

Evaluating The Implementation Of The Transgender Persons (Protection Of Rights) Act, 2019: Challenges And Progress In Haryana

Ms. Surbhi Tyagi¹, Advocate Chandan Vats²

¹Research Scholar, School of Law, GD Goenka University, Gurugram.

²District Court, Meerut.

ABSTRACT

The ratification of the Transgender Persons (Protection of Rights) Act, 2019 marked an important milestone in protecting the rights and wellbeing of transgender people in India. The Act seeks to insist and safeguard the fundamental rights of transgender community through persuading better social awareness and gender understanding. This research work tried to undertake an inclusive study of the Act, analyzing its alignment with constitutional provisions and its reaction to the evolving social and economic and political landscape of the nation. Moreover, it provides the historical viewpoint, highlighting the respected position of transgender people in pre-colonial India, the marginalization and discrimination they confronted during the British colonial period, and the ultimate legal recognitions of their rights through the milestone *NALSA judgment*. Though the removal of the compulsory medical examinations under the new rules is a positive development, the transgender community's ongoing quest for an inclusive, fair, supportive, lawfully safeguarded, and respectful situation remains far from complete. Attaining the constitutional promises of freedom, equality, self-determination, and justice continues to be an isolated goal.

The study aimed to critically analyze both the advantages and limitations of the Act and suggest practical solutions to deal with the existing gaps. The research article concludes with thoughtful critiques and provides practical recommendations aimed at enhancing the execution and effect of the Act, thereby assisting its intended purpose.

KEYWORDS

Transgender Persons, Implementation, Provisions, India.

1. INTRODUCTION

The importance of gender arises as an outcome of social emergencies due to human behavioural patterns. This is a consequence of issues unaddressed or overlooked through long periods of time. These were finally spurred up as atrocities explicitly revealed in mishandling gender equations in society. In India such effects seem to surface with huge transitions occurring in almost every decade in the recent past.

The process for obtaining legal recognition through gender identity certificates under the Transgender Persons (Protection of Rights) Act, 2019¹, has been a particular point of contention. The act tried to recognize the necessity of allowing some significant civil rights and different societal and economic right to transgender communities that can assist them to attain societal and

legal recognitions. Critics argue that the certification process is cumbersome, invasive, and fails to adequately respect the privacy and dignity of transgender persons. In addition, the Act's provisions for non-discrimination and access to essential services, such as education and employment, are always undermined by persistent social stigma and lack of awareness among service providers. These procedural and social challenges contribute to a situation where legal rights do not always equate to practical benefits for transgender individuals.

Also, the broader social and legal environment continues to be shaped by entrenched biases and inadequate enforcement mechanisms. Though legal advancements have set a precedent for recognizing transgender identities, the real world implications of these laws are limited by ineffective execution, inadequate public education, and ongoing discrimination. Identifying these issues requires an inclusive approach that not only reforms legal processes but also tackles the societal attitudes and institutional practices that perpetuate inequality. Thus, a critical evaluation of the present legal system and its effect on the lives of transgender persons is essential for identifying and identifying the systemic barriers that continue to impede their full and equal participation in society.

In *Veera Yadav v. The Chief Secretary, Government of Bihar*² case the Court highlighted that the State has both a constitutional and statutory responsibilities to safeguard the transgender community from discrimination. It traced these rights to the core principles of the Constitution, always referred to as the "golden triangle" (Articles 14, 19, and 21)³, as established in the *NALSA judgment*⁴, as well as necessary statutory provisions such as Section 8 of the Transgender Persons Act. This section mandates that the State ensure the full and effective participation of transgender individuals, though Chapter IV of the Act obligates the government to implement welfare measures for them.

1.1. PROBLEM STATEMENT

The Transgender Persons (Protection of Rights) Act, 2019, though a landmark initiative towards recognizing and safeguarding the rights of transgender individuals in India, continues to face significant challenges. In spite of the legal system aiming to ensure equality, non-discrimination, and access to welfare measures, there remains a substantial gap among the Act's provisions and their practical enforcement. Issues such as inadequate awareness, lack of institutional readiness, societal stigma, bureaucratic hurdles in legal recognition, and insufficient allocation of resources hinder its effective execution. This paper seeks to examine these challenges in depth though also assessing the progress made so far in translating the Act's intent into real world effect.

1.2. RESEARCH QUESTIONS

- Whether the Transgender Persons (Protection of Rights) Act, 2019 provisions are accessible to transgender persons belonging from the State of Haryana?
- Whether transgender persons of Haryana State are experiencing any positive change in their circumstances post the enactment of the Transgender Persons (Protection of Rights) Act, 2019?

