
A CRITICAL ANALYSIS OF TRANSGENDER ACT 2019

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ABSTRACT

The Transgender Protection Act, 2019 denotes the landmark legislative attempt aimed at advancing the rights, dignity, and wellbeing of transgender people. This comprehensive act addresses systemic inequalities and discrimination faced by transgender people in various aspects of life, including employment, healthcare, education, and public accommodations. By providing legal recognition of gender identity and prohibiting discrimination based on gender identity or expression, the act promotes equality and social inclusion. The act provides legal recognition of transgender people and protects them against discrimination. This is a crucial step towards addressing systemic inequalities and promoting equality in society. Providing legal recourse for transgender people who experience discrimination or violence based on their gender identity is crucial for safeguarding their rights and ensuring accountability for discriminatory actions.

Key provisions include ensuring access to sensitive healthcare services, recognition of self-identified gender in official documents, and implementation of educational programs to foster understanding and acceptance. Despite its strengths, challenges such as enforcement issues, cultural resistance, and intersectional considerations remain. However, the Transgender Protection Act, 2019 signifies a significant step towards creating a more equitable and inclusive society for all individuals, regardless of gender identity. Continued efforts to address its limitations and ensure effective implementation are essential for realizing its transformative potential. The act's scope may be limited to certain areas or aspects of transgender rights, potentially overlooking broader systemic issues such as economic inequality, housing insecurity, or violence against transgender people.

Introduction

A Transgender is the situation of one's gender individuality or gender expressions not match one's assigned sex. Community has prepared 2 box one is for man another is for woman but what about those who doesn't include to these box, are they not human being?

Transgender has individuality catastrophe. Fundamentally transgender is an individual who belong to some other sex and follow the gender norm of reverse sex. The landmark decisions of the SC that transgender people as third genders have stirred vast academic discussions about the position to be associating this till now communally exclude and demoralized group.

On 15 Apr 2014¹ under J. Radhakrishnan, 2 judge bench, said in his decisions that identification of transgender as third genders isn't communal or medical issues but human right issues. A transgender is also Indian citizen" and they should be "given equivalent chance to develop and progress. The spirit of the Indian Constitution is to offer equivalent chance to all people to develop and accomplish their prospective, irrespective of castes, religions or genders. It has undoubtedly lifted voices against the violations of human right of minority groups of people of a nation who were financially backward, communally stigmatize and politically divested.

Indian citizens with broad ranges of transgender associated individualities, culture, or experience exists – comprising Hijra, Aravani, Kothi, Jogta/Jogappa, and Shiv-Shakthi, sakhiyas. Indian Trans-women group or hijras have been divisions of subcontinents for providing on civilization has. There are more than 4000 years and being denoted in olden text, the hijras group are testaments to the sexual diversities that are vital yet forgotten in Indian traditions. When subcontinent of India came in the Britisher during nineteenth century their situation in community got worsened they criminalized hijra group through different legal frameworks. However, after the seventy years of independence LGBT community is a sufferer of hatred and aggression not only corporeal but mental also.

National Legal Services Authority vs UOI and others

The sexual life isn't bed of rose either they are compelled to follow prostitutions or they are prepared victims of sec. 377²

¹ National legal Services Authority vs UOI and others

² Vimal Balasubrahmanyam, Gay Rights in India, Economic and Political Weekly, Vol. 31, No. 5 (Feb. 3, 2006)

They sell their bodies not for happiness but for their continued existence, as they can't do any other job.

S.377 of IPC. Unnatural crimes - whoever willfully has licentious intercourse against the request for nature with any man, woman or creature, will be rebuffed with [imprisonment forever], or with detained of one or the other portrayal for a term which might reach out to ten years, will likewise be obligated to fine.³

Explanations- Penetration is enough to comprise the carnal intercourses essential to the offence denoted in these sections.

The section explained that sexual intercourses with the same sex is also a crime, these sections criminalize the sexual intercourses among two adult of same sexes. The revision of this section is required that if there is consensual sex among the adult people of same sexes that must not be criminalized.

