

On 28 December 2016, Amnesty International India made a [submission](#) on The Transgender Persons (Protection of Rights) Bill, 2016 to the Parliamentary Standing Committee on Social Justice and Empowerment.

Here's a list of recommendations made by the PSC to the Ministry of Social Justice and Empowerment, which have adopted several points submitted by Amnesty International India.

1. Definition of transgender persons

Section 2(i) of the Bill defines 'transgender person' as "a person who is—

(A) neither wholly female nor wholly male; or (B) a combination of female or male; or (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."

The committee noted, "any definition of 'transgender person' only should relate to gender identity and not to biological sex of that person". It also noted "that by conflating these definitions, the Bill completely misunderstands trans identities and severely restricts the constitutionally guaranteed right of transgender persons to self-identify, which NALSA has upheld. Even a transgender person who identifies as a woman, for instance, would be seen under this Bill as a combination of male or female, or as neither of the two and the law would thus completely fail to recognise her self-perceived identity as female".

With these points in mind, the committee recommended the following definition -

"transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-men and trans-women (whether or not they have undergone sex reassignment

surgery or hormone therapy or laser therapy etc.), gender-queers and a number of socio-cultural identities such as - kinnars, hijras, aravanis, jogtas etc.

2. Definition of discrimination

Section 3 of the Bill prohibits the denial or discontinuation of, or unfair treatment in, several areas including employment, healthcare, and the right of movement. However the Bill does not explicitly define discrimination.

The Committee noted they did not find any definition of 'discrimination' in the Bill, further stating that, "the bill does not provide for any mechanism by which the acts prohibited in Clause 3, if committed, either by the Government or by a private establishment/individual, can be made liable".

It recommended a definition of 'discrimination' to be included, "in Chapter I of the Bill which must cover a range of violations that transgender persons face" and if required, used the definition as laid down by the Yogyakarta Principles on the application of human rights law in relation to sexual orientation and gender identity.

3. Recognition of gender identity

Chapter III of the Bill provides a mechanism for gender recognition, which stipulates that transgender persons may make applications to a District Magistrate for receiving a certificate of identity as a transgender person. The District Magistrate then refers the application to a 'District Screening Committee' - which includes a medical officer and a psychologist or psychiatrist - and on the basis of their recommendations issues a certificate of identity as a transgender person. Persons with such certificates can then change their first name in official identity documents.

The committee made some very relevant observations, based on Amnesty's recommendations, such as:

"...the Bill does not even spell out specific and concrete procedure to be followed for legal gender recognition which is likely to violate this right. The Committee observe that the Bill does not even spell out specific and concrete procedure to be followed for legal gender recognition which is likely to violate this right. It does not specify any grounds for the District Screening Committee to make its recommendations, or for the District Magistrate to follow them. The presence of medical professionals on the panel increases the risk that the recognition of the gender identity of the applicant will be based on some kind of assessment of medical, biological or psychological 'eligibility', which would risk pathologising trans identities, and violate the right of transgender persons ' under the Supreme Court judgement and international human rights law and standards - to have their self-identified gender recognized."

"The Committee strongly feel that 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."

"...the Bill doesn't address the issue of those transgender persons who identify in the binary of 'male' or 'female' and do not want a certificate of transgender identity, since they want to be identified as 'male' or 'female', in accordance with their self-identified gender and not in gender assigned at birth"

However, the committee concurred with the ministry's concern that the usage of 'or' instead of 'and' in the definition of a Transgender person would widen the scope of inclusion and likely to be misused. The Committee recommended "Clause 7(1) may be redrafted indicating clearly that certificate will be issued only as a 'transgender person',

not as a 'male' or 'female'". This was despite the committee's disagreement with the definition of a Transgender person.

Although the committee recommended a simple, hassle free, time bound and applicant friendly process of obtaining a certificate, it asked the ministry for more clarity on the role of a Chief Medical Officer in the District Screening Committee.

4. Grievance redressal mechanism

Section 12 of the Bill states that establishments with 100 or more persons shall designate a person to be a complaint officer to deal with complaints of violations under the Bill.

The Committee noted that "restricting the obligation to set up grievance redressal mechanisms at the institutional level to establishments with more than a hundred employees might potentially leave transgender persons exposed to harassment and discrimination with no recourse except in the courts." It asked for "the duties and responsibilities of the Complaint Officer to be specified and the types of complaints he can look into and remedies offer, be also mentioned on the lines of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013".

5. Right of residence and movement

Section 13(1) of the Bill states that "no transgender person shall be separated against their will from parents or immediate family on the ground of being a transgender, except on an order of a competent court, with the explicit consent and in the interest of such person." Section 13(3) states that where family members are unable to take care of a transgender person, they can be "placed in a rehabilitation centre."

The Committee recognized the need for alternative family structures, busting the myth of “the 'family' as a protection unit for transgender persons”. The Committee recommended that Clause 13(3) may be reworded as under:

“Where any parent or a member of his immediate family is unable to take care of a transgender child or the child does not want to live with them, the competent court shall make every effort, if need be, by an order, to place such child with his or her extended family, or in the Community in a family setting or rehabilitation centre”.

An important recognition by the committee was that transgender persons “do not need rehabilitation, but they require State assistance to rebuild their lives, either through education or employment”. The committee recommended separate rehabilitation centres for Transgender persons.

6. Affirmative action

While Chapter IV of the bill contains provisions related to the provision of inclusive education, formulation of welfare schemes and programmes, and measures towards providing adequate health care, it does not contain any provisions related to affirmative action.

While the committee makes no explicit recommendation for affirmative action, it notes that “the bill is silent on granting reservation to Transgender persons under the category of socially and economically backward classes of citizens”.

7. Offences against transgender persons

Section 19 of the Bill recognizes certain categories of crimes committed against transgender persons, including the compelling of transgender persons to engage in begging. All these offences are punishable with imprisonment for up to two years.

The committee made a recommendation to the ministry for "slurs based on real or perceived gender identity may be included in section 153A of the IPC" and for workplace sexual harassment policies to be made transgender inclusive. Apart from these, the committee also made two important recommendations -

1) "As Clause 19 provides for the same/similar punishment for offences that are varied in nature and in the harm caused, which violates the principle of proportionality under Article 14 of the Constitution, the Committee recommend that there should be graded punishment for different offences and those involving physical and sexual assault must be met with higher punishment."

2) "...the Bill should also specifically recognize, and provide appropriate penalties for, violence that transgender persons face from officials in educational institutions, healthcare institutions, police stations, jails, shelter and remand homes and other places of custody".

Although the committee agreed with the ministry to the extent, "that the Bill must recognize these offences as crimes against transgender persons, and provide for sentences commensurate with the gravity of their offences", they also exhorted the Ministry to direct State governments to provide employment opportunities, short term courses and skill training for transgender persons.

8. Immunity from prosecution

Section 22 of the Bill provides immunity from legal proceedings to government officials “in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.”

While defining discrimination, the committee recommended that the provision should extend “not just to 'person(s)', but also to all establishments (public and private)” as perpetrators.

9. Right to found a family and inheritance rights

The bill does not explicitly recognize the rights of transgender persons to found a family and to inheritance.

Although no recommendation was made, the committee found “that the bill does not mention about the inheritance rights of transgender persons, wherein they cannot be disinherited from their rightful share in parental property on the ground of gender entity”.