IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) NO. _____OF 2026
[WITH PRAYER FOR INTERIM RELIEF]

IN THE MATTER OF:

DR. AKKAI PADMASHALI AND ORS. …PETITIONERS

VERSUS

UNION OF INDIA AND ORS. …RESPONDENTS

I.A. NO. _____ OF 2026 : APPLICATION PRAYING FOR AD INTERIM AND EX-PARTE STAY

PAPER BOOK

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ADVOCATE FOR THE PETITIONER: ROHIT KUMAR

FILED ON: 15.04.2026

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ANNEXURE 'A'

PROFORMA FOR FIRST LISTING

SECTION:

The case pertains to (Please tick/check the correct box):

☐ Central Act: (Title) : Transgender Persons (Protection of Rights) Amendment Act, 2026 (No. 3 of 2026) & The Transgender Persons (Protection of Rights) Act, 2019

☐ Section: Sections 2(ii), 2(iii), 2(iv), 3, 4(a), 4(b) 5, 7 and 8 of the Transgender Persons (Protection of Rights) Amendment Act, 2026 & Section 2(aa), Section 2(i), Section 2(k), Section 4(2), Sections 6, 7, 18 and 22 of the Transgender Persons (Protection of Rights) Act, 2019

☐ Central Rule: (Title): N/A

☐ Rule No(s): N/A

☐ State Act: (Title) : N/A

☐ Section: N/A

☐ State Rule: (Title): N/A

☐ Rule No(s): : N/A

☐ Impugned Interim Order: (Date) : N/A

☐ Impugned Final Order/Decree: (Date): N/A

☐ High Court: (Name): N/A

☐ Names of Judges: N/A

☐ Tribunal/Authority: (Name) N/A

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1. Nature of matter: CIVIL

2.

(a) Petitioner: Dr. Akkai Padamshali and Ors.

(b) e-mail ID: officeofrohitkumar@gmail.com

(c) Mobile phone number: N/A

3.

(a) Respondent: Union of India & Ors.

(b) e-mail ID: N/A

(c) Mobile phone number: N/A

4.

(a) Main category classification: 48

(b) Sub-classification: 4805

5. Not to be listed before: N/A

6. (a) Similar disposed of matter with citation, if any, & case details: No similarly disposed of matter.

(b) Similar pending matter with case details: W.P. (C) No. 1405 of 2023 titled as "Jane Kaushik vs Union of India & Ors."

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7. Criminal Matters: No

(a) Whether accused/convict has surrendered: N/A

(b) FIR No.: N/A

(c) Police Station: N/A

(d) Sentence Awarded: N/A

(e) Period of sentence undergone including period of detention/custody undergone: N/A

(f) Whether any earlier case between the same parties is filed: No

(g) Particulars of the FIR and Case: N/A

(h) Whether any bail application was preferred earlier and decision thereupon: N/A

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8. Land Acquisition Matters:

(a) Date of Section 4 notification: N/A

(b) Date of Section 6 notification: N/A

(c) Date of Section 17 notification: N/A

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9. Tax Matters: State the tax effect: N/A

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10. Special Category (first petitioner/appellant only):

☐ Senior Citizen > 65 years ☐ SC/ST ☐ Woman/Child ☐ Disabled

☐ Legal aid case ☐ In custody

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11. Vehicle Number (in case of Motor Accident Claim matters): N/A

12. Whether there was / is litigation on the same point of law, if yes, details thereof: W.P. (C) No. 1405 of 2023 titled as "Jane Kaushik vs Union of India & Ors."

Filed: 15.04.2026

Rohit Kumar
3594
AOR for Petitioners

SYNOPSIS

The Petitioners have filed the present Writ Petition under Article 32 of the Constitution of India challenging the constitutional validity of the Transgender Persons (Protection of Rights) Amendment Act, 2026 ("Amendment Act") for being violative of the fundamental rights to equality, dignity, autonomy, privacy and discrimination on the ground of gender identity privacy guaranteed under Articles 14, 15(1), 16, 19 and 21 of the Constitution of India and in contravention of this Hon'ble Court's judgement in ***National Legal Services Authority (NALSA) v. Union of India*** (2014) 5 SCC 438 in as much as it takes away the right to self-determination, self-identification, mandates certification from state-appointed medical boards and introduces new penalties which create a chilling effect.

The Petitioners are members of the transgender and genderqueer community having gender identities of transwoman, intersex person, transman, hijra/transwoman, *"panthi satla kothi"* ('Pant-shirt transgender') and a genderqueer person. The Petitioners represent the diversity of transgender identities that are impacted by the introduction of the Amendment Act, 2026 and who stand to lose the protections, rights and entitlements accrued to them under the Transgender Persons (Protection of Rights) Act, 2019 **("The 2019 Act" or "the TG Act, 2019").**

In March 2026, without any prior consultation or public engagement, The Transgender Persons (Protection of Rights) Amendment Bill, 2026 ("The 2026 Amendment Bill") was introduced in the Lok Sabha on 13.03.2026 and passed on 24.03.2026 and subsequently passed by the Rajya Sabha on 25.03.2026. It received the Hon'ble President's assent on 30.03.2026 and was published in the

Gazette on the same day as the Transgender Persons (Protection of Rights) Amendment Act 2026 ("Amendment Act").

The Amendment Act seeks to undo judicial precedents and legislative developments that have ensured the fundamental rights of transgender persons in the country. The Amendment Act has completely changed the definition of 'transgender persons' under section 2(k) of the TG Act 2019, to include only persons having socio-cultural identities of *hijra, kinnar, arvani* and *jogta*, and intersex persons, and excluding all other persons including transgender men, transgender women, persons who do not identify with the gender assigned at birth, genderqueer persons, all other trans persons who do not belong to these socio-cultural groups, thus completely leaving the Petitioners out of the purview of 'transgender persons' under the TG Act 2019 and from the coverage of the law. Further, the Amendment Act deletes Section 4(2) of the 2019 Act *vide* section 3 of the impugned Amending Act that removes a clause clarifying that transgender persons have the right to self-perceived identity. The deletion of Section 4 (2) of the 2019 Act renders the right to self-determination of gender identity redundant. At the same time, the constitutional validity of unamended Section 4, which limits recognition to "transgender" rather than permitting identification as male or female, remains pending adjudication.

It also amends Section 7 of the 2019 Act by requiring that anyone who undergoes surgery for their gender-affirmation has to report it and the medical institution performing such surgery is also obliged to report it to the District Magistrate. The 2026 Amendment Act makes it exponentially more severe by mandating institutional surveillance and stripping away individual autonomy.

Finally, the Amendment Act introduces new penal offences that are extremely broad and vague encompassing anyone who (i) kidnaps someone

(ii) causes grievous hurt by procedures like emasculation, castration, surgery or hormonal therapy (iii) with an intent of 'compelling such person to assume, adopt, or outwardly present a transgender identity against the will or consent of such person, whether by force, allurement, deceit, undue influence or otherwise' with punishment up to life imprisonment. The Impugned Amendment Act introduces new offences under Sections 18(e)-(h) which invoke severe criminal law against the transgender community itself. These sections are extremely broad and vague and therefore would be used to criminalize the Petitioners, including members of the hijra community, transgender community networks, kinship networks, supportive parents, medical workers providing gender-affirming care or social organisations and workers who support transgender persons.

The Petitioners including those who are transmen, transwomen and genderqueer persons were all falling under the definition of 'transgender persons' under the TG Act 2019 as they are persons who do not identify with the gender assigned to them at birth, transmen, transwomen, or genderqueer persons, who are not from the socio cultural identities, and many of whom also had the Certificates of Identity as transgender persons issued to them under the TG Act 2019, for legal recognition, and now are completely erased from the protective umbrella of the 2019 Act and are left essentially unrecognised by the law threatening to permanently impact their access to healthcare, education, employment and livelihood as all these aspects remained contingent on documentation provided by way of certification under the 2019 Act. In other cases, even for the Petitioner who is from the hijra community, and other Petitioners, the newly introduced penalties threaten and create a chilling effect on their community and alternate family structures such as *gharanas*. The Petitioners would not be able to get their gender identity legally recognised and obtain documentation and stand to have their access to safe healthcare and medical facilities completely disrupted. All Petitioners are impacted by the mandatory

medical board certification. Once covered under the 2019 Act, they are now completely without any of their fundamental rights to their self-determined gender identity, legal recognition as transgender persons under the 2019 Act despite having the TG cards issued to them, and also unable to get protection from discrimination in employment, education or access to healthcare.

These amendments militate against this Hon'ble Court's ruling in ***NALSA*** which has held the right to self-identification to be a fundamental right and gender identity to be based entirely and exclusively upon self-identification and not any medical procedure. This Hon'ble Court further held that both gender and biological attributes constitute distinct components of sex and that while biological characteristics, include genitals, chromosomes and secondary sexual features, but gender attributes include one's self-image, the deep psychological or emotional sense of sexual identity and character. It held that discrimination on the ground of 'sex' under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity.

The judgement in ***NALSA*** was affirmed by the 9-judge constitutional bench in ***K.S. Puttaswamy and Another v. Union of India and Other*****s** (2017) 10 SCC 1 which held the right to privacy to be a part of the Right to Life and Personal Liberty under Article 21 of the Constitution and such privacy to include the freedom for self-determination and protection "of all elements which are crucial to gender identity." The ruling was once again affirmed by a 5-judge bench in ***Navtej Singh Johar and others v. Union of India*** (2018) 10 SCC 1 which held that the right to self-determine one's gender identity is an integral part of one's right to life, dignity and autonomy.

As such, the impugned Amendment Act seeks to undo judicial precedents and legislative developments that have ensured the fundamental rights of the

Petitioners who are transgender persons by violating their rights under Articles, 14, 15(1), 16, 19 and 21 of the constitution.

Hence, this Writ Petition.

LIST OF DATES

DATE	PARTICULARS
NIL	The transgender community is among one of the most marginalized communities in the country, and they face extreme social exclusion due to stigma and discrimination based on their gender identity, lack of education facilities, unemployment, lack of medical facilities, housing and violence at the hands of family and society. The discrimination based on their class and gender makes the transgender community one of the most disempowered and deprived groups in the country.
15.4.2014	For the first time, the constitutional rights of transgender persons were recognized by this Hon'ble Court in *National Legal Services Authority v. Union of India & Ors*., (2014) 5 SCC 438, this Hon'ble Court held that gender identity is an important aspect of one's personal identity and is inherent to a person. It was held that transgender persons have the right to express their self-identified gender by way of speech, mannerism, behaviour, presentation and clothing, etc. This Hon'ble Court also noted that like gender identity, sexual orientation is integral to one's personality, and is a basic aspect of self-determination, dignity and freedom. It held that all persons have the right to self-identification of gender identity as against the biological or medical model and held that

all persons have the right to self-identify one's gender identity as male, female or transgender. In paragraph 75 and 76, it was observed as follows::

> *"75. As already indicated, we cannot accept the Corbett principle of "Biological Test", rather we prefer to follow the psyche of the person in determining sex and gender and prefer the "Psychological Test" instead of "Biological Test"*
>
> *...*
>
> *Gender identity as already indicated forms the core of one's personal self,* ***based on self-identification, not on surgical or medical procedure****."* (emphasis supplied)"

This Hon'ble Court gave extensive directions to the Government of India to, *inter alia*, uphold transgender persons' "right to decide their self-identified gender" and grant legal recognition of their gender identity such as male, female or as transgender.

2.8.2016 During this time, the Respondent Union of India, in 2016 introduced the Transgender Persons (Protection of Rights) Bill, 2016 in the Lok Sabha on 2.8.2016**.** The 2016 Bill had several deficiencies, especially the definition of 'transgender person",

8.9.2016 The Transgender Persons (Protection of Rights) Bill, 2016 was referred to The Standing Committee on Social Justice and Empowerment.

19.7.2017 The Standing Committee on Social Justice and Empowerment produced its Report dated 19.7.2017. The Committee Report, on the specific definition given to "transgender persons" under the

2016 Bill noted that the definition as it stood in the 2016 Bill failed to incorporate the right to self-determination. It recommended as follows:

> *"1.13 The Committee feels that the definition of 'transgender person' will be the fulcrum of any legislation on transgender rights and welfare and the whole law would depend on the scope of this definition. The Committee feel that the proposed definition of 'transgender person' in the Bill is in stark contrast to global developments, where transgender persons have been granted the right to self-determine and to seek benefits according to such identity/expression. More so, it not only violates the fundamental rights to equality, dignity, autonomy but also freedom of transgender persons guaranteed under Articles 14, 19 and 21 of the Constitution."*
>
> *1.26 The Committee, therefore, are of considered view that the proposed definition of transgender person not only takes away the right to self determined gender identity which was guaranteed by the Hon'ble Supreme Court in NALSA judgement but also adversely effects significant part of the transgender population - specially pre-op/non-op transmen and transwomen, trans people who cannot or do not wish to undergo surgical interventions, gender fluid, gender neutral, and intergender persons.*
>
> *1.27 In view of the foregoing, the Committee conclude that a transgender person should have the option to choose*

either 'man', 'woman' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones. The Committee, therefore, recommend that Clause 2(i) of the Bill may be reframed as under:

"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 sociocultural identities such as - kinnars, hijras, aravanis, jogtas etc".

2017 The Transgender Persons (Protection of Rights) Bill, 2016 lapsed and was resultantly not passed.

23.8.2017 A 9-Judge Bench in ***Puttaswamy v Union of India*** (2017) 10 SCC 1 affirmed and relied on *NALSA* (Supra) to clarify that the right to self-determination of gender is an integral part of personal autonomy and self-expression under Articles 19 and 21 of the Constitution.

10.11.2017 The Yogyakarta Principles Plus 10 (YP+10) were adopted to supplement the Yogyakarta Principles. Principle 31 mandates that no medical and psychological tests can be required for the legal recognition of one's gender identity.

6.9.2018 A 5-Judge Bench of the Supreme Court in ***Navtej Singh Johar v Union of India*** (2018) 10 SCC 1 affirmed and relied on *NALSA* (Supra) and held that Section 377 of the Indian Penal Code, which criminalised 'carnal intercourse against the order of nature, creating a chilling effect on queer individuals was

unconstitutional to the extent that it criminalised consensual sexual acts between adults because it furthered stigma and prejudice, and had a disproportionate impact on the freedom and liberty of transgender and queer people. The Judgement adopted the principle of non-retrogression and progressive realisation of rights and bodily autonomy. It held as follows:

"253. The eminence of identity which has been luculently stated in the NALSA case very aptly connects human rights and the constitutional guarantee of right to life and liberty with dignity. With the same spirit, we must recognize that the concept of identity which has a constitutional tenability cannot be pigeon-holed singularly to ones orientation as it may keep the individual choice at bay. At the core of the concept of identity lies self-determination, realization of ones own abilities visualizing the opportunities and rejection of external views with a clear conscience that is in accord with constitutional norms and values or principles that are, to put in a capsule, constitutionally permissible"

17.12.2018 The Transgender Persons (Protection of Rights) Bill, 2018, was passed in the Lok Sabha despite strong opposition from the transgender community and society. This Bill however lapsed.

19.7.2019 The Transgender Persons (Protection of Rights) Bill, 2019 was introduced in the Lok Sabha with the following stated objects:

"1. Transgender community is one of the most marginalised 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 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 Parliament and the State Legislature"

05.12.2019 The Transgender Persons (Protection of Rights) Act, 2019 received the assent of the Hon'ble President of India and was published in the official gazette. Some of the sections state as follows:

> *Sec. 2(k) "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman*

(whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.

1. *Recognition of identity of transgender person.—*

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

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

6. Issue of certificate of identity.—

1) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.

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

(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.

7. Change in gender.—

(1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.

(2) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, 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 a certificate of identity under section 6 or a revised certificate under sub-section (2) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:

Provided that such change in gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act.

25.9.2020 The Transgender Persons (Protection of Rights) Amendment Rules, 2020 were notified.

2020 After the TG Act 2019 was enacted and the Rules were framed in 2020, there were petitions filed, both before this Hon'ble Court as W.P. (C) No. 406 of 2020 titled as "Grace Banu Ganesan & Ors. vs Union of India & Anr." and before some of the High Courts, being W.P. No. 11679 / 2020 (before the Hon'ble High Court of Karnataka), challenging several provisions of the TG Act 2019 as being in direct violation of the judgement in NALSA with regard to recognition of gender identity, denying transgender persons the choice to live in any alternative arrangement outside of their family, which was often a place of violence, and also sections which criminalised certain acts as offences, on the ground of being vague and therefore be applied against the interests of the transgender community in an arbitrary manner, and also as violating Article 14's guarantee of equality as the maximum penalty for sexual abuse committed against transgender persons was capped at two years' imprisonment, whereas, for similar offences committed against women under the Indian Penal Code, 1860 at that time, was between three years to life imprisonment. These petitions are still pending.

6.7.2023 In the meanwhile, the Hon'ble Telangana High Court in ***Vyjayanti Vasanta Mogli v State of Telangana*** MANU/TL/0911/2023 struck down the Telangana Eunuchs Act, 1329 Fasli as unconstitutional as it replicated the Criminal Tribes Act 1867 and criminalised 'Every… eunuch found in female dress or ornamented in a street or a public place or in any other place with

the intention of being seen from a street or public place or who dances or plays music or takes part in any public entertainment in a street or public place'. This was found to be 'anathema to our constitutional philosophy.' The Hon'ble High Court noted that Section 1-A of the 1329 Act which defines the word 'eunuch' is not only repugnant to the definition of transgender person under Section 2(k) of the Transgender Persons Act but also opposed to the interpretation given by the Supreme Court to the word 'transgender' in ***NALSA*** and subsequent judgments.

17.10.2023 A 5-Judge Bench of the Supreme Court in ***Supriyo v Union of India*** 2023 INSC 920 upheld the right of transgender people to self-determine their gender, including for the purposes of marriage, and held that the Transgender Persons (Protection of Rights) Act 2019 may be enforced through Article 226 of the Constitution. Further, this Hon'ble Court clarified that there is a right to association for transgender and queer persons, regardless of marriage as several High Court have enforced through police protection and habeas corpus orders.

17.10.2025 This Hon'ble Court in ***Jane Kaushik v Union of India*** 2025 INSC 11248 recognized the shortcomings and gaps in the 2019 Act and 2020 Rules and the continued widespread discrimination against transgender persons. This Hon'ble Court held that the Respondent Union and State Governments therein had failed to formulate inclusive policies, constitute redressal mechanisms, ensure safety and equitable access which had resulted in omissive discrimination. The judgement constituted an Advisory Committee of experts of which the members of the Ministry of Social Justice and Welfare were ex-officio members.

The mandate of the Committee was to give recommendations on *inter alia*, inclusive medical care for Transgender and Gender Diverse persons and Protections for Gender non-conforming and Gender-diverse persons noting that the 2019 Act focuses on the aspect of "medicalisation" of gender and does not give preponderance to the right to self-perceived identity. The Committee, it was directed, must look into how the State, without excessive bureaucratization, can guarantee rights provided under the 2019 Act to genderqueer and non-binary persons, especially those who do not undergo gender affirmative surgeries.

9.12.2025 The Union of India filed Review Petition No. 3046/2025 against the judgement dated 17.10.2025 in ***Jane Kaushik v Union of India*** which came to be dismissed by the Hon'ble Supreme Court by order dated 9.12.2025.

13.3.2026 While not addressing any of the gaps and the excessive medicalisation already in the TG Act 2019, The Transgender Persons (Protection of Rights) Amendment Bill, 2026, was introduced in the Lok Sabha, which introduced several amendments, making the TG Act 2019 even more medicalised and completely exclusionary to transpersons, without any prior consultation with the members of the transgender community. That, the 2026 Amendment Act is draconian and instead of curing existing defects in the TG Act 2019, the Impugned Act unlawfully retrogresses by completely altering the definition of 'transgender person' to exclude transmen, transwomen, and genderqueer persons; deleting Section 4(2) to strip away the only provision for self-perceived identity; requiring unconstitutional medicalization

by mandating Medical Board screenings and institutional surveillance under amended Sections 6 and 7; and invoking penal by introducing dangerously broad offences under Sections 18(e) to (h) with punishments up to life imprisonment that threaten to criminalize the transgender community's kinship structures, supportive networks, and essential healthcare providers.

30.3.2026

In 17 days, without any further consultation or referral to a Parliamentary Committee, the Bill was passed by both houses and received assent by the President of India which was communicated in the Gazette of India Notification dated 30.3.2026 as the Transgender Persons (Protection of Rights) Amendment Act, 2026. The amended Act has completely changed the definition of 'transgender persons' removed all persons who did not identify with their gender assigned to them at birth, transwomen, transmen, gender queer persons, and to include only socio-cultural identities of *hijra, kinnar, arvani* and *jogta*, and the derogatory term 'eunuch',

Further, it deletes Section 4(2) of the 2019 Act vide section 3 of the impugned Amending Act which had provided that that transgender persons under the Act have the right to self-perceived identity. It also amends Section 7 of the 2019 Act by now requiring that anyone who undergoes surgery to change their gender is obliged to apply to change their gender to a binary marker (male or female), and the medical institution performing such surgery is obliged to report it to the District Magistrate. Finally, the amended section 18 of the 2019 Act vide section 7 of the Impugned Amending Act introduces new offences that

are unnecessarily broad and vague encompassing anyone who (i) kidnaps someone (ii) causes grievous hurt by procedures like emasculation, castration, surgery or hormonal therapy (iii) with an intent of ‘compelling such person to assume, adopt, or outwardly present a transgender identity against the will or consent of such person, whether by force, allurement, deceit, undue influence or otherwise with punishment up to life imprisonment which have potential for misuse and for creating a chilling effect.

10.04.2026 Hence, this writ petition.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WRIT PETITION (CIVIL) NO. OF 2026

IN THE MATTER OF:

1. **DR. AKKAI PADMASHALI**
   Transwoman Aged about 43 years [redacted]

2. **ABEDA BEGAM**
   Intersex person Aged about 24 years [redacted]

3. **RUMI HARISH**
   Transgender man Aged about 53 years [redacted]

[redacted].

4. **MONIKA**

Transwoman/Hijra Aged about 41 years [redacted]

5. [redacted]**PRAKASHI**

'Panthi Satla Kotli' (Transgender person in pant-shirt) Aged about 41 years [redacted]

6. **NITHYANANDA**

A genderqueer person Aged about 41 years [redacted]

…PETITIONERS

VERSUS

1. **UNION OF INDIA** Through its Secretary Ministry of Social Justice and Empowerment Government of India, Shastri Bhawan Dr. Rajendra Prasad Road New Delhi – 110001

2. **MINISTRY OF LAW AND JUSTICE**
   Through its Secretary Government of India, Shastri Bhawan Dr. Rajendra Prasad Road New Delhi – 110001

3. **MINISTRY OF HEALTH AND FAMILY WELFARE**
   Through its Secretary Government of India, Nirman Bhawan New Delhi – 110001

…RESPONDENTS

A WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA PRAYING, INTER ALIA, FOR ISSUANCE OF WRIT/ORDER/DIRECTION DECLARING THE TRANSGENDER

PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026 UNCONSTITUTIONAL FOR BEING VIOLATIVE OF ARTICLES 14, 15 (1), 16, 19 AND 21 OF THE CONSTITUTION OF INDIA

TO,

THE HON'BLE CHIEF JUSTICE AND

HIS COMPANION JUDGES OF THE HON'BLE

SUPREME COURT OF INDIA

THE HUMBLE PETITION OF

THE PETITIONER ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. The Petitioners have approached this Hon'ble Court under Article 32 of the Constitution of India as members of the transgender community in India challenging the constitutional validity of the Transgender Persons (Protection of Rights) Amendment Act, 2026 **("The impugned Act")** which makes sweeping changes to the Transgender Persons (Protection of Rights) Act, 2019 **("The 2019 Act" or "the TG Act")** for being violative of the fundamental rights to dignity, autonomy and privacy guaranteed under Articles 14, 15 (1), 16, 19 and 21 of the Constitution of India and for being in complete contravention of this Hon'ble Court's judgement in ***National Legal Services Authority (NALSA) v. Union of India*** (2014) 5 SCC 438 in as much as it takes away the right to self-identification, mandates certification from state-appointed medical boards and introduces new criminal offences.

BRIEF FACTS:

2. The Petitioners are all transgender persons, being members of the diverse transgender community in India, and all are working on transgender rights.

3. The Petitioner No.1 is Dr. Akkai Padmashali, is a transgender person who identifies as a woman, and is a very well-known transgender rights activist based in Karnataka. In 2015, she was awarded the Karnataka Rajyotsava Award, which is the highest award in the State for her contribution as a social rights activist working for the rights of gender and sexual minorities. She is also the first transgender woman in the State to be given this award. In 2016, she was awarded an honorary Doctorate by the Indian Virtual University for Peace and Education and has become the first transgender person in the country to be awarded a Doctorate. The 1st Petitioner, for the past twenty-five years, has been working to educate gender minority community members about their rights and has also worked on issues concerning right to health and the right to access health services. She has been working on issues of gender and gender-based violence with the community of gender and sexual minorities, media, civil society organizations and the police to bring awareness and change for the community. The Petitioner No. 1 herein was also a Petitioner in one of the petitions in *Navtej Johar and others v. Union of India*, in W.P. (Civil) No. 572 / 2016 challenging section 377 of the Indian Penal Code. The work done by the 1st Petitioner herein has been recognized not only by the State government but also at the central government and at the national level. She has also published a book, being her autobiography and memoir which outlines her personal journey as she explores the struggles of the transgender community and the history of the LGBTQI movement in India.

