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**CASE COMMENTARY - NATIONAL LEGAL SERVICE
AUTHORITY VERSUS UNION OF INDIA (AIR (2014)
5 SCC 438).**

(DECLARATION OF TRANSGENDER PEOPLE AS
THE 'THIRD GENDER' BY SUPREME COURT OF INDIA
AND PROVIDING THE TRANSGENDER PEOPLE WITH
GENDER RECOGNITION)

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NATIONAL LEGAL SERVICE AUTHORITY VERSUS
UNION OF INDIA (AIR (2014) 5 SCC 438), INDIAN
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PG. 796-800, ISSN - 2583-2344.

ABSTRACT

The constitution has enforced certain
rights to each individual for their recognition in
the society so that they can live life with dignity.

There are people who are specified as 'third
gender' in the Indian constitution who were
discriminated, humiliated and disgraced
because of their identity. National legal service
authority V. UOI is a landmark supreme court
judgement which was laid down to recognise
the transgender community as the 'third
gender' to provide them with fundamental
rights and identification on the same aspects of
men and women. Due to the lack of legislation
protecting the rights and recognition of the
transgender people, this community faced a lot
of discrimination because gender recognition is
important in various fields like rights in relation
to marriage, adoption, succession, taxation and
other important aspects. This article shall
emphasize on how the judgement had given
the right to be identified and categorized as
'third gender' to the transgender community.

KEYWORDS: Transgender, Gender
regognition, Supreme court, Right to life and
personal liberty, Gender Identity etc.

CASE TITLE	NATIONAL LEGAL SERVICE AUTHORITY(NALSA) V. UOI
CASE NO	WRIT PETITION (CIVIL) NO. 604 OF 2013.
DATE OF THE ORDER	15 APRIL 2014.
CITATION	AIR 2014 SC 1863.
JURISDICTION	SUPREME COURT OF INDIA
QUORUM	HON'BLE JUSTICE MR. K.S RADHAKRISHNAN HON'BLE JUSTICE MR. A.K SIKRI
AUTHOR OF THE JUDGEMENT	HON'BLE JUSTICE MR. A.K SIKRI
PETITIONER	NATIONAL LEGAL SERVICE AUTHORITY (PRIMARY PETIONER) POOJAYA MATA NASIB KAUR JI WOMEN

	WELFARE SOCIETY LAXMI NARAYAN TRIPATHY
RESPONDENT	UNION OF INDIA AND OTHERS
COUNSEL FOR PETITIONER	ADVOCATE SHRI RAJU RAMACHANDRAN
COUNSEL FOR RESPONDENT	ADVOCATE SHRI RAKESH K. KHANNA
ACTS AND SECTIONS INVOLVED	<ul style="list-style-type: none"> - ARTICLE 14 OF CONSTITUTION OF INDIA. - ARTICLE 15 OF CONSTITUTION OF INDIA. - ARTICLE 16 OF CONSTITUTION OF INDIA. - ARTICLE 19(1)(a) OF CONSTITUTION OF INDIA. - ARTICLE 21 OF CONSTITUTION OF INDIA.

I. INTRODUCTION:

The verdict of the supreme court, regarding the case 'National legal service authority (NALSA) V. UOI' is an important landmark judgement wherein the grievances of the third gender community (also known as TG community) were recognised as these group of people were looked down in the society and were treated as untouchables. A writ petition was filed by the National legal service authority, which is constituted under national legal service authority act,1997 which provided the weaker sections with free legal service in relation to this a registered association, poojaya Mata Nasib Kaur ji women welfare society had also filed a writ petition seeking reliefs in respect of the transgender community. The petitioner Laxmi Narayan Tripathy had also put across the difficult situations that the transgender

community face that is non-recognition of the community which goes against the fundamental principles. This is an important judgement which was decided on 15 April 2014 emphasizing on gender equality, the supreme court had opined that the transgender people will be granted with fundamental rights and identification will be granted to them as t 'third gender'. The court has also directed the centre and state government to grant legal recognition of gender identity subject to any sex whether it is male, female or third gender.

II. FACTS OF THE CASE:

1. In the contemporary times, the transgender community face a lot of disgrace and humiliation pertaining to their gender.They are exploited and harassed by people at railways, bus stands, malls, hospitals and various other public places.

2. These circumstances undergo the violation of fundamental rights of our country and is violative of Article 14 of the Indian constitution that lays down 'Right to equality' and Article 21 of the Indian constitution that is 'Right to life and personal liberty'.

3. The 'Third gender' community lack legal provisions of gender recognition. Therefore, all laws governing to marriage, adoption, succession, taxation etc were governed by either male or female and these rights were not provided to the TG community. Hence, a public Interest Litigation (PIL) was filed.

IV. ISSUES:

1. Whether the person who fall outside the binary category (men or women) can be given the legal recognition of 'Third gender'?

2. Whether the fundamental rights guaranteed by the constitution of India of the third gender was being breached as they were not provided with equal opportunity to that of the binary category?

V. ARGUMENTS IN FAVOUR OF THE APPELLANT:

The learned senior counsel appearing for the petitioner's side Shri Raju Ramachandran, highlighted and submitted that every person has their right to determine their identity. It was further argued by the counsel that the 'TG community' is not given the status of the third gender nor were treated as female or male due to this reason this group of people faced a lot of discrimination on the grounds to get licence, employment, contest election etc.

