

What is the Transgender Persons' Bill about and what next for the community?

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On Tuesday, the Rajya Sabha passed the Transgender Persons' (Protection of Rights) Bill, 2019, even though several Opposition members urged the House to send the Bill to a committee for further scrutiny. Since its introduction in 2016, the legislation has come under heavy criticism from transgender rights activists.

The Bill had been passed by the Lok Sabha without much debate on August 5 – the same day the Centre also abrogated the special status of Jammu and Kashmir.

The Transgender Persons' (Protection of Rights) Bill was tabled in the Rajya Sabha by Minister of Social Justice and Empowerment Thawar Chand Gehlot on November 20. On Tuesday, several Opposition members in the Rajya Sabha including Dravida Munnetra Kazhagam MP Tiruchi Siva also called for a vote on whether to send the Bill for scrutiny but the motion was defeated.

And division takes place

Ayes - 48

Noes - 67

Abstain - 1

And notice to send #TransBill to Select Committee is defeated #SansadWatch
pic.twitter.com/Vff48pksoE

— Maadhyam (@_maadhyam_) November 26, 2019

Grace Banu, a Dalit transgender rights activist, said that the Bill was a “murder of gender justice”.

“As a community, we have opposed this Bill from the beginning,” said Banu. “We do not want it. It does not uplift us.”

However, activists added that the passage of the Bill would not stop the community from speaking against the legislation. “Our only hope is the Constitution,” Banu said. “Our fight will not come to an end. I have to educate the community about what is in this Bill.”

All fights by minorities against this government will lose in the short run. It is no surprise that despite fighting like hell as a microminority, our campaign to [#StopTransBill](#) lost to the BJP.

Ours is a long march, in solidarity with all the oppressed and minority communities

— Bittu K (@Bittu_K_R) [November 26, 2019](#)

What led the Centre to introduce the Bill?

In 2014, the Supreme Court in a landmark judgement in the case of National Legal Services Authority versus the Union of India recognised the rights of transgender persons and their right to decide on their gender identity.

A year later in April 2015, Siva of the DMK introduced a [Private Member's Bill on transgender persons'](#) rights that was passed in the Rajya Sabha and was transmitted to the Lok Sabha.

But Siva's Bill was never taken up for discussion. In August 2016, the government in Lok Sabha introduced its own Bill to protect the transgender community's rights.

The government's Bill was criticised by the community and activists for several reasons, including the way it defined transgender persons as “neither wholly female nor wholly male”. The Bill was sent to a Parliamentary standing committee but the report it produced in July 2017 was rejected by the government.

In December 2018, the government returned with the Bill in Lok Sabha and passed it with 27 amendments that included a different definition of a [transgender person](#).

The revised definition states that a transgender person is “a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman, person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta”.

It also included a provision to set up a district screening committee. The district magistrate will issue a gender identity certificate based on its recommendations.

The Bill was then sent to the Rajya Sabha that did not pass it. It lapsed with the dissolution of the [Lok Sabha for the General Elections](#) in May.

After the Bharatiya Janata Party's won a second term, the Bill was introduced in the Lok Sabha again and passed on August 5.

What does the Bill cover?

Prohibition against discrimination

The Bill prohibits discrimination against transgender persons in educational institutions, government establishments, and while renting or purchasing property, receiving healthcare and using public services.

But the legislation does not explicitly define what constitutes discrimination in the context of the transgender community. It also fails to specify punishment for those who discriminate against transgender persons.

Recognition of identity

The Bill states that transgender persons will have the right to “self-perceived” gender identity. But in the same section, it adds that a transgender person must make an application to the district magistrate to receive an identity certificate. The certificate “shall confer rights and be a proof of recognition of his [their] identity as a transgender person”.

In case a person undergoes a sex reassignment surgery, then they must apply for another certificate to change their gender identity. The district magistrate will analyse the “correctness” of the medical certificate issued by the medical superintendent or chief medical officer, according to the Bill.

Penalties

The penalties for causing harm of any kind, including physical or sexual abuse, to a transgender person, could attract punishment from six months and extend up to two years.

National Council for Transgender Persons

The Bill provides for the formation of a National Council for Transgender Persons that will advise the government on formulating policies for the community, and monitor the implementation, and address grievances, among others.

Besides this, the Bill does not make any mention of reservation in education and employment for the transgender community.

The legislation also states that the court can decide to place a transgender person in a rehabilitation centre if their families are unable to take care of them. It also adds that the Centre will provide for healthcare services, including sex reassignment surgery and hormonal therapy. The Bill is however not specific on whether these services would be free or subsidised by the government.

It adds though that there will be “provision for coverage of medical expenses by a comprehensive insurance scheme for sex reassignment surgery, hormonal therapy, laser therapy or any other health issues of transgender persons.”

What are the implications of the Bill?

One of the main objections to the Bill is that it does not recognise the right to identify one's gender. The Bill only allows for the certificate to identify a person as "transgender" till they undergo a sex reassignment surgery and apply for another certificate.

Activists said that this went against the Supreme Court's judgement in 2014. "How will district magistrates understand what the transgender community goes through?" said Banu. "We know it takes many months to get a simple government identity card."

In Rajya Sabha on Tuesday, Opposition MPs also said that the Bill only added penalties for "sexual abuse" and did not provide for extensive penalties for crimes such as rape committed against transgender persons.

"The message is, rape a woman; yes, very bad; rape a child, worse; but, the transgenders, these people are on streets, they are begging, they are under high risk, and what is this Bill that we are passing?" asked Trinamool Congress MP Derek O'Brien.

Banu also pointed out that the Bill is silent on reservations in education and employment for the community. "Everyone is aware that we beg and do sex work and pay taxes from that money," they said. "If there are no reservations then how do we uplift ourselves?"