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ANALYSIS OF THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2019¹**ABSTRACT**

- Introduction: A Transgender in simple words is someone who is neither male nor female. Today we know them as third gender, however before 2014 there was no such concept of third gender. These people have to suffer many difficulties in education employment; healthcare; access to, or enjoyment of goods, facilities, opportunities available to the general public; free movement; residing etc. because of their sex discrimination and non-recognition. Objective: This article tries to analyze the Transgender Persons (Protection of Rights) Act, 2019 in clear and concise words that includes its history, judicial response and critic. Sources: The main source of the data for this research work is from secondary sources like research papers, articles, blogs, websites and online databases like Manupatra, SCC online and Hein Online. Conclusion: Given the complexity of the situation The Transgender Persons (Protection of Rights) Act, 2019 is an exemplary and very important move taken by Indian legislature in the path of Justice and Equality. This law provides Transgender people with their essential rights to live a respected life in a society.

Keywords: *Third Gender, Article 21, Justice, Sex, Equality*

INTRODUCTION

- The Transgender Persons (Protection of Rights) Bill, 2019 was introduced in Lok Sabha on July 19, 2019 by the Minister for Social Justice and Empowerment, Mr. Thaawarchand Gehlot. Which was passed by Lok Sabha on August 05 and passed by Rajya Sabha on November 26 and to this President gives assent on December 5, 2019. The Act defines a transgender person as person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other

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therapy), person with intersex variations, gender queer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.

HISTORICAL EVOLUTION

- In the year 2013 an expert committee was set up by the government to analyse the problems of transgenders and suggest probable solutions.

- On 15 April, 2014: In *National Legal Services Authority V. Union of India*² case transgender people are declared as 'third gender' by the Hon'ble Supreme Court of India. It also laid down various measures for the protection of the rights of transgender peoples in India, such as the prohibition of discrimination, suggesting the creation of welfare policies, and reservations for transgender people in educational institutions and jobs. It also provides transgender the right to self-perceived gender identity, that will be guaranteed by the Constitution of India, in the non presence of sex reassignment surgery. The judicial responses of 2014 were also seen in the judgments *Justice K. S. Puttaswamy (Retd.) and anr. v. Union of India and ors.*³ and *Navtej Singh Johar v. Union of India*⁴. The 2014 judgment of *NALSA v. UOI* pointed upon the history of transgender people and their existence from the Ancient Periods, and it also made reference to the communities like hijra, kinnar, and jogta which are at present spread across the country and at other places in the Indian subcontinent. The court also held that the fundamental rights under part 3 of the Constitution of India will be applied equally upon the transgender people, and this provides them with the right to identify themselves as male, female or third-gender.

- In 2014: A private member bill by Tiruchi Siva, of the Dravida Munnetra Kazhagam party, the Rights of Transgendered Persons Bill, was introduced in the Rajya Sabha but it got lapsed. The bill dealt upon various rights of transgender peoples in specific sectors like healthcare, education, employment, skills buildup and also protects them from harassment and abuse.

² (2014) 5 SCC 438

³ AIR 2017 SC 4161

⁴ AIR 2018 SC 4321

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- Now in the year of 2016: The Government of India has tabled its own Bill in the Lok Sabha later which was referred to a Standing Committee.
- In 2018 when the bill was retabled there comes lots of disagreement and activists protesting against the bill, Various political Parties like the Indian National Congress and Communist Party of India (Marxist) had promised in their electoral manifestoes and agendas for the 2019 elections to, withdraw the 2018 bill whereas to introduce a new bill with consultation of the members of the queer community and pass it based upon the 2014 judgment and bill.

OBJECTIVES

- To Prohibit discrimination against transgender community : The Act prohibits any kind of discrimination against a transgender person including unfair treatment and rejecting from services with respect to-
 - (i) education;
 - (ii) employment;
 - (iii) healthcare;
 - (iv) access to, or enjoyment of goods, facilities, opportunities available to the public;
 - (v) right to movement;
 - (vi) right to reside, rent, or otherwise occupy property;
 - (vii) opportunity to hold public or private office; and
 - (viii) Access to a government or private establishment in whose care or custody a transgender person is.
- To set up a National Council for Transgender Persons that will-
 1. Advice government to form the policies, laws, programs, and projects for the betterment of the transgender people;
 2. look upon the ongoing projects and programs their evaluation and impact on this people;
 3. Review and coordinate the activities of departments related to the transgender and
 4. Address the grievances of transgender community.
- To give a right to the transgender person to recognize their self-perceived gender identity and also provides for certification from a District Magistrate; in a case if a transgender

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person has a surgery for gender change then as per the law they can obtain a certificate from the medical facility where they had the operation, and apply for a change in their certificate.

- To put forth the problems and issues faced by the transgender community and its major concerns related to the livelihood of these peoples, to make people aware about the Trans community, their rights and to provide equality to them, so that this people can live with their families and are widely accepted by the society.
- To ensure the above stated point in all states the transgender welfare boards are made and necessary needs like housing, food, healthcare and education are being provided to the transgender community.
- To impose Offences and penalties: The Act recognizes some of the offences against transgender persons are:-
 1. forced or bonded labor (excluding compulsory government service for public purposes),
 2. Rejecting from use of public places,
 3. illegal removal from household, and village,
 4. Physical, sexual, verbal, emotional or economic harassment. Penalties for these offences vary between six months and two years, and a fine.

