



TRANSGENDERS' RIGHTS IN ARGENTINA: REGARDING INDIA

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Abstract: The transgender community has faced and continues to face discrimination in almost every part of the world. The inception, extent, and duration of such differential treatment coupled with violence may differ across the globe. The reason behind this could be the cultural and constitutional values of the concerned nation along with the traditional position of transgenders in the relevant society. The movement of LGBT community to assert their presence and voice their concerns can be traced in different countries. Argentina can be distinguished as a vanguard in the advancement of inclusive policies, notably with the passage of its Gender Identity Law in 2012, marking it as the inaugural nation worldwide to formally acknowledge an individual's gender identity without imposing any prerequisites. This article provides a concise overview of the historical trajectory of the LGBT movement in Argentina, followed by an examination of the constitutional and legislative framework established to safeguard the rights of transgender individuals in the country. Subsequently, it delves into the enactment and notable attributes of the Gender Identity Law. It also provides a comparative analysis of transgender law in India vis a vis Argentina and criticises the contrasting approach followed by different States of India. It concludes with the finding that Argentina's Gender Identity Law is quite progressive from which countries like India can take inspiration.

Keywords: transgenders, LGBT movement, gender identity, third gender, affirmative action.

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INTRODUCTION

Like most of the countries, in Argentina also the transgender people are highly marginalized. The individuals face stigma and discrimination from a very young age at various levels such as family, schools, society, public places, etc., which is the major reason for marginalization (Socias et al. 2014: 5). Moreover, the families of many individuals refuse of to accept them into their homes as soon as they start to transition. The treatment at schools is no different and in most cases, transgenders are either expelled, or they choose to drop out of, or avoid going to school. Consequently, they lack education and due to legal non-recognition of their gender, they were also deprived of opportunities to get an employment, housing, or social security for that matter. Most of the transgender people often get involved in sex work to make a living. Life in such vulnerabilities lead to substance abuse, psychological distress, attempts to take one's life, higher risk of getting infected with HIV and other sexual transmitted diseases, along with increased risk of facing physical violence (Avila 2017: 2068). These factors negatively impact the lives of transgenders and affect the overall quality of their lives. This situation is further aggravated by the legal and policy framework that refuses this population gender recognition which in consequence deprive them of benefits that they might get under various public policies. Legal gender recognition has been found to be an essential component in ensuring transgender people's health and well-being as well as their access to justice. In this backdrop, Gender Identity Act was brought to address the variety of problems faced by the transgender community due to absence of legal gender recognition.

The Constitutional protections, Gender Identity Law, and protection under other laws has been discussed in the coming paragraphs. But before understanding the law, it is necessary to know about the movements and struggles of the LGBT community as whole that ultimately culminated in several progressive legal developments. A brief history of the LGBT movement in Argentina has been discussed below followed by the legal framework.



HISTORY OF LGBT MOVEMENT IN ARGENTINA

Argentina has played a prominent role as far as the history of LGBT movement is concerned. As a country that grappled with human rights abuses under the military dictatorships of the 1970s and 1980s (Lessa 2011: 48), Argentinian LGBT movement succeeded in tackling fear and misinformation that characterized their community, triggered change in social attitudes, which complemented and accelerated the judicial and political thrust to recognize the rights of the community, resulting in the world's most progressive equality and gender laws (Pousadela 2013: 720).

The impetus for a sexual diversity movement started in Argentina by lower class homosexuals belonging to trade unions. They formed an organization called Group Our World in 1967 (Andia 2010: 65). As their contact with intellectuals increased over time, the organization gained leftist ideals, eventually leading to the formation of the Homosexual Liberation Front (FLH) in 1971. The two most prominent leftist camps were Marxism and Peronism- a uniquely Argentinian ideology promulgated by Argentine President Juan Peron with its focus on nationalism and social justice. The FLH thus oscillated between both these two ideologies and advocated the inclusion of homosexual community's claims in both these leftist frameworks (Brown 2002: 125). However, their self-identification with the Leftist cause does not mask the Left's discomfort with the FLH, as exemplified by the resistance they faced from other Left wing when they joined a demonstration in Plaza De Mayo. Eventually, the movement became defunct as a military dictatorship began in 1976, which overthrew the government. As repression descended onto Argentine civil life, the LGBT movement went into dormancy. It was only with the restoration of democracy in 1983 that a new movement called CHA (Comunidad Homosexual Argentina) or Argentine Homosexual Community emerged in 1984. Initially, the CHA focused on fighting repressive police action which stopped suspected homosexuals and applied charges of "scandal on the streets", promotion of awareness of sexual diversity, and improving the community's



visibility. So, when the CHA joined the country's annual anniversary of the hated military coup and its repression on March 24th, it firmly situated sexual diversity within the context of inalienable human rights. They also raised consciousness by joining other equality focused marches such as those on International Women's Day. Despite their work, they were not recognized officially. After years of judicial litigation, they were recognized only in 1992, becoming the first such organization to achieve recognition in Latin America.

The gay community itself underwent changes in 1990s – women were previously invisible within the community and transvestites were considered to be “just there”. This started to change with the 1992 *Marcha del Orgullo* (the 1st Pride Parade), when the term “transgender” was applied to all intersex, transsexual, and transvestite individuals (Laskar et. al. 2017: 192). Throughout the 1990s, the number of sexual diversity organizations ballooned to include specific organizations for everyone in the LGBT community – male gays, trans people, lesbians, comaternal families, and transvestites. These developments took place against the global backdrop of greater understanding of homosexuality – starting with the removal of homosexuality as a category mental illness from ICD-10, a medical classification list by the WHO (Drescher 2015: 565). Heartened by such developments and change, from 1993 onwards, the CHA conducted annual campaigns that compelled politicians to declare their stance on sexual diversity. Eventually, in 1996, the Constituent Assembly of Buenos Aires (the capital city and province) outlawed gender and sexual discrimination and also enshrined the “right to be different”. Five years later, Netherlands legalised same sex marriage (2001) and therefore became the first country in the world to do so. It was followed by Spain in 2005. The latter was especially important to the Argentine LGBT community given the close historical and cultural affinity of Argentina with Spain (Trandafir 2014: 340).

