including adequate food, safe drinking water, adequate sanitation and continuous improvement of living conditions on the basis of sexual orientation or gender identity.

States shall:

A. take all necessary legislative, administrative and judicial measures to ensure the realization of the right to adequate food, safe drinking water, adequate sanitation and continuous improvement of living conditions on the basis of sexual orientation or gender identity;

PRINCIPLE

1 5 THE RIGHT TO ADEQUATE HOUSING

Everyone has the right to adequate housing without discrimination on the basis of sexual orientation or gender identity.

States shall:

A. take all necessary legislative, administrative and judicial measures to ensure the realization of the right to adequate housing, including tenure and access to affordable, habitable, and secure housing, including shelters and other emergency housing, on the basis of sexual orientation, gender identity and marital status;

B. take all necessary legislative, administrative and judicial measures to prevent and end evictions that are not in conformity with international law and ensure that adequate and effective legal remedies are available to any person claiming that a right to property has been violated or is under threat of violation, including the right to alternative land of better or equal status, on the basis of sexual orientation or gender identity;

C. ensure equal rights to land and home ownership on the basis of sexual orientation or gender identity;

D. establish social programmes, including support services, to address the needs of persons on the basis of sexual orientation and gender identity.

especially for children and young people, in forms of violence, discrimination, lack of food or cultural communities, as well as to promote security;

- E. Provide training and awareness-raising programs that are aware of and sensitive to the needs of those affected as a result of sexual orientation or gender identity.

THE RIGHT TO EDUCATION

Everyone has the right to education, without discrimination, taking into account, their sexual orientation and gender identity.

States shall:

- A. take all necessary legislative, administrative and financial measures to ensure equal access to education, and equal treatment of students in the education system, without discrimination on the basis of sexual orientation and gender identity;
- B. ensure that education is directed to the development of the intellectual and mental and physical abilities to their fullest potential of students of all sexual orientations and gender identities;
- C. ensure that education is directed to the development of respect for each child's parents and family values, in a spirit of understanding, peace, and tolerance, respecting diverse sexual orientations and gender identities;
- D. ensure that education methods, curricula and materials are inclusive of and respectful of diverse sexual orientations and gender identities, and take into account the particular needs of students, their parents and families;
- E. ensure that laws and policies provide adequate protection of students of different sexual orientations and gender identities from harassment and violence within the school environment, and ensure that such protection is respected in a participatory manner;
- F. ensure that students subjected to such exclusion or harassment are not segregated for reasons of protection, and that their rights are respected in a participatory manner;
- G. take all necessary legislative, administrative and financial measures to ensure that education in educational institutions is administered in a non-discriminatory manner, without discrimination or penalty on the basis of sexual orientation or gender identity, or the expression thereof;

Ensure that everyone has access to opportunities without discrimination on the basis of sexual orientation, gender identity or sex expression, particularly for adults who have already suffered such forms of discrimination.

PRINCIPLE

1 THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH

Everyone has the right to the highest attainable standard of physical, mental and emotional health, without discrimination on the basis of sexual orientation, gender identity or sex expression. Sexual and reproductive health is a part of the right to the highest attainable standard of health.

States shall:

- A. take all necessary legislative, administrative, judicial and other measures to ensure the right to the highest attainable standard of health, including the right to the highest attainable standard of sexual orientation or gender identity;
- B. take all necessary legislative, administrative, judicial and other measures to ensure that all persons have access to healthcare facilities, goods and services, including those related to reproductive health, and to their own medical decisions, without discrimination on the basis of sexual orientation or gender identity;
- C. ensure that healthcare facilities, goods and services, including those related to reproductive health, status of, and respond to the needs of, all persons, including those of diverse sexual orientation and gender identity, and taking into account, sexual orientation and gender identity, and in this respect are treated with confidentiality;
- D. develop and implement programmes to address the social, cultural, economic and other factors which undermine the health of persons, including those of diverse sexual orientation and gender identity;
- E. ensure that all persons are informed and educated, including through the media, regarding medical treatment and care, on the basis of their own free and informed consent, without discrimination on the basis of sexual orientation or gender identity;
- F. ensure that all sexual and reproductive health programmes and services respect the diversity of sexual orientation and gender identity, and are equally available to all without discrimination;
- G. facilitate access by those seeking body modification to safe, competent, non-discriminatory treatment, care and support;
- H. ensure that all health service providers do not discriminate on the basis of sexual orientation or gender identity, and that all persons have equal access to recognition as next of kin;

1. adopt the policies, and programmes or educational working in the healthcare sector to deliver to all persons, with full respect for each person

PRINCIPLE PROTECTION FROM MEDICAL ABUSE

No person may be forced to undergo any form of treatment, procedure, testing, or be confined on the basis of sexual orientation or gender identity. No person, on the contrary, a person's sexual orientation or gender identity themselves, medical conditions and are not

States shall:

- A. take all necessary legislative, administrative and judicial measures against harmful medical practices based on sex or gender identity on the basis of stereotypes, whether derived from physical appearance or perceived gender norms;
- B. take all necessary legislative, administrative and judicial measures to ensure that a person's gender identity is irreversibly altered by medical procedures without the full, free and informed consent of the person, and guided by the age and maturity of the child and guided by the best interests of the child shall be protected;
- C. establish child protection mechanisms whereby children are protected from medical abuse;
- D. ensure protection of persons of diverse sexual orientation and gender identity from unethical or involuntary medical procedures or treatments or HIV/AIDS or other diseases;
- E. review and amend any health funding provision of a development-assistance nature, which may promote or perpetuate possible such abuses;
- F. ensure that any medical or psychological treatment does not implicitly, treat sexual orientation and gender identity as a disease to be cured or suppressed.

1 THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

Everyone has the right to freedom of opinion and expression, including the right to hold opinions without interference and to receive and impart information and ideas of all kinds, irrespective of frontiers.

States shall:

- A. take all necessary legislative, administrative, judicial and other measures to ensure the effective exercise of freedom of opinion and expression, while without discrimination on the basis of sexual orientation, receipt and imparting of information and ideas, and identity, as well as related advocacy for lesbian, gay, bisexual, transgender or intersex persons, or participation in conferences or other international or regional human rights instruments on sex information;
- B. ensure that the outputs and standards of public administration and non-discriminatory in respect of issues of public administration that the personnel recruitment and promotion are not discriminatory on the basis of sexual orientation;
- C. take all necessary legislative, administrative, judicial and other measures to ensure the effective enjoyment of the right to express identity, including the right to determine one's name, department, dress, bodily characteristics, and other aspects of one's gender identity and expression;
- D. ensure that notions of public order, public morality, or national security are not employed to restrict, in a discriminatory manner, the right to opinion and expression that affirms diverse sexual orientation and gender identity;
- E. ensure that the exercise of freedom of opinion and expression of persons of diverse sexual orientation and gender identity is not restricted;
- F. ensure that all persons, regardless of sexual orientation and gender identity, have equal access to information and ideas, as well as to the media.

THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION

Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstration, protest, or picketing, and the right to form, join, or participate in trade unions or other associations or organizations, without discrimination, and the right to form, join, or participate in associations that distribute information, or advocate for the rights of, persons of diverse sexual orientations and gender identities.

States shall:

- A. take all necessary legislative, administrative, and judicial measures to ensure that persons can peacefully assemble, associate, assemble and associate, and to obtain legal recognition and protection without discrimination on the basis of sexual orientation or gender identities;
- B. ensure in particular that notions of public order or national security are not employed to restrict any exercise of the right of peaceful assembly and association solely on the basis that it involves persons of diverse sexual orientations and gender identities;
- C. under no circumstances impede the exercise of the right of peaceful assembly and association on grounds relating to sexual orientation or gender identity, and provide adequate police and other physical protection to persons exercising these rights;
- D. provide training and awareness-raising programs for law enforcement and other relevant officials to enable them to protect and promote the rights of persons of diverse sexual orientations and gender identities;
- E. ensure that information disclosure rules for public officials, or for the media or other persons, do not have discriminatory effects for persons of diverse sexual orientation or gender identity, or for their associations or organizations.

PRINCIPLE

2 THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Everyone has the right to freedom of thought, of sexual orientation or gender identity. No State to justify laws, policies or practices that discriminate, on the basis of sexual orientation, law, or discriminate, on the basis of sexual orientation.

States shall:

- A. take all necessary legislative, administrative and judicial measures to protect the rights of all persons, regardless of sexual orientation or gender identity, and non-religious beliefs, alone or in association with their beliefs and to be free from coercion or discrimination;
- B. ensure that the expression, practice and promotion of religious beliefs with regard to issues of sexual orientation or gender identity is not in a manner incompatible with human rights.

PRINCIPLE

2 THE RIGHT TO FREEDOM OF MOVEMENT

Everyone lawfully within a State has the right to freedom of movement and residence within the borders of the State, without discrimination on the basis of sexual orientation or gender identity. Sexual orientation and gender identity shall not be a ground to limit or impede a person's entry, egress or return to that person's own State.

States shall:

- A. take all necessary legislative, administrative and judicial measures to ensure that freedom of movement and residence is guaranteed to all persons, regardless of sexual orientation or gender identity.

THE RIGHT TO SEEK

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Everyone has the right to seek and enjoy persecution, including persecution related to sexual orientation or gender identity. A State may not remove, expel or otherwise deprive that person of that person may face a well-founded fear of persecution in any form of cruel, inhuman or degrading treatment or punishment, on the basis of sexual orientation or gender identity.

States shall:

- A. review, amend and enact legislation to ensure that the recognition of refugee status and asylum is based on the basis of sexual orientation or gender identity;
- B. ensure that no policy or practice discriminates against persons on the basis of sexual orientation or gender identity;
- C. ensure that no person is removed, expelled or otherwise deprived of their right to seek asylum where they may face a well-founded fear of torture, persecution or degrading treatment or punishment, on the basis of sexual orientation or gender identity.

THE RIGHT TO FOUNDED

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Everyone has the right to found a family, including through access to a donor insemination), without discrimination on the basis of sexual orientation or gender identity. Families exist in diverse forms and may be defined by descent or marriage, and take all other measures to ensure that no family may be

States shall:

- A. take all necessary legislative, administrative and other measures to ensure that no family may be defined by descent or marriage, and take all other measures to ensure that no family may be
- B. ensure that laws and policies recognise the right to found a family, including through access to a donor insemination), without discrimination on the basis of sexual orientation or gender identity;

of the sexual orientation or gender identity family-related social welfare and other public

- C. take all necessary legislative, administrative actions or decisions concerning children, welfare institutions, courts of law, administrative interests of the child shall be a primary of gender identity of the child or of any family incompatible with such best interests;
- D. in all actions or decisions concerning children personal views can exercise the right to express given due weight in accordance with the age
- E. take all necessary legislative, administrative that recognise same-sex marriages or registered obligation or benefit available to different available to same-sex married or registered
- F. take all necessary legislative, administrative obligation, entitlement, privilege, obligation partners is equally available to same-sex un
- G. ensure that marriages and other legally-recognized with the free and full consent of the intended

PRINCIPLE

25 THE RIGHT TO PARTICIPATE IN

Every citizen has the right to take part in the right to stand for elected office, to affecting their welfare, and to have equal employment in public functions, including without discrimination on the basis of s

States shall:

- A. review, amend and enact legislation to ensure in public and political life and affairs, employment in public functions, including s discrimination on the basis of, and with fu and gender identity;

- B. take all appropriate measures to eliminate stigmatisation based on sexual orientation and gender identity that prevent full participation in society;
- C. ensure the right of each person to participate in decisions affecting their welfare, without discrimination on the basis of sexual orientation and gender identity.

THE RIGHT TO PARTICIPATE PRINCIPLE 26

Everyone has the right to participate freely in decisions affecting their sexual orientation or gender identity, and to express their views on the diversity of sexual orientation and gender identity.

States shall:

- A. take all necessary legislative, administrative and judicial measures for the participation in cultural life of all persons, regardless of their sexual orientations and gender identities;
- B. foster dialogue between, and mutual respect among, groups present in society, including among groups that hold different views on matters of sexual orientation and gender identity, and the rights referred to in these Principles.

THE RIGHT TO PROMOTE PRINCIPLE 27

Everyone has the right, individually and in association with others, to the protection and realisation of human rights at all levels, without discrimination on the basis of sexual orientation and gender identity. This includes activities directed at the promotion of the rights of persons of diverse sexual orientations and gender identities, as well as the right to develop and discuss their views and to advocate their acceptance.

States shall:

- A. take all necessary legislative, administrative, and judicial measures to create a supportive environment for activities directed towards the promotion and protection of human rights, including rights relevant to sexual orientation and gender identity;
- B. take all appropriate measures to combat acts of violence, harassment, discrimination, and targeting of human rights defenders of diverse sexual orientation and gender identity;
- C. ensure that human rights defenders, regardless of their sexual orientation and gender identity, and regardless of the human rights organisation they are affiliated with, have access to, participation in, and communication with human rights organisations and bodies;
- D. ensure the protection of human rights defenders and gender identity, against any form of violence, discrimination, pressure, or any other harm by state actors, in response to their work, and ensure that such protection is maintained or improved, to human rights defenders working on issues of sexual orientation or gender identity based on their sexual orientation or gender identity;
- E. support the recognition and accreditation of human rights organisations at the national and international levels.

PRINCIPLE

2 THE RIGHT TO EFFECTIVE REMEDY AND REDRESS

Every victim of a human rights violation based on sexual orientation or gender identity, has the right to access to appropriate remedies. Measures taken for the prevention, or securing adequate advancement of, human rights and gender identities are integral to the right to effective remedy and redress.

States shall:

- A. establish the necessary legal procedures, mechanisms, and policies, to ensure that victims of human rights violations based on sexual orientation or gender identity have access to, and receive, rehabilitation, satisfaction, and guarantee of non-recurrence of appropriate;

- B.ensure that remedies are enforced and implemented;
- C.ensure that effective institutions and standards are established, and that all personnel are based on sexual orientation and gender identity;
- D.ensure that all persons have access to all means of seeking remedies and redress;
- E.ensure that financial aid is provided to those seeking redress, and that any other obstacles to securing redress are removed;
- F.ensure training and awareness-raising programs for teachers and students at all levels of public education, and for public officials and other violators of human rights, to promote respect for human rights standards in accordance with these Principles, and to promote attitudes based on sexual orientation and gender identity.

PRINCIPLE ACCOUNTABILITY

Everyone whose human rights, including rights to life, liberty and security, are violated is entitled to have those rights restored. Everyone whose rights are violated, whether they are government officials or private individuals, is held accountable for their actions in a manner that is proportionate to the nature of the violation. There should be no impunity for human rights violations related to sexual orientation and gender identity.

States shall:

- A.establish appropriate, accessible and effective procedures, as well as monitoring mechanisms, for human rights violations related to sexual orientation and gender identity;
- B.ensure that all allegations of crimes perpetrated against persons on the basis of their sexual orientation or gender identity of the type prohibited by these Principles, are investigated promptly and thoroughly. If sufficient evidence is found, those responsible are prosecuted and held accountable;
- C.establish independent and effective institutions for the formulation and enforcement of laws and policies that prohibit discrimination on the basis of sexual orientation and gender identity;
- D.remove any obstacles preventing persons responsible for human rights violations on sexual orientation or gender identity from being held accountable.

ADDITIONAL RECOMMENDATIONS

all members of society and of the international community, and of the international human rights community, recommend that:

- A. the United Nations Human Rights Council endorse these Principles, promote their implementation worldwide, and request the High Commissioner for Human Rights, including at the level of the United Nations, to promote their implementation;
- B. the United Nations Human Rights Council endorse these Principles, and request that all States take into consideration to human rights violations based on sexual orientation or gender identity with a view to their elimination in accordance with these Principles;
- C. the United Nations Human Rights Special Procedures pay due attention to human rights violations based on sexual orientation or gender identity, and request that they be included into the implementation of their respective mandates;
- D. the United Nations Economic and Social Council recognise and encourage all States, national and international organisations whose aim is to promote and protect human rights, including those related to sexual orientations and gender identities;
- E. the United Nations Human Rights Treaty Bodies vigorously interpret and apply their respective treaties into the implementation of their respective mandates, and request that they be included into the interpretive texts on the application of human rights treaties related to sexual orientations and gender identities;
- F. the World Health Organization and other appropriate health services and care, respect the dignity of individuals based on their sexual orientation or gender identity;
- G. the United Nations and other human rights mechanisms integrate these Principles into their work, and ensure that persons who experience, or have a well-founded fear of, persecution based on sexual orientation or gender identity, and ensure that they are provided with legal assistance or other services, or the determination of their status;
- H. regional and sub-regional inter-governmental human rights mechanisms, as well as regional human rights mechanisms, request that the implementation of these Principles is integral to the implementation of their respective mandates, procedures and other human rights mechanisms, procedures and other human rights mechanisms;
- I. regional human rights courts vigorously interpret and apply their respective human rights treaties they interpret into their respective mandates, procedures and other human rights mechanisms, and gender identity;
- J. non-governmental organisations working on human rights at national and international levels promote respect for the Yogyakarta Principles in accordance with their specific mandates;

- K.humanitarian organisations incorporate these relief operations, and refrain from discrimination on the basis of sexual orientation or gender identity in the provision of such services;
- L.national human rights institutions, state actors, and integrate into their work the rights of persons of diverse sexual orientation and gender identity;
- M.Professional organisations, including those in the educational sectors, review their practices and promote the implementation of these Principles;
- N.commercial organisations acknowledge and act on their responsibility for both ensuring respect for these Principles within their operations and promoting these Principles nationally and internationally;
- O.the mass media avoid the use of stereotypes on the basis of sexual orientation and gender identity, and promote tolerance and respect for the rights of persons of diverse sexual orientation and gender identity;
- P.governmental and private funders provide financial support to other organisations, for the promotion and protection of the rights of persons of diverse sexual orientations and gender identity.

THESE PRINCIPLES AND RECOMMENDATIONS apply to the application of international human rights law to the rights of persons of diverse sexual orientations and gender identity. They are interpreted as restricting or in any way limiting the rights of persons as recognised in international, regional and national law.

ANNEX

SIGNATORIES TO THE YOGYAKARTA

Philip (Australia) rapporteur on extrajudicial, executions and human rights

Maxim Ameg (Mexico) rapporteur on interfaith dialogue and association

Mauro C (Argentina) rapporteur on international human rights commission

Edwin C (Africa) rapporteur on Africa

Sonia Onuf (Brazil) associate at the ILSIA and associational case law of the expert

Yakin E (Turkey) rapporteur on the theme of the department of the state university, key

Elizabeth (Australia) member of the national human rights commission, former member of the national commission of Jurists

Paul (New Zealand) rapporteur on the right to standard of health care in the United Kingdom

Asma J (Pakistan) rapporteur on the human rights of Pakistan

Maina (Kenya) rapporteur on the human rights

Miloon K (Indonesia) rapporteur on the right to adequate housing, university

Judith M (United Kingdom) rapporteur on the right to education, university

Alice M (United States) rapporteur on the right to education, university

Sanji M (Gambia) rapporteur on the right to education, university

Vitit M (Thailand) rapporteur on the human rights, democratic principles of Korea

Lawrence M (Kenya) rapporteur on the human rights

Manfred (Austria), special rapporteur on torture and other degrading treatment or punishment and member of the Human Rights Committee and the Working Group on Arbitrary Detention; and Prof. Dr. Beitz, member of the Human Rights Committee and the Working Group on Arbitrary Detention.

Ana Elena Obara (Costa Rica), feminist attorney, women and international consultant.

Michael O'Flaherty (Ireland), member of the Human Rights Committee and Professor of Human Rights and Director of the Centre for Human Rights at the University of Nottingham; and Kiran Puri (India), member of the Yogyakarta Principles.

Sunil (Nepal), President of the National Human Rights Commission.

Dimitrina (Belgium), member of the Human Rights Committee.

Rudi Mohammad (Indonesia), special rapporteur on international law and lecturer at the Faculty of Law, Universitas Padjadjaran, Indonesia.

Mary Robinson (Ireland), former UN High Commissioner for Human Rights and former President of the African Commission on Human and Peoples' Rights.

Nevena Vucko (Serbia), member of the Human Rights Committee and President of the Belgrade Bar Association.

Martin Scheinin (Finland), special rapporteur on human rights and Professor of Human Rights and Director of the Centre for Human Rights at the University of Helsinki, Finland.

Wan Yan (China), member of the Human Rights Committee and Director of the Institute for Human Rights, China.

Stephen W. (United Kingdom), member of the Human Rights Committee and Professor of Human Rights, University of London, United Kingdom.

Roman Wieruszko (Poland), member of the Human Rights Committee and head of the Poznań Centre for Human Rights, Poland.

Robert Wight (United Kingdom), member of the Human Rights Committee and Professor of Law, King's College London, United Kingdom.

THE YOGYAKARTA PRINCIPLES *plus 10*

**ADDITIONAL PRINCIPLES AND STATE OBLIGATIONS
ON THE APPLICATION OF INTERNATIONAL HUMAN
RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION,
GENDER IDENTITY, GENDER EXPRESSION AND
SEX CHARACTERISTICS TO COMPLEMENT THE
YOGYAKARTA PRINCIPLES**

As adopted on 10 November 2017, Geneva

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INTRODUCTION

Since the Yogyakarta Principles were adopted in 2006, they have developed into an authoritative statement of the human rights of persons of ‘diverse sexual orientations and gender identities’. The period since then, has seen significant developments both in the field of international human rights law and in the understanding of violations affecting persons of ‘diverse sexual orientations and gender identities’, as well as a recognition of the often distinct violations affecting persons on grounds of ‘gender expression’ and ‘sex characteristics’.

The Yogyakarta Principles plus 10 (YP+10) aims to document and elaborate these developments through a set of Additional Principles and State Obligations. YP+10 should be read alongside the original 29 Yogyakarta Principles. Together, these documents provide an authoritative, expert exposition of international human rights law as it currently applies to the grounds of sexual orientation, gender identity, gender expression and sex characteristics.

The YP+10 document supplements the original 29 Yogyakarta Principles and, in fact, derives its *raison d’être* from preambular paragraph 9 of those Principles:

“**ACKNOWLEDGING** that this articulation must rely on the current state of international human rights law and will require revision on a regular basis in order to take account of developments in that law and its application to the particular lives and experiences of persons of diverse sexual orientations and gender identities over time and in diverse regions and countries.”

This set of nine Additional Principles and 111 Additional State Obligations cover a range of rights whose articulation has emerged from the intersection of the developments in international human rights law with the emerging understanding of violations suffered by persons on grounds of sexual orientation and gender identity and the recognition of the distinct and intersectional grounds of gender expression and sex characteristics.

On the occasion of the tenth anniversary of the Yogyakarta Principles, the International Service for Human Rights and ARC International in consultation with experts and civil society stakeholders, established a Drafting Committee tasked with developing the YP+10 document.

The entire process was aided by a Secretariat comprised of civil society representatives and institutions. The Drafting Committee, once constituted, put out an open call for submissions in order to ensure that the output would be informed both by developments in international human rights law and by lived experience. Drawing both on the submissions received, as well as relevant research and expertise, the Drafting Committee prepared a Draft Document which was then discussed, substantially elaborated and adopted following an Experts' Meeting held in Geneva from 18-20 September 2017. The experts included persons from all regions, from multiple legal traditions, and of diverse sexual orientations, gender identities, gender expressions and sex characteristics.

The YP +10 document was thus informed by an open consultation among multiple stakeholders in the field and hence reflects some of the key issues and developments relating to the specific forms of rights violations experienced by persons on grounds of sexual orientation, gender identity, gender expression and sex characteristics.

The YP+10 document is an affirmation of existing international legal standards as they apply to all persons on grounds of their sexual orientation, gender identity, gender expression and sex characteristics. States must comply with these principles both as a legal obligation and as an aspect of their commitment to universal human rights.

Members of the Drafting Committee:

Mauro Cabral Grinspan

Morgan Carpenter

Julia Ehrt

Sheherezade Kara

Arvind Narrain

Pooja Patel

Chris Sidoti

Monica Tabengwa

WE, THE SECOND INTERNATIONAL PANEL OF EXPERTS IN INTERNATIONAL HUMAN RIGHTS LAW, SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION AND SEX CHARACTERISTICS

PREAMBLE

RECALLING that the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, adopted in November 2006, provided in a preambular paragraph that the Yogyakarta Principles must rely on the current state of international law and will require revision on a regular basis in order to take account of developments in that law and its application to the particular lives and experiences of persons of diverse sexual orientations and gender identities over time and in diverse regions and countries;

NOTING that there have been significant developments in international human rights law and jurisprudence on issues relating to sexual orientation, gender identity, gender expression and sex characteristics, since the adoption of the Yogyakarta Principles;

RECALLING the Yogyakarta Principles' definitions of 'sexual orientation' and 'gender identity';

UNDERSTANDING 'gender expression' as each person's presentation of the person's gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references, and noting further that gender expression may or may not conform to a person's gender identity;

NOTING that 'gender expression' is included in the definition of gender identity in the Yogyakarta Principles and, as such, all references to gender identity should be understood to be inclusive of gender expression as a ground for protection;

UNDERSTANDING 'sex characteristics' as each person's physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty;

NOTING that 'sex characteristics' as an explicit ground for protection from violations of human rights has evolved in international jurisprudence, and recognising that the Yogyakarta Principles apply equally to the ground of sex characteristics as to the grounds of sexual orientation, gender identity and gender expression;

INCLUDING, in sexual orientation, gender identity, gender expression and sex characteristics, actual, perceived and attributed sexual orientation, gender identity, gender expression and sex characteristics as the case may be;

RECOGNISING that the needs, characteristics and human rights situations of persons and populations of diverse sexual orientations, gender identities, gender expressions and sex characteristics are distinct from each other;

NOTING that sexual orientation, gender identity, gender expression and sex characteristics are each distinct and intersectional grounds of discrimination, and that they may be, and commonly are, compounded by discrimination on other grounds including race, ethnicity, indigeneity, sex, gender, language, religion, belief, political or other opinion, nationality, national or social origin, economic and social situation, birth, age, disability, health (including HIV status), migration, marital or family status, being a human rights defender or other status;

NOTING that violence, discrimination, and other harm based on sexual orientation, gender identity, gender expression and sex characteristics manifests in a continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public, including technology-mediated settings, and in the contemporary globalised world it transcends national boundaries;

RECOGNISING that violence, discrimination and other harm based on sexual orientation, gender identity, gender expression and sex characteristics have an individual as well as a collective dimension and that acts of violence and discrimination which target the individual person are also an attack on human diversity, and on the universality and indivisibility of human rights;

ACKNOWLEDGING that the following Additional Principles, State Obligations and Recommendations are based on the current state of international human rights law and will require revision on a regular basis in order to take account of legal, scientific and societal developments and their application to the particular lives and experiences of persons of diverse sexual orientations, gender identities, gender expressions and sex characteristics over time and in diverse regions and countries.

**FOLLOWING CONSULTATION WITH EXPERTS AND AN
EXPERTS' MEETING HELD IN GENEVA, SWITZERLAND,
FROM 18 TO 20 SEPTEMBER 2017, HEREBY ADOPT THESE
PRINCIPLES AND, IN DOING SO:**

AFFIRM the continuing validity of the original 29 Yogyakarta Principles of 2006;
DECLARE these Additional Principles, State Obligations and Recommendations as
supplementary to the original Yogyakarta Principles.

ADDITIONAL PRINCIPLES

PRINCIPLE

30

THE RIGHT TO STATE PROTECTION

Everyone, regardless of sexual orientation, gender identity, gender expression or sex characteristics, has the right to State protection from violence, discrimination and other harm, whether by government or

STATES SHALL:

- A. Exercise due diligence to prevent, investigate, prosecute, punish and provide remedies for discrimination, violence and other harm, whether committed by State or non-State actors;
- B. Take appropriate and effective measures to eradicate all forms of violence, discrimination and other harm, including any advocacy of hatred that constitutes incitement to discrimination, hostility, or violence on grounds of sexual orientation, gender identity, gender expression or sex characteristics, whether by public or private actors;
- C. Compile statistics and research on the extent, causes and effects of violence, discrimination and other harm, and on the effectiveness of measures to prevent, prosecute and provide reparation for such harm on grounds of sexual orientation, gender identity, gender expression and sex characteristics;
- D. Identify the nature and extent of attitudes, beliefs, customs and practices that perpetuate violence, discrimination and other harm on grounds of sexual orientation, gender identity, gender expression and sex characteristics, and report on the measures undertaken, and their effectiveness, in eradicating such harm;
- E. Develop, implement and support education and public information programmes to promote human rights and to eliminate prejudices on grounds of sexual orientation, gender identity, gender expression and sex characteristics;
- F. Ensure sensitivity training of judicial and law enforcement officers and other public officials on issues relating to sexual orientation, gender identity, gender expression and sex characteristics;
- G. Ensure that laws against rape, sexual assault and sexual harassment protect all persons regardless of their sexual orientation, gender identity, gender expression and sex characteristics;
- H. Establish support services for victims of rape, sexual assault and harassment, and other forms of violence and harm on grounds of sexual orientation, gender identity, gender expression, and sex characteristics;

- I. Ensure that human rights violations are vigorously investigated and, where evidence is found, those responsible are prosecuted and, if convicted, punished as appropriate;
- J. Ensure access to effective complaints procedures and remedies, including reparation, for victims of violence, discrimination and other harm on grounds of sexual orientation, gender identity, gender expression and sex characteristics.

THE RIGHT TO LEGAL RECOGNITION

PRINCIPLE 31

Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them.

STATES SHALL:

- A. Ensure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose, and thereby end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver licences, and as part of their legal personality;
- B. Ensure access to a quick, transparent and accessible mechanism to change names, including to gender-neutral names, based on the self-determination of the person;
- C. While sex or gender continues to be registered:
 - i. Ensure a quick, transparent, and accessible mechanism that legally recognises and affirms each person's self-defined gender identity;
 - ii. Make available a multiplicity of gender marker options;
 - iii. Ensure that no eligibility criteria, such as medical or psychological interventions, a psycho-medical diagnosis, minimum or maximum age, economic status, health, marital or parental status, or any other third party opinion, shall be a prerequisite to change one's name, legal sex or gender;
 - iv. Ensure that a person's criminal record, immigration status or other status is not used to prevent a change of name, legal sex or gender.

PRINCIPLE

32

THE RIGHT TO BODILY
AND MENTAL INTEGRITY

Everyone has the right to bodily and mental integrity, autonomy and self-determination irrespective of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to be free from and cruel, inhuman and degrading treatment or punishment on the basis of sexual orientation, gender identity, gender expression or sex characteristics. No one shall be subjected to invasive or irreversible medical procedures that modify sex characteristics without their free, prior and informed consent, unless necessary to avoid serious, urgent and irreparable harm to the concerned person.

STATES SHALL:

- A. Guarantee and protect the rights of everyone, including all children, to bodily and mental integrity, autonomy and self-determination;
- B. Ensure that legislation protects everyone, including all children, from all forms of forced, coercive or otherwise involuntary modification of their sex characteristics;
- C. Take measures to address stigma, discrimination and stereotypes based on sex and gender, and combat the use of such stereotypes, as well as marriage prospects and other social, religious and cultural rationales, to justify modifications to sex characteristics, including of children;
- D. Bearing in mind the child's right to life, non-discrimination, the best interests of the child, and respect for the child's views, ensure that children are fully consulted and informed regarding any modifications to their sex characteristics necessary to avoid or remedy proven, serious physical harm, and ensure that any such modifications are consented to by the child concerned in a manner consistent with the child's evolving capacity;
- E. Ensure that the concept of the best interest of the child is not manipulated to justify practices that conflict with the child's right to bodily integrity;
- F. Provide adequate, independent counselling and support to victims of violations, their families and communities, to enable victims to exercise and affirm rights to bodily and mental integrity, autonomy and self-determination;
- G. Prohibit the use of anal and genital examinations in legal and administrative proceedings and criminal prosecutions unless required by law, as relevant, reasonable, and necessary for a legitimate purpose.

THE RIGHT TO FREEDOM FROM CRIMINALISATION AND SANCTION ON THE BASIS OF SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION, OR SEX CHARACTERISTICS

33

Everyone has the right to be free from criminalisation and any form of sanction arising directly or indirectly from that person's actual or perceived sexual orientation, gender identity, gender expression

STATES SHALL:

- A. Ensure that legal provisions, including in customary, religious and indigenous laws, whether explicit provisions, or the application of general punitive provisions such as acts against nature, morality, public decency, vagrancy, sodomy and propaganda laws, do not criminalise sexual orientation, gender identity and expression, or establish any form of sanction relating to them;
- B. Repeal other forms of criminalisation and sanction impacting on rights and freedoms on the basis of sexual orientation, gender identity, gender expression or sex characteristics, including the criminalisation of sex work, abortion, unintentional transmission of HIV, adultery, nuisance, loitering and begging;
- C. Pending repeal, cease to apply discriminatory laws criminalising or applying general punitive sanctions on the basis of sexual orientation, gender identity, gender expression or sex characteristics;
- D. Expunge any convictions and erase any criminal records for past offences associated with laws arbitrarily criminalising persons on the basis of sexual orientation, gender identity, gender expression and sex characteristics;
- E. Ensure training for the judiciary, law enforcement officers and healthcare providers in relation to their human rights obligations regarding sexual orientation, gender identity, gender expression and sex characteristics;
- F. Ensure that law enforcement officers and other individuals and groups are held accountable for any act of violence, intimidation or abuse based on the criminalisation of sexual orientation, gender identity, gender expression and sex characteristics;
- G. Ensure effective access to legal support systems, justice and remedies for those who are affected by criminalisation and penalisation on grounds of sexual orientation, gender identity, gender expression and sex characteristics;
- H. Decriminalise body modification procedures and treatments that are carried out with prior, free and informed consent of the person.

PRINCIPLE

34

THE RIGHT TO PROTECTION FROM POVERTY

Everyone has the right to protection from all forms of poverty and social exclusion associated with sexual orientation, gender identity, gender expression and sex characteristics. Poverty is incompatible with the dignity of all persons, and can be compounded by discrimination on the grounds of sexual orientation, gender identity,

STATES SHALL:

- A. Take all necessary legislative, administrative, budgetary and other measures, including economic policies, to ensure the progressive reduction and elimination of all forms of poverty associated with or exacerbated by sexual orientation, gender identity, gender expression or sex characteristics;
- B. Promote social and economic inclusion of persons marginalised on the basis of sexual orientation, gender identity, gender expression and sex characteristics;
- C. Ensure the participation and inclusion of those experiencing poverty on grounds of sexual orientation, gender identity, gender expression and sex characteristics in the adoption and implementation of legislative, administrative, budgetary and other measures to combat poverty;
- D. Ensure appropriate institutional arrangements and data collection with the view to reduce poverty and social exclusion related to sexual orientation, gender identity, gender expression and sex characteristics;
- E. Ensure access to effective remedies for violations of human rights, including those caused by non-State actors, that result in poverty and exclusion, and that adversely affect persons on the grounds of sexual orientation, gender identity, gender expression and sex characteristics.

PRINCIPLE

35

THE RIGHT TO SANITATION

Everyone has the right to equitable, adequate, safe and secure sanitation and hygiene, in circumstances that are consistent with human dignity, without discrimination, including on the basis of sexual orientation, gender identity, gender expression or sex characteristics.

STATES SHALL:

- A. Ensure that there are adequate public sanitation facilities which can be accessed safely and with dignity by all persons regardless of their sexual orientation, gender identity, gender expression or sex characteristics;

- B. Ensure that all schools and other institutional settings provide safe access to sanitation facilities to staff, students and visitors without discrimination on grounds of sexual orientation, gender identity, gender expression or sex characteristics;
- C. Ensure that both public and private employers provide safe access to sanitation without discrimination on grounds of sexual orientation, gender identity, gender expression or sex characteristics;
- D. Ensure that entities offering services to the public provide adequate sanitation without discrimination, including on grounds of sexual orientation, gender identity, gender expression or sex characteristics;
- E. Ensure that places of detention have adequate sanitation facilities which can be accessed safely and with dignity by all detainees, staff and visitors without discrimination on grounds of sexual orientation, gender identity, gender expression or sex characteristics.

THE RIGHT TO THE ENJOYMENT OF HUMAN RIGHTS IN RELATION TO INFORMATION AND COMMUNICATION TECHNOLOGIES

PRINCIPLE 36

Everyone is entitled to the same protection. Everyone has the right to access and use information and communication technologies, including the internet, without violence, discrimination or other harm based on sexual orientation, gender identity, gender expression or sex characteristics. Secure digital communication, anonymity and pseudonymity tools are essential for the full realisation of human rights, in particular the rights to life, bodily and mental integrity, health, privacy, due process, freedom of opinion and expression, peaceful assembly and association.

STATES SHALL:

- A. Take all necessary measures to ensure that all persons enjoy universal, affordable, open, safe, secure and equal access to information and communication technologies, including the internet, without discrimination based on sexual orientation, gender identity, gender expression or sex characteristics;
- B. Ensure the right of all individuals, without discrimination based on sexual orientation, gender identity, gender expression or sex characteristics, to seek, receive and impart information and ideas of all kinds, including those concerning sexual orientation, gender identity, gender expression and sex characteristics, through information and communication technologies;

- C. Ensure that any restrictions to the right to access and use information and communication technologies and the internet are provided for by law and are necessary and proportionate to protect the human dignity, equality and freedoms of others, without discrimination on the basis of sexual orientation, gender identity, gender expression or sex characteristics;
- D. Respect and protect the privacy and security of digital communications, including the use by individuals of encryption, pseudonyms and anonymity technology;
- E. Ensure that any restrictions on the right to privacy, including through mass or targeted surveillance, requests for access to personal data, or through limitations on the use of encryption, pseudonymity and anonymity tools, are on a case specific basis, and are reasonable, necessary and proportionate as required by the law for a legitimate purpose and ordered by a court;
- F. Take measures to ensure that the processing of personal data for individual profiling is consistent with relevant human rights standards including personal data protection and does not lead to discrimination, including on the grounds of sexual orientation, gender identity, gender expression and sex characteristics;
- G. Take all necessary legislative, administrative, technical and other measures, including ensuring private sector accountability, as outlined by relevant international standards, in consultation with relevant stakeholders, to seek to prevent, remedy and eliminate online hate speech, harassment and technology-related violence against persons on the basis of sexual orientation, gender identity, gender expression or sex characteristics under the framework of international human rights law.

PRINCIPLE

37

THE RIGHT TO TRUTH

Every victim of a human rights violation on the basis of sexual orientation, gender identity, gender expression or sex characteristics has the right to know the truth about the facts, circumstances and processes of the violation. The right to truth includes effective, independent and impartial investigation to establish the facts, and includes all forms of reparation recognised by international law. The right to truth and its application must bear in mind its dual nature as an individual right and the right of the society at large to know the truth.

STATES SHALL:

- A. Adopt legal provisions to provide redress to victims of violations on the basis of sexual orientation, gender identity, gender expression and sex characteristics, including public apology, expungement of relevant criminal convictions and records, rehabilitation and recovery services, adequate compensation and guarantees of non-recurrence;

- B. Ensure, in cases of violations of the right to mental and bodily integrity, effective access to remedies, redress, reparation and, where appropriate, psychological support and restorative treatments;
- C. Protect individuals' right to know the truth about their medical histories, including through full access to accurate medical records;
- D. Adopt and fully implement procedures to establish the truth concerning violations based on sexual orientation, gender identity, gender expression and sex characteristics;
- E. Establish a truth-seeking mechanism and process in regard to human rights violations based on sexual orientation, gender identity, gender expression and sex characteristics;
- F. Ensure that, in addition to individual victims and their families, communities and society at large can realise the right to the truth about systemic human rights violations based on sexual orientation, gender identity, gender expression and sex characteristics, while respecting and protecting the right to privacy of individuals;
- G. Preserve documentary evidence of human rights violations based on sexual orientation, gender identity, gender expression and sex characteristics, and ensure adequate access to archives with information on violations based on sexual orientation, gender identity, gender expression and sex characteristics;
- H. Ensure that the facts and truth of the history, causes, nature and consequences of discrimination and violence on grounds of sexual orientation, gender identity, gender expression and sex characteristics are disseminated and added to educational curricula with a view to achieving a comprehensive and objective awareness of past treatment of persons on grounds of sexual orientation, gender identity, gender expression and sex characteristics;
- I. Commemorate the suffering of victims of violations on the basis of sexual orientation, gender identity, gender expression and sex characteristics through public events, museums and other social and cultural activities.

PRINCIPLE

38

THE RIGHT TO PRACTISE, PROTECT, PRESERVE AND REVIVE CULTURAL DIVERSITY

Everyone, individually or in association with others, where consistent with the provisions of international human rights law, has the right to practise, protect, preserve and revive cultures, traditions, languages, rituals and festivals, and protect cultural sites of orientation, gender identity, gender expression or sex characteristics. Everyone, individually or in association with others, has the right to manifest cultural diversity through artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used, without discrimination based on sexual orientation, gender identity, gender expression or sex characteristics. Everyone, individually or in association with others, has the right to seek, receive, provide and utilise resources for these purposes without discrimination on the basis of sexual orientation, gender identity, gender expression or

STATES SHALL:

- A. Ensure the right to practice, protect, preserve and revive the diversity of cultural expressions of persons of all sexual orientations, gender identities, gender expressions and sex characteristics on the basis of the equal dignity of and respect for all.

ADDITIONAL STATE OBLIGATIONS

RELATING TO THE RIGHTS TO EQUALITY AND NON-DISCRIMINATION (PRINCIPLE 2)

STATES SHALL:

- G. Take all appropriate steps to ensure that reasonable accommodation is provided, where needed, in order to promote equality and eliminate discrimination on the basis of sexual orientation, gender identity, gender expression or sex characteristics, including in education, employment, and access to services;
- H. Ensure that HIV status is not used as a pretext to isolate, marginalise or exclude persons of diverse sexual orientations, gender identities, gender expressions or sex characteristics, or prevent them from accessing goods, commodities and services;
- I. Ensure that all individuals can participate in sport in line with the gender with which they identify, subject only to reasonable, proportionate and non-arbitrary requirements;
- J. Ensure that all individuals can participate in sport without discrimination on the grounds of sexual orientation, gender identity, gender expression or sex characteristics;
- K. Adopt legislative, policy and other measures in line with international human rights norms and standards to eliminate bullying and discriminatory behaviour at all levels of sports, on the basis of sexual orientation, gender identity, gender expression and sex characteristics;
- L. Combat the practice of prenatal selection on the basis of sex characteristics, including by addressing the root causes of discrimination against persons on the basis of sex, gender, sexual orientation, gender identity, gender expression and sex characteristics, and by carrying out awareness-raising activities on the detrimental impact of prenatal selection on these grounds;
- M. Take measures to address discriminatory attitudes and practices on the basis of sex, gender, sexual orientation, gender identity, gender expression and sex characteristics in relation to the application of prenatal treatments and genetic modification technologies.

RELATING TO THE RIGHT TO PRIVACY (PRINCIPLE 6)

STATES SHALL:

- G. Ensure that requirements for individuals to provide information on their sex or gender are relevant, reasonable and necessary as required by the law for a legitimate purpose in the circumstances where it is sought, and that such requirements respect all persons' right to self-determination of gender;
- H. Ensure that changes of the name or gender marker, as long as the latter exists, is not disclosed without the prior, free, and informed consent of the person concerned, unless ordered by a court.

RELATING TO THE RIGHT TO TREATMENT WITH HUMANITY WHILE IN DETENTION (PRINCIPLE 9)

STATES SHALL:

- H. Adopt and implement policies to combat violence, discrimination and other harm on grounds of sexual orientation, gender identity, gender expression or sex characteristics faced by persons who are deprived of their liberty, including with respect to such issues as placement, body or other searches, items to express gender, access to and continuation of gender affirming treatment and medical care, and "protective" solitary confinement;
- I. Adopt and implement policies on placement and treatment of persons who are deprived of their liberty that reflect the needs and rights of persons of all sexual orientations, gender identities, gender expressions, and sex characteristics and ensure that persons are able to participate in decisions regarding the facilities in which they are placed;
- J. Provide for effective oversight of detention facilities, both with regard to public and private custodial care, with a view to ensuring the safety and security of all persons, and addressing the specific vulnerabilities associated with sexual orientation, gender identity, gender expression and sex characteristics.

RELATING TO THE RIGHT TO FREEDOM FROM TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (PRINCIPLE 10)

STATES SHALL:

- D. Recognise that forced, coercive and otherwise involuntary modification of a person's sex characteristics may amount to torture, or other cruel, inhuman or degrading treatment;
- E. Prohibit any practice, and repeal any laws and policies, allowing intrusive and irreversible treatments on the basis of sexual orientation, gender identity, gender expression or sex characteristics, including forced genital-normalising surgery, involuntary sterilisation, unethical experimentation, medical display, "reparative" or "conversion" therapies, when enforced or administered without the free, prior, and informed consent of the person concerned.

RELATING TO THE RIGHT TO EDUCATION (PRINCIPLE 16)

STATES SHALL:

- I. Ensure inclusion of comprehensive, affirmative and accurate material on sexual, biological, physical and psychological diversity, and the human rights of people of diverse sexual orientations, gender identities, gender expressions and sex characteristics, in curricula, taking into consideration the evolving capacity of the child;
- J. Ensure inclusion of comprehensive, affirmative and accurate material on sexual, biological, physical and psychological diversity, and the human rights of people of diverse sexual orientations, gender identities, gender expressions and sex characteristics, in teacher training and continuing professional development programmes.

RELATING TO THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH (PRINCIPLE 17)

STATES SHALL:

- J. Protect all persons from discrimination, violence and other harm on the basis of sexual orientation, gender identity, gender expression and sex characteristics in healthcare settings;
- K. Ensure access to the highest attainable standard of gender affirming healthcare, on the basis of an individual's free, prior and informed consent;
- L. Ensure that gender affirming healthcare is provided by the public health system or, if not so provided, that the costs are covered or reimbursable under private and public health insurance schemes;
- M. Take all necessary measures to eliminate all forms of sexual and reproductive violence on the basis of sexual orientation, gender identity, gender expression and sex characteristics, including forced marriage, rape and forced pregnancy;
- N. Ensure access, without discrimination on the grounds of sexual orientation, gender identity, gender expression, or sex characteristics, to pre and post-exposure prophylaxis (PrEP and PEP);
- O. Ensure access to a range of safe, affordable and effective contraceptives, including emergency contraception, and to information and education on family planning and sexual and reproductive health, without discrimination based on sexual orientation, gender identity, gender expression and sex characteristics;
- P. Take all necessary legislative and other measures to ensure access to quality post abortion care, and remove any barriers that may hinder timely access to affordable and quality abortion services, without discrimination based on sexual orientation, gender identity, gender expression or sex characteristics;
- Q. Prevent the disclosure of HIV status, as well as personal health and medical information related to sexual orientation, gender identity, gender expression and sex characteristics, such as gender affirming treatment, without the free, prior and informed consent of the person;
- R. Ensure that legal provisions, regulations or any other administrative measures on the donation of blood, gametes, embryos, organs, cells or other tissues do not discriminate on grounds of sexual orientation, gender identity, gender expression or sex characteristics;
- S. Ensure inclusion of affirmative material on sexual, biological, physical and psychological diversity and the human rights of people of diverse sexual orientations, gender identities, gender expressions and sex characteristics in medical curricula and continuing professional development programmes.

RELATING TO THE RIGHT TO INFORMATION (PRINCIPLE 19)

STATES SHALL:

- G. Take legislative, administrative, and other appropriate measures to ensure that all persons have access to information about their civil, political, economic, social and cultural rights, including how these rights apply in relation to sexual orientation, gender identity, gender expression and sex characteristics;
- H. Make freely available and accessible, both online and otherwise, international and regional treaties and instruments; the national constitution, national laws and regulations; research studies, reports, data, archives; reports and information submitted by the State to international and regional bodies and mechanisms; and all other information as may be necessary to secure or enable the exercise of any human rights or fundamental freedoms or access to remedy for a violation of any such right;
- I. Recognise that the needs, characteristics and human rights situations of populations of diverse sexual orientations, gender identities, gender expressions and sex characteristics are distinct from each other, and ensure that data on each population is collected and managed in a manner consistent with ethical, scientific and human rights standards and made available in a disaggregated form.

RELATING TO THE RIGHT TO THE FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION (PRINCIPLE 20)

STATES SHALL:

- F. Respect, protect and facilitate the formation of associations for the purpose of promoting the rights of all persons, including on the basis of sexual orientation, gender identity, gender expression or sex characteristics;
- G. Ensure that associations which seek to promote human rights related to sexual orientation, gender identity, gender expression or sex characteristics can seek, receive and use funding and other resources from individuals, associations, foundations or other civil society organisations, governments, aid agencies, the private sector, the United Nations and other entities, domestic or foreign;
- H. Ensure that requirements and procedures to register associations, where they exist, are not burdensome or impose unjustifiable limitations, including on grounds of morality and public order;

- I. Ensure that the right to freedom of association applies equally to associations that are not registered, including associations working on issues related to sexual orientation, gender identity, gender expression or sex characteristics;
- J. Take positive measures, including affirmative action measures, to overcome specific challenges to the enjoyment of the freedom of association of groups that are marginalised and made vulnerable on grounds of sexual orientation, gender identity, gender expression or sex characteristics;
- K. Take positive measures to protect the right to association of service providers working with those discriminated against on grounds of sexual orientation, gender identity, gender expression or sex characteristics.

RELATING TO THE RIGHT TO SEEK ASYLUM (PRINCIPLE 23)

STATES SHALL:

- D. Ensure that a well-founded fear of persecution on the basis of sexual orientation, gender identity, gender expression or sex characteristics is accepted as a ground for the recognition of refugee status, including where sexual orientation, gender identity, gender expression or sex characteristics are criminalised and such laws, directly or indirectly, create or contribute to an oppressive environment of intolerance and a climate of discrimination and violence;
- E. Ensure that persons seeking asylum are protected from violence, discrimination and other harm committed on grounds of sexual orientation, gender identity, gender expression or sex characteristics, including during the determination of their claims and in reception conditions;
- F. Ensure that no person is denied asylum on the basis that a person may conceal or change their sexual orientation, gender identity, gender expression or sex characteristics in order to avoid persecution;
- G. Accept the self-identification of a person seeking asylum on the basis of sexual orientation, gender identity, gender expression or sexual characteristics as the starting point for consideration of their asylum claim;
- H. Ensure that persons seeking asylum are not refused asylum because they did not set out their sexual orientation, gender identity, gender expression or sexual characteristics as a ground for persecution on the first occasion they were given to do so;
- I. Ensure sensitive and culturally appropriate guidelines and training on sexual orientation, gender identity, gender expression and sexual characteristics for agents involved in the process of determination of refugee status and in managing reception conditions;

- J. Ensure respect for the dignity and privacy of persons seeking asylum at all times, including by recording information about a person's sexual orientation, gender identity, gender expression and sex characteristics only where it is lawful, reasonable, necessary and proportionate to do so, by storing it securely and by prohibiting its release to any person other than a person directly involved in the refugee determination process;
- K. Develop and implement guidelines on assessing credibility in relation to establishing a person's sexual orientation, gender identity, gender expression and sex characteristics when seeking asylum, and ensure such assessments are determined in an objective and sensitive manner, unhindered by stereotyping and cultural bias;
- L. Ensure that inappropriate, invasive, unnecessary or coercive medical or psychological testing or evidence is not utilised to assess a person's self-declared sexual orientation, gender identity, gender expression or sex characteristics when seeking asylum;
- M. Provide access to medical care and counselling appropriate to those seeking asylum, recognising any particular needs of persons on the basis of their sexual orientation, gender identity, gender expression or sex characteristics, including with regard to reproductive health, HIV information and therapy, hormonal or other therapy, and gender affirming treatment;
- N. Ensure that the detention of asylum seekers is avoided, and is only used as a measure of last resort and for the shortest possible time;
- O. Ensure that placement in detention, where used, avoids further marginalising persons on the basis of sexual orientation, gender identity, gender expression or sex characteristics or subjecting them to violence, discrimination or other harm;
- P. Ensure that solitary confinement is not used to manage or to protect persons at risk of discrimination, violence or other harm on the basis of sexual orientation, gender identity, gender expression or sex characteristics, and release or refer asylum seekers to alternatives to detention, if effective protection cannot be provided.

RELATING TO THE RIGHT TO FOUND A FAMILY (PRINCIPLE 24)

STATES SHALL:

- H. Protect children from discrimination, violence or other harm due to the sexual orientation, gender identity, gender expression or sex characteristics of their parents, guardians, or other family members;
- I. Issue birth certificates for children upon birth that reflect the self-defined gender identity of the parents;
- J. Enable access to methods to preserve fertility, such as the preservation of gametes and tissues for any person without discrimination on grounds of sexual orientation, gender identity, gender expression, or sex characteristics, including before hormonal treatment or surgeries;
- K. Ensure that surrogacy, where legal, is provided without discrimination based on sexual orientation, gender identity, gender expression or sex characteristics.

RELATING TO THE RIGHT TO PARTICIPATE IN PUBLIC LIFE (PRINCIPLE 25)

STATES SHALL:

- D. Take measures to ensure that sexual orientation, gender identity, gender expression and sex characteristics are not used as grounds to prevent a person from exercising their right to vote;
- E. Develop and implement affirmative action programmes to promote public and political participation for persons marginalised on the basis of sexual orientation, gender identity, gender expression or sex characteristics.

RELATING TO THE RIGHT TO PROMOTE HUMAN RIGHTS (PRINCIPLE 27)

STATES SHALL:

- F. Enact a law, including to establish, designate or maintain an adequately resourced mechanism, for the protection of defenders of the rights of persons who experience or are at risk of violations on the basis of sexual orientation, gender identity, gender expression or sex characteristics;
- G. Ensure the participation of individuals and organisations working on human rights issues related to sexual orientation, gender identity, gender expression or sex characteristics in public and political decision-making processes that affect them.

ADDITIONAL RECOMMENDATIONS

All members of society and of the international community have responsibilities regarding the realisation of human rights. We therefore further recommend that:

- Q. National human rights institutions ensure that in their programmes and activities they take action on human rights issues relating to sexual orientation, gender identity, gender expression and sex characteristics, mainstream those issues in all their functions, including complaint handling and human rights education, and promote the inclusion of persons of diverse sexual orientation, gender identity, gender expression and sex characteristics in their leadership and staff;
- R. Sporting organisations integrate the Yogyakarta Principles (2006) and these Additional Principles (2017), as well as all relevant human rights norms and standards, in their policies and practices, in particular:
 - i. Take practical steps to create welcoming spaces for participation in sport and physical activity, including installation of appropriate changing rooms, and sensitisation of the sporting community on the implementation of anti-discrimination laws in the sporting context for persons of diverse sexual orientations, gender identities, gender expressions, and sex characteristics;
 - ii. Ensure that all individuals who wish to participate in sport are supported to do so irrespective of sexual orientation, gender identity, gender expression and sex characteristics, and that all individuals are able to participate, without restriction, subject only to reasonable, proportionate and non-arbitrary requirements to participate in line with their self-declared gender;
 - iii. Remove, or refrain from introducing, policies that force, coerce or otherwise pressure women athletes into undergoing unnecessary, irreversible and harmful medical examinations, testing and/or procedures in order to participate as women in sport;
 - iv. Take measures to encourage the general public to respect diversity based on sexual orientation, gender identity, gender expression and sex characteristics in sports, including measures to eliminate hate speech, harassment, and violence at sports events.

THESE ADDITIONAL PRINCIPLES, STATE OBLIGATIONS AND RECOMMENDATIONS reflect the application of international experiences of persons of diverse sexual orientations, gender identities, gender expressions and sex characteristics, and nothing herein should be interpreted as restricting or in any way limiting the rights and freedoms of such persons as recognised in international, regional

SIGNATORIES TO THE ADDITIONAL PRINCIPLES AND STATE OBLIGATIONS

Philip Alston (*Australia*), UN Special Rapporteur on extreme poverty and human rights

Ilze Kehris Brands (*Latvia and Sweden*), Member, UN Human Rights Committee; Senior research fellow, Raoul Wallenberg Institute of Human Rights and Humanitarian Law

Deborah Brown (*United States of America*), Association for Progressive Communications

Mauro Cabral Grinspan (*Argentina*), Executive Director, GATE

Edwin Cameron (*South Africa*), Judge, Constitutional Court of South Africa

Morgan Carpenter (*Australia*), Founder, Intersex Day Project; Co-executive director, Organisation Intersex International Australia; Consultant, GATE

Kamala Chandrakirana (*Indonesia*), Urgent Action Fund for Women's Human Rights - Asia-Pacific; member of the UN Working Group on the issue of discrimination against women in law and practice (2011-2017)

Sonia Onufer Corrêa (*Brazil*), Research Associate, Brazilian Interdisciplinary AIDS Association (ABIA); Co-chair, Sexuality Policy Watch

Paul Dillane (*United Kingdom*), Executive Director, Kaleidoscope Trust

Julia Ehrh (*Germany*), Executive Director, Transgender Europe (TGEU)

Sheherezade Kara (*United Kingdom and Zimbabwe*), International Human Rights Law Expert, Advocate and Consultant

David Kaye (*United States of America*), UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Maina Kiai (*Kenya*), InformAction and Human Rights Defender; UN Special Rapporteur on the rights to freedom of peaceful assembly and association (2011-2017)

Eszter Kismodi (*Hungary and Switzerland*), International human rights lawyer

Eleanora Lamm (*Argentina*), Human Rights Director at the Supreme Court of Justice of Mendoza; Member of the National Committee on Ethics in Science and Technologies

Victor Madrigal-Borloz (*Costa Rica*) Secretary- General of the International Rehabilitation Council for Torture Victims (IRCT)

Monica Mbaru (*Kenya*), Judge, Employment and Labour Relations Court

Sanji Mmasenono Monageng (*Botswana*), Judge, International Criminal Court, The Hague; Commissioner, International Commission of Jurists

Vitit Muntarbhorn (*Thailand*), Professor Emeritus, Chulalongkorn University; UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (2016-2017)

Arvind Narrain (*India*), Geneva Director, ARC International; Alternative Law Forum (2000-2014)

Sunil Pant (*Nepal*), Member of Parliament (2008-2012), Nepal

Pooja Patel (*India and Switzerland*), LGBT & Women's Rights Programme Manager, International Service for Human Rights (ISHR)

Dainius Puras (*Lithuania*), UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health

Alecs Recher (*Switzerland*), Head legal advice service, Transgender Network Switzerland; Researcher, Swiss Centre of Expertise in Human Rights

C i a n á n B (*United States of America and Thailand*), Human Rights & Advocacy Officer, Asia Pacific Transgender Network

Macarena Saez (*United States of America*), Centre for Human Rights & Humanitarian Law, American University Washington College of Law

Meena Saraswati Seshu (*India*), General Secretary, Sampada Grameen Mahila Sanstha (SANGRAM)

Ajit Prakash Shah (*India*), Chief Justice (2008-2010), High Court of Delhi

Chris Sidoti (*Australia*), International human rights specialist; Australian Human Rights Commissioner (1995-2000)

Monica Tabengwa (*Botswana*), Executive Director, Pan-Africa ILGA

Sylvia Tamale (*Uganda*), Makerere University Law School

Frans Viljoen (*South Africa*); Professor of International Human Rights Law and Director, Centre for Human Rights, Faculty of Law, University of Pretoria

Kimberly Zieselman (*United States of America*), Executive Director, interACT: Advocates for Intersex Youth



General Assembly

Distr.: General
14 July 2011

Original: English

Human Rights Council

Seventeenth session

Agenda item 8

Follow-up and implementation of the Vienna Declaration and Programme of Action

Resolution adopted by the Human Rights Council

17/19 Human rights, sexual orientation and gender identity

The Human Rights Council,

Recalling the universality, interdependence, indivisibility and interrelatedness of human rights as enshrined in the Universal Declaration of Human Rights and consequently elaborated in other human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and other relevant core human rights instruments,

Recalling also that the Universal Declaration of Human Rights affirms that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

Recalling further General Assembly resolution 60/251 of 15 March 2006, in which the Assembly stated that the Human Rights Council should be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner,

Expressing grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity,

1. *Requests* the United Nations High Commissioner for Human Rights to commission a study, to be finalized by December 2011, documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, in all regions of the world, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity;

The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its seventeenth session (A/HRC/17/2), chap. I.

2. *Decides* to convene a panel discussion during the nineteenth session of the Human Rights Council, informed by the facts contained in the study commissioned by the High Commissioner and to have constructive, informed and transparent dialogue on the issue of discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity;

3. *Also decides* that the panel will also discuss the appropriate follow-up to the recommendations of the study commissioned by the High Commissioner;

4. *Further decides* to remain seized of this priority issue.

*34th meeting
17 June 2011*

[Adopted by a recorded vote of 23 to 19, with 3 abstentions. The voting was as follows:

In favour:

Argentina, Belgium, Brazil, Chile, Cuba, Ecuador, France, Guatemala, Hungary, Japan, Mauritius, Mexico, Norway, Poland, Republic of Korea, Slovakia, Spain, Switzerland, Thailand, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay

Against:

Angola, Bahrain, Bangladesh, Cameroon, Djibouti, Gabon, Ghana, Jordan, Malaysia, Maldives, Mauritania, Nigeria, Pakistan, Qatar, Republic of Moldova, Russian Federation, Saudi Arabia, Senegal, Uganda

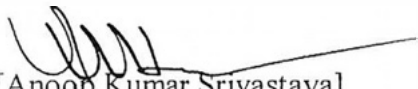
Abstaining:

Burkina Faso, China, Zambia]

The Probation Department has the pleasure to announce the publication of the Government of India's 11th Five Year Plan (2012-17) on Transgender Welfare. This document is a significant step towards the social and economic empowerment of the transgender community. The Government of India has taken a proactive approach in addressing the needs of this vulnerable group. The 11th Five Year Plan (2012-17) on Transgender Welfare is a landmark document that outlines the government's commitment to the social and economic empowerment of the transgender community. The document is a result of the concerted efforts of the Ministry of Social Justice and Empowerment, Government of India, and the Department of Transgender Welfare, Government of India. The document is a comprehensive and detailed plan that covers various aspects of the transgender community's welfare, including education, employment, health care, and social services. The document is a significant step towards the social and economic empowerment of the transgender community. The Government of India has taken a proactive approach in addressing the needs of this vulnerable group. The 11th Five Year Plan (2012-17) on Transgender Welfare is a landmark document that outlines the government's commitment to the social and economic empowerment of the transgender community. The document is a result of the concerted efforts of the Ministry of Social Justice and Empowerment, Government of India, and the Department of Transgender Welfare, Government of India. The document is a comprehensive and detailed plan that covers various aspects of the transgender community's welfare, including education, employment, health care, and social services.

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[Anoop Kumar Srivastava]
Additional Secretary

M/ S o c J a s a n d r a p o w e r m e n t

New Delhi
Date: 01. 2014

Report of the Expert Committee on the Issues relating **354** Transgender Persons

Process followed by the Committee in Submission of the Report

A consultation meeting on the issues relating to Transgender community was held in Shastri Bhawan on 23rd August, 2013 with a view to finding out the status and problems of Transgender community and to obtain the views of Transgender community, experts, researchers, concerned Central and State Governments and to find ways and means to mainstream the Transgender community. This meeting was attended by representatives from Central Ministries of Law & Justice, External Affairs and the Department of Aids Control, few State Governments, University Professors, NGO functionaries and Transgender community. Minutes of this meeting are at Annexure-1. In the meeting it was, inter alia, recommended to constitute a Committee to study the problems of the community. Concerned with the problems being faced by the Transgender community, the Department of Social Justice and Empowerment constituted this Expert Committee to make an in-depth study of the problems being faced by the Transgender Community and suggest suitable measures that can be taken by the Government to ameliorate their problems.

2. Ministry of Social Justice & Empowerment (MSJE) vide Order No.17-08/2013-DP-II dated 22nd October, 2013 (Annexure-2) constituted an Expert Committee on issues relating to transgender persons to make an in-depth study of the problems being faced by the transgender community and suggest suitable measures that can be taken by the Government to ameliorate those problems. The Expert Committee was required to submit its report with recommendations within three months of its constitution.

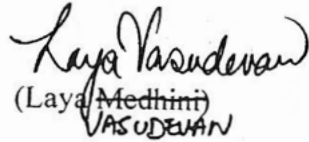
3. MSJE requested all State Governments and UT administrations to give their comments and suggestions on the issue by 22nd November, 2013. The comments and suggestions received from States/UTs have been consolidated and placed at Annexure-3. MSJE had also issued an advertisement in newspapers and also hosted it on the official website of the Ministry, inviting comments and suggestions from individuals, organizations and institutions by 22nd November, 2013. The comments and suggestions received from them have been consolidated and placed at Annexure-4.

4. The Expert Committee held four meetings on 6th November, 2013, 29th November, 2013, 3rd January, 2014 & 21st January, 2014. The minutes of the meetings held on 6th November, 2013, 29th November, 2013, 3rd January, 2014 and 21st January, 2014 are at Annexures 5, 6, 7 and 8 respectively.

5. The Chairperson of the Committee also made a visit to Chennai on 26th-27th November, 2013 and interacted with State Government officials and representatives of transgender community to get a first-hand account of the functioning of the Aravanis Welfare Board set up by the State Government. The minutes of the said meeting are at Annexure-9.

6. The report of the Expert Committee was finalized and approved by the Committee in its Fourth Meeting held on 21st January, 2014, and is appended.

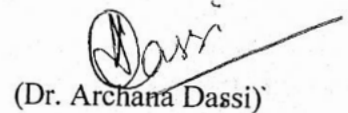

(Ghazala Meenai)

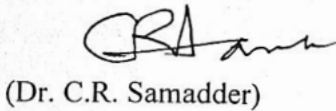

(Laya Medhini)
VASUDEVAN

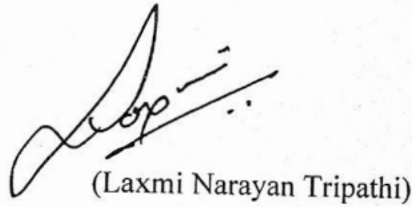

(Dr. Sanjai Bhatt)

(Dr. Rajesh Kumar)

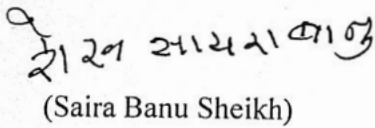

(Dr. Ketki Ranade)

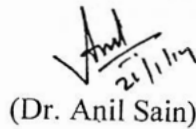

(Dr. Archana Dassi)


(Dr. C.R. Samadder)


(Laxmi Narayan Tripathi)

(Seeta Kinnar Bharti)

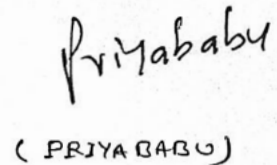

(Saira Banu Sheikh)

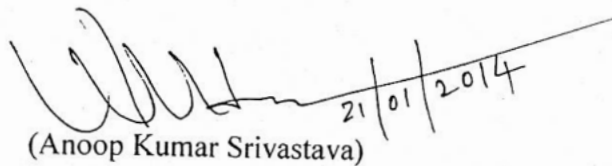

(Dr. Anil Sain)

(Naba Kumar Pal)

(Shanti Kumari)


(Dr. Venkatesan Chakrapani)


(PRIYA BABU)


(Anoop Kumar Srivastava)
21/01/2014

Report of the Expert Committee Transgender Persons

Process followed by the Committee in

A consultation meeting on the issues relating to the transgender community was held on 22nd October, 2013 with a view to finding the views of the transgender community and to obtain the views of researchers, concerned Central and State Government officials, mainstream the transgender community. This meeting was held in the presence of officials from Central Ministries of Law & Justice, External Affairs, and a few State Governments, University Professors and members of the transgender community. Minutes of this meeting are at Annexure 1. It is recommended to constitute a Committee to study the problems being faced by the transgender community. The Ministry of Justice and Empowerment constituted this Expert Committee to study the problems being faced by the transgender community and can be taken by the Government to ameliorate the same.

2. Ministry of Social Justice & Empowerment constituted an Expert Committee on 22nd October, 2013 (Annexure-2) constituted to study the problems of transgender persons to make an in-depth study of the transgender community and suggest suitable measures to ameliorate those problems. The Expert Committee submitted its recommendations within three months of its constitution.

3. MSJE requested all State Governments to submit their comments and suggestions by 20th November, 2013. The suggestions received from States/UTs have been taken into consideration. MSJE had also issued an advertisement in newspaper and on the website of the Ministry, inviting comments and suggestions by 20th November, 2013. The comments and suggestions received have been consolidated and placed at Annexure 3.

4. The Expert Committee held its first meeting on 29th November, 2013. The minutes of the meeting are at Annexure 4. The committee held its second meeting on 27th January, 2014. The minutes of the meeting are at Annexure 5 and 8 respectively.

5. The Chairperson of the Committee held a meeting on 27th November, 2013 and interacted with State Government officials and members of the transgender community to get a first-hand account of the problems being faced by the transgender community. A Board set up by the State Government.. The minutes of the meeting are at Annexure 6.

6. The report of the Expert Committee was its Fourth Meeting held on 21st October, 2014 and is appended.

(Ghazala Meenai)

(Laya Medhini)

(Dr . Rajesh Kumar)

(Dr . Ketki Ranade)

(Dr . C. R. Samadder)

(Laxmi Narayan)

(Saira Banu Sheikh)

(Dr . Anil Sain)

(Shanti Kumari)

(Dr . Venkatesan Ch)

(Anoop Kumar Srivastava)

Minutes of Consultation meeting on the issue August 2013 at conference Hall, Central Secretariat, New Delhi.

Ministry of Social Justice and Empowerment conducted a consultation meeting on the issues relating to TG community in Conference Hall, Central Secretariat Library. The objective of finding out the status and problems of TG Community, experts, researchers, and views of TG Community, experts, researchers, mainstreaming the transgender community. Meeting was attended by officials from Central Ministries of Law and Justice, Health and Family Welfare, concerned State Departments, University Pro Vice-Chancellors, community leaders etc. The list of participants is as follows:

Shri Anoop Kumar Srivastava, Secretary, Ministry of Social Justice and Empowerment, participated and gave his key note address. He stated that this consultative meeting on transgender for the first time had been receiving the information pertaining to TG community educated on the issues by listening to the views of TG experts. He emphasized that the Ministry of Social Justice and Empowerment is the nodal ministry for transgender and this meeting was an important step to share their views and improve the life of transgender community.

Shri T. R. Meena, Joint Secretary, Ministry of Social Justice and Empowerment, the Nodal Ministry for TG with effect from August 2013, participated on board. He pointed out that all Ministries and Departments to mainstream the transgender to be considered a divine creation. Today transgender people live their life in difficult condition. The Ministry was committed to change the mindset of society. Further, he informed that Govt. of Sikkim, Rural and Community Development Ministry employs transgender community people. Rural Ministry employs transgender people. He emphasized that there are many issues and problems of transgender community and immediate intervention like enumeration, he has taken up the matter with the concerned Ministry for immediate intervention.

Shri Balkrishna Shukla, M. P, Rajya responded well by initiating the development Community. He further stated that he had taken issue of 'other' column in the electoral roll was essential for development of programs and participants, specially the community representation community and will continue to raise the issue.

Shri G. P. Upadhyaya, Principal Secretary had formulated an appropriate definition of Transgender had been constituted in Sikkim's enough to have access to programmes of the State a pension scheme and other welfare measures constituted a medical board to verify the schemes.

Ms. Laxmi Narayan Tripathi, Mumbai pointed wherein all the required facilities are being. Further, she suggested for the establishment of Transgender culture. She strongly recommended with all the State Governments and departments.

Ms. Sairabanu said that most of the Transgender India is the only source for the rehabilitation. Government should take housing and health Community. Tamil Nadu Govt. has a provision for Transgender.

Ms. Rani Patel, representing Aarohan, said under privileged children and has conducted suggested that parents of the Transgender need Kinnar children at par with other normal children may be imparted among the Kinnar Community in living. She further suggested that the Education Community.

Ms. Kamla Mausi, representing TG from Mumbai, facing discrimination and stigma in every sphere from the family and continues for the entire society and family would be a great contribution setting up a 'Hijra' Welfare Commission on the lines of the

Ms. Shabnam Mausi, a senior leader of the 'Hijra' /TG community. She stated that most of them behaving in ways that are considered feminine in the family, they lose their identity and face more discrimination and stigma, but a Guru or Nani suggested that the Gurus of Transgender be recognized as

Ms. Sita from Kinnar Bharti, Delhi, spoke about the and torture of Transgender by police. She stressed to be careful as some people with criminal behavior are associated with 'Hijra', thus maligning the image of their community.

Ms. Mridu, Technical Officer, Department of Health, spoke about the initiatives taken by NACO. She stated that the survey revealed high level of HIV prevalence in the community and exclusive intervention for the 'Hijra' /TG community.

Ms. Shabnam Mausi expressed that in addition to the hindrances, the community faces police atrocities and harassment. Gurus for authorizing them to identify the community and document as they don't have Birth/Father/Mother's details. Positive attitude towards the Community.

Shri Anoop Kumar Srivastava, Additional Secretary, stated that as per information provided by the Election Commission already issued directions under provisions of the Representation of the People Act, 1960 that in Forms (Form 6, 7, 8) relating to the registration of eunuchs/transsexual may include their sex as male or female. Further, the Election Commission directed the Officers of all States/UTs to make necessary arrangements for all the forms relating to enrolment. As per

January, 2012, as the qualifying date, there be the 'other' category. All such persons enrol their photo on the elector's photo identity card.

Ms. Abhina stated that the trans community needs proper education. Further, she said that a higher literacy rate than the male or female. She suggested a survey of the population in each State and cited the example of the transgender population should be identified and accordingly the concept of Transgender should cover all categories like male, female, etc.

Ms. Simaran Sheikh requested the Government Population to have an authenticate data. Transgender which is more authentic but not included in welfare schemes.

Ms. Akriti Patel, Transgender, said that there are only male and female wards but there is no ward for Transgender. Further, the Govt. hospitals should have medical facilities for those undergoing feminization treatment. The Transgender should be allowed to do their studies in the arts and classical dance and should be rectified.

Ms. Kinnar Madhvi, Transgender, said that there is no employment for Transgender, they turn towards begging. The Community craves recognition of their identity and should be included in the list of their Kinnar Children and when the parents are not available.

Ms. Rudrani pointed out that there should be separate schools, colleges and hospital wards. Further, the Transgender Community at par with other people, and the Government should take steps to improve their living conditions.

Shri C. S. Randev, CPV Division, said that the Government is working on the MEA for issue of passport. He said that the software for the transgender can be incorporated provided it is approved by the Government.

approved by the competent authority. At the time of issuance, a certificate for age and address verification and affidavit would also be required in the future. However, he did not agree with the certification for age.

Shri Sylvester Merchant, Project Director, stated that the project and documentation need to be carried out on a regular basis and replaced by a Holy name.

Asstt. Director, Deptt. of Social Welfare, stated that the Community are eligible for old age pension and that the scheme will help recognize the contribution of the government.

Shri. J. S. Narayan, Director, Dept. of Social Welfare, Tamil Nadu informed that Tamil Nadu Govt. had established 4294 Kinnars. The Board has distributed ID Cards and have been issued to 1544 Transgender, House connections and machines distributed to 102 Transgender, Inclusive Community people so far. Self Help Groups have been given as loan to SHGs. Further, 2 lakhs amount.

Ms. Shomita Biswas, Member, State Committee for Women and Child Development, Govt. of Maharashtra organized a Consultation Meeting to bring to the attention of the group i.e. Transgender Community. Also Mahila Samitis issues of sexual workers and Transgender. The meeting components like ID Cards, health measures, and Self Help Group.

Shri Piyush Saxena, representing the Transgender community, presented the historical perspective of the issue. He informed that the exercise which led to create an enabling environment for the transgender exercise had not given the correct estimation of the issue. There was no orientation of e

into underestimated figures. He informed that the notification regarding relaxation in the marriage name.

At the end of the Meeting, Empowerment summed up the deliberations and

Suggested steps / Key Recommendations

- It was suggested to constitute a Committee and suggest, within a specified time frame the Committee should be properly represented by
- Passport authorities and Election Commission of 'other' by the term 'Transgender' accepting their existing residence for the suggestion was made by the representatives
- Sensitize police about the human rights appropriate steps to stop abuse, and consider
- To customize intervention in health and Reproductive Health (SRH), Sex re-assignment health care providers on SRS and other health services free of stigma and discrimination.
- There should be a special exercise to reach the community. The community should be involved
- District authorities should be advised Advocacy with police and other law enforcement issues of harassment, violence and other crimes
- The Government should take steps to create a supportive and enabling environment for the
- The Transgender community should be included in interventions for the community.
- MSJE should take up research studies and programs and interventions for the community
- MSJE should compile the existing experience like Tamil Nadu, Maharashtra, Sikkim, and De

- Address the social needs of Transgender. There should be a focus on establishing link and other development programs like Rajiv Ga schemes of MSJE for needy persons from TG co these social welfare schemes more accessible

List of Participants

I. Lok Sabha

1. Shri Balkrishna Shukla, M.P., Lok Sabha,

II. Central Government

1. Shri Anoop Kumar Srivastava, Additional Secretary, Empowerment, Govt. of India.

2. Shri T.R. Meena, Joint Secretary, Ministry of India

3. Shri J.C. Sharma, Legislative Department, Bhawan, New Delhi.

4. Shri C.S. Rande, Litigation Consultant

5. Shri Sandeep Gupta, Director, National

6. Shri Surendra Rawat, Deputy Secretary (S), Empowerment, Govt. of India

7. Dr. Giriraj, Deputy Director, NISD, Ministry of Govt. of India

8. Dr. Mani Lal & Ms. Midhu Maken, Dy. Dir

III. State Governments

9. Shri G.P. Upadhyaya, Principal Secretary, Govt. of Sikkim.

10. Smt Shomita Biswas, Member Secretary, Woman and Child Development Dept, Govt. of M

11. Shri Raj Saravanan, Joint Director, Dept. of Central Secretariat, Chennai.

12. Mr. Vimal Kumar Sharma, Joint Housing Comm

13. Ms Renu Love, Assistant Director, Dept. of

14. Ms Anjali, Welfare Officer, Delhi

I V. Transgender Experts

15. Ms Seeta, Kinnar Bharati , 2363 IInd Floor
Main Road West Patel Nagar, New Delhi - 110008
16. Shri Amit Kumar, Nipun, GH- 5 & 7/883,
17. Ms Rani Patel, Aarohan, B- 127, Malviya
18. Ms Laxmi Narayan Tripathi, Mumbai, Subject
19. Sh Sylvester Merchant, Project Manager,
20. Sh Manvendra Singh Gohil, Chairperson, Lak
21. Sh Abhina Aher, Programme Manager, Pehchan
22. Ms Simran Sheikh, Transgender .
23. Ms Sheikh Saira Banu, Transgender .
24. Su. Sh. Shabnam Mausi Ji, Transgender ,
25. Su. Sh. Kamla Bua Ji, Transgender, Naga
26. Ms .Akriti Patel, Transgender, Gujarat .
27. Ms. Kinnar Madhvi, Transgender, Gujar
28. Sh. Y. D. Ahire, Salvation of Oppressed
29. Ms. Meena Malhotra, Salvation of Oppres
30. Sh. K. Narayana, Salvation of Oppressed
31. Ms. Swati, Salvation of Oppressed Eunu
32. Sh. Shashi Sahai, Aarohan
33. Ms. Mridu Markan, Department of AIDS c
34. Sh. Yushant Kashta, Naya Nigar Sagar
35. Sh. Vijay Singh, Nipun
36. Ms. Rudrani Chettri
37. Sh. Atharv Nar, Astitva, Mumbai
38. Md. Aslam Naved, Dept. of Adult Contin

39. S. P. Saxena, Ex I o F S

V. University Professors

40. Dr. Archana Dassi, Associate Professor
University, New Delhi.

41. Prof. Indrani Mukharji, Dean of Social
Faculty of Social Science, JNU, JNU Campus,

42. Dr. Rajesh Kumar, HoD, Dept. of Dist
Social Science, Delhi University.

VI. Other Experts

43. Dr. Piyush Saxena, Salvation of Oppress

Annexure - 2

No. 17 - ~~ODP~~ 2013 -

Government of India

Ministry of Social Justice & Empowerment

Shastri Bhawan

Dated: 22 October 2013

ORDER

Subject: Constitution of an Expert Committee

The problems being faced by the Transgender community in the recent past, in view of the notice of the Government in the recent past, filed, one in the Hon'ble Supreme Court of India, a meeting was organized by the Ministry of Social Justice & Empowerment to discuss the issues relating to Transgender community. It is decided to constitute a Committee to make an in-depth study of the issues relating to Transgender community. The composition of the Committee is as follows:

- (i) Additional Secretary, Department of Social Justice & Empowerment
- (ii) Dr. Sanjai Bhatt, Professor, JNU
- (iii) Dr. Rajesh Kumar, HoD, Deptt. of Education, University of Delhi
- (iv) Dr. Ketki Ranade, Professor, Tatyasaheb Kore Institute of Education, Mumbai
- (v) Dr. Archana Dassi, Associate Professor, Centre for Women's Work, Jami'a Millia Islamia University
- (vi) Dr. C. R. Samadder, I. A. M. S. (Retd) Former Secretary, Govt of Assam
- (vii) Dr. Fatima Vasanth, Principal Cum

Madras School of Social Work

- (viii) Professor Dipesh Chandra Nath, D. J. Somaiya Institute of Management Studies and Research, Kolkata University, 92, A. P. C. Road, Kolkata - 700 015
- (ix) Ms. Laxmi Narayan Tripathi, Bala Nivas, 153, N. V. S. Prithiylalam, 6th West Cross Street, Krishnapuram colony, Madurai (TN)
- (xi) Ms. Seeta Kinnar Bharti, 2363, I. I. T. Road, Opp Metro Pillar no. 218, West Patel Nagar, New Delhi - 110016
- (xii) Ms. Saira Banu Sheikh, 5/1202, Navi Mumbai - 400706
- (xiii) Representative of Ministry of Health and Family Welfare, Government of India
- (xiv) Representative of Ministry of Health and Family Welfare, Government of Karnataka
- (xv) Representative of Ministry of Health and Family Welfare, Government of Kerala
- (xvi) Representative of Ministry of Health and Family Welfare, Government of Tamil Nadu
- (xvii) Representative of Ministry of Health and Family Welfare, Government of West Bengal
- (xviii) Joint Secretary (SD)

2. The Chairperson of the Committee may nominate a representative to attend the meeting during his absence. He will also be a representative of any other Ministry/Department of Government to the meeting, for seeking their views.

3. The Terms of Reference of the Committee shall be as follows:

"The Committee shall make an in-depth study of the problems of the Transgender community and suggest suitable measures to ameliorate their problems. The Committee shall submit its report within three months of its constitution".

4. TA/DA: The meetings of the Committee official members will be allowed TA/DA equivalent of the Government of India in the Grade Pay instructions of the Government.

Secretarial assistance to the Committee

Sd

Joint Secretary to

To:

1. AS (SJ&E)
2. All members of the Committee
3. Secretary, Ministry of Health & Family below the rank of Deputy Secretary.
4. Secretary, Ministry of Home Affairs: of rank of Deputy Secretary.
5. Secretary, Ministry of External Affairs rank of Deputy Secretary.
6. Secretary, Ministry of Human Resources representative not below the rank of Deputy
7. Secretary, Ministry of Rural Development the rank of Deputy Secretary.
8. Director (NISD)

Copy for information to:

1. PS to Minister (SJ&E)
2. PPS to Secretary (SJ&E)

Comments received from various States/UTs on

1. Rajasthan Govt.

Provision to provide the benefit in the pen Govt. Besides, those TGs who want to live i homes. They are also given benefits in the

2. UT Administration of Dadra & Nagar Hav

There is no facility/concession/benefit etc. Nagar Haveli.

3. Govt. of Kerala

There are no officially identified transgend the transgender community is being implement

4. Govt. of Manipur

Instruction for survey of TG with in the s completed. No benefits, facilities, concess community by the State so far

5. Govt. of Mizoram

There is no transgender community in of he st Mizoram has no comments/suggestions to offer

6. Suggestions given by the Govt. of M. P.

- Transgender should be defined under partic
- Special school should be established fo 1 to 12 std.
- Scholarship schemes for Higher Educati on the help of Central and State Govt.
- Transgender should be included under t Indira Gandhi rural housing schemes on th
- There should be provision of employment
- Benefit of reservation should be provi services.
- Government of India should declare spec Group

"Kinnar Diwas" should be declared once in year

7. Govt. of Gujarat

- It is important to bring them into the their parents and community.

- Transgender should be included in definition (Care and Protection of Children). Hence, the Action should be taken to provide counselling Integrated Child Protection Schemes.

8. Government of NCT of Delhi

- The Government of NCT of Delhi is in Financial Assistance of 1000/- per month to years. Food subsidy for Rs 600/- per month under Pradhan Mantri Aarogyash Yojna. The targeted intervention programme projects are operational in Delhi to cover 5

9. Chandigarh UT Administration

There is no scheme for the benefits of T

10. Government of Haryana

Transgender Community should be identified and they can get any benefit.

Compilation of comments/suggestions received

1. Shri M. P. Bhardwaj, Retd. Joint Director,
 - Appropriate intervention by the Govt. of
 - Census/population enumeration of Transge
 - Registering and Issuing Identity Cards t
 - Rehabilitation and financial assistance
 - Including Transgender people in Persons
 - Reservation in Education and Employment.
 - Special Grievance Redressal Cells for th
 - Creating awareness.

2. Shri K. K. Sharma, President of a N. G. O,
 - Special facilitation may be extended b
 - Disabilities. That includes sex complication
 - Reservation at par with above category i
 - Law should be accommodated in the matte
 - any.
 - Categorization of Transgender as per th
 - Female bend.

3. Ms. Sandhya Sinha, Citizen
 - They can be employed as guards in sec
 - Sensitizing the masses of their probl

4. Shri Gup Aayid Citizen -

Bringing transgender into the mainstream

5. Ms. Ranjita Sinha, Association of Transgender

- State Govt. to take steps to ensure separate social entitlements like passport, driving license, the matter of family inheritance of property

- Health Services should be provided like rehabilitation centers etc.

- The Govt. of West Bengal has taken initiative for Female Sex Workers (FSWs) and have already initiated workers who need to be rehabilitated like Transgender and Hijras also as they are also

6. Ms. Pooja Aggarwal, Citizen

Transgender must get equal rights like

7. Shri M. K. Pande, Citizen

- Integration in Society

- Vocational Training for adults in Transgender

- Provide Reservation for TG Community in

- Provide self-employment opportunities

8. Mr. Aslam, Citizen

Size Estimation and Risk Profile of

9. Shri Hari Shankar Sharma, Citizen

- Imparting training in food preparation

- Imparting training in decoration

- Imparting training in driving

- Imparting training in dancing
- Imparting training in hotel reception deptt/education/teaching/she taxi driver - all

10. Shri K. K. Sharma, Vidrohi, Kullu, H. P. C

Mixed breed marriages of Father - Mother or M promoted by honoring with cash prizes or pr must be provided with free education, noble

11. Prof. Dr. M. Manoharan, Abirami Kamadhenu

- Identify the cause and the period during Thirunangai (Transgender) in order to avoid
- As and when it comes to the notice of t transgender must be included in the count.
- Depending upon the age, they should be technical, Skilled & Semi-skilled.
- Employment for Transgender People for er Social Status and enactment of safeguards fo

12. Shri Gurdhal Sahota, Ludhia

Proper Urinal/Latrine facilities sho

13 Shri Subhash Chandra Agrawal, Delhi Citi

- National Eunuch Commission should be unrestricted admission to any educational in eunuchs without needing any reserved quota.
- Criminal action should be taken against child. Eunuchs forcing parents to part away arrested and punished with stringent most fr

Not only Eunuchs should be given priority a private institutions giving employment of eu subsidy on wages paid to eunuchs by private for eunuchs in legislature and in public-sec

14. Dr. Jacob John, Director, Kerala Develop

- Benefit of Govt. Programme to Transgender should be allowed to participate in economic female do.

- Local Government / Panchayat and Transgen representation in local self-Government (el Government of Tamil Nadu established a Trans

- Education: The major programmes aiming SarvSahiksha Abhiyan) and higher education sh group.

Study on Transgender Community: The individu not highly educated or uneducated and cons employers deny employment for even qualifi encouragement to commence their own entrepre or others) can provide great benefits for th

15. Shri Sylvester Merchant, Lakshya Trust,

- Sensitizing Police regarding the issue Community.

- Sensitizing doctors and staff at Hospi discrimination.

- Providing reservations in jobs

- Transgender should be counted in populat

- Property rights should be given to them

- PAN Card, Aadhar Card, Ration Card must

- Transgender Welfare Board should be mad must be extended

- Transgender chowky should be made in ea to them

- Prevention of trauma, violence, physical
Awas yojna benefit should be extended to

16 Ms Kalki Subramaniam, Founder, Sahodari Foundation
Transgender people should have:

- The right to be treated fairly with no discrimination, and exploitation in all private
- The right to be recognized as a marginal group afforded to transgender in all Government organizations whether local or international
- The right to be given equal opportunities
- The right to participate in all socio-economic & services that directly concern and affect
- The right to build a family and home with
- The right to form and organize groups to government and other institutions without fear
- The right to adequate access to health to attain the highest standard of sexual and reproductive
The right to bodily autonomy and to decide on and reproduction that is free of discrimination

17 Shri Yashpaul, Punjab (Resume attached),

- Separate special schools, colleges, high schools to educate them.
- Rules must be framed so that no one may
- They must be provided opportunities for employment be announced for their social as well as economic
Development in all respects including social

18 Mr . E . Venkatesh , Citizen

Establishing platform for political entry of

19 PAHAL Foundation Khanpur New Delhi

- Education system needs to be strengthened need to be sensitized on issues of stigma.
- Child protection laws need to be strengthened for adolescents.
- Law enforcement agencies including police need to educate people to end their harassment and discrimination.
- Procedures of change of sex and gender identity need to be simplified. Adequate resources need to be provided in public hospitals for people to undergo Sex Re-assignment Surgery.

20 Jindal Global Law School O.P. Jindal Global

The gender column in govt. identity card form should be made compulsory to fill in the gender they identify with.

A person should not be required to go under medical transition to identify as a different gender.

- Welfare schemes applicable in each state should be extended to "Minorities".
- There should be a Transgender Welfare Board at the national level.
- There should be compulsory sexuality/gender education at school level. School syllabus must be modified to include gender studies. of scholarships for gender non-conforming persons.
- Gender non-conforming persons should have access to higher education, and scholarships and access to start their own business.
- Housing and Land allocation schemes for transgender persons should be effective.
- Sexual harassment mechanisms should be gender sensitive. Harassment on gender should be recognized as a separate category.

- The parliament should pass an Anti-Discrimination and harassment on the basis of gender.
- There should be free or subsidized access to include pre and post-operative treatment.
- Gender non-conforming persons should have access to marriage as well as divorce.

21 LABIA Stree.sangam@gmail.com

- The state must be supportive in allowing every person to live in accordance with their gender identity.
- State subsidies must be available for gender-affirmative medical treatments.
- Antidiscrimination laws are needed to safeguard Transgender persons. Various stakeholders with the Transgender Persons (Protection of Rights) Act, 2019 should be sensitized to ensure its effective implementation.
- Teachers and administrators need to be trained to handle transgressive children and sexuality education.
- There needs to be a deregulation of gender-affirmative medical treatments.
- The choice of attire, playing a certain role, etc. must be left to the individual regardless of their gender identity.
- Doctors and health care providers must be sensitized to the needs of Transgender persons. Sensitization campaigns for health professionals should be developed.
- When people access gender segregated spaces like public transportation such as buses and train, etc. they should be treated as part of irrespective of the gender assigned to them.

22. Shri T.D. Sivakumar, Founder and Board Member, Chennai

- Family acceptance shall be given to children.
- National Level Commission exclusively for Transgender persons.
- Monitoring the drop-outs of community schools and encourage them for further study by providing financial support.

- Need better laws to protect them from fa

23. Thakur Rajpal Singh Rastriya Social Pr
Ghaziabad

A Certain amount should be fixed for Hij
economic condition.

24. Sanya, Research Scholar

Social attitude is the most important fa
regard. To make a change in social attit
institution because religious institutio
pope, for gays recently y hume h e s o n a d u s t a b e m

They should be given equal status and rig
etc. Once such status s o c i e t y i v w h l w a t h o t
accordingly.

There should be some strict laws against

They should be taught equally in the scho

NGO's should also participate for welfare

There should be policies meant for their

There e h o u l d b e c o m p r e h e n s i v e s e x e d u c a t i o n p r o g
training centres, access to free and co
realignment or reconstruction surgery (SR
in Tamil Nadu).

E C I t h a a k s e n a h i n s t o r i i n d e c a i t e i r o t h e r e l e x t a s a l
but I believe that the decision will be
"transgender" sex" as others category depr
our society male, female genders have th
allowed to maintain their separate identi

There is no doubt that transgender l o c n o g m m u
and uphill path in a s h e l m d i e a t D e i t i v z e q u s a b f
promises by p a d e t i c i a n s a n d g o v t . w i l l h a v e

Minutes of first meeting of the Expert Committee held on November 2013 in the Conference Room and Empowerment, Shastri Bhawan, New Delhi

Ministry of Social Justice and Empowerment first meeting of the Expert Committee^h on the November 2013 in the Conference Room, Shastri making an in-depth study of the problems be list of participants is at Annexure I.

