

IN THE SUPREME COURT OF INDIA
UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA 1950
CIVIL ORIGINAL JURISDICTION
PUBLIC INTEREST LITIGATION
WRIT PETITION (CIVIL) NO..... OF 2021

IN THE MATTER OF:

Kinner Maa EkSamajik Sanstha Trust
Rep.by.President, Salma Umar Khan Sakerker PETITIONER

VERSUS

UNION OF INDIA & ORSRESPONDENTS

PAPER BOOK
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ADVOCATE FOR PETITIONER :NARENDER KUMAR VERMA

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LISTING PROFORMA
IN THE SUPREME COURT OF INDIA

A1

SECTION: PIL

The case pertains to:

- | | | | |
|--------------------------|--------------------------------------|---|---------------------|
| <input type="checkbox"/> | Central Act (Title) | : | Indian constitution |
| <input type="checkbox"/> | Section/ Article | : | 32 |
| <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. |
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| <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) | : | NA |
| <input type="checkbox"/> | High Court (Name) | : | NA |
| <input type="checkbox"/> | Name of Judges | : | NA |
| <input type="checkbox"/> | Tribunal / Authority (Name) | : | N.A. |
-
- | | | | |
|----|----------------------------------|---|---|
| 1. | Nature of the matter | : | CIVIL |
| 2. | (a) Petitioner / Appellant No.1 | : | Kinner Maa EkSamajik Sanstha
TrustRep.by.President, Salma Umar Khan Sakerker |
| | (b) Email I.D. | : | jayasukin@gmail.com |
| | (c) Mobile phone number | : | 9650134838 |
| 3. | (a) Respondent No.1 | : | UNION of India |
| | (b) Email I.D. | : | N.A. |
| | (c) Mobile phone number | : | N.A. |
| 4. | (a) Main category classification | : | 18 civil |
| | (b) Sub-classification | : | 1807 others |

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 matter pending**
7. **Criminal Matters:**
- (a) Whether accused / convict has surrendered : N.A.
- (b) FIR No. : N.A.
 Date : N.A.
- (c) Police Station : N.A.
- (d) Sentence Awarded : N.A.
- (e) Sentence Undergone : N.A.
8. **Land Acquisitions Matters:**
- (a) Date of Section 4 notification : N.A.
- (b) Date of Section 6 notification : N.A.
- (c) Date of Section 17 notification : N.A.
9. **Tax matters:**
- State the tax effect : N.A.
10. **Special Category** : Senior citizen > 65 years
 (first Petitioner / Appellant only) SC / ST
 Woman / Child
 Disabled
 Legal Aid case
 In custody } **N.A.**
11. Vehicle Number (in cases of Motor Accident Claim matters) : N.A.

Date: 1.3.2021

NARENDER KUMAR VERMA
ADVOCATE FOR PETITIONER
C.C. NO.2103 ,PHONE. 9643517980, SCBA-LIB-1

SYNOPSIS

That the present Writ Petition is being filed as Public Interest Litigation, under Article 32 of the Constitution of India by the petitioner seeking issue writ of mandamus or any other appropriate Writ or Order or Direction direction to Respondent No.1 to No.39 to established Transgender Welfare Board to address the social welfare issues of Transgender person and Appoint a standing committee comprising Station House Officers and human rights and social activists to promptly investigate reports of gross abuses by the police against Transgender person.

Petitioner is social worker and an independent writer and activist and have presented many valuable things for the betterment of humanity and the goodness of the world.

Transgender people should be treated with the same dignity and respect as anyone else and be able to live, and be respected, according to their gender identity. But transgender people often face serious discrimination and mistreatment at work, school, and in their families and communities.

For example, transgender people are more likely to:

- Be fired or denied a job
- Face harassment and bullying at school
- Become homeless or live in extreme poverty
- Be evicted or denied housing or access to a shelter
- Be denied access to critical medical care
- Be incarcerated or targeted by law enforcement
- Face abuse and violence

Living without fear of discrimination and violence and being supported and affirmed in being who they are is critical for allowing transgender people to live healthy, safe, and fulfilling lives. In recent years, laws, policies and attitudes around the country have changed significantly, allowing more transgender people than ever to live fuller, safer, and healthier lives.

The transgender movement is part of a long tradition of social justice movements of people working together to claim their civil rights and better opportunities in this country. These challenges are connected. Discrimination that transgender people of color face is compounded by racism, and lower-income transgender people face economic challenges and classism.

LIST OF DATE AND EVENT

- 2014** While the decision in the *NALSA* petition was still pending, an Expert Committee Report on issues relating to transgender people was published in January 2014, after consultations by the Ministry of Social Justice and Empowerment with transgender people in August 2013
- 15.4.2014** Supreme Court of India delivered its judgment in *National Legal Services Authority v. Union of India (NALSA v. UOI)*, in which it recognised the rights of transgender people in India and laid down a series of measures for securing transgender people's rights by mandating the prohibition of discrimination, recommending the creation of welfare. Policies.

2019

The statutory provisions of the 2019 act prohibit discrimination against transgender people. Similar to the 2018 bill, the 2019 act includes intersex people, hijras, jogtas, and kinnars within its definition of transgender people, as well as trans-men, trans-women, and genderqueers, though these latter terms are undefined. Both the 2019 act as well as the 2018 bill describe a transgender person as someone whose gender does not match with the gender assigned to them.

1.3.2021

Hence This Writ Petition

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISIDICITION
UNDER ARTICLE 32 OF THE CONSTITUTION INDIA 1950
PUBLIC INTEREST LITIGATION
WRIT PETITION (CIVIL) No..... of 2021

IN THE MATTER OF:

Kinner Maa EkSamajik Sanstha Trust
Rep.by.President,
Salma Umar Khan Sakerker
R/6, Gadge Maharaj Colony,
Amrut Nagar Park Site,
Ghatkoper -W, Mumbai,
Maharashtra – 400086.

