
Section 18: Protection Rights of the Trans-Genders

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Abstract

Trans-Gender means those individuals whose identity, gender expression or behavior is not typically related to the gender to which they were assigned at birth. The aim of the present study is to explore the protection rights of the trans-gender persons. The findings of this study is that if any trans-gender person has been physical abused, verbal, emotional and economical abused by anyone then they will be punishable with imprisonment for a term which will not be less than six months but which may extent to two years and with fine.

Keywords- Protection Of Rights, Trans-Gender, Physical Abused, Verbal & Emotional And Economical Abused.

Introduction

Gender identity refers to a person's internal sense of belonging to a particular gender. This option is chosen when a person considers his inner and personal experience of his body, physical appearance, speech, and behavior. If a person does not identify themselves with the gender they were assigned at birth, they may choose to identify with something. A transgender person is someone whose gender identity differs from the gender they were typically assigned at birth. the judgment in NALSA v. Union of India, which directed the Central Government and State Governments to take various steps for the welfare of the transgender community and to treat them as a third gender for the purpose of safeguarding their rights under Part III of the Constitution and other laws made by Parliament and the State Legislature, the Transgender Persons (Protection of Rights) Act was introduced in the Lok Sabha where it passed unanimously. Consequently, having passed the Rajya Sabha and receiving the President's assent, the bill was enacted as the Transgender Persons (Protection of Rights) Act, 2019.

In the present case, the statement of the accused, which takes a narrow interpretation of the law, is problematic as it limits the definition of women to only be gender women. This dilution of the law leaves transgender women with little legal protection and no recourse in cases of such abuse. It denies transgender persons the right to equality before law and equal protection of law, guaranteed under **Article 14** of the Constitution, as well as the right to live with dignity under **Article 21** of the Constitution.

Recognition of Identity of Transgender Persons-

The 2019 Act allows a transgender person to identify as such and allows self-perceived gender identity. The provisions also look into the issue of identity certificates and the issue of certificates stating a change in gender. A transgender person can apply to the District Magistrate for a Certificate of Identity, indicating the gender as 'transgender'. A revised certificate can be obtained only if the person undergoes surgery to change their gender to male or female.

Rights and Entitlements- Under this Act, the Central Government is directed to provide the following rights to the transgender community.

- **Prohibition against Discrimination:** This Act prohibits the discrimination against a transgender person, including denial of service or unfair treatment in relation 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 the 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.

- **Right of residence:** Every transgender person shall have a right to reside and be included in his household. If the immediate family is unable to care for the transgender person, the person may be placed in a rehabilitation center, on the orders of a competent court.
- **Employment:** No government or private entity can discriminate against a transgender person in employment matters, including recruitment, and promotion. Every establishment is required to designate a person to be a complaint officer to deal with complaints about the Act.
- **Education:** Educational institutions funded or recognized by the relevant government shall provide inclusive education, sports and recreational facilities for transgender persons, without discrimination.
- **Health care:** The government must take steps to provide health facilities to transgender persons including separate HIV surveillance centers, and sex reassignment surgeries. The government shall review the medical curriculum to address health issues of transgender persons and provide comprehensive medical insurance schemes for them.

The Existing Law and Its Inadequacies-

The Supreme Court's watershed judgment in NALSA versus Union of India (2014) recognized transgender persons as the 'third gender', thereby extending legal recognition and all fundamental rights to the community. The court stressed the importance of the right to dignity by recognizing one's gender identity within the ambit of the right to life under Article 21. It also was noted that denying equal protection of law to the transgender community would make them extremely vulnerable to violence and sexual assault in public places, at home and in jail. Thereafter, the Delhi High Court, in a welcome decision in 2018, acknowledged the right of a transgender person to seek protection against sexual harassment under Section 354A (sexual harassment) of the IPC. By lending such a purposive interpretation to the existing law, the court bridged the gap between law and life so as to mete out justice to the members of the transgender community.

While the NALSA judgement and the subsequent **Transgender Persons (Protection of Rights) Act, 2019** seek to secure the rights of transgender persons by prohibiting all forms of discrimination and enabling equal opportunity for them, instances of apathy and violence against trans persons is still a commonplace in India. Section 18 of the Act provides that any person who harms, injures or endangers the life, safety, health or well-being of a transgender person, whether physical, mental or emotional, shall be punished with imprisonment for a minimum period of six months which may extend to two years and a fine. The punishment provided under the Act is therefore lesser than the punitive sanction contained in **section 498A of the IPC**, even though the degree of cruelty may be identical in both cases.