Indian narration is relatively broad and has transformed over a long period of time, the rule of laws have been influenced by the different societal variables which relied on rulers with consistent power with the pan Indian conception. Therefore, the consistent comprehensive legislation came only after the British period with the arrival of colonial laws and further, major get through came up only after the execution of IPC in 1860 and therefore Section 377 came into power which altered the course of specific communities in general and hence cause labelling of various sexualities in a different way and their activities were criminalized, which in reply turn them into a criminal.

The search of individuality as a fundamental human model has reign the mind of all citizens in several fields such as victory recognition, financial supremacy, political assertions, celebrity status and societal dominance. More specifically the gender personality of an individual jointly with the statutory concept of "identity with dignity", its societal implications and lawful acceptability has been an important issue from the past few decades. "Questions also arouse as to whether the constitutional concept included merely sexual orientation or was wide enough to be inclusive of the sexual choice. Against this background this Writ Petition was filed for declaring – right to sexuality, right to choice of a sexual partner to be part of the right to life

³ The IPC (45 of 1860) page 153.

guaranteed in Art.21 of the Constitution of India and further to declare Sec.377 of the I.P.C to be unconstitutional” .

The way in front for the L.G.B.T.Q people now lies in the rigidness of this societal ethics which has altered sufficient to continue silent on the HC's decision in public fields in a probable terror of being booked for contempt of court if they talk but mutely in their private fields, the hate is far from over, more so at present when majoritarian perspectives and attitudes are methodically violating and intrude the private space of the minority customs and their existence.

In a landmark judgment, the Supreme Court addressed the transgender as a third gender and has approved The Transgender Persons (Protection of Rights) Act, 2019. The Act intends to safeguard and empower of one of the most marginalized society in India, the transgender community.

The Transgender Persons (Protection of Rights) Act, 2019, experiences from different lacunae in its some provisions and has left many concerns unanswered. In addition it isn't in consonance with NALSA judgments, 2014 and basic rights given under Indian Constitution, which make it unsuccessful in uplifting societal and legal position of a transgender.

The Transgender Protection Act, 2019 was introduced with the aim of providing legal protection and recognition for transgender people. The act sought to address the discrimination and marginalization often faced by transgender people in various aspects of life, including employment, healthcare, education, and public accommodations. By providing legal recognition of transgender people and protection against discrimination, the act affirms their rights as equal members of society. This recognition helps combat stigma and marginalization, promoting dignity and respect for transgender people.

The act aims to address systemic inequalities faced by transgender people in various aspects of life, including employment, healthcare, education, and public accommodations. By prohibiting discrimination and ensuring equal access to opportunities, it promotes equality and fosters a more inclusive society.

Transgender people often encounter barriers to accessing healthcare services, including gender-affirming care. The act's provisions to ensure access to sensitive and appropriate healthcare services are crucial for the well-being and health of transgender people.

Recognizing the right of transgender people to self-identify their gender and have their gender identity acknowledged in official documents and records is significant for affirming their identities and reducing instances of misgendering and identity-related challenges.

Educational programs and awareness initiatives mandated by the act help promote understanding, acceptance, and support for transgender people in society. This can lead to greater empathy, reduced prejudice, and improved social inclusion.⁴

The act provides legal recourse for transgender people who experience discrimination or violence based on their gender identity. This legal protection is essential for safeguarding their rights and ensuring accountability for discriminatory actions.

Transgender

Transgender individuals are people whose gender identity does not align with the sex they were assigned at birth. In other words, their internal sense of gender differs from the gender assigned to them based on physical characteristics such as genitalia at birth. Transgender people may identify as male, female, both, neither, or as a different gender altogether.

It's important to understand that gender identity is distinct from sexual orientation. Transgender individuals may identify as heterosexual, homosexual, bisexual, pansexual, asexual, or any other sexual orientation, just like cisgender (non-transgender) individuals.

Transgender people may undergo medical interventions such as hormone therapy or surgeries to align their physical characteristics with their gender identity, a process sometimes referred to as gender transition. However, not all transgender individuals undergo medical transition, and gender identity is valid regardless of whether or not a person chooses to medically transition.