..... Petitioner

Vs

1. The Union of India,
Rep. by its Home Secretary,
Ministry of Home Affairs,
North Block, New Delhi
2. The Union of India,
Rep. by Secretary,
Ministry of Law and Justice,
Union Secretariat,
New Delhi .
3. The Union of India,
Rep. by Secretary,
Ministry of Agriculture & Co- Operation

115, Krishi Bhawan,
New Delhi – 110001.

4. The Union of India,
Rep. by Secretary,
Ministry of Agriculture & Commerce
107, Krishi Bhawan,
New Delhi – 110001.
5. The State of Andhra Pradesh Through the Secretary
Home Department Secretariat,
Amaravathi, Andhra Pradesh.
6. The State of Arunachal Pradesh
Through the Secretary
Home Department Secretariat
Itanagar, Arunachal Pradesh.
7. The State of Assam Through the Secretary
Home Department Secretariat,
Dispur, Assam.
8. The State of Bihar Through the Secretary
Home Department Secretariat Patna, Bihar.
9. The State of Chhattisgarh Through the Secretary
Home Department Secretariat, Raipur, Chhattisgarh.
10. The State of Goa Through the Secretary
Home Department Secretariat, Panaji, Goa.
11. The State of Gujarat Through the Secretary
Home Department Secretariat, Gandhinagar, Gujarat.
12. The State of Haryana Through the Secretary

Home Department Secretariat, Chandigarh, Haryana.

13. The State of Himachal Pradesh Through the Secretary
Home Department Secretariat,
Shimla, Himachal Pradesh.
14. The State of Jammu & Kashmir
Through the Secretary
Home Department Secretariat, Srinagar,
Jammu & Kashmir.
15. The State of Jharkhand Through the Secretary
Home Department Secretariat, Ranchi, Jharkhand.
16. The State of Karnataka Through the Secretary
Home Department Secretariat, Bangalore, Karnataka.
17. The State of Kerala Through the Secretary
Home Department Secretariat,
Thiruvananthapuram, Kerala.
18. The State of Madhya Pradesh Through the Secretary
Home Department Secretariat,
Bhopal, Madhya Pradesh.
19. The State of Maharashtra Pradesh Through the
Secretary, Home Department Secretariat, Mumbai,
Maharashtra Pradesh.
20. The State of Manipur Through the Secretary
Home Department Secretariat, Imphal, Manipur.
21. The State of Meghalaya Through the Secretary
Home Department Secretariat, Shillong, Meghalaya.
22. The State of Mizoram Through the Secretary

Home Department Secretariat, Aizawl, Mizoram.

23. The State of Nagaland Through the Secretary
Home Department Secretariat, Kohima, Nagaland.
24. The State of Odisha (Orissa) Through the Secretary
Home Department Secretariat,
Bhubaneshwar, Odisha
25. The State of Punjab Through the Secretary
Home Department Secretariat, Chandigarh, Punjab.
26. The State of Rajasthan Pradesh
Through the Secretary
Home Department Secretariat,
Jaipur, Rajasthan Pradesh.
27. The State of Sikkim Through the Secretary
Home Department, Secretariat, Gangtok, Sikkim.
28. The State of Tamil Nadu Through the Secretary
Home Department Secretariat, Chennai, Tamil Nadu.
29. The State of Telangana Through the Secretary
Home Department Secretariat,
Hyderabad, Telangana.
30. The State of Tripura Through the Secretary
Home Department Secretariat, Agartala, Tripura.
31. The State of Uttar Pradesh Through the Secretary
Home Department Secretariat, Lucknow,
Uttar Pradesh.

32. The State of Uttarakhand Through the Secretary
Home Department Secretariat,
Dehradun, Uttarakhand.
33. The State of West Bengal Through the Secretary
Home Department Secretariat, Kolkata, West Bengal.
34. The State of Chandigarh Through the Secretary
Home Department Secretariat, Chandigarh.
35. The State of Dadra and Nagar Haveli
Through the Secretary
Home Department Secretariat, Silvassa,
Dadra and Nagar Haveli.
36. The State of Daman and Diu Through the Secretary
Home Department Secretariat, Daman,
Daman and Diu.
37. The State of Lakshadweep Through the Secretary
Home Department Secretariat,
Kavaratti, Lakshadweep.
38. The State of Delhi Through the Secretary
Home Department Secretariat, Delhi.
39. The State of Puducherry Through the Secretary
Home Department Secretariat,
Pondicheery, Puducherry.

..... Respondents

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA IN THE NATURE OF A PUBLIC
INTEREST LITIGATION SEEKING AN APPROPRIATE
WRIT IN THE NATURE OF MANDAMUS.**

TO,

THE HON'BLE CHIEF JUSTICE AND
THE OTHER COMPANION JUDGES OF
THE HON'BLE SUPREME COURT OF INDIA

HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:-

1. That the present Writ Petition is being filed as Public Interest Litigation, under Article 32 of the Constitution of India by the petitioner seeking issue writ of mandamus or any other appropriate Writ or Order or Direction or any suggestion or observation or particularly in the nature of Writ by giving direction to Respondent No.1 to No.39 to established Transgender Welfare Board to address the social welfare issues of Transgender person and Appoint a standing committee comprising Station House Officers and human rights and social activists to promptly investigate reports of gross abuses by the police against Transgender person.

2. Transgender people have suffered from discrimination for ages in the matters of housing, health, education and employment. The discrimination suffered by them emanates

from the social stigma and isolation that they suffer from lack of resource which were provided for Transgender people. The transgender community faces stigma and discrimination and therefore has fewer opportunities as compared to others. They are hardly educated as they are not accepted by the society and therefore do not receive proper schooling. Even if they are enrolled in an educational institute, they face harassment and are bullied every day and are asked to leave the school or they drop out on their own. It is because of this that they take up begging and sex work.

Transgender people are deprived of social and cultural participation and hence they have restricted access to education, health care and public places which further deprives them of the Constitutional guarantee of equality before law and equal protection of laws.