2. Shri Anoop Kumar Srivastava, Additional the Committee welcomed all the members. Sin requested everyone to give their introductory Committee. He stated that the objective of t problems being faced by the Transgender co ameliorate those problems. He said that oute isst 21 January, 2014 but he requested the membe the Committee is finalized and submitted we presentation, a copy of which is at Annexure

3. The Chairperson informed that the Minis Respondent in two Public Interest Litigation Mumbai High Court. He added that a Consulta representatives of Transgender^d August 2013^{imp} a few inter-ministerial meetings. He enumer which have come to the knowledge of this Mi during the consultation meeting held on 23.8

4. The Chairperson said that their problem Denial of various rights and facilities and and said that there is no representative fro She requested that a representative may be o same was agreed to by the Chairperson. It wa Ministry of Women and Child Development, Reg may also be invited in the next meeting.

Discussion on the definition of Transgender

5. A need was felt that there should be a c Narayan Tripathi referred to the internatio attention to WHO Guidelines in this regard definition of transgender which may be cons

definition should be comprehensive and legal should consider the context of the Indian Transgender Persons (Protection of Rights) Bill, 2017. Dr. Ketki Ranade informed that in India the majority of transgenders are female to male transgenders; she proposed that female to male transgenders should be included while formulating a definition of transgender. Thereafter, Ms. Laxmi intervened and said that the committee should discuss the definition along with the international definition.

Discussion on Medical Issues

6. Sex Reassignment Surgery (SRS) was a sensitive issue. Dr. Ketki Ranade informed that this surgery should only be performed after a thorough medical and psychological evaluation. Some members were of the opinion that this surgery should be performed from the childhood itself. Since there were no members from the Ministry of Health, a request was made to the Minister of Health. A request from Ministry of Health was requested to come to the meeting. He was also requested to refer to the international practices.

Discussion on Social Issues

7. The members expressed that broadly all social issues related to transgender community should be on the agenda. Some of the initiatives have also been taken by the Government of India regarding like enrolment of transgender community in the National Commission of India. There is no prohibition on transgender community to contest election to the Parliament or State Legislatures. The Census year 2011 had given the option of "other" to be recorded as either male or female. Union Government should take steps to support transgender community. However, many issues are still pending.

Decisions Taken in the Meeting

8. After detailed discussion the following decisions were taken:
- i. The members unanimously agreed that the term "Transgender" should be called "Transgender".
 - ii. Dr. Ketki Ranade was requested to come to the meeting to discuss the definition after referring to the other members. She was also requested to consult Ms. Laya Medhini and Dr. Ketki Ranade & Ms. Laya Medhini should prepare a joint paper on this issue.
 - iii. Dr. V. S. Salhotra from Ministry of Health should be requested to be faced by the Transgender Community and suggest suitable measures for their rehabilitation. The Government should perform an individual

or should it be the choice of the Medical Council. He was requested to associate a representative from Delhi University with himself. Dr. Rajesh Kumar from Delhi University was requested to associate with himself Dr. Fatima Vasanth from Delhi University.

v. Smt. Praveen Kumari Singh, Director, MHA, relating to Crime and Police Atrocities Bill, was requested to be discussed in the next meeting. Ms. Laxmi Narayan Tripathi was requested to suggest suitable measures for the community and suggest names of few more experts of the field to the Committee.

9. The Chairperson requested the Committee meeting to be performed by November 2013 and detailed proposals be circulated to all other members for the next meeting will be held on 20th November, 2013. The time and venue will be informed to all the members in due course. The issue would also be discussed in detail in the next meeting. The members concerned with the issue for prior examination of the Committee.

The meeting ended with a vote of thanks to the members.

* * * *

Annexure I

List of Participants

I. Representatives from M/o Social Justice

S, No	Name	
1	Shri Anoop Kumar Srivastava,	In Chair
2	Shri T. R. Meena, Secretary	Member Secretary
3	Shri Anandh, Director	
4	Shri Sravanthra, Deputy Secretary	
5	Shri Rajesh Kr Sinha, Under S	
6	Dr. R. Giriraj, Dy Director,	

II. Representatives from other Central Ministries

7	Smt Praveen Singh,	MHA	Member
8.	Shri Vinod Kumar	Director,	Member
9	Dr V. S. Salhotra	M/o Health	Member
10	Dr Neeleshwari	D/o Aids	
11	Smt Mrinalkan	D/o Aids	
12	Shri Naba Kumar Pal	M/o External	Member

III. Other Members and Experts in the field of

13	Shri Dipesh Chandra	D/o of Psychology University	Member
14	Dr Fatima Vasanth	Madras School of Social Work	Member
15	Dr Rajesh Kumar	HOD, D/o Education, D. U.	Member
16	Md Aslam	D/o Adult D. U.	
17	Ms Sankarati	Transgender	Member
18	Ms Yonne Ahire	Transgender	
19	Ms Saibrahm	Transgender	Member
20	Ms Malini	Transgender	
21	Ms Rudra	Mitras Trust	
22	Smt. Vasudevan	Center for and Rights	
23	Ms Laxmi Narayan Tripathi	Transgender (working)	Member

		Organizat Support Developme Sexual Mi	
24.	Dr. Andasna	D/o Social Jama Mil Univteyr si	Member
25.	Dr. Rende	Tata Ins Social Sc	Member

Minutes of the second meeting of the Expert Transgender community November 2013 in the Vigyan Bhawan Annex, New Delhi

The second meeting of the Expert Committee (TG) was held on November 29, 2013 in the Committee Annex, New Delhi, with the purpose of addressing the problems faced by the Transgender community and suggesting solutions. The list of participants is at Annexure 1.

2. Shri Anoop Kumar Advani, Secretary, MSJE welcomed all members and special invitees present in the meeting, he requested Shri T. R. J. Mehta, Secretary, MSJE to briefly recap the meeting held on November 6, 2013.

3. The Deaf Kerkis Assistant Professor, School of Institute of Social Sciences, Mumbai was invited to discuss 'Transgender'. She mentioned that in order to understand the concept of transgender it is necessary to establish a basic understanding of gender as determined by biological factors. She stated that gender is a person's idea of their own gender as they experience it in every aspect of our life including our name, occupation, mobility and so on. It is also reflected in birth certificate, ration card, voter id, passport and so on. Even the public utilities are gender specific. In terms of categories of gender and transgender. The category of cisgender is male/woman/female. However, when people choose to transition through reassignment surgery (SRS) related to transgender there are also several local terminologies used to describe transgender persons. Some of these terms have religious connotations. In her presentation she stated that the term transgender should be used to refer to all non-cis gender identities. Trans* be used in the place of the term transgender.

4. Ms. Laya Vasudevan for Legal Aid and Rights Centre discussed Transgender definitions - Sociological definition: Transgender people are individuals of any age or sex whose gender identity, roles, behaviors differ from stereotypes about how

broadest sense, transgender encompasses anyone who does not fit into stereotypical gender norms. Some people, however, use the term to refer to themselves, which are associated with biological sex are the same across different communities. "Gender identity" refers to a person's sense of being either male or female, or something other than either. A 'transsexual person', she mentioned that the term refers to one's gender identity and a transsexual woman (FTM) born with female bodies, but have a male gender identity. Transsexual (MTF) people are born with male bodies. Many, but not all, transsexual people undergo hormone therapy and sex reassignment surgery. Different ethnic groups of transgenders like Hijras / Shaktis, Jogtas, Jogappas, Moanas and Leisbaitis. The application of concept of transgender should not be limited to one, but should cover all categories including transsexuals.

5. Ms. Vaisudevi explained about the relevant provisions related to transgender in the 2012 Constitution of India, concluding that on a harmonious construction of the provisions of Citizenship Act, 1956, 1987, there is no conflict or limitation in the laws and a Transgender person would undoubtedly be a citizen of India.

6. Shri. Ap Kumar, Sr. Additional Secretary, Ministry of Health and Family Welfare, explained that under the generic definition of transgender person could be 'a person whose gender identity is different from the one assigned at birth'. Transsexuals, Hijras, Aravanis, and transsexual, irrespective of whether they have undergone Gender Reassignment Surgery. This was broadly agreed to by the members while talking about transgender persons; one of the members said that the term 'transgender' is different. He also opined that the definition of transgender and terms like transsexual and transsexual convey different meanings, a person should not be called transgender, irrespective of whether he/she has undergone gender reassignment surgery. The term 'trans*' may not be used in place of transgender for everyone. He further explained the model adopted in the Constitution recently, where district level screening committee

Transgender persons. The recommendation of level screening committee, after whose clearance the identified transgender person. This entire Dr. Ramakrishnan, Chennai told that present guidelines/criteria among districts for identification be an implementation issue, as the guidelines concerned. It was decided to bring this to the

7. Dr. Piyush, Mumbai cited the recent case in result of a candidate was overturned in an election contested the election from a seat reserved Commission's decision of giving an option to

8. Dr. Rajesh Department of Distance & Continuing Education, Delhi made a presentation on 'Education and transgender persons. He mentioned that the lack of education including higher education/professional low. Majority of the population are illiterate. They face stigma apart from physical, sexual and emotional their studies. The exclusion from society and to education. Some of the suggestions made

Create more awareness & understanding on transgender community.

The fulfillment of the obligation under Right to Educational conditions of transgender community at schools/universities/ educational institutions to the need of this community and to bring Review the existing schemes and to provide on transgender community.

9. He also suggested approach for enhancing transgender persons which are as follows:

- Empowerment process has to be broad and

Awareness generation

Skill and Capacity Building

Employment and entrepreneurship

- Efforts should be made to register transgender of the central and state governments.
- Enhanced credit/subsidized loan as capacity
- Create a supportive environment involving

10. Ms. Rashmi Singh Executive Director, National Women opined that there has to be a system persons and also there is a need to generate Facilitation centers to be called as gender inclusion Plan and

11. Ms. Meenakshi Jha HRD informed that socially disadvantage groups does not included is not mentioned in elementary education (6 is being looked into by M/o Human Resource the States. She also stated that sensitization training module. She was requested by the Ministry on the paper submitted by Dr. Rajes

12. Tanmay from Labia (Mumbai) stated that drop gender discrimination. He suggested that sch Ms. Priya Bab expressed that one of the reason is their sexual abuse. She felt that Vasudev pinned that care home for transgender vulnerable children should also be taken for the present generation get employment. Sanjay Prakash, Delhi School of M/o Social & Empowerment may come up with a Community which may include provision of services expressed that to the people involved also ne

13. Shri T. J. Men mentioned that there is a Caste community to deal with the stigma of schools the teachers should create a suitable

14. The presentation on education mentioning that social stigma and discrimination Transgender community. He opined that if the programs of the Government, they will get mainstreaming them into the society. He stated many have stated, start with their family. teachers is needed. In this context, the punishable offence under Section 317 of the is applicable if the abandoned transgender children takes place usually be Chairperson suggested that MHA should be responsible for this offence. Ministry of Women Development supported this and stated that for consideration as child in all laws.

15. The Chairperson suggested that economic education in Tamil Nadu can also be studied and adopted. The Committee may recommend a centrally sponsored scheme. Sanjai Bhatt, as it will provide positive impact in enhancing their acceptability by the parents. The inclusion of that of self-employment opportunities, including that of self-employment opportunities, loans, he said that similar interventions for PwDs may be studied for designing suitable interventions. The mindset of society, parents and teachers towards

16. Dr. Anil Kumar, Director General of Health & Family Welfare made a presentation. He informed that a committee has been constituted under the Chairmanship of Dr. S. Y. Jeyaraj, Director of Transgender Services. The Committee, in its first meeting, had made the following recommendations:

- i) Being a 'Transgender' is essentially an individual.
- ii) Gender Identity Disorder may be considered as an individual and all possible assistance should be provided to those suffering from such disorder, in the health care system of the general population.
- iii) Transgender persons wishing to live as a particular gender should be provided assistance and facilities like any other person. Reassignment Surgery.
- iv) Sex/Gender of the transgender may be considered as a particular gender for all practical purposes till they are transitioned. The cost of the treatment modalities and not merely the cost of the treatment modalities and not merely the cost of the treatment modalities.
- v) In case a separate third category is created, a competent authority it may be made competent authority to provide Ward/Cubicle and Toilet facilities in all Government Hospital / Health Care Projects.
- vi) Necessary instructions can be issued to the hospitals while admitted in the hospital for any kind of the patients of the third category should be issued.
- vii) All treatment/facilities, whatever the cost, should be provided to all the patients coming to the Government Hospital on any ground whatsoever except that some

specialized investigations. The same is also.

viii) Possibility of providing any special facilities for patients of the third category, which is also, can be explored on the basis of

ix) While conducting medical examination services/any other service or institution as per the format for any other candidate like Height, Weight and Chest expansion is accepted. While examining the genital re-examined for 'Male', 'Female' or the third

x) For any endeavor of Sex reassignment should be thoroughly examined by a Endocrinologist, Urologist, Plastic Surgeon. If procedure is undertaken and any attempt is made, it shall be considered as a Violation. So far as the three Central Government Ministries of Health Services, Min. of Health and Family Welfare are concerned, a Standing panel of the above mentioned Ministries shall be constituted for the purpose.

xi) Time at which the Sex Reassignment assessment is to be done. However, psychiatric/psychological assessment is required, medical/hormonal treatment is required and surgical treatment for genitalia may be done only when patients have lived continuously for a period of 5 years congruent with their gender identity. The assessment shall be a criterion and not an indication in and of itself for corrective surgery for birth defects of sex. Consent from the parents is required.

xii) Health being a state subject, respective State Governments should provide appropriate hospitals in their state for the treatment and availability of the required specialists. The Government is informed that Indian Council of Medical Research (ICMR) on Disorders of Sex Development and Gender Identity (ICMR-DSDGI) may also be taken to finalize the definition of the third category and other issues.

17. There was a detailed discussion on the above. The Chairperson requested Dr. Sain to complete the above recommendations for consideration by this Commission. The definition of transgender should be taken as per the above. It is also requested Dr. Sain that the Committee may

undergo only castration and penectomy, provide short of full-scale SRS. Though Dr. Saini, the choice of a procedure is with the perspective of the Committee and come back on this issue. With 'Penectomy and Orchiectomy' as a term, it is not a castration technically refers to removal of genitalia (penis/testis). So, the terms denote "removal of male external genitalia". 'emasculatation' is sometimes used to denote an inappropriate term by some people. Further, 'Gender Dysphoria' Vs. 'Gender Dysphoria' mentioned in the current DSM-5 (Diagnostic and Statistical Manual of Mental Disorders - 5th Edition) American Psychiatric Association - APA), the term is replaced by 'Gender dysphoria / Gender incongruence' [proposed, not finalised] or 'Gender dysphoria' (2015) of International Classification of Diseases (10th Revision) World Health Organisation), WHO is planning to include 'Gender dysphoria' [proposed, not finalised] or 'Gender dysphoria' (2012). In India, the field-testing of the procedure is planned at AIIMS, New Delhi.

18. Smt. Praveen, K. D. Singh, Director, Maharashtra mentioned about police atrocities and crime against Transgender persons and special training to them could be finalized. She mentioned that there should be a separate cell in police authorities. As regards, the queue of cases of sexual assault on transgender persons but cautioned that it is a lengthy process involving the State Governments. A detailed report by Praveen Kumari Singh is at Annexure II.

19. Shri Ashok Kumar, Director (Level) UIDAI explained that the Aadhaar card is adopted by them while enrolling for Aadhaar card and gender is taken as what is declared by the resident and the resident can declare his gender as male or female. Some members that instructions were not clear and some were either asking for document/proof or recording the person was wearing. The representative was not clear about the implementation issue. From the number of residents out of 49 crore residents to whom Aadhaar card is issued, some residents from transgender community had come forward.

20. At the end, the Chairperson requested the members to send their recommendations and send within a week or ten days and circulated well in advance of the next meeting.

be held annually, 2014 & commence at 10.00 am
venue of the meeting will be informed to all

The meeting ended with a vote of thanks t

Annexure I

List of Participants

I. Representatives from M/o Social Justice

S. No.	Name	
1.	Shri Anoop Kumar Srivastava	In Chair
2.	Shri T. R. Meena, Joint Secy	Member
3.	Shri Anandh, Director	
4.	Shri Rajesh Kr Sinha, Under Secy	
5.	Dr. R. Giriraj, Dy Director	

II. Representatives from other Central Ministries

6.	Smt Parvati Kumari Singh	MHA	Member
7.	Shri Naba Kumar Pal	M/o External Affairs	Member
8.	Shri Ashok Kr, Director	UIDAI	Special
9.	Dr Anil Saini	Dept. of Health & Family Welfare	Member
10.	Shri Deepak Rastogi	RGI	Special
11.	Shri Mahesh Tyagi	M/o Law & Justice	Special
12.	Lopamudra Mohanti	M/o WCD	Special
13.	Smt Meenakshi Jolly	D/o SE&L, MHA	Special
14.	Smt Swati Chakraborty	NHRC	Special
15.	Shri Shobham	NHRC	Special

III. Other Members and Experts in the field of

16.	Dr C. R. Samadder	Retd IAS, Principal Assam	Member
17.	Dr Rajesh Kumar	HOD, D/o Education	Member
18.	Md Aslam Naved	D/o Adult Education, D. U.	
19.	Ms Sikha Bharti	Transgender	Member
20.	Ms Yonne Ahire	Transgender	
21.	Ms Saibrahmeh	Transgender	Member
22.	Ms Rudra Chaitri	Mitr Trust	
23.	Smt. Meadhai ni	Center for Gender and Rights	Member
24.	Dr. Ardasina	D/o Social Justice, Jai Prakash University	Member

25.	Dr . Ra h a d e	T a t a I n s S o c i a l S c	M e m b e r
26.	R o j a	T G C o m m u n	
27.	P r o f S a n j a i B h a t t	D e l h i S c S o c i a l W o	M e m b e r
28.	D r . P S i a y x u e s h a	S O O E	S p e c i a l
29.	T a n m a y	L a b i a (M	S p e c i a l
30.	S u n i l M o h a n	L e s B I T	S p e c i a l
31.	B h a r k a t h r i a m m a	B K T r u s t	
32.	D r . L . R a m a k r i s h a n a	S A A T H I , C	S p e c i a l
33.	D r V e n k a t h e a s k h r a p a n i	C-S H a R P	S p e c i a l
34.	P r i y a b a b u	T G C o m m u n	M e m b e r
35.	A n j a l i G o p a l a n	N A Z F O U N D A T I O	S p e c i a l
36.	S m t . R a s h m i S i n g h	N a t i o n a l E m p o w e r m e W o m e n	S p e c i a l

POLICE ATROCITIES ON TRANSGENDERS Atrocities Transgenders have been highlighted in media no separate data is maintained by National has been no evidence or study of systemic bi agencies against Transgenders. The issues of due to lack of proper awareness on applicabl in police. In cases of reported crimes by T often at loss to ascertain applicable provi accusation of excesses by Police on Transg sometimes take advantage of the lacunae of become difficult to contain. Training and se on the lines of trainings and sensitization Children and other vulnerable section of soc

Provisions in IPC

Sec. 375 of the Criminal Amendment Bill 2013 proposed to replace the word 'rape' wherever words 'sexual assault', to make the offence widening the scope of the offence sexual as Criminal Law Amendment Act 2013.

In view of the above, Ministry of Social Ministry, is requested to provide a broad f Affairs so that process of amendment can be

Sec. 377 of the IPC: Petition against the or High Court for repealing sec. 377 IPC is sub can be made in this regard.

Extremely demeaning remarks afe used against then the provisions of SC/ST (PoA) act will the Protection of Civil Rights (PCR) Act whe of the penalt erod d isays,

Whoever (a) by words, either spoken or writ otherwise, promotes or attempts to promote, residence, language, caste or community or feelings of enmity, hatred or ill-will betwe

groups or castes or communities, or (b) maintenance of harmony between different religions, castes or communities, and which disturbs or shall be punished with imprisonment which may be both

Transgenders cannot escape punishment when the word 'Person' in the Indian Penal Code applies to all human beings.

Another way of approaching the problem might be to amend the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to comprehensively incorporate the definition of transgender people. More importantly before formulating any law, a study should be conducted to get a comprehensive picture of the current situation in the society, crimes and atrocities against the transgender community and their aspirations. It has been observed that there is no exhaustive study in modern Indian law which can serve as a bedrock for creation of a new legislation

Minutes of the third meeting of the Expert Committee on Transgender community held on 14th April 2014 in the Committee Room 'A' of Vigyan Bhawan Annexe, New Delhi

The third meeting of the Expert Committee was held on 14th April 2014 in the Committee Room 'A' of Vigyan Bhawan Annexe, New Delhi, with the objective of making an in-depth study of the Transgender community and suggest suitable measures. The list of participants is at Annexure I.

2. Shri Anoop Kumar, Additional Secretary, MSJE welcomed all members and special invitees from the State Governments attending the meeting and requested the participants to give their introduction.

3. After introduction, the Agenda of the meeting was discussed. The Committee will discuss, chapter-wise, the Draft Report consisting of the following chapters:

- Chapter - I [Definition of Transgender]
- Chapter - II [Constitutional protection & judicial remedies]
- Chapter - III [International practices]
- Chapter - IV [Transgender Identity]
- Chapter - V [Inclusive Approach]
- Chapter - VI [Convergence Approach]
- Chapter - VII [Addressing Stigma, Discrimination and Abuse against Transgender People]
- Chapter - VIII [Exploring Education and Employment opportunities for Transgender Persons]
- Chapter - IX [Adolescents - A transgender perspective]
- Chapter - X [Access to Healthcare including HIV/AIDS]

Chapter - XI [Tamil Nadu Transgender Welfare

Chapter - XII [The Role of Ministry of Social

Chapter - XIII [Summary of Conclusions & Rec

4. The discussion started with Introduction of the Draft Report. The Introduction and first chapter were accepted by the Chairperson with minor modifications.

5. The Second chapter which was on the scope of jurisprudence was discussed in brief. Ms. Anand (with Shri Anand Grover) suggested that articles of the Constitution be included in the chapter as these articles of the Constitution were agreed to by everyone that since the Constitutional principle of non-discrimination to all persons is a principle which was thus approved with this modification.

6. The other chapters, except chapter no. VII and chapter no. XIII (Summary of Conclusions and Recommendations) were detailed and accepted by the Committee with minor modifications. As regards Chapter VII, it was decided that the Committee will recast this Chapter. The issue and chairperson's decision was taken to look at a chapter on transgender rights. A member volunteered to write it. This chapter will be included in Chapter X will be re-written by Dr. Venkatesh Ranade & Dr. L. Ramakrishnan. Thus, chapter VII was finalized in the next meeting to be held on 2014.

7. With regard to the issue of 'letti' system, Shri Patankar, Secretary, Salvation of Oppressed, brought the matter before the Committee to decide by vote. Accordingly, the Chairperson sought the vote of the members were not in favour of the system. The members representing the transgender community stated that the issue of 'letti' system was already under consideration was also sub-judice in the High Court, Mumbai separately.

8. Smt K. Kanmani, the representative from Tamil Nadu, was invited to verify the contents of Chapter XI (Tamil Nadu) of the draft Bill. It was decided^{s^t} that a meeting would be held on 15th January, 2014 at 10.00 AM to finalize the draft Bill.

9. The meeting ended with a vote of thanks.

Annexure I

List of Participants

I. Representatives from M/o Social Justice

S. No.	Name	
1.	Shri Anoop Kumar I S Sevesta	In Chair
2.	Smt Ghazala Meenai, Joint	Member S
3.	Shri Anand Katoch, Directo	
4.	Shri Rajesh Kr Sinha, Unde	
5.	Dr. R. Giriraj, Dy Directo	

II. Representatives from other Central Ministries

6.	Shri Bhagirath	Additional SJ&E, Jai	Special Invitee
7.	Smt K Kanmani	Dy Dir Directorate Welfare, Nadu	Special Invitee
8.	Smt Kavitha V. Pad	Joint Sec Assam	Special Invitee
9.	Dr. Arain	Dte Gene Health Serv	Member
10.	Sh Rajender Prasad	Under Sec M/o Hu Resources Developme	Special Invitee
11.	Dr. K Satyari	Spl DGHS Health an	Special Invitee
12.	Shri Sunil Kumar	Principal D/o Socia UP	Special Invitee
13.	Shri B. K. Rjee	DRG, O/o	Special Invitee
14.	Shri Ujjwal Uke	Principal Govt of M	Special Invitee
15.	Shri Kumaravi	Principal WCD, Gov Karnataka	Special Invitee
16.	Shri B. K. Choudhury	S. O., M/ Affairs	Special Invitee

11. Other Members and Experts

17.	Shri Anand Grover	Advocate	Special Invitee
18.	Dr Rajesh Kumar	HOD, D/o Education	Member
19.	Ms Sita Kinnar Bha	Represent Community	Member
20.	Ms Saira Banu Shek	Represent Community	Member
21.	Smt. Laya Medhini	Center f Aid and R	Member
22.	Dr. Archana Dassi	D/o Soci Jamia University	Member
23.	Dr. Ketki Ranade	Tata Ins Social Sc	Member
24.	MsLaxmi Narayan Tri	Astitiva	Member
25.	Shri Priyadarshan	Represent	Special Invitee
26.	Tanmay	Labia (Mu	Special Invitee
27.	Sunil Mohan	LesBIT	Special Invitee
28.	Dr. L. Ramakrishan	SAATHI, C	Special Invitee
29.	Dr Venkatesan Chak	C-SHaRP	Special Invitee
30.	Ms Amritananda Cha	Lawyer	

Minutes of the fourth meeting of the relating to Transgender Jāroumāryni 2014 held conference Hall, Central Secretariat New Delhi.

The fourth meeting of the Expert Committee (TG) was held on 22nd January 2014 in the Conference Hall Block, Shastri Bhawan, to finalise the report Annexure I.

2. Shri Anoop Kumar, Additional Secretary, MSJE the Committee welcomed all members and said the meeting had been convened to finalize the Report of the meeting held on 3.1.2014. Three Chapters were not finalized in that meeting. He requested to finalize these chapters.

3. The discussion started with Chapter X by Mr. Venkatesan Chakrapani. This chapter was agreed by the committee with an additional paragraph on 'Transgender'. Thereafter, Dr. Archana Dassi presented a report on discrimination and violence faced by the transgender community. It was approved with modification of the definition of Transgender Committee by the community members that transgender persons when their bodies are taken for funeral. Chapter [Transgender Young Adults] was explained by Smt Laya Mehta. The concerns of Female to Male transgender persons were discussed. These Chapters were finalized.

4. At the end the report was gone through by all members at the meeting. The Chairperson informed that the report free from grammatical errors, formatting, changes of content would be ready within a couple of days. He whole-heartedly requested all members and concerted efforts in bringing out the report.

5. The meeting ended with a vote of thanks

Annexure IList of Participants

I. Representatives from M/o Social Justice

S. No.	Name	
1.	Shri Anoop Kumar Srivastava	In Chair
2.	Smt Ghazala Meenai, Joint	Member S
3.	Shri Anand Katoch, Director	
4.	Shri Rajesh Kr Sinha, Under	
5.	Dr R. Giriraj, Dy Director	

II. Representatives from other Central Ministries

6.	Dr Anil Sain	Dte Gene Health Serv	Member
7.	Sh Rajender Prasad	Under Secy M/o HRD	
8.	Shri Bikramjit Cho	S.O., M/o	

III. Other Members and Experts

9.	Ms Saira Banu Shek	Represent Community	Member
10.	Smt. Laya Medhini	Center f Aid and R	Member
11.	Dr. Archana Dassi	Jamia Universit	Member
12.	Dr. Ketki Ranade	Tata Ins Sociate Sc	Member
13.	Ms Laxmi Narayan T	Astitiva	Member
14.	Dr Venkatesan Chak	C-SHaRP	Member
15.	Dr. C. R. Sammadda	Former Secretary	Member
16.	Ms Priya Babu	Represent Community	Member
17.	Prof Sanjay Bhatt	Delhi Socf Social Wo	Member
18.	Ms Ambalika Roy	Lawyer	

Visit of Additional Secretary to Government
Ministry of Social Justice Empowerment

Minutes of the meeting held with all
Transgender Welfare on 27.11.2013

The Additional Secretary to Government of Empowerment, visited Chennai, to discuss with the welfare measures provided to the Transgender Board in Tamil Nadu. The meeting / discussion was held in the Conference Room, 1st Floor, Namakkal Kavingnar Maaligai, Secretariat.

2. The following officials and members of

1. Secretary, Social Welfare and Nutritious
2. Secretary, Adi Dravida and Backward Class
3. Director, Adi Dravidar Welfare
4. Director of Social Welfare and Nutritious
5. Deputy Secretary to Government, Social W
6. Assistant Inspector General of Police, C
7. Additional Director, Rural Development
8. The Representative from the Health Depart
9. Deputy Director Woman Welfare (Incharge
- Programme Department
10. Asst. Director, Women Welfare, Social W
- Department
11. District Social Welfare Officer, Chennai
12. District Social Welfare Officer, Thiruva
13. Two Transgender Self Help Groups namel
- Transgender nmg2n0b enr usmb(etrost)ali

3. Secretary, Social Welfare and Nutritious gathering and explained the purpose of the v India, Ministry of Social Justice and Empov Nutritious Meal Programme Department outlin provided to the Transgender through the Tra Transgenders are registered by the District Identity Cards by Tamil Nadu Transgender We whose names are recommended by the District Kadalmeengal and Self Help Groups present w expectations and the activities which they provided by the Transgender Welfare Board.

The Transgenders from Chennai District are carrying out to earn income. They start Government and also obtained loans from the stated that they do their business from the clothes within their Transgender Communities stated that the monetary help given by the Board has helped them to earn a decent living ways of earning their living.

The Transgenders present also showed the They stated that their lives have changed dr They are able to get ration cards, pension,

The Transgenders also stated that their are unable to get proper houses or otherwise

Transgenders Vijaya and Dhanam, stated th be provided to them in the Government sect workers, sweepers etc., in the City Corporat

Roopakala, President of Kadalmeengal Tran Chennai, explained the biological aspect of no way responsible for such a birth and hence more help from the Government in terms of awareness among the public.

She also stated the police are harassing awareness about their problems, and how to among the Police personnel.

In the context of the various issues rais present gave their opinions.

The Additional Director, Rural Developme Minister's Green housing Programme was well to Transgenders, 13e 35t a b e s e h a v e r e n p 2 0 v 2 d e d t and in 206183 - h e u s e s h a v e b e e n a l l o t t e d t o construction. He further stated that rural t Scheme.

The AIG of Police stated that do their d patrol the roads / streets and beaches, and whom they find during the nights on the roa would be issued to all police stations in th

Secretary, Social Welfare requested the officially gazetted.

The Additional Secretary, Government of Empowerment, New Delhi, stated that he made experience by interacting with all the stakeholders stated that, Tamil Nadu is perhaps the only of transgenders. He further stated that a committee to study the problems of Transgenders and to

A PowerPoint presentation was made by the incharge), Department of Social Welfare on Transgender Welfare Board for the welfare of the presentation, on the issues pointed out District, explained the process of sanction loan and the economic activity of production the Transgender Self Help Group in Nallur Village etc.,

During the course of discussion, Secretary Programme Department, suggested that TAHDCO issue of providing further loans if needed.

Transgenders also raised the issue of providing are to be recruited by the Chennai Corporation by the Secretary, Social Welfare and Nutrition the Chennai Corporation can be requested to workers posts. The Official of the Health Department issue with his department.

Further discussions on the issue of housing Dravida Department stated that in some places Transgenders with their own places. However, as it suggested that shelters can be constructed with beds, kitchen, etc., Secretary, Social Welfare stated that housing is a real issue and need together, funds are required.

The Rural Development Department has information for Transgenders they will take appropriate

The Additional Secretary, Government of Health Surgery done by the police and care enquired if sexual assault complaints are reported

they are vulnerable to sexual assaults. Since such cases are reported, what action are they to be looked into.

Finally, the meeting concluded with the p

Director of Social

Visit of Additional Secretary to Government
Empowerment, New Delhi to Transgender Self

The Additional Secretary to Government of Empowerment and Deputy Secretary to Government Programme Department visited the Transgender at No. 69- A, J Block Backside Hut, East Cemetery p. m.

During the visit, the members of the Kad The President of the group negxapd taiivnietdi easboiunt business by the group and they have got Rs. Rs. 50,000/- as Government subsidy and Rs. 1. repayment of loan amount and requested to en

They have expressed their thanks to Soci Department for issue of ID Cards through Tra the ID Card they were able to get Ration Ca

The Group members explained that they are around the nearest area.

The Additional Secretary to Government through the cloth business. The President Rs. 2,000/- to Rs. 3,000/- per month as saving

The Deputy Secretary to Government, S Programme Department enquired about the are business. The members responded that they ar is at walkable distance.

The members also informed that they are making, Vegetable and Flower selling and sel

The members also exposed that their prim house and employment opportunity in Governme

The members also requested to issue ID C

The Deputy Secretary to Government, S Programme Department pointed out to include

As the end of visit, the Additional Secr members of the group.

INTRODUCTION

Transgender people and their p

Who are transgender people?

Transgender people are individuals of an characteristics, or behaviors differ from "supposed" to be. Transgender people have ex story of human life has been recorded. Onl technology available to transsexual people encompasses anyone whose identity or behavior

What is the difference between sex and gender

2. Sex refers to biological status as male sex chromosomes, gonads, sex hormones, into genitalia. Gender is a term that is often us about themselves, which are associated with biological sex are the same across different

Gender Identity and Gender Expression

3. "Gender identity" refers to a person's or woman, or something other or in between personally defined, it is not visible to ot external and socially perceived. Gender expr and behaviors that are socially defined as mannerisms, speech patterns and social inter

What does transgender mean?

4. The contemporary term "transgender" an community of gender-different people. In co "umbrella" term that is used to describe a v but not limited to transsexual people; male as "transvestites," "drag queens" or "drag women, regardless of sexual orientation, who be gender atypical. In its broadest sense, t behavior falls outside of stereotypical genc identify as transgender, but who are perceiv same social oppressions and physical violen these categories. Other current synonyms for different," and "gender non-conforming."

5. In India there are a large number of socio-cultural groups such as kinnars, and other trans-gendered groups, etc. However, these socio-cultural groups are those who do not belong to any of the groups mentioned above. Though an accurate and reliable estimate of their number is denied that their number is miniscule compared to the population of India.

6. The definition of transgender people in India is not uniform. One. The definition recommended in that chapter is not uniformity in the understanding of the term transgender. It is well for it to serve as a guide for all state and central judicial officers, NGOs and the society at large.

7. Transgender people in India face a variety of problems. They perceive that they have been excluded from social life; economy; and politics and decision-making. The consequence of the exclusion is perceived to be the gender status of hijras and other transgender people. This is them in exercising their civil rights in the area of social and economic comprehensive source on the basis of which a report has been prepared by transgender activists or possibly by policymakers. Reports of harassment, violence against transgender persons in the areas of social and economic life have been discussed in local media, from time to time.

8. The problems being faced by the Transgender community in a few Public Interest Litigation (PIL) petitions [WP (C) No. 400 of 2012 & 604 of 2012] in India and one PIL [No. 01 of 2012] in the High Court of Delhi.

9. The problems faced by the Transgender community in WP (C) No. 400 of 2012 filed by the National Human Rights Commission above, in short, are that Transgender persons are treated to the other two sexes i.e. male and female, and are deprived of many of the rights and privileges available to them. The transgender are deprived of social and economic rights in society, have only restricted access to educational and economic rights available to citizens such as right to employment and livelihood opportunities and to travel by Passport, driving license, ration card, etc. They are treated as a legal non-entity in violation of the Constitution of India. Other important submissions of NLSA are as follows:

“(i) The transgender community, generally consisting of a small section of Indian citizens who are treated as

ridicule and even fear on account of superstition in dignity and ought to be entitled to enjoy the basis of sexual orientation or gender identity law and equal protection of the law without part of society and have equal, rights as are based on their class and gender makes them disempowered and deprived groups in Indian society.

" (ii) In view of the constitutional guarantees of rights i.e. Right to Personal Liberty, dignity, Empowerment, Right against violence, Discrimination. Moreover, every person must have the right to gender identity including transsexuals, transgenders, hijras and be considered as a third gender.

" (iii) The problems, faced by transgenders such as unemployment, lack of shelter, lack of medical care, depression, hormone pill abuse, tobacco and alcohol consumption, property, electoral rights, adoption. Ministries and Governments need to recognize the deprivation and provide much needed reform.

" (iv) In 2003, the Hon'ble High Court of Madhya Pradesh Tribunal which nullified the election of a transgender person on the ground that it was a seat reserved for women not entitled to contest the seat. It is submitted that transgender persons are entitled to contest elections. But in the election laws, only male and female are mentioned. This is unfair to transgender persons and their statutory right to vote and contest elections.

" (v) Transgenders, though human beings are entitled to human rights as they are deprived of their fundamental rights. The lack of recognition isolates transgender persons. The Constitution of India prohibits discrimination on the basis of sex to mean only male and female, the eunuchs are excluded and do not avail the benefits of constitutional rights granted to male and female genders.

" (vi) Transgenders have very limited employment opportunities. Access to bathrooms/toilets and public spaces is illustrative of discrimination and amenities. They face similar problems in other areas.

" (vii) So far as criminal liability is concerned, transgender persons are accused of committing crimes. The

General Clauses Act means all human beings. offences include transgenders, though they a

" (viii) Transgenders have very limited empl to male and female sexes. Transgenders, bei jobs.

" (ix) Transgender persons must be properly statutory reservation in education, election sectors. They need to be empowered and up vocational training to upgrade their earnin acceptability in society.

" (x) Since transgenders are prone to health proper medical facilities, including health treatment should be made available.

" (xi) The different manifestations of discr the practice of recognizing and providing or reflected in prescribed forms for applying these do not reflect that a person may belong

10. In the other WP No. 604 of 2013 by Poo Society, the petitioner has made similar sub They have prayed to the Supreme Court to Governments) to inter alia bring a policy fo of the Kinnar Communities in India.

11. The Salvation of Oppressed Eunuchs (SOO the High Court, Mumbai has brought out some are as follows:

" (i) Eunuchs are forced by their 'gurus' to prayer has been made to ensure that the cor ended forthwith under the provisions of the

" (ii) The word 'rape' in Section 375 of Ind crimes against women, men, children and tra targets of some of the worst sex crimes, mor therefore, been prayed to direct appropriate include transsexuals and eunuchs in the defi

" (iii) There is an order of the Hon'ble H validating rights of the homosexual people now, simply because their disability was att in this context for directing appropriate m

validating the rights of homosexual people and eunuchs in the definition of the term 'h

12. In a lecture delivered on Refresher Cou at Tamil Nadu State Judicial Academy on 12 Sensising Officers to¹ By Hon'ble Aec Ms Justice Judge, Supreme Court of India (Chief Justice) had st

"The Constitution provides for the fundame discrimination on the grounds of sex, cast guarantees prod o t h e r a l b e n e f i t s a t o e v e r y c i t i z (transgenders) co t h e n c o n s t i t u t e i o s t a f i z m d . e q the moot question is whether it is being app

"The main problems that are being faced by t unemployment, lack of educational facilitie HIV care and hygiene, depression, hormone penectomy and problems related to marriage a

13. The broad remit of the Committee is to above problems being faced by the transgende

¹ Lecture delivered on Refresher Course for Civil Judges (Junior Division)-I Batch at Tamil Nadu State Judicial Academy on 12.02.2011 Rights of Transgender People – Sensitising Officers to Provide Access to Justice by Hon'ble Thiru. Justice P.Sathasivam, the Judge, Supreme Court of India (presently Chief Justice): [http://www\[dot\]hcmadrass\[dot\]tn\[dot\]nic\[dot\]in/jacade Royappetah\[dot\]pdf](http://www[dot]hcmadrass[dot]tn[dot]nic[dot]in/jacade Royappetah[dot]pdf)

Chapter One

Definition of Transgender

Understanding Gender: Some basic concepts

In order to define or describe who is a transgender, we need a clear understanding of what gender is and how and why it is the most pervading and given social category yet while going about the business of daily life, gender determines every aspect of our life including behaviours, occupation, mobility and so on. This includes documents including birth certificate, ration card, voter ID card, etc.

2. Then there are spaces that are strictly for men or women, queues and lines in several public utilities, for instance security checks at malls, metros, airports, separate seating in buses and other public transport. Living out one's life in a rural or an urban area, globally, gender is constantly present, both in public and private spaces.

3. To the question, how and by whom is gender assigned, we understand that none of us are born with a gender, but based on the kind of primary sexual characteristics. Thus an infant born with genitalia looking like a girl and an infant born with genitalia looking like a boy. The basic idea of 'gender as assigned' is expressed as 'person assigned gender female at birth (PAGFB) and person assigned gender male at birth (PAGMB)'. In this chapter, rather than simply using the terms 'born female' and 'born male', the terms PAGFB and PAGMB would be used.

4. Having established that gender is assigned at birth, we understand that gender at birth may or may not match the person's own/inner sense of gender. As a result there would be those, who grow up feeling that their own/inner sense of gender does not match their assigned gender. Persons who are 'cisgender', both ciswomen and cismen, their own/inner sense of gender does not match their assigned gender. Persons who are 'transgender', their own/inner sense of gender does not match their assigned gender.

Transgender Persons: Some basic names and id

5. In terms of categories of gender, one transgender. The category of cisgender is referred to as man / male or woman / female (cis male and cis female are also used). However gender assigned at birth, then they express names, all of which largely fall under the c

6. Some of these terms used are described similar or overlapping meanings.

□ Trans* - This is a term used in the disc whose own sense of gender does not match wi with an asterix, trans* is an umbrella term expressions. This includes transgender, tra (FtM), gender queer, third gender, other and

□ Transgender person - A person, who does them at birth.

□ Trans-man: A person who is assigned gender with the gender male. The person may or may surgery/procedures.

□ Trans-woman: A person who is assigned identifies with the gender female. The per reassignment surgery/procedures.

□ Male to Female Trans person (M to F / Mt with the female gender.

□ Female to Male Trans person (F to M / Ft with the male gender

□ Transsexual: Transsexual refers to a per to a gender that is opposite to that of the

□ Genderqueer: The term Transgender may me from one gender to the other as is implied (male to female or female to male transition some others may be more comfortable choosing gender binaries of male and female. They may the term Genderqueer to refer to their gender identify as non cis gender and is used as normative gender expressions.

All of the above names except transsexual men, sex reassignment surgery (post-operative), surgery eventually (pre-operative) or who modify their bodies to match their own sense of gender.

□ Persons with Intersex Variations : Persons with primary sexual characteristics, external genitalia, and normative standard of female or male body are intersex. All persons with intersex variations are a mix of everyone else, some of these persons may feel like men, some will be cis gender and others may not, and some may be with Intersex Variations is given at Appendix 7.

7. Sex reassignment surgery/procedure refers to including surgical procedures that people undergo to that of the supposed opposite sex. This includes hormone therapy, laser treatment for removal of body hair, etc.

8. In India, there are also several local terms that describe gender transgressions. Some of these terms have religious connotations such as in the case of Hijras described below:

□ Kothi: A local language term used in South India to identify with characteristics, roles and behaviors of men. Kothis have also been defined as effeminate men who identify themselves as women and use the female pronouns. They use this identity only while among their peers, and otherwise.

□ Hijras: Hijras are usually PAGMBs and identify with the characteristics, roles and behaviors of women and feminine. They cross dress and live their lives as 'third gender'. They may or may not undergo a process of 'guru'. Most Hijras earn a living through sex work on auspicious occasions. Similarly there are 'joginis' who are dedicated to a goddess¹ and later ritually cross-dress.

9. Kothi persons present themselves as men in most contexts but reveal their feminine identity in certain social contexts. They present themselves in their feminine attire and behaviors. At times, the two identities may often overlap, and the social networks they are associated with.

1. ¹Singh S, Dasgupta S, Patankar P, Sinha M. (2013). A People Stronger – The collectivization of MSM and TG Groups in India, UNDP Publication, New Delhi: Sage Publications Pvt. Ltd.

10. For the purpose of this report, and recommends that the term 'transgender' (not will cover various gender identities and ex will not be confined to any one of the spec kothis, etc but will include all such pers transgender persons as follows:

Transgender persons: All persons whose own s assigned to them at birth. They will include have undergone sex reassignment surgery or genderqueers and a number of socio cultural jogtas, etc. The term 'transgender' shall b

11. The Committee further recommends that socio-cultural groups should be prepared & disclaimer that the said compilation is "su who qualify as transgender as per the generi social assessme notf (Csheaep tpear aFgoruarp)h s6hould be persons." The criterion/test for qualifying basis and the fact such a person belongs to a corroborative evidence and not conclusive transgender socio-cultural groups has been information, and is at Appendix - 2.

12. It is also important that while talking make clear distinction between 'sexual orien distinction has been clearly explained in t International Human Rights Law in relation follows:

"Sexual orientation" is understood to refer affectional and sexual attraction to, and i different gender or the same gender or more

"Gender identity" is understood to refer to experience of gender, which may or may not including the personal sense of the body (w of bodily appearance or function by medical, of gender, including dress, speech and manne

13. It is also clear from the Yogyakarta P Lesbian, Gay or Bisexual is a function of se is a function of gender identity. This is ev the said principles:

"...historically people have experienced these perceived to be lesbian, gay or bisexual, b persons of the same gender or because they transgender or intersex or belong to social orientation or gender identity;"

14. However, what is significant is that un gender identity are integral to every person for discrimination or abuse. All human being All human rights are universal, interdependence

15. The remit of this Committee being limi doesn't intend to discuss the issues of lesb

16. In the context of 'sexual orientation' it is recommended that the terms 'sex' and are often used presently) and only the ter documents including identity documents, appl

References:

1.LABIA, (2013) Breaking the Binary: Unders persons assigned gender female at birth ac Mumbai: LABIA

2.Singh S, Dasgupta S, Patankar P, Sinha collectivization of MSM and TG Groups in In Publications Pvt. Ltd.

3.Vaidya, S. (2013). Between Places and Spac narratives of trans-persons, (t U r a p t u a b l i n s h t e i d t) u t Soc S a i l e n c e s

4.The Yogyakarta Principles on the Applicat relation to Sexual Orientation and Ge [http://www\[yogoyakartaprinciples.org/](http://www[yogoyakartaprinciples.org/)

Chapter Two

Constitutional Protection & Jurisprudence

The Constitution of India

In essence, the Constitution of India is 'se before the law and equal protection of the law'. The sex of a person is irrelevant save where there may be made for women [Article 15(3)]. Article 19(1) ensures for all citizens the right to life and personal liberty. Article 14 guarantees life of dignity to all persons. Article 15 prohibits discrimination on the ground of sex.

" 14. Equality before the law. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

" 15. Prohibition of discrimination on ground of caste, sex, place of birth or any of them.
(1) The State shall not discriminate against any citizen on grounds only of caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of residence, be subject to any disability, liability, restriction or condition, which is not applicable to all citizens merely on grounds only of residence, be subject to any disability, liability, restriction or condition, which is not applicable to all citizens merely on grounds only of residence.

(a) access to shops, public restaurants, hotels, clubs and public places, and use of wells, tanks, bathing ghats, roads and means of public transport, wholly or partly out of State funds or dedicated to the public use.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4)

(5)

" 16. Equality of opportunity in matters relating to employment or office. The State shall not deny to any person equality of opportunity for all citizens in matters relating to employment or office under the State.

(2) No citizen shall, on grounds only of residence or any of them, be ineligible for employment or office under the State.

- (3)
- (4)
- (4 A) '
- (4 B) '
- (5)

" 19. Protection of certain rights regarding the right —

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory
- (e) to reside and settle in any part of the
- (g) to practise any profession, or to carry

" 21. Protection of ~~No person shall be deprived~~ personal liberty except according to procedure

2. In Part III of the Constitution, the be or 'citizen'. In the absence of any specific by virtue of the fact that a transgender is necessarily flow to a transgender. The 'Tran the Constitution of India and thereby they a same.

3. Article 5 of the Constitution identifies India. None of the conditions specified ther a pcondition of acquiring citizenship.

4. The Citizenship Act, 1955 which provides Indian Citizenship also does not, expressly identity as a pre-condition for acquiring c he/she has to be a citizen of India. The E measures to enroll the transgender persons a

5. The definition of person under the Gen wider terms. Section 3(42) of the Act of 18 association or body of individuals, whether 1897 Act stipulates that words importing th

females, this stipulation is itself conditional if there is anything repugnant in the subject of the law.

6. A harmonious reading of the Constitution and the provisions of the Citizenship Act, 1955 show that in fact there is no conflict or inconsistency between these laws and a Transgender person would be a 'person'.

7. Interestingly, the Registration of Births and Deaths Act, 1969 is gender neutral. The requirement of indicating sex or death in the Birth or Death certificate, is a requirement of the provisions of the Act itself. Such a requirement is also prescribed in the Rules under the Act.

Naz Foundation Vs NCT of Delhi

8. In the case of Naz Foundation vs NCT of Delhi, it has been held that "Where society can display intolerance, it can be assured of a life of dignity and non-discrimination is antithesis of equality and justice. The law should foster the dignity of every individual"

"Discrimination must be prohibited where it is based on sex, pregnancy, maternity, civil, family or other opinion, birth, national or social origin, a national minority, sexual orientation, gender or other predisposition toward illness or a disability on the basis of characteristics associated with any of these categories."

9. Further it has been laid down in Naz Foundation vs NCT of Delhi that sexual orientation is a ground analogous to sex and discrimination on the basis of sexual orientation is not permitted by Article 15. The horizontal application of rights. In other words, discrimination by another in matters of access to public spaces on the basis of sexual orientation is impermissible even on the basis of Article 15. The above judgment was set aside by the Supreme Court dated- 2013.2 Review petitions have been filed in the Supreme Court.

10. It is therefore evident that the Constitution guarantees non-discrimination for all including transgender persons.

¹Declaration of Principles on Equality 2008

²160 Delhi law times 277

³160 Delhi law times 277

Chapter Three

International Practices

Legal definitions

In many of the countries who have a strong transgender seem to have been observed only effect, the laws emphasise the Anti-discrimination definition and wherever definitions have been guidelines are internationally accepted definitions are citizens with equal rights under the various recognition and strengthening of the anti-discrimination protection measures laid out by the state are

Canada

2. In Canada, a private member's bill on expression and gender identity was passed in 2012. It amends the Canada Human Rights Code to prohibit discrimination by including gender identity for discrimination, as well as including gender identity as a identifiable group, so that offences are punished to a similar extent. The bill was passed by the Senate.

United States of America (USA)

3. In the USA, a federal bill to protect orientation and gender identity in the employment has not been passed and failed several times. In some states, however, they have begun passing their own non-discrimination laws. Governor David Paterson passed the first law in September 2010.

¹ The Harry Benjamin International Gender Dysphoria Association's Standards Of Care For Gender Identity Disorders, Sixth Version, February, 2001.

² <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3906520&file=4>

³ Ibbitson, John (2011-02-10). "Transgendered-rights bill headed for defeat in Tory-held Senate". The Globe and Mail (Toronto).

⁴ Gay and Lesbian Alliance Against Defamation. "LGBT Non-Discrimination Protections in the Workplace". May 2010.

⁵ Gay and Lesbian Alliance Against Defamation. "Governor Paterson Signs Non-Discrimination Protections for Transgender Employees". GLAAD Blog, USA, September 2010.

4. Nicole, took a case of whether she is allowed to access public restrooms as a transgender girl, to Maine's Supreme Court. Her claim that access is a violation of Maine's Human Rights Law is being heard with her.

5. The current status of US policy on transgender rights in Argentina & Australia

6. There are two recent examples of clarifications of gender identity law, recently, by Argentina in 2012 and Australia in 2013. *Gender Identity Act 2012* -

7. Gender identity is understood as the inner sense of one's gender, as perceived by persons, that can correspond or not to the sex assigned at birth or personal experience of the body. This can be expressed through pharmacological, surgical or other means. Gender identity also includes other expressions of gender such as name, pronouns, and appearance. *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill*⁷; Australia, 2013

8. Gender identity means the gender-related characteristics of a person, whether or not they correspond to the person's assigned sex at birth, with or without regard to the person's designation of gender. Intersex status means the status of having physical or hormonal characteristics (a) neither wholly female nor wholly male; or (b) a combination of female and male; or (c) neither female nor male.

From the Yogyakarta Principles

Principle 3: The right to recognition before the law. States should recognize and protect the right of every person to have their gender identity and expression recognized before the law. This right includes the right to refer to each person's deeply felt internal sense of gender, which may not correspond with the sex assigned at birth (which may involve, if freely chosen, modification of their primary or secondary sex characteristics through medical, surgical or other means) and other gender-related attributes, names, and mannerisms;

⁶ June, Daniel, "Transgender Girl in Maine Seeks Supreme Court Review," *Wash Post*, 2015

⁷ Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill, Australia, 2013

⁸ The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity: <http://www.yogyartaprinciples.org/>

States shall Take all necessary legislative procedures exist whereby all State-issued gender/identity including birth certificates, passport reflect the person's profound self-defined gender

The right to Education, civil and political clearly identified and defined. States must capacity in civil matters, without discrimination identity, and the opportunity to exercise to contracts, and to administer, own, acquire (dispose of property;

The International Bill of Gender Rights, 19 Texas, ⁹U. S. A.)

"The International Bill of Gender Rights (I from a gender perspective. However, the ten special rights applicable to a particular application to persons for whom gender identity concern. All ten sections of the IBGR are exercised by every human being."

The Right to define Gender Identity

All human beings carry within themselves and they are capable of achieving. The individual sex, genitalia, assigned birth sex, or initial capabilities cannot be circumscribed by what behavior. It is fundamental that individuals lives unfold, their own gender identities, assigned birth sex or initial gender role.

The Right to Free Expression of Gender Identity

All human beings have the right to gender expression further no individual shall be denied Human self-defined gender identity.

The Right of Access to Gendered Space and Participation

Given the right to define one's own gender expression of a self-defined gender identity or denied participation in an activity by violation accord with chromosomal sex, genitalia assigned

⁹[http://my\[dot\]e\[dot\]ecpc\[dot\]com/dmmnson/illrights\[dot\]html](http://my[dot]e[dot]ecpc[dot]com/dmmnson/illrights[dot]html)
[http://www\[dot\]transgenderleal\[dot\]com/illrights\[dot\]html](http://www[dot]transgenderleal[dot]com/illrights[dot]html)

The Right to control and change one's body

All human beings have the right to control their bodies cosmetically, chemically or surgically. Therefore, individuals shall not be denied the right of expressing a self-defined gender identity. Human or Civil Rights on the basis that they are transsexual, chemically, or surgically, or desire to do so, shall not be denied their gender identity.

The Right to competent medical and professional services

No individual should be denied access to competent medical and professional services on the basis of the individual's chromosomal sex, gender identity or gender expression.

The Right to freedom from psychiatric diagnosis and treatment

Individuals shall not be subject to psychiatric diagnosis or treatment solely on the basis of a self-defined gender identity or gender expression.

UN Declaration on Sexual Orientation and Gender Identity
General Assembly dated 18.12.2008 (First ever resolution on gender identity at the UN General Assembly):

We have the honour to make this statement on behalf of Albania, Andorra, Argentina, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Cambodia, Canada, Chile, Colombia, Croatia, Cuba, Cyprus, Estonia, Finland, France, Gabon, Georgia, Germany, Iceland, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Mauritius, Mexico, Montenegro, Nepal, Netherlands, Paraguay, Poland, Portugal, Romania, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, United Kingdom, Uruguay, and Venezuela.

The statement is non-binding, and reaffirms existing international law. It builds on a previous statement by Norway delivered at the UN Human Rights Council in 2007.

Principle 1 - We reaffirm the principle of non-discrimination in the Universal Declaration of Human Rights, whose article 1 of which proclaims that all human beings are born free and equal in rights.

¹⁰
¹¹[http://ilc.a\[dot\]org/ilc/a/en/article/10](http://ilc.a[dot]org/ilc/a/en/article/10)
<http://www.hrw.org/news/2008/12/11/un-general-assembly-address-sexual-orientation-and-gender-identity>

Principle 2 - We reaffirm that everyone is equal in dignity and rights without distinction of any kind, such as race, colour, sex, language, religion, political opinion, national or social origin, property or marital status, and on the basis of the Universal Declaration of Human Rights, and the American Declaration of the Rights and Duties of Man, and the American Declaration of the Rights and Duties of Man, and the International Covenant on Civil and Political Rights, as well as in article 26 of the International Covenant on Civil and Political Rights.

Principle 3- We reaffirm that all human rights apply equally to every human being regardless of their sex, gender identity or expression.

Principle 4- We are deeply concerned by violations of human rights based on sexual orientation or gender identity.

Principle 5- We are also disturbed that violence, discrimination, stigmatization and prejudice are directed against individuals on the basis of sexual orientation or gender identity, and that the dignity of those subjected to these abuses is violated.

Principle 6- We condemn the human rights violations based on sexual orientation or gender identity wherever they occur, in particular extrajudicial, summary or arbitrary executions, torture, inhuman and degrading treatment or punishment, and the denial of economic, social and cultural rights, including the right to work.

Principle 7- We call upon all states and relevant international organizations to commit to promote and protect the human rights of all individuals on the basis of sexual orientation or gender identity.

Principle 8- We urge states to take all the necessary measures, legislative, administrative, judicial, and other, to ensure that sexual orientation or gender identity circumstances be the basis for criminal persecution, discrimination, or detention.

Principle 12 - We urge States to ensure that individuals on the basis of sexual orientation or gender identity are investigated and held accountable to justice.

Principle 13- We urge States to ensure adequate protection and to remove obstacles which prevent them from carrying out their obligations on the basis of sexual orientation and gender identity.

J u d g m e n t s :

DECISIONS ON GENDER IDENTITY

Australia: Attorney General v. Kevin and Jonathan, 2003
Australia at Sydney, 2003

... taking the view that psychological factors
 "where a person's gender identification [psychological] should in all cases prevail
 treated in law according to the sex identification
 any medical treatment to make their bodies conform to their gender identity."

Australia: AB and AH v State of Western Australia
 HCA 42- 6 October 2011

An appeal in AB & AH v State of Western Australia
 that jurisdiction's highest court, has been
 now legally recognised as men, although they
 Transgender and intersex organisations have

The Australian High Court held that a person's
 characteristics are "confined to external
 recognisable" and "such recognition does not
 Peter Hyndal, of the organisation Gender Agency
 with decisions in South Africa, Britain and
 spokesperson for Transgender Victoria said that
 the Australian Human Rights Commission's Secretary
 that surgery should not be considered a necessary
 change of sex."

Additionally, Australia has recently changed
 can alter their passports without sex-change

B VerfGE [Federal Constitutional Court], May 2011

The ¹³ ~~cases~~ brought by prominent lawyer Maria-
 Constitutional Court case that led to the
 (Transsexuellengesetz - TSG in German), and

The German Constitutional Court considerably
 under German law, particularly the rights of
 same-gender relationships.

In Germany pre- or non-operative transsexual
 identity (so called "small solution" as opposed to
 however legally they remain in their birth
 male or female non-operative transsexual who has
 changed her first name wanted to get her re-

¹² <http://www.gaylawnet.com/laws/cases/ABvStateofWesternAustralia.pdf>

¹³ <http://www.ilga->

[europe.org/home/guide/country_by_country/germany/](http://www.ilga-europe.org/home/guide/country_by_country/germany/)

[landmark_transgender_case_in_german_constitutional_court](http://www.ilga-europe.org/home/guide/country_by_country/germany/landmark_transgender_case_in_german_constitutional_court) and [http://sl \[dot\] ed /\) oc m](http://sl[dot]ed[dot]org/m)

Journal/Archives/Mott Article[dot]pdf

the same perspective she is living in a marriage registrar and got married, she was changed back to her previous name in a process.

This rule was enacted in 1981 to prevent what she is still legally male she is not available to partners of the same legal gender.

The current law in effect is a prohibition on operative homosexual transsexuals in Germany (non-operative transsexuals can register a partner's name back). This aspect of the TSG has been challenged today as it contravenes the intimate sphere of gender identity of the affected individuals. Many pre-operative transsexuals in Germany feel their gender identity has to be respected by the law, which is outdated in its expectation that transsexuals who are in fact homosexual.

The German Government and Bundestag now have passed a law giving operative homosexual transsexuals the ability to register a partner's name back.

LSVD has urged the government to use this law to amend the TSG as a whole and make it less burdensome (by removing the requirement for full surgery to legally divorce in that case). Also we hope that this law will allow for non-operative transsexuals with the "small surgery" to have their gender identity legally recognized in Europe (in Europe they can use identity cards).

XY v. Ontario, 11 April 2012

The 11 April 2012 decision of the Ontario Human Rights Tribunal regarding reassignment surgery in order to change a sex has been hailed by Egale Canada as a significant step towards equality faced daily by trans people in Canadian society.

According to the ruling, entitled XY v. Ontario, "Section 36 of the [Vital Statistics Act] is discriminatory against transgendered persons because it requires transgendered people are not entitled to have their bodies altered."

¹⁴ <http://www.scribd.com/doc/89708239/Ontario-Tribunal-Decision-on-Vital-Statistics-Act-surgery-requirement>

While the Tribunal does not have the jurisdiction directed the Government of Ontario to revise the order to remove the discriminatory effect of the Code with the Ontario Human Rights Code—namely, the ruling sets a 180 day deadline for the amendment.

*Sunil Babu Pant and Others*¹⁵. Nepal Government v. Supreme Court of Nepal (21 December 2007)

In April 2007, the Blue Diamond Society, Maiti Nepal, and all organizations representing lesbian, gay, bisexual, and transgender individuals as a third gender, filed a writ petition under Article 107(2) of the Constitution of Nepal, challenging the law on sexual orientation and gender identity, and the violence and discrimination against them.

Under Nepal's citizenship card system, all citizens have access to certain benefits, such as ration cards, but frequently denied citizenship cards to individuals who are neither male or female. In addition, the law on relationships, Nepal's Criminal Code criminalized the third gender (metis) frequently faced persecution and gender expression.

The petitioners argued that international human rights courts protected people, including those of the third gender (intersex people) had not been treated equally. People of the third gender identity documents, including birth certificates, citizenship cards, specifying sex in accordance with the law, identity cards, people of the third gender were not recognized and were dishonored and disrespected.

The Court considered the following questions:

(1) Whether the writ petition regarding the third gender, considered as minorities on the basis of their sexual orientation under the category of public interest litigation.

(2) Whether homosexuals and people of the third gender are some mental perversion.

(3) Whether the State had acted in a discriminatory manner.

(4) Whether the order sought by the petitioners was in the public interest.

¹⁵ <http://www.gaylawnet.com/laws/cases/PantvNepal.pdf>

First, the Court found that the writ petition because it concerned a matter of social justice of the state to make the deprived and socially enjoy their rights as others did. Protection in the realm of public interest litigation the extraordinary jurisdiction in cases of public interest litigation.

The Court next considered the origin of non-discriminatory identities. It used the Yogyakarta Principle and defined the terms lesbian, gay, bisexual and intersexuality.

The Court concluded that sexual orientation "mental perversion" or "emotional and psychological people of the third sex were "sexual perverters".

As for the question of whether the State had discriminated on the basis of sexual orientation was homosexual and whose gender identity was the petitioners and the people they represented. It based this finding on the fact that the State had discriminated on the basis of sexual orientation.

The petitioners argued that international instruments and courts protected people, including those on the grounds of sexual orientation. People of the third gender (intersex people) had not been treated equally. They had not been issued equal identity documents, including birth certificates, identity cards, specifying sex in accordance with their identity cards, people of the third gender were discriminated against and were dishonored and disrespected.

The Court ordered the Government to make the new laws or amending existing laws, to ensure that all sexual orientations could enjoy their rights and that the new Constitution should guarantee equality of gender identity and sexual orientation. Finally, the Court directed a committee to study issues related to same-sex marriage.

DECISION ON CUSTODY OF CHILDREN

Kantaros v. Kantaras

In June 2005, love, patience, and persistence led to a historic settlement agreement between NCLR and Michael, a transsexual father, has been fighting for his rights to his two children, aged 16 and 13. This was reported in news in 2002, when Court TV aired the entire story. Michael's former wife knew he was transgender.

for divorce, she attacked the validity of the parent to the couple's two children-based so 2003, Circuit Court judge Gerard O'Brien is Michael was legally male, affirming the val primary custody of the couple's two children Judge O'Brien's historic Order, voiding the the case back to the trial court to determin case, television celebrity Dr. Phil invited to mediate the case for the sake of the chi parties reached a settlement in which Mich responsibilities and will continue to share

J E A N D O E v . B E L L

In January 2003, SRLP working with the Peter Center and Debevoise & Plimpton LLP, helped transgender youth in foster care in the Jean

In this case, a 17-year-old transgender woman while a resident in foster care facilities (ACS). The court ruled that dress codes barring clothing appropriate to their gender identity

In the suit, the legal team argued that ACS based on her gender identity disorder (GID) ACS was violating her First Amendment right Supreme Court Judge Louise Gruner Gans ruled unlawful discrimination.

E m p l o y m e n t T r i b u n a l D e c i s i o n s

P v (1) S and (2) Cornwall County Council (1

P was employed as the general manager of a Cornwall County Council, and was originally employer that she intended to undergo gender a sex discrimination complaint. The industr dismissal was her employer's objection to h operation. The tribunal did not believe, h Discrimination Act (SDA), because the SDA p women because they belong to one sex or the and the tribunal was satisfied that P would reassignment surgery whether she had been a the European Court of Justice (ECJ) for a ru wider in scope than the SDA. In its judgement Directive stipulates that there should be '

and that the right not to be discriminated fundamental human rights whose observance the scope of the Directive cannot be confined to a person is of one or other sex. In view of it seeks to safeguard, the Directive must also reassignment. Such discrimination is based, person concerned. Where a person is dismissed undergo, or has undergone, gender reassignment comparison with persons of the sex to which undergoing gender reassignment. Dismissal of gender reassignment is therefore in breach industrial tribunal, her discrimination compensation of an unstated sum before the h

Chessington World of Adventure v Reed (1997

Ms Reed was subjected to a prolonged campaign colleagues at work when she announced her claim. The Employment Appeal Tribunal (EAT) held that intention to undergo gender reassignment was Act).

M v West Midlands Police (1996 ET)

M, who had undergone male to female gender Midlands Police Force as a police constable. informed that she was suitable for appointment supply would show that she had previously been Midlands Police that she was transsexual. indicating that because of her gender reassignment would be inappropriate for her to carry out suspects. The Industrial Tribunal found that reassignment did not come within the SDA/Equality Act. did, West Midlands Police had a defence under occupational qualifications and under Article 15. Since this case was heard, the EAT has decided discrimination on the grounds of being transsexual and Chessington World of Adventure v Reed abolished. amended to make it lawful to discriminate against if the work involves the holder conducting it contained in, for example, The Police and Criminal

Malone v Ministry of Defence (1997 ET)

Ms Malone was dismissed from the Royal Air Force she was transsexual. She made her complaint

months' time limit. The tribunal considered it had not been known at the time of the discrimination arising on the ground of being transsexual. The issue had not been transposed into domestic law. The claimant's claim had not been transposed into domestic law. The claimant's claim had not been transposed into domestic law. The claimant's claim had not been transposed into domestic law.

Clare v Fairburn t/a The Old Rectory Nursing

Ms Clare believed that she had not been selected for the interview because she was a transsexual person. She was rejected because of her lack of qualifications. The tribunal accepted the reason for her rejection was her being transsexual. The claimant's claim was unsuccessful.

A v Chief Constable of the West Yorkshire Police

A underwent gender reassignment from male to female. She worked for the West Yorkshire Police. She made it clear from the beginning that she was transsexual and was told that, in accordance with the Force's policy, this was a problem. She was invited to continue with the various selection tests. However, she was not selected. She had been rejected, the issue of transsexual people in the Force had been made that transsexual people were not allowed to search suspects, and could not therefore be promoted. (The Police and Criminal Evidence Act requires officers to be of the same sex). The case reached the House of Lords. The Court of Appeal refused A's application for judicial review.

INDIA: DECISION ON POLICE HARASSMENT

Jayalakshmi vs The State of Tamil Nadu, 10 J

The petitioner was the sister of a young man who was being interrogated by the Police regarding a crime. He was taken to a Police station for interrogation and he was told that he would report to the Police station regularly. The Police personnel inside the police station were harassing him. The petitioner sought disclosure of the sexual harassment.

Pandian later set himself on fire and after his death, a declaration was made that he was unable to continue with his life.

The Court ordered that:

The State Government has no competence as to the right of a person to change their name.

The State Government is not liable to pay compensation for the loss of a name.

ABRIDGED CRIP TO FOND IDENTIFY - RELATIVE SEX CHANGE OPERATION AND FEMINISATION PROCEDURES; AND PROCEDURES FOR IN LEGAL DOCUMENTS)

Argentina

The law allows a person to change their name without any reason.

The law allows a person to change their name without any reason.

The law allows legal minors to change their name with the authorization of competent judicial authorities etc.

The law allows a person to change their name without any reason even before sex transition by straightaway.

The law allows a person to change their name without any reason in official records (not in private documents).

Changes in name are not subject to any legal obligations.

UK - Gender Recognition Act 2004

The law allows a person to change their name without any reason from female to male.

Trans* communities can change their legal sex documents (that includes medical certification panel. After scrutinizing the documents/app gender recognition certificate based on marriage

After getting full gender recognition certificate which he or she has changed (marriage, child restrictions levied to transsexuals relative offences for exercising their rights in new

It ensures confidentiality of information (f

Change in legal sex does not affect parentho

Change in legal sex has effect on marriage a

Jersey Gender Recognition¹⁸ (Jersey) Law 2009

The law legally recognizes gender identity of transsexuals.

It allows transsexuals of 'full' age to change Royal court for gender recognition certificate, relevant changes will be made records/registers. From there afterwards, the to which he or she has changed (marriage, ch

However, there are some restrictions levied and gender-specific offences for exercising

Transsexuals heterosexually married will not provide evidence of annulment/divorce/death

Transsexuals based in Jersey who have done S for gender recognition certificate to get respectively. It ensures confidentiality of

Change in legal sex does not affect parentho

South Africa¹⁸ Alteration of Sex Description and S

The law allows a transgender person to apply to 'sex description' on the basis of the 'gender issues with which the person is concerned for purposes' to be of the new sex. The specific Act

¹⁸ [http://www\[dot\]jerseycommunityrelations\[dot\]gov\[dot\]nj/doc\[dot\]msoc/](http://www[dot]jerseycommunityrelations[dot]gov[dot]nj/doc[dot]msoc/)

¹⁹ http://en.wikipedia.org/wiki/Legal_aspects_of_transsexualism

ibid.

refers to reassigning a person's sex by change and includes any part of such a process. This had genital surgery in order to have the sex

Japan - Act on Special Cases in Handling Gender Identity
 IdentityDw is b h d effect from 16 July 2004

The law enables transsexual people to change reassignment surgery and hormone replacement change, it is not paid for by national health

Germany - The German Gender Recognition Act

The German Gender Recognition Act (Transsexual regulations on the change of the civil status called "small solution" allows the transsexual Transsexual Act). The so-called "big solution" (Sec. 8 Transsexual Act). In all cases, a change of the gender status (Sec. 2 and 8 of

The Transsexual Act is vastly criticized as requiring the transsexual to agree to be married. The Transsexual Act provided that the change of transsexual had to be divorced, and that sterilization and a sex change surgery. The prerequisites of Sec. 8 of the Transsexual declared the requirement of a divorce (in same sex) as void. It has been removed from that the juridical recognition of transsexual surgeries. Thus, they declared the provision comes into force

On the question of legal treatment of transsexual between transsexual and intersexual persons makes clear that intersexuality or the gender development) are variations of the anatomical individual to the male or female sex is doubtful. The term transsexuality has to be clearly different. Transsexuality is typically existing when in their psychological sex. The German Ethics intersexuality and transsexuality and thus groups of people concerned: In contrast to related in the course of their lives to the

²⁰ http://en.wikipedia.org/wiki/Legal_aspects_of_transsexualism

²¹ <http://www.impowr.org/content/current-legal-framework-transgender-issues-germany#sthash.lrlXvPOG.dpuf>

question of gender identity and gender role comprises a host of biological - somatic given can exist already at birth.

In its legal evaluation the German Ethics C people have based on a the contribution status of (different from male or female) register of births as necessary. Consequently November 2013 the Law on the Amendment of Personal Registration Legislation (PStG) and the Personal Registration Law (PStG) the birth based on the former legal situation the register child open in the birth register, if the gender. In registration practice, however, and doctors usually agreed on a gender as characteristics. The new regulation in § 22, without indication of the gender has to be associated to the female nor the male "intersexuality" discussed by the German Ethics indication remains open in the birth register aims at relieving the parents from pressure and for that reason to have sex reassignment soon. The fact that the registrar may leave not lead to the introduction of a new gender the constitutional and civil right, only the right as register right only reflects the family right". Regulations for registrar intersexuality for the marriage right and the

France

France treats discrimination on grounds of t

In France, hormonal treatment and/or surgery

The individual must demonstrate:

- a) that (s)he has followed a medically supervised restricted to certain state appointed doctor
- b) that (s)he has been rendered surgically i
- c) that (s)he has undergone other medical pr

France permits a 'post-operative transsexual acquired gender. Also, the name can be changed surgery, and/or hormonal treatment.

Transgender persons are defined as a distinct change their civil status, first name and the does not appear in law, only in jurisprudence.

In 2009, France became the first country in illness. Transsexualism is part of the ALD. The French Senate voted unanimously in July transgender people.

Some case laws on above points:

Transsexuals have the right to change the s appears in no law, but in jurisprudence. In Court of Human Rights on 25 March (B. v. Fr Convention on Human Rights. Seized by a comp become a woman, The European Court found t revelation of her official sex, placed the c her right to privacy. Following this Europea Cassation amended its jurisprudence relative certificate to be amended after a sex change the right to privacy justifies that the civil or she app²²ears to be"

Transsexuals also have the right to change civil status automatically gives one the rig any person, a transsexual has the right to t article 8 of the E. C. H. R. He or she may marr been prohibited in France. Finally, a trans cohabiting p²³artner's children

²² 11 December 1992, JCP 1993, II, 21991.

²³ V. CA Aix-en-Provence, 12 March 2002.

Chapter Four

Transgender identity

A crucial issue for consideration is categorized as male or female depending on third gender, namely, 'transgender' should

2. The Committee referred several papers world in general, as well as to the paper Arvind Narrain to UNDP titled "Legal Recognition of Transgender People in India: Current Situation and Potential Options". The authors have proposed three options for transgender people in India: -

Option 1 - Legal recognition of gender identity for trans men

Option 2 - Legal recognition of gender identity for trans women ('Third Gender' or 'Transgender')

Option 3 - Legal recognition of gender identity for trans men or a separate gender ('Transgender')

3. Parameters that can be considered for implementation are provided by the authors and are listed in the annexure. Pros and cons of each of the above options are also provided.

Option 1 - Legal recognition of gender identity for trans men

- Merits:
 - Easy to implement
 - Protects privacy of the transgender people

¹Legal Recognition Of Gender Identity Of Transgender People In India: Current Situation and Potential Options, authored by Venkatesan Chakrapani & Arvind Narrain, UNDP publication 2012.

- Demerits:

- Doesn't provide an option to a person
- Transgender identity remains obscure may pose problems in availing specific persons; number of transgender persons
- Cis women may not feel comfortable as women and share benefits exclusively local bodies

Option 2 Legal recognition of gender identity gender ('Third Gender' or 'Transgender')

- Merits

- Creates three distinct 'male', 'female' no overlapping implement

- Demerits

- Takes away the right of a person to
- Obscures the chosen gender identity

Option 3 Legal recognition of gender identity their choice, -men or a separate gender ('

- Merits

- Protects everyone's rights to choose
- Easy to implement

- Demerits

- Creates some confusions with trans men or women; the question will be ho
- Number of transgender persons cannot

4. After considering the proposed Commission recommends Option 3 to be adopted in which

choice to declare himself/herself as neither that this model is already being followed in India and UIDAI. Even the RGI had followed. However, the Committee recommends that should be used and nomenclatures like 'ot

5. The Committee next discussed the issue of transgender people. The Committee, in the light of suggestions by the authors mentioned above, suggested a combination of the following: a self-affidavit, and go on to a more formal 'government authority like a board.):

- A 'gender recognition certificate/document similar to the panel constituted by Government of Tamil Nadu (Aravani Welfare Board) that usually issues identity.
- A medical certificate from a doctor that certifies a transgender person (this procedure is already in place in India). This would be specifically for a woman to man. (Care will have to be taken in the process, many in the community already face discrimination at the hands of health care providers.)
- A self-affidavit or self-endorsement of gender change channel (e.g., similar to the process in place in India) in which the person can self-declare as transgender who want to identify as 'transgender' or undergo the process of gender change, we reinforce this as a part of the change.)

6. It was noted that authors have suggested the model of Argentina where a self-declaration is required for change of gender. It was felt that in the first instance, to follow the model suggested in the first report, transgender identity should be done by an authority in Tamil Nadu Government, wherein a transgender person can approach the Aravanis Welfare Board on the basis of the recommendations of the Screening Committee headed by District Medical Director (HS), District Social Welfare Officer, and a representative of transgender community. The process is provided in chapter ten. The Committee

may be adopted by other States, with suitable conditions, in respect of the other measures in Tamil Nadu. For example, the addition of a separate category may be considered by the State Governments. It is recommended that in place of the term 'transgender' the term 'third gender' will be used. Members of this Screening Committee should have two members from the transgender community. Training/ orientation/ sensitization on transgender issues should be provided to all government employees.

7. The Committee further recommends that the term 'transgender' may be recognized by a Government order. For this purpose, Government may refer the matter to the Law Commission for its consideration.

8. In sum, the Committee recommends that the following measures be taken:

- i) A Transgender person should have the option to use either 'woman' or 'transgender' as well as 'man' in official documents. Options independent of surgery/ hormone therapy should be provided. The term 'transgender' should be used and not 'third gender' should not be used.
- ii) Certificate that a person is a transgender should be issued by a state level authority duly designated by the Government of State/UT on the lines of Tamil Nadu. The certificate should be based on the recommendation of a District Level Authority consisting of the Collector/District Magistrate, a representative of the Transgender Welfare Officer, psychologist, psychiatrist, and other representatives of transgender community. The certificate should be issued by an official as the State Govt/UT Administration.
- iii) The certificate issued as at (ii) should be made acceptable to all authorities for use in all official documents like ration card, voter ID card, AADHAAR card, etc.
- iv) The third 'gender' identity known as 'transgender' should be recognized by a Government order and for this purpose, Government may refer the matter to the Law Commission for its consideration.

Chapter Five

Inclusive Approach

" we must keep in mind that growth must be inclusive and sustainable. We must reach the SCs, STs, Minorities and women in our society....."

- Dr. Manmohan Singh, Prime Minister

Inclusion

The genesis of the problems of Transgender discrimination they face in the society, regional political spectrum. They are one among the many of their problems will, therefore, require solution of an inclusive approach in all spheres of life of disadvantaged groups and without their inclusion inclusive growth cannot be fully realised.

Meaning of Inclusiveness

2. According to the Twelfth Five Year Plan, there are different things and each aspect of inclusiveness has different facets of inclusiveness are inclusiveness as equality, inclusiveness as regional balance, inclusiveness as empowerment and inclusiveness through employment. Inclusiveness is important, inclusiveness as group equality through programmes assume special significance for the Twelfth Year Plan (2012-17), inclusiveness as group equality is seen to be 'fair' by different socio-economic groups. It must also embrace the concern of other groups like Scheduled Tribes (STs), Other Backward Classes and other marginalised persons, being a part of the inclusive growth. Inclusiveness through empowerment is concerned with the eleventh⁴ and it continues to be important during

¹Twelfth Five Year Plan (2012-17): Faster, More Inclusive & Sustainable Growth, Volume I, Foreword, page vi.

² Ibid, page 5

³ Ibid, page 6

⁴ Ibid, page 7

living in rural areas may be brought in the
be brought in the ambit of National Urban Li

3. The Twelfth plan document states: "To
by a vision of India moving forward in a wa
in living standards of all sections of the po
in the rural areas, and also more environmentally su
Developing capabilities

4. The Twelfth Plan focuses on developing
the capabilities we need to develop to achi
sustainable growth. We first consider the de
many ways the most important. Then we foc
development of infrastructure which is a ger
Central and State Governments have a large r
the Twelfth Plan at the Central and State lev⁶

5. Development of human capabilities invo
longevity, education, skill development, nut
information technology. The Experts Committ
develop human capabilities, the needs of tr
account. Significantly, the Twelfth Plan al
Policy must be the provision of Universal Hea
is assured of access to a well⁷-defined set a
objective. It is expected that this will un
will also be benefitted.

6. The Committee is of the view that inc
Government's strategy to mainstream the tra
Justice & Empowerment should take up with
Government of India and State Governments
community in their policies, programmes and

7. The Twelfth Five Year Plan (2012-17);
transgender communities as follows:

" 23.71. The Twelfth Plan proposes empower
advocating that line Ministries support thei
development, employment opportunities and fi
provided for transgendered persons in all
introducing a separate column to include the
Empowerment along with the Ministry of Sta

⁵ibid, page 10

⁶ibid, page 10

⁷ibid, page 13

determine the number of transgendered persons in order to create a law to protect interests under these conditions.⁸

8. In keeping with above intent, the Commission on Justice & Empowerment to seek convergence schemes for a more targeted and focused approach detailed in next Chapter Six; while considering intervention in certain areas.

⁸Twelfth Five Year Plan (2012-17): Social Sectors, Volume III, Foreword, pages 176-77

Chapter Six

Convergence Approach

Various Ministries/Departments of the Government have a number of schemes which target a variety of special emphasis is given to cover the disadvantaged groups. The committee is of the opinion that these schemes can be effectively utilized for providing benefits to the eligible under-privileged. Some of these schemes/programmes are given below (this list is not exhaustive):

Mahatma Gandhi National Rural Employment

2. The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) was a major initiative for enhancing the livelihood security of people in rural areas who are engaged in unskilled manual work. The Act provides for 100 days of wage employment in a financial year to every rural household member voluntarily engaged in such work. The Act also provides for the employment of such transgender persons who are willing to work.

National Rural Livelihoods Mission (NRLM)

3. As per the Twelfth Five Year Plan Document: Economic and Financial Affairs, NRLM will emerge as the centerpiece of rural development. The mission is to be implemented in a phased manner in blocks which will be identified by each State. The range of activities under the mission will include:

- Building institutions of the poor
- Promotion of financial inclusion
- Diversification and strengthening of rural enterprises
- Promotion of convergence and partnerships between the government and non-government organizations
- Promotion of skills and placement support
- Support for livelihoods and social innovation

¹ <http://nrega.nic.in/netnrega/home.aspx>

² Twelfth Five Year Plan (2012-17): Economic Sectors, Volume II, page 297

4. It is recommended that the transgender as a target group under SHG (NRLM Help Grant) granted to the transgender community to Rules/ policies may also be relaxed in the

National Social Assistance Programme (NSA)

5. This is an important programme aimed differently abled people and others who have unconditional cash transfers. At present Old Age Pension Scheme (IGNOAPS), the Annapurna Benefit Scheme (NFBS), the Indira Gandhi (IGNWPS) and the Indira Gandhi National D is recommended that transgender persons targeted under the Indira Gandhi National

National Urban Livelihood Mission (NULM)

6. An important initiative of the Ministry of Alleviation is the National Urban Livelihood poverty and vulnerability of the urban population through gainful self-employment and skilled wage appreciable improvement in their livelihoods through strong grassroots level institutions of the shelters equipped with essential services

7. Majority of transgender persons are transgender community could tremendously persons are taken into account in the NULM may be granted to the transgender community services, etc. Rules/ policies may also subsidies, loans.

Healthcare facilities

8. The inclusive agenda of the document: Social Sectors, Volume III mentions services provided with marginalized sections of the population.

³ ibid, page 313

⁴ http://mhupa.gov.in/NULM_Mission/NULM_Mission.htm

access to ~~under~~ ⁵ this, barriers to access especially for the disadvantaged and people

9. Keeping in line with both ~~in~~ ⁶ what the and Family Welfare should issue an advisory Governments and Union Territory Administrations to ensure easy access of healthcare facilities.

Rashtriya Swasthya Bima Yojana (RSBY)

10. Rashtriya Swasthya Bima Yojana (RSBY) based health insurance cover of Rs. 30,000 comprising up to five individuals. The basic registration/registration fee is Rs. 500. The scheme (out-patient expenses are not covered) and Rs. 100 per visit ⁶ is for target groups have from time to time. ~~The~~ ⁷ Committee recommends that this be covered under RSBY. Since the Scheme coverage could be provided either to a person alternatively, coverage of Rs. 6,000 per person on payment of Rs. 6 per annum as would be administratively more convenient

National Health Mission (NHM)

11. As mentioned in the ⁸ Twelfth Five Year Plan document: S-III, the gains of flagship programme of NHM be strengthened under the umbrella of NHM have universal coverage. While the focus will continue, a major component of NHM is primary healthcare to the urban ⁷. ~~For~~, ⁸ the Committee recommends that the concerns be adequately taken care of under the NHM.

Education

12. Education is the most important lever for transformation ⁸. There is need for proper education over-emphasized. The integration of training

⁵ Twelfth Five Year Plan (2012-17): Social Sectors, Volume III, page 10

⁶ ibid, page 20

⁷ ibid, page 26

⁸ ibid, page 47

Abhiyan (SSA) and Right to Education Act education issues of transgender community persons will happen when an enabling environment for transgender children are not pushed out into the system through measures that have

National Policy on Skill Development, 2009

13. The National Policy on Skill Development empowers all individuals through improved internationally recognized qualifications to ensure India's competitiveness in the global

14. The Policy presently does not include groups in the chapter on skill development. The Plan document proposes empowerment of trade unions. Line Ministries support their education development initiatives. It is recommended that the transgender persons mentioned in the said National Policy as a part of skill development for the unorganized sector

15. The National Skill Development Agency will focus on persons in vulnerable categories who are in need of skilling. The Government has identified SCs, STs, OBCs, minorities, women and disabled persons as

Indira Awas Yojana

16. Housing is an important need of the transgender community. The report notes that transgender persons are included in the list of beneficiaries under para 4.1 of the National Policy on Skill Development. The Government recommends that the transgender persons be included in the list of beneficiaries so that maximum number of transgender persons are benefited. The Tamil Nadu Government has assisted a number of transgender persons in housing

17. Government may also relax norms for transgender persons in various programmes/schemes cited above

⁹ ibid, page 142

¹⁰ <http://labour.nic.in/upload/uploadfiles/files/Policies/NationalSkillDevelopmentPolicyMar09.pdf>, page 28

¹¹ <http://www.skilldevelopment.gov.in/>

¹² http://iay.nic.in/netiay/more_benefcry.htm

Chapter Seven

Addressing Stigma, Discrimination and Violence faced by Transgender People¹

Introduction

Despite a pre-colonial heritage that recognized and celebrated gender diversity through sculptures, mythology, and transgender people, negative attitudes of intolerance, stigma, and violence against transgender people pervade families, educational institutions, workplaces, and society at large. Human rights identified people against transgender people, discrimination, unfair practices, membership in a caste, and society at large.

Stigma, discrimination, and violence stem from intolerance of gender norms and expectations, the gendered power relations, and the threat to psychological harm.

In this chapter, we describe the nature of stigma, discrimination, and violence experienced by transgender people and structural interventions needed to address them.

Children and Adolescents

While most transgender individuals behave in roles during childhood, not all gender-nonconforming

¹Drafted by Dr. Archana Dassi and Dr. L. Ramakrishnan with members of the expert committee. Thanks to Dr. Kaveri Rajarathnam and Thaddeus Alfonso for valuable suggestions

²United Nations https://www.un.org/discrimination/id_8_un

³Krug EG, LL Dahlberg, JA Mercy, AB Zwi and R Lozano. Eds. 2002. Geneva, World Health Organization

⁴Kalra, G. 2012. Hijras: the unique transgender culture of India. *Health Affairs* 31(2): 121-126.

⁵Elder GH, MK Johnson and R Crosnoe. 2003. The Emergence and Stabilization of Adult Development. In Jeylan T. Mortimer and Michael J. Shanahan (Eds.), *Handbook of the Life Course* (pp. 3-19).

identity. However, gender-nonconforming children at home and regardless of whether they consider themselves transgender. Hence the authors use the term 'transgender children' in this chapter.

Most families do not accept gender-nonconforming children manifest as early as three to five years of age. Transgender or gender non-conforming children can be very sad, fearful and disappointed while others are willing to support their loved ones without

Parents may threaten, scold or even assault their children for being girlish or feminine, and their reasons for doing so: fear that a gender-nonconforming child will bring shame to the family, apprehension that their child will be discharged from family responsibilities. This ostracism can shorten the lifespan of such children. Gender non-conformity leads to violence and a range of corrective actions by family networks including neighborhood, school etc. In one instance, corrective rape of PAGFBs by family members; this may lead to (in addition to) unwanted pregnancies, infections and injuries. Another common practice is mental health professionals to force cure on both PAGFBs and PAGMBs. Transgender and gender-nonconforming children are expelled from the family, or run away unable

Puberty is a difficult time for all transgender children. Puberty and attaining menarche is marked by physical changes, however it is a time of heightened distress. In rural communities there is increased surveillance and control, even when a trans-PAGFB or trans man may want to move to a bigger city, which lends anonymity and where a trans-man (a common narrative among trans-women) is more likely to pursue this with the police and bring the person back home. After that the daughter of the family runs away. This puts major restrictions on how they express their gender non-conformity.

⁶Roberts, AL, M Rosario, HL Corliss, KC Koenen and SB Austin. (2012). A Risk Indicator for Childhood Abuse and Posttraumatic Stress in Transgender Youth. <http://pediatrics.aappublications.org/content/early/2012/04/01/peds.2011.2148>

⁷Chakrapani, V. & Dhall, P. (2011). Family Acceptance Among Transgender People in India. Family Planning Association of India.

⁸UNDP (2013). Transgender Health and Human Rights, Discussion Paper.

Anxious parents attribute gender - nonconforming mental illness, sexual abuse, confusion, reb way to help their children thrive as adults normative peers, seek to make their child through abuse, bullying, threats and medical fear the consequences of non-conforming to However, attempts to change or force his/h unethical and contrary to findings from e develop. Furthermore, these reactions undermine gender - nonconforming and transgender children

Stigmatization of gender - nonconforming and the educational system, which mirrors the patriarchal gender norms. A study done with that school uniform, certain kinds of sport gendered, for instance bakery or cooking for immense stress for¹⁰ s e v a s a m a t e s a n s n o p a g e s h e r s harass gender nonconforming children. Ext nonconforming children are at higher risk of

A rece¹¹tt h s a t t u d y o l l o w e d gender - nonconforming c showed that gender nonconformity strongly p adolescence, and that physical and emotional home, accounted for much of this increased r

Absence of a supportive family and a hostile reasons many gender - nonconforming children foreclosing opportunities for gainful emplo jamaat system offers space for transgender male at birth, and may offer income through married couples and newborn children, and/o system does not exist for those who are assi support system, in addition to the limited m the relative invisibility of FtM transgender

⁹Halim ML, DN Ruble, CS Tamis-Lemonda, KM Zosuls, LE Lurye, Avoidance of All Things "Girly": Children's Appearance Rig Development. *Dev Psychol.* 2013 Nov 25.

¹⁰Nevatia, S., Raj, Mahajan, S., Shah, C. (2012). Bound by within the formal education system, *Contemporary Education*

¹¹Chakrapani, V. &Dhall, P. (2011). Family Acceptance Among and Transgender people in India, Family Planning Associati
¹Roberts AL, M. Rosario, N Slopen, JP Calzo, SB Austin. 20 victimization, and depressive symptoms across adolescence. *J Am Acad Child Adolesc Psychiatry.* 2013 Feb; 52(2):143-52.

Addressing stigma, discrimination and violence against transgender children and adolescents:

Family awareness and information are needed for nonconforming or transgender children, setting normative attitudes. Such information could be provided by child development specialists, as well as siblings should be alert to the risk of the child being mistreated by the extended family, at schools, or accordingly. They also need to take cognizance of a nonconforming or transgender child as he/she experiences gender dysphoria when he/she develops secondary sex characteristics of gendered self.

Counseling and other mental health services are needed for the children and their parents alike. The Center for Counselling in Chennai and its replication by government and civil society groups help parents to (i) overcome misconceptions about sexuality, gender, and intersex variations and (ii) work through their negative feelings of anger and grief to create a safe space. Additionally, existing forums such as support groups may be oriented on transgender issues, and targeted at gender-nonconforming youth.

Besides a supportive family environment, gender-specific counseling and support for their self-stigmatization and abuse. Such support could be made available through counseling services, and through youth and suicide hotlines.

Educational: Awareness interventions for transgender youth from hostile school environments. An advocacy group for transgender and other sexual minorities referred to as lesbian, gay, bisexual and transgender (LGBT) interventions in schools and colleges. The group provides support for meetings, a safe space, augmenting libraries with books and holding periodical sensitization events, addressing harassment and bullying of transgender children.

¹³Orinam. 2009. Resources for [Educational Institutions](http://www.namset.in/resources)

efforts in this direction¹⁴ by and involving their students and staff. The Committee recommended that Governments and suitably adopted transgender children in educational institutions.

Healthcare interventions to reduce discrimination in the healthcare system have been described in Chapter 10. Interventions appended to this chapter. The physical and psychological violence inflicted on children and adolescents through conversion treatment.

Shelter and welfare are imperative that every nonconforming and transgender children safe need to ensure that short-stay homes, orphanages sensitive to the needs and concerns of such children abandoned by their families need to be covered under the Protection of Children) Act and efforts made to sensitize the caregivers in the facilities.