- What are the challenges and issues of the Transgender Persons (Protection of Rights) Act, 2019?

1.3. RESEARCH OBJECTIVES

- To explore the extent of accessibility of transgender persons towards the provisions of the Transgender Persons (Protection of Rights) Act, 2019.
- To analyze the Transgender people (Protection of Right) Act 2019 and its efficiency in protecting the interests of transgender to raise their societal and legal position.
- To identify if there is any positive change in the circumstances of transgender persons in the state of Haryana post the enactment of the Transgender Persons (Protection of Rights) Act, 2019.
- To address the challenges of the Transgender Persons (Protection of Rights) Act, 2019.

1.4. HYPOTHESES OF THE RESEARCH

- The circumstances of transgender persons in Haryana have improved after the enforcement of the Transgender Persons (Protection of Rights) Act, 2019.
- The transgender persons of Haryana cannot access to the provisions of the Transgender Persons (Protection of Rights) Act, 2019.

1.5. LITERATURE REVIEW

1.5.1. Nikitha (2019)⁵

In her research paper transgender persons in India is a vital part of society, and their existence cannot be denied by law. In spite of living in the 21st century, where human rights are safeguarded for all, transgender people, continues to face major loopholes. In spite of legitimate guarantees, transgender people are always denied basic rights like the rights to dignity, personal liberty, education, and freedom of expression. They are marginalized in every aspect of life, from their families to society in general, and are subjected to hate and disrespect. The article also examines the issues transgender people face in emerging nations like India, focusing on their exclusion from community and the effort of laws and policies to transform this social segregation into inclusion.

1.5.2. Sanjeev Kumar (2019)⁶

The book written by the author tried to examine into the historical background, societal attitudes, and legal system surrounding transgender rights in the nation, mainly in the aftermath of the landmark *Navtej Singh Johar judgment*, which decriminalized same sex relations. Kumar also offers a thorough study of the stigma and discrimination that the community continues to face, regardless of legal progress.

1.5.3. Tripathi and Rajsingh (2020)⁷

In a research paper authors examines the significance of the *NALSA vs. Union of India case*, a landmark judgment delivered by the Supreme Court of India in 2014, which identified the rights of transgender people and the violation of Article 14 of the Indian Constitution. Article 14 guarantees equality before the law and ensures equal protection for all citizens. In this judgement, the court officially underlined transgender people as a third gender, affirming their constitutional rights and granting them legal recognition and protection. The judgment emphasized that discrimination based on gender identity directly contradicts the principles of equality and dignity enshrined in the Constitution. Though, in spite of the NALSA judgment acknowledging and securing the rights of transgender people, a gap remains in researching the practical execution of these rights. There is limited exploration of how legal recognition translates into social acceptance, access to essential services, and protection against discrimination across different regions of India.

1.5.4. Mohanty and Hota (2021)⁸

Authors point out that transgender community historically remained marginalized, subjected to extensive and systemic discrimination in spite of constitutional safeguards. This article examines the concept of transgender within the Indian situation by analyzing the Supreme Court's judgments. It traces the legal and social development of transgender rights in India, providing a historical timeline of their recognition. Likewise, it underscores the legislative advancements made to strengthen the transgender community, with a particular focus on the Transgender Persons (Protection of Rights) Act, 2019, and its implications for guaranteeing their rights and self-respect within Indian society.

1.5.5. Utkarsh (2021)⁹

This study seeks to examine the patterns of employment discrimination faced by the transgender community in human right perspective. Whereas the Supreme Court has taken creditable measures to improve the economic situations of transgender people, these measures alone are inadequate to resolve the deeply ingrained issues of workplace inequity. Legal recognitions, though a vital milestone, doesn't immediately translate into social inclusion, as societal attitudes take time to evolve. Therefore, identifying employment disparities requires not only legislative reform but also a broader cultural shift toward acceptance and equality.

1.5.6. Purnima Khanna (2022)¹⁰

The Indian Constitution upholds the fundamental rights to equality under Article 14, though Articles 15 and 16 explicitly prohibit discrimination based on sex. In addition, the Indian judiciary played a pivotal role in advancing transgender rights by decriminalizing Section 377 of IPC, marking a historic legal milestone in recognizing transgender people as a distinct gender identity. To further safeguard their rights and promote inclusivity, India also introduced the Transgender Persons (Protection of Rights) Act, 2019, aimed at guaranteeing legal protections and social wellbeing for the transgender community.

