

Report on the webinar on

Transgender Protection Act 2019

Date: Aug 31, 2020

Time: 12:00 PM India

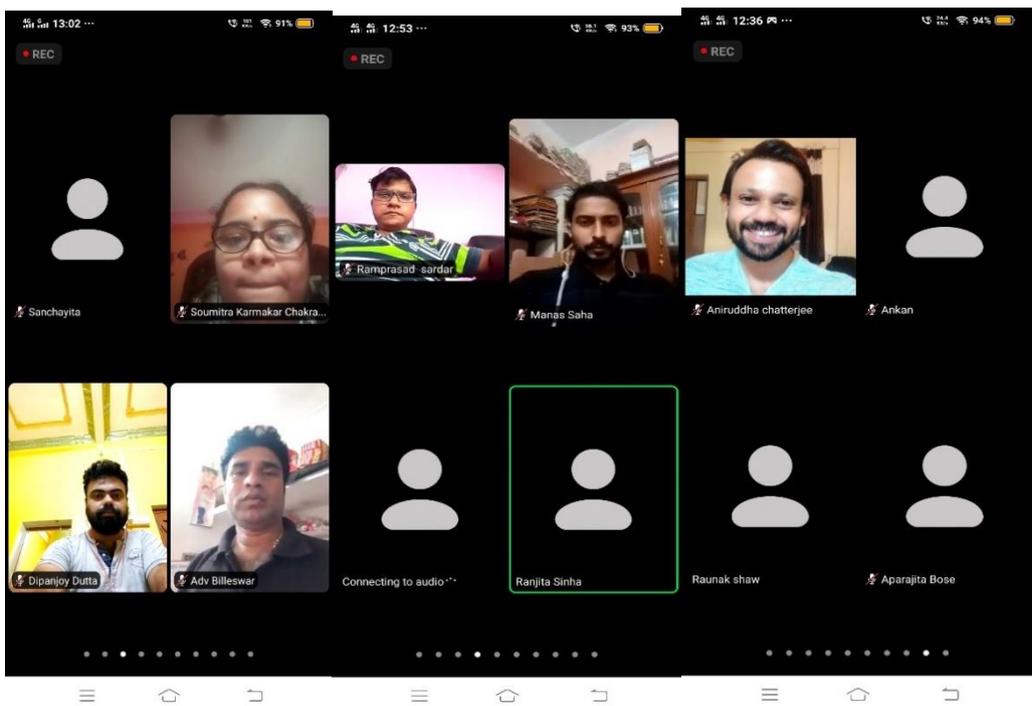
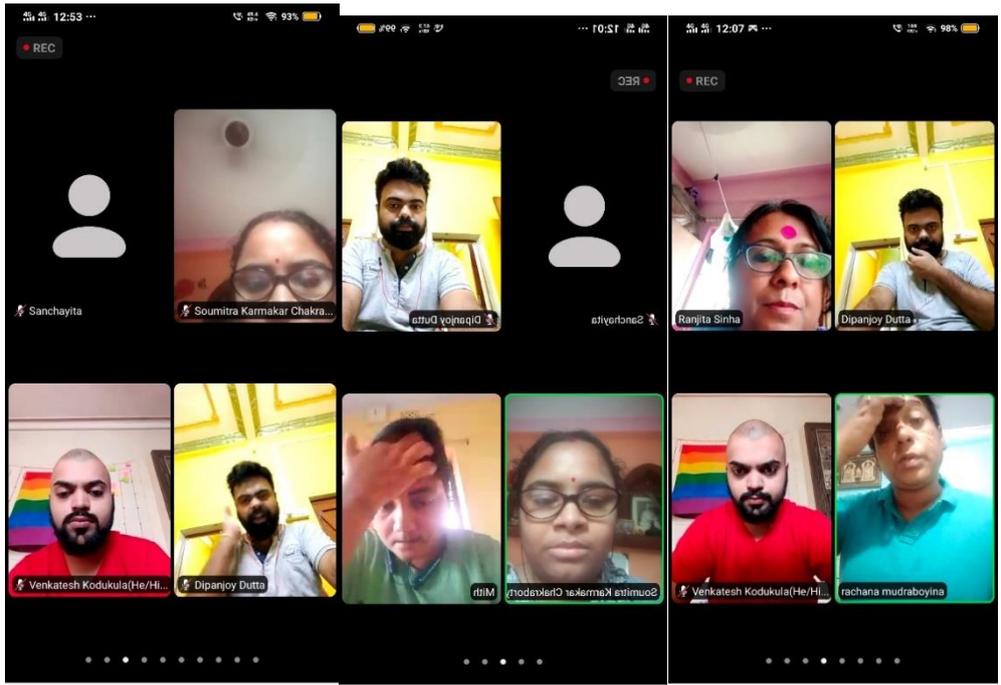
Topic :Discussion on the Transgender Persons (Protection of Rights) Act, 2019