Transgender Adults

Stigma, discrimination and violence against transgender adults in families and school systems, are further compounded if there is a perception that laws have been formulated that do not acknowledge their existence either as a third gender or opposite of that assigned at birth. This gives rise to a range of institutional structures^{15, 16, 17, 18}

Transgender adults who remain within their families, by family members, who seek to rid them of

¹⁴ Menon, P. 2013. Tamil Nadu schools begin gender identity education. Online at http://articles.111219/news/4145714103a1i_rgsndcom/20131121 students

¹⁵ UNDP. 2013. Discussion Paper on Health and Human Rights and Development Group

¹⁶ Peoples' Union for Democratic Rights, Karnataka. 2003. Human Rights Violations: A study of kothi and hijra sex workers in Bangalore, India

¹⁷ Moran, L and 2004. Shivappa, R. 2004. Violence, identity and policing: The case of transgender sex workers. *Criminal Justice*. 4 (4) , 413-45

¹⁸ Rhonda, n. 2007. Esther A. 2007. A Study of Transgender Traders and their Experiences of Violence, *Journal of Demographic Characteristics*, and Experiences of Violence, J Vol. 3(3) 2007

therapies, or by forcing them to get married family property.

Those transgender individuals who manage to and youth, find their employment opportunities education many have had, and by stigma and employers, as well as hostility in most work etc.. This leaves many MtF transgender people backgrounds, with no alternative but begging individuals also have to contend with sexual and informal sectors

The discrimination inherent in institutions gendered worldview prevents transgender people writing competitive exams, and seeking employment discriminated against, also causes many individuals (applications) that may require an identity status.

Sometimes, excessive powers given to the Police and abuse. An amendment made in the Karnataka of 2011] through insertion of Section 36A preparation and maintenance of a register of transgender persons residing in the area under of kidnapping or emasculating boys or of offences or abetting the commission of such activities as may be stated in the order.

Many cases of human rights violations by police in the country. There is no systematic research violence, often the only reports are those from was that of Pandian/Pandiammal, a transgender sexually abused by the police in Chennai, India police station²⁹. In the 2007 Government of Tamil Nadu to provide compensation

Our societal discomfort with transgenderism assault, and domestic violence without necessary and domestic violence shelters are unprepared. Medical personnel, criminal justice and the

¹⁹Rebello-Fernandes. 2013. The **BNN** by nT2ap.20113me On News Netwo <http://articles.timesofindia.com/2013/06/06/06062013breasts-ge>

²⁰Shah, AP and P. Jayalakshmi 2007 Government of Tamil Nadu. High Court. Online at <http://indiankanoon.org/doc/1373799/>

complexity of issues facing the transgender community addressed by broad changes in the delivery of services to meet the needs of this community.

The right to security includes the right to be free from harm, whether inflicted by government officials or by private actors. United Nations High Commissioner for Human Rights, racism, xenophobia and sexism have been consistently identified as too often overlooked. "History of discrimination and prejudice. No one is entitled to be less deserving or less worthy of respect," is the issue.

In the absence of State protection, many trans rights violations occur.

Addressing stigma, discrimination and violence against trans people.

In addition to the recommendations previously made, educational institutions, and healthcare systems should address stigma, discrimination and violence against trans people.

Workplace consultation with community groups experienced in the area of Diversity and Inclusion. Need to sensitize employers and employees to trans rights. Discriminatory policies must be instituted and measures for retention, promotion, and employee benefits be made to ensure inclusion.

Law and Law Enforcement training for police and Transgender have been highlighted in the media and brought to the attention of the public. Data is maintained by the National Crime Record and Bureau. Empirical evidence based on a study of crimes against trans people at various agencies against Transgender persons. The incidents occur mainly due to lack of proper knowledge and training and sensitization. The lines of training and sensitization done for police and other vulnerable groups. The legal and administrative systems sensitized on issues of transgender people and their rights.

- (i) Criminal and disciplinary action against trans rights violations of human rights of transgender people.

²¹ UN News centre: Homophobic hate crimes on the rise, UN human rights chief warns: <http://www.un.org/apps/news/story.asp?NewsID=38406&Cr=pillay&Cr1=#.UttsZPvhXs0>

- (ii) Taking action against parents who mistreat nonconforming or transgender children through electro-shock or other kinds of unethical practices.
- (iii) Making free legal aid available to transgender persons against discrimination and violence.

Taking into account of the difficulties in exercising their legal right to have access to legal services to such persons by way of an affidavit, NALSA felt that the first step in this regard was to inform other people about the rights of transgender persons and citizens. As a first step, NALSA has directed the State Authorities to organise programmes throughout the country. These programmes have included transgender people as participants in their Rules.

- (iv) Where transgender individuals need to be protected from sexual assault.
- (v) Sexual assault, sexual harassment and sexual abuse of transgender persons as victims (to be the victims of sexual assault). A law should be included to cover the cases of sexual assault.
- (vi) Blurs based on real or perceived gender identity under Section 153A of the Indian Penal Code.
- (vii) Bureau of Police Research & Training to study crime against transgender persons, in order to take a view to investigate their causes and prevent such crimes.
- (viii) National Crime Records Bureau may, from time to time, collect statistics of crime against transgender persons and against them as accused.

For the long run, the possibility of a law for the protection of transgender persons is being considered.

Social Welfare and institutional reforms through various schemes, targeting the poor and other at-risk groups.

Community strengthened through capacity building of community monitors, document and respond to discrimination and violence strengthened. Training in legal literacy, and

²² <http://nalsa.gov.in/>; NALSA newsletter Vol1, April-November 2010.

Transgender representation in dialogues around reform, and public sensitization is necessary.

Given the poverty experienced by many transgenders encountered in finding housing, it is imperative that the Ministry of Housing and Urban Poverty Alleviation ensure that transgender people to obtain non-discriminatory housing.

Media and Transgender human rights issues must be discussed in other public forums so as to improve public awareness and ability to realize those rights. Stigmatizing transgenders is a crime.

Elderly Transgender People

The concerns of senior citizens who are transgender include the issues affecting transgender adults, such as employment, because of limited work opportunities, and social status. It was informed that discrimination against transgender people with burial grounds or crematoriums refuse to accept transgender status.

There is a need for pension scheme for elderly transgender people assigned at birth, adopting a model such as the Tamil Nadu well as non-discriminatory and affordable.

²³Times News Network. 2012. Transgenders to get Rs 1,000 monthly allowance. Times News Network, Aug 2, 2012, 07:25AM IST. http://article02/chennai/33000445_1_transgenders-sahodari-foundation-kal

Chapter Eight

Exploring Education and Employment Opportunities for Transgender Persons

Background and Rationale

The transgender community is ¹seriously lagging behind on human development and employment. Majority of this community is excluded as they are not able to participate fully in society. There are many factors responsible for the lag. The reasons are exclusion from family and society, insensitive attitude of teachers/staff, violence,

2. The Committee after ~~Appendix 5~~ ^{Appendix 5} suggests the following approaches for mainstreaming to provide better opportunities for education and employment.

Access to Education: Key Barriers

3. Following factors appear to deny adequate access to transgender persons. They are:

- High level of stigma and physical, sexual violence leading to dropping out of their studies
- Exclusion from family and society
- Insensitivity of the teachers and fellow students
- High dropout rate and low average of schooling

¹ From Wikipedia, free encyclopedia for the channel 4 documentary about voluntary eunuchs, see Eunuchs (Channel 4 Documentary)

² Terminology guidelines, UNAIDS (October 2011, page 27) : Discrimination is significantly discredits an individual in the eyes of others based upon and defined by others as discreditable or unworthy. Discrimination can take the form of actions or omissions

³ Terminology guidelines, UNAIDS (October 2011, page 27) : Discrimination is exclusion, or restriction affecting a person, usually but not necessarily, belonging to a particular group

- Low level of education either push them them more vulnerable to HIV/STI, or for begging.
- Social structure of transgender community
- Lack of skill based education opportunity

Suggested Approach to Mainstream with Educat

4. There is an urgent need for addressing in a holistic way that ⁴imped⁵Equity Enabling⁶ Environment and Employment. Addressing stigma and discrimination transgender children to school and retaining strategies can be considered:

- Ensure equal access to educational oppo discrimination: Affirmative actions are needed with the community. Schools and colleges need. There has to be proper sensitization of soc and students.
- The fulfillment of the obli⁷Attitudinal the improvements in the educational condition
- Enhance understanding on transgender is and human rights aspects would help in attit
- Dropout of transgender persons from sch has to be seen from different perspective. schools not by choice but by force due to a dropout may require review and reform of s policies that impede access to mainstream ed
- Ensure safety of transgender children in face physical, mental and emotional violence be evolved to ensure their safety. This also

⁴ Accessibility indicates that the educational system is non-discriminatory and accessible to all, and that positive steps are taken to include the transgender persons.

⁵ Equity looks into the dimensions of disadvantage, social section like Transgender persons and other neglected group management, and governance issues social groups (teachers,

⁶ Enabling Environment refers to supportive environment tha stigma, remove structural barriers to the use of services.

⁷ <http://mhrd.gov.in/rte>

- Sensitization towards transgender community counselling at schools. The transgender persons should be given adequate opportunity to interact with gender -dilemmas.
- Contents on transgender can be included in schools to sensitize children. This can be done to reduce stigma/discrimination at schools.
- Activities organized at schools to be inclusive. This will enable other children to understand transgender children in their friendship.⁸ School Management Committee training programmes should include separate modules on transgender. SMC members should also talk to children to create awareness.
- Mainstreaming of transgender persons can be done by working in the education sector, particularly in capacity building.
- Review the existing schemes (Education schemes/programmes like SSA, Rashtriya Madhyamik Shiksha Abhiyan⁹ (RMSA) Shiksha Samithis (USS) i.e. State Level and senior level need to be reviewed to include transgender. Human Resource Development (MHRD) may take up the National Council¹⁰ for Teacher Education as a vehicle for implementation of RTE Act, as persons have a right to education. States can include transgender so that they are also admitted in private schools.
- There is a need to harmonize different policies to be suitable and accessible to transgender children¹¹ to address the concerns of transgender children.
- Development of community friendly customised Vocational skill development training should be provided of new skills or providing additional skills to transgender which can enable them to look for better jobs.

⁸The constitution of a School Management Committee (SMC) is to improve the monitoring and management of schools.

⁹ <http://mhrd.gov.in/schemes>

¹⁰ http://mhrd.gov.in/rashtriya_madhyamik_shiksha_abhiyan

¹¹ http://mhrd.gov.in/jan_shikshan

¹² <http://www.ncte-india.org/>

¹³ wcd.nic.in/childprot/jjact2000.pdf

tailor-made skill based training programmes Shikshan Sansthan, National Skill Development programme¹⁴ from universities and colleges.

- Financial incentives/scholarship for them provide scholarship/entitlements, fee-waiver and other facilities at subsidized rates for students.
 - Establishment of anti-discrimination cell should establish an anti-discrimination cell against the transgender students.
 - Create an enabling environment: There is different school based committees like School management committee as recommended under the
 - Section 317 of the IPC: Abandonment of 317 of the IPC if the child is abandoned upon abandonment of transgender children takes place after eighteen years. The Ministry of Home Affairs is enhancing the age of child for this offence.
 - Research: Generate more data/information related to various aspects of their life and design a programme that would bring an effective and
- Improving Employment opportunities for transgender

5. The interrupted education and social and livelihood opportunities for transgender contribute to their economic deprivation which are as under

Access to Employment: Key Barriers

- Exclusion from Family and Society
- Stigma and Discrimination¹⁴ at work place
- Lack of knowledge and training in vocational

¹⁴ NSDA is an autonomous body to coordinate and harmonize skill development programmes in the private sector to achieve the skilling targets of the 12th Five Year Plan for the marginalized groups like SCs, STs, OBCs, minorities, and the various skill development programmes (<http://www.skilldevelopment.gov.in/>)

¹⁵ Lifelong Learning Programme (LLP) is a flagship programme of the Government of India to provide quality education and skill development to all citizens. For more information, visit <http://www.llp.gov.in/>

¹⁶ People's Union for Civil Liberties (PULIC), <http://www.pulic.org/>

- Lack of opportunities
- Lack of confidence in engaging them by e

Suggested Approaches

The economic empowerment of transgender communities, community norms, culture and process has to be broad based and should cover

Awareness generation

Skill and Capacity Building

Employment and entrepreneurship

Suggested Strategy to improve Access to Employment

- Create opportunities for Information and
- Establish Helpline for Career Guidance,
- Capacity Building and Entrepreneurship D
- Liberal credit facilities and other need
- Provision of social entitlement to the c
- Convergence with existing schemes of Mi
(MSJE) MSJE may explore the possibility of
Corporations for providing the economic supp
- Vocational Skill Building: Design custom
transgender community as per their needs an
vocational training centers run by private a
- Create a supportive Environment: The e
concerned stakeholders like government offi
employers, corporate, community leaders like
- Convergence with existing schemes: Ment
existing schemes specially centrally sponsore
Mission National Urban¹⁹ NLR E²⁰ National Finance Development
Corporations (NFD²¹) will help in giving them due recog

¹⁷ <http://socialjustice.nic.in/schemespro.php>

¹⁸ <http://aajeevika.gov.in/>

- Adopt good model / intervention: There a Welfare Board²² which helps through Self-Help security of this community. The Board provide employment. The proven models can be adopted

* * * * *

¹⁹ mhupa.gov.in/NULM%20mission%20

²⁰ <http://nrega.nic.in/netnrega/>

²¹ The Government of India has set up seven 'National women, weaker section, minorities and PWDs. <http://e>

²² Chakrapani The V. C. (2012) Nadu Transgender Welfare Board: Insights on Social Protection Programmes for Transgender People in India

Chapter Nine

Transgender Adolescents, Youth & Young Adults

Like all young people in supportive environments, transgender youth deserve free attention to their unique needs and to services. They should be supported in their traditional conceptions of gender in order to ensure their child welfare professionals who work with them are about transgender issues and prepared to work with them.

Transgender youth are usually dependent on their parents and other needs, and because most doctors are not trained to treat them, transgender youth face different challenges than their cisgender counterparts. Transgender conditions manifest at an early age, most commonly in childhood, when such a child may express gender-related to his, or her assigned gender. However, as a result of their differences and quickly these children regularly may be unaware that they are transgender.

The incongruity between a person's internal gender identity and their anatomical or birth sex can lead to distressing feelings rise to clinically significant levels. Gender Identity Disorder (GID), a diagnosable medical condition in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), is defined as a persistent and insistent discrepancy between a person's gender identity and that person's assigned sex at birth. Treatment of GID is focused on gender identity. It may include services like hormone therapy and surgery to change one's sense of self as male or female. Once transgender youth are able to go on to lead happy lives, the classification of transgender identity as a disorder is a reflection of having explicit standards of health care that transgender youth need to be supported in their gender identity. This diagnosis of gender identity as a disorder is being revised, and will be removed from the DSM-5 in 2012, on the basis of the standards

¹ American Psychological Association (APA)(2000)" [Gender Identity Disorder in DSM IV TR.](#)

² http://data.lambdalegal.org/publications/downloads/gdtb_working-with-transgender-youth.pdf

diagnosed with Gender Dysphoria (and not 'incongruence between one's experienced/expressed gender and assigned sex at birth').

The following are some made by the organization and transgenders youth that are applicable to India.

Understanding and being aware of health care

The World Professional Association for Transgender Health has developed internationally recognized protocols with Gender Dysphoria. These protocols recommend that transgenders experience through dressing in the clothes of their preferred gender. Young people age 16 and above should have an individualized assessment for medical treatment for transition from one gender to another.

Allow transgenders youth to express their gender

Allow transgenders youth to express their names and mannerisms without punishment or ridicule. They are "acting out" when they express their gender. An individual's choices are an important aspect of their identity. Support them in these choices and challenge restrictive policies.

Use young people's preferred names and pronouns

Respect a transgender young person's choice. It reflects their sense of self as woman or man and their sense of self-worth. If there is an uncertainty, they should be asked sensitively rather than assumed.

Ensure that transgenders youth have access to health care providers:

Advocate for transgenders youth to receive medical services, including access to monitoring and treatment that is appropriate. When youth don't have access to health care, they may resort to buying illegal medications and hormones without medical supervision, which can lead to serious medical complications and infections.

Make room assignments & housing decisions based on the needs of transgenders youth

In gender-segregated facilities, don't assign rooms strictly based on their anatomical sex. Instead, consider the physical and emotional well-being of the youth.

³ http://data.lambdalegal.org/publications/downloads/gdtb_working-with-transgender-youth.pdf

safety, the degree of privacy afforded, recommendations of qualified mental health should be protected without resorting to its population. However, single occupancy rooms, for transgender youth in sex-segregated faci

Avoid assumptions about transgender young pe
 Transgender youth may identify as gay, les
 important to keep in mind that sexual orient
 one's gender identity and expression

Locate and develop resources to help trans
 issues:

Transgender young people may need assista
 identity documents like birth certificates,
 reflect the gender with which they identify.
 change. Child welfare systems have the resp
 resources for transgender people and
 should also have the right to straitwac
 transition. Any such information that is r
 confidential and not disclosed to others wit

Provide transgender-friendly role models and
 Transgender youth, like all youth, need co
 transgender youth, these pos
 harder to find but are nonetheless crucial
 from their families of origin, and part of a
 can find a sense of family and belonging fro

Provide support in finding employment

Transgender youth face especially steep ba
 even more complicated for those transgender
 their chosen names and gender expression. W
 opportunities, they're at a further disadvan
 welfare systems or schools can be left with
 harmful activities in order to survive.

There are clearly some specific areas wh
 environment in the life of transgender, are
 the following including but not limited to
 school resources, medical and mental health
 CWC), legal, organisational - support for tr

For example, Trans Youth Family Allies con
 leading agency's brief⁴ for families with tra

According to the American Academy of Pediatrics
**the first year of life. Their gender identity is stable by age 4 and they know that they will always be a boy
 or a girl.**"

Trust yourself and your child, you've done no
 you that they are trans or gender variant. Pay more attention to their cues and behaviors. You and your
 child will know best.

Acept where you and your child are now. You didn't cause
 wrong.... it just is. You didn't "decide" what
 he/she just knows. There is nothing as meaningful to a gender variant child as the support and acceptance
 of family, friends, teachers and the community.

Confidence and knowledge are essential. View
 child as one of your grea**confidence and self esteem**, as well as setting an
 example for others to view your child in the same light. Confidence and knowledge equal power.

Treatment is available. Making informed decisions to medically intervene at appropriate intervals may be
 essential to your child's mental health and well
 decisions out of fear or denial. Seek support and/or therapy if you, your child or your family are struggling
 to accept your child's **yourself, your child, and the rest of your family** physically
 and mentally during this journey.

Trans Youth Equality has some guidelines
 Conforming Children & Youth

- ☒ The child may not experience their gender
- ☒ This is significant and the child takes i
- ☒ Continue providing unconditional love.
- ☒ If you feel overwhelmed or under-informed
 You are not alone!
- ☒ This isn't about something anyone has don
- ☒ This isn't about the child's current or f
- ☒ Sexual Orientation is unrelated to Gender
- ☒ Substantial research indicates that gende
 physical illness.
- ☒ Support the child for who they are today
 someday become.
- ☒ The child, if supported in their gender e
 up to be an exceptional and successful pe
- ☒ Above all, respect the child's feelings a

4

⁵ from the Trans Active Education & Advocacy Document Library;

✚ While this may be confusing at first, do not rush to label children about their gender identity. They most likely

When looking at health pertaining to transgender children, providers are often the first people that transgender children and youth turn to for help. As first responders, it is important that identity-affirming services be offered. A provider who only has a rudimentary or trans adult-centric understanding of gender identity might, with the best of intentions, reinforce trans adult stereotypes, social challenges, and barriers to shut down completely and decide to just 'wait and see' a child's gender non-conforming identity and

When providing care, treatment, or services, it is important to understand that they are not trans adult people; many aspects of the adult

Taking a passive, "wait and see" approach to transgender or gender non-conforming children's self-esteem and social isolation as a diagnostic methodology,⁷ it is inhumane

While there are broad guidelines available in the literature on one particular area of health and transgender identity, the discourse and even research. The ethics of gender identity while yet being firm in the principle of doing no harm. The first step of the debate begins with the issue and what constitutes the right age. The current research in this country, and studies from practical interventions in some of the Commonwealth countries like Australia, show that a person is critical in the consent aspect. Gender identity intervention, cannot be done before the age of coming of age.

In 2004, an Australian Family Court case of a transgender teenager and treatment,⁹ titled

⁶ <http://www.transyouthequality.org/health.html>

⁷ <http://www.transyouthequality.org/health.html>

⁸ **2004 Fam CA 297, "Re Alex"** was a legal case decided in the [Family Court of Australia](#) on 13 April 2004. It examined the rights of a thirteen-year-old adolescent affirming his male sex and seeking hormonal medical treatment "Sex Affirmation Treatment".

issues surrounding treatment of children proposed by treatment in adolescence. In children since hormonal treatment is not recommended whether GID can or should be suppressed. C whether psychiatric treatment can reduce gen

Moreover, as for psychiatric treatment to motivation is to prevent GID given that either so, homosexuality is no longer considered a prevent it would be the appropriate, GID remain disorder

Thus, if parents desire such treatment, e treatment and whether parents have authority is no single answer as to how to treat ch professionals must exercise clinical judgment when sound clinical judgment is exercised, treating these minors.

In light of this, how best can the legal s satisfactory short and long term outcome?

What role can the law play in lessening t these youth?

This issue becomes particularly important Currently none exist specifically, but when WPATH guidelines that have been developed w have looked at the issues such as these for "there is a considerable narrowing of [gender gender identity differentiation." The appar into adolescence (albeit to a lesser degree predict outcome and establish reliable treat approach in treating ^{1,2} and a most recent scientific well If acst before, needs be taken into account. It is

⁹ Ethical Concerns Related to Treating Gender Nonconformity in Childhood and Adolescence: Lessons from the family court of Australia; Authors: Hazel Beh Ph.D. J.D. and Milton Diamond Ph.D. Published in Health Matrix: Journal of Law-Medicine. Case School of Law. Volume 15 Number 2, Summer 2005

¹⁰ In 1973 homosexuality per se was removed from the DSM-II classification of mental disorders and replaced in DSM-III by the category Ego-dystonic Homosexuality. See A.M. PSYCHIATRIC ASS'N, DIAGNOSTIC AND MENTAL DISORDERS (DSM II) 39 (2nd ed. 1968); Ibid.

¹¹ There are currently, in the United States, Australia and elsewhere, differing opinions as to the suitability of considering Gender Identity Dysphoria a psychiatric disorder any more than homo Looking Glass, "AUSTL. CHIL. RTS. NEWS, May 2004, at 28.;

¹² Kenneth J. Zucker, Gender Identity Development and Issues, 13 CHILD & ADOLESCENT PSYCHIATRIC CLINICS OF N. AM. 551, 554 (2004); Supra note 8

when adolescents elect to live transsexual, treatment plans for adolescents need not assume surgery

"Although the care afforded Alex is nevertheless important and noteworthy. Alex's case is a transsexual minor.¹⁵⁶ A few generalizations are evident. Developmentally, the gender and sexual orientation of children and even young adolescents remains in flux and treatment must therefore be well considered and cautious. There is urgency to the need to treat them, however, because psychological distress, depression, and suicide are real risks. The legal status of children and adolescents and their lack of maturation may prevent them from consenting to treatment but their wishes must be valued and respected. Society can be intolerant to gender incongruity and adults must take responsibility for removing stigma and ostracism. The condition is mysterious, rare, and complicated, so experts must be consulted for diagnosis and treatment. Treatment in every case must be individualized and responsive. For all these reasons, these youth are in for a difficult and protracted struggle that will require them to have the support of adults and social institutions.

The judge's approach to Alex was extremely well-informed. He was not bogged down with best interests, current needs and future potential.

Ethical Concerns Related to Treating Gender Nonconformity in Childhood and Adolescence: Lessons from the family court of Australia; Authors: Hazel Beh Ph.D. J.D. and Milton Diamond Ph.D. Published in Health Matrix: Journal of Law-Medicine. Case School of Law. Volume 15 Number 2, Summer 2005;

Transgender Youth and high suicide risk constitute the dangers

A staggering 41 percent of transgender people commit suicide, according to a new survey. Being refused medical care because of their gender identity, 25 percent have been violently assaulted in a disturbing finding from a survey of more than 10,000 people by the National Center for Transgender Equality and released in October 2010.¹⁴

¹³ Milton Diamond, What's In a Name? Some Terms Used In The TAPESTRY J. 19 (2003); Supra 8

¹⁴<http://www.livescience.com/11208-high-suicide-risk-prejudice-plague-transgender-people.html>

Psychologists say transgender people often experience the burden of stress. This is particularly true

In a landmark report "Injustice At Every Turn: A Report of Transgender Discrimination Survey", it was seen that a large number of respondents said they had attempted suicide, a 15% population, according to the National Gay and Lesbian Task Force National Center for Transgender Equality. Transgender people experience unemployment and were four times more likely to have a household income of \$10,000 compared to the general population.

"Transgender and gender nonconforming people experience discrimination in many ways, "in childhood homes, in schools, in shelters and education, in harsh workplaces, in the grocery store, the hotel front desk, in emergency rooms, before judges and landlords, police officers, health care service providers"

" My mother told me I was fired from my job after 18 years of loyal employment. I was forced onto public assistance to survive. But still I have pressed forward, started a new career, and rebuilt my immediate family. You are defined not by falling, but how well you rise after falling. I'm a practical nurse now and am studying to become an RN. I have walked these streets and been harassed nearly every day, but I will not change. I am back out there the next day with my head up. "

—Survey Respondent

There are limited studies available, but the ones that exist are unambiguous. A study of 50 cities of the country with 50% of the population at birth (of whom some identified as transgender) stated that depression, self-harm, and homelessness were common responses to family violence. For transgender respondents (LABIA, 2013). The study found that thirteen respondents among the transgender population still living with their family experienced violence and control at home.

Despite the highly specific medical and mental health needs, transgender people continue to be an underserved and poorly studied population. The community is positioned to improve physical and mental health.

¹⁵ "Injustice At Every Turn: A Report of Transgender Discrimination Survey", National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

¹⁶ http://endtransdiscrimination.org/PDFs/NTDS_Exec_Summary.pdf

¹⁷

http://www.abajournal.com/news/article/staggering_rate_of_attempted_suicides_by_transgenders_highlight_s_injustices/

¹⁸ LABIA, (2013) Breaking the Binary: Understanding concerns and realities of queer persons assigned gender female at birth across a spectrum of lived gender identities, Mumbai: LABIA. Available at:

<https://sites.google.com/site/labiacollective/>

Transgender youth are at increased risk for and peer rejection, harassment and bullying, problems, lack of financial support, and educational

It is often highly problematic for transgender medical and mental health services.

Some of the key challenges faced by transgender

- ❖ Deliberately incorrect and disrespectful transgender youth identifies as a particular respectful to the youth's human dignity appropriate to that particular gender. To name and other pronouns is to be deliberately understand and sympathize with some confusion faith progress in using the proper name and
- ❖ Lack of access to appropriate gender expression safe access to public restrooms. They may conforms to their gender identity or forced their gender identity.
- ❖ Privacy transgender youth who would disclose information concerning their transgender status and gender recorded in school records must be treated without their consent.
- ❖ Confidential transgender youth may have unsupported face violence and/or rejection from their expression is disclosed to the family.
- ❖ Lack of role models; transgender youth are alone in the world. Few programs for youth offer information about biological sex transgender.
- ❖ Arrange for transgender awareness training administrators from a qualified professional receive training or support in transgender professional careers; it is not fair to already having learned the skills they need youth from the transgender awareness training effective when they are mandatory and regulated
- ❖ Incorporate positive information about the existence of transgender people is often

stigmatized way in the teaching of any culture. The lack of any positive acknowledgment makes it difficult for transgender, gender non-conforming people to feel that they have a place in our society. Other students that transgender people do not deserve.

Therapists working with transgender adolescents and be able to discuss sensitive issues.

The Medical Council of India along with other organizations working on transgender development protocols for the care of transgender individuals also drew development of detailed protocols for adolescents. The consent of adolescents bearing in mind age criterion is required to be formulated before surgery to be done on an individual, the age of younger parental / guardian consent is necessary. Lessons learned will also help India achieve its goals.

Youth younger than 18 are strongly advised to seek counseling on transgender issues prior to hormone treatment. Initiating hormonal therapy with youth over 18 should be done only after consulting them to consult a qualified mental health professional to understand the ramifications of gender transition, potential risks, and benefits.

There are some frameworks that are already in place for young adults; families have the obligation to support their child that the child is unable or unwilling to accept their gender identity. This means that the JJ Act would not be needed, shelter homes for those who run away from home, and best standards of health care access including mental health services.

The international and therefore the national best interests of the child in the expectation that they are not allowed to fall through the framework. They should stay in schools which have a supportive and protective environment and protection given to the system to ensure that there is no abuse and coercion into accepting forced gender identity.

World over, in countries where research and evidence that young transgender people are at risk of education, bullying, depression, assault, and suicide.

supporting frameworks do not exist or because the exception to this, that there is a disti exist to compound a young person's vulnerabi ends here.

On the contrary, it simply means that th incorporated; and all existing laws that our children be used to protect these young peop look at all of these pressing needs and th professionals, psychologists and psychiatris legal change, educationists to look at int enforcement to look at issue of h aprraostsemctri to, n social workers to look at a holistic protect matter of children and young adult transgend

Chapter Ten

Access to Healthcare¹: General Health Services (Physical / Mental), and Gender Transition Services (including Sex Reassignment Surgery)

The World Health Organisation (WHO) has defined mental and social well-being and not² merely Transgender people too, like any other people health and contribute to their families and In this chapter, the Expert Committee main health³ settings:

- A. Improving access to and use of general health services
- B. Improving access to and use of gender transition services for transgender people
- C. Enabling better understanding and enhanced collaboration between health providers (HCPs) in dealing with transgender people

A. Improving access to and use of general health services for transgender people

Fear of discrimination or experience of discrimination of transgender people in health care settings tend to hinder access to and use of these services in the public health sector (e.g. poverty), institutional (registration policies), and barriers are inter-related. Previous experience in various settings and/or fear of anticipated discrimination tend to hinder access to and use even the otherwise free health services. At the individual level, the barriers faced by HIV and AIDS patients, such as lack of money to travel to antiretroviral (ARV) treatment, lack of travel support for people living with HIV (e.g., Tamil Nadu).

¹ Public and Private health care settings (governmental health sector).

² Preamble to the Constitution of the World Health Organisation, New York, 19-22 June, 1946; signed by 61 States (Official Records of the World Health Organization, April 1948).

³ Even though the principles of non-judgemental care for all people should be irrespective of the type of health condition.

At institutional level the stigma and discrimination have occurred in public hospitals include:

- Lack of hospital policies on whether [Mt 'man' or 'woman' in the outpatient department female ward) they get admitted. For example transgender person who was living full-time male genital removal was asked to put on
- Verbal abuse from the physicians, counselors in the hospital settings.
- Harassment from the relatives of the transgender people in the hospital departments.

These underscore the need for hospital policies, training and sensitization of the hospital staff and their health issues, and the need to educate relatives) about the transgender people.

At the structural level stigma against people especially against transgender people, is transgender people facing related stigmas being a sex worker, and being a person suspected decrease stigma faced by transgender people

Limited information is available on the access to health settings. Information from a study from FTM people (L Abridged, 2013) actions with FtM people

- Heteronormativity (people are assumed to have negative experiences with HCPs delayed treatment with symptoms suggestive of sexually transmitted infections)
- While gynecologists provide pills to delay menstruation FtM people are not provided prescription to get those pills).

(Note: The current situation of transgender people is enclosed as Appendix - 6)

B. Improving access to and use of gender related services for transgender people

Not all transgender people desire surgery to align their bodies with their gender identity. The common concerns of transgender people are summarized in Table 1

Except in a few government hospitals, sex related services are not available for free

parts of And it a dy co h d u c t a e s d e i s m s 2 0 1 3 situation related health services for MtF transgender

- Lack of free sex reassignment surgery (S cost of SRS in private hospitals seem to and other MtF trans people go to unqual resulting in post-operative complication surgery been provided by qualified medica
- Unwillingness among qualified medical pr (for feminization), and self-administrati and other MtF transgender people.
- Lack of national guidelines on gender tra of SRS mean even qualified medical practi

Table 10.1: Gender transition^x tran

Gender transition related	MtF transgender	FtM transgender
Common need	Proper counselling about opt transition Proper post-operative counselling and	
Types of procedures required	Neovagina creat (construction o Penectomy (removal of Orchidectomy (removal of testes) Clitoroplasty (clitoris) Breast augmenta (breast enlarge Rhinoplasty (re Hair transplant	Bilateral ma (removal of Hysterectomy (removal of Oophorectomy (removal of Phalloplasty of penis)
Types of surgical procedures required	Female hormone Hair removal: E therapy Voice modulatio	Male hormone t Voice modul therapy

It was brought to the notice of the Expert genital removal (orchidectomy and/or penect penile cancer, and perform vaginoplasty on conditions (such as absence of vagina at bi

urogenital sinus-related problems). Thus, only those who are not in public or private hospitals, who should be consulted, can be adapted for SRS among MtF transgender people.

Very little academic or grey literature is available on FtM transgender people in India. Information on those who have identified FtM people in Mumbai and Pune (Maharashtra, India) are part of support groups or activist collectives.

Limited expertise in India on SRS⁴ (especially for FtM people) means many FtM transgender people undergo penile construction (phalloplasty) such as hysterectomy, oophorectomy, and mastectomy. Surgeries are commonly performed among cisgender people with similar conditions.

Limited knowledge among health care providers about surgical options available for FtM transgender people.

- Lack of awareness about devices used by transsexuals (penile prostheses, penile packers, urinating devices, and penile prostheses for erection)
- Limited knowledge about male hormone therapy among HCPs. This means many FtM transgender people do not use hormones.

Indian psychiatrists and mental health professionals use the International Classification of Diseases (ICD-10) of the World Health Organization and the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). These guidelines are primarily diagnostic guidelines. A transgender person can be diagnosed using any one of these guidelines, an internationally reputed set of guidelines (ICD-10 or DSM-5) is that of the World Professional Association for Transsexual Health (WPATH), which is now known as the World Professional Association for Transgender Health (WPATH). In the absence of national guidelines, UNAIDS India in 2011 convened a national working group (including surgeons, psychiatrists, counselors) to provide guidelines for SRS. The national guidelines were developed by the government for its consideration. The content of the national guidelines (the latest version of the WPATH guidelines on the SRS among MtF transgender people, and on health-related issues) needs to be finalized. The following recommendations are made for consideration:

⁴ While penile construction may be a difficult surgical procedure (enlargement of clitoral tissue), which may be preferred by transsexuals, it can be offered by surgeons.

⁵ Formerly known as the Harry Benjamin International Gender Institute.

⁶ National Working Group convened by UNAIDS India to develop national guidelines for SRS. Development of Interim National Guidelines: Good Practices for Male-to-Female Transgender People in India.

- 1.To prepare a policy statement (and/or an essential gender transition services, including
- 2.To prepare national clinical guidance (standard international WPATH guidelines)
- 3.To provide penectomy/orchiectomy (removal of testes) for those who are confirmed to be '[MtF] transgender' based on the criteria
- 4.To prepare policy guidelines for providing these services in hospitals
- 5.To train relevant health care providers on these services

- 1.To prepare a policy statement (and/or an essential gender transition services, including

MoHFW may explicitly state its intent to provide SRS, to start with) in at least select public hospitals as essential and medically necessary (Wolfer Note). Not all transgender-identified people would want all available types of gender transition services. The issue of defining transgender and certifying it is delinked from the issue of how the SRS (such as what should be its protocol, as the latter is the Committee of doctors of MoHFW, SRS, like an extant prudent procedures/guidelines given the medical, ethical and legal process details. The procedure should be initiated only after a process wherein the individual has been explicitly informed what all options are available to achieve the advantages/disadvantages of all the options.

- 2.To prepare national clinical guidance (standard international WPATH guidelines):

As the MoHFW has agreed that SRS can be provided on the minutes of the meeting enclosed as an annexure, it recommends that not just SRS, but the essential mental health counselling (pre- /post-surgical) be provided. For national clinical guidance, the WPATH's standards of care for SRS can be adapted to the Indian context. Adaptation of WPATH guidelines to the Indian context of living (if not a permanent gender reassignment) and removal of external genitalia alone (penectomy)

⁷ Also see: 'WPATH Clarification on Medical Necessity and Insurance Coverage in the U.S.A.' http://www.wpath.org/uploaded_files/140/files/Med%20

⁸ WPATH guidelines say: "Because most of the research on SRS is from a North American and Western European perspective, a global perspective and world are necessary."

transgender people who request such a surgery. The possible content for the national SOC

The Committee recommends that the national team of mental health professionals (psychologists, social workers, etc.), surgeons (plastic surgeons, physicians, endocrinologists, researchers) be finalized by the MoHFW. The committee can also involve the Indian Psychiatric Society (IPS) and other relevant organizations.

Note: These standards of care are for clinical policy guidelines for public hospitals. Some private hospitals who are providing or considering services for transgender people. Again, some of the suggestions

<p>Box 10.1: Suggestions for what guidelines standards of care (SOC) for gender transition should include</p> <ol style="list-style-type: none"> 1. Purpose (Clinical guidance) 2. Target audiences (Primarily practicing clinicians) 3. Diagnosis (Summary of clinical diagnosis) 4. Suggested components of mental health care for transsexual, transgender, and transsexual people 5. Psychological assessment and psychological support for transgender people and their families 6. Relationships with other health professionals, Surgeons, and Other Health Professionals 7. Hormone therapy (information and consent) 8. Surgery: <ul style="list-style-type: none"> - Relationship of Surgeons with transgender people - Prescribing (if Applicable), and - Criteria for surgeries (medical conditions) - Competency of Surgeons Performing Surgeries - Post-operative care 9. Linkage and referral services <ul style="list-style-type: none"> - Linkages with psychosocial support services - Linkages with social welfare schemes <p>Other areas that can be addressed include:</p> <ul style="list-style-type: none"> - Surgery or hormonal therapy and consent from parents/guardians - Role of public health in providing a decision-making framework
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⁹ The Committee also recommends that the Health Ministry Baruah Vs SR Baruah and Ors, 2012, regarding age of consent

or until the legal age is reached
- Age criteria for undergoing SRS

3. To provide penectomy/orchiectomy (removal of testes) to transgender people who are confirmed to be '[MtF] transgender' based on the following criteria:

MoHFW needs to consider providing the necessary medical services to transgender people who are diagnosed to be transgender people who desire surgery. Some hijras/MtF transgender people or people with gender dysphoria [as defined in ICD-10 or DSM-V] by mental health professionals without wanting a complete SRS (that is, not following the current national guidelines for gender transition, can provide services to transgender people. The committee recommends that qualified medical personnel. The committee recommends that such a request from a transgender person is

- a. person is diagnosed as a [MtF] transgender person by a mental health professional (for example, usually psychiatrist) with a diagnosis such as 'Body dysmorphic disorder', which is a mental health condition;
- b. that person has been provided the option of undergoing SRS at a government hospital or to the range of gender transition surgery at a private hospital or institution;
- c. pressure from other people (peers or parents) is not a factor;
- d. adequate time is provided for that person to consider the option and the person is being provided mental health support during the time of entry into clinical care until the person is ready to remove male genitalia alone.

As 'emasculatation' (legal meaning of which is 'grievous injury' (Section 320 of IPC) and the committee recommends that if MoHFW wishes to provide such services, the Ministry on the legality of offering penectomy/orchiectomy to a transgender person, as the context is different^{xi,ii} and the committee recommends that the Ministry should refer the matter to the Attorney General. According to Section 88 of IPC, an exception to the above (penectomy/orchiectomy) is undertaken in good faith if the person does not suffer that harm. The section reads: "Nothing is an offence by reason of any harm which it may cause to another person whose benefit it is done in good faith and who is not harmed, or to take the risk of that harm". The committee recommends that the Ministry about this, too.

4. To prepare policy guidelines for providing such services in government hospitals:

MoHFW may provide guidance on the policies for providing such services in public hospitals (e.g., availability of services, etc.)

counselling for gender transition, whether mix of both for different services). For locally made (at the state govt. or hospital breast augmentation whether breast implant costs for the same will be borne by that go

5. To train relevant health care providers o

There is a need to develop programmes to providers and public health institutions transition services. The Expert Committee institutions that have been providing gen transgender people as possible training in different States. Resources can be allocated departments to be centres of excellence for transition services). The Committee further been providing SRS and small attendants providers for area where much in-country training and exp

C. Enabling better understanding and enhanced providers (HCPs) in dealing with some transg

Health care providers' limited understanding may result in suboptimal care or even denial people in health care settings, as noted ear So far, there have been primarily ad hoc tra few age and almost all of these are in relat care providers (including capacity building programmes). One ongoing pilot interventi transgender people is currently being imp of which will be useful in fine-tuning curr issues. As part of 'Saksham project', Tata prepared guidelines for LGBT-w if in ma in v e c o counselors within HIV programmes and any oth

To improve better understanding of the heal health care settings welcoming and non-discr

1. Curriculum and Training on transgender heal

Health care providers need to better under some of the trans-specific health issues w listed in Table 10. 2. There is also a need and ethical management provide to people including tra The govt feels that there Medical Council of India to inear to the

¹⁰ www.indianLGBTHealth.com www.fhcu.msu.edu/ashgaram.cei.ndia.org

¹¹ <https://apha.confex.com/apha/141am/webprogram/Paper>

¹² TISS. Annual Report 2010 to 2011

undergraduate and postgraduate medical, nursing for the new batches of HCPs. Other HCPs continuing education (CME) programmes and targeted training.

2. Trans-friendly hospital policies/guidelines: There is a need for explicit trans-friendly policies at public hospitals (at the institutional level). MoHFW.

3. Non-discrimination policy/guidelines: A non-discrimination policy (to prevent discrimination on the basis of gender identity) can be explicitly stated. The Experts Committee of the MoHFW met on 11 December, 2013. (The meeting minutes are enclosed as Appendix-7). The meeting points that specified: "All treatments are provided equitably and free of cost to patients at hospitals without any discrimination on any basis. In relation to this the Experts Committee recommended an advisory to all concerned including the Administrations to emphasize this point and ensure that health care services is realised for transgenders."

Table 10.2. Examples of certain transgender-specific health issues that general medical practitioners need to be aware of

General sensitivity	Addressing transgender people in a sensitive manner (e.g. not being sensitive in physical examination, not expressing shock in finding male person in woman's attire) Not to assume that all the health issues) of transgender people are related to their sexual behavior
Sexual health	Being sensitive in sexual history taking (e.g. not asking about their sexual orientation or sexual behavior based on their gender identity). Providing safer sex practices (e.g. condom use, avoiding penetrative sexual practices).
Vaccination	Hepatitis B vaccination is recommended for all transsexuals.
HIV-positive persons and persons with Tuberculosis	Ask for administration of hormonal therapy. Hormonal therapy may interfere with TB treatment or TB treatment.
Cancer screening	Prostate cancer screening is not recommended for transsexuals whose prostate is not removed in SRS. Breast cancer screening need for transsexuals on hormone therapy.

¹³ This committee of MoHFW was formed to examine the health care needs of transgender persons and their need for undergoing Sex Reassignment Surgery (SRS).

	Cervical and/or ovarian cancer as man, but with intact vagina/c
Cardiovascular disease, Hypertension, Osteoporosis, Hypercholesterolemia	History of sex hormone therapy (current to be enquired among those who have had therapy) as a possible elevated risk of cardiovascular disease in transgender people. Also, the use of androgenic and antiandrogenic hormone therapy

Research and evidence-base to promote transgender health. The Committee also recommends that the India government develop and fund a research agenda to gather information to improve the health of transgender people, clinical guidelines for gender transition interventions to decrease stigma and discrimination in health care settings.

Clinical Management of Intersexed People
 National guidelines are also needed in terms of 'Disorders of Sex Development'), which can be managed by a pediatrician, endocrinologist, developmental psychologist, and other stakeholders such as intersexed people themselves. When non-urgent appearance-altering surgery is requested, early surgical genital reconstruction (female-to-male sex assignment surgery, if requested, needs national guidelines can be based on the latest international standards adapted to the Indian context.

List of some of the resources from India for the issues of transgender people

1. Trai mānugādhars and counsellors for transgender people and their programs in India. National Commission on Human Rights, New Delhi. <http://nacodot.gov.in/B57>
2. Ketraina Sdher, Utkarsh Bhatnagar. T - a field of medicine in practice. New Delhi: All India Institute of Medical Sciences, New Delhi.
3. Trai mānugādhars point to the need for a national transgender health policy. www.go2itech.org
4. Trai mānugādhars of the National Alliance of Transgender People (www.allianceindia.org)
5. Venkatesh Kumar (2015). Gender inequality in India. In H. J. & P. S. (Eds.), *Gender inequality in India: A critical analysis*. New Delhi: Sage Publications. <http://www.indianlgbthealth.info/Training/>

6. Venkatesan Chakrapani (2005). who have sex with men (MSM) and transgender people (Hijras & Providing HIV/AIDS risk reduction training to their partners (STI/HIV and Sexual health care providers). <http://www.indianlgbthealth.info/Training/MSM%20and%20Hijras.pdf>
7. Venkatesan Chakrapani (2005). sexual health care for transgender people (Hijras & Providing HIV/AIDS risk reduction training to their partners (STI/HIV and Sexual health care providers). <http://www.indianlgbthealth.info/Training/MSM%20and%20Hijras.pdf>

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- ^v Chakrapani, V., Mehta, S., Buggineni, P., Barr, R. (2006). HIV/AIDS Risk in India: Service Needs, Gaps, and Barriers. *Journal of the International Association of Providers of AIDS Care*, 5, 100-105.
- ^{vi} Breaking The Binary: Understanding concerns and needs of transgender people at birth across a spectrum of lived gender identities. Feminist LBT Collective. 2013.
- ^{vii} Chakrapani, V. (forthcoming, 2014). Sex Change and Gender Identity: Transgender women in India: Current Scenario and Way Forward. In Chandran (Eds.). *Medicalisation of Sexual Orientation: A Resource Book*. New Delhi: Yoda Press. <http://yodapress.com/Forthcoming.htm>
- ^{viii} India HIV/AIDS Alliance. (2013). *Transforming Identities: A Resource Book for Male and Female Transgender People in India*. © India HIV/AIDS Alliance. <http://www.allianceindia.org/publications/38657-issues>
- ^{ix} Adapted from: "Policy brief: Health Policies and Services for Transgender People Living with HIV and Sexual Minorities in Orissa." SAATHI Project in Partnership with Interact Worldwide. Venkatesan Chakrapani, M.D., March 2011. <http://www.saathi.org/policy-research-report.pdf>
- ^x Breaking The Binary: Understanding concerns and needs of transgender people at birth across a spectrum of lived gender identities. Feminist LBT Collective. 2013.

^{xi} Coleman, E., et al. (2011). "Standards of Care for Gender-Nonconforming People, Version 7." *International Journal of Transgenderism*, 165-232.

^{xii} Chakraborty, A., Veil, A., Jha, A., & Banu, W. (2010). *Guidelines for the treatment of gender dysphoria in India: Discussion on the need for 'India-specific' of Indian Psychiatrists Society, Kolkata, India.*
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^{xiii} Har D. Chavla, K. H. Singh, and K. A. S. (2013). *Aggravated Assault: A Forensic Toxicology Review*. (Jan - June 2013): [about 6 p]. Available from:
http://www.anilaggrawal.com/ij/vol_014_no_001/paper

^{xiv} Christopher P. Houk, Ieuan A. Hughes, S. Faisal for the International Intersex Consensus Conference on the Disorders of Sex Development. *Journal of Interpersonal Violence*, 2006, 21(11), 1542-1547. doi:10.1186/1524-6390-21-11-1542

^{xv} Singh, Y., Aher, A., Shaikh, S., Mehta, S., Robertson. *Transition Services for Gender Dysphoria in India: A Review*. *International Journal of Transgenderism*. doi: 10.1080/15532739.2014.8905

Chapter Eleven

Tamil Nadu Transgender Welfare Board

In order to help the Transgender persons in the society, the Government of Tamil Nadu on 15th April, 2008.

2. The Tamil Nadu Transgender Welfare Board as its Chairperson, eleven official Transgender persons. Its official members are

1.	Minister of Social Welfare	Chairperson
2.	Special Commissioner Welfare & NMP Department	Vice-Chairman
3.	Director, Social Welfare	Member Secretary
4.	Secretary, Finance Department	Member
5.	Secretary, Law Department	Member
6.	Chairperson, Tamil Nadu Commission	Member
7.	Chairman, Tamil Nadu Social Justice Commission	Member
8.	Managing Director, Corporation for Development	Member
9.	Director, College Education	Member
10.	Director, Medical Education	Member
11.	Director, Employment	Member

3. The Board initiates welfare programmes and other functions are to:

- Obtain funds from the State Government as approved by the Board;
- Issue ID Cards;
- Give financial approval for various Income
- Initiate awareness programmes; and
- Take decision on new initiatives taken by

4. The Government of Tamil Nadu initially did survey of Transgender persons in all district Administration in this regard.

5. In order to enlist the transgender persons on the Welfare Board and provide them welfare measures, the Screening Committees.

6. The District Level Screening Committee Chairperson, and Deputy Director, Medical and Welfare Officer, Clinical Psychologist / Psychiatrist Community nominated by the District Collector.

7. This Committee examines the Transgender persons.

8. After certification by the District Level Transgender Welfare Board and given an identity card, they are also provided with ration cards, health housing, etc.

9. In order to empower them economically, Persons' Self Help Groups with 25% subsidy employment activities by Government of Tamil Nadu. Self Help Groups have been sanctioned with 25% of sub crore as Bank loan is being distributed for shops, stores, rearing of milch animals, canteens, products, plying passengers Autos, load auto rickshaws, etc.

10. A sum of Rs.100.00 lakh was provided in the welfare of the Transgender persons.

11. In order to provide financial assistance to transgender persons who have no means to take care of, the Government Pension Scheme for Destitute Transgender persons.

12. For the year 2012-13, the State Government Pension for destitute Transgender persons, vide Government Order. Out of the total budget allotment of Rs.1,00,00,000 distributed to all District Collectors for pension per month to 500 Transgender persons.

13. For the year 2013-14, the State Government Pension for destitute Transgender persons, vide Government Order above. Out of total budget allotment of Rs.1,00,00,000 distributed to all District Collectors for pension per month to 743 Transgender persons.

Tami l Nadu Transgender Welfare Bo
Expenditure Details
(2011 - 12, 2012 - 13)

Sl. No.	Subjec	Year	Budg Allot Rs.	Expen ure Rs.	Ben fici
1.	a) Educ Assistance	2011-12	1.0 cror [@ R lakh allocat educa assis	* 48,	1
	b) ID Car (Transgend	2011-12		15,	48
	c) 25% su Transge economic a	2011-12		55, 44	44
		Total		56, 08	93

* Actual claimed.

Transgender Pension Scheme

SI No	Subje	Year	Budg Allot (Rs)	Expend (Rs)	Benefi
1	Transge pension (age 40 and	20123	1. cro	* 10,000 ** 25,000	33 50
			Tot	35,000	83

* For three months (August, September, Oct

** For five months (November, December 20

SI No	Subje	Year	Budg Allot (Rs)	Expend (Rs)	Benefi
1	Transge pension (age 40 and a	20134	1. cro	60,000 16,000	50 24
			Tot	89,160	74

Details of Welfare Assistance Given Through Tran

Sl. No.	District	No. Transferees as per census	No. Identified Transgender Persons	No. Identified cards supplied	No. Transgender Persons 25% Su (Self Groups)	No. of Help for Transgender Persons	Ratio cards	Housing Patt	Sewing machines	Health Insurance Cards
1.	Ariyalur	30	24	10	10	2	10	0	0	0
2.	Chennai	68	63	63	71	6	22	0	17	20
3.	Coimbatore	33	33	33	12	1	28	29	5	0
4.	Cuddalore	18	13	13	11	2	28	43	4	30
5.	Dharmapuri	87	87	85	36	3	53	87	5	0
6.	Dindigul	14	14	14	10	2	50	29	0	0
7.	Erode	16	14	13	31	5	13	10	5	57
8.	Kancheepuram	11	85	68	14	1	32	15	3	0
9.	Kanyakumari	41	41	39	24	2	39	39	4	0
10.	Karur	11	44	29	24	2	28	28	0	0
11.	Krishnagiri	32	26	24	0	0	12	15	0	22
12.	Madurai	31	23	22	0	4	67	91	4	0
13.	Nagapattinam	49	36	28	8	1	17	0	4	0
14.	Namakkal	15	12	12	0	0	63	29	4	0
15.	Nilgiris	16	1	1	0	0	1	0	0	0
16.	Perambalur	19	19	19	15	2	17	19	0	0
17.	Pudukottai	20	14	14	0	1	10	10	3	0
18.	Ramanathapuram	10	51	51	15	2	23	21	3	0
19.	Salem	18	18	18	0	0	80	71	3	5
20.	Sivagangai	32	32	32	5	2	18	15	3	10
21.	Tanjavur	73	40	40	13	2	10	15	1	0
22.	Theni	12	12	12	51	5	68	72	0	0
23.	Thiruppur	68	45	26	11	3	16	7	4	0
24.	Thiruvarur	22	10	10	11	2	48	0	4	10
25.	Thoothukudi	68	62	62	0	5	3	0	5	0
26.	Thirunelveli	62	62	47	16	2	21	12	4	0
27.	Thiruvarur	13	86	68	5	1	22	57	5	0
28.	Thiruvarur	14	14	14	7	1	7	7	0	0
29.	Trichy	16	12	12	13	2	60	58	5	13
30.	Vellore	18	14	14	0	0	80	20	4	35
31.	Villupuram	16	14	14	10	1	86	36	6	76

Sl. No	District	No. Transgender Persons as census	No. Identified Transgender Persons	No. Identified cards suppl	No. Transgender Persons 25% Su (Self Groups)	No. of Help for Transgender Persons	Ratio cards	Housing Patt	Sewing machines	Health Insurance Cards
32.	Virudhur	11	11	11	19	2	16	36	3	31
	Total	422	347	332	44	64	150	96	10	58

Chapter Twelve

The Role of Ministry of Social Justice & Empowerment

The Department of Social Justice & Empowerment should be the nodal agency for transgender persons. The Department of Social Justice & Empowerment should coordinate with various line Ministries/Departments of State Governments for ensuring welfare measures.

2. For the above purpose, the Ministry of Social Justice & Empowerment should set up a Monitoring Mechanism in the form of an Inter-Ministerial Committee of Ministries of Social Justice & Empowerment, Health & Family Welfare, Housing & Urban Development, Labour & Employment and the Department of Women Empowerment. The Committee may also associate representatives from different regions of the community and experts may also be included. The Committee may also invite representatives from NGOs as special invitees. This Committee should prepare an action plan by all concerned Ministries/Departments. The Committee should suggest measures for removing bottlenecks in the representation of transgender persons.

3. A National Council for Transgender Persons should be set up on similar lines as that of the National Council for Women Empowerment.

4. With a view to ascertain a quick estimate of the number of transgender persons in the country as also their socio-economic status, a survey should be conducted in collaboration with the Ministry of Statistics and Programme Implementation. This may also help the concerned Ministries/Departments to design schemes for improvement of their socio-economic status in the Twelfth Five Year plan document.

5. To begin with, the Ministry may consider the following measures for the benefit of transgender persons with financial assistance:

- (i) Scholarship for transgender persons and financial assistance for SC students;
- (ii) Loan with 25% subsidy for transgender persons to start up self-employment ventures;

(iii) A pension scheme for transgender people aged 60 years and above, who for some reasons cannot access economic empowerment, for ensuring

(iv) Grant-to Voluntary and other Organizations for Empowerment of Transgender People, including vocational training.

6. As discussed in Chapter seven, the role of the Ministry of Social Justice and Empowerment in sensitizing the society and family members, in concert with the Ministry of Health, is to launch an intensive publicity campaign for this

Chapter Thirteen

Summary of Conclusions & Recommendations

Definition of Transgender

1. The Committee recommends that the term be an inclusive term and will cover various gender identity groups, such as hijras, kothis, etc. It will not be a generic definition of transgender persons as

Transgender persons: All persons whose own gender assigned to them at birth. They (whether or not they have undergone sex reassignment or laser therapy, etc.), genderqueers and kinnars, hijras, aravanis, jogtas, etc. accordingly.

2. A compilation of all known transgender terms circulated for guidance of all concerned, which is "suggestive and not exhaustive and all such terms (including the generic definition above and pass the mandate of Chapter Four) should be categorized as qualifying as a transgender person will apply. It belongs to a known transgender socio-cultural context and is not conclusive. As a starting point, a compilation has been prepared by the Committee, based on

3. The terms 'sex' and 'gender' should not be used (presently) and only the term 'gender' should be used in identity documents, application forms, return

Constitutional protection

4. In essence, the Constitution of India is based on equality before the law and equal protection of the law. That the sex of a person is irrelevant save for special provisions to be made for women.

5. A harmonious reading of the Constitution, Citizenship Act, 1955 and the General Clause shows no conflict or limitation imposed on the rights of a Transgender person would undoubtedly fall within the ambit of the Constitution of India guarantees rights to all persons.

Transgender Identity

6. In this regard, the Committee recommends the following:

- i) Transgender should be declared as a third gender. A person should have the option to be declared as 'transgender' as well as have the option to undergo independent gender reassignment surgery/hormones. The term 'transgender' should be used and not 'third gender' should not be used.
- ii) Certificate that a person is a transgender should be issued by a state level authority duly designated by the State/UT on the lines of Tamil Nadu. The recommendation of a District level authority like the Collector/District Magistrate, District Welfare Officer, psychologist, psychiatrist, and other representatives of transgender community should be taken into account by the State Govt/UT Administration.
- iii) The certificate issued as at (ii) should be used by the authorities for indicating the gender in the voter card, passport, birth certificate, etc.
- iv) The third 'gender' identity known as 'transgender' should be recognized by a Government order and for the purpose of welfare, whether a separate law will be debarred or not. For this purpose, Government may refer the matter to the Law Commission.

Inclusive Approach

7. The genesis of the problems of Transgender persons and the discrimination they face in the society, requires a holistic political spectrum. They are one among the many marginalized groups. Some of their problems will, therefore, require a holistic approach of an inclusive approach in all spheres of life.

8. The Committee is of the view that inc Government's strategy to mainstream the tra Justice & Empowerment should take up with Government of India and State Governments community in their policies, programmes and Convergence Approach

9. The Twelfth Five Year Plan (2012-17); transgender communities as follows:

" 23.71. The Twelfth Plan proposes empowerment advocating that line Ministries support the development, employment opportunities and provided for transgendered persons in all introducing a separate column to include the Empowerment along with the Ministry of Stat determine the number of transgendered person order to create a law to protect interests conditions. "

10. In keeping with above intent, the Comm Justice & Empowerment to seek convergence schemes for a more targeted and focused appr considering an Umbrella Scheme for direct ta

11. Various Ministries/Departments of the number of schemes which target a variety of emphasis is given to cover the weaker section The Expert Committee is of the view that th providing benefits to such transgender perso of such schemes/programmes are mentioned bel

MGNREGA

National Rural Livelihood Mission (NRLM)

National Social Assistance Programme (NSA)

National Urban Livelihood Mission (NULM)

Healthcare facilities

Rashtriya Swasthya Bima Yojana (RSBY)

National Health Mission (NHM)

National Policy on Skill Development, 200

Indira Awas Yojana

Addressing Stigma, Discrimination and Violence

Addressing stigma, discrimination and violence against transgender children and adolescents:

12. Family awareness and information are needed for nonconforming or transgender children, setting normative attitudes. Such information could be provided by child development specialties), as well as to

13. Counseling and other mental health services are needed for the children and their parents. These services should be facilitated by the Center for Counselling in Tamil Nadu. The model is being examined for replication by government and welfare.

14. Besides a supportive family environment, transgender children need counseling and support for their self-harm and abuse. To cope up with trauma and violence, a model of RCLCs (rape and crisis Intervention Centers) is being implemented in schools, through various child-welfare services and suicide prevention helplines. Additionally, Self-Help Groups may be oriented on trauma and violence. Information to parents of gender-nonconforming children is also being provided.

15. Educational Awareness Initiatives: gender diversity and transgender youth from hostile school environments. Interventions include formation of groups of students, screenings for sensitization of students and teachers, libraries with books and audio-visual materials, sensitization events by collaborating with NGOs, and adopting policies for preventing sexual harassment. Some schools in Tamil Nadu have initiated elected student representatives and counselors to educate teachers and students. It is recommended that these recommendations may be adopted for creating a conducive environment in educational institutions.

16. Health interventions to reduce discrimination and violence in the healthcare system have been described in Chapter 10. These interventions prevent physical and psychological violence against transgender children and adolescents through counseling and shock treatment.

17. Shelter and WHR deficiencies are imperative that even in the absence of gender-nonconforming and transgender children, there is a need to ensure that short-stay homes are sensitive to the needs and concerns of such children. This includes capacity building of the caregivers for the institutional setting.

Addressing stigma, discrimination and violence

18. Workplace consultation with community groups experienced in the area of Diversity and Inclusion need to sensitize employers and employees. Discrimination policies must be instituted at recruitment, promotion, and employee benefits to be made transgender-inclusive.

19. Law and Law Enforcement and law-enforcement sensitized on issues of transgender people and

- (i) Criminal and disciplinary action against violations of human rights of transgender
- (ii) Taking action against parents who resort to electro-shock or other kinds of unethical
- (iii) Making free legal aid available to transgender against discrimination and violence.
- (iv) Where transgender individuals need to ensure they are not in circumstances of sexual assault.
- (v) Sexual assault, sexual harassment and sexual violence to be transgender-inclusive. Presently, Sections 375 and 376 cover the transgender persons as victims (but not as perpetrators of sexual assault). A new section should be included to cover the cases of sexual violence against transgender persons.
- (vi) Slurs based on real or perceived gender identity under Section 153A of the Indian Penal Code.
- (vii) Bureau of Police Research & Training to study crime against transgender persons, in order to take a view to investigate their causes and prevent them.
- (viii) National Crime Records Bureau may, from time to time, publish statistics of crime against transgender persons and against them as accused.

20. For the long run, the possibility of a transgender community should be considered.

21. Social Welfare and institutional reforms to be implemented, targeting the poor and other at-risk groups.

22. Community strengthened and capacity of community organizations to monitor, document and respond to discrimination strengthened. Training in legal literacy, and Transgender representation in dialogues around reform, and public sensitization is necessary.

23. Housing: Given the poverty experienced by transgender people and the discrimination encountered in finding housing, the Ministry of Housing and Urban Development and that of Housing and Urban Infrastructure should ensure that housing assistance schemes help transgender people to find housing.

24. Media and Transgender human rights issues should be discussed in newspapers and other public forums so as to improve public awareness and ability to realize those rights. Stigmatizing transgender people should be avoided.

Elderly Transgender People

25. There is a need for pension scheme for transgender people assigned at birth, adopting a model similar to that of transgender people in Tamil Nadu, as well as non-discriminatory pension schemes for transgender people.

Suggested Approach to Mainstream Transgender People

26. There is an urgent need for addressing transgender issues in a holistic way that implies giving attention to all aspects of their lives: Education, Employment. Addressing stigma and discrimination against transgender children to school and retaining them in school through various strategies can be considered:

- Ensure equal access to educational opportunities for transgender children and avoid discrimination: Affirmative actions are needed to ensure equal access to education with the community. Schools and colleges need to be made more inclusive. There has to be proper sensitization of society and students.
- The fulfillment of the obligations under the Convention on the Rights of the Child and the improvements in the educational conditions for transgender children.
- Enhance understanding on transgender issues and human rights aspects would help in attitudinal change.
- Dropout of transgender persons from schools has to be seen from different perspective. Dropouts from schools not by choice but by force due to a hostile environment. Dropout may require review and reform of school policies that impede access to mainstream education.
- Ensure safety of transgender children in schools. Schools should be evolved to ensure their safety. This also includes providing safe spaces in schools.
- Sensitization towards transgender community through counselling at schools. The transgender persons should be given adequate opportunity to interact with their peers and address gender-dilemmas.

- Contents on transgender can be included in school textbooks to sensitize children. This can help reduce stigma/discrimination at schools.
- Activities organized at schools to be inclusive. This will enable other children to understand transgender children in their friendship. School Management Committees (SMC) programmes should include separate sessions for transgender children. SMC members should also talk to community members.
- Mainstreaming of transgender persons can be achieved by working in the education sector, particularly in capacity building.
- Review the existing schemes (Education schemes/programmes like Sarva Shiksha Abhiyan (RMSA), Jan Shikshan Sansthan (JSS) etc.) at senior level need to be reviewed to include transgender children. Resource Development (MHRD) may take up this task. Council for Teacher Education may take up separate training programmes for which a separate model may be developed for implementation of RTE Act, as per the mandate of the act on transgender education. States can include transgender children in their education. They are also admitted in private schools under special provisions.
- There is a need to harmonize different schemes to make them suitable and accessible to transgender children. This will address the concerns of transgender children.
- Development of community friendly customised vocational skill development training should be provided to transgender children. This will help them to acquire new skills or providing additional skills which can enable them to look for better job opportunities. Tailor-made skill based training programmes should be developed by Shikshan Sansthans, NSDC and lifelong learning centres.
- Financial incentives/scholarship for transgender children to provide scholarship/entitlements, fee-waiver, hostel facilities, other facilities at subsidized rates for students.
- Establishment of anti-discrimination cell in schools should establish an anti-discrimination cell to protect transgender students against the transgender students.
- Create an enabling environment: There is a need to have different school based committees like School Management Committee as recommended under the RTE Act.

- Section 317 of the IPC: Abandonment of 317 of the IPC if the child is abandoned u abandonment of transgender children takes p eighteen years. The Ministry of Home Affai enhancing the age of child for this offence

- Research: Generate more data/information related to various aspects of their life and programme that would bring an effective and

Suggested Approach for Improving Employment

27. Following approach is suggested:

Create opportunities for Information and cou

- Establish Helpline for Career Guidance,
- Capacity Building and Entrepreneurship D
- Liberal credit facilities and other need
- Provision of social entitlement to the c

- Convergence with existing schemes of Mi (MSJE): MSJE may explore the possibility of Corporations for providing the economic supp

- Vocational Skill Building: Design custom transgender community as per their needs an vocational training centers run by private a

- Create a supportive Environment: The e concerned stakeholders like government offi employers, corporate, community leaders like

- Convergence with existing schemes: Ment existing schemes specially centrally sponso NREGA, NFDC will help in giving them due rec

- Adopt good model/intervention: There a Welfare Board in Tamil Nadu which helps thro of this community. The Board provides 25% employment. The proven models can be adopted

Transgender Adolescents, Youth and Young Adu

28. The international and therefore the na pertaining to children, adolescents and youn

the expectation that no child, adolescent or young person should be subjected to the right to education framework entitled to a safe and nurturing environment, with adequate training to ensure that the high instances of reported bullying based on gender roles are removed from that young person's life. Research and studies have been done, there are at considerable risk of mainly, things of depression, assault, violence and the risk of suicide exist or because they are unable to access it.

29. The Medical Council of India along with other organizations working on transgender issues should develop detailed protocols for counseling of families and transgender adolescents/ youth under the age of 18 and detailed guidelines for adolescents. It is also pertinent to note that on an individual, the age of consent for the purpose of guardian consent is necessary. International standards also help our country achieve this standard. Key issues are:

- Deliberately incorrect and disrespectful information
- Lack of access to appropriate restriction of information
- Privacy and Confidentiality
- Highest standards of psychological health care
- Lack of role models; lack of accurate information
- Transgender awareness training for faculty and community-based trainer

Access to Healthcare: General Health Services and Gender Transition Services (including Sex Reassignment Surgery)

Improving access to and use of general health services for transgender people

30. All public hospitals need to have hospital-based services for transgender people, training and sensitization of staff and their health issues, and the need for support and relatives/care-givers in hospitals) about transgender people.

31. As a transgender person can be a sex worker in public settings, steps need to be taken to decrease the impact of these intersecting stigmas (stigma related to being transgender and sex work).

Improving access to and use of gender transition services for trans people

32 The common gender transition-related services are summarized in the Table below:

Table 10.1: Gender transition-related services

Gender transition-related	MtF transgenders	FtM transgenders
Common needs	Proper counselling options available for transition Proper supportive counselling and peer support	Proper counselling options available for transition Proper supportive counselling and peer support
Types of procedures required	Neovagina creation (construction of vagina) Penectomy (removal of testes) Orchiectomy (removal of testes) Clitoroplasty (removal of clitoris) Breast augmentation (breast enlargement) Rhinoplasty (removal of nose) Hair transplant	Bilateral mastectomy (removal of breasts) Hysterectomy (removal of uterus) Oophorectomy (removal of ovaries) Phalloplasty (removal of penis) Phalloplasty of penis
Types of surgical procedures required	Female hormone therapy Hair removal: Electrolysis Voice modulation therapy	Male hormone therapy Voice modulation therapy

33 The following recommendations are made:

1. To prepare a policy statement (and/or an essential gender transition services, including:
2. To prepare national clinical guidance (supported by international WPATH guidelines)
3. To provide penectomy/orchiectomy (removal of testes) to trans people who are confirmed to be ' [MtF] transgenders' based on the following criteria:

4. To prepare policy guidelines for providing services to transgender persons in hospitals (e.g., which hospitals, whether subsidized)
5. To train relevant health care providers on transgender health care
6. To develop national guidelines on clinical practice for transgender health conditions (now called 'Disorders of Sex Development')

Enabling better understanding and enhancing the capacity of Health Care Providers (HCPs) in dealing with some transgender-specific health issues.

34. To improve better understanding of the health care settings welcoming and non-discriminatory towards transgender persons:

- Curriculum and Training on transgender health care for HCPs
- Transgender-friendly hospital policies/guidelines
- Non-discrimination policy/guidelines
- Research and evidence-base to promote transgender health care

The Role of Ministry of Social Justice & Empowerment

35. The Department of Social Justice & Empowerment should be the nodal agency of the Government for the welfare of transgender persons. The Department of Social Justice & Empowerment should coordinate with other relevant Ministries/Departments of the Government to implement welfare measures for the transgender persons.

36. For the above purpose, the Ministry may constitute a Committee on Transgender Health Care in the form of an Inter-Ministerial Committee comprising representatives from the Ministry of Social Justice & Empowerment, Human Resource Development, Health, Labour & Employment, Housing & Urban Poverty Alleviation, Rural Development, and the Department of Financial Services. The Committee should include representatives from the State Governments by rotation, representing transgender persons. The Committee should recommend representatives of the transgender community to be invited as special invitees to the Committee or be invited as special invitees to the Committee. The Committee should submit time bound action plans by all concerned departments and suggest measures for removing bottlenecks in the health care services and representation.

37. A National Council for Transgender Persons should be constituted as that of the National Council for Senior Citizens.

38. With a view to ascertain a quick estimate of the transgender population in the country as also their socio-economic conditions, the Ministry of Statistics & Programme Implementation should conduct a survey.

help the concerned Ministries in preparing socio-economic status. This is also mentioned

39. To begin with, the Ministry may consider benefit of transgender persons with following

- (i) Scholarship for transgender persons schemes for SC students;
- (ii) Loan with 25% subsidy for transgender self-employment ventures;
- (iii) A pension scheme for transgender persons, who for some reasons cannot avail economic empowerment, for ensuring
- (iv) Grant-to Voluntary and other Organizations for Empowerment of Transgender People, vocational training.

40 As discussed in Chapter seven, the Government is sensitizing the society and families on the transgender issue in a concerted manner in a concerted with the Ministry of Information & Publicity campaign for this purpose.

** * * * *

Persons with Intersex Variations

Though many people believe that all infants are not so binary-minded. At least one in every 1000 mixes male and female characteristics in ways that do not label them male or female. Although no one is born both male and female, some intersexed infants may have been judged "too small" or a clitoris that is judged to be too large.

Parents concerned about their infant's health and genital variation. Although genital ambiguity does not always cause concern, often fear that their children will be adversely affected. The child will grow up to be lesbian or gay.

Some intersexed people are born with genital variations. Some may have internal reproductive organs usual for one sex, but bodies that do not spontaneously go through puberty at the usual years ahead of the usual schedule, or go through puberty at the opposite sex, or experience some of the pubertal changes. Some have congenital absence of the vagina (1 in every 10,000) or the urethral opening does not occur at the usual location. These are also considered by many physicians to be intersexed.

Around the late 1950s, it became widespread to perform genital surgeries and hormone treatments intended to make the child female or clearly male. These procedures are now widely criticized and designed to make the child's genitals look more like those of people who were subjected to genital surgery. There is growing concern against these medical interventions as harmful and based on social prejudice. Their voices have now begun to be heard. Many now recommend and perform these surgical interventions. The idea that sexual ambiguity is shameful is being challenged. For this reason, doctors have been taught that they should provide accurate information about procedures, or that people are able to adapt somewhat to their assigned sex. People are coming out the way the doctors believe it will. Some are coming out the opposite of their surgically assigned sex; some are coming out as intersexed. Some intersexed people have a problematic relationship with their assigned sex.

with doubts about their ability to relate i
created sexual dysfunction.

A sense of inadequacy created by years of di
and a medical posture that sexual ambiguity
problems with self-esteem. In some cases, in
treatments as transsexual people and face th

The view that there is a continuum of sexual
parallel to the contemporary understanding
reside on a continuum. Contemporary theorist
manifestation of human diversity—not a matte
but just what happens in life. These view
medical/psychological profession since the a
by intersexed people, led by the Intersex So

Please also see:

<http://www.wpath.org/>

http://geneq.berkeley.edu/lgbt_resources_def

<http://www.intersexinitiative.org/articles/i>

http://www.isna.org/faq/what_is_intersex

Appendix - 2

Transgender Communities in India

Kothi: A local language term used in South East India (Gender Male at Birth), who identify with characteristics associated with the feminine. Kothis have a strong desire to cross dress and see themselves as women. They may take on this identity or dress and act like men otherwise. Kothi persons of their lives and only reveal their sex when identified persons who present themselves with this difference, in present times, the two communities and the social and community networks they are a part of.

Hijras: Hijras are biological males who reject the binary gender to identify either as women, or "not-men", or "neither man nor woman". Hijras can be considered as the biological male (male of female) persons but Hijras have a long history formalized through a ritual called "reet" (rites) with regional variations in the use of terms referring to them. Aravanis (Tamil Nadu) (See below). Hijras make their money (taking money from hosts at auspicious occasions, babies, or dancing in ceremonies. Some provide other job opportunities, while some may be organized into organisations.

Aravanis: In Tamil Nadu identify themselves as Aravanigal. The Aravanigal Welfare Board, a state government body, Welfare defines Aravanis as biological males who are trapped in a male's body. Some Aravanis act as 'Thirunangi' to refer to Aravanis.

Jogtas / Jogtaps / Jogtappas: Jogtaps or Jogtappas are those persons who are servant of Goddess Renuka Devi (Yellamma) in Andhra Pradesh and Karnataka. 'Jogta' refers to male servant (who is also sometimes referred to as Jogti) if it is part of their family tradition to refer to him/her as a 'Chela' or 'Shishya' (disciple). They denote those transgender persons who are devotees of Goddess Renuka Devi and who are also in the Hijra community. They are different from 'Jogtas' who are heterosexuals and who are not transgender. Also, that transgender biological females dedicated to the Goddess. They are referred to as 'Jogti' (female pronoun) or Hijras, and e

Shiv-Shaktis are considered as males close to a goddess and who have feminine gender inducted into the Shiv-Shakti community by customs, and rituals to be observed by them. sword that represents male power or Shiva (d generally/socially meant for women. Most people economic status and earn for their living as

U. S. Policy Regarding Transgender Com

Transgender transgender individuals are recognized different from the sex assigned to them at birth but who self-identify as a different sex, an individual the female sex at birth but whose gender identity is that of individuals who would fit this definition of transgender and instead identify themselves simply as transgender identity.

It is the policy of the U.S. Federal Government to respect and to provide a workplace that is free from discrimination is based on race, color, religion, national origin, disability, political affiliation, organization, age, sexual orientation, or other characteristics.

In the United States, classifying a person's sex is under the jurisdiction of the states. The requirements for a birth certificate vary from state to state. Ohio, Kansas, Tennessee, and Oklahoma, permit individuals to make either through amending the existing birth certificate, or necessary changes to a birth certificate, if a request is presented.

The State Department, which determines what information is on passports, amended the policy on gender marker changes to be made with a physician's recommendation and appropriate clinical treatment for transition.

Twenty-one U.S. states and the District of Columbia prohibit discrimination based on sexual orientation, and 17 states prohibit discrimination based on gender identity. The Employment Non-Discrimination Act (ENDA), which would bar employers from discriminating against employees based on sexual orientation, is now with the U.S. House taken up for a vote. Currently, there is no federal law that prohibits discrimination against the LGBT class, or specifically demanding equal treatment.

The Department of Justice Civil Rights Division enforces a number of laws that prohibit various forms of discrimination in education, employment, housing, police practices. Although these laws do not explicitly refer to transgender individuals, they prohibit sex discrimination, which protects

based discrimination, including discrimination based on stereotypes associated with that person's race, ethnicity, or national origin.

The Education Division enforces Title IV of the Education Amendments of 1972, which prohibits discrimination on the basis of race, sex, or national origin in colleges, and universities. The Division also enforces Title IX of the Education Amendments of 1972, which prohibits sex discrimination in federally assisted education programs. Both laws prohibit severe or pervasive harassment, including nonconformity with gender stereotypes. The Employment Division enforces Title VII of the Civil Rights Act of 1964, which prohibits discrimination in recruitment, hiring, and benefits. It also prohibits gender-based harassment and discrimination.

The Housing Division enforces the Fair Housing Act, which prohibits discrimination in the sale or rental of housing and in other real estate transactions. The Police Practices Division enforces laws that prohibit harassment, mistreatment, or abuse by police officers and the failure or refusal to investigate certain complaints against police officers involving LGBTI victims.

The Crime Division enforces the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which criminalizes the willful infliction of physical injury, death, or property damage on a person because of their actual or perceived sexual orientation or gender identity.

President Obama's [Executive Order on Promoting Human Rights of Lesbian, Gay, Bisexual, and Transgender Americans](#) in 2010 established a "human rights" approach by directing all agencies to promote human rights in diplomacy and foreign assistance programs. President Obama made it clear that "the struggle for equality is a global challenge, and one that is central to our values as a nation." Through the memorandum, he directed agencies to ensure the criminalization of LGBT status or conduct is not a condition for asylum seekers, use foreign assistance to support human rights, and develop and implement strategies to protect LGBT persons, and engage international organizations to address discrimination.

The State Department's priorities for advancing the rights of lesbian, gay, bisexual, and transgender (LGBT) persons abroad are to

on sexual orientation and gender identity. perpetrators of violence against LGBT individuals decriminalize LGBT status and conduct, and LGBT individuals. Human rights framework of human rights protections. As F "In America and in the pursuit of the foreign on race, ethnicity, gender, ability, religion irrelevant to a person's entitlement to the department, we must openly and explicitly affect persons, including LGBT people."

Appendix - 4

Options for recognition of gender identity
Parameters/Criteria that can be co

Parameters	Option -1 Recognition of gender identity of transgender women or men	Option -2 Recognition of transgender people as trans people	Option -3 Recognition of transgender people based on choice of women/ or third gender
Citizenship	Citizen of	Citizen of	Citizen of
Age limit	Above 18 y	Above 18 y	Above 18 y
Diagnosis dysphoria/ identification	Medical certificate the person identifies gender of choice and legally recognized that is seen to gender.	Affidavit person 'gender' or 'transgender' as a separate category) trans community members/le know the person transgender per	Affidavit person, affidavits community that the man or woman gender/trans For recognition or woman, certificate would be r
Requirement and/or hormonal therapy	If the person hormonal can be provided there are no contraindications SRS: Either undergone or not undergone emasculation Valid medical certificate from more members of SR team of SR providers to be produced	Not required	Not required trans person not want recognized woman.
Parents' guardian's	Not necessary people age 18 years.	Not necessary people age 18 years.	Not necessary people age 18 years.

Approach Paper on Education and Employment
Challenges for Transgender

National Expert Committee on Issues
Ministry of Social Justice and Empowerment

New Delhi
November, 2013

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Exploring Education and Employment Opportunities

Background and Rationale

The Transgender community is one among the communities in India. They face high levels of discrimination such as health, schools/colleges, employment, and social exclusion diminishes self-esteem and sense of being included in the mainstream development programs. They are also subjected to various forms of abuse¹ and exploitation.

This paper is a step towards enhancing the educational and employment opportunities of transgender individuals. It has analysed the present educational and employment status of transgender individuals and the social, cultural and educational factors affecting their education and employment against the backdrop of the existing schemes. The paper has attempted to build external support for the transgender community in education and employment to facilitate their needs and for generating better opportunities.

The authors have analysed and interpreted the secondary sources, official documents, reports, and newspaper articles. The focus group discussion (FGD) with community members has helped to increase our understanding on the issues related to transgender individuals.

Section I: Inclusive Education for Transgender

Every child of the Age of six to fourteen years has the right to education in neighbourhood schools. This is enshrined in the Right to Education Act, 2009', Government of India.

'The education of the child shall be directed to the full development of his talents and mental and physical abilities in accordance with the Convention on the Rights of Child (UNCRC)

¹ From Wikipedia, free encyclopedia for the channel 4 documentary about voluntary eunuchs, see Eunuchs (Channel 4 Documentary)

²<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

The United Nations Convention on the Rights of Child, of India is also a fundamental Government child promulgated Right to Education Act (RTE) 2009 and compulsory education Act (CPIA) 1986. The Act further provided impetus to the government education to children, as it has now become free education.

India has achieved significant growth and development indices such as levels of literacy however, that not all disadvantaged groups process. Among these, the transgender communities in the country is seriously lagging including education. What is appalling is that (Right to Education, etc.) the disparities remain in India. Majority of the population is unable from participating in social, cultural, political apathy towards transgender community, exclusion, discrimination, violence are some of the impediments to participation of transgender persons in education.

Some chilling facts are:

- ❑ Transgender persons face high level violence, violence in terms of neglect by institutions leading to most of the
- ❑ Exclusion from society and family in education
- ❑ The insensitive teachers and staff on the continuity of a transgender
- ❑ The low level of education coupled with making them vulnerable to HIV⁴, and sex to take sub optimal jobs like beggi

³The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. http://india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf

⁴Sexually transmitted infections (STIs) are a common cause of HIV. There are more than 30 different sexually transmissible bacteria. http://www.who.int/topics/sexually_transmitted_infecti

PROBLEM ANALYSIS AND GAPS

High level of stigma, violence and discrimination towards transgender community, high level of stigma and discrimination in educational opportunities inaccessible to the growing up physical, sexual, emotional violence discrimination as well. They often experience to share with classmates, both in the classroom.

Families and schools can both be seen as external forces. These teachers accused effeminate boys of being gay. These are some of the main factors forcing transgender students out of educational institutes at an early stage.

High dropout rate and low enrollment of transgender students in educational environment, transgender students discontinue their education. A close analysis of various reports and discussions indicate that transgender students are most vulnerable to school dropout. The average qualification is secondary level and enrollment is significantly low and dropout rate is very high. Therein bridging the gap of gender inequality is a challenge for the community.

Absence of community support and discrimination in society, teachers accused transgender students towards the community have adverse impact on educational institutes. The teachers and students' sensitivities about the community to support transgender students are inaccessible and mainstream them into the system. The community excluded from the family and society does not support them, therefore forced to discontinue the education.

Social structure of the Hijra community has a hierarchical structure and is determined by various factors like their cultural hierarchy and community norms among Hijra community. The decision making ability both positive and negative norms members feel that these norms sometime become mainstream efforts or allow them to explore their identity.

⁵Terminology guidelines, UNAIDS (October 2011, page 27) : Discrimination, exclusion, or restriction affecting a person, usually but not necessarily, belonging to a particular group

⁶Mostly Hijra lineage is known as 'mother' of the Hijra community. The relationship always go through some of the members of their community.

Lack of skill based need of a tti hœn sœrpi œrutsu rgiatpys: i n is the absence of a skilled based education India, as the children move to the higher cl weaker section/disadvantaged groups, which e an unproductive workforce with little skill opportunity for skilled based education at s gaps in the education system particularly fo

An Approach to mainstream the community

In the midst of our many achievements in nœd approach to deal with the issue of inequali There is no contrary belief that addressing huge problem in bringing transgender childr level.

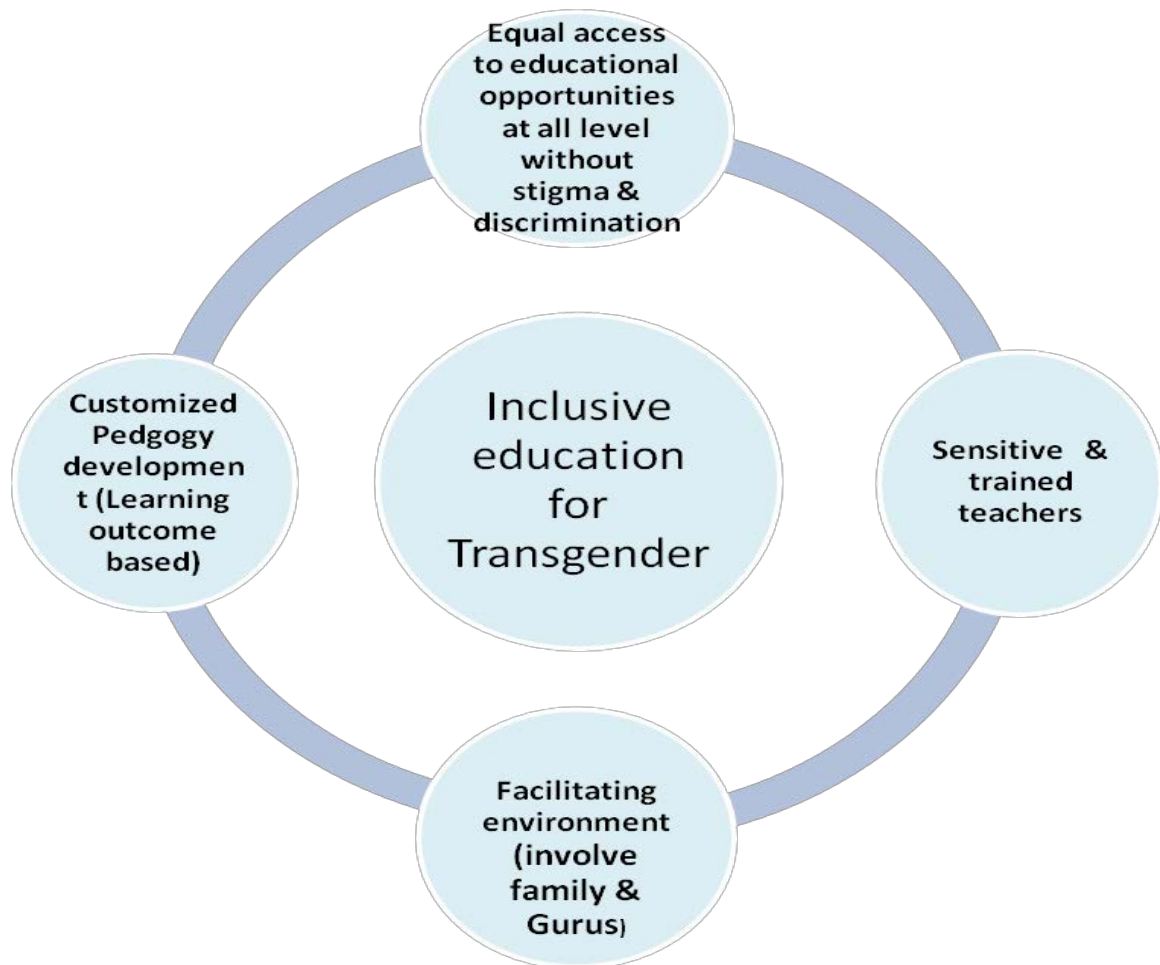
The transgender community experts also argue community concerns in education sector in a Four core areas ⁷ Enabling Environment to yment.

The policy and programmatic framework on ed aspects as highlighted above s da rien faudsder es œu all education sector (primary, secondary and hi afor œsair d corien aerduacsation sector to ensure t adopted in addressing the gaps. The framewo dwelled upon as;

⁷ Accessibility in education is non-discriminatory and accessible to a taken to t r a b g e d e h e p e r s o n s

⁸Equity looks into the dimensions of a n d i s p e c i a t i g e e d s o f i a l m a section like Transgender persons and other neglected group management, and governance issues socialongroups (teachers,

⁹Enabling Environment refers to supportive environment tha stigma, remove structural barriers to the use of services



Other measures suggested are:

Equal access to educational opportunities at

The mainstream society does not understand the transgender community and their social deprivation and discrimination against the transgender and towards the transgender community. The better understanding of the transgender community and their social deprivation and discrimination against the transgender and towards the transgender community would help in addressing the structural constraints, like access to education. Affirmative actions are needed to work with the community and to improve the access to education. Schools and colleges need to be made more inclusive, as it is important that education and/or vocational training is available to all.

The following actions may help in improving

Free and compulsory education up to the secondary level. The fulfillment of this obligation is crucial for the conditions of transgender community. The

states and district level to include the Weaker Section (WES) to provide them necessary Education Act.

Sensitization towards Transgender/Hijra schools. The community feels that it is students to interact with trained counselors. A chapter on TG/Hijra can be included in school to sensitize the larger society or address stigma/discrimination at school level. Advocate with and build capacities of people sectors (NGOs, education activists, teachers) to facilitate the mainstream efforts.

State and Central Education Board (ICSE), Commission (UGC), National Council for Educational Research and Training (NCERT) and other relevant authorities should be encouraged to include schools/universities/educational institutions and mainstream them into the system.

Review the existing schemes and education for transgender and hijra community.

Develop advocacy, social mobilization and awareness (society, transgender community, government) to improve utilization of existing education and create a supportive environment for inclusive education for transgender and hijra community.

Development of community friendly customized

India is facing acute shortage of skilled manpower to provide vocational education and training to the system. At the secondary and higher secondary level, a community friendly and skill based programme need to be developed at this level. The National Skill Development Agency (NSDA) will be the nodal agency for the program of universities and colleges will be

¹⁰The RTE Act makes it mandatory for all schools, except minority, to reserve 25 per cent of seats for children from weaker sections (WES). (http://mhupa.gov.in/W_new/EWS_OFFICE_MEMORUNDUM_14_11_2012.pdf)

¹¹NCVT is the vocational training schemes of Directorate General of Technical Education, Ministry of Skill Development & Entrepreneurship, Government of India. The scheme aims at creating a skill based education system. (<http://www.ncvt.gov.in/>)

¹²Jan Shikshan Sansthan (JSSs) are established to provide vocational education to drop outs by identifying skills as well as providing training. (<http://www.jss.gov.in/>)

¹³NSDA is an autonomous body to coordinate and harmonize the activities of the public and private sector to achieve the skilling targets of the 12th Five Year Plan.

Financial incentives for higher education/pr

Government should provide fee-waiver, fee-free hostel accommodation and other facilities to this group in order to make higher education accessible to the community. Special coaching should be provided for examinations and National Eligibility Test (NET)

Establishment of anti-discrimination cell

All the educational institutions/universities should monitor any form of discrimination against transgender students. An anti-ragging cell, there should be zero tolerance for ragging or complain.

Create an enabling environment

It is increasingly recognized by experts and practitioners that creating an enabling environment to continue their education and work closely with community and different stakeholders. A management committee, village management committee, has to be proper sensitization and capacity building for the transgender community. The involvement of transgender community will help in building an enabling environment. An advocacy strategy has to be developed with stakeholders.

Research

There is need for a focused institutionalized research to generate more data and information on the various aspects of their life and help frame policies and programmes that would bring about change and improve their lives.

and marginalized groups like SCs, STs, OBCs, minorities, and the various skill (https://www.mca.gov.in)

¹⁴ National Eligibility Test (NET) determine the eligibility of candidates for Junior Research Fellowship (JRF) and Eligibility for Assistant Professorship (https://www.mca.gov.in)

Convergence with existing schemes on education

The strategic networking and building partnerships can be established for leverage of resources, showcasing good practices, joint implementation to facilitate this convergence to bring NGO and departments of the Government in one platform to achieve the goal in a judicious and symbiotic way.

The following table is suggestive list of existing schemes useful for the community:

Name of Scheme / Program	Strategy to mainstream the transgender community
Sarv Shiksha Abhiyan (SSA) Ministry of Education Resource Development	SSA is an important pillar of the main thrust of the Government to be bridging all gender and social concerns. State level data can be collected and shared with authorities at state/divisional level for trans gender and community mobilisation on SSA.
Rashtriya Madhyamik Shiksha Abhiyan (RMSA) Ministry of Education Resource Development	RMSA aims to widen access to categories of children. Scheme for inclusive education for disabled cum mentally challenged children is given to girls. The schemes should be made available. Financial incentives to transition to Education (as per the provisions)
Vocationalisation of Secondary Education ¹⁷ Ministry of Education Resource Development	This centrally sponsored scheme enhance individual employability to meet the demand and supply of skills for those pursuing higher education. The schemes can be beneficial go for vocational education

¹⁵ <http://mhrd.gov.in/schemes>

¹⁶ http://mhrd.gov.in/rashtriya_madhyamik_shiksha_abhiyan

¹⁷ http://mhrd.gov.in/scheme_vocationalisation

<p>Adult Education Sakshar¹⁸ Bharat Ministry of Resource Development</p>	<p>The program aims at providing quality education and by reducing the performance gap between the excluded groups like SCs, STs and neo literate adults to contribute and acquire equivalency to formal education.</p> <p>The scope of adult education focuses on life skills and meeting the needs of the community, such as health, nutrition, life saving, up mechanism, counselling, etc.</p>
<p>Jan Shiksha (JSS) Ministry of Resource Development</p>	<p>JSS have been established to provide education to the disadvantaged groups like slum dwellers, SC and ST and increase their productive abilities.</p> <p>The schemes can be integrated with the community development projects and provide training to the transgender community.</p>
<p>Open School Ministry of Resource Development</p>	<p>NIOS provides education in the rural areas as a national board of Secondary and Senior Secondary education.</p> <p>The community members can continue their studies and then opt for higher education or distance learning.</p>
<p>Distance²⁰ Education</p>	<p>It is a flexible, innovative and cost-effective mode of education. It is the leading mode of education. It is a course for the distance universities also provide other diplomas in various fields. Distance mode can provide education to all segments of the society.</p> <p>The distance mode can be used for the following purposes:</p>

¹⁸ http://mhrd.gov.in/saakshar_bharat

¹⁹ http://mhrd.gov.in/jan_shikshan

²⁰ <http://detc.org>

	especially in hard to reach a
Coaching Residential Academy for SC/ST	Universities and Colleges es for UG/PG level students to entry into services covered u The scope of the est perso Special remedial coaching SC/ST and the Minority popul examinations
Merit Scheme / Merit means scholarship MHRD	Under this scheme account of the student benefi The awareness about the schem for higher education

Improving Employment opportunities in community

Article 14 of the Constitution of India guarantees equal rights and opportunities to men and women in political, economic and social spheres.

