

Mainstreaming Transgender Persons in India The Transgender Persons (Protection of Rights) Act, 2019 and Initiatives

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Abstract

In recent decades India has adopted a couple of progressive Acts to give justice to certain sections of the Indian population. These include the Provisions of the Panchayats (Extension to Scheduled Areas) (PESA) Act, 1996, Right of Children to Free and Compulsory Education (RTE) Act, 2009, The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA), 2006, and the Transgender Persons (Protection of Rights) (TPA) Act, 2019. The general objectives of these Acts are to give justice by way of implementing various policies and programmes for the development of concerned sections of the population in the society. Among these Acts TPA, 2019 has a crucial significance in Indian society. The Act aims to abolish discriminations, recognition of identity, provisions of rights in day to day life by way of making welfare schemes for the transgender persons. Both the Government of India Ministries and the State Departments have expressed their commitment to implement these Acts so as to translate their objectives into actions. During this preliminary phase the country has made several experiments through various programmes and schemes. In this backdrop, the paper makes a preliminary study on the achievements of various programmes adopted by state agencies and the achievements so far made to meet the objectives of the Act. The paper draws on government reports, web sites, and published research papers.

Keywords: Transgender Persons, Stigma, Discrimination, Protection of Rights, Garima Greh

1.0 Introduction

The globalisation in India has created the demand for adopting various progressive Acts in order to give justice to certain sections of the Indian population against the historic injustice made to them. A few of them include the Provisions of the Panchayats (Extension to Scheduled Areas) (PESA) Act, 1996, Right of Children to Free and Compulsory Education (RTE) Act, 2009, The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA), 2006, and the Transgender Persons (Protection of Rights) (TPA) Act 2019. The objectives of these Acts are to give justice by way of implementing various policies and programmes for the

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development of concerned sections of the population in the society. Among these Acts, TPA 2019 has been engaging at different sections of the society. The Act aims to abolish discriminations, recognition of identity, provisions of rights in day to day life by way of making welfare schemes for the transgender persons. Both the Government of India Ministries and the State Departments have committed to implement these Acts so as to translate the objectives into actions. During this preliminary phase of the Act, the country has introduced several measures. Government interventions on the subject have been the theme of discussion in this paper. It examines various provisions made in the Act, and critically reviews the achievements of various programmes adopted by the centre and state agencies and the achievements so far made in this regard.

The paper is based on secondary data available in the websites of different Ministries of the Central Government, the Department of various State Governments and research papers published in different books and journals on transgender issues. The paper is structured into four Sections. **Firstly**, it provides a conceptual understanding of the term transgender persons and the socio-cultural premises attached with the concept both at national and international levels. **Secondly**, it explains basic provisions of the Transgender Persons (Protection of Rights) Act 2019 of India with respect to its features and mechanisms of implementation as enshrined in the Act. **Thirdly**, the paper highlights some of the major achievements of the Transgender Persons (Protection of Rights) Act 2019 in different States and UTs of India. **Lastly**, the paper taking a critical stand gives few major findings and suggestions to strengthen the implementation of the Act and to ensure Rights of the Transgender persons as conceived in the Act.

1.1 Transgender Persons in India: A Social and Cultural Profile

Men or Women are the unique creation of the universe and is indeed an integral part of the nature. Transgender persons are one of the organic components of the society. It would thus be unethical to judge and discriminate people who may be different from either man or woman. Transgender person is a person having both the characteristics of man and woman, and thus suffers from a biological identity considered 'normal' in the society. The society imposes multiple socio-cultural identities on this biological entity of being neither 'normal' man nor woman. In India, transgender persons are named as *Hijras*¹, *Shiv-shaktis*², *Jogappas*³, *Open Kothi*⁴, and *Transgender*⁵ (KDS 2017:10). All these sections of the transgender persons suffer from bio-social identity crisis and constitute a marginalized section of the society.

All societies assign specific adult roles to the human being based on gender; these roles are hallmarks in the process of socialisation. For many people, the term sex and gender are used interchangeably. Although sex and gender are closely related, there is a subtle difference between the two. Sex refers to biological status as male or female. It includes biological attributes such as sex chromosomes, genes, sex hormones, internal reproductive structures and external genitals. Gender is a term that is often used to refer to ways that people act or feel themselves, which is associated with boy/man and girl/woman. While aspects of biological sex are the same across different cultures, aspects of gender may not be. Third Gender is the state of one's '*gender identity*' which does not match with one's '*assigned gender*' their gender differs from the sex that is assigned at birth (KDS 2017:10)

Government of India in its first major Census (2011) on transgender persons accounted the population to the tune of 4, 90,000. Around 66 per cent of the total population identified as transgender persons live in rural areas of India. The Census data also revealed their low literacy (46%) level in the community when compared with the literacy level (74%) of the general population. The accounting of the transgender persons by the Government reflects that their ratio to total population is higher in the State of Andhra Pradesh, Odisha, Madhya Pradesh, Jharkhand, Uttar Pradesh, and Uttarakhand, while in the State of Manipur. Gujarat and Kerala they are found in low ratio (ibid.).

Human being is the unique creature of the universe. While few believe on the scientific and biological principles of human being, a larger section of the society believes that the universe including the human being has been created by the God. This is the latter belief that has a bearing in the socio-cultural construct of transgender. Transgender persons are popularly known in different names is a person whose gender identity, gender expressions or behaviour does not confirm to their biology (Show 2015). The Supreme Court of India recognises the biological fact that the transgender persons do not have reproduction capacity either as man or woman and thus known as transgender as an institution (Bristow 1995).

