

Protection of LGBTQ Rights: An Analysis of Legal Framework in India

The Transgender Persons (Protection of Rights) Act, 2019

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Abstract

The Transgender Persons (Protection of Rights) Act, 2019 is an Indian law aimed at protecting the rights of transgender persons in India. The Transgender Persons (Protection of Rights) Act, 2019, provides legal recognition to transgender persons and prohibits discrimination against them. The law defines a transgender person as someone whose gender identity does not match the sex assigned at birth. Key provisions include:

1. Identifying transgender
2. Prevention of discrimination in education, employment, healthcare and other sectors
3. Right to self-identity and gender choice
4. Government's obligation to provide welfare schemes and benefits
5. Establishment of National Council for Transgender Persons to advise on policy matters

The Act seeks to promote inclusiveness, equality and justice for transgender persons in India.

Keywords: community perspective, discrimination, intersectionality, legal rights, non-binary gender identity, public spaces, LGBTQ, Human Rights, Transgender Rights, Legislation

Introduction

The Transgender Persons (Protection of Rights) Act, 2019 is an important step to protect the rights of transgender persons in India.

Transgender Identity: The Transgender Persons (Protection of Rights) Act, 2019 provides legal recognition to transgender persons and prohibits discrimination against them.

Protection of Rights: This Act protects the basic rights of transgender persons like education, employment, healthcare etc.

Self-identification: This law allows transgender individuals to self-identify their gender without the need for medical intervention.

National Council for Transgender Persons: The Act establishes a National Council for Transgender Persons to advise on policy matters.

Welfare Schemes: This Act obliges the government to provide welfare schemes and benefits to transgender persons.

The Transgender Persons (Protection of Rights) Act, 2019, was enacted to provide a legal framework to protect the rights of transgender persons in India. The Act aims to promote inclusion, equality and justice for transgender persons and to address the discrimination and violence they face.

Literature Review

Books:

1. Arvind Narrain and Alok Gupta, *Law Like Love: Queer Perspectives on Law*, Yoda Press, New Delhi, 2011: The book explores the intersection of law and queer identity in India, offering a critical perspective on the legal system's treatment of LGBTQ+ individuals.

2. Arvind Narrain, *Queer: Despised Sexuality Law And Social Change*, Books for Change, Bangalore, 2004: The book is a critical examination of the legal and social treatment of queer individuals in India, with a focus on the ways in which law shapes and is shaped by societal attitudes towards queer sexuality.

3. B. Shiva Rao, *The Framing of India's Constitution : Select Documents, Vol. II*, Universal Law Publishing, New Delhi, 2015: published in 2015 by Universal Law Publishing, New Delhi. This volume is a collection of select documents related to the framing of India's Constitution, which was adopted on November 26, 1949.

4. B.M. Gandhi, *Indian Penal Code*, EBC Publishing Pvt. Ltd., Lucknow, 2018: The book provides an in-depth analysis of the IPC, which is the main criminal code of India.

5. UN Human Rights Office of the High Commissioner, 2012:

6. The office is responsible for promoting and protecting human rights globally. It was created in the wake of the 1993 World Conference on Human Rights in Vienna.

Article:

1. Alok Gupta, "Section 377 and the Dignity of Indian Homosexual", Economic and Political Weekly 41(46), 2006 :
2. Puspesh Kumar, "Queering Indian Sociology- A Critical Engagement", Centre for the Study of Social System, New Delhi 2014:
3. Danish Sheikh, "Queer Rights and the Puttaswamy Judgement", Economic and Political Weekly, Vol. 52, 2017:
4. Douglas Sanders, "Section 377 and the Unnatural Afterlife of British Colonialism in Asia", Asian Journal of Comparative Law 4(1), 2009:
5. Janet E. Halley, "Sexual Orientation and the Politics of Biology : A Critique of the Argument from Immutability", South African Law Journal, 1993:

Cases:

1. Navtej Singh Johar v. Union of India, 2018 S.C.C. Online S.C. 1350 case on 6 th Sep, 2018
2. National Legal Services Authority v. Union of India and Others, (2014) 5 S.C.C. 438 case: In September 2012,
3. Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1: The Delhi High Court's

Objectives of the Study

- To classify different kinds of violation of rights of LGBTQ
- To study international legal Framework related to rights of LGBTQ
- To study Indian legal system and protect the rights of LGBTQ
- To support the amendments and reforms to the existing legal system
 - Constitutional

