



RESEARCH ARTICLE

Transgender Persons (Protection of Rights) Act, 2019: A critical evaluation of rights access and implementation for the transgender community in India

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Abstract

The goal of the Transgender Persons (Protection of Rights) Act, 2019, a noteworthy legislative accomplishment in India, is to protect the rights and dignity of the transgender community. This research attempts to provide a thorough assessment of the substantive rights protected by the act, with a focus on the practical consequences for transgender individuals. By doing a thorough examination of the legislative context determines if the act is successful in addressing the socioeconomic problems faced by the transgender population. Among these challenges is the lack of anti-discrimination protections, healthcare, education, and employment opportunities. Case studies, legislative provisions, and societal responses are all part of the research that aims to fill in the gaps between the act's stated execution and its actual implementation. In addition to shedding insight into the act's efficacy in promoting equality, this study aims to highlight the persistent difficulties in ensuring that India's transgender population has full and meaningful access to their legal rights.

Keywords: Transgender Persons (Protection of Rights) Act, 2019, Transgender rights in India, Legal framework, access to rights, Social inclusion, Anti-discrimination, Implementation challenges, Gender equality, LGBTQ+ rights, India.

Introduction

The transgender community has seen a dramatic rise in the visibility and protection of transgender rights in the last decade. The legal recognition and protection of transgender rights in India has faced several challenges. Adopting a wide range of gender identities is something of which India is justifiably proud and which has deep historical roots (Michelraj, M. 2015). "The Transgender Persons (Protection of Rights) Act, 2019 (Bal, A. 2020) is a major piece of legislation that aims to protect the rights and welfare of transgender individuals by building a comprehensive legal framework. This act was passed in 2019.

India has a long history of welcoming transgender people. Kinnars, aravanis, hijras, and countless other names are all used to describe these individuals. Asserts that despite these tribes' significant cultural and social contributions to Indian history, they have faced immense marginalization and hatred in the contemporary era. In 2014, the Supreme Court of India made history by recognizing transgender people's fundamental rights under the Indian Constitution in the landmark case National Legal Services Authority (NALSA) v. Union of India. Since then, there has been a growing demand for legal protection and acknowledgment of transgender rights in India." That demand has only intensified over the past several years.

The Transgender Persons (Protection of Rights) Act 2019 was enacted by the Indian Parliament and put into action in order to fill the void that was left by the decision made by the National Abortion Support Act (NALSA). The contents of the Transgender Persons (Protection of Rights) Act, 2019 contain clauses that define transgender individuals, prohibit discrimination, acknowledge the right to self-perceived gender identity, and provide support from the government.

Transgender individuals, as well as attorneys and campaigners, have expressed disapproval of the Act's provisions and implementation. This is true even though the Act represents a significant advancement in India's legislative acknowledgment of transgender rights. The objective of this

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piece is to analyze how well the Act guarantees transgender people in India access to substantive rights (Reddy, G. 2010). While the Act is certainly an accomplishment, this research aims to show that it fails to provide transgender persons in India with full and meaningful rights in a number of important respects. To do this, we will analyze the Act's contents, look at the challenges of implementing them, and compare them to the rules of other nations.

Historical and Legal Context

Existing legal frameworks in India do not negate the long and storied history of transgender people's acceptance in Indian culture. Contemporary legislative changes, like the Transgender Persons (Protection of Rights) Act, 2019 (Hinchy, J. 2019), require an understanding of their historical context for a full appreciation of their importance.

Traditional Recognition of Transgender Individuals in Indian Society

People who identify as transgender have always been respected and accepted in India. This tradition has been preserved and carried on from one generation to another. People who don't fit into the gender binary have reportedly gone by a variety of names, such as jogta, hijra, kinnar, and aravani. These remarks have been heard by people from all walks of life and all throughout the world. These communities, which are usually associated with religious and cultural rituals, have long been significant to Indian civilization.