In social context historically people have various notions about the transgender persons with respect to their biological, social, psychological determinants, dignity, and freedom (Dutt 2002 and Babbar 2016). But legal provisions do not discriminate them. According to the Right to Life and Liberty under Article 21 of Indian Constitution, a human being has the right over his/her privacy and dignity. Justice V.K. Krishna Iyer observed that human dignity is concerned with physical, psychological and integrity with empowerment. In spite of various Constitutional provisions and protections in India, the social structure of our country many times gives them a different status other than legal interpretations. The research study findings of Show (2015), Revathy (2014), Mittal (1988), Sharma (2009), and Reddy (2007) reveal that the transgender persons maintain comparatively a secret life and living, and are subject to exploitation and deprivation. They add a new perspective to human thinking beyond binary division of human as man and woman. Das (1965) and Jayaswal (2011) argue that existence of transgender persons in the society provides a new way to think about sex and gender corresponding to crucial contemporary debates within the social sciences on human dignity, human rights, identity, personality construction, and ethnicity.

1.1.1 Legal Safeguard

Articles 14, 15, 19 and 21 of Indian Constitution provides equal rights to all, transgendered persons included, without any legitimate State rationale to uphold such provisions. Supreme Court focuses on individual rights, promises to bridge the gaps between the Constitutional aspirations and ground realities. That is why transgender persons use these legal provisions to safeguard their rights and dignity. A study by Humsafar Trust on *Human Rights Violation Against Sexual Minorities in India* reveals that more cases against the gays filed in Delhi, Punjab, UP, West Bengal, Maharashtra, Gujarat, Karnataka and Manipur by using Section 377 where the gays, bisexuals, and lesbians have been victimised (Pandit 2018).

Looking at the historical injustice to the transgender community in India, the Supreme Court of India unanimously struck down a part of the 158 years old law under Section 377 of the IPC which had criminalised unusual and unnatural sex behaviour. The Delhi High Court in 2009 and the Supreme Court of India in 2018 have decriminalised gay sex. These two decisions opened the door for many young people to be open about their sexuality. This verdict is a land mark decision of India in a post-global era. By this an age old colonial law that was an anachronism in modern times ends restoring the fundamental rights and negating discrimination based on sexual orientation. This decision in India is a landmark and ground breaking victory in India.

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

The Transgender Persons (Protection of Rights) Act, 2019⁶ (also see GoI 2013), abbreviated to or TIP, 2019 is a progressive legislation against discrimination and social injustice to a section of population. The Act extends to the whole of India.

1.2.1 *Basic Features of the Act*

A few basic but crucial features of the Act are as follows:

- **Non-discrimination** against a transgender person in educational institutions, employment, healthcare services, etc.
- **Recognition of Identity** of Transgender persons and the right to self-perceived gender identity.

The Act provides for the transgender person to make an application to the District Magistrate for issuing a certificate of identity as a transgender person. The certificate issued by the District Magistrate confers rights and remains a proof of recognition of his/her identity as a transgender person. The Act provides the transgender person for changing the first name in the birth certificate on the basis of the certificate issued under section 6 or a revised certificate under sub-section 2. Application of the provision has wider scope. It also applies to change the first name all other official documents relating to the identity, 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.

- Provision of the **Right of Residence** with parents and immediate family members.
- Provision for the **formulation of welfare schemes** and programmes for education, social security, and health of transgender persons.
- Provision for **National Council for Transgender Persons** to advise, monitor, and evaluate measures for the protection of their rights.

The Act also ensures welfare provisions. The Act provides for the appropriate Government to take steps to secure full and effective participation of transgender persons in welfare programmes. The concerned Government also has to ensure their inclusion in society, protect of the rights and interests of transgender persons, and facilitate their access to government formulated welfare schemes. While formulating welfare measures the government has to ensure that these are basically transgender person 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 Government shall initiate appropriate measures to promote and protect the rights of transgender persons to participate in cultural and recreational activities.

The Act entrusts greater accountability on the part of the Central Government and State Governments/Union Territories Administrations for issues concerning transgender persons. As a part of the obligation, the government ensures non-discrimination of the transgender persons in any matter relating to employment, recruitment, promotion, and other related issues and shall ensure compliance with the provisions of this Act and provide such facilities to transgender persons as may be prescribed. In work place, the Act provides for 'Grievance' redressal mechanism with a provision of Complaint Officer to deal with the complaints relating to violation of the provisions of this Act. Every transgender person has the right of residence with the parent or immediate family members.

The State has the obligation of providing inclusive education, including the vocational training and self-employment opportunities for sports, recreation, and leisure activities to transgender persons. The Government shall ensure non-discrimination, participation on an equal basis with others, and access to social security and health provisions of transgender persons. The Act lists the obligation of the State for

- Establishment of separate Human Immunodeficiency virus Sero-surveillance Centres to conduct sero-surveillance for them.
- Providing medical care facility including sex reassignment surgery and hormonal therapy and counselling.
- Facilitating access to transgender persons in hospitals and other healthcare institutions and Centres.
- Provisioning for coverage of medical expenses by a comprehensive insurance scheme for Sex and Reassignment Surgery, hormonal therapy, laser therapy or any other health issues of transgender persons.