Edited by

SoumitraKarmakar, Advocate



Time	Speaker	Topic
12.00-12.10	SoumitraKarmakar	Introduction and welcoming participants
12.10-12.30	Rachana	The Proposed Rules under the Transgender Protection Act
12.30-12.50	Ranjita Sinha	The National Board for Transgender
12.50-1.10	Ankan Biswas	Police Atrocities on Trans-persons
1.10-1.30	SomabhaBandopadhyay	Emergent issues that need to be brought before the Court
1.30-1.45	Phillip C Phillip	Effects of COVID 19 and the Transgender Protection Act
	Soumitra	Conclusion



INTRODUCTION

With the onset of demanding and claiming of basic human rights one of the major taboos that India faces is the discrimination of the sexual minorities. The much-debated topic of the very recent TG Bill being passed as TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT 2019 that brought about protests, agitation and resistance from the transgender community of India. The landmark Nalsa Judgement of 2014 that recognised 'third gender' and had opined the progressive statements over 'gender', 'identity', 'protection of transgenders' etc. although the Act has been made to hold the rights and provisions for the transgender community there have been conjectures that the Act do not meet its purpose. The Sexual minorities or the LGBTQ+ community have a history of facing discrimination and violence . West Bengal is caught in a curious position, largely because the strength of the movement in the state stands unparalleled when compared to other states in the country. When contrasted with the narrative that state has chosen to take, where post the establishment of the Transgender Persons Welfare Board in West Bengal, there has been no action either by the welfare board or the state at large towards advancement of rights of Transgender Persons in the state.

In cases where violence has been inflicted by the rest of the society, the law enforcement agencies have stayed back and tried to carry out resolutions among between the perpetrators and the victim and refused to translate the criminal act into FIRs and punitive action being taken against the perpetrators. It is in this background that there was ascertained to be an urgent need to take a training for Transgender Persons and Groups across West Bengal on the laws that protect them and newer laws and legislations that would have an adverse impact on the lives of Transgender, Gender Non-Conforming and Intersex Persons. Both the knowledge about the laws and how to challenge the narrative of oppression and marginalisation was essential to carry out a meeting of such a scale.

The transgender community being one of the most marginalized communities , the webinar discussion aims to bring out the topic of Transgender Persons (Protection of Rights) Act, 2019 and how does it work and most importantly does it help the community or it doesn't meet the ends of the purpose. HRLN stands by human rights and in this pandemic situation when it is hard to address the problems in person, a discussion on the topic has been held by organizing a Webinar

The meeting started with the welcoming and introduction of all the distinguished panelists by our moderator. The moderator also introduced and mentioned about the fields of work and contribution in the society done by HRLN.