Progressive action picked up again in 2005 over a controversy on prostitution. In January 2005, a Code of Misdemeanors was implemented to regulate prostitution, mandating its relocation from residential zones, educational facilities, and



places of worship. Consequently, this policy shift led to a concentration of prostitution activities in Rosedal, situated in the Palermo Quarter (Loehr 2007: 54). This particular area became predominantly inhabited by transvestites, a group then subjected to societal stigma, perceived merely as men assuming female attire for the sole purpose of engaging in sex work, rather than individuals with a distinct gender identity from their assigned one at birth, often compelled into sex work due to limited alternatives. Subsequent to objections raised by local residents, the authorities took the decisive step of completely prohibiting the solicitation of sexual services in Rosedal in July 2007.

Protests ensued in response to this resolution, and the advocacy group representing transgender individuals was among the entities extended an invitation to participate in the government's "dialogue table". The predicament of the trans community, particularly the startling fact that a trans person's life expectancy was 35 years, was used by ATTA (Association of Argentinean Transvestites, Transsexuals, and Transgenders) to promote employment, health, and educational policies for trans persons (Sabsay 2013: 175). This resulted in some visible changes the next year, 2008, an agreement was reached regarding the Rosedal issue by which facilities such as trashcans and toilets, health programs for those involved in sex trade, increased police presence were implemented. Following an extended ten-year legal process, in September 2008, Tania Luna secured a court ruling allowing her to obtain a female identification document without the requirement of undergoing surgical procedures. Shortly thereafter, Marcela Romero, who serves as the president of ATTTA, followed suit in taking similar measures. This struggle for an ID was a struggle for an acceptance of their identity; After all, a person's ID must reflect their identity and as such be acceptable in academic institutions, health systems, pension systems and so on.

The legalization of same-sex marriages in Spain in 2005 (Castresana 2005: 135) served as a catalyst for analogous endeavours within Argentina. Despite the rejection by the Argentine Congress of the CHA's proposal in 2005 to extend civil



unions on a nationwide scale, the LGBT movement gained substantial impetus following the establishment of the Federacion Argentina LGBT (FALGBT) in June 2006. This development was further bolstered by the drafting of a bill aimed at amending the country's Civil Code to permit marriages for all couples, irrespective of sexual orientation and gender identity. The reform legislation, introduced by Representative Eduardo De Pollina, was formally presented in April 2007, receiving endorsement from the majority of party representatives, and a parallel bill was subsequently introduced in the Senate (Friedman 2012: 35).

The judicial way was also utilised to support the political strategy, even while the congressional route was being taken (with its own dangers of mobilising reluctant members who thought about voter opinions, combating conservative forces such as the Catholic Church). When the Registrar's Office in Buenos Aires denied FALGBT President Maria Rachid's request to marry her partner, she was inspired to create this movement in 2006. In order to secure conformity with the legal need of equality, FALGBT demanded a *recurso de amparo* in response to the rejection. The Rachid case, which culminated in a Supreme Court hearing in 2008, attracted substantial media coverage and, of greater significance, served as a catalyst for legislators across party lines to establish the Congressional Front for the Rights of Sexual Diversity.

Nonetheless, the bills were never subjected to deliberation or re-introduction. Nevertheless, persistent advocacy within both the judicial and legislative spheres, coupled with civic mobilization exemplified by the 18th Pride Parade in November 2009, effectively ensured that the matter remained prominent in public discourse and political awareness. In the days following the Pride Parade, Judge Gabriela Seijas rendered a verdict deeming the Civil Code provisions defining marriage as an institution between a man and a woman as unconstitutional. As a result, the Registry Office was instructed to facilitate the marriage of the petitioning couple in another *amparo* case, involving Freyre and Di Bello. Despite protests and unsuccessful appeals by Catholic lawyers and other denominations, the couple was able to obtain a date for their marriage. Although Judge



Seijas' ruling was voided by a different judge, the couple eventually married in the province of Tierra Del Fuego, bolstering similar other couples' legal demands (Gargarella 2010: 191).

Throughout this time, even as legislators dithered in their support for same-sex marriage arguing that the "time isn't right", civic opinion consistently showed that more than 70% of people were in favour of same-sex marriages and an even greater percentage (82%) in favour of civil unions, showing that "society was ahead of institutions". During this time, FALGBT held a meeting with support from five different political parties to show their political support. The bill was forwarded to the House after a combined meeting of two congressional committees, and on May 5, 2009, it was approved there with 126 votes in favor and 110 against. Now the bill had to be passed by the Senate (Gargarella 2010: 199).

During the Senate's General Legislation Committee sessions, public consultations were conducted regarding the proposed Bill, with participation from both the LGBT community and their adversaries, predominantly represented by Catholic and Evangelical Churches. However, it was observed that in these deliberations, the voices of Catholic and Evangelical spokespersons were afforded a disproportionately greater platform, while the perspectives of the LGBT community were frequently marginalized. The anti-LGBT opponents invoked biological arguments ("homosexuality is against nature"), religious arguments ("marriage excluded same-sex marriages only man and woman") and cultural arguments ("that this was a foreign agenda and not native to Argentinean culture"). Even after 8 hearings and a dozen conducted outside Buenos Aires in the provinces, the Senate Committee was ambivalent. However, support came from former President Nestor Kirchner who stood behind legal change and the then President Cristina Kirchner, who voiced her demand for an egalitarian society. Ultimately, the Bill was approved by the Senate on July 14 without any changes, making Argentina the first nation in Latin America to legalise gay marriage (Schulenberg 2012: 122). Within the first year of the law, there were 2697 same-sex marriages, which encouraged others in the LGBT community to come out. The success of the Equal Marriage Law led to the campaign for legal



papers for trans people. ATTA activists were first invited to the 2009 House of Representatives reintroduction of the Gender Identity bill. The National Front for Gender Identity Law was established in November 2010 when FALGBT demanded new IDs for trans persons using tactic similar to that employed for Equal Marriage Law. The 19th Pride Parade also made the Gender Identity Laws the focus of their march.

