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**THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT,
2019****-Bhumani Tyagi & Diksha Chouhan¹****Abstract-**

There are lot of social issues that are increasing day by day in India and one such major social issues concerning within the country is the identity of transgender. Some people even hate the Trans people as if they are some criminals. The trans people were fighting since long to get a recognition in the society and to have a separate gender for them and finally after a lot of struggle the government came up with an act that can help trans people to improve their condition and to give them a recognition in society, the act is called “The Transgender Persons (Protection of Rights) Act, 2019”. The article also contains views on the issue of transgender in defining their socio – cultural exclusion and inclusion problems and development process in the society, and perceptions by the main stream. The article also analyzes the flaws that this act still have because of which it is still facing widespread criticism.

Transgender social condition-

Transgender community is considered as one of the most marginalized community in our country because they do not fit into the general categories of gender of male and female and because of this they face a lot of problems and find it difficult to survive in the country.

“Although there are other examples of human rights progress for Trans people, much of this change is isolated, non-systemic, and insufficient.”² Though India has a specific law dealing with human rights viz. Protection of Human Rights Act, 1993³ and there is a definition of “human rights” in Section 2(d) of the Indian human rights law, but the rights of transgenders were recognized in a well-known through the Judgment of the Hon’ble Supreme Court.

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² Vivek Diwan, Clifton Cortez, Marina Smelyanskaya and Joanne Keatley, “*Transgender social inclusion and equality: a pivotal path to development*” *J Int AIDS Soc.* 2016; 19(3Suppl 2): 20803 accessed online on 7th May 2020

³ Protection of Human Rights Act, 1993 has 43 sections. Section 30 even contains the concept of Human Rights Court.

Even though in India the transgender people are considered as a manifestation of the “*Ardhanareshvar*” form of Divine energy that is created by merging Lord Shiva and goddess Parvati thus portraying as half male and half female. But still they face a lot of social exclusion. It’s not that there were no former laws for the equal treatment of everyone irrespective of gender. It is apt to note that the Constitution of India contains all the provisions for equal treatment of all the people living in our country, and though it has been that “in India” “we are all certainly governed by our Constitution,”⁴ but still there are several practices of discrimination in our society. It is useful to note that the right to equality contained in Article 14 is a fundamental right and “Article 14 is a founding faith of the Constitution” which is “indeed the pillar on which rests securely the foundation of our democratic republic.”

NALSA v. UOI -

The verdict of *NALSA v. UOI* was a much-needed respite for the transgender community. According to the case that was filed by the ⁵National Legal Services Authority of India (*NALSA*) to legally recognize persons who fall outside the male/female gender binary, including persons who identify as third gender. In the final decision, the Hon’ble Supreme Court had to decide about the persons who fall outside the male/female category and also the court issued guidelines to the Central and State governments to formulate laws for the protection of rights of the Transgender. Court noted the trauma undergone by a transgender; it noted that this entire community was treated as criminals

The findings of the Court are worth noting:

- Seldom, our society realizes or cares to realize the trauma, agony and pain which the members of Transgender community undergo, nor appreciates the innate feelings of the members of the Transgender community.
- International Conventions and norms were held to be significant for the purpose of interpretation of gender equality. Reference was made to Article 1 and Article 3 of UDHR, 1948 as well as to Article 6 of ICCPR.
- Article 14 does not restrict the word ‘person’ and its application only to male or female.
- Transgenders are also entitled to reservation in the matter of appointment, as envisaged under Article 16(4) of the Constitution. On 15 April 2014 justices K.S. Radhakrishnan

⁴ Maneka Gandhi v Union of India (1978) 1 SCC 248.

⁵ NALSA v. Union of India. [(2014) 5 SCC 438]

and A.K. Sikri gave the final verdict on NALSA v. UOI which vouchsafed legal recognition to transgenders as a third gender.

History of the Act-

The origin of bill took place while the judgment of NALSA v. UOI was pending in the Supreme Court. ⁶“During this time Tiruchi Siva of the Dravida Munnetra Kazhagam party introduced a private member’s bill in the Rajya Sabha, namely the Rights of Transgender Persons Bill, 2014. And after certain amendments this bill was unanimously passed by the Rajya Sabha on 24 April 2015 and it was named as Rights of Transgender Persons Bill, 2015”. On 26 February 2016, the bill was introduced in the Lok Sabha but the Bill faced opposition on all fronts, and was termed as insensitive to the members of the transgender community. ⁷The Bill was then scrutinized, but it again faced severe criticism so it was reintroduced on 19 July 2019 and finally the bill received presidential assent on 5 December 2019, following which the Ministry of Law and Justice notified it in the *Gazette of India* as Act No. 40 of 2019. ⁸The act came into effect from 10 January 2020.

