

Bill No. 210 of 2016

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS)
BILL, 2016

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to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5 **1.** (1) This Act may be called the Transgender Persons (Protection of Rights) Act, 2016. Short title,
extent and
commencement.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- 10 **2.** In this Act, unless the context otherwise requires,— Definitions.
- (a) "appropriate Government" means,—
- (i) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government;
- 15 (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, the State Government;

(b) "establishment" means—

(i) any body or authority established by or under a Central Act or a State Act or an authority or a body owned or controlled or aided by the Government or a local authority, or a Government company as defined in section 2 of the Companies Act, 2013, and includes a Department of the Government; or

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2013.

(ii) any company or body corporate or association or body of individuals, firm, cooperative or other society, association, trust, agency, institution;

(c) "inclusive education" means a system of education wherein transgender students along with other students learn together and the system of teaching and learning is suitably adapted to meet the learning needs of such students;

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(d) "institution" means an institution, whether public or private, for the reception, care, protection, education, training, rehabilitation or any other service of transgender persons;

(e) "local authority" means the municipal corporation or municipality or Panchayat or any other local body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;

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(f) "National Council" means the National Council for Transgender Persons established under section 17;

(g) "notification" means a notification published in the Gazette;

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(h) "prescribed" means prescribed by rules made by the appropriate Government under this Act;

(i) "transgender person" means a person who is—

(A) neither wholly female nor wholly male; or

(B) a combination of female or male; or

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(C) neither female nor male; and

whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.

CHAPTER II

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PROHIBITION OF CERTAIN ACTS

Prohibition
against
discrimination.

3. No person shall discriminate against a transgender person on any of the following grounds, namely:—

(a) the denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof;

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(b) the unfair treatment in, or in relation to, employment or occupation;

(c) the denial of, or termination from, employment or occupation;

(d) the denial or discontinuation of, or unfair treatment in, healthcare services;

(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public;

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(f) the denial, or, discontinuation of, unfair treatment with regard to the right of movement;

(g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;

(h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office;

5 (i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be.

CHAPTER III

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

10 **4.** (1) A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act. Recognition of identity of transgender person.

(2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.

15 **5.** A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed: Application for certificate of identity.

Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child.

20 **6.** (1) On the receipt of an application under section 5, the District Magistrate shall refer such application to the District Screening Committee to be constituted by the appropriate Government for the purpose of recognition of transgender persons. District Screening Committee.

(2) The District Screening Committee referred to in sub-section (1) shall comprise—

(a) the Chief Medical Officer;

(b) District Social Welfare Officer;

(c) a Psychologist or Psychiatrist;

25 (d) a representative of transgender community; and

(e) an officer of the appropriate Government to be nominated by that Government.

30 **7.** (1) The District Magistrate shall issue to the applicant under section 5 a certificate of identity as transgender person on the basis of the recommendations made by the District Screening Committee in such form and manner, within such time, as may be prescribed, indicating the gender of such person as transgender. Issue of certificate of identity.

(2) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).

(3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.

35 **8.** (1) After the issue of a certificate under sub-section (1) of section 7, if there is any change in the gender of a transgender person, he shall make an application to the District Magistrate for revised certificate. Change in gender.

40 (2) The District Magistrate shall, on receipt of an application under sub-section (1), and on the recommendation made by the District Screening Committee, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.

(3) The person who has been issued revised certificate shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:

45 Provided that such change in gender and the issue of revised certificate under sub-section (1) shall not affect the rights and entitlements of such person under this Act.

CHAPTER IV

WELFARE MEASURES BY GOVERNMENT

- Obligation of the appropriate Government.
- 9.** (1) The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.
- (2) The appropriate Government shall take such measures as may be necessary to protect the rights and interests of the transgender person, and facilitate their access to welfare schemes framed by that Government. 5
- (3) The appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.
- (4) The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such person. 10
- (5) The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities.

