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Recent Legal Reforms on Gender Recognition: A Global Review



CENTRE FOR HEALTH LAW, ETHICS AND TECHNOLOGY

CHLET conducts legal empirical research on contemporary questions of sexuality, gender, public policy and public health law. Our work is at the intersection of gender, power, sexuality, law and society with the vision to influence law and policy through research and consultations

CHLET adopts a multidisciplinary approach and focuses particularly on rights of sexual minorities; gender minorities and gender diverse people; constitutional right to health, and reproductive rights.

CHLET aims to use its position to engage in global-domestic research, dialogue, negotiation and, when necessary, the judicial system, to achieve systemic reforms that advance social justice and equity in the many dimensions of health, sexuality and gender.



RECENT LEGAL REFORMS ON GENDER RECOGNITION: A GLOBAL REVIEW

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Glossary¹

Cisgender: It refers to persons whose gender identity and gender expression match the sex they were assigned at birth, and the social expectations related to their gender.

Cross-dresser: An individual who dresses in clothing that is culturally associated with members of a different sex or gender.

Gender: The culturally specific set of characteristics that identifies the perceived social behaviour of people. Gender refers not simply to women or men, but also to the relationship between them, and the way it is socially constructed, as well as all identities that exist within and outside binary constructions of femininity and masculinity, including transgender, gender-diverse and non-binary people.

Gender Identity: It reflects a deeply felt and experienced sense of one's own gender. Gender identity is a part of one's overall identity.

Gender Expression: The way in which one expresses their gender through actions and appearance.

Hijra: Hijra is a socio-cultural identity outside the heteronormative binary. Depending on their cultural and geographical location, Hijras may identify as Aravani or Thirunangi in Tamil Nadu, Jogti Hijra in Maharashtra and Karnataka, Kinnar in Chattisgarh, Aradhi in Maharashtra etc.

Intersex: People born with physical or biological sex characteristics that are more diverse than the binary definitions of male or female bodies. With around 40 different recognized types of intersex variation, there is a huge diversity among intersex people. Intersex variations can be picked up on at any time during one's life, and are not always evident at birth. There is no singular intersex experience.

Glossary

Queer: An umbrella term for sexual and gender minorities who are not heterosexual or cisgender. Originally meaning "strange", queer was used pejoratively against those with same-sex desires or relationships. However, since the 1980s, many LGBTI individuals have begun to reclaim the word.

Sex: The binary (male or female) identification usually given to a child at birth, most often based on the child's external anatomy.

Sexual Orientation: An enduring pattern of romantic or sexual attraction (or a combination of these) to persons of the opposite sex or gender, the same sex or gender, to no sex or gender, or to both sexes or more than one gender.

Transgender: It is an umbrella term; transgender people have a gender identity or gender expression that differs from their assigned sex. In addition to including people whose gender identity is the opposite of their assigned sex (trans men and trans women), it may include people who are not exclusively masculine or feminine (people who are genderqueer or non-binary, including bigender, pangender, genderfluid, or agender).

Transitioning: When trans people take steps to live in their gender identity. It may involve social transition, legal gender recognition and/or medical transition. There is no single way of transitioning, nor is transition defined by medical steps someone has or has not taken.

Transphobia: An irrational fear, hatred or aversion towards transgender people.

Executive Summary

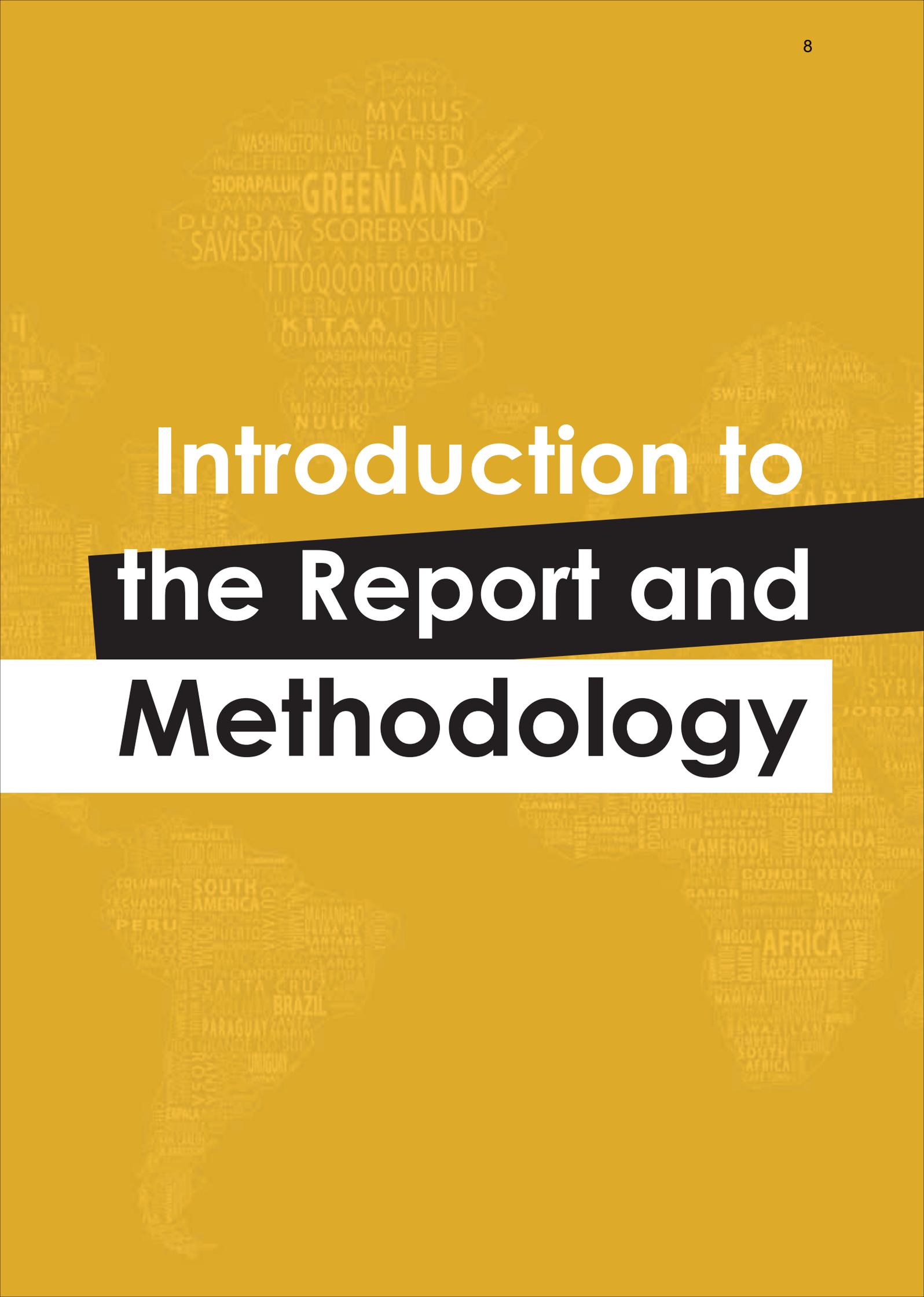
The Centre for Health Law, Ethics and Technology (CHLET) offered a clinical course on the rights of gender-variant persons in which students gathered in-depth information for this report. After receiving background instruction and research methodology training, students conducted extensive research on the legal status of gender-variant persons in ten countries across the globe and India. CHLET also held a National Consultation on the Human Rights of Transgender Persons, Hijras and Other Non-Conforming groups in India from 9-10 November, 2013, in order to better understand the legal and social barriers that the gender-variant community in India faces. This report sets forth the legal status of gender-variant persons in ten countries. The term transgender is not used in this report as its meaning varies across regions, cultures and nations. Instead, the term “gender-variant” will be used, which includes “individuals whose gender expression is different from mainstream societal expectations related to gender.” This term was chosen because it is a broader term which includes many groups that are gender non-conforming and non-binary (e.g., transgender, transsexual, gender queer, intersex etc.). However, the term transgender has been employed in limited circumstances wherein a specific court, report or individuals chose to use this term or identify as a transgender person.

The countries discussed in the report were selected on the basis of several factors, including international prominence, progressive policies and recent legal reforms. The diverse geographical spread of the selected countries aims to provide important insights into the range of issues confronting gender-variant communities across jurisdictions. The selected countries further highlight how spaces which might otherwise be considered to have a certain kind of civil liberties track record may chart a different trajectory when it comes to rights of gender-variant communities. For example, Argentina has recently made exceptional progress regarding the rights of gender-variant persons that may serve as an inspiration for legislators and advocates in other nations. The new legislation allows people to change their name and gender without gender affirmation surgery. Similarly, Pakistan has paved the way for the recognition of the gender-variant Khawaja Sara.

Executive Summary

In light of India's geographical location, and the progress recently achieved through the landmark Supreme Court judgment *NALSA v. Union of India*², the report analyzes the rights of gender-variant persons within India. In the *NALSA* judgment, the Court recognized the right of transgender persons to self-identification, and directed the Government to grant legal recognition of their gender identity. From 2014 to 2018, there have been several other cases in the High Courts and Supreme Court as well as proposed legislative reforms.

The purpose of this report is to serve as an information manual and advocacy tool for lawyers, advocates, and policy makers across the globe. By providing comprehensive and contemporary information on the legal engagement of gender-variant persons in ten countries, this report will raise awareness and provide a reference point for advocacy groups and policy makers. Overall, this report highlights the developments that have occurred across the globe for the rights of gender-variant persons.



Introduction to the Report and Methodology

This report, prepared by the Centre for Health Law, Ethics and Technology (CHLET), aims to provide a transnational perspective on gender-variant people. It surveyed the rights of gender-variant persons in select countries across the world. The data has been collected by students in a year-long clinical course at Jindal Global Law School, on the rights of gender-variant persons, through case law, journal articles and newspaper clippings. Each student was assigned two or three countries to examine in depth. In addition, CHLET held a National Consultation on the Human Rights of Transgender Persons, Hijras and Other Gender Non-Conforming Groups in India on 9th & 10th November, 2013 in order to better understand the legal and social barriers facing the gender-variant community in India. As a result, the students' research was enriched by consultations conducted by CHLET over the course of the year.