1.5.7. Shamayeta Bhattacharya (2022)¹¹

Author illustrated that the amendments to the Transgender Persons (Protection of Rights) Act of 2019 aimed to safeguard the constitutional rights of non-binary individuals, underline their gender identity, and enforce nondiscrimination laws across diverse institutional settings, comprising family, workplaces, education, and healthcare. Whereas the Act offers a legal system for the protection of transgender rights, it fails to integrate practical mechanisms, structural support, and apparent guidelines necessary for the effective execution of these rights.

1.5.8. Gouri Mahabalshetti(2023)¹²

The Author critically examine the provisions of the Transgender Persons Act, assess the contemporary legal and social status of transgender people in India, and investigate their historical presence and status in ancient Indian society. The objective is to offer readers with an inclusive perceptive of the progress of transgender rights in India over time. The authors also seek to enhance awareness of the entitlements and contribution of the transgender community, underlining their vital role in making current Indian society.

1.6. RESEARCH METHODOLOGY

In this research non-doctrinal research method is followed throughout the research paper. The study is based on primary and secondary data. Primary data includes statutes, case laws while secondary data includes articles, blogs, websites and journals. All these data has been used to develop an understanding related to the title of research paper and to highlight the current scenario of the research topic. This paper is written from the research conducted towards non-doctoral work.

2. HISTORY OF LAWS OF TRANSGENDER PERSONS IN INDIA

The definition of transgender persons are explained in Section 2(k). In accordance with this section, a "transgender person" refers to an individual whose gender identity doesn't align with the gender assigned to them at birth. This definition encompasses transgender men and transgender women, regardless of whether they have undergone sex reassignment surgery, hormone therapy, laser therapy, or any other medical treatment.¹³

During British ruling, transgender people were classified as the criminal tribe under The Criminal Tribes Act of 1871, which extend depressing myths concerning them. In independence India, this legislation was cancelled by the Indian legislative body. Since independence, the government basically ignored the requirements of transgender people. It wasn't until decades later, in 2014, that SCI officially underlined transgender community, granting them legal recognitions.

*NALSA v. Union of India*¹⁴ In this case, the Court underlined transgender community as a third gender, affirming that the fundamental rights enshrined in the Indian Constitution is equally relevant to them. The court also allowed them the rights to self-identify as male or as a third gender.

The Supreme Court further underscored that transgender people are humans and entitled to every rights guaranteed by the Indian Constitution. These privileges comprise the rights to life and personal liberty, the rights to privacy, the rights to equality, the freedom of speech and expression, and all other rights provided to all citizens of India.

*NAZ Foundation v. Government of NCT of Delhi*¹⁵ ruling by the Court summarized that consensual homosexual sex among adults is not an illegal offense and that Section 377 of IPC violates the fundamental rights of persons. As a result, the court declared Section 377 unconstitutional.

In *Suresh Kumar Koushal and Another v. NAZ Foundation*¹⁶ case, Court overturned the High Court's judgment and declared that Section 377 is valid and constitutional. Follow this Supreme Court decision, the petition was filed in the Supreme Court.

*Navtez Singh Johar v. Union of India*¹⁷ In this writ petition, the SCI decriminalized homosexuality, but upheld the rest of Section 377, which pertains to sex with minors and non-consensual sexual acts, as remaining in force.

In 2019, the Parliament of India passed the Transgender Persons (Protection of Rights) Act, 2019. Section 2(k) defines a transgender person. The Act provides a variety of rights to transgender community. Section 3 underscores discrimination against transgender people based on their sex, though Section 4 underlines the rights of transgender people to self-identify their gender.

Section 18 denotes penalties for some offenses. It states that anyone who coerces or persuades a transgender person to engage in forced or bonded labor, forces them to leave their home or community, or harms or endangers their life, safety, health, or wellbeing - whether physical or mental - will countenance punishment. It comprises different forms of physical abuses, sexual abuse, verbal or emotional abuses, economic exploitations, or denial of access to public spaces. The punishment for these crimes can range from 6 months to two years of imprisonment, along with fines. The Act also imposes the accountability on the government to make sure the protection of transgender community rights.¹⁸

3. OVERVIEW OF TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019¹⁹

Notwithstanding major opposition and negation to vote by numerous resistance members, the Bill was passed in 2019, in its real shape without integrating the proposals of the Standing Committee. It was subsequently approved by the Rajya Sabha on November 26, 2019. The Bill received presidential assent on December 5, 2019, after which it was officially published in the Gazette of India.