CHAPTER V

OBLIGATION OF ESTABLISHMENTS AND OTHER PERSON

- Non discrimination in employment
- 10.** No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues. 15
- Obligations of establishments.
- 11.** Every establishment shall ensure compliance with the provisions of this Act and provide such facilities to the transgender person as may be prescribed. 20
- Grievance redressal mechanism.
- 12.** Every establishment consisting of one hundred or more persons shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act.
- Right of residence.
- 13.** (1) No transgender person shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such person. 25
- (2) Every transgender person shall have—
- (a) a right to reside in the house-hold where parent or immediate family members reside;
- (b) a right not to be excluded from such house-hold or any part thereof; 30
- (c) a right to enjoy and use the facilities of such house-hold in a non-discriminatory manner.
- (3) 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 rehabilitation centre. 35

CHAPTER VI

EDUCATION, SOCIAL SECURITY AND HEALTH OF TRANSGENDER PERSON

- Obligation of educational institutions to provide inclusive education to transgender persons.
- 14.** All educational institutions funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities without discrimination on an equal basis with others. 40

15. The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

Vocational training and self-employment.

16. The appropriate Government shall take the following measures in relation to the transgender persons, namely:—

Health care facilities.

(a) a separate human immunodeficiency virus Sero-surveillance Centres;

(b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;

(c) pre and post sex reassignment surgery and hormonal therapy counselling;

(d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;

(e) review of medical curriculum and research for doctors to address their specific health issues;

(f) to facilitate access to the transgender persons in the hospitals and other healthcare institutions and centres;

(g) provision for coverage of medical expenses by a comprehensive insurance scheme for transgender persons.

CHAPTER VII

NATIONAL COUNCIL FOR TRANSGENDER PERSONS

17. (1) The Central Government shall by notification constitute a National Council for Transgender to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

National Council for Transgender.

(2) The Council shall consist of—

(a) the Union Minister in-charge of the Ministry of Social Justice and Empowerment, Chairperson, *ex officio*;

(b) the Minister of State, in-charge of the Ministry of Social Justice and Empowerment in the Government, Vice-Chairperson, *ex officio*;

(c) Secretary to the Government of India in-charge of the Ministry of Social Justice and Empowerment, Member, *ex officio*;

(d) one representative each from the Ministries of Health and Family Welfare, Home Affairs, Housing, Urban and Poverty Alleviation, Development, Human Resources Development, Rural Development, Labour and Employment and Departments of Legal Affairs, Pensions and Pensioners Welfare and NITI Ayog, not below the rank of Joint Secretaries to Government of India, Members, *ex officio*;

(e) one representative each from the National Human Rights Commission and National Commission for Women, not below the rank of Joint Secretaries of Government of India, Members, *ex officio*;

(f) representatives of the State Governments and Union territories by rotation, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members, *ex officio*;

(g) five representatives of transgender community, by rotation, from the State Governments and Union territories, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members;

(h) five experts, to represent non-governmental organisations or associations, working for the welfare of transgender persons, to be nominated by the Central Government, Members;

(i) Joint Secretary to the Government of India in the Ministry of Social Justice and Empowerment dealing with the welfare of the transgender persons, Member-Secretary, *ex officio*.

(3) A Member of National Council, other than *ex officio* member, shall hold office for a term of three years from the date of his nomination. 5

Functions of the Council.

18. The National Council shall perform the following functions, namely:—

(a) to advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to transgender persons;

(b) to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of transgender persons; 10

(c) to review and coordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to transgender persons;

(d) to perform such other functions as may be prescribed by the Central Government. 15

CHAPTER VIII

OFFENCES AND PENALTIES

Offences and penalties.

19. Whoever,—

(a) compels or entices a transgender person to indulge in the act of begging or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government; 20

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;

(c) forces or causes a transgender person to leave house-hold, village or other place of residence; 25

(d) harms or injures or endangers the life, safety, health, or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse;

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine. 30

CHAPTER IX

MISCELLANEOUS

Grants by Central Government.

20. The Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the Council as may be necessary for carrying out the purposes of this Act. 35

Act not in derogation of any other law.

21. The provisions of this Act shall be in addition to, and not derogation of, any other law for the time being in force.

Protection of action taken in good faith.

22. No suit, prosecution or other legal proceeding shall lie against the appropriate Government or any local authority or any officer of the Government in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and any rules made thereunder. 40

Power of appropriate Government to make rules.