Article 16 - Equality of opportunity in matters of public employment.

Article 42 directs the State to make provision for ensuring just and humane conditions

Problem Analysis and Gaps

The transgender community is highly deprived participating in economic activities. Their social exclusion further limits their employment opportunities. There are several factors responsible for their economic deprivation which have been analysed as below.

Exclusion from families and do not get any support related opportunities for even qualified and skilled individuals.

²¹ <http://www.socialjustice.nic.in/pdf/freecoach.pdf>

²² http://mhrd.gov.in/national_merit_scheme

²³ Chakrapani, V. (2010). Hijras/Transgender Women in India: published by UNDP-India.

options is a key reason for a significant continue to be in sex work - with its as discussion with the community members and opportunities are provided, the community option or job.

Stigma and Discrimination against transgender workers as a stigma and discrimination at work place period²⁴. They are abused verbally, physically, and sexually at workplaces for which they never received any justice. Denied in the job market, transgender forced to take optimal or low paying²⁵ and marginal work as their livelihood. Exploited by clients, beaten up but hardly report any incidence to police because of fear of further harassments by the police.

High level of economic deprivation: or need so transgenders to survive in difficult economic security for the community in case of so with poor transgender persons or old age enough savings to go for treatment for illnesses, saving schemes or health insurance.

Lack of documentation of the transgender legal document like Election Photo Ident Card. The low level of educational status officials and complex procedure are some to obtain these documents. The lack of bank other social protection and livelihood program bank loan, etc.

Lack of vocational skills of transgender are becoming difficult particularly in urban areas, most transgender expresses their desire to be involved in any occupation. However low level of education skill and absence of vocational skills push them to low paying jobs or unemployment inequality in access to and quality of inequality in wages and employment (Heck outcomes, lower status group like transgender the stand to lose these benefits. Overall

²⁴http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/-ilo_aids/documents/publication/wcms_165448.pdf

²⁵ Badhai is ethnic profession is transgender persons which festival seek kongaadms by dancing and singing

would hinder full and effective utilization of economic growth.

AN APPROACH FOR ENHANCING EMPLOYMENT

The economic empowerment of transgender communities, community norms, culture and empowerment process has to be broad and should include:

- ✚ Awareness generation
- ✚ Skill and Capacity Building
- ✚ Employment and entrepreneurship

The suggested strategy would cover the following:

Create opportunities for Information and counselling

There is a need to create a knowledge base for transgenders on the issues related to economic empowerment in the form of camps/melas, communication campaigns, etc. To ensure participation from all stakeholders, a single desk to help the community open a Bank account, Aadhaar, etc. Special counselling and financial schemes of banks/loans etc can be developed.

Establish a Helpline for Career Guidance and Employment

A telephonic helpline can be set up to provide information on employment, jobs, existing schemes of the government. The helpline can also work as crisis management at work place and report it to the concerned authorities.

A dedicated online placement portal can be developed to provide skilled manpower from transgender community accessed by the employers, corporates, and private sector.

Capacity Building Support on Entrepreneurship

A comprehensive model of market led approach to economic empowerment need to be developed. This would require a range of activities to enterprise development by the transgender community. The need of skill and market access, a comprehensive skill development program is required. The knowledge and confidence

entrepreneurship development (curriculum of literacy consisting of simple maths, language specialised nature of income generation and market linkages, retails and business development skills including soft skills like spoken English resolution, workplace etiquette and leadership)

Enhanced credit and other: support to economic

Bank credit/subsidized loan/micro credit should employment initiatives which may include small businesses, retail trade, professionals and

The agency National Backward Development Finance Corporation to provide the training and support to community organizations (CBOs) to support the initiative

Vocational Skill Building

As highlighted above, the lack of skills and prevent transgender from improving their capacity strategic employment opportunities in new market pronged strategy can be worked out.

- ✚ Design the customized vocational training needs and interest and
- ✚ Effective linkages with vocational training agencies

Create a supportive Environment

The transgender need a facilitating environment opportunities. Efforts should be made to sensitize officials in relevant departments, banks, private Gurus etc.

The transgender community has unique cultural great strength and a sense of identity to them are inseparable parts of the community and should ensure a greater community involvement. The made to link it to employment opportunities.

²⁶ <http://socialjustice.nic.in/schemespro.php>

Networking and Linkages

The strategic networking and building partnerships with industries/corporate, placement agencies etc. of resources and skills is a key to economic growth. The MSJE can facilitate this networking by providing employment opportunities for the transgender community. The MSJE can facilitate to make educational institutions in the transgender community so that they are accessible to employment, or set up their own enterprises.

The MSJE can facilitate to make educational institutions in the transgender community so that they are accessible to employment, or set up their own enterprises.

National Institute of Distance Education (NIDE), National Council for Vocational Training (NCVT), The Ministry of Human Resource Development (MHRD), Ministry of Skill Development and Entrepreneurship, have been working with 14 other ministries, for skill development.

The Modular Employable Skills (MES) and Skill Development Programme adopted by the Directorate General of Employment and Training, Government of India, provides skill development for early school leavers and exit-re-entry sector.

Self-employment and Wage employment (Ministry of Skill Development and Entrepreneurship) in rural areas, can have special provisions for the transgender community. The targets earmarked for beneficiaries belonging to the transgender community below the poverty line.

Swarnajayanti Shahari Urban Wage Employment Programme (Ministry of Skill Development and Entrepreneurship) is accessible to the transgender community.

²⁷ <http://www.nios.ac.in/>

²⁸ <http://labour.nic.in>

²⁹ <http://www.rural.nic.in/>

³⁰ <http://moud.gov.in/>

³¹ <http://dget.gov.in/>

³² <http://rural.nic.in/sites/programmes-schemes-SGSY.asp>

³³ <http://www.indianyोजना.com/rojgar-yोजना/swarnajayanti-gram-swarozgar-yोजना.htm>

Sampoorna Grameen Rozgar Yojana (SGRY), which provides employment in rural areas, can have some impact on the transgender community.

General Recommendations

- ⊕ Efforts should be made to register transgender persons at the central and state government level.
- ⊕ A nodal unit/department should be constituted to coordinate relevant departments and stakeholders and to monitor schemes/ programmes such as education, health, and protection schemes.
- ⊕ Transgender persons who receive vocational skills training and entrepreneurship development training of support structures to be able to use their skills should be established to provide them continued support and linkages with the like-minded agencies (e.g. MSME³⁴ Indian Institute of Management (IIM) etc.) needs to be explored.

³⁴ <http://msme.gov.in/>

Interventions for Transgender persons under

i. In order to prevent the spread of HIV Control Programme (NACP) was started in 1985 scheme. Over the years, the programme has evolved focus on prevention of HIV in the country. The programme has two strong components for- those who are not infected and Treatment for those who are infected. The programme is able to contain the HIV epidemic and the population and those who interact with them.

ii. HIV infection is characterized by its nature, the prevalence of HIV infection in varied risk of acquiring and transmitting HIV detected at Integrated Counseling and Testing that more than 85% of HIV transmission is through multi-partner routes of transmission such as sharing needles (IDU), contaminated blood and blood products contribute to HIV infections. Under sexual prevention programmes to reduce spread of HIV who Have Sex with Men (MSM) including Transgender

iii. Under the programme, MSM are defined as a matter of preference or practice, regardless of whether they also have sex services at cruising sites or hotspots, where they may solicit, interact or have Interventions under NACP-III, Section 1.2.2)

iv. During the third phase of the National 12), programmatic experience has shown that prevention and care needs although some common with men (MSM) and transgender people. Consistent transgender persons when compared with other interventions among them are scaled up. The working group acknowledges the unique HIV transgender people as the community itself need to be adapted to the needs of these groups (workers etc.). Hence exclusive interventions for more than 20 exclusive transgender persons targeted and covering around 23000 transgender persons

shows the prevalence of 8.82 among Transgender initiated by DAC for working with Transgender include a mapping study; draft Operational addressing stigma, legal issues and social i

v. DAC has always been alert to the needs crucial to work with this population sensit related services. In fact, DAC, from 2009 on and DFID to understand the community better modalities of implementation might be. For The epidemiological data on this community prevalence of HIV. The HIV sentinel surveill Mumbai showed as prevalence of 18%. Two site and 0.8% respectively.

vi. In 2012, DAC went a step further and Institute of Epidemiology (NIE), initiated a most at risk of HIV. In this workshop, the estimates will also guide the placement and from giving reliable estimates of most at ri been compiled on demographics, service uptak

vii. For the Department of AIDS Control pr utmost importance and currently the Departn programme for prevention and control of HIV. The scope of work of the Dept. of AIDS Contr of transgender persons, DAC implements Targ These projects are peer-led interventions, Organisations.

viii. TI projects provide HIV prevention Communication (BCC). These messages address messages on safer sex and health-seeking pra Sexually Transmitted Infections (STIs) is p provision of free condoms and linkages to h care & support services. The projects also building and creation of an enabling enviro also key stakeholders.

ix Targeted Interventions follow a peer-l themselves are designated as "Peer Educators Each peer educator is to regularly contact linking them to HIV-related services. This safe sex practices and information on treat Since these peer educators are also TG and f

faith in each other is high and makes the c effective. Furthermore, these Peer Educators demonstrating the benefits of health seeking condoms. The peer-led approach ensures that that their vulnerabilities are addressed.

x. Focus of the fourth phase of the National

a) Scaling up of comprehensive prevention a increased coverage, particularly where TG coverage where TG populace are sparse or spr

b) Improving the quality and intensity of tr

c) Building the technical skills and organ Organizations of TG and provide support to e

d) Strengthening the involvement of TG pop community development and mobilization

e) Strengthening the partnership between g technical assistance providers

f) Reducing stigma and discrimination agains for the community.

g) Implementing interventions to reduce and

h) Flexibility to design interventions to re

i) Provide prevention services like Behaviour promotion of condoms and lubricants and cre environment.

xi. Currently, approximately 23,000 TG peop through 22 TI projects. A comprehensive care risk under NACP. Three broad outreach strat saturation of this key population with servi outreach, b) Through support of Gurus or Gh melas/functions in which transgender people been proposed to promote enabling environmen tremendous focus to cater to the needs of TG

xii. However, there are also several chall prevention strategi epso wferf uTG,gaff @k ee p a mp) ec H levels of marginalization, crime and human community. In addition, the access and awa Department of AIDS Control through various

challenges in the fourth phase of the National separate working group of Transgender population strategies for the next phase of the program scale up plan focusing on both quantitative

xiii. To strengthen HIV-related services for module, a communication package, Operational Technical Resource Group (TRG). DAC with SAC evidence informed scale up plan for transgender workshop conducted with SACS and community design perspective to operationalize the vision. Operational Guideline has been developed by

xiv. Department of AIDS Control is closely related to this population. DAC is also committed to create an enabling environment for this marginal

Minutes of the 1st Meeting of the Expert Committee on Transgender Health, 2013

A meeting was held under the Chairmanship of the Director General of Health Services on the following agenda points:

Defining transgender;

Whether the transgender should be recorded as male and female for the purpose of equality under the Constitution of India as well as for affirmative action. Whether transgender should be permitted to marry as male or female depending upon their choice. Whether any kind of medical or physical compulsory sterilisation and

To examine whether a person can go for gender reassignment (removal) & penectomy (penis removal), Reassignment Surgery (SRS), provided a

2. Following attended the meeting:

1. Prof. A. C. Ammini, HoD, Department of Psychiatry, New Delhi.
2. Dr. Pratap Sharan, Prof. Psychiatry, All India Institute of Medical Sciences, New Delhi.
3. Prof. M. Bajpai, Professor, Paediatrics, All India Institute of Medical Sciences, New Delhi.
4. Dr. Manju Mehta, Psychologist, All India Institute of Medical Sciences, New Delhi.
5. Dr. L. K. Makhiya, HoD, Department of Psychiatry, RML Hospital, New Delhi.
6. Dr. (Mrs.) S. N. Deshpande, Consultant Psychiatrist, Manohar Lohia Hospital, New Delhi.
7. Dr. R. P. Beniwal, Specialist, Psychiatry, All India Institute of Medical Sciences, New Delhi.
8. Dr. Pankaj Verma, Specialist Grade Psychiatrist, All India Institute of Medical Sciences, New Delhi.
9. Dr. Devendra Kumar Yadav, Associate Professor, Safdurjung Hospital, New Delhi.
10. Dr. H. K. Chellani, Professor & Consultant Psychiatrist, Safdurjung Hospital, New Delhi.
11. Dr. Krishna Biswas, HoD, Endocrinology, All India Institute of Medical Sciences, New Delhi.
12. HoD, Department of Burns and Plastic Surgery, All India Institute of Medical Sciences, New Delhi.

13. Dr. Tripti Khanna, Scientist 'E', I
 14. Dr. Sanjeev Kumar Tudu, Professor,

After due deliberations the Committee agr

Definitions

Transgender

3. Transgender is an umbrella term use
 identity (sense of themselves as man or
 that usually associated with their birth

(Adopted from definitions developed by A
 World Professional Association for Transg

According to WHO

"Sex refers to the biological and physiolo
 women

"Gender refers to the socially constructed
 that a given society considers appropriat

4. In humans, biological sex is determi
 chromosomal constitution, the type of g
 reproductive anatomy (such as the uterus
 People whose internal psychological exper
 transgender

5. When a child is born it has certain
 according to which the Doctor/Society an
 'Gender' is assigned to it. In case, th
 child are ambiguous then the child is l
 genitalia' / 'others' etc. At this point o
 identity. As the child grows up it may b
 or infrequently it may behave otherwis
 opposite gender, than what was assigne
 'Transgender'. Thus 'Transgender' canno
 and a person is a 'transgender' only whe
 himself/herself with the opposite sex tha

6. Transgender persons may be given an individual for participating in any activity/treatment/facilities, whatever and wherever of cost to all the patients coming to discrimination on any ground whatsoever, nominal charges levied for certain special any discrimination on any ground whatsoever approval of the competent authority of the

7. To provide identity to the transgender column in the forms/proforma which are interacting with the society, where an transgender or not. Such provision may admission to educational institutions, vo forms etc. However, while declaring t supported by a certificate obtained from by the competent authority. Such Medical fields like psychology/psychiatry, endoc urology and any other field felt necessary

8. This is important as while giving ad have a definite implication dur Wmigl edeci respecting the fact that the transgender opposite gender than what was assigned t ignore, what the major part of theesociet they may not be allowed in the exclusive hostels, jobs meant exclusively for male undertaken with 'men' and 'women' as sepa is in the best interest of the society population. For example, females may be perceived to be of male gender by the so safety of such transgender persons who ar society may be at risk while working in e combat formation in army/paramilitary for

9. Self-declaration as 'male' or 'female'

Regarding Sex Reassignment Procedure/Surg

10. Sex Reassignment Procedure/Surgery, be undertaken as per extant prudent pro literature and following due medical, eth worked out in due course. This subject i requirements of the target population may region to region in a vast country like I

11. This procedure should be initiated if an individual is available wherein the individual's present condition and what all outcomes by the individual along with advanced

12. We may agree to provide the Sex Reassignment individuals to the extent consent was suffered by them due to the discrepancy between the gender assigned to that individual at birth that while there will be individuals seeking of the opposite sex to the extent of creation will be others who do not have any issues without seeking the surgical procedure for (is ex deletion of chromosomes) This surgery as ethically speaking and also going by functional organs is illegal.

13. Thus, while agreeing to the above, this should be endorsed by the Medical Council in the country, from an ethical and legal angle to the issue.

* * * * *

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H u m a n R i g h t s 1 9 4 8

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Universal Declaration of Human Rights

United Nations

2

Note

Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

On December 10, 1948 the General Assembly of the United Nations proclaimed the Universal Declaration of Human Rights on the following pages. Following this historic act, many countries have publicized the text of the Declaration in their own languages, displayed, read and expounded principally in schools and universities without distinction based on the political status of the country.

Preamble

3

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the promotion of human rights shall enjoy freedom of speech and belief, and the right to work has been proclaimed as the highest aspiration of the human mind,

Whereas it is essential, if man is not to be compelled to live in a state of lawlessness, that the rule of law be established in the land,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and have determined to promote better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the utmost importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations,

all nations, to the end that every individual and every State shall have these rights and freedoms constantly in mind, shall strive by teaching and education for these rights and freedoms and by progressive measures to secure their universal and effective recognition and observance by all peoples of Member States themselves and among the peoples under their jurisdiction.

Article 1

12

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

14

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. No distinction shall be made on the basis of the political, jurisdictional or other status of the country or territory to which a person belongs, whether it is independent, non-self-governing or under any other limitation of sovereignty.

Article 3

16

Everyone has the right to life, liberty and security of person.

Article 4

18

No one shall be held in slavery or servitude; slavery and the trade in slaves shall be prohibited in all their forms.

Article 5

20

No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment.

Article 6

22

Everyone has the right to recognition everywhere as a person before the law.

Article 7

24

All are equal before the law and are entitled without distinction of the law. All are entitled to equal protection of this Declaration and against any incitement to

Article 8

26

Everyone has the right to an effective remedy by the competent national authorities for acts violating the fundamental rights granted him

Article 9

28

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

30

Everyone is entitled in full equality to a fair and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

32

1. Everyone charged with a penal offence has the right to be tried in a fair and public trial, in which he has had the opportunity to defend himself.

2. No one shall be held guilty of any penal offence which did not constitute a penal offence, under national or international law, when it was committed. Nor shall a heavier penalty be applied to him than that which was applicable at the time the penal offence was committed.

Article 12

35

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference.

Article 13

37

1. Everyone has the right to freedom of movement and residence within the frontiers of each state.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14 40

1. Everyone has the right to seek and to enjoy⁴¹ in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15 43

1. Everyone has the right to a nationality. 44
2. No one shall be arbitrarily deprived of his⁴⁵ nationality, nor shall anyone acquire his nationality arbitrarily.

Article 16 46

1. Men and women of full age, without any limitation of race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights in marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses. 48
3. The family is the natural and fundamental group unit of society, entitled to protection by society and the State. 49

Article 17 50

1. Everyone has the right to own property alone as well as in association with others. 50
2. No one shall be arbitrarily deprived of his⁵⁵ property.

Article 18 53

Everyone has the right to freedom of thought, conscience and religion; in particular, no one shall be subjected to coercion which would impair his freedom to change his religion or belief, and freedom of religion shall include the right, either alone or in community with others and in public or private, to manifest his religion or belief in worship and observance. 53

Article 19 55

Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. 55

Article 20

57

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with other persons, including the right to form and to join trade unions for the protection of his interests.
2. No one may be compelled to belong to an association.

Article 21

60

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be held by secret vote or by equivalent free and fair voting systems, which shall ensure the free expression of the will of the electors.

Article 22

64

Everyone, as a member of society, has the right to security of person, family, and property, and the right to the realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free and full development of his personality.

Article 23

66

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration which should enable him, if he has a family, to maintain a decent standard of living for himself and his family, including housing, food, clothing, medical care and social services, and to be able to enjoy his leisure time and to pursue his education, cultural and social development.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

71

Everyone has the right to rest and leisure, including reasonable hours of work and periodic holidays with pay.

Article 25

73

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care and necessary social services, and education.

being of himself and of his family, including food and necessary social services, and the right to security in sickness, disability, widowhood, old age or other circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same rights.

Article 26

76

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be equally accessible to all on the basis of capacity.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among peoples, racial and national groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

80

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests which he derives from his scientific, literary or artistic productions.

Article 28

83

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

85

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject to limitations as are determined by laws solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of the community. These limitations shall be determined by law.

3. These rights and freedoms may in no case be exercised in a manner that is contrary to the rights and principles of the United Nations.

Article 30

89

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act which would be contrary to the rights and freedoms set forth herein.

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International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all

persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4. 2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The

election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
 - (a) Twelve members shall constitute a quorum;

 - (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights: (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
 - (b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

1.

(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

1. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

ANNEXURE P-13

English Translation of Argentina's Gender Identity Law as approved by the Senate of Argentina on May 8, 2012 - <http://tgeu.org/argentina-gender-identity-law/>

Gender Identity Law – Buenos Aires, November 30th.

Article 1 – *Right to gender identity*. All persons have the right,

1. a) To the recognition of their gender identity;
2. b) To the free development of their person according to their gender identity;
3. c) To be treated according to their gender identity and, particularly, to be identified in that way in the documents proving their identity in terms of the first name/s, image and sex recorded there.

Article 2 – *Definition*. Gender identity is understood as the internal and individual way in which gender is perceived by persons, that can correspond or not to the gender assigned at birth, including the personal experience of the body. This can involve modifying bodily appearance or functions through pharmacological, surgical or other means, provided it is freely chosen. It also includes other expressions of gender such as dress, ways of speaking and gestures.

Article 3 – *Exercise*. All persons can request that the recorded sex be amended, along with the changes in first name and image, whenever they do not correspond with the self-perceived gender identity.

Article 4 – *Requirements*. All persons requesting that their recorded sex be amended and their first name and images changed invoking the current law, must comply with the following requirements:

1. Prove that they have reached the minimum age of eighteen (18) years, with the exception established in Article 5 of the current law.
2. To submit to the National Bureau of Vital Statistics or their corresponding district offices, a request stating that they fall under the protection of the current law and requesting the amendment of their birth certificate in the records and a new national identity card, with the same number as the original one.
3. To provide the new first name with which they want to be registered.

In no case will it be needed to prove that a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychological or medical treatment has taken place.

Article 5 – *Minors*. In relation to those persons younger than eighteen (18) years old, the request for the procedure detailed in Article 4 must be made through their legal representatives and with explicit agreement by the minor, taking into account the evolving capacities and best interests of the child as expressed in the Convention on the Right of the Child and in Law 26061 for the Comprehensive Protection of the Rights of Girls, Boys and Adolescents. Likewise, the minor must be assisted by a children's lawyer as prescribed by Article 27 of Law 26061.

When the consent of any of the minor's legal representatives is denied or impossible to be obtained, it will be possible to resort to summary proceedings so the corresponding judges will decide, taking into account the evolving capacities and best interests of the child as expressed in

the Convention on the Right of the Child and in Law 26061 for the Comprehensive Protection of the Rights of Girls, Boys and Adolescents.

Article 6 – Procedure. Once the requirements stated in Articles 4 and 5 are met, the public officer will proceed – without any additional legal or administrative procedure required – to notify the amendment of the sex and the change of first name to the Civil Register corresponding to the jurisdiction where the birth certificate was filed so it will issue a new birth certificate incorporating the said changes, and to issue a new national identity card reflecting the amended sex and the new first name as now recorded. Any reference to the current law in the amended birth certificate and in the new national identity document issued as a result of it is forbidden. The procedures for amending the records as described in the current law are free, personal and do not require the intervention of any agent or lawyer.

Article 7 – Effects. The effects of the amendment of the sex and recording a new first name/s according to the current law will create rights against third parties since the record is first made. The amendment in the records will not change the legal entitlements to rights and legal obligations that could have corresponded to the persons before the recording of the amendments, nor those derived from the relationships consecrated by family law at all levels and degrees, that will remain unchanged, including adoption. In all cases, the number in the persons' national identity document will be relevant over the first name or morphological appearance of the persons, for identification purposes.

Article 8 – The record amendments prescribed by the current law, once completed, can only be modified again with judicial authorization.

Article 9 – Confidentiality. Only those authorized by the document holder or provided with a written and well-founded judicial authorization can have access to the original birth certificate. The amendment of the recorded sex and the change in first name will never be given to publicity, except with the authorization of the document holder. The publication in newspapers prescribed by Article 17 of the Law 18248 will be omitted in these cases.

Article 10 – Notifications. The National Bureau of Vital Statistics will provide information about the change of national identity document to the National Registry of Criminal Records, to the corresponding Electoral Registry for correction of electoral rolls and to other bodies as determined in the regulation of this law, including those that might have information on existing precautionary measures involving the interested party.

Article 11 – Right to free personal development. All persons older than eighteen (18) years, according to Article 1 of the current law and with the aim of ensuring the holistic enjoyment of their health, will be able to access total and partial surgical interventions and/or comprehensive hormonal treatments to adjust their bodies, including their genitalia, to their self-perceived gender identity, without requiring any judicial or administrative authorization. There will be no need to prove the will to have a total or partial reassignment surgery in order to access comprehensive hormonal treatment. The only requirement will be, in both cases, informed consent by the individual concerned. In the case of minors, the informed consent will be obtained following the principles and requirements established in Article 5. Without prejudice to the

former, when consent for total or partial surgical intervention is to be obtained, the competent judicial authorities for the jurisdiction must also express their agreement, taking into account the evolving capacities and best interests of the child as expressed in the Convention on the Right of the Child and in Law 26061 for the Comprehensive Protection of the Rights of Girls, Boys and Adolescents. Judicial authorities must express their views within sixty (60) days from the time they were required to provide their agreement.

Public health officials, be they from the state, private or trade union-run health insurance systems, must guarantee in an ongoing way the rights recognized by this law. All medical procedures contemplated in this article are included in the Compulsory Medical Plan (that is, they are not subjected to additional costs for those having private or trade union-run insurance plans), or in whatever system replaces it, as decided by the enforcing authority.

Article 12 – Dignified treatment. The gender identity adopted by the individual must be respected, particularly in the case of girls, boys and adolescents using a first name that is different from the one recorded in their national identity documents. Whenever requested by the individual, the adopted first name must be used for summoning, recording, filing, calling and any other procedure or service in public and private spaces.

When the nature of the procedure makes it necessary to register information in the national identity document, a system will be employed that combines the initials of the first name, the surname in full, date and year of birth, and the number of the document, adding the first name chosen by the individuals on the ground of their gender identity if so required by them.

In those circumstances in which the person must be named in public, only the chosen first name respecting the adopted gender identity will be used.

Article 13 – Enforcement. Every norm, regulation or procedure must respect the human right to gender identity. No norm, regulation or procedure must limit, restrict, exclude or annul the exercise of the right to gender identity, and all norms must always be interpreted and enforced in a manner that favors access to this right.

Article 14 – Section 4 of Article 19 in Law 17132 is repealed. (This 1967 law regulates the practice of Medicine, Dentistry and their auxiliary professions. The repealed section forbade doctors to carry on “surgical interventions modifying the sex of the sick person, unless they are performed after judicial authorization has been provided.”)

Article 15 – The passing of this law is to be communicated to the Executive Power.

Translated by Alejandra Sardá–Chandiramani and Radhika Chandiramani
Translingua – Traducciones feministas multigenéricas

provided by Global Action for Trans*Equality – GATE

Original Text in Spanish provided by the Argentinean Ministry of Public Finances:
[IDENTIDAD DE GENERO Ley 26.743 Establécese el derecho a la identidad de género de las personas](#)

True and Translated Copy

CHAPTER ANNEXURE P-14
GENDER IDENTITY, GENDER EXPRESSION AND
SEX CHARACTERISTICS ACT

To provide for the recognition and registration of the gender of a person and to regulate the effects of such a change, as well as the recognition and protection of the sex characteristics of a person.

14th April, 2015

ACT XI of 2015, as amended by Acts XX of 2015 and LVI of 2016, XIII of 2018 and XXV of 2024.

1. The short title of this Act shall be the Gender Expression and Sex Characteristics Act.

2. In this Act, unless the context otherwise requires—

"acts of civil status" means the facts of birth, marriage, civil union, ^{Amended by: LVI of 2016; XXI of 2024.} adoption, descent, and death, as they may be recorded in any register;

"Chief Executive Officer" means the person appointed by the Minister to be in charge of the International Protection Agency;

"Director" means the Director of the Public Registry;

"gender expression" means the manifestation of a person's gender identity, which may or may not correspond to the sex assigned at birth, including the person's name, pronouns, gender role, appearance and mannerisms, and other characteristics that may be perceived as gendered;

"gender identity" means the internal and individual experience of gender, which may or may not correspond to the sex assigned at birth, including the person's sense of self, role, and appearance and other characteristics that may be perceived as gendered;

"gender marker" means a characteristic that identifies a person within a particular sex category;

"interdisciplinary team" refers to the team referred to in section 14;

"lived gender" refers to each person's gender expression over the course of their life;

"Minister" means the Minister responsible for equality;

"minor" means a person who has not attained sixteen years;

"non-binary gender" refers to all gender identities that are neither male nor female;

"Notary" means a person who is authorized to practise as a Notary Public in Maldives in accordance with the Notarial and Notarial and Archives Act;

"sex characteristics" means the biological and anatomical characteristics of a person's sex assigned at birth, including the primary and secondary sex characteristics, and the genitalia, which may or may not correspond to the gender identity of the person.

anatomical features of a person, such as reproductive organs and genital structures and hormones and glands such as mass, hair distribution, breasts and, or

Emancipation
Added by:
XXV.2024.4.

2A. Persons who have reached the age of 16 years have not yet reached the age of 18 years, for and purposes of this Act:

Provided that the rights and interests of the Convention on the Rights of the Child, the Assembly of the United Nations on 20 November 1989, notwithstanding any provision in this article.

Right to
identity.

3.(1) All persons of legal age shall have the right to -

- (a) the recognition of their gender identity;
- (b) the free development according to their gender identity;
- (c) be treated according to their gender identity, particularly, to be identified in official documents providing their identity;
- (d) bodily integrity and physical autonomy.

(2) Without prejudice to the provisions of this Act -

- (a) a person's rights, relationship or status, including out of parenthood or marriage shall not be affected;
- (b) the person's rights arising out of a contract, but not limited to any testamentary or contractual obligation in one's favour, and any obligation or liability subjected to or acquired prior to the change of gender identity shall in no way be affected;
- (c) any personal or real right already held by a party or any proprietary right already held by a creditor acquired before the change of gender identity shall not be affected.

(3) The gender of a person shall be determined at all times.

(4) The person shall not be required to undergo any surgical procedure for total or partial genital reconstruction, hormonal therapies or any other psychological or medical treatment to make use of the right to gender identity.

Change of
identity.
Amended by:
XX.2015.3;
XXV.2024.5.

4.(1) It shall be the right of every person to request the Director to change the recorded gender of a person, or to a non-binary gender, if the person so chooses to change the name, and the person's self-determined gender identity.

Provided that without prejudice to other law, a person may only request the Director to change the recorded gender of the person if the person is of legal age and is not under any legal interdiction.

request that ~~persons~~ shall also change the record gender:

Provided further that in the case of a new gender marker shall in any ~~act~~ document be "X".

(2) The request shall be made by means of published ~~in a~~ ~~card~~ ~~article~~ 5(3).

(3) The Director shall not require any other the declarator ~~in the public~~ ~~act~~ ~~of~~ ~~the~~ ~~public~~

(4) The Director shall within fifteen days note of enrolment by the ~~Notary~~ at the public in the act of birth of the applicant.

(5) The provisions ~~of~~ ~~the~~ ~~Code~~ ~~of~~ ~~the~~ ~~Notary~~ ~~Act~~ ~~of~~ ~~1998~~ of the *mutandis* apply.

(6) a) (The person who made a request in accordance with sub-article (1) shall also be entitled to a full certificate ~~of~~ ~~birth~~ ~~showing~~ the particulars resulting from the annotations on them so however that there shall be in certificates the annotations that have been made on it by virtue of a decree of a court of law ~~without~~ the details of the said annotations being specified.)

(b) Every person who has made use of the provisions of article 257 of the Civil Code in whom a birth ~~is~~ ~~certified~~ in accordance with article 257C of the said Code shall also be entitled to demand the issue of his or her certificate which results from these annotations there shall be indicated on the same annotations that were made by virtue of a judgment given in accordance with the provisions of article 257 ~~of~~ ~~the~~ ~~Code~~ ~~of~~ ~~the~~ ~~Notary~~ ~~Act~~ ~~of~~ ~~1998~~ details of the specific annotations.

(c) A person whose request to the Court of Notarial Acts, for a correction in the act assigned to them in their act of birth to demand that ~~the~~ ~~act~~ ~~of~~ ~~birth~~ showing the particulars resulting from the annotations on it be issued to them so however that there shall be indicated on the annotations that have been made upon it by virtue of a decree of a court of law without the details of the said annotations being specified.

(d) Within seven days of a request made for the issue of a certificate in accordance with this article shall the ~~Notary~~ give any information contained in the register of original acts ~~of~~ ~~birth~~ ~~expressed~~ in this article.

(7) The said information or copy of may be given:

(a) with the consent of the person t refers; or

(b) when there is no such consent, Court (Voluntary Jurisdiction Sec Court taking cognizance of a caus of the presentation of that cert arises, wheræt itshfei eCdo utrhtati sthse iss the said conf birmia d a b e o is necessar defend or safeguard a right or a the person making the demand whic consideration r a u n s t r a e l c e e v s a , n t t h e c o u considerations should prevail ove of the pertshen ctør twihfoimate refers.

Cap. 420. (8) A person who was granted ed internat h e n t e r n a t i o n a l , P r o t e c t i o n s A c t o f any othe legislation l i s t e n e d u n d e r, t h e d e c r e e o n A wants to change the recorded o s g e n d e r and to change the name, shall m a k e a d e c l a r the Chief Executive Officern e d d e c l a r g e n d e r and name. The Chief Executive o amendment in their asylum a p p l i c a t i o n f within fifteen days.

Change of gender identity and adopted persons. Added by: XX.2015.4. Amended by: XXV.2024.6.

4A(1) The Court which would have issued a d e c r e e m a y , o n a n a p p l i c a t i o n o f a n of a minor or an adopted p e r s o n , a m e n d g e n d e r o f t h e p e r s o n a n d t h e n a m e i f t h e name; and when such decree is so a m e n d shall see that s t h e m a m e n d a m e n t t o t h e D i within fifteen d a y s o f r o m t h e d e c r e e ; a n correction or addition in the Register deletion of t h e r e g i s t e r a r t e b g i n s t t h e o f k the Register o n a A d o p t e d e d e d s t h a l l b e m a manner:

Provided that before the end of the award of the a m e n d o n t e d c o p e r s o r t shall public declaratory act in t a s c t o r e d a n c e w changes ordered in the Court decree.

(2) When the a d o p t e d e d e c r e e y i a s u t h e n t i copy of the relative r e g i s t r a t i o n i n t that can be i a s t u e d b y 2 6 9 (5) e s o f t h e C i v i be a copy of the r e g i s t r a t i o n s o a m e n d of any note or marker of the a m e n d m e n t been deleted by virtue of s u c h p o w e r ; registration in any r e g i s t r a t i o n w h i c h i s a has been deleted shall be c o n s i d e r e d a marker and also the deletion are not s

5. (1) The drawing up of a public deed shall contain the following elements:

- (a) a copy of the act of birth of the applicant;
- (b) a clear, unequivocal and informed declaration by the applicant that one's gender identity corresponds to that of birth;
- (c) a specific identification of the applicant;
- (d) the name with which the applicant wants to be known;
- (dd) a declaration of the acts of civil status other than those of family law, the act of civil status wherein the applicant appears, with the registration number done; and
- (e) all the prescribed conditions in accordance with the Notarial Archives Act.

(2) The Notary shall not request any psychological or medical documents for the drawing up of a deed.

(3) Every Notary acting in accordance with the Notarial Archives Act shall be bound by the provisions of the Notarial Archives Act.

6. The date of birth of the person concerned shall be the date of birth as recorded in the civil registry, unless the person concerned is considered to be of legal age, in which case the date of birth shall be considered to be the date of birth as recorded in the civil registry.

7. (1) The persons exercising parental authority over a minor or the tutor of the minor may file a request with the Civil Court (Voluntary Jurisdiction) requesting the Court to change the recorded name of the minor in order to reflect the minor's gender identity.

(2) When an application under sub-article 7 of a minor, the Court shall:

- (a) ensure that the best interests of the minor are in the Convention on the Rights of the Child, in the paramount consideration; and
- (b) give due weight to the views of the minor, in accordance with the Convention on the Rights of the Child, regarding to the minor's age and maturity: Provided that the Court shall ensure that any process, service or evaluation that the minor shall undergo to evaluate their gender identity shall respect those rights stipulated under article 3 of the Affirmation of Sexual Orientation, Identity and Gender Expression Act.

(3) If the Court orders the recording of the name of the minor in accordance with the provisions of this article, the Court shall also give due consideration to the process, service or evaluation that the minor has gone through, and where possible, not to additional processes.

sub-article (1) or the Court in order to record gender and name of the minor, by means of an annotation in the

(4) The persons exercising parental authority or the tutor of the minor whose gender has not yet been determined may before the minor attains the age of sixteen (16) years (the Civil Code, Section 10, paragraph 1) and the name of the minor chooses to change the name and follow the name of the minor, taking into consideration the best interests of the minor (the Civil Code, Section 10, paragraph 1) shall be allowed to change the name of the minor in the act of birth annotation in the margin:

Provided that persons of sixteen (16) years, whose gender has not yet been determined, may before attaining the age of eighteen (18) years of the procedure as established in the

Provided further that a declaration in terms of the preceding proviso shall be an amendment to the act of birth

Amendment to Act No. 2024.9.
Amended by:
XXV.2024.9.

8. (1) Accessibility to the full act of birth and exclusively by persons of sixteen (16) years and to whom that act order.

(2) An amendment to the act of birth article 7 may be made when the person is of age of sixteen (16) years and the procedure established in article 4:

Provided that without prejudice to the provisions of article 7, an amendment to the act of birth in accordance with this Act shall be made by Court order

Act No. 2024.9.
Act No. 2024.9.

Provided further that any person who wishes to change the gender to a non-binary gender shall express reference to the provisions of article 4 in the declaration of recognition in accordance with article 4(e) of the Act No. 2024.9 by not later than five (5) years after the date of the change of gender to a non-binary gender shall express reference to the provisions of article 4 in the declaration of recognition in accordance with article 4(e) of the Act No. 2024.9

Foreign decision (1).
Amended by:
LVI. 2016.3.
Substituted by:
XXV.2024.10.

(1) A final decision about any person which has been determined by a competent authority in the law of the country shall be recognised in Malta in virtue of the provisions of article 12 and (1) it shall apply

(2) The public deed of recognition shall contain the following elements:

(a) a legal copy of the final decision recognised, and when it is not in the Maltese language a translation into the Maltese language;

(b) a legal copy of a valid identification issued by the country where the decision was issued;

(c) a declaration of the acts of civil status of the applicant registered in Malta, as well as the status wherein the applicant appears registered in the country of origin; and

(d) all the prescribed elements required by the Notarial Profession and Notarial Archives Act, Cap. 55.

(3) In the case of minors, a request for a decision about the minor's gender identity made by a competent foreign court or responsible authority in accordance with the law of that country, shall be accepted if an application filed in the registry of the Civil Jurisdiction Section) by the persons exercising parental responsibility for the minor or the tutor of the minor and the applicant *mutatis mutandis*.

(4) Gender markers by which a person is recognised by a competent foreign court or responsible authority in accordance with the law of that country shall be recognised in Malta if they are recognised in the country of origin.

(5) When a person who has made a request in accordance with article 10 and the provisions of the Act relating to the Director, shall be recognised in accordance with this article.

9A.(1) A person of any nationality who is recognised by a competent authority in a foreign country as having a gender identity that is different from the sex assigned at birth and the intention of living as a person of that gender throughout the period of detention:

Provided that the relevant authority that is provided for in this sub-section shall, after consulting the person concerned, make those adjustments that are necessary to provide reasonable accommodation for that person.

(2) The affidavit referred to in sub-article 9A(1) shall be subject to the procedures set out in the Code of Organised Crime Procedure.

(3) The affidavit mentioned in sub-article 9A(1) shall cease to have effect upon the expiration of the period of detention.

Amendments 10. (1) The Director shall, within five
other of f... of the note of enrolment and by the
documents without prejudice to the aboves
Amended by: of civil status which shall be accord
XX.2015.5; article 5(1)(dd):
XXI.2024.12.
Cap. 614.

Provided that when presented shall be demand
given the complete certificate of the
these annotations and there shall be i
annotations made by virtue of this Act
specific annotations.

Cap. 258. (2) A person, in respect of whom an
birth has been made in accordance with
shall, within five days of receipt of a
request for the issue of a certificate of
other identity documents of the person
identification documents of the person
card and other documents in accordance with the ge
the name of the person reflecting the
birth of the person.

(3) A person may also, on the payment
prescribed, represent any public institution,
employer, educational or cultural institution
or certificate of birth of the person.

Offences. 11. (1) Whosoever shall knowingly expo
has availed of the provisions of this
person, shall upon conviction be liable
than one thousand euro (€1,000) and not
euro (€5,000).

Cap. 9 (2) Saving the provisions of article
when an offence is motivated by gender
characteristics, the punishment shall
article.

(3) Whosoever knowingly violates any
Act, shall upon conviction be liable
than five hundred euro (€500) and not
(€1,000).

Data protection 20. A person who in the course of the
duties was involved with a matter rel
Cap. 377. disclose such information shall be liable
Cap. 586. Act and Data Protection Act

Cap. 55. 5. Provided that public information referred to
5 published Notations of National Archives
Act shall not be disseminated to the public.

Anti-discrimination 13. (1) Every norm, regulation or proced
promotion of gender equality. No procedure
equality. limit, restrict, or annul the exercise
Amended by: and all norms enacted shall be enforced in
XXI.2024.13. that favour the sex.

(2) The public service has the duty to ensure that its services do not discriminate on the basis of sexual orientation, gender identity, gender expression and sex characteristics, and that its services must promote equality irrespective of sexual orientation, gender expression and sex characteristics.

(3) The provisions of this Act shall apply to all public sector departments, agencies and all authorities that maintain personal records and information. Such forms, records and information shall be revised and modified to reflect the new standards set within a maximum of one (1) year from the date of the [Gender Identity, Gender Expression and Sex Characteristics \(Amendment\) Act, 2024](#).

14.(1) It shall be unlawful for any medical professional to perform any surgical intervention on the physical characteristics of a person without their informed consent, or if the person is a minor, without the consent of the person's parent or guardian, unless the person is a minor and the intervention is necessary for the person's health or safety.

Provided that surgical intervention on the physical characteristics of a minor shall be conducted if the minor gives informed consent, or if the minor is a minor and the intervention is necessary for the person's health or safety, and the parent or guardian exercises parental authority or the tutor exercises parental authority.

(2) Medical professionals who breach of this article shall be liable to a fine not exceeding five thousand euro (€5,000) and not more than five thousand euro (€20,000).

(3) In exceptional circumstances, the provisions of this article may be effected once an agreement is reached between the interdisciplinary team and the persons exercising parental authority or the tutor is still unable to provide consent.

Provided that medical intervention which is necessary for the person's health or safety, or for the person's safety, shall be carried out without the consent of the person or the parent or guardian.

(4) The interdisciplinary team appointed by the Minister for a period of three years which shall be renewed for another period of three years.

(5) The interdisciplinary team shall be composed of professionals whom the Minister considers appropriate.

(6) When the needs of a minor are expressed by a minor with the consent of the persons exercising parental authority or the tutor, the medical professionals shall:

- (a) ensure that the best interests of the minor are in the Convention on the Rights of the Child are of paramount consideration; and
- (b) give weight to the views of the minor and the minor's age and maturity.

Health services (1) All persons seeking psychosocial
Amended by: medical interventions related to sex or
LVI. 2015.5. sensitive and individually mediated support
practitioners or peer counsellors. Such
date of diagnosis for a self-identified transsexual person as necessary

(2) The pathologisation of any form of gender identity and, or gender expression under the International Classification of Diseases and similar internationally recognised classification shall be void in Malta. The nullity of such classification shall not affect negatively the provision of any health care, or gender.

Treatment protocol. 16. (1) The Minister, after consulting for health, shall appoint a working group

(2) The working group shall consist of a chairperson and members.

(3) The Chairperson shall be a medical professional with twelve years experience.

(4) The members shall include a representative of the transsexual community and three psychosocial and medical experts.

(5) The Minister shall appoint the working group within three months of the date of the coming into force of this Act.

(6) The members of the working group shall develop medical treatment protocols for transsexual persons, taking into account medical practices and human rights standards, from the date of their appointment, and shall submit recommendations to the Minister for the development of health care protocols.

Power to make regulations. 17. The Minister may make regulations for the purpose of giving effect to any of the provisions of this Act and in relation to gender identity in conformity with the provisions



Gender Recognition Act 2004

CHAPTER 7

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ELIZABETH II

c. 7



Gender Recognition Act 2004

2004 CHAPTER 7

An Act to make provision for and in connection with change of gender.

[1st July 2004]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Applications for gender recognition certificate

1 Applications

- (1) A person of either gender who is aged at least 18 may make an application for a gender recognition certificate on the basis of—
 - (a) living in the other gender, or
 - (b) having changed gender under the law of a country or territory outside the United Kingdom.
- (2) In this Act “the acquired gender”, in relation to a person by whom an application under subsection (1) is or has been made, means—
 - (a) in the case of an application under paragraph (a) of that subsection, the gender in which the person is living, or
 - (b) in the case of an application under paragraph (b) of that subsection, the gender to which the person has changed under the law of the country or territory concerned.
- (3) An application under subsection (1) is to be determined by a Gender Recognition Panel.
- (4) Schedule 1 (Gender Recognition Panels) has effect.

2 Determination of applications

- (1) In the case of an application under section 1(1)(a), the Panel must grant the application if satisfied that the applicant—
 - (a) has or has had gender dysphoria,
 - (b) has lived in the acquired gender throughout the period of two years ending with the date on which the application is made,
 - (c) intends to continue to live in the acquired gender until death, and
 - (d) complies with the requirements imposed by and under section 3.
- (2) In the case of an application under section 1(1)(b), the Panel must grant the application if satisfied—
 - (a) that the country or territory under the law of which the applicant has changed gender is an approved country or territory, and
 - (b) that the applicant complies with the requirements imposed by and under section 3.
- (3) The Panel must reject an application under section 1(1) if not required by subsection (1) or (2) to grant it.
- (4) In this Act “approved country or territory” means a country or territory prescribed by order made by the Secretary of State after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland.

3 Evidence

- (1) An application under section 1(1)(a) must include either—
 - (a) a report made by a registered medical practitioner practising in the field of gender dysphoria and a report made by another registered medical practitioner (who may, but need not, practise in that field), or
 - (b) a report made by a chartered psychologist practising in that field and a report made by a registered medical practitioner (who may, but need not, practise in that field).
- (2) But subsection (1) is not complied with unless a report required by that subsection and made by—
 - (a) a registered medical practitioner, or
 - (b) a chartered psychologist,practising in the field of gender dysphoria includes details of the diagnosis of the applicant’s gender dysphoria.
- (3) And subsection (1) is not complied with in a case where—
 - (a) the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics, or
 - (b) treatment for that purpose has been prescribed or planned for the applicant,unless at least one of the reports required by that subsection includes details of it.
- (4) An application under section 1(1)(a) must also include a statutory declaration by the applicant that the applicant meets the conditions in section 2(1)(b) and (c).
- (5) An application under section 1(1)(b) must include evidence that the applicant has changed gender under the law of an approved country or territory.

- (6) Any application under section 1(1) must include—
- (a) a statutory declaration as to whether or not the applicant is married,
 - (b) any other information or evidence required by an order made by the Secretary of State, and
 - (c) any other information or evidence which the Panel which is to determine the application may require,
- and may include any other information or evidence which the applicant wishes to include.
- (7) The Secretary of State may not make an order under subsection (6)(b) without consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland.
- (8) If the Panel which is to determine the application requires information or evidence under subsection (6)(c) it must give reasons for doing so.

4 Successful applications

- (1) If a Gender Recognition Panel grants an application under section 1(1) it must issue a gender recognition certificate to the applicant.
- (2) Unless the applicant is married, the certificate is to be a full gender recognition certificate.
- (3) If the applicant is married, the certificate is to be an interim gender recognition certificate.
- (4) Schedule 2 (annulment or dissolution of marriage after issue of interim gender recognition certificate) has effect.
- (5) The Secretary of State may, after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland, specify the content and form of gender recognition certificates.

5 Subsequent issue of full certificates

- (1) A court which—
- (a) makes absolute a decree of nullity granted on the ground that an interim gender recognition certificate has been issued to a party to the marriage, or
 - (b) (in Scotland) grants a decree of divorce on that ground,
- must, on doing so, issue a full gender recognition certificate to that party and send a copy to the Secretary of State.
- (2) If an interim gender recognition certificate has been issued to a person and either—
- (a) the person's marriage is dissolved or annulled (otherwise than on the ground mentioned in subsection (1)) in proceedings instituted during the period of six months beginning with the day on which it was issued, or
 - (b) the person's spouse dies within that period,
- the person may make an application for a full gender recognition certificate at any time within the period specified in subsection (3) (unless the person is again married).

- (3) That period is the period of six months beginning with the day on which the marriage is dissolved or annulled or the death occurs.
- (4) An application under subsection (2) must include evidence of the dissolution or annulment of the marriage and the date on which proceedings for it were instituted, or of the death of the spouse and the date on which it occurred.
- (5) An application under subsection (2) is to be determined by a Gender Recognition Panel.
- (6) The Panel –
 - (a) must grant the application if satisfied that the applicant is not married, and
 - (b) otherwise must reject it.
- (7) If the Panel grants the application it must issue a full gender recognition certificate to the applicant.

6 Errors in certificates

- (1) Where a gender recognition certificate has been issued to a person, the person or the Secretary of State may make an application for a corrected certificate on the ground that the certificate which has been issued contains an error.
- (2) If the certificate was issued by a court the application is to be determined by the court but in any other case it is to be determined by a Gender Recognition Panel.
- (3) The court or Panel –
 - (a) must grant the application if satisfied that the gender recognition certificate contains an error, and
 - (b) otherwise must reject it.
- (4) If the court or Panel grants the application it must issue a corrected gender recognition certificate to the applicant.

7 Applications: supplementary

- (1) An application to a Gender Recognition Panel under section 1(1), 5(2) or 6(1) must be made in a form and manner specified by the Secretary of State after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland.
- (2) The applicant must pay to the Secretary of State a non-refundable fee of an amount prescribed by order made by the Secretary of State unless the application is made in circumstances in which, in accordance with provision made by the order, no fee is payable; and fees of different amounts may be prescribed for different circumstances.

8 Appeals etc.

- (1) An applicant to a Gender Recognition Panel under section 1(1), 5(2) or 6(1) may appeal to the High Court or Court of Session on a point of law against a decision by the Panel to reject the application.
- (2) An appeal under subsection (1) must be heard in private if the applicant so requests.

- (3) On such an appeal the court must –
 - (a) allow the appeal and issue the certificate applied for,
 - (b) allow the appeal and refer the matter to the same or another Panel for re-consideration, or
 - (c) dismiss the appeal.
- (4) If an application under section 1(1) is rejected, the applicant may not make another application before the end of the period of six months beginning with the date on which it is rejected.
- (5) If an application under section 1(1), 5(2) or 6(1) is granted but the Secretary of State considers that its grant was secured by fraud, the Secretary of State may refer the case to the High Court or Court of Session.
- (6) On a reference under subsection (5) the court –
 - (a) must either quash or confirm the decision to grant the application, and
 - (b) if it quashes it, must revoke the gender recognition certificate issued on the grant of the application and may make any order which it considers appropriate in consequence of, or otherwise in connection with, doing so.

Consequences of issue of gender recognition certificate etc.

9 General

- (1) Where a full gender recognition certificate is issued to a person, the person's gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman).
- (2) Subsection (1) does not affect things done, or events occurring, before the certificate is issued; but it does operate for the interpretation of enactments passed, and instruments and other documents made, before the certificate is issued (as well as those passed or made afterwards).
- (3) Subsection (1) is subject to provision made by this Act or any other enactment or any subordinate legislation.

10 Registration

- (1) Where there is a UK birth register entry in relation to a person to whom a full gender recognition certificate is issued, the Secretary of State must send a copy of the certificate to the appropriate Registrar General.
- (2) In this Act "UK birth register entry", in relation to a person to whom a full gender recognition certificate is issued, means –
 - (a) an entry of which a certified copy is kept by a Registrar General, or
 - (b) an entry in a register so kept,
 containing a record of the person's birth or adoption (or, if there would otherwise be more than one, the most recent).
- (3) "The appropriate Registrar General" means whichever of –
 - (a) the Registrar General for England and Wales,
 - (b) the Registrar General for Scotland, or
 - (c) the Registrar General for Northern Ireland,

keeps a certified copy of the person's UK birth register entry or the register containing that entry.

- (4) Schedule 3 (provisions about registration) has effect.

11 Marriage

Schedule 4 (amendments of marriage law) has effect.

12 Parenthood

The fact that a person's gender has become the acquired gender under this Act does not affect the status of the person as the father or mother of a child.

13 Social security benefits and pensions

Schedule 5 (entitlement to benefits and pensions) has effect.

14 Discrimination

Schedule 6 (amendments of Sex Discrimination Act 1975 (c. 65) and Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15))) has effect.

15 Succession etc.

The fact that a person's gender has become the acquired gender under this Act does not affect the disposal or devolution of property under a will or other instrument made before the appointed day.

16 Peerages etc.

The fact that a person's gender has become the acquired gender under this Act—

- (a) does not affect the descent of any peerage or dignity or title of honour, and
- (b) does not affect the devolution of any property limited (expressly or not) by a will or other instrument to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour unless an intention that it should do so is expressed in the will or other instrument.

17 Trustees and personal representatives

- (1) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire, before conveying or distributing any property, whether a full gender recognition certificate has been issued to any person or revoked (if that fact could affect entitlement to the property).
- (2) A trustee or personal representative is not liable to any person by reason of a conveyance or distribution of the property made without regard to whether a full gender recognition certificate has been issued to any person or revoked if the trustee or personal representative has not received notice of the fact before the conveyance or distribution.

- (3) This section does not prejudice the right of a person to follow the property, or any property representing it, into the hands of another person who has received it unless that person has purchased it for value in good faith and without notice.

18 Orders where expectations defeated

- (1) This section applies where the disposition or devolution of any property under a will or other instrument (made on or after the appointed day) is different from what it would be but for the fact that a person's gender has become the acquired gender under this Act.
- (2) A person may apply to the High Court or Court of Session for an order on the ground of being adversely affected by the different disposition or devolution of the property.
- (3) The court may, if it is satisfied that it is just to do so, make in relation to any person benefiting from the different disposition or devolution of the property such order as it considers appropriate.
- (4) An order may, in particular, make provision for –
 - (a) the payment of a lump sum to the applicant,
 - (b) the transfer of property to the applicant,
 - (c) the settlement of property for the benefit of the applicant,
 - (d) the acquisition of property and either its transfer to the applicant or its settlement for the benefit of the applicant.
- (5) An order may contain consequential or supplementary provisions for giving effect to the order or for ensuring that it operates fairly as between the applicant and the other person or persons affected by it; and an order may, in particular, confer powers on trustees.

19 Sport

- (1) A body responsible for regulating the participation of persons as competitors in an event or events involving a gender-affected sport may, if subsection (2) is satisfied, prohibit or restrict the participation as competitors in the event or events of persons whose gender has become the acquired gender under this Act.
- (2) This subsection is satisfied if the prohibition or restriction is necessary to secure –
 - (a) fair competition, or
 - (b) the safety of competitors,at the event or events.
- (3) “Sport” means a sport, game or other activity of a competitive nature.
- (4) A sport is a gender-affected sport if the physical strength, stamina or physique of average persons of one gender would put them at a disadvantage to average persons of the other gender as competitors in events involving the sport.
- (5) This section does not affect –
 - (a) section 44 of the Sex Discrimination Act 1975 (c. 65) (exception from Parts 2 to 4 of that Act for acts related to sport), or

- (b) Article 45 of the Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15)) (corresponding provision for Northern Ireland).

20 Gender-specific offences

- (1) Where (apart from this subsection) a relevant gender-specific offence could be committed or attempted only if the gender of a person to whom a full gender recognition certificate has been issued were not the acquired gender, the fact that the person's gender has become the acquired gender does not prevent the offence being committed or attempted.
- (2) An offence is a "relevant gender-specific offence" if—
- (a) either or both of the conditions in subsection (3) are satisfied, and
 - (b) the commission of the offence involves the accused engaging in sexual activity.
- (3) The conditions are—
- (a) that the offence may be committed only by a person of a particular gender, and
 - (b) that the offence may be committed only on, or in relation to, a person of a particular gender,
- and the references to a particular gender include a gender identified by reference to the gender of the other person involved.

21 Foreign gender change and marriage

- (1) A person's gender is not to be regarded as having changed by reason only that it has changed under the law of a country or territory outside the United Kingdom.
- (2) Accordingly, a person is not to be regarded as being married by reason of having entered into a foreign post-recognition marriage.
- (3) But if a full gender recognition certificate is issued to a person who has entered into a foreign post-recognition marriage, after the issue of the certificate the marriage is no longer to be regarded as being void on the ground that (at the time when it was entered into) the parties to it were not respectively male and female.
- (4) However, subsection (3) does not apply to a foreign post-recognition marriage if a party to it has entered into a later (valid) marriage before the issue of the full gender recognition certificate.
- (5) For the purposes of this section a person has entered into a foreign post-recognition marriage if (and only if)—
- (a) the person has entered into a marriage in accordance with the law of a country or territory outside the United Kingdom,
 - (b) before the marriage was entered into the person had changed gender under the law of that or any other country or territory outside the United Kingdom,
 - (c) the other party to the marriage was not of the gender to which the person had changed under the law of that country or territory, and
 - (d) by virtue of subsection (1) the person's gender was not regarded as having changed under the law of any part of the United Kingdom.

- (6) Nothing in this section prevents the exercise of any enforceable Community right.

Supplementary

22 Prohibition on disclosure of information

- (1) It is an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person.
- (2) “Protected information” means information which relates to a person who has made an application under section 1(1) and which—
- (a) concerns that application or any application by the person under section 5(2) or 6(1), or
 - (b) if the application under section 1(1) is granted, otherwise concerns the person’s gender before it becomes the acquired gender.
- (3) A person acquires protected information in an official capacity if the person acquires it—
- (a) in connection with the person’s functions as a member of the civil service, a constable or the holder of any other public office or in connection with the functions of a local or public authority or of a voluntary organisation,
 - (b) as an employer, or prospective employer, of the person to whom the information relates or as a person employed by such an employer or prospective employer, or
 - (c) in the course of, or otherwise in connection with, the conduct of business or the supply of professional services.
- (4) But it is not an offence under this section to disclose protected information relating to a person if—
- (a) the information does not enable that person to be identified,
 - (b) that person has agreed to the disclosure of the information,
 - (c) the information is protected information by virtue of subsection (2)(b) and the person by whom the disclosure is made does not know or believe that a full gender recognition certificate has been issued,
 - (d) the disclosure is in accordance with an order of a court or tribunal,
 - (e) the disclosure is for the purpose of instituting, or otherwise for the purposes of, proceedings before a court or tribunal,
 - (f) the disclosure is for the purpose of preventing or investigating crime,
 - (g) the disclosure is made to the Registrar General for England and Wales, the Registrar General for Scotland or the Registrar General for Northern Ireland,
 - (h) the disclosure is made for the purposes of the social security system or a pension scheme,
 - (i) the disclosure is in accordance with provision made by an order under subsection (5), or
 - (j) the disclosure is in accordance with any provision of, or made by virtue of, an enactment other than this section.
- (5) The Secretary of State may by order make provision prescribing circumstances in which the disclosure of protected information is not to constitute an offence under this section.

- (6) The power conferred by subsection (5) is exercisable by the Scottish Ministers (rather than the Secretary of State) where the provision to be made is within the legislative competence of the Scottish Parliament.
- (7) An order under subsection (5) may make provision permitting –
 - (a) disclosure to specified persons or persons of a specified description,
 - (b) disclosure for specified purposes,
 - (c) disclosure of specified descriptions of information, or
 - (d) disclosure by specified persons or persons of a specified description.
- (8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

23 Power to modify statutory provisions

- (1) The Secretary of State may by order make provision for modifying the operation of any enactment or subordinate legislation in relation to –
 - (a) persons whose gender has become the acquired gender under this Act, or
 - (b) any description of such persons.
- (2) The power conferred by subsection (1) is exercisable by the Scottish Ministers (rather than the Secretary of State) where the provision to be made is within the legislative competence of the Scottish Parliament.
- (3) The appropriate Northern Ireland department may by order make provision for modifying the operation of any enactment or subordinate legislation which deals with a transferred matter in relation to –
 - (a) persons whose gender has become the acquired gender under this Act, or
 - (b) any description of such persons.
- (4) In subsection (3) –

“the appropriate Northern Ireland department”, in relation to any enactment or subordinate legislation which deals with a transferred matter, means the Northern Ireland department which has responsibility for that matter,

“deals with” is to be construed in accordance with section 98(2) and (3) of the Northern Ireland Act 1998 (c. 47), and

“transferred matter” has the meaning given by section 4(1) of that Act.
- (5) Before an order is made under this section, appropriate consultation must be undertaken with persons likely to be affected by it.

24 Orders and regulations

- (1) Any power of the Secretary of State, the Chancellor of the Exchequer, the Scottish Ministers or a Northern Ireland department to make an order under this Act includes power to make any appropriate incidental, supplementary, consequential or transitional provision or savings.
- (2) Any power of the Secretary of State, the Chancellor of the Exchequer or the Scottish Ministers to make an order under this Act, and any power of the Registrar General for England and Wales or the Registrar General for Scotland to make regulations under this Act, is exercisable by statutory instrument.

- (3) No order may be made under section 2 or paragraph 11 of Schedule 3 unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing an order made by the Secretary of State under section 7, 22 or 23 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) A statutory instrument containing an order made by the Scottish Ministers under section 22 or 23 is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (6) Any power of a Northern Ireland department to make an order or regulations under this Act is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (7) Orders and regulations made by a Northern Ireland department under this Act are subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))).

25 Interpretation

In this Act—

- “the acquired gender” is to be construed in accordance with section 1(2),
- “approved country or territory” has the meaning given by section 2(4),
- “the appointed day” means the day appointed by order under section 26,
- “chartered psychologist” means a person for the time being listed in the British Psychological Society’s Register of Chartered Psychologists,
- “enactment” includes an enactment contained in an Act of the Scottish Parliament or in any Northern Ireland legislation,
- “full gender recognition certificate” and “interim gender recognition certificate” mean the certificates issued as such under section 4 or 5 and “gender recognition certificate” means either of those sorts of certificate,
- “gender dysphoria” means the disorder variously referred to as gender dysphoria, gender identity disorder and transsexualism,
- “Gender Recognition Panel” (and “Panel”) is to be construed in accordance with Schedule 1,
- “subordinate legislation” means an Order in Council, an order, rules, regulations, a scheme, a warrant, bye-laws or any other instrument made under an enactment, and
- “UK birth register entry” has the meaning given by section 10(2).

26 Commencement

Apart from sections 23 to 25, this section and sections 28 and 29, this Act does not come into force until such day as the Secretary of State may appoint by order made after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland.

27 Applications within two years of commencement

- (1) This section applies where applications are made under section 1(1)(a) during the period of two years beginning with the appointed day (“the initial period”).

- (2) Section 2(1)(a) has effect as if there were inserted at the end “or has undergone surgical treatment for the purpose of modifying sexual characteristics,”.
- (3) In the case of an application which—
- (a) is made during the first six months of the initial period, or
 - (b) is made during the rest of the initial period and is based on the applicant having undergone surgical treatment for the purpose of modifying sexual characteristics,
- section 2(1)(b) has effect as if for “two” there were substituted “six”.
- (4) Subsections (5) and (6) apply in the case of an application to which subsection (3) applies and in the case of an application—
- (a) made during the rest of the initial period,
 - (b) based on the applicant having or having had gender dysphoria, and
 - (c) including a statutory declaration by the applicant that the applicant has lived in the acquired gender throughout the period of six years ending with the date on which the application is made.
- (5) Section 3 has effect as if for subsections (1) to (3) there were substituted—
- “(1) An application under section 1(1)(a) must include either—
- (a) a report made by a registered medical practitioner, or
 - (b) a report made by a chartered psychologist practising in the field of gender dysphoria.
- (2) Where the application is based on the applicant having or having had gender dysphoria—
- (a) the reference in subsection (1) to a registered medical practitioner is to one practising in the field of gender dysphoria, and
 - (b) that subsection is not complied with unless the report includes details of the diagnosis of the applicant’s gender dysphoria.
- (3) Subsection (1) is not complied with in a case where—
- (a) the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics, or
 - (b) treatment for that purpose has been prescribed or planned for the applicant,
- unless the report required by that subsection includes details of it.”
- (6) Paragraph 4(2) of Schedule 1 has effect with the omission of paragraph (b).

28 Extent

- (1) The following provisions extend only to England and Wales—
- (a) Part 1 of Schedule 2,
 - (b) Part 1 of Schedule 3, and
 - (c) Part 1 of Schedule 4.
- (2) The following provisions extend only to Scotland—
- (a) section 24(5),
 - (b) Part 2 of Schedule 2,
 - (c) Part 2 of Schedule 3, and
 - (d) Part 2 of Schedule 4.

- (3) The following provisions extend only to England and Wales and Scotland –
 - (a) paragraphs 12, 14 and 16 of Schedule 5, and
 - (b) Part 1 of Schedule 6.
- (4) The following provisions extend only to Northern Ireland –
 - (a) section 23(3) and (4),
 - (b) section 24(6) and (7),
 - (c) Part 3 of Schedule 2,
 - (d) Part 3 of Schedule 3,
 - (e) Part 3 of Schedule 4,
 - (f) paragraphs 13, 15 and 17 of Schedule 5, and
 - (g) Part 2 of Schedule 6.
- (5) Subject to subsections (1) to (4), this Act extends to Northern Ireland (as well as to England and Wales and Scotland).

29 Short title

This Act may be cited as the Gender Recognition Act 2004.

SCHEDULES

SCHEDULE 1

Section 1

GENDER RECOGNITION PANELS

List of persons eligible to sit

- 1 (1) The Lord Chancellor must, after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland, make appointments to a list of persons eligible to sit as members of Gender Recognition Panels.
- (2) The only persons who may be appointed to the list are persons who –
 - (a) have a relevant legal qualification (“legal members”), or
 - (b) are registered medical practitioners or chartered psychologists (“medical members”).
- (3) The following have a relevant legal qualification –
 - (a) a person who has a 7 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41),
 - (b) an advocate or solicitor in Scotland of at least seven years’ standing, and
 - (c) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years’ standing.

President

- 2 (1) The Lord Chancellor must, after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland –
 - (a) appoint one of the legal members to be the President of Gender Recognition Panels (“the President”), and
 - (b) appoint another of the legal members to be the Deputy President of Gender Recognition Panels (“the Deputy President”).
- (2) The Deputy President has the functions of the President –
 - (a) if the President is unavailable, and
 - (b) during any vacancy in the office of President.

Tenure of persons appointed to list

- 3 Persons on the list –
 - (a) hold and vacate their appointments in accordance with the terms on which they are appointed, and
 - (b) are eligible for re-appointment at the end of their period of appointment.

Membership of Panels

- 4 (1) The President must make arrangements for determining the membership of Panels.
- (2) The arrangements must ensure that a Panel determining an application under section 1(1)(a) includes—
- (a) at least one legal member, and
 - (b) at least one medical member.
- 5 The arrangements must ensure that a Panel determining an application under section 1(1)(b), 5(2) or 6(1) includes at least one legal member.

Procedure

- 6 (1) Where a Panel consists of more than one member, either the President or Deputy President or another legal member nominated by the President must preside.
- (2) Decisions of a Panel consisting of more than one member may be taken by majority vote (and, if its members are evenly split, the member presiding has a casting vote).
- (3) Panels are to determine applications in private.
- (4) A Panel must determine an application without a hearing unless the Panel considers that a hearing is necessary.
- (5) The President may, after consulting the Council on Tribunals, give directions about the practice and procedure of Panels.
- (6) Panels must give reasons for their decisions.
- (7) Where a Panel has determined an application, the Secretary of State must communicate to the applicant the Panel's decision and its reasons for making its decision.

Staff and facilities

- 7 The Secretary of State may make staff and other facilities available to Panels.

Money

- 8 (1) The Secretary of State may pay sums by way of remuneration, allowances and expenses to members of Panels.
- (2) The Secretary of State may pay compensation to a person who ceases to be on the list if the Secretary of State thinks it appropriate to do so because of special circumstances.

Council on Tribunals

- 9 In Schedule 1 to the Tribunals and Inquiries Act 1992 (c. 53) (tribunals under

supervision of Council on Tribunals), before paragraph 22 insert –

“Gender Recognition 21AA. Gender Recognition Panels
constituted under Schedule 1 to
the Gender Recognition Act
2004 (c. 7).”

Disqualification

- 10 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (offices disqualifying person from membership of House of Commons), at the appropriate place insert –

“Person on the list of those eligible to sit as members of a Gender Recognition Panel.”

- 11 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (offices disqualifying persons from membership of Northern Ireland Assembly), at the appropriate place insert –

“Person on the list of those eligible to sit as members of a Gender Recognition Panel.”

SCHEDULE 2

Section 4

INTERIM CERTIFICATES: MARRIAGE

PART 1

ENGLAND AND WALES

- 1 The Matrimonial Causes Act 1973 (c. 18) is amended as follows.
- 2 In section 12 (grounds on which a marriage celebrated after 31st July 1971 is voidable), after paragraph (f) insert –
- “(g) that an interim gender recognition certificate under the Gender Recognition Act 2004 has, after the time of the marriage, been issued to either party to the marriage;”.
- 3 In section 13 (bars to relief), after subsection (2) insert –
- “(2A) Without prejudice to subsection (1) above, the court shall not grant a decree of nullity by virtue of section 12 above on the ground mentioned in paragraph (g) of that section unless it is satisfied that proceedings were instituted within the period of six months from the date of issue of the interim gender recognition certificate.”
- 4 (1) Paragraph 11 of Schedule 1 (grounds on which a marriage celebrated before 1st August 1971 is voidable) is amended as follows.
- (2) In sub-paragraph (1), after paragraph (d) insert “or
- (e) that an interim gender recognition certificate under the Gender Recognition Act 2004 has been issued to either party to the marriage;”.

(3) After sub-paragraph (3) insert –

“(3A) The court shall not grant a decree of nullity in a case falling within sub-paragraph (1)(e) above unless it is satisfied that proceedings were instituted within six months from the date of issue of the interim gender recognition certificate.”

PART 2

SCOTLAND

5 The Divorce (Scotland) Act 1976 (c. 39) is amended as follows.

6 (1) In subsection (1) of section 1 (grounds on which decree of divorce may be granted) –

(a) the words “the marriage has broken down irretrievably” become paragraph (a), and

(b) after that paragraph insert “or

(b) an interim gender recognition certificate under the Gender Recognition Act 2004 has, after the date of the marriage, been issued to either party to the marriage.”

(2) Accordingly, the title of that section becomes “Grounds of divorce”.

7 In section 2(1) (encouragement of reconciliation), for “in an action for divorce” substitute “under paragraph (a) of section 1(1)”.

PART 3

NORTHERN IRELAND

8 The Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15)) is amended as follows.

9 In Article 14 (grounds on which a marriage celebrated after the commencement of that Article is voidable), after paragraph (f) insert –

“(g) that an interim gender recognition certificate under the Gender Recognition Act 2004 has, after the time of the marriage, been issued to either party to the marriage;”.

10 In Article 16 (bars to relief), after paragraph (2) insert –

“(2A) Without prejudice to paragraph (1), the court shall not grant a decree of nullity by virtue of Article 14 on the ground mentioned in paragraph (g) of that Article unless it is satisfied that proceedings were instituted within the period of six months from the date of issue of the interim gender recognition certificate.”

11 (1) Paragraph 18 of Schedule 3 (grounds on which a marriage celebrated before the commencement of Article 14 is voidable) is amended as follows.

(2) In sub-paragraph (1), after paragraph (d) insert “or

(e) that an interim gender recognition certificate under the Gender Recognition Act 2004 has been issued to either party to the marriage;”.

(3) After sub-paragraph (4) insert –

“(4A) The court shall not grant a decree of nullity in a case falling within sub-paragraph (1)(e) unless it is satisfied that proceedings were

instituted within six months from the date of issue of the interim gender recognition certificate.”

SCHEDULE 3

Section 10

REGISTRATION

PART 1

ENGLAND AND WALES

Introductory

- 1 In this Part—
- “the Registrar General” means the Registrar General for England and Wales, and
- “the 1953 Act” means the Births and Deaths Registration Act 1953 (c. 20).

Gender Recognition Register

- 2 (1) The Registrar General must maintain, in the General Register Office, a register to be called the Gender Recognition Register.
- (2) In this Part “the Gender Recognition Register” means the register maintained under sub-paragraph (1).
- (3) The form in which the Gender Recognition Register is maintained is to be determined by the Registrar General.
- (4) The Gender Recognition Register is not to be open to public inspection or search.

Entries in Gender Recognition Register and marking of existing birth register entries

- 3 (1) If the Registrar General receives under section 10(1) a copy of a full gender recognition certificate issued to a person, the Registrar General must—
- (a) make an entry in the Gender Recognition Register containing such particulars as may be prescribed in relation to the person’s birth and any other prescribed matter,
 - (b) secure that the UK birth register entry is marked in such manner as may be prescribed, and
 - (c) make traceable the connection between the entry in the Gender Recognition Register and the UK birth register entry.
- (2) Sub-paragraph (1) does not apply if the certificate was issued after an application under section 6(1) and that sub-paragraph has already been complied with in relation to the person.
- (3) No certified copy of the UK birth register entry and no short certificate of birth compiled from that entry is to include anything marked by virtue of sub-paragraph (1)(b).
- (4) Information kept by the Registrar General for the purposes of sub-paragraph (1)(c) is not to be open to public inspection or search.

- (5) “Prescribed” means prescribed by regulations made by the Registrar General with the approval of the Chancellor of the Exchequer.

Indexing of entries in Gender Recognition Register

- 4 (1) The Registrar General must make arrangements for each entry made in the Gender Recognition Register to be included in the relevant index kept in the General Register Office.
- (2) Any right to search the relevant index includes the right to search entries included in it by virtue of sub-paragraph (1).
- (3) Where by virtue of sub-paragraph (1) an index includes entries in the Gender Recognition Register, the index must not disclose that fact.
- (4) “The relevant index”, in relation to an entry made in the Gender Recognition Register in relation to a person, means the index of the certified copies of entries in registers, or of entries in registers, which includes the person’s UK birth register entry.

Certified copies of entries in Gender Recognition Register

- 5 (1) Anyone who may have a certified copy of the UK birth register entry of a person issued with a full gender recognition certificate may have a certified copy of the entry made in relation to the person in the Gender Recognition Register.
- (2) Any fee which would be payable for a certified copy of the person’s UK birth register entry is payable for a certified copy of the entry made in relation to the person in the Gender Recognition Register.
- (3) If the person’s UK birth register entry is an entry in the Gender Recognition Register, sub-paragraph (1) applies as if the person’s UK birth register entry were the most recent entry within section 10(2)(a) or (b) containing a record of the person’s birth or adoption which is not an entry in the Gender Recognition Register.
- (4) A certified copy of an entry in the Gender Recognition Register must not disclose the fact that the entry is contained in the Gender Recognition Register.
- (5) A certified copy of an entry in the Gender Recognition Register must be sealed or stamped with the seal of the General Register Office.

Short certificates of birth compiled from Gender Recognition Register

- 6 Where a short certificate of birth under section 33 of the 1953 Act is compiled from the Gender Recognition Register, the certificate must not disclose that fact.

Gender Recognition Register: re-registration

- 7 (1) Section 10A of the 1953 Act (re-registration where parents not married) applies where an entry relating to a person’s birth has been made in the Gender Recognition Register as where the birth of a child has been registered under that Act.
- (2) In its application by virtue of sub-paragraph (1) section 10A has effect—
- (a) as if the reference to the registrar in subsection (1) were to the Registrar General, and

- (b) with the omission of subsection (2).
- (3) Sections 14 and 14A of the 1953 Act (re-registration in cases of legitimation and after declaration of parentage) apply where an entry relating to a person's birth has been made in the Gender Recognition Register as if the references in those sections to the Registrar General authorising re-registration of the person's birth were to the Registrar General's re-registering it.

Correction etc. of Gender Recognition Register

- 8 (1) Any power or duty of the Registrar General or any other person to correct, alter, amend, mark or cancel the marking of a person's UK birth register entry is exercisable, or falls to be performed, by the Registrar General in relation to an entry in the Gender Recognition Register which –
- (a) relates to that person, and
 - (b) under paragraph 4(1) is included in the index which includes the person's UK birth register entry.
- (2) If the person's UK birth register entry is an entry in the Gender Recognition Register, the references in sub-paragraph (1) to the person's UK birth register entry are to the most recent entry within section 10(2)(a) or (b) containing a record of the person's birth or adoption which is not an entry in the Gender Recognition Register.
- (3) The Registrar General may correct the Gender Recognition Register by entry in the margin (without any alteration of the original entry) in consequence of the issue of a full gender recognition certificate after an application under section 6(1).

Revocation of gender recognition certificate etc.

- 9 (1) This paragraph applies if, after an entry has been made in the Gender Recognition Register in relation to a person, the High Court or the Court of Session makes an order under section 8(6) quashing the decision to grant the person's application under section 1(1) or 5(2).
- (2) The High Court or the Court of Session must inform the Registrar General.
- (3) Subject to any appeal, the Registrar General must –
- (a) cancel the entry in the Gender Recognition Register, and
 - (b) cancel, or secure the cancellation, of any marking of an entry relating to the person made by virtue of paragraph 3(1)(b).

Evidence

- 10 (1) Section 34(5) of the 1953 Act (certified copy of entry in register under that Act deemed to be true copy) applies in relation to the Gender Recognition Register as if it were a register under that Act.
- (2) A certified copy of an entry made in the Gender Recognition Register in relation to a person is to be received, without further or other proof, as evidence –
- (a) if the relevant index is the index of the Adopted Children Register, of the matters of which a certified copy of an entry in that Register is evidence,

- (b) if the relevant index is the index of the Parental Order Register, of the matters of which a certified copy of an entry in that Register is evidence, and
 - (c) otherwise, of the person’s birth.
- (3) And any certified copy which is receivable in evidence of any matter in Northern Ireland by virtue of paragraph 31(2)(a) or (b) of this Schedule is also receivable as evidence of that matter in England and Wales.

Regulatory reform

- 11 The Chancellor of the Exchequer may by order amend this Part in consequence of any order under section 1 of the Regulatory Reform Act 2001 (c. 6) which includes provision relating to the system of registration of births and adoptions in England and Wales.

PART 2

SCOTLAND

Introductory

- 12 In this Part—
- “the Registrar General” means the Registrar General for Scotland, and
 - “the 1965 Act” means the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49).

Gender Recognition Register

- 13 (1) The Registrar General must maintain, in the General Register Office of Births, Deaths and Marriages in Scotland, a register to be called the Gender Recognition Register.
- (2) In this Part “the Gender Recognition Register” means the register maintained under sub-paragraph (1).
- (3) The form in which the Gender Recognition Register is maintained is to be determined by the Registrar General.
- (4) The Gender Recognition Register is not to be open to public inspection or search.

Entries in Gender Recognition Register

- 14 (1) If the Registrar General receives under section 10(1) a copy of a full gender recognition certificate issued to a person, the Registrar General must—
- (a) make an entry in the Gender Recognition Register containing such particulars as may be prescribed in relation to the person’s birth and any other prescribed matter, and
 - (b) otherwise than by annotating in any way the birth register, make traceable the connection between the UK birth register entry and the entry in the Gender Recognition Register.
- (2) Sub-paragraph (1) does not apply if the gender recognition certificate was issued after an application under section 6(1) and that sub-paragraph has already been complied with in relation to the person.

- (3) Information kept by the Registrar General for the purposes of subparagraph (1)(b) is not to be open to public inspection or search.
- (4) “Prescribed” means prescribed by regulations made by the Registrar General with the approval of the Scottish Ministers.

Indexing of entries in Gender Recognition Register

- 15 (1) The Registrar General must make arrangements for each entry made in the Gender Recognition Register to be included in an index of such entries kept in the General Register Office of Births, Deaths and Marriages in Scotland.
- (2) Whenever the Registrar General causes a search to be made under subsection (2)(a) of section 38 of the 1965 Act (search of indexes of entries in the registers of births, deaths and marriages) on behalf of any person, he must also, without payment of any fee additional to the fee or fees prescribed under that section –
 - (a) cause a search to be made of the index of entries in the Gender Recognition Register on behalf of that person, and
 - (b) issue to that person an extract of any such entry provided that (disregarding, for the purposes of subsection (4)(j) of section 22, this paragraph) disclosure of the entry to the person would not constitute an offence under that section.

Extracts of entries in Gender Recognition Register

- 16 (1) This paragraph applies in respect of an extract issued under paragraph 15(2)(b).
- (2) Except as regards the sex and name of the person to whom it relates, the extract must have the form and content it would have had had it been an extract from the register of births of the entry relating to that person.
- (3) The extract must not disclose the fact that the entry is contained in the Gender Recognition Register.

Abbreviated certificates of birth compiled from Gender Recognition Register

- 17 Where an abbreviated certificate of birth under section 40 of the 1965 Act is compiled from the Gender Recognition Register, the certificate must not disclose that fact.

Gender Recognition Register: correction, re-registration etc.

- 18 Section 18A(2) (decrees of parentage and non-parentage), section 20(1) and (3) (re-registration in certain cases), section 42(1) and (5) (correction of errors), section 43(1), (2) and (5) to (9) (recording change of name or surname) and section 44 (Register of Corrections etc.) of the 1965 Act apply in relation to the Gender Recognition Register as they apply in relation to the register of births.

Revocation of gender recognition certificate etc.

- 19 (1) This paragraph applies if, after an entry has been made in the Gender Recognition Register in relation to a person, the High Court or the Court of Session makes an order under section 8(6) quashing the decision to grant the person’s application under section 1(1) or 5(2).

- (2) The High Court or the Court of Session must inform the Registrar General.
- (3) Subject to any appeal, the Registrar General must cancel the entry in the Gender Recognition Register.

Authentication and admissibility

- 20 Section 41 of the 1965 Act (authentication of extracts etc. and their admissibility as evidence) applies in relation to the Gender Recognition Register as in relation to the registers kept under the provisions of that Act.

PART 3

NORTHERN IRELAND

Introductory

- 21 In this Part—
- “the Registrar General” means the Registrar General for Northern Ireland, and
 - “the 1976 Order” means the Births and Deaths Registration (Northern Ireland) Order 1976 (S.I. 1976/1041 (N.I. 14)).

Gender Recognition Register

- 22 (1) The Registrar General must maintain, in the General Register Office in Northern Ireland, a register to be called the Gender Recognition Register.
- (2) In this Part “the Gender Recognition Register” means the register maintained under sub-paragraph (1).
- (3) The form in which the Gender Recognition Register is maintained is to be determined by the Registrar General.
- (4) The Gender Recognition Register is not to be open to public inspection or search.

Entries in Gender Recognition Register and marking of existing birth register entries

- 23 (1) If the Registrar General receives under section 10(1) a copy of a full gender recognition certificate issued to a person, the Registrar General must—
- (a) make an entry in the Gender Recognition Register containing such particulars as may be prescribed in relation to the person’s birth and any other prescribed matter,
 - (b) secure that the UK birth register entry is marked in such manner as may be prescribed, and
 - (c) make traceable the connection between the entry in the Gender Recognition Register and the UK birth register entry.
- (2) Sub-paragraph (1) does not apply if the gender recognition certificate was issued after an application under section 6(1) and that sub-paragraph has already been complied with in relation to the person.
- (3) No certified copy of the UK birth register entry and no short certificate of birth compiled from that entry is to include anything marked by virtue of sub-paragraph (1)(b).

- (4) Information kept by the Registrar General for the purposes of sub-paragraph (1)(c) is not to be open to public inspection or search.
- (5) “Prescribed” means prescribed by regulations made by the Department of Finance and Personnel.

Indexing of entries in Gender Recognition Register

- 24 (1) The Registrar General must make arrangements for each entry made in the Gender Recognition Register to be included in the relevant index kept in the General Register Office in Northern Ireland.
- (2) Any right to search the relevant index includes the right to search entries included in it by virtue of sub-paragraph (1).
- (3) Where by virtue of sub-paragraph (1) an index includes entries in the Gender Recognition Register, the index must not disclose that fact.
- (4) “The relevant index”, in relation to an entry made in the Gender Recognition Register in relation to a person, means the index of the entries in registers which includes the UK birth register entry.

Certified copies of entries in Gender Recognition Register

- 25 (1) Anyone who may have a certified copy of the UK birth register entry of a person issued with a full gender recognition certificate may have a certified copy of the entry made in relation to the person in the Gender Recognition Register.
- (2) Any fee which would be payable for a certified copy of the person’s UK birth register entry is payable for a certified copy of the entry made in relation to the person in the Gender Recognition Register.
- (3) If the person’s UK birth register entry is an entry in the Gender Recognition Register, sub-paragraph (1) applies as if the person’s UK birth register entry were the most recent entry within section 10(2)(a) or (b) containing a record of the person’s birth or adoption which is not an entry in the Gender Recognition Register.
- (4) A certified copy of an entry in the Gender Recognition Register must not disclose the fact that the entry is contained in the Gender Recognition Register.
- (5) A certified copy of an entry in the Gender Recognition Register must be sealed or stamped with the seal of the General Register Office in Northern Ireland.

Short certificates of birth compiled from Gender Recognition Register

- 26 Where a short certificate of birth under Article 40 of the 1976 Order is compiled from the Gender Recognition Register, the certificate must not disclose that fact.

Gender Recognition Register: re-registration

- 27 Articles 18, 19 and 19A of the 1976 Order (re-registration of births) apply where an entry relating to a person’s birth has been made in the Gender Recognition Register as if the references in those Articles to the Registrar General authorising re-registration of the person’s birth were to the Registrar General’s re-registering it.

Correction of errors in Gender Recognition Register

- 28 (1) Any power or duty of the Registrar General to correct, alter, amend, mark or cancel the marking of a person's UK birth register entry is exercisable, or falls to be performed, by the Registrar General in relation to an entry in the Gender Recognition Register which –
- (a) relates to that person, and
 - (b) under paragraph 24(1) is included in the index which includes the person's UK birth register entry.
- (2) If the person's UK birth register entry is an entry in the Gender Recognition Register, the references in sub-paragraph (1) to the person's UK birth register entry are to the most recent entry within section 10(2)(a) or (b) containing a record of the person's birth or adoption which is not an entry in the Gender Recognition Register.
- (3) The Registrar General may correct the Gender Recognition Register by entry in the margin (without any alteration of the original entry) in consequence of the issue of a full gender recognition certificate after an application under section 6(1).

Revocation of gender recognition certificate etc.

- 29 (1) This paragraph applies if, after an entry has been made in the Gender Recognition Register in relation to a person, the High Court or the Court of Session makes an order under section 8(6) quashing the decision to grant the person's application under section 1(1) or 5(2).
- (2) The High Court or the Court of Session must inform the Registrar General.
- (3) Subject to any appeal, the Registrar General must –
- (a) cancel the entry in the Gender Recognition Register, and
 - (b) cancel, or secure the cancellation of, any marking of an entry relating to the person made by virtue of paragraph 23(1)(b).

Change of name

- 30 Paragraphs (4) to (6) of Article 37 of the 1976 Order (change of name) apply in relation to the Gender Recognition Register as they apply in relation to a register under that Order.

Evidence

- 31 (1) Article 42 of the 1976 Order (proof of age or death) applies in relation to the Gender Recognition Register as it applies in relation to a register under that Order.
- (2) A certified copy of an entry made in the Gender Recognition Register in relation to a person is to be received, without further or other proof, as evidence –
- (a) if the relevant index is the index of the Adopted Children Register, of the matters of which a certified copy of an entry in that Register is evidence,
 - (b) if the relevant index is the index of the Parental Order Register, of the matters of which a certified copy of an entry in that Register is evidence, and
 - (c) otherwise, of the person's birth.

- (3) And any certified copy which is receivable in evidence of any matter in England and Wales by virtue of paragraph 10(2)(a) or (b) of this Schedule is also receivable as evidence of that matter in Northern Ireland.

Fees

- 32 Article 47 of the 1976 Order (fees for searches, certificates etc.) applies in relation to the Gender Recognition Register as it applies in relation to a register under that Order.

SCHEDULE 4

Section 11

EFFECT ON MARRIAGE

PART 1

ENGLAND AND WALES

Marriage Act 1949 (c. 76)

- 1 The Marriage Act 1949 is amended as follows.
- 2 In section 1 (restrictions on marriage), insert at the end –
- “(6) Subsection (5) of this section and Parts 2 and 3 of the First Schedule to this Act have effect subject to the following modifications in the case of a party to a marriage whose gender has become the acquired gender under the Gender Recognition Act 2004 (“the relevant person”).
- (7) Any reference in those provisions to a former wife or former husband of the relevant person includes (respectively) any former husband or former wife of the relevant person.
- (8) And –
- (a) the reference in paragraph (b) of subsection (5) of this section to the relevant person’s son’s mother is to the relevant person’s son’s father if the relevant person is the son’s mother; and
- (b) the reference in paragraph (d) of that subsection to the relevant person’s daughter’s father is to the relevant person’s daughter’s mother if the relevant person is the daughter’s father.”
- 3 After section 5A insert –
- “5B Marriages involving person of acquired gender**
- (1) A clergyman is not obliged to solemnise the marriage of a person if the clergyman reasonably believes that the person’s gender has become the acquired gender under the Gender Recognition Act 2004.
- (2) A clerk in Holy Orders of the Church in Wales is not obliged to permit the marriage of a person to be solemnised in the church or chapel of which the clerk is the minister if the clerk reasonably

believes that the person’s gender has become the acquired gender under that Act.”

Matrimonial Causes Act 1973 (c. 18)

- 4 The Matrimonial Causes Act 1973 is amended as follows.
- 5 In section 12 (grounds on which a marriage celebrated after 31st July 1971 is voidable), insert at the end –
- “(h) that the respondent is a person whose gender at the time of the marriage had become the acquired gender under the Gender Recognition Act 2004.”
- 6 In section 13(2), (3) and (4) (bars to relief), for “or (f)” substitute “, (f) or (h)”.

PART 2

SCOTLAND

Marriage (Scotland) Act 1977 (c. 15)

- 7 In section 2 of the Marriage (Scotland) Act 1977 (marriage of related persons), insert at the end –
- “(6) Subsections (1A) and (1B) above and paragraphs 2 and 2A of Schedule 1 to this Act have effect subject to the following modifications in the case of a party to a marriage whose gender has become the acquired gender under the Gender Recognition Act 2004 (“the relevant person”).
- (7) Any reference in those provisions to a former wife or former husband of the relevant person includes (respectively) any former husband or former wife of the relevant person.
- (8) And –
- (a) the reference in paragraph (b) of subsection (1B) above to the relevant person’s son’s mother is to the relevant person’s son’s father if the relevant person is the son’s mother; and
- (b) the reference in paragraph (d) of that subsection to the relevant person’s daughter’s father is to the relevant person’s daughter’s mother if the relevant person is the daughter’s father.”

PART 3

NORTHERN IRELAND

Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 (S.I. 1984/1984 (N.I. 14))

- 8 In Article 18 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 (restrictions on marriage), after paragraph (2D) insert –
- “(2DA) Paragraph (2D) and Parts 2 and 3 of the Table in paragraph (1) have effect subject to the following modifications in the case of a party to a marriage whose gender has become the acquired gender under the Gender Recognition Act 2004 (“the relevant person”).

(2DB) Any reference in those provisions to a former wife or former husband of the relevant person includes (respectively) any former husband or former wife of the relevant person.

(2DC) And –

- (a) the reference in paragraph (2D)(b) to the relevant person’s son’s mother is to the relevant person’s son’s father if the relevant person is the son’s mother, and
- (b) the reference in paragraph (2D)(d) to the relevant person’s daughter’s father is to the relevant person’s daughter’s mother if the relevant person is the daughter’s father.”

Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15))

- 9 The Matrimonial Causes (Northern Ireland) Order 1978 is amended as follows.
- 10 In Article 14 (grounds on which a marriage celebrated after the commencement of that Article is voidable), insert at the end –
- “(h) that the respondent is a person whose gender at the time of the marriage had become the acquired gender under the Gender Recognition Act 2004.”
- 11 In Article 16(2), (3) and (4) (bars to relief), for “or (f)” substitute “, (f) or (h)”.

SCHEDULE 5

Section 13

BENEFITS AND PENSIONS

PART 1

INTRODUCTORY

- 1 This Schedule applies where a full gender recognition certificate is issued to a person.

PART 2

STATE BENEFITS

Introductory

- 2 (1) In this Part of this Schedule “the 1992 Act” means –
- (a) in England and Wales and Scotland, the Social Security Contributions and Benefits Act 1992 (c. 4), and
 - (b) in Northern Ireland, the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (2) In this Part of this Schedule “the Administration Act” means –
- (a) in England and Wales and Scotland, the Social Security Administration Act 1992 (c. 5), and
 - (b) in Northern Ireland, the Social Security Administration (Northern Ireland) Act 1992 (c. 8).