1.2.2 National Council for Transgender Persons

In exercise of the powers conferred by Section 16 of the Transgender Persons (Protection of Rights) Act, 2019, the Central Government constituted a National Council for Transgender Persons⁷ on 21st August 2020. The Union Minister of Social Justice & Empowerment is the Chairperson (Ex-officio) and the Union Minister of State for Social Justice & Empowerment is the Vice-Chairperson (Ex-officio) of the council. The other members of the Council include representatives of various Ministries/Departments; five representatives also represent the transgender community, the National Human Rights Commission (NHRC), and the National Commission for Women (NCW), State Governments and UTs, and experts representing NGOs.

The National Council for Transgender Persons is constituted to advise Government on policies, programmes, legislations, and projects with respect to transgender persons. As per the Act, the National Council shall perform the following functions:

- **Advise** the Central Government on the formulation of policies, programmes, legislations and projects with respect to transgender persons;
- **Monitor and evaluate** the impact of policies and programmes designed for achieving equality and full participation of transgender persons;
- **Review and Coordinate** the activities of all the departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to transgender persons;
- **Redress the grievances** of transgender persons; and
- **Perform** such other functions for the welfare of the Transgender Persons as may be prescribed by the Central Government.

A framework for conceptualising, designing, and implementing welfare and well-being measures for transgender people by United Nations Development Programme, India, 2021 includes health, good health, physical and mental wellbeing, education, achieving full learning potential, livelihood and skill building, economic security, and enterprise support, housing and food, adequate security and personal security, safety and protection from violence (Box-1). This framework has been well recognised by the Government of India as a part of the welfare measures.

1.3 Achievements of Transgender Persons (Protection of Rights) Act, 2019, Government Policies and Programmes

Government of India on 05.12.2019 enacted a historic Act titled *The Transgender Persons (Protection of Rights) Act, 2019* to provide justice, protection of rights of transgender persons and for their welfare. As envisaged under section 22 of the Act, the Ministry of Social Justice and Empowerment, Government of India has notified Transgender Persons Protection of Rights Rules, 2020 on 10th January, 2020. The Rules, inter-alia provides for recognition of identity of

transgender persons, Right to self-perceived gender identity, non-discrimination against a transgender person, Right of Residence with parents and their immediate family members.

Box-1. Framework for social welfare of Transgender persons in India to ensure quality life with dignity

Health, Good Health, Physical and Mental Wellbeing	Education achieving full learning potential	Livelihood and Skill Building, Economic security and Enterprise support	Housing and Food, Adequacy Security	Personal security, Safety and Protection from violence
-Improving access to gender-affirmative therapies & general healthcare -Ensuring trans-inclusivity in national health policies/ programmes -Ending HIV epidemic among trans people by 2030 - Creating & using research evidence base to reduce health inequalities EDUCATION	-Providing financial assistance to gender-diverse children and their families -Providing free or subsidised school and college education -Ensuring trans-inclusive infrastructure at safe educational settings -Capacity-building on gender diversity in educational settings LIVELIHOOD	-Improving employability through skill-building & supporting businesses -Offering financial support for unemployed and older people -Creating safe & Discrimination free, Trans-inclusive working environment -Improving representations in jobs through reservations HOUSING & FOOD	-Improving access to adequate housing -Providing temporary shelter for those in need and crisis -Improving access to subsidised or free food -Reducing poverty to improve nutritional status PERSONAL SAFETY Safe & protected	-Creating awareness about trans people and promoting acceptance -Establishing and strengthening redressal mechanisms -Providing support Services to victims of violence -Improving awareness among trans people about their rights.

Source: UNDP 2021

1.3.1 Citizenry Rights and Possession of ID Proofs

The Act recognises the rights of the transgender persons through the following provisions like a citizen rights in India. More specifically the Act has the

- Provision of grievance redressal platform and specific help line number for transgender persons.
- Amendment in Law for child adoption & rendering care as a single parent.

- Provision for all basic identity proofs like birth certificate, death certificate, voter Id, Aadhar card, PAN card, ration card, ATM, vehicle license, Samagra Id, passport etc.
- Members of the transgender community shall be provided with transgender identity card, which shall be linked to Aadhar card. This transgender person Id card will enable them to avail any of the required services.
- Provision of changing name in the public document.
- Inclusion of transgender persons in all applications/ forms.
- Transgender persons shall be refrained from being called as *Chhakka, Hijra, Mamu*, etc. in public. They must be known and addressed by their name. Strict provision is made in this regard.

1.3.2 Status of issue of Transgender Persons Certificate and Transgender ID Card

The Transgender Persons (Protection of Rights) Act 1919, as is mentioned above, recognised the fact that the transgender persons have the right for the self-identification of their gender. On the basis of the Act several measures have been initiated. The Support for Marginalised Individuals for Livelihood and Enterprise popularly known as the SMILE scheme focuses on the welfare of the transgender persons and comprehensive rehabilitation of persons engaged in begging. This umbrella scheme covers rehabilitation, provision of medical facilities, counselling, education, skill development, and economic linkages with the support from State and Central government, urban bodies, voluntary organisations, Community Based Organisations, etc. The National Portal of the Ministry of Social Justice and Empowerment provides the facility for the transgender persons to apply for certificate and identity cards. It is a mandatory requirement to get welfare measures provided under SMILE scheme. As per the Ministry data, 8236 transgender persons have been issued with Transgender Certificate, 8251 transgender persons issued with ID Card, and 2281 persons issued with Transgender Certificate and ID Card. It is mandatory for the district authorities to issue Transgender Certificates & ID Cards within 30 days of receiving the applications from the transgender persons.