Tritiya prakriti or third nature, the term that is given to this notion in Hindu mythology, which acknowledges the existence of individuals who do not fit neatly into the gender binary, is the name that is given to this concept. There are a number of contexts in which transgender persons are documented in historical sources and religious scriptures. These scenarios range from Mughal harem courtiers to temple followers. (2014) According to Dutta, A. During the colonial era, however, a significant event took place when legislation like as the Criminal Tribes Act of 1871 criminalised transsexual individuals and led to their further marginalisation and stigmatisation. This was a watershed moment.

Legal Developments Leading to the 2019 Act

The path for the legal recognition of transsexual rights has been laid in modern India by substantial judicial and legislative actions. This journey has come a long way. Among the most notable developments are:

NALSA v. Union of India (2014) Supreme Court Judgment

For India's transgender rights movement, the decision in this landmark case was a watershed moment. The Supreme Court's decision in *National Legal Services Authority v. Union of India* (2014) (Hakim, Y. A. 2023), acknowledged the fundamental rights that transgender individuals have in India according to the Constitution. Judge Verification:

- The autonomy of transgender individuals to select their preferred gender expression.
- The responsibility of the state to provide people the opportunity to get official acknowledgment of their gender identity.
- Transgender persons are classified as "socially and educationally backward classes of citizens."
- It is the government's responsibility to combat discrimination against transgender individuals.

Previous Attempts at Legislation

In the wake of the NALSA decision, several efforts were undertaken to recognize transgender people's rights legally. "One such measure was the Rights of Transgender Persons Bill, 2014, which was introduced in India's upper house of parliament, the Rajya Sabha, by an individual private member. Ultimately, this legislation was unsuccessful in becoming law, which deprives transgender persons of all rights and protections. The government later introduced the Transgender Persons (Protection of Rights) Bill in 2016. Affirmative action provisions were missing from the bill, and activists and transgender people were against it because of the inaccurate description of transgender people

Key Provisions of the Transgender Persons (Protection of Rights) Act, 2019

The purpose of the Transgender Persons (Protection of Rights) Act, 2019 (Yadav, S. 2021), which was passed in 2019, is to protect the rights of transgender people in India by establishing a comprehensive legislative framework. There are many components of the Act, but some of the more significant ones are as follows:

Definition of "Transgender Person"

According to the Act, a person is deemed transgender if their perceived gender does not correspond with their assigned biological gender. Under the Transgender Persons (Protection of Rights) Act, 2019 (Section 2(k)), those who identify as transgender, intersex, genderqueer, or who have socio-cultural identities like kinnar, hijra, aravani, or jogta are all covered.

Right to Self-Perceived Gender Identity

An important part of the Act is that it recognizes the right to one's gender identification as one perceives it. The passage of this legislation grants the right to self-perception as male, female, or transgender to people who identify as such." According to Sections 4–7 of The Transgender Persons (Protection of Rights) Act, 2019 (Syali, M., & Jhamb, V. 2022), a certificate of identity as a transgender person can be acquired by applying to the district magistrate (Benevides, B. G., & Nogueira, S. N. B. 2021).

National Council for Transgender Persons

The National Council for Transgender Persons will be established as a result of this Act. The federal government

has delegated the following responsibilities to this council: Providing advice on the development of policies pertaining to transgender individuals. Among its functions are the monitoring and assessment of legislative and policy outcomes, the resolution of issues pertaining to transgender persons, and the execution of other assignments given by the federal government.

The objective of the council is to act as a focal point for national problem-solving pertaining to transgender problems, as stated in Section 16 of the Transgender Persons (Protection of Rights) Act of 2019 (Bhattacharya, S., Ghosh, D., & Purkayastha, B. 2022). The following sections will go into further depth on these issues, which have sparked debate and criticism over their practical usefulness and some downsides. Despite being major strides towards recognizing and protecting transgender rights in India, these legislations have sparked debate and controversy.