In December, a judicial decision in the case of trans actress Florencia de la V affirmed that gender identity constitutes a fundamental entitlement, dismissing any attempts to impose it via psychiatric or medical interventions and emphasizing that “an individual’s sexual identity transcends mere biological factors”. Another instance saw a judge mandating the issuance of identity documents aligning with an individual’s self-identified gender, devoid of any necessity for medical or surgical substantiation. Although legislative progress was temporarily halted in light of the impending 2011 Presidential Elections, the Federación Argentina LGBT (FALGBT) introduced a comprehensive strategy for LGBT Citizenship and published a report on Equality, grounded in a survey of the circumstances of LGBT individuals across 27 localities. Notably, universities, particularly the National University of Cordoba, played a significant role in advancing this cause. The endorsement of recognizing self-perceived gender by the University’s Higher Council was subsequently replicated by other academic institutions. This surge of support for fluid gender identities, accommodating transgender experiences, subsequently extended to other civil institutions including the Buenos Aires Ombudsman Office and the Health Ministry of Buenos Aires (Ministerio de Salud 2021). The latter proved especially impactful, given that nearly 40% of transgender individuals had refrained from seeking medical care due to feelings of shame and fear (Gargarella 2010).

The Gender Identity Bill, characterized by its destigmatizing, decriminalizing, and de-pathologizing of transgender identities, unequivocally stands as one of the most progressive legislative measures in history. These endeavours reached their pinnacle with the successful passage of the Gender Identity Bill in the final session of 2011, endorsed by 167 votes to 17 in the



House of Representatives. Shortly thereafter, it received unanimous approval from the Senate. In compliance with the stipulations outlined in the Gender Identity Law, the government is obligated to issue citizens identification documents reflecting their self-identified gender, irrespective of their biological sex, without necessitating adaptation procedures, medical or psychiatric assessments, or other forms of medical intervention (Rucovsky 2015: 19). Notably, neither adults nor minors (with the consent of their parents or legal guardian) are subject to judicial or administrative prerequisites for accessing hormone treatment. Furthermore, as an integral component of the Compulsory Medical Plan, both the public healthcare system and private health insurance entities are mandated to provide the requisite procedures and treatments.

There were several reasons for the success of the LGBT movement in Argentina. First, the demands for marriage rights made by the LGBT movement were couched in terms of equality and citizenship rights. For instance, the right to marry was valued because of the numerous benefits it conferred, such as inheritance rights, health insurance coverage, legal support in the event of a divorce, and the ability to adopt children. Therefore, rather than highlighting the differences between their demands, they concentrated on concerns of universal human dignity. So, the LGBT movement opted for words like “equal marriage” and “marriage for all” rather than “gay marriage”. Furthermore, the incorporation of a framework grounded in dignity and human rights enabled the LGBT movement to establish parallels with prior movements, including those advocating for women’s rights and the civil rights of African Americans. This parallelism also allowed them to draw moral and other forms of support from women’s movements. Female judges and legislators were a major source of support, as they were the first to rule that it was unlawful to forbid same-sex marriages; a woman served as the main face of FALGBT; and female lawmakers were the first to sign the Equal Marriage Bill in early 2007. The most common parallelism was that just as quotas and activism had led to progress of women’s rights which enabled their participation in judiciary and legislative functions, so too did the LGBT need the similar action to strike down on un-



progressive and unjust laws. Secondly, the LGBT movement's relative youth also accounted for its success. Thirdly, while targeting legislators, the LGBT organizations not only revealed existing social consensus on LGBT issues but also created it by favourable journalistic coverage and by humanizing the LGBT community. Emphasizing real people over abstract concepts also meant that the media itself could become more educated about the difference between transsexual and intersexual or the struggles faced by the children of same-sex couples or the lack of rights of homosexuals. For example, when a socialist representative who was father to a heterosexual and a gay son made a public speech protesting that his gay son lacked the rights his other son had. Likewise, a young individual presented a public statement detailing his "typical" and gratifying life as the child of a homosexual father, within the context of the Senate's deliberations on the Equal Marriage Law. Moreover, various LGBT organizations united together and thus presented a united effort to legislators, lawyers, and the public, instead of squabbling and getting mired in differences. In addition, the numerous organizations often debated and engaged with their Catholic and Evangelical opponents using constitutional arguments as opposed to dubious biological and moral arguments (Pecheny et. al. 2016: 215).

This meant that the media was enlisted as an ally for change. While the speed of the change was surprising to many, the change itself was overdue and "inevitable" – "inevitable" in the sense that the LGBT movement framed their struggle as issues of equality and civic rights, themes that were relevant to many Argentinians who had emerged from the repression and military dictatorship of the 1970s and 1980s. Also, the fear and misinformation that characterized the attitudes of "normal" people was tackled effectively by information and knowledge. Lastly, the support of former presidents Nestor and Christina Kirchner lent credibility to the cause. Thus, by instigating small changes in the form of struggle for marriage rights, the LGBT movement in Argentina built upon these small victories to mobilize public sentiment, media attention, and judicial support to trigger legislative change in the form of Equal Marriage Law (Encarnacion 2013: 700) and Gender Identity Law.



POLITICAL VISIBILITY OF LGBT COMMUNITY

The movements relating to legal recognition of gender identity and recognition to same-sex relations have generally not been separate from one another. There is in most cases an LGBT movement going on for demanding certain basic rights. In Argentina also, while tracing the origin and development of transgender rights movement, the development in the LGBT movement as a whole has to be understood. In Argentina, the same-sex relations were not prohibited as these were considered part of right to privacy guaranteed under the National Constitution. But, despite non-discrimination being the general rule, there was a lot of differential treatment that was offered to people of sexual diversity (Giami, Russo 2013: 5). Persistent regulations persisted, specifically targeting transgender individuals among others. These statutes either proscribed the donning of attire associated with a different gender while in public spaces or engaging in sex work in such areas, primarily aimed at transgender persons. Additional rationales for penalizing transgender individuals encompassed considerations of public order and moral standards.

The collective demands representing gay, lesbian, transgender, transsexual, transvestite, bisexual, and intersex individuals found expression within the political sphere under the umbrella term “GLTTTBI movement”, also known as the “sexual diversity movement”. To comprehend the political mobilization of these groups, it is essential to contextualize the period of military dictatorship in the country from 1976 to 1983, characterized by repressive measures concerning social engagement and utilization of public spaces. The advent of democracy in 1983 ushered in a more permissive discourse and practices regarding sexuality. The restoration of individual rights and the gradual fortification of human rights advocacy created a conducive environment for public demonstrations and political advocacy on behalf of the GLTTTBI community (Giami, Russo 2013).

In the late 1990s, many social and political organizations with gay and lesbian membership began to intervene more frequently in public spaces. In 1990s, transvestites and transsexuals became assertive and organized to publicize their demands.