1.3.3 Scholarship Schemes for the Transgender Students

For the educational development of the transgender persons Government of India has made the provision of scholarships at various levels of education for the transgender students. They are:

- Scholarship Schemes for the transgender students at the level of Secondary School Education of 9th and 10th standards
- Scholarship Schemes for the transgender students at the level of Senior Secondary Education of 11th and 12th standards
- Scholarship Schemes for the transgender students pursuing Under-Graduate/Diploma courses
- Scholarship Schemes for the transgender students pursuing Post Graduation courses

1.3.4 Comprehensive Rehabilitation for the Welfare of Transgender Persons

In order to implement to the Transgender Persons (Protection of Rights) Act 1919, different Ministries of the Government of India have framed and implemented various welfare programmes. A few of them are as follows:

- Scholarships for Transgender Students
- Skill Development and Livelihood for the empowerment of transgender community
- Composite Medical Health for transgender persons
- Housing in the form of 'Garima Greh' for transgender Persons

- E-Services through National Portal, Helpline and Advertisements
- Provision of Transgender Protection Cell
- Ministry has initiated 12 pilot Shelter Homes namely '**Garima Greh**'
- Ministry of Social Justice and Empowerment has formulated a scheme 'SMILE – Support for Marginalized Individuals for Livelihood and Enterprise', which includes a sub-scheme - 'Central Sector Scheme for Comprehensive Rehabilitation of persons engaged in the Act of Begging'.

1.4 Functional status of the Transgender Persons (Protection of Rights) Act 2019 in different States

India is a land of diversities reflected in the areas of cultural practices, beliefs, economy, geography, ecology, governance, etc. In such a plural situation, it is difficult to maintain the uniformities and a level of development unless the State governments have the will power and commitments to adopt the Acts formulated by the Government of India in spirits and action. Keeping this in mind, the following section has attempted to find out the implementation status of the Transgender Persons (Protection of Rights) Act 2019 in different States of India.

1.4.1 The State of Tamil Nadu

The State of Tamil Nadu is pioneer in the country to form Transgender Persons Welfare Board in 2008⁸. According to the policy, transgender people can access free sex reassignment surgery in government hospitals, free housing, various citizenship documents, admission in government colleges with a full scholarship for higher studies and initiating Income-Generation Programmes (IGP). The State has strengthened the Tamil Nadu Aravanigal (Transgender) Welfare Board to address the needs of the Transgender persons and to converge various welfare schemes for the transgender persons. Third Gender who are inclined to earn their livelihood through a decent and respectable profession are provided with financial assistance to start-up small businesses like setting up of grocery shops, rearing of milk animals, opening canteens, cloth, coir, rice and vegetable vending. Financial assistance is also given for buying auto for passenger transport and goods auto for business activities. The Government provides monthly pension to help Third Gender who are above the age of 40 years.

Tamil Nadu Aravanigal (Transgender) Welfare Board constituted in the year 2008 to address the needs of the Transgender persons. The Board is consisting of 22 members, presided by the Minister Social Welfare, with 11 Official members and 8 non-Official members representing the Transgender community. Studies by UNDP (2014) and USAID (2014) said that this Board is functioning well in initiating welfare schemes, facilitating the accessibility of the transgender community to such benefits. However, the Board is unable to process the Identity cards to the transgender persons. The Government has proactively initiated the process in various Government Departments for the transgender persons to lead a dignified life in the Society. Till 2020, five transgender persons have been recruited as Sub Inspector and Constables in State Police Department and two transgender persons are posted as Physiotherapist and Lab Assistant in Health Department. In the Social Welfare Department, two transgender persons have been appointed as Nutritious Meal Organiser and Cook. Two of them have been appointed as Office Assistant and Jeep Driver. Further, eight Third genders have been appointed as Security Guard in Government Medical College, Thanjavur District. An '**Award for the Third Gender**' of Rs.1.00 lakh and a citation has been instituted from the year 2020 to encourage the Third Gender who has done eminent work for the welfare of third gender persons and who has built their career on their own efforts. The award is felicitated on '**Third Gender Day**' which falls on 15th April of every year.

In Tamil Nadu approximately 65 per cent general population supports transgender persons for their rights and betterment. But, still transgender population face stigma and discrimination, so

there should be an awareness campaign for general community as well as for the government officials. Tamil Nadu Government has adopted various Government Orders for various welfare purposes of the Transgender Persons. They are as follows,

- Transgender Persons Membership ID card Relaxation Form
- Form of Certificate for transgender persons and change of gender to be issued by the District Magistrate
- Award of the best transgender person by the Social Welfare and Nutritious Meal Programme Department
- Allocation of flats to transgender persons by Tamil Nadu Slum Clearance Board.
- Approval of the scheme of Rs.15.00 lakhs (with 25% subsidy) by Social Welfare Board to transgender persons managing Self Help Groups (SHGs).
- Supporting various Livelihood entrepreneurship and business shops like jewellery, idly, etc. shops managed by transgender persons.

