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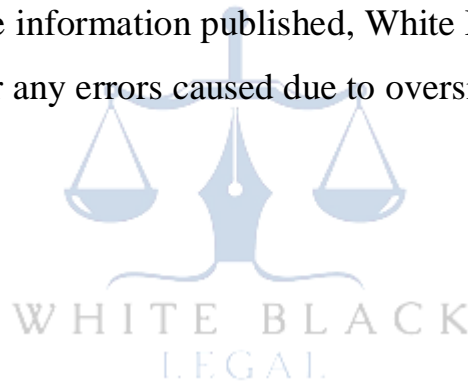
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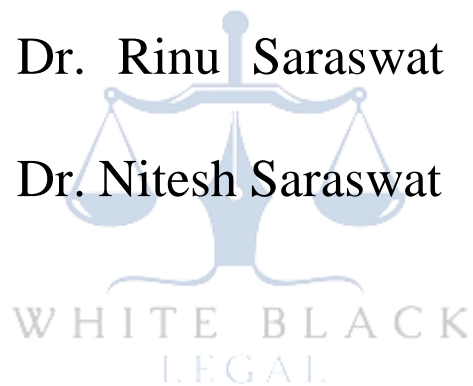
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CRITICAL ANALYSIS OF THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT 2019

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Abstract

All human beings without any discrimination should get equal rights. However, transgender people's rights are frequently rejected. Hatred, torture, brutality, physical damage, and abuse are frequently perpetrated against them. They are forced into dangerous jobs and exploited because of a lack of social, economic, and educational rights. The Transgender Persons (Protection of Rights) Act, 2019 ('Transgender Persons Act') aims to recognize transgender people's identities and prohibit discrimination in areas such as education, employment, healthcare, property ownership and disposal, public and private office holding, and access to and use of government services and benefits. Thus, the laws are adequate in safeguarding their rights and creating public awareness to accept them as a part of society by adopting a friendly attitude towards them.

KEYWORDS:- Transgender, gender, person, male, female, Transgender community, Transgender rights, protection

transgender people are referred to as Hijra, Sakhi, Kinnar, and Chhakka, among other names.³ In India, anytime an important event occurs, like a wedding or the birth of a child, transgender persons arrive, dance, and bestow blessings in exchange for money. The state of a person's gender identity (self-identification as male or female) does not match their assigned sex at birth.⁴ One well-known community concerning transgender is LGBT Community.

3. Problems faced By Transgender

Some of the problems are listed out as

3.1 Discrimination And Ostracization: Society has utterly abandoned and isolated transgender people. They've established their community, in which they all live and work together. They are only summoned for dancing and bestowing blessings on auspicious occasions. They have always been marginalized as gender and treated differently than males and females. They are also discriminated against in areas such as education, work, and justice. Adoption is not an option for them.⁵

3.2 Disrespect: Genders such as male and female are called and seen with respect in India, however, transgender persons are never respected, and people are abused with terms such as Chakka, Kinnar, and other terms that are demeaning to their group as a whole. There are also a lot of people who will chuckle at their appearance when begging in trains or around signals. They are always looked down on by society, no matter how hard they strive to earn money and live a normal life.⁶

3.3 Prostitution: People from the transgender community are forced into prostitution due to a lack of career opportunities and respect, and they work as prostitutes to make a living. It is common to witness transgender people working as sex workers late at night in Mumbai and Delhi.

3.4 Lack Of Educational Facilities: Because this population is the third gender, they are not admitted as pupils in many schools, and other circumstances such as a lack of washroom facilities for transgender people make this gender appear to be less educated or uneducated. They suffer several health difficulties as a result of their lack of education, including HIV,

³<http://docs.manupatra.in/newslines/articles/Upload/C348C957-63F1-457A-BD0C-2A24005C0702.pdf> (last visited 24 April, 2022)

⁴Merriam-Webster <https://www.merriam-webster.com/dictionary/female> (last visited 24 April, 2022)

⁵Supra 2

⁶Ibid

basic care and sanitation, and how to deal with problems like depression, which can lead to problems like tobacco, alcohol, and drug misuse.⁷

3.5 Separation from Parents: Kids are removed from their parents as soon as they are born, and transgender communities whisk them away and force them to live with them, leaving them without parents and without the ability to parent, resulting in a life full of grief and pain.