23. (1) The appropriate Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

- (a) the form and manner in which an application shall be made under section 5;
- 5 (b) the form and manner in which a certificate of identity is issued under sub-section (1) of section 7;
- (c) the form and manner in which an application shall be made under sub-section (2) of section 8;
- (d) facilities to be provided under section 10;
- (e) other functions of the National Council under section 18;
- 10 (f) any other matter which is required to be or may be prescribed.

(3) Every rule made by the Central Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or 15 both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one house, before that house.

24. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may make such order or give such directions, by order published in the Official 25 Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Power to
remove
difficulties.

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid 30 before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

Transgender community is one of the most marginalized communities in the country because they do not fit into the general categories of gender of 'male' or 'female'. Consequently, they face problems ranging from social exclusion to discrimination, lack of education facilities, unemployment, lack of medical facilities and so on.

2. Though article 14 of the Constitution of India guarantees to all persons equality before law, clauses (1) and (2) of article 15 and clause (2) of article 16, *inter alia* prohibit in express terms discrimination on the ground only of sex and sub-clause (a) of clause (1) of article 19 ensures freedom of speech and expression to all citizens, yet the discrimination and atrocities against the transgender persons continue to take place.

3. The Hon'ble Supreme Court, vide its order dated 15th April, 2014, passed in the case of National Legal Services Authority Vs. Union of India, *inter alia*, directed the Central Government and State Governments to take various steps for the welfare of transgender community and to treat them as a third gender for the purpose of safeguarding their rights under Part III of the Constitution and other laws made by the Parliament and the State Legislature.

4. The Transgender Persons (Protection of Rights) Bill, 2016 seeks to—

- (a) define a transgender person;
- (b) prohibit discrimination against transgender person;
- (c) confer right upon transgender person to be recognised as such, and a right to self-perceived gender identity;
- (d) issue of certificate of identity to transgender persons;
- (f) provide that no establishment shall discriminate against transgender person in matters relating to employment, recruitment, promotion and other related issues;
- (g) provide for grievance redressal mechanism in each establishment;
- (h) establishment of a National Council for Transgender;
- (i) punishment for contraventions of the provisions of the Bill.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 27th July, 2016.

THAAWARCHAND GEHLOT.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of D.O. No. 13011/5(11)/2014-DP.III dated 29 July, 2016 from Shri Thaawarchand Gehlot, Minister of Social Justice and Empowerment to the Secretary General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Transgender Persons (Protection of Rights) Bill, 2016 recommends introduction of the Bill in the House under article 117(1) of the Constitution of India.

FINANCIAL MEMORANDUM

Sub-clause 2 of clause 9 of the Bill states that the appropriate Government shall take such measures as may be necessary to protect the rights and interests of the transgender person, and facilitate their access to welfare schemes framed by that Government.

2. Sub-clause 3 of clause 9 of the Bill states that the appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.

3. Clause 15 of the Bill states that the appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

4. Clause 16 (1) (g) of the Bill contains provision for coverage of medical expenses by a comprehensive insurance scheme for transgender persons.

5. Clause 17 of the Bill proposes to constitution of a National Council for Transgender.

6. Clause 20 of the Bill provides that the Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the Council as may be necessary for carrying out the purposes of this Act.

7. For the current financial year, an amount of 15 crore rupees has been allocated as budgetary expenditure for the transgender scheme. It is not possible at this juncture to estimate the full financial burden likely to be incurred if all the provisions of the proposed legislation if enacted were implemented. The above expenditure will be met from the budgetary allocation of the Plan Scheme for transgenders.

8. The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 23 of the Bill empowers the appropriate Government to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made are— (a) the form and manner in which an application shall be made under section 5; (b) the form and manner in which a certificate of identity is issued under sub-section (1) of section 7; (c) the form and manner in which an application shall be made under sub-section (2) of section 8; (d) facilities to be provided under section 10; (e) other functions of the National Council under clause (d) of section 18; (f) any other matter which is required to be or may be prescribed.

The matters in respect of which rules and regulations may be made under the aforesaid provisions are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

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to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

(Shri Thaawarchand Gehlot, Minister of Social Justice and Empowerment)