The years prior to GIA saw the increase in voices which highlighted that the LGBT community had started to express their demands. Initially centred mostly in Buenos Aires, the political mobilisation gradually spread to other urban regions of the country. Earlier, the demand of rights was made through the expansion of global AIDS epidemic-related discourses and resources, and by the creation of worldwide networks working on the defence of sexual and reproductive rights (Mendieta, Vidal-Ortiz 2021: 55).

Throughout the evolution of time, the requisites of the societal collective have exhibited a dynamic nature. During the nascent stages of democratic governance, the GLTTBI movement concentrated its efforts on defensive requisites, primarily centered on the cessation of law enforcement excesses perpetrated against individuals identifying as gay or lesbian, along with advocating for the cessation of discriminatory practices directed towards them. In the early 1990s, the movement redirected its focus towards managing the AIDS epidemic, dedicating substantial efforts to devising strategies aimed at cultivating positive portrayals of sexual diversity, particularly within the realm of media representation. As the 1990s drew to a close, endeavours of transvestites and transsexuals began to emphasize the cessation of police misconduct, particularly in relation to those engaged in street-based prostitution. Subsequently, in the ensuing years, the requisites became aligned with the international agenda, encompassing calls for the implementation of state-sanctioned recognition policies for same-sex couples. Although the nature of concerns underwent a transformation, this did not imply a forsaking of the initial demands (Mendieta, Vidal-Ortiz 2021).

Alumine Moreno has talked about the visibility process of GLTTTBI community in Argentina and analysed the impact of such visibility (Moreno 2008: 140). Alumine conducted in-detailed interviews with the GLTTTBI movement activists to understand the organisation and implication of visibility of people associated with the GLTTTBI movement. For the activists who were interviewed, visibility was more like a process that comprised of a number of actions that didn't necessarily have to be consistent across social contexts or have absolute values. In



contrast, it was not possible to declare one's sexual non-conformity to co-workers or members of one's religious group while speaking to family and close friends. Additionally, Moreno brought up the effect of visibility. The visibility may have both favorable and unfavorable impacts, depending on the particular person and the socio-historical situation. According to some activists, being very visible can result in just as much oppression as being invisible. Further, those who are labelled as deviants become subject to various forms of violence once their deviation from the standards of sexuality, gender, race, and social status is detected (via visibility) in hostile contexts. It's important to comprehend the effects of visibility in the context of local elements like the neighbourhood, city, and region. The reason for this is that diverse social landscapes create distinct privileges and disadvantages based on different traits. The GLTTBI movement in Argentina aimed to develop laws in the 1990s that would dispel prejudice and encourage acceptance of non-heteronormative sexual orientations. Positive changes in the media's representation of sexual diversity occurred throughout this time (Moreno 2010: 387).

CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

The Constitution of Argentina (1853) guarantees equality before law to all the inhabitants of Argentina and says that they should be given employment without any condition other than that of aptitude. Further, any form of discrimination against individuals is prohibited. This is provided for by a number of legislations, including Article 43 of the Constitution. Article 14 of the Argentine Constitution guarantees both the freedom to associate for constructive objectives and the publication of ideas without prior restriction. The international conventions ratified by Argentina traditionally uphold the rights to freedom of expression and association. These fundamental rights, which pertain to the LGBT community, have not undergone any specific alterations or limitations. The Federal Non-Discrimination Law No. 23592, enacted in 1988, imposes both civil and criminal sanctions for any acts that curtail, hinder, obstruct, or infringe upon an individual's capacity to exercise their constitutional



rights in a complete and unhindered manner, on grounds of discrimination (Constitution of Argentina 1853: Article 14).

Under Federal Civil Marriage Law No. 26618 (2010) and Article 599 of the National Civil and Commercial Code (2015), individuals within the LGBT community possess equal entitlements to pursue adoption. Moreover, in accordance with the Federal Gender Identity Law No. 26743 (2012), adoptions finalized prior to a legal gender change retain their validity. Following the enactment of the Federal Gender Identity Law, trans individuals face no impediments in entering into marriage, a law that will be discussed in detail later in this text. Pertaining to employment parity, Article 17 of the Labour Contract Law (1976) explicitly prohibits any manifestation of gender-based bias against employees. It is pertinent to underscore that the term “gender” encompasses both gender identity and sexual orientation, despite its implicit nature. The Trade Unions Law (1988) reinforces that trade unions are proscribed from establishing distinctions based on sexual orientation and are mandated to refrain from discriminatory practices against their members. Furthermore, it clarifies that the term “gender” encompasses gender identity and sexual orientation. Additionally, non-labour anti-discrimination statutes, such as Federal Non-Discrimination Law No. 23592 (1988) and Fight Against AIDS Law No. 23798 (1990), hold applicability within labour relations. In the city of Buenos Aires, Law 14783 (2015) mandates that a minimum of 1% of the public sector workforce must consist of transgender individuals. As stipulated by Law No. 26791 (2012), a homicide motivated by the victim’s sexual orientation constitutes an aggravating factor in the determination of sentencing.

Gender identity law

Argentina has persistently instituted legal reforms aimed at advancing LGBT rights. An illustrative example is the Comprehensive Sexual Education National Law, which mandates the inclusion of sexual diversity education across all educational tiers and prohibits discrimination within educational institutions based on gender identity and sexual orientation (Theumer



2020: 499). Subsequent to these legislative initiatives, Argentina witnessed the enactment of the Gender Identity Law, a pivotal milestone in the country's pursuit of LGBT rights. Furthermore, the advent of the Equal Marriage Law represented a seminal development, safeguarding the rights of same-sex couples to marry and adopt. This legal stride assumed particular significance, as the discussions surrounding same-sex marriage in 2010 not only precipitated a profound societal divide in Argentina, but also heightened awareness regarding the challenges faced by the LGBT community. The discussion was crucial because it helped to foster an environment where policymakers and the general public were more accepting of issues relating to sexual diversity. Additionally, during that time the transgender community became more visible and had a greater political impact. Following a similar trajectory as the Equal Marriage Law, the Gender Identity Law was introduced two years subsequent with minimal resistance, as the primary deliberations had already taken place. Subsequently, the proposal garnered endorsement from the national government office, as well as the transgender advocates and organizations that had initially championed it. Ultimately, after a span of several weeks marked by deliberations and consultations with experts and local authorities, the law was subjected to a vote and subsequently ratified by both chambers of the National Congress.