The report also aims to raise awareness about the challenges facing gender-variant persons. Specifically, the triumphs achieved and setbacks faced by gender-variant persons in these countries may serve to better inform advocates in their own policy efforts within other legal systems. Furthermore, understanding the extent to which the gender-variant community varies across the world (in demographics, culture, etc.) highlights the need for flexible, broad, heterogeneous and multi-dimensional laws protecting the rights of these marginalized communities in consultation with and with involvement of the community.

The report is divided into sections by country. As stated above, the countries were selected on the basis of several factors, including international prominence, progressive policies and recent reforms. Each section of the report summarizes and analyzes the legal status of gender-variant persons in each country. It concludes with an "observation" segment, which describes their legal status, and exposes potential legal and social barriers to their recognition and equality.



**AN
INTERNATIONAL
PERSPECTIVE ON
GENDER-VARIANT
PERSONS**

ARGENTINA

OVERVIEW

The term used to describe gender-variant persons in Argentina is “Transgénero”. Argentina has seen considerable progress with regard to gender-variant persons’ legal rights, moving from pervasive discrimination against them, to the enactment of progressive legislation for the community. However, the gender-variant community in Argentina is still marginalized.³ Transgenero persons are ostracized by their families and by society in general.⁴ They also face discrimination with regard to employment.⁵ They continue to face abuse and discrimination in hospitals. They are also isolated from the healthcare system.

STATUTORY LAW

ATTTA (Argentine Association of Transsexuals, Transvestites and Transgenders) and FALGBT (Federación Argentina Lesbian, Gay, Bisexual, and Transgender) are the two main organizations that campaign for the rights of the gender-variant community in the country. Both of these organizations worked and fought for recently adopted legislation that makes it easier to change one's name (allowing persons to have names that reflect their chosen gender) on official documents.⁶

In 2012, Argentina passed a non-discrimination law that protects all individuals irrespective of their gender identity—the first country in the world to do so.⁷ Under this law, any person above the age of 18 years can request an amendment to their records in the civil registry with regard to their name, sex, or image when it does not match their self-perceived gender identity.⁸ The law does not require persons to undergo hormonal treatment or gender affirmation surgeries in order to make such amendments.⁹ It allows for the legal recognition of gender-variant persons in all official documents. Significantly, the Act broadly defines gender identity as “the internal and individual experience of one's own gender according to each person's feelings, which may or may not correspond to the sex the person had when he or she was born.”¹⁰

In 2018, a court in Buenos Aires found a man guilty of murdering prominent transgender activist Diana Sacayán and sentenced him to life imprisonment. This decision marked the first time Argentina invoked hate crime laws (specifically the crime of travesticidio i.e. murdering someone due to their trans identity) and recognized violence against trans individuals in the country.¹¹

OBSERVATION

Despite progressive laws that respect the rights of transgenero persons, advocacy is needed to combat discrimination, violence, and stigma in Argentina. A 2014 study on the use of the gender identity law by trans women found that more than half of the participants had secured identification matching their chosen gender within 18 months of the legislative enactment.¹² The study also recommended that the government ensure equal access for all trans women in Argentina.¹³

The Gender Identity law, while a significant step forward, must be implemented effectively, and for all persons regardless of nationality or immigrant status within the country.



AUSTRALIA

OVERVIEW

Australia acknowledges diversity amongst its citizens and has recently included LGBTI persons within its public policies and laws.

STATUTORY LAW

The Sex Discrimination (Sexual Orientation, Gender Identity and Intersex Status) Act, 2013 Act, 1984 (amended in 2013) contains all the grounds of prohibited discrimination. It is unlawful to discriminate against a person on the basis of sexual orientation, gender identity, and intersex status in Australia. Both direct and indirect forms of discrimination are unlawful when occurring in protected areas of public life: employment, education, provision of goods, services, and facilities such as providing land, housing or accommodation, membership and activities of licensed clubs, and the administration of Commonwealth laws.¹⁴ An individual who has experienced discrimination may file a complaint with the Australian Human Rights Commission. These protections under the Federal Law are broader than the anti-discrimination protections provided by regional (i.e., state and territory) laws.

In July 2013, the Australian Government introduced “Guidelines on the Recognition of Sex and Gender” for government departments and agencies, to inform them about the appropriate and legal manner to collect, use, and amend sex and/or gender information in personal records.¹⁵ Individuals are now given the option to select M (Male), F (Female), or X (Indeterminate/Intersex/Unspecified) in their personal records.¹⁶ This classification system is consistent with the government’s passport policy. When an individual intends to change their sex and/or gender information in a personal record, the government will recognize any one of the following:¹⁷

- A statement from a registered medical practitioner or psychologist
- A valid Australian Government travel document, such as a passport, which specifies their preferred gender
- An amended State or Territory birth certificate, which specifies the preferred gender

In 2018, the Medical Journal of Australia released guidelines for addressing the healthcare needs of transgender and gender-variant children. Until then, most guidelines only focused on adults. Notably, the guidelines were created in conjunction with the transgender community and associated organizations. Gender affirmation surgery or hormone therapy is not required to change one's gender marker. The guidelines also recognize that, in certain cases, individuals may prefer to have different markers in different documents. For example, a person may want gender "X" on their personal record, but M or F on their passport to ensure safety while traveling.

In Australia, state and territory governments are responsible for registering births, deaths, marriages, and changes of name or sex, and providing certificates.¹⁸ Altering a birth certificate in most states requires a gender affirmation procedure.¹⁹

Previously, the transitioning individual was also required by law to divorce their same-sex partner; however, in 2017, Australia legalized same-sex marriage. Subsequently, the requirement of divorce was removed.²⁰ However, neither surgery nor an amended birth or citizenship certificate is required to obtain a passport with a new gender.²¹ The individual may choose to submit a letter from a medical practitioner certifying either that the person has had, or is receiving, appropriate clinical treatment for gender transition, or that they are intersex.²² Several states have introduced policies to support transgender or intersex children.²³

CASE LAW

*NSW Registrar of Births, Deaths and Marriages v. Norrie*²⁴

Facts: Norrie, a gender-variant person who had undergone gender-affirmation surgery²⁵ applied to the Registrar under the state Births, Deaths and Marriages Registration Act, 1995 to register as “non-specific” sex.

The Registrar had initially issued a certificate that registered Norrie’s sex as “non-specific.” However, the Registrar later rescinded his decision on the ground that Norrie could not have stated sex as ‘non-specific’ after a gender-affirmation procedure. Norrie appealed to the administrative tribunal, which ruled that the registration of sex could only be “male” or “female” after a gender-affirmation procedure. The tribunal’s appeal panel affirmed this decision. This decision was appealed to the Court of Appeal, which ruled in Norrie’s favor. By special leave, the Registrar appealed to the High Court.

Issue: Whether a registrar has the power to register an individual under a “non-specific” sex category (i.e. neither male nor female), even after they have undergone a gender-affirmation procedure.

Reasoning: In a momentous decision, the High Court ruled that the state Act recognizes that a person may be of ambiguous sex even after a gender affirmation procedure, granting the registrar the power to register Norrie’s sex as “non-specific.” The court observed that the binary male/ female classification cannot be true for everyone, and that the Registrar’s job was to record the information as provided by individual applicants. The Registrar cannot assume the outcome of a gender-affirmation procedure and make moral/social judgments. The court held that the sex of a person can remain indeterminate even after surgery.

Australia has made considerable progress by introducing laws and policies to protect the rights of gender-variant individuals. There is a federal anti-discrimination law in addition to the respective state laws that cover various aspects of public life. However, procedures for amending and issuing new identity documents are still inconsistent and difficult, as this process remains under individual state control. Education and labour policies vary across states, despite these topics being both under the purview of the anti-discrimination board. The processes for alteration of one's gender identity documents still remains a contentious issue. Nevertheless, the decision of the High Court in the *Norrie* case inspires hope that state legislatures may eventually give recognition to the familial and personal relationships of individuals who lie beyond traditional gender binary classifications.

AUSTRALIA



OVERVIEW

As in many countries across the world, gender-variant persons in Brazil are a marginalized group. Gender-variant persons within the country fall into two categories — transvestites and transsexuals — with both terms being used interchangeably. Transgênero, the Portuguese term for transgender persons, is understood as referring to individuals who are born male but live their lives as female. The Brazilian LGBT movement faces the challenge of a contradictory cultural environment.²⁶ On the one hand, the country has the highest rate of LGBT hate crimes in the world.²⁷ On the other hand, it also has one of the largest LGBT organizations in Latin America and they host one of the world's largest LGBT pride parades in the world.²⁸ This paradox can be explained by the country's history of severe discrimination against the LGBT community, which is tempered by its current position as a socially liberal state moving towards recognition and equality.

It was only after 1990 that unique gender identities were embraced by the Brazilian LGBT movement, which previously had been categorized as a generic gay community.²⁹ This movement sought to include a diversity of identities under one umbrella, in order to achieve better representation and recognition of their rights. This also allowed them to forge closer ties and gain support from political parties and international organizations. In 2018, the Brazilian Supreme Court ruled that transgender people may self-identify and obtain legal recognition for their gender identity without undergoing any medical procedures.³⁰

STATUTORY LAW

There is no legislation that addresses gender identity or specifically protects the gender-variant community from targeted violence. This inhibits free expression of gender variant persons and restricts their access to education, employment, and health services. In Brazil, the lack of specific provisions relating to gender-variant people has led to problems regarding marriage, adoption, and inheritance. However, the judicial system has played a positive role in advancing the rights of the LGBT movement by giving favorable rulings and setting precedent that goes beyond existing law.

