



SHAPING TOMORROW'S LEADERS. TODAY.

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2016

The transgender community is one of the most marginalized in the country because they don't fit into existing gender categories. Consequently, they face problems ranging from social exclusion to discrimination, lack of education facilities, unemployment, and lack of medical facilities. The Transgender Persons (Protection of Rights) Bill, 2016 **attempts to solve the issues of transgender and give them a life of dignity.**

HIGHLIGHTS OF THE BILL

- 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.
- Such a certificate would be granted by the District Magistrate on the recommendation of a Screening Committee. The Committee would comprise a medical officer, a psychologist or psychiatrist, a district welfare officer, a government official, and a transgender person
- The Bill prohibits discrimination against a transgender person in areas such as education, employment, and healthcare. It directs the central and state governments to provide welfare schemes in these areas.
- Offences like compelling a transgender person to beg, denial of access to a public place, physical and sexual abuse, etc. would attract up to two years' imprisonment and a fine¹
- The government would take steps to provide health facilities to transgender persons including separate HIV surveillance centres, sex reassignment surgeries, etc
- The government will take measures to ensure the full inclusion and participation of transgenders in mainstream society via rehabilitation, vocational training, employment schemes etc
- National Council for Transgender persons (NCT) will be set up to advise the central government on the formulation and monitoring of policies, legislation and projects with respect to transgender persons



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WHY THERE WAS A NEED OF SUCH LEGISLATION

- The community which has around 6 lakhs population as per 2011 census had been neglected since a long time, will finally get its dues as citizens of our country
- The Bill attempts to do cover all types of discrimination faced by the community and clearly lists them to avoid ambiguities. Provision for reservation and support through scholarships etc will help in their empowerment in true sense.
- Will create awareness among the people and sensitize them to be compassionate for the cause of the community and look at them with respect

CASE LAW WHICH PAVED WAY FOR THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2016

National Legal Services Authority v. Union of India is a landmark decision by the Supreme Court of India, which declared transgender people to be a 'third gender', affirmed that the **fundamental rights granted under the Constitution of India will be equally applicable to transgender people, and gave them the right to self identification of their gender as male, female or third-gender.** This judgment is a major step towards gender equality in India. Moreover, the court also held that because transgender people were treated as socially and economically backward classes, they will be granted reservations in admissions to educational institutions and jobs.

KEY ISSUES

- The Supreme Court has held that the right to self-identification of gender is part of the right to dignity and autonomy under Article 21 of the Constitution. However, objective criteria may be required to determine one's gender in order to be eligible for entitlements
- The Bill states that a person recognised as 'transgender' would have the right to 'self-perceived' gender identity. However, it does not provide for the enforcement of such a right. A District Screening Committee would issue a certificate of identity to recognise transgender persons
- The definition of 'transgender persons' in the Bill is at variance with the definitions recognised by international bodies and experts in India
- The Bill includes terms like 'trans-men', 'trans-women', persons with 'intersex variations' and 'gender-queers' in its definition of transgender persons. However, these terms have not been defined



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- Certain criminal and personal laws that are currently in force only recognise the genders of 'man' and 'woman'. It is unclear how such laws would apply to transgender persons who may not identify with either of the two genders
- Reservation provision in education and employment has been dropped, although was directed by the Supreme Court
- Protection against violence – has not been provided by any provision in the bill. There are such provision for Children and SC/ST in various laws and transgender are also vulnerable
- Other rights like - marriage, inheritance and adoption are left untouched
- The Bill doesn't guard the community against police violence in spite of having cases documented in this regard
- The Bill has removed clauses from 2014 Bill of setting up of National and State Transgender Welfare commission and instead have provided for National Council for Transgender persons with Union Minister for Social Justice as its ex-officio chairman. The council is expected to be heavily bureaucratized and without power
- The Bill doesn't make any commitment for transgender students scholarships or pensions for elderly, but leaves it for the government to formulate such schemes

TRANSGENDER POLICY ACROSS INDIAN STATES

Kerala- Kerala Transgender Policy

- The policy envisages to end the societal stigma towards the sexual minority group and ensure them non discriminatory treatment
- The policy aims to enforce the constitutional rights of transgender's (TGs), taking into account the Supreme Court judgement (2014) and the findings of the recent Kerala State TG Survey
- The policy covers all the categories of TGs, including male to female TGs and intersex people
- It emphasises the right of the minority group to self-identify themselves as man, woman or TG as stated in the Supreme Court judgement



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- It also ensures them equal access to social and economic opportunities, resources and services, right to equal treatment under the law, right to live life without violence and equitable right in all decision making bodies
- It also recommends the setting up of a TG Justice Board with state Minister for Social Justice as its chairperson

Delhi

- Delhi government has decided to introduce “transgender category” in forms for registration of birth and death certificates
- Delhi government also issued notices to all registrar offices to duly make the changes in birth and death certificate forms

Orissa

- Government of Odisha conferred the Below Poverty Line status to transgenders in Odisha
- This move will benefit around twenty two thousand transgenders in Odisha
- This makes Odisha the first state in India to grant the BPL status to transgenders

WAY AHEAD

- Transgender is a crucial gender identity issue which needs not only requires action by the government and civil society but requires their integration in the mainstream society
- Ireland, Argentina, Malta, Colombia and Denmark allows the transgender community to self-determine gender without undergoing medical treatment or sterilization, India should follow the same.

CONCLUSION

To a community that has been ostracized and discriminated against for so long, this Bill could mean a chance to live a life of dignity and equality but a more delegated legislation covering all their plights in fact including their suggestions can enhance the effectiveness of the bill.