SPEAKERS

Speaker 1: Rachana Mudraboyina, Director of LGBT issues HRLN, Founder of Transgender Collective, Telengana

1. The speaker introduced herself and opined on the **the Proposed Rules under the Transgender Protection Act** regressive Transgender Act where she started of with the NALSA judgement . The judgement highlighted on the fact that transgender persons identity should be self recognised identity, only the transgender persons can identify and recognise their gender and no one else other than the transgender person can decide on their identity. She went forward by highlighting this judgement an talking about the SC guidelines and instructions.
2. She further threw light on the Sec 6 of the Act which talks about the sex reassignment certificate that need to be presented to the District magistrate in order to get recognised as a transgender person. During the session she expressed how problematic this provision is and how it is not only derogatory in nature but also goes against the NALSA judgement. The transgender Bill was looked down upon and there were resistance to pass the bill, irrespective of all the resistance from the transgender persons, activists, petitioners and LGBTQ community bill got passed to be an Act.
3. Rachna further added saying the Movement is not against disrupting the peace and tranquillity of the Nation and neither it is to protest against the government, 'it is the Battle of liberty'. she added 'If we as transgender persons are getting rights then we should get our rights properly'.
4. She ended on the note saying till date transgender Persons are dependent on jobs like Sex work an begging. They face family oppression and are often discarded from family institutions and face violence and abuse. The conditions of the transgender persons are still to be uplifted and definitely the Act does not much good to the

transgender persons. The Act does not meet the ends of its purpose and is not very fruitful to the transgender persons.

Speaker 2: Ranjita Sinha , The National Board for Transgender

1. The speaker started by mentioning the basic problems faced by transgender are Financial, Medical, security stability, proper sanitation and lifestyle etc. she added that today LGBT issues are not mere social issues but are political agendas. Today many political parties are coming forward to support and work for LGBT issues and rights.
2. She expressed her concerns and intolerance towards the TG protection of Rights act 2019 and said that 'It is problematic and puts us all in trouble' . She further exclaimed that the TG act is derogatory and is definitely not of help to the transgender persons; adding to it she said there must be more RTIs demanding to know the wear bouts of the Act. She encouraged transgender persons and activists to File RTIs with respect to the Act of 2019.
3. she further went on showing her concerns with the derogatory Provisions of the act and suggested that there should be better policies and activists and other persons must come out to argue the problematic provisions of the Act.
4. Sinha highlighted the fact that the transgenders should be at par to other citizens as well and they should be given jobs by the State and the Central Body. The Government should make enough provisions and open up jobs for the Transgender persons.
5. She concluded that during the pandemic situation she was involved in distributing ration and providing shelter to the transgender person by making shelter home and keep them safe and provide them with basic necessities. It is the government who should be more vigilant towards such activities an should make arrangements that are adequate for the transgender persons. The various communities like the Kotis and Hijras need proper Ration, shelter homes, Cultural Homes and educational Provisions.

Speaker 3: Ankan Biswas, Police Atrocities on Trans-persons

1. The speaker started of by mentioning few important judgements that fellow advocates and legal fraternity members should go through to understand the Transgender rights that are evolving in India.
2. The important cases that were suggested are
 - SRS case initiated in the Mumbai HC by BidhanBarua now Swati BidhanBarua (Assam Transgender Board, Chairman) asking the Court if a person could undergo a SRS and if the State has any role in it.
 - NAAZ Foundation 2009 case
 - NALSA V UOI
3. Post mentioning of the cases which was suggested by him, he mentioned about the Transgender Act and not SC had laid down the principle as per the NALSA Judgement which was not being followed by the 2019 Act.
4. He mentioned that there were 3 Bills initiated namely. 2014 Bill by T. Shiba, 2015 Bill by Sashi Tharoor and a 2016 Bill that got passed and became the Transgender Protection of Rights Act, 2019. The Act came into play although it is very problematic and thus she further discussed how the Act causes problems.
5. The Section 4 of the Act poses no clarity. She added by discussing the penalty section where person doing a criminal offence or a sexual offence towards a transgender person faces an imprisonment of only 6months-2 years and is not treated through IPC. He mentioned that transgender persons are eve teased, molested, sexually abused and violated, raped and goes through other sexual violence so why is it that these sexual violence are treated discriminatorily? He raised a statement that why does the Act discriminate with sexual violence towards transgender people.
6. The Advocate speaker also talked about atrocity of police towards transgender persons as he was wrongly detained by a police filing charges of rape against him. He along with other advocate has been fighting the case in the Calcutta HC where he has been falsely charged of committing rape. Adv Ankan being a transgender person goes through a lot of perils due to the taboo of the society. Time and again he has been wrongly detailed and being accused with false accusations on the ground of transphobia by police authorities.