That the transgender community are facing neglect, isolation, insult, social ostracisation are due to transprejudice that runs deep in the society. Transgenders are still considered untouchable in India.

Transgender community is an isolated and a highly ostracized community. They don't have a family to

look after them. Many transgender don't have Adhar card or rashan card etc to avail relief measures and government schemes. They are a scattered and insecure community which makes their situation alarming

That the Parliament passed the Transgender Persons (Protection of Rights) Bill which was enacted following this Hon'ble Court judgement in the historic NALSA judgment. This may have seemed a significant and joyous occasion. But for members of the community it only served to partially address the problems faced by the community. Moreover the state has not shown the intention to see that its intention to protect the rights of the Transgender community not only legislated but seen to be done practically. That inspite of the Trans Act, the community continue to suffer the age old neglect and abuse at the hands of the state authorities and the society as a whole.

3. That the Bill passed by Parliament betrays the rights assured by the verdict. The Petitioner would like bring to the attention of this Hon'ble Court at least five key flaws.

- a) First, despite the SC verdict, it requires a trans person to be certified as trans by a district magistrate. Further, until and unless the person undergoes sex reassignment

surgery, the certificate will only recognise the person as transgender and not the gender they identify as.

- b) Second, it conflates trans persons and inter-sex persons.
- c) Third, it outlaws discrimination against trans persons but provides no penalties against such discrimination.
- d) Fourth, it clubs various forms of violence—from emotional to sexual abuse—under one head with a penalty of six months to two years, making it evident that the state believes sexual violence against trans persons is a crime of less gravity than against cisgender women.
- e) Fifth, despite the verdict's call for reservations, the Bill makes no such provisions.

4. That the 2019 Act gives the district magistrate (DM) the power to recognise a person as trans, while the NALSA judgment allowed self identification of gender. The NALSA judgment had further said that any insistence on SRS (sex reconstruction surgery) was immoral and illegal. It stressed that self-determination of gender is integral to one's personality and dignity. However, the 2019 Act specifies that to identify as male or as female, one must supply proof of surgery to the

magistrate. Activists say this gives immense power to the DM, leading to the possibility of arbitrariness and misuse.

5. That the meaning and implication of the term 'self-perceived gender identity' is unclear in the bill. The Bill states that a person will be recognised as 'transgender' on the basis of a Certificate of Identity issued by a District Magistrate. Such a Certificate will be proof of identity as 'transgender' and confer rights under the Bill. However, the Bill also states that a person who is recognised as 'transgender' shall have the right to 'self-perceived' gender identity. Given that there is a requirement of a Certificate of Identity under the Bill, it is unclear what the term 'self-perceived' gender identity entails and how it will be enforced. It is pertinent to note that, if a transgender person is denied a Certificate of Identity, the Bill does not provide a mechanism for appeal or review of such decision of the District Magistrate.

6. India's parliament passed a bill 2019 to protect transgender rights, but the new law is inadequate on several fronts. Trans activists and allied human rights groups have critiqued the various trans rights bills since the first one was

introduced in 2016. In the end, lawmakers failed to consider the concerns the activists raised. As a result, India's new law will violate the rights of trans people rather than respect and uplift long-persecuted communities.

7. The Bill does not follow the Standing Committee's recommendation on a Screening Committee. The Bill states that a person will be recognised as 'transgender' on the basis of a Certificate of Identity issued by a District Magistrate. Note that the Transgender Persons (Protection of Rights) Bill, 2016 provided that a person will be issued a Certificate of Identity as a 'transgender' by the District Magistrate based on the recommendations of a District Screening Committee.

The District Screening Committee consisted of a:

- (i) Chief Medical Officer;
- (ii) District Social Welfare Officer;
- (iii) psychologist or psychiatrist;
- (iv) representative of the transgender community; and
- (v) government officer. The 2019 Bill removes this provision.

8. That the role of Screening Committee is critical in declaring a person as transgender.⁶ It further emphasised on the importance of the role of the Chief Medical Officer to check any potential misuse of the certificate, and recommended that the role of the Chief Medical Officer should be clearly defined in the Bill. However, the 2019 Bill removes the provisions for a District Screening Committee and leaves the power to issue the Certificate with the District Magistrate, based on procedure notified through rules.

9. That the 2019 Act also institutionalises legal discrimination by making punishment for sexual abuse against transgenders imprisonment of “not less than six months but which may extend to two years and with fine.” This is much less than the punishment for rape against women under the Indian Penal Code (IPC), which is imprisonment of “not less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable for fine.”

10. That the 2019 Act which was purportedly enacted to eliminate discrimination against transgender persons by other persons or establishments does not even prescribe a punishment for

discrimination. It states that if the immediate family is unable to care for a transgender person, the person could be placed in a rehabilitation centre after an order from a competent court. This violates Article 21 of the constitution, which guarantees the right to life and dignity. The 2019 Act fails to recognise that transgender persons are capable of making their own decisions.

11. That the Act also violates the NALSA judgment by failing to provide reservations in admissions to educational institutions and public appointments by treating the transgender community as socially and educationally backward classes of citizens. Fervent appeals to send the draft Bill to a select committee were brushed aside and the Trans Act was passed in 2019 on the day Article 370 was repealed. The Rajya Sabha had only half of its members in attendance when the Trans Act was passed.

12. That the 2019 Act fails to recognise persons with intersex variations, gender-queers, and persons with socio-cultural identities like kinner, hijra, nupimanbi/nupimanba, thirunambi/tirunangai, jogta/jogappa, mangalamukhi, aravani and shivashakti among others.

13. That the rules are beyond the scope of the Act. The rules empower the DM to reject an application for a trans certificate and also criminalises what the Act calls 'false claims.'. By giving arbitrary power to the DM to reject the application, the 2019 Act violates the NALSA judgment. The time limit for the appeals process is also limited. A person can apply to the DM for a Trans certificate and the DM must grant or reject the application within 60 days. Based on this certificate, starting from the day a trans person applies to the DM for a certificate in the male/female binary supported with a surgery certificate from a medical superintendent, the DM must grant the second certificate within 15 days.