CASE LAW

*Global Rights Partners for Justice, Rede Negra LGBT de Brazil v. State of Brazil*³³

Facts: Petitioners before the Inter-American Commission on Human Rights (IACHR) argued that Brazil did not sufficiently protect the rights of its transgender community, (particularly those of African descent). They relied on statistics showing pervasive discrimination, poor quality of life, and gender-based violence.³⁴ For example, trans women make up only ten percent of the total LGBTI population but were the victims of nearly 150 murders of LGBTI people in 2012. Petitioners further argued that gender-variant persons had difficulty obtaining identification documents and could not change their names without undergoing gender affirmarion surgery.³⁵

The government countered that Brazil does not have specific federal legislations to protect the rights of this community, as there are different practices and standards in different parts of the country. They also highlighted progressive steps the government had taken, and stated that the Petitioners' statistics were unreliable, since data from other countries distorted the level of violence in Brazil.³⁶

Issues: Whether the government has an obligation to improve protections for gender-variant communities in Brazil by adopting specific legislation to address their needs.

Reasoning: The IACHR expressed concern over the lack of clear policies regarding gender identity and expression. It encouraged the enactment of legislation allowing trans persons to obtain appropriate identification without having to undergo gender affirmation surgery.³⁷ The state concluded the hearing by expressing its willingness to seek guidance and assistance from IACHR and civil society to improve upon these issues.

OBSERVATION

At present, Brazil lacks the mechanisms required to counteract the growing rate of hate crimes against gender-variant persons in the country. The government should consider introducing more legislation specifically targeted towards protecting the rights of the gender-variant community. There is, however, an active citizens' movement pushing for reforms and recognition the rights of gender-variant persons.

BRAZIL



CANADA

OVERVIEW

There are signs of consistent progress on the rights of gender-variant persons in Canada. In 1982, the Canada Act established the Constitution of Canada and Canadian Charter of Rights and Freedoms as the supreme law of the land. As a result of the enactment of the Charter, various fundamental rights have been guaranteed to people.

The Constitution and the Canadian Charter of Rights and Freedoms prohibit discrimination based on sex, race and religion in public and private sector employment. However, they do not include the terms “sexual orientation” or “gender identity,” allowing such discrimination to continue. The Human Rights Code of Ontario prohibits discrimination in five protected social areas: employment; housing; contracts; goods, services, and facilities; and membership in unions, trade, or professional associations.³⁸ Although the grounds of discrimination have been explicitly mentioned in the Code, companies may incorporate further safeguards to prevent additional forms of discrimination within the workplace, including gender identity and expression.³⁹ In addition to Ontario, other provinces such as British Columbia, Nova Scotia, New Brunswick, Yukon, Saskatchewan, and the Northwest Territories have adopted similar codes to provide health benefits to same-sex couples and a non-discriminatory work environment for gender-variant persons.⁴⁰

Moreover, in 2016 the Parliament introduced Bill C-16 to amend the Canadian Human Rights Act and the Criminal Code. This was done in order to prohibit discrimination on the basis of ‘gender identity’ and ‘expression’ by including these two terms within Section 3(1) of the Canadian Human Rights Act, 1977, which lists the prohibited grounds of discrimination. Despite these progressive steps, discrimination has continued to negatively impact the gender-variant community in Canada. The Charter still allows religious institutions to discriminate on the grounds of their belief⁴¹, although public schools governed and funded by the government are not allowed to discriminate. According to a report by Egale Canada Human Rights Trust, 17% percent of gender-variant students were subject to transphobic comments at school, and 74% of transgender students, 55% of sexual minority students, and 26% of non-LGBT students have been verbally assaulted regarding their gender expression.⁴²

The national health care plan includes gender-variant persons however; access to proper health-care services across Canada is limited.⁴³ For example, metropolitan cities such as Saskatchewan have advanced infrastructure, but due to persistent lack of knowledge and economic disparity, the most disadvantaged groups are unable to benefit from the system.⁴⁴ Gender-variant youth continue to face considerable challenges in gaining access to sensitive and knowledgeable physicians who can prescribe medications and monitor them.⁴⁵

As of 2017, the Ministry of Immigration allows Canadians to list that they are neither female nor male on their passports but are gender X.

STATUTORY LAW

The Canadian Charter of Rights and Freedoms is the primary law that provides equality protections in the country. Section 15 of the Charter states⁴⁶:

1. Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
2. Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

As the current provision does not cater to the needs of all people, several bills, such as Bill C-279 and Bill C-389, were introduced to provide⁴⁷ –

1. Explicit federal human rights protection on the grounds of gender identity and gender expression.
2. The availability of greater moral and penal sanction for crimes committed against an individual because of the individual's gender identity or gender expression.

Recently, Bill C-16, which proposed amendments to the Canada Human Rights Act and the Canadian Criminal Code, was cleared by the legislature. Under the new Human Rights Act and Criminal Code:

1. Discrimination on the basis of 'gender identity' and 'gender expression' is prohibited under the Canadian Human Rights Act; and
2. Hate propaganda motivated by a person's 'gender identity' or 'gender expression' is punishable under the Criminal Code, with up to five years of imprisonment.

CASE LAW

*C.F. v. Alberta (Vital Statistics)*⁴⁸

Facts: The petitioner, C.F., was assigned male at birth and presented as male during childhood, but always considered herself a girl. When she reached adulthood, she took the necessary steps to transition to female. She completed this transition by early 2011. In June 2011, C.F. decided to change her legal name. She applied for a birth certificate and was issued one in her new name. The birth certificate, however, still listed her sex as “male”. She was unsuccessful in subsequent efforts to obtain a birth certificate with her sex listed as “female”. Section 22 of the Vital Statistics Act, RSA 2000, c V-4 (now repealed and replaced), required that her genitals be surgically changed from male to female. Further, she needed two physicians to depose in affidavits that such a change had taken place.

Issues:

1. Whether the system of issuance of birth certificates established by the VSA infringes the Petitioner’s Charter S. 15(1) right to equality.
2. Whether that system discriminates against transgender persons other than those who have had genital surgery, in a manner which offends Charter s. 15(1).

Reasoning: The Court relied heavily on the precedent of *XY v. Ontario (Minister of Government and Consumer Services)*⁴⁹, in which Vice-Chair Price of the Ontario Human Rights Tribunal held that:

The requirement that Ontario birth certificates reflect the sex assigned at birth is covered under the prohibited ground of discrimination in the Ontario Human Rights Code, as it is characteristic of sex and/or disability. Moreover, it has resulted in distinct and disadvantageous treatment of the Petitioner on the basis of her status as a transgender person.

Thus, the insistence upon genital surgery in order to change official records is substantively discriminatory because:

- it exacerbates the situation of transgender persons as a historically disadvantaged group and perpetuates their disadvantage
- it perpetuates stereotypes about transgender persons and their need to have surgery in order to live in accordance with their gender identity.

OBSERVATION

The Canadian judiciary seems to be in support of human-rights claims from gender-variant people. Overall, Canada is making steady progress towards protecting the rights of gender-variant people.



INDIA

OVERVIEW

There are numerous gender-variant identities in India due to the country's diverse cultural, religious, and linguistic communities. These include genderqueer, intersex, Hijra, Aravani, Kothi, Shiv-Shaktis, Jogti, Kinnar, Aradhi, and many others. Other fluid non-traditional trans identities include Intergender, Bhaiya, Babu, Kotha, FTK (Female to Kotha), Thirunangai, and Gandabasaka.

During colonial rule, the British enacted the Criminal Tribes Act in 1871 for the “registration, surveillance and control”⁵⁰ of criminal tribes and “eunuchs” (an inaccurate term). Under this Act, a government register was to be maintained with the names of “eunuchs” who were “reasonably suspected of kidnapping or castrating children or of committing offences under section three hundred and seventy seven of the Indian Penal Code.”⁵¹ Hijras were also forbidden from dressing as women, playing music, willing away property, adopting a son, or participating in any public or private show.⁵² Thus, the Act sought to curb the social life of gender-variant persons. Laws of this nature continued to exist in India until recently. One such example is Section 36A of the Police Act in Karnataka, which gave the police arbitrary powers to prohibit “eunuchs” from certain activities.⁵³ However, in 2016, the Karnataka High Court ordered the State government to erase all uses of the derogatory term from the Act – a positive step forward for transgender rights.⁵⁴

In a national consultation on the human rights of gender-variant persons, organized by the Centre for Health Law, Ethics and Technology (CHLET), Hijras and other gender-minority groups spoke about their interaction with the State and society. As expressed during Consultation, gender-variant people continue to face extensive abuse at the hands of the police⁵⁵ and have restricted access to public places.⁵⁶ Many community members cannot access basic amenities like education, housing, and employment.⁵⁷ This results in limited career prospects, and some of them resort to sex work, Badhai⁵⁸, begging, or other low-paying occupations, such as selling vegetables and fruits. Gender-variant persons have such an entrenched fear of the legal and police system that, at least in some cases, they hesitate to assert their Constitutional rights even when they have been legally wronged.⁵⁹

A study⁶⁰ conducted by CHLET in November 2013, revealed the State's attitude towards gender-variant people. CHLET filed Right to Information applications ("RTIs") with all Indian States to determine the presence of law, policies, and welfare schemes for the gender-variant community in India and to also inquire as to the number of gender-variant persons in each state.⁶¹ The RTIs also enquired if the Government of each State provided free or subsidized sex reassignment surgeries at government hospitals.⁶² Most of the responses revealed that States had no welfare schemes for gender-variant people. From the responses received, only Rajasthan and Tamil Nadu⁶³ had welfare schemes in place, whereas the states of Bihar, Chhattisgarh, Himachal Pradesh, Manipur, Meghalaya and Mizoram, and the union territories of Andaman and Nicobar, Daman, and Dadra and Nagar Haveli, reported having no such schemes.⁶⁴

Further, Nagaland, Chhattisgarh, Himachal Pradesh, and Mizoram, and the union territories of Dadra and Nagar Haveli and Daman, denied the presence of any gender-variant persons within their territories.⁶⁵ Most surprisingly, two conflicting responses were received from the State of Nagaland. The Nagaland AIDS Control Society stated that there were thirteen gender-variant persons in the State, whereas the Directorate of Social Welfare replied that "there is no official report of any transgender and Hijras in Nagaland."⁶⁶

Currently, the lives of gender-variant persons in India are regulated by a few different laws. First, the Immoral Traffic (Prevention) Act (ITPA), 1956 which criminalizes various aspects of sex work. Second, anti-begging acts exist in various States and are used by the police to harass Hijra persons. Until recently, certain provisions of the Indian Penal Code, such as Section 377 (now partially repealed) have been used against transgender people. A recent Supreme Court decision⁶⁷ overturned Section 377, finding its prohibition against "unnatural acts" (read to include same-sex acts) unconstitutional.