7. Beside all those the speaker lastly talked about the perils of a transgender advocate due to the less sensitivity of the BAR officials and authorities. During his time of enrolling as an advocate he did not get the option of transgender and thus had to go by the option of his birth sex i.e. of female which invalidated his existence and was disrespectful to him as an individual and to his gender. Not only this he also mentioned the lack of bathrooms in the Court for transgender persons. It is highly discriminatory as bathroom being one of the basic utilities for a human in all institutions. He faced a lot of problems and bodily discomfort for not having a transgender bathroom in the Calcutta HC during the tenure of practice.
8. In a Q&A round he was put forward with a question that what if a person is both Sexual minority and a caste minority say the person is of SC/ST and a Transgender person, how would the reservation be applied ? would the person be entitled to dual reservations then ? to this the Speaker Adv Ankan answered that there he himself happens to be both SC and transgender and in this case there should be regulation or choosing of the appropriate reservation and not giving effect to both the reservations. He stated that the person depending on the scenario must be entitled to either get reservation as a transgender person or SC/ST/OBC reservation.
9. The speaker ended on the note that the Act does not do much justice to the transgender persons and therefore should be subjected to change.

Speaker 4: SomabhaBandopadhyay Professor NUJS

1. The speaker started on the note by mentioning the ambiguous and derogatory nature of the 2019 act. She presented a Power Point presentation which showed the segregation of the Act in three different parts namely Civil Rights, Criminal aspect and national council.
2. She went on explaining all the parts starting with the civil rights aspect where she distributed civil rights into three parts of Welfare, Non Discrimination and Protection. Art 15 talking about welfare is a very ambiguous section as for e.g. if a client is a transgender person and she has come with a case of getting discriminated the Section does not mention clearly the grounds of discrimination and appropriate penalties and provisions for such discrimination thus keeping the Section ambiguous in nature.

3. The other aspects of the Act that is worth discussing as it lacks clarity is the identity restrictive nature. The NALSA JUDGEMENT was clear that identity would be self-identification but the Act restricts the identity. There is a huge definitional challenge also as the Act confuses between Intersex people and Transgender person.
4. The family aspect has also not been discussed in details as a result the provisions for inheritance remains ambiguous. Laws related to Civil Rights of the transgender person like Marriage Law, Inheritance Law, Adoption Etc. remain unclear and unattended. Moreover there is a huge gap in proper representation of the socio cultural aspect.
5. She opined on the fact that the sexual violence towards the transgender community is very much prevalent but the Act discriminates there as it gives 6 months -2years imprisonment for people committing sexual violence towards Transgender people whereas it can be given effect through provisions of IPC. This is a huge flaw in the act and needs to be amended.
6. She concluded by saying that there should be reservations for the transgender persons and the act should be amended to make it non ambiguous enough and thus provide adequate representation and visibility to the community.