Transgender individuals face various challenges and forms of discrimination, including social stigma, discrimination in employment and housing, lack of access to gender-affirming healthcare, and higher rates of violence and harassment. Advocates and activists work to raise awareness, promote acceptance, and advocate for the rights and well-being of transgender

⁴ Bhattacharya, Transgender Persons (Protection of Rights) Act' of India: An Analysis of Substantive Access to Rights of a Transgender Community. *Journal of Human Rights Practice* (2022)

individuals.

The Life of Transgender People

As soon as a transgender person is born in our country, its struggle begins then and there. At times they are abandoned by their birth parents and they face such sort of discrimination since then. When they grow, they are restricted from the basic educational opportunities which is their birth right too, and even if they somehow get the education they still face discrimination when they go to seek work from various fields of profession. All this discrimination from the society makes their life difficult and they are forced to take up jobs such as sex work, dancing and they get stuck forever in a vicious cycle of begging. Before 1871 in the British era the Transgender people had a special status in the society, but the British government rolled out the “Criminal Tribes Act of 1871”.

Under the Criminal Tribes Act, various ethnic and social groups were labelled as criminal tribes, and members of these communities were subjected to surveillance, restrictions on movement, forced labour, and other forms of discriminatory treatment. The act essentially stigmatized entire communities based on their social or ethnic background, rather than their individual actions.

Transgender individuals were not specifically targeted by the Criminal Tribes Act. However, like other marginalized groups, transgender people in colonial India may have faced discrimination and oppression under British rule, along with the communities targeted by the act.⁵

It's important to note that the Criminal Tribes Act of 1871 was repealed in independent India in 1952, recognizing the injustice and discrimination inherent in the legislation. However, transgender individuals in India continue to face various challenges and forms of discrimination, and efforts to promote their rights and well-being remain ongoing.

In a landmark judgement passed by the Supreme Court in the case of *National Legal Services Authority vs The Union of India*⁶. Which recognised the rights of the Transgender people in the society. The bill aimed to abolish discrimination with transgender people at educational

⁵ Bindu, Government, society have responsibility to bring queer community to mainstream, says Kerala minister
The Hindu (2022)

⁶ (2014) 5 SCC 438.

institutions such as schools and colleges and government aided and supported policies and facilities provided by them. Along with all these the bill also stated that no transgender person must be excluded for renting or buying property anywhere in India and they must not be forced into any sort of discrimination at any stage during formation of contracts. Apart from these there were various provisions in the bill, along with some major loopholes or drawbacks which faced a lot of criticism which gave rise to the Protests that were held at various parts of the country including the majority group in the country's capital. One such drawback was "Gender recognition", through which the Transgender would not be able to now change their documents which will showcase their identity. The Protestors put forward their arguments that they found the bill very ironic as it claims to provide equality and justice to all but it itself has various layered portions which will discriminate them from the society.

Why was the Act Opposed?

After visualizing and Analysing the whole situation both before and after the bill was introduced, one thing can be made clear that the bill was not properly drafted as it lacked the foremost reason i.e. equality in society. Also the legislation was not able to explain and present the bill properly to those people from whom it was supposed to be. Although it had provisions to eliminate discrimination of Transgender people in the society, but it doesn't have any provision to secure the same (Security). Talking about rights and duties there is yet no provision for the matter of adoption and marriage of transgender. There is no clarity for the fact that whether it is legal or not in India to marry transgender or to adopt kids as a transgender parent. The act faced a lot of Criticism all over the media and social media.

It's not hidden that in our country the Transgender People are facing discrimination and hatred since a very long time, making India a homophobic nation. Even today people can be seen sparing themselves from matters that involve the Transgender people, the society has also normalised the use of words "hijaras", "chakka", "meethe" and what not as abusive and disgraceful words to address them and to ill-treat them in the society. They are often beaten up publicly, also are both mentally and physically tortured, which makes their life miserable as hell since a very young age! Lately but now they have risen up to fight against the prejudice society and to fight for their rights and respect in society which they were always deprived of.

