

Legal Identity-The Transgender Persons (Protection of Rights) Bill, 2019

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Introduction

Every human being is guaranteed inalienable human rights in accordance with international legal standards. For many trans people, these rights exist only in form, not in substance. Trans people are denied not only fundamental rights to equality, dignity, health and security of being, but their very personhood. Trans people experience grave marginalization, discrimination and violence. Trans people in many countries suffer from a lack of legal recognition, equality and protection, and fundamental citizenship rights. These include the right to a legal identity based on the gender of their choosing, and the right to gender equality and equity, i.e. non-discrimination in all spheres of life based on their gender identity or gender expression. In India there are many activist done movement for rights of tras people. Building on the success of activists who had worked with the national government to establish a Transgender Welfare Board, the hijra and trans women community in the Indian state of Maharashtra advocated successfully for the Women Policy 2014. The policy, which was developed by the state's Women and Child Development Department, acknowledged for the first time the human rights and the needs of hijras and trans women and committed to take action in several areas. In 2014, India's Supreme Court directed the government to recognize trans people as a third gender and trans women who identify as female, and trans men who identify as male, while guaranteeing the right to equality under the country's constitution. It called for special health and welfare programmes to support

the needs of trans people. Base on this direction many changes in basic bill from 2014 to 2018 the central government passed The Transgender Persons (Protection of Rights) Bill, 2019

Background of bill

In 2014, the Supreme Court of India delivered its judgment in *National Legal Services Authority v. Union of India* which first time recognized the rights of the transgender persons in India and laid down a series of measures for securing transgender persons' rights by mandating prohibition of discrimination, recommending the creation of welfare policies and reservations for transgender persons in educational institutions and jobs. The judgment upheld the right of a transgender person to self-perceived gender identity, guaranteed by the Constitution of India, in the absence of sex reassignment surgery. The judgment in *NALSA v. UOI* also noted the presence of transgender persons in India throughout its history, and made reference to the hijra, kinnar, and jogta communities, spread across the country and beyond in the Indian subcontinent.

Expert Committee report on issues relating to transgender persons was published in January 2014, after consultations by the Ministry of Social Justice and Empowerment with transgender persons in August 2013. In this background, Tiruchi Siva of the Dravida Munnetra Kazhagam party introduced a private member's bill in the Rajya Sabha, namely the Rights of Transgender Persons Bill (No. XLIXC-C), 2014.

The government had initially asked him to withdraw the bill citing various anomalies; however, the opposition had a majority in the house and the bill was unanimously passed by the Rajya Sabha on 24 April 2015. The bill was welcomed by queer rights activists in India. However, some transgender persons noted their absence in the entire process and called for their recommendations being sought for. Following the passing of the Rights of Transgender Persons Bill, 2014 in 2015, it stood to be the first private member's bill to be passed by the Rajya Sabha in the preceding thirty-six years and by the Parliament in the preceding forty-five years. Until 2015, only sixteen private member's bills had stood passed since 1947. The 2014 bill underwent

significant changes when the government drafted its own version of the bill, with omissions of provisions in the 2014 bill. After recommendations were received from transgender persons, the bill was sent to the Law Ministry. It came to be known as the Rights of Transgender Persons Bill, 2015. Later, on 26 February 2016, the bill was introduced in the Lok Sabha for debate by Baijayant Panda of the Biju Janata Dal party. He argued that the bill would help extend constitutional rights and end the discrimination against transgender people, allowing them to live a life of dignity. The bill was discussed in the Lok Sabha on 29 April 2016. Siva stated that he will not be withdrawing the 2014 bill. While the 2014 bill passed by the Rajya Sabha continues to be pending, the government tabled the Transgender Persons (Protection of Rights) Bill (No. 210), 2016, on 2 August 2016, following the constitution of the Lok Sabha, post the 2014 general elections. The 2016 bill had various provisions regressive to the provisions in the 2014 bill. The bill was met with criticism and protests from Indian transgender persons and was referred to the Standing Committee, which submitted its report in July 2018. The Lok Sabha tabled and passed a newer version of the bill with twenty-seven amendments on 17 December 2018. The bill was once again met with severe criticism and protests pan-India, as it overlooked the commendations made by the Standing Committee and suggestions offered by transgender persons. However, the 2018 bill stood lapsed. Following the constitution of the Lok Sabha, post the 2019 general elections, the bill was reintroduced on 19 July 2019 by the Minister of Social Justice and Empowerment, Thawar Chand Gehlot. The bill was passed by a voice vote in the Lok Sabha on 5 August 2019, amidst chaos following the revocation of Jammu and Kashmir's special status by the Parliament.