Speaker 5: Phillip C Phillip, HRLN Delhi

1. The speaker spoke on the topic of COVID-19 and Transgender Act where he started by saying that the pandemic was a great set back to the transgender community and have suffered a lot due to the pandemic. To overcome the pandemic and give some relief the activist with HRLN had written letters to the Social Justice Department on March asking for transgender reliefs. As a response INR 1500 would be given to each transgender persons was said but later there was no steps taken to execute the order.
2. Meanwhile Kerela Government gave free ration to the Transgender Persons irrespective of any Id Card, Pan Card, Aadhar Card. They would be given ration on self identification as transgender persons basis. Keeping this in mind the speaker had the same agenda to implement in the respective areas for the community people aswell.

3. There was another petition filled by HRLN where an order was passed by the Bihar HC to give INR 3000 to all transgender persons due to the perils faced by them during the pandemic.
4. The speaker highlighted that the five essential things were focused on to give relief during the COVID-19 situation they were
 - Ration
 - Housing
 - Medical
 - Financial
 - Psycho Social Counselling

This was brought about in the Maharashtra HC as a petition to be implemented as a part of relief to the transgender persons but was disposed off without any satisfactory decisions out of it.

5. The speaker added to his speech the problematic aspect of the Transgender Act by saying that it has inadequate rules and are derogatory in nature. He threw light on the aspect of identification and said that identification is much more than welfare schemes and provisions of the government. Identification is a personal right and such Rules and Acts prohibit a person from perusing self Identification which gradually invalidates the struggles and the movement for rights and liberty.
6. During a Q&A round a question raised towards him asking “ How do you think there will be inclusivity in workplace for LGBT people?”

The speaker replied to this by saying that one of the most useful mechanism would be reservation, Reservation could attract more people from the community and that would mobilize the community crowd and make more of them in work places.

Another tool could be using Inclusivity Policies in work places where they would hire transgender people and sexual minorities. The policies of such workplaces must be inclusive and queer friendly

Lastly he added that there must be strict anti bullying and anti ragging policy of work places. LGBT community has a history of being targeted to bullying and mocking and strict policies that stop bullying against them will be a great leap to attain inclusivity at workplace and create a safe environment for the people of the community.

7. The speaker concluded by saying that the Act needs to work more on welfare and inclusivity, he mentioned that few surveys showed that there were just 19 transgender persons giving their 10th Standard examination and 6 persons giving 12th examination in a year which itself shows the low inclusivity provisions and less participation. The 2019 Act must focus on welfare and development of transgender people despite restricting the identities of the Transgender Persons.

The meeting was concluded with a vote of thanks to all the distinguished guests and everyone associated with the Webinar by the Moderator.

CONCLUSION

After the evaluative discussion by the panelists on the various issues of Queer Rights and Transgender protection Act it is drawn that there is still some lack in the welfare programs and the protection and functioning of the transgender rights. An act that has been implemented for the protection of the TG persons turns out to be violative of their rights and identity as a whole. Time and again the Constitutionality of the Act has been questioned by the Transgenders as it has shown signs of discrimination and reflected an essence of regression.

Suggestions

With the history of oppression, violence and discrimination towards the Transgender community of India, a recent Act of 2019 made for the protection of their rights; the resistance and the debates around the Act makes it clear that it is not meeting the ends of the purpose. It is suggested that there should be proper redressal of laws and provisions and the Act stands by its Name and Protects the transgender persons in the truest sense. Moreover now that the bill has been passed as the Transgender Persons (protection of rights) Act 2019 the constitutionality of the Act been challenged by various Transgender Activists, Lawyers and other Petitioners. The Debatable and ambiguous laws and provisions should be taken up by the appropriate body and should be looked into. Moreover the Transgender Protection of Rights Act 2019 does not cater to the issue it should have met. It is not clear with its provisions of Welfare, financial support, Educational facility, Socio-Cultural development, Shelter, Protection and Security and other Civil Rights and Criminal aspects. It is not only

Ambiguous in nature but is also discriminatory, goes against the NALSA judgement principles and is also unconstitutional. The Act is problematic as it cause a lot of troubles and adds up to the struggle of the transgender persons which puts the entire Act in question.