

## A promise falls short

One of the biggest challenges that the transgender community faces is for recognition of their chosen names and gender. File | Photo Credit: [Shashi Ashiwal](#)

On April 15, 2014, the Supreme Court passed the judgment in *NALSA v. Union of India*. It was a judgment that came out of the blue, like a thunderbolt when no one was expecting it. It was in the background of *Suresh Koushal v. Union of India* where the Supreme Court held that Section 377 could not be read down and it was for Parliament to decide on decriminalisation of homosexuality.

All of a sudden came *NALSA*, in which Justices K.S. Radhakrishnan and A.K. Sikri held that the right to gender identity is inherent in one's right to life, autonomy and dignity. They held that transgender persons have the right to identify their gender as male, female or transgender irrespective of medical sex reassignment and the right to expression of their chosen gender identity.

*NALSA* brought with it great excitement and gave momentum to the trans rights movement in India. Transgender persons have been criminalised, discriminated against, deprived of access to education and employment, they have faced sexual and physical violence, even been killed due to their gender choices. *NALSA* for the first time gave public recognition to the violence and discrimination that the trans community faces in India and declared unequivocally their entitlement to constitutional fundamental rights. With the fourth anniversary of *NALSA* coming up, it is time we ask whether its promises are being fulfilled? Are there positive changes on the ground?

The apex court directed the Central and State governments to grant legal recognition of gender identity of male, female or transgender; to provide reservations to transgender persons in admission in educational institutions and in public appointments; to provide medical care to transgender persons in hospitals and provide them separate public toilets and other facilities; to frame social welfare schemes for their uplift; and to create public awareness.

These directions are far from being implemented. The proposed Transgender Persons Bill, 2016 was extremely problematic as it failed to even define transgender persons adequately and was rejected by the trans community. Government forms have included the 'TG' option in the gender category, but till date there is no law in place providing for a change in one's name and gender identity.

One of the biggest challenges that the transgender community faces is for recognition of their chosen names and gender. Getting their changed names and gender markers in their birth certificates, educational certificates, PAN cards, passports and identity documents is an uphill battle with no norms or guidelines laid down for such change of legal identity. While *NALSA* mandates the right to identify one's gender even without medical intervention, government authorities do not allow change of name and gender identity unless medical certificates show that the person has undergone sex reassignment surgery, thus completely nullifying what the Supreme Court aimed to protect.

While Kerala and Karnataka have introduced State Policies for Transgender Persons, there are no schemes for reservation of transgender/intersex persons in educational institutions and public employment. They are not included in any of the reserved categories, making education and public employment out of bounds for them due to their transgender and gender non-conforming status. Even within schools, universities and public institutions there are no gender neutral public toilets.

It is time to push purposefully for these reforms. Justice Chandrachud reiterated the stand of the Supreme Court in the privacy judgment, reaffirming that the right to sexual orientation and gender identity are some of our most intimate life decisions and need to be protected. It is time that these exciting proclamations of constitutional rights are translated into realities on the ground. We need a Gender Identity Law, that would provide for a person to change name and gender, and take inspiration from Argentina, which introduced a law based on self-determination and provides full recognition of a person's self-defined gender identity. Such a law needs to hold clearly that transgender persons will not need to prove they have had surgical procedures, hormonal therapy or other psychological treatment and should clearly separate medical interventions from legal recognition of their chosen name and gender.

The list of legal reforms that are needed to truly capture the letter and spirit of *NALSA* is long. The Supreme Court has been constantly reiterating its stand on transgender rights, and it is time that governments work towards the realisation of these rights.

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