IMMORAL TRAFFIC (PREVENTION) ACT, 1956

The Act was adopted with the purpose of criminalizing brothel keeping, pimping, and trafficking, and is often used to arrest and detain gender-variant persons who are suspected of engaging in sex-work.⁶⁸ ITPA conflates sex trafficking with voluntary sex work, resulting in victims of trafficking themselves being penalized under the provisions of the Act. The Hijra community relies on sex work as an important and sometimes primary source of income. Although sex work is technically not illegal under the Act, various related aspects are penalized which endangers the livelihood of the community.

ANTI-BEGGING ACTS

The criminalization of begging in India can be traced to the Bombay Prevention of Begging Act, 1959, which was later adopted by and extended to many other States. Under the Act, begging includes “soliciting or receiving alms in a public place, whether or not under any pretense of singing, dancing, fortune-telling, performing or offering any article for sale”.⁶⁹ The punishment ranges from 3-10 years imprisonment.⁷⁰ Many Hijras rely on begging as a source of income. In 2018, however, the Delhi High Court, in its judgment in *Harsh Mander v. Union of India*, decriminalized begging and emphasized that criminalization has the effect of stigmatizing and further disenfranchising the poorest.

SECTION 377 OF THE INDIAN PENAL CODE, 1860

This provision criminalized “carnal intercourse against the order of nature,” which was interpreted as criminalizing homosexuality. Although the thrust of this section was to criminalize all non-penile-vaginal sex irrespective of sexual orientation, it had a disproportionate impact on those engaged in same-sex relationships. In 2009, the Delhi High Court struck this section down, holding that it does not apply to consensual intercourse between adults, regardless of their sex.⁷¹ However, the Supreme Court in December 2013 overturned this decision⁷² and recriminalized consensual private “unnatural” sex between adults. Finally, in September 2018, the Supreme Court delivered a landmark judgment in *Navtej Johar v. Union of India* on a new batch of petitions challenging Section 377. The court read down the section, stating that it was unconstitutional insofar as it criminalized consensual sexual conduct between adults of the same gender.

Gender-variant persons face several hurdles in employment due to their identities, and many turn to begging to survive. In November of 2014, over 167 members of the transgender community were taken away by the Bangalore police and detained at a "beggar's home".⁷³ As many of the detainees had not actually committed offences under the Karnataka Prohibition of Beggary Act, 1975, it is evident that the objective of the police was not merely to pick up those who were "begging." Rather, it was to harass the hijra. Gender-variant persons are, therefore, at great risk of violence due to such laws.

The recent debates surrounding the proposed Transgender Persons (Protection of Rights) Bill⁷⁴ are worth mentioning. In 2014, Rajya Sabha (Upper House of Parliament) Private Member Tiruchi Siva introduced 'The Rights of Transgender Persons Bill, 2014' in the Rajya Sabha which was passed unanimously. This Bill was drafted in consultation with transgender and gender diverse people and activists.⁷⁵ Thereafter, the Ministry of Social Justice and Empowerment (MSJE) sought comments on its Draft 'Rights of Transgender Persons Bill, 2015. Union Minister Thaawarchand Gehlot presented the Transgender Persons (Protection of Rights) Bill, 2016 in the Lok Sabha (Lower House) in 2016. This 2016 Bill was seen by many as a highly diluted version of Siva's Bill, and criticized for lacking a rights-based framework.⁷⁶ After receiving recommendations from many transgender-led groups, the Bill went through several amendments and was again introduced and passed in the Lok Sabha in December 2018. However, this 2018 Bill still retained many of the provisions from the 2016 version that transgender persons had objected to. Due to quick mobilization by transgender and gender-diverse activists and country-wide protests⁷⁷, the Bill did not make it to the Rajya Sabha and has been set aside indefinitely.

National Legal Services Authority (NALSA) v. Union of India⁷⁸

Facts: NALSA filed a writ petition in the Supreme Court of India in 2012, demanding various civil, political and social protections for transgender people from the State. Several Hijra and transgender activists intervened in the case and contended that their fundamental rights were being violated due to non-recognition of their gender.

Issue: Whether transgender persons have a constitutional right to the recognition of their self-identified gender.

Reasoning: The Court held that transgender persons are full and equal citizens of India and are entitled to all the protections guaranteed by the Constitution. Non-recognition of their gender amounts to a violation of their fundamental rights.

The court found that gender identity is one of the most fundamental aspects of life, referring to various international human rights instruments. Drawing upon the Yogyakarta Principles and the Universal Declaration of Human Rights (UDHR), the court held that one's "deeply felt experience of gender" constitutes a basic element of individual self-determination." The court also examined Articles 14, 15, 16, 19, and 21:

Article 14 places a positive obligation on the State to ensure equal protection of laws by bringing in necessary social and economic changes. Non-recognition of the identity of Hijras/transgender persons denies them equal protection of law and leaves them vulnerable to harassment, violence, and sexual assault.

Articles 15 and 16 obligate the State to take affirmative action for the advancement of the transgender community so that historical injustice done to them can be remedied.

Article 19(1)(a) allows for one's self-identified gender to be expressed through dress, words, action, behavior, or other forms. Reasonable constitutional restrictions can be placed on this only by the State.

Article 21 has been understood through established jurisprudence as including all those aspects of life which make a person's life meaningful. The rights to dignity and integrity have been recognized and at the heart of these lies gender identity. Moreover, self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under this Article.

Each of the Articles use the terms 'citizen' or 'person,' both of which are gender-neutral and thus, protect against any discrimination on the basis of gender.

The court further stated that no individual should be forced to undergo medical procedures (including sex-reassignment surgery) in order for the government to recognize their gender identity. The court observed that non-recognition of identity leaves transgender persons vulnerable to mistreatment—including sexual assault, violence, molestation, rape, and custodial violence. The court also found that non-recognition leads to discrimination in the areas of employment, healthcare, education, and access to public spaces (restaurants, malls, etc.). Finally, the court issued directives to all Central and State governments:

- 1. Transgender persons have the right to identify as their self-identified gender.**
- 2. Hijras have the right to be recognized as ‘third gender’.**
- 3. Transgender people are declared a socially and educationally backward class (SEBC) and accordingly, affirmative reservations are to be made for them in educational institutions and in public appointments.**
- 4. States must operate separate HIV sero-surveillance centres for Hijra/transgender persons.**
- 5. It is illegal and immoral for States to require transgender/Hijra person to undergo SRS to be eligible for reservations or other measures.**
- 6. States must address issues of shame, fear, suicide, and depression faced by transgender people by creating public awareness of these issues.**
- 7. States must create separate public toilets for transgender persons.**
- 8. States must make adequate medical care available to transgender populations in hospitals.**
- 9. States must institute social welfare schemes for transgender persons/Hijras.**

Illyas v. Badshah Alias Kamla⁷⁹

Facts: A Hijra guru willed property to a person outside the Hijra community. The customary law dictates that the property of the Hijra guru must pass to the chela upon the guru's demise. However, the parties involved were Muslim and it was argued that the rights of Muslim to will away his property could not be limited by customary law.

Issue: Whether this customary practice of devolution of property takes precedence over a will through which a Hijra guru gives away property to someone outside the community?

Holding: The chela alone is the heir of the guru and property of the latter cannot be willed to a person outside the community without the former's consent.

Reasoning: The Madhya Pradesh High Court stated that a Muslim Hijra could will away property to anyone within the restrictions of Muslim inheritance law, so long as the person is within the Hijra community.

Kamala alias Kamala Jaan v. Sadiq Ali⁸⁰

Facts: As per the Madhya Pradesh Municipality Rules, 1999, the seat of the mayor of the Municipal Corporation of Katni, Madhya Pradesh was reserved for a woman. A Hijra by the name of Kamala Jaan contested and was elected to this seat.

Issue: Whether a Hijra can self-identify as a 'woman' and thereby, contest in election for a seat reserved for women.

Reasoning: The petitioner, a Hijra, had registered herself as a woman in the voter list. The Madhya Pradesh High Court interpreted the word 'woman' in its strict biological sense and held that since Kamala Jaan was not a woman "in fact," she could not contest on a seat reserved for women. As a result, Kamala Jaan lost the elected seat.

Nangai v. Superintendent of Police (Nangai I)⁸¹

Facts: The petitioner identified as a woman and had grown up attending an all girls' school and college. When the Tamil Nadu Uniformed Services Board, Chennai, put out a recruitment call for the post of woman police constable, the petitioner applied and was selected. However, during training, she underwent medical tests and was marked as "trans gender." The medical report issued by the government doctor stated that she had an XY chromosome and that her external genitalia was "ambiguous". The report further diagnosed her with Disorder of Sexual Differentiation, Partial Androgen, Insensitivity Syndrome and Male Pseudohermaphroditism.

After a show-cause notice was issued to the petitioner, she was terminated from services for not disclosing her transgender identity and for applying in the women's category.

Issues:

1. Whether the petitioner is female and, therefore, eligible for appointment as a "Woman Police Constable".
2. Whether the termination of the petitioner from service due to medical examination showing her to be transgender is sustainable.

Reasoning: The Madras High Court found that no law provided a definitive set of tests to determine when a person may qualify as male or as female. Moreover, drawing from the NALSA judgment, the court found that transgender and third gender persons are not accommodated within the binary arrangement of laws, and that for certain purposes, they must be categorized either as male or female. The court held that the Services Board had violated the privacy rights of the petitioner by disqualifying her from applying as a woman, as she was recognized by herself and by society as female.