The Act provides legal definitions of transgender community, describing them as those whose gender identity doesn't align with the gender assigned at birth. It comprises transgender men, transgender woman individuals with intersex variations, genderqueer persons, and those with socio-cultural identities such as kinner, hijra, aravani, and jogta. On the other hand, it classifies the intersex community within the broader transgender group, an arrangement that some persons and groups might find arguable or disagree with.²⁰

Test of Identity: The Bill presented a flawed and degrading definition of 'transgender,' stating that a 'transgender individual' refers to a person who is:

- (i) Not wholly female nor wholly male; or
- (ii) A combination of female and male; or
- (iii) Neither male nor female, whose gender identity doesn't align with the sex assigned at birth, including trans-men, trans-women, individuals with intersex variations, and gender-queers.²¹

The Act incorporates the earlier denoted definitions of transgender persons but omits the vital provisions that allowed transgender individuals the rights to determine their own gender identity. Instead, the legislation establishes a District Screening Committee tasked with 'verifying' transgender individuals. Under this provision, a transgender person should obtain a certificate of identity from the District Magistrate, which is issued based on the recommendations of the Committee.

These requirements directly violates upon the right of transgender persons to self-recognize their gender, contradicting fundamental rights described in Constitution. It infringes the rights to equality under Article 14, the freedom of expression guaranteed by Article 19, and the rights to life and dignity as per Article 21²².

The Act fails to draw an apparent and structured process for the legal recognition of gender identity. It also lacks any specified criteria for the Screening Committee to follow when assessing transgender individuals. The enclosure of medical experts in the Committee heighten the risks of subjecting transgender persons to medical or biological test for gender confirmation, which comprises major breach of their fundamental rights.

3.1. KEY PROVISIONS OF THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

(i) **Transgender Laws and workplace compliance:** The Act, which came into effect in 2020, aims to avoid discrimination against transgender community in diverse aspects, comprising employment, recruitment, and promotion, as stated in Section 9. In accordance with Section 2(k), a transgender person is defined as someone whose gender identity doesn't support with the gender assigned at birth. This comprises trans-men and trans-women, regardless of whether they have undergone sex reassignment surgical treatment, hormone therapies, laser therapies, or any other medical procedures.²³

(ii) Enforcement and penalties: Although the Act places the responsibility on establishments to fulfill the obligations outlined in Section 1.1, it fails to specify how these requirements will be enforced or what legal remedies are obtainable to transgender employees in cases of noncompliance. This lack of liability and enforcement mechanism could severely harm the rights of transgender employees and eventually weaken the rationale of the Act.²⁴

Section 18²⁵ prescribes the fines and imprisonment ranging from six months to two years for any person who:

(i) Forces or coerces a transgender person into bonded or forced labor, except for any compulsory public service mandated by the government.

(ii) Denies a transgender person access to or obstructs their passage to a public place.

(iii) Causes harm, injury, or endangers the life, safety, health, or wellbeing - whether mental or physical - of transgender persons, comprising acts of physical, sexual, verbal, emotional, or economic abuses.

(iii) Rights to privacy: All transgender individuals have the rights to identify with their self-perceived gender, as stated in Section 4(2). In general terms, gender identity refers to a person's internal knowledge and personal sense of belonging to a specific gender.

(iv) Gender identity and discretion: Though the Act requires employers to maintain the confidentiality of transgender employees' gender identity, it doesn't specify any penalties for breaches. This means that if Section 4(2) of the Act or Rule 12(4)(c) of the Transgender Persons (Protection of Rights) Rules²⁶ is violated, there is no direct legal recourse under the Act itself.

3.2. CHALLENGES AND ISSUES OF THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

(i) The Lack of Civil and Political Privileges

Although Sections 13-15 of the Transgender Persons (Protection of Rights) Act, 2019²⁷ offer limited financial, social, and cultural rights - like protection against employment discrimination, a grievance redressal mechanism, and the rights to residence - these provisions are narrowly defined. The Act largely overlooks essential civil and political rights, comprising marriage, adoption, and reservations in public education and employment, thereby failing to align with the guidelines set forth in the *NALSA Judgment*²⁸. These rights are crucial not only for personal development but also for affirming an individual's rights to self-determination and choice.