- (3) Expressions used in this Part of this Schedule and in Part 2 of the 1992 Act have the same meaning in this Part of this Schedule as in Part 2 of the 1992 Act.

Widowed mother's allowance

- 3 (1) If (immediately before the certificate is issued) the person is, or but for section 1 of the Administration Act would be, entitled to a widowed mother's allowance under section 37 of the 1992 Act (allowance for woman whose husband died before 9th April 2001) –
- (a) the person is not entitled to that allowance afterwards, but
 - (b) (instead) subsections (2) to (5) of section 39A of the 1992 Act (widowed parent's allowance) apply in relation to the person.
- (2) If (immediately before the certificate is issued) the person is (actually) entitled to a widowed mother's allowance, the entitlement to widowed parent's allowance conferred by sub-paragraph (1) is not subject to section 1 of the Administration Act.

Widow's pension

- 4 If (immediately before the certificate is issued) the person is entitled to a widow's pension under section 38 of the 1992 Act (pension for woman whose husband died before 9th April 2001), the person is not entitled to that pension afterwards.

Widowed parent's allowance

- 5 If (immediately before the certificate is issued) the person is, or but for section 1 of the Administration Act would be, entitled to a widowed parent's allowance by virtue of subsection (1)(b) of section 39A of the 1992 Act (allowance for man whose wife died before 9th April 2001), subsections (2) to (5) of that section continue to apply in relation to the person afterwards.

Long-term incapacity benefit etc.

- 6 If (immediately before the certificate is issued) the person is entitled to incapacity benefit, or a Category A retirement pension, under –
- (a) section 40 of the 1992 Act (long-term incapacity benefit etc. for woman whose husband died before 9th April 2001), or
 - (b) section 41 of the 1992 Act (long-term incapacity benefit etc. for man whose wife died before that date),
- the person is not so entitled afterwards.

Category A retirement pension

- 7 (1) Any question –
- (a) whether the person is entitled to a Category A retirement pension (under section 44 of the 1992 Act) for any period after the certificate is issued, and
 - (b) (if so) the rate at which the person is so entitled for the period,
- is to be decided as if the person's gender had always been the acquired gender.
- (2) Accordingly, if (immediately before the certificate is issued) the person –

- (a) is a woman entitled to a Category A retirement pension, but
 (b) has not attained the age of 65,
 the person ceases to be so entitled when it is issued.
- (3) And, conversely, if (immediately before the certificate is issued) the person—
 (a) is a man who has attained the age at which a woman of the same age attains pensionable age, but
 (b) has not attained the age of 65,
 the person is to be treated for the purposes of section 44 of the 1992 Act as attaining pensionable age when it is issued.
- (4) But sub-paragraph (1) does not apply if and to the extent that the decision of any question to which it refers is affected by—
 (a) the payment or crediting of contributions, or the crediting of earnings, in respect of a period ending before the certificate is issued, or
 (b) preclusion from regular employment by responsibilities at home for such a period.
- (5) Paragraph 10 makes provision about deferment of Category A retirement pensions.

Category B retirement pension etc.

- 8 (1) Any question whether the person is entitled to—
 (a) a Category B retirement pension (under section 48A, 48B, 48BB or 51 of the 1992 Act), or
 (b) an increase in a Category A retirement pension under section 51A or 52 of the 1992 Act (increase in Category A retirement pension by reference to amount of Category B retirement pension),
 for any period after the certificate is issued is (in accordance with section 9(1)) to be decided as if the person's gender were the acquired gender (but subject to sub-paragraph (4)).
- (2) Accordingly, if (immediately before the certificate is issued) the person is a woman entitled to—
 (a) a Category B retirement pension, or
 (b) an increase in a Category A retirement pension under section 51A or 52 of the 1992 Act,
 the person may cease to be so entitled when it is issued.
- (3) And, conversely, if (immediately before the certificate is issued) the person—
 (a) is a man who has attained the age at which a woman of the same age attains pensionable age, but
 (b) has not attained the age of 65,
 the person is to be treated for the purposes of sections 48A, 48B and 48BB of the 1992 Act as attaining pensionable age when it is issued.
- (4) But a person who is a man (immediately before the certificate is issued) is not entitled to a Category B retirement pension under section 48B of the 1992 Act for any period after it is issued if the person—
 (a) attains (or has attained) the age of 65 before 6th April 2010, and
 (b) would not have been entitled to a Category B retirement pension under section 51 of the 1992 Act for that period if still a man.

- (5) Paragraph 10 makes provision about deferment of Category B retirement pensions.

Shared additional pension

- 9 (1) Any question –
- (a) whether the person is entitled to a shared additional pension (under section 55A of the 1992 Act) for any period after the certificate is issued, and
 - (b) (if so) the rate at which the person is so entitled for the period, is to be decided on the basis of the person attaining pensionable age on the same date as someone of the acquired gender (and the same age).
- (2) Accordingly, if (immediately before the certificate is issued) the person –
- (a) is a woman entitled to a shared additional pension, but
 - (b) has not attained the age of 65,
- the person ceases to be so entitled when it is issued.
- (3) And, conversely, if (immediately before the certificate is issued) the person –
- (a) is a man who has attained the age at which a woman of the same age attains pensionable age, but
 - (b) has not attained the age of 65,
- the person is to be treated for the purposes of section 55A of the 1992 Act as attaining pensionable age when it is issued.
- (4) Paragraph 10 makes provision about deferment of shared additional pensions.

Deferment of pensions

- 10 (1) The person's entitlement to –
- (a) a Category A retirement pension,
 - (b) a Category B retirement pension, or
 - (c) a shared additional pension,
- is not to be taken to have been deferred for any period ending before the certificate is issued unless the condition in sub-paragraph (2) is satisfied.
- (2) The condition is that the entitlement both –
- (a) was actually deferred during the period, and
 - (b) would have been capable of being so deferred had the person's gender been the acquired gender.

Category C retirement pension for widows

- 11 If (immediately before the certificate is issued) the person is entitled to a Category C retirement pension under section 78(2) of the 1992 Act, the person is not entitled to that pension afterwards.

Graduated retirement benefit: Great Britain

- 12 (1) The provision that may be made by regulations under paragraph 15 of Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (c. 6) (power to retain provisions repealed by Social Security Act 1973 (c. 38), with or without modification, for transitional purposes) includes provision

modifying the preserved graduated retirement benefit provisions in consequence of this Act.

- (2) “The preserved graduated retirement benefit provisions” are the provisions of the National Insurance Act 1965 (c. 51) relating to graduated retirement benefit continued in force, with or without modification, by regulations having effect as if made under that paragraph.

Graduated retirement benefit: Northern Ireland

- 13 (1) The provision that may be made by regulations under paragraph 15 of Schedule 3 to the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9) (corresponding power for Northern Ireland) includes provision modifying the Northern Ireland preserved graduated retirement benefit provisions in consequence of this Act.
- (2) “The Northern Ireland preserved graduated retirement benefit provisions” are the provisions of the National Insurance Act (Northern Ireland) 1966 (c. 6 (N.I.)) relating to graduated retirement benefit continued in force, with or without modification, by regulations having effect as if made under that paragraph.

PART 3

OCCUPATIONAL PENSION SCHEMES

Guaranteed minimum pensions etc.: Great Britain

- 14 (1) In this paragraph “the 1993 Act” means the Pension Schemes Act 1993 (c. 48); and expressions used in this paragraph and in that Act have the same meaning in this paragraph as in that Act.
- (2) The fact that the person’s gender has become the acquired gender does not affect the operation of section 14 of the 1993 Act (guaranteed minimum) in relation to the person, except to the extent that its operation depends on section 16 of the 1993 Act (revaluation); and sub-paragraphs (3) and (5) have effect subject to that.
- (3) If (immediately before the certificate is issued) the person is a woman who is entitled to a guaranteed minimum pension but has not attained the age of 65—
- (a) the person is for the purposes of section 13 of the 1993 Act and the guaranteed minimum pension provisions to be treated after it is issued as not having attained pensionable age (so that the entitlement ceases) but as attaining pensionable age on subsequently attaining the age of 65, and
- (b) in a case where the person’s guaranteed minimum pension has commenced before the certificate is issued, it is to be treated for the purposes of Chapter 3 of Part 4 of the 1993 Act (anti-franking) as if it had not.
- (4) But sub-paragraph (3)(a) does not—
- (a) affect any pension previously paid to the person, or
- (b) prevent section 15 of the 1993 Act (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed) operating to increase the person’s guaranteed minimum by reason of

a postponement of the commencement of the person's guaranteed minimum pension for a period ending before the certificate is issued.

- (5) If (immediately before the certificate is issued) the person is a man who –
- (a) has attained the age of 60, but
 - (b) has not attained the age of 65,
- the person is to be treated for the purposes of section 13 of the 1993 Act and the guaranteed minimum pension provisions as attaining pensionable age when it is issued.
- (6) If at that time the person has attained the age of 65, the fact that the person's gender has become the acquired gender does not affect the person's pensionable age for those purposes.
- (7) The fact that the person's gender has become the acquired gender does not affect any guaranteed minimum pension to which the person is entitled as a widow or widower immediately before the certificate is issued (except in consequence of the operation of the previous provisions of this Schedule).
- (8) If a transaction to which section 19 of the 1993 Act applies which is carried out before the certificate is issued discharges a liability to provide a guaranteed minimum pension for or in respect of the person, it continues to do so afterwards.
- (9) "The guaranteed minimum pension provision" means so much of the 1993 Act (apart from section 13) and of any other enactment as relates to guaranteed minimum pensions.

Guaranteed minimum pensions etc.: Northern Ireland

- 15 (1) In this paragraph "the 1993 Act" means the Pension Schemes (Northern Ireland) Act 1993 (c. 49); and expressions used in this paragraph and in that Act have the same meaning in this paragraph as in that Act.
- (2) The fact that the person's gender has become the acquired gender does not affect the operation of section 10 of the 1993 Act (guaranteed minimum) in relation to the person, except to the extent that its operation depends on section 12 of the 1993 Act (revaluation); and sub-paragraphs (3) and (5) have effect subject to that.
- (3) If (immediately before the certificate is issued) the person is a woman who is entitled to a guaranteed minimum pension but has not attained the age of 65 –
- (a) the person is for the purposes of section 9 of the 1993 Act and the guaranteed minimum pension provisions to be treated after it is issued as not having attained pensionable age (so that the entitlement ceases) but as attaining pensionable age on subsequently attaining the age of 65, and
 - (b) in a case where the person's guaranteed minimum pension has commenced before the certificate is issued, it is to be treated for the purposes of Chapter 3 of Part 4 of the 1993 Act (anti-franking) as if it had not.
- (4) But sub-paragraph (3)(a) does not –
- (a) affect any pension previously paid to the person, or
 - (b) prevent section 11 of the 1993 Act (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed) operating to increase the person's guaranteed minimum by reason of

a postponement of the commencement of the person's guaranteed minimum pension for a period ending before the certificate is issued.

- (5) If (immediately before the certificate is issued) the person is a man who –
- (a) has attained the age of 60, but
 - (b) has not attained the age of 65,
- the person is to be treated for the purposes of section 9 of the 1993 Act and the guaranteed minimum pension provisions as attaining pensionable age when it is issued.
- (6) If at that time the person has attained the age of 65, the fact that the person's gender has become the acquired gender does not affect the person's pensionable age for those purposes.
- (7) The fact that the person's gender has become the acquired gender does not affect any guaranteed minimum pension to which the person is entitled as a widow or widower immediately before the certificate is issued (except in consequence of the operation of the previous provisions of this Schedule).
- (8) If a transaction to which section 15 of the 1993 Act applies which is carried out before the certificate is issued discharges a liability to provide a guaranteed minimum pension for or in respect of the person, it continues to do so afterwards.
- (9) "The guaranteed minimum pension provision" means so much of the 1993 Act (apart from section 9) and of any other enactment as relates to guaranteed minimum pensions.

Equivalent pension benefits: Great Britain

- 16 (1) The provision that may be made by regulations under paragraph 15 of Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (c. 6) (power to retain provisions repealed by Social Security Act 1973 (c. 38), with or without modification, for transitional purposes) includes provision modifying the preserved equivalent pension benefits provisions in consequence of this Act.
- (2) "The preserved equivalent pension benefits provisions" are the provisions of the National Insurance Act 1965 (c. 51) relating to equivalent pension benefits continued in force, with or without modification, by regulations having effect as if made under that paragraph.

Equivalent pension benefits: Northern Ireland

- 17 (1) The provision that may be made by regulations under paragraph 15 of Schedule 3 to the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9) (corresponding power for Northern Ireland) includes provision modifying the Northern Ireland preserved equivalent pension benefits provisions in consequence of this Act.
- (2) "The Northern Ireland preserved equivalent pension benefits provisions" are the provisions of the National Insurance Act (Northern Ireland) 1966 (c. 6 (N.I.)) relating to equivalent pension benefits continued in force, with or without modification, by regulations having effect as if made under that paragraph.

SCHEDULE 6

Section 14

SEX DISCRIMINATION

PART 1

GREAT BRITAIN

- 1 The Sex Discrimination Act 1975 (c. 65) is amended as follows.
- 2 In section 7A (gender reassignment: exception for genuine occupational qualification), insert at the end—
 - “(4) Subsection (1) does not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.”
- 3 In section 7B (supplementary exceptions relating to gender reassignment), for subsection (3) substitute—
 - “(3) Subsection (2) does not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.”
- 4 In section 9 (discrimination against contract workers), after subsection (3C) insert—
 - “(3D) Subsections (3B) and (3C) do not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.”
- 5 In section 11 (partnerships), after subsection (3C) insert—
 - “(3D) Subsections (3B) and (3C) do not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.”

PART 2

NORTHERN IRELAND

- 6 The Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15)) is amended as follows.
- 7 In Article 10A (gender reassignment: exception for genuine occupational qualification), insert at the end—
 - “(4) Paragraph (1) does not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.”
- 8 In Article 10B (supplementary exceptions relating to gender reassignment), for paragraph (3) substitute—
 - “(3) Paragraph (2) does not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.”
- 9 In Article 12 (discrimination against contract workers), after paragraph (3C)

insert—

“(3D) Paragraphs (3B) and (3C) do not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.”

10 In Article 14 (partnerships), after paragraph (3C) insert—

“(3D) Paragraphs (3B) and (3C) do not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.”



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

CASE OF CHRISTINE GOODWIN v. THE UNITED KINGDOM

(Application no. 28957/95)

JUDGMENT

STRASBOURG

11 July 2002

This judgment is final but may be subject to editorial revision.

In the case of Christine Goodwin v. the United Kingdom,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
 Mr J.-P. COSTA,
 Sir Nicolas BRATZA,
 Mrs E. PALM,
 Mr L. CAFLISCH,
 Mr R. TÜRMEŒ,
 Mrs F. TULKENS,
 Mr K. JUNGWIERT,
 Mr M. FISCHBACH,
 Mr V. BUTKEVYCH,
 Mrs N. VA J I,
 Mr J. HEDIGAN,
 Mrs H.S. GREVE,
 Mr A.B. BAKA,
 Mr K. TRAJA,
 Mr M. UGREKHELIDZE,
 Mrs A. MULARONI, *judges*,

and also of Mr P. J. MAHONEY, *Registrar*,

Having deliberated in private on 20 March and 3 July 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 28957/95) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a United Kingdom national, Ms Christine Goodwin (“the applicant”), on 5 June 1995.

2. The applicant, who had been granted legal aid, was represented by Bindman & Partners, solicitors practising in London. The United Kingdom Government (“the Government”) were represented by their Agent, Mr D. Walton of the Foreign and Commonwealth Office, London.

3. The applicant alleged violations of Articles 8, 12, 13 and 14 of the Convention in respect of the legal status of transsexuals in the United Kingdom and particularly their treatment in the sphere of employment, social security, pensions and marriage.

4. The application was declared admissible by the Commission on 1 December 1997 and transmitted to the Court on 1 November 1999 in accordance with Article 5 § 3, second sentence, of Protocol No. 11 to the Convention, the Commission not having completed its examination of the case by that date.

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court).

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

7. On 11 September 2001, a Chamber of that Section, composed of the following judges: Mr J.-P. Costa, Mr W. Fuhrmann, Mr P. K r i s , Mrs F. Tulkens, Mr K. Jungwiert, Sir Nicolas Bratza and Mr K. Traja, and also of Mrs S. Dollé, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

8. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24 of the Rules of Court. The President of the Court decided that in the interests of the proper administration of justice, the case should be assigned to the Grand Chamber that had been constituted to hear the case of *I. v. the United Kingdom* (application no. 25680/94) (Rules 24, 43 § 2 and 71).

9. The applicant and the Government each filed a memorial on the merits. In addition, third-party comments were received from Liberty, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 61 § 3).

10. A hearing in this case and the case of *I. v. the United Kingdom* (no. 25680/94) took place in public in the Human Rights Building, Strasbourg, on 20 March 2002 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*

Mr D. WALTON,	<i>Agent,</i>
Mr RABINDER SINGH,	<i>Counsel,</i>
Mr J. STRACHAN,	<i>Counsel,</i>
Mr C. LLOYD,	
Ms A. POWICK,	
Ms S. EISA,	<i>Advisers;</i>

(b) *for the applicant*

Ms L. COX, Q.C.,	<i>Counsel,</i>
Mr T. EICKE,	<i>Counsel,</i>
Ms J. SOHRAB,	<i>Solicitor.</i>

The applicant was also present.

The Court heard addresses by Ms Cox and Mr Rabinder Singh.

11. On 3 July 2002, Mrs Tsatsa-Nikolovska and Mr Zagrebelsky who were unable to take part in further consideration of the case, were replaced by Mrs Mularoni and Mr Caflisch.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

12. The applicant is a United Kingdom citizen born in 1937 and is a post-operative male to female transsexual.

13. The applicant had a tendency to dress as a woman from early childhood and underwent aversion therapy in 1963-64. In the mid-1960s, she was diagnosed as a transsexual. Though she married a woman and they had four children, her conviction was that her “brain sex” did not fit her body. From that time until 1984 she dressed as a man for work but as a woman in her free time. In January 1985, the applicant began treatment in earnest, attending appointments once every three months at the Gender Identity Clinic at the Charing Cross Hospital, which included regular consultations with a psychiatrist as well as on occasion a psychologist. She was prescribed hormone therapy, began attending grooming classes and voice training. Since this time, she has lived fully as a woman. In October 1986, she underwent surgery to shorten her vocal chords. In August 1987, she was accepted on the waiting list for gender re-assignment surgery. In 1990, she underwent gender re-assignment surgery at a National Health Service hospital. Her treatment and surgery was provided for and paid for by the National Health Service.

14. The applicant divorced from her former wife on a date unspecified but continued to enjoy the love and support of her children.

15. The applicant claims that between 1990 and 1992 she was sexually harassed by colleagues at work. She attempted to pursue a case of sexual harassment in the Industrial Tribunal but claimed that she was unsuccessful because she was considered in law to be a man. She did not challenge this decision by appealing to the Employment Appeal Tribunal. The applicant was subsequently dismissed from her employment for reasons connected with her health, but alleges that the real reason was that she was a transsexual.

16. In 1996, the applicant started work with a new employer and was required to provide her National Insurance (“NI”) number. She was concerned that the new employer would be in a position to trace her details

as once in the possession of the number it would have been possible to find out about her previous employers and obtain information from them. Although she requested the allocation of a new NI number from the Department of Social Security (“DSS”), this was rejected and she eventually gave the new employer her NI number. The applicant claims that the new employer has now traced back her identity as she began experiencing problems at work. Colleagues stopped speaking to her and she was told that everyone was talking about her behind her back.

17. The DSS Contributions Agency informed the applicant that she would be ineligible for a State pension at the age of 60, the age of entitlement for women in the United Kingdom. In April 1997, the DSS informed the applicant that her pension contributions would have to be continued until the date at which she reached the age of 65, being the age of entitlement for men, namely April 2002. On 23 April 1997, she therefore entered into an undertaking with the DSS to pay direct the NI contributions which would otherwise be deducted by her employer as for all male employees. In the light of this undertaking, on 2 May 1997, the DSS Contributions Agency issued the applicant with a Form CF 384 Age Exemption Certificate (see Relevant domestic law and practice below).

18. The applicant's files at the DSS were marked “sensitive” to ensure that only an employee of a particular grade had access to her files. This meant in practice that the applicant had to make special appointments for even the most trivial matters and could not deal directly with the local office or deal with queries over the telephone. Her record continues to state her sex as male and despite the “special procedures” she has received letters from the DSS addressed to the male name which she was given at birth.

19. In a number of instances, the applicant stated that she has had to choose between revealing her birth certificate and foregoing certain advantages which were conditional upon her producing her birth certificate. In particular, she has not followed through a loan conditional upon life insurance, a re-mortgage offer and an entitlement to winter fuel allowance from the DSS. Similarly, the applicant remains obliged to pay the higher motor insurance premiums applicable to men. Nor did she feel able to report a theft of 200 pounds sterling to the police, for fear that the investigation would require her to reveal her identity.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Names

20. Under English law, a person is entitled to adopt such first names or surname as he or she wishes. Such names are valid for the purposes of identification and may be used in passports, driving licences, medical and insurance cards, etc. The new names are also entered on the electoral roll.

B. Marriage and definition of gender in domestic law

21. Under English law, marriage is defined as the voluntary union between a man and a woman. In the case of *Corbett v. Corbett* ([1971] Probate Reports 83), Mr Justice Ormrod ruled that sex for that purpose is to be determined by the application of chromosomal, gonadal and genital tests where these are congruent and without regard to any surgical intervention. This use of biological criteria to determine sex was approved by the Court of Appeal in *R. v. Tan* ([1983] Queen's Bench Reports 1053) and given more general application, the court holding that a person born male had been correctly convicted under a statute penalising men who live on the earnings of prostitution, notwithstanding the fact that the accused had undergone gender reassignment therapy.

22. Under section 11(b) of the Matrimonial Causes Act 1973, any marriage where the parties are not respectively male and female is void. The test applied as to the sex of the partners to a marriage is that laid down in the above-mentioned case of *Corbett v. Corbett*. According to that same decision a marriage between a male-to-female transsexual and a man might also be avoided on the basis that the transsexual was incapable of consummating the marriage in the context of ordinary and complete sexual intercourse (*obiter per* Mr Justice Ormrod).

This decision was reinforced by Section 12(a) of the Matrimonial Causes Act 1973, according to which a marriage that has not been consummated owing to the incapacity of either party to consummate may be voidable. Section 13(1) of the Act provides that the court must not grant a decree of nullity if it is satisfied that the petitioner knew the marriage was voidable, but led the respondent to believe that she would not seek a decree of nullity, and that it would be unjust to grant the decree.

C. Birth certificates

23. Registration of births is governed by the Births and Deaths Registration Act 1953 ("the 1953 Act"). Section 1(1) of that Act requires that the birth of every child be registered by the Registrar of Births and

Deaths for the area in which the child is born. An entry is regarded as a record of the facts at the time of birth. A birth certificate accordingly constitutes a document revealing not current identity but historical facts.

24. The sex of the child must be entered on the birth certificate. The criteria for determining the sex of a child at birth are not defined in the Act. The practice of the Registrar is to use exclusively the biological criteria (chromosomal, gonadal and genital) as laid down by Mr Justice Ormrod in the above-mentioned case of *Corbett v. Corbett*.

25. The 1953 Act provides for the correction by the Registrar of clerical errors or factual errors. The official position is that an amendment may only be made if the error occurred when the birth was registered. The fact that it may become evident later in a person's life that his or her "psychological" sex is in conflict with the biological criteria is not considered to imply that the initial entry at birth was a factual error. Only in cases where the apparent and genital sex of a child was wrongly identified, or where the biological criteria were not congruent, can a change in the initial entry be made. It is necessary for that purpose to adduce medical evidence that the initial entry was incorrect. No error is accepted to exist in the birth entry of a person who undergoes medical and surgical treatment to enable that person to assume the role of the opposite sex.

26. The Government point out that the use of a birth certificate for identification purposes is discouraged by the Registrar General, and for a number of years birth certificates have contained a warning that they are not evidence of the identity of the person presenting it. However, it is a matter for individuals whether to follow this recommendation.

D. Social security, employment and pensions

27. A transsexual continues to be recorded for social security, national insurance and employment purposes as being of the sex recorded at birth.

1. National Insurance

28. The DSS registers every British citizen for National Insurance purposes ("NI") on the basis of the information in their birth certificate. Non-British citizens who wish to register for NI in the United Kingdom may use their passport or identification card as evidence of identity if a birth certificate is unavailable.

29. The DSS allocates every person registered for NI with a unique NI number. The NI number has a standard format consisting of two letters followed by three pairs of numbers and a further letter. It contains no indication in itself of the holder's sex or of any other personal information. The NI number is used to identify each person with a NI account (there are at present approximately 60 million individual NI accounts). The DSS are thereby able to record details of all NI contributions paid into the account

during the NI account holder's life and to monitor each person's liabilities, contributions and entitlement to benefits accurately. New numbers may in exceptional cases be issued to persons e.g. under the witness protection schemes or to protect the identity of child offenders.

30. Under Regulation 44 of the Social Security (Contributions) Regulations 1979, made under powers conferred by paragraph 8(1)(p) of Schedule 1 to the Social Security Contributions and Benefits Act 1992, specified individuals are placed under an obligation to apply for a NI number unless one has already been allocated to them.

31. Under Regulation 45 of the 1979 Regulations, an employee is under an obligation to supply his NI number to his employer on request.

32. Section 112(1) of the Social Security Administration Act 1992 provides:

“(1) If a person for the purpose of obtaining any benefit or other payment under the legislation ...[as defined in section 110 of the Act]... whether for himself or some other person, or for any other purpose connected with that legislation -

(a) makes a statement or representation which he knows to be false; or

(b) produces or furnishes, or knowingly causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular, he shall be guilty of an offence.”

33. It would therefore be an offence under this section for any person to make a false statement in order to obtain a NI number.

34. Any person may adopt such first name, surname or style of address (e.g. Mr, Mrs, Miss, Ms) that he or she wishes for the purposes of the name used for NI registration. The DSS will record any such amendments on the person's computer records, manual records and NI number card. But, the DSS operates a policy of only issuing one NI number for each person regardless of any changes that occur to that person's sexual identity through procedures such as gender re-assignment surgery. A renewed application for leave to apply for judicial review of the legality of this policy brought by a male-to-female transsexual was dismissed by the Court of Appeal in the case of *R v. Secretary of State for Social Services ex parte Hooker (1993) (unreported)*. McCowan LJ giving the judgment of the Court stated (at page 3 of the transcript):

“...since it will not make the slightest practical difference, far from the Secretary of State's decision being an irrational one, I consider it a perfectly rational decision. I would further reject the suggestion that the applicant had a legitimate expectation that a new number would be given to her for psychological purposes when, in fact, its practical effect would be nil.”

35. Information held in the DSS NI records is confidential and will not normally be disclosed to third parties without the consent of the person concerned. Exceptions are possible in cases where the public interest is at stake or the disclosure is necessary to protect public funds. By virtue of

Section 123 of the Social Security Administration Act 1992, it is an offence for any person employed in social security administration to disclose without lawful authority information acquired in the course of his or her employment.

36. The DSS operates a policy of normally marking records belonging to persons known to be transsexual as nationally sensitive. Access to these records is controlled by DSS management. Any computer printer output from these records will normally be referred to a special section within the DSS to ensure that identity details conform with those requested by the relevant person.

37. NI contributions are made by way of deduction from an employee's pay by the employer and then by payment to the Inland Revenue (for onward transmission to the DSS). Employers at present will make such deductions for a female employee until she reaches the pensionable age of 60 and for a male employee until he reaches the pensionable age of 65. The DSS operates a policy for male-to-female transsexuals whereby they may enter into an undertaking with the DSS to pay direct to the DSS any NI contributions due after the transsexual has reached the age of 60 which have ceased to be deducted by the employer in the belief that the employee is female. In the case of female-to-male transsexuals, any deductions which are made by an employer after the age of 60 may be reclaimed directly from the DSS by the employee.

38. In some cases employers will require proof that an apparent female employee has reached, or is about to reach, the age of 60 and so entitled not to have the NI deductions made. Such proof may be provided in the form of an Age Exemption Certificate (form CA4180 or CF384). The DSS may issue such a certificate to a male-to-female transsexual where such a person enters into an undertaking to pay any NI contributions direct to the DSS.

2. *State pensions*

39. A male-to-female transsexual is currently entitled to a State pension at the retirement age of 65 applied to men and not the age of 60 which is applicable to women. A full pension will be payable only if she has made contributions for 44 years as opposed to the 39 years required of women.

40. A person's sex for the purposes of pensionable age is determined according to biological sex at birth. This approach was approved by the Social Security Commissioner (a judicial officer, who specialises in social security law) in a number of cases:

In the case entitled *R(P) 2/80*, a male-to-female transsexual claimed entitlement to a pensionable age of 60. The Commissioner dismissed the claimant's appeal and stated at paragraph 9 of his decision:

“(a) In my view, the word “woman” in section 27 of the Act means a person who is biologically a woman. Sections 28 and 29 contain many references to a woman in terms which indicate that a person is denoted who is capable of forming a valid marriage with a husband. That can only be a person who is biologically a woman.

(b) I doubt whether the distinction between a person who is biologically, and one who is socially, female has ever been present in the minds of the legislators when enacting relevant statutes. However that may be, it is certain that Parliament has never conferred on any person the right or privilege of changing the basis of his national insurance rights from those appropriate to a man to those appropriate to a woman. In my judgment, such a fundamental right or privilege would have to be expressly granted. ...

(d) I fully appreciate the unfortunate predicament of the claimant, but the merits are not all on her side. She lived as a man from birth until 1975, and, during the part of that period when she was adult, her insurance rights were those appropriate to a man. These rights are in some respects more extensive than those appropriate to a woman. Accordingly, an element of unfairness to the general public might have to be tolerated so as to allow the payment of a pension to her at the pensionable age of a woman.”

41. The Government have instituted plans to eradicate the difference between men and women concerning age of entitlement to State pensions. Equalisation of the pension age is to begin in 2010 and it is anticipated that by 2020 the transition will be complete. As regards the issue of free bus passes in London, which also differentiated between men and women concerning age of eligibility (65 and 60 respectively), the Government have also announced plans to introduce a uniform age.

3. *Employment*

42. Under section 16(1) of the Theft Act 1968, it is a criminal offence liable to a sentence of imprisonment to dishonestly obtain a pecuniary advantage by deception. Pecuniary advantage includes, under section 16(2)(c), being given the opportunity to earn remuneration in employment. Should a post-operative transsexual be asked by a prospective employer to disclose all their previous names, but fail to make full disclosure before entering into a contract of employment, an offence might be committed. Furthermore, should the employer discover the lack of full disclosure, there might also be a risk of dismissal or an action by the employer for damages.

43. In its judgment of 30 April 1996, in the case of *P. v. S. and Cornwall County Council*, the European Court of Justice (ECJ) held that discrimination arising from gender reassignment constituted discrimination on grounds of sex and, accordingly, Article 5 § 1 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions, precluded dismissal of a transsexual for a reason related to a gender reassignment. The

ECJ held, rejecting the argument of the United Kingdom Government that the employer would also have dismissed P. if P. had previously been a woman and had undergone an operation to become a man, that

“... where a person is dismissed on the ground that he or she intends to undergo or has undergone gender reassignment, he or she is treated unfavourably by comparison with persons of the sex to which he or she was deemed to belong before undergoing gender reassignment.

To tolerate such discrimination would be tantamount, as regards such a person, to a failure to respect the dignity and freedom to which he or she is entitled and which the Court has a duty to safeguard.” (paragraphs 21–22)

44. The ruling of the ECJ was applied by the Employment Appeal Tribunal in a decision handed down on 27 June 1997 (*Chessington World of Adventures Ltd v. Reed* [1997] 1 Industrial Law Reports).

45. The Sexual Discrimination (Gender Re-assignment) Regulations 1999 were issued to comply with the ruling of the European Court of Justice in *P. v. S. and Cornwall County Council* (30 April 1996). This provides generally that transsexual persons should not be treated less favourably in employment because they are transsexual (whether pre- or post-operative).

E. Rape

46. Prior to 1994, for the purposes of the law of rape, a male-to-female transsexual would have been regarded as a male. Pursuant to section 142 of the Criminal Justice and Public Order Act 1994, for rape to be established there has to be “vaginal or anal intercourse with a person”. In a judgment of 28 October 1996, the Reading Crown Court found that penile penetration of a male to female transsexual's artificially constructed vagina amounted to rape: *R. v. Matthews (unreported)*.

F. Imprisonment

47. Prison rules require that male and female prisoners shall normally be detained separately and also that no prisoner shall be stripped and searched in the sight of a person of the opposite sex (Rules 12(1) and 41(3) of the Prison Rules 1999 respectively).

48. According to the Report of the Working Group on Transsexual People (Home Office April 2000, see further below, paragraphs 49-50), which conducted a review of law and practice, post-operative transsexuals where possible were allocated to an establishment for prisoners of their new gender. Detailed guidelines concerning the searching of transsexual prisoners were under consideration by which post-operative male to female transsexuals would be treated as women for the purposes of searches and searched only by women (see paragraphs 2.75-2.76).

G. Current developments

1. Review of the situation of transsexuals in the United Kingdom

49. On 14 April 1999, the Secretary of State for the Home Department announced the establishment of an Interdepartmental Working Group on Transsexual People with the following terms of reference:

“to consider, with particular reference to birth certificates, the need for appropriate legal measures to address the problems experienced by transsexuals, having due regard to scientific and societal developments, and measures undertaken in other countries to deal with this issue.”

50. The Working Group produced a report in April 2000 in which it examined the current position of transsexuals in the United Kingdom, with particular reference to their status under national law and the changes which might be made. It concluded:

“5.1. Transsexual people deal with their condition in different ways. Some live in the opposite sex without any treatment to acquire its physical attributes. Others take hormones so as to obtain some of the secondary characteristics of their chosen sex. A smaller number will undergo surgical procedures to make their bodies resemble, so far as possible, those of their acquired gender. The extent of treatment may be determined by individual choice, or by other factors such as health or financial resources. Many people revert to their biological sex after living for some time in the opposite sex, and some alternate between the two sexes throughout their lives. Consideration of the way forward must therefore take into account the needs of people at these different stages of change.

5.2. Measures have already been taken in a number of areas to assist transsexual people. For example, discrimination in employment against people on the basis of their transsexuality has been prohibited by the Sex Discrimination (Gender Reassignment) Regulations 1999 which, with few exceptions, provide that a transsexual person (whether pre- or post-operative) should not be treated less favourably because they are transsexual. The criminal justice system (i.e. the police, prisons, courts, etc.) try to accommodate the needs of transsexual people so far as is possible within operational constraints. A transsexual offender will normally be charged in their acquired gender, and a post-operative prisoner will usually be sent to a prison appropriate to their new status. Transsexual victims and witnesses will, in most circumstances, similarly be treated as belonging to their acquired gender.

5.3. In addition, official documents will often be issued in the acquired gender where the issue is identifying the individual rather than legal status. Thus, a transsexual person may obtain a passport, driving licence, medical card etc, in their new gender. We understand that many non-governmental bodies, such as examination authorities, will often re-issue examination certificates etc. (or otherwise provide evidence of qualifications) showing the required gender. We also found that at least one insurance company will issue policies to transsexual people in their acquired gender.

5.4. Notwithstanding such provisions, transsexual people are conscious of certain problems which do not have to be faced by the majority of the population. Submissions to the Group suggested that the principal areas where the transsexual community is seeking change are birth certificates, the right to marry and full recognition of their new gender for all legal purposes.

5.5. We have identified three options for the future;

- to leave the current situation unchanged;
- to issue birth certificates showing the new name and, possibly, the new gender;
- to grant full legal recognition of the new gender subject to certain criteria and procedures.

We suggest that before taking a view on these options the Government may wish to put the issues out to public consultation.”

51. The report was presented to Parliament in July 2000. Copies were placed in the libraries of both Houses of Parliament and sent to 280 recipients, including Working Group members, Government officials, Members of Parliament, individuals and organisations. It was publicised by a Home Office press notice and made available to members of the public through application to the Home Office in writing, E-mail, by telephone or the Home Office web site.

2. *Recent domestic case-law*

52. In the case of *Bellinger v. Bellinger*, EWCA Civ 1140 [2001], 3 FCR 1, the appellant who had been classified at birth as a man had undergone gender re-assignment surgery and in 1981 had gone through a form of marriage with a man who was aware of her background. She sought a declaration under the Family Law Act 1986 that the marriage was valid. The Court of Appeal held, by a majority, that the appellant's marriage was invalid as the parties were not respectively male and female, which terms were to be determined by biological criteria as set out in the decision of *Corbett v. Corbett* [1971]. Although it was noted that there was an increasing emphasis upon the impact of psychological factors on gender, there was no clear point at which such factors could be said to have effected a change of gender. A person correctly registered as male at birth, who had undergone gender reassignment surgery and was now living as a woman was biologically a male and therefore could not be defined as female for the purposes of marriage. It was for Parliament, not for the courts, to decide at what point it would be appropriate to recognise that a person who had been assigned to one sex at birth had changed gender for the purposes of marriage. Dame Elizabeth Butler-Sloss, President of the Family Division noted the warnings of the European Court of Human Rights about continued lack of response to the situation of transsexuals and observed that largely as

a result of these criticisms an interdepartmental working group had been set up, which had in April 2000 issued a careful and comprehensive review of the medical condition, current practice in other countries and the state of English law in relevant aspects of the life of an individual:

“[95.] ... We inquired of Mr Moylan on behalf of the Attorney-General, what steps were being taken by any government department, to take forward any of the recommendations of the Report, or to prepare a consultation paper for public discussion.

[96.] To our dismay, we were informed that no steps whatsoever have been, or to the knowledge of Mr Moylan, were intended to be, taken to carry this matter forward. It appears, therefore, that the commissioning and completion of the report is the sum of the activity on the problems identified both by the Home Secretary in his terms of reference, and by the conclusions of the members of the working group. That would seem to us to be a failure to recognise the increasing concerns and changing attitudes across western Europe which have been set out so clearly and strongly in judgments of Members of the European Court at Strasbourg, and which in our view need to be addressed by the UK...

[109.] We would add however, with the strictures of the European Court of Human Rights well in mind, that there is no doubt that the profoundly unsatisfactory nature of the present position and the plight of transsexuals requires careful consideration. The recommendation of the interdepartmental working group for public consultation merits action by the government departments involved in these issues. The problems will not go away and may well come again before the European Court sooner rather than later.”

53. In his dissenting judgment, Lord Justice Thorpe considered that the foundations of the judgment in *Corbett v. Corbett* were no longer secure, taking the view that an approach restricted to biological criteria was no longer permissible in the light of scientific, medical and social change.

“[155.] To make the chromosomal factor conclusive, or even dominant, seems to me particularly questionable in the context of marriage. For it is an invisible feature of an individual, incapable of perception or registration other than by scientific test. It makes no contribution to the physiological or psychological self. Indeed in the context of the institution of marriage as it is today it seems to me right as a matter of principle and logic to give predominance to psychological factors just as it seem right to carry out the essential assessment of gender at or shortly before the time of marriage rather than at the time of birth...

[160.] The present claim lies most evidently in the territory of the family justice system. That system must always be sufficiently flexible to accommodate social change. It must also be humane and swift to recognise the right to human dignity and to freedom of choice in the individual's private life. One of the objectives of statute law reform in this field must be to ensure that the law reacts to and reflects social change. That must also be an objective of the judges in this field in the construction of existing statutory provisions. I am strongly of the opinion that there are not sufficiently compelling reasons, having regard to the interests of others affected or, more relevantly, the interests of society as a whole, to deny this appellant legal recognition of her marriage. I would have allowed this appeal.”

He also noted the lack of progress in domestic reforms:

“[151.] ...although the [interdepartmental] report has been made available by publication, Mr Moylan said that there has since been no public consultation. Furthermore when asked whether the Government had any present intention of initiating public consultation or any other process in preparation for a parliamentary Bill, Mr Moylan said that he had no instructions. Nor did he have any instructions as to whether the Government intended to legislate. My experience over the last 10 years suggests how hard it is for any department to gain a slot for family law reform by primary legislation. These circumstances reinforce my view that it is not only open to the court but it is its duty to construe s 11(c) either strictly, alternatively liberally as the evidence and the submissions in this case justify.”

3. Proposals to reform the system of registration of births, marriages and deaths

54. In January 2002, the Government presented to Parliament the document “Civil Registration: Vital Change (Birth, Marriage and Death Registration in the 21st Century)” which set out plans for creating a central database of registration records which moves away from a traditional snapshot of life events towards the concept of a living record or single “through life” record:

“In time, updating the information in a birth record will mean that changes to a person's names, and potentially, sex will be able to be recorded.” (para. 5.1)

“5.5 Making changes

There is strong support for some relaxation to the rules that govern corrections to the records. Currently, once a record has been created, the only corrections that can be made are where it can be shown that an error was made at the time of registration and that this can be established. Correcting even the simplest spelling error requires formal procedures and the examination of appropriate evidence. The final records contains the full original and corrected information which is shown on subsequently issued certificates. The Government recognises that this can act as a disincentive. In future, changes (to reflect developments after the original record was made) will be made and formally recorded. Documents issued from the records will contain only the information as amended, though all the information will be retained. ...”

H. Liberty's third party intervention

55. Liberty updated the written observations submitted in the case of Sheffield and Horsham concerning the legal recognition of transsexuals in comparative law (Sheffield and Horsham v. the United Kingdom judgment of 30 July 1998, *Reports of Judgments and Decisions* 1998-V, p. 2021, § 35). In its 1998 study, it had found that over the previous decade there had been an unmistakable trend in the member States of the Council of Europe towards giving full legal recognition to gender re-assignment. In particular, it noted that out of thirty seven countries analysed only four (including the

United Kingdom) did not permit a change to be made to a person's birth certificate in one form or another to reflect the re-assigned sex of that person. In cases where gender re-assignment was legal and publicly funded, only the United Kingdom and Ireland did not give full legal recognition to the new gender identity.

56. In its follow up study submitted on 17 January 2002, Liberty noted that while there had not been a statistical increase in States giving full legal recognition of gender re-assignment within Europe, information from outside Europe showed developments in this direction. For example, there had been statutory recognition of gender re-assignment in Singapore, and a similar pattern of recognition in Canada, South Africa, Israel, Australia, New Zealand and all except two of the States of the United States of America. It cited in particular the cases of *Attorney-General v. Otahuhu Family Court* [1995] 1 NZLR 60 and *Re Kevin* [2001] FamCA 1074 where in New Zealand and Australia transsexual persons' assigned sex was recognised for the purposes of validating their marriages: In the latter case, Mr Justice Chisholm held:

“I see no basis in legal principle or policy why Australian law should follow the decision in Corbett. To do so would, I think, create indefensible inconsistencies between Australian marriage law and other Australian laws. It would take the law in a direction that is generally contrary to development in other countries. It would perpetuate a view that flies in the face of current medical understanding and practice. Most of all, it would impose indefensible suffering on people who have already had more than their share of difficulty, with no benefit to society...

...Because the words 'man' and 'woman' have their ordinary contemporary meaning, there is no formulaic solution to determining the sex of an individual for the purpose of the law of marriage. That is, it cannot be said as a matter of law that the question in a particular case will be determined by applying a single criterion, or limited list of criteria. Thus it is wrong to say that a person's sex depends on any single factor, such as chromosomes or genital sex; or some limited range of factors, such as the state of the person's gonads, chromosomes or genitals (whether at birth or at some other time). Similarly, it would be wrong in law to say that the question can be resolved by reference solely to the person's psychological state, or by identifying the person's 'brain sex'.

To determine a person's sex for the law of marriage, all relevant matters need to be considered. I do not seek to state a complete list or suggest that any factors necessarily have more importance than others. However the relevant matters include, in my opinion, the person's biological and physical characteristics at birth (including gonads, genitals and chromosomes); the person's life experiences, including the sex in which he or she was brought up and the person's attitude to it; the person's self-perception as a man or a woman; the extent to which the person has functioned in society as a man or a woman; any hormonal, surgical or other medical sex re-assignment treatments the person has undergone, and the consequences of such treatment; and the person's biological, psychological and physical characteristics at the time of the marriage...

For the purpose of ascertaining the validity of a marriage under Australian law the question whether a person is a man or a woman is to be determined as of the date of marriage...”

57. As regarded the eligibility of post-operative transsexuals to marry a person of sex opposite to their acquired gender, Liberty's survey indicated that 54% of Contracting States permitted such marriage (Annex 6 listed Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Italy, Latvia, Luxembourg, the Netherlands, Norway, Slovakia, Spain, Sweden, Switzerland, Turkey and Ukraine), while 14% did not (Ireland and the United Kingdom did not permit marriage, while no legislation existed in Moldova, Poland, Romania and Russia). The legal position in the remaining 32% was unclear.

III. INTERNATIONAL TEXTS

58. Article 9 of the Charter of Fundamental Rights of the European Union, signed on 7 December 2000, provides:

“The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

59. The applicant claims a violation of Article 8 of the Convention, the relevant part of which provides as follows:

“1. Everyone has the right to respect for his private ... life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Arguments of the parties

1. *The applicant*

60. The applicant submitted that despite warnings from the Court as to the importance for keeping under review the need for legal reform the

Government had still not taken any constructive steps to address the suffering and distress experienced by the applicant and other post-operative transsexuals. The lack of legal recognition of her changed gender had been the cause of numerous discriminatory and humiliating experiences in her everyday life. In the past, in particular from 1990 to 1992, she was abused at work and did not receive proper protection against discrimination. She claimed that all the special procedures through which she had to go in respect of her NI contributions and State retirement pension constituted in themselves an unjustified difference in treatment, as they would have been unnecessary had she been recognised as a woman for legal purposes. In particular, the very fact that the DSS operated a policy of marking the records of transsexuals as sensitive was a difference in treatment. As a result, for example, the applicant cannot attend the DSS without having to make a special appointment.

61. The applicant further submitted that the danger of her employer learning about her past identity was real. It was possible for the employer to trace back her employment history on the basis of her NI number and this had in fact happened. She claimed that her recent failure to obtain a promotion was the result of the employer realising her status.

62. As regarded pensionable age, the applicant submitted that she had worked for 44 years and that the refusal of her entitlement to a State retirement pension at the age of 60 on the basis of the pure biological test for determining sex was contrary to Article 8 of the Convention. She was similarly unable to apply for a free London bus pass at the age of 60 as other women were but had to wait until the age of 65. She was also required to declare her birth sex or disclose her birth certificate when applying for life insurance, mortgages, private pensions or car insurance, which led her not to pursue these possibilities to her advantage.

63. The applicant argued that rapid changes, in respect of the scientific understanding of, and the social attitude towards, transsexualism were taking place not only across Europe but elsewhere. She referred, *inter alia*, to Article 29 of the Netherlands Civil Code, Article 6 of Law No. 164 of 14 April 1982 of Italy, and Article 29 of the Civil Code of Turkey as amended by Law No. 3444 of 4 May 1988, which allowed the amendment of civil status. Also, under a 1995 New Zealand statute, Part V, Section 28, a court could order the legal recognition of the changed gender of a transsexual after examination of medical and other evidence. The applicant saw no convincing reason why a similar approach should not be adopted in the United Kingdom. The applicant also pointed to increasing social acceptance of transsexuals and interest in issues of concern to them reflected by coverage in the press, radio and television, including sympathetic dramatisation of transsexual characters in mainstream programming.

2. *The Government*

64. Referring to the Court's case-law, the Government maintained that there was no generally accepted approach among the Contracting States in respect of transsexuality and that, in view of the margin of appreciation left to States under the Convention, the lack of recognition in the United Kingdom of the applicant's new gender identity for legal purposes did not entail a violation of Article 8 of the Convention. They disputed the applicant's assertion that scientific research and "massive societal changes" had led to wide acceptance, or consensus on issues, of transsexualism.

65. The Government accepted that there may be specific instances where the refusal to grant legal recognition of a transsexual's new sexual identity may amount to a breach of Article 8, in particular where the transsexual as a result suffered practical and actual detriment and humiliation on a daily basis (see the *B. v. France* judgment of 25 March 1992, Series A no. 232-C, pp. 52-54, §§ 59-63). However, they denied that the applicant faced any comparable practical disadvantages, as she had been able *inter alia* to obtain important identification documents showing her chosen names and sexual identity (e.g. new passport and driving licence).

66. As regards the specific difficulties claimed by the applicant, the Government submitted that an employer was unable to establish the sex of the applicant from the NI number itself since it did not contain any encoded reference to her sex. The applicant had been issued with a new NI card with her changed name and style of address. Furthermore, the DSS had a policy of confidentiality of the personal details of a NI number holder and, in particular, a policy and procedure for the special protection of transsexuals. As a result, an employer had no means of lawfully obtaining information from the DSS about the previous sexual identity of an employee. It was also in their view highly unlikely that the applicant's employer would discover her change of gender through her NI number in any other way. The refusal to issue a new NI number was justified, the uniqueness of the NI number being of critical importance in the administration of the national insurance system, and for the prevention of the fraudulent use of old NI numbers.

67. The Government argued that the applicant's fear that her previous sexual identity would be revealed upon reaching the age of 60, when her employer would no longer be required to make NI contribution deductions from her pay, was entirely without foundation, the applicant having already been issued with a suitable Age Exemption Certificate on Form CF384.

68. Concerning the impossibility for the applicant to obtain a State retirement pension at the age of 60, the Government submitted that the distinction between men and women as regarded pension age had been held to be compatible with European Community law (Article 7(1)(a) of Directive 79/7/EEC; European Court of Justice, *R. v. Secretary of State for Social Security ex parte Equal Opportunities Commission Case C-9/91* [1992] ECR I-4927). Also, since the preserving of the applicant's legal

status as a man was not contrary as such to Article 8 of the Convention, it would constitute favourable treatment unfair to the general public to allow the applicant's pension entitlement at the age of 60.

69. Finally, as regards allegations of assault and abuse at work, the Government submitted that the applicant could have pressed charges under the criminal law against harassment and assault. Harassment in the workplace on the grounds of transsexuality would also give rise to a claim under the Sex Discrimination Act 1975 where the employers knew of the harassment and took no steps to prevent it. Adequate protection was therefore available under domestic law.

70. The Government submitted that a fair balance had therefore been struck between the rights of the individual and the general interest of the community. To the extent that there were situations where a transsexual may face limited disclosure of their change of sex, these situations were unavoidable and necessary e.g. in the context of contracts of insurance where medical history and gender affected the calculation of premiums.

B. The Court's assessment

1. Preliminary considerations

71. This case raises the issue whether or not the respondent State has failed to comply with a positive obligation to ensure the right of the applicant, a post-operative male to female transsexual, to respect for her private life, in particular through the lack of legal recognition given to her gender re-assignment.

72. The Court recalls that the notion of “respect” as understood in Article 8 is not clear cut, especially as far as the positive obligations inherent in that concept are concerned: having regard to the diversity of practices followed and the situations obtaining in the Contracting States, the notion's requirements will vary considerably from case to case and the margin of appreciation to be accorded to the authorities may be wider than that applied in other areas under the Convention. In determining whether or not a positive obligation exists, regard must also be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual, the search for which balance is inherent in the whole of the Convention (*Cossey v. the United Kingdom* judgment of 27 September 1990, Series A no. 184, p. 15, § 37).

73. The Court recalls that it has already examined complaints about the position of transsexuals in the United Kingdom (see the *Rees v. the United Kingdom* judgment of 17 October 1986, Series A no. 106, the *Cossey v. the United Kingdom* judgment, cited above; the *X., Y. and Z. v. the United Kingdom* judgment of 22 April 1997, *Reports of Judgments and Decisions* 1997-II, and the *Sheffield and Horsham v. the United Kingdom* judgment of

30 July 1998, *Reports* 1998-V, p. 2011). In those cases, it held that the refusal of the United Kingdom Government to alter the register of births or to issue birth certificates whose contents and nature differed from those of the original entries concerning the recorded gender of the individual could not be considered as an interference with the right to respect for private life (the above-mentioned Rees judgment, p. 14, § 35, and Cossey judgment, p. 15, § 36). It also held that there was no positive obligation on the Government to alter their existing system for the registration of births by establishing a new system or type of documentation to provide proof of current civil status. Similarly, there was no duty on the Government to permit annotations to the existing register of births, or to keep any such annotation secret from third parties (the above-mentioned Rees judgment, p. 17, § 42, and Cossey judgment, p. 15, §§ 38-39). It was found in those cases that the authorities had taken steps to minimise intrusive enquiries (for example, by allowing transsexuals to be issued with driving licences, passports and other types of documents in their new name and gender). Nor had it been shown that the failure to accord general legal recognition of the change of gender had given rise in the applicants' own case histories to detriment of sufficient seriousness to override the respondent State's margin of appreciation in this area (the Sheffield and Horsham judgment cited above, p. 2028-29, § 59).

74. While the Court is not formally bound to follow its previous judgments, it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases (see, for example, *Chapman v. the United Kingdom* [GC], no. 27238/95, ECHR 2001-I, § 70). However, since the Convention is first and foremost a system for the protection of human rights, the Court must have regard to the changing conditions within the respondent State and within Contracting States generally and respond, for example, to any evolving convergence as to the standards to be achieved (see, amongst other authorities, the Cossey judgment, p. 14, § 35, and *Stafford v. the United Kingdom* [GC], no. 46295/99, judgment of 28 May 2002, to be published in ECHR 2002-, §§ 67-68). It is of crucial importance that the Convention is interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. A failure by the Court to maintain a dynamic and evolutive approach would indeed risk rendering it a bar to reform or improvement (see the above-cited *Stafford v. the United Kingdom* judgment, § 68). In the present context the Court has, on several occasions since 1986, signalled its consciousness of the serious problems facing transsexuals and stressed the importance of keeping the need for appropriate legal measures in this area under review (see the Rees judgment, § 47; the Cossey judgment, § 42; the Sheffield and Horsham judgment, § 60).

75. The Court proposes therefore to look at the situation within and outside the Contracting State to assess “in the light of present-day conditions” what is now the appropriate interpretation and application of the Convention (see the *Tyrer v. the United Kingdom* judgment of 25 April 1978, Series A no. 26, § 31, and subsequent case-law).

2. *The applicant's situation as a transsexual*

76. The Court observes that the applicant, registered at birth as male, has undergone gender re-assignment surgery and lives in society as a female. Nonetheless, the applicant remains, for legal purposes, a male. This has had, and continues to have, effects on the applicant's life where sex is of legal relevance and distinctions are made between men and women, as, *inter alia*, in the area of pensions and retirement age. For example, the applicant must continue to pay national insurance contributions until the age of 65 due to her legal status as male. However as she is employed in her gender identity as a female, she has had to obtain an exemption certificate which allows the payments from her employer to stop while she continues to make such payments herself. Though the Government submitted that this made due allowance for the difficulties of her position, the Court would note that she nonetheless has to make use of a special procedure that might in itself call attention to her status.

77. It must also be recognised that serious interference with private life can arise where the state of domestic law conflicts with an important aspect of personal identity (see, *mutatis mutandis*, *Dudgeon v. the United Kingdom* judgment of 22 October 1981, Series A no. 45, § 41). The stress and alienation arising from a discordance between the position in society assumed by a post-operative transsexual and the status imposed by law which refuses to recognise the change of gender cannot, in the Court's view, be regarded as a minor inconvenience arising from a formality. A conflict between social reality and law arises which places the transsexual in an anomalous position, in which he or she may experience feelings of vulnerability, humiliation and anxiety.

78. In this case, as in many others, the applicant's gender re-assignment was carried out by the national health service, which recognises the condition of gender dysphoria and provides, *inter alia*, re-assignment by surgery, with a view to achieving as one of its principal purposes as close an assimilation as possible to the gender in which the transsexual perceives that he or she properly belongs. The Court is struck by the fact that nonetheless the gender re-assignment which is lawfully provided is not met with full recognition in law, which might be regarded as the final and culminating step in the long and difficult process of transformation which the transsexual has undergone. The coherence of the administrative and legal practices within the domestic system must be regarded as an important factor in the assessment carried out under Article 8 of the Convention.

Where a State has authorised the treatment and surgery alleviating the condition of a transsexual, financed or assisted in financing the operations and indeed permits the artificial insemination of a woman living with a female-to-male transsexual (as demonstrated in the case of X., Y. and Z. v. the United Kingdom, cited above), it appears illogical to refuse to recognise the legal implications of the result to which the treatment leads.

79. The Court notes that the unsatisfactory nature of the current position and plight of transsexuals in the United Kingdom has been acknowledged in the domestic courts (see *Bellinger v. Bellinger*, cited above, paragraph 52) and by the Interdepartmental Working Group which surveyed the situation in the United Kingdom and concluded that, notwithstanding the accommodations reached in practice, transsexual people were conscious of certain problems which did not have to be faced by the majority of the population (paragraph 50 above).

80. Against these considerations, the Court has examined the countervailing arguments of a public interest nature put forward as justifying the continuation of the present situation. It observes that in the previous United Kingdom cases weight was given to medical and scientific considerations, the state of any European and international consensus and the impact of any changes to the current birth register system.

3. *Medical and scientific considerations*

81. It remains the case that there are no conclusive findings as to the cause of transsexualism and, in particular, whether it is wholly psychological or associated with physical differentiation in the brain. The expert evidence in the domestic case of *Bellinger v. Bellinger* was found to indicate a growing acceptance of findings of sexual differences in the brain that are determined pre-natally, though scientific proof for the theory was far from complete. The Court considers it more significant however that transsexualism has wide international recognition as a medical condition for which treatment is provided in order to afford relief (for example, the Diagnostic and Statistical Manual fourth edition (DSM-IV) replaced the diagnosis of transsexualism with “gender identity disorder”; see also the International Classification of Diseases, tenth edition (ICD-10)). The United Kingdom national health service, in common with the vast majority of Contracting States, acknowledges the existence of the condition and provides or permits treatment, including irreversible surgery. The medical and surgical acts which in this case rendered the gender re-assignment possible were indeed carried out under the supervision of the national health authorities. Nor, given the numerous and painful interventions involved in such surgery and the level of commitment and conviction required to achieve a change in social gender role, can it be suggested that there is anything arbitrary or capricious in the decision taken by a person to undergo gender re-assignment. In those circumstances, the ongoing scientific and

medical debate as to the exact causes of the condition is of diminished relevance.

82. While it also remains the case that a transsexual cannot acquire all the biological characteristics of the assigned sex (Sheffield and Horsham, cited above, p. 2028, § 56), the Court notes that with increasingly sophisticated surgery and types of hormonal treatments, the principal unchanging biological aspect of gender identity is the chromosomal element. It is known however that chromosomal anomalies may arise naturally (for example, in cases of intersex conditions where the biological criteria at birth are not congruent) and in those cases, some persons have to be assigned to one sex or the other as seems most appropriate in the circumstances of the individual case. It is not apparent to the Court that the chromosomal element, amongst all the others, must inevitably take on decisive significance for the purposes of legal attribution of gender identity for transsexuals (see the dissenting opinion of Thorpe LJ in *Bellinger v. Bellinger* cited in paragraph 52 above; and the judgment of Chisholm J in the Australian case, *Re Kevin*, cited in paragraph 55 above).

83. The Court is not persuaded therefore that the state of medical science or scientific knowledge provides any determining argument as regards the legal recognition of transsexuals.

4. *The state of any European and international consensus*

84. Already at the time of the Sheffield and Horsham case, there was an emerging consensus within Contracting States in the Council of Europe on providing legal recognition following gender re-assignment (see § 35 of that judgment). The latest survey submitted by Liberty in the present case shows a continuing international trend towards legal recognition (see paragraphs 55-56 above). In Australia and New Zealand, it appears that the courts are moving away from the biological birth view of sex (as set out in the United Kingdom case of *Corbett v. Corbett*) and taking the view that sex, in the context of a transsexual wishing to marry, should depend on a multitude of factors to be assessed at the time of the marriage.

85. The Court observes that in the case of Rees in 1986 it had noted that little common ground existed between States, some of which did permit change of gender and some of which did not and that generally speaking the law seemed to be in a state of transition (see § 37). In the later case of Sheffield and Horsham, the Court's judgment laid emphasis on the lack of a common European approach as to how to address the repercussions which the legal recognition of a change of sex may entail for other areas of law such as marriage, filiation, privacy or data protection. While this would appear to remain the case, the lack of such a common approach among forty-three Contracting States with widely diverse legal systems and traditions is hardly surprising. In accordance with the principle of subsidiarity, it is indeed primarily for the Contracting States to decide on the

measures necessary to secure Convention rights within their jurisdiction and, in resolving within their domestic legal systems the practical problems created by the legal recognition of post-operative gender status, the Contracting States must enjoy a wide margin of appreciation. The Court accordingly attaches less importance to the lack of evidence of a common European approach to the resolution of the legal and practical problems posed, than to the clear and uncontested evidence of a continuing international trend in favour not only of increased social acceptance of transsexuals but of legal recognition of the new sexual identity of post-operative transsexuals.

5. Impact on the birth register system

86. In the Rees case, the Court allowed that great importance could be placed by the Government on the historical nature of the birth record system. The argument that allowing exceptions to this system would undermine its function weighed heavily in the assessment.

87. It may be noted however that exceptions are already made to the historic basis of the birth register system, namely, in the case of legitimisation or adoptions, where there is a possibility of issuing updated certificates to reflect a change in status after birth. To make a further exception in the case of transsexuals (a category estimated as including some 2,000-5,000 persons in the United Kingdom according to the Interdepartmental Working Group Report, p. 26) would not, in the Court's view, pose the threat of overturning the entire system. Though previous reference has been made to detriment suffered by third parties who might be unable to obtain access to the original entries and to complications occurring in the field of family and succession law (see the Rees judgment, p. 18, § 43), these assertions are framed in general terms and the Court does not find, on the basis of the material before it at this time, that any real prospect of prejudice has been identified as likely to arise if changes were made to the current system.

88. Furthermore, the Court notes that the Government have recently issued proposals for reform which would allow ongoing amendment to civil status data (see paragraph 54). It is not convinced therefore that the need to uphold rigidly the integrity of the historic basis of the birth registration system takes on the same importance in the current climate as it did in 1986.

6. Striking a balance in the present case

89. The Court has noted above (paragraphs 76-79) the difficulties and anomalies of the applicant's situation as a post-operative transsexual. It must be acknowledged that the level of daily interference suffered by the applicant in *B. v. France* (judgment of 25 March 1992, Series A no. 232) has not been attained in this case and that on certain points the risk of

difficulties or embarrassment faced by the present applicant may be avoided or minimised by the practices adopted by the authorities.

90. Nonetheless, the very essence of the Convention is respect for human dignity and human freedom. Under Article 8 of the Convention in particular, where the notion of personal autonomy is an important principle underlying the interpretation of its guarantees, protection is given to the personal sphere of each individual, including the right to establish details of their identity as individual human beings (see, *inter alia*, *Pretty v. the United Kingdom*, no. 2346/02, judgment of 29 April 2002, § 62, and *Mrkulić v. Croatia*, no. 53176/99, judgment of 7 February 2002, § 53, both to be published in ECHR 2002-...). In the twenty first century the right of transsexuals to personal development and to physical and moral security in the full sense enjoyed by others in society cannot be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved. In short, the unsatisfactory situation in which post-operative transsexuals live in an intermediate zone as not quite one gender or the other is no longer sustainable. Domestic recognition of this evaluation may be found in the report of the Interdepartmental Working Group and the Court of Appeal's judgment of *Bellinger v. Bellinger* (see paragraphs 50, 52-53).

91. The Court does not underestimate the difficulties posed or the important repercussions which any major change in the system will inevitably have, not only in the field of birth registration, but also in the areas of access to records, family law, affiliation, inheritance, criminal justice, employment, social security and insurance. However, as is made clear by the report of the Interdepartmental Working Group, these problems are far from insuperable, to the extent that the Working Group felt able to propose as one of the options full legal recognition of the new gender, subject to certain criteria and procedures. As Lord Justice Thorpe observed in the *Bellinger* case, any “spectral difficulties”, particularly in the field of family law, are both manageable and acceptable if confined to the case of fully achieved and post-operative transsexuals. Nor is the Court convinced by arguments that allowing the applicant to fall under the rules applicable to women, which would also change the date of eligibility for her state pension, would cause any injustice to others in the national insurance and state pension systems as alleged by the Government. No concrete or substantial hardship or detriment to the public interest has indeed been demonstrated as likely to flow from any change to the status of transsexuals and, as regards other possible consequences, the Court considers that society may reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost.

92. In the previous cases from the United Kingdom, this Court has since 1986 emphasised the importance of keeping the need for appropriate legal measures under review having regard to scientific and societal developments (see references at paragraph 73). Most recently in the Sheffield and Horsham case in 1998, it observed that the respondent State had not yet taken any steps to do so despite an increase in the social acceptance of the phenomenon of transsexualism and a growing recognition of the problems with which transsexuals are confronted (cited above, paragraph 60). Even though it found no violation in that case, the need to keep this area under review was expressly re-iterated. Since then, a report has been issued in April 2000 by the Interdepartmental Working Group which set out a survey of the current position of transsexuals in *inter alia* criminal law, family and employment matters and identified various options for reform. Nothing has effectively been done to further these proposals and in July 2001 the Court of Appeal noted that there were no plans to do so (see paragraphs 52-53). It may be observed that the only legislative reform of note, applying certain non-discrimination provisions to transsexuals, flowed from a decision of the European Court of Justice of 30 April 1996 which held that discrimination based on a change of gender was equivalent to discrimination on grounds of sex (see paragraphs 43-45 above).

93. Having regard to the above considerations, the Court finds that the respondent Government can no longer claim that the matter falls within their margin of appreciation, save as regards the appropriate means of achieving recognition of the right protected under the Convention. Since there are no significant factors of public interest to weigh against the interest of this individual applicant in obtaining legal recognition of her gender re-assignment, it reaches the conclusion that the fair balance that is inherent in the Convention now tilts decisively in favour of the applicant. There has, accordingly, been a failure to respect her right to private life in breach of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 12 OF THE CONVENTION

94. The applicant also claimed a violation of Article 12 of the Convention, which provides as follows:

“Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”

A. Arguments of the parties

1. *The applicant*

95. The applicant complained that although she currently enjoyed a full physical relationship with a man, she and her partner could not marry because the law treated her as a man. She argued that the *Corbett v. Corbett* definition of a person's sex for the purpose of marriage had been shown no longer to be sufficient in the recent case of *Bellinger v. Bellinger* and that even if a reliance on biological criteria remained acceptable, it was a breach of Article 12 to use only some of those criteria for determining a person's sex and excluding those who failed to fulfil those elements.

2. *The Government*

96. The Government referred to the Court's previous case-law (the above-cited Rees, Cossey and Sheffield and Horsham judgments) and maintained that neither Article 12 nor Article 8 of the Convention required a State to permit a transsexual to marry a person of his or her original sex. They also pointed out that the domestic law approach had been recently reviewed and upheld by the Court of Appeal in *Bellinger v. Bellinger*, the matter now pending before the House of Lords. In their view, if any change in this important or sensitive area were to be made, it should come from the United Kingdom's own courts acting within the margin of appreciation which this Court has always afforded. They also referred to the fact that any change brought the possibility of unwanted consequences, submitting that legal recognition would potentially invalidate existing marriages and leave transsexuals and their partners in same-sex marriages. They emphasised the importance of proper and careful review of any changes in this area and the need for transitional provisions.

B. The Court's assessment

97. The Court recalls that in the cases of Rees, Cossey and Sheffield and Horsham the inability of the transsexuals in those cases to marry a person of the sex opposite to their re-assigned gender was not found in breach of Article 12 of the Convention. These findings were based variously on the reasoning that the right to marry referred to traditional marriage between persons of opposite biological sex (the Rees judgment, p. 19, § 49), the view that continued adoption of biological criteria in domestic law for determining a person's sex for the purpose of marriage was encompassed within the power of Contracting States to regulate by national law the exercise of the right to marry and the conclusion that national laws in that respect could not be regarded as restricting or reducing the right of a

transsexual to marry in such a way or to such an extent that the very essence of the right was impaired (the Cossey judgment, p. 18, §§ 44-46, the Sheffield and Horsham judgment, p. 2030, §§ 66-67). Reference was also made to the wording of Article 12 as protecting marriage as the basis of the family (Rees, *loc. cit.*).

98. Reviewing the situation in 2002, the Court observes that Article 12 secures the fundamental right of a man and woman to marry and to found a family. The second aspect is not however a condition of the first and the inability of any couple to conceive or parent a child cannot be regarded as *per se* removing their right to enjoy the first limb of this provision.

99. The exercise of the right to marry gives rise to social, personal and legal consequences. It is subject to the national laws of the Contracting States but the limitations thereby introduced must not restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired (see the Rees judgment, p. 19, § 50; the F. v. Switzerland judgment of 18 December 1987, Series A no. 128, § 32).

100. It is true that the first sentence refers in express terms to the right of a man and woman to marry. The Court is not persuaded that at the date of this case it can still be assumed that these terms must refer to a determination of gender by purely biological criteria (as held by Ormrod J. in the case of *Corbett v. Corbett*, paragraph 21 above). There have been major social changes in the institution of marriage since the adoption of the Convention as well as dramatic changes brought about by developments in medicine and science in the field of transsexuality. The Court has found above, under Article 8 of the Convention, that a test of congruent biological factors can no longer be decisive in denying legal recognition to the change of gender of a post-operative transsexual. There are other important factors – the acceptance of the condition of gender identity disorder by the medical professions and health authorities within Contracting States, the provision of treatment including surgery to assimilate the individual as closely as possible to the gender in which they perceive that they properly belong and the assumption by the transsexual of the social role of the assigned gender. The Court would also note that Article 9 of the recently adopted Charter of Fundamental Rights of the European Union departs, no doubt deliberately, from the wording of Article 12 of the Convention in removing the reference to men and women (see paragraph 58 above).

101. The right under Article 8 to respect for private life does not however subsume all the issues under Article 12, where conditions imposed by national laws are accorded a specific mention. The Court has therefore considered whether the allocation of sex in national law to that registered at birth is a limitation impairing the very essence of the right to marry in this case. In that regard, it finds that it is artificial to assert that post-operative transsexuals have not been deprived of the right to marry as, according to law, they remain able to marry a person of their former opposite sex. The

applicant in this case lives as a woman, is in a relationship with a man and would only wish to marry a man. She has no possibility of doing so. In the Court's view, she may therefore claim that the very essence of her right to marry has been infringed.

102. The Court has not identified any other reason which would prevent it from reaching this conclusion. The Government have argued that in this sensitive area eligibility for marriage under national law should be left to the domestic courts within the State's margin of appreciation, adverting to the potential impact on already existing marriages in which a transsexual is a partner. It appears however from the opinions of the majority of the Court of Appeal judgment in *Bellinger v. Bellinger* that the domestic courts tend to the view that the matter is best handled by the legislature, while the Government have no present intention to introduce legislation (see paragraphs 52-53).

103. It may be noted from the materials submitted by Liberty that though there is widespread acceptance of the marriage of transsexuals, fewer countries permit the marriage of transsexuals in their assigned gender than recognise the change of gender itself. The Court is not persuaded however that this supports an argument for leaving the matter entirely to the Contracting States as being within their margin of appreciation. This would be tantamount to finding that the range of options open to a Contracting State included an effective bar on any exercise of the right to marry. The margin of appreciation cannot extend so far. While it is for the Contracting State to determine *inter alia* the conditions under which a person claiming legal recognition as a transsexual establishes that gender re-assignment has been properly effected or under which past marriages cease to be valid and the formalities applicable to future marriages (including, for example, the information to be furnished to intended spouses), the Court finds no justification for barring the transsexual from enjoying the right to marry under any circumstances.

104. The Court concludes that there has been a breach of Article 12 of the Convention in the present case.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

105. The applicant also claimed a violation of Article 14 of the Convention, which provides as follows:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

106. The applicant complained that the lack of legal recognition of her changed gender was the cause of numerous discriminatory experiences and prejudices. She referred in particular to the fact that she could not claim her

State pension until she was 65 and to the fact that she could not claim a “freedom pass” to give her free travel in London, a privilege which women were allowed to enjoy from the age 60 and men from the age of 65.

107. The Government submitted that no issues arose which were different from those addressed under Article 8 of the Convention and that the complaints failed to disclose any discrimination contrary to the above provision.

108. The Court considers that the lack of legal recognition of the change of gender of a post-operative transsexual lies at the heart of the applicant's complaints under Article 14 of the Convention. These issues have been examined under Article 8 and resulted in the finding of a violation of that provision. In the circumstances, the Court considers that no separate issue arises under Article 14 of the Convention and makes no separate finding.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

109. The applicant claimed a violation of Article 13 of the Convention, which provides as follows:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

110. The applicant complained that she had no effective remedy available to her in respect of the matters complained of above.

111. The Government submitted that no arguable breach of any Convention right arose to engage the right to a remedy under Article 13. In any event, since 2 October 2000 when the Human Rights Act 1998 came into force, the Convention rights could be relied on in national courts and the applicant would now have a remedy in a national court for any breach of a Convention right.

112. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Its effect is to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief (see, amongst other authorities, the *Aksoy v. Turkey* judgment of 25 September 1996, *Reports* 1996-VI, p. 2286, § 95).

113. Having found above that there have been violations of Articles 8 and 12 of the Convention, the applicant's complaints in this regard are without doubt arguable for the purposes of Article 13 of the Convention. The case-law of the Convention institutions indicates, however, that Article 13 cannot be interpreted as requiring a remedy against the state of domestic law, as otherwise the Court would be imposing on Contracting

States a requirement to incorporate the Convention (see the *James and Others v. the United Kingdom* judgment of 21 February 1986, Series A no. 98, p. 48, § 86). Insofar therefore as no remedy existed in domestic law prior to 2 October 2000 when the Human Rights Act 1998 took effect, the applicant's complaints fall foul of this principle. Following that date, it would have been possible for the applicant to raise her complaints before the domestic courts, which would have had a range of possible redress available to them.

114. The Court finds in the circumstances no breach of Article 13 of the Convention in the present case.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

115. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

116. The applicant claimed pecuniary damage of a total of 38,200 pounds sterling (GBP). This represented a sum of GBP 31,200 in respect of the pension which she had been unable to claim at age 60 and GBP 7,000 as the estimated value of the pensioner's bus pass which she had not been eligible to obtain. The applicant also claimed for non-pecuniary damage the sum of GBP 40,000 in respect of distress, anxiety and humiliation.

117. The Government submitted that were the Court to find any breach of the Convention this finding would of itself be sufficient just satisfaction for the purposes of Article 41 of the Convention.

118. The Court recalls that there must be a clear causal connection between the pecuniary damage claimed by the applicant and the violation of the Convention and that this may, in the appropriate case, include compensation in respect of loss of earnings or other sources of income (see, amongst other authorities, the *Barberà, Messegué and Jabardo v. Spain* judgment of 13 June 1994 (Article 50), Series A no. 285-C, pp. 57-58, §§ 16-20; the *C a k v. Turkey* judgment of 8 July 1999, *Reports* 1999-IV, § 127).

119. The Court observes that the applicant was unable to retire at age 60 as other female employees were entitled and to obtain a state pension or to claim a bus pass for free travel. The degree of financial detriment suffered

as a result, if any, is not clear-cut however as the applicant, though perhaps not by choice, continued to work and to enjoy a salary as a result. While it has adverted above to the difficulties and stresses of the applicant's position as a post-operative transsexual, it would note that over the period until 1998 similar issues were found to fall within the United Kingdom's margin of appreciation and that no breach arose.

120. The Court has found that the situation, as it has evolved, no longer falls within the United Kingdom's margin of appreciation. It will be for the United Kingdom Government in due course to implement such measures as it considers appropriate to fulfil its obligations to secure the applicant's, and other transsexuals', right to respect for private life and right to marry in compliance with this judgment. While there is no doubt that the applicant has suffered distress and anxiety in the past, it is the lack of legal recognition of the gender re-assignment of post-operative transsexuals which lies at the heart of the complaints in this application, the latest in a succession of cases by other applicants raising the same issues. The Court does not find it appropriate therefore to make an award to this particular applicant. The finding of violation, with the consequences which will ensue for the future, may in these circumstances be regarded as constituting just satisfaction.

B. Costs and expenses

121. The applicant claims for legal costs and expenses GBP 17,000 for solicitors' fees and GBP 24,550 for the fees of senior and junior counsel. Costs of travel to the Court hearing, together with accommodation and other related expenses were claimed in the sum of GBP 2,822. This made a total of GBP 44,372.

122. The Government submitted that the sum appeared excessive in comparison to other cases from the United Kingdom and in particular as regarded the amount of GBP 39,000 claimed in respect of the relatively recent period during which the applicant's current solicitors have been instructed which would only relate to the consolidated observations and the hearing before the Court.

123. The Court finds that the sums claimed by the applicant for legal costs and expenses, for which no detail has been provided by way of hours of work and fee rates, are high having regard to the level of complexity of, and procedures adopted in, this case. Having regard to the sums granted in other United Kingdom cases and taking into account the sums of legal aid paid by the Council of Europe, the Court awards for this head 39,000 euros (EUR), together with any value-added tax that may be payable. The award is made in euros, to be converted into pounds sterling at the date of settlement, as the Court finds it appropriate that henceforth all just

satisfaction awards made under Article 41 of the Convention should in principle be based on the euro as the reference currency.

C. Default interest

124. As the award is expressed in euros to be converted into the national currency at the date of settlement, the Court considers that the default interest rate should also reflect the choice of the euro as the reference currency. It considers it appropriate to take as the general rule that the rate of the default interest to be paid on outstanding amounts expressed in euro should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 8 of the Convention;
2. *Holds* unanimously that there has been a violation of Article 12 of the Convention;
3. *Holds* unanimously that no separate issue arises under Article 14 the Convention;
4. *Holds* unanimously that there has been no violation of Article 13 of the Convention;
5. *Holds* unanimously that the finding of violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
6. *Holds* unanimously that the respondent State is to pay the applicant, within three months, EUR 39,000 (thirty nine thousand euros) in respect of costs and expenses, together with any value-added tax that may be chargeable, to be converted into pounds sterling at the date of settlement;
7. *Holds* by fifteen votes to two that simple interest at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;

8. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 11 July 2002.

Luzius WILDHABER
President

Paul MAHONEY
Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Mr Fischbach;
- (b) partly dissenting opinion of Mr Türmen;
- (c) partly dissenting opinion of Mrs Greve.

L.W.
P.J.M

CONCURRING OPINION OF JUDGE FISCHBACH

Even though I voted with the majority of the Court as concerns point 7 of the operative part of the judgment, I would have preferred a fixed rate of default interest to have been set.

PARTLY DISSENTING OPINION OF JUDGE TÜRMEK

As concerns default interest, I would have preferred, at point 7 of the operative part of the judgment, for a fixed rate to have been set.

PARTLY DISSENTING OPINION OF JUDGE GREVE

In the present case I do not share the views of the majority of my colleagues concerning the default interest to be paid.

There is agreement among the judges that the euro is *a suitable reference currency* for all awards under Article 41. The Court wants such *awards paid promptly*, and the default interest rate is intended to be an incentive for prompt payment *without* it having a *punitive character*. So far I fully agree.

Under the Court's new policy awards are made in the euro to be converted into national currencies at the day of settlement. This means that in the present case the applicant will suffer a loss in the value of her award if her national currency, the pound sterling, continues to gain strength vis-à-vis the euro. Conversion into national currency first at the day of settlement in contradistinction to a conversion at the day of the judgement will favour applicants from the euro countries and applicants that have national currencies on a par with the euro, or weaker. All other applicants will suffer a loss under the changed policy. This, in my opinion, conflicts with the provisions of Article 14 in combination with Article 41. Moreover, it conflicts with the Court's desire that the awards shall to be as fair as possible, that is to maintain the value of the award as accurately as possible.

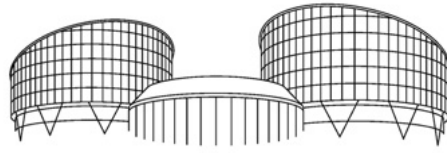
The latter objective is also the rationale for changing the Court's previous practice of using the default interest rate in each member State as basis for the Court's decision in individual cases.

The majority is attempting to secure that awards become fair by using varying interest rates as they evolve throughout the period of default. The marginal lending rate used by the European Central Bank (ECB) when lending money overnight to commercial banks plus three percentage points will be used. This will in the present case, as in many other cases, give the applicant a lower default interest rate than the rate previously used by the Court, the national default interest rate.

The marginal lending rate is interest paid by banks to the ECB, when they need quick emergency loans. That is, it is a rate which forms the ceiling for the commercial money market; and of little, if any, practical interest to most of the applicants in the Court. The default interest rates provided for in each of the States parties to the Convention for their part do reflect the situation in the national money markets regarding the rates to be paid by applicants who may have to opt for borrowing money while awaiting payment of an award of just satisfaction. For this reason national default interest rates compensate the individuals in a manner not secured by the new default interest rate opted for by the Court's majority.

Furthermore, I believe that an applicant receiving an award ought to be able to know herself the applicable default interest rate. The marginal lending rate used by the ECB when lending money overnight to commercial banks is not easily available to all applicants in Europe. The rate has been

stable for quite some time but if need be it could be set on a weekly if not even daily basis. Although it will be for the State to prove that it has actually paid the applicant in compliance with the judgment, and for the Committee of Ministers in the Council of Europe to check that this is correct, I find this to be an added bureaucratic procedure which makes it more difficult for applicants to keep track themselves. At all events the basis on which the Court's majority sets the new default interest rate is removed from the actual rate which an applicant, who needs to borrow money on an interim basis while awaiting payment of the award in a judgement, will have to pay. This is not compensated by the new varying interest rate, and this rather abstract search for fairness does not, in my opinion, merit a potentially bureaucratic new procedure.

ANNEXURE P-17

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF A.P., GARÇON AND NICOT v. FRANCE

(Applications nos. 79885/12, 52471/13 and 52596/13)

JUDGMENT
[Extracts]

STRASBOURG

6 April 2017

This judgment became final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A.P., Garçon and Nicot v. France,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Angelika Nußberger, *President*,

André Potocki,

Faris Vehabović,

Yonko Grozev,

Carlo Ranzoni,

Martina Mitsch,

Ljudmila Županovič, *judges*,

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 21 and 28 February 2017,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in three applications (nos. 79885/12, 52471/13 and 52596/13) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three French nationals, A.P. (“the first applicant”), Émile Garçon (“the second applicant”) and Stéphane Nicot (“the third applicant”) on 5 December 2012 (as regards the first applicant) and 13 August 2013 (as regards the second and third applicants). The President of the Section acceded to the first applicant’s request not to have his name disclosed (Rule 47 § 4 of the Rules of Court).

2. The first applicant was represented before the Court by SCP Gatineau-Fattaccini, a law firm authorised to practise in the *Conseil d’État* and the Court of Cassation. The remaining two applicants were represented by SCP Thouin-Palat and Boucard, a law firm authorised to practise in the *Conseil d’État* and the Court of Cassation, and by Mr Julien Fournier and Mr Emmanuel Pierrat, lawyers practising in Paris. The French Government (“the Government”) were represented by their Agent, Mr François Alabrune, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. The applicants, who are transgender persons, alleged that the refusal of their requests to have the indication of gender on their birth certificates corrected, on the grounds that persons making such a request had to substantiate it by demonstrating that they actually suffered from a gender identity disorder and that the change in their appearance was irreversible, amounted to a violation of Article 8 of the Convention (taken in conjunction with Article 3 of the Convention in the first applicant’s case). Alleging a violation of Article 8 read in conjunction with Article 3, the first applicant

also criticised the fact that the domestic courts had made the correction of his birth certificate conditional on his undergoing an intrusive and degrading expert medical assessment. He further complained, under Article 6 § 1 of the Convention, “possibly taken in conjunction with Article 8”, of a breach of his right to a fair hearing, stemming from the fact that the domestic courts had allegedly committed a manifest error of assessment in finding that he had not provided proof of an irreversible change in his appearance. The second and third applicants also complained of a violation of Article 14 of the Convention taken in conjunction with Article 8.

4. On 18 March 2015 the Government were given notice of the complaints concerning Articles 3, 8 and 14 of the Convention.

5. On 15 June 2015 the non-governmental organisations Alliance Defending Freedom (ADF) International and, jointly, Transgender Europe, Amnesty International and the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), were given leave to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. On the date of lodging of the applications, the applicants were regarded for civil-law purposes as belonging to the male sex. For that reason, the masculine form is used in referring to them; however, this cannot be construed as excluding them from the gender with which they identify.

A. Application no. 79885/12

7. The first applicant was born in 1983 and lives in Paris.

8. The first applicant stated that, although he had been entered in the register of births as being male, he had always behaved like a girl and his physical appearance had always been very feminine. As an adolescent and young adult he had struggled considerably with his gender identity, since the male identity assigned to him at birth did not match his female psychological and social identity. In 2006, after several doctors had diagnosed a gender identity disorder known as “Harry Benjamin syndrome”, he had begun a transitional phase, living in society as a woman and undertaking a course of hormone treatment under the supervision of an endocrinologist, Dr H., and a neuropsychiatrist, Dr Bo.

9. The first applicant submitted three medical certificates issued by these doctors during the period in question. In the first two certificates, dated 12 April 2007, Dr Bo. stated that the first applicant had been under his supervision since 27 April 2005 “for a syndrome typical of gender identity disorder”. He stated that “there [was] thus an observable difference between his current physique and the photograph on his identity card”, and that “there [were] no medical or psychological contraindications for [an] operation ... on the Adam’s apple”. In the third certificate, dated 16 January 2008, Dr H. stated that he had been overseeing the applicant’s hormone treatment for “typical primary gender identity disorder since 1 June 2006, together with Dr B.”, and that “following endocrinology and metabolic tests, including karyotyping, [he was being] treated with anti-androgens and oestrogen”. The doctor concluded that “the marked, plausible and genuine nature of his gender dysphoria, together with the ‘real life test’, [made him] eligible for reassignment surgery, of which [he had] a legitimate expectation”.

10. The first applicant also produced a medical certificate issued on 3 April 2008 by another psychiatrist, Dr Ba., which certified that he had “typical Harry Benjamin syndrome” and that “there [were] currently no contraindications for the medical and/or surgical treatment entailed in the gender reassignment sought by the patient”.

11. The first applicant stressed that he had not originally intended to undergo mutilating gender reassignment surgery, but had resigned himself to it because the French courts’ case-law made it a precondition for a change in civil status.

12. The first applicant decided to undergo surgery in Thailand, performed by Dr S., whom he described as a “world-renowned specialist”. The operation was carried out on 3 July 2008. Dr S. issued the following medical certificate:

“... following a period of diagnosis by psychosexual specialists and an appropriate period of living full-time with a female identity, the above-mentioned person was diagnosed with a gender identity disorder (F64.0) defined as DSM IV, ICD-10. She was accepted for the appropriate surgical treatment, namely gender reassignment surgery.

... The surgery consisted of an orchidectomy, a vaginoplasty, a clitoroplasty and a labiaplasty, combined in a single operation. On completion of the operation the male sexual organs ... were replaced by organs that are female in appearance and function, with the exception of the reproductive organs. This involved removing the male reproductive organs, resulting in irremediable infertility.

In accordance with all established medical and legal definitions, the operation is irreversible and means that Mr [A.P.]’s male sexual identity has been permanently changed to a female sexual identity.”

13. In a certificate signed on 10 September 2008 Dr H. confirmed that the first applicant “[had] undergone irreversible male-to-female gender

reassignment surgery”, and stressed that “the request for a change in civil status [was] compelling and admissible [and was] an integral part of the treatment”.

14. The first applicant produced four further certificates. The first, dated 26 May 2009, was signed by Dr W., a surgeon. It stated that the first applicant had undergone “a cosmetic laryngoplasty as part of male-to-female transitioning, after irreversible reassignment surgery was performed on the external genitalia”. In the second certificate, dated 27 May 2009, a speech therapist stated that she had “worked with [A.P.] for two years on feminisation of her voice”, and that “her voice and appearance [were] now wholly feminine and consistent with each other”. The third certificate, signed on 23 July 2009 by Dr B., a psychiatrist, read as follows:

“... [A.P.] is under supervision for typical Harry Benjamin syndrome, for which a gender reassignment process has been under way for several years. She has had hormone treatment and the surgery required to make her appearance and behaviour female. It is therefore legitimate, in the interests of her social and professional integration, for her civil status to be brought into line with her appearance and her wishes. ...”

15. In the fourth certificate, dated 16 March 2010, Dr P., a doctor specialising in fundamental psychopathology and psychoanalysis and a psychotherapist, stated that he had started psychotherapy sessions with the first applicant and, in particular, had “noted ... the consistency between Ms [A.P.]’s statements and her preferred gender identity”.

1. Judgments of the Paris tribunal de grande instance of 17 February and 10 November 2009

16. On 11 September 2008 the first applicant brought proceedings against State Counsel in the Paris *tribunal de grande instance* seeking a declaration that he was now female and that his first name was A. (a female forename). He submitted, in particular, the medical certificates of 12 April 2007 and 16 January and 10 September 2008, and the certificate issued by Dr S. On 16 October 2008 State Counsel requested a multi-disciplinary expert assessment, on the grounds that the applicant’s surgery had been performed abroad.

(a) Interlocutory judgment of 17 February 2009

17. On 17 February 2009, in an interlocutory judgment, the Paris *tribunal de grande instance* stressed as follows:

“Where a diagnosis of gender identity disorder has been made following a thorough assessment and the person concerned has undergone irreversible physical changes for therapeutic purposes, it is appropriate to consider that, although the person’s new gender status is imperfect in that the chromosomal make-up is unchanged, he or she is closer, in terms of physical appearance, mindset and social integration, to the preferred gender than to the gender assigned at birth.”

However, the court further found:

“Irrespective of the status of the authors of the medical certificates produced in support of the application, the need for a firm diagnosis means that a multi-disciplinary expert assessment should be carried out in order to establish the applicant’s current state from a physiological, biological and psychological perspective and to investigate the persistence of the alleged disorder in his past.”

The court appointed three experts – a psychiatrist, an endocrinologist and a gynaecologist – and requested them, after interviewing and examining the first applicant and consulting the medical certificates and operation reports submitted, to:

“(a) describe the applicant’s current physical state ... and the presence or absence of any external or internal genitalia of either sex; order, with the applicant’s consent, any samples and laboratory tests capable of establishing the biological and genetic characteristics of the applicant’s sex; state whether a mistake could have been made in the sex recorded on the birth certificate, or an organic or biological change could have occurred later; look for traces of possible surgery aimed at bringing about or completing a transformation of the genitalia or secondary sexual characteristics; state whether the patient has been treated with either medication or hormones; state whether the surgery or hormone treatment was carried out on account of pre-existing physical anomalies or because of the patient’s psychological state, leaving aside his deliberate intentions;

(b) describe [the first applicant’s] mental state and behaviour as regards his gender and, in so far as possible, indicate their origins and trace their development; report on any course of psychotherapy followed, specifying its duration and outcome; state whether the patient suffers from any mental disorder and, if so, specify the nature of that disorder;

(c) express a view on the possible existence of gender identity disorder, giving reasons for making or ruling out such a diagnosis; state whether, in the light of all the available individual medical data (physiological, biological and physical), the person concerned should be regarded as male or female.”

18. The court ruled that the costs of the expert assessment should be met by the first applicant, and ordered him to deposit a sum of 1,524 euros (EUR) for that purpose.

19. The first applicant refused to submit to an expert assessment on the grounds that this type of assessment, as well as being very costly, also failed to respect the physical and mental integrity of the person concerned. In his view the documents he had submitted, which had been written by specialist doctors and noted the genuine nature of his change of gender, were more than sufficient and it was not necessary to make him undergo a further battery of traumatic tests.

20. In an order of 13 March 2009 the Deputy President of the Paris Court of Appeal refused the first applicant leave to appeal against this interlocutory judgment.

(b) Judgment of 10 November 2009

21. On 10 November 2009 the Paris *tribunal de grande instance* rejected the first applicant's request. It stressed that the certificates produced by the first applicant, however informative, did not answer the court's questions regarding the origin, nature, persistence and consequences of the disorder in question, and that the doctors who had been consulted could not, in the space of a few lines intended to allow the operation to go ahead, carry out the work of three experts instructed on the basis of a very wide-ranging and detailed mandate. The court noted in particular that the certificates did not mention the applicant's mental state and attitude with regard to his gender, or express a view as to the origin of the disorder and its development. Likewise, they did not specify whether the first applicant suffered from mental-health problems and whether he had followed a course of psychotherapy, nor did they provide any information on his current state, having been written prior to his gender reassignment. The court added that patients who underwent surgery in France submitted a comprehensive file covering all the disciplines concerned as a precondition of reassignment surgery, something which the doctor who had operated on the first applicant in Thailand had apparently not required. In order to have their costs covered by the social-security scheme, patients in France had to undergo a whole series of rigorous examinations. The court found that, in the light of the evidence in the file, the applicant should submit willingly to the expert assessment. In accordance with Article 11 of the Code of Civil Procedure, which authorised the courts to draw all the appropriate inferences from a party's refusal to cooperate with an investigative measure, the court found that, in the absence of a multi-disciplinary expert assessment, the first applicant's request had not been sufficiently substantiated.

2. Paris Court of Appeal judgment of 23 September 2010

22. Following an appeal by the first applicant the Paris Court of Appeal, in a judgment of 23 September 2010, upheld the judgment of 10 November 2009 in so far as it had rejected the first applicant's request for the indication of gender on his birth certificate to be corrected.

