

The Transgender Status In India With Special Reference To The Transgender Persons Act, 2019: Legal And Medical Lacuna

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In India, the Transgender Persons (Protection of Rights) Act, 2019, is a significant piece of legislation with the dual objectives of empowering and protecting transgender people. It was passed in order to acknowledge and defend the rights of transgender people and to combat the prejudice and marginalisation they experience in a variety of spheres of life. According to the Act, a transgender person is someone whose gender does not correspond to the gender assigned at birth, including intersex people and Tran's men and women. It recognises the freedom for people to choose their own gender and offers a legal framework for that recognition and safety. The Act's main clauses are shown below.

Key Provisions:

- **Identification of a transgender person:** A transgender person is one whose gender does not correspond to the gender assigned at birth, according to the Act. It encompasses those who identify as transgender, intersex, genderqueer, and with socio-cultural identities like kinnar and hijra.
- **Unfair Treatment:** The Act forbids denial of service as well as other forms of discrimination and unfair treatment against transgender people.
- **Right to be included:** Each transgender person has the right to live with and be a part of their household. A competent court may order the placement of the transgender person in a rehabilitation facility if the individual's immediate family is unable to care for them.
- **Jobs and employment matters:** No public or private organisation has the right to discriminate against transgender people in hiring, advancement, or other employment-

related decisions. Every establishment must appoint a representative to handle complaints pertaining to the Act as the complaint officer.

- **Inclusive Education:** Transgender students must have access to nondiscriminatory inclusive education, sports, and recreation facilities in educational institutions supported or recognised by the relevant government.
- **Specific Health Facility:** The government must take action to offer transgender people with health facilities, such as private HIV surveillance centre and sex reassignment surgery.
- **Identity Certificate for a transgender person:** A certificate of identity with the gender designation "transgender" may be requested from the District Magistrate by a transgender person. Only if the person has surgery to change their gender, either as a man or a female, is a new certificate possible.
- **Safety measures by the government:** According to the Act, the responsible government must take steps to ensure that transgender people are fully accepted and included in society. Additionally, it must implement programmes that are attentive to transgender issues, rescue and rehabilitate them, provide them with self-employment and vocational training, and encourage their involvement in cultural events..
- **Offences and penalties:** The Act recognize the following offences against transgender persons:
 - Forced or bonded labour (excluding compulsory government service for public purposes)
 - Denial of use of public places
 - Removal from household, and village
 - Physical, sexual, verbal, emotional or economic abuse. Penalties for these offences vary between six months and two years, and a fine.

National Portal for Transgender Persons

- The Ministry of Social Justice and Empowerment has developed an online portal (<https://transgender.dosje.gov.in>) for helping transgender persons to register and

apply for scholarships and skill training schemes under SMILE (Support for Marginalised Individuals for Livelihood and Enterprise).

- Provision of 'Garima-Greh' shelter homes and Composite Medical Care are a part of the SMILE scheme.
- Gender reassignment surgery and medical support are covered under the Composite Medical Care for registered Transpersons.

Healthcare for Transgender Population

- Transgender health is an emerging field with increasing number of people acknowledging their gender identities and seeking medical care.
- Gender affirmation includes mental health care and counselling, hormonal intervention as well as gender affirmation surgeries.
- The Indian Professional Association for Transgender Health (IPATH) and its international counterpart, World Professional Association for Transgender Health (WPATH) have developed Standards of Care relating to healthcare of transgender persons and the different options available for gender re-affirmation.
- Concerns regarding transgender healthcare revolve around two main aspects- safe spaces and accessibility for basic healthcare for this vulnerable population, and gender-affirmation specific availability of health facilities.
- Awareness amongst healthcare providers regarding transgender rights must be assessed and addressed if safe spaces are to be created for transgender individuals, without facing discrimination.

Remaining Bottlenecks in the Act

- **Nomenclature issue:** Instead of concentrating on the rights of transgender people solely, a more inclusive word like LGBTQ (Lesbian, Gay, Bisexual, Transgender, Queer) would have been more acceptable.
- **Against the Spirit of Self Perceived Identity:** The Bill stipulates that a person will be accepted as "transgender" on the basis of a Certificate of Identity issued by a District Magistrate, which is against the spirit of self-perceived identity. It is unclear in this situation what is meant by the term "self-perceived" gender identity and how it would be applied.

- **No Review Mechanism:** The Bill does not include a procedure for appealing or reviewing the District Magistrate's decision to deny a transgender person a Certificate of Identity.
- **No Chief Medical Officer:** The Standing Committee stressed the significance of the Chief Medical Officer's position in preventing potential certificate abuse. However, the 2019 Bill eliminates the provisions for a District Screening Committee and instead gives the District Magistrate the authority to issue the Certificate in accordance with a process that is made known by rules.
- **Ambiguity regarding other rights:** At now, a number of criminal and civil laws recognised the existence of the two gender categories of man and woman. 'Transgender' is a third gender recognised by the bill. However, the Bill does not specify how transgender people will be covered by the current laws.
- **Discrimination that is compartmentalised:** Bill expressly forbids discrimination against transgender people, but only on nine different forms of discriminatory behaviours. To limit the concept of discrimination to just nine forms would be an injustice because it has many facets..
- **No Reservation:** The NALSA decision did not order the state or federal governments to grant transgender people the benefits of the backward class exemption in public employment or education. However, the bill does not deal with that problem.
- **Lighter Penalties:** Several criminal acts, such as "sexual abuse" and "physical abuse," carry lighter sentences if they are committed against transgender people as opposed to females.
- **National Commission not enough:** National Commission insufficient: A national commission on transgender issues is insufficient. At the regional and local levels, there should be a welfare board for transgender people as well as a crisis hotline.
- **Sex Selective Reassignment Surgery:** According to some activists, this provision encourages coercive or non-consensual sex reassignment surgery and violates the natural order of things.

Way Forward:

- More State level initiatives are needed for augmenting their welfare like:
 - **Tamil Nadu** established a **transgender welfare board** in 2008.

- **Kerala** brought the ‘**State Policy for Transgenders in Kerala 2015**’ to provide the “right to live with dignity.” It was the first state to have a transgender policy.
- **Odisha** is the first state to give transgender people social welfare benefits.
- **Andhra Pradesh** also announced pension scheme for transgender community.
- **Socio Economic support:** Provide opportunities in social and economic activities by encouraging their incorporation in government initiatives and bringing reservation for them in education and employment. **Ernakulam District Panchayat** helped 6 transgender people to open Kerala’s 1st Transgender run hotel named **Ruchimudra**.
- **Grassroots Support:** Local governments must take a constructive and proactive approach to eradicating discrimination and taboos. Additionally, reservation in panchayats can be implemented to give them more power.
- **Child Protection laws:** To address the problems experienced by transgender teenagers, it must be strengthened. Section 317 of the Indian Penal Code (IPC) makes child abandoning a criminal offence. The minimum age for committing this crime should be raised to 18, as transgender youngsters are typically abandoned between the ages of 12 and 18.
- **Sensitization:** Sensitization: To implement the constitutional goals of social justice and the rule of law, the Home Department of the Government of India must take the lead and collaborate with the State Governments to educate the law enforcement community.

Conclusion

To empower and protect transgender people, the Indian Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019, although the necessary regulations for its application have not yet been completed or formally published. It's important to remember that the Act itself establishes the framework for the central government's development of rules and guidelines for a number of different topics, including the issuance of transgender certificates, the implementation of welfare programmes, the operation of transgender rights cells, and the handling of offences and penalties. The government is expected to create these regulations in order to offer detailed instructions for the efficient application of the Act.

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