

Press Release

The Human Rights Forum (HRF) feels there are multiple and serious problems with the Transgender Persons (Protection of Rights) Bill, 2018 that was recently passed by the Lok Sabha. The transgender community has unanimously been protesting against the Bill saying it actually violates more rights than it claims to protect.

The trans community demands their right to self-identification, instead of being assessed and certified by a district screening committee as the Bill now requires. The Supreme Court in the NALSA (National Legal Services Authority vs Union of India) judgment said "[t]hat any procedure for identification of transgender persons' which goes beyond self-identification, and is likely to involve an element of medical, biological or mental assessment, would violate transgender persons' rights under Article 19 and 21 of the Constitution". In simple words that means self-definition is enough for persons whose subjective experience of gender does not match the gender they were assigned at birth.

One major problem with the Bill is with respect to reservations. In the NALSA judgment, the Supreme Court said that the community must be treated as a "socially disadvantaged" class under the Constitution and therefore entitled to reservations in education and public employment. However, the Act has no mention at all of reservations to transgender persons.

In case of sexual violence and abuse against transgenders, the Bill provides punishment of six months to two years with a fine. Trans activists claim this is discriminatory since the punishment for rape under section 376 of the IPC is for seven years. The Bill prescribes punishment for begging by transgenders. It is blind to the fact that they resort to begging largely out of compulsion and not out of choice.

The Bill not only dehumanises and criminalises the community thus, but by deciding where they should live, also violates their Constitutional right to freedom of residence. A clause in the Bill reads: "Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in a rehabilitation centre." This clause that compels transgenders to live with parents does not consider the fact that their biological families are many times the primary centres of violence, and that they depend on the families and kin they choose.

In light of such crucial flaws, HRF believes that the Bill is regressive and must not be passed in its present form in the Rajya Sabha as it would perpetuate massive injustice. It has to be completely overhauled so as to protect and further the interests of the transgender community.

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