14. That the rules further violate the NALSA judgment by making SRS mandatory. The form prescribed by the Act has only one column headed 'transgender,' thereby failing to recognise culture specific multiple gender identities. Section 4 (2) of the Act recognises the right to self-identified gender, but the rules constrain the gender and thereby violate the act itself. The government itself to fill in the answer to the one question they are asking about the Transgender – what do a member of

Transgender want to identify as? In which other government have you seen the government ask a question and answer it itself? The Act upholds this right only in the definition portion, but not in the section where ‘recognition of identity by State is mandated.’”

15. That the rules further say that even for self-identification as a transgender person, you need psychologist’s certificate. This violates the 2019 Act itself. The NALSA judgment had stressed that self-identification is enough and rights should flow from it. This has been held as part of the right to equality. But the rules of the 2019 Act, particularly from Section 2 to section 9, only focus on identity and an exclusionary process around it. There is no list of specific ways in which welfare benefits must be provided and no word about reservations and other form of benefits. The rules only hover around the identity question, not the welfare issues that follow. The Act is a mere bureaucratic exercise which has destroyed the spirit of the NALSA judgment.

16. That Clause 8 of the rules says the DM shall inform the applicant if the application has been rejected, but there is no time limit. Clause 9, which talks of the right to appeal, does not

say who is the appellate authority and in how many days the appeal should be closed.

17. That the application seeks too many intrusive details like where the member of Transgender stay. It looks like the product of a colonial hangover, giving the bureaucracy too much power over human life. . “The insistence on getting an SRS certificate from the medical superintendent of the hospital is unjustified. Many trans persons have undergone surgeries years ago and SRS is not a monolithic, single surgery. The rules leave many things unclear, such as the status and rights of trans persons who have already undergone surgery years ago and may not be able to produce documentation at this stage.”

18. That there are rules about penal action against transgender persons who make ‘false claims. The fundamental aim of the law should be to protect transgender people but not penalize who suffer for ages at the hands of the society. The penal provision is only to further exploit the vulnerable transgender community. A large number of trans people are illiterate and unlettered. There is a likelihood of confusion and errors which the police attribute to crime. To say such mistakes could lead

to penal action is deeply problematic and against the spirit of NALSA.”

19. That Several definitions that the Transgender Persons Bill prescribes are rather redundant with regard to the issues of the community. In particular the definition of “family”. Where the present act borrows its definition blindly from earlier laws in place, without any application of mind with regard to the position or the nuances associated with the transgender community. Such a banal definition of ‘family’ is after multiple clarifications made by members of the community with regard to the need to expand the meaning of ‘family’. With most transpersons not living with their biological family because of the discrimination and violence they face from their biological family and their immediate community. Therefore, a need to include chosen family within the ambit and definition of ‘family’. Since it is through the chosen family that most transpersons get support and are able to find their kith and kin.

20. That though there is a separate definition for ‘intersex persons’, it seems to have been done to purely appease international

groups appealing for a separate definition for intersex persons. Since in the very next line it has been conflated along with the definition for 'transgender person'. This is not just a horrifying misrepresentation but also an invisibilisation of intersex persons and their concerns. This is of extreme importance in the aspect of health as there is a range of distinct issues that intersex persons face. Ranging from forced 'corrective' operations on intersex infants to continuing health issues which the medical system is both unequipped to handle and is inaccessible to a large number of intersex persons.

21. That the Chapter that prohibits discrimination does cover discrimination against transgender persons on range of fronts. It is not even a toothless tiger, it is just a number of teeth scattered about with no power, reason or authority to take action on their own. The chapter prohibiting discrimination is plagued with three major concerns:

- i) Lack of an enforcing authority
- ii) Lack of remedial measures, be it in terms of compensation or any other means, for the survivor
- iii) Lack of punitive measures to be taken against the violator

22. That the process of recognition of identity of transpersons is affected by the same issues with the earlier Bill. Though the District Screening Committee has been dismantled, recognition of a transgender person's identity is then to be decided by the District Magistrate, who will then issue the certificate based on a certain set of documents that would be prescribed. The elemental question that arises is then as to what are the documents that would allow transgender persons to be recognised with regard to their identity as a transgender person. These follow on with another set of issues that muddle how gender identity is to be decided:

23. That as per the Act, if a person is to then change their preferred gender to male or female, the Transgender Persons Bill harks back to the archaic understanding, enforcing the need for a Sex Reassignment Surgery (SRS) in order to change their gender identity to their preferred gender of either male or female. Moreover the validity of the SRS would be decided by the District Magistrate.

24. That as per the Act, the post the change in gender identity, the person is then allowed to only change their first name, which

raises the question as to the sacrosanct position that the last name holds such that under no circumstance then can the person be aided in changing their last name. The sole reason for such an obstruction of changing one's last name, is the impervious nature of caste in Indian society. Thereby preventing one from changing one's last name is the primary manner through which caste system and the hierarchy retains its ossified state.

25. That the Act contains 'Obligations by the appropriate government' suffers from the same issues as the chapter on prevention of discrimination. The lack of any kind of punitive action against the state, or funds apportioned for such schemes, significantly raises questions on the efficacy of such provisions.

26. That the Act contains the clause of 'rescue, protection and rehabilitation' has to be read in context of the experience of transpersons in rescue/shelter homes. The amount of abuse, of various forms—mental, physical, emotional and sexual, faced by transpersons has had the community being extremely apprehensive about the manner in which shelter homes are established and run. Secondly, from earlier experiences shelter

homes have displayed an evident insensitivity to concerns of transgender persons. For years, we have stayed and lived independently with support from the community, amidst the discrimination and violence. We don't need an unnecessary policing of our existence by the state. Do not restrict our lives, we need protection mechanisms from those who bent on violating our identities, bodies and lives.