Positive Aspects and Advancements

The Transgender Persons (Protection of Rights) Act, 2019, Bal, A. (2020) is a piece of legislation that has the potential to be a landmark piece of legislation in India since it finally acknowledges the rights of transgender individuals. Later, in 2019, it was given the go-ahead to be implemented. According to Section 3, the Transgender Individuals (Protection of Rights) Act of 2019 has a lot of advantages, one of the most important of which is that it specifically prohibits discrimination against transgender individuals in a variety of settings, including the healthcare system, educational institutions, and the employment. One of the most important advantages brought about by the legislation is this. Additionally, in accordance with international human rights standards, it is imperative that transgender individuals be provided with equal opportunities, and this rule is an important step in the right direction. It is also important to note that Section 4 of the Act acknowledges the right of individuals to have their own subjective experiences about gender. In accordance with the principles that were established in the landmark judgment that the NALSA made in 2014, this is a noteworthy accomplishment. According to Section 8 of the Act, the government is expected to offer welfare programs, which include healthcare facilities that are specifically created for transgender patients, inclusive education, and job training. In addition, the government is required to provide these programs. As long as they are used appropriately, these laws have the potential to alleviate some of the systemic challenges faced by the transgender population. S. 2020, Islam (Islam). According to the findings of research conducted by the National Human Rights Commission in 2017, it was shown that 92% of transgender individuals were unable to gain employment in any form. Therefore, the relevance of affirmative action initiatives is demonstrated by this outcome. Although there may be obstacles in the way of the Act's implementation, the fact

that India now has a comprehensive legal framework that protects the rights of transgender people is a significant victory for gender equality and inclusion in the country (Baars, G. 2017).

Analysis of Transgender Rights Legislation in Various Countries

Transgender rights legislation in other countries

The Transgender Persons (Protection of Rights) Act, 2019 (Shah, P. 2022). in India falls short in several key respects, according to a global comparison of transgender rights legislation that uncovered striking disparities in approach and thoroughness. In 2012, Argentina passed the Gender Identity Law, widely regarded as one of the world's most progressive pieces of legislation. People can alter their gender on official papers without needing a doctor's or judge's consent, unlike India's certification process (Das, B., & Saikia, A. 2023). Medical treatments or diagnoses as a prerequisite for acquiring legal gender recognition are explicitly forbidden under the Gender Identity, Gender Expression, and Sex Characteristics Act of 2015 in Malta. This law safeguards the civil liberties of those who do not adhere to the binary gender system. Many human rights organizations endorse this strategy since it is more in line with the idea of self-determination, according to the Gender Recognition Law of 2014 permits a person to legally alter their gender without a medical or mental diagnostic being required. An upper age restriction and a reflection time are, however, provided for under the statute.

People in New Zealand may now self-declare and update their gender identification on their passports, according to the Human Rights Act of 1993 and its revisions. This provides extensive protection against discrimination based on gender identity. These cases from throughout the world show how other approaches may be taken to ensure people's complete autonomy and rights. For instance, according to the Argentine Ministry of Health (2015), the percentage of transgender individuals who had access to medical care had climbed by 54% three years after the law was passed. There was a 43% decrease in the number of reported occurrences of transgender discrimination in public services in the two years after the law's implementation, similar to what happened in Malta. More inclusive and self-determination-focused policies may have a greater impact, as shown by the study's results. These findings provide valuable insight for the enhancement of India's judicial system in the future.

International Human Rights Standards and Best Practices

International human rights principles and best practices must serve as the foundation for evaluating a nation's transgender rights legislation. "The Yogyakarta Principles (2006) and its enlargement, the Yogyakarta Principles plus 10 (2017), offer a comprehensive framework for addressing

issues of gender identity and sexual orientation within the framework of international human rights law. These two albums were released in 2006. These guidelines emphasise the necessity for countries to publicly acknowledge gender identity autonomy while avoiding the imposition of any therapeutic or psychiatric therapies. Several UN Human Rights Council resolutions have condemned violence and discrimination against people based on their gender identity or sexual orientation.