A True Copy of the article titled, "Transgender awarded Honorary Doctorate in Bengaluru", in the Times of India dated 01.06.2016, is annexed hereto and marked as **ANNEXURE-P-1. (Page No. 83)**

A true copy of the article titled, "Transgender Activist Akkai Pasmashali Wins Karnataka Rajyotsava Award" in the Better India dated 31.10.2015 is annexed hereto and marked as **ANNEXURE- P-2 (Page No. 84 to 85).**

A true copy of the article titled, "Akkai Padmashali first transgender to register marriage in Karnataka in the Times of India is annexed hereto and marked as **ANNEXURE – P 3 (Page No. 86)**

4. The Petitioner No. 2 Abeda Begum is an intersex woman hailing from Jagir Jadaladinni Village in Raichur, which is considered one of the most backward Districts in Karnataka. She is the President and of the Karnataka Intersex Association, a group based in Raichur district. She faced severe discrimination from within the family and community for being born as an intersex person including disruption of her primary education. She is presently engaged in working for the upliftment and integration of intersex and gender minority communities in Karnataka. She applied for her TG card under the 2019 Act but was unable to obtain the same.

5. The Petitioner No. 3, Rumi Harish is a musician and a queer transman, and a social justice activist. He has worked as a consultant on several studies involving various marginalised communities. He has worked as a translator and a trainer on issues around gender, caste and sexuality and the law. He is also a well-known theatre artist and has narrated Jounpuri Khayal, the first autobiography of a trans man in Kannada, published in 2023. It was written and composed by Dadapeer Jyman, a Sahitya Academy Yuva Puraskar recipient. The Petitioner No.3 has also obtained a TG Card under the 2019 TG Act.

A copy of the Transgender Identity Card issued to Petitioner No. 3 is annexed hereto and marked as **ANNEXURE – P- 4 (Pages 87)**

6. The Petitioner No. 4 Monika is a transwoman belonging to the hijra community in Bangalore for the past 25 years. An erstwhile sex worker, she served on the board of ONDEDE, a Karnataka based organisation working for gender minorities and is a priest at Banshankari temple in Bengaluru. She has not obtained a TG Card.

7. The Petitioner No. 5 Prakashraj@Prakashi is a transgender person, commonly known as Panti Satla Kothi, and he has got a TG Card under the TG Act 2019. She is working as the President of Karnataka State Gender and Sexuality Minorities Coalition for Convergence. Her work with working class communities in the state of Karnataka has been pioneering and relentless in building communities and handling crisis situation.

A copy of the Transgender Identity Card of Petitioner No. 5 dated 10.8.2023 is annexed hereto and marked as **ANNEXURE – P-5 (Pages 88-89)**

8. The Petitioner No. 6 Nithyananda is a gender-queer person currently working as Unit Manager at SBI Life Insurance. They are the founder of "Queer Expressions" which works with members of the queer and disabled persons' communities organising awareness programs and initiatives focused on inclusion, expression and social connection.

A copy of the Transgender Identity Card of Petitioner No. 6 dated 11.4.2023 is annexed hereto and marked as **ANNEXURE – P-6 (Pages 90)**

9. It is submitted that the transgender community is among one of the most marginalized communities in the country, and they face extreme social exclusion due to stigma and discrimination based on their gender identity, lack of education facilities, unemployment, lack of medical facilities, housing and violence at the hands of family and society. The discrimination based on their class and gender makes the transgender community one of the most disempowered and deprived groups in the country.

10. For the first time, the constitutional rights of transgender persons were recognized by this Hon'ble Court in *National Legal Services Authority v. Union of India & Ors*., (2014) 5 SCC 438, This Hon'ble Court held that gender identity is an important aspect of one's personal identity and is inherent to a person. It was held that transgender persons have the right to express their self-identified gender by way of speech, mannerism, behaviour, presentation and clothing, etc. This Hon'ble Court also noted that like gender identity, sexual orientation is integral to one's personality, and is a basic aspect of self-determination, dignity and freedom. It held that all persons have the right to self-identification of gender identity as *against* the biological or medical model, and held that all persons have the right to self-identify one's gender identity as male, female or transgender. In paragraph 75 and 76, this Hon'ble Court observed as follows:

> *"75. As already indicated, we cannot accept the Corbett principle of "Biological Test", rather we prefer to follow the psyche of the person in determining sex and gender and prefer the "Psychological Test" instead of "Biological Test"*
>
> *...*

Gender identity as already indicated forms the core of one's personal self, ***based on self-identification, not on surgical or medical procedure****."* (emphasis supplied)"

11. This Hon'ble Court further held that both gender and biological attributes constitute distinct components of sex and that while biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one's self-image, the deep psychological or emotional sense of sexual identity and character. It held that discrimination on the ground of 'sex' under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity. It then directed the Union Government to enforce the rights of transgender persons, particularly the right to self-identification of gender identity and held as follows:

"*135. We, therefore, declare:*

135.1. Hijras, eunuchs, apart from binary genders, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by Parliament and the State Legislature.

135.2. Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

135.3. We direct the Centre and the State Governments to take steps 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. 135.4. The Centre and State Governments are directed to operate separate HIV sero-surveillance

centres since hijras/transgenders face several sexual health issues.
135.5. The Centre and State Governments should seriously address the problems being faced by hijras/transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.
135.6. The Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.
135.7. The Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.
135.8. The Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.
135.9. The Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life."

12. Following the judgement laid down in ***NALSA***, the right to self-identification of gender identity has been solidified and affirmed in subsequent judgements of this Hon'ble Court. In ***K.S. Puttaswamy and Another v. Union of India and Other*s** (2017) 10 SCC 1 the 9-judge constitutional bench re-iterated that the right to privacy includes the right to one's self-identification of gender identity, and stated as follows:

"NALSA indicates the rationale for grounding of a right to privacy in the protection of gender identity within Article 15. The intersection of Article 15 with Article 21 locates a constitutional right to privacy as an

expression of individual autonomy, dignity and identity. NALSA indicates that the right to privacy does not necessarily have to fall within the ambit of any one provision in the chapter on fundamental rights.

……

"Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary state action. It prevents the state from discriminating between individuals. The destruction by the state of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary state action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity."

13. Thereafter a 5-judge Constitutional Bench of this Hon'ble Court in ***Navtej Singh Johar and others v. Union of India*** (2018) 10 SCC 1, held that the right to self-determine one's gender identity is an integral part of one's right to life, dignity and autonomy.

14. During this time, the Respondent Union of India, in 2016 introduced the Transgender Persons (Protection of Rights) Bill, 2016 in the Lok Sabha on 2.8.2016**.** The 2016 Bill had several deficiencies, especially the definition of 'transgender person", and was thereafter referred to the Standing Committee on Social Justice and Empowerment which produced its Report dated 19.7.2017. The Committee Report, on the specific definition given to "transgender persons" under the 2016 Bill noted that the definition as it stood in the 2016 Bill failed to incorporate the right to self-determination. It recommended as follows:

> *"1.13 The Committee feels that the definition of 'transgender person' will be the fulcrum of any legislation on transgender rights and welfare and the whole law would depend on the scope of this definition. The Committee feel that the proposed definition of 'transgender person' in the Bill is in stark contrast to global developments, where transgender persons have been granted the right to self-determine and to seek benefits according to such identity/expression. More so, it not only violates the fundamental rights to equality, dignity, autonomy but also freedom of transgender persons guaranteed under Articles 14, 19 and 21 of the Constitution."*
>
> *1.26 The Committee, therefore, are of considered view that the proposed definition of transgender person not only takes away the right to self-determined gender identity which was guaranteed by the Hon'ble Supreme Court in NALSA judgement but also adversely effects significant part of the transgender population - specially pre-op/non-op transmen and transwomen, trans people who cannot or do not wish to undergo surgical interventions, gender fluid, gender neutral, and intergender persons.*

1.27 In view of the foregoing, the Committee conclude that a transgender person should have the option to choose either 'man', 'woman' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones. The Committee, therefore, recommend that Clause 2(i) of the Bill may be reframed as under:
"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 sociocultural identities such as - kinnars, hijras, aravanis, jogtas etc".

15. Ultimately the Committee in its Report had recorded that the Bill completely misunderstands trans identities and severely restricts the constitutionally guaranteed right of transgender persons to self-identify, which ***NALSA*** has upheld (Para 1.24) and not only takes away the right to self-determined gender identity which was guaranteed by the Hon'ble Supreme Court in ***NALSA*** judgement but also adversely effects significant part of the transgender population - specially pre-op/non-op transmen and transwomen, trans people who cannot or do not wish to undergo surgical interventions, gender fluid, gender neutral, and intergender persons (Para 1.26). The Committee further went on to consider the process for certification as envisioned in the Bill and noted 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. (Para 3.7).

A copy of the Forty-Third Report of the Standing Committee on Social Justice and Empowerment (2016-2017) dated 21.7.2017 is annexed hereto and marked as **ANNEXURE -P- 7 (Pages 91-220)**

16. While the 2016 Bill was not passed, after the above developments, the Transgender Persons (Protection of Rights) Act, 2019 (TG Act 2019") was introduced, which incorporated the definition of 'transgender persons' in accordance with the judgement of this Hon'ble Court in ***NALSA*** and also as laid down by the Standing Committee in its Report and recommendations. The TG Act 2019 was passed with specific and explicit provisions to recognize and give legislative recognition to the right to self-perceived gender identity incorporated through Sections 2(k), 4(2), (6) and (7) specifically providing for a broad definition of 'transgender person'. That the unamended provisions are reproduced herein below:

Sec. 2(k) "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.

7. Recognition of identity of transgender person.—

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

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

6. Issue of certificate of identity.—

1) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.

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

(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.

7. Change in gender.—

(1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.

(2) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, 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 a certificate of identity under section 6 or a revised certificate under sub-section (2) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person: Provided that such change in gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act.

17. The definitions given above to 'transgender persons" ensured that definition is as per the guarantees in ***NALSA*** and that transgender remains an umbrella term that is inclusive of all gender identities which includes any person who does not identify with the gender assigned to them at birth and includes transmen, transwomen and genderqueer persons. In addition to the above provisions, the TG Act 2019 provided for non-discrimination in employment, education, health care and the setting up of the National Council for transgender persons. Thereafter the Transgender Persons (Protection of Rights) Rules, 2020 were passed, which laid down the procedure for obtaining a certificate of identity for transgender persons, and the provision of welfare measures, education, social security and health of transgender persons by appropriate Government.

A copy of the Transgender Persons (Protection of Rights) Act 2019 is annexed hereto and marked as **ANNEXURE P-8 (Page Nos. 221-228).**

A copy of The Transgender Persons (Protection of Rights) Rules, 2020 is annexed hereto and marked as **ANNEXURE P- 9 (Page Nos. 229-243).**

18. That after the TG Act 2019 was enacted and the Rules were framed in 2020, there were petitions filed both before this Hon'ble Court in W.P. (C) No. 406 of 2020 titled as "Grace Banu Ganesan & Ors. vs Union of India & Ors" and before some of the High Courts, being W.P. No. 11679 / 2020 (before the Hon'ble High Court of Karnataka), challenging some provisions of the TG Act 2019 as being in direct violation of the judgement in NALSA with regard to recognition of gender identity, denying transgender persons the choice to live in any alternative arrangement outside of their family, which was often a place of violence, and also sections which criminalized certain acts as offences, on the ground of being vague and therefore, be applied against the interests of the transgender community in an arbitrary manner, and also on the ground that the maximum penalty for sexual abuse committed against transgender persons was capped at two years' imprisonment, whereas, for similar offences committed against women under the Indian Penal Code, 1860 at that time, was between three years to life imprisonment, which are still pending.

19. Thereafter, since the passing of the TG Act 2019, there have been several developments to extend rights, entitlements and protections to transgender persons. However, despite the enactment of the 2019 Act and several judgements from the High Courts and Supreme Courts, several of its provisions remained unenforced and there was still entrenched stigma amongst law enforcement and healthcare professionals against the transgender community and there continued to be challenges faced by transgender individuals. It was in fact, in recognition of these challenges that that Respondent No. 1 Union had on 24.3.2021 launched the online National

Portal for Transgender Persons to ensure that the process of certification is done for transgender persons.

A copy of the National Portal for Transgender Persons homepage is annexed hereto and marked as **ANNEXURE P- 10 (Pages Nos. 244)**

20. In a similar vein, the Ministry of Health and Family Welfare issued guidelines which clarify that access to hormones, surgery or other types of gender affirming care must be available to those who express a difference between their gender identity and their gender assigned at birth, and recognised the diversity in kinds of persons who experience gender incongruence, which is not limited to the categories defined in the impugned Amending Act, but also include transgender men and women, among others.

A copy of the Guidelines issued by the Ministry of Health and Family Welfare dated 03.09.2024 is annexed hereto and marked as **ANNEXURE P-11 (Pages Nos. 245 - 258)**

21. While things stood thus, suddenly in March 2026, without any prior consultation or reasoning, The Transgender Persons (Protection of Rights) Amendment Bill, 2026 ("The 2026 Amendment Bill") was introduced by the Respondents, to completely restrict the coverage of the TG Act 2019. The Bill in its Statement of Objects and reasons stated as follows:

"STATEMENT OF OBJECTS AND REASONS

1. *It is the legislative policy to recognise a specific class of transgender persons, who face social issues and to create a regime for their protection. The legislative policy was and is intended to protect only those who face severe social exclusion due to biological reasons for no fault of their own and no choice of their own.*

2. *Over the course of time, during the implementation of this enactment, certain doubts and difficulties have arisen and are likely to arise with regard to the expanse of the definition of transgender persons and how the identification of such persons is to be done under the existing definition. This is critical to the implementation of the Act, as it is of prime importance that the enactment is utilised and works towards only those who are in actual need of such protection.*

3. *The intent, object and purpose of the Act is and was to protect a specified class of persons socially and culturally known as transgender people who face societal discrimination of an extreme and oppressive nature. The purpose was and is not to protect each and every class of persons with various gender identities, selfperceived sex/gender identities or gender fluidities.*

4. *The existing vague definition of the expression "transgender person" not only makes it impossible to identify the genuine oppressed persons to whom the benefits of the Act are intended to reach, but also makes the operation and enforcement of several provisions under penal, civil and personal laws unworkable. Such a vague and broad definition of the expression "transgender person" is found to have created complex issues in the working of statutory enactments, as this vague definition is not compatible with several statutory provisions of several enactments enacted both by the Parliament and the State Legislatures. Any enactment conferring rights, privileges and protections cannot have a definition clause whereby the status entitling such rights, privileges and protections can be acquired.*

5. *It is therefore imperative to give a precise definition for proper and definitive identification and protection of transgender persons to whom the benefits of the Act must reach. The protection and benefits that are provided under the Act are vast in nature, and therefore, care has to be taken that such identification cannot be extended on the basis of any acquirable characteristics or personal choice or claimed self-perceived identity of an individual.*

6. *…….*

7. *The Transgender Persons (Protection of Rights) Act, 2019 prohibits discrimination and abuse against transgender persons but its penal provision under section 18, as presently enacted, addresses only general wrongs and criminal offences and prescribes a maximum of two years' imprisonment. It does not adequately address offences of exceptional gravity that have been documented in practice. The abduction of adults and children, the infliction of reversible or irreversible bodily harm upon them through mutilation, emasculation, castration, hormone therapies / other similar therapies or chemical alteration, and their forced assumption of a transgender identity, frequently as a prelude to economic and other forms of exploitation including but not limited to begging or servitude has been observed. While scattered provisions of the Bharatiya Nyaya Sanhita, 2023 and the Juvenile Justice (Care and Protection of Children) Act, 2015 address individual elements of these wrongs, no existing provision treats this conjunction of abduction, permanent bodily harm, and forced identity as a unified penal approach.*

8. The Bill, therefore, also proposes to substitute section 18 of the principal Act, creating specific offences with graded punishments that reflect the gravity of the harm, the irreversibility of the injury, and the particular vulnerability of child victims. The proposed provisions operate cumulatively with the general criminal law and give legislative expression to the constitutional guarantees that every person's bodily integrity is inviolable, that no person may be subjected to forced labour or traffic in human beings.

A copy of the Transgender Persons (Protection of Rights) Amendment Bill 2026 is annexed hereto and marked as **ANNEXURE – P-12** (**Page Nos. 259-270**)

22. The above Statement of Objects and reasons shows that it is based on allegations of misuse, which are not substantiated with any data or evidence of such misuse or implementational hurdles. Further, there was no public consultation on the Bill, which introduced drastic changes to the existing TG Act and to the definition of 'transgender person".

23. Thereafter the Bill was introduced in the Lok Sabha on 13.03.2026 and passed on 24.03.2026 and subsequently passed the Rajya Sabha on 25.03.2026. It received the president's assent on 30.03.2026 and was published in the Gazette on the same day as the Transgender Persons (Protection of Rights) Amendment Act 2026 ("Amendment Act").

A copy of the Transgender Persons (Protection of Rights) Amendment Act, 2026 is annexed hereto and marked as **ANNEXURE – P-13** (**Page Nos. 271-275**)

24. The Impugned Amendment Act makes the following changes to the 2019 Act:

Section amending	**2019 Act**	**Amendment Act 2026**
Section 2(ii)	None	Section 2 *'(aa)* "authority" means a medical board, headed by a Chief Medical Officer or a Deputy Chief Medical Officer, as may be appointed by the Central Government, State Government or Union territory Administration;';
Section 2(iii)	Section 2*(i)* "person with intersex variations" means a person who at birth shows variation in his or her primary sexual characteristics,	Omitted

	external genitalia, chromosomes or hormones from normative standard of male or female body;	
Section 2(iv)	Section 2(*k*) "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such	Section 2(k) "transgender person" means— (*i*) a person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*, or eunuch, or a person with intersex variations specified below or a person who, at birth, has a congenital variation in one or more of the following sex

	socio-cultural identities as *kinner, hijra, aravani* and *jogta.*	characteristics as compared to male or female development:— (*a*) primary sexual characteristics; (*b*) external genitalia; (*c*) chromosomal patterns; (*d*) gonadal development; (*e*) endogenous hormone production or response, or such other medical conditions; or (*ii*) any person or child who has been, by force, allurement, inducement, deceit or undue influence, either

		with or without consent, compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise: Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.

Section 3	Section 4(2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.	Omitted
Section 4(a)	Section 6 (*1*) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.	Section 6 (*1*), for the words "District Magistrate", the words "District Magistrate, after examining the recommendation of the authority and, if he considers either necessary or desirable, after taking the assistance of other medical experts" shall be

		substituted;
Section 4(b)	No equivalent sub-section.	In section 6 - "(*4*) The person who has been issued a certificate of identity under sub-section (*1*) and is so declared as a transgender person within the definition under this Act shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person."
Section 5(a)	Section 7 *(1)* After the issue of a certificate under sub-	(*a*) in sub-section (*1*), for the words "such person may", the words

	section (*1*) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.	"such person shall" shall be substituted;
Section 5(b)	No equivalent clause	In section 7- "(*1A*) The medical

		institution in which the person who has undergone surgery to change gender, either as male or female, shall furnish the details of such person to the concerned District Magistrate and the authority in such form and manner as may be prescribed.”
Section 5(c)	Section 7 (2) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with	In section 7 - “(*2*) A person referred to in sub-section (*1*) shall also make an application to the District Magistrate who shall, on receipt of an application along with the

	the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.	certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.”;
Section 5(d)	Section 7 (*3*) The person who has been issued a certificate of identity under section 6 or a revised certificate under sub-section (*2*) shall be entitled to change the first name in the birth certificate	Omitted

	and all other official documents relating to the identity of such person: Provided that such change in gender and the issue of revised certificate under sub-section (*2*) shall not affect the rights and entitlements of such person under this Act.	
Section 7	**Section 18.** Whoever,— *(a)* compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government;	Sections 18 (e), (f), (g) and (h) added: (e) kidnaps or abducts any adult person and causes— (i) grievous hurt to such person, whether by mutilation,

	(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 household, village or other place of residence; and *(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	emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or (ii) permanent or severe injury to the body or bodily functions of such person, with the intent of, or in the course of, compelling such person to assume, adopt, or outwardly present a transgender identity against the will or consent of such person, whether by force, allurement, deceit, undue influence or otherwise, shall be punishable with

	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.	rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than two lakh rupees; (f) kidnaps or abducts any child and causes— (i) grievous hurt to such child, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or

		hormonal procedure; or (ii) permanent or severe injury to the body or bodily functions of such child, with the intent of, or in the course of, compelling such child to assume, adopt, or outwardly present a transgender identity, whether by force, allurement, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for life, and shall also be liable to fine which shall not be

		less than five lakh rupees; (g) by force, threat, coercion, allurement, deception, inducement, or undue influence— (i) compels any person, whether or not such person is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person against the will of such person; and (ii) employs, uses, or causes such person to engage in begging, solicitation,

		servitude, or any other form of forced or bonded labour while so presenting, shall be punishable with rigorous imprisonment for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine which shall not be less than one lakh rupees; and (h) by force, threat, coercion, allurement, deception, inducement, undue influence or otherwise—

		(i) compels any child, whether or not such child is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person; and (ii) employs, uses, or causes such child to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which

		may extend to fourteen years, and shall also be liable to fine which shall not be less than three lakh rupees."

25. The Amendment Act has been passed in complete disregard of the judgements of the Hon'ble Court and the lived realities of transgender persons. The Petitioners herein are transgender persons many of whom have now been completely excluded from the coverage of the TG Act 2019 due to the Amendment Act. The definition excludes transmen, transwomen and genderqueer persons, and those who do not identify with the gender assigned to them at birth. Some of the Petitioners have already obtained TG identity Cards under the TG Act 2019, and are undergoing medical treatment for affirming their gender identity. Some of the Petitioners are still applying for their certificates of identity cards under the TG Act. The Amendment Act would not allow them to get their ID cards or carry on with their medical treatment, as they now do not fall under the definition of 'transgender persons' under the law. The Amendment Act seeks to undo judicial precedents and legislative and policy developments that have ensured the fundamental rights of gender minorities in the country. The Amended Act has completely changed the definition of 'transgender' to include only persons from socio-cultural identities of *hijra, kinnar, arvani* and *jogta*, and intersex persons, and excluding all other persons including transgender men, transgender women, persons who do not identify with the gender assigned at birth, genderqueer persons, all other trans persons who do not belong to these socio-cultural

groups, thus completely leaving the Petitioners out of the purview of the TG Act 2019.

26. Further, the Amendment Act deletes Section 4(2) of the 2019 Act vide section 3 of the impugned Amending Act that removes a clause clarifying that transgender persons have the right to self-perceived identity. It also amends Section 7 of the 2019 Act which was already problematic, by requiring surgery. However, by now requiring that anyone who undergoes surgery to report their surgery to the District Magistrate.

27. Finally, the Amendment Act introduces new penal offences that are extremely broad and vague encompassing anyone who (i) kidnaps someone (ii) causes grievous hurt by procedures like emasculation, castration, surgery or hormonal therapy (iii) with an intent of 'compelling such person to assume, adopt, or outwardly present a transgender identity against the will or consent of such person, whether by force, allurement, deceit, undue influence or otherwise' with punishment up to life imprisonment. These sections are extremely broad and vague and therefore would be used to criminalize the Petitioners, including members of the hijra community, transgender community networks, kinship networks, supportive parents, medical workers providing gender-affirming care or social organisations and workers who support transgender persons.

28. In view of the foregoing this Writ Petition is being filed on the following, amongst other grounds:

GROUNDS

29. **THAT** the Amendment Act 2026 amounts to a serious violation of the Petitioners' fundamental rights under Articles 14, 15(1), 16, 19 and 21 of the constitution and deserves to be held as ultra vires of the constitution and set aside.

I. UNCONSTITUTIONAL AND ARBITRARY EXCLUSIONS FROM THE DEFINITION OF 'TRANSGENDER PERSONS"

30. **THAT** the Amendment Act under Section 2(k) completely changes the definition of 'transgender person" that has been used under the TG Act since 2019 and is now limited only to persons from "socio-cultural identities" of *hijra, kinnar, aravani, jogta* and 'eunuch', persons with intersex variations and persons compelled to present as transgender. The definition completely excludes the Petitioners who were earlier included under the definition of 'transgender person' as *" a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta"* under Section 2 (k) of the TG Act 2019. Such restriction completely negates the Petitioners' identities, from the coverage of the law, and thus the Amendment Act deserves to be set aside.

31. **THAT** the impugned Amending Act by amending the definition of 'transgender person' goes against the definition given to the same, by the Hon'ble Supreme Court in ***NALSA v. Union of India***, (2014) 5 SCC 438 wherein it was held that:

"Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms. Gender identity, therefore, refers to an individual's self-identification as a man, woman, transgender or other identified category." [para 19]

32. **THAT** the impugned Amendment Act by deleting Section 4(2) of the TG Act which protected self-perceived gender identity, is in complete violation of the judgement in ***NALSA v. Union of India,*** (2014) 5 SCC 438. ***T***he deletion of Section 4(2) entirely removes the statutory protection of self-perceived identity. This creates a complete retrogression in law, stripping away even the idea of self-perceived gender identity. That the aforesaid is an affront to the principle that self-identification is the basis of gender identity as held by this Hon'ble Court in in NALSA (Supra), the relevant portion of the judgement is reproduced hereunder:

"*We therefore, hold that values of privacy,* ***self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the transgender community under Article 19(1)(a)*** *of the Constitution of India and the State is bound to protect and recognize those rights." [para 66]*

*"****Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21*** *of the Constitution of India." [para 69]*

"(2) Transgender persons' right to decide their self-identified gender is also upheld *and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender." [para 129]*

Thus, by completely changing the definition of transgender persons to exclude from the definition which included persons who did not identify with the gender assigned to them at birth, amounts to a complete denial of the Petitioners' right to gender identity as held by this Hon'ble Court under NALSA and deserves to be set aside.

33. **THAT** the definition by completely excluding transgender persons who do not belong to any socio-cultural identity, the Amendment Act has completely ignored a large section of the transgender community such as the Petitioners, who are transgender women and transgender men, and others, who were earlier covered under the TG Act, and were also clearly recognised by the law. Further, the Hon'ble Supreme Court in NALSA (Supra) explicitly stated that transmen should not be excluded from the coverage of the law and held:

"Discussion on gender identity including self-identification of gender of male/female or as transgender mostly focuses on those persons who are assigned male sex at birth, whether one talks of Hijra transgender, woman or male or male to female transgender persons, ***while concern voiced by those who are identified as female to male trans-sexual persons often not properly addressed. Female to male unlike Hijra/transgender persons are not quite visible in public unlike Hijra/transgender persons. Many of them, however, do experience***

***violence and discrimination because of their sexual orientation or gender identity**." [para 46]*

The Amendment Act by only covering persons falling under the socio-cultural identities and intersex persons, completely excludes transgender men, or transmasculine identities, and excludes them from getting legal recognition of their gender identity and from the coverage of the law, which provides protection and non-discrimination and hence, violates the fundamental rights under Articles 14, 15, 19 and 21 of the Petitioners.

