

# Legal Research & Analysis

## Case Comment: Matam Gangabhavani v. State of Andhra Pradesh

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**Abstract:** Transgender is as a broad term that defines individuals whose gender individuality or expression is different from the culturally-bound gender linked with one's allotted birth sex, i.e., male or female. Transgenders face extensive bias, discernment, violence and other problems of stigma and trans-phobia, i.e., abhorrence of or bias against trans-sexual or transgender people. Stigma is the social process of tagging, labelling, and declining human difference as a system of social regulator. Studying several approaches whereby transgenders face the stigma and discrimination and to comprehend circumstances and environment under which they are susceptible towards stigma is an important field of contemporary research. This paper scrutinizes the judgment by The Hon'ble Sri Justice M. Satyanarayana Murthy of the case Matam Gangabhavani vs State of Andhra Pradesh (2022 SCC Online AP 200) in the light of the nature and approach of the judgment towards the transgender society. Society is a vast term which includes various kinds of communities and judgment like Matam Gangabhavani has an effect to the society about the social stigma and the legislations by the government. The paper analyses the judgment and criticize the non-inclusive approach of the bench and also discuss the effect of such judgment to the society as a whole.

**Keywords:** Transgender; Society; Stigma; Judgment; Reservation

### 1. Introduction

Quota for transgenders and intersex persons is one of the main demands on for (trans)gender equality (Rajamane, & Swaminathan, 2022). The first transgender reservation law in India was passed in 2014 case National Legal Services Authority of India (NALSA) v Union of India and others<sup>1</sup> by the Supreme Court is significant because nonbinary gender identities and the fundamental rights of the transgender population are now officially recognized in India. This choice is historic. As part of the ruling, the Central and State Governments were supposed to take action to protect the transgender person's rights and safeguard the State at all times. Following this, the Indian government presented the Transgender Persons (Protection of Rights) Bill in 2016, for reservations of seats for transgender individuals in educational institutions and government jobs. This 2016 Bill lapsed due to dissolution of the Sixteenth Lok Sabha. Hence, the Transgender Persons (Protection of Rights) Bill 2019, was introduced, which became the Transgender Persons (Protection of Rights) Act, 2019<sup>2</sup>, after all the due legislative procedures

The United States has endorsed numerous principal human rights conventions to protect individual rights and help transgenders secure jobs. These include International Covenant on Civil and Political Rights [ICCPR]<sup>3</sup> and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment [CAT]<sup>4</sup>. Moreover, the US has signed the International Covenant on Economic, Social

<sup>1</sup> NALSA v. Union of India (2014) 5 SCC 438

<sup>2</sup> <https://www.indiacode.nic.in/bitstream/123456789/13091/1/a2019-40.pdf>

<sup>3</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>4</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

and Cultural Rights [ICESCR]<sup>5</sup>, and the Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW]<sup>6</sup>. Of these, article 26 of the ICCPR forbids discrimination offering equal protection to all persons before the law and has been interpreted to include transgenders as a “sex”. Article 9 of the ICCPR offers the right of liberty to “everyone” which includes all persons of LGBTQ+ identity. Article 12 of the ICESCR recognizes the right to health of transgenders being a vulnerable group which needs State protection. Similarly, article 2 of CAT necessitates special measures to protect transgenders from torture, and its article 14 provides effective redressal mechanisms to transgender victims of torture.

The judgment of National Legal Services Authority of India ordered for all kind of reservation to transgender persons whereas social reservation is vertical and gender reservation is horizontal. Matam Gangabhavani<sup>7</sup> case (2022 SCC Online AP 200) by The Hon'ble Sri Justice M. Satyanarayana Murthy briefly discusses the vertical, horizontal reservation and takes by different courts. The case of Matam Gangabhavani v. State Of Andhra Pradesh points out the state default in taking the necessary steps ordered under the National Legal Services Authority of India judgment. Upon the analysis of the judgment, there are multiple observations on the given case.

## **2. Historical Background and Facts**

Matam Gangabhavani, a transgender individual, filed a writ petition under Article 226 of the Constitution of India regarding a notification dated 01.11.2018. The petition claimed that the notification did not include provisions for the reservation of transgender persons, which was deemed illegal, arbitrary, and violative of articles 14, 15, 19 and 21 of the Constitution. The petitioner had undergone Sexual Reassignment Surgery in 2003 and officially changed gender identity to transgender in Aadhar, permanent account number (PAN), voter ID, and passport in the year 2017. The petitioner got official certificate as transgender from Andhra Pradesh Government. Later the petitioner came across Notification of the post of Post Code No.11 Stipendiary Cadet Trainee Sub Inspector of Police in Police Department. The notification in question only provided options for "male" and "female", excluding transgender category. The petitioner registered as female for a police recruitment examination and appeared for the first round of recruitment process. Petitioner scored 28% in paper-I and 21% in paper-II in preliminary written test held on 16.12.2018 and, was accordingly disqualified for the next round of recruitment. The qualifying score for both papers is 35% for members of backward classes (BC) community which the petitioner is a member of. The petition argued that the notification contradicted the directions of the Supreme Court in the National Legal Services Authority v. Union of India case, which called for quota for transgenders.