1.4.2 The State of Kerala

Kerala, India was the first state in the country to create a comprehensive policy in 2015 based on a state wide survey (2014-15) and implement it for transgender people⁹. The Transgender community faces many problems like fear, shame, social discrimination, depression, suicidal tendencies and social stigma. They are unable to live a dignified life, once their gender status is revealed. The State has taken various steps to create public awareness so that transgender persons feel that they are a part of society and are not treated as untouchables. The Kerala High Court during COVID-19 pandemic issued directions in order to put an end to the issues faced by the transgender community (1 July 2020). Kerala government has made few schemes for the development of the transgendered persons.

- Sakalyam scheme of vocational training to transgender persons
- Karuthal scheme for transgender persons
- Varnam scheme for transgender students pursuing distance education
- Financial assistance to transgender for self-employment.
- Samanwaya continuing education programme for transgender persons.
- Marriage assistance for legally married transgender persons.
- Financial aid to transgender persons for Sex Reassignment Surgery (SRS).
- Hostel facility for the transgender persons
- Establishment of 24x7 helpline for the transgender persons
- Various schemes for imparting skill development programme to transgender persons.

14.3 The State of Karnataka

The Government of Karnataka in pursuance with the Supreme Court decision of *NALSA vs. Union of India*¹⁰ recognised the structural discriminations faced by the transgender persons in the areas of health, education, housing, and employment, etc. The policy on transgender persons in Karnataka addresses three pronged approach based on the enforcement of constitutional guarantees of equal access, non-discriminations, and dignity; identification of responsible State institutions and departments; and defining accountability mechanisms. The State has different implementing agencies to achieve the targets. They are: The Cell for Transgender Persons, Transgender Persons Support Unit and the Co-ordination Committee, and Monitoring Committee. These agencies have focused more to develop welfare programmes, issuing identification card, and conducting sensitisation programmes. The physical achievements of such efforts are yet to be documented for public knowledge.

1.4.4 The State of Odisha

The State of Odisha in consonance with the ‘Transgendered Persons (Protection of Rights) Act 2019, has formulated a draft Rule of *Odisha State Transgendered Persons Policy 2021*¹¹. The policy has clearly spelt out the situation of the transgendered people, mandate of the State, goals and objectives, strategic interventions, implementation, monitoring and evaluation details in the line of the Central Act of ‘The Transgender Persons (Protection of Rights) Act 2019’. A **Portal for Transgendered Persons** has been developed seeking applications from the transgendered persons to get the ID Card.

1.4.4.1 Sweekruti Odisha, 2017

The Government of Odisha formulated an umbrella scheme ‘Sweekruti’ to secure the rights of transgender persons and ensure equitable justice. It recognises that transgender persons are subject to discrimination and hardships in society. It recognises the need to create an enabling environment for transgender persons to ensure their participation and social integration, strengthen the implementation of various schemes and facilities, and promote measures for employment and socio-educational services for transgender persons. The following major focus has been given by the Government of Odisha for the development of the transgender persons of the State.

- Survey and identification of all transgender persons in the State, and issue certificates and multipurpose smart cards.
- Assist the parents of transgender children and provide pre-and-post-metric scholarship.
- Upgrade skills and entrepreneurship development training by strengthening self-help groups.
- Provide support for critical health care and group insurance support for transgender persons.
- Provide legal aid, counselling and guidance services for transgender persons.
- Organise awareness and sensitisation campaigns on rights of transgender persons and provide training to staff and volunteers.

Introduction of a Multipurpose SMART Card: A multipurpose SMART card is provided to all transgender persons. The purpose is to enable enrolment in schemes and provision of services. It also assists in monitoring the benefits utilised and identifying the type of services required by transgender persons.

Assistance to Parents of Transgender Persons: The scheme provisioned providing awareness and sensitisation to parents to provide support to their gender non-conforming children. This is particularly relevant because transgender children are at the risk of being bullied. They are also more likely to face violence within the extended family and in schools.

Pre-and Post-Metric Scholarships: The scheme provides for scholarships for transgender students to help them complete their education. It lays down the extent of scholarship for different categories of transgender students in Odisha.

Personality Development: In order to address the effects of oppression and deprivation of transgender persons, the State provides mental health and counselling support, personality development training, and support for office furniture, equipment and other expenses. Odisha extends *Madhu Babu Pension Yojana* benefits to around 5000 transgender persons with a monthly pension of Rs 500/- to 900/-.

Skill Up-gradation, Training, and Self-Employment: In order to increase employment opportunities for transgender persons the scheme provides for assistance with skill up-gradation, securing employment and engaging in income-generating activities. Further, it suggests providing for self-employment kits and encourages group endeavours to initiate income generating projects not exceeding a one-time investment of Rs. 20.00 lakhs. Similarly, self-help groups formed by transgender persons and registered with the District Social Security Office will be provided Rs. 50,000 for their initial activities.

Sensitisation on Transgender Rights and Entitlements: The scheme notes that the provision of services and schemes for transgender persons requires various departments to act in coordination. Many employees in these departments often lack basic knowledge and understanding of issues that are central to the transgender community. Therefore, the policy provides that the State must make provisions to provide training to government employees, NGO heads, corporate managers and positions concerned with public requirements. Similarly, there is lack of awareness among the transgender community and their families on targeted welfare schemes. The scheme lists several participatory activities such as cultural programmes, TV/radio publicity, posters, publications of newsletters, etc, which can generate awareness among the transgender community on their rights and entitlements.