34. **THAT** the Amendment Act is manifestly arbitrary and therefore in violation of Article 21 as per the test laid down in ***Shayara Bano v Union of India***, AIR 2017 SC 4609:

"The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary." [para 55]

The definition of 'transgender persons' under the Act, the inclusion of new criminal offences under the Amendment Act includes categories and excludes categories in a classification that is capricious, irrational and/or without adequate determining principle. First, there is no constitutional basis for excluding people from the definition of 'transgender persons' who were earlier covered under the 2019 Act, which included persons who do not

identify with their gender assigned at birth, and included transmen, transwomen, and gender queer persons, particularly since this was the definition decided by this Hon'ble Court. Second, the definition includes within its scope those who were 'compelled' to present as transgender, thereby itself forcing people to identify as transgender without respecting their agency. Such exclusions and classifications are manifestly arbitrary and without application of mind and amounts to a violation of Article 14 and deserves to be struck down.

35. **THAT** the Amendment Act, by creating a distinction in the amended section 2(k) between transgender persons who fall within socio-cultural identities and are intersex, and other transgender persons who self-determine their gender identity, are transgender men or transgender women, or genderqueer, makes a classification amongst transgender person, and excludes an entire section of the transgender community from the coverage of the law. Such a classification is unreasonable and bears no rational nexus with the purpose of the law, which is to protect and recognise all transgender persons, and cannot be meant for the coverage of only a section of the transgender community and is violative of Article 14 of the constitution and deserves to be struck down.

36. **THAT** the impugned Act systematically excludes gender non-binary and genderqueer persons from the protective umbrella of the law, thereby being in direct contravention of this Hon'ble Court's judgement in ***Jane Kaushik v. Union of India***, 2025 INSC 1248 wherein this Hon'ble Court has held that the State's failure to adapt administrative machinery to recognize and include non-binary identities constitutes omissive discrimination, and specifically directed this aspect to be considered. By removing the right to self-identify

one's gender identity, the Amendment Act creates a procedural impossibility for non-binary and gender diverse citizens to access public employment, education, healthcare and all other entitlements and thus deserves to be set aside.

II. COMPLETE DENIAL OF THE RIGHT TO SELF-PERCEIVED GENDER IDENTITY, WHICH IS IN VIOLATION OF THE RIGHT TO AUTONOMY AND THE RIGHT TO LIFE:

37. **THAT** the impugned Act is violative of Article 21 of the Constitution of India in as much as it violates the right to self-determination and therefore personal autonomy and personal liberty as guaranteed under Article 21 of the Constitution of India.

38. **THAT** this Hon'ble Court have held that the recognition of gender identity lies at the heart of the fundamental right to dignity and legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under Article 21 of the Constitution. The Hon'ble Court in ***K.S. Puttaswamy v. Union of India,*** (2017) 10 SCC 1 to include gender identity and sexual orientation. It held,

> "*Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected*

*freedoms. The guarantee of equality is a guarantee against arbitrary state action. It prevents the state from discriminating between individuals. The destruction by the state of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary state action**. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity**. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised" (para 169)*

39. **THAT** Article 141 of the Constitution of India states that law declared by this Hon'ble Court shall be binding on all courts within the territory of India and hence the directions of this Hon'ble Court in *NALSA* to provide reservations for transgender persons in public employment have to be guaranteed. This is to ensure certainty and continuity in the interpretation of the law across the country as required by the legal doctrine of *stare decisis.* This Hon'ble Court in the case of ***Priya Gupta and Ors. vs. Addl. Secy. Ministry of Health and Family Welfare and Ors*** (2013) 11 SCC 404 held that, "*The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No Court or Tribunal and for that matter any other authority can ignore the law stated by this Court."*

40. **THAT** the Amendment Act in excluding a vast spectrum of gender-diverse individuals by taking away the right to self-identify has created a legal vacuum wherein entire categories of gender minorities have been rendered without any protection, rights and entitlements previously extended to them.

41. **THAT** in ***Arunkumar v Inspector General of Registration***, judgment dated 22.04.2019 in WP (MD) No. 4125 of 2019, the Hon'ble Madras High Court held that a transgender or intersex woman who identifies as a woman can register her marriage with a man under the Hindu Marriage Act, 1955:

> *"Seen in the light of the march of law, the expression "bride' occurring in Section 5 of the Hindu Marriage Act, 1955 will have to include within its meaning not only a woman but also a transwoman. It would also include an intersex person/transgender person who identifies herself as a woman. The only consideration is how the person perceives herself." [para 15]*

Therefore, the Madras High Court has affirmed the right to self-determine gender extends to all legal entitlements including marriage. All of these rights would now be denied to the Petitioners and such exclusions amount to violation of the Petitioners' rights under Article 14 and 15 of the constitution.

42. **THAT** the Hon'ble Karnataka High Court has also upheld and implemented the right to self-determine one's gender in the case of ***Ms. X v State of Karnataka,*** in judgment dated 20.12.2024 in WP No 55559 of 2017 (GM-RES), wherein the Hon'ble High Court held that the Respondent State authorities are bound to change the name and gender on the birth certificate of the petitioner as per the intent of the 2019 Transgender Act and the rights

under the Constitution. The Hon'ble Karnataka High Court recommended that the 2019 Act was a special enactment and other statutes ought to be amended or read in compliance with it:

> *"There is an obligation in terms of Section 8 of the Transgender Act on the government to safeguard the interest of the Transgenders, one of the modes and methodologies for such protection being the implementation of the mandate of Section 4 to 7 of the Transgenders Act, the Government would have to carry out necessary amendments to the Act of 1969 and Rules framed thereunder to give effect to the Transgenders Act and establish necessary procedures required to be followed, to give effect to the purpose and intent and mandate of the special laws, namely the Transgender Act." [para 42]*

The impugned Amendment Act removes the main thrust and purpose of the 2019 Act which was to implement and give shape to the constitutional rights of transgender persons and therefore frustrates the established doctrines and principles of law on gender identity held in several cases by this Hon'ble Court and High Courts across various jurisdictions.

III. MEDICALIZATION OF GENDER IDENTITY

43. **THAT** the Amendment Act through the amended Section 6 gives the District Magistrate the discretion to refuse applications for change of gender identity and to decide on the same only after obtaining a certificate from a medical board, and medical experts and aggressively worsens this process for transgender persons by introducing a mandatory Medical Board. Hence, making the issuance of the identity certificate to transgender persons dependent on various undefined third parties, medical examinations and vague and arbitrary criteria which would amount to a violation of a person's

right to self-determine their gender identity and autonomy guaranteed under Article 21 of the constitution. That the impugned Amendment Act also states in Section 7 that if a transgender person undergoes surgery to change their gender identity to male or female, it can be done only after medical reassignment and is now mandatory to apply for a revised certificate, taking away even the option to self-determine whether one wishes to undergo the state certification process. This amounts to a complete violation of the right to self-determination of one's gender identity upheld by this Hon'ble Court in ***NALSA*** which held that there is no need to undergo any medical procedure in order for a transgender person to exercise their right to identify their gender under Articles 19(1)(a) and 21 of the Constitution:

> *"Each person's self-defined sexual orientation and gender identity is integral aspects of self-determination, dignity and freedom and* ***no one shall be forced to undergo medical procedures, including SRS, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity****." [para 22]*
>
> *"Gender identity as already indicated forms the core of one's personal self, based on self-identification,* ***not on surgical or medical procedure****." [para 82]*

44. **THAT** the Amendment Act is in complete violation of the ruling of this Hon'ble Court in ***NALSA*** which has explicitly clarified the test for gender identity to be the psychological test and not the medical model and held:

> *"As already indicated, we cannot accept the Corbett principle of "Biological Test", rather we prefer to follow the psyche of the person in determining sex and gender and prefer the "Psychological Test" [para 75]*

45. **THAT** The Amendment Act under section 7 requires all medical institutions to furnish details of gender affirmative surgeries undertaken by persons to the District Magistrate, by creating mandatory surveillance. Such a provision is a blatant violation of the right to privacy under Article 21 by sharing personal data of persons who intend to undergo surgery with the State, without their consent and without any legitimate aim or compelling state interest. This would also violate the right to privacy of the Petitioners. As held by this Hon'ble Court in ***K.S. Puttaswamy v. Union of India,*** (2017) 10 SCC 1, the right to privacy over personal data was upheld, which would also encompass medical data:

> *"The sphere of privacy stretches at one end to those intimate matters to which a reasonable expectation of privacy may attach. It expresses a right to be left alone. A broader connotation which has emerged in academic literature of a comparatively recent origin is related to the protection of one's identity. Data protection relates closely with the latter sphere. Data such as medical information would be a category to which a reasonable expectation of privacy attaches." [para 77]*

46. **THAT** the "Authority" constituted by s. 2(ii) of the impugned Amendment adding sub clause (aa) to include a Medical Board is to be comprised of a Chief Medical Officer or Deputy Medical Officer, as may be appointed by the Central or State Government or Union Territory Administration. The Authority carries significant powers relating to the determination of a person's gender and legal identity yet completely excludes transgender and intersex persons from its composition going against the principles of natural justice and procedural fairness. By constituting an authority charged with the power

to verify someone's gender identity without any community representation the amendment contravenes the Right to Dignity under Article 21 by leaving groups vulnerable to institutional humiliation.

47. **THAT** amended Section 6 of the Transgender Persons (Protection of Rights) Act, 2019 vide sections 2(ii) and 4 of the impugned Amending Act, provides the District Magistrate with undue discretion to refuse applications and consult medical experts as 'desirable', and also creates undue medical hurdles without any clarity on what exactly the medical board under this provision will examine and base their recommendation on. The Impugned Amendment Act makes the provisions completely draconian thus aggravating the issues for obtaining a certificate. Such a legal provision which would make an identity certificate dependent on various undefined third parties, medical examinations and vague and arbitrary criteria which would amount to a violation of a person's right to gender identity and autonomy guaranteed under Article 21 of the constitution, as one's right to get recognition of legal identity should not be dependent on any documents to be provided**.**

IV. NEW CRIMINAL OFFENCES AGAINST TRANSGENDER PERSONS WHICH ARE UNCONSTITUTIONAL:

48. **THAT** this Hon'ble Court in the context of sexual minorities in ***Navtej Singh Johar v Union of India***, (2018) 10 SCC 1, has held as follows:

> *"Citizens of a democracy cannot be compelled to have their lives pushed into obscurity by an oppressive colonial legislation. In order to ensure to sexual and gender minorities the fulfilment of their fundamental rights, it is imperative to 'confront the closet' and, as a necessary*

consequence, confront 'compulsory heterosexuality.' Confronting the closet would entail "reclaiming markers of all desires, identities and acts which challenge it." It would also entail ensuring that individuals belonging to sexual minorities, have the freedom to fully participate in public life, breaking the invisible barrier that heterosexuality imposes upon them. The choice of sexuality is at the core of privacy. But equally, our constitutional jurisprudence must recognise that the public assertion of identity founded in sexual orientation is crucial to the exercise of freedoms." [para 60]

49. **THAT** the exclusionary definition in amended section 2(k), as well as the new criminalization provisions in amended section 18, produce an effect where Petitioners who are not included under the definition will be forced to hide their identity and return to the 'closet'. That without legal recognition of the Petitioners' identity, the Petitioners who are excluded from the definition are denied the right of the 'public assertion of identity'. In ***Navtej Singh Johar v. Union of India,*** (2018) 10 SCC 1, it was held that a classification, which discriminates against persons based on their 'intrinsic or core trait' such as their gender identity *ipso facto* fail the test of equality under Article 14 of the Constitution of India:

"*Section 377 creates an artificial dichotomy. The natural or innate sexual orientation of a person cannot be a ground for discrimination.* ***Where a legislation discriminates on the basis of an intrinsic and core trait of an individual, it cannot form a reasonable classification based on an intelligible differentia****.*

" In National Legal Services Authority v. Union of India & Ors. this Court ***granted equal protection of laws to transgender persons****. There is*

therefore no justification to deny the same to LGBT persons and such classification has no rational nexus with the purpose of the law." [paras 14.3-14.4]

50. That while even the existing criminal offences under Section 18 were problematic as they were vague and undefined, and that sexual offences against transgender persons were penalized with minimal punishments, the amended section 18 *vide* the Amendment Act errs in furthering the complete retrogression, by introducing a series of crimes that can be attracted by merely presenting oneself as a transgender. It fundamentally prejudices the idea of self-determination of gender identity. For these reasons, the impugned Amending Act violates Article 14 of the Indian Constitution.

51. THAT the Amendment Act now invokes severe criminal offences against the transgender community itself. That by introducing Sections 18(e)-(h), the State imposes life imprisonment for vaguely defined acts like 'allurement' or 'undue influence' to adopt a transgender identity, giving rise to a paradox in approaching and applying criminal provisions *on* transgender persons since while on one hand the State fails to protect transgender persons from severe sexual violence, yet on the other hand is deploying the harshest criminal sanctions to surveil and criminalize the transgender community's own healthcare providers and kinship structures.

52. **THAT** further, the provisions of amended sections 18 (e), and (f) use extremely vague and broad terms including 'force, threat, coercion, allurement, deception, inducement or undue influence', and for sections 18(g)

and (h), the terms ‘force, allurement, deceit, undue influence or otherwise’. Such terms are not defined within the Act which run the risk of criminalizing even health care professionals as in the instant case for the Petitioners and leads to deprivation of fundamental rights. In ***State of Madhya Pradesh v. Baldeo Prasad***, [1961] 1 S.C.R. 970, this Hon’ble Court struck down the use of the phrase ‘goonda’ because it was too vague and undefined in the legislation, casting a chilling effect on the freedoms under Article 19 of the Constitution:

> *“Incidentally it would also be relevant to point out that the definition of the word "goonda" affords no assistance in deciding which citizen can be put under that category. It is an inclusive definition and it does not indicate which tests have to be applied in deciding whether a person falls in the first part of the definition. […] After all it must be borne in mind that the Act authorises the District Magistrate to deprive a citizen of his fundamental right under Art. 19(1)(d) and (e), and […] care must always be taken in passing such acts that they provide sufficient safeguards against casual, capricious or even malicious exercise of the powers conferred by them. It is well known that the relevant provisions of the Act are initially put in motion against a person at a lower level than the District magistrate, and so it is always necessary that sufficient safeguards should be provided by the Act to protect the fundamental rights of innocent citizens and to save them from unnecessary harassment.” [page 979]*

Thus, the provisions are unconstitutional considering the potential ways in which it can be arbitrarily used to target and harass the members of the transgender community, as well as medical providers of care to transgender

persons, without any sufficient safeguards, thereby violating Article 14 of the constitution.

53. **THAT** the Amendment Act by including criminal offences under Sections 18 (e) and (f) which criminalise anyone who causes grievous hurt by 'mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure in order to compel someone to present a transgender identity, will amount to putting health care providers and medical professionals at risk of being charged with the criminal offence of grievous hurt, or kidnapping. Thus, rather than amending Section 18 to adequately punish perpetrators of sexual violence against transgender persons as required for the protection of the transgender community, the State has introduced draconian penalties that target those providing essential gender-affirming care, which can result in a sentence of ten years to life imprisonment. This has led to the Petitioners being unable to get their medical treatment which they are undergoing presently, and if there are no continual treatment and drugs accessible to them, it would lead to their gender affirming treatment being aborted, and would leave them in a situation where they would not be able to express their gender identity in the manner that they wish to. It would also lead to several adverse health and medical consequences with hormonal effects reversing and leading to their right to life under Article 21 of the constitution being violated.

54. **THAT** the Amendment Act, by introducing vague and broad crimes cast a chilling effect on this established right to relationships by potentially criminalising couples who run away with each other and where one is often accused of 'kidnapping' the other when one of them is a transgender person, which violates the right recognised under Article 21 of the constitution. This

protection would also extend to all forms of alternative kinship structures and chosen families exercised by the Petitioners who are transgender persons in order to maintain community and support, but which this impending Amendment Act could interfere with through its vague definition of crimes. This would also be in violation of the ruling of this Hon'ble Court in ***Supriyo v Union of India,*** 2023 INSC 920:

> *"While we agree, that there is a right - which we will characterise as a 'right to relationship' to avoid confusion - we squarely recognise it to fall within Article 21, as already recognised in the afore cited cases. The right to relationship here, includes the right to choose a partner, cohabit and enjoy physical intimacy with them, to live the way they wish to, and other rights that flow from the right to privacy, autonomy and dignity. They are, like all citizens, entitled to live freely, and express this choice, undisturbed in society. Whenever their right to enjoyment of such relationship is under threat of violence, the state is bound to extend necessary protection. This is a natural consequence of this Court's judgments in Navtej Johar (supra), K.S. Puttaswamy (supra), Shafin Jahan (supra) and Shakti Vahini (supra)." [para 427, Justice Bhat]*

55. **THAT** the TG Act 2019 itself was not fully implemented, and there was a case of a lack of bureaucratic will and 'legislative omission' in its implementation to all transgender persons. As this Hon'ble Court identified in ***Jane Kaushik v. Union of India***, 2025 INSC 1248:

> *"At this stage, it would be apposite to discuss another facet of legislative omission, i.e., a situation in which the subject matter is not entirely unattended by legislation, yet discrimination still ensues owing to the gaps in the said legislation. Such gaps have the consequence of violating*

the constitutional mandate. In such cases, discrimination is not the result of an explicit act but of institutional legislative inaction. This is commonly known as, "relative legislative omission"." [para 120]

Rather than addressing these gaps, the impugned Amending Act has in fact widened the legislative omission by further excluding more transgender persons from the definition, protections and mechanisms of the 2019 Act, and would amount to omissive discrimination under Articles 14, 15 and 21 of the Constitution.

56. **THAT** the provisions of amended section 18 (g) and 18(h) of the amended Act, makes it an offence to compel a person to present as transgender and indulge in begging, solicitation or forced labour, is vague in material terms as it does not define what is meant by forced or bonded labor. Therefore, it has the potential to be arbitrarily applied against the members of the transgender community who are already discriminated and face stigmatic treatment at the hands of state officials and other members of the society as indicated above. Further, the provision is also vague as it does not state what amounts to force, threat, coercion, allurement, deception, inducement, or undue influence. Thus, the provision is void for vagueness considering the potential ways in which it can be arbitrarily used to target and attack the members, be 'atypical' such as guru-chela relationships, or live together in homes of their own community. Such rights are protected under ***Deepika Singh v Central Administrative Tribunal & Ors.,*** AIR 2022 SC 4108, which extended constitutional rights to atypical families. Furthermore, in ***Supriyo v Union of India*****,** 2023 INSC 920, the Court upheld the right of transgender persons in heterosexual relationships to enter marriage as well as all transgender and queer persons to live together and make a life

together outside the institution of marriage under the right to association in Article 19. The impugned Amending Act threatens the ability of heterosexual transgender persons to change their gender to access this right to marriage, and for all transgender persons to live in community with other transgender persons.

57. **THAT** the inclusion of the word 'eunuchs' in section 2(k) closely resemble the intention to criminalize and exterminate 'eunuchs' contained in the Criminal Tribes Act, 1871, a colonial legislation that was repealed in August 1949 by the Constituent Assembly sitting as Provisional Parliament as in contravention to the Founding values of the nation. The same is therefore prima facie unconstitutional and the doctrine of presumption of constitutionality should not apply. In ***Vyjayanti Vasanta Mogli v. State of Telangana***, judgment dated 06.07.2023 in WP (PIL) No 44 of 2018, the Hon'ble Telangana High Court held that the Telangana Eunuchs Act 1329, Fasli is unconstitutional because it used derogatory terms that are hostile to the transgender community such as 'eunuch', which has been used again the impugned Amending Act. It was held as follows:

> *"[…] there can be no iota of doubt that such an enactment is anathema to our constitutional philosophy as explained by the Supreme Court in the above judgments. This is not only arbitrary and unreasonable but is, also manifestly arbitrary in as much as it criminalises the entire communities of eunuchs." [para 48]*
>
> *"This legislation is violative of the human rights of the third gender community besides it is an intrusion into their private sphere as well as an assault on their dignity. It is thus offensive of both the right to privacy, and the right to dignity of transgender persons. It is not only violative of*

Article 14 but also clearly violative of Article 21 of the Constitutional of lndia. Such an enactment can no longer continue to find a place in our statute book. It is accordingly declared as unconstitutional." [para 49]

58. **THAT** in ***Lt. Col. Nitisha v Union of India***, (2021) 15 SCC 125, this Hon'ble Court held that if any provision, even if neutrally worded has a 'disproportionate impact' on a certain protected category of persons, it is violative of Articles 14 and 15 of the Constitution. Specifically, this Hon'ble Court endorsed the following two-part test:

"First, the Court has to enquire whether the impugned rule disproportionately affects a particular group. […] Second, the Court has to look at whether the law has the effect of reinforcing, perpetuating, or exacerbating disadvantage. Such disadvantage could be in the shape of: "[e]conomic exclusion or disadvantage, [s]ocial exclusion…[p]sychological harms…[p]hysical harms…[or] [p]olitical exclusion", and must be viewed in light of any systemic or historical disadvantages faced by the claimant group." [para 65]

The amended sections 18 (e)-(h), while ostensibly neutral, will be disproportionately used against transgender persons who maintain households and provide shelter to other transgender persons who face social stigma and harm, including from their families. It will also affect the access to healthcare, support, shelter, and community for transgender people. The disproportionate impact is made out on the face of the impugned Amending Act itself which states that one of the elements of all of these crimes is when someone 'presents' as a transgender person or with a transgender identity and will produce a disproportionate harm on transgender persons and engages in

furthering stereotypes and physical violence against transgender communities. By criminalising anyone who compels a person to 'dress, present or conduct themselves outwardly as transgender' by 'force, allurement, deception or undue influence', the impugned Amendment Act will cast a chilling effect on persons who assist transgender persons in pursuing their constitutional right to a self-declared gender identity. The impugned Amendment runs the risk of framing any such support as 'allurement' or 'undue influence' due to the vagueness in these concepts. This broad and vague provision increases the discretion to be enjoyed by police authorities in interpreting the ambit of the offence and is thereby unconstitutional.

V. VESTED AND ENTRENCHED RIGHTS CANNOT BE TAKEN AWAY

59. **THAT** the impugned Act creates a chilling effect on fundamental rights and threatens to have the Petitioners de-recognised by the law resulting in losing access to healthcare, education and employment opportunities that are all contingent upon the valid identity certificates issued under the 2019 Act.

60. **THAT** once rights are granted under Indian Constitutional law, they cannot be restricted or taken away. This follows from the doctrine of progressive realization which is contained in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, to which India is signatory, and held by this Hon'ble Court in ***Navtej Singh Johar***:

> *"The doctrine of progressive realization of rights, as a natural corollary, gives birth to the doctrine of non-retrogression. […] The doctrine of non-retrogression sets forth that the State should not take measures or steps that deliberately lead to retrogression on the enjoyment of rights either under the Constitution or otherwise." [paras 188-189]*

Since the rights of self-determination and self-perceived identity were provided by the jurisprudence of this Hon'ble Court and section 4(2) of the 2019 Act, its explicit removal *vide* the impugned Amending Act defeats the principle of non-retrogression which is an aspect of the Indian Constitution including Article 14.

61. **THAT** in ***Kerala State Beverages (M&M) Corpn. Ltd. v. PP Suresh and Others***, (2019) 9 SCC 710, this Hon'ble Court held that when an authority makes an assurance as to providing some right that gives rise to a legitimate expectation, then it cannot be withdrawn without having firstly, provided for the opportunity to hear reasons why it should not be withdrawn and secondly, without having good reasons in public interest to change their policy:

> *"[…] That the procedural part of legitimate expectation relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit, that it will be continued and not be substantially varied, then the same could be enforced." [para 15]*

Therefore, those who already have received their rights and entitlements including, but not limited to, legal gender change, access to gender affirming care, schemes and benefits, should be able to continue accessing the same as per their legitimate expectation. In the instant case, the Impugned Amending Act has taken away the right of transgender persons who were previously recognized and are no longer within the definition. There was neither any

consultation nor any clauses which provided a transition period, savings of previous rights or acknowledged the fact that the statute was in violation of a right granted by a constitutional court. The failure to retain these rights violates the legitimate expectation of benefit held by the Petitioner. It is submitted that the impugned Amending Act has led to infringement of Petitioner's fundamental right to life guaranteed under article 21, right to equality under article 14 and the doctrine of legitimate expectation.

62. **THAT** the Amendment Act amended section 2(k) of the 2019 Act *vide* impugned amending Act section 2(iv) which restricts the definition of 'transgender persons' and discriminates on the basis of gender identity in complete violation of Constitutional guarantees under Articles 14, 15 and 19 this Hon'ble Court's judgement in ***NALSA*** (2014) in which the Court has held that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution.

63. **THAT** by removing the right to self-identify the impugned Act creates a procedural impossibility for non-binary and gender diverse citizens to access public employment, education, healthcare and all other entitlements.