G. Nagalakshmi v. Director General of Police (Nangai II)⁸²

Facts: The facts of this case are similar to those in the Nangai I case. The petitioner had applied and been recruited to the position of a female constable by the Tamil Nadu Uniformed Services Board. However, a medical examination in the government hospital during her training period revealed that she had X-Y chromosomes, leading the examiner to label her as "transgender". She was, therefore, disqualified from the position of a female constable.

Issue: Whether a person who lived her entire life as a woman can be prohibited from identifying as a woman legally because she has an X-Y chromosome.

Reasoning: The Madras High Court held that the petitioner had the right to her self-determined "sexual identity" under Article 19(1)(a). In accordance with the NALSA judgment, the court also found that the petitioner has a right to identify as either female or third gender, regardless of the medical examination's findings. The Tamil Nadu Uniformed Services Board was directed to re-instate the petitioner in her services as a female constable.

Facts: A public interest litigation (PIL) was filed in the Allahabad High Court seeking a clarification as to whether Section 13 of the National Food Security Act, 2013 (which requires a declaration of to the head of the household for the purpose of issuing ration cards) recognizes transgender persons. Section 13, until that point, had only provided for a female or a male member of the house to be the head of the household.

Issue: Whether Section 13 bars transgender people from qualifying for ration cards.

Reasoning: The court found that the object and purpose of Section 13 was to empower women and that this objective could not be interpreted as excluding transgender people. The court reasoned that the form for issuance of ration cards allowed persons to register themselves for food security as male, female, or other. As the system allowed for “other,” the court found that the government must have intended that the head of the household could be transgender. Further, the court found that food security is crucial for transgender persons and impeding access to food violates their right to live with dignity.

*Shivani Bhat v. Union of India and Ors*⁸⁴

Facts: A 19-year-old transman, Shivy, was an Indian citizen and resident of the United States of America. He was illegally confined in his home by his family during a visit to India in the summer of 2015. His passport and green card were confiscated. Shivy managed to contact the queer resource group *Nazariya* and other activists in Delhi and requested their help. With their assistance, he managed to leave his home, and wrote a note to his parents stating that he had left of his own free will. Nevertheless, his parents filed a FIR stating that he had been kidnapped and then harassed the activists who had helped Shivy.

Issue: Whether the confinement of an adult gender-variant person through withholding of his travel and identity documents constituted a violation of their fundamental rights.

Reasoning: The court held that no person can be illegally confined in their home, as it is a violation of their basic rights. The court reiterated the holding of the NALSA judgment and ruled that “there is, thus, no gainsaying the fact that transgenders enjoy basic human rights including protection from violence and discrimination. They have the right to dignity and self-determination.” The court directed the family to return Shivy’s passport and other documents. Further, the court found the FIR filed for kidnapping to be false and ordered the police not to harass Shivy.

Chanchal Bhattacharya v. West Bengal⁸⁵

Facts: The petitioner's son, Tamal, had behaved like a boy since childhood. He was eventually diagnosed with Gender Identity Disorder. Several doctors were consulted, and he underwent gender affirmation surgery in February 2014. After surgery, the petitioner approached the West Bengal Council of Higher Secondary Education and the Board of Secondary Education for change of name and gender in the admit cards, registration certificates and mark sheets of his son. The Administrator of the Board rejected the prayer of the petitioner. This rejection order and the inaction of the President of the Council is under challenge in the writ petition.

Issues: Whether the Board and Council were obligated to change the name and sex of the petitioner's son in the certificates issued by them after Sex Re-assignment Surgery.

Reasoning: The petitioner placed reliance on *NALSA v. Union of India* and decisions of the Madras High Court to contend that the administrator of the board had erred in the exercise of his jurisdiction in not granting the prayer of the petitioner. The Respondent relied on the contention that there was no statutory provision mandating the Administrator to effect corrections prayed for by the petitioner. The court in *NALSA* had observed that the absence of a statutory regime would not stand as an impediment to give recognition to gender identity. The President of the Board ought to have given recognition to the choice exercised by the child of the Petitioner and directed his subordinates to make necessary changes to the relevant certificates.

K. Gowtham Subramaniam v. Controller of Examination Anna University⁸⁶

Facts: The petitioner, after consultation with doctors, underwent gender-affirmation surgery and changed his name to K. Gowtham. He was issued a certificate that mentioned that he was transgender. The certificates from his school and college, however, contained the name prior to the legal name change. Therefore, the petitioner had approached the respondents to carry out the necessary changes in the certificates and also gave written representations to them. Since the petitioner's representations were not considered, the petitioner has come before this Court by way of this writ petition.

Issues: Whether the Respondents are obligated to carry out necessary changes of name and sex of the petitioner in the certificates issued by them.

Reasoning: The authorities, in the absence of any precedent or provision, had not complied with the request of the petitioner. In such circumstances, when a transgender person undergoes a gender affirmation surgery and makes an application thereafter for changing of name and sex in the relevant records, the concerned authorities are expected to verify the records and make consequential changes in the concerned records.

The Court was of the opinion that the petitioner should be granted the relief sought for and that he is entitled to the name mentioned in the certificates to be changed.

Facts: The parents of the appellant could not identify his sex when he was born as the external genitals were ambiguous. They decided to get him registered as a female child. The appellant, however, felt like a boy. His voice started getting husky and hair began to sprout on his chin and upper lip. His parents then took him to the Lokhat Sarvajanik Medical Trust, Surat. On his medical examination by a team of experts, he was given a certificate stating that he belongs to the male gender. According to the doctor's certificate, the appellant is genetically, endocrinologically and psychologically male.

The parents of the appellant made an application to the Taluka Development Officer for necessary changes re: appellant's sex in the records and for issuance of a fresh birth certificate to him. This application was rejected because the Registration of Births & Deaths Act, 1969 did not allow changes. The appellant insisted that his claim for changing the entry in the register of birth was not based on the change of his sex by surgery but rather on the basis that he was born a 'natural male child' and his genitals were concealed at the time of birth.

Issues: Whether the Respondent was obligated to change the entry regarding appellant's sex in the Register of Births on the basis of incorrect identification of the sex of appellant at birth on account of him being intersex.

Reasoning: The Court reasoned that this case is not one of change of sex of the appellant by operation. His claim is based on the medical opinion that he was born a 'natural male' with some deformity of the sexual organs. The provisions of the Act clearly permit correction of an entry in the Register of births if it is found to be "erroneous in form or substance or has been....improperly made." The order of the lower court was therefore set aside, and relief was granted.

Shri.Vinod v. State of Karnataka⁸⁸

Facts: The petitioner was born with Severe Perianal Hypospadias (intersex variance). The petitioner underwent necessary medical procedures and is presently seeking that the name and sex of the petitioner be changed in the appropriate documents.

Issues: Whether the Respondents are obligated to carry out necessary changes of name and sex of the petitioner in their official records

Reasoning: The petitioner is entitled to seek for such relief in the present petition in consideration of his medical records and representations. A similar case was dealt with by the Gujarat High Court in Mulla Faizal v. State of Gujarat. A perusal of the case intimates that it is for the authorities before whom such request is made to make necessary inquiries keeping in view the medical records relied on by the petitioner and thereafter make such entries. The prayer of the petitioner is granted and accordingly the Respondents are directed to consider the representations made by the petitioner.

OBSERVATION

A study of Indian cases involving gender-variant persons reveals the following:

Courts have been forthcoming in recognizing and promoting the rights of gender-variant persons. Before the NALSA judgment, High Courts already recognized the right of Hijra *chelas* to inherit from their gurus, as well as addressed the rampant police harassment of gender variant persons. The decision of the Court in NALSA has expanded the ambit of legal protection and, consequently, the accountability of the government in not only recognizing rights, but also in implementing them.

Several positive steps have stemmed out of the NALSA directives. University systems are now opening admissions to gender minorities with a “TG” option⁸⁹ in their admission forms, and the University Grants Commission - the body that regulates college education in India - has opened its scholarships to gender-variant persons.⁹⁰

However, the Transgender Persons (Protection of Rights) Bill, 2018 has generated discourse around the State's unwillingness to draft legislations after meaningful consultation with the affected individuals and groups. The Bill proposes the issuance of certificates of identity, which is in direct contradiction to the right to self - identification articulated in the NALSA judgment. Socio-cultural identities such as *Shiv Shaktis* have been removed from the definition of ‘transgender’. The Bill also restricts the term 'transgender' to only encompass the binary of male and female.

Furthermore, the Bill does not include reservations in employment and education sector for transgender persons. It criminalizes the ‘enticement’ of a transgender person for begging, etc. The notion of “enticing” is not clearly defined in the Bill, thus putting Hijra *gurus* at risk if their *chelas* engage in begging. The Bill also ignores the socio-economic realities of gender-variant persons for whom begging is often a last resort, resulting from discrimination in access to employment.

Despite some positive developments, little has improved in the lives of gender minorities. While government bodies are taking steps to implement the court directives, gender minorities still face violence from society. There have been newspaper reports of gender minorities being pushed out of moving trains⁹¹, sexual assaults of gender minorities in police custody⁹², and of public assaults on gender minorities⁹³ at several locations in the country. There must be a more concerted effort, at the Central and State levels, to safeguard the rights of gender minorities and ensure their full participation in society.

NEW ZEALAND

OVERVIEW

New Zealand has a wide variety of gender-variant groups. Acknowledging this, the Human Rights Commission of New Zealand, in 2008, published a report on discrimination against gender-variant persons.⁹⁴ The report examined areas such as education, employment, health, and citizenship, and provided recommendations in the form of policy changes and legislative amendments.⁹⁵ Some of these recommendations have led to positive changes for gender-variant individuals in the country.

