



The Transgender Persons (Protection of Rights) Bill 2016

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The Lok Sabha has passed the transgender persons (Protection of Rights) Bill 2016. The bill will now be placed in Rajya Sabha.

The Bill was brought following a 2014 order of the Supreme Court (*NALSA vs. Union of India*) that asked the central and state governments to take steps for the welfare of the transgender community and to treat them as a third gender for the purpose of safeguarding their rights under Part III of the Constitution.

Provisions in the bill

- **Definition of a Transgender Persons:** In the amended bill transgender person means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man (whether or not such person has undergone sex reassignment surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, gender-queer and person having such socio-cultural identities as kinnar, hijra, aaravani and jogta.
- **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) public goods (v) right to movement (vi) right to reside, rent, own or occupy property (vii) opportunity to hold public or private office; and (viii) access to a government or private establishment.**
- **Offenses and Penalties:** The Bill recognizes the following offenses: (i) begging, forced or bonded labor (ii) denial of use of a public place; (iii) denial of residence in the household, village, etc.; (iv) physical, sexual, verbal, emotional and economic abuse.
These offenses will attract imprisonment between six months and two years and a fine.
- **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 right of residence:** If the immediate family is unable to care for the transgender person, the person may be placed in a rehabilitation center, on the orders of a competent court.
- **Welfare measures by the government:** The Bill states that the 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.
- **Setting up of National Council for Transgender persons (NCT):** Under the Bill, NCT will be set up which will consist of:
 - Union Minister for Social Justice (Chairperson);
 - Minister of State for Social Justice (Vice-Chairperson);
 - Secretary of the Ministry of Social Justice;
 - One representative from ministries like 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 the 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 non-governmental organizations.

Concerns in the Bill

- The Bill does **not give the right of self-identification to transgender persons**, instead, it is certified by a district screening committee.
- Bill is **silent on granting reservations** to transgender persons. The Bill does not give effect to the directive of the Supreme Court to grant backward class reservation to the transgender community.
- The Bill lack robustness as it has provision for a **lower punishment for sexual violence against transgender persons**, as against seven years' imprisonment awarded in case of sexual assault on women.
- The Bill treats **transgender persons as victims who need protection** rather than an empowered subject with rights.
- The Bill **criminalizes begging by making it an offense**. When begging itself is no more seen as an offense, it may harm the community if such a means of **livelihood – in the absence of employment – is criminalized**.
- The bill **does not provide a mechanism for appeal if a transgender person is denied a certificate of identity**.
- The Standing Committee's concerns about recognizing rights in marriage, divorce and adoption of transgender person have not been addressed.