64. It is in this background that this Hon'ble Court in ***Jane Kaushik v. Union of India*** 2025 INSC 1248 recognized the shortcomings and implementational gaps in the 2019 Act and 2020 Rules and the continued widespread discrimination against transgender persons. This Hon'ble Court held that the Respondent Union and State Governments therein had failed to formulate

inclusive policies, constitute redressal mechanisms, ensure safety and equitable access which had resulted in omissive discrimination. Noting the nature of continued discrimination faced by transgender persons, this Hon'ble Court held:

> *"179. It is a matter of grave constitutional concern that members of the transgender community continue to encounter systemic barriers in the ordinary conduct of their lives. Their daily existence is marred by a pattern of discrimination that operates across domains: beginning with the hurdles pertaining to recognition in official records, extending to harassment at public spaces, exclusion from educational and employment opportunities, and summing up in social ostracism and violence. A chain of precedents from various High Courts reveals a disturbing continuum of prejudice. We cannot but express our dismay towards the intrusive surveillance of transgender persons, policing of their identities, and an institutional indifference that often results in denial of dignity. Despite the authoritative pronouncement in NALSA (supra), the reality of the transgender person remains one of stigma. The workplaces question their capability, educational institutions hesitate to include them and the law, though well-intentioned, falters in its implementation. We have discussed below the day-to-day hurdles faced by the transgender community that stand revealed to us from various judgments and orders of High Court."*

65. **THAT** the Petitioners have themselves had their healthcare professionals including those specialising in gender affirmative care, express their concerns that the Act threatens the ability to deliver gender affirming care to international and national standards as they are required to do so under the

Mental Healthcare Act 2016. It also risks criminalizing the provision of crucial medical drugs and procedures for transgender people and could cause great harm to the Petitioners and others who have already begun treatment such as hormonal replacement therapy if their prescriptions are stopped.

VI. VIOLATION OF RIGHT TO LIFE AND AUTONOMY AND HEALTH UNDER ARTICLE 21

66. **THAT** the impugned Act, in introducing mandatory reporting by the individuals seeking medical procedures as well as by medical institutions severely hinders the rights to health of transgender and gender-diverse persons which has been held to be a fundamental right under Article 21 (***Parmananda Katara v. Union of India*** AIR 1989 SC 2039, ***Paschim Banga Khet Mazdoor Samity v. State of West Bengal & Ors., AIR 1996 SC 2426***) as it introduces a form of medical surveillance which is likely to deter persons from accessing health facilities.

67. **THAT** the impugned Act is violative of Article 21 of the Constitution of India in as much as it violates the right to self-determination and therefore personal autonomy and personal liberty as guaranteed under Article 21 of the Constitution of India.

68. **THAT** in ***Anuj Garg v. Hotel Association of India*** (2008) 3 SCC 1, this Hon'ble Court held that personal autonomy includes both the negative right of not to be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in.

69. **THAT** this Hon'ble Courts have held that the recognition of gender identity lies at the heart of the fundamental right to dignity and legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution.

70. **THAT** it has been held by this Hon'ble Court in ***K.S. Puttaswamy v. Union of India*** that the test of popular acceptance does not furnish a valid basis to disregard rights which are conferred with the sanctity of constitutional protection noting that sexual orientation is an essential attribute of privacy. It was held that discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual. Equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution.

71. **THAT** In ***Joseph Shine v. Union of India***, (2019) 3 SCC 39, this Hon'ble Court decriminalised Section 497 of the IPC as it was violative of Articles 14, 15(1) and 21 of the Constitution respectively. This Hon'ble Court opined that the first step towards realising substantive equality is to test if a provision enacted to address a disadvantage, itself results in a handicap to a group of citizens or not. Further, the provisions, measures or redressal of such a disadvantage must not be grounded in the notions and stereotypes about a section of the society. That such stereotypical redressal gives birth to social, economic and political impediments and is in fact no real remedy at all. This is so because, in essence, the same would lead to the legitimization of the disadvantage. It was recognised that the object underlying Article 15(3)

includes giving effect to substantive equality in the fullest sense by assuring dignity and autonomy to the section of the society sought to be benefited. While doing so, there can be no possibility for the legislature or executive to entrench their remedial measures in stereotypes and notions that find their origin in the very disadvantage sought to be remedied.

72. **THAT** the Hon'ble Supreme Court in the case of ***Navtej Singh Johar and Others vs. Union of India***, (2018) 10 SCC 1, where a legislation discriminates on the basis of an intrinsic and core trait of an individual, it cannot form a reasonable classification based on an intelligible differentia.

73. **THAT** the passage of the Amendment Act was not in compliance with the minimum 30-day period of consultation that is mandated under the Pre-Legislative Consultative Policy.

VII. INTERNATIONAL PRINCIPLES AND JUDGEMENTS

74. **THAT** the Yogyakarta Plus 10 Principles, in Principle 31 mandates that no medical and psychological tests can be required for the legal recognition of one's gender identity. Principle 31 of the Yogyakarta Principles reads as under:

> "*Principle 31 – The Right To Legal Recognition: Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right*

to change gendered information in such documents while gendered information is included in them.

States Shall:

A. Ensure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose, and thereby end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver licences, and as part of their legal personality;

B. Ensure access to a quick, transparent and accessible mechanism to change names, including to gender-neutral names, based on the self-determination of the person;

C. While sex or gender continues to be registered:

i. Ensure a quick, transparent, and accessible mechanism that legally recognises and affirms each person's self-defined gender identity;

ii. Make available a multiplicity of gender marker options;

iii. ***Ensure that no eligibility criteria, such as medical or psychological interventions, a psycho-medical diagnosis, minimum or maximum age, economic status, health, marital or parental status, or any other third-party opinion, shall be a prerequisite to change one's name, legal sex or gender;***

iv. Ensure that a person's criminal record, immigration status or other status is not used to prevent a change of name, legal sex or gender."

(emphasis supplied)

75. That the Yogyakarta Principles were recognised as being a part of Indian law in ***NALSA v Union of India*** and the same was upheld in ***Puttaswamy v Union of India***. That this Hon'ble Court held as follows: "29. Observations of several judgments make it clear that in the absence of any specific prohibition in municipal law, international law forms part of Indian law and consequently must be read into or as part of our fundamental rights. (For this proposition, see: Bachan Singh v. State of Punjab, (1980) 2 SCC 684 at paragraph 139, Francis Coralie Mullin v. Administrator, Union Territory of Delhi & Ors., (1981) 1 SCC 608 at paragraph 8, Vishaka & Ors. v. State of Rajasthan & Ors., (1997) 6 SCC 241 at paragraph 7 and National Legal Services Authority v. Union of India, (2014) 5 SCC 438 at paragraphs 51-60). This last judgment is instructive in that it refers to international treaties and covenants, the Constitution, and various earlier judgments. The conclusion in paragraph 60 is as follows:

> *"The principles discussed hereinbefore on TGs and the international conventions, including Yogyakarta Principles, which we have found not inconsistent with the various fundamental rights guaranteed under the Indian Constitution, must be recognized and followed, which has sufficient legal and historical justification in our country."* (at page 487)

76. **THAT** the 11th edition of the International Statistical Classification of Diseases and Related Health Problems (ICD-11) issued by the World Health Organisation on sexual health and gender identity and the WPATH Standards of Care (Version 8) deprecates a "gatekeeping model" of health.

77. **THAT** the impugned Amendment Act vide Section 8 amends Section 22 of the principal Act, specifically modifying Section 22(2)(c) to empower the government to prescribe "the form and manner of details to be furnished by the medical institution under sub-section (1A)". It is submitted that since the newly inserted Section 7(1A) is itself manifestly arbitrary and violative of the fundamental right to privacy by mandating the non-consensual reporting of confidential medical and surgical data to the District Magistrate, the corresponding rule-making power granted under the amended Section 22 is equally unconstitutional.

78. That the Petitioners have not filed any other petition before this Hon'ble Court or any other court seeking the same relief.

PRAYER

Wherefore, in view of the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

A. Declare the Transgender Persons (Protection of Rights) Amendment Act, 2026, specifically Sections 2(ii), 2(iii), 2(iv), 3, 4(a), 4(b) 5, 7 and 8 that introduce amendments by way of addition of Section 2(aa), omit Section 2(i), modify Section 2(k), add a proviso to Section 2(k), omit Section 4(2), modify Sections 6, 7, 18 and 22 of the Transgender Persons (Protection of Rights) Act, 2019 as ultra vires Part III of the Constitution of India, 1950 for being violative of Articles 14, 15 (1), 16, 19 and 21 of the Constitution of India; and

B. Grant such other reliefs as this Hon'ble Court may deem fit and proper in light of the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL AS IS DUTY BOUND EVER PRAY.

Drawn by: Aparna Mehrotra & Shaileshwar Yadav, Advocates

Research support by: Mihir Rajamane

Settled by: Jayna Kothari, Senior Advocate

Drawn on: 10.04.2026
Filed on: 15.04.2026
Place: New Delhi

FILED BY:

Rohit Kumar-I
Advocate-on-Record for the Petitioners
Code: 3594

ANNEXURE P-1

Transgender awarded honorary doctorate in Bengaluru

timesofindia.indiatimes.com/city/bengaluru/transgender-awarded-honorary-doctorate-in-bengaluru/articleshow/52541777.cms

Deepika Burli June 1, 2016

- News
- City News
- bengaluru News
- Transgender awarded honorary doctorate in Bengaluru

Trending

This story is from June 1, 2016

Dr Akkai Padmashali.

BENGALURU: From now she will be known as Dr Akkai Padmashali. The sexual minority activist and co-founder of Ondede is the first transgender in the country to be conferred with an honorary doctorate.
Akkai, who has been the voice of the sexual minority and has inspired many in the battle against gender prejudice was bestowed with the doctorate by the Indian Virtual University for Peace and Education at the Bharatiya Vidya Bhavan on Tuesday.

"It just came as such an unexpected happening and I was so confused as to why would they (IVUP) want to bestow a class 10 failure with such an honor?" said Akkai. "They told me that it was my dedication towards social activism and towards the sexual minority that has drawn their attention as well."
But for Akkai, the journey doesn't end right here. "Yes, it is a great honor but what is next? I asked the Vice Chancellors who were present there. They have verbally promised that there will be more honours awarded to the members of our community. It is after all, a part of the mainstreaming process."
Latest Comment
D

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ANNEXURE P-2

Transgender Activist Akkai Padmashali Wins Karnataka Rajyotsava Award

thebetterindia.com/37454/in-a-first-karnataka-govt-to-honour-a-transgender-with-the-rajyotsava-award

Shreya Pareek October 31, 2015

In a First, Karnataka Govt to Honour a Transgender with the Rajyotsava Award

60 personalities from Karnataka will receive the Karnataka Rajyotsava Award on November 1. What makes this year's awards special is the fact that for the first time, a transgender has been chosen for this honour.

The Karnataka government recently chose 60 people who will be honoured with the prestigious Karnataka Rajyotsava Award.

Many inspirational personalities were chosen for the award, but one thing that stood out this year was the fact that a transgender has been selected to receive the honour for the first time.

Add The Better India As A Trusted Source

Akkai Padmashali, a transgender who is fighting for the rights and acceptance of her community, has been recognised for her efforts.

Born as a boy named Jagdish, Akkai chose to become a transgender. She contacted other transgender women and told them about her dilemma and her desire to be one of them. They cautioned her that this path would only be full of problems. But Akkai was determined. She wasn't happy as a boy, and wanted to change as soon as she could.

At a young age of 12, suffocated in her own body, she wanted to commit suicide. But she didn't. Instead, she gathered enough courage to disclose her real identity. The journey wasn't easy. From facing sexual violence, to taking up sex work for four years, Akkai faced all of it with immense strength.

She not only transformed her life, but is also changing the way our society treats sexual minorities.

She joined Sangama, a local NGO that works with sexual minorities and later founded Ondede (meaning 'convergence' in Kannada), an organisation that aims to create awareness about sexuality, sexual diversity and the right to choose one's sexual orientation.

The award is not just her victory, but an achievement for the entire transgender community. You can read Akkai's life story here.

Other recipients of the honour include the Chairman of Indian Space Research Organisation, A.S. Kiran Kumar, cricketer Vinay Kumar, writer Aryambha Pattabhi, former judge A.J. Sadashiva, film actors 'Sowcar' Janaki, Sadashiva Brahmavar, Shani Mahadevappa and Sadhu Kokila, and theatre actor H.G. Somashekara Rao. A total of 60 personalities have been chosen for this year's Karnataka Rajyotsava Award.

Rajyotsava Award is the second highest civilian honour of Karnataka state. It is conferred annually on November 1 - the formation day of Karnataka State that is celebrated as Kannada Rajyotsava. The award recognizes people who have shown extra ordinary commitment in their chosen fields. This year, it carries a prize of Rs. 1 lakh, a 20-gram gold medal and a citation.
Tags: ISRO transgender Akkai Padmashali Sexual minorities Karnataka H.G. Somashekara Rao Sadhu Kokila Sowcar Janaki Sadashiva Brahmavar Shani Mahadevappa A.J. Sadashiva Aryambha Pattabhi kannada rajyotsava karnataka rajyotsava rajyotsava awards A.S. Kiran Kumar Vinay Kumar Sangama
You May Also like

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ANNEXURE P

Akkai Padmashali is 1st transgender to register for marriage in Karnataka

timesofindia.indiatimes.com/india/akkai-padmashali-is-1st-transgender-to-register-for-marriage-in-karnataka/articleshow/62639638.cms

PTI January 24, 2018

Akkai Padmashali

BENGALURU: After saying no to marriage for eight years, Akkai Padmashali has became the first transgender in Karnataka to register for it this month."I was reluctant to get married to my beloved who I was living with. I resisted marriage for eight years, but I gave in. I want to face challenges the institution of marriage throws up," Akkai told PTI here.Both Akkai and Vasu,also a noted transgender activist,got married on January 20 last, but the registration process took a year as her partner had to put together relevant documents."I was too busy with various issues on my hand and the registration did not work out as expected," Akkai, also a noted transgender activist, said.On her opinion of live-in relationships as she was in it for eight years, Akkai said it was good,but it was not working out for her, because of her community's resistance."Also, my brother and family also did not like the living-in relationship," she said.Asked to choose between the institution of marriage and living-in relationship, Akkai said "I decided to marry, but with conditions. I would be the first person to go public if I become a prey to domestic violence.This I have told Vasu very clearly."

Asked whether she feels more secured in marriage than in living-in relationship, she said, "Let us see how it pans out. For now I am in a state of bliss. However, living-in relationships also have advantages for there is a lot of bonding and trust between the couple, Akkai said.A staunch believer in humanism, Akkai said she was very happy to invite people from various religions to be at the sub-registrar's office."They were very cooperative and supportive," she said.

//TRUE COPY//

ANNEXURE P-7

43

STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT (2016-2017)

(SIXTEENTH LOK SABHA)

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT

(DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT)

[THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2016]

FORTY-THIRD REPORT

LOK SABHA SECRETARIAT
NEW DELHI

July, 2017/Ashadha, 1939 (Saka)

FORTY-THIRD REPORT

STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT (2016-2017)

(SIXTEENTH LOK SABHA)

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT

(DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT)

[THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2016]

Presented to Lok Sabha on 21.07.2017

Laid in Rajya Sabha on 21.07.2017

LOK SABHA SECRETARIAT
NEW DELHI

July, 2017/Ashadha, 1939 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT (2016-2017)

SHRI RAMESH BAIS - CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Kantilal Bhuria
3. Shri Santokh Singh Chaudhary
4. Shri Sher Singh Ghubaya
5. Shri Jhina Hikaka
6. Shri Sadashiv Kisan Lokhande
7. Smt. K. Maragatham
8. Shri Kariya Munda
9. Prof. Seetaram Azmeera Naik
10. Shri Asaduddin Owaisi
11. Sadhvi Savitri Bai Phule
12. Dr. Udit Raj
13. Smt. Satabdi Roy (Banerjee)
14. Kunwar Bhartendra Singh
15. Prof. Sadhu Singh
16. Smt. Mamata Thakur
17. Shri Mansukhbhai Dhanjibhai Vasava
18. Shri Tej Pratap Singh Yadav
19. Vacant*
20. Vacant*
21. Vacant#

RAJYA SABHA

22. Smt. Jharna Das Baidya
23. Dr. Tazeen Fatma
24. Shri Chunibhai Kanjibhai Gohel
25. Shri Ahamed Hassan
26. Smt. Sarojini Hembram
27. Dr. Narendra Jadhav
28. Smt. Vijila Sathyananth
29. Smt. Wansuk Syiem
30. Smt. Chhaya Verma
31. Shri Ramkumar Verma

---

* Shri Bhagwant Khuba and Shri Mohanbhai K. Kundariya changed their nomination *w.e.f.* 19.10.2016.

\# Shri Prakash B. Hukkeri changed his nomination *w.e.f.* 23.11.2016.

LOK SABHA SECRETARIAT

1.	Shri Ashok Kumar Singh	-	Additional Secretary
2.	Shri S.C. Chaudhary	-	Joint Secretary
3.	Shri Ashok Sajwan	-	Director
4.	Smt. Mamta Kemwal	-	Additional Director
5.	Smt. Shilpa Kant	-	Sr. Executive Assistant

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Social Justice and Empowerment (2016-17) having been authorized by the Committee to present the Report on its behalf, do present this Forty Third Report of the Committee on "The Transgender Persons (Protection of Rights) Bill, 2016".

2. The Bill was introduced in Lok Sabha on 02.08.2016 and referred to the Standing Committee on Social Justice and Empowerment on 08.09.2016 for examination and Report.

3. The Committee issued a Press Release inviting memoranda/views from individuals and other stakeholders. In response, a large number of individuals/organizations/stakeholders/NGOs submitted their written representations to the Committee. The Committee considered all these representations/submissions.

4. The Committee held five sittings during the course of examination of the Bill, *i.e.,* on 5.10.2016, 30.11.2016, 28.12.2016, 25.04.2017 and 19.07.2017.

5. The Committee considered the draft Report and adopted the same on 19.07.2017.

6. The Committee relied on the following documents in finalization of the Report:-

(i) The Transgender Persons (Protection of Rights) Bill, 2016.

(ii) The Report of the Expert Committee, constituted by the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment).

(iii) Background Notes on the Bill received from the Department of Social Justice and Empowerment.

(iv) Presentation, clarifications, briefing, oral evidence and replies to the list of points furnished by the Department of Social Justice and Empowerment.

(v) Memoranda/Submissions received by the Committee on the Bill from various institutes/ organizations/ associations/ NGOs/ stakeholders/ Experts.

(vi) NGOs/ stakeholders/ Experts who appeared before the Committee to express their views/ make their submissions on the Bill in Delhi were :-

1. Vidhi Centre for Legal Policy
2. Sampoorna Working Group
3. Amnesty International India
4. South Indian Transgenders Federation
5. Lawyers Collective
6. All India Hijra Transgender Samiti
7. Kinnar Bharti
8. Dr. Kaveri Rajaraman, Neuroscientist and Genderqueer Transgender boy

7. The Committee also undertook on-the-spot study visit to Mumbai on 5th November, 2016 and interacted with Lakshmi Narayan Tripathi, Consultant, UNDP; Dr. Ketaki Ranade, Professor; Brandt D'mello; Shals Mahajan; Shri Siddhant More and Dr. Piyush Saxena, Chairperson, SOOE.

8. On behalf of the Committee, I would like to acknowledge with thanks the huge contribution made by not only those who deposed before the Committee but also those who gave their valuable suggestions to the Committee through written submissions. The Committee, no doubt, benefitted immensely by their views and valuable suggestions.

9. ***The Committee would like to assure and remind to all the members of transgender community that, "A historic shift is underway, you are not alone in your struggle for the end of violence and discrimination. It is a shared struggle. Transgender is not an anomaly. It is a part of the spectrum of people's realities. While there is no shame in being gay, lesbian, bisexual, transgender or intersex or even straight - there is a most certainly shame and dishonor in being a homophobe, a transphobe and a bigot".***

New Delhi;
19 July, 2017
28 Ashadha, 1939(Saka)

RAMESH BAIS,
Chairperson,
Standing Committee on
Social Justice and Empowerment

REPORT

PART A

INTRODUCTION

"*Seldom, our society realizes or cares to realize the trauma, agony and pain which the members of Transgender community undergo, nor appreciates the innate feelings of the members of the Transgender community, especially of those whose mind and body disown their biological sex. Our society often ridicules and abuses the Transgender community and in public places like railway stations, bus stands, schools, workplaces, malls, theatres, hospitals, they are sidelined and treated as untouchables, forgetting the fact that the moral failure lies in the society's unwillingness to contain or embrace different gender identities and expressions, a mindset which we have to change.*" (Justice K.S. Radhakrishnan of Hon'ble Supreme Court, while delivering judgement on 15th April, 2014 in Writ Petition No.400/2012 filed by National Legal Services Authority Vs Union of India).

B. Eunuchs are ubiquitous in India, standing out in crowds throughout the length and breadth of the country. Their fortunes are determined to a large extent by their looks. Intersexual people are not visibly distinguishable in the West. In marked contrast, eunuchs in the Indian subcontinent are

found to dress and behave differently, in addition to living apart in bands and groups.

C. India and other South Asian countries are the only places where the tradition of eunuchs is prevalent today. According to a survey carried out by Salvation Of Oppressed Eunuchs (SOOE), the number of eunuchs in India is around 19 lakhs, as of March 1, 2011. The figures are approximate, since eunuchs live in a secretive, shadowy world that they have created for themselves, away from the abuse and persecution of society in general. Here, the term 'eunuch' refers to only those people who wish to be treated as neither male nor female and embrace a lifestyle that is in conformity with their sexual divergence. This group does not include those intersex people who pretend to lead their lives as either males or females and embrace a normal lifestyle. For most Indians today, eunuch are 'diabolic creatures', a source of eternal disgust and perennial fear. They are looked upon as hapless and strange creatures, bereft of sexual potency. This is evident from the way the word 'hijra' is used in the day-to-day conversations of people. It is often found being used to abuse people. Even dictionaries in Hindi define hijra in derogatory terms. The very utterance of the word carries with it an obvious sense of denigration. In India they are a stigmatised, socially marginalised and economically impoverished people.

D. The eunuch community and its traditions, including their very basic form of 'gender change' from male to eunuch, has a recorded history of over 2,000 years in India. This widespread practice enables transsexual kids to escape the trauma and fate of masculinisation as teenagers and provides a safe though very low place in society. The agonising extremes to which these transsexual youngsters will subject themselves to in order to 'approximately have a female gender', with the full knowledge that they will never see their families again and will face social degradation for the rest of their lives, is a testimonial to the reality and extremity of the gender conflict that they face within themselves.

E. Eunuchs lived fairly secure lives working as domestic 'girls' in the homes of wealthy people and by performing during numerous ritual ceremonies. This role of eunuchs ended with the advent of the British rule and abolition of many kingdoms. Eunuchs were left with no means of supporting themselves. Hence, they exist in this pitiable condition in the Indian subcontinent.

F. The roots of contemporary violence against the hijra community can in fact be traced back to the historical form that modern law in post-colonial India has adopted. It took the form of the enactment of the Criminal Tribes Act, 1871, which was an extraordinary legislation that departed from the

principles on which the Indian Penal Code was based. Once a tribe was notified as a criminal tribe, all members of the tribe including women and children, would have to register with the specified authority, with non-registration rendering the person liable to prosecution.

G. The link between criminality and sexual non-conformity was made even more explicit in the 1897 amendment to the said Act, which was sub-titled 'An Act for the Registration of Criminal Tribes and Eunuchs'. Under the provisions of this statute, a eunuch was 'deemed to include all members of the male sex who admit themselves or on medical inspection clearly appear to be impotent'. Being a eunuch was itself a criminal occurrence, with surveillance being the everyday reality. The surveillance mechanism criminalised the quotidian reality of a eunuch's existence, by making its manifest sign, i.e. cross-dressing, a criminal offence.

H. A Public Interest Litigation (PIL) No.1 of 2012 was filed in Bombay High Court by Salvation Of Oppressed Eunuchs (SOOE) in the year 2012 in which Union of India was made the respondent. The Cabinet Secretariat, in July 2012, decided that the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) would handle that PIL and the related matters thereto, in consultation with other relevant sectoral Ministry/Ministries. Subsequently, the work relating to the welfare of

Transgender Persons has been allocated to this Ministry in the Government of India (Allocation of Business Rules), 1961 vide notification dated 21.5.2016.

I. An Expert Committee was constituted in the Ministry to make an in-depth study of the problems being faced by the Transgender Community and suggest suitable measures to ameliorate their conditions. The Committee submitted its report on 27th January, 2014. The recommendations of the Committee, *inter alia*, include declaring transgender as 'third gender'.

J. The key recommendations of the Expert Committee were:

i. Transgender should be declared as the third gender, and a transgender person should have the option to choose either 'man', 'woman' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones. Only the nomenclature 'transgender' should be used and nomenclatures like 'other' or 'others' should not be used.

ii. Certificate that a person is a transgender person should be issued by a State level authority duly designated or constituted by the respective State/UT on the lines of Tamil Nadu Aravanis Welfare Board on the recommendation of a District Level Screening

Committee headed by Collector/DM and comprising District Social Welfare Officer, psychologist, psychiatrist, a social worker and two representatives of transgender community and such other person or official as the State/UT Administration deems appropriate.

iii. Change of gender either as male, female or transgender should be allowed to be carried out on the birth certificate of the person after the age of eighteen years or above. The certificate issued should be acceptable to all authorities for indicating the gender on official documents like driving license, ration card, passport, etc.

iv. The third gender i.e. transgender may be recognized by a Government order and for the long run, it may be examined whether a separate law will be desirable for this purpose. For this purpose, the Government may refer the matter to the Law Commission.

v. An Umbrella Scheme for transgender persons may be formulated for empowerment of this community.

vi. To cope up with trauma and violence, Crisis Counselling Services could be set on the model of Rape and Crisis Intervention Centres.

vii. Formation of groups of transgender children for meetings, holding film screening for sensitization of students and staff, setting up of resource centre, augmenting libraries with books and audio-visual materials on transgender issues.

viii. Existing forums such as the Anganwadi Centres and Self-Help Groups may be oriented on transgender issues, and involved in providing information to parents of gender non-conforming youths.

ix. Criminal and disciplinary action against delinquent police officials in cases of violation of human rights of transgender persons.

x. Work place sexual harassment policies should be made transgender inclusive.

xi. Ministry of Rural Development and Ministry of Housing and Urban Poverty Alleviation to ensure housing assistance schemes to help transgender persons.

xii. Another Section under IPC to cover the cases of sexual assault on transgender persons.

xiii. Slurs based on real or perceived gender identity may be included in Section 153A of the IPC.

xiv. Government should provide scholarship/entitlements, fee-waiver, free textbooks, free hostel accommodation and other facilities at subsidized rates for students belonging to this group.

xv. All the educational institutions/Universities should establish an anti-discrimination cell to monitor any form of discrimination against the transgender community.

xvi. Contents on transgender to be included in the curriculum of adolescent education in schools.

xvii. Abandonment of child is a punishable offence under Section 317 of the IPC if child is abandoned under the age of twelve years. The Ministry of Home Affairs (MHA) may be requested to consider enhancing the age of child for this offence to eighteen years.

xviii. Generate more data/information to identify and understand the problems related to various aspects of their life and help frame policies through research and academic program.

xix. Establishment of Helpline for Career Guidance and Online Placement Support.

xx. Widening the mandate of one of the Corporations for providing the economic support to transgender community.

xxi. Establishment of effective linkages with vocational training centres run by private and Government agencies for providing vocational training to this community.

xxii. A National Council for Transgender persons may be considered on similar lines as that of the National Councils for Senior Citizens.

xxiii. To carry out survey in association with Ministry of Statistics for ascertaining their population in the country.

xxiv. Bureau of Police Research and Training (BPR&D) may undertake a study on crime against transgender persons, as also about cases registered against them as accused.

xxv. Intensive publicity campaigns.