3.6 Illegal Business: Transgender people have been involved in criminal industries like as drugs and human trafficking in recent years, owing to a lack of job opportunities compared to the other two genders.

3.7 Other Problems: Transgender people were granted voting rights in 1994, but the administration was unable to issue them voter identification cards due to the question of whether they were male or female. They also have difficulty using public restrooms because no facilities for the third gender are provided.

4 The Transgender Persons (Protection of Rights) Act, 2019- The Transgender Persons (Protection of Rights) Act, got President's Assent on 5th December 2019 and became an act. The act is made in accordance to provide a mechanism for the protection of rights of transgender persons and their welfare and to provide them social, economic, and educational rights so that they do not feel less than any other gender in India.⁸

5 Background of “The Transgender Persons (Protection of Rights) Act, 2019”:- Before critically analyzing this Act we can discuss its background of it in short. The Supreme Court of India recognized the rights of transgender people in India and recommended a series of measures to protect those rights, including prohibiting discrimination and recommending the formation of welfare policies, as well as reservations for those third gender people in educational institutions and jobs.⁹ The Supreme Court of India affirmed the 2014 judicial mandate in the cases of Justice K.S. Puttaswamy (Retd.) and anr v. Union of India and ors(2017)¹⁰ and Navtej Singh Johar v. Union of India and ors¹¹(2018). However, other bills, such as the Rights of Transgender Persons Bill of 2014, were introduced before the

⁷Ibid

⁸ The Transgender Persons (Protection of Rights) Act,2019

⁹ National Legal Services Authority v. Union of India, AIR 2014 SC 1863

¹⁰ Justice K.S. Puttaswamy (Retd.) and anr v. Union of India and ors, W.P. (Civil) No. 494 of 2012

¹¹Navtej Singh Johar v. Union of India, W.P. (CrI.) No. 76 of 2016

implementation of this Act. During the time that this Bill was being debated, the 2016 Bill was introduced. After then, the Transgender Persons(Protection of Rights) Bill, 2018 lapsed, and on July 19, 2019, the Minister of Social Justice and Empowerment introduced the 2019 Act in the Lok Sabha, citing the expiry of the 2018 Bill.

6. Salient Features Of The Act:-

6.1 Chapter I defines a transgender person as one whose gender does not match the gender assigned at birth. It includes transmen and trans-women, persons with intersex variations, gender-queers, and persons with socio-cultural identities, such as kinnar and Hijra.¹²

6.2 Chapter II of the Act deals with the Right of Transgender regarding Prohibition against any type of discrimination. Under this chapter, the Act prohibits discrimination such as denial of admission of transgender in the educational institution, unfair treatment in the work or denial of the work, denial of a proper healthcare facility, denial of usage of public goods and services, denial of holding public and private office and denial of rent/purchase/occupy the property. All of this is prohibited and they have equal rights same as given to other genders.¹³

6.3 Chapter III of the Act deals with the Recognition of Identity of Transgender Person, under this, The District Magistrate is been authorized to give or issue an identification certificate to the Transgender, and to avail benefits given to Transgender, this certificate is mandatory. The person has to apply with proper application in the DM office, then after examining documents the DM will give the certificate. Also if the person wants to recognize as male or female he has to go for Sex Reassignment Surgery and then get the approval of DM by showing the medical certificate issued by the Chief Medical Officer and only after that the person can be recognized as male or female.¹⁴