(ii) The Problematic Definition of Transgender

The broad and inclusive definition provided under Section 2(k) of the Act poses significant challenges. It encompasses various identities, comprising trans-women, trans-men, individuals

with intersex variations, and genderqueer persons. In addition, it comprises sociocultural identities like hijras, kinner, aravani, and jogta, each of which has its own unique history, issues, and context. However, apart from intersex individuals, the Act doesn't provide specific definitions for these terms, leading to ambiguity in its application. Furthermore, intersex individuals may not necessarily identify as transgender; some may identify as cisgender. As a result, the challenges and experiences of each group may vary significantly, necessitating a more nuanced legal approach.²⁹

(iii) The Equality Challenges

Sections 4 to 7 of the Transgender Persons (Protection of Rights) Act, 2019³⁰ face scrutiny on the grounds of violating the principle of equality. A primary argument against these provisions is that they impose specific obligations - like obtaining a certificate of identity - on transgender individuals, which are not required of cisgender persons. This distinction, though appearing simple, is significant because it reveals an underlying bias in legal structures that treats being cisgender as the default or "normal" identity, whereas being transgender is perceived as an anomaly that needs formal validation.

This perspective reflects a deeper societal assumption: the widely accepted practice of assigning gender at birth is rooted in the belief that individuals are born with a "natural" gender identity. Transgender persons, whose identities diverge from this assigned norm, are thus viewed as deviating from the standard and are consequently required to prove their identity through legal certification. This flawed assumption is reflected not only in societal norms but also in the statutory language itself - for example, in Section 2(k) of the Act, which defines a "transgender person" in relation to a mismatch with the gender assigned at birth. Such systems reinforce exclusion rather than promote equality.

(iv) Problem with Recognition of the 'Third Gender'

In today's world, the legal recognition of an individual's gender identity is considered a fundamental human right, closely linked to the rights to privacy, self-expression, and access to justice. Though India's formal acknowledgment of a third gender is a progressive step and deserves appreciation, the practical provisions of the Transgender Persons (Protection of Rights) Act, 2019 raise serious concerns. The Act outlines a two-tier process for gender recognition. First, an individual should obtain a "transgender certificate" from the District Magistrate. Only after receiving this certificate can the individual apply for a "gender change certificate."

However, complications arise during this second phase. The person is required to submit proof of gender-affirming surgery, certified by a hospital authority, to the District Magistrate. The Magistrate is then tasked with assessing the validity of this proof and should be "satisfied" before granting approval. This grants excessive discretionary authority to a single bureaucrat, who effectively becomes the gatekeeper for recognizing a person's gender identity. Moreover, the requirement of surgical proof forces individuals to undergo medical procedures they may not want or need, ignoring the essential truth that physical surgery is not a prerequisite for someone to

authentically belong to the transgender community. This stipulation undermines bodily autonomy and reinforces harmful stereotypes about what it means to be transgender.³¹

(v) The Affirmative Action Challenges

In the *NALSA judgment*, the Supreme Court explicitly stated that transgender individuals should be underlined as a “socially and educationally backward class” to ensure their inclusion in reservation policies under Articles 15 and 16 of the Indian Constitution³². However, as anticipated, the government failed to take concrete steps to implement this directive. Moreover, the Transgender Persons (Protection of Rights) Act, 2019³³ makes no reference to any form of affirmative action or reservation, leaving a significant gap in identifying the socio-economic marginalization of the community.

(vi) Constitutional Challenges

Although the Transgender Persons (Protection of Rights) Act, 2019³⁴ marked progress in certain areas by affirming some rights of transgender individuals, it continues to face significant criticism due to several inherent flaws. A major point of contention is that, though the Act allows individuals to self-identify as transgender, it doesn’t extend this rights to identification as male or female without requiring gender-affirming surgery. This surgical prerequisite for changing one’s gender marker has sparked widespread concern.³⁵

As a result, several petitions have been submitted to the Supreme Court of India by members of the transgender community and activists, challenging the constitutionality of these provisions. The petitioners argue that mandatory surgical requirements violate fundamental rights, comprising bodily autonomy, personal integrity, and the rights to privacy. Their arguments are grounded in Articles 15, 19, and 21 of the Indian Constitution³⁶, which guarantee equality before the law, prohibit discrimination on the basis of sex, uphold freedom of expression, and protect the rights to life and personal liberty.

Furthermore, the petitioners heavily reference the 2014 *NALSA v. Union of India*³⁷ judgment, in which the Supreme Court underlined the right of transgender individuals to self-identify as male, female, or third gender and affirmed their entitlement to all fundamental constitutional rights. Through their legal challenge, the petitioners are urging the Supreme Court to strike down specific provisions of the 2019 Act³⁸ that they believe contradict the Constitution.

(i) Lack of Awareness and Sensitization

A critical barrier to effective execution is the widespread lack of awareness about the rights of transgender individuals among the general public, government officials, police personnel,

healthcare providers, and educators. In spite of the legal system, many institutions continue to function with outdated or prejudiced notions, resulting in insensitive treatment or outright denial of services. Training programs and gender sensitization workshops are either limited or non-existent, leading to an execution gap among the law and its actual effect on the ground.