23. First of all, the Court of Appeal inferred from Article 8 of the Convention that "where, following medical and surgical treatment undergone for therapeutic purposes", a person with a gender identity disorder no longer possessed all the characteristics of his or her original sex and had taken on a physical appearance closer to that of the opposite sex, which matched his or her social behaviour, the principle of respect for private life warranted amending the civil-status records to indicate the sex corresponding to the person's appearance.

24. However, the Court of Appeal found that, in the light of the documents submitted by the first applicant, it was "not established that he

no longer possesse[d] all the characteristics of the male sex”. It stressed in that regard that, although the psychiatrists Bo. and Ba. had given a diagnosis of gender identity disorder in their certificates of 12 April 2007 and 3 April 2008, they had not noted the “absence of mental-health problems”. The Court of Appeal further noted that the hormone treatment referred to in the certificates issued by Dr H. on 16 January and 10 September 2008 dated back a long time. It also found that the certificate drawn up by Dr S., the doctor who had operated on the first applicant in Thailand on 3 July 2008, was “extremely brief” and consisted merely in a list of items of medical information that did not make clear whether the gender reassignment surgery had been effective. Furthermore, the documentation produced by the first applicant concerning the clinic, which had been taken from the Internet, was not sufficient to establish either the scientific and surgical reputation of the surgeon who had performed the operation or whether the surgery had complied with standard medical practice. Nor was this demonstrated by Dr W.’s certificate of 26 May 2009, “owing to the lack of any detail”.

25. The Court of Appeal went on to observe that the first applicant had refused persistently on principle to submit to an expert assessment and had not cooperated in the assessment ordered by the lower court, “on the irrelevant pretext of protection of his private life, even though the aim [had been] to establish that a person presenting with a gender identity disorder no longer possessed all the characteristics of the sex assigned at birth”. The court stressed that “the possible interference with private life [had been] proportionate to the requirement to establish the person’s gender identity, which [was] a component of civil status that [was] subject to the public-order principle of inalienability”.

26. The Court of Appeal found, however, that the fact that the first applicant was known by a female forename – as was clear from numerous statements from those close to him – allied to his conviction that he was female, the fact that he had had various medical treatments and operations, and the “reality of his social life”, meant that he had a legitimate interest in changing his male forenames to female ones. The court therefore ordered that his forenames be corrected on his birth certificate.

3. Judgment of the First Civil Division of the Court of Cassation of 7 June 2012

(a) Grounds of appeal

27. The first applicant appealed on points of law against the judgment of 23 September 2010.

28. He argued, firstly, that the right to respect for private life meant that gender reassignment should be authorised for persons whose physical appearance was closer to that of the opposite gender, to which their social

behaviour corresponded. He criticised the Court of Appeal's refusal of his request to have the indication of his gender amended because he had refused to cooperate in an expert assessment aimed at determining the origins of his gender identity disorder and its development, and at ascertaining that he no longer had all the characteristics of the male sex. In his view, in ruling in this way after noting that he was known by a female forename, that he was convinced that he belonged to the female sex, and that he had had various medical and surgical treatments and lived in society as a woman, the Court of Appeal had breached Article 8 of the Convention. The first applicant referred, in particular, to the position of the Commissioner for Human Rights of the Council of Europe as set out in his issue paper of October 2009 entitled "Human rights and gender identity", and to Resolution 1728 (2010) of the Parliamentary Assembly of the Council of Europe on discrimination on the basis of sexual orientation and gender identity (see paragraphs 73 and 75 below).

29. Secondly, he argued that it had been fully established by the medical certificates he had submitted that he was transgender, that he had undergone surgery which made him a woman, and that his physical appearance and social behaviour were female. In ruling that these documents were insufficient to establish the existence of the conditions required for gender reassignment, and criticising him for not cooperating with the expert assessment, the Court of Appeal had therefore distorted the evidence.

30. Thirdly, he alleged a violation of Article 14 of the Convention taken in conjunction with Article 8, taking the view that the Court of Appeal, in finding that he should have submitted to the expert assessment and in dismissing his appeal, had based its assessment on discriminatory grounds.

(b) The judgment

31. On 7 June 2012 the Court of Cassation (First Civil Division, Bulletin 2012, I, no. 123) dismissed the appeal in the following terms:

"... In order to substantiate a request to have the gender markers on a birth certificate corrected, the person concerned must demonstrate, in view of the widely accepted position within the scientific community, that he or she actually suffers from the gender identity disorder in question and that the change in his or her appearance is irreversible. After examining the documents submitted, without distorting them, and having noted, firstly, that the certificate describing surgery performed in Thailand was very brief (being confined to a list of items of medical information and saying nothing about the effectiveness of the operation) and, secondly, that [the first applicant] refused in principle to undergo the expert assessment ordered by the first-instance court, the Court of Appeal was entitled to refuse the application for correction of the gender markers on the appellant's birth certificate ..."

B. Application no. 52471/12

32. The second applicant was born in 1958 and lives in Le Perreux-Sur-Marne.

33. He submitted that, although he had been entered in the register of births as male, he had been aware from a very young age of belonging to the female gender.

34. Owing to social pressure he had tried to hide his true nature and had married twice while living with the male identity entered on his birth certificate. However the marriages, from which he had children, had ended in divorce.

35. He dressed as a woman and was perceived by others as a woman. Since 2004 he had been undergoing treatment with feminising hormones and had undergone genital reconstruction surgery.

1. Judgment of the Créteil tribunal de grande instance of 9 February 2010

36. On 17 March 2009 the second applicant brought proceedings against State Counsel in the Créteil *tribunal de grande instance* seeking an order for his birth certificate to be corrected by replacing the word “male” with “female” and replacing his male forenames with the name “Émilie”. He referred in particular to a certificate issued in 2004 by Dr B., a psychiatrist and specialist in transgender issues, stating that the second applicant was a transgender person.

37. The court gave judgment on 9 February 2010. It noted that the second applicant had merely filed a few invoices dated 2008 and issued in the name of “Émilie” Garçon, four statements made by witnesses in 2008 saying that they had known the second applicant for a number of years, knew that he was a “transgender” person (or “transsexual”, as one of them put it) and had seen him “evolve as a woman without any apparent difficulty”, and a certificate dated 23 April 2009 signed by the endocrinologist Dr T., according to which the second applicant had been receiving treatment for gender dysphoria since 2006 and taking feminising hormones since 2004, a treatment that was well tolerated and effective. Noting also that the second applicant had not submitted the certificate from Dr B., the court found that he had not “[demonstrated] that he was actually transgender as claimed”. As he had not demonstrated that he actually suffered from the alleged disorder, his request had to be refused, since a change to the indication of gender in civil-status documents “was possible only in order to make a proven *de facto* situation official”. The court held that it had to refuse the request for a change of forename on the same grounds, as that request was merely secondary to the request for a change in civil status.

2. *Judgment of the Paris Court of Appeal of 27 January 2011*

38. On 27 January 2011, following an appeal by the second applicant, the Paris Court of Appeal upheld the judgment of 9 February 2010 giving the following reasons:

“... While the principle of the inalienability of civil status precludes the law from recognising a change wilfully sought by an individual, it does not imply that civil status cannot be changed.

Where a genuine gender identity disorder that is medically recognised and untreatable has been diagnosed following a rigorous assessment, and the transgender person has undergone irreversible physical changes for therapeutic purposes, it is appropriate to consider that, although the person’s new gender status is imperfect in that the chromosomal make-up is unchanged, he or she is closer, in terms of physical appearance, mindset and social integration, to the preferred gender than to the gender assigned at birth. In these circumstances, and since under Article 57 of the Civil Code the birth certificate must mention the sex of the individual concerned, the principle of change should be accepted.

In the present case *Émile Maurice Jean Marc Garçon* ... was entered in the civil-status registers as male.

It is up to the appellant to give reasons, in particular on the basis of medical evidence, why he should be regarded as female as he requests.

The appellant claims to be a transgender person who has lived with a female gender identity for several years. He argues that the disparity between his preferred gender and the gender assigned to him at birth is sufficient to warrant a change in civil status without his first having to demonstrate that he has undergone gender reassignment surgery.

Regarding the medical aspect he has simply submitted, as he did before the first-instance court, a certificate issued by Dr [T.] dated 23 April 2009, written on the headed paper of Dr [D. S.-B.], in which that doctor ‘certifies that the endocrinologist Dr [S.-B.] has been treating Mr *Émile (Émilie) Garçon* for gender dysphoria ... since 2006’, and specifies that the appellant has been receiving treatment with feminising hormones since 2004 and that the treatment is well tolerated and effective.

This medical certificate stating that the appellant followed a course of feminising hormone treatment from 2004 to 2009 does not in itself demonstrate the existence of a permanent physical or physiological change and hence the irreversible nature of the gender reassignment process.

An expert assessment appears pointless since the appellant, who rejects the idea of having to undergo genital surgery, does not mention any plastic surgery performed in connection with the current course of hormone treatment, and has not produced any opinion by a psychiatrist capable of demonstrating the existence and persistence of the alleged disorder, although *Émile Garçon*’s birth certificate states that he has been married twice ... and divorced twice ...”

3. Judgment of the first Civil Division of the Court of Cassation of 13 February 2013

(a) Grounds of appeal

39. The second applicant appealed on points of law against the judgment of 27 January 2011. He argued in particular that, in refusing his requests on the pretext that he had not demonstrated either the existence of “permanent physical or physiological change and hence the irreversible nature of the gender reassignment process”, or “the existence and persistence of the alleged disorder”, the Court of Appeal had breached Article 8 of the Convention, since the right to respect for private life implied the right for individuals to define their sexual identity and to have their civil-status documents amended to reflect their preferred gender identity, without having to demonstrate the existence of a gender identity disorder or gender dysphoria, or to undergo a prior process of irreversible gender reassignment. Making the right to amendment of civil-status documents subject to proof of having undergone an irreversible process of gender reassignment amounted to requiring the holders of that right to be sterilised in order to exercise it, thereby interfering with their dignity and with due respect for their bodies and the intimacy of their private lives. The second applicant inferred from this that there had been a violation of Article 8 on account of the fact that the Court of Appeal had required him to furnish proof of having undergone that process. He added that it was discriminatory and contrary to Article 14 of the Convention to make this right subject to such proof and to proof of a gender identity disorder or gender dysphoria.

(b) Judgment of 13 February 2013

40. On 13 February 2013 the Court of Cassation (First Civil Division) dismissed the appeal on points of law in the following terms:

“... In order to substantiate a request for correction of the gender markers on a birth certificate, the person concerned must demonstrate, in view of the widely accepted position within the scientific community, that he or she actually suffers from the gender identity disorder in question and that the change in his or her appearance is irreversible.

Furthermore, after noting that [the second applicant] had merely produced a certificate issued by a doctor on 23 April 2009 on the headed paper of a different doctor, in which the former certified that the latter, an endocrinologist, was treating [the second applicant] for gender dysphoria, and which stated that the patient had been receiving treatment with feminising hormones since 2004, the Court of Appeal found that this medical certificate alone did not demonstrate the existence or persistence of a gender identity disorder, or the irreversible nature of the gender reassignment process. These are not discriminatory conditions nor do they infringe the principles set out in Articles 8 and 14 of the European Convention on Human Rights or Articles 16 and 16-1 of the Civil Code, as they are based on a fair balance between the requirements of legal certainty and the inalienability of civil status on the one hand, and the protection of private life and respect for the human body on the other ...”

C. Application no. 52471/12

41. The third applicant was born in 1952 and lives in Essey-les-Nancy.

42. He submitted that, although he had been entered in the register of births as male, he had been aware from a very young age of belonging to the female gender. He had lived with a woman from 1975 to 1991 and they had had a child together in 1978.

43. The third applicant said that he had hidden his true nature for a long time as he had been afraid of being bullied and later of losing custody of his daughter. Once his daughter was grown up he had adapted his appearance and social conduct to match his female gender identity. While most of the documents he used in everyday life reflected his gender identity, this was not the case of his civil-status documents, passport, driving licence, vehicle registration papers or entry in the national identity register. As a result, he was constantly obliged to refer to his transgender identity, to the detriment of his private life.

1. Judgments of the Nancy tribunal de grande instance of 7 November 2008 and 13 March 2009

44. On 13 June 2007 the third applicant brought proceedings against State Counsel in the Nancy *tribunal de grande instance* seeking an order for his birth certificate to be corrected by replacing the word “male” with “female” and for his forenames to be replaced by the name “Stéphanie”.

(a) Judgment of 7 November 2008

45. The Nancy *tribunal de grande instance* delivered an initial judgment on 7 November 2008. It pointed out that it was “now unanimously recognised by both domestic and European case-law that transgender persons [had] the right to respect for their private life” and were therefore entitled to have their gender and forenames amended on their civil-status documents. However, the court stressed that a number of conditions had to be met, stating as follows:

“[T]he gender identity disorder [must] be established not only medically (usually by a multi-disciplinary team of doctors, surgeons, an endocrinologist, a psychologist and a psychiatrist), but also judicially, either by means of an expert assessment (although the court is not required to order one) or on the basis of medical certificates produced by the person concerned establishing with certainty that he or she has undergone medical treatment and surgery in order to achieve gender reassignment.”

The court went on to find as follows:

“Persons wishing to have their gender changed in their civil-status documents must demonstrate that they have undergone medical and surgical treatment for therapeutic purposes and have had previous surgery to remove the external characteristics of their original sex.

Hence, only ‘genuine’ transgender persons can have the gender markers in their civil-status documents changed, that is to say, persons who have already undergone an irreversible gender reassignment process.

In other words, a court may order individuals’ civil-status documents to be amended to reflect their preferred new gender only after they have genuinely altered their sexual anatomy to make it conform as closely as possible to their preferred gender.

These medical and surgical conditions are explained by the fact that a genuine gender identity disorder, which is characterised by ‘a deeply held and unshakeable feeling of belonging to the opposite gender to one’s genetically, anatomically and legally assigned gender, accompanied by an intense and consistent need to change one’s gender and civil status’, must be distinguished from other related but different concepts such as transvestism, which is based solely on reversible outward appearance and does not entail a change of anatomical sex.

In the present case, although S. Nicot is female in appearance and has provided documents and invoices issued to him by certain bodies in the name of Ms Stéphanie Nicot, these factors do not enable the court to assess whether he has actually changed gender. At the hearing, when questioned by the President regarding any treatment he may have undergone, S. Nicot took a militant stance – as he is perfectly entitled to do – and invoked the confidential nature of his private life ...”

46. The court therefore stayed the proceedings concerning the third applicant’s requests and ordered him to “produce in the proceedings any medical documents relating to the medical and surgical treatment undergone and capable of demonstrating that he [had] actually changed gender”.

(b) Judgment of 13 March 2009

47. The third applicant refused to produce any medical documents, taking the view that he had demonstrated sufficiently that he was physically and psychologically female and was integrated socially as a woman. He simply stated that his general practitioner had prescribed hormone treatment for him which meant that he had female secondary sexual characteristics such as breasts. State Counsel concluded that it was not possible to amend his civil status without proof of gender reassignment surgery.

48. In a judgment of 13 March 2009 the Nancy *tribunal de grande instance* noted that the third applicant had not produced medical and surgical evidence of gender reassignment, and therefore rejected his request. The judgment reiterated the reasoning of the judgment of 7 November 2008. The court stated as follows:

“[A change of gender in civil-status documents may be granted only to] ‘genuine’ transgender persons, that is, to persons who have already undergone irreversible gender reassignment, and not to persons who merely claim to be ‘transgender’ on the grounds that they are regarded socially as belonging to the gender corresponding to their outward appearance, but who oppose any gender reassignment surgery or refuse to provide medical and surgical evidence of such reassignment having been carried out by means of medical treatment and surgery.”

The court went on to find as follows:

“Granting S. Nicot’s request would effectively amount to the creation by the courts of a ‘third gender’, namely persons of female appearance who nevertheless continue to have a male external sexual anatomy but can marry a man. In the opposite case, a person who is male in appearance would continue to have female genitalia and could thus give birth to a child!!! As the case-law currently stands, such a situation is wholly prohibited.”

2. Judgment of the Nancy Court of Appeal of 3 January 2011

49. In a judgment of 3 January 2011 the Nancy Court of Appeal upheld the judgment of 13 March 2009. It stressed in particular that “the request for a change in civil status [did] not necessarily require proof of surgical change such as the removal or alteration of the genitalia, or plastic surgery”, but implied that “the irreversible nature of the gender reassignment process be established in advance”. The court went on to find that the third applicant “[had] not provided such intrinsic proof, which [could] on no account derive from the fact that he [was] regarded by others as female”. It added that respect for private life could not result in the third applicant being exempted from this “obligation to provide proof, which [was] not designed to confuse transgenderism and transsexualism but which, besides the inalienability of civil status, [was] aimed at ensuring the consistency and reliability of civil-status records”. That requirement, which was legitimate and in no way discriminatory, was not in breach of Article 14 of the Convention, and it was not the court’s task to remedy the deficiencies in the evidence adduced by the third applicant.

3. Court of Cassation judgment of 13 February 2013

(a) Grounds of appeal

50. The third applicant lodged an appeal on points of law against the judgment of 3 January 2011. He argued that the right to respect for private life entailed the right to define one’s gender identity and to have civil-status documents amended to reflect one’s preferred gender, without a prior obligation to undergo an irreversible gender reassignment process and provide proof thereof. In finding that he should have furnished proof of this irreversible process, the Court of Appeal had therefore breached Article 8 of the Convention, especially since neither the principle of the inalienability of civil status nor the need for consistency and reliability of civil-status records made it necessary for individuals to undergo an irreversible process of gender reassignment, and provide proof thereof, in order to have their civil-status documents amended. The third applicant added that it was discriminatory and contrary to Article 14 of the Convention to make individuals’ right to have their civil-status documents amended to reflect their preferred gender conditional upon proof that they had undergone irreversible gender reassignment.

(b) Judgment of 13 February 2013

51. The third applicant's appeal was examined at the same time as the second applicant's.

52. On 13 February 2013 the Court of Cassation (First Civil Division) dismissed the appeal on the following grounds:

“... In order to substantiate a request for correction of the gender markers on a birth certificate, the person concerned must demonstrate, in view of the widely accepted position within the scientific community, that he or she actually suffers from the gender identity disorder in question and that the change in his or her appearance is irreversible.

Given that [the third applicant] has not furnished intrinsic evidence of the irreversible nature of the gender reassignment process in his case, which cannot derive from the sole fact that he is seen by others as female, the dismissal of his claims by the Court of Appeal did not infringe the principles laid down under Articles 8 and 14 of the Convention ..., but rather struck a fair balance between the requirements of legal certainty and the inalienability of civil status on the one hand, and the protection of private life on the other ...”

II. REPORT BY THE HIGH AUTHORITY FOR HEALTH

53. In November 2009 the High Authority for Health published a report entitled “Medical treatment of gender identity disorders in France – situation and outlook”.

54. Among other things, the report advocated a “care pathway” involving several stages. The first consisted in diagnosing and assessing the “gender identity disorder”; the aim was to “avoid, as far as possible, unwarranted irreversible changes”. The second stage consisted in “real-life experience”, the aim being to study the individual's capacity to live in the desired role. The person lived full-time in the desired gender role in his or her daily life and social and professional activities, and demonstrated his or her social integration in that role, chose a new forename and informed family members of the intended change. The third stage consisted in hormone substitution, whereby exogenous hormones were administered “in order to eliminate the secondary sexual characteristics of the sex of origin and replace them as fully as possible with those of the opposite sex”. The fourth stage consisted in reassignment surgery. The report specified in that regard that, although most transgender persons wished to have reassignment surgery, it was contraindicated for some patients on medical grounds, while others felt that this step was not necessary in their case and that, for instance, hormone substitution, “peripheral” surgery and speech therapy were sufficient to give them the appearance of belonging to the other gender and allowing them to be recognised as such by society. The report further observed that a reluctance to undergo surgery might also be due to the considerable technical difficulties and the secondary effects linked to the operations.

III. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Civil Procedure

55. The relevant provisions of the Code of Civil Procedure read as follows:

Article 11

“The parties must cooperate in the investigative measures. The judge may draw all the appropriate inferences from a failure or refusal to do so. ...”

Article 143

“The facts on which the outcome of the dispute depends may, at the parties’ request or of the judge’s own motion, be the subject of any legally admissible investigative measure.”

Article 144

“Investigative measures may be ordered in any event where the judge does not have sufficient information to determine the case.”

Article 147

“The judge must confine the choice of measures to what is sufficient in order to resolve the dispute, focusing on choosing the simplest and least costly option.”

Article 232

“The judge may seek clarifications from any person of his or her choosing, in the form of observations, a consultation or an expert assessment on a factual issue which requires technical knowledge.”

Article 263

“An expert assessment should be ordered only in cases where observations or a consultation would not provide the judge with sufficient clarification.”

B. Case-law of the Court of Cassation

56. In two judgments of 11 December 1992 (nos. 91-11900 and 91-12373; Bulletin 1992 AP no. 13), the Court of Cassation, sitting as a full court, held as follows:

“Where a person with a gender identity disorder no longer possesses all the characteristics of his or her original sex and has taken on a physical appearance closer to that of the opposite sex, which matches his or her social behaviour, the principle of respect for private life warrants amending the civil-status records to indicate the sex corresponding to the person’s appearance.”

The Court of Cassation stressed that “the principle of the inalienability of civil status [did] not preclude such amendment”. It therefore quashed the

contested judgments, which had dismissed requests from transgender persons to have the gender markers on their birth certificates corrected.

57. In the second of these cases the appellant had unsuccessfully requested the appellate court to order an expert medical assessment in order to demonstrate the feminisation process he had undergone and establish that he was transgender. The Court of Cassation noted that, while the fact that the appellant was female was attested to by a certificate from the surgeon who had performed the operation and the unofficial opinion of a doctor consulted by the appellant, the actual existence or otherwise of a gender identity disorder could be established only by means of an expert assessment. It therefore criticised the impugned judgment for refusing the request.

58. The Court of Cassation, sitting in plenary, thus established in 1992 five conditions for amending the indication of gender on a person's birth certificate. The person concerned had to (1) have a gender identity disorder, (2) have undergone medical and surgical treatment with a therapeutic purpose, (3) no longer have all the characteristics of the sex assigned at birth, (4) have taken on a physical appearance close to that of the other sex, and (5) display social behaviour corresponding to that sex. However, in two judgments delivered on 7 June 2012 (Bulletin 2012, I, nos. 123 and 124), one of which concerned the first applicant's case, the First Civil Division found as follows:

“In order to substantiate a request for correction of the gender markers on a birth certificate, the person concerned must demonstrate, in view of the widely accepted position within the scientific community, that he or she actually suffers from the gender identity disorder in question and that the change in his or her appearance is irreversible.”

The First Civil Division confirmed that approach on 13 February 2013 (see paragraphs 40 and 52 above).

C. Decree no. 2010-125 of 8 February 2010

59. Decree no. 2010-125 of 8 February 2010 removed the reference to “early gender identity disorder” from the annex to Article D. 322-1 of the Social Security Code concerning the medical criteria used to define “long-term psychiatric disorders” within the category of long-term disorders.

D. Circular no. CIV/07/10 of 14 May 2010 on requests for a change of gender in civil-status documents

60. The Minister of Justice and Freedoms issued Circular no. CIV/07/10, requesting Principal State Counsel attached to the Court of Cassation, and

State Counsel and Principal State Counsel at the appellate courts, as follows:

“...[to] respond favourably to requests for a change in civil status [from transsexual or transgender persons] where hormone treatments producing permanent physical or physiological change, combined as appropriate with plastic surgery (breast prostheses or removal of mammary glands, facial plastic surgery, etc.) have resulted in an irreversible change of gender, without requiring removal of the genitalia.”

The circular also requested them to “seek an expert assessment only if the information provided raise[d] serious doubts as to whether the person concerned [was] transgender”.

E. Reply by the Minister of Justice and Freedoms to Written Question no. 14524 (Senate Official Gazette, 30 December 2010)

61. Written Question no. 14524 (Senate Official Gazette, 22 July 2010, p. 1904) asked the Minister of Justice and Freedoms to clarify the meaning of the word “irreversible” in Circular no. CIV/07/10 of 14 May 2010.

62. The Minister of Justice and Freedoms replied as follows (Senate Official Gazette, 30 December 2010, p. 3373):

“The concept of irreversible gender reassignment alluded to in the circular of 14 May 2010 refers to Council of Europe Recommendation no. 1117 on the conditions of transsexuals, which is cited in the report by the High Authority for Health entitled ‘Treatment of gender identity disorders in France – situation and outlook’. This is a medical rather than a legal concept. According to some specialists, irreversible reassignment may result from hormone substitution, which erases certain physiological characteristics, including fertility, sometimes irreversibly. It is for the persons concerned to furnish evidence in this regard, in particular by producing certificates from recognised specialists in this field (psychiatrists, endocrinologists and, where appropriate, surgeons) who have overseen their gender transition. State Counsel’s opinion should then be based, case by case, on the medical documents produced by the person concerned.”

F. Opinion of the National Advisory Commission on Human Rights (CNCDH) of 27 June 2013

63. In January 2013 the Minister of Justice and the Minister of Women’s Rights addressed two questions to the National Advisory Commission on Human Rights concerning the definition of and position regarding “gender identity” in French law and the conditions for amending the indication of gender in civil-status documents. The Commission heard evidence from researchers, law lecturers, representatives of associations and members of the Senate, and took into consideration written contributions from non-governmental organisations, doctors, social science researchers and rights advocates.

64. In an opinion of 27 June 2013 the CNCDH noted that the Court of Cassation judgments of 7 June 2012 and 13 February 2013, cited above, established two conditions for changing the indication of gender in civil-status documents, namely a diagnosis of gender identity disorder and an irreversible change in physical appearance. It observed that “although surgery [was] not a requirement, the law nevertheless require[d] irreversible medical treatment, which entail[ed], among other things, sterilisation”. The CNCDH also observed that the notion of irreversibility, which was “ill-defined and difficult to prove ... frequently result[ed] in a request for an expert medical assessment” and that, since the rulings on this point differed from one court to another, there were substantial inequalities in the situations of transgender persons in this regard. It added that the expert medical assessments were seen as intrusive and humiliating by the persons concerned and contributed to the protraction of the process of changing gender in civil-status documents, and that the amount of evidence required by the case-law, and the frequency of requests for expert assessments, raised the issue of the suspicions that all too often surrounded transgender people and which they perceived as a kind of denial of their identity.

65. The CNCDH went on to advocate abolishing the medical requirements. In that regard it took the view that, viewed in a judicial context, the requirement to demonstrate the existence of “gender dysphoria” was problematic in so far as “the wording itself appear[ed] to endorse the view of transgender identity as an illness, although gender identity disorders [had] been removed from the list of psychiatric disorders [by Decree no. 2010-125 of 8 February 2010]”. According to the CNCDH, such a condition, which was required for the purposes of differential diagnosis strictly in the context of the medical procedures undergone by transgender persons, contributed in a judicial context to the stigmatisation of these persons and to a lack of understanding of transgender identity. With regard to the requirement to prove an irreversible change in physical appearance, the CNCDH stressed as follows:

“23. ... This condition obliges the persons concerned to undergo medical treatments with very far-reaching consequences which entail an obligation to be sterilised. This obligation does not necessarily involve gender reassignment surgery but may be achieved by means of hormone treatment, which, according to the High Authority for Health, is liable to lead to irreversible metabolic changes if taken over a long period. Different patients appear to react differently to hormone treatment, with effects (including sterility) being produced after varying periods of time. In other words, the judicial proceedings depend on the – uncertain – progress of the medical procedure, thus contributing to considerable inequalities between the persons concerned. Furthermore, the irreversible nature of the change in physical appearance is difficult to prove and very often, in the courts’ view, warrants recourse to an expert medical assessment, despite the recommendations of the circular of 14 May 2010, which called on judges to ‘seek an expert assessment only if the information provided raises serious doubts as to whether the person concerned is transgender’. Besides the cost to the person concerned, expert assessments are a factor in making the proceedings

unacceptably long. Moreover, when hormone treatment is insufficient to prove the irreversible nature of the change in physical appearance, persons seeking a change of gender in their civil-status documents are often forced, as a last resort, to agree to surgery (in particular a penectomy or mastectomy). The medical requirements laid down by the law are therefore problematic in so far as some people who do not wish to have recourse to these treatments and operations nevertheless agree to this constraint in the hope of securing a successful outcome in the judicial proceedings concerning them. Consequently, the CNCDH calls for an end to any requirement to undergo gender reassignment, whether through hormone treatment entailing sterility or through recourse to surgery. ...”

G. Draft legislation

66. A bill on the protection of gender identity (no. 216) was registered with the Presidency of the Senate on 11 December 2013. It is aimed at defining a procedure enabling transgender persons to obtain, within a reasonable time and without being required to undergo any medical or surgical treatment, a change of gender in their civil-status documents and the corresponding change of forename. The reasoning included the following passage:

“Four Court of Cassation judgments [of 7 June 2012 and 13 February 2013] established the principle whereby ‘in order to substantiate a request for correction of the gender markers on a birth certificate, the person concerned must demonstrate, in view of the widely accepted position within the scientific community, that he or she actually suffers from the gender identity disorder in question and that the change in his or her appearance is irreversible’. Two conditions are therefore established: a diagnosis of gender identity disorder and an irreversible change in physical appearance. While the law does not require a surgical operation, it does require irreversible medical treatment entailing sterilisation.”

67. A further bill, on gender identity, drafted by the National Transgender Association in May 2014, is designed to enable transgender persons to obtain a change in civil status without satisfying any medical requirements and without going through the courts. Referring to the Court of Cassation judgments of 7 June 2012 and 13 February 2013, the explanatory memorandum stresses that “while the Court of Cassation does not explicitly require a surgical operation, it does nevertheless, through the nebulous criterion of an irreversible change in appearance, require medical treatment entailing sterilisation”. The explanatory memorandum adds that “the interpretation of this criterion by most of the courts amounts to requiring the transgender person to undergo a surgical operation resulting in sterility”.

H. Law on the modernisation of justice in the twenty-first century

68. Section 56 of the Law on the modernisation of justice in the twenty-first century (enacted on 12 October 2016) introduced the following

Articles into the Civil Code, concerning amendments to the indication of gender in civil-status documents:

Article 61-5

“Adults or emancipated minors who demonstrate on the basis of a sufficient combination of circumstances that the gender indicated in their civil-status documents does not correspond to the gender with which they identify, and with which others identify them, may have that indication amended.

The main circumstances taken into account, proof of which may take any form, shall be the following:

1. the fact that the persons concerned identify themselves publicly as belonging to the preferred gender;
2. the fact that they are known by family, friends or colleagues as belonging to the preferred gender;
3. the fact that they have had their forename changed so that it corresponds to their preferred gender.”

Article 61-6

“The application shall be made to the *tribunal de grande instance*.

The applicant shall state his or her free and informed consent to the change of gender in the civil-status documents and shall produce any available evidence in support of the application.

The fact that an applicant has not undergone medical treatment, surgery or sterilisation shall not constitute grounds for refusing the request.

The court shall note the fact that the applicant satisfies the conditions laid down in Article 61-5 and shall order the amendment of the indication of gender and, as applicable, of the individual’s forenames, in the civil-status documents.”

Article 61-7

“At the request of State Counsel, an entry shall be made in the margin of the individual’s birth certificate recording the change of gender and, as applicable, of forenames. This shall be done within fifteen days from the date on which the corresponding decision becomes final.

By way of derogation from Article 61-4, changes to forenames related to a change of gender shall be entered in the margin of the civil-status documents of spouses and children only with their consent or that of their legal representatives.

Articles 100 and 101 shall be applicable to changes of gender.”

Article 61-8

“A change of gender in civil-status documents shall have no implications for obligations entered into *vis-à-vis* third parties or parent-child relationships established prior to the change.”

69. On 17 November 2016 the Constitutional Council found section 56 of the Law to be compatible with the Constitution (Decision no. 2016-739

DC). It stressed in particular that “in enabling persons to obtain the amendment of the gender markers in their civil-status documents without requiring them to undergo medical treatment, surgery or sterilisation, the provisions [did] not infringe in any way the principle of the protection of human dignity”.

IV. COMPARATIVE-LAW MATERIALS

70. It emerges from a document entitled “Trans Rights Europe Map 2016”, published on 22 April 2016 by the non-governmental organisation Transgender Europe (see also “Discrimination on grounds of sexual orientation and gender identity in Europe”, Council of Europe Publishing, June 2011, and the comparative-law materials referred to in the judgment in *Y.Y. v. Turkey* (no. 14793/08, §§ 35-43, ECHR 2015 (extracts)), that at that time legal recognition of the gender identity of transgender persons was not possible in seven Council of Europe member States (Albania, Andorra, Cyprus, Liechtenstein, Monaco, San Marino and the former Yugoslav Republic of Macedonia).

71. The document also makes clear that such recognition was subject to a legal requirement to undergo sterilisation in twenty-four Council of Europe member States (Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Finland, France, Georgia, Greece, Latvia, Lithuania, Luxembourg, Montenegro, Norway, Romania, the Russian Federation, Serbia, Slovakia, Slovenia, Switzerland, Turkey and Ukraine). It was possible in sixteen member States without a legal requirement to undergo sterilisation (Austria, Denmark, Estonia, Germany, Hungary, Iceland, Ireland, Italy, Malta, Moldova, the Netherlands, Poland, Portugal, Spain, Sweden and the United Kingdom). France (see paragraph 68 above) and Norway (following a Law of 17 June 2016) have since joined the second category. The number of member States in which recognition is not subject to a legal requirement to undergo sterilisation has thus risen to eighteen (nineteen in Europe, counting Belarus), compared with twenty-two countries in which it is. In several of the countries concerned, the abolition of this requirement is the result of recent legal developments (an Administrative Court judgment of 27 February 2009 in Austria; a Law of 15 March 2010 in Portugal; a Federal Constitutional Court judgment of 11 January 2011 in Germany; a Law of 22 May 2013 in Sweden; a Law of 18 December 2013 in the Netherlands; a Law of 11 June 2014 in Denmark; a Law of 1 April 2015 in Malta; a Law of 15 July 2015 in Ireland; a Court of Cassation judgment of 21 July 2015 in Italy; a Law of 17 June 2016 in Norway; and a Law of 12 October 2016 in France). It appears also that a number of member States are currently reviewing or intend to review the conditions for legal recognition of the identity of transgender persons in order to remove any that appear unreasonable (Council of Europe Steering

Committee for Human Rights: Report on the implementation of Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity – CDDH(2013)R77 Addendum VI, 21 March 2013).

72. It also emerges from this last document in particular that a psychiatric diagnosis is among the prerequisites for legal recognition of transgender identity in thirty-six European countries, with only Denmark, Iceland, Malta and Norway having enacted legislation establishing a recognition procedure that excludes such a diagnosis (two of the seventeen Autonomous Communities in Spain also have similar legislation).

V. INTERNATIONAL MATERIALS

A. Council of Europe

1. *Commissioner for Human Rights of the Council of Europe*

73. In October 2009 the Commissioner for Human Rights of the Council of Europe published an issue paper entitled “Human rights and gender identity” in which he adopted a stance against making legal recognition of the gender identity of transgender persons subject to irreversible sterilisation surgery. The Commissioner stated as follows:

“...

It should be stressed that the eligibility conditions for the change of sex in documents vary widely across Europe. It is possible to roughly distinguish three categories of countries. In the first category, no provision at all is made for official recognition. As pointed out above, this is in clear breach of established jurisprudence of the ECtHR. In the second and smaller category of countries, there is no requirement to undergo hormonal treatment or surgery of any kind in order to obtain official recognition of the preferred gender. Legal gender recognition is possible by bringing evidence of gender dysphoria before a competent authority, such as experts from the Ministry of Health (in Hungary), the Gender Reassignment Panel (in the UK) or a doctor or clinical psychologist. In the third category of countries, comprising most Council of Europe member states, the individual has to demonstrate:

1. that (s)he has followed a medically supervised process of gender reassignment – often restricted to certain state appointed doctors or institutions;
2. that (s)he has been rendered surgically irreversibly infertile (sterilisation), and/or
3. that (s)he has undergone other medical procedures, such as hormonal treatment.

Such requirements clearly run counter to the respect for the physical integrity of the person. To require sterilisation or other surgery as a prerequisite to enjoy legal recognition of one’s preferred gender ignores the fact that while such operations are often desired by transgender persons, this is not always the case. Moreover, surgery of this type is not always medically possible, available, or affordable without health insurance funding. The treatment may not be in accordance with the wishes and needs

of the patient, nor prescribed by his/her medical specialist. Yet the legal recognition of the person's preferred gender identity is rendered impossible without these treatments, putting the transgender person in a limbo without any apparent exit. It is of great concern that transgender people appear to be the only group in Europe subject to legally prescribed, state-enforced sterilisation.

It needs to be noted that many transgender people, and probably most transsexual persons among them, choose to undergo this treatment, often including the elimination of procreative organs. The treatment is often desired as a basic necessity by this group. However, medical treatment must always be administered in the best interests of the individual and adjusted to her/his specific needs and situation. It is disproportionate for the state to prescribe treatment in a 'one size fits all' manner. The basic human rights concern here is to what extent such a strong interference by the state in the private lives of individuals can be justified and whether sterilisation or other medical interventions are required to classify someone as being of the one sex or the other.

...

... States which impose intrusive physical procedures on transgender persons effectively undermine their right to found a family.

..."

2. Committee of Ministers and Parliamentary Assembly of the Council of Europe

74. On 31 March 2010 the Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity. It stated in particular that “[p]rior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements”, and that “[m]ember states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way” (Appendix, points 20 and 21).

75. In Resolution 1728 (2010), adopted on 29 April 2010, on discrimination on the basis of sexual orientation and gender identity, the Parliamentary Assembly of the Council of Europe called on States to “... ensure in legislation and in practice [the] right [of transgender persons] to ... official documents that reflect an individual's preferred gender identity, without any prior obligation to undergo sterilisation or other medical procedures such as sex reassignment surgery and hormonal therapy” (point 16.11.2).

76. On 26 June 2013 the Parliamentary Assembly further adopted Resolution 1945 (2013), entitled “Putting an end to coerced sterilisations and castrations”, in which it noted as follows:

“... there is a small but significant number of both sterilisations and castrations which would fall under the various definitions of ‘coerced’. These are mainly directed against transgender people, Roma women and convicted sex offenders. Neither forced nor coerced sterilisations or castrations can be legitimated in any way in the 21st century – they must stop” (point 4).

It therefore urged the member States to “revise their laws and policies as necessary to ensure that no one can be coerced into sterilisation or castration in any way for any reason” (point 7.1).

77. On 22 April 2015 the Parliamentary Assembly adopted Resolution 2048 (2015) on discrimination against transgender people in Europe. This called on the member States, among other things, to abolish sterilisation and other compulsory medical treatment, as well as a mental health diagnosis, as a necessary legal requirement to recognise a person’s gender identity in laws regulating the procedure for changing a name and registered gender, and to amend classifications of diseases used at national level and advocate the modification of international classifications, making sure that transgender people, including children, were not labelled as mentally ill, while ensuring stigma-free access to necessary medical treatment.

B. United Nations

1. United Nations High Commissioner for Human Rights

78. In her report of 17 November 2011 to the Human Rights Council, entitled “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity” (A/HRC/19/41), the United Nations High Commissioner for Human Rights observed in particular that regulations in countries that recognised changes in gender often required, implicitly or explicitly, that applicants undergo sterilisation surgery as a condition of recognition (paragraph 72). She recommended in particular (paragraph 84 (h)) that States:

“[f]acilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights.”

2. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

79. In his report of 1 February 2013 to the United Nations Human Rights Council (A/HRC/22/53), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stressed the following (paragraph 78):

“In many countries transgender persons are required to undergo often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender. In Europe, 29 States require sterilization procedures to recognize the legal gender of transgender persons. In 11 States where there is no legislation regulating

legal recognition of gender, enforced sterilization is still practised. As at 2008, in the United States of America, 20 states required a transgender person to undergo ‘gender-confirming surgery’ or ‘gender reassignment surgery’ before being able to change their legal sex. In Canada, only the province of Ontario does not enforce ‘transsexual surgery’ in order to correct the recorded sex on birth certificates. Some domestic courts have found that not only does enforced surgery result in permanent sterility and irreversible changes to the body, and interfere in family and reproductive life, it also amounts to a severe and irreversible intrusion into a person’s physical integrity. In 2012, the Swedish Administrative Court of Appeals ruled that a forced sterilization requirement to intrude into someone’s physical integrity could not be seen as voluntary. In 2011, the Constitutional Court in Germany ruled that the requirement of gender reassignment surgery violated the right to physical integrity and self-determination. In 2009, the Austrian Administrative High Court also held that mandatory gender reassignment, as a condition for legal recognition of gender identity, was unlawful. In 2009, the former Commissioner for Human Rights of the Council of Europe observed that ‘[the involuntary sterilization] requirements clearly run counter to the respect for the physical integrity of the person’.”

80. In his conclusions and recommendations, he called on all States (paragraph 88):

“... to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, ‘reparative therapies’ or ‘conversion therapies’, when enforced or administered without the free and informed consent of the person concerned. He also calls upon them to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups.”

3. World Health Organisation (WHO), United Nations Children’s Fund (UNICEF), Office of the High Commissioner for Human Rights (OHCHR), UN Women, UNAIDS, United Nations Development Programme (UNDP) and United Nations Population Fund

81. In May 2014 WHO, UNICEF, OHCHR, UNAIDS, UNDP and the United Nations Population Fund published an interagency statement on eliminating forced, coercive and otherwise involuntary sterilisation. They observed in particular that in many countries transgender persons were required to undergo sterilisation surgeries that were often unwanted, as a prerequisite to obtaining gender-marker changes on their papers. The authors also noted that, according to international and regional human rights bodies and some constitutional courts, and as reflected in recent legal changes in several countries, these sterilisation requirements ran counter to respect for bodily integrity, self-determination and human dignity, and could cause and perpetuate discrimination against transgender and intersex persons. They called for action to ensure that sterilisation, or procedures resulting in infertility, were not a prerequisite for legal recognition of preferred sex/gender.

THE LAW

...

II. ALLEGED VIOLATIONS OF ARTICLE 8 OF THE CONVENTION

83. The applicants complained about the refusal of their requests to have the indication of gender on their birth certificates corrected on the grounds that persons making such a request had to substantiate it by demonstrating that they actually suffered from a gender identity disorder and that the change in their appearance was irreversible. They criticised the fact that the latter requirement meant that transgender persons who, like them, wished to have the indication of their gender amended in their civil-status documents were compelled to undergo prior surgery or treatment entailing irreversible sterility. The applicants relied on Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

The first applicant (application no. 79885/12) further relied on Article 8 read in conjunction with Article 3 of the Convention, which provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

84. The second applicant (application no. 52471/13) also complained specifically of the fact that the first requirement (for individuals to prove that they suffered from a gender identity disorder) infringed the dignity of the persons concerned as it assumed that they suffered from a mental disorder. He relied on Article 8, cited above.

85. The first applicant (application no. 79885/12) also criticised the fact that the domestic courts had made the correction of the gender markers on his birth certificate conditional on his undergoing a traumatic expert medical assessment. In his view, the expert assessments required in this context by the French Court of Cassation amounted, at least potentially, to degrading treatment. He relied on Article 8 read in conjunction with Article 3, both cited above.

...

B. Merits

1. Preliminary issues

(a) Applicability of Article 8 of the Convention

92. The Court has stressed on numerous occasions that the concept of “private life” is a broad term not susceptible to exhaustive definition. It includes not only a person’s physical and psychological integrity, but can sometimes also embrace aspects of an individual’s physical and social identity. Elements such as gender identity or identification, names, sexual orientation and sexual life fall within the personal sphere protected by Article 8 of the Convention (see, in particular, *Van Kück v. Germany*, no. 35968/97, § 69, ECHR 2003-VII; *Schlumpf v. Switzerland*, no. 29002/06, § 77, 8 January 2009; and *Y.Y. v. Turkey*, cited above, § 56, and the references cited therein).

93. The Court has also emphasised that the notion of personal autonomy is an important principle underlying the interpretation of the guarantees of Article 8 of the Convention (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). This has led it to recognise, in the context of the application of that provision to transgender persons, that it includes a right to self-determination (see *Van Kück*, § 69, and *Schlumpf*, § 100, both cited above), of which the freedom to define one’s sexual identity is one of the most basic essentials (see *Van Kück*, cited above, § 73). It has also found that the right of transgender persons to personal development and to physical and moral security is guaranteed by Article 8 (see, among other authorities, *Van Kück*, § 69; *Schlumpf*, § 100; and *Y.Y. v. Turkey*, § 58, all cited above).

94. The Court’s judgments in this sphere have hitherto concerned legal recognition of the gender identity of transgender persons who had undergone reassignment surgery (see *Rees v. the United Kingdom*, 17 October 1986, Series A no. 106; *Cossey v. the United Kingdom*, 27 September 1990, Series A no. 184; *B. v. France*, 25 March 1992, Series A no. 232-C; *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, ECHR 2002-VI; *I. v. the United Kingdom* [GC], no. 25680/94, 11 July 2002; *Grant v. the United Kingdom*, no. 32570/03, ECHR 2006-VII; and *Hämäläinen v. Finland* [GC], no. 37359/09, ECHR 2014), and the conditions of access to such surgery (see *Van Kück*, cited above; *Schlumpf*, cited above; *L. v. Lithuania*, no. 27527/03, ECHR 2007-IV; and *Y.Y. v. Turkey*, cited above). However, it cannot be inferred from this that the issue of legal recognition of the gender identity of transgender persons who have not undergone gender reassignment treatment approved by the authorities, or who do not wish to undergo such treatment, does not come within the scope of application of Article 8 of the Convention.

95. The right to respect for private life under Article 8 of the Convention applies fully to gender identity, as a component of personal identity. This holds true for all individuals.

96. The “private life” aspect of Article 8 is therefore applicable to the present case. Moreover, this was not disputed by the Government.

(b) Whether the case concerns interference or a positive obligation

97. Referring to the judgments in *I. v. the United Kingdom*, *Christine Goodwin*, and *Van Kück* (all cited above), the Government observed that Article 8 imposed an obligation on the member States to legally recognise the gender reassignment of transgender persons; States had discretion only in determining the conditions to be met by persons seeking legal recognition of their acquired gender identity, for the purposes of establishing that they had actually undergone reassignment. The Government inferred from this that the complaint should be examined from the standpoint of the State’s positive obligations.

98. The second and third applicants did not comment expressly on this point.

99. The Court agrees with the Government. As, for instance, in the case of *Sheffield and Horsham v. the United Kingdom* (30 July 1998, § 51, *Reports of Judgments and Decisions* 1998-V), the applicants’ complaints fall to be examined from the perspective of whether or not the respondent State failed to comply with its positive obligation to secure to the persons concerned the right to respect for their private lives. The Court also refers to the case of *Hämäläinen*, cited above, which, like the present case, concerned the compatibility with Article 8 of the Convention of the conditions for legal recognition of the gender identity of a transgender person. In that case the Court found it more appropriate to examine the applicant’s complaint from the perspective of the State’s positive obligations. In other words, the issue to be determined is whether respect for the applicants’ private lives entails a positive obligation for the State to provide a procedure allowing them to have their gender identity legally recognised without having to fulfil the conditions of which they complain (see, *mutatis mutandis*, *Hämäläinen*, cited above, § 64).

100. The Court notes that, at first sight, France complies with this positive obligation since French law permits transgender persons to have their identity legally recognised by having their civil-status documents corrected. However, at the time of the events in the applicants’ case, French law made it a condition of legal recognition for the persons concerned to demonstrate that they suffered from a gender identity disorder and that the change in their appearance was irreversible. The requests to that effect made by the second and third applicants were therefore rejected on the grounds that they had not fulfilled the condition in question. Hence, the issue to be addressed with regard to the second and third applicants is whether, in

imposing that condition on them, France failed to comply with its positive obligation to secure their right to respect for their private lives. In the case of the first applicant, the issue is whether France failed to comply with that obligation by making legal recognition of the applicant's identity subject to an expert medical assessment.

101. Accordingly, the Court will examine whether, in view of the margin of appreciation which they enjoyed, the French authorities, by making legal recognition of the applicants' gender identity subject to such conditions, struck a fair balance between the competing interests of the individuals concerned and of the community as a whole, the aims in the second paragraph of Article 8 being of a certain relevance (see, for example, *Hämäläinen*, cited above, § 65).

2. The requirement to demonstrate an irreversible change in appearance

(a) The parties' submissions

(i) The second and third applicants

102. Both the applicants argued that requiring persons to demonstrate the "irreversible nature of the change in appearance" amounted to requiring sterility.

103. The applicants did not submit observations, but set out their arguments in their application. In their view, it was clear from the Court's case-law that the fundamental freedom to define one's gender identity was enshrined in Article 8, without its exercise being made subject to a diagnosis of a psychiatric disorder or to medical or surgical treatment; this was also the approach advocated in Resolution 1728 (2010) of the Parliamentary Assembly (cited above). The criteria employed by the Court of Cassation were in contradiction with this approach, as they were based not on the idea that gender reassignment was a fundamental freedom, but on the notion that persons seeking a change in civil status suffered from a psychiatric disorder affecting their gender identity and which the reassignment surgery was supposed to cure. Furthermore, this approach could not be justified by the irrational fear that individuals would be able to have the gender markers in their civil-status documents altered indefinitely and on a whim, thereby jeopardising the principle of the inalienability of civil status. This was the case, firstly, because of the hierarchy of norms and, secondly, because that principle did not mean that a change of status was irreversible; moreover, such a move was possible, for instance, in relation to marital status and individuals' forenames. There was no moral value that justified depriving persons of the fundamental right to choose their gender identity and to ensure that their civil-status documents reflected that identity, on the grounds that they had not undergone an irreversible

gender reassignment process. That would amount to imposing sterilisation on people who wished to exercise this right, in disregard of their dignity and the respect due to their bodies and the intimacy of their private lives.

(ii) *The Government*

104. In their observations the Government acknowledged that it emerged from the judgment in *Y.Y. v. Turkey*, cited above, that permanent sterility as a prior condition for gender reassignment amounted to a breach of Article 8. However, the irreversible nature of the change, required by the Court of Cassation judgments of 7 June 2012 “[did] not necessarily entail” sterility and did not amount to compelling the persons concerned to undergo sterilisation. The “medical and surgical treatment” required under the earlier case-law “was traditionally understood as requiring the removal of the original genitalia and their replacement by artificial genitalia of the preferred gender (an operation known as gender reassignment)”. The Court of Cassation had replaced that requirement by the requirement to demonstrate an irreversible change in appearance, in order to take account of the development of medical techniques. The reason it had not defined this concept was because it was medical rather than legal. The Government acknowledged that gender reassignment surgery resulted in sterility, but argued that scientists were not unanimous as to the effects of hormone treatment on fertility. However, such treatment did have an irreversible impact on physical appearance, with the High Authority for Health having stated that the breast development and testicular atrophy caused by oestrogen therapy “[might] be irreversible”, and that changes to the voice, the growth of facial hair, baldness and enlargement of the clitoris resulting from testosterone treatment “[were] irreversible”. The judge’s assessment as to whether there had been an irreversible change in appearance such that the gender markers in the person’s civil-status documents should be altered was made in the light of all this medical information. Several recent decisions demonstrated that the courts had allowed such alterations on the basis of medical certificates stating that the person concerned had undergone surgery or hormone treatment, without requiring proof of sterility.

105. The Government inferred from the fact that the complaint fell to be examined from the standpoint of positive obligations that “it [was] unnecessary to examine whether the interference [had been] in accordance with the law”. The refusal of the applicants’ requests had pursued a legitimate aim as it had been guided by the French principle of the inalienability of civil status, according to which the decision to amend a birth certificate could not be a matter for the individual’s choice alone, even though that choice fell within the sphere of respect for private life. It was because the reliability and consistency of French civil-status records were at stake, and in the interests of the necessary structural role of sexual identity within the country’s social and legal arrangements, that a change of gender

in civil-status documents could be permitted only when the irreversible nature of the gender reassignment process had been objectively established.

106. Furthermore, the Court had reiterated in its judgment in *Y.Y. v. Turkey*, cited above, that whereas States' margin of appreciation was restricted when a particularly important facet of an individual's existence or identity was at stake, it was wider where there was no consensus within the member States. Only a minority of European countries did not require any surgery or hormone treatment. Noting that the Court had observed in the same judgment that the current trend was in favour of relaxing the statutory criteria with regard to the prior sterilisation requirement and the need for gender reassignment surgery, the Government stressed that – as established at the time of the facts in the present case – French positive law reflected this trend, since it no longer made the amendment of gender markers subject to gender reassignment surgery, but rather to proof that hormone treatment or surgery had had an irreversible impact on the person's appearance. The Government inferred from this that it was not disproportionate to refuse a request for the indication of gender to be amended where the irreversible nature of the change in appearance had not been demonstrated. Such a refusal struck a fair balance between the principle of the inalienability of civil status and the requirements of legal certainty on the one hand, and the right of all individuals to respect for their private life on the other.

107. In the specific case of the third applicant the Government contended that his request had been refused on the ground that, having merely argued that he was regarded by others as female, he had not provided proof of the irreversible nature of the gender reassignment process. As to the second applicant, his request had been turned down on the grounds that, in view of the deficient nature of the medical records produced, neither of the conditions established by the Court of Cassation's case-law had been met in his case.

108. Lastly, in a letter dated 17 January 2017 the Government informed the Court that the legal framework governing requests for a change of gender had been amended by the Law on the modernisation of justice in the twenty-first century, enacted on 18 November 2016 (see paragraph 68 above). They stated that the new provisions "provide[d] persons wishing to have the gender markers in their civil-status documents changed with a specific, simplified and paperless procedural framework". They added as follows:

"By this means, adults or emancipated minors who demonstrate on the basis of a sufficient combination of circumstances that the gender indicated in their civil-status documents does not correspond to the gender with which they identify, and with which others identify them, may have that indication amended."

The Government further specified that "it [was] expressly stated that the fact of not having undergone medical treatment, surgery or sterilisation [could] not be cited as grounds for refusing a request".

(b) Observations of the third-party interveners*(i) ADF International*

109. In the view of ADF International, these three applications raised relatively novel issues going to the manner in which Article 8 came into play in the context of domestic proceedings concerning the recognition of gender reassignment.

110. The third-party intervener observed that the Court's case-law in this sphere focused on the lawfulness of the restrictions imposed on recognition, with the Court consistently finding that it was for States to define the mechanisms for recognition. This raised fundamental questions regarding definitions, which had ramifications in the spheres of ethics, psychology and medical science, and in relation to which the States should enjoy wide discretion. The way in which States addressed transgender issues varied from one country to another depending on the specific features of the domestic environment, with each State defining rules aimed at striking a balance between the competing public and private interests at stake. This approach was supported by the widely diverging legal options chosen by the member States regarding this issue.

111. Lastly, ADF International submitted that no account should be taken of the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity in examining these three applications, as those principles did not reflect established international law and went beyond what the Court had accepted hitherto.

(ii) Amnesty International, ILGA Europe and Transgender Europe (TGEU)

112. The interveners pointed first of all to the principle established by Article 5 of the Oviedo Convention on Human Rights and Biomedicine, according to which any intervention in the health field could only be carried out after the person concerned had given free and informed consent to it. In France, transgender persons seeking legal recognition of their gender were required to undergo a variety of medical treatments. Their consent was compromised because they were unable to obtain recognition if they had not undergone the treatments in question. Effectively, they had to choose between two fundamental rights, namely the right to recognition of their gender identity and the right to respect for their physical integrity. The trans community was a diverse one. While some transgender persons had undergone or wished to undergo genital surgery or hormone therapy, others did not wish to do so, or were unable to because, for instance, of the cost, the fact that they were elderly or in poor physical condition, the fear of post-operative complications, their religious or personal beliefs, opposition from their loved ones, the wish to retain their reproductive capacity,

opposition from the authorities, or because they did not need surgery in order to be comfortable with their gender identity.

113. Furthermore, on the basis of the “irreversibility” requirement many French courts made a change in civil status conditional on surgery resulting in sterilisation. The third-party interveners stressed that, on account of the serious implications, genital surgery should be performed only on persons who had requested it and who had given their free and informed consent. They also criticised the fact that, in France, the process of gender recognition tended to view the situation of transgender persons as a disorder, regarding trans identity as a mental illness. This contributed to the stigmatisation of transgender persons and their social exclusion.

114. The vast majority of medical professionals rejected the idea that the transition process should necessarily and inevitably culminate in genital surgery. The interveners pointed in particular to the position of the World Professional Association for Transgender Health. The requirement of an irreversible change in appearance imposed by the case-law of the French Court of Cassation was based on an irrational fear that persons would change gender more than once; in fact, studies showed that this was unlikely to happen.

115. The interveners submitted that forced sterilisation and forced medical treatments interfered drastically with physical integrity and reproductive rights, and as such were incompatible with the prohibition of inhuman and degrading treatment under Article 3 of the Convention. They were also in breach of Article 8 of the Convention, as States had only very limited discretion where individuals’ intimate identity was at stake.

(c) The Court’s assessment

(i) Preliminary issue

116. The first issue that arises in the present case is whether, by requiring transgender persons seeking recognition of their gender identity to demonstrate the “irreversible nature of the change in appearance”, French positive law as it existed at the time of the events in the present case made such recognition conditional on surgery or treatment resulting in sterilisation.

117. The Court observes at the outset the ambiguity of the terms used. The reference to “appearance” suggests superficial change, whereas the notion of irreversibility reflects a radical transformation which, in the context of a change in the legal identity of transgender persons, in turn raises the notion of sterility. The Court considers this ambiguity to be problematic where individuals’ physical integrity is at stake.

118. The Court notes that the Government referred to (without producing) domestic decisions apparently demonstrating that some first-instance courts had approved a change in civil status for transgender

persons without requiring them to provide proof of sterility. However, it observes that one of the applicants referred to contemporaneous decisions (producing two of them) which showed, by contrast, that several courts had required such proof.

119. The Court also observes that in its opinion of 27 June 2013 the CNCDH stressed that “although surgery [was] not a requirement, the law nevertheless require[d] irreversible medical treatment, which entail[ed], among other things, sterilisation” and that “this condition oblige[d] the persons concerned to undergo medical treatments with very far-reaching consequences which entail[ed] an obligation to be sterilised”. The CNCDH specified that “this obligation [did] not necessarily involve gender reassignment surgery but [might] be achieved by means of hormone treatment, which, according to the High Authority for Health, [was] liable to lead to irreversible metabolic changes if taken over a long period” (see paragraph 63 above). This view was shared by the authors of the bill on the protection of gender identity (no. 216), registered with the Senate on 11 December 2013, the reasoning of which states that, while positive law at the time “[did] not require a surgical operation, it [did] require irreversible medical treatment entailing sterilisation” (see paragraph 66 above). Associations involved in protecting the interests of transgender persons, such as Transgender Europe (see paragraph 71 above) and the National Transgender Association (see paragraph 67 above), likewise observe that sterility was one of the conditions established by French positive law as it existed at the material time in the present case.

120. The Court will therefore proceed on the basis that, at the time of the circumstances in the applicants’ case, French positive law made recognition of the gender identity of transgender persons conditional on sterilisation surgery or on treatment which, on account of its nature and intensity, entailed a very high probability of sterility.

(ii) The margin of appreciation

121. In implementing their positive obligations under Article 8 the States enjoy a certain margin of appreciation. A number of factors must be taken into account when determining the breadth of that margin. Hence, where there is no consensus within the member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin will be wider. There will also usually be a wide margin if the State is required to strike a balance between competing private and public interests or Convention rights. Nevertheless, where a particularly important facet of an individual’s existence or identity is at stake, the margin allowed to the State will be restricted (see, in particular, *Hämäläinen*, cited above, § 67, and the references cited therein).

122. In the present case the Court notes that the Contracting Parties are divided as regards the sterility requirement (see paragraph 71 above). There is therefore no consensus on the subject. It further notes that public interests are at stake, with the Government pleading in that regard the necessity of safeguarding the principle of the inalienability of civil status and ensuring the reliability and consistency of civil-status records, and that the present case raises sensitive moral and ethical issues.

123. Nevertheless, the Court also notes that an essential aspect of individuals' intimate identity, not to say of their existence, is central to the present applications. This is so, firstly, because the issue of sterilisation goes directly to individuals' physical integrity, and secondly because the applications concern individuals' gender identity. In this regard, the Court has previously stressed that "the notion of personal autonomy is an important principle underlying the interpretation of the guarantees of Article 8" (see *Pretty*, § 61; *Van Kück*, § 69; and *Schlumpf*, § 100, all cited above) and that the right to gender identity and personal development is a fundamental aspect of the right to respect for private life (see *Van Kück*, cited above, § 75). This finding leads it to conclude that the respondent State had only a narrow margin of appreciation in the present case.

124. Moreover, the Court notes that the condition in question ceased to be part of the positive law of eleven Contracting Parties, including France, between 2009 and 2016, and that similar reforms are under discussion in other Contracting Parties (see paragraph 71 above). This shows that a trend has been emerging in Europe in recent years towards abolishing this condition, driven by developments in the understanding of transgenderism.

125. The Court also notes that numerous European and international institutional actors involved in the promotion and defence of human rights have adopted a very clear position in favour of abolishing the sterility criterion, which they regard as an infringement of fundamental rights. These include the Commissioner for Human Rights of the Council of Europe, the Parliamentary Assembly of the Council of Europe, the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the World Health Organisation, the United Nations Children's Fund, the United Nations High Commissioner for Human Rights and the OHCHR, UN Women, UNAIDS, the United Nations Development Programme and the United Nations Population Fund (see paragraphs 73-81 above). It observes that many of these declarations were made prior to or around the same time as the Court of Cassation's judgments in the cases of the second and third applicants.

(iii) Whether a fair balance was struck between the general interest and the applicants' interests

126. The Court notes that, in order to obtain recognition of their identity, persons in the applicants' situation had no choice but to first undergo

difficult medical treatment, or surgery, which, under French positive law as it existed at the time of the events in the present case, had to result in an irreversible change of appearance. As the Court pointed out above, this meant in all probability that they had to be sterilised. However, not all transgender persons wish to – or can – undergo treatment or surgery leading to such consequences, as illustrated by the example of the second and third applicants in the present case. The Court notes in that regard that in its opinion of 27 June 2013, cited above, the CNCDH stressed that some people who did not wish to have recourse to such treatment or operations nevertheless agreed to this constraint in the hope of securing a successful outcome in the proceedings concerning the amendment of their civil status (see paragraph 65 above).

127. Medical treatments and operations of this kind go to an individual's physical integrity, which is protected by Article 3 of the Convention (although this provision was not relied on by the second and third applicants) and by Article 8.

128. Hence, in different contexts, the Court has found a violation of these provisions in cases concerning the sterilisation of mentally competent adults who had not given their informed consent. In particular, it found that, since sterilisation concerns an essential human bodily function, it has implications for multiple aspects of individuals' integrity, including their physical and mental well-being and their emotional, spiritual and family life. It specified that, while it may be performed legitimately at the request of the person concerned, for instance as a means of contraception, or for therapeutic purposes where a case of medical necessity has been convincingly established, the situation is different where it is imposed on a mentally competent adult patient without his or her consent. In the Court's view, such a course of action is incompatible with respect for human freedom and dignity, which constitute one of the core principles of the Convention (see *Soares de Melo v. Portugal*, no. 72850/14, §§ 109-11, 16 February 2016, and *G.B. and R.B. v. the Republic of Moldova*, no. 16761/09, §§ 29-30 and 32, 18 December 2012).

129. More broadly, the Court has held that, in the sphere of medical assistance, even where the refusal to accept a particular treatment might lead to a fatal outcome, the imposition of medical treatment without the consent of a mentally competent adult patient would interfere with his or her right to physical integrity (see *V.C. v. Slovakia*, no. 18968/07, § 105, ECHR 2011, and the cases cited therein: *Pretty*, cited above, §§ 63 and 65; *Glass v. the United Kingdom*, no. 61827/00, §§ 82-83, ECHR 2004-II; and *Jehovah's Witnesses of Moscow v. Russia*, no. 302/02, § 135, 10 June 2010; see also *Soares de Melo*, cited above, § 109).

130. Medical treatment cannot be considered to be the subject of genuine consent when the fact of not submitting to it deprives the person concerned of the full exercise of his or her right to gender identity and

personal development, which, as previously stated, is a fundamental aspect of the right to respect for private life (see *Van Küick*, cited above, § 75).

131. Making the recognition of transgender persons' gender identity conditional on sterilisation surgery or treatment – or surgery or treatment very likely to result in sterilisation – which they do not wish to undergo therefore amounts to making the full exercise of their right to respect for their private life under Article 8 of the Convention conditional on their relinquishing full exercise of their right to respect for their physical integrity as protected by that provision and also by Article 3 of the Convention.

132. The Court fully accepts that safeguarding the principle of the inalienability of civil status, ensuring the reliability and consistency of civil-status records and, more generally, ensuring legal certainty, are in the general interest. However, it notes that, on the basis of this interpretation of the general interest, French positive law as it stood at the material time presented transgender persons not wishing to undergo full gender reassignment with an impossible dilemma. Either they underwent sterilisation surgery or treatment – or surgery or treatment very likely to result in sterilisation – against their wishes, thereby relinquishing full exercise of their right to respect for their physical integrity, which forms part of the right to respect for private life under Article 8 of the Convention; or they waived recognition of their gender identity and hence full exercise of that same right. In the Court's view, this amounted to disrupting the fair balance which the Contracting Parties are required to maintain between the general interest and the interests of the persons concerned.

133. The Court reiterates in that regard its finding in *Y.Y. v. Turkey* (cited above, § 119), to the effect that due respect for the physical integrity of the applicant (a transgender person whose request to undergo gender reassignment surgery was refused on the grounds that he had not demonstrated that he was permanently unable to procreate) precluded any obligation for him to undergo treatment resulting in permanent infertility. It further observes that in the case of *Soares de Melo* (cited above, § 111) it found a violation of Article 8 on account of the requirement for the applicant to undergo sterilisation surgery in order to exercise her parental rights as protected by that same provision.

134. Furthermore, the Court observes that on 12 October 2016 the French legislature expressly excluded sterilisation from the conditions to be fulfilled by transgender persons seeking recognition of their identity. The new Article 61-6 of the Civil Code states that “[t]he fact that an applicant has not undergone medical treatment, surgery or sterilisation shall not constitute grounds for refusing the request [for amendment of the gender markers in civil-status documents]” (see paragraph 68 above).

135. Accordingly, the refusal of the second and third applicants' requests for a change in civil status, on the grounds that they had not provided proof of the irreversible nature of the change in their appearance –

that is to say, demonstrated that they had undergone sterilisation surgery or medical treatment entailing a very high probability of sterility – amounts to a failure by the respondent State to fulfil its positive obligation to secure their right to respect for their private lives. There has therefore been a violation of Article 8 of the Convention on this account in respect of these applicants.

3. Requirement for individuals to prove the existence of a gender identity disorder (application no. 52471/13)

(a) The parties' submissions

136. The second applicant submitted that making legal recognition of transgender persons' gender identity conditional on proof that they "actually suffered from a gender disorder" amounted to labelling them as being mentally ill, and hence to an infringement of their dignity.

137. The Government observed that a prior diagnosis of gender identity disorder was a requirement in most countries. In its 2009 report the High Authority for Health had stressed that, in the medical procedure leading to the change in a transgender patient's morphology, a diagnosis of gender dysphoria was required for the purposes of differential diagnosis, in order for the doctors to be sure, before administering hormone treatment or performing surgery, that the patient's suffering did not stem from other causes such as mental illness.

(b) The Court's assessment

138. The Court is mindful of the fact that the second applicant echoed the stance taken by the non-governmental organisations working to protect transgender rights, to the effect that transgenderism is not an illness and that addressing gender identities from the perspective of a psychological disorder adds to the stigmatisation of transgender persons. This is also the position of the CNCDH, which in its opinion of 27 June 2013 (see paragraphs 63-65 above) stressed as follows:

"Viewed in a judicial context, the requirement to attest to the existence of 'gender dysphoria' is problematic in so far as the wording itself appears to endorse the view that transgender identity is an illness, although gender identity disorders were removed from the list of psychiatric disorders [by Decree no. 2010-125 of 8 February 2010]."

The CNCDH added:

"Asking transgender persons to demonstrate that they suffer from gender dysphoria, which is a requirement for the purposes of differential diagnosis strictly in the context of the medical procedures undergone by them, contributes in a judicial context to the stigmatisation of these persons and to a lack of understanding of transgender identity."

It therefore recommended that this requirement no longer form part of the procedure for obtaining a change of gender in civil-status documents.

139. However, the Court observes that a psychiatric diagnosis features among the prerequisites for legal recognition of transgender persons' gender identity in the vast majority of the forty Contracting Parties which allow such recognition, with only four of them having enacted legislation laying down a recognition procedure which excludes such a diagnosis (see paragraph 72 above). Hence, there is currently near-unanimity in this regard. The Court also notes that "transsexualism" features in Chapter V of the World Health Organisation's International Classification of Diseases (ICD-10, no. F64.0) entitled "Mental and behavioural disorders", under the category "Disorders of adult personality and behaviour", sub-category "Gender identity disorders". Furthermore, unlike the sterility condition, the requirement to obtain a prior psychiatric diagnosis does not directly affect individuals' physical integrity. Lastly, while the Commissioner for Human Rights of the Council of Europe (see paragraph 73 above) has stressed that the requirement to obtain a psychiatric diagnosis may hinder the exercise of individuals' fundamental rights, especially where it is designed to limit their legal capacity or impose medical treatment on them, the position of European and international fundamental rights organisations on this point seems less clear-cut than with regard to the sterility requirement.

140. The Court concludes from this that, even though an important aspect of the identity of transgender persons is at stake in the context of their gender identity (see paragraph 123 above), the Contracting Parties retain wide discretion in deciding whether to lay down such a requirement.

141. The Court also notes that the Government referred to the remarks made by the High Authority for Health to the effect that a diagnosis of gender dysphoria is required for the purposes of differential diagnosis, so that doctors can be sure, before administering hormone treatment or performing surgery, that the patient's suffering does not stem from other causes. In so far as the Government thereby seek to argue that the requirement of a prior psychiatric diagnosis is a means of ensuring that individuals who are not really transgender do not embark on irreversible medical reassignment treatment, their argument is not wholly persuasive as regards the situation of individuals who – like the second and third applicants – refuse to undergo treatment resulting in irreversible sterilisation. Nevertheless, the Court accepts that this requirement is aimed at safeguarding the interests of the persons concerned in that it is designed in any event to ensure that they do not embark unadvisedly on the process of legally changing their identity.

142. In that regard, moreover, the interests of the second and third applicants overlap to some extent with the general interest in safeguarding the principle of the inalienability of civil status, the reliability and consistency of civil-status records, and legal certainty, given that this requirement also promotes stability in changes of gender in civil-status documents.

143. Consequently, and especially in view of the wide margin of appreciation which they enjoyed, the Court considers that the French authorities, in refusing the second applicant's request to have the indication of gender on his birth certificate amended, on the grounds that he had not shown that he actually suffered from a gender identity disorder, struck a fair balance between the competing interests at stake.

144. In other words, the refusal of the second applicant's request on these grounds does not disclose a failure by France to comply with its positive obligation to secure his right to respect for his private life. There has therefore been no violation of Article 8 of the Convention on this account in respect of the second applicant.

4. Obligation to undergo a medical examination (application no. 79885/12)

(a) The parties' submissions

(i) The applicant

145. The first applicant, who argued that this complaint fell to be examined from the standpoint of negative obligations since the obligation to undergo a traumatic expert medical assessment constituted interference with his intimate sphere, submitted that the interference in question had not been in accordance with the law. He observed in that connection that no provision specifically required recourse to an expert medical assessment in order to establish the change in a transgender person's appearance, and the irreversible nature thereof, as part of the procedure for amending his or her civil-status records. This meant that, as noted by the Minister of Justice's circular referred to above, the case-law differed from one court to another regarding the use of this type of evidence, especially in the case of surgery performed abroad. As a result the persons concerned faced arbitrary treatment. Furthermore, the interference in question had not pursued any of the legitimate aims enumerated in the second paragraph of Article 8. With regard to the principle of the inalienability of civil status, the first applicant observed that this was not covered by any of those aims. He also inferred from the judgment in *B. v. France* (cited above, §§ 52 et seq.) that this principle by itself could not constitute a legitimate aim. As to the second aim relied on by the Government, it was not possible to argue that an expert assessment carried out after medical treatment resulting in an irreversible change in appearance and accompanied by sterilisation, not to say mutilation, was aimed at safeguarding the health of the person concerned.

146. As to the issue of proportionality, the first applicant reiterated that States enjoyed limited – or indeed minimal – room for manoeuvre where transgender persons' right to respect for their private life was in issue, especially where their physical integrity was at stake. He stressed the

particularly traumatic nature of expert medical assessments such as those that had been ordered in his case. The CNCDH had stated in its report referred to above that they were perceived as “intrusive and humiliating”, and produced statements to that effect made by transgender persons who had been subjected to them. In his view, there were ways of ensuring that the persons concerned had undergone an irreversible change in appearance that interfered less with their freedoms, such as requiring them to furnish certificates issued by several doctors of their own choosing. The applicant also produced some comments from legal observers concerning the Court of Cassation judgment in his case, in which the authors expressed surprise at the courts’ finding that the evidence submitted to them had been insufficient.

(ii) The Government

147. The Government submitted that the interference complained of had been in accordance with the law, as the judge could order an expert assessment under Articles 143 to 174, 232 to 248 and 263 to 284-1 of the Code of Civil Procedure. The case-law had softened since the 1992 Court of Cassation judgments cited above. An expert assessment was now ordered only where the medical documents produced by the applicant were deemed insufficient to establish that he or she actually had a gender identity disorder and that the change in physical appearance was irreversible. Furthermore, the interference had pursued a legitimate aim in terms of the need to preserve the reliability of civil-status records, the inalienability of civil status, and the protection of the health of the persons concerned (the Government referred in this regard to *Y.Y. v. Turkey*, cited above, § 79). On this last point they stated, without providing further details, that “the Court [had] accepted that the State [might] intervene in order to ascertain, in the interests of health protection, the irreversible nature of the surgery or treatment undergone by the applicant”.

148. On the issue of proportionality the Government stressed that expert medical assessments were not ordered as a matter of course, but only to offset any shortcomings in the medical evidence furnished with a view to demonstrating the irreversible nature of the change in appearance. This was borne out by several recent decisions of the first-instance courts. In 2010, for example, an expert assessment had been ordered in only 17% of cases. The Government added that the circular issued by the Minister of Justice on 14 May 2010 specified that expert assessments should be requested only where the evidence provided raised serious doubts as to whether the person making the request was really transgender. Hence, in the instant case, the first-instance court had ordered the expert assessment in question on account of the unsatisfactory nature of the documents supplied by the applicant. Expert opinions that were non-mandatory in principle but to which the courts were required to have recourse, in the interests of

applicants themselves, where they deemed the evidence produced to be insufficient, were a reasonable solution in view of the importance of the interests at stake.

(b) The Court's assessment

149. The Court notes the first applicant's assertion that he was relying on Article 8 of the Convention taken in conjunction with Article 3. As master of the characterisation to be given in law to the facts of the case, it considers it appropriate to examine the first applicant's allegations from the standpoint of Article 8 alone.

150. That being said, the Court must take into consideration the fact that the first applicant, who opted to undergo gender reassignment surgery abroad, argued in the domestic courts that he had thereby fulfilled the conditions laid down by positive law in order to obtain a change in civil status. The expert assessment in question, which had been aimed at establishing whether that claim was accurate, had therefore been ordered by a judge as part of the taking of evidence, an area in which the Court allows the Contracting Parties very considerable room for manoeuvre, provided that they do not act in an arbitrary manner.

151. It is for the domestic courts to assess the probative value of the evidence submitted to them. In the present case the Paris *tribunal de grand instance*, in its judgment of 17 February 2009 (see paragraph 17 above), gave precise reasons as to why it deemed the evidence produced by the first applicant to be insufficient. It accordingly appointed experts specialising in three different but complementary fields and issued them with a detailed remit. There is nothing to suggest that this decision was taken in an arbitrary manner. As pointed out by the Government, the court was thus ruling on the basis of the power of exclusive jurisdiction conferred on it by French law, as the Code of Civil Procedure authorises the first-instance judge to order any investigative measure "in any event where the judge does not have sufficient information to determine the case" (Article 144); these measures include expert assessments (Articles 232 and 263 et seq.).

152. These considerations lead the Court to conclude that, although the expert medical assessment that was ordered entailed an intimate genital examination of the first applicant, the extent of the resulting interference with the exercise of his right to respect for his private life should be qualified to a significant degree.

153. The Court therefore considers that, in rejecting the first applicant's request to have the indication of gender on his birth certificate altered, on the grounds that he had refused in principle to cooperate with the medical expert assessment that it had ordered, the domestic court – which under Article 11 of the Code of Civil Procedure was entitled to draw any inferences from such a refusal – struck a fair balance between the competing interests at stake.

154. In other words, this fact does not disclose a failure by France to comply with its positive obligation to secure the first applicant's right to respect for his private life. There has therefore been no violation of Article 8 of the Convention on this account in respect of the first applicant.

...

FOR THESE REASONS, THE COURT

...

4. *Holds*, by six votes to one, that there has been a violation of Article 8 of the Convention in respect of the second and third applicants on account of the requirement to demonstrate an irreversible change in appearance (applications nos. 52471/13 and 52596/13);
5. *Holds*, unanimously, that there has been no violation of Article 8 of the Convention in respect of the second applicant on account of the requirement to demonstrate the existence of a gender identity disorder (application no. 52471/13);
6. *Holds*, unanimously, that there has been no violation of Article 8 of the Convention in respect of the first applicant on account of the requirement to undergo a medical examination (application no. 79885/12);

...

Done in French, and notified in writing on 6 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Ranzoni is annexed to this judgment.

A.N.
M.B.

DISSENTING OPINION OF JUDGE RANZONI

(Translation)

1. My disagreement with the majority of the Chamber concerns the finding of a violation of Article 8 of the Convention in respect of the second and third applicants (applications nos. 52471/13 and 52596/13) on account of the obligation to establish the irreversible nature of the change in appearance. Accordingly, I also voted against the finding that, as regards these two applications, there was no need to examine separately the complaint under Article 14 of the Convention read in conjunction with Article 8.

2. On 17 March 2009 the second applicant requested that his birth certificate be corrected in order to have the indication of his gender changed from “male” to “female” and to have his male forename replaced by a female forename. His request was refused, in particular because he had not demonstrated the irreversible nature of the gender reassignment process, which was a requirement under domestic law as in force at that time. In a judgment of 13 February 2013 the Court of Cassation dismissed his appeal on points of law, finding that this requirement was not discriminatory and did not infringe the principles laid down under Articles 8 and 14 of the Convention (see paragraphs 32 to 40 of the judgment).

3. On 13 June 2009 the third applicant lodged a request for correction of his birth certificate, similar to that of the second applicant. This request too was refused, on the grounds that the applicant had not demonstrated with certainty that he had undergone the medical and surgical treatment necessary in order to complete the process of gender reassignment. The Court of Cassation examined the third applicant’s appeal at the same time as that of the second applicant and arrived at the same conclusion (see paragraphs 41-52 of the judgment).

4. In two judgments delivered on 7 June 2012 the Court of Cassation held that, in order to substantiate a request to have the indication of gender on a birth certificate corrected, the person concerned had to demonstrate, in view of the widely accepted position within the scientific community, that he or she actually suffered from the gender identity disorder in question and that the change in his or her appearance was irreversible (see paragraph 58 of the judgment). It is this second requirement which, in the view of the majority of the Chamber, constituted a failure on the part of the respondent State to comply with its positive obligation to secure the applicants’ right to respect for their private lives (see paragraph 135 of the judgment).

5. I do not dispute the fact that at the material time French positive law made recognition of the gender identity of transgender persons conditional on sterilisation surgery or on treatment which, on account of its nature and intensity, entailed a very high probability of sterility (see paragraph 120 of

the judgment). I can also subscribe without any hesitation to the majority's assessment that this case concerns an essential aspect of individuals' intimate identity, since the right to gender identity and personal development is a fundamental aspect of the right to respect for private life under Article 8 of the Convention (see, in particular, paragraph 123 of the judgment). Moreover, such medical treatments and operations go to the physical integrity of the individuals concerned. However, neither the second nor the third applicant relied on Article 3 of the Convention (see paragraph 128 of the judgment).

6. I can also accept that, in the search for a fair balance between the general interest and the interests of the applicants (see paragraphs 126 to 135 of the judgment), there are strong arguments in favour of finding that the obligation to undergo sterilisation surgery or treatment in order to have one's gender identity recognised disrupts this fair balance and amounts to a violation of Article 8 of the Convention. Nevertheless, there are also weighty arguments which tilt the balance in favour of the margin of appreciation of the respondent State, and thus in favour of finding that there has been no violation of Article 8.

7. In October 2016 the situation regarding the legal recognition of the gender identity of transgender persons in the Council of Europe member States was as follows (see paragraphs 70-71 of the judgment). In seven member States recognition was not possible; in twenty-two member States it was possible, but was subject to legal requirements including the disputed condition of sterilisation of the person concerned; and in "only" eighteen member States, sterilisation was no longer required by law for recognition of the gender identity of transgender persons.

8. Furthermore, this development is a recent one in those eighteen member States, a fact that emerges very clearly from the majority judgment. Of the countries concerned, eleven abolished sterilisation as a condition for legal recognition between February 2009 and October 2016 (see paragraph 71 of the judgment). This means that, for example, at the time of the first-instance judgments in the cases of the second and third applicants, on 9 February and 13 March 2009 respectively (see paragraphs 37 and 48 of the judgment), only eight member States did not require sterilisation. By the time of the Court of Cassation judgments of 13 February 2013 (see paragraphs 40 and 52 of the judgment), legal recognition of the identity of transgender persons was possible, without sterilisation being a legal requirement, in only eleven member States.

9. As the Chamber reiterates (see paragraph 121 of the judgment), in implementing their positive obligations under Article 8 of the Convention the member States enjoy a certain margin of appreciation. A number of factors must be taken into account when determining the breadth of that margin. Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will be restricted. Where,

however, there is no consensus within the member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin will be wider. There will also usually be a wide margin if the State is required to strike a balance between competing private and public interests (see *Hämäläinen v. Finland* [GC], no. 37359/09, § 67, ECHR 2014, with further references).

10. In the present case, at the time of the impugned judgments, which were delivered by the Court of Cassation on 13 February 2013, no consensus existed among the member States on the issue of requiring sterilisation as a prior condition for the legal recognition of transgender identity. Only eleven of the forty-seven member States did not require such a condition. At present – more specifically in October 2016 – such recognition is possible, without sterilisation being required by law, in only eighteen of the forty-seven member States. This is by no means a majority of the member States, still less does it represent a European consensus, which is still a long way off.

11. In the absence of consensus and in view of the fact that the present case undoubtedly raises sensitive moral and ethical issues, the margin of appreciation to be left to the respondent State remains wide (see *Hämäläinen*, cited above, § 75, and *X, Y and Z v. the United Kingdom*, 22 April 1997, § 44, *Reports of Judgments and Decisions* 1997-II). However, this margin vanishes in the analysis conducted by the majority in paragraphs 121 to 135 of the judgment. How can this be? Of course, the finding that an essential aspect of individuals' intimate identity is at stake may reduce the margin of appreciation (see paragraph 123 of the judgment), but not completely. What other factors prompted the majority to disregard entirely the margin of appreciation and also the fact that, to date, only a minority of the member States have abolished the sterility requirement?

12. In this regard the judgment highlights the existence of a “trend” towards the abolition of this requirement (see paragraph 124). I acknowledge that there exists a certain trend in Europe, but it is, as demonstrated above, only recent. Is this sufficient justification for narrowing considerably the margin of appreciation, which is in principle a wide one? I doubt it. Societies are moving only gradually towards abolishing sterilisation as a prerequisite for legal recognition of the gender identity of transgender persons.

13. I am conscious of the fact that the Court observed in *Y.Y. v. Turkey* (no. 14793/08, § 108, ECHR 2015), referring to the judgment in *Christine Goodwin v. the United Kingdom* ([GC], no. 28957/95, § 85, ECHR 2002-VI), “that it attache[d] less importance to the lack of evidence of a common European approach to the resolution of the legal and practical problems posed than to the existence of clear and uncontested evidence of a continuing international trend in favour not only of increased social

acceptance of transgender persons but of legal recognition of the new gender identity of post-operative transgender persons”. However, these two cases concerned other issues, namely legal recognition of a process of gender reassignment that had already been completed (*Christine Goodwin*), and the possibility for a transgender person to undergo gender reassignment without being subject to a requirement to be unable to procreate (*Y.Y. v. Turkey*). It must be pointed out that the Court noted in *Christine Goodwin* that it was for the Contracting State to determine, *inter alia*, the conditions under which a person claiming legal recognition as a transsexual established that gender reassignment had been properly effected (see *Christine Goodwin*, cited above, § 103). Furthermore, in *Y.Y. v. Turkey*, the comparative survey of the legislation of thirty-two member States carried out by the Court had shown that the option for transgender persons to undergo gender reassignment treatment already existed in twenty-four of the thirty-two member States, in other words in the majority of the countries surveyed. It appears that none of these States made treatment conditional on an inability to procreate (see *Y.Y. v. Turkey*, cited above, §§ 35-39). In other words, this was more than a mere trend: a clear majority of the States did not impose conditions similar to those laid down by the respondent State in that case.

14. There is also a need to examine and determine the question whether there are substantial and valid grounds capable of justifying the requirement to be unable to procreate and the retention of the corresponding systems in the majority of the member States (a question asked, for instance, by Judge Lemmens in his separate opinion annexed to the judgment in *Y.Y. v. Turkey*, cited above). In the present case, unfortunately, the Court did not answer this question, but simply stated that the trend referred to above was “driven by developments in the understanding of transgenderism” (see paragraph 124 of the judgment). This strikes me as a somewhat bold assumption, which is not backed up by any references in the judgment. In view of the facts as established in this case, the Court is unaware of the precise reasons for these developments, just as it is unaware of the reasons that have prompted most of the member States to retain to date this prior condition for legal recognition of the gender identity of transgender persons.

15. As regards the margin of appreciation, the majority note that “numerous European and international institutional actors in the human rights field have adopted a very clear position in favour of abolishing the sterility requirement” (see paragraph 125 of the judgment). To my mind, this argument is insufficient to justify the application of a very narrow margin of appreciation or the finding that there is a clear European trend. It is true that the Commissioner for Human Rights of the Council of Europe adopted a stance in 2009 against making legal recognition of transgender identity subject to irreversible sterilisation surgery (see paragraph 73 of the judgment), and that the Parliamentary Assembly noted in a 2013 Resolution

that “[n]either forced nor coerced sterilisations or castrations can be legitimated in any way in the 21st century” (see paragraph 76 of the judgment). However, I note, while acknowledging the great importance of the institutions and organisations listed in paragraph 125 of the judgment, that they are for the most part involved in the “promotion” of human rights. The majority’s assessment is not based on European or international human rights “protection” institutions, or on binding international conventions or settled case-law within the member States.

16. While it is true that an essential aspect of individuals’ intimate identity is in issue, it is arguable, in the absence of consensus at European level, that the member States’ margin of appreciation remains wide, especially since a highly sensitive issue is at stake. For that reason it could also be argued that a Contracting State – in this instance, France – should not be criticised in 2017 for having given priority between 2009 and 2013 to the requirement to demonstrate the irreversible nature of the change in appearance. In a context where standards were evolving, but where the trend was even less clear than it is today, the respondent State took the view that this arrangement was the most fitting at the time, a position still taken by the majority of member States. Had it adopted this point of view, the Court could have found that the respondent State, during the period when the decisions were given, had not overstepped its margin of appreciation or, accordingly, breached Article 8 of the Convention. It could nevertheless have called on the (other) member States to continue to monitor the issue giving rise to the present case and to pursue their efforts in the direction of the trend that had been demonstrated.

17. By contrast, the finding of a violation of Article 8 of the Convention in the present case actually has the effect of requiring twenty-two member States, in order to avoid future violations of this provision, to amend their legislation and abolish the sterilisation requirement as a condition for legal recognition of transgender identity, to say nothing of the seven member States in which legal recognition of such identity is currently not possible.

18. In cases of this type the Court has been cautious where there is no European consensus, and has advanced by means of little steps. The case-law on transgender issues is proof of that.

For instance, in the case of *Rees v. the United Kingdom* (17 October 1986, Series A no. 106), the law in the United Kingdom did not grant transsexuals a legal status corresponding to their actual situation. The Court held that there had been no violation of Article 8, finding that “there is at present little common ground between the Contracting States in this area and that, generally speaking, the law appears to be in a transitional stage”. Consequently, it considered that “this is an area in which the Contracting Parties enjoy a wide margin of appreciation” (§ 37). It specified that “[t]he need for appropriate legal measures should ... be kept under review having regard particularly to scientific and societal developments” (§ 47).

In *Cossey v. the United Kingdom* (27 September 1990, Series A no. 184), the Court reached a similar conclusion, and also noted that an annotation to the entry in the register of births would not be an appropriate solution.

In the case of *B. v. France* (25 March 1992, Series A no. 232-C), the Court found a violation of Article 8 for the first time in a case concerning the recognition of transsexual persons, taking into consideration the factors that distinguished that case from the cases of *Rees* and *Cossey*.

In *X, Y and Z v. the United Kingdom* (cited above) and *Sheffield and Horsham v. the United Kingdom* (30 July 1998, *Reports* 1998-V), the Court did not depart from its judgments in *Rees* and *Cossey*. It did not consider it necessary to “conclude that on the basis of scientific and legal developments alone the respondent State can no longer rely on a margin of appreciation to defend its continuing refusal to recognise in law a transsexual’s post-operative gender”, finding that “it continues to be the case that transsexualism raises complex scientific, legal, moral and social issues, in respect of which there is no generally shared approach among the Contracting States” (*Sheffield and Horsham*, § 58).

In its judgment in *Christine Goodwin* (cited above) the Grand Chamber of the Court found, sixteen years after the *Rees* judgment, that there had been a violation of Article 8 in view of an international trend in favour of increased social acceptance of transsexuals and of legal recognition of the new sexual identity of post-operative transsexuals, “[s]ince there are no significant factors of public interest to weigh against the interest of this individual applicant in obtaining legal recognition of her gender re-assignment” (§ 93). Nevertheless, the Court reaffirmed that it was for the Contracting State to determine, *inter alia*, the conditions of that recognition (see paragraph 13 above).

After *Christine Goodwin*, the Court delivered several judgments in Article 8 cases which also dealt with the legal recognition of the gender identity of transgender persons who had undergone reassignment surgery, and with other consequences arising for these persons from their situation (see, for example, *Van Kück v. Germany*, no. 35968/97, ECHR 2003-VII (violation); *Grant v. the United Kingdom*, no. 32570/03, ECHR 2006-VII (violation); *L. v. Lithuania*, no. 27527/03, ECHR 2007-IV (no violation); *Schlumpf v. Switzerland*, no. 29002/06, 8 January 2009 (violation); *P.V. v. Spain*, no. 35159/09, 30 November 2010 (no violation); *P. v. Portugal* (dec.), no. 56027/09, ECHR 2011 (struck out of the list); *Cassar v. Malta*, no. 36982/11, 9 July 2013 (struck out of the list); and *Hämäläinen*, cited above (no violation).

The case of *Y.Y. v. Turkey* (cited above) concerned the authorities’ refusal to allow a transgender person to undergo gender reassignment on the grounds that the person concerned was not permanently unable to procreate. This was the first time, to my knowledge, that the Court had ruled on this requirement, albeit in a different context to the present case. It found a

violation of Article 8, but taking into consideration the fact that a clear majority of the member States did not impose similar conditions to those laid down by the respondent State (see paragraph 13 above).

19. Between the *Rees* judgment in 1986 and the case of *Y.Y.* in 2015, the Court constantly elaborated upon its case-law in this field, but did so cautiously, “little by little”, or, to put it another way, “step by step”. However, with the present judgment the Court has not taken a mere step but a whole leap, and, what is more, on a highly sensitive subject, a new aspect of transsexualism – or, more accurately, transgenderism – in the absence of consensus among the member States on this specific aspect, and in awareness of the breadth of the margin of appreciation resulting from all these factors.

20. I confess that I found it difficult to make a decision in this very difficult and sensitive case. As I already stated in paragraph 6 above, there are weighty arguments to support the conclusion that the obligation to undergo sterilisation surgery or treatment in order to have one’s gender identity recognised disrupts the fair balance to be struck between the general interest and the interests of the applicants, and therefore amounts to a violation of Article 8 of the Convention. However, the majority also accepted, quite rightly, “that safeguarding the principle of the inalienability of civil status, ensuring the reliability and consistency of civil-status records and, more generally, ensuring legal certainty, are in the general interest”. They nevertheless considered that the balance was tipped in favour of the interests of the persons concerned (see paragraph 132 of the judgment). Admittedly, such an assessment is not without some foundation.

21. On the other hand, there is far from being a European consensus on this requirement, and the minority of member States which had abolished it was even smaller at the time. These considerations made me hesitate. My hesitation grew in view of the arguments advanced by the majority concerning the member States’ margin of appreciation and the European and international “trends”, arguments which, to my mind, are not wholly persuasive. Nor do I consider it appropriate to refer to Article 3 of the Convention in order to strengthen the argument (see paragraphs 127 and 131 of the judgment), since the second and third applicants had not relied on that provision.

22. Furthermore, the observation made in paragraph 134 of the judgment concerning the fact that the French legislature, on 12 October 2016, expressly excluded sterilisation from the conditions to be met by transgender persons in order to obtain recognition of their identity, strikes me as a problematic argument, as the principles established in our judgment will apply not only to the respondent State but also to the other member States.