Research and Documentation on Transgender Issues: The scheme emphasises the significance of the research and documentation on transgender issues. It states that transgender persons have a range of rights based concerns including hate crime laws inclusion, equal rights in housing, employment, non-discrimination, bathroom use, changing name and gender on public documents, marriage rights, medical insurance, and financial assistance. Since the lived experience of the transgender persons matters in determining future action, the scheme recognises the need for research support on transgender issues and rehabilitation models for their empowerment.

Budget allocation and utilisation: In Odisha, budget allotted to Transgender Persons Welfare Board was high, but due to political issues funds remained unutilised. There needs to be a mechanism to utilise the fund judiciously.

1.4.4.2 Portal for Transgender Persons

In the line of the National Portal for the Transgender Persons, the Government of Odisha has developed a portal for the transgender persons of the State. This portal helps the transgender persons to register to get their IDs for identification. The government also monitors their plans and programmes for the development of the transgender persons, following the timeline by the authorities while responding the timely requirements of the transgender persons. The objectives of the State Transgender Persons policy are: to ensure dignity and protection, to create public awareness, to facilitate their accessibility to various avenues, to promote equal rights, and to promote employability of the transgender persons. Major strategies adopted by the State to implement the Act includes improving accessibility, freedom of expression, dignity and life without violence, equal access to education and health services, infrastructure facilities, creating employment opportunity, right to family life, right over homestead land and housing, food security, facilitation in transport, social security and inclusion, offences and penalties, establishment of state level Transgender Welfare Board, provision of providing helpline and undertaking monitoring, and evaluation activities concerning the Transgender persons.

1.4.4.3 Development programmes for the Transgender Persons

Government of Odisha has strategically adopted convergence methods for existing government welfare schemes to address most of the problems faced by transgender persons. It places the

obligation on coordinating and converging existing schemes of the District Administration. In particular, the scheme specifies that the Block Administration must (a) ensure coverage of transgender persons under various poverty alleviation schemes; (b) sensitise local leaders on transgender rights and issues; and (c) increase participation of community-based organisations at the grass root level.

Odisha is the first State to give the Transgender Persons pension popularly known as Madhu Babu Pension scheme, housing and food grains to improve their overall social and economic status. The Department of Social Security of the State acknowledges that lack of access to education and employment opportunity has forced many transgender persons into sex work, moving around organised begging or demanding money. As per the government record, Odisha has around 40,000 transgender persons. Meera Parida the Chairperson of 'All Odisha Third Gender Welfare Trust' is all praise of the Government of Odisha for creative programmes for the transgender persons adopted by the State.

1.4.5 The State of Madhya Pradesh

The State of Madhya Pradesh has adopted a Transgender Persons Policy¹² which aims

- to ensure the effective implementation of 'The Transgender Persons (Protection of Rights) Act, 2019 in the State;
- to expand outreach services for the protection of rights and entitlements of transgender persons in the State;
- to promote individual and group endeavours by transgender persons for employment, as well as for self-employment;
- to build an enabling environment to ensure equal opportunities, equity, social justice and empowerment of transgender persons of the State;
- to live with dignity and enjoy a life free from all forms of violence along with freedom of expression in all matters;
- to encourage voluntary action and participation of all stake holders for ensuring effective social integration of transgender persons;
- ensure their participation in the key development decisions that shape their lives and community;
- to strengthen the existing implementation mechanisms and create facilities for the coverage of all transgender persons of the state.

Transgender Persons Policy in Madhya Pradesh is committed to

- ensure that all rights of transgender persons are protected and enforced, including the right for self- identification of gender as man, woman, or transgender persons.
- ensure equal access to all services of the Government.
- provide mechanisms to improve the lives of transgender persons.
- create public awareness so that transgender community feel that they are also part of the social life and not be treated as untouchables.
- develop effective mechanisms to address issues of violence and harassment faced by transgender persons.
- effective implementation and monitoring that Transgender Persons rights are being protected and implemented.

1.4.6 The State of Chhattisgarh

There are contradictory figures for the count of transgender persons in the state of Chhattisgarh¹³. While the Census of India, 2011 figure depicts a total number of 6591 transgender persons, a

separate survey done by the Social Welfare Department of the Government of Chhattisgarh put the figure of about 2500 transgender persons for the state. However, there are a few policies and programmes to address issue of transgender persons. *Chhattisgarh State Inclusive Sanitation Policy for Transgender Persons with disabilities and Transgender Persons, 2018* (WaterAid n.d.) is a crucial step in this regard. The policy is applicable to the entire state of Chhattisgarh, rural and urban which includes government, public sector undertaking, private public places, and local self-government as defined in the annexure with focus on transgender persons also. The policy uses powers conferred by Article 38 read together with Article 39(a) and 39(b) of the Constitution of India with a view to empower transgender persons adopted in the State. This policy of Chhattisgarh recognises the enormous task and commits itself to pioneer many social sector programmes including disability and transgender persons in the State. Chhattisgarh Police has recruited 13 transgender persons as constables in an effort to boost the confidence of people from the community and change the society's perception towards them. Of the successful candidates, eight belong to Raipur district; two are from Rajnandgaon, and one each from Bilaspur, Korba, and Surguja districts.