On May 9, 2012, the Argentinean Senate achieved a historic milestone with the passage of the Gender Identity Act (2012). This accomplishment emerged from a protracted, collective effort propelled by trans activism (Romero 2021: 125), aimed at attaining legal validation of gender identity. Following extensive parliamentary deliberations, the Act received approval, representing a substantial stride in the pursuit of civil rights for the transgender population. The enactment of the Gender Identity Act stands as a noteworthy contribution to the realms of civil and sexual rights, particularly within the domain of transgender policy concerns. The Act's ratification marked a momentous triumph for the transgender community, as it established provisions for the recognition of self-perceived gender identity, diverse expressions of gender, and the entitlement to accessible



public healthcare-a momentous legal development for transgender individuals in Argentina (Cutuli, Keller 2015: 225).

Salient features of the Act

The Gender Identity Law No. 26743 (2012) delineates “gender identity” as an intrinsic perception or distinct mode through which an individual apprehends their gender, which may not necessarily align with the assigned gender at birth (Article 2). This encompasses the voluntary modification of one’s physical presentation via surgical, pharmacological, or alternative methodologies. Additionally, it encompasses diverse modes of self-expression, encompassing aspects such as attire, speech patterns, and gestures.

The GIA mentions gender identity in Article 1. Every person’s right to gender recognition and the freedom to develop in line with that gender are guaranteed by this clause. The legislation permits individuals to have their identity documents reflect their chosen first name, visual representation, and recorded gender. The Act sets forth specific criteria that must be met by individuals seeking to effectuate pertinent alterations in their identity documents. These requirements include the following: *a)* the prospective applicant must have reached the legal age of 18 years, except in cases specified in the Act pertaining to minors (as outlined in Article 5); *b)* lodge a formal application with the National Bureau of Vital Statistics or the relevant district offices, requesting the modification of the birth certificate and issuance of a new national identity card (retaining the original identification number), while explicitly indicating compliance with the prevailing legislation; *c)* specify the desired first name for official registration.

The provision does not require to adduce any proof of sex change operation, or hormonal therapy, or any other medical and psychological treatment. A minor’s request for the aforementioned procedure must be made through their legal representative and with their express consent.

In adherence to the provisions set forth in the Convention on the Rights of the Child and Law 26061 for the Holistic Safeguarding of the Rights of Minors, any determination pertaining



to a juvenile is arrived at with paramount consideration for the child's optimal welfare. As stipulated in Article 7 of Law 26061, a legal representative for the child is mandated to offer assistance. In cases where consent from the minor's legal guardian is withheld or unattainable, the discernment is made by the relevant magistrate.

Upon receipt of the request, the public official proceeds to inform the Civil Register corresponding to the jurisdiction where the birth certificate was initially registered, regarding the alteration in the individual's given name and gender. This notification facilitates the issuance of a revised birth certificate reflecting the aforementioned modifications, along with a new national identity card that accurately reflects the updated gender designation and first name. The procedures delineated in this legislation are both cost-free and individually managed, devoid of the need for intermediary agents or legal representatives. Alterations to identity documents engender legal implications with respect to third parties. Any entitlements and responsibilities held by individuals prior to the modifications, as well as those emanating from familial unions sanctioned by family law across all tiers and degrees, shall remain unaltered, including matters of adoption. These revisions to identity documents do not bear any impact on these aforementioned matters.

The documented alteration in gender designation and given name remains confidential unless authorized by the document holder. Additionally, provisions are in place to facilitate amendments in the electoral registers. According to Article 10, the National Bureau of Vital Statistics is mandated to communicate the modification in the national identity document to the National Registry of Criminal Records, the relevant Electoral Registry, and other pertinent entities, ensuring their records are appropriately updated as well.

A very striking feature of this piece of legislation is that it provides for the right to free personal development. Article 11 grants individuals unrestricted access to surgical interventions, both total and partial, as well as comprehensive hormonal treatments, affording them the means to align their physical attributes with their self-identified gender, all without necessitating



any form of legal or administrative clearance. The sole prerequisite for availing these surgical or hormonal interventions is the informed consent of the individual. Furthermore, healthcare providers in the public sector, whether under state, private, or trade union auspices, are obliged to continuously uphold the rights enshrined in this legislation. These medical procedures, as delineated above, are encompassed within the Compulsory Medical Plan, incurring no additional costs for those covered by private or trade union-backed insurance schemes.

This legislation mandates the recognition of individuals' self-identified gender, particularly in the case of minors and adolescents. A person's chosen first name is to be employed for all official purposes, including summoning, documentation, communication, and any other procedure or service, both within public and private domains, upon request. Moreover, any established norm, legal provision, or customary practice must uphold the fundamental human right to gender identification, without adopting language that constrains, excludes, or negates it. Each standard should be implemented and construed in a manner that facilitates access to this entitlement. Furthermore, this law abrogates Section 4 of Article 19 in Law 17132, which formerly prohibited medical practitioners from conducting surgical procedures to alter a patient's gender unless authorized by a judicial decree.

Analysis of the Act

The Gender Identity Law stands as a markedly progressive statute, grounded in the principles of human rights. By affirming the entitlement to self-determine one's gender identity, it promotes human rights and parity for transgender individuals and the wider populace of Argentina. Furthermore, as previously indicated, this legislation affords individuals the agency to effectuate alterations in their name and gender on various official documents, encompassing birth certificates, previously conferred educational credentials, and other government-issued identity records. In contrast to prevailing practices in other nations, the process of gender recognition in Argentina is notably uncomplicated, devoid of arbitrary prerequisites and



impediments. The law does not stipulate the submission of substantiating evidence related to hormonal therapy, partial or complete gender-affirming surgeries, or any additional psychological or medical interventions. Likewise, it does not necessitate psychiatric or judicial authorization. This characteristic constitutes a significant factor in why this Argentinean legislation is widely regarded as notably progressive.