Supreme Court Judgement in WP No.400/2012 filed by National Legal Services Authority (NALSA) vs Union of India

K. In a landmark judgement dated 15.04.2014 delivered by Hon'ble Supreme Court in WP No.400/2012 filed by National Legal Services Authority (NALSA) vs UOI, the Court has given following directions:

(i) Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.

(ii) Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

(iii) Centre and the State Governments to take steps 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.

(iv) Centre and State Governments to operate separate HIV Sero-surveillance Centres since Hijras/Transgenders (TGs) face several sexual health issues.

(v) Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.

(vi) Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.

(vii) Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.

(viii) Centre and State Governments should take steps to create public awareness so that TGs feel that they are also part and parcel of the social life and be not treated as untouchables.

(ix) Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

L. The Hon'ble Court directed the report of the Expert Committee be examined in the light of legal declarations in its judgement and its recommendation be implemented within a time frame of six months. Accordingly, Expert Committee's recommendations should have been implemented by 14th October, 2014. Meanwhile, a clarificatory application was filed by the Ministry of Social Justice and Empowerment in the Supreme Court in September, 2014 seeking, *inter alia*, clarification in definition of transgender. The Hon'ble Court in its judgement dated 30th June, 2016 has clarified that lesbian, gay or bisexual may not be included in the category of Transgender.

M. A Private Member Bill titled "The Rights of Transgender Persons Bill, 2014" was introduced in Rajya Sabha on 12th December, 2014 by Shri Tiruchi Siva, MP. The Bill was passed by Rajya Sabha on 24th April, 2015.

N. A Private Member Bill was also introduced in Lok Sabha in May 2015. The Bill is, however, pending for consideration.

O. As the Private Member Bill (of Shri Tiruchi Siva, MP) suffered from some infirmities, it was not possible for the Ministry of Social Justice and Empowerment to agree to all the provisions of the Private Member Bill in *toto* viz. (i) Special Employment Exchange for Transgender (ii) National and

State Commissions for Transgender Persons (iii) Transgender Right Courts; and (iv) Reservation in Primary, Secondary and Higher Educational Institutions. The Minister of Social Justice and Empowerment during the discussion in Rajya Sabha, assured that the Ministry would bring its own Bill in view of the Expert Committee's detailed recommendations. Accordingly, a draft Government Bill was uploaded on the Ministry's website on 3.12.2015 seeking comments of general public. Thereafter, a pre-legislative consultation meeting with stakeholders was conducted on 18.01.2016. Subsequently, a Drafting Committee was constituted in the Ministry to finalize the draft Bill. After two meetings of the Drafting Committee on 4th February, 2016 and 23rd February, 2016, the draft Bill was finalized by the Legislative Ministry on 20th-21st April, 2016. The Cabinet approved the Bill on 20th July, 2016.

P. The Government introduced the Bill (present Bill) in Lok Sabha on 2nd August, 2016.

Q. Though most of the provisions of the Private Member Bill of Shri Tiruchi Siva, MP have been accommodated in the present Bill except provisions for Exclusive Transgender Rights Courts, reservation in primary, secondary and higher educational institutions, incentives to employers in

private sector, special employment exchanges and National and State Commissions for Transgender Persons.

R. Some salient features of the Transgender Persons (Protection of Rights) Bill, 2016 are as under:

(i) Transgender Person is defined as a person who is (i) neither wholly female nor wholly male; or (ii) a combination of female or male; or (iii) 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.

(ii) Non discrimination against a Transgender Person in educational institutions, employment, healthcare services etc.

(iii) Recognition of identity of Transgender Persons and to confer upon them right to self perceived gender identity.

(iv) Provision of certificate by the District Magistrate to a Transgender Person on the recommendation of a District Screening Committee under Chief Medical Officer.

(v) Provision for Transgender Persons to change gender and in consequence to change the first name in the birth certificate and all other official documents relating to the identity of such person.

(vi) Provision of Right of Residence with parents and immediate family members.

(vii) Provision for formulation of welfare schemes and programmes for education, social security and health of Transgender Person.

(viii) Provision for National Council for Transgender Persons to advice, monitor and evaluate measures for the protection of their rights.

(ix) Provisions for penalties for offences against Transgender Persons.

THE PRESENT POSITION OF TRANSGENDER PERSONS IN THE COUNTRY AND THE LIKELY IMPACT ON THEIR LIVES AFTER ENACTMENT OF THE BILL:

S. Transgender community is among one of the most marginalized communities in the country because they don't fit into the stereotypical categories of gender of 'men' or 'women'. Consequently they face problems ranging from social exclusion to discrimination, lack of education facilities, unemployment, lack of medical facilities and so on. The discrimination based on their class and gender makes the 'Transgender' community one of the most disempowered and deprived groups in Indian Society.

T. The presence of the Transgender Person in the country is highly scattered and they are unevenly settled. As per the information provided by the Registrar General of India (RGI) "Census of India does not collect any data specifically on transgenders. During Population Enumeration of

Census 2011, three codes were provided *i.e.;* Male-1, Female-2, and Others-3. In case the respondent wished to record neither '1' not '2', then enumerator was instructed to record sex as "other" and give code '3'. Thus the category of 'Other' would not only include transgenders but also any person who desired to record sex under the category of 'Other'. It is also possible that transgenders would also have registered themselves either male or female depending on their choice. Thus, the precise number of transgender persons in the country is not known. However, as per Census of India 2011, it is stated that population of persons who has registered as 'others' as their gender (Neither male nor female) constitutes 4,87,803. Further, there was no enumeration of data on others which may include transgender engaged/employed.

U. This will benefit a large number of transgender persons, mitigate the stigma, discrimination and abuse against this marginalized section and bring them into the mainstream of society. This will lead to inclusiveness and will make the transgender persons productive members of the society. Through this Bill, the Central Government and the State Governments will extend support for financial security, health care, shelter, welfare and other needs of Transgender Persons, make available opportunities for development of their potential, seek participation, and provide services so that they can improve the quality of their lives. The Bill will also bring

greater accountability on the part of the Central Government and State Governments/Union Territory Administrations for issues concerning Transgender persons. The Bill will make all the stakeholders responsive and accountable for upholding the principles underlying the Bill.

The Transgender Persons (Protection of Rights) Bill, 2016

V. The Transgender Persons (Protection of Rights) Bill, 2016 to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto was introduced in Lok Sabha on 2nd August, 2016. The statement of objects and reasons of the Bill states as under:

> "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.
>
> 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.
>
> 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."

W. 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.

The Bill seeks to achieve the above objects.

PART B

CHAPTER I

PRELIMINARY

Title of the Bill

1.1 The title of the Bill is "The Transgender Persons (Protection of Rights) Bill, 2016"[1]. The Committee find that the Bill does not *per se* include, address and protect the interest of intersex persons as concerns of transgender persons and intersex persons continue to be different. The Committee feel that the Bill should be renamed as "The Transgender and Intersex Persons (Protection of Rights) Bill, 2016.

1.2 When the Ministry were asked to furnish their views on this, the Ministry in their written submission stated that:

> "Transgender is an umbrella term which includes intersex persons also. Re-wording the title of the Bill would not serve any purpose".

1.3 The Committee are convinced with the reply of the Ministry. The Committee are of the view that there is no need to change the title of the Bill as transgender persons would also include intersex persons and therefore, the Bill will take care and address the concerns of the intersex persons.

[1] Please see Appendix (i)

Definitions

1.4 Clause 2(c) of the Bill defines 'inclusive education' as " 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".

1.5 The Committee interacted extensively with large number of stakeholders so as to ascertain their views on 'inclusive education'. The Committee find that transgender persons face severe hardships and discrimination in accessing education, primarily owing to their gender non-conformity.

1.6 The Committee feel that the term 'transgender student' appears to be a misnomer since children, though gender non-confirming, often may not be in a position to identify as 'transgender persons' and therefore, the phrase 'transgender and gender non-conforming students' may be used instead of 'transgender students'.

1.7 The Committee also feel that any notion of 'inclusive education' has to take into account the specific concerns regarding bullying and harassment suffered by the gender non-confirming students.

1.8 The Committee, therefore, recommend that Clause 2(c) may be reframed as under:-

> **"inclusive education" means a system of education wherein transgender and gender non-conforming students along with other students learn together without the fear of bullying, singling out and other forms of harassment and the system of teaching and learning is suitably adapted to meet the learning needs of such students.**

1.9 Clause 2(d) of the Bill defines 'institution' as " an institution, whether public or private, for the reception, care, protection, education, training, rehabilitation or any other service of transgender persons".

1.10 During their interaction with many stakeholders, the Committee were informed that the word 'rehabilitation' has a negative connotation indicating lack of agency for the transgender persons and would be better if substituted with the word 'housing' in order to take care of the pressing shelter needs of the transgender persons.

1.11 The Committee, therefore, desire that in Clause 2(d) the word 'rehabilitation' be replaced with the word 'housing' in order to take care of the pressing shelter needs of the transgender persons.

1.12 Clause 2(i) of the Bill defines the 'transgender person'. It says 'transgender person' means a person who is -

A. neither wholly female nor wholly male;

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 the person at the time of birth, and includes trans-men and trans-women, persons with inter-sex variations and gender-queers.

1.13 The Committee feel that the definition of 'transgender person' will be the fulcrum of any legislation on transgender rights and welfare and the whole law would depend on the scope of this definition. The Committee feel that the proposed definition of 'transgender person' in the Bill is in stark contrast to global developments, where transgender persons have been granted the right to self determine and to seek benefits according to such identity/expression. More so, it not only violates the fundamental rights to equality, dignity, autonomy but also freedom of transgender persons guaranteed under Articles 14, 19 and 21 of the Constitution.

1.14 Attention of the Ministry was drawn by the Committee towards the landmark judgement of Hon'ble Supreme Court in 2014 (in WP No.400/2012 filed by National Legal Services Authority (NALSA) vs Union

of India) which *inter-alia* stated that "every person must have the right to decide his/her gender expression and identity, including transsexuals, transgender, hijras and should have right to freely express their gender identity and be considered as a third sex."

1.15 The Ministry were even reminded that the above decision of the Hon'ble Supreme Court was also accepted by the Expert Committee, constituted by the Ministry which recommended that "Transgender should be declared as the third gender, and a transgender person should have the option to choose either 'man', 'women' or 'female' or 'transgender'.

1.16 When the Ministry were confronted that why it should not be left to the transgender person to have the option to choose either 'man', 'women' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones and on what basis the definition of 'transgender person' has been framed in the Bill, the Ministry in their written note stated as under -

> "An Expert Committee was constituted in the Ministry in October, 2013 under the chairmanship of Additional Secretary(SJE) to make an in-depth study of the problems being faced by the Transgender Community. The Committee has submitted its report on 27th January, 2014. The Committee has recommended that transgender should be declared as the third gender, and a Transgender Person should have the option to choose either 'man', 'woman' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones. Only the nomenclature 'transgender' should be used and nomenclatures like 'other' or 'others' should not be used.

The Expert Committee further recommended that the term 'transgender' (not trans) will be used, as an inclusive term and will cover various gender identities and expressions like trans-men, trans-women, male to female transpersons, female to male transpersons, transsexuals, genderqueer, persons with intersex variations etc. It will not be confined to any one of the specific socio-cultural identity groups, such as hijras, kothis, etc but will include all such persons who fall under the generic definition of transgender persons as follows:

> Transgender Persons: All persons whose own sense of gender does not match with the gender assigned to them at birth. They will include trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormonal treatment or laser therapy, etc.) genderqueers and a number of socio-cultural identities, such as Kinnars, hijras, aravanis, jogtas, etc. The term 'transgender' shall be construed accordingly."

1.17 Subsequently, the definition of Transgender persons was also revisited with respect to international practices as per Sex Discrimination Amendment (Sexual Orientation, Gender, Identity and Intersex Status) Bill, Australia, 2013. Intersex status means the status of having physical, hormonal or genetic features that are :

(a) neither wholly female nor wholly male; or

(b) a combination of female and male; or

(c) neither female nor male.

1.18 The definition of the Transgender Person has been framed in Section 2(i) Chapter-I of the Bill. However, as per Section 4(2) of the Bill, a person

recognized as Transgender under sub-section(1) has right to self perceived gender identity".

1.19 An official of the Ministry during the evidence before the Committee further submitted that, "We have taken this present definition as given by the Expert Committee. We have only made certain clarifications in the definition given by the Expert Committee".

1.20 The Committee also note that the proposed definition of transgender persons appears to be two-fold; the first part focuses on '*biological sex*', as mentioned in sub-clauses (A) to (C), while the second part focuses on '*psychological sex'*. NALSA has explicitly laid emphasis on the '*psychological test'* and not '*biological test'*, wherein the psychological factor and thinking of that person has to be given primacy over the binary notion of gender of that person. In fact, the jurisprudence in the last 30 years from most parts of the world has rejected the emphasis on 'biological sex' and has given way to self-identified gender for the purpose of legal recognition. Thus, any definition of 'transgender person' only should relate to gender identity and not to biological sex of that person.

1.21 Further, the phrases '*neither wholly female nor wholly male'*, '*a combination of female or male'* and '*neither female nor male'* are unscientific and primitive, and are based on the underlying assumption of

'*biological determinism'*, i.e., all persons are born with innate and immutable biological attributes, i.e., chromosomes, hormone prevalence and internal and external sexual anatomy. It further fails to recognise that many persons are born with ambiguous or typical sexual organs, whether external or internal, and identify themselves as male, female or transgender (generally known as persons with intersex variation).

1.22 In view of the foregoing, it is clear that the term 'transgender person' refers to a category of persons who identify in a gender that is different from their gender assigned at birth, including identifying as 'male', 'female' or 'third gender' (inclusive of distinct socio-cultural identities in India, i.e., hijras, kinnars, aravanis and jogappas, amongst others.

1.23 The Committee would even like to remind the Ministry that the draft Bill which they had uploaded on their website in December, 2015 used the following definition of 'transgender person' :-

> "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, jotgtas, etc."

1.24 The Committee find that there are fundamental issues with this definition since it conflates intersex and transgender persons even though

'intersex' and 'transgender' are not the same in any jurisprudence. Intersex status means the status of having physical, hormonal or genetic features that are :(a) neither wholly female nor wholly male; or (b) a combination of female and male; or (c) neither female nor male. The Committee also note 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.

1.25 The Committee, therefore, are of the firm view that the present definition of 'transgender person' does not conform with the definition prescribed by the Hon'ble Supreme Court in NALSA, the Expert Committee Report and not even with the Clarification Petition filed by the Government before the Hon'ble Supreme Court.

1.26 The Committee, therefore, are of considered view that the proposed definition of transgender person not only takes away the right to self determined gender identity which was guaranteed by the Hon'ble Supreme Court in NALSA judgement but also adversely effects significant part of the

transgender population - specially pre-op/non-op transmen and transwomen, trans people who cannot or do not wish to undergo surgical interventions, gender fluid, gender neutral, and intergender persons.

1.27 In view of the foregoing, the Committee conclude that a transgender person should have the option to choose either 'man', 'woman' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones. The Committee, therefore, recommend that Clause 2(i) of the Bill may be reframed as under :

> **"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.**

CHAPTER II

PROHIBITION OF CERTAIN ACTS

2.1 In Clause 3 of the Bill, there are 9 Clauses from 3(a) to 3(i), which elaborate prohibition of discrimination against transgender persons. Clause 3 states:

> "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;
>
> (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;
>
> (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;

(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."

2.2 The Committee find that Clause 3 of the Bill prohibits the denial or discontinuation of, or unfair treatment in, several areas including employment, healthcare, and the right of movement. The Committee, however, do not find any definition of 'discrimination' in the Bill.

2.3 It is an open fact that Transgender persons have historically faced a range of discrimination by the State and citizens which go beyond the categories enumerated in Articles 15(1) and 15(2) of the Constitution. For example, transgender persons routinely face discrimination in access to education, employment, healthcare, and housing. The Committee are of the view that without a definition of 'discrimination' for the purpose of this Act/law, it would be almost impossible to prohibit the same by the appropriate Governments.

2.4 The Committee also find 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. In other words, if a transgender person faces discrimination in any of the listed fields, there is no remedy provided in the Bill to rectify the same.

2.5 It is well known that, anti- discrimination legislations have clearly spelt the specific acts that would amount to discrimination and the procedure for bringing a claim of discrimination by an affected individual, including providing for a presumption in favour of the affected individual that he/she/they have been discriminated on the basis of prohibited grounds.

2.6 The Committee, hence, recommend that a definition of 'discrimination' be included, in Chapter I of the Bill which must cover a range of violations that transgender persons face. If need be, the Government can utilize the definition of discrimination given in the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, which the Hon'ble Supreme Court also mentioned and referred to in NALSA judgement.

2.7 The Committee note that Clause 3 of the Bill prohibits acts of discrimination by 'person(s)'.

2.8 The Committee, in this connection, perused the General Clauses Act, 1897. According to section 3 of the Act, the term 'person' would include natural persons and private establishments i.e., companies, associations and bodies of individuals (whether incorporated or not). However, public establishments are excluded entirely from the purview of this provision.

2.9 The Committee feel that discrimination on the grounds so listed may be faced not just from private individuals and establishments, but also from the State too. The Committee, therefore, recommend extension of this provision not just to 'person(s)', but also to all establishments (public and private) as defined in Clause 2(b) of the Bill. The Committee also recommend that the word 'or establishment' be added after the words "No person"' in Clause -3.

2.10 The Committee observe that there is no grievance redressal mechanism proposed in the Bill by which these acts prohibited under Sub-clauses (a) to (i) in Clause 3, if committed, either by Government or by a private establishment, can be made liable.

2.11 The Committee believe that the Transgender Persons have a right to formal recognition of their self-defined gender identity, and Governments are obligated to respect this right. The Yogyakarta Principles expect States to "take all necessary legislative, administrative and other measures to fully respect and legally recognize each person's self-defined gender identity." The Supreme Court has also clarified that transgender persons have a right to decide their self-identified gender. In NALSA case, the Court ruled that self-determination of gender flowed from the rights to freedom of expression and personal liberty under Articles 19 and 21 of the Constitution of India. It ruled: "We, therefore, declare that...transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender."

2.12 When the Ministry were asked as to why there is no grievance redressal mechanism in the Bill, the Ministry in their written submission stated as under:-

> "Chapter VII of the Bill provides for a National Council of Transgender Persons which shall perform functions as assigned to it under the Act. While framing the rules, provision could be made that in case a person violates the provisions contained in Clause 3 in Chapter II, the aggrieved Transgender Person may approach National Council for Transgender Persons for redressal of his/her grievance. Moreover, the mechanism of Indian Judicial system is robust for taking care of any violations of the Act either by a person or an Establishment."

2.13 The Committee note that Clause 3 of the Bill provides nine provisions for prohibition of certain acts for the welfare of transgender persons. However, the Committee find that there is no mechanism provided in the Bill by which acts prohibited in the proposed Clause 3 either by Government or a private establishment can be made liable in case of violation of these prohibited acts. The Committee also observe that the National Council for Transgender Persons is not empowered to address or penalize a person or establishment in case of violation of the prohibited acts mentioned in Clause 3. As the nature and powers of the National Council have not been defined, neither there is any provision of redressal of grievance mechanism under functions or power of the National Council, the Committee recommend that an appropriate provision in Clause 3 of the Bill be added, providing a mechanism by which the acts prohibited in the proposed Clause 3, if committed, either by Government or by a private establishment, can be made liable, should be incorporated.

CHAPTER III

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

3.1 Clauses 4-7 of the proposed Bill provide for the recognition of identity of transgender persons along with laying down the procedure for issuance of certificate of identity by a District Screening Committee. In particular, under Clause 4,a transgender person shall have the right to be recognised as such in accordance with the provisions of the Act as well as the right to be self-perceived gender identity. Clause 5 provides for the procedure for certification, wherein a transgender person may make an application to the District Magistrate for issuing a certificate of transgender identity in such form and documents that may be prescribed.

3.2 The Committee also note that detailing the procedure, Clause 6 provides that the District Magistrate ('DM'), on receipt of such application, shall refer the same to the District Screening Committee to be set up by the appropriate Government for the purpose of recognition of transgender persons. The Committee would comprise of the Chief Medical Officer, District Social Welfare Officer, a Psychologist/Psychiatrist, a representative of transgender community and an officer of the appropriate Government. Clause 7 mandates the DM to issue a certificate of transgender identity,

based on the recommendation of the Committee, which shall be recorded in all official documents and be a proof of recognition of transgender identity.

3.3 The Committee note that the Bill makes the recognition of identity of transgender persons contingent on the issuance of certificate of transgender identity, pursuant to the recommendation of the District Screening Committee, in turn changing the nature of the issue from 'identification' of transgender persons, to 'recognition of transgender persons in law'. When the Ministry were asked to offer their views in this regard, the Ministry in their written submission stated as under :-

> "The Constitution does not discriminate against transgender persons. The Constitution of India is 'sex blind', that is to say, the basic premise of equality before the law and equal protection of the law is based on a Constitutional mandate that the sex of a person is irrelevant save where the Constitution itself requires special provisions to be made for women [Article 15(3)]. Article 14 guarantees to all persons equality before the law. Article 19(1) ensures for all citizens freedom of speech and expression. Article 21 guarantees life of dignity to all persons. Articles 15(1), 15(2) and 16(2) in express terms prohibit discrimination on the ground of sex. Recognition of identity of Transgender persons is being made contingent on the issuance of certificate of transgender identity is to their recognition availing of different benefits and opportunities thereby mainstreaming them".

3.4 In this context, the Committee examined the Report of the Expert Committee on the issues relating to transgender. It says "gender identity" refers to a person's internal, deeply felt sense of being either man or

woman, or something other or in between. Because gender identity is internal and personally defined, it is not visible to others. in contrast, a person's "gender expression" is external and socially perceived. Gender expression refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns and social interactions.

3.5 The Committee also find that the Hon'ble Supreme Court has also clarified that transgender persons have a right to decide their self-identified gender. In the NALSA case, the Court ruled that self-determination of gender flowed from the 'rights to freedom of expression and personal liberty' under Articles 19 and 21 of the Constitution of India. It ruled: "We, therefore, declare that...transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender." More so, the requirement of a screening process runs counter to progressive international jurisprudence.

3.6 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.

3.7 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.

3.8 The Committee also note that the Bill only provides for applicants to receive identity certificates as transgender persons, which restricts the right to recognition of their gender identity. In accordance with the Supreme Court ruling, trans persons must be able to secure recognition of their self-identified gender as male, female or transgender. The Bill, by stating that persons who receive identity certificates will be able to change their first names, also implies that transgender persons will not be able to change their last names on official identity documents. Since cisgender persons

can officially change both their first and last names, this provision can create a discriminatory restriction against trans persons.

3.9 The Committee also do not find any clarity on the role of District Screening Committee or the nature of assessment by the same and has been left to the Government to frame rules. Further, it is unclear on what basis the Committee would make recommendations to the District Magistrate, and whether the Committee can refuse to make recommendations or reject any application.

3.10 The Committee after examining the provisions of Clause 4(1) and 4(2) thoroughly are of the firm view that it is essential in the Bill to explicitly define the terms 'gender identity' and 'gender expression' since the right to self determination has been recognised and upheld in the directions given in NALSA judgement. NALSA judgement also upholds the right to self-identified gender i.e. male, female or third gender in absolute terms. The Committee, therefore, recommend that such key definition of 'gender identity' may be adopted in the Bill as '"gender identity' refers to each person's internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and/or functions by medical, surgical or other means) and other expressions of gender such as dress, mannerisms, speech patterns and social interactions".

3.11 The Committee further note that by a cursory inspection of Clause 4, it is not clear as to what recognition is being envisaged, whether only as a transgender person or as a male/female/transgender, irrespective of gender assigned at birth. Further, 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. Though they are covered under the definition of 'transgender persons', they would require recognition as 'male' or 'female'.

3.12 When the Ministry were asked to comment, the Ministry replied that they have proposed the definition of Transgender Persons as follows:

> "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 include trans-men and trans-women, persons with intersex variations and gender-queers."

3.13 The Ministry further clarified that "it may be seen that if the word 'and' in (C) above is replaced by 'or' any person can approach the Screening Committee for getting the certificate of Transgender Person stating that

their gender is not matching with their present gender and it would be difficult for the Screening Committee to assign him or her a certificate of Transgender Person. Provisions in Clauses (A) to (C) are the basic criteria for defining a Transgender Person. Therefore, it is envisaged that by replacing the word 'and' by 'or' would widen the scope of inclusion of any person in the definition of Transgender Person and in turn may be misused".

