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# THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2016

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# THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2016<sup>1</sup>

## Introduction

The Bill defines a transgender person as one who is partly female or male; or a combination of female and male; or neither female nor male. In addition, the person's gender must not match the gender assigned at birth, and includes trans-men, trans-women, persons with intersex variations and gender-queers. A transgender person must obtain a certificate of identity as proof of recognition of identity as a transgender person and to invoke rights under the Bill. The Bill seeks to achieve a number of objectives<sup>2</sup> relating to the rights and protection of the Transgender persons.

## Salient Features of the Bill

- **Definition of a transgender person:** The Bill defines a transgender person as one who is (i) neither wholly female or male; (ii) a combination of female and male; or (iii) neither female nor male. Such a person's gender does not match the gender assigned at birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.
- **Prohibition against discrimination:** The Bill prohibits 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, own 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.
- **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.

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<sup>1</sup> The Transgender Persons (Protection of Rights) Bill, 2016 was introduced in Lok Sabha on August 2, 2016 by the Minister for Social Justice and Empowerment, Mr. Thaawarchand Gehlot. The Bill is set to be reintroduced in the Monsoon Session of Parliament, 2018 after incorporating the suggestions made by the Parliamentary Committee.

<sup>2</sup> For Objects and Reasons of the Bill, please see **Annexure**.

- **Employment:** No government or private entity can discriminate against a transgender person in employment matters, including recruitment, promotion, etc. If the entity has more than 100 persons, it is required to designate a person to be a complaint officer to deal with complaints in relation to the Act.
- **Education:** Educational institutions funded or recognised by the government shall provide inclusive education, sports and recreational facilities for transgender persons, without discrimination.
- **Health care:** The government shall take steps to provide health facilities to transgender persons including separate HIV surveillance centres, sex reassignment surgeries, etc. The government shall review medical curriculum to address health issues of transgender persons, and provide comprehensive medical insurance schemes for them.
- **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'. The District Magistrate will issue such certificate based on the recommendations of a District Screening Committee. The Committee will comprise: (i) the Chief Medical Officer; (ii) District Social Welfare Officer; (iii) a psychologist or psychiatrist; (iv) a representative of the transgender community; and (v) an officer of the relevant government.
- **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.
- **Offences and Penalties:** The Bill recognizes the following offences: (i) begging, forced or bonded labour (excluding compulsory government service for public purposes); (ii) denial of use of a public place; (iii) denial of residence in household, village, etc.; (iv) physical, sexual, verbal, emotional and economic abuse.
- These offences will attract imprisonment between six months and two years, and a fine.
- **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, Minority Affairs, Housing and Poverty Alleviation, Human Resources Development, etc.

Other members include representatives of the NITI Aayog, National Human Rights Commission, and National Commission for Women. State governments will also be represented. The Council will also consist of five members from the transgender community and five experts from nongovernmental organisations.

- The Council will advise the central government on the formulation and monitoring of policies, legislation and projects with respect to transgender persons.

### **Standing Committee Report<sup>3</sup>**

The key recommendations of the Standing Committee for Social Justice and Empowerment which examined the draft Bill are as under:

- **Definition of ‘transgender persons’:** Under the Bill, the definition of a transgender person includes one who is (i) neither wholly female or male; (ii) a combination of female and male; or (iii) neither female nor male. It also requires that such a person’s gender not match the gender assigned at birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.
- The Standing Committee observed that this definition is against global norms and violates the right to self-determine gender identity. It recommended that the definition be modified to cover those whose gender does not match with the gender assigned at birth and include trans-men, trans-women, gender-queers, and other sociocultural identities. Further, transgender persons may choose to identify as ‘man’, ‘woman’ or ‘transgender’ irrespective of sex reassignment surgery (SRS) and hormonal therapy.
- **Process of certification as a transgender person:** As per the Bill, a transgender person must obtain a certificate of identity indicating the gender as ‘transgender’. This would be granted by the District Magistrate on the recommendation of a Screening Committee. A revised certificate may be obtained if there is any subsequent change in gender. The Committee recommended that the certificate indicate identity only as ‘transgender’, and not ‘male’ or ‘female’. Consequently, the provision for revised certificate should be removed.