27. That the Transgender Persons Bill stipulates a complaint officer designated to deal with complaints under this law. The process of having a complaint officer is completely unclear, it could be through nomination, election or any other process, but as of now, the process of having the complaint officer is non-existent. The procedure finalized will establish the independence and the efficacy of the complaint officer and its absence, the clause is a cause for concern.

28. That the restriction of movement with regard to transpersons in separating from their parents and allowing a person to move out only through an order of 'a competent court'. Dividing the community on class lines with only those being able to access court even having a chance at separating from their family.

Moving out of the family has been the need of a large number of transpersons, primarily due to the discrimination and violence they would face from their immediate family and the immediate surrounding community. The freedom to move and have a chosen family has been effectively restricted and dismantled through this clause. Furthermore, the only alternative made available to the community other than the family is a rehabilitation centre, the errors and fears of which have been reiterated multiple times.

29. That with regard to health though, there are certain issues that are covered. It is pertinent to note that there isn't a single organised protocol guiding the medical community on healthcare for the transgender community. Without such a concerted effort to build health systems working for transgender persons, an array of individual clauses and provisions becomes a mere juggling of health rights that play with our lives. Other than the need for a separate protocol concerning the health of the transgender person, there also needs to be a subsequent inclusion in each of the health care policies that would be drafted further on and also applied retrospectively. For a greater implementation throughout the

Indian health system, there needs to be an addition to Primary Health Centres, which would be an implementing agency for all the healthcare policies at the grass root level. Rights of a transperson with regard to their fertility is critical, and inclusion in both artificial fertilisation and surrogacy. These areas still follow critically heteronormative understandings of the ability of a person to be a parent. Furthermore with regard to mental health issues faced by the trans community, by virtue of discrimination and ostracization faced by transpersons, other than the involvement of mental health professionals in verifying gender dysphoria there is no further support that is provided; whereas there needs to be continued support for mental health to be provided to a Transgender Person.

30. That the National Council for Transgender Persons lacks any kind of independence to carry out functions. The National Council which is composed of at least 30 persons, has a mere representation of 5 persons from the transgender community. Further, the persons would be nominated by the Central Government, compromising significantly the autonomy of the persons on board. Every member who is not an employee of the central government is to be appointed by the Central

Government, placing significant questions on the independence of The National Council for Transgender Persons, its separation from the government and therefore its ability to then question the government on various concerns.

31. That the offences and penalties enumerated, though have seen changes from previous drafts of The Transgender Persons Bill, but similar sections have been employed through a mere contortion of the law. There are still issues that come across glaring errors:

i) Though the Transgender Persons Bill has removed provisions criminalising begging and sex-work, it has introduced a new section that criminalizes 'compelling or enticing' a transgender person to indulge in forced labour. The need for the section should be under scrutiny, for when there is a pre-existing Bonded Labour System (Abolition) Act which criminalises those employing bonded labour, and is applied across persons with no discrimination on gender, the need for this provision is redundant. The only reason that can be foreseen for the presence of this section is to criminalise begging and sex work. The twisting of words doesn't absolve the law makers of the repercussions it would translate in, during implementation.

ii) The section criminalizing violence against transgender persons, has been reproduced without any changes from previous drafts. In fact any kind of violence, as much as that which would endanger a transperson's life is punished by a term of a maximum of 2 years. Sexual abuse rampant against transpersons is included within the same section. Such acts which ought to be criminalized over and above the existing sections in the IPC, are now a watered down version of what is present in existing criminal law, which punishes a person with a minimum of 7 years in cases of rape. This section thus is a travesty to the rights of bodily integrity of transpersons.

32. That living conditions of Transgender community are very poor and inhuman due to state and social negligence. The majority of the Transgender people are living in rented accommodations. As per a 2017 report of the National Human Rights Commission, 79% of transgender people either live in rented rooms or share accommodations with others, and 52.61% of transgender people have a monthly income below Rs. 10,000.

33. That it is pertinent to note that the laws such as Indian Penal Code (IPC), 1860, National Rural Employment Guarantee Act,

2005 and Hindu Succession Act, 1956 which contain some gender specific provisions. The Bill recognises a third gender i.e. 'transgender'. However, the Bill does not clarify how the above mentioned laws will apply to transgender persons. The penalties for similar offences may vary because of the application of different laws, based on gender identity. For example, under the IPC, sexual offences related to women attract a higher penalty (up to life imprisonment) than that specified for sexual abuse under the Bill (up to two years).

34. That it is very much evident that the state has no intention to safeguard the interest of the transgender citizens of the country even while passing the Trans Act, 2014 from the fact that though the legislature is being compelled to enact legislation towards addressing the issues highlighted in the NALSA judgement of this Hon'ble Court in 2014 it has totally ignored to give effect to the respect of the transgender community. The state has conveniently ignored to amend the procedural law, criminal laws, Civil laws and special laws of the country to highlight the rights of the transgender. The following laws would corroborate this fact before this Hon'ble Court.

A. Criminal Law

I. Indian Penal Code,1860

1. Punishment for assault on a woman with intent to outrage her modesty;
2. Punishment for selling female minors for purposes of prostitution;
3. Rape as an act committed by a man on a woman; Word, gesture or act intended to insult the modesty of a woman; Husband or relative of husband of a woman subjecting her to cruelty; Dowry death, where death of a woman caused due to cruelty by husband or his relatives.

II. Code of Criminal Procedure,1973

1. A female under arrest can be searched only by another female with strict regard to decency;
2. Grants the power to compel restoration of the liberty of unlawfully detained females;
3. Requires the medical examination of a victim of rape, who should be a woman.

III. Indecent Representation of Women(Prohibition) Act, 1986

Prohibits the indecent representation of women in various forms of publications.