An adolescent health study⁹⁶ conducted by researchers from the University of Auckland surveyed 8,500 secondary school students from 91 randomly selected high schools in New Zealand. This survey separately examined the experiences of gender-variant persons. The questions in the survey pertained to issues of health, safety in schools and neighborhoods, and family and friend support systems. The results indicated that most gender-variant students have at least one parent that cared for them, that their families got along, and that they felt safe in the neighborhood.⁹⁷ However, results also indicated that gender-variant students face an increased risk of being bullied; being prone to physical fights or depressive symptoms; suicide attempts; and being unable to access health care, as compared to their gender conforming peers.⁹⁸

Statutory Law:

Section 28 of the Births, Deaths, Marriages, and Relationships Registration Act 1995 (hereinafter referred to as the “BDMRA”) allows an eligible adult, who is a citizen or permanent resident of New Zealand, to apply for a declaration from the Family Court that their birth certificate be changed to show the sex specified in the application. The elements that must be proven before the court are⁹⁹:

1. The applicant’s birth is registered with the previous sex to that of the nominated sex; and
2. The applicant is not a person of the nominated sex, but
 - Has assumed and intends to maintain, or has always had and intends to maintain, the gender identity of a person of the nominated sex; and
 - Wishes the nominated sex to appear on his or her birth certificates; and
3. On the basis of expert medical evidence, that the applicant
 - Has assumed (or has always had) the gender identity of a person of the nominated sex; and
 - Has undergone such medical treatment as is usually regarded by medical experts as desirable to enable persons of the genetic and physical conformation of the applicant at birth to acquire a physical conformation that accords with the gender identity of a person of the nominated sex; and
 - Will, as a result of the medical treatment undertaken, maintain a gender identity of a person of the nominated sex

There is no surgical requirement. The test may be specific to each individual’s needs based on the recommendations made by medical advisors.¹⁰⁰ Hence, a full reconstructive surgery is not required in every case.¹⁰¹ As long as there is “some degree of permanent physical change as a result of the treatment (including psychological treatment) received,”¹⁰² the third limb of the test under Section 28 will be fulfilled. The effect of a declaration made by the Family Court under Section 28 is only for the purposes of change in the birth certificate. Any other civil union/marriage record cannot be updated in the same manner. A change of sex in the passport requires a separate application supplemented with a simple statutory declaration stating how long the individual has maintained his/her preferred sex or gender identity.¹⁰³ The options that are available are M, F and X. A change of sex in a driver’s license may also be affected by a simple statutory declaration registered with a Justice of the Peace, a member of Parliament, a lawyer, a registered Legal Executive or a government officer authorized to make statutory declarations.

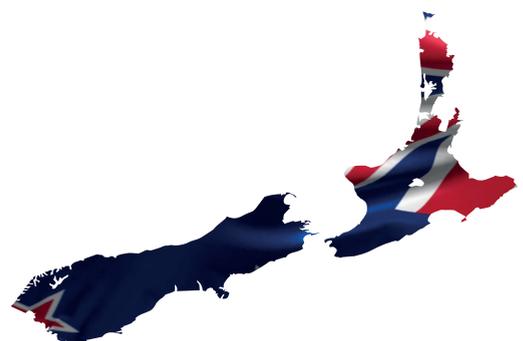


The Human Rights Commission (HRC) has published resources to guide schools on how to support gender-variant students.¹⁰⁴ The HRC states that gender-variant students must be allowed to use toilets and wear uniforms that reflect their gender identity.¹⁰⁵ The HRC also requires schools to maintain the confidentiality of information on trans students at all times and also advocates for the establishment of support systems during the transitioning process.¹⁰⁶

Ensuring the protection of gender-variant persons' rights at the workplace is also considered essential, as reflected in the guide published by the Department of Labor.¹⁰⁷ This guide recognizes unlawful discrimination on the basis of sex and gender identity and states that an employer must treat a trans woman the same as any other woman, and a trans man the same as other men.¹⁰⁸ Further, the guide recommends that employers not ask potential employees about their gender identity, as their gender identity has no bearing on their ability to perform a job.¹⁰⁹ Additionally, the dress code should ideally be gender-neutral and the employee should be allowed to use facilities that match their gender identity. This is significant to their "real life experience" that is taken into account by health professionals to assess whether the individual is ready for medical transition.¹¹⁰

The Human Rights Commission Report¹¹¹ exposed gaps in the availability, accessibility, acceptability, and quality of medical services for gender-variant persons in the country. In light of the report, the Ministry of Health reported in 2009 that the Ministry would establish a small group of health professionals and gender-variant persons, in order to develop recommendations for improving access to quality gender-reassignment health services. A Good Practice Guide¹¹² for Health Professionals was published shortly thereafter.

Section 21 of the Human Rights Act, 1993 (HRA) prohibits discrimination based on a number of grounds, including sex. In August 2006, the Solicitor-General of New Zealand stated that gender identity discrimination claims could be presented as sex discrimination cases.¹¹³ The provision on sex discrimination should not be narrowly construed and must include gender-identity discrimination as well.¹¹⁴ However, the HRA has not yet been amended.



CASE LAW

*New Zealand Attorney General v. Family Court at Otahuhu*¹¹⁵

Facts: The Attorney General made an application on behalf of the Registrar of Marriage for a declaration “as to whether two persons of the same genetic sex, may, by the law of New Zealand, enter into a valid marriage where one of the parties to the proposed marriage has adopted the sex opposite to that of the proposed marriage partner through sexual reassignment by means of surgery or hormone administration or both or by any other medical means.”¹¹⁶

Issues: What are the necessary surgical requirements for the legal recognition of a person’s sex in regard to their ability to marry?

Reasoning: The Family Court stated that the legal recognition of an individual’s sex for the purpose of marriage ought to take into consideration gender affirmation surgery. Hormone therapy, or any other medical means, was considered insufficient for this purpose, and only a “full” surgery would be sufficient. However, the court held that post-operative capacity of heterosexual intercourse was not a prerequisite for recognizing an individual’s sex, since there may be many forms of sexual expression possible without penetrative sexual intercourse.

This case replicated the reasoning expressed in *M v. M*¹¹⁷ that required “psychological and anatomical harmony” while legally recognising an individual’s sex. However, the case went beyond this to state that full surgery is required only for legal recognition of sex for the purpose of determining capacity for marriage, and not for criminal law, inheritance, etc. In other branches of law, lower thresholds may allow an individual to be categorised under his/her desired sex regardless of a “full” surgery.

OBSERVATION

New Zealand has witnessed an increasing number of progressive laws, policies and guidelines with regard to rights of gender-variant persons. In addition, the Human Rights Commission has consistently worked to make the law more accommodating for gender-variant persons. Although these recent changes are good indicators, implementation must be assessed.

PAKISTAN

OVERVIEW

As of 2012, there were between 50,000 and 150,000 gender-variant persons living in Pakistan.¹¹⁸ One such group is the *khawaja sara*.¹¹⁹ The *khawaja sara* is a cultural and religious gender-variant community.¹²⁰ Their main sources of employment are singing, dancing, and blessing at religious functions, such as birth celebrations and marriages.¹²¹ As a community, *khawaja sara* are divided and live within specific households, with *chelas* giving their earnings as well as respect to the *gurus* of the household. *Khawaja Sara* adopt distinct cultural characteristics that set them apart from the binary of men and women. Although the Supreme Court of Pakistan has issued a progressive judgment recognizing their rights, there has been little substantive change in the lives of gender-variant persons in Pakistan. The rights of the gender-variant community in Pakistan exist mostly on paper, while respect and acceptance lag behind in their lived experiences.¹²²

In 2007, the Supreme Court of Pakistan ordered the government to officially recognize a separate gender for Pakistan's *khawaja sara*. As a result, *khawaja sara* may identify as such when registering for a national identity card.¹²³ In recent elections, many *khawaja sara* candidates participated in the election process.¹²⁴ Although the government has taken some steps in the right direction, more protection is needed for gender-variant persons in Pakistan. Merely issuing such identity cards does not address the potential difficulties faced by other groups of gender-variant persons.¹²⁵ The judgment recognizing rights of the *khawaja sara* appears like a positive sign towards progress; however, it has not uprooted the social stigma and discrimination waged against them.¹²⁶

STATUTORY LAW

In May 2018, Pakistan's Parliament passed the Transgender Persons (Protection of Rights) Act allowing people to choose their own gender and have it legally recognized. The Act also prohibits discrimination in schools, workplaces, and healthcare facilities. The key features of this Act are:

1. It affirms the right of every individual to express their gender
2. It recognizes the citizen's right to self-identify themselves as male, female or a blend of both genders, and allows for such identification to be registered on all official documents
3. It expressly proscribes discrimination against the third gender on basis of gender identity by employers, educational institutions, healthcare providers, transportation service providers and any private business or service provider
4. It guarantees, among others, the right of transgender people to inherit, run for office, assemble, or have access to public place
5. It mandates the government to establish government-run protection centres for transgender persons fearing their safety

The government aims to supplement the Act through a Transgender Persons Welfare Policy (the draft of which has already been released). The objective of the policy is to provide guiding principles and priority areas in implementing various future programs for welfare and protection of rights of transgender persons.

However, Pakistan still criminalizes "unnatural offenses" under Section 377 of the Penal Code, which has been used to harass gender-variant persons. This law states that, "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to fine."¹²⁷ Although this does not specifically criminalize or target gender-variant persons, the police often utilize this section as a tool of harassment.¹²⁸

CASE LAW

*Khaki v. Senior Superintendent of Police (Operation Rawalpindi)*¹²⁹

Facts: Dr. Khaki, an attorney specializing in Islamic law, brought a case before the court in 2009 after an atrocious incident in Taxila, near Islamabad, where police attacked and raped a group of gender-variant wedding dancers. Khaki filed a private case in the Supreme Court.

Issue: Whether the khawaja sara have the right to be recognized and protected from discrimination.

Reasoning: The decision legally recognized the rights of the khawaja sara as being at par with those of any other citizen of Pakistan. The court recognized the khawaja sara's rights in the matters of inheritance, employment, and election registration. Further, the court ruled that the national and provincial authorities must safeguard these rights.