- Legal
- Judicial

Conventions and Legislations:

1. Yogyakarta principles:

The Yogyakarta Principles are a set of international principles that affirm the human rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals. Developed in 2006 by a group of international human rights experts, the principles aim to promote and protect the rights of LGBTI people globally. The 29 principles address various aspects of LGBTI rights. These principles have been widely recognized and endorsed by various international organizations, governments, and human rights groups, serving as a crucial resource for advocating for LGBTI rights globally. Some key points about the Yogyakarta Principles include:

- They are based on existing international human rights law and standards.
- They apply to all individuals, regardless of their sexual orientation or gender identity.
- They emphasize the importance of protecting vulnerable groups, such as transgender and intersex individuals.
- They have been translated into multiple languages and widely disseminated.
- They serve as a tool for advocacy, education, and policy development.

The Yogyakarta Principles play a significant role in promoting the human rights of LGBTI individuals worldwide, and their implementation is crucial for creating a more inclusive and equitable society.

Universal Declaration of Human Rights 1948: The Universal Declaration of Human Rights (UDHR) is a foundational document that outlines the fundamental rights and freedoms that every human being is entitled to. Adopted by the United Nations General Assembly in 1948, the UDHR consists of 30 articles that establish the standards for human rights globally.

Some key articles relevant to LGBTQ+ rights include: Article 1,2,3,5,7,9,12,19,22 While the UDHR does not explicitly mention LGBTQ+ rights, its principles of equality, non-discrimination, and freedom from discrimination and violence apply

to all individuals, regardless of their sexual orientation or gender identity. The UDHR has served as a foundation for subsequent human rights instruments and has inspired numerous national and international laws and policies protecting LGBTQ+ rights.

3. International Convention on Civil Political Rights 1966: The International Covenant on Civil and Political Rights (ICCPR) was adopted by the United Nations General Assembly in 1966 and became effective in 1976. It is a key international human rights treaty that sets out a range of civil and political rights that are guaranteed to all individuals. The ICCPR has been ratified by over 160 countries, making it one of the most widely ratified human rights treaties in the world. The treaty protects the rights to life, liberty, and security of person, as well as the rights to freedom of speech, assembly, and association. It also prohibits torture, cruel, inhuman, or degrading treatment or punishment, and ensures the rights of individuals to a fair trial and privacy. Some of the key provisions of the ICCPR include: Article 2,6, 7, 9,19,22

Overall, the ICCPR is a crucial treaty that sets out a range of fundamental rights and freedoms that are essential for the dignity and well-being of all individuals.

4. European Convention on Human Rights 1950: The European Convention on Human Rights (ECHR) was adopted in 1950 and is a cornerstone of human rights law in Europe. It established the European Court of Human Rights (ECtHR) and outlines certain fundamental rights and freedoms that are guaranteed to all individuals within the Council of Europe's member states.

Some key provisions of the ECHR include: Article 2,3, 8, 9, 10, 11, 14

The ECHR has been significant in promoting and protecting human rights in Europe, and its provisions have been interpreted and applied by the ECtHR in various cases, including those related to LGBTQ+ rights.

The ECHR continues to play a vital role in protecting and promoting human rights, including those of LGBTQ+ individuals, in Europe.

5. Indian Constitution: The Indian Constitution has several provisions that protect the rights of LGBTQ+ individuals. The Constitution of India guarantees fundamental rights to all citizens, including those from the LGBTQ+ community,

through Articles 14 to 16 and Articles 19 and 21. Here are some key points about LGBTQ+ rights in India:

- The Supreme Court of India decriminalized homosexuality in September 2018, striking down a colonial-era law that criminalized same-sex relationships.
- Transgender persons have the right to self-identification, and the Supreme Court has recognized the right to gender identity and expression.
- The Transgender Persons (Protection of Rights) Act, 2019, provides legal recognition and protection to transgender individuals.
- The Supreme Court has recognized the right to privacy and extended it to LGBTQ+ individuals, protecting their right to privacy and dignity.
- The Indian Constitution guarantees equality and non-discrimination, and the Supreme Court has interpreted these provisions to protect the rights of LGBTQ+ individuals.
- Recent court judgments have advanced LGBTQ+ rights, including the recognition of same-sex relationships and the right to adopt children.
- The Supreme Court's handbook on gender stereotypes is a progressive step towards promoting inclusivity and respect for LGBTQ+ individuals.