(ii) Limited Welfare Measures and Poor Infrastructure

Though the Act mandates the formulation of inclusive welfare policies, progress in this area has been slow and fragmented. Welfare schemes for transgender persons, comprising those related to health, education, employment, and housing, are either poorly designed or inadequately funded. Furthermore, infrastructure remains a major hurdle. For instance, the Draft Rules under the Act require separate washrooms for transgender persons in all establishments within two years of notification. However, this is practically challenging due to the broad definition of “establishment” and the lack of financial and logistical capacity, especially in smaller organizations and rural areas.

(iii) Persistent Social Stigma and Discrimination

In spite of the legal protections provided under the Act, transgender persons continue to face widespread discrimination and marginalization in society. Deep-rooted stigma, prejudice, and social exclusion hinder their access to education, healthcare, employment, and housing. The lack of social acceptance not only undermines the dignity of transgender individuals but also prevents them from fully participating in mainstream society. Many continue to be subjected to harassment, abuse, and violence, further isolating them from institutional support and legal recourse.

(iv) Weak Monitoring and Lack of Accountability

The absence of a robust monitoring mechanism is another significant flaw in the Act’s execution. There is no designated independent body at the national or state level responsible for overseeing the enforcement of the Act, identifying grievances, or evaluating progress. As a result, there is no systematic tracking of cases of discrimination or progress in welfare initiatives. The lack of transparency and accountability makes it difficult to measure the real-world effect of the legislation and leaves affected individuals with limited avenues for justice.

(v) Appropriate Welfare Measures by Government

Though Section 8 outlines various government obligations, comprising rehabilitation, rescue, protection, and participation in cultural and recreational activities to improve the status of the transgender community, it remains silent on the crucial issue of reservations in employment and education. Given the long history of discrimination and marginalization faced by transgender individuals due to deep-seated societal prejudices, such reservations are essential to guaranteeing their equal opportunities and social inclusion.

(vi) Criminalising Certain Acts and Penalties

The Act criminalizes certain acts and omissions under Section 18, comprising forced or bonded labor, denial of access to public spaces, forced eviction from homes or villages, and various forms of abuse - physical, sexual, verbal, and psychological. The prescribed penalty for such offenses ranges from six months to two years of imprisonment, along with a fine. However, in comparison,

sexual offenses committed against women under the Indian Penal Code (IPC) attract significantly harsher penalties, which can extend to life imprisonment or even the death penalty following recent amendments. This disparity highlights an inequitable approach to justice for individuals belonging to the LGBTQIA+ community.³⁹

Based on the above analysis, it can be concluded that, much like other human rights issues, the Indian judiciary has historically played a crucial role in the progressive realization of fundamental rights for marginalized communities. The guidelines established by the Supreme Court in the *NALSA judgment* have been received more positively in comparison to the Transgender Persons (Protection of Rights) Act, 2019⁴⁰. Though this newly enacted legislation is still too recent to be fully assessed in terms of enforcement and execution, it is undoubtedly a step forward and deserves recognition.

However, this doesn't mean that the shortcomings of the law should be overlooked. There are evident gaps and inconsistencies that require urgent attention. It is essential to align this legislation with other personal laws, social welfare statutes - comprising maternity benefits, surrogacy regulations - and criminal laws to ensure the transgender community enjoys their full spectrum of rights. Identifying the existing deficiencies in the protection of civil and political rights, which the Act largely overlooks, is imperative. Awareness initiatives should be undertaken to educate the transgender community about their legal rights and the social welfare measures that the government is mandated to provide under the Act. Likewise, the District Magistrate, who has been granted significant and contentious authority to issue gender identity certificates, should undergo proper sensitization and training to ensure fair and just execution of the law.

One of the major criticisms of the legislation is the lack of adequate representation from the LGBTQIA+ community during its drafting. Moving forward, it is essential to ensure that members of the community are meaningfully involved in decision-making processes that directly affecting their lives. Guaranteeing their active participation will help create a more inclusive and effective legal system.

3.3. Positive Aspects and Advancements

The Transgender Persons (Protection of Rights) Act, 2019 holds the potential to serve as a landmark legal development in India, as it formally underlines and affirms the rights of transgender individuals. Enacted and brought into effect in 2019, the Act seeks to address long-standing issues of discrimination and exclusion faced by the transgender community. One of its key provisions, outlined in Section 3, is the explicit prohibition of discrimination against transgender persons across multiple domains, like healthcare, education, and employment. This protection is one of the Act's most significant features, as it directly targets the systemic bias that transgender individuals always encounter⁴¹.