In addition, the court held that qualified khawaja sara were to be given preference for civil-service jobs and that a khawaja sara with a 10th-grade education will be deemed to have the same qualification for government work as a non-khawaja sara person with a bachelor's degree.

PAKISTAN

OBSERVATION

Although the recent Supreme Court decision is a step towards establishing the rights of the khawaja sara, implementation has been slow. Social stigma remains a deep-rooted issue requiring attention.



SOUTH AFRICA

OVERVIEW

President Thabo Mbeki once described South Africa as a country of two nations — wealthy and white, and poor and black.¹³⁰ The racial and economic disparity in the South African society has led to specific victimization of black gender-variant persons, as they typically reside in semi-urban and rural areas.¹³² Although progressive legislation and judicial decisions have provided gender-variant persons the freedom to profess their individuality, they still face societal discrimination.¹³²

A research study by Humans Rights Watch indicates that transmen in South Africa are attacked by strangers, recent acquaintances, and sometimes, even by friends. These attacks occur in isolated public places or in private spaces to which they are taken against their will.¹³³ Although laws guarantee protection by the government, these rights largely exist only on paper.

Gender-variant youth also experience other forms of harassment beyond physical abuse.¹³⁴ A South African study indicated that 16% of LGBT people delayed seeking health care or did not seek any medical help at all out of fear of homophobic and transphobic treatment.¹³⁵ Another report, published by OUT (a non-governmental organization), suggests that 12–16% of gender-variant people delayed seeking medical treatment out of fear of discrimination.

STATUTORY LAW

The South African Constitution was enacted by President Nelson Mandela on 10 December 1996 and came into effect on 4 February 1997, replacing the Interim Constitution of 1993.¹³⁶ The Constitution gained worldwide acknowledgment because it was the first to contain explicit protections for LGBTI individuals.¹³⁷ This guarantee is found in the Equality Clause of the Bill of Rights and reads as follows:

“Article 9(3): The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds including race, **gender**, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience belief, culture language and birth.

Article 9(4): No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

Article 9(5): Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.”¹³⁸

These rights have both vertical and horizontal application, so as to guarantee equality.¹³⁹ This means that the state, private companies, and individuals are prohibited from unfairly discriminating against any person on these grounds.

The Equality Act, 2000¹⁴⁰ requires the government to “promote equality” and it prohibits discrimination on several grounds, including gender, race, and disability.

Quinton Atkins v. Data Centrix (Pty) Ltd¹⁴¹

Facts: The applicant, Quinton, was offered a position in writing, as a senior support engineer, with the Respondent company after a successful interview. She accepted the offer, and then mentioned to the Respondent her intention to undergo a gender-affirmation process from male to female. The Respondent rescinded the offer of employment merely a day before the applicant was due to join work, on the ground that the applicant's failure to disclose her intention of undergoing sex change was "a serious case of misrepresentation."

Issue: Whether Respondent's actions constituted unfair dismissal on the grounds of gender, sex and/or sexual orientation within the meaning of the Employment Equity Act (EEA) 55 of 1988 and the Labour Relations Act 66 of 1995(LRA).

Reasoning: The court rejected the Respondent's argument that there is a legal duty to disclose one's gender identity. Although it "might have been different had he been asked this question during the interview and had lied about it," the court found no duty for the applicant to have disclosed what his intentions were.

The court also drew attention to the element of gender, stating, "The applicant wants to change his gender. Once he undergoes the sex or gender process, he continues to remain an employee and continues to enjoy the protection afforded to him by the LRA, the EEA and Constitution. He does not become a less worthy human being." Thus, the court found unfair dismissal and unlawful discrimination, and ordered that compensation and a written apology be issued to the Applicant.

Christine Ehlers v. Bohler Uddeolm Africa (Pty) Ltd¹⁴²

Facts: The applicant, a trans woman, brought an unfair dismissal suit, alleging that she faced discrimination on grounds of her sex and gender (following which she became severely depressed). In one such instance, she was called a "wannaB woman" by a colleague, which was extremely denigrating as she wanted to be accepted as a woman. She reported this instance along with another grievance to her employer, but alleges that he took no steps to prevent the discrimination against her. She sought reinstatement, damages, and other ancillary relief. The respondent denied that the applicant's dismissal was unfair, contending that the position was distinctly for a male employee, whereas, the applicant had developed distinctly female features during the course of her transition. Moreover, she was also suffering from Bipolar Disorder and displayed severe mood swings and aggressive behavior towards others.

Issues:

1. Whether the circumstances surrounding the applicant's dismissal were unfair, therefore entitling her to reinstatement
2. Whether the respondent is liable to pay damages and compensation as per the EEA for discrimination suffered by the applicant at the workplace

Reasoning: The court examined the evidence on record which showed that the applicant was dismissed on grounds of her sex and gender identity. Therefore, she was entitled to be reinstated to the same position she held before the dismissal. The Court observed that despite the non-discriminatory laws in place, discrimination in the workplace still thrives. Therefore, the court directed that the Respondent should take steps to prevent the same unfair discrimination or any similar practice occurring in respect of other employees.

However, the court in *Christine Ehlers* also went on to hold that the employer was not liable to pay damages and compensation in terms of the EEA. The respondent would only be liable if the applicant was able to prove that she brought to the attention of the respondent and the respondent failed to take all the reasonably practicable steps to ensure that employees would not act in contravention of the EEA. When the applicant lodged grievances against her colleague, they were duly investigated by the respondent. Her claim for damages and compensation therefore, failed.

OBSERVATION

Although there exist certain limitations, such as the lack of specific legislation on the protection of rights of gender-variant persons, the human rights framework established by South Africa's Constitution and case law provide a firm platform for establishing equality for gender-variant persons. Civil-society organizations have litigated extensively to protect their rights and freedoms. South Africa has great potential to pave the way for inclusion of gender-variant persons living in other African countries.¹⁴³



OVERVIEW

The legal and social status of gender-variant persons in the UK is, overall, on a progressive path. However, due to bullying and transphobia, gender-variant people in Great Britain experience higher rates of mental-health problems.¹⁴⁴ There have also been considerable developments in Scotland regarding transgender rights, and it has been rated as the best country in Europe for LGBTI legal equality.¹⁴⁵ For example, the Scottish prison staff are shown training videos on how to treat gender-variant inmates. The Scottish Government and Sports Scotland are making efforts to encourage participation of gender-variant persons in sports.¹⁴⁶ This is part of a national plan to discourage transphobia and include gender-variant persons in sports.¹⁴⁷

Scotland also now permits people to change their gender on official documents (such as passports), while remaining married.¹⁴⁸ Before the passing of the Gender Recognition Act 2004, gender-variant persons were required to get divorced in order to have their new gender legally recognized.¹⁴⁹ As a result, many gender-variant persons would choose to forsake legally changing their gender identity. This Act is considered more progressive than its counterpart, the Marriage (Same Sex Couples) Act, 2013¹⁵⁰ applicable to England and Wales, which does not address gender-variant persons.¹⁵¹

STATUTORY LAW

The Gender Recognition Act¹⁵², 2004 allows a gender-variant individual to apply for legal recognition of their gender. This Act extends to the whole of the UK. Successful applicants under this Act are granted a Gender Recognition Certificate. The individual is also granted a new Birth Certificate with the acquired gender. Although the Act does not require the individual to have undergone gender affirmation procedures to apply, applicants must still demonstrate that they have or have had gender dysphoria, have fully lived in their acquired gender for the past two years, and that they intend to live in their "acquired gender" permanently.¹⁵³

In addition, the United Kingdom also passed the Equality Act¹⁵⁴ in 2010. This Act is applicable to England, Wales, and Scotland. Only some parts of it have been extended to Northern Ireland. The purpose of this Act is to prevent discrimination in the public sphere.¹⁵⁵ It defines certain characteristics as "protected characteristics" and prohibits any discrimination based on these characteristics.¹⁵⁶ The Act includes "gender reassignment" as a protected characteristic.¹⁵⁷ This Act also extends protection against discrimination to individuals who are associated with someone with a protected characteristic.¹⁵⁸

CASE LAWS

Corbett v. Corbett¹⁵⁹

Facts: The dispute arose between married partners, Ashley (Respondent) and Arthur Corbett (Petitioner). Ashley underwent a gender affirmation procedure in 1960. After the operation, Ashley married Arthur in 1963. Arthur argued before the court that the marriage should be *void ab initio* i.e. invalid from the very outset, on the basis that Ashley was male, and the United Kingdom did not recognize same-sex marriage.

Issues: Whether a person can change their sex for the purposes of law by undergoing surgical procedures.

Reasoning: According to the court, the biological sexual constitution of a person is fixed at birth and cannot be changed either by the natural development of organs of the opposite sex, or by medical or surgical means. Further, the sex of a person at birth can be determined by a three-pronged test: chromosomal, gonadal, and genital. Applying this test, the court held that a post-op transsexual woman is not a woman, and therefore, Ashley had not been a woman at the date of the marriage ceremony. Thus, as per Ormrod J., Ashley's 'true sex' continued to be 'male' even after the operation. As a result, the marriage between Ashley and Arthur was held to be void ab initio, as both persons were male at the time of the ceremony, and the UK did not (at the time recognize same-sex marriage).

Christine Goodwin v. United Kingdom¹⁶⁰

Facts: The applicant in this case was a post-operative trans woman and a self-identified transsexual.¹⁶¹ She brought a suit against the UK for lack of legal recognition for post-operative gender-variant persons, particularly in relation to employment, social security, pensions, and marriage. The complainant relied on Articles 8, 12, 13 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁶²

Issue: Whether the government violated Articles 8, 12, 13 and 14 of the Convention by refusing to legally recognize a transgender person's post-operative status.