6. DPSP of Indian constitution:

The Directive Principles of State Policy (DPSP) in the Indian Constitution does not explicitly mention LGBTQ+ rights. However, the Supreme Court of India has taken steps to protect the rights of the LGBTQ+ community through various judgments. For instance, the Supreme Court has decriminalized homosexuality by partially striking down Section 377 of the Indian Penal Code (IPC) in 2018. The Court has also recognized the right to privacy and extended it to LGBTQ+ individuals, protecting their right to privacy and dignity. Additionally, the Transgender Persons (Protection of Rights) Act, 2019, provides legal recognition and protection to transgender individuals. While there is still more work to be done to ensure the rights and protection of the LGBTQ+ community, these developments mark significant progress in promoting equality and inclusivity.

LGBTQ+ rights in India:

-Decriminalization of Homosexuality: The Supreme Court of India decriminalized homosexuality by partially striking down Section 377 of the Indian Penal Code (IPC) in 2018.

- Right to Privacy: The Supreme Court has recognized the right to privacy and extended it to LGBTQ+ individuals, protecting their right to privacy and dignity.

- Transgender Rights: The Transgender Persons (Protection of Rights) Act, 2019, provides legal recognition and protection to transgender individuals.

- Same-sex Marriages: While same-sex marriages are not legally recognized, the Supreme Court has recognized the right to marry and has extended it to same-sex couples.

- Adoption and Surrogacy: LGBTQ+ individuals and couples face discrimination in adoption and surrogacy, and there is a need for laws to be made more inclusive.

- Workplace Discrimination: LGBTQ+ individuals face discrimination in the workplace, and there is a need for laws to protect them from discrimination and harassment.

- Education and Awareness: There is a need for education and awareness about LGBTQ+ rights and issues to promote inclusivity and acceptance.

7. The Right of Transgender Persons Bill 2014:

The Rights of Transgender Persons Bill, 2014, was a significant step towards recognizing and protecting the rights of transgender individuals in India. The Bill aimed to address the social, economic, and political exclusion faced by transgender people and provide them with equal opportunities and protection under the law.

Key provisions of the Bill:

1. Definition of Transgender: The Bill defined a transgender person as someone whose gender identity does not match the gender assigned at birth.

2. Recognition of Identity: The Bill allowed transgender individuals to choose their own gender identity and required the government to recognize it.

3. Prohibition of Discrimination: The Bill prohibited discrimination against transgender people in education, employment, healthcare, and other areas.

4. Right to Equality: The Bill ensured that transgender individuals had the right to equality and equal protection under the law.

5. Reservations and Benefits: The Bill provided for reservations and benefits for transgender individuals in education and employment.

6. Social Security: The Bill ensured that transgender individuals had access to social security schemes and programs.

7. Healthcare: The Bill recognized the right to healthcare for transgender individuals, including gender confirmation surgeries.

8. Legal Aid: The Bill provided for legal aid and assistance to transgender individuals.

Although the Bill was not passed, it paved the way for the Transgender Persons (Protection of Rights) Act, 2019, which was enacted to protect the rights of transgender individuals in India.

Here is a brief overview of how personal law, constitutional law and criminal law relate to LGBTQ rights in India:

1. Personal Law

LGBTQ individuals face challenges in areas such as marriage, inheritance and adoption due to personal laws that do not recognize same-sex relationships. The Hindu Marriage Act, the Muslim Personal Law and the Special Marriage Act do not expressly recognize same-sex marriages. However, the Supreme Court has upheld the right of same-sex couples to marry under the Special Marriage Act.

2. Constitutional Law

The Indian Constitution guarantees fundamental rights to all citizens, including the LGBTQ community. Articles 14 (equality), 15 (non-discrimination), 19 (freedom of expression), and 21 (right to life and liberty) have been interpreted to protect LGBTQ+ rights. The Supreme Court has recognized the right to privacy

(Puttaswamy judgment, 2017) and criminalized same-sex relationships (Navtej Singh Johar judgment, 2018).

3.Criminal Law

Section 377 of the Indian Penal Code (IPC) was decriminalized by the Supreme Court in 2018. The Transgender Persons (Protection of Rights) Act, 2019, prohibits discrimination and violence against transgender persons. However, there are still reports of harassment, violence, and discrimination against LGBTQ individuals, underscoring the need for effective law enforcement and social acceptance. These areas of law are important in shaping the legal landscape for LGBTQ rights in India, and ongoing efforts aim to address the challenges and inequalities facing society.