Bharat Aluminum Company or BALCO also inducted four members from the transgender community into its workforce recently to work as fork lift operators with the PSU's contractual company Ms. Gears India Limited. Bhawani Rathia, a trans-woman, left her parents' house in Raigarh district last year after transitioning against their wishes and knowledge. She lived at Garima Greh, a shelter house for transgender persons, where she took nearly all the courses the home provided which includes cooking spoken English and job applications. Rathia told that the job was only a beginning but a good one. 'We are treated nicely and given a lot of respect for which we have tremendous gratitude. I am glad to have a job with BALCO,' she said. According to Vidya Rajput, member of the State's Third Gender Welfare Board and Director of Chhattisgarh Mitwa Sankalp Samiti, viewed that this is their second batch of transgender persons to gain employment. BALCO CEO Abhijit Pati congratulated the transgender community for ushering in a social change and dispelling myths within the company. He said, 'Any industry running on skills is not dependent on gender. Skills are cultivated by hard work and we at BALCO are ready to include the till-now ignored Transgender Persons into our task force'.

1.5 Discussion

The Transgender Persons (Protection of Rights) Act, 2019 approved and implemented by the Government of India is a hall mark achievement in the history of democratic India. The Act is very clear and transparent in its goal and objectives. The modus operandi adopted by the Central Government for the transgender persons under the purview of the Act is more holistic and integrated. In a federal system of governance, the State governments are to implement any Act adopted by the Central Government in word and spirit. This is an opportunity to make use of the Central supports for the States to build up the processes of development in a uniform manner. In this process they channelize more resources from the centre for the development of their people and to ensure more inclusive development on the principle of *Sabka Saath and Sabka Vikas*.

The review of the Transgender Persons (Protection of Rights) Act 2019 reflects that many State governments have not taken the long term objectives of this Act and its relevance to the society in the socio-cultural fronts of life and living of the people. All the State governments have not taken the Act in a similar manner of seriousness so as to implement the provisions of the Act. A few State governments are yet to frame their Rules to implement the Transgender Act which will make the processes more easy and binding on the State departments. Regular monitoring by the Government of India through specified monitoring mechanisms may be made through a systematic regular manner for a period of at least 10 years so as to make the Act as a part of the implementation, monitoring and reporting system in the governance. Few States have

implemented the Act looking at addressing the local need of the transgender persons. But most of the States are not serious in implementing various programmes provisioned by the Central Government for the development of the transgender persons in a time bound manner.

Involvement of Civil society organisations in managing Shelter House, awareness building and training of the transgender persons is also very less. Involvement of Academic organisations in disseminating the Act and its provisions is very meagre, need to be a part of the educational programme implementation. Non adoption of a time bound implementation of the Act by states left many States at their own will for the implementations of this Act. The educational programmes for the transgender persons are not implemented seriously by the States portending a long term effect on the transgender community. The Transgender Persons (Protection of Rights) Act 2019 inherently imbued with a lot of potentiality to bring changes in the society by creating opportunities for internalising the socio-cultural and psychological processes among not only the transgender persons, but also in the society as a whole. However, such results are subject to a rigorous implementation and visibility of the activities implemented under the Act.

1.6 Suggestions: In Lieu of Conclusion

The following suggestions are made for the welfare of transgender persons:

- With the support from different Government Line Departments and the local NGOs, a need assessment may be made for the transgender community in different States to prepare a package programme for the development of the transgender persons.
- Documentation may be made to find out the regional variations in the beliefs and practices of the societies towards the transgender persons and it may be incorporated in the education planning starting from the primary level.
- Transgender Persons development should be a part of the National Education Programme 2020 emphasising more on regional contents. A data bank may be maintained at State level while issuing IDs to the transgender persons. This will ensure transgender adolescents feel physically and emotionally safe while engaging with the development programmes.
- Social media such as Facebook, Blogging, SMS audio and video based advertisements may be developed based on secular concepts like gender equality, human rights and democratic values so as to bring an attitudinal change in the minds of the people.
- Training should be provided to teachers in schools or health staff in government hospitals to manage this special category population. Basic need based services be provided in a holistic manner to the transgender persons by making it cost and time effective.
- Emphasis is given to 'Do No Harm' approach while supporting transgender persons. Before starting an intervention, a robust assessment of the specific local environment (social, legal, religious, etc.) related to sexual orientation and gender identity may be made involving the civil society organisations.
- Civil societies are to work in close coordination with local transgender groups, seeking their guidance on the potential risks involved and the livelihood strategies to mitigate them. Two-way, mutually beneficial relationships rather than simply 'extracting information' from such groups be encouraged.
- Informed consent may be taken from the transgender persons while dealing with them. While communicating with the transgender persons one should avoid negative or value loaded images and terminologies that could imply cultural imperialism or racism, which undermine their dignity.
- Transgender adolescents in needs of 'safe houses', if they are made homeless or emergency medical care if they experience violence, be provided immediately. A comprehensive long term and short term approach may be adopted to support transgender

community and their adolescents particularly. This might involve combining programmes to directly support transgender adolescents with advocacy to achieve a supportive policy environment involving transgender adolescents themselves, other adolescents, parents, community leaders, religious leaders and government officials.

- The state is to enforce a ‘Zero Tolerance Policy’ for transgender persons’ related stigma and discrimination. This might include a system to document incidents of abuse; give formal warnings; and, if necessary, issue dismissals. It should be incorporated into the standard package of staff induction, training, and performance appraisal.

