

Transgender Rights: A Way Ahead or A Step Back from Reality.

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Abstract --- Law is ever evolving concept. As the society is marking towards the betterment of society, development of the marginalized section is also important. Marginalized sections can be based on various aspects like economic, status-oriented, caste based or the identity basis. The concept of identity is varied vast and it attract various possible interpretations. The mark of 21st century witnessed huge favour for the human rights activities. All over the world the problems of discrimination and identity crises discussed on the world stage openly and liberally. Keeping at pace with the global trends India also witness a policy shift by recognising the transgenders as third gender and make a proper legislation for the betterment and development of trans people. This paper examines the objectives of the Act, its key provisions, and the challenges faced in its implementation, and proposes reforms to strengthen transgender rights in India.

Keyword– Transgender, Rights, Law, NALSA, Fundamental Rights.

“As long as we are living in a culture where one has to prove their womanhood or manhood, we are not living in a free culture.”

– Laverne Cox

I. INTRODUCTION

Law is ever evolving concept. As the society is marking towards the betterment of society, development of the marginalized section is also important. Marginalized sections can be based on various aspects like economic, status-oriented, caste based or the identity basis. The concept of identity is varied vast and it attract various possible interpretations. The identity concept in India became hot topic of discussion when the transgenders were recognized as third gender by the supreme court of India. Transgender persons have historically faced social exclusion, discrimination, and violence. In India, transgender communities such as Hijras, Kinnars, and Aravanis have long existed but remained marginalized.

Legal recognition gained momentum following the Supreme Court’s judgment in National Legal Services Authority v. Union of India, which recognized transgender persons as a “third gender” and affirmed their fundamental rights under the Constitution. The enactment of the Transgender Persons (Protection of Rights) Act, 2019 is the aftereffect of the judgement.

As provided in our constitution of India this Act also aims to prohibit discrimination, ensure welfare measures, and protect the rights of transgender individuals. In response, Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019 to formalize protections and welfare measures. However, despite its progressive intent, the Act has faced criticism for procedural barriers, inadequate enforcement mechanisms, and limited alignment with the principles laid down in the landmark judgment of National Legal Services Authority v. Union of India (NALSA).

This paper examines the objectives of the Act, its key provisions, and the challenges faced in its implementation, and proposes reforms to strengthen transgender rights in India.

II. SALIENT FEATURES OF THIS ACT

The mark of 21st century witnessed huge favour for the human rights activities. All over the world the problems of discrimination and identity crises discussed on the world stage openly and liberally. The global audiences accepted that biological identity is not the fixed identity and being a trans, queer is not a mental health issue. Keeping at pace with the global trends India also witness a policy shift by recognising the transgenders as third gender and make a proper legislation for the betterment and development of trans people. The Act was introduced with the following primary objectives:

1. To prohibit discrimination in education, employment, healthcare, housing, public services, and access to opportunities.
2. To provide a mechanism for legal recognition of transgender identity.
3. To direct governments to formulate welfare schemes.
4. To protect the right of transgender persons to reside with their families.
5. To advise and monitor implementation.

This act provides the statutory recognising to the transgenders by implementing the fundamental rights provided to every citizen under article 14, 15, 19 and 21. This act also provides the mechanism for the implementation of this act, so that the aim of this can be achieved. Here are some salient features of this act listed below:

1. Definition of Transgender Person

The Act defines a transgender person as someone whose gender does not match the gender assigned at birth, including trans-men, trans-women, persons with intersex variations, and gender-queer individuals. The Act provides a broad and inclusive definition of a transgender person. As provide under section 2 of this act, It includes: A person whose gender does not match the gender assigned at birth, Trans-men and trans-women, Persons with intersex variations, Gender-queer individuals, Persons with socio-cultural identities such as hijra, kinnars, aravanis. This definition recognizes both biological and socio-cultural aspects of gender identity. It moves beyond a strictly medical understanding and acknowledges gender diversity.

2. Certificate of Identity

While Section 4 supports self-identification, Sections 5–7 introduce an administrative certification process. This has been controversial because the NALSA judgment emphasized that self-identification should not require medical or bureaucratic approval. A transgender person must apply to the District Magistrate for a certificate of identity. If a person undergoes gender-affirming surgery, a revised certificate may be issued.