Analysis: Transgender Persons (Protection of Rights) Act, 2019

It contains total of nine chapters which talks about all the aspects of discrimination against the transgender and provide them the specific rights for safeguarding their liberty. ⁹

The nine chapters are as follows-

- Chapter I tell about the various definitions discussed in the Act.
- Chapter II talks about the prohibition against Discrimination.
- Chapter III speaks about recognition of identity of Transgender Persons.
- Chapter IV tells about different measures that must be taken by the government for safeguarding the Rights of the Transgender Persons.
- Chapter V sets the obligations of establishments and other persons for the Transgender persons.
- Chapter VI talks about the Education, social security and health of Transgender Persons.
- Chapter VII sets the National Council for the Transgender Persons.
- Chapter VIII tells about the offences and punishments.

⁶ Gandhi and, Ramachandran (24 April 2015). "RS passes Bill on transgender rights". New Delhi.

⁷ Jyoti, and Ratnam (19 December 2018). "Transgender bill criminalises community, say activists; seek its overhaul". New Delhi.

⁸ Nath, Damini (11 January 2020). "Transgender Persons Act comes into effect". The Hindu

⁹ The Transgender Persons (protection of Rights) Act, 2019, No. 169, act of Parliament, 2019

- Chapter IX tells about other miscellaneous things for the protection of rights of Transgender Persons.

Here talking more about the ¹⁰chapter VI, it contains provisions to make the Transgender Persons self sufficient and healthy. ¹¹Section 13 makes it an Obligation for educational institutions to provide inclusive education “and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others”. ¹²Section 14 sets a guideline for the Government that the appropriate Government shall formulate welfare schemes and programmers to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

As health is one of the most important assets a person has so keeping that in mind there are many provisions made to improve the health of the Trans people which is laid down in ¹³ Section 15 which sets a guideline for the Government regarding the Health care facilities Section 16 talks about setting up of National Council for Transgender Persons which will have Minister of Social Justice as Chairperson, ex-officio.

Under Section 16(3) of the Act, a member other than ex-officio shall hold office for a term of three years from the date of his nomination. The functions of the National Council are provided in Section 17 which includes redressal of “grievances of transgender persons.”

The offences and penalties are provided in Chapter 8. Section 18 says, among others, forced labor by compulsion or enticement of a transgender can be punishable for a term of 6 months to 2 years and with fine. Section 22 confers power on the appropriate Government to make rules. Therefore, both Central and State Government can frame rules.

There is a complaint mechanism under Section 11 which is formed by every establishment to deal with complaints of violation of this Act. Therefore, a safeguard has been kept by way of Section 11 and Section 18 to ensure that people comply with this Act which has been enacted to protect the rights of transgenders.

How to be recognized as transgender

The procedure for such recognition (which has come been criticized in some columns) is given in Section 5 of the Act.

An application to the DM for issuing a certificate of identity has to be made. Section 4(1) says

¹⁰ The Transgender Persons (protection of Rights) Act, 2019, Act No.40 of 2019.

¹¹ The Transgender Persons (protection of Rights) Act, 2019, Act No.40 of 2019.

¹² The Transgender Persons (protection of Rights) Act, 2019, Act No.40 of 2019.

¹³ The Transgender Persons (protection of Rights) Act, 2019, Act No.40 of 2019

that a “transgender person shall have a right to be recognized as such in accordance with the provisions of this Act” which indicate that unless you are issued a certificate of identity as given under Section 6 by the DM which is recorded in all official documents, one may not be recognized as a transgender person.

Conclusion-

The issue of obtaining certificate by the DM for recognition as transgender has been criticized on the grounds of violation of privacy and being expensive.¹⁴ The article adds that “The Bill, which is supposed to protect the rights of transgender people, was drafted and passed without approaching anyone from the community. This is one step taken by the government to give a recognition to the community that is not given a proper respect in the society and is discriminated just because of mere sexual characteristics and education is one tool to bring that respect for the transgender people in the society because every reform comes with the education and educated person is always respected in the society because of his knowledge and also educational institution are the place from where a child learn how to behave in the society and how to treat others so educational institution can be considered as the roots from where the discrimination starts and if children are taught to respect and treat everyone equally then there are chances that the discrimination against the Transgender peoples may reduce. We can see that still amidst all the adversities there are a lot of transgender persons who are brave enough to make their way to the mainstream’ achieve their goals and prove that trans people are as capable and deserving as any other Indian, thus breaking the stereotype. Also government is providing all the transgender people the vocational training so that they can become self dependent. But still despite of all these efforts, Tran’s people say that there are some flaws left in the bill and because of which these people are still protesting for getting proper rights. The Trans people still believe that they are discriminated and they are demanding a better bill which can provide them a better recognition in the society. And there is one practical reality that everyone cannot be satisfied from all the bills passed by the legislature and despite of all the protests everyone knows that this is one start for providing them with equal opportunity and this can bring a change though not suddenly but gradually, and transgender people will be treated equally by the society

14Sasha R, “Trans Bill 2019 : Why India’s Transgender Community is opposing a Bill which is supposed to protect their rights”, <
<https://yourstory.com/socialstory/2019/11/stoptransbill2019-india-transgender-community-rights> > accessed on 7th May 2020.