Moreover, the modifications made to official records do not impinge upon the individual's pre-existing legal entitlements or obligations. Solely in the event of a request for reverting to the previous gender identity does it necessitate judicial sanction. Another noteworthy facet of this legislation is that it extends the prerogative to minors and adolescents to effectuate a gender change, contingent upon explicit assent from the minor, alignment with the best interests of the child (as delineated by the Convention on the Rights of the Child), and the prerequisite of prior authorization from their legal guardians. Additionally, by encompassing gender-affirming medical procedures such as hormone therapy and surgery within the National Compulsory Medical Plan, the law ensures unimpeded and cost-free access to comprehensive healthcare. This enactment further bolsters Argentina's standing as a global trailblazer in championing the rights of sexual diversity.

Affirmative action

A historic decision was made by the Argentinean government in 2020 to extend a 1% minimum employment quota to transsexuals, transvestites, and transgender people working in the public sector (The Economist 2021). This action was made in an effort to change the systemic inequity that kept transgender people out of the workforce. The Presidential Decree No. 721/202, issued on September 4, 2020 (Argentina Presidencia 2020), mandated affirmative action. This effort strives to change the historic vulnerability of the aforementioned groups brought on by their little to no chance of finding employment in a setting free from discrimination. The government also gave the companies in the City of Buenos Aires instructions to make sure that gender diversity is reflected in the



composition of their boards. In pursuit of fostering a more equitable societal framework, General Resolutions No. 34/2020 and 35/2020 were officially documented in the Public Registry of the City of Buenos Aires on August 5th and August 13th, 2020, respectively (Stile, Vinassa 2021).

Considering the Argentine Republic's commitment to respect and guarantee equal rights to all without any discrimination through various international instruments, this affirmative action was taken. The government also pursued a comparable approach within the Inter-American System of Human Rights, focusing on the proscription of discrimination grounded in gender identity and its manifestation. This initiative was notably influenced by the Advisory Opinion No. 24, issued in November 2017 by the Inter-American Court of Human Rights, which underscores the significance of state recognition of gender identity and expression in guaranteeing the comprehensive exercise of human rights for transgender individuals, including access to education and employment, among other entitlements. Additionally, in 2018, the Inter-American Commission on Human Rights recommended that States formulate intersectoral collaborative strategies, addressing various facets such as education, employment, social welfare, housing, and nutrition, with the objective of securing the democratic participation and empowerment of the LGBTI community.

Furthermore, in 2017, the United Nations' Independent Expert on Sexual Orientation and Gender Identity advised Argentina to enact a range of cross-sectoral measures to effectively implement the Gender Identity Law and enhance accessibility to education and employment opportunities, encompassing alternative forms of labour and occupation for transgender women (Aristegui et.al. 2017: 443). Then, at the national level, Law No. 26, 743 and its Regulatory Decrees No. 1007/12 and 903/15 recognized the right of every person to their gender identity and free development. But despite these advancements in the matter, transvestites, transsexuals, and transgender people continued to face difficulties in exercising their right to health, education, housing, etc. and didn't get protection from discrimination.



The challenging circumstances faced by transgender individuals, marked by stigmatization, discriminatory practices, and systemic pathologization, were taken into account. It was deemed imperative to rectify the underlying structural inequalities that result in the marginalization of transvestites, transsexuals, and transgender individuals, whose life expectancy is estimated to be between 35 to 40 years. It was considered that for ensuring a more egalitarian society that promotes the integral autonomy of all people without establishing hierarchies or any distinction, there was a need to adopt positive measures to ensure that transvestites, transsexuals, and transgenders people exercise their rights.

The Presidential decree has eleven Articles. Article 1 extends the employment quota of not less than 1% in the National Public Sector, under the terms of Article 8 of Law No. 24156, Article 2 stipulates that the decree's provisions encompass transvestites, transsexuals, and transgender individuals, regardless of whether they have undergone the official procedures for rectification of gender and alteration of first name and visual representation, as delineated in Article 3 of Law No. 26743, Article 3 confers the entitlement to a fair and gratifying work environment, affording protection against unemployment, devoid of any form of discrimination rooted in gender identity and expression. Another salient provision is articulated in Article 4, which offers support to those who may have faced obstacles in attaining requisite education, ensuring that this educational gap does not serve as a hindrance to employment opportunities. It expressly asserts that the obligation to have completed formal education shall not constitute a barrier to initial appointment or continued employment. Candidates who have yet to fulfil their educational requirements may be granted admission on the condition that they commit to fulfilling the necessary educational mandates. The Coordination Unit, as established in Article 7 of this decree, assumes responsibility for orchestrating the mechanisms to ensure compulsory educational training for transvestites, transsexuals, and transgender individuals. Furthermore, Article 5 confers upon the Ministry of Women, Gender, and Diversity, in collaboration with the National Institute



of Public Administration, the responsibility of training the authorities and personnel within the National Executive Power to ensure that inclusive employment practices within the National Public Sector are conducted in a manner respectful of individuals' gender identity and expression.

LEGAL FRAMEWORK FOR TRANSGENDER RIGHTS IN INDIA AND ARGENTINA: A COMPARATIVE ANALYSIS

When it comes to gender recognition reform, Argentina has done an incredible job. The approach of Argentina towards protection of LGBTQ+ has been very progressive (Encarnacion 2016: 27). Following the unanimous approval of the Gender Identity Law (GIA) by its Senate, Denmark, inspired by Argentina's pioneering efforts, introduced legal gender recognition for transgender individuals above the age of 18, predicated solely on self-determination and devoid of medical prerequisites. Argentina set a precedent in 2012 by permitting a straightforward declaration for changing gender markers on national identity cards, a policy subsequently adopted by several Latin American nations, including Uruguay, Colombia, Bolivia, Ecuador, and Peru. In contrast, India's legislation safeguarding transgender rights came about much later. It was only in 2014 that legal recognition of a "third gender" was granted, with subsequent legislation passed in 2019. Notably, India's progress in this regard has been comparatively slower than its smaller neighbour, Nepal. The Supreme Court of Nepal addressed the issue of gender identity in 2007, particularly in the case of *Sunil Babu Pant v. Nepal Government* (2007). The apex court underscored that fundamental rights outlined in Part III of the Nepalese (interim) Constitution apply to all "natural persons", including individuals identifying as third gender. Furthermore, it emphasized that an individual's gender identity should be determined by their own self-perception or "self-feeling", independent of societal, governmental, or legal constructs, and without the need for external medical or procedural assistance (Agrawal 2020). This underscores that while



India's trajectory towards affirming transgender rights is progressive, it has been characterized by a measured and delayed pace in comparison to Argentina's swift strides.