Reasoning: The court held that the State had violated Articles 8 and 12 of the Convention. Regarding Article 8, the court emphasized that the very essence of the Convention was the respect for human dignity and human freedom, including the right of an individual to establish their identity. The test of biological factors is not imperative in determining a post-operative person's gender. Thus, the non-recognition of post-operative status amounted to a failure to respect the private life of the person, amounting to a breach of Article 8. Further, the court held that since a post-operative gender-variant person may wish to marry a person of their former operative sex, denying them their right to marry would constitute a breach of Article 12. Based on the violation of Articles 8 and 12, compensation was granted to the applicant.

R (AC) v. Berkshire West PCT¹⁶³

Facts: The appellant was diagnosed with gender identity disorder. She began the transitioning process and applied to the National Health Service Trust to get funding for her breast augmentation surgery. According to the Trust's policy, breast augmentation was not a core aspect of gender-affirmation process. They refused to fund the procedure for lack of clinical benefit. The appellant challenged this decision on the grounds of discrimination.

Issues:

1. Whether breast augmentation is a necessary expense that the National Health Services must cover
2. Whether failing to cover such a procedure for gender-variant persons would amount to discrimination

Reasoning: The Court of Appeals considered whether the treatment (breast augmentation) was clinically effective. The evidence produced before the court was contradictory and thus, there could be no determination on its effectiveness. Second, the court noted that the National Health Services had funding shortages and, thus, could only approve procedures that were clearly beneficial and effective. The court went on to reject the argument that denying breast augmentation would amount to discrimination against transgender persons and noted that the gender dysphoria policy "was drafted with great care and after extensive consultation." Furthermore, the court concluded that the Right to Family Life under Article 8 does not require the government to provide treatment. Thus, the court rejected the appeal and upheld the lower court's ruling that breast augmentation was not a necessary procedure.

OBSERVATION

In United Kingdom, both case law and statutory law are progressing towards protecting the rights of gender-variant persons. Legislative and executive policies, such as the Gender Recognition Act and the Scotland Prison Service directives, allow gender-variant persons to choose their preferred gender. The government has also acted as a catalyst for changing social attitudes by prohibiting discrimination against gender-variant persons. However, there is still a long way to go for gender-variant persons to be able to exercise the full range of rights and freedoms.



UNITED STATES OF AMERICA

OVERVIEW

In the United States of America, there is growing social and legal acceptance of gender-variant persons.¹⁶⁴ Several states laws that prohibit at least some form of discrimination against gender-variant persons.

However, gender-variant persons still face barriers to accessing healthcare and other benefits. According to a 2018 report by Human Rights Watch¹⁶⁵, only 19 states and the District of Columbia prohibit health insurers from excluding medical services for transgender people in insurance plans. In 18 states and the District of Columbia, there are policies that expressly cover transition-related care for transgender people, while 22 states have no policy on transgender health coverage. Ten states expressly exclude that coverage. Furthermore, on 26 July 2017, President Donald Trump announced through twitter that transgender people could no longer serve in the military “in any capacity.”¹⁶⁶ This announcement reverses the 2016 change in policy allowing transgender persons to serve openly in the military.¹⁶⁷ In 2018, the Department of Health and Human Services issued a rule that would allow insurance providers wide discretion to refuse to serve patients based on their moral or religious beliefs.¹⁶⁸

STATUTORY LAW

There are no federal laws in the United States that protect LGBTI individuals against discrimination. However, some states have passed laws that safeguard certain rights for gender-variant persons.

In August 2013, California passed the School Success and Opportunity Act (AB-1266)¹⁶⁹. The Act requires that students be allowed to participate in sex-segregated school activities, including athletic teams and competitions, and use school facilities consistent with their gender identity, irrespective of the gender listed in their school records.¹⁷⁰

In May 2014, the Fairness for all Marylanders Act of 2014 was passed by the Maryland General Assembly.¹⁷¹ The Act prohibits discrimination on the basis of sexual orientation and gender identity in public accommodations, housing, employment, and credit. It defines “gender identity” as “gender-related identity, appearance, expression, or behavior of a person, regardless of the person’s assigned sex at birth.”¹⁷² The Act exempts certain religious organizations, private clubs, educational institutions, small businesses, and owner-occupied rentals from its provisions, thus, severely limiting its scope.¹⁷³

Doe v. Regional School Unit 126¹⁷⁴

Facts: Susan Doe, a transgender girl was barred from using the girls' bathroom at her school. Her parents challenged this action, claiming it constituted discrimination 'based on her sexual orientation'.¹⁷⁵

Issue: Whether denying a student access to the restroom that corresponds with the student's self-identified gender is unconstitutional discrimination.

Reasoning: The court found that the student was unfairly discriminated against because she was a transgender girl. The court held that as it was established that since Susan's psychological wellbeing and educational success depended on her being allowed to use the female bathroom, denying her access would constitute discrimination in violation of the Maine Human Rights Act. The court also cautioned against reading its decision as allowing students casual access to any bathroom of their choice.

Glenn v. Brumby¹⁷⁶

Facts: An employee alleged that her employer had fired her because she was transgender and that this violated her rights under the Equal Protection Clause. The employer testified that he had fired her because he found it "unnatural" that the plaintiff came to work dressed in women's clothes. The lower court held in favour of the plaintiff, and the decision was appealed to the 11th Circuit Court of Appeals.

Issue: Whether firing someone on the basis of their transgender status was a violation of the rights guaranteed by the Equal Protection Clause.

Reasoning: The Court held that discrimination against a transgender individual on the basis of their gender non-conformity is sex discrimination, which violates equal protection guarantees. Thus, sex discrimination includes discrimination based on a person's deviation from stereotypical gender norms. The court ruled that the plaintiff had been fired because she did conform to her expected gender (i.e., male) and thus, her termination amounted to discrimination.

UNITED STATES OF AMERICA

*Kosilek v. Spencer*¹⁷⁷

Facts: The plaintiff, a prison inmate, requested gender affirmation surgery. A group of qualified medical doctors affirmed her need for medical treatment. The District Court of Massachusetts ordered the Commissioner of the Department of Corrections (DOC) to provide the surgery. However, the DOC did not abide by these orders. The plaintiff brought a suit, alleging that this amounted to a violation of her rights under the “cruel and unusual punishment” prohibition of the Eighth Amendment. The plaintiff won her case in the lower court. The DOC appealed the case to the First Circuit Court of Appeals.

Issues: Whether a prison inmate is entitled to gender affirmation surgery since denying that treatment would violate her constitutional rights.

Reasoning: The district court recognized that prison inmates were entitled to 'trans related' medical treatment. The court further noted that gender affirmation surgery was a necessary medical treatment. Thus, prisoners have a right to such treatment. To deny such necessary medical treatment would amount to a violation of the prisoner's Eighth Amendment rights. The court ruled in the plaintiff's favor. It also upheld the district court's conclusion that a failure to provide the inmate with the necessary medical treatment violated her Eighth Amendment rights, as there was ample evidence to show that surgery was the only adequate treatment.

However, the First Circuit court overturned this ruling, citing "valid security reasons" and uncertainty that the DOC would be able to provide appropriate post-surgical care to the prisoner. Moreover, the court noted that surgery was not the only option available and that where there is question on the safety of all inmates, the prison authorities must be deferred to.

OBSERVATION

Although the United States has gradually become more accepting of the rights of gender-variant persons, this has not brought improvement to all facets of their lives. The National Transgender Discrimination Survey shows that gender-variant people are at a higher risk of suicide attempts.¹⁷⁸ Seventy-eight percent of the respondents who faced bullying in school attempted suicide, as did sixty-five percent of the respondents who faced violence at work. The lack of support from family members is also correlated with a higher suicide risk.

In March 2016, North Carolina passed the Public Facilities Privacy and Security Act, which has been described as one of the most anti-LGBT legislations in the United States. The law eliminates anti-discrimination protections for all LGBT persons, and further requires that in government or public buildings, individuals may only use those restroom or facilities which correspond to the sex on their birth certificates. This has sparked a national debate in the United States concerning access to restrooms and facilities for gender-variant persons.



CONCLUSION

This study concludes that gender-variant people across the world face discrimination and exclusion in all walks of life, including housing, employment, education, and the social sphere. However, countries are slowly moving toward greater legal equality.

Argentina now recognizes gender-variant persons in all legal documents. Additionally, the law now allows people to change their name and gender after the age of 18 without having to undergo any medical procedures.

Australia has made it unlawful to discriminate against persons based on their gender identity. It also allows people to change their sex on official documents without any medical procedures.

In Brazil, an active citizens' movement has been steadily pushing for legislative and judicial reforms to recognize the rights of gender-variant persons.

In Canada, the Constitution and the Charter of Rights provide equality to all persons. Canada also has one of the most welcoming immigration laws for transgender persons.

In India, as a result of the Supreme Court's decision in *NALSA* recognizing the right of self determination of one's gender, and the need for affirmative action, several states have taken positive steps towards recognizing-gender variant persons.

New Zealand's Human Rights Commission has been working to reform policies that actively support the rights of gender-variant persons. The statutory law currently prohibits 'sex discrimination' and there are attempts underway to make this term cover gender discrimination as well.

In Pakistan, *khawaja sara* persons can now get national identity cards. The Supreme Court of Pakistan has ruled that the *khawaja sara* must be recognized as a third gender.

South Africa's Constitution provides protection against discrimination for all LGBTI individuals, and specifically includes the term 'gender' as a prohibited ground of discrimination.

In Scotland, the Marriage and Civil Partnership Act, 2014 allows persons to change their gender while remaining married. The Gender Recognition Act, 2004, which was enacted in the United Kingdom, allows people to legally change their sex.

The United States of America has, through a series of progressive court cases recognized the rights of transgender persons to use bathrooms that match their gender identity and be protected from discrimination at the workplace.

While the world is becoming more inclusive for persons of all gender identities, this report highlights the differences amongst nations regarding the extent of progress that has been achieved, as well as the means by which such strides towards equality have been made.

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3	Research and Capacity Building Institutions	49%	Women faculty members	2400	Publications
29	Indian States and Union Territories represented by Students	55%	Alumni from the top 200 global universities	1900	Alumni
30	Countries represented by students and faculty on campus	60%	Student scholarship awardees	4320	Students