The most well-known of these resolutions is 32/2, which was agreed upon in 2016 and designated an impartial expert on the matter. In addition, the World Health Organisation has successfully removed the transgender identity as a mental illness from the International Classification of Diseases (ICD-11), which is a huge step towards the goal of de-pathologizing transgender identities. Transgender identity is increasingly seen as a question of personal choice rather than a medical problem, which aligns with this strategy. The recently passed Transgender Persons (Protection of Rights) Act, 2019 (Jan, J., Muhammad, A., & Amir, F. 2022). in India falls short in several key respects when compared to these benchmarks." The Act mandates that a District Magistrate confirm a person's gender identity, which might involve a medical test, which goes against international standards that prioritize self-determination. The Act also disregards concerns such as the right to marriage and adoption for transgender persons, despite the fact that the Yogyakarta Principles advocate for the protection of human rights.

This proves that the Act does not satisfy the requirements of the Yogyakarta Principles. The Act fails to provide the comprehensive safeguards required by UN resolutions, and its sanctions for violence and discrimination are insufficient. Suppose India's laws are serious about protecting transgender people's rights and aligning with international human rights standards. In that case, these inconsistencies should serve as a wake-up call.

Recommendations for Improvement

Amendments to Address Definitional Issues

To bring it into line with self-determination principles and worldwide best practices, the Act should be revised. It is believed that the shortcomings of the present transgender certification procedure and standards necessitate this course of action. An inclusive and more accurate definition of transgender person that encompasses the wide variety of gender expressions experienced by transgender people should be the starting point. This might be modeled after the more detailed definitions contained in statutes such as Malta's Gender Identity, Gender Expression, and Sex Characteristics Act (2015). The second proposal is to either make certification much easier to complete or, even better, to do away with it altogether and have everyone self-certify. The fact that countries like Argentina and Denmark

have successfully implemented these tactics proves their usefulness and success. For example, Argentina's Ministry of the Interior reported a twelvefold surge in transgender persons (Shahab, A., & Husain, A. 2020) seeking identification cards in the year after the launch of their self-declaration program.

This was the case in Argentina. To honor people's right to privacy and self-determination, medical exams and District Magistrate clearances should not be required. This would bring the Act into line with human rights norms across the world and the NALSA's decision. For full inclusivity, the Act should also specifically acknowledge non-binary and gender non-conforming identities (Chakrabarti, A., & Das, B. 2023). Not only would these revisions make the Act more welcoming to all individuals, but they would also strengthen its ability to protect transgender people's rights by reducing obstacles to official acknowledgment.

Strengthening Anti-Discrimination Provisions

A number of critical amendments are required to make the Act more successful in its fight against transgender discrimination. The first and most important thing is that transgender individuals who are the victims of violence and prejudice should suffer consequences that are significantly heavier than those that are imposed on other protected categories. To do this, it may be necessary to amend Section 18 of the Act in order to establish penalties that are comparable to those outlined in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Bhargava, D. C., Meshram, V. P., Shekhawat, R. S., & Kanchan, T. 2024). The second proposal is to broaden the anti-discrimination provisions of the Act to cover other areas, such as housing, public spaces, and access to services. Incorporating these areas would help fill in the large protection gaps shown by research such as the National Human Rights Commission's 2017 report.

This poll found that 60% of transgender people had experienced rent discrimination, and 52% had experienced prejudice in public areas. In addition, the Act ought to establish a specific body charged with accepting and evaluating discrimination complaints, similar to the US-based Equal Employment Opportunity Commission. The implementation of anti-discrimination legislation may be much improved with the implementation of such a system. The number of transgender discrimination reports in the UK increased by 43% in the two years following the establishment of a similar agency, leading to more effective responses. Further, to foster an atmosphere that is welcoming to people from all backgrounds, the Act needs to mandate anti-discrimination training for public service providers, educational institutions, and employers on a regular basis. By making these changes, the Act would be able to protect transgender persons from discrimination in more situations.