In this case, it was further noticed that learned senior counsel appearing for the intervener, Shri Anand Grover highlighted on the historical aspects that the third gender were treated barbarically during the British colonial period further submitting the international aspects and recognition of the third gender referring to various international forum, U.N bodies and the Yogyakarta principles.

It was further agued by the petitioner's side that the transgender persons must be classified under socially and economically backward classes which was stated by the learned counsel Shri. T Srinivasa Murthy and these group of people must be given all benefits available to that of the socially and economically backward and weaker sections of the society.

VI. ARGUMENTS IN FAVOUR OF THE RESPONDENT:

The learned additional solicitor general, Shri Rakesh K. Khanna appearing as counsel for the respondents that is Union of India opined that there is a committee called "Expert committee of issues relating to transgender" under the backing of the Ministry of Social Justice and Empowerment ((MOSJE) which is constituted to do a critical study of the problems relating to the transgender community. The counsel further highlighted on the fact that there would also be due representation that would be given to the people who have appeared before the court in the committee, so that their views can be heard. The learned counsel also explained that the steps the state and union territories should take up to improve the conditions and recognise their status in the state and union territories as 'TG Community'

The term 'Transgender' is described in a very wider sense, and it is difficult to understand and classify the people who should and shouldn't be called as the 'Third gender'. In a general understanding, the people who conform to their biological sex are classified as Hijras/Eunuchs who fall under the category of 'Third gender'. Among Hijras also there are various classifications that can be made that is the Castrated, Nirvana (Emasculated men) and Non-castrated/Akva/Akka (Non-Emasculated men) and inter-sexed persons (Hermaphrodites). There are also a group of people who take up Sex Re-Assignment Surgery (SRS) to align their gender identity with their biological sex. They are generally called as "Trans-sexual persons. Further, there is a gender

which is classified as transvestitities who cross-dress of their opposite gender which makes it difficult to classify because the term 'Third gender' is an umbrella term which is used to describe persons whose gender identity, gender expression or behaviour does not conform to their biological sex as mentioned in this judgement.

VII. ORDER OF THE COURT:

The judgement given in the case of National legal service (NALSA) V UOI was 130 pages long authorized by Hon'ble justice Mr. A.K Sikri. There were nine declarations made by the Hon'ble supreme court which is as follows:

1. The court therefore declared that Hijras and eunuchs must be treated as the 'Third gender' to safeguard their rights under part III of the Indian constitution and the laws made by the central government and the state government.
2. The centre and the state governments are directed to grant legal recognition of the gender identity such as male, female or third gender.
3. Any insistence for SRS declaring one's gender is immoral and illegal and the problems faced by the Hijras/transgender such as social pressure, depression, social stigma etc should be addressed seriously by the centre and the state government.
4. There was direction given by the court to the centre and the state government that since the transgender community faced several sexual health issues the HIV sero-surveillance centres must be operated.
5. Proper medical and health care facilities must be provided to the TG community by the centre and the state government in the hospitals and provide separate sanitation facilities and public toilets.
6. Various social schemes for their betterment must be framed by the centre and the state government.

7. The parliament and the state government should also take measures to regain their respect and place in the society.

8. There must be steps that must be taken to create public awareness by the centre and state government and the TG community must not be treated as untouchables.

The court had held that the transgender persons were entitled to fundamental rights under Article 14, 15, 16, 19(1)(a) and 21 of the Indian constitution. To recognise the human rights of transgender the court referred to the core international human rights treaties and the Yogyakarta principles. Under Article 21 the court interpreted the term 'dignity' which allowed a person to lead a dignified life by placing any person's gender identity within the framework of the fundamental rights to dignity under Article 21 of the Indian constitution. The court further stated that Article 14 (Right to equality) and Article 19(1)(a) (freedom of expression) was framed subject to any gender (gender-neutral). Therefore, Article 14 and Article 19(1)(a) of the Indian constitution will be extended to the TG community. Under Article 15 and 16 of the Indian constitution which lays down discrimination on the grounds of 'sex'. In this Article of the constitution the court interpreted that 'sex' does not refer to biological attributes but also 'gender'. Thus, the TG community should not be discriminated based on gender identity.

VIII. CONCLUSION:

The judgement given under National Legal Service Authority V. Union of India is an important supreme court landmark judgement because this judgement had given the TG community a legal recognition as 'Third gender' upholding the concept of equality by law and equal protection of law guaranteed under the Indian constitution. There was also further direction given by the court to the centre and the state government to secure the rights of the transgender.

IX. RELATED CASE LAWS:

A. Shivani Bhat V. State of Nct of Delhi and Ors. W.P. (CRL) 2133/2015.
<https://indiankanoon.org/doc/10525112/>

B. k.prithika Yashini V. The chairman. W.P.NO.15046 OF 2015.
<https://indiankanoon.org/doc/157339454/>

C. Matam Ganga Bhavani V. State of Andhra Pradesh. W.P.NO.16770.
<https://indiankanoon.org/doc/136560884/>

X. REFERENCES.

A. STATUTES.

- 1.The constitution of India,1949
2. The constitution of India,1949(V.N Shukla)

B. WEB PAGES.

1.[National Legal Ser.Auth vs Union Of India & Ors on 15 April, 2014 \(indiankanoon.org\)](#) National legal services authority v. UOI

2. [NATIONAL LEGAL SERVICES AUTHORITY \(NALSA\) VS. UNION OF INDIA - South Asian Translaw Database - THIRD GENDER \(clpr.org.in\)](#) National legal services authority v. UOI