

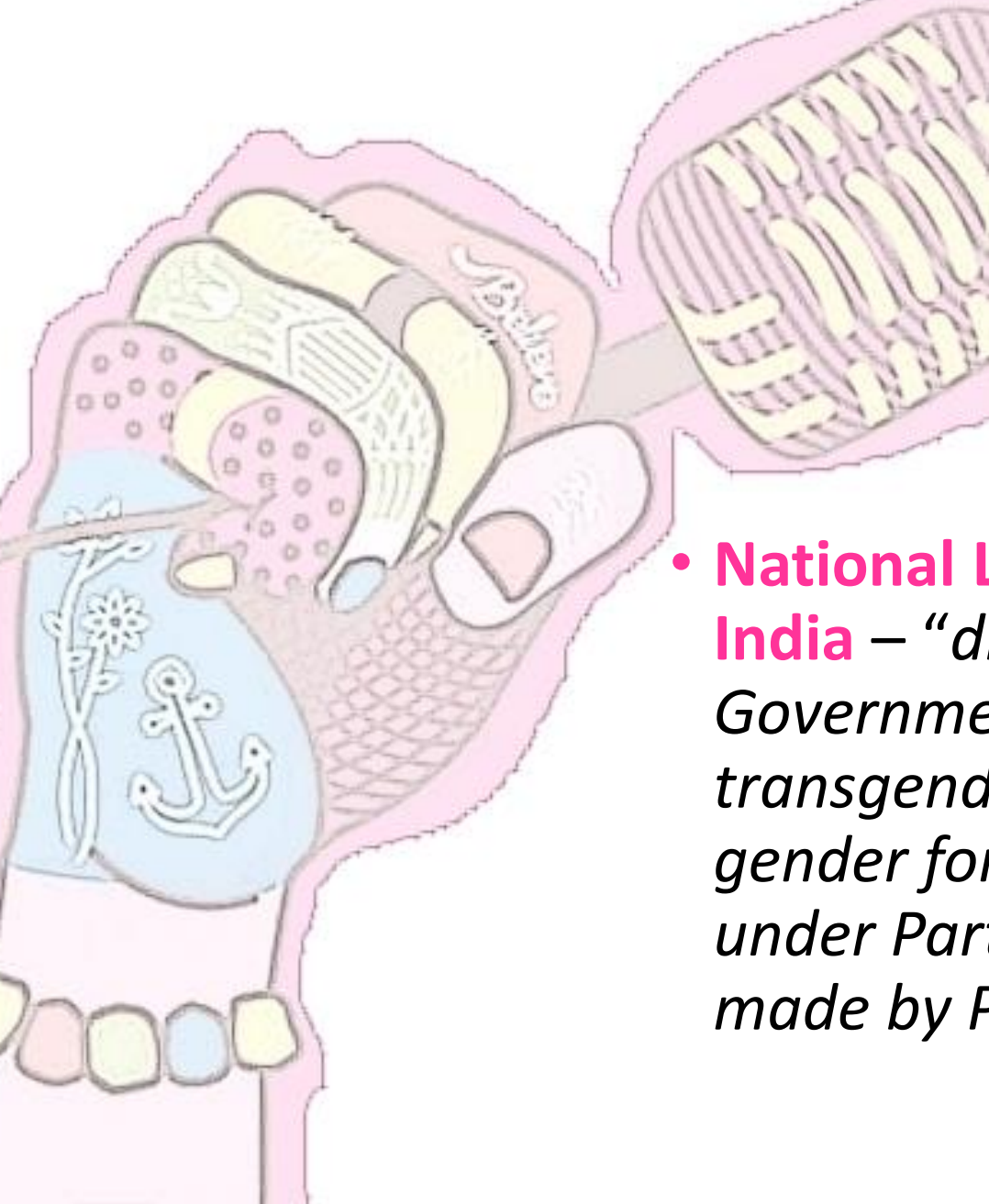


# Conversations on the Transgender Persons (Protection of Rights) Act, 2019

*Legal Challenges and Issues*



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## *History of the Act*

- **National Legal Services Authority Vs. Union of India** – *“directed the Central Government and State Governments to take various steps for the welfare of 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.”*