The petitioner filed O.A.No.23 of 2019 before Andhra Pradesh Administrative Tribunal challenging the Notification dated 01.11.2019 which was dismissed by the tribunal. Due to abolition of tribunal; the petitioner filed the present writ petition and sought the relief as claimed.

## **3. Issues**

The issues in the said case were:

- Whether the petitioner can claim horizontal or vertical reservation, due to social or educational backwardness or gender. If so, whether the petitioner be selected as Stipendiary Cadet Trainee Sub-Inspector although the petitioner did not score minimum required in the notification based on quota, if any?

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<sup>5</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

<sup>6</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

<sup>7</sup> Matam Gangabhavani v. State of Andhra Pradesh 2022 SCC Online AP 200

- Whether the State failed to observe the directions issued by the Apex Court in NALSA judgment? If so, whether the notification bearing Rc.No.216/R&T/Rect.1/2018 dated 01.11.2018 be declared as illegal and arbitrary? Whether this court can issue a direction, while exercising power under Article 226 of the Constitution of India to provide quota to transgenders or transsexuals?

#### **4. Judgment**

Transgender Matam Gangabhavani pray, through writ petition under Article 226 of the Constitution of India to declare Notification vide Rc.No.216/R&T/Rect.1/2018 dated 01.11.2018 as illegal and arbitrary, as it did not make any provision for reservation of appointment of transgender persons, violates Articles 14, 15, 19, & 21 of the Constitution of India. It was contrary to the law declared by the Hon'ble Apex Court in Hon'ble Supreme Court of India in National Legal Services Authority v. Union of India and others and consequently issued a direction to the respondents to offer appropriate measures to transgenders directing the respondents to appoint the petitioner in Post Code No.11 Stipendiary Cadet Trainee Sub-Inspector of Police in the Police Department in the vacant post, kept apart for the petitioner in terms of the order of the Court in W.P.No.1575 of 2019 dated 13.02.2018.

The bench declined to order the State to grant quota to transgenders, reasoning that the Supreme Court's ruling in National Legal Services Authority of India v. Union of India (2014) is adequate to provide quota for admission in educational institutes and for public appointments. However, the State was instructed to research the number of transgender people living in the State, how many transgender people work in public employment, what benefits are available to them without discriminating against men and women, and what reservations are required if transgender people are underrepresented in public employment.

Additionally, because the minimum marks were determined by social status rather than gender more specifically, by the respondents' backwardness and inadequate representation in public employment the bench declined to give instructions to the respondents regarding the petitioner's selection as a stipendiary Cadet Trainee Sub-Inspector. As a result, the petition was denied. However, the State was directed to study the problems being faced by transgenders, as directed by the Apex Court in National Legal Services Authority v. Union of India and implement the direction strictly within 3 months from the date of the order.

#### **5. Analysis**

National Legal Services Authority of India v Union of India is considered as the landmark and historical because of its transgender persons friendly judgment which led to the formation of first ever transgender reservation law. The judgment ordered state to issue appropriate directions and treat transgender persons as socially and educationally backward classes of citizen and extend all kind of reservation. In all aspects the National Legal Services Authority of India judgment is fair enough but the state made default to take necessary steps as per the order of that judgment in this case. The historical judgment made in the case National legal service authority v Union of India prescribe state to take necessary steps to make reservation for transgender community. Matam Gangabhavani case points out the failure of state to take such necessary steps. The Petitioner contended that the issuing of notification is violative of Article 14, 15, & 16 of Indian constitution. They contended that this notification is discriminatory to transgender community because it only has male/ female column available for the examination. During the argument the petitioner side also made a statement regarding how transgender community is being discriminated from the community only because of their gender in the society. The petitioner was deprived of an opportunity for selection in pursuance of the notification in several examinations earlier. Hence, the action of the second respondent in not providing quota is contrary to the directions issued by the Apex Court in National Legal Services Authority v. Union of India and others and sought a direction as stated above. As a reply to the petitioner's contentions, the respondents pointed out that Government is willing to implement the directions issued by this court