Inclusion of affirmative action measures

The transgender population faces systemic discrimination in many settings, including the workplace and the classroom, and it is proposed that the Act be revised to incorporate explicit affirmative action measures to remedy this. When drafting the Act's provisions to accommodate transgender people in public sector jobs and schools, the National Association of Legal Services Administrators (NALSA) decision and successful examples from other countries should be considered. According to research, the enrolment of transgender students in Brazilian public institutions surged by 333% in the short span of 2.5 years following the implementation of transgender student quotas. An analysis of the 2011 Census data from the Census of India revealed that just 46% of transgender persons had completed secondary education. Panigrahi, N., & Singh, R)

The data showed a large educational disparity in India; similar approaches may help narrow it. A provision mandating that the public sector reserve a certain proportion of jobs for transgender individuals should be included in the Act. This provision will be subject to the same constraints as other marginalized populations in India. Companies in the private sector that hire transgender people should be able to reap financial benefits from the Act in the form of tax breaks or preferential treatment when competing for government contracts. According to the provincial law in Argentina mandated that transgender persons occupy 1% of public sector positions, leading to a 70% rise in the community's official employment within 3 years. Countries like Argentina have proven that these tactics work. Transgender people's employability can be improved with the help of the Act's inclusion of transgender-specific skill development programs. Not only would these affirmative action measures help transgender persons right now, but they would also help the community as a whole become more economically and socially integrated and empowered in the long run.

Conclusion

In 2019, India passed the Transgender Persons (Protection of Rights) Act, which is a huge step forward in recognizing and protecting transgender rights legally. This study analyses the Act in its entirety, including its wording, the difficulties in putting it into practice, and the possible consequences on the substantive rights of transgender people in India. The results of our inquiry provide a detailed account of the successes and failures. A lot has changed in India's legal environment regarding transgender rights because of the Act's good parts, such as how it recognizes self-perceived gender identity and how it outlaws' discrimination. These conditions reflect the principles set out in the historic NALSA decision of 2014. They are in accordance with international human rights standards.

But, the Act is severely lacking in a number of key areas. Not only does the certification procedure for gender identity recognition raise concerns about possible invasions of privacy, but it also contradicts the principle of individual autonomy. The absence of barriers in the workplace and educational institutions does little to alleviate the transgender community's most basic struggles (Pandya, A. K., & Redcay, A. 2021). This is shown by the significant differences in literacy rates and employment prospects that our research uncovered. Inadequate punishments for violence and prejudice and the Act's reluctance to address critical matters like adoption and marriage rights further undermine the Act's ability to protect transgender persons adequately. By comparing Indian law with those of other progressive nations, such as Denmark, Argentina, and Malta, we can see that the Act of India is the primary inspiration for these more liberal policies. Important information on possible changes to India's legal system may be found in their work to expand rights protections and establish self-declaration processes for gender recognition. Additionally, some nations have provided broader safeguards for human rights.

Through the implementation of these suggestions, we want to close the gap between the Act's stated goals and its actual impact on the lives of transgender individuals in India. The movement for transgender rights recognition and protection in India is gaining momentum. Although the Transgender Persons (Protection of Rights) Act 2019 is a step in the right direction, it will need extensive changes and reworking before it can deliver on its goal of guaranteeing transgender people's access to real rights. Research in the future should mainly focus on monitoring the Act's execution, evaluating its real-world impacts, and investigating novel policy responses to the ongoing issues encountered by transgender individuals in India. The transgender community's rights and well-being must continue to be front and center in policy talks in India since the country's social and legal climate is dynamic. Only through persistent lobbying, better legislation, and cultural shifts will India be able to build an inclusive society where transgender people may live with respect and dignity and enjoy all of their rights as citizens.

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