6.4 Chapter IV of the Act deals with the Welfare Measure by the Government for the Transgender People, under this, the government will take measures for the more participation of Transgender people and the inclusion of transgender in society. The government will ensure welfare measures for the rights and interests of the transgender community. The government will ensure policies for the protection of the transgender, their rescue, and Rehabilitation of Transgender people, and the government will take measures to involve the transgender people in cultural and recreational activities.¹⁵

6.5 Chapter V of the Act deals with the Obligation of the Establishment and Other Person, in which it is mentioned that No establishment can discriminate against any transgender in the

¹²Sec 2(k)

¹³Sec 3

¹⁴Sec 4 to 7

¹⁵Sec 8

matter of employment which includes recruitment, promotion, and other related issues, The Transgender people should get the compliance facilities in every establishment in which a Compliant officer should be there in every establishment who will deal with the complaints of the above-mentioned issues. This part also gives a right to Transgender, to reside with their family and enjoy the facilities, and in case the family is not able to take care of the child, then by the court order of the competent court, the transgender child will be sent to the rehabilitation center.¹⁶

6.6 Chapter VI of the Act deals with the Education, Social Security, and Health of Transgender Person, under this the Government emphasizes the education as it mandates all educational Institutes which are aided and funded by the government to provide educational opportunities for transgender persons which will help them for their inclusion and include them in sports and recreational activities without discrimination. The government emphasizes the making of welfare schemes which will include vocational courses and training to make transgender people self-employed and financially strong. Under Healthcare, the government is proposing to set up Sero-surveillance Centres, medical facilities for Sex Reassignment Surgery, and also the coverage of expenses involved in the Sex Reassignment Surgery with the help of insurance and include therapies in the insurance cover for transgender persons.¹⁷

6.7 Chapter VII of the Act deals with the National Council for Transgender Person, under this the Central Government will form a National Council in which the members will be the Union Minister, Minister of State, Secretary and Joint Secretary of Social Justice Ministry, then one representative from ministries like Health, Family, House, and Urban Affair, Human Resource and Rural Development Ministry. One representative from National Human Right Commission, one representative each from state ministries from North, South, East, West, and North East Zones and Union Territories. Five representatives of the Transgender Community and Five Experts from NGOs will be nominated by the Central Government. The term of the members will be 3 years from the date of nomination. The Council will help the Government in making policies for the welfare of the Transgender community and the council is there for the grievance redressal related to the Transgender community.¹⁸

6.8 Chapter VIII of the Act deals with the Offences and Penalties where the government explains the type of offenses such as if forced labour is done by transgender then the employer will be punished and any type of abuse which include physical, mental, sexual or any other abuse done a transgender, it will be a criminal offense and the person will be punished in the

¹⁶Sec 9 to 12

¹⁷ Sec 13 to 15

¹⁸Sec 16 to 17

form of imprisonment from six month till two years and fine or both.¹⁹

6.8 Chapter IX of the above Act deals with other miscellaneous things.²⁰

7. Critical Analysis Of The Act

7.1 The act is been criticized by the Transgender community which they have argued that the act is vague and is not good for their community. As the Act speaks about the Certificate of Identity which is criticized as the power is conferred to the District Magistrate, and the community always wanted the right of self-determination, if the power is given to District Magistrate then again they may face humiliation while getting the certificate, and as being male or female does not need any certificate why is there a need to get a certificate of being transgender.

7.2 It also violates the Judgement of the Supreme Court related to Transgender in the NALSA case where the Supreme court did not mandate the ID card instead they gave the right of self-determination.

7.3 Sex reassignment surgery is now mandated if one wants to be recognized as male or female which is also been criticized, as it is their personal choice to be whatever they want to be, there should not be any mandatory requirement such as Sex Reassignment Surgery.

7.4 The Criminalization part is also been criticized as if the physical, sexual and mental abuse happens with the gender like male or female, the minimum imprisonment is given 7 years but for transgender, it is only 2 years, and that to the maximum which makes it bailable offense.

