



Against the mandate for inclusion

Posted at: 21/12/2018

Against the mandate for inclusion-The Transgender Persons Bill will do more damage than good if passed without revision

- 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 aimed at protecting transgender persons' rights, has been drafted hastily, with no real understanding of gender identity and expression.
- 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".

A regressive Bill

- 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.
- 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.
- This makes it difficult 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.

Still time to reconsider

- 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.