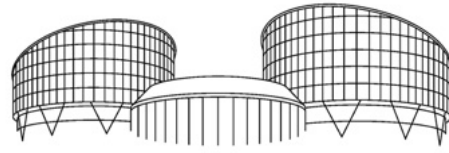
23. I wonder what the Chamber would have concluded if, instead of amending the legislation a few months before our judgment, the French

legislature had maintained the condition of an irreversible change in appearance. Would it still have found that the respondent State had overstepped its margin of appreciation in choosing that legislative option?

24. In view of all these considerations, and bearing in mind the importance and consequences of a Court judgment on this subject, I would have preferred to see the Chamber relinquish jurisdiction in favour of the Grand Chamber under Article 30 of the Convention. The conditions for relinquishment would have been met, as the case raised serious questions affecting the interpretation and application of Article 8 of the Convention and the concepts of “margin of appreciation” and “consensus”. The implications of this judgment for all the member States therefore warranted invoking the authority of the Grand Chamber. I regret the fact that the majority did not adopt this approach.

25. After reflecting as outlined above, I decided in favour of the margin of appreciation allowed to the respondent State in fulfilling its positive obligation to secure the right of the second and third applicants to respect for their private lives in relation to a highly sensitive subject which raises very tricky issues and where no European consensus exists. Accordingly, I voted against finding a violation of Article 8 of the Convention on this account.

...



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FORMER SECOND SECTION

CASE OF Y.Y. v. TURKEY

(Application no. 14793/08)

JUDGMENT
[Extracts]

STRASBOURG

10 March 2015

FINAL

10/06/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Y.Y. v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President*,

Ilkka R. A. K. A. ,

Nebojša Vučinić ,

Helen Keller,

Paul Lemmens,

Egidijus Kūris ,

Robert Spano, *judges*,

and Abel Campos, *Deputy Section Registrar*,

Having deliberated in private on 3 February 2015,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 14793/08) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Y.Y. (“the applicant”), on 6 March 2008. Y.Y. is a transgender person who at the time the application was lodged was recognised in civil law as female. However, the Court will use the masculine form in referring to the applicant, to reflect his preferred gender identity.

2. The applicant was represented by Mr A. Bozlu, a lawyer practising in Mersin. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged a violation of his right to respect for his private life (Article 8 of the Convention), in particular because the courts had refused his request for authorisation to undergo gender reassignment surgery. He also complained of the fact that the Court of Cassation had not considered his case on the merits and had not given reasons for its decisions concerning him (Article 6 of the Convention).

4. On 24 March 2010 the Government were given notice of the application. The acting Section President at that time also decided that the applicant’s identity should not be disclosed (Rule 47 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1981.

6. The applicant is a transgender person whose gender is recorded in the civil-status register as female. He stated that he had become aware, even as a child, of feeling that he was male, a feeling that was at variance with his anatomical sex.

A. Initial court action seeking gender reassignment

7. On 30 September 2005 the applicant applied to the Mersin District Court (“the District Court”) under Article 40 of the Civil Code seeking authorisation to undergo gender reassignment surgery. In the application instituting the proceedings the applicant’s lawyer gave the following reasons for his client’s request. His client had, since he was a child, regarded himself as male rather than female and for that reason had been receiving psychological counselling since childhood; at the age of nineteen or twenty he had contemplated suicide; his current biological identity was at odds with the gender to which he felt he belonged; and gender reassignment was necessary in order for him to achieve harmony between his private perception of himself and his physical make-up. The lawyer stated that several doctors whom his client had consulted since childhood had recommended gender reassignment. The applicant, who was twenty-four years old, was living as a man, had been in a relationship with a woman for four years and was accepted as a man by his family and friends. The lawyer added that his client had been receiving treatment for the past year in the psychiatric department of n Ö University Hospital with a view to undergoing the gender reassignment surgery that he sought. Lastly, the lawyer requested that the proceedings remain confidential in view of his client’s psychological state.

8. On 16 December 2005 the District Court granted the request concerning the confidentiality of the proceedings.

9. On 6 February 2006 the court heard evidence from the applicant’s family. The applicant’s mother stated that as a child her daughter had played mainly with boys and as an adolescent had told her mother that she felt more like a boy and wanted to be one. The applicant’s mother had therefore consulted psychologists, who had expressed the view that her daughter would be happier if she could live as a man, a view which the applicant’s mother shared. The applicant’s older brother also said that his sister had played with boys when she was a child, had started to behave like a boy during adolescence and had had girlfriends, and that she had been determined to undergo gender reassignment by means of surgery. She had

made several suicide attempts and was still in therapy. As far as the applicant's brother was aware, the doctors had decided to go ahead with the operation.

On conclusion of the hearing the District Court sent a request for information to the medical director of the hospital where the applicant was being treated, seeking to ascertain whether the applicant was transgender, whether gender reassignment was necessary to ensure his mental health and whether he was permanently unable to procreate.

10. On 23 February 2006 a medical committee of İnönü University Medical Centre drew up a psychiatric report which found that the applicant was transgender. The report further found that, from a psychological viewpoint, the applicant should henceforth live with a male identity.

11. On 28 February 2006 a medical committee of the gynaecology and obstetrics unit of the same medical centre drew up a report which found that Y.Y. had a female phenotype and was transgender.

12. On 7 April 2006 the District Court examined the two medical reports from İnönü University's medical faculty. The court observed that the authors of the report of 23 February 2006 had diagnosed the applicant as transgender and had found that, from a psychological viewpoint, he should live henceforth with a male identity, but that the authors of the report of 28 February 2006 had found Y.Y.'s phenotype to be female. However, the court considered that these reports had not answered the questions it had asked, namely whether gender reassignment was necessary in order to ensure the claimant's mental health and whether the claimant was permanently unable to procreate. The court therefore reiterated its request for information.

13. On 20 April 2006 the head of the gynaecology and obstetrics unit attached to the surgical department of İnönü University's medical faculty wrote to the head doctor of the medical centre informing him that the applicant had been examined following a request for a consultation with a plastic surgeon with a view to gender reassignment. She said that an examination had established that Y.Y. had female external and internal genitalia and was not permanently unable to procreate.

14. On 21 April 2006 a medical committee of the psychiatric department of İnönü University's medical faculty wrote to the head doctor of the medical centre informing him that the applicant had been examined on 20 April 2006. Following that examination the medical team had concluded that, in the interests of his mental health, the applicant should be allowed to live henceforth with a male identity.

15. At the District Court hearing of 5 May 2006 the applicant's lawyer challenged the report of 20 April 2006 on the grounds that it had not been adopted by a collegiate body. The District Court accordingly requested a fresh expert report on the applicant's ability to procreate. The task of

preparing the report was entrusted to a medical committee of Çukurova University's faculty of medicine.

16. On 11 May 2006 two doctors from the gynaecology and obstetrics department of Çukurova University's faculty of medicine carried out an expert assessment and concluded, after examining the applicant, that he was capable of procreating.

17. On 27 June 2006 the District Court, basing its decision on the findings of the various expert reports, refused the applicant authorisation to undergo gender reassignment, on the ground that he was not permanently unable to procreate and therefore did not satisfy one of the conditions of eligibility for gender reassignment under Article 40 of the Civil Code.

18. On 18 July 2006 the applicant appealed on points of law against that judgment. In his pleadings the applicant's lawyer stressed that his client had considered himself since childhood as male rather than female and that this belief was not a mere whim. The applicant had undergone a lengthy course of psychotherapy following which the doctors had concluded that he was transgender and that, from a psychological perspective, it was advisable for him to live as a man. The lawyer further submitted that his client's ability to procreate did not in any way prevent him from perceiving himself as a man; it was a biological fact over which he had no control. In Turkey as elsewhere in the world, persons who, like the applicant, were unable to reconcile their biological and psychological state were not necessarily single and unable to procreate. There were numerous examples of people who had a predisposition towards transgenderism and who had married and had children before having gender reassignment surgery. It was unfair to make authorisation for a change of biological gender contingent on the ability of the transgender individuals concerned to procreate, whether they considered themselves as men or as women. Accordingly, in refusing to allow the applicant to undergo gender reassignment surgery under Article 40 of the Civil Code – which, in the lawyer's submission, did not reflect social reality – the courts had restricted his client's rights and freedoms. The lawyer further alleged that the refusal of the applicant's request on account of his ability to procreate had been unlawful. In his view, the expression "permanently unable to procreate" should be deleted from the provision in question.

19. On 17 May 2007 the Court of Cassation upheld the District Court judgment, taking the view that the first-instance court had not erred in its assessment of the evidence.

20. On 18 June 2007 the applicant's lawyer lodged an application for rectification of that decision. In his pleadings he submitted that none of the grounds of appeal advanced by the applicant had been taken into account, and that no comment had been made on the official documents and reports included in the file. The lawyer also contested the use of the report of 11 May 2006 prepared by the gynaecology and obstetrics department of

Çukurova University's medical faculty as the basis for rejecting the applicant's claims. He argued in that regard that the report in question did not have the status of an expert report and had been drawn up following a purely superficial examination of his client's genital organs that was insufficient to establish his ability to procreate. Even assuming that the various medical reports had sufficed to establish that his client was capable of procreating, the only gender with which his client could identify from a physical and psychological perspective was male. Moreover, that fact had been established on 2 March 2005 in the report of the medical committee of n Ö University, where his client had also been following a long-term course of psychotherapy. The lawyer criticised the failure to take the latter fact into account. Lastly, he submitted that the courts had infringed the applicant's rights by refusing his request for authorisation to undergo surgery aimed at assigning to him the gender with which he naturally identified.

21. On 18 October 2007 the Court of Cassation rejected the application for rectification lodged by the applicant, observing that none of the grounds for setting aside enumerated in Article 440 of the Code of Civil Procedure applied in the case at hand.

B. Proceedings in the domestic courts following notification of the application to the Government

22. On 5 March 2013 the applicant lodged a fresh application with the Mersin District Court on the basis of Article 40 of the Civil Code, seeking authorisation to undergo gender reassignment surgery. In his application instituting the proceedings, the applicant's lawyer gave the following reasons for the request. His client had regarded himself from a young age as male rather than female and for that reason had received psychological counselling since childhood; medical reports had established that, from a psychological viewpoint, it was advisable for him to live henceforth with a male identity; the applicant's biological identity was at odds with the gender to which he felt he belonged; gender reassignment was necessary to ensure his psychological and mental well-being; on 27 March 2012 he had undergone a double mastectomy and was taking various hormones to increase his testosterone levels; he was working for his brother as a painter and decorator; he went regularly to the gym and had the physical appearance of a man; he was now thirty-two years old and had always regarded himself as a man; the friends he had met after a certain age knew him only as a man; and he did not use the first name indicated on his identity papers. The lawyer added that, in order to bring his physical appearance into line with his perception of himself, his client had resorted to all kinds of methods with damaging side-effects. In his daily life, and especially when he had to produce his identity papers for the authorities, the

applicant was subjected to denigrating and humiliating treatment and encountered numerous difficulties because of the discrepancy between his outward appearance and the identity indicated on his papers. The lawyer summed up by requesting the court to allow his client to begin the requisite formalities in order to change his identity in the civil-status register, to grant his client's request to undergo gender reassignment, to authorise him to undergo gender reassignment surgery and to declare the District Court proceedings confidential.

23. On 11 April 2013, following a full medical history and examination of the applicant, a committee made up of psychiatrists from İstanbul University Medical Centre issued a medical report which found that the applicant was transgender and that gender reassignment was necessary in order to ensure his mental health. The report also stated that an expert assessment should be carried out to establish whether the applicant was permanently unable to procreate.

24. On 6 May 2013 a forensic medical report was drawn up by a committee from the forensic medicine department of İstanbul University Medical Centre. According to the report, during the examination carried out on 11 April 2013 in the forensic medical department, the applicant had stated that he wished to undergo gender reassignment surgery and had already taken steps to that end in the past but had had his claims rejected by the courts. He had then applied to the European Court of Human Rights and had since brought a fresh action. The medical examination had shown that the applicant had a male phenotype (all his external characteristics). He had a beard and a moustache, his breast tissue had been surgically removed and he was receiving treatment following that operation. He had male hair growth on his arms and legs, was undergoing hormone treatment and was embarrassed by the colour of his identity card¹ and had therefore covered it before putting it in his wallet. Lastly, the applicant had stated that reassignment was a necessity for him.

According to the report, blood tests had revealed that the applicant had a total testosterone count of more than 16,000 ng/dl, presumably linked to the hormone treatment he was taking. However, this did not mean that he was permanently unable to procreate.

The report concluded as follows:

- “1. [The applicant] is transgender;
2. gender reassignment is necessary for his mental health;
3. [he] is not permanently unable to procreate (as a woman) ...”

25. On 21 May 2013 the Mersin District Court granted the applicant's request and authorised the gender reassignment surgery which he sought. In its reasoning, the District Court found it established that the applicant was

¹ In Turkey, women's identity cards are pink and men's are blue.

transgender, that gender reassignment was needed to ensure his mental health, and that it was clear from the evidence of the witnesses called by the applicant that he lived as a man in every respect and suffered as a result of his situation. Accordingly, in view of the evidence and of the reports produced, the conditions set forth in Article 40 § 2 of the Civil Code were satisfied and the request should be granted. The judgment specified that it was final.

...

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

44. The applicant alleged a violation of his right to respect for his private life. He maintained that the discrepancy between his perception of himself as a man and his physiological make-up had been established by medical reports. In his application form he added that his request to be allowed to put an end to that discrepancy had been refused by the domestic authorities, who had based their decision on the finding that he was able to procreate. He requested authorisation to undergo gender reassignment surgery. The applicant criticised the content of Article 40 of the Civil Code and the manner in which it had been interpreted. These did not address the concerns which the provision in question was supposed to resolve, since the biological criterion laid down could only be satisfied by means of surgery. In the applicant's view, the impossibility of obtaining access to such surgery meant that the persons concerned were permanently deprived of any opportunity to resolve the discrepancy between their perception of their gender identity and the biological reality.

The applicant relied on Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private ... life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

45. The Government contested the applicant's allegations.

A. Admissibility

46. In additional observations dated 30 August 2013 the Government submitted that, according to their reading of the Court's well-established case-law, the applicant had to be able to demonstrate his victim status at all

stages of the proceedings. In support of their argument they cited the case of *Burdov v. Russia* (no. 59498/00, § 30, ECHR 2002-III). In the present case the District Court had ultimately ruled in favour of the applicant, authorising him to undergo gender reassignment. Accordingly, the applicant no longer had victim status for the purposes of Article 34 of the Convention.

47. The applicant contested the Government's arguments. Referring to the Court's judgments in *Chevol v. France* (no. 49636/99, § 43, ECHR 2003-III); *Guerrera and Fusco v. Italy* (no. 40601/98, §§ 51-53, 3 April 2003); and *Timofeyev v. Russia* (no. 58263/00, § 36, 23 October 2003), he submitted that a favourable decision or measure was not in principle sufficient to deprive applicants of their victim status unless the national authorities had acknowledged, either expressly or in substance, and then afforded full redress for, the violation alleged. The dismissal of his initial request had forced him – like all persons who wished to undergo gender reassignment – to use hormones without any judicial or medical supervision. He was thus indeed a victim, and the domestic authorities had never acknowledged this state of affairs. Furthermore, he had brought a fresh action on his own initiative, while the domestic authorities had taken no active steps to allow him to undergo gender reassignment.

48. The Court reiterates that it falls first to the national authorities to redress any alleged violation of the Convention. The question whether or not the applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see *Burdov*, cited above, § 30). In answering this question, account should be taken not only of the formal position at the time when the application was lodged with the Court but of all the circumstances of the case in question, including any developments prior to the date of the examination of the case by the Court (see *Tin and Moldova* [GC], no. 7/08, § 105, ECHR 2010).

49. The Court further reiterates that, in view of these considerations, the question whether an applicant has victim status falls to be determined at the time of the Court's examination of the case where such an approach is justified in the circumstances (*ibid.*, § 106). Furthermore, a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see, for example, *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-80, ECHR 2006-V; and *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010).

50. Only where both these conditions have been satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of the application (see *Eckle*, cited above, §§ 69 et seq.).

51. As to the redress which is “appropriate” and “sufficient” in order to remedy a breach of a Convention right at domestic level, the Court has generally considered this to be dependent on all the circumstances of the case, having regard in particular to the nature of the Convention violation at stake (see, for instance, *Gäfgen*, cited above, § 116).

52. In the present case the Court observes that the applicant lodged an initial request with the domestic courts in 2005 seeking authorisation to undergo gender reassignment surgery, and that his request was refused following court proceedings which concluded in 2007 (see paragraphs 7 to 21 above). After the present application had been notified to the Government, he followed a course of hormone therapy and underwent a double mastectomy before lodging a second request for gender reassignment with the Mersin District Court in March 2013 (see paragraph 22 above). On 21 May 2013, following a new set of judicial proceedings in which he underwent further medical examinations, his request was finally granted (see paragraph 25 above).

53. It is true, as stressed by the Government, that the domestic courts, after the Government had been given notice of the application, adopted a decision favourable to the applicant by authorising him to undergo the requested gender reassignment. However, the Court cannot overlook the fact that the situation giving rise to the present application, namely the applicant’s inability to obtain access to gender reassignment surgery owing to the courts’ refusal, lasted for more than five years and seven months. In the Court’s view, there can be no doubt that the applicant’s private life was directly affected by the courts’ refusal during this period (see paragraphs 22 and 24 above). Furthermore, it is apparent to the Court from the reasoning of the District Court’s judgment in the applicant’s favour that the judgment did not contain any express acknowledgement of a violation of the applicant’s Convention rights. Likewise, the authorisation granted to the applicant cannot be interpreted as acknowledging in substance a violation of his right to respect for his private life.

54. Accordingly, the Government’s objection that the applicant no longer has victim status must be rejected.

55. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. The Court therefore declares it admissible.

B. Merits

1. General principles

56. The Court has previously stressed on numerous occasions that the concept of “private life” is a broad term not susceptible to exhaustive definition. It includes not only a person’s physical and psychological integrity (see *X and Y v. the Netherlands*, 26 March 1985, § 22, Series A no. 91), but can sometimes also embrace aspects of an individual’s physical and social identity (see *Mikulić v. Croatia*, no. 53176/99, § 53, ECHR 2002-I). Elements such as gender identification, names, sexual orientation and sexual life fall within the personal sphere protected by Article 8 of the Convention (see *Dudgeon v. the United Kingdom*, 22 October 1981, § 41, Series A no. 45; *B. v. France*, 25 March 1992, § 63, Series A no. 232-C; *Burghartz v. Switzerland*, 22 February 1994, § 24, Series A no. 280-B; *Laskey, Jaggard and Brown v. the United Kingdom*, 19 February 1997, § 36, *Reports of Judgments and Decisions* 1997-I; and *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 71, ECHR 1999-VI).

57. Article 8 also protects the right to personal development and the right to establish and develop relationships with other human beings and the outside world (see *Schlumpf v. Switzerland*, no. 29002/06, § 77, 8 January 2009). In that connection the Court considers that the notion of personal autonomy is an important principle underlying the interpretation of the Article 8 guarantees (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III).

58. The Court has also held on many occasions that, as the very essence of the Convention is respect for human dignity and human freedom, the right of transgender persons to personal development and to physical and moral security is guaranteed (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 90, ECHR 2002-VI; *Van Kück v. Germany*, no. 35968/97, § 69, ECHR 2003-VII; and *Schlumpf*, cited above, § 101). The Court has also recognised that serious interference with private life can arise where the state of domestic law conflicts with an important aspect of personal identity (see *Christine Goodwin*, cited above, § 77).

59. The Court further observes that, while the boundaries between the State’s positive and negative obligations under Article 8 do not lend themselves to precise definition, the applicable principles are nonetheless similar. In determining whether or not such an obligation exists, regard must be had to the fair balance which has to be struck between the general interest and the interests of the individual; in both contexts the State enjoys a certain margin of appreciation (see, for instance, *B. v. France*, cited above, § 44, and *Hämäläinen v. Finland* [GC], no. 37359/09, § 67, ECHR 2014).

60. When it comes to balancing the competing interests, the Court has emphasised the particular importance of matters relating to one of the most

intimate parts of an individual's life, namely the determination of an individual's gender (see *Schlumpf*, cited above, § 104). It has previously examined, in the light of present-day conditions, several cases involving the problems faced by transgender persons and has endorsed the evolving improvement of State measures to ensure their recognition and protection under Article 8 of the Convention (see *L. v. Lithuania*, no. 27527/03, § 56, ECHR 2007-IV).

2. *Application of these principles in the present case*

(a) Preliminary remarks

61. The Court stresses at the outset that in the above-mentioned cases the complaints were submitted by post-operative transgender persons or those who had undergone certain surgical procedures with a view to gender reassignment. In the present case, however, at the time the application was lodged the applicant had not undergone surgery, as he had been refused authorisation by the courts to undergo gender reassignment surgery on the grounds that he was not permanently unable to procreate.

62. Hence, the present case concerns an aspect of the problems potentially facing transgender persons that differs from the aspects hitherto examined by the Court, namely the issue of the prior conditions that may be imposed on transgender persons in advance of the process of gender change and the compatibility of those conditions with Article 8 of the Convention. The criteria and principles developed in the case-law cited above were thus established in a very different context and cannot therefore be transposed unaltered to the present case. However, they may serve as a guide to the Court in assessing the circumstances of the case.

(b) The approach to be taken in examining the complaint

(i) *The parties' submissions*

63. The applicant claimed to have been the victim of interference with the exercise of his right to respect for his private life.

64. The Government contested that claim and submitted that the refusal to authorise gender reassignment surgery on the ground that the statutory conditions were not satisfied could not be said to constitute interference with the exercise of the right to respect for private life within the meaning of Article 8 of the Convention. In addressing the issue whether the right of transgender persons to effective respect for their private life gave rise to a positive obligation for the State, regard had to be had to the "fair balance which [had] to be struck between the general interest and the interests of the individual." In its judgments in *Rees v. the United Kingdom* (17 October 1986, Series A no. 106), and *Cossey v. the United Kingdom* (27 September 1990, Series A no. 184), the Court had taken into account, among other

considerations, the fact that “[t]he requirement of striking a fair balance could not give rise to any direct obligation on the respondent State to alter the very basis of its system”, in order to conclude that no such obligation existed for the respondent State.

(ii) The Court’s assessment

65. The Court observes that the applicant’s chief complaint concerned the refusal by the domestic courts of his request for access to gender reassignment surgery. Citing the judgments in *Pretty* (cited above, § 66), and *K.A. and A.D. v. Belgium* (nos. 42758/98 and 45558/99, § 83, 17 February 2005), he submitted that the principle of personal autonomy could be understood to encompass the right to make choices about one’s own body. In that connection the Court observes that, while Article 8 of the Convention cannot be interpreted as guaranteeing an unconditional right to gender reassignment surgery, it has previously held that transgenderism is recognised internationally as a medical condition which warrants treatment to assist the persons concerned (see *Christine Goodwin*, cited above, § 81). The health services of most of the Contracting States recognise this condition and provide or permit treatment, including irreversible gender reassignment surgery (see paragraphs 35-43 above).

66. The Court considers that the initial refusal of the applicant’s request undeniably had repercussions on his right to gender identity and to personal development, a fundamental aspect of the right to respect for private life. That refusal therefore amounted to interference with the applicant’s right to respect for his private life within the meaning of Article 8 § 1 of the Convention.

(c) Whether the interference was justified

67. In order to determine whether the interference found amounted to a violation of Article 8, the Court must ascertain whether it was justified from the standpoint of the second paragraph of that Article, in other words whether it was “in accordance with the law” and “necessary in a democratic society” in order to achieve one of the “legitimate aims” enumerated in that paragraph.

(i) The legal basis for the interference

68. According to the Court’s settled case-law, the expression “in accordance with the law” not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see, among many other authorities, *Amann v. Switzerland* [GC], no. 27798/95, § 50, ECHR 2000-II; *Slivenko v. Latvia* [GC], no. 48321/99, § 100, ECHR 2003-X; and *Fernández Martínez v. Spain* [GC], no. 56030/07, § 117, ECHR 2014 (extracts)).

69. In the present case the Court notes first of all that the issue of the existence of a legal basis is not disputed between the parties. The applicant himself stated that the interference in question had been based on Article 40 of the Civil Code. The Government, for their part, asserted that the requirements of that provision were clear and that in the present case the Mersin District Court had not examined previous court rulings regarding the statutory conditions. Basing its findings on the various expert assessments, it had simply refused the applicant's request on the ground that the statutory criteria for gender reassignment had not been fully met since the applicant was not incapable of procreating.

70. The Court notes that the District Court ruling of 27 June 2006 refusing the applicant authorisation to undergo gender reassignment as he had requested was based on Article 40 of the Civil Code. It is apparent from that provision that, under Turkish law, transgender persons who satisfy certain statutory criteria have the right not only to undergo gender reassignment but also to obtain legal recognition of their new gender by amending their civil status ... However, under Article 40 of the Civil Code, this possibility is subject to a number of conditions, including the inability of the person to procreate. It was on the basis of this condition that the applicant's request was initially refused.

71. Accordingly, the Court considers that the interference complained of had a legal basis in domestic law. However, in view of its finding regarding the necessity of that interference (see paragraphs 121-22 below), the Court does not deem it necessary to determine whether or not the effects of the provision in question were foreseeable.

(ii) *Whether the interference pursued a legitimate aim*

(*The parties' submissions*

72. The applicant submitted that there had been no public-interest grounds for refusing his request to undergo surgical or medical procedures with a view to gender reassignment. The general arguments advanced by the Government to demonstrate that the interference in question fulfilled a public-order interest (such as the need to prevent procedures of this kind from becoming commonplace, the irreversible nature of these procedures and possible misuse by the sex industry, see paragraphs 74 to 75 below) could not be regarded as logical from a scientific, social or legal viewpoint.

73. In the Government's view, it was clear from the Court's case-law that States had the right to control activities that were damaging to the life and safety of others (they referred to *Pretty*, cited above, and to *Laskey, Jaggard and Brown*, cited above). They concluded from the *Pretty* judgment that the more serious the damage incurred the greater the weight that should be attached to public health and safety considerations when assessed in relation to the competing principle of personal autonomy.

74. In that regard the Government argued that the regulation of gender reassignment surgery came not only within the sphere of protection of the public interest in so far as it sought to prevent surgery of this kind from becoming commonplace and to prevent needless operations, but also within the sphere of protection of the interests of individuals who wished to undergo such surgery, given that it was irreversible and posed a risk to the physical and mental well-being of the persons concerned. While transgender persons who underwent surgery lost some of the characteristics of their gender of origin, they did not acquire all the characteristics of their new gender. Furthermore, it rendered them permanently unable to procreate. Account also had to be taken of the risk that individuals who had undergone gender reassignment surgery, the effects of which were irreversible, might have regrets later.

75. Lastly, the Government wished to prevent gender reassignment surgery from becoming commonplace. They argued that this would be dangerous in view of the irreversible nature of the surgery and the risk that certain sections of society (the sex industry for example) might make improper use of the medical possibilities it offered.

(*The Court's assessment*

76. The Court reiterates that the enumeration of the reasons capable of justifying interference with the right to respect for private life, as listed in Article 8 § 2, is exhaustive and that their definition is restrictive (see *S.A.S. v. France* [GC], no. 43835/11, § 113, ECHR 2014 (extracts)). For it to be compatible with the Convention, an instance of interference with an applicant's right to respect for his or her private life must therefore pursue an aim that can be linked to one of those listed in this provision. The Court's practice is to be quite succinct when it verifies the existence of a legitimate aim within the meaning of the second paragraphs of Articles 8 to 11 of the Convention (*ibid.*).

77. Nevertheless, in the present case, given that the applicant contested the relevance of the aims relied on by the Government (see paragraph 72 above), the Court considers that it should set out its position in greater detail. It takes note of the Government's argument that the regulation of gender reassignment surgery falls within the sphere of protection of the general interest and is aimed in particular at preventing such surgery from becoming commonplace and preventing its improper use by certain sections of society, especially the sex industry. The Government further referred to the aim of protecting the interests of the individuals concerned, in view of the risks of these procedures for their physical and mental well-being.

78. In view of the manner in which they were framed, the Court is not persuaded by the Government's arguments concerning the risk of gender reassignment surgery becoming commonplace or being misused by certain sections of society. In particular, it is not convinced that the aims relied on

in that regard fall within the category of the legitimate aims set forth in Article 8 § 2.

79. However, the Court notes that the Government also stressed the irreversible nature of gender reassignment surgery and the health risks posed by this type of operation. In that connection it has no reason to doubt that, in enacting the legislation in question, the respondent Government sought to achieve a legitimate aim within the meaning of the second paragraph of Article 8, and it accepts that this type of surgery may be made subject to State regulation and supervision on health-protection grounds.

80. That being said, the Court notes that the Government's observations did not specifically address the infertility/sterility requirement referred to in the legislation and on the basis of which the applicant's request was initially rejected. However, in view of its findings regarding the necessity of the interference at issue (see paragraphs 121-22 below), it considers it unnecessary to deal with this issue in greater depth.

(iii) Whether the interference was necessary

(The applicant's submissions

81. The applicant pointed out that very few people applied to the courts under Article 40 of the Civil Code seeking permission to live in a physically and psychologically congruent manner. However, numerous individuals underwent illegal operations or had treatment abroad because they did not satisfy the statutory criteria.

82. Treatments aimed at ending a person's reproductive capacity (sterilisation or hormone treatment) were regarded as commonplace for men and women who were not transgender and simply did not wish to have children. The applicant complained of the fact that, as a transgender person, he was deprived of this possibility.

83. The applicant further submitted that Article 40 of the Civil Code should not be interpreted as precluding hormone treatment or medical sterilisation procedures for persons seeking gender reassignment. Although these types of treatment existed in Turkey they had not been available to him. Since non-transgender men and women who did not wish to have children had access to this type of routine, irreversible treatment, he too, as a transgender person, should have had access to it. In his view, he should not have to live in a situation where his physical appearance was at variance with the gender to which he felt he belonged. In the light of the scientific and social data (contained in the medical reports included in the file), the law should offer him a solution.

84. Referring to the position adopted by the Court in the case of *T a v l i v. Turkey* (no. 11449/02, §§ 35-37, 9 November 2006), the applicant submitted that the current legislation should be interpreted in the light of scientific, biological and social reality.

85. Arguing that many transgender people were not permanently unable to procreate, the applicant submitted that Article 40 of the Civil Code did not meet “any need” as it did not contain any provision based on actual necessity. For instance, it made no reference to a “trial period” or to “hormone treatment” or any other type of treatment, but simply referred to gender reassignment “operations” without mentioning any other medical procedure. There was therefore a real legal vacuum in that regard. The information on medical procedures published by the social security scheme did not address this issue either.

86. The applicant also cited an article written by two academics specialising in civil law concerning a ruling by the civil courts² refusing a request for authorisation to undergo gender reassignment on the ground that the person concerned had reproductive organs. The authors had observed that the issue of the constitutionality of such a refusal had not been examined and that the courts had likewise not considered how the situation should be examined from the perspective of the European Convention on Human Rights.

87. In sum, the applicant submitted that the gender reassignment procedure did not apply in practice to transgender persons who were able to procreate – in other words, the majority of transgender persons – owing to the fact that Article 40 of the Civil Code did not indicate the treatment methods to be used and to the lack of any other legislative provisions on the subject. This situation forced transgender people to act outside the law and to resort to medical treatment or surgery that was not systematically supervised by the courts or the medical profession.

(*The Government’s submissions*

88. Referring to the cases of *Christine Goodwin* and *Van Kück* (both cited above) and to *Grant v. the United Kingdom* (no. 32570/03, ECHR 2006-VII), the Government stressed that the Court had already examined, in the light of present-day living conditions, several cases relating to the problems encountered by transgender persons. The Court had welcomed the constantly improved measures taken by States under Article 8 of the Convention to protect these persons and recognise their situation. While allowing States a measure of discretion in the matter, the Court had held that they were required, in accordance with their positive obligations under Article 8, to recognise the new gender identity of post-operative transgender persons, in particular by amending their civil status, with the consequences that this entailed (the Government referred in this connection

² Judgment of the District Court of 17 December 2003 (E. 2002/979 and K. 2003/102) and Court of Cassation judgment of 18 June 2003 (E. 2003/7323 and K. 2003/906).

to the judgments in *Christine Goodwin* (cited above, §§ 71-93), and *Grant* (cited above, §§ 39-44).

89. In the Government's submission, the Turkish legal system complied with this requirement, as post-operative transgender persons had their civil status amended in the register and subsequently led their lives in conformity with their new official identity.

90. In the above-mentioned cases, however, the Court had examined complaints submitted by transgender persons who had already undergone gender reassignment surgery, whereas the present case concerned the refusal of the domestic courts to authorise the applicant to undergo such surgery. Since 1988, Turkish law had made provision for gender reassignment and granted full legal recognition to the new gender identity of post-operative transgender persons.

91. As to the conditions to be satisfied in order to undergo gender reassignment, the Government referred to Article 40 of the Civil Code. The domestic legislation and the detailed arrangements for its implementation did not mean that the persons concerned had to undergo prior medical sterilisation or hormone therapy in order to be eligible for gender reassignment surgery. In the present case the applicant's request had been examined by the Mersin District Court in the light of the statutory requirements.

92. While they acknowledged that the notion of personal autonomy reflected an important principle underlying the interpretation of the Article 8 guarantees, the Government maintained that the Court had never held that Article 8 encompassed a right to self-determination as such (they referred to the judgments in *Schlumpf*, *Van Kück* and *Pretty*, all cited above). It was not possible to infer from Article 8 of the Convention or from the Court's case-law on the subject the existence of an unconditional right to gender reassignment by means of surgery. In the Government's view, such a right would negate the protection that the Convention was designed to afford.

93. In view of the seriousness and the irreversible nature of gender reassignment surgery, the uncertainty that remained as to the necessity of such operations in treating gender identity disorders, and the risk of such operations becoming commonplace, with the associated dangers, the State should be allowed a wide margin of appreciation in regulating gender reassignment and determining the criteria which individuals must meet before undergoing gender reassignment surgery.

94. In order to determine whether the statutory requirements for gender reassignment were fully satisfied, the Mersin District Court had sought to verify that all the prior conditions for the authorisation of gender reassignment had been met, and in particular the condition of being permanently unable to procreate. It had based its conclusions on specialist knowledge and findings.

95. Furthermore, in view of the uncertainty that remained concerning the essential nature of transgenderism and the extremely complex situations arising out of it, the Government submitted that the legislation in question provided for appropriate legal measures in this sphere. Relying on *B. v. France* (cited above), they argued that the Court itself had noted that some uncertainty still remained as to the essential nature of transgenderism and that the legitimacy of surgical intervention in such cases was sometimes questioned.

96. In the Government's view, it was not possible to argue that such surgery was vital for the treatment of gender identity disorders. Obtaining a clear diagnosis of transgenderism was of the utmost importance and such a diagnosis had to be made very carefully in order to avoid any confusion with other similar psychological disorders. A finding that gender reassignment surgery was necessary should be made for reasons of medical as well as psychological necessity.

97. Furthermore, the legal situations arising out of transgenderism were very complicated. They concerned, in particular, issues of an anatomical, biological, psychological and mental nature linked to transgenderism and its definition; issues of consent and the other conditions to be satisfied prior to any operation; the circumstances in which a change of gender identity could be authorised; the international aspects; the legal effects, whether retroactive or not, of such change; the possibility of choosing another first name; the confidentiality of the documents and information relating to the change; and the impact on the family. There was not yet a sufficiently broad consensus among the Council of Europe member States on these different points for the Court to make decisive findings restricting the Contracting States' margin of appreciation. Hence, this was a sphere in which the Contracting States, owing to the lack of common ground on the subject, continued to enjoy a wide margin of appreciation.

98. Arguing that gender reassignment surgery entailed very considerable risks, the Government submitted that the conditions laid down by domestic law were not open to criticism from either a legal or a medical point of view. They feared that the opposite approach might lead to operations being performed without any prior checks as to their medical necessity and without any guarantees of a successful medical outcome.

99. In view of all these considerations, the domestic courts' refusal to authorise the applicant to undergo gender reassignment surgery could not be said to constitute an infringement of his right to respect for his private life within the meaning of Article 8 of the Convention. The domestic authorities had not overstepped the margin of appreciation that had to be left to them in cases such as the present one. Accordingly, there had been no violation of Article 8.

(*The Court's assessment*)

100. According to the Court's settled case-law, an instance of interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need", if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, among other authorities, *Nada v. Switzerland* [GC], no. 10593/08, § 181, ECHR 2012, and *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 105, ECHR 2013 (extracts)).

101. While it is for the national authorities to make the initial assessment in all these respects, the final evaluation of whether the interference is necessary remains subject to review by the Court for conformity with the requirements of the Convention. A margin of appreciation must be left to the competent national authorities in this assessment. The breadth of this margin varies and depends on a number of factors including the nature of the Convention right in issue, its importance for the individual, the nature of the interference and the object pursued by the interference. The margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of "intimate" or key rights. Accordingly, where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will be restricted. Where, however, there is no consensus within the member States of the Council of Europe, either as to the relative importance of the interest at stake or as to how best to protect it, the margin will be wider (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, §§ 101-02, ECHR 2008, and *Fernández Martínez*, cited above, § 125).

102. In the present case the Court observes that the proceedings before the domestic courts directly concerned the applicant's freedom to define his gender identity, one of the most basic essentials of self-determination (see *Van Kück*, cited above, § 73). In that regard it points out that it has repeatedly signalled its consciousness of the serious problems facing transgender persons and has stressed the importance of keeping the need for appropriate legal measures under review (see *Christine Goodwin*, cited above, § 74).

103. The Court reiterates that it is of crucial importance that the Convention is interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. A failure by the Convention institutions to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement (see, among other authorities, *Stafford v. the United Kingdom* [GC], no. 46295/99, § 68, ECHR 2002-IV).

104. In the context of the present case, the Court therefore considers it appropriate to take account of the development of international and European law, and of law and practice in the various Council of Europe

member States, in order to assess the circumstances of the present case “in the light of present-day conditions” (for a similar approach, see, among other authorities, *Tyrer v. the United Kingdom*, 25 April 1978, § 31, Series A no. 26).

105. In that regard the Court observes that the possibility for transgender persons to undergo gender reassignment treatment exists in many European countries, as does legal recognition of their new gender identity. It further notes that the regulations or practice applicable in a number of countries that recognise gender reassignment make legal recognition of the new preferred gender contingent, either implicitly or explicitly, on gender reassignment surgery and/or on the inability to procreate ...

106. In its judgment in *Christine Goodwin* (cited above, § 85) the Court held that, in accordance with the principle of subsidiarity, it was primarily for the Contracting States to decide on the measures necessary to secure Convention rights to everyone within their jurisdiction and that, in resolving within their domestic legal systems the practical problems created by the legal recognition of post-operative gender status, the Contracting States had to be granted a wide margin of appreciation.

107. In the Court’s view, the same is undoubtedly true in relation to the legal requirements governing access to medical or surgical procedures for transgender persons wishing to undergo the physical changes associated with gender reassignment.

108. However, the Court has previously held that it attaches less importance to the lack of evidence of a common European approach to the resolution of the legal and practical problems posed than to the existence of clear and uncontested evidence of a continuing international trend in favour not only of increased social acceptance of transgender persons but of legal recognition of the new gender identity of post-operative transgender persons (see *Christine Goodwin*, cited above, § 85).

109. It further reiterates that the right of transgender persons to personal development and to physical and moral security in the full sense enjoyed by others in society cannot be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved (see *Christine Goodwin*, cited above, § 90).

110. In that connection it emphasises that, in the Appendix to Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, the Committee of Ministers of the Council of Europe stated that prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements ... Furthermore, in Resolution 1728 (2010) on discrimination on the basis of sexual orientation and gender identity, the Parliamentary Assembly of the Council of Europe called on the member States to address the specific discrimination and human rights violations faced by transgender persons

and, in particular, to ensure in legislation and in practice their right to official documents that reflected the individual's preferred gender identity, without any prior obligation to undergo sterilisation or other medical procedures such as gender reassignment surgery or hormone therapy ...

111. The Court also observes that some member States have recently amended their legislation or practice regarding access to gender reassignment treatment and the legal recognition of gender reassignment by abolishing the infertility/sterility requirement ...

112. In that connection the Court considers it worthwhile to highlight the specific features of Turkish law in this sphere. In the majority of countries which require hormone treatment or gender reassignment surgery as a prior condition for legal recognition of a person's preferred gender, the individual's sterility or infertility is assessed after the medical or surgical procedure for gender reassignment (see paragraphs 42-43 above). However, while Turkish law makes the amendment of the individual's civil status contingent upon physical change following gender reassignment surgery "carried out in conformity with the aim specified in the court authorisation and using those medical techniques", it is apparent from the impugned ruling of the Mersin District Court that in the present case the inability to procreate was a requirement which had to be satisfied in advance of the gender reassignment process, with the result that it determined the applicant's access to gender reassignment surgery.

113. On the basis of the evidence in the file, and in particular the witness statements of the applicant's family before the domestic courts (see paragraph 9 above), the Court observes that the applicant has for many years lived in society as a man. It is also apparent that he has received psychological counselling since adolescence and was diagnosed as transgender by a committee of experts in psychology, who also concluded that it was necessary for him to live henceforth with a male identity (see paragraphs 7, 10 and 14 above). In September 2005, when he applied to the courts for the first time for authorisation to undergo gender reassignment surgery, the applicant had thus already been engaged for many years in a process of gender transition; he was receiving psychological counselling and had for a long time been acting as a man in society.

114. Despite this situation, the domestic courts initially refused him the authorisation he needed in order to undergo the physical change to which he aspired. The Court reiterates in that regard that serious interference with private life can arise where the state of domestic law conflicts with an important aspect of personal identity (see *Christine Goodwin*, cited above, § 77).

115. Furthermore, the Court has previously held that it cannot be suggested that there is anything capricious in the decision taken by a person to undergo gender reassignment, given the numerous and painful interventions involved and the level of commitment and conviction required

to achieve a change in social gender role (see *Christine Goodwin*, cited above, § 81, and *Schlumpf*, cited above, § 110).

116. In the present case the Court notes that the domestic courts justified their initial refusal to grant the applicant's request solely by reference to the fact that he retained his ability to procreate. It fails to see why persons wishing to undergo gender reassignment surgery should have to demonstrate that they are unable to procreate even before the physical process of gender change can be undertaken.

117. In that regard the Court notes, in view of the information provided by the parties, that domestic law makes provision for medical procedures with a view to voluntary sterilisation (see paragraphs 23-24 above). In his observations of 25 October 2010 the applicant maintained that he did not have access to these procedures within the existing legal framework (see paragraphs 83 and 87 above). He added that there were no legislative provisions laying down the procedure to be followed or the type of treatment he could undergo, and that there was therefore a legal vacuum in that regard (see paragraphs 85-87 above). In his additional observations of 23 October 2013 the applicant's lawyer stated that his client, after lodging the present application with the Court, had resorted to hormone treatment without any judicial or medical supervision (see paragraph 47 above).

118. While maintaining that the domestic courts' refusal of the applicant's request on account of his ability to procreate had been in accordance with the law, the Government contended that neither the legislation complained of nor the detailed arrangements for its implementation required the applicant to undergo prior medical sterilisation or hormone therapy (see paragraph 91 above). However, the Court fails to see how, other than by undergoing a sterilisation operation, the applicant could have complied with the requirement of permanent infertility given that, in biological terms, he had the ability to procreate.

119. In any event, the Court does not deem it necessary to rule on the question of possible access by the applicant to medical treatment that would have enabled him to satisfy this requirement, since it considers that due respect for his physical integrity precluded any obligation for him to undergo this type of treatment.

120. Moreover, in the circumstances of the present case and in view of the manner in which the applicant's complaint was framed, it suffices for the Court to note that the applicant challenged, both in the domestic courts and in the Convention proceedings, the reference in the legislation to a permanent inability to procreate as a prior requirement for authorisation to undergo gender reassignment.

121. In the Court's view, this requirement appears wholly unnecessary in the context of the arguments advanced by the Government to justify the regulation of gender reassignment surgery (see paragraphs 74 and 75 above). Accordingly, even assuming that the reason for the rejection of the

applicant's initial request to undergo gender reassignment surgery was relevant, the Court considers that it cannot be regarded as sufficient. The interference with the applicant's right to respect for his private life arising from that rejection cannot therefore be considered "necessary" in a democratic society.

The fact that the Mersin District Court changed its approach, authorising the applicant in May 2013 to undergo gender reassignment surgery notwithstanding the medical findings to the effect that he was not permanently unable to procreate (see paragraphs 24 and 25 above), undoubtedly supports this conclusion.

122. Accordingly, the Court considers that in denying the applicant for many years the possibility of undergoing gender assignment surgery, the State breached his right to respect for his private life. There has therefore been a violation of Article 8 of the Convention.

...

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

...

2. *Holds* that there has been a violation of Article 8 of the Convention;

...

Done in French, and notified in writing on 10 March 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Deputy Registrar

Guido Raimondi
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Judges Keller and Spano;
- (b) concurring opinion of Judges Lemmens and K r i s .

G.R.A.
A.C.

JOINT CONCURRING OPINION OF JUDGES
KELLER AND SPANO

(Translation)

1. We voted in favour of finding a violation of Article 8 of the Convention. Nevertheless, we are not entirely convinced by the majority's reasoning. Our reservations relate to the fact that the Court did not answer the question whether the interference sought to achieve one of the legitimate aims set forth in Article 8 § 2 of the Convention. From a methodological viewpoint, we consider it difficult to address the issue of proportionality without having first defined the legitimate aim (A). In our view, the Court should have examined in depth whether the Government had demonstrated (implicitly) the existence of a legitimate interest capable of justifying the requirement of permanent infertility as a prior condition for access to gender reassignment treatment, as found in the impugned decision of the domestic courts (B). Lastly, we would like to make a few general observations regarding recent developments in the sphere of transgenderism and the requirement of a permanent inability to procreate in that context. We believe that these considerations are of importance for similar cases in the future (C).

2. In the present case the applicant, a transgender person, has for years regarded himself as a man. His family and friends have accepted his new identity. In May 2013 the Mersin District Court granted his request and authorised the gender reassignment surgery he sought (see paragraph 25 of the judgment).

A. (In)sufficient determination of the legitimate aim

3. Under Turkish law, anyone wishing to undergo gender reassignment may apply to the domestic courts for authorisation. The person concerned must, among other requirements, demonstrate that he or she is permanently unable to procreate ... – a requirement also laid down in other Council of Europe member States ...

4. In the instant case it was not disputed that the interference had a sufficient legal basis (see paragraphs 68-71 of the judgment). The Court therefore turned to the question of the legitimate aim of the interference. In doing so it correctly observed that the Government had not commented on the permanent infertility/sterility requirement imposed by the legislation in question (see paragraph 80 of the judgment). However, it was precisely because the applicant did not satisfy that requirement that the national authorities denied him gender reassignment surgery for years. In our view, the Court could have stopped there and delivered a shorter judgment, simply finding that the Government had failed to invoke a valid legitimate aim. To

our regret, the majority chose not to deal with this issue in greater depth, proceeding instead to examine whether or not the interference had been proportionate (see paragraph 80 of the judgment).

5. We are well aware that the Court has taken the same approach in other cases. In those cases it either did not address the issue whether the law satisfied all the requirements of clarity and foreseeability (see, for example, *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 99, ECHR 2008; *Kur and Others v. Slovenia* [GC], no. 26828/06, §§ 348-50, ECHR 2012 (extracts); and *I.S. v. Germany*, no. 31021/08, §§ 72-75, 5 June 2014), or it expressed doubts, as in the present case, regarding the legitimacy of the aim relied on by the Government (see *A, B and C v. Ireland* [GC], no. 25579/05, §§ 227-28, ECHR 2010).

6. This approach appears to us to be justified in cases where the issues raised relate essentially to proportionality. In the present case, however, it gives rise to a number of problems. In particular, a general question arises as to how it is possible to weigh up the interests represented on the one hand by the legitimate aim pursued by the State, and on the other hand by the rights of the individual, if the former is disregarded.

B. Proportionality in the present case

7. Any examination of proportionality necessarily entails weighing up the interests involved. As regards the applicant, these are clearly his right to define his gender identity and his right to physical and mental well-being – considerations which are undoubtedly at the heart of the private life of each individual and thus of Article 8 of the Convention. As regards the State, the majority accepts – as justification for the regulation and supervision of gender reassignment surgery – the arguments relating to the irreversible nature of gender reassignment surgery and the health risks posed by this type of operation (see paragraph 79 of the judgment).

8. Nevertheless, it seems to us difficult to justify requiring permanent infertility as a prior condition for gender reassignment by referring to the serious consequences of reassignment surgery, given that permanent sterilisation generally involves treatments which themselves are liable to have serious health implications. The Court rightly opted against this approach.

9. However, the majority's reasoning raises other obvious problems. Firstly, the arguments advanced by the majority in paragraphs 102-11 and 116-19 of the judgment clearly relate to the question whether requiring permanent infertility as a prior condition for gender reassignment treatment is *in itself* compatible with Article 8 of the Convention. Secondly, the Court appears to use language normally used in assessing whether or not the interference pursued a legitimate aim rather than the issue of

proportionality. This can be seen clearly in paragraph 121 of the judgment, which states:

“In the Court’s view, this requirement appears wholly unnecessary in the context of the arguments advanced by the Government to justify the regulation of gender reassignment surgery ... Accordingly, even assuming that the reason for the rejection of the applicant’s initial request to undergo gender reassignment surgery was relevant, the Court considers that it cannot be regarded as sufficient.”

10. Lastly, the majority finds a violation on the ground that the interference was disproportionate since the applicant was for years denied the possibility of gender reassignment surgery. It also notes that in 2013 the District Court granted the applicant’s request notwithstanding the medical findings concerning his ability to procreate.

11. Hence, there are two possible interpretations of the majority’s reasoning. According to a narrower interpretation, the Court, in the specific circumstances of the present case, deems the interference in question (the refusal of authorisation for gender reassignment surgery) to be disproportionate. On the basis of a broader interpretation, however, the Court is also ruling *implicitly on the requirement of permanent infertility* as a prior condition for access to gender reassignment treatment. This second aspect appears to us to be problematic, as the Government did not comment on the need for such a condition. In our view, the Court should have expressed its position on this point with greater clarity.

C. Permanent sterility as a prior condition

12. We would like to stress some important points in addition to those dealt with in more or less explicit fashion in the judgment.

13. First of all, it should be observed that *forced sterilisation*, which has been practised in almost all countries and all societies¹, remains a difficult subject to this day. The notion undoubtedly has negative connotations and the Court has not been spared some sad cases on the subject, particularly concerning women of Roma origin (see, among other examples, *K.H. and Others v. Slovakia*, no. 32881/04, ECHR 2009 (extracts); *V.C. v. Slovakia*,

¹ With particular reference to women of Roma origin or women with disabilities, see World Health Organization, “Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement”, OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, 2014, pp. 4-7; Commissioner for Human Rights of the Council of Europe, “Human rights of Roma and Travellers in Europe”, 2012; Commissioner for Human Rights of the Council of Europe, “Recommendation concerning certain aspects of law and practice relating to sterilisation of women in the Slovak Republic”, 2003; and the 2008 report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak (A/63/175), § 60, and the references cited therein.

no. 18968/07, ECHR 2011 (extracts); *N.B. v. Slovakia*, no. 29518/10, 12 June 2012; *I.G. and Others v. Slovakia*, no. 15966/04, 13 November 2012; and *R.K. v. the Czech Republic*, no. 7883/08, 27 November 2012 (friendly settlement)).

14. In the context of these cases, the Court consistently stressed the importance of prior consent to sterilisation, a requirement which, moreover, flows from the international conventions and the general principles of human dignity and freedom. For their consent to be valid, the persons concerned must be informed of their state of health, the reason for sterilisation and the possible alternatives. They must also be given a reasonable length of time in which to take the final decision (see, for example, *V.C. v. Slovakia*, cited above, §§ 107-15). Permanent sterilisation is thus a particularly sensitive issue.

15. In the “European and international materials” part of the judgment (see paragraphs 29-34 of the judgment), the Court refers to a number of bodies which have criticised permanent sterilisation as a prior condition for gender reassignment. For instance, in Recommendation CM/Rec(2010)5, the Committee of Ministers of the Council of Europe stressed, in points 20-21 ... that making gender reassignment subject to prior requirements (including irreversible sterilisation) should be reviewed by the member States “in order to remove abusive requirements”. Similarly, in Resolution 1728 (2010), point 16.11.2 ..., the Parliamentary Assembly of the Council of Europe took issue with any obligation for individuals to undergo sterilisation or other medical procedures as a prerequisite for having official documents changed. Lastly, in his issue paper of 29 July 2009 ... the Commissioner for Human Rights of the Council of Europe called on member States to make gender reassignment procedures available. More explicitly, he even recommended “[a]bolish[ing] sterilisation and other compulsory medical treatment which may seriously impair the autonomy, health or well-being of the individual, as necessary requirements for the legal recognition of a transgender person’s preferred gender” (2011 report, points 2 and 4 ...).

16. We would add that in 2013, in its concluding observations concerning Ukraine, the United Nations Human Rights Committee adopted for the first time a recommendation relating specifically to legal recognition of gender². The Committee recommended to the Ukrainian Government that

² Human Rights Committee, “Concluding observations on the seventh periodic report of Ukraine”, adopted on 23 July 2013, CCPR/C/UKR/CO/7, § 10: “The Committee is ... concerned at reports that according to Ministry of Health order No. 60 of 3 February 2011 ‘On the improvement of medical care to persons requiring a change (correction) of sex’, transgender persons are required to undergo compulsory confinement in a psychiatric institution for a period up to 45 days and mandatory corrective surgery in the manner prescribed by the responsible Commission as a prerequisite for legal recognition of their gender”.

it repeal any disproportionate requirements such as mandatory corrective surgery³.

17. In a similar vein, the Special Rapporteur on torture found in 2013 that coercive or forced sterilisation was contrary to respect for the person's physical integrity, and highlighted the importance of safeguarding informed consent of sexual minorities⁴.

18. The 2014 report by the World Health Organization on forced and coercive sterilisation also confirms that a number of international human rights protection bodies have already recommended the abolition of sterilisation as a prior condition for medical treatment for transgender people⁵.

19. The materials cited above are evidence of an international trend against requiring sterilisation as a prior condition for entering a change of gender in the official registers and for gender reassignment surgery.

20. In our view, the practice of several national courts also highlights the issue of permanent sterilisation as a prior condition for gender reassignment. Although this national case-law relates primarily to the conditions for having a change of gender recorded in the official civil-status registers (rather than authorisation for gender reassignment surgery), we can observe a general trend towards regarding a requirement to undergo permanent sterilisation as anti-constitutional.

21. The Austrian Constitutional Court, for instance, held in a ruling of 3 December 2009⁶ that gender reassignment surgery could not be seen as a precondition for a change of gender in the civil-status register.

22. In similar fashion, in a ruling of 11 January 2011⁷, the German Constitutional Court held that requiring permanent sterilisation and surgery in order to modify a person's external characteristics was contrary to the constitutional guarantees relating to physical integrity and the right to sexual self-determination. It considered that requiring individuals to

³ “The State party should also amend order No. 60 and other laws and regulations with a view to ensuring that: (1) the compulsory confinement of persons requiring a change (correction) of sex in a psychiatric institution for up to 45 days is replaced by a less invasive measure; (2) any medical treatment should be provided in the best interests of the individual with his/her consent, should be limited to those medical procedures that are strictly necessary, and should be adapted to his/her own wishes, specific medical needs and situation; (3) any abusive or disproportionate requirements for legal recognition of a gender reassignment are repealed” (ibid.).

⁴ Juan E. Méndez, report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2013, A/HRC/22/53, §§ 38, 78 and 79; see also Commissioner for Human Rights of the Council of Europe, “Human rights and gender identity”, issue paper (2009), pp. 19 et seq.

⁵ World Health Organization, “Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement”, HCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, 2014.

⁶ Austrian Constitutional Court, B 1973/08-13, 3 December 2009, § 3, pp. 8-9.

⁷ German Constitutional Court, 1 BvR 3295/07, 11 January 2011.

undergo surgery in order to end their reproductive capacity was contrary to Article 2 § 2 of the German Constitution⁸. The requirement placed the persons concerned under duress, as they had to choose between interference with their physical integrity and non-recognition of their change of gender⁹.

23. Furthermore, the Stockholm Administrative Court of Appeal found in a judgment of 19 December 2012¹⁰ that the requirement to undergo sterilisation imposed by Law no. 1972/119 on gender determination was incompatible with the Swedish Constitution and with Articles 8 and 14 of the European Convention on Human Rights¹¹. In its reasoning it stressed that sterilisation could not be regarded as voluntary if no other option existed in order to have a change of gender recorded in the civil-status register. The Swedish Parliament amended the Law accordingly in 2013.

24. The Swiss Federal Civil-Status Office also published an opinion on 1 February 2012 concerning European developments in the sphere of transgender rights. It found that “legal recognition of a change of gender [was] possible even if the irreversible change of gender and the inability to procreate – necessary for such recognition – [had been] brought about without surgical intervention (sterilisation; construction of genital organs) but instead by means of hormone therapy, for example¹².”

25. Lastly, it is worth noting that in the United States, federal and state governments no longer explicitly require sterilisation in order to have a change of gender recorded on a birth certificate or driving licence¹³.

26. In view of the foregoing, one thing is clear: situations in which sterilisation is the only option in order to obtain authorisation for gender reassignment surgery amount to *de facto* forced sterilisation¹⁴. In examining whether the interference was proportionate, it is vital to take account of the fact that the sterility requirement is a form of interference which has serious and irreversible consequences. Although much less stringent measures could be envisaged, the majority did not highlight this fact.

27. We would further point out, as regards the margin of appreciation, that the right to gender identity and personal development are fundamental

⁸ German Constitutional Court, 1 BvR 3295/07, 11 January 2011, § 68.

⁹ German Constitutional Court, 1 BvR 3295/07, 11 January 2011, § 69.

¹⁰ Kammarrätten i Stockholm, Avdelning 03 (Stockholm Administrative Court of Appeal, Division 03), no. 1968-12, 12 December 2012.

¹¹ The Administrative Court of Appeal also ruled that the law was discriminatory as it related only to transgender persons.

¹² Legal opinion of the Federal Civil-Status Office of 1 February 2012 on transgender issues, p. 8.

¹³ See the references cited by L. Nixon, “The Right to (Trans) Parent”, 20 Wm. & Mary Journal of Women and Law 73 (2013), p. 89.

¹⁴ See also Commissioner for Human Rights of the Council of Europe, “Forced divorce and sterilisation – a reality for many transgender persons”, *Human Rights Comments*, 31 August 2010: “These requirements clearly run against the principles of human rights and human dignity, as also underlined by Court decisions in Austria and Germany.”

aspects of the right to respect for private life (see paragraph 7 above). The majority itself acknowledges that “freedom to define [one’s] gender identity [is] one of the most basic essentials of self-determination” (see paragraph 102 of the judgment). Hence, it seems clear to us that the margin of appreciation in a case such as this should be reduced to a minimum.

D. Conclusion

28. Although we agree with the finding of a violation of Article 8, we believe that the Court should have addressed the question whether, in the present case, the interference pursued a legitimate aim capable of justifying permanent sterilisation. It should also, as applicable, have examined in greater depth whether the requirement of permanent sterilisation as such is compatible with Article 8 of the Convention.

CONCURRING OPINION OF JUDGE LEMMENS, JOINED
BY JUDGE K R I S

(Translation)

1. I am in full agreement with my colleagues that there has been a violation of Article 8 of the Convention. The judgment highlights once again the importance of the right to gender identity as a component of the right to respect for private life for transgender persons.

However, I would like to make clear how I interpret the scope of the judgment.

2. The applicant complained of the application in his case of Article 40 of the Turkish Civil Code.

Article 40 contains two paragraphs ... The first concerns gender reassignment, making it subject to a number of conditions, including a permanent inability to procreate. The second paragraph relates to the rectification of the civil-status register following a change of gender, that is to say, the legal recognition of the individual's new gender. The process leading to recognition of the person's new gender comprises two stages, and at each stage the involvement of the courts is required: first in order to authorise the gender reassignment (first paragraph) and then to recognise the legal effects of reassignment once it has actually taken place (second paragraph).

3. The judgment relates only to the first stage. It examines the Convention compatibility of making a permanent inability to procreate *a prior condition for gender reassignment surgery*. The judgment finds that this condition cannot be considered “necessary” in order to achieve the aims relied on by the Government in this context.

I would like to draw attention to the Court's assertion that it “fails to see how, other than by undergoing a sterilisation operation, the applicant could have complied with the requirement of permanent infertility given that, in biological terms, he had the ability to procreate” (see paragraph 118 of the judgment). While it was impossible for the applicant to comply with that condition, I would point out that other persons could do so. Women who wish to undergo gender reassignment may obtain authorisation to have such surgery performed if they are no longer fertile or have never been fertile. Apparently, it is with this category of women in mind that the legislature makes provision for gender reassignment. A woman who is fertile, on the other hand, may not relinquish the physical characteristics of a woman, including the ability to procreate, in order to undergo gender reassignment.

3. The judgment does not address the issue of the Convention compatibility of requiring a permanent inability to procreate *as a prior condition for the legal recognition of a change of gender*, in particular for persons who have undergone gender reassignment surgery.

Needless to say, there are arguments in favour of finding that the condition referred to above also raises an issue from this point of view. I would refer to the concurring opinion of my colleagues Judge Keller and Judge Spano.

However, I believe that the Court was right not to rule on the condition in question in this broader context. Not just because that issue was not submitted to it, but also because there is insufficient evidence in the file to enable it to rule in full knowledge of the facts. The reasons relied on by the Government to justify making gender reassignment contingent on a permanent inability to procreate (see in particular the legitimate aims referred to in paragraphs 74-75 and 77 of the judgment) are not necessarily the same reasons that a State might rely on to justify imposing the same requirement as a condition for legal recognition of a change of gender.

While there is a clear trend among States towards granting legal recognition of the new gender of transgender persons without requiring a permanent inability to procreate as a prior condition, I am struck by the fact that many States still have such a requirement in their legislation ... I would be curious to know what reasons they might rely on to justify such a system. Those reasons may or may not be sufficient: I simply do not know.

For this reason in particular I am of the view that this judgment cannot be interpreted as precluding definitively a requirement for individuals to be permanently unable to procreate in the context of gender reassignment. The Court will have to await another opportunity to examine this issue in greater depth.



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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez

Summary

The present report focuses on certain forms of abuses in health-care settings that may cross a threshold of mistreatment that is tantamount to torture or cruel, inhuman or degrading treatment or punishment. It identifies the policies that promote these practices and existing protection gaps.

By illustrating some of these abusive practices in health-care settings, the report sheds light on often undetected forms of abusive practices that occur under the auspices of health-care policies, and emphasizes how certain treatments run afoul of the prohibition on torture and ill-treatment. It identifies the scope of States and supervise health-care practices with a view to preventing mistreatment under any pretext.

The Special Rapporteur examines a number of the abusive practices commonly reported in health-care settings and describes how the torture and ill-treatment framework applies in this context. The examples of torture and ill-treatment in health settings discussed likely represent a small fraction of this global problem.

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I. Introduction

1. The present report is submitted to the Human Rights Council in accordance with Council resolution 16/23.
2. Reports of country visits to Tajikistan and Morocco are contained in documents A/HRC/22/53/Add.1 and Add.2, respectively. A/HRC/22/53/Add.3 contains an update on follow-up measures and A/HRC/22/53/Add.4 contains observations made by the Special Rapporteur on some of the cases reflected in the communication reports A/HRC/20/30, A/HRC/21/49 and A/HRC/22/67.

II. Activities of the Special Rapporteur

A. Upcoming country visits and pending requests

3. The Special Rapporteur plans to visit Bahrain in May 2013 and Guatemala in the second half of 2013 and is engaged with the respective Governments to find mutually agreeable dates. The Special Rapporteur has accepted an invitation to visit Thailand in February 2014. He also notes with appreciation an outstanding invitation to visit Iraq.
4. The Special Rapporteur has reiterated his interest to conduct country visits to a number of States where there are pending requests for invitations: Cuba; Ethiopia; Ghana; Kenya; United States of America; Uzbekistan; Venezuela (Bolivarian Republic of) and Zimbabwe. The Special Rapporteur has also recently requested to visit Chad, Côte d'Ivoire, Dominican Republic, Georgia, Mexico and Viet Nam.

B. Highlights of key presentations and consultations

5. On 10 September 2012, the Special Rapporteur participated in a Chatham House event in London hosted by REDRESS on "Absolute prohibition against the death penalty and human rights".
6. On 26 September 2012, the Special Rapporteur met the Director General of the National Human Rights Commission of the Republic of Korea, who was visiting Washington D.C.
7. Between 22 and 24 October 2012, the Special Rapporteur presented his interim report (A/67/279) to the General Assembly and participated in two side events: one, held at the Permanent Mission of Denmark to the United Nations in New York, on "Reprisals against victims of torture and other ill-treatment" and the other organized by the World Organisation Against Torture, Penal Reform International, the Centre for Constitutional Rights and death penalty and human rights Watch on "The way forward". He also met with representatives of Guatemala and Uruguay.
8. On 17 November 2012, the Special Rapporteur participated in a symposium organized by New York University on the practice of solitary confinement, entitled "Solitary prisons and stark realities".
9. From 2 to 6 December 2012, the Special Rapporteur conducted a follow-up visit to Uruguay (A/HRC/22/53/Add.3), at the invitation of the Government, to assess improvements and identify remaining challenges regarding torture and other cruel, inhuman or degrading treatment or punishment.

10. From 13 to 14 December 2012, the Special Rapporteur convened an expert meeting on Torture and ill-treatment in health-care settings at the Center for Human Rights and Humanitarian Law, American University in Washington, DC.

III. Applying the torture and ill-treatment protection framework in health-care settings

11. Mistreatment in health-care settings¹ has received little specific attention by the mandate of the Special Rapporteur, as the denial of health-care has often been understood as essentially interfering with the "right to health".

12. While different aspects of torture and ill-treatment in health-care settings have been previously explored by the rapporteurship and other United Nations mechanisms, the Special Rapporteur feels that there is a need to highlight the specific dimension and intensity of the problem, which often goes undetected; identify abuses that exceed the scope of violations of the right to health and could amount to torture and ill-treatment; and strengthen accountability and redress mechanisms.

13. The Special Rapporteur recognizes that there are unique challenges to stopping torture and ill-treatment in health-care settings due, among other things, to a perception that, while never justified, certain practices in health-care may be defended by the authorities on grounds of administrative efficiency, behaviour modification or medical necessity. The intention of the present report is to analyse all forms of mistreatment premised on or attempted to be justified on the basis of health-care policies, under the common rubric of their purportedly "justified" nature, as "health-care" practices, and to identify the most cutting issues that apply to all or most of these practices.

A. Evolving interpretation of the definition of torture and ill-treatment

14. Both the European Court of Human Rights (ECHR) and the Inter-American Court of Human Rights have stated that the definition of torture is subject to ongoing reassessment in light of present-day conditions and the changing values of democratic societies.²

15. The conceptualization of abuses in health-care settings as torture or ill-treatment is a relatively recent phenomenon. In the present section, the Special Rapporteur embraces this ongoing paradigm shift, which increasingly encompasses various forms of abuse in health-care settings within the discourse on torture. He demonstrates that, while the prohibition of torture may have originally applied primarily in the context of interrogation, punishment or intimidation of a detainee, the international community has begun to recognize that torture may also occur in other contexts.

16. The analysis of abuse in health-care settings through the lens of torture and ill-treatment is based on the definition of these violations provided by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its authoritative interpretations. In order to demonstrate how abusive practices in health-care

¹ Health-care settings refers to hospitals, public and private clinics, hospices and institutions where health-care is delivered.

² World Organization Against Torture (OMCT), *The Prohibition of Torture and Ill-treatment in the Inter-American Human Rights System: A Handbook for Victims and Their Advocates* (2006), p. 107, citing Inter-American Court of Human Rights, *Cantoral-Benavides v. Peru*, Series C, No. 69 (2000) para. 99; ECHR, *Selmouni v. France*, Application No. 25803/94 (1999), para. 101.

settings meet the definition of torture, the following section provides an overview of the main elements of the definition of torture.

B. Applicability of the torture and ill-treatment framework in health-care settings

1. Overview of key elements of the definition of torture and ill-treatment

17. At least four essential elements are reflected in the definition of torture provided in article 1, paragraph 1, of the Convention against Torture: an act inflicting severe pain or suffering, whether physical or mental; the element of intent; the specific purpose; and the involvement of a State official, at least by acquiescence (A/HRC/13/39/Add.5, para. 30). Acts falling short of this definition may constitute cruel, inhuman or degrading treatment or punishment under article 16 of the Convention (A/63/175, para. 46). The previous Special Rapporteurs have covered in great detail the main components of the definition of torture. Nevertheless, there are a few salient points worth elaborating for the purpose of the present report.

18. The jurisprudence and authoritative interpretations of international human rights bodies provide useful guidance on how the four criteria of the definition of torture apply in the context of health-care settings. ECHR has noted that a violation of article 3 may occur where the purpose or intention of the State is to humiliate or punish the victim, but where this nevertheless was the result.³

19. The application of the criteria of severe pain or suffering, intent, and involvement of a public official or other person acting in an official capacity, by consent or acquiescence to abuses in health-care settings, is relatively straightforward. The criterion of the specific purpose warrants some analysis.⁴

20. The mandate has stated previously that intent, required in article 1 of the Convention, can be effectively implied where a person has been discriminated against on the basis of disability. This is particularly relevant in the context of medical treatment, where serious violations and discrimination against persons with disabilities may be defended in a broader context of health-care professionals. Purely negligent conduct lacks the intent required under article 1, but may constitute ill-treatment if it leads to severe pain and suffering (A/63/175, para. 49).

21. Furthermore, article 1 explicitly names several purposes for which torture can be inflicted: extraction of a confession; obtaining information from a victim or a third person; punishment, intimidation and coercion; and discrimination. However, there is a general acceptance that these stated purposes are only of an indicative nature and not exhaustive. At the same time, only purposes which have "something expressly illicit" are sufficient (A/HRC/13/39/Add.5, para. 35).

22. Although it may be challenging to satisfy the required purpose of discrimination in some cases, as most likely it will be claimed that the treatment is intended to benefit the patient, this may be met in a number of ways.⁵ Specifically, the description of abuses

³ See *Peers v. Greece*, Application No. 28524/95 (2001), paras. 68, 74; *Grori v. Albania*, Application No. 25336/04 (2009), para. 125.

⁴ Open Society Foundations, *Treatment or Torture? Applying International Human Rights Standards to Drug Detention Centers* (2011), p. 10.

⁵ *Ibid.*, p. 12.

outlined below demonstrates that the explicit or implicit aim of inflicting punishment, or the objective of intimidation, often exist alongside ostensibly therapeutic aims.

2. The scope of State core obligations under the prohibition of torture and ill-treatment

23. The Committee against Torture interprets State obligations to prevent torture as indivisible, interrelated, and interdependent with the obligation to prevent cruel, inhuman, or degrading treatment or punishment (ill-treatment) because "conditions of ill-treatment frequently lay the foundation for torture" each State must prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm"

24. Indeed, the State's obligation to prevent torture applies not only to public officials, such as law enforcement agents, but also to doctors, health-care professionals and social workers, including those working in private hospitals, other institutions and detention centres (A/63/175, para. 51). As underlined by the Committee against Torture, the prohibition of torture must be enforced in all types of institutions and States must exercise due diligence to prevent, investigate, prosecute and punish violations by non-State officials or private actors.⁸

25. In *da Silva Pimentel v. Brazil*, the Committee on the Elimination of Discrimination against Women observed that "the State is directly responsible for the action of private institutions when it outsources its medical services" and "always maintains the duty to regulate and monitor private health-care institutions".⁹ The Inter-American Court of Human Rights addressed State responsibility for actions of private actors in the context of health-care delivery in *Ximenes Lopes v. Brazil*.¹⁰

26. Ensuring special protection of minority and marginalized groups and individuals is a critical component of the obligation to prevent torture and ill-treatment. Both the Committee against Torture and the Inter-American Court of Human Rights have confirmed that States have a heightened obligation to protect vulnerable and/or marginalized individuals from torture, as such individuals are generally more at risk of experiencing torture and ill-treatment.¹¹

C. Interpretative and guiding principles

1. Legal capacity and informed consent

27. In all legal systems, capacity is a condition assigned to agents that exercise free will and choice and whose actions are attributed legal effects. Capacity is a rebuttable

⁶ General comment No. 2 (2007), para. 3.

⁷ Ibid., para. 15.

⁸ General comment No. 2, paras. 15, 17 and 18. See also Committee against Torture, communication No. 161/2000, *Dzemajl et al. v. Serbia and Montenegro*, para. 9.2; Human Rights Committee, general comment No. 20 (1992), para. 2.

⁹ Communication No. 17/2008, para. 7.5.

¹⁰ Inter-American Court of Human Rights. (Series C) No. 149 (2006), paras. 103, 150; see also Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992), para. 9.

¹¹ Committee against Torture, general comment No. 2, para. 21; *Ximenes Lopes v. Brazil*, para. 103.

presumption; therefore, "incapacity" has to be proven before a person is deemed incapable of making decisions. Once a determination is made, substituted decision-making is expressed choices cease to be treated meaningfully. One of the core principles of the Convention on the Rights of Persons with Disabilities is individual autonomy including the freedom to make decisions (art. 3 (a)). The Committee on the Rights of Persons with Disabilities has interpreted the core requirement of article 12 to be the replacement of substituted decision-making regimes by supported decision-making, which respects the person's will and preferences.¹²

28. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health observed that informed consent is not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision. Guaranteeing informed consent is a fundamental feature of respecting an individual's determination and human dignity in an appropriate continuum of voluntary health-care services (A/64/272, para. 18).

29. As the Special Rapporteur on the right to health observed, while informed consent is commonly enshrined in the legal framework at the national level, it is frequently compromised in the health-care setting. Structural inequalities, such as the power imbalance between doctors and patients, exacerbated by stigma and discrimination, result in individuals from certain groups being disproportionately vulnerable to having informed consent compromised (ibid., para. 92).

30. The intimate link between forced medical interventions based on discrimination and the deprivation of legal capacity has been emphasized both by the Committee on the Rights of Persons with Disabilities and the previous Special Rapporteur on the question of torture.¹³

2. Powerlessness and the doctrine of "medical necessity"

31. Patients in health-care settings are reliant on health-care workers who provide them services. As the previous Special Rapporteur stated: "Torture is the most serious violation of the human right to personal integrity and dignity, presupposes a situation of powerlessness, whereby the victim is under the total control of another person."¹⁴ Deprivation of legal capacity-making is taken away from persons and given to others, is one such circumstance, along with deprivation of liberty in prisons or other places (A/63/175, para. 50).

32. The mandate has recognized that medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned (ibid., paras. 40, 47). This is particularly the case when intrusive and irreversible, non-consensual treatments are performed on patients from marginalized groups, such as persons with disabilities, notwithstanding claims of good intentions or medical necessity. For example, the mandate has held that the discriminatory character of forced psychiatric interventions, when committed against persons with psychosocial disabilities, satisfies both intent and purpose required under the article 1 of the Convention against Torture, notwithstanding claims of "good intentions" by medical professionals (ibid., paras. 47, 48). In other examples, the administration of non-consensual medication or involuntary

¹² See CRPD/C/ESP/CO/1.

¹³ Convention on the Rights of Persons with Disabilities, art. 25 (d); see also CRPD/C/CHN/CO/1 and Corr.1, para. 38; A/63/175, paras. 47, 74.

¹⁴ A/63/175, para. 50.

sterilization is often claimed as being a necessary treatment for the so-called best interest of the person concerned.

33. However, in response to reports of sterilizations of women in 2011, the International Federation of Gynecology and Obstetrics (FIGO) emphasized that sterilization for prevention of future pregnancy cannot be ethically justified on grounds of medical emergency. Even if a future pregnancy may endanger a woman's life, it must be given the time and support she needs to consider her choice. Her informed decision must be respected, even if it is considered liable to be harmful to her health.

34. In those cases, dubious grounds of medical necessity were used to justify intrusive and irreversible procedures performed on patients without full free and informed consent. In this light, it is therefore appropriate to quote the jurisprudence established by the ECHR in the case of *Herczegfalvy v. Austria* (1992),¹⁶ where the Court held that continuously sedating and administering forcible feeding to a patient who was physically restrained by being tied to a bed for a period of two weeks was nonetheless consistent with article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms because the treatment in question was medically necessary and in line with accepted psychiatric practice at that time.

35. The doctrine of medical necessity continues to be an obstacle to protection from arbitrary abuses in health-care settings. It is therefore important to clarify that treatment provided in violation of the terms of the Convention on the Rights of Persons with Disabilities – either through coercion or discrimination – cannot be legitimate or justified under the medical necessity doctrine.

3. Stigmatized identities

36. In a 2011 report (A/HRC/19/41), the United Nations High Commissioner for Human Rights examined discriminatory laws and practices and acts of violence against individuals based on sexual orientation and gender identity in health-care settings. She observed that a pattern of human rights violations emerged that demanded a response. With the adoption in June 2011 of resolution 17/19, the Human Rights Council formally expressed its "concern" regarding violence and discrimination based on sexual orientation and gender identity.

37. Many policies and practices that lead to abuse in health-care settings are due to discrimination targeted at persons who are marginalized. Discrimination plays a prominent role in an analysis of reproductive rights violations as forms of torture or ill-treatment because sex and gender bias commonly underlie such violations. The mandate has stated, with regard to a gender-sensitive definition of torture, that the purpose element is always fulfilled when it comes to gender-specific violence against women, in that such violence is inherently discriminatory and one of the possible purposes enumerated in the Convention is discrimination (A/HRC/7/3, para. 68).

38. In the context of prioritizing informed consent as a critical element of a voluntary counselling, testing and treatment continuum, the Special Rapporteur on the right to health has also observed that special attention should be paid to vulnerable groups. Principles 17 and 18 of the Yogyakarta Principles, for instance, highlight the importance of safeguarding informed consent of sexual minorities. Health-care providers must be cognizant of, and adapt to, the specific needs of lesbian, gay, bisexual, transgender and intersex persons (A/64/272, para. 46). The Committee on Economic, Social and Cultural Rights has

¹⁵ *Ethical Issues in Obstetrics and Gynecology* (2012), pp. 123–124.

¹⁶ Application No. 10533/83, paras. 27, 83.

indicated that the International Covenant on Economic, Social and Cultural Rights proscribes any discrimination in access to health-care and the underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of sexual orientation and gender identity.¹⁷

IV. Emerging recognition of different forms of abuses in health-care settings

39. Numerous reports have documented a wide range of abuses against patients and individuals under medical supervision. Health providers allegedly withhold care or perform treatments that intentionally or negligently inflict severe pain or suffering for no legitimate medical purpose. Medical care that causes severe suffering for no justifiable reason can be considered cruel, inhuman or degrading treatment or punishment, and if there is State involvement and specific intent, it is torture.

A. Compulsory detention for medical conditions

40. Compulsory detention for drug users is common in so-called rehabilitation centres. Sometimes referred to as drug treatment centres or camps, these are institutions commonly run by military or paramilitary, police or security forces, or private companies. Persons who use, or are suspected of using, drugs and who do not voluntarily opt for drug treatment and rehabilitation are confined in such centres and compelled to undergo diverse interventions.¹⁸ In some countries, a wide range of other marginalized groups, including street children, persons with psychosocial disabilities, sex workers, homeless individuals and tuberculosis patients, are reportedly detained in these centres.¹⁹

41. Numerous reports document that users of illicit drugs who are detained in such centres undergo painful withdrawal from drug dependence without medical assistance, administration of unknown or experimental medications, State-sanctioned beatings, caning or whipping, forced labour, sexual abuse and intentional humiliation.²⁰ Other reported abuses included "beatings and electroshock resulting in seizures, all in the guise of rehabilitation. In such settings, medical professionals trained to manage drug dependence disorders as medical illnesses²¹ are often unavailable.

42. Compulsory treatment programmes that consist primarily of physical disciplinary exercises, often including military-style drills, disregard medical evidence (A/65/255, paras. 31, 34). According to the World Health Organization (WHO) and the United Nations Office on Drugs and Crime (UNODC), neither detention nor forced labour have been recognized by science as such detention is frequently used for drug use

¹⁷ General comment No. 14 (2000), para. 18.

¹⁸ See World Health Organization (WHO), *Assessment of Compulsory Treatment of People Who Use Drugs in Cambodia, China, Malaysia and Viet Nam* (2009).

¹⁹ Human Rights Watch (HRW), *Torture in the Name of Treatment: Human Rights Abuses in Vietnam, China, Cambodia, and LAO PDR* (2012), p. 4.

²⁰ See Daniel Wolfe and Roxanne Saucier, "In rehabilitation's name? Ending inhumane and degrading treatment of drug users", *International Journal of Drug Policy*, vol. 21, No. 3 (2010), pp. 145-148.

²¹ United Nations Office on Drugs and Crime (UNODC) and WHO, "Principles of drug dependence treatment", discussion paper, 2008.

²² *Ibid.*, p. 15.

without medical evaluation, judicial review or right of appeal – offers no evidence-based²³ or effective treatment. Detention and forced labour programmes therefore violate international human rights law and are illegitimate substitutes for evidence-based measures, such as substitution therapy, psychological interventions and other forms of treatment given with full, informed consent (A/65/255, para. 31). The evidence shows that this arbitrary and unjustified detention is frequently accompanied by – and is the setting for – egregious physical and mental abuse.

Overview of developments to date

43. The numerous calls by various international and regional organizations to close compulsory drug detention centres,²⁴ as well as the numerous injunctions and recommendations contained in the recently released guidelines by WHO on pharmacotherapy for opiate dependence,²⁵ the UNODC policy guidance on the organization's human rights responses²⁶ and resolutions by the Commission on Narcotic Drugs,²⁷ are routinely ignored.²⁸ These centres continue to operate often with direct or indirect support and assistance from international donors without any adequate human rights oversight.²⁹

44. Notwithstanding the commitment to scale-up methadone treatment and evidence-based treatment as opposed to punitive approaches, those remanded to compulsory treatment in the punitive drug-free centres continue to exceed, exponentially, the number receiving evidence-based treatment for drug dependence.³⁰

B. Reproductive rights violations

45. The Special Rapporteur has, on numerous occasions, responded to various initiatives in the area of gender mainstreaming and combating violence against women, by, inter alia, examining gender-specific forms of torture with a view to ensure that the torture protection framework is applied in a gender-inclusive manner.³¹ The Special Rapporteur seeks to complement these efforts by identifying the reproductive rights practices in health-care settings that he believes amount to torture or ill-treatment.

46. International and regional human rights bodies have begun to recognize that abuse and mistreatment of women seeking reproductive health services can cause tremendous and lasting physical and emotional suffering, inflicted on the basis of gender.³² Examples of such violations include abusive treatment and humiliation in institutional settings;³³

²³ See for example WHO, UNODC, UNAIDS, *Technical Guide for Countries to Set Targets for Universal Access to HIV Prevention, Treatment and Care for Injecting Drug Users* (WHO, 2009).

²⁴ World Medical Association, "Call for compulsory drug D statement, 17 May 2011; United Nations entities, "Comp centres", joint statement, March 2012

²⁵ See Wolfe and Saucier, "In rehabilitation s name".

²⁶ "UNODC and the promotion and protection of human rights

²⁷ Such as resolutions 55/12 (2012); 55/2 (2012) and 55/10 (2012).

²⁸ See Wolfe and Saucier, "In rehabilitation s name"

²⁹ HRW, submission to the Special Rapporteur on the question of torture, 2012.

³⁰ See Wolfe and Saucier, "In rehabilitation s name"

³¹ See A/54/426, A/55/290.

³² CAT/C/CR/32/5, para. 7 (m); Human Rights Committee general comment No. 28 (2000), para. 11.

³³ See Center for Reproductive Rights, *Reproductive Rights Violations as Torture and Cruel, Inhuman, or Degrading Treatment or Punishment: A Critical Human Rights Analysis* (2011).

involuntary sterilization; denial of legally available health services³⁴ such as abortion and post-abortion care; forced abortions and sterilizations;³⁵ female genital mutilation;³⁶ violations of medical secrecy and confidentiality in health-care settings, such as denunciations of women by medical personnel when evidence of illegal abortion is found; and the practice of attempting to obtain confessions as a condition of potentially life-saving medical treatment after abortion.³⁷

47. In the case of *R.R. v. Poland*, for instance, ECHR found a violation of article 3 in the case of a woman who was denied access to prenatal genetic testing when an ultrasound revealed a potential foetal abnormality. The Court recognized "that situation of great vulnerability"³⁸ and that R.R.'s access to genetic testing, procrastination, confusion and lack of proper counselling and information given to the applicant³⁹ constituted "a violation of the right to information about reproductive health and ability to exercise reproductive autonomy, and the rights to health and to physical integrity."

48. Some women may experience multiple forms of discrimination on the basis of their sex and other status or identity. Targeting ethnic and racial minorities, women from marginalized communities⁴⁰ and women with disabilities⁴¹ for involuntary sterilization⁴² because of discriminatory notions⁴³ is an increasingly global problem. Forced sterilization is an act of violence,⁴⁴ a form of social control, and a violation of the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.⁴⁵ The mandate has asserted that "forced sterilization carried out by State officials in accordance with coercive family planning laws or policies may amount⁴⁶ to torture."

49. For many rape survivors, access to a safe abortion procedure is made virtually impossible by a maze of administrative hurdles, and by official negligence and obstruction. In the landmark decision of *K.N.L.H. v. Peru*, the Human Rights Committee deemed the denial of a therapeutic abortion a violation of the right to the highest attainable standard of health.⁴⁷ In the case of *P. and S. v. Poland*, ECHR stated that "the general prohibition attached to abortion and to sexual violence ..., carried out physically and mentally"

50. The Committee against Torture has repeatedly expressed concerns about restrictions on access to abortion and about absolute bans on abortion as violating the prohibition of torture and ill-treatment.⁴⁹ On numerous occasions United Nations bodies have expressed

³⁴ See CAT/C/PER/CO/4, para. 23.

³⁵ E/CN.4/2005/51, paras. 9, 12.

³⁶ A/HRC/7/3, paras. 50, 51, 53; CAT/C/IDN/CO/2, para. 16.

³⁷ CAT/C/CR/32/5, para. 6 (j).

³⁸ ECHR, *R.R. v. Poland*, Application No. 27617/04 (2011), para. 159.

³⁹ *Ibid.*, para. 153.

⁴⁰ See ECHR, *V.C. v. Slovakia*, Application No. 18968/07 (2011).

⁴¹ A/67/227, para. 28; A/HRC/7/3, para. 38.

⁴² A/64/272, para. 55.

⁴³ See Open Society Foundations, *Against Her Will: Forced and Coerced Sterilization of Women Worldwide* (2011).

⁴⁴ See Committee on the Elimination of Discrimination against Women, general recommendation No. 19, para. 22; Human Rights Committee, general comment No. 28, paras. 11, 20.

⁴⁵ A/HRC/7/3, paras. 38, 39.

⁴⁶ *Ibid.*, para. 69.

⁴⁷ Communication No. 1153/2003 (2005), para. 6.3.

⁴⁸ ECHR, Application No. 57375/08 (2012), para. 76.

⁴⁹ See CAT/C/PER/CO/4, para. 23.

concern about the denial of or conditional access to post-abortion care.⁵⁰ often for the impermissible purposes of punishment or to elicit confession.⁵¹ The Human Rights Committee explicitly stated that breaches of article 7 of the International Covenant on Civil and Political Rights include forced abortion, as well as denial of access to safe abortions to women who have become pregnant as a result of rape⁵² and raised concerns about obstacles to abortion where it is legal.

C. Denial of pain treatment

51. In 2012, WHO estimated that 5.5 billion people live in countries with low or no access to controlled medicines and have no or insufficient access to treatment for moderate to severe pain.⁵³ Despite the repeated reminders made by the Commission on Narcotic Drugs to States of their obligations,⁵⁴ 83 per cent of the world population has either no or inadequate access to treatment for moderate to severe pain. Tens of millions of people, including around 5.5 million terminal cancer patients and 1 million end-stage HIV/AIDS patients, suffer from moderate to severe pain each year without treatment.⁵⁵

52. Many countries fail to make adequate arrangements for the supply of these medications.⁵⁶ Low- and middle-income countries account for 6 per cent of morphine use worldwide while having about half of all cancer patients and 95 per cent of all new HIV infections.⁵⁷ Thirty-two countries in Africa have almost no morphine available at all.⁵⁸ In the United States, over a third of patients are not adequately treated for pain.⁵⁹ In France, a study found that doctors underestimated pain in over half of their AIDS patients.⁶⁰ In India, more than half of the country's regional cancer trained in using it. This is despite the fact that 70 per cent or more of their patients have advanced cancer and are likely to require pain treatment.⁶¹

53. Although relatively inexpensive and highly effective medications such as morphine and other narcotic drugs have prov⁶² these essential " t types of medications are virtually unavailable in more than 150 countries.⁶³ Obstacles that unnecessarily impede access to morphine and adversely affect its availability include overly restrictive drug control regulations⁶⁴ and, more frequently, misinterpretation of otherwise appropriate regulations;⁶⁵ deficiency in drug supply management; inadequate infrastructure;⁶⁶ lack of prioritization of palliative care⁶⁷; ingrained prejudices about using

⁵⁰ See CAT/C/CR/32/5, para. 7 (m); A/66/254, para. 30.

⁵¹ CAT/C/CR/32/5, para. 7 (m).

⁵² General comment No. 28, para. 11; see also CCPR/CO.70/ARG, para. 14.

⁵³ WHO, " Access to Controlled Medicines Programme ", brief

⁵⁴ Resolutions 53/4 (2010) and 54/6 (2011).

⁵⁵ WHO, " Access ", p. 1.

⁵⁶ See HRW, " Please Do Not Make Us Suffer Any More... ": Acces Right (2009).

⁵⁷ Open Society Foundations, " Palliative care as a human right ", Public

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ HRW, Unbearable Pain: India's O(2009), p 3

⁶² Single Convention on Narcotic Drugs, 1961, preamble.

⁶³ Joseph Amon and Diederik Lohman, " Denial of pain treati inhuman or degrad ing treat me nINTERIGHTS Bulletin, vol 16, No 4 (2011), p. 172.

⁶⁴ See HRW, " Please Do Not. Make Us Suffer "

⁶⁵ E/INCB/1999/1, p. 7.

⁶⁶ A/65/255, para. 40.

opioids for medical purposes;⁶⁸ and the absence of pain management policies or guidelines for practitioners.⁶⁹

Applicability of torture and ill-treatment framework

54. Generally, denial of pain treatment involves acts of omission rather than commission,⁷⁰ and results from neglect and poor Government policies, rather than from an intention to inflict suffering. However, not every case where a person suffers from severe pain but has no access to appropriate treatment will constitute cruel, inhuman, or degrading treatment or punishment. This will only be the case when the suffering is severe and meets the minimum threshold under the prohibition against torture and ill-treatment; when the State is, or should be, aware of the suffering, including when no appropriate treatment was offered; and when the Government failed to take all reasonable steps⁷¹ to protect individuals physical and mental integrity.

55. Ensuring the availability and accessibility of medications included in the WHO Model List of Essential Medicines is not just a reasonable step but a legal obligation under the Single Convention on Narcotic Drugs, 1961. When the failure of States to take positive steps, or to refrain from interfering with health-care services, condemns patients to unnecessary suffering from pain, States not only fall foul of the right to health but may also violate an affirmative obligation under the prohibition of torture and ill-treatment (A/HRC/10/44 and Corr.1, para. 72).

56. In a statement issued jointly with the Special Rapporteur on the right to health, the Special Rapporteur on the question of torture reaffirmed that the failure to ensure access to controlled medicines for the relief of pain and suffering threatens fundamental rights to health and to protection against cruel, inhuman and degrading treatment. Governments must guarantee essential medicines – which include, among others, opioid analgesics – as part of their minimum core obligations under the right to health, and take measures to protect people under their jurisdiction from inhuman and degrading treatment.⁷³

D. Persons with psychosocial disabilities

57. Under article 1 of the Convention on the Rights of Persons with Disabilities, persons with disabilities include those who have long-term intellectual or sensory impairments, which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others. These are individuals who have been either neglected or detained in psychiatric and social care institutions, psychiatric wards, prayer

⁶⁷ Palliative care is an approach that seeks to improve the quality of life of patients diagnosed with life-threatening illnesses, through prevention and relief of suffering. WHO Definition of Palliative Care (see www.who.int/cancer/palliative/definition/en/).

⁶⁸ E/INCB/1999/1, p. 7.

⁶⁹ HRW, "Please Do Not, p. Make Us Suffer"

⁷⁰ Amon and Lohman, "Denial", p. 172

⁷¹ See for example ECHR, *Osman v. United Kingdom*, Application No. 23452/94 (1998), paras. 115-122; Committee on Economic, Social and Cultural Rights, general comment No. 14.

⁷² Amon and Lohman, "Denial", p. 172

⁷³ Joint letter to the Chairperson of the fifty-second session of the Commission on Narcotic Drugs, 2008, p. 4.

camps, secular and religious-based therapeutic boarding schools, boot camps, private residential treatment centres or traditional healing centres.⁷⁴

58. In 2008 the mandate made significant strides in the development of norms for the abolition of forced psychiatric interventions on the basis of disability alone as a form of torture and ill-treatment (see A/63/175). The Convention on the Rights of Persons with Disabilities also provides authoritative guidance on the rights of persons with disabilities and prohibits involuntary treatment and involuntary confinement on the grounds of disability, superseding earlier standards such as the 1991 Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991 Principles).