Research Gap

Despite recent increases in attention and recognition for LGBTQ rights, there are significant research gaps in this field. While some research has been conducted on the social, economic, and legal issues confronting LGBTQ individuals and communities, there is still a dearth of in-depth research focusing on the specific experiences of LGBTQ marginalised groups such as trans people, people of colour, and people with disabilities. Furthermore, research on the intersections of LGBTQ rights and other social justice issues, such as poverty, immigration, and health disparities, is lacking. This research deficit is a serious barrier to understanding and solving the diverse and interconnected challenges confronting LGBTQ people and communities.

Proposed Methodology

The first stage is to formulate a research topic, which may be something like, "What are the barriers to achieving full LGBTQ rights, and how can they be addressed?" The research topic should lead the source selection and data analysis. Academic studies, government reports, news stories, and personal accounts should all be considered. The trustworthiness, relevancy, and bias of the sources should be assessed.

The next stage is to perform a literature review, which entails synthesising the material acquired from the various sources. The literature study should identify the most important topics, debates, and trends concerning LGBTQ rights. It should also indicate knowledge gaps and areas that need more investigation.

Following the completion of the literature review, data collection methods should be selected. Surveys, interviews, and focus groups are examples of such methods. Data collection should be done in an ethical way, with informed permission and anonymity of the participants protected.

The information gathered should be analysed using acceptable methodologies. Statistical approaches may be used to analyse quantitative data, whereas content analysis or theme analysis can be used to analyse qualitative data. The findings of the analysis should be evaluated in light of the research question and the evaluation of the literature.

depending on the study, conclusions and suggestions should be developed. The conclusions should summarise the important results, and the suggestions should offer ways to overcome the hurdles to full LGBTQ rights. The suggestions should be research-based and realistic, ethical, and successful.

In the process of methodology, components like introduction, literature review, research gap, goals, research design, data collecting method, and analysis outcomes will be included. For the purpose of the research, the researcher will be obtaining information using a secondary data collection approach. The goal and objectives of this research will be shown via the use of secondary data investigation.

Conclusion

The Transgender Persons of India (Protection of Rights) Act, 2019 is a landmark law. Its purpose is to protect the rights of transgender persons. Provisions in the Act on Transgender Identity, Protection from Discrimination and Right to Self-Identification are important steps forward for transgender rights. However, enforcement and effectiveness of the law are important issues. Challenges such as

interdivisibility, inclusiveness and community participation need to be met to ensure the success of this legislation. It contains key provisions to protect transgender people from discrimination and harassment. The Transgender Persons (Protection of Rights) Bill has various salient features that will affect transgender people in India. For example, the bill would make it easier for transgender people to get legal recognition and protection from discrimination. Consequently, the Transgender Persons (Protection of Rights) Bill, 2019 is an important step to ensure that transgender people in India enjoy their full rights.

Focus on future research

1. Intersectionality: Examining the experiences of transgender individuals who identify with race, class, gender.
2. Inclusivity: Ensuring that legislation contains language and provisions that are inclusive of diverse gender identities and expressions.
3. Community Engagement: Ensuring there is meaningful engagement with transgender communities to ensure effective implementation and support.
4. Implementation Challenges: Addressing challenges in implementation of the Act including funding, resources and social attitudes.
5. Impact Assessment: To assess the impact on the lives of transgender persons, including education, employment, healthcare and social welfare.

By addressing these areas, the Transgender Persons (Protection of Rights) Act, 2019, can be a powerful tool to promote transgender rights and equality in India.

References

1. Sahoo, S. (2020). The Transgender Persons (Protection of Rights) Act, 2019: A Step Forward. *Journal of Gender and Sexuality*, 31(1), 1-5.
2. Bhattacharya, S. (2020). The Transgender Persons (Protection of Rights) Act, 2019: A Critical Analysis. *Journal of Gender Studies*, 29(3), 347-355.
3. Kumar, A. (2020). The Transgender Persons (Protection of Rights) Act, 2019: An Analysis. *Journal of Social Policy*, 49(3), 537-545.
4. Sharma, A. (2020). The Transgender Persons (Protection of Rights) Act, 2019: An Intersectional Analysis. *Journal of Intersectionality*, 4(1), 1-12.