

AGAINST THE MANDATE FOR INCLUSION: THE TRANSGENDER PERSONS BILL 2018

Relevant for: Indian Polity & Constitution | Topic: Indian Constitution – Amendments, Schedules, and Important Articles

The transgender community has once again been let down, as the [Lok Sabha passed the Transgender Persons \(Protection of Rights\) Bill, 2018](#) in a hurry amid ongoing protests over the Rafale deal. The Bill, ostensibly aiming to protect transgender persons' rights, has been drafted hastily, with no real understanding of gender identity and expression. This was made amply clear in the original draft, with the offensive and unscientific definition of a transgender person as someone who is "neither wholly male nor wholly female". After several submissions made by the transgender community and the recommendations of a parliamentary standing committee, the definition of transgender has been rectified and made inclusive of diverse gender identities.

However, all nuance of people's self-identified gender expression is lost in the Bill. It proposes setting up a District Screening Committee comprising five people, including a medical officer and a psychiatrist to certify a transgender person. This process is in direct violation of the Supreme Court's directions in *National Legal Services Authority v. Union of India* (or *NALSA*), 2014 that affirmed the right to self-determination of gender as male, female or transgender without the mandate of any medical certificate or sex-reassignment surgery (SRS). In fact, *NALSA* had clearly directed that "any insistence for SRS for declaring one's gender is immoral and illegal".

All you need to know about the Transgender Persons Bill, 2016

Drafted by the Ministry of Social Justice and Empowerment in 2016, the Bill was met with immediate protests from the transgender and intersex community as it has several provisions that take away from the rights accorded through *NALSA* while injecting disempowering and regressive clauses. The Bill does not provide for employment opportunities through reservations, disregarding the directions of the Court in *NALSA* "to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments."

To make matters worse, the Bill criminalises begging, thereby targeting transgender persons who rely on begging for sustenance. Such provisions disregard the lived realities of transgender persons for whom begging often is the last resort. In fact, provisions such as these could give immunity to the police to exert force on transgender persons and "rehabilitate" them in beggars' homes or detention centres against their will. Such harsh measures of detaining marginalised individuals under the garb of rehabilitation have also been criticised by the Delhi High Court in *Harsh Mander v. Union of India*, 2018, declaring provisions of the Bombay Prevention of Begging Act, 1959 as unconstitutional on grounds that it violates Article 14 (equality before the law) and Article 21 (right to life and personal liberty), and affects the rights of persons who have no other means of sustenance but to beg.

The Bill fails to extend protection to transgender persons who might be victims of sexual assault or rape, as the Indian Penal Code recognises rape in strict terms of men and women as perpetrator and victim, respectively. While the Bill makes "sexual abuse" punishable, with a disproportionate punishment of imprisonment only up to two years, it does not define the acts that constitute sexual offences, making it complicated for transgender persons to report such crimes and access justice. Moreover, the Bill does not grapple with the realisation of civil rights such as marriage, civil partnership, adoption and property rights, thereby continuing to deprive

transgender persons of their fundamental rights and the constitutional guarantee provided by the Supreme Court in *NALSA*.

Transgender persons have faced prejudice, discrimination and disdain for years, and it is dehumanising to deny them their dignity, personhood and, above all, their basic human rights. The Bill in its present form continues to push them into obscurity, making a mockery of their lives and struggles by failing to secure for them their constitutional rights.

The need of the hour is a robust Bill with strong anti-discrimination provisions that will remedy the historical injustices faced by the transgender community, which continues to fight for the most basic rights even today. The community has its hopes pinned on the Rajya Sabha. It is hoped that the Bill will be revised and brought in line with the *NALSA* judgment to ensure full realisation of transgender persons' fundamental rights.

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The government's maternity benefit programme must be implemented better and comply with the Food Security Act

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