# History of the 2019 Act

2014 Bill

- Unanimously passed in Rajya Sabha
- Never debated in the Lok Sabha - lapsed

2016 Bill

- Introduced in Lok Sabha
- Report of the Standing Committee on Social Justice and Empowerment on the Bill

2018 Bill

- Passed in Lok Sabha despite opposition from Transgender community - lapsed

2019 Act

- Unanimously passed in Lok Sabha
- Passed by Rajya Sabha and received President's assent



# *Legal Provisions of the Transgender Persons (Protection of Rights) Act 2019*





## *Section 3 – Prohibition against Discrimination*

### No discrimination based

- (a) educational establishments and services thereof;
- (b) employment or occupation;
- (c) employment or occupation;
- (d) healthcare services;
- (e) enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public
- (f) right of movement;
- (g) right to reside, purchase, rent, or otherwise occupy any property;
- (h) hold public or private office;

### No provisions for remedy

### No civil or criminal remedy provided



## *Section 4: Recognition of identity of transgender person*

- 4.
  - (1) A transgender person shall have a **right to be recognised as such**, in accordance with the provisions of this Act.
  - (2) A person recognised as transgender under sub-section (1) shall have **a right to self-perceived gender identity**.





## *Section 4: Recognition of identity of transgender person*

Violates right to life, dignity and autonomy and gender self-determination

- Gender self determination includes having the autonomy to recognise as male, female or transgender.

Violates Article 21



## *Section 5: Application for certificate of identity*

- 5. 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.





## *Section 5: Application for certificate of identity*

Violates right to gender identity and autonomy (Art. 21)

- Identity certificate dependent on production of documents

Proviso violates Principle 18 and 32 of Yogyakarta Principles -

- Principle 18 - **Protection from Medical Abuses**
- Principle 32 - **The Right to Bodily and Mental Integrity**
- State is giving the power to choose gender of the child to the parents



## *Section 6: Issue of certificate of identity*

- 6. (1) 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.
- (2) The gender of transgender person **shall be recorded in all official documents in accordance with certificate** issued under sub-section (1).
- (3) 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**.







## Section 7: Change in gender

- 7. (1) 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.
- (2) 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.
- (3) 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.



## *Section 7: Change in gender*

Violates right to self-determination  
(Art. 21)

- Changing gender only after medical reassignment

Prohibited by NALSA judgment

- Right to self-identify their gender as an aspect of personal autonomy and liberty



## Section 12: Right of residence

- 12. (1) No child **shall be separated from parents or immediate family on the ground of being a 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 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 rehabilitation centre.**





## Section 12: Right of residence

Violates Art. 19

- Either live with immediate family or rehabilitation centre

S. 12(3)

- Does not make any distinction between a minor and an adult
- Infringes upon the right to choose where to live
- No third alternative provided

Violates Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan (1997) – fundamental right to live anywhere in India

K.S. Puttuswamy v. Union of India (2017) - Personal autonomy violated



## Section 18: Offences and penalties

- 18. Whoever,— (a) **compels or entices a transgender person to indulge in the act of forced or bonded labour** other than any compulsory service for public purposes imposed by Government;
- (d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or **tends to** do acts including causing physical abuse, **sexual abuse**, verbal and emotional abuse and economic abuse,
- shall be punishable with **imprisonment for a term which shall not be less than six months but which may extend to two years and** with fine.



## Section 18: Offences and penalties

### s. 18(a) – violative of Art. 14 - vague

- Fails to define ingredients of the offence

### S. 18(d) – violative of Art 14 & 15

- Lower punishment for sexual offences against transgender persons than the punishment provided under IPC (s. 354, 354A, 354B, 354C, 354D, 375, 376, 376C)
- Implies transgender identity is unequal to other identities
- Does not define sexual abuse (arbitrary and vague)
- Fails the test of equality as discrimination based on gender identity





## *Other Issues*

### Yogyakarta Principles violated

- Principle 6 - Right to Privacy
- Principle 12 – Right to Work

### Violates Art. 141

- Law declared by Supreme Court binding on all courts
- No Court or Tribunal or any other authority can ignore the law stated by the Supreme Court (Priya Gupta v. Addl. Secy Ministry of Health and Family Welfare (2013))

### Reservations not provided



*Thank You*



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