IV. Protection of Women from Domestic Violence Act, 2005

B. CIVIL LAWS

- i. The Sexual Harassment of Women At Workplace (Prevention, Prohibition, Redressal) Act, 2013
Provides protection against the sexual harassment of women at the workplace.
- ii. Hindu Marriage Act, 1955
Recognises marriage between a man and a woman.
- iii. The Special Marriage Act, 1954 Recognises marriage between a man and a woman.1956
Provides different criteria for a man and a woman in relation to adoption of a child.
- iv. Hindu Succession Act, 1956 'Heir' refers to either a male or a female for the purpose of succession, in the absence of a will.
- v. The Muslim Personal Law (Shariat) Application Act, 1937
Specifies 'special property' of females which includes personal property inherited or obtained by contract, gift, etc.

C. OTHER LAWS

- i. The Mines Act, 1952 Prohibits the employment of a woman in areas of a mine below ground level;
Permits the employment of a woman in a mine above ground level between the hours of 6 am and 7 pm.

- ii. Factories Act, 1948 Permits a woman from working in any factory only between the hours of 6 am and 7 pm.
- iii. National Food Security Act, 2013 States that the eldest woman in every eligible household will be head of the household for the purpose of issue of ration cards.
- iv. National Rural Employment Guarantee Act, 2005 States that priority will be given to women workers (at least one-third of the beneficiaries are to be women) if they have registered and requested for work under this Act.
- v. The Companies Act, 2013 Requires the Board of Directors of every company to have at least one woman director.

35. That state failed to guarantee the basic voting rights of the Transgender community. Most transgender persons do not have a voter identity card or Aadhaar card. This makes it difficult for them to availing themselves of their constitutional rights and government schemes.

36. That majority of transgender persons do not have access to various career opportunities, as a result. And even when they get a chance to be part of mainstream professions, they face

verbal and sexual harassment or frequent bullying and discrimination by co-workers.

37. That For Transgender Persons, Discrimination Begins in Schools. That bullying of transgender students are a widely prevalent phenomenon across the country. Attending school became hard for the Transgender students because it is seen that the most teachers and students make fun of the Transgender students due to negative attitude shown by the state, society towards the Transgender community. Other students refuse to sit with the Transgender students, or touch the Transgender students as if the Transgender students have some disease. Such attitude inflict unending insult to the Transgender students and badly harm psychological growth of the students. Most of the students prefer to drop out of the schools rather face such insults. That lack of sensitivity and awareness in our educational institutions has affected the transgender students to drop out of the school due to the bullying and insulting attitude of the negligent teachers and students. The challenges faced by transgender students in our schools are real and need to be addressed by our education system. Like our mindsets, our institutions are trained to only

divide persons into the heterosexual binary of male and female. From school uniforms to seating arrangements, from the school assembly to the washrooms, this binary expression does not acknowledge the existence of transgender persons. This impacts their mental health to a great extent and results in high school dropout rates.

38. That the state policies followed by successive governments do not have any direction to ensure and safeguard the fundamental rights of the Transgender community. The right to education is a very basic fundamental right guaranteed in our Constitution to every Citizen of the country which is not provided to members of Transgender. The state institution only give lip service in the matter of the rights of Transgender but practically have no action to ensure the rights to the members of Transgender.

39. That the education is out of the reach for the Transgender children due to various reasons and neglect by the state. Education is still seen as a luxury by them. Transgender children deal with social stigma outside schools as well as they are not accepted as dignified members of society by people.

Hence, it is the fundamental duty of the state to correct the neglectful policies towards the transgender community and make the schools and educational institutions 'trans friendly' on the urgent footing.

40. That transgender persons in general and transgender students, in particular, are being continually ignored by successive governments and policymakers. Just giving them a separate category of gender to tick in forms will not solve their problems.

41. That transgender students need constant representation and support in the education system so that stigmas pertaining to their identity can be addressed. Gender-inclusive education and curriculum can only lead to transformation in mainstream social perceptions. The Central Board of Secondary Education results for classes 10 and 12 were declared on July 13, 2020, and July 15, 2020, respectively. That as per the CBSE press release, there were 1,889,878 candidates in class 10 and 1,206,893 candidates in class 12. Among the students who registered for class 10 exam, 7,88,195 were girls, 11,01,664 were boys and 19 were transgender persons. For class 12, 5,22,819 were girls, 6,84,068 were boys, and six were

transgender persons. There has been a spike in the percentage of students from class 10 and 12 who have passed this year. The pass percentage of class 10 students has increased by 0.36% and that of class 12 students has increased by 5.38%. It has been considered a significant achievement by various education departments across India. But the pass percentage of transgender persons has been widely ignored. The pass percentage of transgender persons of class 10 has decreased by 15.79% and those of class 12 has decreased by 16.66 %. These data are not appeared in public or a matter of discussion in mainstream media which itself shows the social attitude towards the members of Transgender.

42. That in India, the total population of transgender persons is around 4,87,803 with a literacy rate of 57.06% according to the 2011 Census. In 2011, there were 54,854 transgender children below the age of six. These children are now between the ages of 10 and 16 and should currently be in schools.

43. That the state has to answerable about why is there a slide in the academic performance of transgender persons? Why are they being constantly neglected by our education system?

There were only 19 transgender students in class 12 and six transgender students in class 10 who appeared for the board exams. Where are the other transgender children whose presence had been recorded by the Census?

44. That the trans community is struggling for basic survival and there is an urgent need to provide social security, food security and accessible healthcare, both general healthcare and trans specific healthcare.

45. That Transgender children face rejection from an early age from their own family and the society. There is no acceptance by the society. The friends and families reject them forcing them to feel alone in the world. That due to the ostracized attitude of the society towards the members of Transgender, they often runaway from homes and end up in the hands of criminal gangs of the cities who exploit them maximum by putting these helpless community to sex trade, begging, drug peddling for survival.