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<sup>3</sup> The Standing Committee on Social Justice and Empowerment (Chairperson: Mr. Ramesh Bais) submitted its report on the Transgender Persons (Protection of Rights) Bill, 2016 on July 21, 2017. The Bill was introduced in Lok Sabha on August 2, 2016 and referred to the Standing Committee for examination on September 8, 2016.

- The Committee also recommended that timelines, guidelines and the right to appeal in relation to the decisions of the Screening Committee be specified.
- **CMO in the Screening Committee:** As per the Bill, the composition of the Screening Committee includes a Chief Medical Officer (CMO). The Committee recommended that the role of the CMO be clearly defined.
- **Definition of ‘discrimination’:** The Committee noted that while the Bill prohibits discrimination of transgender persons it does not define the term. It recommended that the Bill should include a definition of ‘discrimination’, similar to that in the Yogyakarta Principles (which are international principles relating to sexual orientation and gender identity). Further, while the Bill prohibits only persons from discriminating against transgender persons, the Committee recommended that this be extended to public and private establishments. It also recommended that a redressal mechanism for those facing discrimination be included in the Bill.
- **Grievance redressal in establishments:** As per the Bill, any establishment with more than 100 persons is required to designate a person as a complaints officer. The Committee recommended that this requirement be extended to all establishments, irrespective of the number of employees. Further, the duties and responsibilities of the complaints officer should be specified.
- **Family:** The Bill specifies that no transgender person shall be separated from parents or immediate family on the grounds of the transgender status, except by a court order, in the person’s interest. The Committee recommended that the provision only apply to transgender children.
- **Healthcare:** The Bill states that the centre or state government will make provisions which includes (i) a comprehensive medical insurance scheme for transgender persons; and (ii) pre and post SRS and hormonal therapy counselling. The Committee recommended that the Bill specify that the medical insurance covers SRS, hormonal therapy and other health issues.
- **Offences and penalties:** The Bill specifies a penalty of six months to two years’ imprisonment with a fine for committing a variety of offences against transgender persons, such as (i) bonded labour and begging; (ii) denial of access to a public place or residence; and (iii) causing physical, sexual and economic abuse. The Committee recommended that there be graded punishment for different offences, similar to the Indian Penal Code, based on the severity of the offence.

- **Other recommendations:** The Standing Committee recommended the inclusion of certain other provisions in the Bill, such as: (i) defining the term ‘persons with intersex variations’ to cover those who show variations in their sexual characteristics; (ii) granting reservations under the category of socially and educationally backward classes; and (iii) recognition of civil rights like marriage, partnership, divorce and adoption.

**STATEMENT OF OBJECTS AND REASONS**

Transgender community is one of the most marginalized communities in the country because they do not fit into the general categories of gender of 'male' or 'female'. Consequently, they face problems ranging from social exclusion to discrimination, lack of education facilities, unemployment, lack of medical facilities and so on.

2. Though article 14 of the Constitution of India guarantees to all persons equality before law, clauses (1) and (2) of article 15 and clause (2) of article 16, *inter alia* prohibit in express terms discrimination on the ground only of sex and sub-clause (a) of clause (1) of article 19 ensures freedom of speech and expression to all citizens, yet the discrimination and atrocities against the transgender persons continue to take place.

3. The Hon'ble Supreme Court, vide its order dated 15th April, 2014, passed in the case of National Legal Services Authority Vs. Union of India, *inter alia*, directed the Central Government and State Governments to take various steps for the welfare of transgender community and to treat them as a third gender for the purpose of safeguarding their rights under Part III of the Constitution and other laws made by the Parliament and the State Legislatures.

4. The Transgender Persons (Protection of Rights) Bill, 2016 seeks to—

- (a) define a transgender person;
- (b) prohibit discrimination against transgender person;
- (c) confer right upon transgender person to be recognised as such, and a right to self-perceived gender identity;
- (d) issue of certificate of identity to transgender persons;
- (e) provide that no establishment shall discriminate against transgender persons in matters relating to employment, recruitment, promotion and other related issues;
- (f) provide for grievance redressal mechanism in each establishment;
- (g) establishment of a National Council for Transgender;
- (h) punishment for contraventions of the provisions of the Bill.

5. The Bill seeks to achieve the above objects.

NEW DELHI;

*The 27th July, 2016.*

THAAWARCHAND GEHLOT