7.5 If the Trans child is not maintained by the parents then that child will be sent to a rehabilitation center which is discrimination against the transgender as no male or female child is sent to a rehabilitation center no matter what but the transgender child will be sent to a rehabilitation center.

7.6 There are no provisions of reservation anywhere in the Act, right now in the present time, the Transgender people need reservations to compete with the other two genders but there are no provisions for reservations for them which is also a loophole of this act. In many ways, this Act is not what was needed for the welfare of the Transgender communities.

7.7 The Act itself discriminates between different genders and is not completely for the welfare of Transgender people. It looks like the act is just made for the sake of making it, and no one is going to get any benefit as the Transgender people are only opposing it so, the government should bring amendments and make the act more strong and more appropriate.

8 Initiatives by Government:- State Government of Kerala is one of the first state governments

¹⁹Sec 18

²⁰Sec 19 to 23

which came up with the initiative of educating them that this will increase their progress. The new policy for transgender will be applied to all government colleges of Kerala in which two seats will be reserved for the Transgender students. The Kerala Government announced the jobs for transgender people in the state's metro system and also implemented other welfare plans for the upliftment of this community.²¹The government of Tamil Nadu also started initiatives for the upliftment of the transgender community. The state government announced proper access of transgender to education, health care, social security and other non discrimination initiatives for transgender. The government of Maharashtra is a second state in India to set up a welfare board. The Maharashtra is first state to set up a cultural institute for the transgender. The welfare board is set up to provide proper education, employment and self-employment opportunity, health programmes and free legal aid to the community. ²²States like Odisha, Karnataka and some more states have started taking consideration for the welfare of the transgender community now and it's a good sign that state government are coming forward to take responsible steps for the upliftment of the transgender community in their states and in whole India. On July 8, 2017, 29-year-old "Mondal" became the first transgender judge of a Lok Adalat from West Bengal, India.



8. Suggestions:-

- 9.1 Provide legal recognition of their gender identity of their choice such as men, women or third Gender.
- 9.2 Take concrete steps to treat them equally as backward classes (socially or educationally) of citizens and provide them all kinds of reservation with respect to admission in educational institutions and for public appointments and jobs.
- 9.3 Operate and make HIV Sero-surveillance Centres separately as Transgender face several different sexual health issues.
- 9.4 Seriously acknowledge and address the problems being faced by Transgender such as fear, shame, social pressure, depression, suicidal tendencies, social stigma, etc.
- 9.5 Take proper steps to give transgender medical care in the hospitals and also provide the transgender separate public toilets and other facilities as different from male and female.
- 9.6 Take concrete steps for making different and various types of social welfare schemes for the betterment of the Transgender.

²¹Gupta, S. (2018, July 16). Indian state takes a step forward for transgender rights. <https://edition.cnn.com/2018/07/16/health/india-kerala-transgender-laws-bill-intl/index.html> (last visited 27 April, 2022)

²² United Nations Development Programme, A Development Agenda for Transgenders in Maharashtra <http://www.in.undp.org/content/india/en/home/sustainable-development/successstories/a-development-agenda-for-transgenders-in-maharashtra.html> (last visited 25 April, 2022)

9.7 Take measures to create and increase public awareness so that Transgender will feel that they are also part of the social life and not be treated as aliens.

10. Conclusion

Any sort of discrimination prevailing on the grounds of race, religion, color, sex, or any other basis creates a threat to the secular and democratic structure of the country.²³ Transgender should not be denied basic rights. There are some serious problems faced by the transgender community which needs immediate action by the Government and supplement necessary measures for them regarding their health, education, employment, basic amenities, etc. Amelioration of the mentality of the people is also needed to bring the transgender persons to the mainstream of the society.



²³<https://blog.ipleaders.in/transgender-protection-article, 15-constitution-india/> (last visited 28 April,2022)