Notes

1. **Hijra**-The term *Hijra*, which, is of Urdu origin and the masculine gender has the primary meaning of hermaphrodite. It is usually translated as *eunuch*. In our country *Hijra* means those who are anatomically true hermaphrodite and a special distinguished group of individuals from both men and women and attributed them with a constellation of traits comparable to those traits used to define other gender.
2. **Shiv Shakti**- The *Shiv Shakti* is one of the transgender categories who only worship God Shiva. They are directly linked between society and the divine. However, owing to their identity and gender expression, they also transgress the binary norms of gender and sexuality held sacrosanct by societies everywhere.
3. **Jogappa**- The *Jogappas* are one of the least known transgender communities in South India. They are ‘caught’, possessed, by the goddess *Yellamma*. They are regarded as holy women, and their gender identity and expression reflects this.
4. **Open Kothi**- A *Kothi or Koti*, in the culture of the Indian subcontinent, is an effeminate man or boy who takes on a female gender role in same sex relationships, often with a desire to be the penetrated member in sexual intercourse. The word *Kothi (or Koti)* is common across India.
5. **Transgender**- Person appearing and identifying as neither man nor woman, presenting a gender either mixed or neutral.
6. [https://www.google.com/search?q=The+Transgender+Persons+\(Protection+of+Rights\)+Act%2C+2019&oq=The+Transgender+Persons+\(Protection+of+Rights\)+Act%2C+2019&gs_lcrp=EgZjaHJvbWUyBggAEEUYOdIBCDIyMjJqMGo3qAIIIsAIB&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=The+Transgender+Persons+(Protection+of+Rights)+Act%2C+2019&oq=The+Transgender+Persons+(Protection+of+Rights)+Act%2C+2019&gs_lcrp=EgZjaHJvbWUyBggAEEUYOdIBCDIyMjJqMGo3qAIIIsAIB&sourceid=chrome&ie=UTF-8)
7. For the structure of National Council for Transgender Persons see <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1648221>
8. For the discussion on the board, policy, implementation, recruitment of transgender persons and award see
 - (i) <https://www.tnsocialwelfare.tn.gov.in/en/specilisationstransgenders-welfare/tamil-nadu-transgender-welfare-board>;
 - (ii) https://images.assettype.com/barandbench/2023-01/1d404a86-e08f-4958-a353-d1d16dd402ec/Tamil_Nadu_government_gazette.pdf;
 - (iii) <https://tg.tnsw.in/webapp/index.aspx>
9. For the policy, its implementation, schemes, and the work of Social Justice Department see
 - (i) https://sjd.kerala.gov.in/beneficiary-info.php?benef_sl=Nw==
 - (ii) <https://sjd.kerala.gov.in/index.php>
 - (iii) <https://translaw.clpr.org.in/reports-and-policies/state-policy-for-transgenders-in-kerala-2015-2/#:~:text=It%20further%20recommends%20recognising%20the,organisations%20working%20for%20their%20development.>
10. For the Supreme Court decision pertaining to NALSA (National Legal Services Authority of India) vs. Government of India and transgender persons policy in Karnataka see
 - (i) <https://translaw.clpr.org.in/case-law/nalsa-third-gender-qidentity/#:~:text=This%20was%20a%20landmark%20decision,Constitution%20and%20under%20International%20law.>
 - (ii) kswdc.karnataka.gov.in/uploads/media_to_upload1655970330.pdf

11. For State government's policy for transgender persons, policy guidelines, sweekruti and development schemes, communication between the government and transgender organisation see
 - (i) <https://ssepd.odisha.gov.in/sites/default/files/2024-01/ODISHA%20STATE%20TRANSGENDER%20PERSONS%20POLICY%202021.pdf>
 - (ii) [https://translaw.clpr.org.in/reports-and-policies/sweekruti-odisha-a-scheme-for-promotion-of-transgender-equality-justice-2017/#:~:text=%26%20Justice\)%2C%202017-SWEEKRUTI%20ODISHA%20\(A%20Scheme%20for%20Promotion%20of%20Transgender%20Equality%20%26%20Justice,discrimination%20and%20hardships%20in%20society.](https://translaw.clpr.org.in/reports-and-policies/sweekruti-odisha-a-scheme-for-promotion-of-transgender-equality-justice-2017/#:~:text=%26%20Justice)%2C%202017-SWEEKRUTI%20ODISHA%20(A%20Scheme%20for%20Promotion%20of%20Transgender%20Equality%20%26%20Justice,discrimination%20and%20hardships%20in%20society.)
 - (iii) <https://ssepd.odisha.gov.in/sites/default/files/2024-01/Guideline%20on%20Sweekruti.pdf>
12. See https://aiggpa.mp.gov.in/uploads/project/State_Transgender_Policy1.pdf
13. Chhattisgarh has initiated diverse schemes for the welfare of the transgender persons. The discussion is based on information available at
 - (i) <https://www.balcoindia.com/news-room/press-releases/list/balco-welcomes-transgender-professionals-into-its-workforce/>
 - (ii) <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2004124>
 - (iii) <https://theprint.in/india/chhattisgarh-police-recruits-13-transgender-people-as-constables-for-first-time/615546/>
 - (iv) www.nitiforstates.gov.in
 - (v) <https://sw.cg.gov.in/en>

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