according to the law. It was contended that the petitioner was a male by birth who converted into transfemale. Hence, the petitioner was not entitled to claim the benefit based on birth, for quota in the public employment as per the judgment of the Apex Court in NALSA case. The petitioner cannot be selected being the only transfemale appeared in the selection process in Stipendiary Cadet Trainee Sub-Inspector, since the petitioner did not secure minimum marks prescribed under different categories mentioned in the notification, as minimum marks were not based on gender. Hence, unless the petitioner does not secure the minimum qualifying score in the selection process, he can't claim selection without undergoing second round in the process of selection, i.e., physical test. In addition, since the determination of sub grades was not based on gender, but on social status, especially their backwardness and insufficient representation in public work, the office refused to give the respondents instructions on the selection of the petitioner as a stipendiary Cadet trainee sub-inspector. Therefore, the petition was dismissed.

Problems faced by LGBTQIA+ society don't necessitate supporting the gender politics raised by them. Gender, being determined from a biological base, the very idea of gender politics that a person's gender is his personal choice contradicts the whole biological reality of his/her own body's sexual orientation demonstrated by the trillion cells in that body. Gender politics in its practicality violates the scope of an unbiased study in finding the reasons for homosexual instincts countering on the ground that LGBTQIA+ societies are not cadavers, which is a very emotional argument. While writing the judgment, the bench considered the above observations and carefully scrutinized the facts given. The judgment is well established and enclosed with logical reasoning and legal provision available. It defines the transgender community, horizontal and vertical reservations and the criteria needed for claiming it. But at first glance itself one could infer the non-inclusive approach of bench towards the community by not answering to all the contentions made by petitioners. The apex court made initiatives as reservation to social and backward class of transgender in public employment and provide them a third gender category in the famous National legal service authority v Union of India. As per this judgment, anyone who fall out of the category of male or female will be treated as a third gender category and are entrusted to all the fundamental Rights just like any other citizen. But by not providing a third gender column in the S I cadet examination the state made a default in ensuring the fundamental rights of transgender community. The bench is silent on this matter when the petitioners raised the contentions regarding the discrimination under Article 15&16. As a reply to the contentions of petitioner's bench explains the horizontal and vertical reservation. Horizontal reservation is given to socially and educationally backward community and bench further explains that if transgender are counted under this "socially and educationally backward" and provide horizontal reservation it would create problems in the current reservation slabs. By adding them the maximum reservation provided under SEBC will exceed 50% and this will create bigger issues. The Petitioner's advice to consider transgender person reservation under vertical reservation is to avoid this issue.

The petitioner is indisputably a transgender person and was denied her fundamental rights entrusted under Indian Constitution. The judgment explains the concept of equality under Article 14 as egalitarian equality and proportional equality and the bench admits that the petitioner is entitled to proportional equality but takes no further steps to ensure that her proportional equality is protected. The judgment also observes that till date there is no provisions including transgender under the term person. Hence there is no provision to give reservation under SEBC category. Article 15 provides prohibition of discrimination and the bench observes that in the close analysis the provision only available to discrimination against religion, race, caste, sex, place of birth or any of them. Article 15 does not include the term gender till date. And the court infer that even though Article 14(4) grant state to make special provision for socially and economically backward community there is no observations regarding accepting transgenders as this category. The judgment is excluding the transgender community with the existing lacunas of the legislation and provided no solution for the same. Transgender persons are humans and should be treated as humans at least. And on that human consideration they are entitled for all human rights which include the public employment. Though the judgment includes observations

regarding the issues and social rejections faced by the community, it does not make any initiatives to address the social stigma faced by transgender community.

The judgment by Justice Satyanarayana Murthy is a carefully made judgment which tactically blocks all the social issues may have by answering to all the contentions made by petitioner. Even though is logically well written it indirectly leaves space for social issues. The state as a sovereign body has a duty to protect everybody irrespective of their gender and this judgment forget to follow this. The judgment indirectly questions the reservation of transgender community by not giving a proper order by establishing a column for transgender. From the analysis we infer that this judgment is logically correct in all ways but lack moral imperatives to protect a minority community. The judgment could have been elaborated by adding a third column in the notification and by giving a proper addressing regarding the issue.

## **6. Conclusions**

After the landmark judgment of National Legal Service Authority v Union of India, all the Trans male/ Trans female got legal recognition which later leads to the formation of first transgender person's law. Matam Gangabhavani questions the effect of National Legal Service Authority judgment in a lighter way. The Honorable High Court stated in its consideration of the petition that it is inappropriate to deny a qualified applicant employment based only on her gender. As a result, the Honorable High Court ordered the State to make necessary steps mentioned in the National legal service authority v Union of India within 3 months while rejecting the writ petition.

## **References**

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