3. Prohibition of Discrimination

This is one of the strongest features of the Act. It ensures that transgender persons cannot be denied opportunities solely on the basis of gender identity. Both government and private establishments are bound by this provision. The Act prohibits discrimination in: Education, Employment, Healthcare, Access to public services, right to movement and residence.

4. Offences and Penalties

The Act criminalizes certain acts against transgender persons, including forced labour, denial of access to public places, and physical or sexual abuse.

III. DIFFICULTIES AND CRITICISMS

India has around 4.87 lakh self-declared transgender persons as per census 2011, though the actual population is estimated to be much higher due to stigma and under reporting. India although recognized the third gender and also provide protection laws, but still social acceptance, healthcare access and livelihood opportunity remain limited. Government has taken initiative for the betterment of the transgender persons. They are:

- a. Transgender person (protection of rights) rules, 2020.
- b. National council for transgender persons for monitoring schemes and redressing grievances.
- c. National portal for transgender persons 2020 for online self-identification certificate, ID card issuance and access to schemes in multiple languages.
- d. SMILE Scheme 2022, this scheme focuses on the livelihood, scholarships, skill training, Ayushman Bharat TG plus health coverage, and Garima Greh shelters in 20 plus states.

Government is working for the development of the transgenders. For the security, equality and development the policies, legislation and rules are there but still challenges are faced by the transgender persons in India. Following are the barrier in the implementation of this act. They are:

1. Certification Process and Bureaucratic Barriers

One of the most criticized provisions is the requirement of obtaining a certificate from a District Magistrate. Activists argue that this violates the principle of self-identification affirmed in National Legal Services Authority v. Union of India, which emphasized that gender identity should be based on self-perception without medical or administrative scrutiny.

2. Inconsistency with NALSA Judgment

The NALSA judgment directed the government to treat transgender persons as socially and educationally backward classes for reservation in education and employment. However, the Act does not explicitly provide reservation benefits, leading to criticism that it dilutes the spirit of the judgment.

3. Inadequate Penal Provisions

The punishment prescribed for sexual abuse against transgender persons is less severe compared to similar offences under general criminal law. This discrepancy has been viewed as discriminatory.

4. Lack of Clarity in Implementation

Although the Act mandates welfare measures, it lacks detailed mechanisms for funding, monitoring, and accountability. Many states have been slow to implement effective schemes.

5. Social Stigma and Ground Reality

Legal recognition alone cannot eliminate societal prejudice. Transgender individuals continue to face family rejection, unemployment, homelessness, and violence despite statutory protection.



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IV. WAY FORWARD

As the global attention has shifted to India after the major world countries formulate transgender favoured or against policies, there is need to implement the proper policies and enforcement mechanism to tackle the present issue in hand. Following are the few suggestions for the easy enforcement of the transgender oriented policies and regulations. They are:

1. States must strictly implement the provisions regarding the act such as welfare boards, grievance redressal systems, and anti-discriminatory mandates to ensure uniformity and proper enforcement.
2. For the easy accessibility or implementation of the rule-oriented approach Adopt Full Self-Identification Model and Remove bureaucratic certification barriers. Only then the identity crisis can be handled in an effective way.
3. Recognition cannot work unless the proper reservation policies is not there. Work oriented policies can bring the act aligned with the NALSA directions
4. After the new criminal codes certain issue regarding the transgender's are still in the grey area. For the protection of the trans people penal provision need to be Strengthen and for that punishments should be aligned with general criminal law standards.

5. To Ensure Effective Implementation allocation of dedicated budgets and monitoring bodies is required step by the working governments. Presently, high homelessness, family abandonment and discrimination push many trans people into unsafe atmosphere with minimal protection.

6. From many decades trans people are living under the dilemma of non-acceptability. To make them a part of this society Awareness and Sensitization towards them is needed. In order to achieve that nationwide campaign should be organized to reduce stigma.

V. CONCLUSION

The Transgender Persons (Protection of Rights) Act, 2019 represents a significant step toward the recognition and protection of transgender rights in India. However, gaps between legislative intent and implementation continue to hinder its effectiveness. Aligning the Act more closely with the principles laid down in National Legal Services Authority v. Union of India and adopting a rights-based approach grounded in dignity, equality, and self-determination are essential for ensuring substantive justice for transgender persons. India stands at pivotal footing where recognition must cooperate with the implementation. Equality should not only be done in paper but in reality. India needs to create an inclusive atmosphere in this diverse cultural society where the trans gender people can live freely, walk proudly and strive with respect and autonomy.