3.14 The Committee concur with the contentions of the Ministry that by replacing the word 'and' by 'or' would widen the scope of inclusion of any person in the definition of Transgender Person and in turn may be misused. The Committee, however, recommend that Clause 7(1) may be redrafted indicating clearly that certificate will be issued only as a 'transgender person', not as a 'male' or 'female'. Accordingly, the word 'only' may be inserted after such person in Clause 7(1) and Clause 7(1) may be redrafted as under:-

> **"The District Magistrate shall issue a certificate of identity to the applicant under Section 5 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 only as 'transgender'."**

3.15 The Committee observe that for the purpose of recognition of identity, a provision for constitution of a District Screening Committee is there in the Bill. Clause 6(1) and (2) provides the details of the District Screening Committee as follows:

> 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."
>
> (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;
> (d) a representative of transgender community; and
> (e) an officer of the appropriate Government to be nominated by that Government."

3.16 The Committee also note that there is no clarity on the role of District Screening Committee or the nature of assessment by the same and has been left to the Government to frame rules. Further, it is unclear on what basis the Committee would make recommendations to the District Magistrate, and whether the Committee can refuse to make recommendations or reject any application.

3.17 The Committee observe that Clause 7(2) also does not specify which official documents are being referred to and how the gender of transgender persons would be recorded in such documents. Does it include

education certificates too, i.e., Class X or XII or college certificates? Does it mean that following the certificate issued to a person under Clause 7(1), other State authorities like Passport Authority, Election Commission, Income Tax Ministry, etc would automatically record the transgender identity of persons in their documents (Passport, Voter's ID, PAN card)?

3.18 Further, Clause 7(3) is unable to specify whether the proof of recognition as a transgender person is for all purposes, including marriage, divorce, adoption, inheritance, criminal law, etc or is it limited to recognition of transgender identity only.

3.19 During the briefing of the Committee by the stakeholders, the Committee were informed that "the State can lay down a procedure to facilitate the recognition of self-identified gender of persons, whether as male, female or transgender, but cannot prescribe a procedure that does against the principles of self-determination and self-identification". It was also suggested that "for recognition of identity of Transgender Person, the Screening Committee may comprise only three persons, one representative from the Male to Female (MTF) trans community, one representative from the Female to Male (FTM) trans community and one from the Social Welfare Ministry".

3.20 When the Ministry were confronted on this, the Ministry stated that, "the District Screening Committee is being constituted on the lines of Transgender Welfare Board constituted by the Government of Tamil Nadu in order to help the Transgender persons lead a decent life and mainstream them into the society. In order to enlist the transgender persons as members of the Transgender Welfare Board and provide them welfare measures, the Government has constituted the District Level Screening Committees. The District Level Screening Committee comprises the District Collector as the Chairperson, and Deputy Director, Medical and Rural Health Services, the District Social Welfare Officer, Clinical Psychologist / Psychiatrist and a representative of the Transgender Community nominated by the District Collector as members of the Committee. This Committee examines the Transgender persons and certifies them as Transgender. After certification by the District Level Screening Committee, they are registered with Transgender Welfare Board and given an identity card. By recognizing them as Transgender, they are also provided with ration cards, health insurance cards, house site pattas, voter ID, housing, etc. This procedure is successful in Tamil Nadu".

3.21 The Committee, after a careful examination of Clauses 5 and 6, recommend that process of obtaining a certificate from the Screening Committee be made as simple as possible, hassle free and applicant friendly. A strict and reasonable timeline must be mentioned for issuance of a certificate of identity. Further, a strict code of guidelines may also be introduced to ensure that the screening process neither becomes an arbitrary affair nor a source of any harassment to transgender persons.

3.22 As regards, the presence of the Chief Medical Officer in the Screening Committee and medical examination of a transgender person, the Committee note that "the screening procedure envisaged under the proposed provision seems to involve a medical assessment, which is intrusive and demeaning and subjects the transgender person to unnecessary scrutiny of their non-confirming gender. This procedure of 'screening' of transgender persons is problematic and constitutes violation of fundamental rights to equality, dignity, autonomy and bodily integrity and freedom of gender expression guaranteed under Articles 14, 19 and 21 of the Constitution, as affirmed by the Supreme Court in NALSA judgement."

3.23 When the Committee perused the NALSA judgement, the Committee found that the Supreme Court also made it amply clear in the judgement that each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom and no one shall be forced to undergo medical procedures including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity.

3.24 When the Ministry were asked to offer their comments on this, the Ministry stated that, "if the medical practitioner is not involved, it is likely that certificate may be misused. Therefore, involvement of medical practitioner in the Committee for deciding a gender of the person is essential".

3.25 The Committee are in agreement with the contention of the Ministry and feel that the role of Screening Committee is very critical in declaring a person as transgender and the role of the Chief Medical Officer too is equally important while issuing a certificate to a transgender person and without it, it would be difficult to check the misuse of the certificate. As the role likely to be played by the Chief Medical Officer has not been defined in the District Screening Committee, the Committee recommend that the role of the Chief Medical Officer be clearly defined.

3.26 The Committee observe that in Clause 6(2)(b), it has been mentioned that the District Screening Committee referred to in sub-section (1) shall comprise, among other members, (b) 'District Social Welfare Officer'.

3.27 When asked the reasons for appointing a District Welfare Officer in the Screening Committee and not prescribing any qualification for him, the Ministry during their evidence before the Committee submitted as under:

> "...a District Social Welfare Officer is responsible for looking after social welfare of all the people in that District. Therefore, we have appointed District Social Welfare Officer also in the Screening Committee... District Social Welfare Officer is there by virtue of his designation in this Committee. As a representative of transgender community is already there in the District Screening Committee, it is not necessary to replace the District Social Welfare Officer with a representative of transgender community again on this position."

3.28 The Committee find that the membership of a District Social Welfare Officer is only by virtue of his designation in that District. The Committee feel that there is no need of a District Social Welfare Officer in the Screening Committee. The Committee, however, are of the considered view that if at all there has to be a District Social Welfare Officer, he should have atleast five years experience of working with/among transgender persons, must have a fair knowledge about their specific needs, activities and be well acquainted with the temperament and aptitude of the transgender persons.

3.29 The Committee are also aware that it would not be easy for any State Government to find a person with above qualification for being nominated as a District Social Welfare Officer in every District. The Committee, therefore, recommend that instead of a mandatory membership of a District Welfare Officer, renowned person in the field of welfare of transgender persons in that District may be appointed as a member of the District Screening Committee in place of the District Social Welfare Officer.

3.30 For applying for certificate of identity in Clause 5 of the Bill, it is provided that:

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

3.31 Clause 7(1) states as follows:

> "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."

3.32 Clause 8 states as follows:

> "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."
>
> "8(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."

3.33 Asked to elaborate and clarify the procedure for applying for a revised certificate, the Ministry in their written submission stated that :

> "Sex Re-assignment Surgery (SRS) would not be mandatory for a person to be declared as a transgender person in the first instance. Their gender shall be recorded in all official documents like passport, ration card, voter card, Aadhar card etc. as per the certificate issued by the District Magistrate. However, as per the provision under

> Clause 8(1), if transgender persons (either trans-men or trans-women) desire to change their gender after going through SRS, they, for the second time, may make an application to the District Magistrate for the revised certificate. On production of certificate from a competent Medical Officer regarding their SRS, the District Magistrate shall, *suo-motu*, issue them the revised certificate regarding their being either a trans-man or trans-woman under Clause 8(1) of the proposed Bill".

3.34 The Ministry further submitted that "however provisions contained in Clause 8(2) viz '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' may be deleted from the Bill."

3.35 The Committee, after going through the submission of the Ministry on one hand and hearing the contentions of the stakeholders on the other hand, observe that the transgender persons, no doubt, are reluctant to undergo physical examination in front of the District Screening Committee for obtaining a certificate of a transgender person in the first instance. The Committee wonder why will then the same person would apply again for a certificate and undergo the same procedure which he went earlier. Concurring with the views of the Ministry, the Committee recommend that Clause 8(2) may be deleted from the Bill, being superfluous.

3.36 The Committee also desire that the right to appeal against the decision of the Screening Committee may also be incorporated in the Bill itself.

CHAPTER -IV

WELFARE MEASURES BY GOVERNMENT

4.1 Clause 9 of the Bill states:

"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.

(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.

(5) The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities."

4.2 The Committee observe that Clause 9 provides for the obligation of the appropriate Government, including to secure full participation of transgender persons in society, take measures to protect the rights of transgender persons and facilitate their access to welfare schemes, which are non-stigmatizing and non-discriminatory, and to take steps for the rescue, protection and rehabilitation of transgender persons, amongst others.

4.3 The Committee find that welfare measures to be undertaken by the 'appropriate Government', without clarifying the duties of different agencies, unclear and undefined division of responsibilities between the Central and State Governments would lead to passing the buck on each other resulting in delays in implementation of welfare measures for the transgender persons besides diluting the accountability. More so, there is no obligation on the Government to redress the grievances of transgender persons, in case of violation of any provision of the Bill.

4.4 With respect to Clause 9(4), the Committee note that the policy of institutionalization of marginalised individuals, especially adults, whether women, or those charged with begging offence, or persons with intellectual/mental disabilities, amongst others, has not made much headway over the last 65 years in India. The notion of institutionalization denudes people of their agency to decide for themselves and to live a life of dignity and respect. The transgender persons do not need to be rehabilitated by the State, but need protection of their rights guaranteed by the Constitution as well as redressal of their grievances, whether of discrimination, violence or financial penury.

4.5 When enquired from the Ministry as to why there is no obligation on the Government to redress the grievances of transgender persons and why specific welfare measures to be undertaken by the Union Government and the State Governments have not been laid down or explicitly spelt out, the Ministry replied that, "it is informed that welfare measures undertaken by the Centre as well as State Government, do not make any discrimination on the basis of their gender. The present Bill seeks to reiterate their rights and is a step in protection of their rights. Accordingly, Clause 9 (1 to 5), which pertain to welfare measures by the Government highlight directions to appropriate Governments for taking specific measures for their welfare. As far as redressal of their grievance is concerned, Chapter VII of the Bill provides for National Council of Transgender persons. It shall perform such functions assigned to it under the Act. Further, Clause 18(d) brings out the functions of the National Council. The Council is a broad based entity including representatives from transgender community. It is expected that their grievances shall be addressed by the Council. Chapter VIII further provides penalties for the offenses and lays down stringent measures for securing the rights of transgender persons with respect to their life, safety, well being etc. The State law and order mechanism shall take care of their immediate concerns".

4.6 The Committee find that there is a lack of clarity in the division of responsibilities between the Central and State Governments, as well as other authorities where relevant. The Committee are of the considered opinion that this lack of clarity in the division of responsibilities would lead to administrative delays, confusion, and added regulatory costs, apart from impeding the effective implementation of the provision of Clause 9. The Committee recommend that the responsibilities of the Central and State Governments be clearly demarcated so as to avoid administrative delays.

4.7 As there are no provisions in the Bill regarding directions to the State Governments and civil society to implement measures for awareness generation and sensitization, the Committee desire that there should be a separate Clause directing Central Government, States and civil society to adopt measures for generating awareness at various levels such as schools/colleges, Government and private offices, police stations, etc. regarding concerns of transgender persons.

4.8 The Committee also desire that there should be a separate provision directing that application forms or any other documentation

required for accessing welfare schemes provided to the general public, should also provide an option for 'transgender', in place of 'other' .

CHAPTER V

OBLIGATION OF ESTABLISHMENTS AND OTHER PERSON

5.1 Clauses 10-12 provide for the obligation of establishments, whether Government or private, to ensure that no transgender person is discriminated in any matter relating to employment, and provide for the setting up of a Complaint Officer in every establishment (with 100 or more persons).

5.2 It is a fact that most transgender persons either are not employed or have to leave their jobs, owing to diverse reasons. Many transgender persons, in particular, trans-men and trans-women, do not even apply for jobs, on account of discrepancy between the gender recorded in their educational certificates and their gender identity and expression, while others are forced to leave jobs, when they start transitioning or after undergoing SRS.

5.3 The Committee observe that no proper and effective enforcement mechanism exists in the Bill to make the private sector comply with the provisions of the Bill. In fact, the only obligation is on establishments with more than 100 'persons' to establish a Complaint Officer. The Bill also does not lay down the exact powers of the Complaint Officer or what action can be taken by such an officer, in case of discrimination against a transgender

person. Further, the Bill does not specify any obligation on the private establishments with less than 100 employees/persons.

5.4 When the Committee confronted the Ministry as to why the Bill does not specify any obligation on the private establishments with less than 100 employees/persons and why the definition of establishment provided in the Bill leaves out scores of unorganized sector workers, and trans persons in organization with less than 100 employees, the Ministry responded as under:

> "the obligation to ensure compliance with the provisions of this Act is for all establishments including which have less than 100 persons. However, Clause 12 provides for designation a person to be a Complaint Officer for establishment having more than 100 persons to deal with the complaints relating to violation of the provisions of this Act. It is not practically feasible for small establishments to designate a Complaint Officer. However, the mechanism of police system is robust in India for taking care of such grievances".

5.5 The Ministry further submitted that "this Clause may be reworded as every establishment shall designate a person to be a Complaint Officer to deal with the complaints relating to violation of the provisions of this Act".

5.6 The Committee take note of the fact 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. The Committee feel that, since the designation of one Complaint Officer in an institution is not an onerous or resource-intensive measure, this requirement should ideally be extended to all establishments under the Act. The Committee, therefore, recommend that it should be clearly mentioned in this Clause of the Bill that all establishments, including Government and private, irrespective of the number of employees, shall designate a Complaint Officer to deal with the complaints relating to violation of provisions of this Act.

5.7 The Committee note that the Bill currently does not specify the functions of the Complaint Officer or vest the authority with any powers. To ensure effective implementation of the Act, it is imperative to specify the types of complaints the Complaint Officer can look into, and the kinds of orders it can pass and remedies it can provide. The Committee desire that duties and responsibilities of the Complaint Officer 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.

5.8 Clause 13 of the Bill States :

"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 count, in the interest of such person.

(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;
(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."

5.9 As may be seen, Clause 13 provides for right to residence of transgender persons, including right to reside in the family household, right not to be separated from parents or immediate family, right not to be excluded from such household or right to enjoy and use the household facilities.

5.10 The Committee, in other words, find that the Bill assumes the 'family' as a protection unit for transgender persons. However, the truth is that most transgender persons face severe abuse and harassment at the hands of their family/immediate relatives, including physical and sexual violence. In fact, it is the family that is the seat of violence, abuse and a denial of

identity for young trans-person. For transgender children and minors, the family and the natal home become places where the right to self determine gender and to express that gender through various means, are severely curtailed. They have to often leave their homes to escape from the domestic abuse and have nowhere to go, including no legal protection for domestic violence. The only recourse for such transgender children is to run away from the natal home. For them, the Hijra families, the 'Jamaats' or 'dormitories' are places of refuge, the 'Hijra elders' their adoptive parents, the 'Hijra community' their family and friends. The Bill ignores this critical aspect of transgender persons' lives.

5.11 The Committee also observe that Clause 13(3), which is about rehabilitation of transgender persons, in case the parents/family of transgender person being unable to take care, is extremely elusive. It is not clear what the nature of these 'rehabilitation centres' is, or what the rehabilitation of transgender persons would entail. As is well-known, families either abandon transgender persons or compel them to live and behave in their gender assigned at birth. As a result, transgender persons often leave their families and homes at an adolescent age, owing to stigma and discrimination, and do not need rehabilitation, but they require State assistance to rebuild their lives, either through education or employment. They require protection against domestic violence, since majority of

violence faced by transgender persons is on account of their self-identified gender.

5.12 The Committee, further, find 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.

5.13 When asked how the Ministry propose to address these important issues and problems of transgender persons, the Ministry in their written submission stated as under:

> "Clause 13 (1to 3) was primarily aimed at retention of transgender children within their immediate family. Punishments envisaged in chapter VIII are expected to bring down cases of domestic/familial violence. The spirit of the Bill is to integrate transgender persons and community in to the society rather than to create separate structures. If we allow two parallel systems to exist then the Bill have no meaning for the transgender community. However, 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".

5.14 The Ministry further submitted that "as long as Transgender Person is a child, he/she should not have a choice to reside other than the household where parent or immediate family reside as it would increase the chances of his physical and sexual abuse. Such child may also not get a chance of proper education. It would, therefore, be in the interest of the child to be

with his/her family. A Transgender Person, after becoming an adult may have his choice of residing anywhere".

5.15 The Committee, after going through the wordings of Clause 13(1) carefully *vis a vis* reply of the Ministry, are not convinced by the justification given by them. The Committee recommend that Clause13(1) may be redrafted as:

> **"No child who is a transgender shall be separated from his or her parents or immediate family on the ground of being a transgender except on an order of a competent Court, in the interest of such child."**

5.16 Further, the Committee feel that it is imperative that alternative family structures are recognized, especially in the context of transgender persons. Accordingly, there is a need to recognize alternate support structures in the transgender community. The Committee desire that there is a need to define the word 'family' so that the Hijra or Aravani community elders, who adopt young transgender children are not put under risk and the Hijra family system is not criminalized. The Committee, therefore, recommend that a sub-clause may be added in Clause 2 of Chapter-I of the Bill giving appropriate definition of the word 'family', *viz.*, a group of people related by blood, marriage or by adoption of a transgender person.

5.17 The Committee further recommend 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".**

5.18 The Committee find that there are no specific directions to the States to establish rehabilitation centres for transgender persons. The Committee feel that general rehabilitation centres meant for male, female and children would not cater to the specific needs of the transgender persons. The Committee, therefore, recommend that directions should be given to the State Governments to set up specific rehabilitation centres meant only for transgender persons, which would cater to their specific needs.

CHAPTER VI

EDUCATION, SOCIAL SECURITY AND HEALTH OF TRANSGENDER PERSON

6.1 Clause 14 of the Bill states:

> "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."

6.2 The Committee note that above Clause provides obligation of educational institutions to provide inclusive education to transgender persons, but there is lack of clarity on inclusive education. When asked to comment, the Ministry in their written note stated that "Clause 2 (c) of the proposed Bill defines "inclusive education " as 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. However, a transgender child enjoys full right as others. However, in order to protect the education, social security and health care of transgender persons, Clauses 14 to 17 have been added as a safeguard".

6.3 The Committee wonder when a transgender child enjoys full and all rights as enjoyed by other normal children, what and where is the need to bring this legislation for protection of their rights. The Committee find that

this Clause does not impose any tangible obligation on the educational institutions.

6.4 The Committee also find that, education remains one of the least accessible options for the transgender persons, due to plethora of reasons, including bullying for gender non-conformity in schools, lack of recognition of gender non-conforming children in the Right of Children to Free and Compulsory Education Act, 2009, recording of gender assigned at birth in educational certificates, which are impossible to change, and entrenched stigma and discrimination in colleges and university campuses against gender non-conforming behaviour and expression, resulting in frequent drop outs and discontinuation of education, etc.

6.5 The Committee desire that a provision for obligations imposed on private educational institutions in line with the provisions of the Right to Education Act, 2009 should be there in the Bill. There should also be a provision regarding obligations on the Government for formulation of educational and communication programmes which are 'age-appropriate, gender-sensitive, non-stigmatising and non-discriminatory'.

6.6 The Committee also urge the Ministry to include following sub-Clauses under Clause 14 of the Bill:

"14(1) It is unlawful for an educational authority to discriminate against a person on transgender grounds:

(a) by refusing or failing to accept the person's application for admission as a student, or

(b) in the terms on which it is prepared to admit the person as a student.

14(2) It is unlawful for an educational authority to discriminate against a student on transgender grounds:

(a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or

(b) by expelling the student or subjecting the student to any other detriment."

6.7 The Committee after carefully perusing Clause 15, do not find any schemes and programmes which are being provided by the Government to support livelihood of the transgender persons nor any meaningful livelihood options for vocational training or self-employment to the transgender persons.

6.8 The Committee wish to draw the attention of the Ministry towards the fact that very few transgender persons are part of formal employment system, owing to lack of equal and non-discriminatory educational and employment opportunities as well as gender-incongruent identity norms.

6.9 When the Ministry were asked as to what specific schemes and programmes have been provided in the Bill, the Ministry replied that "it is not possible to put everything in the Bill as the same is derivative in nature".

6.10 The Committee observe that with regard to vocational training and self-employment of the transgender persons, the proposed Clause 15 is too vague and limited and will hardly provide any meaningful livelihood option to the transgender persons. It is important that the Government provide appropriate facilities for vocational and technical training to transgender persons, many of whom are interested in creative fields like fashion design, photography, interior designing, etc. in order to make them self sufficient and self-reliant. Due to lack of equal and non-discriminatory educational and employment opportunities in addition to gender-incongruent identity documents, very few transgender persons are part of formal employment system. Therefore, the Committee desire that adequate facilities for vocational and technical training to transgender persons should be provided in the Bill.

6.11 Further, a separate provision should also be made under which directions should be issued to undertake specific measures such as counselling, career guidance and sensitizing employers regarding concerns of transgender persons, a suggestion which was also made by the Expert Committee constituted by the Ministry on the issues relating to transgenders.

6.12 Clause 16 of the Bill states :

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

(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."

6.13 Commenting on the provisions made in this Clause, the Ministry stated that "...Clause 16 provides for taking measures in relation to their medical care facilities including Sex Reassignment Surgery (SRS) and hormonal therapy and bringing out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines".

6.14 The Committee note that there are several measures which have been recommended by the Expert Committee and are germane for the welfare of transgender persons but have not been explicitly incorporated in the Bill, such as, developing trans-friendly hospital policies/guidelines, developing non-discriminatory policies so that transgender persons can have barrier free access to healthcare and funding research for promoting transgender health, etc. The Committee urge the Ministry to ensure that transgender individuals and health activists are part of the consultation process to design any guidelines for SRS or for larger trans-health issues or to incorporate the same into medical curricula.

6.15 The Committee, therefore, desire that these measures should be incorporated in this Clause of the Bill.

6.16 The Committee find that under Clause 16(c), counselling is limited only to Sex Reassignment Surgery, and hormonal therapy and there is no provision for psychological counselling or counselling related to mental health. Therefore, the Committee desire that measures on counselling, review of medical curriculum and insurance coverage must explicitly incorporate mental health concerns of transgender persons.

6.17 Further, the Committee find that Clause 16(g) does not make it clear if the comprehensive insurance scheme is simply for Sex-Reassignment Surgery (SRS) and hormonal therapy, or for any health issues. Therefore, the Committee recommend that Clause 16(g) may be redrafted as follows:

> **"provision for coverage of medical expenses by a comprehensive insurance scheme for SRS, hormonal therapy and other health issues."**

CHAPTER VII

NATIONAL COUNCIL FOR TRANSGENDER PERSONS

7.1 Clause 17 provides for the establishment of a National Council for Transgender Persons by the Central Government, comprising several members from different Ministries and Departments of the Central Government, representatives from the State Governments, autonomous statutory bodies, representatives from the transgender community from different States on a rotation basis and five experts working with transgender persons. All members are to be nominated by the Central Government and will hold office for a period of three years, except the Member Secretary. Clause 18 lists the functions of the Council, including, to advice the Central Government on the formulation of policies, programmes and legislations for the transgender persons, and monitor and evaluate the impact of policies and programmes on transgender persons, amongst others.

7.2 The Committee note that Clause 17 and 18 of the Bill describe the constitution and functions of National Council for Transgender Persons. The Committee find that the National Council is merely an advisory body and does not have any effective powers. The Council is not even empowered to record evidence, call for documents, and does not have the

powers of a Civil Court within the ambit of the Code of Civil Procedure, 1908, unlike the Statutory Commissions.

7.3 When asked why there is no clarity on the nature and powers of the National Council, the Ministry stated that "nature and powers of National Council are clearly outlined in Clause 18 of the Bill. The National Council is headed by Union Minister of Social Justice and Empowerment and is a fairly empowered body". The Ministry, on the functions of the National Council, further, stated that "...in case a person violates the provisions contained in Clause 3 in Chapter II of the Bill, the aggrieved Transgender Person may approach National Council for Transgender Persons for redressal of his/her grievance".

7.4 The Committee are dismayed to find that 'functions' of the National Council for Transgender Persons as detailed by the Ministry in their written submission have not been precisely mentioned in the Bill. The Committee do not find anything in the Council's role for the grievance redressal of the transgender persons in Clause 18. The Committee are equally not satisfied with the reply given by the Ministry. The Committee observe that the National Council has been reduced merely to an advisory body and does not have any effective enforcement powers. The Committee are, therefore, of the opinion that the Council be vested with more teeth and its powers and functions need be elaborated. The Committee recommend that a new Clause indicating clearly the function of the National Council for redressal of grievances as "to redress the grievances of the transgender persons" may be added as sub-clause (e) to Clause 18 of the Bill. The mechanism for enforcing the orders of such body must be clearly expressed in the Bill. A provision for allowing enforcement of the orders of such body should be incorporated in the Bill and non-compliance of which must attract penalties.

7.5 The Committee also recommend that a provision for constitution of State Councils for Transgender Persons should be there in the Bill

so that enforcement bodies must be set up at the State level by the State Governments.

CHAPTER - VIII

OFFENCES AND PENALTIES

8.1 Clause 19 of the Bill states :

"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;

(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;

(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."

8.2 As may be seen from the above Clause, 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.

8.3 The Committee feel that Clause 19(a), though well-intentioned, is likely to be misused against the other transgender persons, in the garb of protecting them. It is an open fact that most transgender persons are harassed or booked under the begging prohibition laws, even when they are not begging or merely present at public places.

8.4 The Committee observe that the Bill does not fully recognize the range of violence that transgender persons face, and, therefore, does not provide for sentences commensurate with the gravity of the offences. The Indian Penal Code was amended in 2013 to expand the definition of rape and recognize a broader range of offences against women, including acid attacks, voyeurism, stalking, sexual harassment and disrobing. Transgender persons often face similar abuses.