59. Severe abuses, such as neglect, mental and physical abuse and sexual violence, continue to be committed against people with psychosocial disabilities and people with intellectual disabilities in health-care settings.⁷⁵

60. There are several areas in which the Special Rapporteur would like to suggest steps beyond what has already been proposed by the mandate in its efforts to promote the Convention on the Rights of Persons with Disabilities as the new normative paradigm and call for measures to combat impunity.

1. A new normative paradigm

61. Numerous calls by the mandate to review the anti-torture framework in relation to persons with disabilities⁷⁶ remain to be addressed. It is therefore necessary to reaffirm that the Convention on the Rights of Persons with Disabilities offers the most comprehensive set of standards on the rights of persons with disabilities, inter alia, in the context of health care, where choices by people with disabilities are often overridden based on their supposed "best interests", and where serious violations of the rights of persons with disabilities may be masked as (A/63/175, para. 49) "interventions".

62. It is necessary to highlight additional measures needed to prevent torture and ill-treatment against people with disabilities, by synthesizing standards and coordinating actions in line with the Convention on the Rights of Persons with Disabilities.⁷⁷

2. Absolute ban on restraints and seclusion

63. The mandate has previously declared that there can be no therapeutic justification for the use of solitary confinement and prolonged restraint of persons with disabilities in psychiatric institutions; both prolonged seclusion and restraint may constitute torture and ill-treatment (A/63/175, paras. 55-56). The Special Rapporteur has addressed the issue of solitary confinement and stated that its imposition, of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment (A/66/268, paras. 67-68, 78). Moreover, any restraint on people with mental disabilities for even a short period of time

⁷⁴ See HR W, "Like a Death Sentence": Abuses against Persons with Disabilities (2012).

⁷⁵ In November 2012, the Inter-American Commission on Human Rights approved precautionary measures to protect 300 individuals in Guatemala City where forms of abuses were documented.

⁷⁶ See A/58/120; A/63/175, para. 41.

⁷⁷ See for example Organization of American States, Committee for the Elimination of all Forms of Discrimination against Persons with Disabilities, resolution CEDDIS/RES.1 (I-E/11) (2011), annex.

may constitute torture and ill-treatment.⁷⁸ It is essential that an absolute ban on all coercive and non-consensual measures, including restraint and solitary confinement of people with psychological or intellectual disabilities, should apply in all places of deprivation of liberty, including in psychiatric and social care institutions. The environment of patient powerlessness and abusive treatment of persons with disabilities in which restraint and seclusion is used can lead to other non-consensual treatment, such as forced medication and electroshock procedures.

3. Domestic legislation allowing forced interventions

64. The mandate continues to receive reports of the systematic use of forced interventions worldwide. Both this mandate and United Nations treaty bodies have established that involuntary treatment and other psychiatric interventions in health-care facilities are forms of torture and ill-treatment.⁷⁹ Forced interventions, often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimized under national laws, and may enjoy wide public support as being in the best interests of the persons concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment (A/63/175, paras. 38, 40, 41). Concern for the autonomy and dignity of persons with disabilities leads the Special Rapporteur to urge revision of domestic legislation allowing for forced interventions.

4. Fully respecting each person's legal capacity is a firm principle and ill-treatment

65. Millions of people with disabilities are stripped of their legal capacity worldwide, due to stigma and discrimination, through judicial declaration of incompetency or merely by a doctor's decision that the person "lacks capacity". Where a person lacks legal capacity, people are assigned a guardian or other substitute decision maker, whose consent will be deemed sufficient to justify forced treatment (E/CN.4/2005/51, para. 79).

66. As earlier stated by the mandate, criteria that determine the grounds upon which treatment can be administered in the absence of free and informed consent should be clarified in the law, and no distinction between persons with or without disabilities should be made.⁸⁰ Only in a life-threatening emergency in which there is no disagreement regarding absence of legal capacity may a health-care provider proceed without informed consent to perform a life-saving procedure.⁸¹ From this perspective, several of the 1991 Principles may require reconsideration as running counter to the provisions of the Convention on the Rights of Persons with Disabilities (A/63/175, para. 44).

5. Involuntary commitment in psychiatric institutions

67. In many countries where mental health policies and laws do exist, they focus on confinement of people with mental disabilities in psychiatric institutions but fail to effectively safeguard their human rights.⁸²

⁷⁸ See CAT/C/CAN/CO/6, para. 19 (d); ECHR, *Bures v. Czech Republic*, Application No. 37679/08 (2012), para. 132.

⁷⁹ A/63/175, paras. 44, 47, 61, 63; Human Rights Committee, communication No. 110/1981, *Viana Acosta v. Uruguay*, paras. 2.7, 14, 15.

⁸⁰ See also A/64/272, para. 74.

⁸¹ *Ibid.*, para. 12.

⁸² WHO, *Mental health legislation and human rights – denied citizens: including the excluded*.

68. Involuntary commitment to psychiatric institutions has been well documented.⁸³ There are well-documented examples of people living their whole lives in such psychiatric or social care institutions.⁸⁴ The Committee on the Rights of Persons with Disabilities has been very explicit in calling for the prohibition of disability-based detention, i.e. civil commitment and compulsory institutionalization or confinement based on disability.⁸⁵ It establishes that community living, with support, is no longer a favourable policy development but an internationally recognized right.⁸⁶ The Convention radically departs from this approach by forbidding deprivation of liberty based on the existence of any disability, including mental or intellectual, as discriminatory. Article 14, paragraph 1 (b), of the Convention unambiguously states that "the existence of a disability does not justify a deprivation of liberty".⁸⁷ Legislation authorizing the institutionalization of persons with disabilities on the grounds of their disability without their free and informed consent must be abolished. This must include the repeal of provisions authorizing institutionalization of persons with disabilities for their care and treatment without their free and informed consent, as well as provisions authorizing the preventive detention of persons with disabilities on grounds such as the likelihood of them posing a danger to themselves or others, in all cases in which such grounds of care, treatment and public security are linked in legislation to an apparent or diagnosed mental illness (A/HRC/10/48, paras. 48, 49).

69. Deprivation of liberty on grounds of mental illness is unjustified if its basis is discrimination or prejudice against persons with disabilities. Under the European Convention on Human Rights, mental disorder must be of a certain severity in order to justify detention.⁸⁷ The Special Rapporteur believes that the severity of the mental illness is not by itself sufficient to justify detention; the State must also show that detention is necessary to protect the safety of the person or of others. Except in emergency cases, the individual concerned should not be deprived of his liberty unless he has been reliably shown to be of "unsound mind".⁸⁸ As detention in a psychiatric context may lead to non-consensual psychiatric treatment,⁸⁹ the mandate has stated that deprivation of liberty that is based on the grounds of a disability and that inflicts severe pain or suffering could fall under the scope of the Convention against Torture (A/63/175, para. 65). In making such an assessment, factors such as fear and anxiety produced by indefinite detention, the infliction of forced medication or electroshock, the use of restraints and seclusion, the segregation from family and community, etc., should be taken into account.⁹⁰

70. Moreover, the effects of institutionalization of individuals who do not meet appropriate admission criteria, as is the case in most institutions which are off the monitoring radar and lack appropriate admission oversight,⁹¹ raise particular questions under prohibition of torture and ill-treatment. Inappropriate or unnecessary non-consensual

⁸³ See Thomas Hammarberg, "Inhuman treatment of persons with disabilities," *Human Rights Comment* (2010).

⁸⁴ See Dorottya Karas, "Disability, torture and ill-treatment: taking stock and ending a bus," *The International Journal of Human Rights*, vol. 16, No. 6 (2012), pp. 816-830.

⁸⁵ See also CRPD/C/HUN/CO/1, paras. 27-28.

⁸⁶ See CRPD/C/CHN/CO/1 and Corr.1, paras. 92-93.

⁸⁷ See Peter Bartlett, "A mental disorder of a kind or degree warranting confinement: examining justifications for psychiatric detention," *The International Journal of Human Rights*, vol. 16, No. 6 (2012), pp. 831-844.

⁸⁸ See ECHR, *Winterwerp v. The Netherlands*, Application No. 6301/73 (1979) and ECHR, *E v. Norway*, Application No. 11701/85 (1990).

⁸⁹ See Bartlett, *or A mental disorder of a kind or degree warranting confinement*.

⁹⁰ Stop Torture in Healthcare, "Torture and ill-treatment of people with disabilities in healthcare settings" Campaign Briefing, 2012.

⁹¹ See CAT/C/JPN/CO/1, para. 26.

institutionalization of individuals may amount to torture or ill-treatment as use of force beyond that which is strictly necessary.⁹²

E. Marginalized groups

1. Persons living with HIV/AIDS

71. Numerous reports have documented mistreatment of or denial of treatment to people living with HIV/AIDS by health providers.⁹³ They are reportedly turned away from hospitals, summarily discharged, denied access to medical services unless they consent to sterilization,⁹⁴ and provided poor quality care that is both dehumanizing and damaging to their already fragile health status.⁹⁵ Forced or compulsory HIV testing is also a common abuse that may constitute degrading treatment if it is "done on a discriminatory basis without respecting consent and necessity requirements" (A/HRC/10/44 and Corr.1, para. 65). Unauthorized disclosure of HIV status to sexual partners, family members, employers and other health workers is a frequent abuse against people living with HIV that may lead to physical violence.

2. Persons who use drugs

72. People who use drugs are a highly stigmatized and criminalized population whose experience of health-care is often one of humiliation, punishment and cruelty. Drug users living with HIV are often denied emergency medical treatment.⁹⁶ In some cases the laws specifically single out the status of a drug user as a stand-alone basis for depriving someone of custody or other parental rights. Use of drug registries – where people who use drugs are identified and listed by police and health-care workers, and their civil rights curtailed – are violations of patient confidentiality⁹⁷ that lead to further ill-treatment by health providers.

73. A particular form of ill-treatment and possibly torture of drug users is the denial of opiate substitution treatment, including as a way of eliciting criminal confessions through inducing painful withdrawal symptoms (A/HRC/10/44 and Corr.1, para. 57). The denial of methadone treatment in custodial settings has been declared to be a violation of the right to be free from torture and ill-treatment in certain circumstances (*ibid.*, para. 71). Similar reasoning should apply to the non-custodial context, particularly in instances where Governments impose a complete ban on substitution treatment and harm reduction measures.⁹⁸ The common practice of withholding anti-retroviral treatment from HIV-positive people who use drugs, on the assumption that they will not be capable of adhering to treatment, amounts to cruel and inhuman treatment, given the physical and psychological suffering as the disease progresses; it also constitutes abusive treatment based on unjustified discrimination solely related to health status.

⁹² ECHR, *Mouisel v. France*, Application No. 67263/01 (2002), para. 48; see also Neil Monroe, "Defining acceptable: how can we ensure that treatment for mental disorder in detention is consistent with the UN Convention on the Rights of Persons with Disabilities?" *The International Journal of Human Rights*, vol. 16, No. 6 (2012).

⁹³ Campaign to Stop Torture in Health Settings: Centre for "Torture and Accountability" *Human Rights Bulletin*, vol. 16, No. 4 (2011), p. 162.

⁹⁴ Open Society Foundations, *Against Her Will* (footnote 43 above).

⁹⁵ See HRW, *Rhetoric and Risk: Human Rights Abuses Impeding U* (2006).

⁹⁶ *Ibid.*, p. 44.

⁹⁷ A/65/255, para. 20.

⁹⁸ See HRW, *Lessons Not Learned: Human Rights Abuses and HIV/AIDS in the Russian Federation* (2004).

74. By denying effective drug treatment, State drug policies intentionally subject a large group of people to severe physical pain, suffering and humiliation, effectively punishing them for using drugs and trying to coerce them into abstinence, in complete disregard of the chronic nature of dependency and of the scientific evidence pointing to the ineffectiveness of punitive measures.

3. Sex workers

75. A report on sex workers documented negative and obstructive attitudes on the part of medical workers, including denial of necessary health-care services.⁹⁹ Public health rationales have in some instances led to mandatory HIV testing and exposure of their HIV status, accompanied by punitive measures.¹⁰⁰ Breaches of privacy and confidentiality are a further indignity experienced by sex workers in health settings.¹⁰¹ Most recently, the Committee against Torture noted "reports of alleged lack of privacy and humiliating circumstances amounting to degrading treatment during medical examinations".¹⁰² The mandate has observed that acts aimed at humiliating the victim, regardless of whether severe pain has been inflicted, may constitute degrading treatment or punishment because of the incumbent mental suffering (E/CN.4/2006/6, para. 35).

4. Lesbian, gay, bisexual, transgender and intersex persons

76. The Pan American Health Organization (PAHO) has concluded that homophobic ill-treatment on the part of health professionals is unacceptable and should be proscribed and denounced.¹⁰³ There is an abundance of accounts and testimonies of persons being denied medical treatment, subjected to verbal abuse and public humiliation, psychiatric evaluation, a variety of forced procedures such as sterilization, State-sponsored forcible anal examinations for the prosecution of suspected homosexual activities, and invasive virginity examinations conducted by health-care providers,¹⁰⁴ hormone therapy and genital-normalizing surgeries under the guise of so called procedures are rarely medically necessary,¹⁰⁵ can cause scarring, loss of sexual sensation, pain, incontinence and lifelong depression and have also been criticized as being unscientific, potentially harmful and contributing to stigma (A/HRC/14/20, para. 23). The Committee on the Elimination of Discrimination against Women expressed concern about lesbian, bisexual, transgender and intersex women by health services.¹⁰⁶

77. Children who are born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization, involuntary genital normalizing surgery, performed without their informed consent, or that

⁹⁹ Campaign to Stop Torture; see also A/64/272, para. 83. Care, "Torture", p.

¹⁰⁰ WHO and the Global Coalition for Violence Against Sex Workers and HIV and AIDS, "Prevention" (2005), p. 2. WHO,

¹⁰¹ Campaign to Stop Torture in Health Care, "Torture" p. 63.

¹⁰² CAT/C/AUT/CO/4-5, para. 22.

¹⁰³ PAHO, "Cures for an illness that does not exist" (2012).

¹⁰⁴ See HRW, *In a Time of Torture: The Assault on Justice in the Congo* (2003).

¹⁰⁵ PAHO/WHO, "Therapies to change sexual orientation lack medical justification and threaten health", news statement, 17 May 2012; and submission by Advocates for Informed Choice to the Special Rapporteur on the question of torture, 2012.

¹⁰⁶ PAHO/WHO, "Therapies to change sexual orientation lack medical justification and threaten health", news statement, 17 May 2012.

fix them¹⁰⁷ leaving them with permanent, irreversible infertility and causing severe mental suffering.

78. In many countries transgender persons are required to undergo often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender. In Europe, 29 States require sterilization procedures to recognize the legal gender of transgender persons. In 11 States where there is no legislation regulating legal recognition of gender,¹⁰⁸ enforced sterilization is still practised. As at 2008, in the United States of America, 20 states required a transgender person to undergo "gender-confirming surgery" or "gender reassignment surgery" before being able to change their legal sex.¹⁰⁹ In Canada, only the province of Ontario does not enforce "transsexual surgery" in order to rectify the recorded sex on birth certificates.¹¹⁰ Some domestic courts have found that not only does enforced surgery result in permanent sterility and irreversible changes to the body, and interfere in family and reproductive life, it also amounts to a severe and irreversible intrusion into a person's physical integrity. In Appeals ruled that a forced sterilization requirement to intr integrity could not be seen as voluntary.¹¹¹ In 2011, the Constitutional Court in Germany ruled that the requirement of gender reassignment surgery violated the right to physical integrity and self-determination.¹¹² In 2009, the Austrian Administrative High Court also held that mandatory gender reassignment, as a condition for legal recognition of gender identity, was unlawful.¹¹³ In 2009, the former Commissioner for Human Rights of the Council of Europe observed that "[the involuntary ster counter to the respect for the physical integrity of the person".¹¹⁴

79. The mandate has noted that "members of sexual subjected to torture and other forms of ill-treatment because they fail to conform to socially constructed gender expectations. Indeed, discrimination on grounds of sexual orientation or gender identity may often contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment t¹¹⁵ take place "Medically worthless" practices of subjecting me non-consensual anal examination¹¹⁶ have been condemned by the Committee against Torture, the Special Rapporteur on the question of torture and the Working Group on Arbitrary Detention, which have held that the practice contravenes the prohibition of torture and ill-treatment (A/HRC/19/41, para. 37).

5. Persons with disabilities

80. Persons with disabilities are particularly affected by forced medical interventions, and continue to be exposed to non-consensual medical practices (A/63/175, para. 40). In the case of children in health-care settings, an actual or perceived disability may diminish the

¹⁰⁷ A/HRC/19/41, para. 57.

¹⁰⁸ Commissioner for Human Rights of the Council of Europe, *Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe* (2011), pp. 86-87.

¹⁰⁹ D. Spade, "Doc *Harvard Law Journal*, vol. 159, No. 1 (2008), pp. 830-831.

¹¹⁰ *XY v. Ontario*, 2012 HRTO 726 (CanLII), judgement of 11 April 2012.

¹¹¹ Mål nr 1968-12, Kammarrätten i Stockholm, Avdelning 03, http://du2.pentagonvillan.se/images/stories/Kammarrtens_dom_-_121219.pdf, p. 4.

¹¹² Federal Constitutional Court, *I BvR 3295/07*. Available from www.bundesverfassungsgericht.de/entscheidungen/rs20110111_1bvr329507.html.

¹¹³ Administrative High Court, No. 2008/17/0054, judgement of 27 February 2009.

¹¹⁴ "Human rights and gender identity", issue paper (2009)

¹¹⁵ A/56/156, para. 19. See also E/CN.4/2001/66/Add.2, para. 199.

¹¹⁶ Working Group on Arbitrary Detention, opinion No. 25/2009 (2009), para. 29.

weight given to¹¹⁷ in determining their best interests, or may be taken as the basis of substitution of determination and decision-making by parents, guardians, carers or public authorities.¹¹⁸ Women living with disabilities, with psychiatric labels in particular, are at risk of multiple forms of discrimination and abuse in health-care settings. Forced sterilization of girls and women with disabilities has been widely documented.¹¹⁹ National law in Spain, among other countries,¹²⁰ allows for the sterilization of minors who are found to have severe intellectual disabilities. The Egyptian Parliament failed to include a provision banning the use of sterilization as a protection law. In the United States, 15 states have laws that fail to protect women with disabilities from involuntary sterilization.¹²¹

V. Conclusions and recommendations

A. Significance of categorizing abuses in health-care settings as torture and ill-treatment

81. The preceding examples of torture and ill-treatment in health-care settings likely represent a small fraction of this global problem. Such interventions always amount at least to inhuman and degrading treatment, often they arguably meet the criteria for torture, and they are always prohibited by international law.

82. The prohibition of torture is one of the few absolute and non-derogable human rights,¹²² a matter of *jus cogens*,¹²³ a peremptory norm of customary international law. Examining abuses in health-care settings from a torture protection framework provides the opportunity to solidify an understanding of these violations and to highlight the positive obligations that States have to prevent, prosecute and redress such violations.

83. The right to an adequate standard of health care ("right to health") and the States' obligations towards persons suffering from disabilities, together with the absolute and non-derogable nature of the right to protection from torture and ill-treatment establishes objective restrictions on certain therapies. In the context of health-related abuses, the focus on the prohibition of torture strengthens the call for accountability and strikes a proper balance between individual freedom and dignity and public health concerns. In that fashion, attention to the torture framework ensures that system inadequacies, lack of resources or services will not justify ill-treatment. Although resource constraints may justify only partial fulfilment of some aspects of the right to health, a State cannot justify its non-compliance with core obligations, such as the absolute prohibition of torture, under any circumstances.¹²⁴

84. By reframing violence and abuses in health-care settings as prohibited ill-treatment, victims and advocates are afforded stronger legal protection and redress

¹¹⁷ Committee on the Rights of the Child, general comment No. 12 (2009), para. 21.

¹¹⁸ See A/HRC/20/5, para. 53 (d); A/63/175, para. 59.

¹¹⁹ See Independent Expert for the Secretary-General on Violence against Children, *World Report on Violence against Children* (2009).

¹²⁰ Open Society Foundations, *Against Her Will* (footnote 43 above), p. 6, A/64/272, para. 71.

¹²¹ Open Society Foundations, *Against Her Will*, p. 6.

¹²² Convention against Torture, art. 2, para. 2, International Covenant on Civil and Political Rights, art. 7.

¹²³ See International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Furundzija*, case No. IT-95-17/1-T, judgement (1998).

¹²⁴ See Committee on Economic, Social and Cultural Rights, general comment No. 14.

for violations of human rights. In this respect, the recent general comment No. 3 (2012) of the Committee against Torture on the right to a remedy and reparation offers valuable guidance regarding proactive measures required to prevent forced interventions. Notably, the Committee considers that the duty to provide remedy and reparation extends to all acts of ill-treatment,¹²⁵ so that it is immaterial for this purpose whether abuses in health-care settings meet the criteria for torture per se. This framework opens new possibilities for holistic social processes that foster appreciation of the lived experiences of persons, including measures of satisfaction and guarantees of non-repetition, and the repeal of inconsistent legal provisions.

B. Recommendations

85. The Special Rapporteur calls upon all States to:

(a) Enforce the prohibition of torture in all health-care institutions, both public and private, by, inter alia, declaring that abuses committed in the context of health-care can amount to torture or cruel, inhuman or degrading treatment or punishment; regulating health-care practices with a view to preventing mistreatment under any pretext; and integrating the provisions of prevention of torture and ill-treatment into health-care policies;

(b) Promote accountability for torture and ill-treatment in health-care settings by identifying laws, policies and practices that lead to abuse; and enable national preventive mechanisms to systematically monitor, receive complaints and initiate prosecutions;

(c) Conduct prompt, impartial and thorough investigations into all allegations of torture and ill-treatment in health-care settings; where the evidence warrants it, prosecute and take action against perpetrators; and provide victims with effective remedy and redress, including measures of reparation, satisfaction and guarantees of non-repetition as well as restitution, compensation and rehabilitation;

(d) Provide appropriate human rights education and information to health-care personnel on the prohibition of torture and ill-treatment and the existence, extent, severity and consequences of various situations amounting to torture and cruel, inhuman or degrading treatment or punishment; and promote a culture of respect for human integrity and dignity, respect for diversity and the elimination of attitudes of pathologization and homophobia. Train doctors, judges, prosecutors and police on the standards regarding free and informed consent;

(e) Safeguard free and informed consent on an equal basis for all individuals without any exception, through legal framework and judicial and administrative mechanisms, including through policies and practices to protect against abuses. Any legal provisions to the contrary, such as provisions allowing confinement or compulsory treatment in mental health settings, including through guardianship and other substituted decision-making, must be revised. Adopt policies and protocols that uphold autonomy, self-determination and human dignity. Ensure that information on health is fully available, acceptable, accessible and of good quality; and that it is imparted and comprehended by means of supportive and protective measures such as a wide range of community-based services and supports (A/64/272, para. 93). Instances of treatment without informed consent should be investigated; redress to victims of such treatment should be provided;

¹²⁵ General comment No. 3, para. 1.

(f) Ensure special protection of minority and marginalized groups and individuals as a critical component of the obligation to prevent torture and ill-treatment¹²⁶ by, inter alia, investing in and offering marginalized individuals a wide range of voluntary supports that enable them to exercise their legal capacity and that fully respect their individual autonomy, will and preferences.

1. Denial of pain relief

86. The Special Rapporteur calls upon all States to:

(a) Adopt a human rights-based approach to drug control as a matter of priority to prevent the continuing violations of rights stemming from the current approaches to curtailing supply and demand (A/65/255, para. 48). Ensure that national drug control laws recognize the indispensable nature of narcotic and psychotropic drugs for the relief of pain and suffering; review national legislation and administrative procedures to guarantee adequate availability of those medicines for legitimate medical uses;

(b) Ensure full access to palliative care and overcome current regulatory, educational and attitudinal obstacles that restrict availability to essential palliative care medications, especially oral morphine. States should devise and implement policies that promote widespread understanding about the therapeutic usefulness of controlled substances and their rational use;

(c) Develop and integrate palliative care into the public health system by including it in all national health plans and policies, curricula and training programmes and developing the necessary standards, guidelines and clinical protocols.

2. Compulsory detention for medical reasons

87. The Special Rapporteur calls upon all States to:

(a) Close compulsory drug detention and "rehabilitation" centres without delay and implement voluntary, evidence-based and rights-based health and social services in the community. Undertake investigations to ensure that abuses, including torture or cruel, inhuman and degrading treatment, are not taking place in privately-run centres for the treatment of drug dependence;

(b) Cease support for the operation of existing drug detention centres or the creation of new centres. Any decision to provide funding should be made only following careful risk assessment. If provided, any such funds should be clearly time-limited and provided only on the conditions that the authorities (a) commit to a rapid process for closing drug detention centres and reallocating said resources to scaling up voluntary, community-based, evidence-based services for treatment of drug dependence; and (b) replace punitive approaches and compulsory elements to drug treatment with other, evidence-based efforts to prevent HIV and other drug-related harms. Such centres, while still operating as the authorities move to close them, are subject to fully independent monitoring;

(c) Establish an effective mechanism for monitoring dependence treatment practices and compliance with international norms;

¹²⁶ See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 43 (a)-(f).

(d) Ensure that all harm-reduction measures and drug-dependence treatment services, particularly opioid substitution therapy, are available to people who use drugs, in particular those among incarcerated populations (A/65/255, para. 76).

3. Lesbian, gay, bisexual, transgender and intersex persons

88. The Special Rapporteur calls upon all States to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, "reparative therapies" or "conversion," when enforced or administered without the free and informed consent of the person concerned. He also calls upon them to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups.

4. Persons with psychosocial disabilities

89. The Special Rapporteur calls upon all States to:

(a) Review the anti-torture framework in relation to persons with disabilities in line with the Convention on the Rights of Persons with Disabilities as authoritative guidance regarding their rights in the context of health-care;

(b) Impose an absolute ban on all forced and non-consensual medical interventions against persons with disabilities, including the non-consensual administration of psychosurgery, electroshock and mind-altering drugs such as neuroleptics, the use of restraint and solitary confinement, for both long- and short-term application. The obligation to end forced psychiatric interventions based solely on grounds of disability is of immediate application and scarce financial resources cannot justify postponement of its implementation;¹²⁷

(c) Replace forced treatment and commitment by services in the community. Such services must meet needs expressed by persons with disabilities and respect the autonomy, choices, dignity and privacy of the person concerned, with an emphasis on alternatives to the medical model of mental health, including peer support, awareness-raising and training of mental health-care and law enforcement personnel and others;

(d) Revise the legal provisions that allow detention on mental health grounds or in mental health facilities, and any coercive interventions or treatments in the mental health setting without the free and informed consent by the person concerned. Legislation authorizing the institutionalization of persons with disabilities on the grounds of their disability without their free and informed consent must be abolished.

5. Reproductive rights

90. The Special Rapporteur calls upon all States to ensure that women have access to emergency medical care, including post-abortion care, without fear of criminal penalties or reprisals. States whose domestic law authorizes abortions under various circumstances should ensure that services are effectively available without adverse consequences to the woman or the health professional.

¹²⁷ Convention on the Rights of Persons with Disabilities, art. 4, para. 2.

ANNEXURE P-20 (COLLY)

Submissions on the Transgender Persons (Protection of Rights) Amendment Bill, 2026

I. BACKGROUND

The Supreme Court in *NALSA v. Union of India*¹ (N A L S A v. U n i o n o f I n d i a) held that a transgender person has a right to self-identified gender identity.² The Court also held that the right to self-identified gender identity is independent of any form of medical intervention.³ Specifically, the Court stated, "Gender identity as a right is based on self-identification, not on surgical ⁴ On the right to self-identified gender identity the Court held, ' ' Transgender persons-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."

Following this judgment, the Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019. Aligned with *NALSA*, this Act defined a transgender person as, "a person assigned to that sex at birth but whose gender identity or role does not conform to that sex assigned to that person and made specific references to groups within the transgender community such as transgender men, transgender women, and socio-cultural transgender groups. The Act also recognised a transgender person's right to self-perceived gender identity⁷ and did not mandate any form of medical intervention for an individual to be legally recognised as a transgender person.⁸

¹ *NALSA v. Union of India*, AIR 2014 SC 1863.

² *NALSA v. Union of India*, Para 129(2).

³ *NALSA v. Union of India*, Paras 20, 76.

⁴ *NALSA v. Union of India*, Paras 20, 76.

⁵ *NALSA v. Union of India*, Para 129(2).

⁶ S. 2(k) of the TG Act, 2019 defines transgender person as "that person at birth and person whose gender identity or role does not conform to that sex assigned to that person and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and others."

⁷ S. 4(2), TG Act, 2019.

⁸ S. 6, TG Act, 2019.

Under section 7 however, the Act requires a transgender person to undergo surgery to be eligible to identify within the binary genders of man or woman.⁹ While the rules enacted under the TG Act, 2019 diluted the requirement for surgery by replacing it with 'medical intervention' broadly defined as, individual to facilitate the transition to their self-identified gender, including but not limited to counseling, hormonal therapy, and surgical.¹⁰ section 7 of the Act stands challenged before the Supreme Court.¹¹ The ground for challenge is that mandating medical intervention as a prerequisite to legal identification as a man or woman is in violation of the principle of self-determination and autonomy articulated in *NALSA*. Further, there are several transgender persons who do not want to undergo any form of medical procedure or intervention for affirmation of their gender identity whether as a man, woman or a non-binary transgender person (a person who does not identify either as a man or a woman).

The proposed Transgender Persons (Protection of Rights) *NALSA* Amendment Act, 2026 counts many counts. First, the definition of 'transgender' is not a transgender community. It focuses on those groups that socio-culturally present as trans-feminine, which leads to the exclusion of transgender men and non-binary transgender individuals. Second, by empowering a medical board to influence whether a transgender person can exercise their right to self-identified gender, it stands in tension with the principle of self-determination upheld in *NALSA*. Finally, the proposed amendment, while retaining the present provision on offences committed against transgender persons, seeks to introduce further offences. These pertain to grievous hurt or injury caused with intent to unduly, compel, or obstruct persons who work or travel as transgender persons and undefined terms including "allurement" are used in criminalising begging and solicitation while presenting as a transgender person. Further, it anchors punishment to immeasurable facets such as dress and gender presentation. The offences also criminalise kidnapping or compelling to present as transgender, which can result in older transgender persons being prosecuted for sheltering younger, more vulnerable individuals who are subjected to natal or community-based violence. This can also affect transgender gharanas, as it may implicate the guru-chela system.

⁹ S. 7, TG Act, 2019.

¹⁰ Rule 2(i), Transgender Persons (Protection of Rights) Rules, 2020.

¹¹ Swati Bidhan Baruah v. Union of India, available at <https://www.scoobserver.in/cases/swati-bidhan-baruah-union-of-india-challenges-to-transgender-persons-act-case-background/>.

¹² Clause 7(g) & (h), The Transgender Persons (Protection of Rights) Amendment Bill, 2026.

¹³ Clause 7(g) & (h), The Transgender Persons (Protection of Rights) Amendment Bill, 2026.

Further, the transgender community has expressed their concerns and disagreements with the Amendment Bill.¹⁴ This Bill has been met with sustained and visible opposition from the transgender community across the country, including street protests, press conferences, public hearings, op-eds, and direct engagement attempts with the government. Alongside on-ground mobilisation, several community-led statements and op-eds have described the Bill as “rights. The core reasons for disagreement, articulated consistently across these engagements, is that the Bill undermines self-identification by introducing medical and bureaucratic gatekeeping, narrows the definition of transgender identity, and risks diluting existing legal protections recognised by the Supreme Court.

Consultations also show that the Amendment Bill is already creating fear in the community. Many people are rushing to obtain transgender identity certificates (or “TG”) in case legal recognition becomes harder in future. Transgender men are especially worried that the proposed changes will make recognition more difficult and increase medical and bureaucratic scrutiny. The Amendment Bill may also affect healthcare by increasing gatekeeping, discouraging non-transfeminine presenting transgender persons from seeking care, and making gender-affirming treatment harder to access.

II. RECOMMENDATIONS

¹⁴ Tanmayee Tyagi, ‘Trans groups, social or’, *The Times of India* (23 March 2026) new tr <http://timesofindia.indiatimes.com/articleshow/129736894.cms?utm_source=&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 23 March 2026; Bodies call transgender bi, *The Times of India* (23 March 2026) demand w <https://timesofindia.indiatimes.com/city/vadodara/lgbtqia-bodies-call-transgender-bill-regressive-demand-withdrawal/articleshow/129737041.cms?utm_source=> accessed 23 March 2026; ‘Transgender Right The Times I row: of India (23 March 2026) <https://timesofindia.indiatimes.com/india/transgender-rights-bill-row-opposition-mps-activists-seek-withdrawal/articleshow/129736370.cms?utm_s> accessed 23 March 2026; Pheroze L Vincent, ‘Queer groups scope excludes’, *www.telegraphindia.com/india/queer-groups-slam-transgender-persons-amendment-bill-2026-as-scope-excludes-vulnerable-sections-prnt/cid/2152409?utm* <<https://www.telegraphindia.com/india/queer-groups-slam-transgender-persons-amendment-bill-2026-as-scope-excludes-vulnerable-sections-prnt/cid/2152409?utm>> accessed 23 March 2026; Deccan Herald, ‘“They Are Snatching Our Rights”, Protestors Oppose t’, *YouTube*, B1B1 March 2026) ding th <https://timesofindia.indiatimes.com/city/pune/pune-based-lgbtqia-members-activists-object-to-transgender-persons-protection-of-rights-amendment-bill/articleshow/129686260.cms?utm_s; <<https://www.youtube.com/watch?v=IQ8oWcgPZJ0>> accessed 23 March 2026; National Council members Pandit to govt: ‘Self perceived identity’ must remain, *The Times of India* (22 March 2026) transge <http://timesofindia.indiatimes.com/articleshow/129737382.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 23 March 2026.

The Government's Legislative Consultation Policy¹⁵ (' Policy ') prescribes that every legislation (which would include amendments) in the public domain and ensure that groups affected directly by such legislation have knowledge of it.¹⁶ Further, the Policy encourages the parent Ministry to carry out public consultations and ensure transparency by disclosing public comments and feedback on its website. It is recommended that this protocol be followed and transgender communities must be engaged in relation to any proposed legal and policy developments directly impacting them. In this context and the legal concerns flagged above, the Amendment Bill must be reconsidered.

Further the following is recommended:

- (a) Standing Committee:** If amendments are deemed to be required, it is recommended that the Amendment Bill be referred to a Parliamentary Standing Committee (' Committee ') to receive public comments, carry out consultations, and invite depositions from community members, lawyers and subject matter experts. A similar process was followed for the Transgender Persons (Protection of Rights) Bill, 2016 which led to, amongst other changes, the welcome outcome of the definition in the TG Act, 2019 aligning with the NALSA judgment. Given the legal concerns and community response to the Amendment Bill, establishment of a Committee is recommended.
- (b) Consultations:** It is critical that consultations must be representative of different groups within the transgender community: transgender women, transgender men and non-binary transgender persons. Socio-cultural groups from across the country must also be engaged. The members of the National Council for Transgender Persons, established under the TG Act, 2019, must be actively consulted for their expert opinion. This will ensure that expert opinions and lived experiences inform law and policy on transgender rights such that their fundamental rights can be recognised, protected and realised.

Further, below we present a **clause-by-clause** analysis of the Amendment Bill.

¹⁵ Chairmanship of Cabinet Secretary on the Pre-legislative Consultation Policy, available at <https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/02/2023021333.pdf>.

¹⁶ Ibid.

III. CLAUSE-BY-CLAUSE ANALYSIS

Clause	Provision	Vidhi Comment
2	<p>In section 2 of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as the principal Act),—</p> <p>(ii) after clause (a), the following clause shall be inserted, namely:—</p> <p>‘ (a a) “ a u t h o r i t y ” m e a n s Chief Medical Officer or a Deputy Chief Medical Officer, as may be appointed by the Central Government, State Government or Union territory Administration ; ‘ ;</p>	<p>NALSA recognised self-identification as central to gender identity and made clear that a person does not require medical validation or external certification to know or assert their own gender identity.¹⁷ Specifically, it states, “Gender identity as already indicated forms the core on self-identification, not on surgical or medical procedure”¹⁸</p> <p>The Amendment Bill by introducing a medical board which has the power to make recommendations to inform whether a person is entitled to have their gender legally changed to transgender person dilutes the right recognised by <i>NALSA</i>. This is especially significant because the Bill deepens medicalisation and official scrutiny in an area where the Supreme Court has already affirmed autonomy, dignity, and self-determination.</p> <p>The Amendment Bill does so by building on provisions of the 2019 Act that are themselves under constitutional challenge. Section 7 of the 2019 Act, for</p>

¹⁷ *NALSA v. Union of India*, Paras 20, 76.

¹⁸ *NALSA v. Union of India*, Para 76.

		<p>instance, has been challenged before the Supreme Court because it requires "intervention" for the certificates, such as man or woman.¹⁹ Rather than correcting that flaw, the Amendment Bill appears to carry it forward and strengthen it.</p> <p>Recommendation: It is recommended that this clause be deleted and the requirement of a medical board making a recommendation for a person to be able to exercise their self-identified gender identity be removed.</p>
2	<p>In section 2 of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as the principal Act),—</p> <p>(iv) for clause (k), the following clause shall be substituted, namely:—</p> <p>' (k) " t r a n s g e n d e r p e r s o n</p> <p>(i) a person having such socio-cultural identities as kinner, hijra, aravani and jogta, or eunuch, or</p>	<p>The NALSA judgment broadly defined transgender persons as any person who did not identify with the sex assigned to them at identity refers to each individual experience.²⁰ It also recognised the right of a transgender person to be legally recognised as per their self-identified gender identity be it man, woman or a transgender person.²¹ The 2019 Act under section 2(k) affirmed this.²²</p> <p>The Amendment Bill however restricts the definition of transgender person to include only: members of</p>

¹⁹ Swati Bidhan Baruah v Union of India, available at <https://www.scobserver.in/cases/swati-bidhan-baruah-union-of-india-challenges-to-transgender-persons-act-case-background/>.

²⁰ NALSA v. Union of India, AIR 2014 SC 1863, Para 19.

²¹ NALSA v. Union of India, Para 129(1) and (2).

²² S. 2(k), The Transgender Persons (Protection of Rights) Act, 2019.

<p>a person with intersex variations specified below or a person who, at birth, has a congenital variation in one or more of the following sex characteristics as compared to male or female development:—</p> <ul style="list-style-type: none"> (a) primary sexual characteristics; (b) external genitalia; (c) chromosomal patterns; (d) gonadal development; (e) endogenous hormone production or response, or such other medical conditions; or <p>(ii) any person or child who has been, by force, allurements, inducement, deceit or undue influence, either with or without consent, compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise: Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.</p> <p>Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual</p>	<p>certain socio-cultural groups (such as <i>hijras</i>, <i>aravanis</i>, <i>jogtas</i>, and <i>kinners</i>), persons with intersex variations, and persons (including children) who have been unduly compelled to assume, adopt, or outwardly present a transgender identity through surgical, chemical, or hormonal procedures, or otherwise.²³ Further, it uses the word 'eunuch' which is a term which has been rejected by the transgender community.</p> <p>In relation to clause (iii) namely children and persons who are compelled to present as transgender, it needs to be noted that <i>first</i>, the word 'com' undefined, and <i>second</i>, there is no clarity in relation to what 'presenting as trans' individuals who may be perceived as transgender by certain sections of society (based on a stereotypical understanding of the term) may not identify as transgender and may be cis-gender persons. Thus, clause (iii) suffers on account of vagueness and an incorrect understanding of who a transgender person is.</p> <p>Further, the <i>proviso</i> which clarifies that the Act does not apply to persons with "different sexual orientations and self-perceived sexual identities" is vague and redundant. First, it is clear that the TG Act, 2019 does not cover sexual minorities namely lesbian, gay and</p>
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²³ Clause 2(iv), The Transgender Persons (Protection of Rights) Amendment Bill, 2026.

		<p>bisexual persons and applies only to transgender persons. Second, the term “self-perceived sexual identities” is vague and undefined and may create confusion and exclusion at the stage of implementation.</p> <p>The proposed definition stands in tension with the position of law articulated in the NALSA judgment. Further, it excludes several transgender persons from the ambit of the law especially transgender men, non-binary transgender persons, genderqueer persons, and persons who do not present in a specific, socio-cultural transfeminine manner.</p> <p>Recommendation: It is recommended that the definition of ‘transgender 2019 be retained.</p>
<p style="text-align: center;">3</p>	<p>In section 4 of the principal Act, sub-section (2) shall be omitted.</p>	<p>Section 4(2) provides that transgender under sub-section (1) shall have a right to self-perceived gender identity.</p> <p>This was aligned with the binding direction in <i>NALSA</i> where the Court stated, “Transgender persons 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.”²⁴</p>

²⁴ NALSA v. Union of India, Para 129(2).

		<p>Omission of section 4(2) takes away the constitutionally protected fundamental right of transgender persons to self-identified gender identity.</p> <p>Recommendation: Section 4(2) must be retained to ensure the law recognises the fundamental right to self-identified gender identity as upheld in a binding direction of the Supreme Court.</p>
<p style="text-align: center;">4</p>	<p>In section 6 of the principal Act,—</p> <p>(a) in sub-section (1), for "Magistrate", the words "examining the recommendation of the authority and, if he considers either necessary or desirable, after taking the assistance of a medical expert" be substituted;</p>	<p>As explained above, <i>NALSA</i> recognises the right to self-identified gender independent of any form of medical intervention.</p> <p>The Amendment Bill not only requires a medical authority to make recommendations affirming the gender identity of a transgender person but also empowers the District Magistrate to consult other medical experts. This follows the medical model of affirming gender identity which the <i>NALSA</i> judgment has firmly rejected.²⁵</p> <p>Recommendation: A reversion to the original section 6, which was aligned with the position of law in <i>NALSA</i> and did not prescribe any medical inputs for exercise of self-identified gender identity as a transgender person, must be retained.</p>

²⁵ *NALSA v. Union of India*, Para 76.

5	<p>In section 7 of the principal Act,—</p> <p>.....</p> <p>(b) after sub-section (1), the following sub-section shall be inserted, namely:—</p> <p>" (1 A) T h e m e d i c a l i n s t i t u t i o n h a s u n d e r g o n e s u r g e r y t o c h a n g e g e n d e r , e i t h e r a s m a l e o r f e m a l e , s h a l l f u r n i s h t h e d e t a i l s o f s u c h p e r s o n t o t h e c o n c e r n e d D i s t r i c t M a g i s t r a t e a n d t h e a u t h o r i t y i n s u c h f o r m a n d m a n n e r a s m a y b e p r e s c r i b e d . "</p>	<p>Section 7 of the TG Act, 2019 stands challenged before the Supreme Court on the ground that it dilutes the right to self-identified gender identity recognised in NALSA. This is because it introduces the prerequisite of surgical intervention for a transgender person to be able to identify within the binary of man or woman. NALSA has categorically held that the right to gender identity is not contingent on any form of medical intervention.²⁶</p> <p>Further, the proposed provision mandates medical institutions to share details of transgender persons who have undergone medical intervention with the District Magistrate. Since this involves the personal data of transgender persons, the provision must be assessed against both the Supreme Court's judgment in Justice K.S. Puttaswamy v. Union of India²⁷ (Puttaswamy and the Digital Personal Data Protection Act, 2023 (" DPDP Act ")).</p> <p>Under the DPDP Act, processing of personal data requires either the consent of the Data Principal, or a legitimate use ground provided under the Act. At the same time, in Puttaswamy, while recognising the right to privacy under Article 21, the Supreme Court held that State interference may be justified only if it is backed by law, in pursuance of a legitimate aim, and it</p>
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²⁶ NALSA v. Union of India, Paras 20, 76.

²⁷ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 and (2019) 1 SCC 1.

		<p>is a proportionality test'). The proposed amendment against the Supreme Court privacy.</p> <p>The mandatory disclosure requirement under the proposed provision (1A) raises constitutional concerns regarding the informational privacy of transgender persons. The provision will have to withstand scrutiny under the <i>Puttaswamy</i> framework, where it would have to be demonstrated that requiring medical institutions to share such information serves a legitimate state aim, that there is a rational nexus between the mandatory sharing and collection of such data and that aim, and that no less intrusive alternative could have achieved this objective.</p> <p>Recommendation: In light of the constitutional concerns outlined above, this amendment must be omitted.</p>
5	<p>In section 7 of the principal Act,—</p> <p>....</p> <p>(c) for sub-section (2), the following sub-section shall be substituted, namely:—</p> <p>" (2) A person section (1) shall also make an application to the District Magistrate who</p>	<p>The Amendment Bill, like the TG Act, 2019 continues to empower medical authorities to inform whether a transgender person can exercise their right to self-identified gender within the binary of man or woman by requiring them to see District Magistrate for consideration. This follows the medical model of affirming gender identity which the</p>

	<p>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</p>	<p>NALSA judgment has firmly rejected.²⁸ A constitutional challenge to section 7 of the TG Act, 2019 (which requires proof of medical intervention to identify as man or woman) is pending before the Supreme Court on this ground already.²⁹</p> <p>Recommendation: It is recommended that section 7 be amended to align itself with the position of law articulated in NALSA where the right to be recognised as per self-identified gender identity whether man, woman or transgender person is independent of any form of medical intervention. The production of medical certification must be optional and based on the choice of the applicant.</p>
<p style="text-align: center;">7</p>	<p>For section 18 of the principal Act, the following section shall be substituted, namely:—</p> <p>"</p> <p>(e) kidnaps or abducts any adult person and causes— (i) grievous hurt to such person, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or (ii) permanent or severe injury to the body or bodily functions of such person, with the intent of, or in the course of,</p>	<p>While these newly introduced provisions under Section 18 seek to address grave and aggravated criminal acts like abduction and grievous hurt, their practical application on the ground raises serious concerns across clauses (e) to (h).</p> <p>The inclusion of these clauses will invariably target community support structures such as the <i>gharana</i> system. These traditional spaces of belonging, often the only refuge for transgender persons who are rejected by natal families, could be easily</p>

²⁸ NALSA v. Union of India, Para 76.

²⁹ Swati Bidhan Baruah v Union of India, available at <https://www.scobserver.in/cases/swati-bidhan-baruah-union-of-india-challenges-to-transgender-persons-act-case-background/>.

<p>compelling such person to assume, adopt, or outwardly present a transgender identity against the will or consent of such person, whether by force, allurement, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than two lakh rupees;</p>	<p>mischaracterised as sites or "compulsion", entangling the community in long, targeted criminal proceedings in response to <i>bona fide</i> actions.</p> <p>In addition to this, the inclusion of several medical procedures, including "hormonal or surgical procedures" under the umbrella of grievous hurt risks criminalising legitimate gender-affirming care, creating a chilling effect where members of the community or medical professionals may fear prosecution for assisting individuals in their voluntary transition process. The provision also carries risk of wrongful application against instances of medical treatment wholly unconcerned with gender identity or presentation (such as hormone therapy for symptoms of Polycystic Ovary Syndrome, menopause, and certain types of cancer).</p> <p>Further, the language of the provision as in the compulsion to "outwardly identity" is rooted in incorrect stereotypes, and the profiling and homogenisation of transgender persons. The use of words such as "assume, adopt, or outwardly present" furthers misleading views of being transgender as a choice of appearance or clothing rather than an inherent identity. This framing treats gender-affirming transition or presentation as inherently suspicious or</p>
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		<p>criminal. It also blurs the distinction between situations involving actual violence or abduction, and those involving voluntary co-opting into community networks and shared kinship structures. These are already dealt with in existing general criminal legislation.³⁰ The need for separate criminalisation within the TG Act, 2019 must be backed with data or anecdotal evidence in support of the same.</p> <p>Recommendation: It is recommended that this clause be reconsidered and revised in deliberation with the larger transgender community. The need for such criminalisation, rooted in evidence of an existing harm, must be established. The language of the clause, if it is to be retained, must be revised in an inclusive and gender-sensitised manner, without reliance on stereotypes. Existing legislations may be adequately relied on until the specific needs and concerns of the community are considered holistically and addressed consultatively.</p>
7	<p>(f) kidnaps or abducts any child and causes— (i) grievous hurt to such child, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or (ii) permanent or severe injury to the body or bodily functions of such child, with the intent of, or in the course of, compelling such child to assume, adopt, or</p>	<p>In addition to the general concerns for Section 18(e) to (f) identified above, it may be noted that the offences introduced in relation to children under clause (f) are already punished under general criminal law (as in the Bharatiya Nyaya Sanhita, 2023) and existing special legislations (such as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 and the Bonded</p>

³⁰ S. 117, The Bharatiya Nyaya Sanhita, 2023.

	<p>outwardly present a transgender identity, whether by force, allurements, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees;</p>	<p>Labour System (Abolition) Act, 1976).</p> <p>Recommendation: Same recommendation as for proposed clause (e) of Section 18.</p>
	<p>(g) by force, threat, coercion, allurements, deception, inducement, or undue influence—</p> <p>(i) compels any person, whether or not such person is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person against the will of such person; and</p> <p>(ii) employs, uses, or causes such person to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting, shall be punishable with rigorous imprisonment for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine which shall not be less than one lakh rupees; and</p>	<p>The criminalisation of present, or conduct themselves outwardly as a transgender person" for solicitation or forced labour is overreaching and ambiguous in its scope and meaning, as well as rooted in false stereotypes and artificial homogenisation of transgender identities. Furthermore, it ignores the lived realities of the most socio-economically marginalised groups, including <i>hijra gharanas</i> among others, where begging and solicitation are in light of alternative means of livelihood.</p> <p>The employment of criminal law in relation to begging and solicitation carries a significant likelihood of harassment, arbitrary arrest, illegal detention and custodial violence being committed against transgender persons, and most specifically of leaders of <i>gharanas</i> and other community kinship spaces. The need for such a clause specific to the presentation of a transgender identity remains unclear in the absence of data or anecdotal evidence in support of the same.</p> <p>Recommendation: It is recommended that the proposed clause, in its present form, be omitted.</p>

		Existing general ³¹ as well as special legislation (including the Bonded Labour System (Abolition) Act 1976 ³²) may be relied on in a gender-agnostic manner to safeguard against forced begging.
7	<p>(h) by force, threat, coercion, allurement, deception, inducement, undue influence or otherwise—</p> <p>(i) compels any child, whether or not such child is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person; and</p> <p>(ii) employs, uses, or causes such child to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to fourteen years, and shall also be liable to fine which shall not be</p>	<p>In addition to the general concerns for Section 18(e) to (f) identified above, it may be noted that the offences introduced in relation to children under clause (h) are already punished under general criminal law (as in the Bharatiya Nyaya Sanhita, 2023³³) and existing special legislations (such as the Juvenile Justice (Care and Protection of Children) Act, 2015³⁴ and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986³⁵).</p> <p>Recommendation: Same recommendation as for proposed clause (g) of Section 18.</p>

³¹ S. 143, The Bharatiya Nyaya Sanhita, 2023.

³² S. 16, The Bonded Labour System (Abolition) Act, 1976.

³³ S. 139, The Bharatiya Nyaya Sanhita, 2023.

³⁴ S. 76, The Juvenile Justice (Care and Protection of Children) Act, 2015 and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

³⁵ S. 3, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION

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Press Release

Date: 15.03. 2026

Transgender Persons (Protection of Rights) Amendment Bill, 2026

The All India Democratic Women's Association (AIDWA) strongly condemns the regressive introduction of the Transgender Persons (Protection of Rights) Amendment Bill, 2026 in the Lok Sabha on 13 March 2026. The proposed amendment represents a grave reversal of the limited but significant protections recognised under the Transgender Persons (Protection of Rights) Act, 2019, and threatens to further marginalise transgender and gender-diverse persons by narrowing the scope of recognition and subjecting identity to state control.

One of the most concerning features of the amendment is the removal of the principle of self-perceived gender identity, which presently forms a core component of the 2019 Act. The current 2019 Act was imperfect, yet it recognised the right of transgender persons to identify their gender without being subjected to mandatory medical procedures or institutional verification. This right was hard-won as the bill which introduced the 2019 Act did not contain in it, this right of self-identification. It was only after fierce protests that the government agreed to rollback the institution of medical boards for determining the gender identity of Transgender persons. The Amendment proposed dismantles the current framework of self-identification by reintroducing the certificates issued by the District Magistrate only upon the recommendation of a medical board. By doing so, the amendment shifts authority away from the individual and places it in the hands of the State, undermining the principle that gender identity is a matter of personal autonomy and dignity.

The amendment also significantly narrows the definition of a "transgender person." The Transgender Persons (Protection of Rights) Act, 2019 recognised a broad spectrum of identities, including trans men, trans women, gender-queer persons, and individuals with intersex variations, irrespective of medical transition. In contrast, the amendment restricts recognition largely to specific socio-cultural communities such as hijra, kinner, aravani, jogta, or persons with congenital intersex variations. By confining legal recognition to a limited set of categories, the Bill excludes many gender-diverse persons whose identities do not fall within these definitions. Equally troubling is the reasoning offered in the Statement of Objects and Reasons accompanying the Bill, which blatantly, and in violation of the Constitution, asserts that the law should not extend protection to all persons with diverse or self-perceived gender identities. Such an

approach reflects a restrictive and exclusionary understanding of gender diversity, reducing identity to narrowly defined biological or cultural categories rather than recognising the lived realities of gender-diverse persons. This is also in violation of what the Supreme Court propounded in *NALSA v. Union of India* (2014), where the Court upheld the right of all Transgender persons to self-identify their gender as under:

“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.”

It was further held that the court was not only upholding the rule of law but also advancing justice to the class so far deprived of their legitimate natural and constitutional rights. The introduction of this Bill is therefore categorically in violation with the pronouncement of the Court.

This narrowing of the definition has serious implications for access to rights, welfare schemes, and legal protections guaranteed under the Act. Individuals whose identities are excluded from the revised definition risk being denied recognition altogether, thereby losing access to mechanisms intended to address discrimination and social marginalisation. The Bill therefore negates the rights of transgender people under Articles 14, 15, and 21 of the Indian Constitution, which allow all persons to live a life of dignity without discrimination.

The introduction of this amendment must also be viewed in the broader context of the shrinking democratic space and the steady erosion of rights affecting minorities and marginalised communities across the country. Legislative measures that dilute existing protections and restrict recognition deepen existing inequalities and reinforce their exclusion. Gender identity is a matter of dignity and self-determination. It cannot be reduced to medical certification or bureaucratic approval.

AIDWA condemns the exclusion of non binary individuals and demands that the law ensures protection for all transgender identities including those with fluid gender identity.

The All India Democratic Women’s Association stands firmly in solidarity with transgender persons and all gender-diverse communities in their struggle for equality, dignity, and recognition. AIDWA calls for the immediate withdrawal of the Transgender Persons (Protection of Rights) Amendment Bill, 2026 and urges democratic forces to oppose any attempt to curtail the rights and legal recognition of transgender and gender-diverse persons.

P.K Sreemathi
President

Adv Kirti Singh
Legal Advisor

Kaninika Ghosh
General Secretary

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**AILAJ CONDEMNS THE INTRODUCTION OF THE TRANSGENDER PERSONS
(PROTECTION OF RIGHTS) AMENDMENT BILL, 2026 AND DEMANDS AN
IMMEDIATE ROLLBACK!**

The All India Lawyers' Association For Justice (AILAJ), strongly condemns the attempt of the Union government to compromise both individual and community rights of the transgender persons in the country through the introduction of the **Transgender Persons (Protection of Rights) Amendment Bill, 2026**. This bill has been introduced by the Minister of Social Justice and Empowerment on Friday, 13th of March 2026 in the Lok Sabha, and represents an attempt to set back by several decades, the rights of transgender persons and completely, and dishonestly, disowns the legislative recognition of whatever rights were secured through years of struggle.

To begin with, the proposed amendments erode the right to self-determination of gender identity by replacing it with criteria based on medically assessed physiological markers and narrowly defined cultural identities. In doing so, they depart from the constitutional protections affirmed in **NALSA v. Union of India 2014 INSC 275**, which recognised the fundamental right of individuals to determine their own gender identity.

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Further, the legislature had enacted the **Transgender Persons (Protection of Rights) Act of 2019** which was a major breakthrough for the recognition of the transgender community and the recognition of their rights, which included the right to self-identification; the right to an affirming identity documentation; education, social security and health of transgender persons; protection against discrimination etc. While the provisions of this Act and the Rules framed thereunder were also criticised for an incomplete recognition of the right to self identification, the law was a starting point of recognition and rights-conferment on the transgender persons.

The Amendment Bill, in its **Statement of Objects and Reasons**, blatantly and outrightly denies the legislative history and legislative intent of the parent Act, therefore losing the good faith test before even coming to the provisions of the Bill. Paragraph 3 of the **Statement of Objects and Reasons** states:

“3. The intent, object and purpose of the Act is and was to protect a specified class of persons socially and culturally known as transgender people who face societal discrimination of an extreme and oppressive nature. The purpose was and is not to protect each and every class of persons with various gender identities, self-perceived sex/gender identities or gender fluidities.”



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Apart from being directly contradictory to the sections 2(k) and 4(2),¹ the Paragraph also lays bare the current mischief of the draft— departing from the rights-based framework of recognition of self-perceived gender identity, and moving towards a medically surveilled and culturally guarded model of selective recognition.

The pre-existing protections, to whatever limited extent were enacted, have been severely curtailed by design, wherein trans-men and trans-women cease to be recognised within the revised definition of “transgender person”, leaving only the socio-cultural pigeonholed categories, i.e. *kinner*, *hijra*, *aravani*, and *jogta*, as options for them to choose from. It is needless to say, that such socio-cultural categories come with their respective cultural heritage and baggage— a top-down enforced dilution whereof is unfair to both the individual compelled to choose the aforementioned identities, as well as the socio-cultural communities themselves. Further, the newly inserted *Provisio* to section 2(k),² effectively reverses and retrospectively nullifies the previously guaranteed right to self-identification, and amounts to invalidation of the legal recognition of a population which is estimated to be in millions.

¹ **2. Definitions.—** (k) “transgender person” means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*.

4. Recognition of identity of transgender person.— (2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.

² The provisio reads: “(...) Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.”



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It is also interesting to note that the new section 2(k) recognises transgender status for individuals who have been, by the use of “*force, allurement, inducement, deceit or undue influence, either with or without consent, compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise*” (emphasis supplied), but not the individuals who choose to identify as transgender.

Furthermore, the relatively straightforward process under the section 6 of the original Act [although the delegated legislation yet made the process more complicated], have been replaced by a gatekeeping procedure of reinstating the “authority”³ (medical board) which was principally done away with in **NALSA** (supra; para 66-69, 74-76) by recognising the Fundamental Right to self-identify.

Furthermore, in a time where attacks on citizenship through processes like Special Intesive Revision (SIR), National Register of Citizens (NRC), and related drives of disenfranchisement, non-recognition, and domicile are becoming state policy, this drive of retrospective derecognition of transgender persons would add to the vulnerability which has been amply recognised in judgments and academic literature and are difficult to dispute by anyone.

³ (aa) “authority” means a medical board, headed by a Chief Medical Officer or a Deputy Chief Medical Officer, as may be appointed by the Central Government, State Government or Union territory Administration;’;

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Besides, it must be noted at this crucial juncture where we are seeing a continuous attack on the religious minorities, that the hijra jamaats which are primarily Muslim, may face the burden of these new regulations more severely than others.

The amendment to Section 18 introduces new offences, which criminalise force/compulsion of persons to “to assume, adopt, or outwardly present a transgender identity”. This stigmatizes and pathologises transgender identity as a result of coercion, instead of a representation of personal autonomy. Further, it may render communities like hijra jamaats, kinnar akhadas etc., as well as community support groups as vulnerable to criminalisation, while act of community support and solidarity will be misconstrued as inducement. This erodes social support which has, historically been central to the survival and welfare of transgender people.

AILAJ strongly condemns the attempt of the government to attack the individuals belonging to the transgender community, as well as the community as a whole, by virtually erasing their existence out of the law. The reimposition of colonial ideals, and a reinstatement of the talking points of the western right-wing in the Indian socio-legal discourse must be identified and condemned in the strongest of terms. We call upon the entire legal community to protest the roll-back of basic human rights and Fundamental Rights for millions of people who stand to be impacted by this move.





AMAN ~ GLOBAL VOICES FOR PEACE IN THE HOME

We, members of Aman Network strongly condemn and oppose the [redacted]. The bill undermines the dignity, autonomy, and constitutional protections guaranteed to transgender persons.

On the evening of [redacted], the Honourable Union Minister for Social Justice and Empowerment, [redacted], introduced the amendment bill in the Lok Sabha. With this move, the government effectively attempted to strip people across India of a fundamental right recognised by the Supreme Court — the [redacted], affirmed in the landmark judgement of [redacted].

This amendment represents a major step backwards.

For over a decade, India has been recognised for adopting an inclusive understanding of the term transgender. The term refers broadly to people whose gender identity does not align with the sex assigned to them at birth. It is an umbrella term, not limited to specific socio-cultural communities such as [redacted], or people with intersex variations.

Under the current framework, the recognition of transgender identity is built on five key principles:

1. Self-identification
2. A simple administrative process
3. No compulsory medical procedures
4. Recognition of non-binary identities
5. Access to gender-affirming care

The [redacted], recognised these principles and provided limited protections to one of the largest transgender populations in the world.

The dismantles this model.

The statement of objects and reasons says, "It is the legislative policy to recognise a specific class of transgender persons, who face social issues, and to create a regime for their protection. The legislative policy was and is intended to protect only those who face severe social exclusion due to biological reasons for no fault of their own and no choice of their own."

But it is incorrect to say that the NALSA judgement, as well as the 2019 law, were formed solely for the "protection of a specific class of transgender persons." The 2019 Act, followed NALSA, to first and foremost:

1. define who a transgender person is,
2. Create administrative and other regulations for all transgender persons to access their rights as citizens of this country.
3. protect them all from discrimination

The proposed bill changes the intent of the earlier law. By eliminating 1 and 2 from the objectives of the law, it is discriminating against trans men, trans women, genderqueer people, and gender non-binary persons, because this is the only law that recognizes the category 'transgender person'.

And by doing so, the proposed bill is creating a deep lacuna in the law itself.

This bill rejects "self-perceived gender," but at the same time ignores the fact that you become a part of the communities mentioned ("hijras, kinnars, aravanis, and jogtas") based on self-perceived gender. In so doing, they deny the rights of trans men, trans women, genderqueer people, gender diverse people, and gender non-binary persons.

The amendment proposes to create a restricted category of transgender persons eligible for legal protection, while excluding many others. Yet the Ministry of Social Justice & Empowerment (MOSJE) has not released any criteria explaining how these classifications were developed.

Instead, the bill relies on vague terms such as "genuine oppressed persons" and "those in actual need of protection."

The government claims the amendment is necessary because the definition of “transgender” in Section 2(k) of the 2019 Act is vague.

The current definition, which allows self-identification as a legal right, emerged through:

1. The Expert Committee on Transgender Issues (2013)
2. the Supreme Court’s NALSA judgment (2014)
3. years of community mobilisation across India during debates over the 2016 draft bill

The government’s claim ignores the history of how this definition came into being.

By changing the very definition of “transgender persons,” this Bill is in violation of the Supreme Court Judgement, ignores International legal standards, and goes against the demands of the transgender movements in this country.

The Amendment Bill introduces _____ to the 2019 Act. Several key provisions raise serious constitutional and human rights concerns. Some of the most crucial ones are:

The bill shifts the power to recognise gender identity from individuals to a government-appointed medical board, thereby limiting the definition of transgender persons to a strictly biological understanding.

Mandatory medical certification and disclosure impinge on the right to dignity and bodily autonomy of a person because it forces individuals into physical examinations, often performed in horrifying conditions. The declaration of the medical report to obtain certification further infringes on the right to privacy granted by the Puttuswamy judgment.

The amendment drastically restricts the definition of transgender persons to a few socio-cultural identities, people with intersex variations, thereby excluding trans men and trans-masculine people, trans women and trans-feminine people who are not part of socio-cultural communities, non-binary individuals, genderqueer people, and gender-diverse communities across India. In doing so, it reduces complex lived realities of gender marginalisation to narrow biological criteria.

By including persons with intersex variations as completely under the definition of transgender persons and actually defining transgender persons as those with intersex variations, this Bill is violative of persons with intersex variations and transgender persons.

By grouping intersex people within a transgender framework, the law conflates sex characteristics with gender identity, which are separate issues. This approach prevents the recognition of intersex-specific human rights concerns, such as non-consensual “normalising” surgeries on intersex infants, medical secrecy, lack of informed consent, and the right to bodily autonomy

It further complicates the understanding by referring to incomprehensible clauses like “

either with or without consent.

The bill introduces a new criminal provision in Section 18, allowing imprisonment of up to five years for “alluring” or “forcing” someone to become transgender, despite no credible evidence that such conduct exists as a social pattern in India.

The provision could easily be misused to harass, target, and incarcerate individuals, communities, networks, and organisations, parents, and other supportive adults and service providers. The ‘socio-cultural communities’ who have been historically known to protect and nurture transgender individuals could be particularly at risk under this clause.

This harks back to colonial-era laws that treated gender-diverse communities as suspicious or criminal. Laws such as the Criminal Tribes Act, 1871, the Telangana Eunuchs Act 1919, the Habitual Offenders Act 1952 (and its amended versions at the state level), the Bombay Prevention of Begging Act 1959, and the Immoral Traffic (Prevention) Act 1956 historically targeted and harassed people who the bill refers to as ‘socio-cultural’ communities.

This directly contradicts the Government of India’s stated commitment to decolonising Indian law, and undermines the very purpose of the Transgender Persons (Protection of Rights) Act, 2019.

The Transgender Persons (Protection of Rights) Amendment Bill, 2026 threatens to undo a decade of legal progress and community struggle. In the name of protection it in fact deprives

many persons of their identities and rights. If at all it is meant to be a protective legislation, it needs to focus on the many substantiated recommendations around employment, education, and alleviation from violence made by the transgender movements and those given by the MoSJE.

We call on lawmakers to withdraw this amendment and uphold the constitutional rights, dignity, and autonomy of transgender persons in India.

In any amendment, we urge the government to

, which reflects both constitutional principles and international human rights standards.



IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
I.A. NO. _____ OF 2026
IN
WRIT PETITION (CIVIL) NO. _____ OF 2026
(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

LAXMI NARAYAN TRIPATHI & ANR.

...PETITIONERS / APPLICANTS

VERSUS

UNION OF INDIA & ANR.

...RESPONDENTS

APPLICATION FOR SEEKING STAY

MOST RESPECTFULLY SHOWETH:

1. The Petitioners/Applicants have filed the accompanying Writ Petition under Article 32 of the Constitution of India challenging the constitutional validity of the Transgender Persons (Protection of Rights) Amendment Act, 2026 (No. 3 of 2026) (hereinafter "the Impugned Amendment Act"), which received Presidential Assent on 30th March 2026 and was published in the Gazette of India Extraordinary, Part II, Section 1, bearing reference CG-DL-E-31032026-271438. This Application seeks a stay of the Impugned Amendment Act, or such provisions thereof as this Hon'ble Court may deem fit, pending the hearing and final disposal of the Writ

Petition, on the grounds that the three-fold test for the grant of a stay which is prima facie case, balance of convenience, and irreparable injury, is satisfied with the fullest force.

2. The detailed constitutional grounds are set out in the accompanying Writ Petition. For the limited purpose of this Application, the Applicants highlight the following as constituting an overwhelming prima facie case:
 - a. The new Section 2(k), substituted by the Impugned Amendment Act, replaces the self-identification-based definition of "transgender person" — which NALSA declared a fundamental right under Article 21 — with a biologized definition requiring membership in specified socio-cultural groups or possession of a diagnosable congenital condition. The Proviso to Section 2(k) expressly excludes "persons with self-perceived sexual identities.
 - b. Section 3 of the Impugned Amendment Act simply omits Section 4(2) of the Principal Act — the statutory codification of the right to self-perceived gender identity — thereby legislatively abrogating a fundamental right affirmed by this Court. Ordinary legislation cannot abrogate a fundamental right.
 - c. Section 4 of the Impugned Amendment Act re-introduces a medical board recommendation as a condition precedent to the issuance of a transgender identity certificate under Section 6(1). NALSA, at paragraph 76, expressly held that requiring medical certification as a condition for legal gender recognition violates the right to privacy and dignity. The medical gatekeeping NALSA struck down has been expressly resurrected.

- d. The new Section 7(1A) requires every medical institution that performs gender reassignment surgery to report the patient's details to the District Magistrate and the government-appointed medical board, without the patient's consent, without a data protection framework, and without independent oversight.
 - e. The new Sections 18(g) and 18(h) penalise compelling a person to 'dress, present, or conduct themselves outwardly as a transgender person', a phrase so vague and undefined that it creates a direct chilling effect on the free expression of authentic transgender identity.
 - f. The Proviso to Section 2(k) operates retroactively, it declares that self-perceived identities 'shall not include, nor shall ever have been so included' within the definition, thereby purporting to strip legal status from thousands of transgender persons who obtained certificates between January 2020 and March 2026 under the original self-identification-based definition. Retrospective legislation that strips vested rights is manifestly arbitrary.
 - g. Therefore, in sum, the Impugned Amendment Act is prima facie a legislative nullification of a binding constitutional judgment of this Court.
3. The following harms will materialise from the moment the Impugned Amendment Act is notified into force, and cannot be remedied by final relief at the conclusion of proceedings:
 - a. Medical Surveillance is Immediate and Irreversible: The mandatory reporting obligation under Section 7(1A) will operate from

commencement. Every transgender person who undergoes surgery will have their medical details transmitted to government authorities without consent. The deterrence this creates, causing persons to forgo necessary gender-affirming surgery out of fear of state surveillance, produces irreversible health consequences including severe psychological distress, depression, and suicidality that no judicial order can undo years later.

- b. Existing Certificate Holders Face Immediate Jeopardy: The retroactive Proviso to Section 2(k) creates, from commencement, immediate and concrete legal uncertainty for every person who holds a transgender identity certificate issued under the original self-identification-based definition. Government departments, employers, and institutions may treat these certificates as void. The disruption to the daily lives of these persons, their access to employment, housing, healthcare, and social security, is irreversible while litigation pend.
- c. The Hijra Guru-Chela System Faces Immediate Criminal Jeopardy: Applicant No. 1, as Acharya Mahamandaleshwar of the Kinnar Akhara, presides over a community structured around the sacred guru-chela relationship and the 'reet' initiation ceremony. The new Section 2(k)(ii), which frames transgender identity as something that can be 'compelled' by a 'procedure or otherwise,' exposes the traditional Hijra initiation to potential criminal characterisation as 'compelling' a person into a transgender identity. The chilling effect on the functioning of this ancient institution is immediate, and the

destruction of the guru-chela bonds that would result cannot be restored by a final order.

- d. Applicant No. 2's Statutory Functions are Disrupted: Applicant No. 2 is a Member of the National Council for Transgender Persons (Western Region) constituted under Section 16 of the Principal Act. The Impugned Amendment Act amends Section 16(2)(f), directly altering the Council's composition, creating uncertainty about the lawful constitution of the only statutory body for transgender representation at the national level.
 - e. Chilling Effect on Identity Expression: The vagueness of Sections 18(g) and 18(h) operates to suppress transgender expression from the moment of commencement. A right chilled in practice is a right extinguished: Shreya Singhal, supra. The years of suppressed identity expression cannot be recovered.
4. That the balance of convenience is overwhelmingly in the Applicants' favour. If a stay is refused: hundreds of thousands of transgender persons face immediate harm, legal uncertainty, medical surveillance, and chilling effects on their identity expression and healthcare access. If a stay is granted: the Respondents are required only to administer the Principal Act as it stood on 29th March 2026 — a law that has been in operation for over six years without administrative difficulty. No financial loss, no constitutional vacuum, no national security consideration, and no emergency of any kind arises from granting the stay. The Respondents suffer no prejudice; the Applicants and the transgender community of India suffer profound, daily, and irreversible harm if it is refused.
 5. That the following circumstances render the present Application urgent:

- a. A community that has lived under colonial criminalisation and post-colonial stigmatization does not await a gazette notification to feel the weight of a law that frames their identity as victimhood. Transgender persons, their families, healthcare providers, and the Hijra community are already modifying their behaviour in anticipation of commencement.
- b. The Impugned Amendment Act directly contravenes NALSA — a binding constitutional judgment of this Court. When Parliament legislates in direct contradiction of a constitutional judgment, this Court's obligation under Article 32 requires it to intervene at the earliest opportunity. To permit such legislation to operate, even temporarily, would diminish the authority and efficacy of constitutional adjudication.
- c. There is no efficacious alternative remedy. This Court has original jurisdiction under Article 32 over fundamental rights violations. The scale of the harm — affecting the entire transgender community of India — and the direct contradiction of a judgment of this Court leave no other forum competent to provide adequate relief.

PRAYER

In view of the foregoing, the Applicants most respectfully pray that this Hon'ble Court may be pleased to:

- A. Issue an ex parte ad interim stay of the operation, commencement, and enforcement of the Transgender Persons (Protection of Rights) Amendment Act, 2026 (No. 3 of 2026) in its entirety, pending service of notice and hearing of this Application;

B. Grant such other and further relief as this Hon'ble Court may deem just and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE APPLICANTS, AS IN DUTY BOUND, SHALL EVER PRAY.

FILED BY

AADHAR NAUTIYAL

ADVOCATE FOR THE PETITIONERS

NEW DELHI

02.03.2026

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

I.A No. of 2026

IN

**WRIT PETITION (CIVIL) NO. _____ OF 2026
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

IN THE MATTER OF:

LAXMI NARAYAN TRIPATHI & ANR.

...PETITIONER(S)

VERSUS

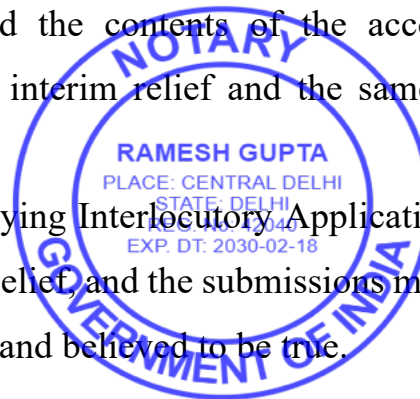
UNION OF INDIA & ANR.

...RESPONDENT(S)

AFFIDAVIT

I, Zainab Javid Patel, C/o Sebastian Noronha, Transgender Woman, R/o 1/40, Iqbal Manzil (Wahid House), Dr. Ambedkar Road, Parel, Mumbai, Maharashtra, Petitioner No. 2 in the accompanying Writ Petition, do hereby solemnly affirm and state as under :-

1. That I am the Petitioner No. 2 in the accompanying Writ Petition and the Applicant in the accompanying Interlocutory Application seeking interim relief, and being well acquainted with the facts and circumstances of the case, I am competent to swear this Affidavit.
2. That I have read and understood the contents of the accompanying Interlocutory Application seeking interim relief and the same has been drafted under my instructions.
3. That the contents of the accompanying Interlocutory Application are true and correct to my knowledge and belief, and the submissions made therein are based on legal advice received and believed to be true.



Registry No: ENOTARY/ 02.04.2026/ 9kule9

Date: Thu, 02 Apr, 2026, 11:18:31 am IST

I Identify the deponent(s) who have electronically signed this document using Aadhaar esign.
Digitally Notaried in Delhi.

4. That the interim relief prayed for is necessary in the interest of justice and in order to protect the rights of the Petitioners during the pendency of the present Writ Petition.
5. That no part of the contents of the accompanying application is false and nothing material has been concealed therefrom.

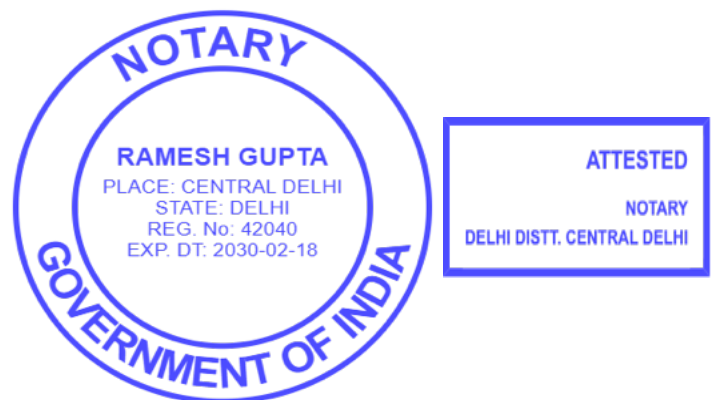
DEPONENT

VERIFICATION

I, the Deponent above named, do hereby verify the contents of the abovementioned petition as being true and correct to the best of knowledge and belief, and state that nothing material has been concealed therefrom.

Verified at New Delhi on this Day of April, 2026

DEPONENT



Registry No: ENOTARY/ 02.04.2026/ 9kule9

Date: Thu, 02 Apr, 2026, 11:18:31 am IST

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The Notaries Rules, 1956
FORM XV - NOTARIAL REGISTER

[(See rule 11(2))]

Register Serial No.	ENOTARY/ 02.04.2026/ 9kule9
Enotary Document No.	ENOTARY/ 02.04.2026/ 9kule9
Date	2026-04-02
Name of Notarial Act	AFFIDAVIT OR ADMINISTERING OATH
Name of Executant / Person Concerned	zainab javid patel
Address of Executant / Person Concerned	1/40,iqbal manzil, dr.ambdekar road,parel,mumbai
Contents of Document	affidavit ia for writ in supreme court
Notarial Fee-Stamp Affixed	NIL
Prescribed Fee	INR 35/-
Fee Charged	INR 35/-
Sl. No. of Receipt Book	ENOTARY/ 02.04.2026/ 9kule9
Signature of Person Concerned: _____	
Signature of Notary: _____	



Registry No: ENOTARY/ 02.04.2026/ 9kule9

Date: Thu, 02 Apr, 2026, 11:18:31 am IST

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Registry No: ENOTARY/ 02.04.2026/ 9kule9

Date: Thu, 02 Apr, 2026, 11:18:31 am IST

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Registry No: ENOTARY/ 02.04.2026/ 9kule9

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Registry No: ENOTARY/ 02.04.2026/ 9kule9

Date: Thu, 02 Apr, 2026, 11:18:31 am IST

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**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

I.A No. of 2026

IN

**WRIT PETITION (CIVIL) NO. _____ OF 2026
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

IN THE MATTER OF:

LAXMI NARAYAN TRIPATHI & ANR.

...PETITIONER(S)

VERSUS

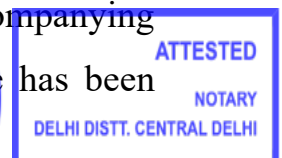
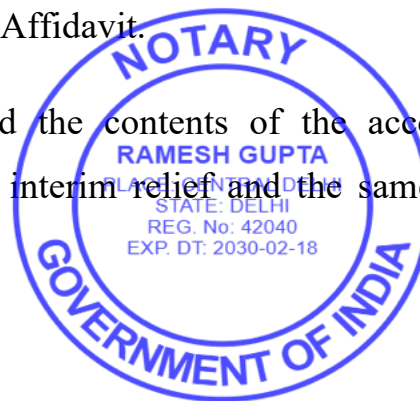
UNION OF INDIA & ANR.

...RESPONDENT(S)

AFFIDAVIT

I, Laxmi Narayan Tripathi, D/o Late Shri Chandradev Tripathi, Transgender Woman, Hijra Guru, Acharya Mahamandaleshwar, Kinnar Akhara, Founder, Astitva Trust, R/o 303, Poonam Apartment, Pokharan Road No. 1, Sahak Nagar, Shastri Nagar, Thane, Maharashtra – 400606, the Petitioner No. 1 in the accompanying Writ Petition, do hereby solemnly affirm and state as under:-

1. That I am the Petitioner No. 1 in the accompanying Writ Petition and the Applicant in the accompanying Interlocutory Application seeking interim relief, and being well acquainted with the facts and circumstances of the case, I am competent to swear this Affidavit.
2. That I have read and understood the contents of the accompanying Interlocutory Application seeking interim relief and the same has been drafted under my instructions.



Registry No: ENOTARY/ 02.04.2026/ 7aguvf

Date: Thu, 02 Apr, 2026, 11:48:00 am IST

I Identify the deponent(s) who have electronically signed this document using Aadhaar esign.
Digitally Notaried in Delhi.

3. That the contents of the accompanying Interlocutory Application are true and correct to my knowledge and belief, and the submissions made therein are based on legal advice received and believed to be true.
4. That the interim relief prayed for is necessary in the interest of justice and in order to protect the rights of the Petitioners during the pendency of the present Writ Petition.
5. That no part of the contents of the accompanying application is false and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

I, the Deponent above named, do hereby verify the contents of the abovementioned petition as being true and correct to the best of knowledge and belief, and state that nothing material has been concealed therefrom.

Verified at New Delhi on this Day of April, 2026

DEPONENT



Registry No: ENOTARY/ 02.04.2026/ 7aguvf

Date: Thu, 02 Apr, 2026, 11:48:00 am IST

I Identify the deponent(s) who have electronically signed this document using Aadhaar esign.
Digitally Notaried in Delhi.

The Notaries Rules, 1956
FORM XV - NOTARIAL REGISTER

[(See rule 11(2)]

Register Serial No.	ENOTARY/ 02.04.2026/ 7aguvf
Enotary Document No.	ENOTARY/ 02.04.2026/ 7aguvf
Date	2026-04-02
Name of Notarial Act	AFFIDAVIT OR ADMINISTERING OATH
Name of Executant / Person Concerned	laxmi narayan tripathi
Address of Executant / Person Concerned	303,poonam apartment, Pokhran roan no. 1, shark nagar, Shastri nagar, thane, Maharashtra - 400606
Contents of Document	affidavit for I.A in supreme court
Notarial Fee-Stamp Affixed	NIL
Prescribed Fee	INR 35/-
Fee Charged	INR 35/-
Sl. No. of Receipt Book	ENOTARY/ 02.04.2026/ 7aguvf
Signature of Person Concerned:	_____
Signature of Notary:	_____



Registry No: ENOTARY/ 02.04.2026/ 7aguvf

Date: Thu, 02 Apr, 2026, 11:48:00 am IST

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Registry No: ENOTARY/ 02.04.2026/ 7aguvf

Date: Thu, 02 Apr, 2026, 11:48:00 am IST

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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
I.A. NO. _____ OF 2026
IN
WRIT PETITION (CIVIL) NO. _____ OF 2026
(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

LAXMI NARAYAN TRIPATHI & ANR.

...PETITIONERS / APPLICANTS

VERSUS

UNION OF INDIA & ANR.

...RESPONDENTS

APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY
OF ANNEXURES P-__ TO P-

MOST RESPECTFULLY SHOWETH:

1. That the Petitioners have filed the accompanying Writ Petition under Article 32 of the Constitution of India challenging the action/inaction impugned therein.
2. That the Petitioners are filing along with the present Writ Petition copies of Annexures P-__ to P-__ , which are true copies of their respective originals.
3. That the certified copies of Annexures P-__ to P-__ are not being filed at present due to paucity of time and for the reasons stated in the accompanying affidavit, and the Petitioners seek exemption from filing the same at this stage.

4. That no prejudice would be caused to the Respondents if the present exemption is granted, as the Petitioners have filed true copies of the said annexures for the present purposes.
5. That the Petitioners undertake to file the certified copies of Annexures P-__ to P-__ , as and when available, or as and when directed by this Hon'ble Court.
6. That the present application is bona fide and in the interest of justice.

PRAYER

In the premises aforesaid, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Exempt the Petitioners from filing certified copies of Annexures P-__ to P-__ at the present stage; and
- b. Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

AADHAR NAUTIYAL
ADVOCATE FOR THE PETITIONERS

NEW DELHI

02.04.2026

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

I.A No. of 2026

IN

**WRIT PETITION (CIVIL) NO. _____ OF 2026
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

IN THE MATTER OF:

LAXMI NARAYAN TRIPATHI & ANR.

...PETITIONER(S)

VERSUS

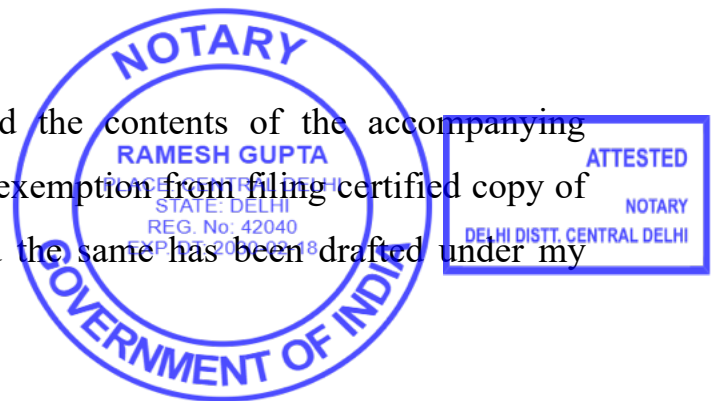
UNION OF INDIA & ANR.

...RESPONDENT(S)

AFFIDAVIT

I, Zainab Javid Patel, C/o Sebastian Noronha, Transgender Woman, R/o 1/40, Iqbal Manzil (Wahid House), Dr. Ambedkar Road, Parel, Mumbai, Maharashtra, Petitioner No. 2 in the accompanying Writ Petition, do hereby solemnly affirm and state as under :-

1. That I am the Petitioner No. 2 in the accompanying Writ Petition and the Applicant in the accompanying Interlocutory Application seeking exemption from filing certified copy of Annexures P-__ to P-__ , and being well acquainted with the facts and circumstances of the case, I am competent to swear this Affidavit.
2. That I have read and understood the contents of the accompanying Interlocutory Application seeking exemption from filing certified copy of Annexures P-__ to P-__ and the same has been drafted under my instructions.



Registry No: ENOTARY/ 02.04.2026/ secfai

Date: Thu, 02 Apr, 2026, 11:08:59 am IST

I Identify the deponent(s) who have electronically signed this document using Aadhaar esign.
Digitally Notaried in Delhi.

3. That the contents of the accompanying application are true and correct to my knowledge and belief.
4. That the certified / authenticated copies of Annexures P-__ to P-__ could not be filed at present due to paucity of time and/or for the reasons stated in the application; however, the copies filed along with the Writ Petition are true copies of their respective originals.
5. That the Applicant undertakes to file the certified / authenticated copies of the said annexures, if so directed by this Hon'ble Court.
6. That no part of the contents of the accompanying application is false and nothing material has been concealed therefrom

DEPONENT

VERIFICATION

I, the Deponent above named, do hereby verify the contents of the abovementioned petition as being true and correct to the best of knowledge and belief, and state that nothing material has been concealed therefrom.

Verified at New Delhi on this Day of April, 2026

DEPONENT



Registry No: ENOTARY/ 02.04.2026/ secfai

Date: Thu, 02 Apr, 2026, 11:08:59 am IST

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The Notaries Rules, 1956
FORM XV - NOTARIAL REGISTER

[(See rule 11(2))]

Register Serial No.	ENOTARY/ 02.04.2026/ secfai
Enotary Document No.	ENOTARY/ 02.04.2026/ secfai
Date	2026-04-02
Name of Notarial Act	AFFIDAVIT OR ADMINISTERING OATH
Name of Executant / Person Concerned	zainab javid patel
Address of Executant / Person Concerned	1/40,iqbal manzil,dr.ambedkar road,parel Mumbai, Maharashtra
Contents of Document	affidavit for i.a
Notarial Fee-Stamp Affixed	NIL
Prescribed Fee	INR 35/-
Fee Charged	INR 35/-
Sl. No. of Receipt Book	ENOTARY/ 02.04.2026/ secfai
Signature of Person Concerned:	_____
Signature of Notary:	_____



Registry No: ENOTARY/ 02.04.2026/ secfai

Date: Thu, 02 Apr, 2026, 11:08:59 am IST

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Registry No: ENOTARY/ 02.04.2026/ secfai

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**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

I.A No. of 2026

IN

**WRIT PETITION (CIVIL) NO. _____ OF 2026
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

IN THE MATTER OF:

LAXMI NARAYAN TRIPATHI & ANR.

...PETITIONER(S)

VERSUS

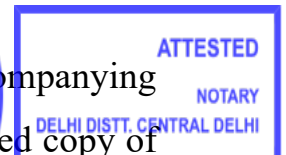
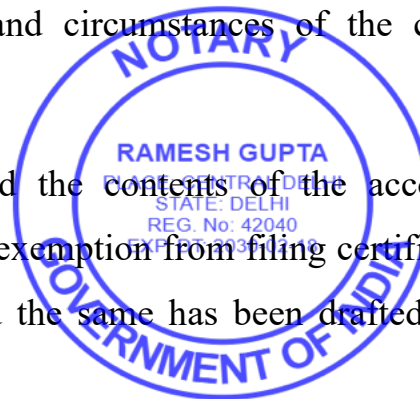
UNION OF INDIA & ANR.

...RESPONDENT(S)

AFFIDAVIT

I, Laxmi Narayan Tripathi, D/o Late Shri Chandradev Tripathi, Transgender Woman, Hijra Guru, Acharya Mahamandaleshwar, Kinnar Akhara, Founder, Astitva Trust, R/o 303, Poonam Apartment, Pokharan Road No. 1, Sahak Nagar, Shastri Nagar, Thane, Maharashtra – 400606, the Petitioner No. 1 in the accompanying Writ Petition, do hereby solemnly affirm and state as under:-

1. That I am the Petitioner No. 1 in the accompanying Writ Petition and the Applicant in the accompanying Interlocutory Application seeking exemption from filing certified copy of Annexures P-__ to P-__, and being well acquainted with the facts and circumstances of the case, I am competent to swear this Affidavit.
2. That I have read and understood the contents of the accompanying Interlocutory Application seeking exemption from filing certified copy of Annexures P-__ to P-__ and the same has been drafted under my instructions.



Registry No: ENOTARY/ 02.04.2026/ sfjutg

Date: Thu, 02 Apr, 2026, 11:58:34 am IST

I Identify the deponent(s) who have electronically signed this document using Aadhaar esign.
Digitally Notaried in Delhi.

3. That the contents of the accompanying application are true and correct to my knowledge and belief.
4. That the certified / authenticated copies of Annexures P-__ to P-__ could not be filed at present due to paucity of time and/or for the reasons stated in the application; however, the copies filed along with the Writ Petition are true copies of their respective originals.
5. That the Applicant undertakes to file the certified / authenticated copies of the said annexures, if so directed by this Hon'ble Court.
6. That no part of the contents of the accompanying application is false and nothing material has been concealed therefrom

DEPONENT

VERIFICATION

I, the Deponent above named, do hereby verify the contents of the abovementioned petition as being true and correct to the best of knowledge and belief, and state that nothing material has been concealed therefrom.

Verified at New Delhi on this Day of April, 2026

DEPONENT



Registry No: ENOTARY/ 02.04.2026/ sfjutg

Date: Thu, 02 Apr, 2026, 11:58:34 am IST

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Digitally Notaried in Delhi.

The Notaries Rules, 1956
FORM XV - NOTARIAL REGISTER

[(See rule 11(2)]

Register Serial No.	ENOTARY/ 02.04.2026/ sfjutg
Enotary Document No.	ENOTARY/ 02.04.2026/ sfjutg
Date	2026-04-02
Name of Notarial Act	AFFIDAVIT OR ADMINISTERING OATH
Name of Executant / Person Concerned	laxmi narayan tripathi
Address of Executant / Person Concerned	303,poonam apartment, Pokhara roan no. 1, shark nagar, Shastri nagar, thane, Maharashtra, 400606
Contents of Document	affidavit for I.A in supreme court
Notarial Fee-Stamp Affixed	NIL
Prescribed Fee	INR 35/-
Fee Charged	INR 35/-
SI. No. of Receipt Book	ENOTARY/ 02.04.2026/ sfjutg
Signature of Person Concerned:	_____
Signature of Notary:	_____



Registry No: ENOTARY/ 02.04.2026/ sfjutg

Date: Thu, 02 Apr, 2026, 11:58:34 am IST

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Registry No: ENOTARY/ 02.04.2026/ sfjutg

Date: Thu, 02 Apr, 2026, 11:58:34 am IST

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Registry No: ENOTARY/ 02.04.2026/ sfjutg

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Date: Thu, 02 Apr, 2026, 11:58:34 am IST

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IN THE SUPREME COURT OF INDIA
(ORIGINAL JURISDICTION)
[UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA]
Under _____
WRIT PETITION (C) NO. _____ OF 2026

IN THE MATTER OF

Laxmi Narayan Tripathi & Anr.

...PETITIONER

Versus

Union of India & Anr.

...RESPONDENTS

VAKALATNAMA

I, Laxmi Narayan Tripathi, the Petitioner No. 1 above-named, do hereby appoint and retain AADHAR NAUTIYAL, Advocate-On-Record of the Hon'ble Supreme Court of India to act and appear for me in the above Petition, and/or on my behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same, or any decree passed therein, including proceedings in taxation and application for Review, to file and obtain and return documents, to deposit or receive money on my behalf in the said Petition, Reference and in application of Review, and to represent me and take all necessary steps on my behalf in the above matter. I agree to ratify all acts done by the aforesaid Advocate in pursuance of this authority.

Dated this the 2nd Day of April , 2026.

Accepted, identified, certified.

(AADHAR NAUTIYAL)
Advocate for the Petitioner

Laxmi Narayan Tripathi

Laxmi
Petitioner

MEMO OF APPEARANCE

To,
The Registrar
Hon'ble Supreme Court of India
New Delhi

Respected Sir,

Kindly enter my appearance on behalf of the Petitioner in the above-mentioned matter.

Dated this the 2nd Day of April , 2026.

Yours faithfully

AADHAR NAUTIYAL

Code No. 3996

Chamber No. 734, D- Block,

Lawyers Chamber Block, Administrative Buildings Complex,

Supreme Court, New Delhi-110001

+91-9205109664

aadharnautiyal44@gmail.com