SUMMARY

- The Transgender Persons (protection of rights) Act, 2019 contains 9 chapters and 23 sections in toto.
- Chapter 1 is a Preliminary in which section 2(k) defines the term "transgender person".
- Chapter 2 contains provision for the prohibition against Discrimination of transgender person. The Act prohibits any kind of discrimination against a transgender person including unfair treatment and rejecting from services with respect to- *(i) education; (ii) employment; (iii) healthcare; (iv) access to, or enjoyment of goods, facilities, opportunities available to the public; (v) right to movement; (vi) right to reside, rent, or otherwise occupy property; (vii) opportunity to hold public or private office; and (viii) access to a government or private establishment in whose care or custody a transgender person is.*

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- Chapter 3 of the Act provides for Recognition of identity of transgender person, Application for certificate of identity, Issue of certificate of identity and change in gender under section 4, 5, 6 and 7 respectively.
- Chapter 4 of the Act has written the welfare measure by the government this is particularly section 8 of the Act that has laid down the obligations of the appropriate government for the betterment of the transgender community.
- Chapter 5 of the given Act provides for the provisions related to the non discrimination in employment, obligations of the establishments, Grievance redressal and Right of Residence. As per the provision under section 12 of the Act every transgender person has given the right to live and be included in his household. If the near member of the family is not able to take care the person, then in such condition, he can also reside in a rehabilitation center on the order of court.
- Chapter 6 deals with the education, social security and health of transgender persons.
- Chapter 7 section 16 constitutes National Council for Transgender Persons.
- Chapter 8 and 9 deals with the Offences and penalties and miscellaneous provisions respectively.

CRITICAL APPRAISAL

- This act will help a large number of transgender persons in order to manage the stigma, eliminate the discrimination and harassment against this underprivileged section and up bring them into the mainstream of society. This will help the transgender people being the productive members of the society.
- The formation of National Council for Transgender Persons aims to increase awareness and produce the sense of respect, adoption and fraternity for transgender community. This is a very good step taken by the government of India for the welfare of Trans community. However, it all depends upon how it works, the efficiency and functioning of the council depends on the point that whether it is able to identify the problems faced by the transgender people and how often it advice and suggest new policies and programs to the government.
- 2014 case of NALSA vs Union of India talks about the reservation of transgender person in educational and job opportunities but the present Act is *silent on granting reservations to*

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transgender persons. I think granting reservation to the third gender people will be a good idea because these people are actually in need as the global reports shows that in most of the countries transgender persons are not treated well, they suffer poverty, no respect in society, livelihood issues etc. Even in India their rights have been recognized in 2019 it required for the government to provide some kind of reservation to the Trans community.

JUDICIAL RESPONSE

The Constitution of India through its preamble provides every citizen Justice: – social, economic, political equality of status.

- In the landmark Judgment of 2014 - National Legal Service Authority v Union of India the Hon'ble Supreme Court has recognized the third gender and ruled that the fundamental rights will also be available to the third gender person in the same way as they were given to other both genders. Then Hon'ble court provides third gender the right to equality and equal protection of law under the Article 14, 15, 16 and 21 of the Indian constitution. The Hon'ble also court emphasis upon the need of right to dignity and provided due recognition to their gender identity that was after undergoing Sex Reassignment Surgery based on reassigned sex as the any person has a constitutional right to get recognized as a male or female. Therefore the third gender people were also entitled to equal protection of law in all the forms of state works that also includes the education and employment. The Article 14 and 21 under Indian Constitution guarantee right of equality before law and equal protection of law. Under the ambit of Article 21 a person has the right to chose one's gender identity because it is an essential part to a life to lead with dignity.
- The Hon'ble Supreme Court of India has also interpreted Article 14 and held that the article 14 of the Indian Constitution provides protection to 'any person,' and "person" these two terms also includes transgender person as well and that's why they are also entitled to equal protection of law in all the kinds of state works like a other citizen of the country. The Hon'ble court also interprets that Article 15 and 16 is not only limited to gender of male or female but it also includes third gender. In addition the court also mentioned. Article 19(1)(a) and 19(2) and held that Trans community person can be expressed by transgender's behavior and presentation there is not restriction and prohibition to this. Lastly, the court talked upon the Article 21- Right to Life and held that third gender also includes Hijras/ Eunuchs, over and above binary gender under our constitution and the laws".

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CONCLUSION

- After knowing all the provisions and judicial response related to The Transgender Person (protection of rights) Act, 2019 we can conclude that this law brings lots of hope and good thing for transgender community. After the 2014 National legal services authority versus union of India case this is the biggest victory for the transgender community. This law will surely provide transgender with wide range of rights so that they can live in the society with equality and dignity. However this law has also neglected upon some points such as reservation for transgender, proper and stringent punishments for the violation of rights of transgender people, etc.
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