Furthermore, the Act aligns with international human rights principles by emphasizing the necessity of providing equal opportunities for transgender persons. This legal mandate represents

a critical step toward achieving social equity and inclusion. Of particular importance is Section 4⁴², which upholds an individual's rights to self-identify their gender, reflecting a progressive stance on gender-identity. This provision echoes the spirit of the Supreme Court's 2014 *NALSA judgment*⁴³, which underscored the rights to self-perceived gender identity as a fundamental right. Moreover, Section 8 of the Act⁴⁴ outlines the government's responsibility to initiate and implement welfare schemes tailored to the needs of the transgender population. These programs include dedicated healthcare services, access to inclusive education, and vocational training, all designed to empower transgender individuals and enhance their participation in mainstream society. Collectively, these provisions signify a move toward greater legal recognition, protection, and support for the transgender community in India.

4. The Effect of Section 377 of Indian Penal Code⁴⁵ in Bharatiya Nyaya Sanhita (BNS)

The removal of Section 377 from the Indian Penal Code in the newly introduced BNS has sparked significant debate. Originally, Section 377 criminalized individuals for engaging in what was termed "unnatural sex," which was interpreted to include penetrative penile–non-vaginal acts like penile–oral, penile–anal intercourse, and sexual relations among humans and animals. The underlying justification for this provision was rooted in the belief that sexual activity should be solely for procreation. Since these acts did not lead to reproduction, they were deemed "unnatural" and, consequently, punishable under the law.

5. JUDICIAL APPROACH

In *Reshma Prasad v. State of Bihar*⁴⁶ case raised an important legal problem concerning the classification of transgender people in the 2022 Caste Survey carried out by the Bihar State Government. The petitioner, contended that the enclosure of transgender community within the caste enumeration processes breached their fundamental rights guaranteed under Articles 14, 15, 16, and 21⁴⁷. She argued that caste and gender are separate identities and should not be conflated in official classifications. The court showed sensitivity in its remarks by identifying transgender people and their problems with accuracy and admiration. It acknowledged that the transgender community strives for equal rights and social upliftment. Also, the court pointed out that their inclusion in the caste list appeared to be an administrative mistake rather than an intentional infringement of their rights.

*Neha Singh v. State of UP. and 2 Others*⁴⁸ This decision marks a significant advancement in the recognition of transgender rights. By aligning its stance with the Supreme Court's rulings and the provisions of the Transgender Persons (Protection of Rights) Act, 2019⁴⁹, the court reinforces the importance of gender identity as an essential aspect of human rights. Through this judgment, the

court plays a pivotal role in promoting inclusivity, dignity, and equality for transgender individuals within the legal system.

*Arun kumar and Sreeja v. Inspector General of Registration*⁵⁰, relating to wellbeing provisions for transgender people, the Act mandates that government departments assess and modify current schemes to ensure the protection and promotion of transgender rights and interests. On the other hand, in spite of this requirement, the precise nature and scope of these welfare initiatives remain vague and underdeveloped. Also, the Draft Rules accompanying the Act stipulate that the appropriate government should ensure the provision of separate washrooms for transgender persons in all establishments within two years from the date of notification of the rules. Nonetheless, implementing this directive poses significant practical challenges. The definition of “establishment” under the Act is broad and comprises entities like institutions, agencies, firms, associations of individuals, and both centrally and state-funded or controlled bodies. Given this broad ranging interpretations, it might be logistically and financially unfeasible for the government to ensure the construction or allocation of separate washrooms for transgender persons across such wide range of establishments. It underscores the disconnect among the legislative intent and the on ground reasonableness of enforcing such measures.

6. INTERVIEW METHOD

The interview method has conducted in Haryana to explore the current situations of transgender persons that if there is any improvement in their conditions and to know whether they are able to access to the provisions of the Transgender Persons (Protection of Rights) Act, 2019⁵¹ which are enacted for their welfare.

- **Universe of Interview Method** – Faridabad & Gurugram of Haryana State.
- **No. of Respondents** – 20 Respondents (Transgender Persons).
- **No. of Questions Asked** – 5 Questions (All Close Ended Questions).
- **Age of Respondents** – From 10 years -20 years – 6 respondents
From 21 years to 30 years – 6 respondents
From 31 years to 40 years – 5 respondents
From 41 years to 50 years – 3 respondents

(i) What is your Educational Qualification?