Objective of bill

- To provide for protection of rights of transgender persons
- To provide them their welfare
- Any other matters connected therewith

Features of the Bill

- **Definition of a transgender person:** The Bill defines a transgender person as one whose gender does not match the gender assigned at birth. It includes trans-men and trans-women, persons with intersex variations, gender-queers, and persons with socio-cultural identities, such as kinnar and hijra. Intersex variations is defined to mean a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes, or hormones from the normative standard of male or female body.
- **Prohibition against discrimination:** The Bill prohibits the discrimination against a transgender person, including denial of service or unfair treatment in relation to: (i) education; (ii) employment; (iii) healthcare; (iv) access to, or enjoyment of goods, facilities, opportunities available to the public; (v) right to movement; (vi) right to reside, rent, or otherwise occupy property; (vii) opportunity to hold public or private office; and (viii) access to a government or private establishment in whose care or custody a transgender person is.
- **Certificate of identity for a transgender person:** A transgender person may make an application to the District Magistrate for a certificate of identity, indicating the gender as 'transgender'. A revised certificate may be obtained only if the individual undergoes surgery to change their gender either as a male or a female.
- **Welfare measures by the government:** The Bill states that the relevant government will take measures to ensure the full inclusion and participation of transgender persons in society. It must also take steps for their rescue and rehabilitation, vocational training and self-employment, create schemes that are transgender sensitive, and promote their participation in cultural activities
- **Employment:** No government or private entity can discriminate against a transgender person in employment matters, including recruitment, and promotion. Every

establishment is required to designate a person to be a complaint officer to deal with complaints in relation to the Act.

- **Right of residence:** Every transgender person shall have a right to reside and be included in his household. If the immediate family is unable to care for the transgender person, the person may be placed in a rehabilitation centre, on the orders of a competent court.
- **Education:** Educational institutions funded or recognised by the relevant government shall provide inclusive education, sports and recreational facilities for transgender persons, without discrimination.
- **Health care:** The government must take steps to provide health facilities to transgender persons including separate HIV surveillance centres, and sex reassignment surgeries. The government shall review medical curriculum to address health issues of transgender persons, and provide comprehensive medical insurance schemes for them.
- **National Council for Transgender persons (NCT):** The NCT will consist of: (i) Union Minister for Social Justice (Chairperson); (ii) Minister of State for Social Justice (Vice-Chairperson); (iii) Secretary of the Ministry of Social Justice; (iv) one representative from ministries including Health, Home Affairs, and Human Resources Development. Other members include representatives of the NITI Aayog, and the National Human Rights Commission. State governments will also be represented. The Council will also consist of five members from the transgender community and five experts from non-governmental organisations.
- The Council will advise the central government as well as monitor the impact of policies, legislation and projects with respect to transgender persons. It will also redress the grievances of transgender persons.
- **Offences and penalties:** The Bill recognizes the following offences against transgender persons: (i) forced or bonded labour (excluding compulsory government service for

public purposes), (ii) denial of use of public places, (iii) removal from household, and village, (iv) physical, sexual, verbal, emotional or economic abuse. Penalties for these offences vary between six months and two years, and a fine.

Activist views on Bill

- Activists had problems right from the beginning, starting with the name. 'Transgender' was restrictive
- Change of gender identity in documents cannot be done without a certification by the District Magistrate after proof of a sex reassignment surgery is provided. This goes against the principle of self determination itself,
- Families are often a source of gruesome violence against the trans community leading them to separate from the natal family.
- It does not offer reservations for employment and education.
- There is little emphasis on the intersex, gender queer and even transmen.
- Transgender and intersex persons might require a range of unique health care needs, and that should have been incorporated into the Act

Conclusion

It's the beginning of given identity to transgender though its seem their difference seen between activist and legislation.

Reference

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