As previously noted, Argentina's 2012 Gender Identity Law stands as an unprecedented international legislation, granting unequivocal recognition to an individual's gender identity without imposing any conditions. The process for effecting alterations in names and gender markers on official documents is straightforward and uncomplicated, thereby incentivizing a greater number of individuals to exercise their rights. In contrast, the Indian legislation pertaining to transgender rights, namely the Transgender Persons (Protection of Rights) Act, 2019, garnered substantial criticism from transgender rights advocates. The Act does not explicitly outline the procedure for acquiring a gender identity certificate. Section 5 mandates the submission of an application for a certificate of identity to the District Magistrate, who is tasked with issuance under Section 6, following a procedure that is "prescribed". This process is elucidated in Rule 4 of the Transgender Persons (Protection of Rights) Rules, 2020, stipulating that the District Magistrate is to grant the certificate based on the affidavit and the psychologist's report, obviating the need for a medical examination (Shaikh 2020). Such a requirement is absent in the Argentinian legislation. Moreover, this certificate serves as evidentiary documentation recognizing one's identity as a transgender individual. It is discernible that, whereas the Argentinian law emphasizes the alteration of names and gender markers on official documents, the Indian law centers on obtaining a gender identity certificate prior to effecting any modifications in official documentation.

The Argentinian legislation allows for the modification of an individual's name and gender without necessitating any form of documentation pertaining to gender-affirming procedures, such as surgery or hormonal treatments. Conversely, Section 7 (Transgender Persons, Protection of Rights Act 2019) of the Indian law mandates proof of medical intervention in cases where an individual undergoes gender-affirming surgery subsequent to the issuance of the certificate of identity, whether transitioning to a male or female identity. In such instances, evidence of medical



intervention is requisite for obtaining a revised identity certificate. The legal rights and responsibilities held by an individual prior to the alteration of their identification remain unaffected by the changes enacted under the Gender Identity Law.

While the Gender Identity Law in Argentina ensures that the modifications made to an individual's records do not impinge upon their pre-existing rights and obligations, the Indian law does not explicitly address the status of rights held prior to a change in identity. Instead, it stipulates that the issuance of a certificate of identity bestows certain rights upon the applicant.

Additionally, it is notable that the Gender Identity Act (GIA) mandates judicial approval solely in cases where an individual seeks to revert to their previous gender identity. This underscores that, in general, there is no requisite psychiatric or judicial endorsement for effecting changes in one's name and gender. Conversely, as previously noted, the Indian law involves executive and psychiatric clearance in the issuance of a certificate of identity. The entitlement to change gender is extended to children and adolescents under Argentine law. A comparable provision is delineated in Section 5 of the Indian law, specifying that in the case of a minor, application may be submitted by a parent or legal guardian. Moreover, as a commendable stride, the legal framework ensures universal access to cost-free healthcare. A similar provision can be discerned in Section 15 of the Indian law, which mandates the appropriate government to take measures to facilitate coverage of medical expenses through a comprehensive insurance scheme.

The Argentinian government's decision in 2020 to extend a 1% employment quota in the public sector to transvestites, transsexuals, and transgender individuals further solidifies Argentina's standing as a global advocate for sexual diversity rights. In order to facilitate the effective implementation of this policy, provisions were established to offer support to those who faced challenges in obtaining the requisite education, which could otherwise hinder their employment prospects. In contrast, the Karnataka Government is the sole state in India to enforce a 1% horizontal reservation for transgender individuals in public employment, even though the broader Indian govern-



ment has not taken similar action. The issue of extending reservations to transgender persons is intricate in India, given the various approaches being considered. The Ministry of Social Justice and Empowerment is currently seeking advice from the National Commission for Backward Classes regarding the potential inclusion of transgender individuals in the Other Backward Classes category, despite calls from transgender activists for “horizontal reservations” rather than inclusion in the OBC list. India’s Apex Court, in its NALSA judgement, directed both Union and State governments to take measures to categorize transgenders as “socially and educationally backward classes of citizens”, thereby warranting reservations. However, this approach has encountered opposition from concerned groups who argue that it overlooks the diversity within the transgender community. Not all transgender individuals fall under the OBC category, as they hail from various caste backgrounds and may experience caste-based discrimination within their own community (Mankatalia 2021). This reservation proposal fails to account for the fact that a transgender person may belong to Scheduled Castes, Scheduled Tribes, Other Backward Classes, or the general category. If transgenders were included in the OBC category, they would find themselves competing with multiple groups within that category, rendering the reservation less effective. As aforementioned, the Karnataka government currently extends a 1% reservation in each category, encompassing general, SC, ST, and all categories under “OBC”, with Rule 9 of the 1977 Karnataka Civil Services (General Recruitment) Rules having been amended to accommodate transgender individuals.

In a significant recent development, the esteemed Supreme Court of India has issued notifications to the Centre, States, and Union Territories (UTs) to solicit their perspectives on the potential extension of reservations to transgender individuals for state employment nationwide. This initiative stems from a plea submitted by Subi KC, a transgender individual, seeking a declaration affirming the entitlement of transgender individuals, on the whole, to reservation in state government positions under Articles 14, 19, and 21 of the Constitution of India. Additionally, it was implored before the Chief Justice of India (CJI)



bench that a policy for reservations in public employment specifically benefiting transgender persons should be formulated and put into practice (Ojha 2023).

The above comparison on various issues suggests that India has scope to make modifications both in the law and policies. It is necessary that the procedure is made less complicated and there is minimum external interference for obtaining gender identity certificate. Moreover, a uniform reservation policy decision can be taken just like the Argentinian government has done in employment in public sector.

AN INSPIRATION FOR THE GLOBAL COMMUNITY

A lot has already been discussed as to how Argentina has proved to be a global leader in transgender rights. This reputation was acquired by Argentina by the variety of progressive steps taken by it in the form of its Gender Identity Law, extension of 1% reservation to transgenders in Argentina's public sector jobs, tax incentives and soft loans to private businesses that provide job opportunities to trans people, and introduction of PROGRESAR (a scholarship program introduced in by the Argentina government in 2014 to provide support in education to transgenders and non-binary persons. It was later reformed into PROGRESAR+ in 2020 to address the non-financial barriers to education). Further, latest figures suggest that as of April 2023, around 16,090 Argentinians, out of which 1,529 were under 17 years of age, had applied and obtained new national identity cards to change their legal gender. In furtherance of the legal mandate to provide free healthcare to trans people in public hospitals, the Ministry of Health offers courses and training and has also brought guidelines to handle institutional violence in the care of trans children and adolescents. It also has brought a document that provides for medical consensus on the use of puberty blockers and hormone replacement therapy. Around 318 medical teams in the public hospitals and medical centres are providing these services in the country (Ministerio de Salud 2023). These developments can rarely be found in other parts of the region.