Sr.No.	Options	No. of Respondents	In Percentage
1.	No Schooling	17	85%
2.	Upto 10 th	2	10%
3.	Upto 12 th	1	5%
4.	Till Graduation	0	0%
5.	Post Graduation & Above	0	0%

Interview data reveals that only 5% of the population (20 Respondents) receives education till 12th and not even a single transgender person reaches to the level of graduation or post graduation and above. It shows that the educational rights of transgender persons are not used by them.

(ii) What is your income source?

Sr. No.	Options	No. of Respondents	In Percentage
1.	Toli-Badhahi	16	80%
2.	Sex-Work	9	45%
3.	Begging	12	60%
4.	Teaching	1	5%

Transgender persons are forced to choose toli-badhahi, sex-work, begging like works for their livelihood. The above collected data proves that no employment opportunities are provided to them, therefore they opt for such professions, which in reality does not have any dignity.

(iii) Do you know about The Transgender Persons (Protection of Rights) Act, 2019?

Sr. No.	Options	No. of Respondents	In Percentage
1.	Yes	4	20%
2.	No	16	80%

Here the data highlights that only 20% people know about the Transgender Persons (Protection of Rights) Act, 2019⁵², which indicates that very less percentage of persons are having knowledge of the same which results into no improvement in their conditions as they are not aware about the remedies they are having through this Act⁵³.

(iv) Do you know about the rights provided to you by the special law i.e. The Transgender Persons (Protection of Rights) Act, 2019?

Sr. No.	Options	No. of Respondents	In Percentage
1.	Yes	2	10%
2.	No	18	90%

The interview data shows that the major population (90% respondents) of transgender persons does not know about their rights as mentioned under the Act⁵⁴. It indicates that merely enacting law will not help transgender persons until its application will be taught to transgender persons. There is

highly requirement of providing trainings to the transgender persons as this Act⁵⁵ alone is not serving them properly.

(v) Do you ever face any sexual offence or sexual assault after the enactment of The Transgender Persons (Protection of Rights) Act, 2019?

Sr. No.	Options	No. of Respondents	In Percentage
1.	Yes	20	100%
2.	No	0	0%

The data reveals that not even a single transgender person is there who have not faced any sexual offence or sexual assault after the enforcement of the Transgender Persons (Protection of Rights) Act, 2019⁵⁶, in state of Haryana. The question arises what is the use of this Act⁵⁷ which is made for the welfare and protection of rights of transgender persons.

7. CONCLUSION

The Transgender Persons (Protection of Rights) Act, 2019⁵⁸, in its weakened shape, fails to support the fundamental rights of the transgender community, ignoring their physical autonomy, personal self-respect, and key ideologies established in the milestone *NALSA judgment*⁵⁹. By imposing obligatory evaluations by emotional, medical, or government authorities, the Act undermines the community's rights to self-identify their gender.

The interview conducted have following findings:-

- (i) The transgender persons are not aware about their rights due to lack of education.
- (ii) The transgender persons are unable to access to the provisions of the Act as they are unaware of the same.
- (iii) There is no change in the circumstances of Transgender Persons after the enforcement of the Act as they are still forced to choose less dignity work like toil-badhahi, sex-work and begging for their bread and butter.
- (iv) Transgender Persons have no employment and education availing opportunities despite of this Act in force.

The Act⁶⁰ was enacted with the objective of guaranteeing dignity, equality, and inclusion for the transgender community in India. Though the Act has undoubtedly provided a formal legal system recognizing transgender group and prohibiting discrimination in areas like education, service, and healthcare, its execution has been uneven and fraught with challenges. Several provisions, comprising the certification procedure and the lack of clarity on wellbeing measures, have drawn common criticism for being regressive and for failing to align with constitutional principles and global human rights standards.

One of the key problems with execution has been the two step gender recognition processes, which places unnecessary bureaucratic troubles on transgender persons and always breaches their rights to privacy and physical autonomy. The lack of affirmative action, in spite of the *NALSA judgment's*⁶¹ obvious mandate for reservations and social inclusion, also highlights a significant gap among legal recognition and actual empowerment. Also, the failure to provide adequate infrastructure, like separate washrooms and transgender broad spaces, further marginalizes the community and limits their access to public services. These limitations reveal that legislative intention alone is insufficient without robust and compassionate execution on the ground.

In spite of these challenges, the Act has opened the door for much-needed dialogue and judicial scrutiny. Continuous activism, legal interventions, and policy debates have created awareness and pushed for improvements. For the Act to accomplish its intended purpose, there is an urgent requirement for policy reform, greater sensitivity among authorities, and community involvement in the law making and execution processes. Real development will only be achieved when the transgender community is empowered not just in legal terms, but in social, economic, and political fields as equal people of the nation.

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