Additionally, section 5 of the Act requires Trans-persons to obtain a certificate of identity from a district magistrate after following a legally cumbersome procedure, thereby diluting the right to self-perceived gender identity enshrined in **section 4**. In, such certification, based on detailed examination, is also contrary to the spirit and directions of self-determination without medical intervention laid down in the NALSA judgment.

Prohibition against Discrimination: No person or establishment shall discriminate against a

Trans-gender person on any of the following grounds, namely -

(a) The denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof -

- The unfair treatment in, or in relation to, employment or occupation;
- The denial of, or termination from, employment or occupation;
- The denial or discontinuation of, or unfair treatment in, healthcare services;
- The denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public;
- The denial or discontinuation of, or unfair treatment with regard to the right of movement;
- The denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;
- The denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; and the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be.

Recognition of Identity of Transgender Persons- A transgender person shall have a right to be recognized as such, in accordance with the provisions of this Act. A person recognized as transgender under sub-section (1) shall have a right to self-perceived gender identity. A person recognized as transgender under sub-section (1) shall have a right to self-perceived gender identity.

Application for certificate of identity: A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed: Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child.

Issue of Certificate of Identity-

- The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender. 5
- The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).
- A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.

Change in Gender-

- After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.
- The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.
- The person who has been issued a certificate of identity under section 6 or a revised certificate under sub-section (2) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person: Provided that such change in

gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act.

Obligation of appropriate Government -

- The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.
- The appropriate Government shall take such welfare measures as may be prescribed to protect the rights and interests of transgender persons, and facilitate their access to welfare schemes framed by that Government.
- The appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.
- The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such persons.
- The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities.

Non-discrimination in employment: No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.

Obligations of establishments: Every establishment shall ensure compliance with the provisions of this Act and provide such facilities to transgender persons as may be prescribed.

Grievance redressal mechanism.—Every establishment shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act.

Right of residence: (1) No child shall be separated from parents or immediate family on the grounds of being transgender, except on an order of a competent court, in the interest of such child.
(2) Every transgender person shall have—

- (a) a right to reside in the household where the parent or immediate family members reside;
- (b) a right not to be excluded from such household or any part thereof; and
- (c) a right to enjoy and use the facilities of such household in a non-discriminatory manner.

(3) Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in a rehabilitation centre.

The Obligation of Educational Institutions to Provide Inclusive Education to Transgender Persons: Every educational institution funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others.

Vocational Training and Self-Employment: The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

Healthcare facilities: The appropriate Government shall take the following measures in relation to transgender persons, namely:—

- (a) To set up separate human immunodeficiency virus Sero-surveillance Centres to conduct sero surveillance for such persons in accordance with the guidelines issued by the National AIDS Control Organization in this behalf;

- (b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;
- (c) Before and after sex reassignment surgery and hormonal therapy counselling;
- (d) Bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;
- (e) Review of medical curriculum and research for doctors to address their specific health issues;
- (f) To facilitate access to transgender persons in hospitals and other healthcare institutions and centers.
- (g) provision for coverage of medical expenses by a comprehensive insurance scheme for Sex Reassignment Surgery, hormonal therapy, laser therapy or any other health issues of transgender persons.

Conclusion- The protection of rights of the Trans-Gender has been made to protect them by all mean either in the form physical, verbal, emotional, economical or mental. Trans-Genders who normally feels that our society was not accepting them by their felled identity rather than their birth identity. Therefore they felled himself alone in the society and assumed that no one could want them in their work place as employment but after passed the act for The Protection Rights of the Trans-Gender now these assumptions has been changed and each and every Trans-gender have the right to work at any work place where they want to be employed. And most of the industries have been taken an initiative to reserve some seats in their organization for the trans-genders. Now they are able to make their identity as trans-gender and if they want to change their birth identity with medical treatment they can (man can change their identity as women and women can change their identity as men).

Major Findings-

- No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.
- The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.
- After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.
-) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.
- Trans-gender persons cannot be discriminate by means like unfair treatment, educational establishment, service, etc.
- Every educational institution funded or recognized by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others.

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