46. That discrimination in India's healthcare system against transgender people remains rife despite new laws aimed at

ensuring them equal treatment. Stress caused by the fear of being treated unfairly, worries about abuse and administrative hurdles are preventing many of the country's two million transgender people from seeking medical care. Many of those responsible for "transphobia" are medical professionals themselves, who remain largely uninformed about gender identity issues.

47. That Transgender community end up feeling embarrassed about themselves after visiting hospitals. Treatments are cursory. Sometimes doctors prescribe medicines without even examining them. They're afraid to even feel the pulse of members of Transgender community.". They are asked personal questions about their genitals or sexual lives by the medical staff, particularly in smaller clinics and government hospitals, are judgmental about their "deviant" behaviour.

48. That sex-reassignment surgery is mostly conducted in a private hospital. Only a few people from Transgender community have the opportunity or the money for such operations and most male-to-female transgender people undergo illegal castration by unqualified medics in smaller towns in India particularly

such as Dindigul in Tamil Nadu and Palamaner and Kadapa in Andhra Pradesh. It stemmed from two reasons - general apathy and disregard for the well-being of transgenders.

49. That as the world fights corona virus, the survival of India's transgender community is at stake. Most transgenders are daily earners who beg, do sex work or collect alms during weddings and child birth. The lockdown has left them with no option to make a living.

50. The treatment of members of Transgender by the police and the judiciary are also very discriminatory. The bail condition has had a harsh impact on them. For transwomen who survive on traditional systems like badhai and mangti, being uprooted from their immediate ecosystem due to terms of bail, meant not just a loss of livelihood but also exposure to bodily threats. Attacks and public humiliation have been a common experience, They have to stay away from their group and associate with new groups which compels them to fall in the sex trade for survival.

51.The prison conditions in the country for members of Transgender are very pathetic. The authorities are not bothered to correct the mistakes inspite of repeated wakeup calls made by the various NGOs operating for the welfare of the members of the Transgender. Most of the medical professionals employed in prisons across the state are ill-equipped to look after transgenders. There is also general apathy and a sense of ridicule that creeps in their minds against the transgenders.

52.That in most prisons in India transwomen were placed in a “separate ward” assigned only to those suffering from infectious diseases like tuberculosis, leprosy, scabies and HIV. The prisoners here are neglected, and so is the barrack. They would be in a constant fear of getting infected.

53.That unlike the other undertrial prisoners, all arrested transwomen were denied their right to wear civil clothes and were forced to wear white striped shirt and white shorts even denying the undergarments. No transwoman was allowed to participate in the special events organised occasionally in jail.

54. That Article 39 A of the Indian constitution provides for free legal aid to the poor and weaker sections of the society; Article 14 and 22 (1) make it obligatory for the state to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all. But barring Delhi, all other 28 Indian states and seven union territories have failed to recognise the community's need for legal aid. According to the data made available on the National Legal Services Authority's website, Delhi defines three separate categories for legal aid. For the transgender community and senior citizens, the income ceiling limit is set at Rs 2 lakh or approximately \$2,700; for the rest, the limit is set at Rs 1 lakh.

55. That the data gathered shows that at least 214 transgender persons were incarcerated across different prisons between May 2018 and April 2019. Among them, Uttar Pradesh and Telangana reported the highest number, with 47 and 40 transgender prisoners respectively.

56. That the Indian lawmakers have shown no regard to international standards or best practices – including those of multiple United Nations agencies, or the Yogyakarta Principles

and the Yogyakarta Principles plus 10 that specifically focus on concerns of human rights violations targeted towards persons because of their actual or perceived sexual orientation or gender identity.

57. That the petitioner states the petitioner address and name is Salma Umar Khan Sakerker , R/6, Gadge Maharaj Colony, Amrut Nagar Park Site, Ghatkoper -W, Mumbai, Maharashtra – 400086.

58. That the petitioner occupation is social work and the most time service to people and income 75 thousand per annual PAN card No. FSFPS4279M and the petitioner is not tax payers.

59. Petitioner Name is Petitioner Adhara Card No. 213940505239 and phone No.9892807649.

60. Cause of action is all states and the entire country suffering discrimination . so many Indian citizens had died and suicide . The cause of action started from long years ago and it continuation till today if it continue very danger for India.

61. That the petitioner have not any personal interest or personal motive on file this Public Interest Litigation.

62. That the petitioner have not any civil and criminal and Revenue litigation, involving the petitioner or any of the petitioner which has or could have a legal nexus with the issue involved in the public interest litigation.

63. That the petitioner not filed similar petition or Writ petition before any court or Hon'ble High Court and the Hon'ble Supreme Court.

64. That the petitioner states petitioner not sent detailed representation to respondents, Remedy rely upon this Hon'ble Court only.

65. That the petitioner stated that nature of injury is, not only Transgender but also all state people suffering and so may citizens being dispersion.

66. That the petitioner states violation of Article 14 and 21 of Indian Constitution.

67.GROUNDS

- A. Because that for years, Transgender community have stayed and lived independently with support from the community, amidst the discrimination and violence and do not require an unnecessary policing of the existence by the state. The state should not restrict the lives of Transgender who need protection mechanisms from those who bent on violating the identities, bodies and lives of Transgender.
- B. Because in a conflict between the court judgement and legislations, such as NALSA Act, it is the legislation that will take precedence. The law being used as an effective mechanism to validate existence of Transgender placing them at a plane lower than that which the rest of the society rests on, thus legitimizing the violence that are put through.
- C. Because the sole purpose of a social welfare legislation should be to protect the rights of the marginalised. In instances where discourse by the marginalised is not allowed, purely because of a very real threat to their lives and systemic obstructions in place to not just dissuade, but to disallow members from the community from occupying and participating in political

spaces, it is incumbent then on the state to actively engage with such communities to create such a discourse.