8.5 The Committee also observe that there is also a risk that the Bill could end up criminalizing transgender persons begging of their own volition. The Committee further observe that criminalizing the act of "compelling or enticing transgender persons in begging and other forms of forced or bonded labour" increases the risk that transgender persons - many of whom have limited employment opportunities - will be criminalized due to misuse of the law. The Committee feel that provisions on beggary

under other laws already exist, and are already used to harass and abuse transgender persons.

8.6 The Committee also find that Clause 19(d) is not specific, since there is no definition of 'sexual abuse' given in the Bill. The words "tends to do acts" are vague and ambiguous and have no place in a provision prescribing a criminal offence. This Clause, the Committee feel has to be precise and specific. Though there exists an urgent need to provide for protection against sexual assault and rape of transgender persons, the present provision falls woefully short, since it does not specify the exact non-consensual acts that are sought to be prohibited. Moreover, there is no clarity on how these acts would interplay with Section 377, IPC that criminalizes all penile non-vaginal sexual acts between individuals.

8.7 When asked to give their views on Clause 19 and what the Ministry have to say on the Committee's observations, the Ministry stated as under:

> " As far as Clause 19(a) of the Bill is concerned, it speaks only about compelling and enticing transgender persons in begging and other forms of forced or bonded labour. The aim of this provision is to discourage forced beggary/bonded labour system which is a crime under various Acts. However, forced beggary/beggary syndicates shall be dealt with under appropriate provisions of the IPC Act. After the Bill is approved, all efforts would be made to mainstream the transgender community by providing skill training."

8.8 The Committee concur with the suggestion of the Ministry to the extent that beggary/beggary syndicates and bonded labour system must be discouraged being a crime under various Acts irrespective of any gender. The Committee strongly feel that the Bill must recognize these offences as crimes against transgender persons, and provide for sentences commensurate with the gravity of their offences. 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. Further, the Indian Penal Code may be used as a guideline while determining penalties of such abuses/crimes so that principle of proportionality is also preserved.

8.9 The Committee further recommend that 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.

8.10 Although beggary is a criminal act but the transgender community does not enjoy parity with other genders when it comes to alternative modes of employment. The Committee, therefore, exhort the Ministry to issue directions to State Governments to provide alternative employment opportunities for transgender persons, such as, recruitment as drivers, conductors, traffic policemen etc. in the Central and State Departments. To provide more employment avenues to transgender persons, the Committee desire that directions may also be given to States to introduce various short term courses designed according to their abilities and requirements for skill development of transgender persons as well.

CHAPTER -IX

MISCELLANEOUS

9.1 The Committee further recommend that the Ministry should consider suitably incorporating the following suggestions in "The Transgender Persons (Protection of Rights) Bill, 2016". which the Committee feel are equally important and will have a direct bearing on the welfare of transgender persons:

(1) In NALSA, the Supreme Court directed the Central Government and the State Governments to take steps to treat transgender persons as socially and educationally backward classes of citizens and extend all kinds of reservation for admission in educational institutions and for public appointments. The Bill is silent on granting reservations to transgender persons under the category of socially and educationally backward classes of citizens.

(2) The Bill does not refer to important civil rights like marriage and divorce, adoption, etc, which are critical to transgender persons' lives and reality, wherein many are engaged in marriage like relations, without any legal recognition from the State.

(3) There should be separate HIV Sero-surveillance Centres since hijras/transgenders face several sexual health issues operated by Centre and State Governments.

(4) There should be a provision to provide the transgender persons separate public toilets and other such facilities.

(5) There should be counseling services provided to the transgender persons to cope up with trauma and violence on the model of Rape and Crisis Intervention Centres.

(6) Helping for career guidance and online placement support should be established.

(7) At the end of Clause 2(i) in Chapter-I of the Bill, definition of 'persons with intersex variations' should be given as "Persons who at birth show variations in their primary sexual characteristics, external genetalia, chromosomes, hormones from the normative standard of female or male body are referred to as persons with intersex variations".

(8) A provision providing penal action against abortions of intersex foetuses and forced surgical assignment of sex of intersex infants should be there in the Bill.

(9) A provision for separate frisking zones of transgender persons at public places such as airport, Government and

private office complex, etc. should be there. For this purpose, transgender persons should be appointed.

(10) Transgender persons remain at risk of criminalization under Section 377. The Bill must at the very least recognize the rights of transgender persons to partnership and marriage.

(11) The Bill must recognize transgender persons' right to marriage, partnership, divorce and adoption, as governed by their personal laws or other relevant legislation.

(12) A census for transgender persons is a separate exercise from the drafting of guidelines for self-registration. The Census can be proceeded with independently.

New Delhi;
19 July, 2017
28 Ashadha, 1939(Saka)

RAMESH BAIS,
Chairperson,
Standing Committee on
Social Justice and Empowerment

AS INTRODUCED IN LOK SABHA

Bill No. 210 of 2016

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2016

A

BILL

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

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.

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;

(*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 18 of 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;

(*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;

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

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

(*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

(*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

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;

(*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;

(*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;

(*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

Recognition of identity of transgender person.

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

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

Application for certificate of identity.

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:

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

District Screening Committee.

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.

(*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;

(*d*) a representative of transgender community; and

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

Issue of certificate of identity.

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.

(*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.

Change in gender.

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.

(*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:

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.

(*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.

(*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.

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.

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.

(*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;

(*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.

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.

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-survellance 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.

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;

(*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.

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;

(*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;

(*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.

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.

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.

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;

(*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;

(*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 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.

Power to remove difficulties.

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 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:

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 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 27*th 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.

LOK SABHA

A

BILL

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*)

GMGIPMRND—1989LS(S3)—29.07.2016.

ANNEXURE-I

MINUTES OF THE SECOND SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON WEDNESDAY, 5th OCTOBER, 2016

The Committee met from 1430 hrs. to 1620 hrs. in Committee Room No. '139', Parliament House Annexe, New Delhi.

PRESENT

SHRI RAMESH BAIS - CHAIRPERSON

MEMBERS
LOK SABHA

2. Shri Kantilal Bhuria
3. Shri Sher Singh Ghubaya
4. Shri Bhagwant Khuba
5. Shri Sadashiv Lokhande
6. Smt. K. Maragatham
7. Shri Kariya Munda
8. Kunwar Bharatendra Singh

RAJYA SABHA

9. Shri Ahamed Hassan
10. Dr. Narendra Jadhav
11. Smt. Vijila Sathyananth
12. Smt. Chhaya Verma
13. Shri Ramkumar Verma

LOK SABHA SECRETARIAT

1.	Shri Sukhi Chand Chaudhary	-	Joint Secretary
2.	Shri Ashok Sajwan	-	Director
2.	Smt. Mamta Kemwal	-	Additional Director

REPRESENTATIVES OF THE MINISTRY/ORGANIZATION

Sl. No.	Name	Designation and Organization
1.	Smt. Anita Agnihotri	Secretary, Department of Social Justice and Empowerment
2.	Shri Arun Kumar	Special Secretary, Department of Social Justice and Empowerment
3.	Ms. Ghazala Meenai	Joint Secretary, Social Defence
4.	Shri Rajesh Katoch	Director, NISD

2. At the outset, the Chairperson welcomed the Members and the representatives of the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) to the sitting of the Committee convened to hear the views of the Ministry on "The Transgender Persons (Protection of Rights) Bill, 2016". Impressing upon the witnesses to keep the proceedings of the Committee 'Confidential', the Chairperson asked the Secretary, Department of Social Justice and Empowerment to give an overview of the Bill.

3. The Secretary accordingly briefed the Committee on the Bill highlighting its background, recommendations of the Expert Committee constituted by the Ministry, decision of the Hon'ble Supreme Court on the rights of the Transgender Persons along with its major recommendations and explaining the salient features of the Bill through power-point presentation. The broad issues discussed at the meeting are as follows:

(i) Need to conduct more research work by the Ministry to have better understanding of the state of affairs regarding Transgender Persons before finalising the Bill.

(ii) Forced conversion of small children to include them into Transgender community by the persons of Transgender Community.

(iii) Requirement of a provision for medical/physical examination of the Transgender Persons before issuing certificate for their identity.

(iv) Provisions for rights and facilities for the Transgender Persons, which are not there in the Bill, such as, right to inherit property, right to representation.

(v) Need to conduct further research on the means of livelihood of the Transgender Persons and their involvement in criminal activities.

4. The representatives of the Department of Social Justice and Empowerment also responded to the queries by the Members to the extent possible. The Chairperson directed the Secretary to furnish written replies to the unanswered queries raised by Members to the Secretariat at the earliest. The Secretary assured to comply.

5. The Chairperson then thanked the Secretary and other officials of the Department of Social Justice and Empowerment for giving valuable information to the Committee on the subject and expressing their views in a free and frank manner on various issues raised by the Members.

6. A copy of the verbatim proceedings of the sitting has been kept on record.

The witnesses then withdrew.

The Committee then adjourned.

ANNEXURE-II

MINUTES OF THE THIRD SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON WEDNESDAY, 30TH NOVEMBER, 2016.

The Committee met from 1500 hrs. to 1635 hrs. in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

SHRI RAMESH BAIS - CHAIRPERSON

MEMBERS
LOK SABHA

14. Shri Kantilal Bhuria
15. Shri Santokh Singh Chaudhary
16. Shri Sadashiv Lokhande
17. Smt. K. Margatham
18. Prof. Seetaram Ajmeera Naik
19. Sadhvi Savitri Bai Phule
20. Kunwar Bharatendra Singh
21. Smt. Mamta Thakur
22. Shri Tej Pratap Singh Yadav

RAJYA SABHA

11. Smt. Jharna Das Baidya
12. Dr. Narendra Jadhav
13. Smt. Vijila Sathyananth
14. Smt. Wansuk Syiem
15. Smt. Chhaya Verma

LOK SABHA SECRETARIAT

1. Shri S.C. Chaudhary - Joint Secretary
2. Shri Ashok Sajwan - Director
3. Smt. Mamta Kemwal - Additional Director

LIST OF NON-OFFICIAL WITNESSES

Sl. No.	Name	Organization
1.	Ms. Namrata Mukherjee	Vidhi Centre for Legal Policy
2.	Dr. Kaveri Rajaraman	Neuroscientist and Genderqueer Transgender boy
3.	Ekta Guru	All India Hijra Transgender Samiti

2. At the outset, Hon'ble Chairperson welcomed the Members and representatives of the organizations/stakeholders appearing before the Committee convened in connection with examination of "The Transgender Persons (Protection of Rights) Bill, 2016". Impressing upon the witnesses to keep the proceedings of the Committee 'confidential', the Chairperson requested the stakeholders to brief the Committee on issues related with the Transgender Persons and give concrete advice/suggestions regarding various Clauses of the Bill.

3. The representatives of the organizations/stakeholders then put forth their views/suggestions on the various provisions of the Bill before the Committee. The stakeholders suggested the following changes/amendments in the new proposed legislation:

(i) More inclusive definition of Transgender Persons.

(ii) Absolute right to self-determination may be given to Transgender Persons.

(iii) Inclusion of definition for 'discrimination' for Transgender Persons in the Bill.

(iv) Implementation of anti-discrimination laws for Transgender Persons in Government establishments also.

(v) Grievance Redressal Mechanism should be implemented in all the establishments where Transgender Persons are working irrespective of the strength of the establishment.

(vi) Division of responsibility between State Governments and Central Governments to fix accountability.

(vii) Specified steps for educational upliftment of Transgender Persons should be there.

(viii) Specified steps for the health benefits of the Transgender Persons should be there.

(ix) Reservation in employment should be provided for Transgender Persons.

(x) Provision of Third Gender option in forms should be mandatory for all the Government and private forms.

(xi) Inclusion of different crimes against Transgender Persons in the Bill, such as, deliberate outrage of privacy of Transgender Persons, forceful medical intervention. Provision of security measures for Transgender Persons should be there in court premises while they appear for Court Proceedings.

(xii) Exclusive Chapter on 'Rights' of the Transgender Persons should be added in the Bill.

(xiii) Inclusion of gender sensitization in the syllabus of schools.

(xiv) Separate provision to deal with employment for transgender boys/men.

(xv) Certificate of education should also be issued with changed name and gender by the District Magistrate along with certificate of gender identity.

(xvi) In Chapter VIII Clause 19(c) in the Bill, while deciding Offences and Penalties for a person who "forces or causes a Transgender Person to leave household, village or other place of residence", in addition to house, village or place of residence, 'school' and 'job' should also be added.

(xvii) Complaint Officer should be a neutral person i.e., he should not belong to the same organization where complaint has been lodged.

(xviii) IPC Acts/Provisions for rape against women should also be applied to Transgender Persons.

(xix) Provision for atrocities against Transgender Persons specifying the types of atrocities.

(xx) Freedom of choice of residence.

4. The stakeholders also responded to the queries raised by the Members to the extent possible.

5. The Chairperson thanked the stakeholders for briefing the Committee and also appreciated the work being done by them.

The witnesses then withdrew.

A copy of the verbatim proceedings was kept on record.

The Committee then adjourned.

ANNEXURE-III

MINUTES OF THE FIFTH SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON WEDNESDAY, 28TH DECEMBER, 2016.

The Committee met from 1130 hrs. to 1430 hrs. in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

SHRI RAMESH BAIS - CHAIRPERSON

MEMBERS
LOK SABHA

23. Shri Santokh Singh Chaudhary
24. Shri Sadashiv Lokhande
25. Shri Kariya Munda
26. Prof. Seetaram Ajmeera Naik
27. Sadhvi Savitri Bai Phule
28. Smt. Satabdi Roy (Banerjee)
29. Kunwar Bharatendra Singh
30. Shri Mansukhbhai Dhanjibhai Vasava

RAJYA SABHA

10. Shri Chunibhai Kanjibhai Gohel
11. Shri Ahamed Hassan
12. Dr. Narendra Jadhav
13. Smt. Vijila Sathyananth
14. Smt. Chhaya Verma
15. Shri Ramkumar Verma

LOK SABHA SECRETARIAT

1.	Shri A.K. Singh	-	Additional Secretary
2.	Shri Ashok Sajwan	-	Director
3.	Smt. Mamta Kemwal	-	Additional Director

LIST OF NON-OFFICIAL WITNESSES

Sl. No.	Name	Organization
1.	Shri Satya Rai Nagpaul	Sampoorna Working Group
2.	Shri Anand Grover	Lawyers Collective
3.	Ms. Sindhujaa Iyengar	Amnesty International India
4.	Ms. Subiksha	South Indian Transgenders Federation
5.	Ms. Seeta	Kinnar Bharti

2. At the outset, Hon'ble Chairperson welcomed the Members and representatives of the organizations/stakeholders appearing before the Committee convened in connection with examination of "The Transgender Persons (Protection of Rights) Bill, 2016". Impressing upon the witnesses to keep the proceedings of the Committee 'confidential', the Chairperson requested the stakeholders to brief the Committee on issues related with the Transgender Persons and give concrete advice/suggestions regarding various Clauses of the Bill.

3. The representatives of the organizations/stakeholders then put forth their views/suggestions on the various provisions of the Bill before the Committee. The stakeholders suggested the following changes/amendments in the new proposed legislation:

(xxi) NALSA judgement should be followed in all the Clauses of the Bill.

(xxii) Medical Practitioner should be excluded from the Screening Committee.

(xxiii) Inclusion of provision for reservation in education and employment for Transgender Persons.

(xxiv) Every Clause should explicitly indicate transmen and intersex persons also in the Bill while providing facilities and rights to the Transgender Persons.

(xxv) 'Workplace' should be defined more appropriately. A broad and inclusive definition of workplace/establishment should be provided in the current Bill.

(xxvi) Inclusion of provision for facilities and protection of Transgender Persons/intersex in hospitals and provision for medical insurance for Transgender Persons/intersex.

(xxvii) Clause of criminalization of 'beggary' should be deleted.

(xxviii) Inclusion of a provision in the Bill to provide 'identification' and 'social recognition' to the 'trans-masculine persons' and 'intersex people'.

(xxix) Definition of the 'Transgender Persons' should be according to NALSA Judgement. Emphasis on 'self-identity' should be given. Definition of 'Transgender Persons' and 'intersex' should be added separately.

(xxx) Inclusion of provision for prevention of forced castration of any kind, either in society or within the systems of State.

(xxxi) Inclusion of a provision of a separate 'Atrocities Act' which covers all the violence and discrimination that the trans-community faces.

4. The stakeholders also responded to the queries raised by the Members to the extent possible.

5. The Chairperson thanked the stakeholders for briefing the Committee and also appreciated the work being done by them.

The witnesses then withdrew.

A copy of the verbatim proceedings has been kept for record.

The Committee then adjourned.

ANNEXURE-IV

MINUTES OF THE FOURTEENTH SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON TUESDAY, 25th APRIL, 2017

The Committee met from 1145 hrs. to 1245 hrs. in Committee Room 'E', Basement, Parliament House Annexe, New Delhi.

PRESENT

SHRI SANTOKH SINGH CHAUDHARY - IN THE CHAIR

MEMBERS
LOK SABHA

31. Shri Sadashiv Lokhande
32. Smt. Satabdi Roy (Banerjee)
33. Smt. Mamata Thakur

RAJYA SABHA

34. Shri Chunibhai Kanjibhai Gohel
35. Shri Ahamed Hassan
36. Smt. Sarojini Hembram
37. Smt. Vijila Sathyananth
38. Smt. Wansuk Syiem
39. Smt. Chhaya Verma
40. Shri Ramkumar Verma

LOK SABHA SECRETARIAT

1.	Shri Sukhi Chand Chaudhary	-	Joint Secretary
2.	Shri Ashok Sajwan	-	Director
3.	Smt. Mamta Kemwal	-	Additional Director

REPRESENTATIVES OF THE MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT (DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT)

Sl. No.	Name	Designation and Organization
1.	Shri N.S.Kang	Secretary-in-Charge, Department of Social Justice and Empowerment
2.	Smt. Ghazala Meenai	Joint Secretary, Department of Social Justice and Empowerment
3.	Shri Khagesh Garg	Director, Department of Social Justice and Empowerment

2. As the Chairperson could not attend the sitting due to some unavoidable circumstances, the Members of the Committee chose Shri Santokh Singh Chaudhary, MP and a Member of the Committee, to act as Chairperson under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha. The acting Chairperson then welcomed the Members and the representatives of the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) to the sitting of the Committee convened to hear the views of the Ministry on "The Transgender Persons (Protection of Rights) Bill, 2016". Impressing upon the witnesses to keep the proceedings of the Committee 'Confidential', the Chairperson asked the Secretary-in-Charge, Department of Social Justice and Empowerment to give an overview of the Bill.

3. As the Secretary of Department of Empowerment of Persons with Disabilities was given the additional charge of the Secretary, Department of Social Justice and Empowerment, he accompanied the officials of the Department of Social Justice and Empowerment. However, the Joint Secretary of the Department of Social Justice and Empowerment briefed the Committee on the Bill. The broad issues discussed at the meeting are as follows:

(vi) Census of transgender persons.

(vii) Definition of transgender persons.

(viii) Recognition of identity of transgender persons.

(ix) Right to decide self-identified gender by the transgender persons.

(x) Constitution and role of District Screening Committee.

(xi) Anti-discriminatory provisions for the transgender persons in the Bill.

(xii) Meaning and definition of 'rehabilitation' of transgender persons in the Bill.

4. The representatives of the Department of Social Justice and Empowerment also responded to the queries by the Members to the extent possible. The Chairperson directed the Secretary to furnish written replies to the unanswered queries raised by Members to the Secretariat at the earliest. The Secretary assured to comply.

5. The Chairperson then thanked the Secretary and other officials of the Department of Social Justice and Empowerment for giving valuable information to the Committee on the subject and expressing their views in a free and frank manner on various issues raised by the Members.

6. A copy of the verbatim proceedings of the sitting has been kept on record.

The witnesses then withdrew.

The Committee then adjourned.

ANNEXURE-V

MINUTES OF THE SEVENTEENTH SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON WEDNESDAY, 19th JULY, 2017

The Committee met from 1000 hrs. to 1030 hrs. in Chairperson's Chamber, Room No. 113, First Floor, Block-B, Parliament House Annexe Extension Building, New Delhi.

PRESENT

SHRI RAMESH BAIS - CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Santokh Singh Chaudhary
3. Shri Sher Singh Ghubaya
4. Shri Sadashiv Lokhande
5. Smt. K. Maragatham
6. Dr. (Prof.) Azmeera Seetaram Naik
7. Sadhvi Savitri Bai Phule
8. Dr. Udit Raj
9. Smt. Satabdi Roy (Banerjee)
10. Kunwar Bhartendra Singh
11. Smt. Mamata Thakur

RAJYA SABHA

12. Smt. Jharna Das Baidya
13. Shri Chunibhai Kanjibhai Gohel
14. Smt. Sarojini Hembram
15. Dr. Narendra Jadhav
16. Smt. Vijila Sathyananth
17. Smt. Wansuk Syiem
18. Smt. Chhaya Verma
19. Shri Ramkumar Verma

LOK SABHA SECRETARIAT

1.	Shri S.C. Chaudhary	-	Joint Secretary
2.	Shri Ashok Sajwan	-	Director
3.	Smt. Mamta Kemwal	-	Additional Director

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee.

3. The Committee then took up for consideration the 43rd Report on "The Transgender Persons (Protection of Rights) Bill, 2016".

4. The Chairperson then requested the Members to give their suggestions on the draft Report, if any. The Report, thereafter, was adopted by the Committee without any modifications. The Committee then authorized the Chairperson to finalize the draft Report in the light of consequential changes that might arise out of factual verification of the draft Report and to present the same to both the Houses.

The Committee then adjourned.

//TRUE COPY//

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

ARRANGEMENT OF SECTIONS

SECTIONS

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1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

PROHIBITION AGAINST DISCRIMINATION

3. Prohibition against discrimination.

CHAPTER III

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

4. Recognition of identity of transgender person.
5. Application for certificate of identity.
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CHAPTER IV

WELFARE MEASURES BY GOVERMENT

8. Obligation of appropriate Government.

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13. Obligation of educational institutions to provide inclusive education to transgender persons.
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16. National Council for Transgender Persons.
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18. Offences and penalties.

CHAPTER IX

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19. Grants by Central Government.
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22. Power of appropriate Government to make rules.
23. Power to remove difficulties.

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

ACT NO. 40 OF 2019

[5*th December*, 2019.]

An Act 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 Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(*1*) This Act may be called the Transgender Persons (Protection of Rights) Act, 2019.

(2) It extends to the whole of India.

(*3*) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "appropriate Government" means, —

(*i*) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government;

(*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 (18 of 2013), and includes a Department of the Government; or

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

(*c*) "family" means a group of people related by blood or marriage or by adoption made in accordance with law;

(*d*) "inclusive education" means a system of education wherein transgender students learn together with other students without fear of discrimination, neglect, harassment or intimidation and the system of teaching and learning is suitably adapted to meet the learning needs of such students;

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

(*f*) "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;

(*g*) "National Council" means the National Council for Transgender Persons established under section 16;

(*h*) "notification" means a notification published in the Official Gazette;

1. 10th January, 2020, *vide* notification No. S.O. 135(E), dated 10th January, 2020, *see* Gazette of India, Extraordinary, Part II, sec. 2(*ii*).

(*i*) "person with intersex variations" means a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body;

(*j*) "prescribed" means prescribed by rules made by the appropriate Government under this Act; and

(*k*) "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner, hijra, aravani* and *jogta*.

CHAPTER II

PROHIBITION AGAINST DISCRIMINATION

3. Prohibition against discrimination.—No person or establishment 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;

(*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;

(*f*) the denial or discontinuation of, or 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; and

(*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

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

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

5. Application for certificate of identity.—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:

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

6. Issue of certificate of identity.—(*1*) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.

(*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.

7. Change in gender.—(*1*) After the issue of a certificate under sub-section (*1*) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.

(*2*) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, 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 a certificate of identity under section 6 or a revised certificate under sub-section (*2*) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:

Provided that such change in gender and the issue of revised certificate under sub-section (*2*) shall not affect the rights and entitlements of such person under this Act.

CHAPTER IV

WELFARE MEASURES BY GOVERMENT

8. Obligation of appropriate Government.—(*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 welfare measures as may be prescribed to protect the rights and interests of transgender persons, and facilitate their access to welfare schemes framed by that Government.

(*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 persons.

(*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 PERSONS

9. Non-discrimination in employment.—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.

10. Obligations of establishments.—Every establishment shall ensure compliance with the provisions of this Act and provide such facilities to transgender persons as may be prescribed.

11. Grievance redressal mechanism.—Every establishment shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act.

12. Right of residence.—(*1*) No child 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 child.

(*2*) Every transgender person shall have—

(*a*) a right to reside in the household where parent or immediate family members reside;

(*b*) a right not to be excluded from such household or any part thereof; and

(*c*) a right to enjoy and use the facilities of such household 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.

CHAPTER VI

EDUCATION, SOCIAL SECURITY AND HEALTH OF TRANSGENDER PERSONS

13. Obligation of educational institutions to provide inclusive education to transgender persons.—Every educational institution funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others.

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

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

(*a*) to set up separate human immunodeficiency virus Sero-surveillance Centres to conduct sero-surveillance for such persons in accordance with the guidelines issued by the National AIDS Control Organisation in this behalf;

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

(*c*) before and after 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 transgender persons in hospitals and other healthcare institutions and centres;

(*g*) 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.

CHAPTER VII

NATIONAL COUNCIL FOR TRANGENDER PERSONS

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

(*2*) The National 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 and Urban Affairs, Minority Affairs, Human Resources Development, Rural Development, Labour and Employment and Departments of Legal Affairs, Pensions and Pensioners Welfare and National Institute for Transforming India Aayog, not below the rank of Joint Secretaries to the 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 to the 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; and

(*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.

17. Functions of Council.—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;

(*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 redress the grievances of transgender persons; and

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

CHAPTER VIII

OFFENCES AND PENALTIES

18. Offences and penalties.—Whoever,—

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

(*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 household, village or other place of residence; and

(*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.