In a country where the governing body to run the nation is chosen on the basis of religion, politics, it's not fascinating that such an irresponsible approach to provide justice to a particular

amount of population has been made by our government. Even in the political agendas and resolutions there are so called “portfolios” there’s always mention of less important stuff like building of some statue or building of some religious bodies and buildings just to grab votes! No one does and no one prefers to talk about the real issues and concerns of the society.

The Harsh Reality

If we carefully look around us we can easily conclude that it is quite easy now to deviate people from some stronger and much more important issues to issues which are not even worth a penny, i.e. they are baseless. The Transgender Protection of Rights Act was made to safeguard the interests and remove any sort of discrimination from the lives of Transgender people through the long “impractical and nearly impossible path”. The streets were full of people as they came down for a peaceful protest, and maybe that was the reason they were ignored by the government. This act indeed has become a mere piece of paper prepared just for the sake of publicity and has no benefits and use as one hand it says one must not discriminate transgender persons anywhere but there is no provision for checking and safeguarding the same. The homophobic nation had no effect on itself and even after such act they are even now alienated in their very own nation as the rapidly growing society has left her mind in the old era!

Being a student, I have seen people teasing boys who like feminine stuff and call them with weird nicknames and humiliate them a lot. They alienate a person and make their life miserable just because of their choices. That’s why it always becomes hard for a person to accept a fact. People are always trained since the childhood that transgender is a form of abuse and it’s almost become some sort of taboo in many people’s minds. People are grown with this mindset and that’s why they tend to discriminate when the encounter transgender person. All this even raises difficulties for a person to accept the fact that he is a transgender.

Challenges faced by the Transgender people in India

Transgender people in India face numerous challenges, stemming from societal attitudes, legal barriers, and economic disparities. Some of the key challenges they encounter include:

Social Stigma and Discrimination: Transgender people often face widespread social stigma and discrimination, leading to exclusion, harassment, and violence. They may be ostracized by their

families, communities, and society at large, leading to isolation and mental health issues.

Lack of Legal Recognition: Despite legal advancements like the recognition of transgender identity as a third gender by the Supreme Court, there are still gaps in legal recognition and protection. Many transgender people face challenges in obtaining official documents reflecting their gender identity, leading to difficulties in accessing basic services and rights.

Limited Access to Healthcare: Transgender people often encounter barriers in accessing healthcare services, including gender-affirming care such as hormone therapy and gender reassignment surgeries. Discrimination and ignorance among healthcare providers further exacerbate these challenges.

Educational and Employment Discrimination: Transgender people frequently face discrimination in educational institutions and workplaces, limiting their access to education and employment opportunities. This discrimination may manifest in the form of bullying, harassment, and denial of equal opportunities.

Economic Marginalization: Transgender people often experience economic marginalization due to educational and employment discrimination, as well as limited access to social welfare schemes. This economic vulnerability can perpetuate cycles of poverty and exclusion.

Violence and Abuse: Transgender people are disproportionately vulnerable to various forms of violence, including physical and sexual violence, hate crimes, and police brutality.

Perpetrators often act with impunity due to societal prejudice and inadequate legal protection.

Lack of Support Networks: Many transgender people lack support networks and community resources due to social isolation and rejection by family and friends. This lack of support can exacerbate mental health issues and hinder access to essential services.

Legal Vulnerability: Transgender people often face legal vulnerability due to discriminatory laws and practices, as well as inadequate legal recognition of their gender identity. They may encounter difficulties in accessing justice and legal recourse for rights violations.

Addressing these challenges requires concerted efforts from various stakeholders, including policymakers, civil society organizations, healthcare providers, and communities.

Comprehensive measures are needed to combat stigma, promote inclusion, and ensure equal rights and opportunities for transgender people in India.

Objectives of the Study

- To examine the legal framework established by the Transgender Protection Act, 2019 to determine its comprehensiveness, clarity, and enforceability.
- To examine the impact of the act on the rights and protections of transgender individuals, including changes in discrimination rates, access to healthcare, employment opportunities, and social inclusion.
- Identify and analyze challenges in implementing the provisions of the Transgender Protection Act, 2019.
- To propose policy recommendations to strengthen the effectiveness and impact of the Transgender Protection Act, 2019, addressing gaps, barriers, and emerging issues in transgender rights protection.

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