- D. Because that the unfairness with which history has dealt its hand would only be corrected through an active effort of the state, to recreate a discourse, the primary requirement being consultations with the community.
- E. Because that to treat the Transgender with dignity respect their existence in the society without any expression of unwanted sympathy or favour. To extend the fundamental rights, Respect, equality, dignity, gender-inclusive education system and love is the need the state should provide to ensure rightful space to the members Transgender in the gender-sensitive society.
- F. Because the right to recognition as a person before the law is guaranteed in numerous international human rights conventions, and is a fundamental aspect of affirming the dignity and worth of each person. Legal gender recognition is also an essential element of other fundamental rights — including to privacy, to freedom of expression, to be free from arbitrary arrest, and rights related to employment, education,

health, security, access to justice, and the ability to move freely.

G. Because trans people face a legal system that often does not protect transgender community from discrimination based on gender identity. Despite the Human rights and fundamental rights that makes it clear that trans people are legally protected from discrimination, there is still no comprehensive non-discrimination law that includes gender identity - which means trans people may still lack recourse if they face discrimination when they are seeking housing or dining in a restaurant. Moreover, state legislatures across the country are debating – and in some cases passing – legislation specifically designed to prohibit trans people from accessing public bathrooms that correspond with gender identity, or creating exemptions based on religious beliefs that would allow discrimination against LGBTQ people.

H. Because that the transgender persons bill has come to parliament in this context of apathy, neglect and secrecy. a series of betrayal of assurances and a convolution of a law that

would do nothing for the trans community and would rather snatch away the bare minimum that existed.

- I. Because that the state must ensure that the members of Transgender are not marginalized in any form. That the Transgender member face Marginalization and Social Exclusion at the hands of the society and the state. Marginalization is at the core of exclusion from fulfilling and full social lives at individual, interpersonal and societal levels. People who are marginalized have relatively little control over their lives and the resources available to them; they may become stigmatized and are often at the receiving end of negative public attitudes. Their opportunities to make social contributions may be limited and they may develop low self-confidence and self esteem and may become isolated. Social policies and practices may mean they have relatively limited access to valued social resources such as education and health services, housing, income, leisure activities and work. The impacts of marginalization, in terms of social exclusion, are similar, whatever the origins and processes of marginalization, irrespective of whether these are to be located in social attitudes (such as towards impairment, sexuality, ethnicity

and so on) or social circumstance (such as closure of workplaces, absence of affordable housing and so on)

J. Because Transgender members may experience multiple forms of marginalization—such as racism, sexism, poverty or other factors—alongside homophobia or transphobia that negatively impact on mental health. The stigma attached to sexual orientation and gender identity or expression that fall outside the expected heterosexual, nontransgender norm relegates many Transgender people to the margins of society. This marginalization often excludes Transgender people from many support structures, often including their own families, leaving them with little access to services many others take for granted, such as medical care, justice and legal services, and education. Marginalization and bias around sexual orientation and gender identity and expression regularly.

K. Because prevent Transgender people from accessing fundamental public services such as health care and housing and contributes to significant health disparities. Marginalization of Transgender people often starts with the family into which they were born. The familial marginalization

of Transgender people hinders initial prevention and education efforts, encourages risk-taking behavior that can lead to HIV infection, and places obstacles in the way of receiving proper medical treatment and psychosocial support for Transgender youth already living with HIV/AIDS. Moreover, lacking other means of support, many Transgender youth are forced to turn to criminalized activities such as sex work to survive, which drives them further onto the margins of society and can expose them to greatly elevated risk for HIV.

- L. Because transgender people live in poverty at elevated rates, in india 80% people of transgender are living in poverty, they have not any permanent income and most of them living starvation , getting food in one time per day.
- M. Because I). Every person must have the right to decide their gender expression and identity, including transsexuals, transgenders, transvestites, and hijras. They should also have the right to freely express their gender identity. This includes the demand for hijras to be considered female as well as a third sex.
II). There should be a special legal protection against this form of discrimination inflicted by both state and civil society which

is very akin to the offence of practicing untouchability. III). The Immoral Trafficking Prevention Act, 1956, as has been pointed out earlier, is used less for preventing trafficking than for intimidating those who are the most vulnerable i.e., the individual sex worker as opposed to brothel keepers or pimps. This law needs to be reformed with a clear understanding of how the state is to deal with those engaged in sex work. IV). Civil rights under law such as the right to get a passport, ration card, make a will, inherit property and adopt children must be available to all regardless of change in gender / sex identities.

N. Because a comprehensive sex-education program should be included as part of the school curricula that alters the heterosexist bias in education and provides judgement-free information and fosters a liberal outlook with regard to matters of sexuality, including orientation, identity and behavior of all sexualities. Vocational training centers should be established for giving the transgender new occupational opportunities.

O. Because Centre and State Governments have been asked to provide the community various social welfare schemes and to

treat the community as socially and economically backward classes. They have also been asked to extend reservation in educational institutions and for public appointments.

P. Because Centre and State Governments have been directed to take proper measures to provide medical care to Transgender people in the hospitals and also provide them separate public toilets and other facilities. Further, they have been directed to operate separate HIV/ Sero-surveillance measures for Transgenders.

Q. Because main problems that are being faced by the transgender community are of discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities, depression, hormone pill abuse, tobacco and alcohol abuse, penectomy, and problems related to marriage and adoption.

PRAYER

It is, therefore most respectfully prayed that this Hon'ble Court may be graciously pleased to issue writ of mandamus or any other appropriate Writ or Order or Direction or any suggestion or observation or particularly in the nature of Writ by giving direction to Respondents No.1 to No.39

A). To established Transgender Welfare Board to address the social welfare issues of Transgender person.

B). To appoint a standing committee comprising Station House Officers and human rights and social activists to promptly investigate reports of gross abuses by the police against Transgender person.

C). Pass such order and orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

**FOR THIS ACT OF KINDNESS, THE PETITIONER HEREIN
AS IN DUTY BOUND SHALL EVER PRAY**

Drawn By.C.R.JayaSukin

New Delhi

1.3.2021

Filed By

NARENDER KUMAR VERMA
Advocate for Petitioner

