

THE RIGHTS OF TRANSGENDER PERSONS BILL 2014

PASSED BY THE RAJYA SABHA ON 24 APR 2015

A PRIMER

1) Whom does it cover?

Clause 2 (t) defines '**transgender person**' as a person, whose gender does not match with the gender assigned to that person at birth and includes trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormone therapy or laser therapy etc.), gender-queers and a number of socio-cultural identities such as — Kinnars, Hijras, Aravanis, Jogtas etc.

2) What are the rights guaranteed under the Bill?

Chapter II of the Bill looks at **Rights and Entitlements** across eight clauses. Most deal with substantive rights such as the right to equality, life, free speech, community, integrity, family, along with rights against torture and abuse. One clause specifically provides for transgender children.

Education, Employment and Social Security and Health are then covered in successive chapters. The chapter on education mandates the Government to provide for inclusive education for transgender students. It also places an obligation on the Government towards ensuring participation of transgender persons in adult education programmes.

With the employment chapter, the Government is mandated to formulate schemes for vocational training and self-employment of transgender persons. The chapter also prohibits discrimination against transgender persons in any establishment, thus encompassing private actors.

In the social security and health chapter, the Government is asked to promulgate a range of schemes for promoting the rights of transgender persons to an adequate standard of living. These include schemes for community centers and access to safe drinking water and sanitation. Health care facilities are to be provided in the form of separate HIV clinics and free sex reassignment surgery. Transgender rehabilitation programmes, particularly in the areas of health, education and employment are also provided for. Measure to promote cultural life are also to be undertaken, which include sponsoring of transgender film, theatre, music and dance festivals.

There is a limited provision for **reservations** in this chapter as well. Government educational institutions, as well those receiving aid from the Government, are asked to reserve two percent of the total seats in each course for transgender persons, while Government establishments are asked to provide for the same percentage of reservation in

vacancies. As far as the private sector is concerned, the Bill asks for the Government to provide incentives to employers to ensure that at least two percent of their work force is comprised of transgender persons within a five year period from the commencement of the Act.

3) Who are the duty bearers under the law?

For most provisions, it is the State. The term "**appropriate government**" is used throughout the act, which encompasses establishments owned or financed by the Government. Private persons are included within the legislative scheme in a clause prohibiting discrimination against transgender persons in any establishment. An **establishment** is defined under the Act to include a range of authorities including companies, firms, etc that provide certain services. These services are defined broadly to mean services provided by members of any profession or trade, which includes services relating to banking, education, health, entertainment, etc.

4) What is the enforcement mechanism?

The Bill sets up a number of authorities and forums. Chapter VII provides for **National and State Commissions for Transgender Persons**, echoing existing bodies such as the National Commission for Women. The mandate of these Commissions are largely in the nature of inquiry or recommendations, relating to inconsistencies in the application of the law or violations of rights of transgender persons. Commissions are given the powers of a civil court with respect to their process of operation - summoning witnesses, receiving evidence, etc.

For adjudicating suits filed on behalf of a transgender person regarding infringement of their rights based on their identity under this or any other law, special transgender courts are prescribed under the law. There are to exist at two levels. First, it is optional for a court in each sub-division to be designated as a Special Transgender Rights Court for hearing matters related to transgender persons alongside its other matters. Second, it is optional with respect to each district, and compulsory with respect to each city with a population above 10 lakh, to provide an exclusive Transgender Rights Court.

Finally, Chapter IX deals with Offences and Penalties, and provides for treatment of discrimination by establishments as a criminal offence as opposed to a civil one. Further, there is penalty by way of imprisonment for upto a year for hate speech.

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