



A law that defeats its purpose

Posted at: 29/12/2018

A law that defeats its purpose-The Transgender Bill omits positive rights and ignores the protections of the 'NALSA' judgment

- The Transgender Persons (Protection of Rights) Bill, 2018, passed by the Lok Sabha recently, has caused great alarm.
- Transgender and intersex activists have protested on the streets, campaigned with parliamentarians and spoken out against the Bill.

Gender recognition

- In the landmark NALSA v. Union of India judgment, the Supreme Court laid down that transgender and intersex persons have the constitutional right to self-identify their gender as male, female or transgender even without medical intervention.
- Requiring a person to submit proof of medical treatment or mental health assessment of their gender identity violates one's right to dignity, the right to be free from unwanted medical treatment and the right to be free from discrimination.
- The 2018 Bill in Section 6 establishes a District Screening Committee for the purpose of recognition of transgender persons.
- This Screening Committee includes a chief medical officer and a psychologist/psychiatrist, which goes to show that medical and psychological tests would be required for grant of change of gender identity.
- There is no provision in the Bill that gender change would be permitted without medical or psychological treatment.
- The Bill also does not allow for recognition of gender identity as male or female.
- It only allows for an identity certificate as 'transgender'.
- This goes against the decision of the Supreme Court, which recognised the right to self-identify oneself as male, female or transgender and would also be forcing intersex persons to get a gender identity as "transgender".

- The U.K.'s Gender Recognition Act 2004 was the first law in the world allowing people to change gender without surgery.
- Hence the District Screening Committee needs to be removed from the 2018 Bill.

Reservations not provided

- Debates on the Bill have always included the demand for reservations for transgender and intersex persons in educational institutions and in public employment as they are seen to be crucial for their social inclusion.
- This was not only mandated by the Supreme Court in NALSA, the Rights of Transgender Persons Bill 2014 too provided for 2% reservation.
- Surprisingly the 2018 Bill does not provide for any reservation.
- It provides in Sections 10 and 14 that there would be no discrimination in education and employment, but these rights are meaningless if transgender persons are not able to get access in the first place.

Criminalising lives

- The Bill in Section 19 makes it a criminal offence for anyone to compel a transgender person into begging.
- A large number of people from the trans and intersex community are engaged in begging and sex work due to discrimination and not having any other opportunities.
- This provision would lead to members of the trans community being criminalised.
- When the criminalising of begging itself has been held to be unconstitutional by the Delhi High Court, there is no place for this offence in the 2018 Bill.
- The current law on rape is gender specific and transgender persons have no recourse under criminal law for sexual assault.
- In all these ways the 2018 Bill is seriously flawed.
- The Bill is an opportunity to ensure that the constitutional rights of transgender and intersex persons are realised.
- Let us not lose this opportunity by passing such a flawed legislation.