In contrast to Argentina, the position in other Latin American countries seem to be rather unfavourable for LGBT community. According to research by Transrespect versus Transphobia Worlwide (a research project initiated by Transgender Europe 2016), Brazil is the most unsafe place for trans people after 125 trans and gender diverse people were killed there between October 2020 and September 2021. It continued to be the country with largest trans killing in 2022 as well reflecting a contrary situation with its legislative provision criminalising transphobia. The Bolsonaro's government had a negative impact on the rights of LGBTQI people (Carbajal 2022). The National Council of Anti-discrimination and Pro-Human Rights of LGBT was also scrapped down in 2019 which further affected the state of trans people in the country. Several pro-government lawmakers also advocated against providing medical care for trans youths and children including ban on hormonal therapy and sex reassignment surgery for trans people in Sao Paulo state and Rio de Janeiro city. According to Human Rights Watch Report of 2022, Brazil introduced several bills between 2014-2022 targeting imparting of education on gender and sexuality in schools. It highlighted the experience of teachers at public schools who feared educating students on gender and sexuality due to the political pressure and threat to their lives for alleged "gender ideology" or "indoctrination" in municipal or state schools (Human Rights Watch 2022b).

Similar approach could be seen in Peru where the Peruvian Congress recently passed Bill 904 that upholds parents' right to decide that their children are educated as per their values and principles (Marina 2022). The Bill titled *Law Promoting the Quality of Educational Materials and Resources in Peru* was passed in May 2022. Other than this, there have been legal attempts to curb any changes to the Spanish and Portuguese languages that are male-oriented and have rigid binary structure. Brazil introduced bill that penalizes use of inclusive language in schools and such prohibition has been passed in the States of Santa Catarina, Rondonia, and Mato Grosso do Sul. Similar approach was seen in Argentina and Uruguay that bans the use of "e", "x" or "@" for making gendered Spanish words gender neutral. Similar state of affairs can be noticed in Chile (Lambert,



Scribner 2021: 232). Paraguay became the first country to ban any reference to “gender” in public education (Cariboni 2021).

The situation in Bolivia is that despite the constitutional and legal mandate banning discrimination based on gender identity and other forms, the Plurinational Constitutional Judgment 0076/2017 denies equal rights for trans people. Guatemala recently introduced Bill 5940 that is essentially Anti-Trans as it aims to potentially justify any discriminatory measure for curbing spread of any information related to transgender identity in school education (Human Rights Watch 2022a). Moreover, it is introduced with the supposed intention of protecting children and adolescents from “gender identity disorders”. The Bill if passed would negatively impact the transgender people and affect their rights to education, health, employment, human rights, etc. Moving to other region of Latin America, El Salvador is also facing the problem of violence against LGBTQI community. The environment in the country has led to the forced displacement of many LGBTQI people. However, the February 2022 ruling of the Constitutional Chamber of the Supreme Court of Justice of El Salvador came as a little relief wherein it was recognized that trans people can change their name on identity documents according to their self-perceived gender (Rosales 2022).

The above comprehensive analysis of the state of affairs in different parts of Latin-America certainly highlights as to why Argentina’s legal framework for transgender rights is the best and how the above States must take inspiration from it. As mentioned before, despite the saddening situation of transgenders in various Latin American States, they have taken some positive steps taking inspiration from Argentina. For example, in 2012 Argentina set a precedent by allowing a straightforward declaration for changing gender markers on national identity cards, a policy which was subsequently adopted by several Latin American nations, including Uruguay, Colombia, Bolivia, Ecuador, and Peru. Other countries like the USA can also take inspiration from Argentinian law.



CONCLUSION

The enactment of the Gender Identity Law in Argentina represents a ground-breaking advancement. It stands as a progressive legislation that champions the principles of human rights, being the first of its kind to acknowledge an individual's gender identity without any stipulations. Furthermore, Argentina's affirmative action of reserving a minimum of 1% of public sector employment for transsexuals, transvestites, and transgender individuals is a commendable stride towards inclusivity.

While India has made notable strides in advancing the rights of transgender individuals in recent years, a significant portion of this demographic continues to grapple with social marginalization and lacks assurance of fundamental rights, including the right to marry, adopt, and own property, among others. They endure persistent societal ridicule and remain on the fringes of mainstream society. Encountering discrimination and humiliation from both law enforcement and medical authorities further exacerbates their plight. Despite constituting a small fraction of the overall population, the LGBTQI community remains entitled to their basic rights. It is imperative that they be safeguarded against police misconduct and physical violence at large. The developments witnessed in Argentina may serve as instructive guidance for India in effecting pertinent changes.

With its progressive and multifaceted initiatives, Argentina's position as a global leader in transgender rights is unmistakably established. The country's dedication to the transgender community extends beyond legal measures and encompasses a comprehensive approach that caters to multiple dimensions of their existence. Argentina has implemented innovative affirmative action policies, including but not limited to reservations for public sector employment, targeted assistance in healthcare, and substantial support for education. The efficient procedure for changing the legal gender designation on national identity cards serves as another instance of Argentina's commitment to eliminating administrative obstacles frequently encountered by transgender people.



On the contrary, a number of other Latin American nations, most notably Brazil, Bolivia, Peru, persist in maintaining policies that showcase prejudice towards the transgender community, thereby depriving them of fundamental rights. This striking contrast highlights Argentina's remarkable dedication to inclusiveness, providing a clear contrast to the regressive policies implemented by its neighbouring countries. Argentina's exemplary transgender-friendly policies serve as a source of motivation for other countries to reassess and improve their own approaches to transgender inclusion (Cruz 2018: 31). The stark disparity between policies and their consequences for the transgender community emphasises the critical nature of gaining international recognition and implementing Argentina's model as a guide for promoting respect and equality for transgender people around the world.

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