CHAPTER IX

MISCELLANEOUS

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

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

21. Protection of action taken in good faith.—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 there under.

22. Power of appropriate Government to make rules.—(*1*) The appropriate Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, 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;

(*b)* the procedure, form and manner and the period within which a certificate of identity is issued under sub-section (1) of section 6;

(*c*) the form and manner in which an application shall be made under sub-section (*1*) of section 7;

(*d*) the form, period and manner for issuing revised certificate under sub-section (*2*) of section 7;

(*e*) welfare measures to be provided under sub-section (*2*) of section 8;

(*f*) facilities to be provided under section 10;

(*g*) other functions of the National Council under clause (*e)* of section 17; and

(*h*) 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 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.

23. Power to remove difficulties.—(*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official 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:

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 before each House of Parliament.

ANNEXURE P-9

The Transgender Persons (Protection of Rights) Rules, 2020

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The Transgender Persons (Protection of Rights) Rules, 2020[1]

[*25th September, 2020*]

Whereas the draft rules in exercise of the powers conferred by Section 22 of the Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019) were published, as required by sub-section (1) of the said section vide notification of the Government of India in the Ministry of Social Justice and Empowerment, number G. S. R. 441(E), dated the 13th July, 2020 in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) inviting objections and suggestions from the persons likely to be affected thereby, before the expiry of the period of thirty days from the date on which copies of the Gazette containing the said notification were made available to the public;

And whereas, the copies of the said Gazetted notification were made available to the public on the 13th July, 2020;

And whereas, the objections and suggestion received from the public in respect of the said draft rules have been considered by the Central Government;

Now, therefore, in exercise of the powers conferred by Section 22 of the Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019), the Central Government hereby makes the following rules, namely—

1. Short title and commencement.—(1) These rules may be called the Transgender Persons (Protection of Rights) Rules, 2020.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definition.—In these rules, unless the context otherwise requires,—

(*a*) "Act" means the Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019);

(*b*) "applicant" means a transgender person who submits an application under Rule 3;

(*c*) "application" means the application form as provided in Form 1;

(*d*) "any official documents" include all documents listed in Annexure 1, which the appropriate Government may revise, by notification in the Official Gazette;

(*e*) "certificate of identity" means a certificate issued by the District Magistrate under Section 6 or Section 7 of the Act as in Form 3 or Form 4 respectively;

(*f*) "form" means a form prescribed to these rules;

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1. Ministry of Social Justice and Empowerment, Noti. No. G.S.R. 592(E), dated September 25, 2020 and published in the Gazette of India, Extra., Part II, Section 3(i), dated 29th September, 2020, pp. 14-27, No. 483

(*g*) "identity card" means a photo identity card issued in Form 5 to a transgender person under Section 6 or issued in Form 6 to a transgender person on change of gender under Section 7 on the basis of "certificate of identity" issued by the District Magistrate or an identity card to a transgender person issued by a State authority prior to the coming into force of these rules;

(*h*) "medical institution" means any medical institution whether hospital or clinic, private or public, in rural areas or urban or overseas;

(*i*) "medical intervention" includes any gender affirming medical intervention undertaken by an individual to facilitate the transition to their self-identified gender, including but not limited to counseling, hormonal therapy, and surgical intervention, if any;

(*j*) "section" means a section of the Act;

(*k*) all other words and expressions used herein but not defined and defined in the Act shall have the same meaning assigned to them in the Act.

3. Application for issue of certificate of identity under Section 6 or Section 7.—(1) A transgender person desirous of obtaining a certificate of identity shall make an application as prescribed in Form 1.

(2) The application shall be submitted to the District Magistrate in person or by post till online facilities are developed by the State Government concerned and thereafter the application shall be made by online only:

Provided that the appropriate Government may undertake measures, as it deems appropriate, to facilitate the submission of applications for certificate of identity by transgender persons living in remote areas or disadvantaged conditions:

Provided further that in case of a minor child, such application shall be made by a parent or guardian of such minor child and in the case of a child in need of care and protection, by the competent authority under the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).

(3) Transgender persons who have officially recorded their change in gender, whether as male, female or transgender, prior to the coming into force of the Act shall not be required to submit an application for certificate of identity under these rules:

Provided that such persons shall enjoy all rights and entitlements conferred on transgender persons under the Act.

4. Procedure for issue of certificate of identity.—(1) The District Magistrate shall, subject to the correctness of the applicant's particulars, get the application processed based on the affidavit submitted declaring the gender identity of any person in Form 2, without any medical or physical examination, and thereafter issue an identification number to the applicant, which may be quoted as proof of application.

(2) For the purpose of determination of the place of residence, the applicant shall have to reside in the area under the jurisdiction of District Magistrate as on the date of application and an affidavit to this effect shall be submitted in Form 2.

5. Issue of certificate of identity for a transgender person under Section 6.—(1) The District Magistrate shall issue to the applicant, a certificate of identity in Form 3 following the procedure provided in Rule 4 indicating the gender of such person.

(2) The said certificate of identity shall be issued within thirty days of receipt of duly filled in application along with the affidavit.

(3) The certificate of identity issued under sub-rule (1) shall be the basis to change the gender as well as the name and the photograph, if so necessitated, of the transgender person in all such official documents as provided in Annexure 1, in accordance with the gender specified in the said certificate of identity.

(4) The District Magistrate shall, at the time of issuance of the certificate of identity under sub-rule (1), issue a transgender identity card in Form 5 to the applicant.

(5) The appropriate Governments shall maintain a register for the issuance of certificate of identity card and the transgender identity card.

(6) The authority that issued the official document, on an application made by an applicant under Rule 3, shall change the name or gender or photograph or any of this information of the applicant in the official documents within fifteen days of making of such application.

(7) Any official document wherein gender, name and the photograph of transgender are revised based on the said certificate of identity, shall bear the same serial or reference number as in the original official document of such transgender person who seeks change in the name or gender or both in the official documents:

Provided that all benefits that a transgender person was entitled to based on an identity card, if any, issued by a State authority shall continue to be enjoyed by that transgender person based on the certificate of identity issued under these rules.

6. Procedure for issue of a certificate of identity for change of gender.—(1) If a transgender person undergoes medical intervention towards a gender affirming procedure, either as a male or female, such person may apply in the Form 1, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone the said medical intervention, to the District Magistrate for the issue of a revised certificate of identity.

(2) The District Magistrate shall, on receipt of an application referred to in sub-rule (1) shall verify the genuineness of the said medical certificate, which shall not include any physical examination.

(3) The applicant shall be a currently residing in the area under the jurisdiction of the District Magistrate as on the date of application and an affidavit to this effect shall be submitted along with the application in Form 1 and no additional evidence shall be called for.

7. Issue of certificate of identity under Section 7.—(1) The District Magistrate shall issue a revised certificate of identity in Form 4 to the applicant

seeking change in gender indicating the gender of such a person as male or female, as the case may be.

(2) The District Magistrate shall issue the revised certificate under sub-rule (1) within fifteen days of its receipt of the application.

(3) The certificate of identity issued under sub-rule (1) shall entitle the applicant to record or change the gender, as well as photograph and name, if so necessitated of transgender person in all such official documents provided in Annexure 1, in accordance with the gender specified in the said certificate of identity as male or female, as the case may be.

(4) The District Magistrate while issuing the certificate of identity for change of gender shall simultaneously issue an identity card in Form 6 to the applicant.

(5) The authority that issued the official document, on an application made by an applicant under sub-rule (3), shall change the name or gender or photograph or any of this information of the applicant in the official documents within fifteen days of making of such application.

(6) Any official document wherein gender, name or photograph of transgender person is revised based on the said certificate of identity shall bear the same serial or reference number as in the original official document of such transgender person who seeks change in the name or gender or both in the official documents.

8. Communication of rejection of application.—(1) In case of rejection of application made under Rule 3, the District Magistrate shall inform the applicant the reason or reasons for such rejection within thirty days from the date of receipt of such application.

(2) The District Magistrate may review the decision of rejection of the application based on the reply submitted by the applicant regarding the reason for rejection communicated in sub-rule (1) of Rule 8 within sixty days from the date of such rejection.

9. Right to appeal.—The applicant shall have a right to appeal, within ninety days from the date of intimation of the rejection of the application, to the appellate authority as designated by the appropriate Government by notification for a final order.

10. Welfare measures, education, social security and health of transgender persons by appropriate Government.—(1) The appropriate Government shall constitute a welfare board for the transgender persons for the purpose of protecting their rights and interests of, and facilitating access to schemes and welfare measures framed by the Government.

(2) The appropriate Government shall review all existing educational, social security, health schemes, welfare measures, vocational training and self-employment schemes to include transgender persons to protect their rights and interests and facilitate their access to such schemes and welfare measures framed by that Government.

(3) The appropriate Government shall formulate educational, social security, health schemes and welfare schemes and programmes as specified in Annexure II in a manner to be transgender sensitive, non-stigmatising and non-discriminatory to transgender persons.

(4) The appropriate Government shall take adequate steps to prohibit discrimination in any Government or private organisation, or private and public educational institution under their purview, and ensure equitable access to social and public spaces, including burial grounds.

(5) The appropriate Government shall create institutional and infrastructure facilities, including but not limited to, rehabilitation centre referred to in sub-section (3) of Section 12 of the Act, separate human immunodeficiency virus sero-surveillance centres, separate wards in hospitals and washrooms in the establishment, within two years from the date of coming into force of these rules to protect the rights of transgender persons.

(6) The appropriate Government shall carry out an awareness campaign to educate, communicate and train transgender persons to avail themselves of the benefits of welfare schemes, educate and train transgender persons on their rights; eradicate stigma and discrimination against transgender persons and mitigate its effects.

(7) The appropriate Government shall also provide for sensitisation of institutions and establishments under their purview, including—

(*a*) sensitisation of teachers and faculty in schools and colleges, changes in the educational curriculum to foster respect for equality and gender diversity;

(*b*) sensitisation of healthcare professionals;

(*c*) sensitisation programmes in workplaces;

(*d*) sensitisation programmes for complaints officers.

(8) All educational institutions shall have a committee which shall be accessible for transgender persons in case of any harassment or discrimination, with powers to ensure that transgender students do not have to be affected by the presence of the persons bullying them, including teachers.

(9) The appropriate Government shall create institutional and infrastructure facilities, including but not limited to, temporary shelters, short-stay homes and accommodation, choice of male, female or separate wards in hospitals and washrooms in the establishment within two years from the date of coming into force of these rules to protect the rights of transgender persons.

11. Provisions for non-discrimination.—(1) The appropriate Government shall take adequate steps to prohibit discrimination in any Government or private organisation or establishment including in the areas of education, employment, healthcare, public transportation, participation in public life, sports, leisure and recreation and opportunity to hold public or private office.

(2) The appropriate Government shall within two years from the date of coming into force of these rules, formulate a comprehensive policy on the measures and procedures necessary to protect transgender persons in accordance with the provisions of the Act.

(3) The policy formulated under sub-section (2) shall include preventative administrative and police measures to protect vulnerable transgender communities.

(4) The appropriate Government shall be responsible for the supervision of timely prosecution of individuals charged under Section 18 of the Act, or under any other Law for similar offences committed against the transgender persons.

(5) Every State Government shall set up a Transgender Protection Cell under the charge of the District Magistrate in each District and under Director General of Police in the State to monitor cases of offences against transgender persons and to ensure timely registration, investigation and prosecution of such offences.

12. Equal opportunities in employment.—(1) Every establishment shall implement all measures for providing a safe working environment and to ensure that no transgender person is discriminated in any matter relating to employment including, but not limited to, infrastructure adjustments, recruitment, employment benefits, promotion and other related issues.

(2) Every establishment shall publish an equal opportunity policy for transgender persons.

(3) The establishment shall display the equal opportunity policy, including the details of the complaints officer, preferably on their website, failing which, at conspicuous places in their premises.

(4) The equal opportunity policy of an establishment shall, inter alia, contain details of—

(*a*) infrastructural facilities (such as unisex toilets), measures put in for safety and security (transportation and guards) and amenities (such as hygiene products) to be provided to the transgender persons so as to enable them to effectively discharge their duties in the establishment;

(*b*) applicability of all rules and regulations of the company regarding service conditions of employees;

(*c*) confidentiality of the gender identity of the employees;

(*d*) complaint of the officers.

13. Grievance redressal.—The appropriate Government shall ensure that every establishment designates a complaint officer in accordance with Section 11 within thirty days from the date of coming into force notification of these rules.

(2) The complaint officer shall enquire into the complaints received within fifteen days from the date of receipt of such complaints.

(3) The head of the establishment shall take action on the enquiry report submitted by the complaints officer within fifteen days from the date of submission of the report.

(4) The head of the establishment shall take action forthwith in all cases where action has not been taken in accordance with the above time limits.

(5) The appropriate Government shall also set up within one year a grievance redressal mechanism, operating through a helpline and outreach centres, for ensuring proper implementation of the provisions of Chapter V of the Act with special reference to sub- sections (1) and (2) of Section 12.

(6) The grievance redressal system shall ensure resolution of grievances within thirty days from the date of bringing of such grievance to the helpline, and imposing of penalties as laid down in Section 18.

(7) The appropriate Government shall put in place a monitoring system for tracking the number of complaints filed, enquired and action taken of all the establishments in their jurisdiction.

14. National Council.—(1) The National Council shall perform the functions as per Section 17 of the Act.

(2) National Institute of Social Defence shall give secretarial assistance to the National Council in conduct of its meetings and facilitate in the discharge of the functions of the National Council.

FORM 1

[*See* Rules 2(*d*), 3(1) and 6(1)]

Application form for issue of transgender certificate of identity under Rule Transgender Persons (Protection of Rights) Rules, 2020 read with Section 6/7* of the Transgender Persons (Protection of Rights) Act, 2019*

***Strike out whichever is not applicable**

State Emblem State Government of (Name of the State) Office of the District Magistrate		
Application form for issue of a transgender certificate of identity under Rule Transgender Persons (Protection of Rights) Rules, 2020 (read with Section 6*/7* of the Transgender Persons (Protection of Rights) Act, 2019 * Strike out whichever is not applicable		
1	**Name**	
(*i*)	Given name (in capital letters)	
(*ii*)	Changed/Chosen name (in capital letters)	
(*iii*)	Out of (*i*) and (*ii*), name to be printed in the certificate of identity and in the identity card	
2	**Gender**	
(*i*)	Assigned at birth	
(*ii*)	Requested in the application	
3	**Date of birth**	dd/mm/yyyy

4	**Educational qualification**	
5	**Present address**	
6	**Permanent address**	
7	**If there is a source of income, the annual income:**	
(*i*)	Under Rs 1,00,000	Yes/No
(*ii*)	Between Rs 1,00,001 and 3,00,000	Yes/No
(*iii*)	Above Rs 3,00,000	Please specify the amount:
8	**Do you have any of the following documents? If so, please submit self-attested photocopies of the certificates stated below.**	
(*i*)	Date of birth certificate	Yes/No
(*ii*)	Aadhaar card	Yes/No
(*iii*)	PAN card	Yes/No
(*iv*)	Election Voter Identity Card	Yes/No
(*v*)	Ration card	Yes/No
(*vii*)	Passport	Yes/No
(*viii*)	Bank passbook	Yes/No
(*ix*)	MNREGA Card	Yes/No
(*x*)	Caste certificate (SC/ST/OBC/Others)	Yes/No
9	**Medical history (for those applying under Section 7 of the Transgender Persons (Protection of Rights) Act, 2019**	
(*i*)	Have you undergone any medical intervention in the context of transgender transition?	Yes/No
(*ii*)	Please give details	
(*iii*)	Name and complete address of the Hospital or medical institute	
(*iv*)	Name of the issuing authority along with the date	
(*v*)	Any other medical status you would like to share	
(*vi*)	Have you been issued any certificate of identity under Section 6 and Section 7 under the Act, or any other ID Card issued by the State Authority before the commencement of these Rules? If so, enclosed the same.	
10	Any other information you would like to give	
11	Have you attached affidavit prescribed in Form 2 of the Transgender Persons (Protection of Rights) Act, 2019 under Rule—Transgender Persons Protection of Rights) Rules, 2020	
12	Have you attached the passport size photographs?	Yes/No

Enclosed: .....documents as mentioned in the application

Declaration

1. I declare that the particulars furnished by me are true and correct.

2. Information provided in this application will be treated as confidential and shall not be shared with any person or organisation save the Central and/or State security agencies, any other agency as provided by Law; and for statistical and policy framing purposes.

Place: Date:	Signature or left hand thumb impression of the applicant given name of the applicant

FORM 2

[*See* Rules 2(*b*) and 4(1)]

Format of affidavit to be submitted by a person applying for certificate of identity for transgender persons under Rule 4 of the Transgender Persons (Protection of Rights) Rules, 2020 read with Section 6 of the Transgender Persons (Protection of Rights) Act, 2019

(Affidavit should be on Non-judicial stamp paper of Rs 10/-) Competent Notary Civil, District (Name of the District), (Name of the State)

I, (Name), son/daughter/ward/spouse of (name of the parent/guardian/husband), aged (in completed years), residing at (address), (Tehsil), (District), (State) (Pin code) do hereby solemnly affirm and declare as under:

1. I am currently residing in the above address.
2. I perceive myself as a transgender person whose gender does not match with the gender assigned at birth.
3. I declare myself as transgender.
4. I am executing this affidavit to be submitted to the District Magistrate for issue of certificate of identity as transgender person under Section 6 of the Transgender Persons (Protection of Rights) Act, 2019 under Rule Transgender Persons (Protection of Rights) Rules, 2020.

.* strike out whichever is not applicable.

Deponent

(Signature of the Applicant)

Verification

I, (Name), hereby state that whatever is stated here in above Serial Nos. 1 to 4 are true to the best of my knowledge.

Deponent

(Signature of the Applicant)

Tehsil

Date

Before Me

Identified by me

Notary

Advocate

Public

FORM 3

[*See* Rules 2(*e*) and 5(1)]

Form of certificate of identity to be issued by District Magistrate under Rule 5 Transgender Persons (Protection of Rights) Rules, 2020 read with Section 6 of the Transgender Persons (Protection of Rights) Act, 2019

Photograph of the certificate holder District Magistrate to attest the photograph

1. On the basis of the application dated dd/mm/yyyy to the undersigned it is certified that Shri/Smt/Km/Ms (name) son/daughter/ward of Shri/Smt (name of the parent or Guardian) of (complete residential address of the applicant) is a transgender person.
2. His/Her birth name is.....
3. This certificate is issued in terms of the provisions contained under Rule 5 Transgender Persons (Protection of Rights) Rules, 2020 read with Section 6 of the Transgender Persons (Protection of Rights)Act, 2019.
4. It is also certified that Shri/Smt/Km/Ms.....is ordinarily a resident at the address given above.
5. This certificate entitles the holder to change name and gender in all official documents of the holder.

Date — Signature of the District Magistrate

Place — Seal

FORM 4

[*See* Rules 2(e) and 7(1)]

Form of certificate of identity for change of gender to be issued by District Magistrate under Rule 6 of the Transgender Persons (Protection of Rights) Rules, 2020 read with Section 7 of the Transgender Persons (Protection of Rights) Act, 2019

Photograph of the certificate holder District Magistrate to attest the photograph

1. On the basis of the application submitted to the undersigned along with a medical certificate from the Medical Superintendent or Chief Medical Officer (name of the Hospital and complete address), it is to certify that Shri/Smt/Km/Ms. (name) son/ daughter/ward of Shri/Smt (name of the parent or Guardian) of (complete residential address of the applicant) has undergone medical intervention to change gender.
2. His/Her birth name is.....

3. This certificate is issued in terms of the provisions contained under Rule 6 of the Transgender Persons (Protection of Rights) Rules, 2020 read with Section 7 of the Transgender Persons (Protection of Rights) Act, 2019.
4. It is also certified that Shri/Smt/Km/Ms.....is ordinarily a resident at the address given above.
5. This certificate entitles the holder to change name and gender in all official documents of the holder.
6. Such change in name and gender and the issue of this certificate shall not adversely affect the rights and entitlements of the holder of this certificate.

Date — Signature of the District Magistrate

Place — Seal

FORM 5

[*See* Rules 2(*g*) and 5(4)]

Form of Identity Card Front side of identity card

State Emblem

State Government of (Name of the State) Office of the District Magistrate

Transgender Identity Card

Identity card number

Photograph of the Card holder

Name

Mother's name@

Father's or Guardian's name @

Gender — Transgender

Date of birth or — dd/mm/yyyy

Age as on the date of application for issue of Identity card — .....years

Reference number of certificate of authority on the basis of which this card is issued

Back side of the identity card

Present address

Card issue date

Signature of the issuing authority Designation

Seal of the issuing authority

Issued under Section 6*/7* of the Transgender Persons (Protection of Rights) Act, 2019 and under Rule.....of Transgender Persons (Protection of Rights) Rules, 2020

*** Strike out whichever is not applicable**

@ only in case the applicant is a minor child

FORM 6

[*See* Rules 2(*g*) and 7(4)]

Form of Identity Card Front side of identity card

State Emblem

State Government of (Name of the State) Office of the District Magistrate

Identity Card

Identity card number

Photograph of the Card holder

Name

Mother's name@

Father's/Guardian's name@

Gender Male/Female

Date of birth or dd/mm/yyyy

Age as on the date of application for issue of .....years identity card

Reference number of certificate of authority on the basis of which this card is issued

Back side of the identity card

Present address

Permanent address

Card issue date

Signature of the issuing authority

Designation

seal of the issuing authority

@ only in case of a minor child

ANNEXURE I

Illustrative list of official documents referred to in .....

Sl. No	Name of the official document
(1)	Birth certificate
(2)	Caste/Tribe certificate

(3)	Any education certificate issued by a school, board, college, university or any such academic institution
(4)	Election Photo Identity Card
(5)	Aadhaar Card
(6)	Permanent Account Number (PAN)
(7)	Driving Licence
(8)	BPL ration card
(9)	Post Office bank/Bank Pass book with photo
(10)	Passport
(11)	Kisan Pass book
(12)	Marriage certificate
(13)	Electricity/water/gas connection paper
(14)	Property papers,
(15)	Vehicle registration
(16)	Service book, employment papers
(17)	Identity card related to bar,
(18)	Policy papers

ANNEXURE II

Suggested list of welfare schemes to be considered:

1. Access to health

a) At least 1 government hospital in every State shall be equipped to offer safe and free gender affirming surgery, counseling and hormone replacement therapy to the transgender community, including all Male to Female (MTF) and Female to Male (FTM) procedures.
b) State medical insurance shall cover procedures of SRS, hormonal therapy, laser therapy, counselling and other health issues of transgender persons at private hospitals.
c) Medical insurance/arogyashri cards.
d) All healthcare facilities should ensure that that there are separate wards for transgender persons.

2. Access to education

a) Scholarship for transgender students.
b) Inclusive and equitable quality education in schools that fosters respect for equality and gender diversity.
c) Protection against ragging in the educational institutions with provisions for grievance redressal.
d) Facilitation of accommodation and schooling for transgender, gender non-conforming and intersex children in residential government schools and universities.

3. Access to housing:

a) Affordable housing.
b) Shelters and community centres for at risk transgender youth that provide nutritious food and counselling.
c) Access to sanitation facilities and safe drinking water.

4. Welfare measures

a) Universal access to Food security schemes and provision of ration cards.
b) Pension for aged, disabled or other vulnerable transgender persons.
c) Old age and retirement homes for transgender persons facing housing exclusion.
d) Public transport to have harassment-free zones for transgender persons.

5. Economic support

(1) Universal coverage of Life Insurance.
(2) Access to banking and financial services including loans.
(3) Explicit inclusion of transgender persons in employment guarantee schemes such as Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) and all social security schemes.
(4) Formation into self help groups for livelihood activities.
(5) Provisions of zero-interest and other micro-finance schemes.

ANNEXURE P-10

Certificates & Identity Cards

transgender.dosje.gov.in/Applicant/Registration/DisplayForm1

Apply Now

Previous Next

- About
- Features
- Helpline

The Portal provides the facility for transgender person to apply for certificate and identity card from across the country without physical interface through a seamless end to end mechanism. The Transgender certificate & identity card are nationally recognised and provided by the Ministry of Social Justice & Empowerment, the certificate is a mandatory document to avail the welfare measures being provided under the SMILE scheme.

The applicant can monitor, edit, track the status of their application through their login id ensuring transparency throughout the procedure. They are also provided with a grievance redressal mechanism wherein, the applicant can post their grievances pertaining to delay in the certification process which would be then forwarded to the concerned authority for resolution at the earliest. The portal acts as a facilitator between the districts authorities and beneficiaries for easy access to Transgender Certificate and Identity Cards as per their self-perceived identity which is an important provision of The Transgender Persons (Protection of Rights) Act, 2019 & Transgender Persons (Protection of Rights) Act 2020.

Smile

- Scholarships
- Recognition & Appreciation

//TRUE COPY//

ANNEXURE P-11

F.No. Z.28017/43/2024-SAS-III (FTS 8281793)
Govt. of India
M/o Health & Family Welfare
Dte. General of Health Services

Nirman Bhawan, New Delhi.
Dated the August, 2024

Subject: Standard Operating Procedures for medical treatment of transgender persons

Sir/Ma'am

The Dte. GHS has prepared Standard Operating Procedures for medical treatment of transgender persons. The same is being enclosed for your information and wider dissemination.

This issues with the approval of competent authority.

Enclosure as above.

Yours sincerely

Signed by
Amita Bali
Date: 03-09-2024 16:09:30

(Dr Amita Bali)
Dy. Director General (Planning)

To

1. Secretary (Health) all States/UTs
2. Director, AIIMS, New Delhi
3. Director/EDs of all AIIMS.
4. Director LHMC and Associated hospitals, New Delhi.
5. Medical Superintendent, ABVIMS & RML Hospital, New Delhi.
6. Medical Superintendent, VMMC and Safdarjung Hospital, New Delhi.

Copy to-

1. PSO to Secretary (H)
2. PSO to DGHS

Standard Operating Procedures for

Medical Treatment of Transgender Persons

Gender dysphoria is defined as a marked incongruence between one's experienced or expressed gender and gender assigned at birth. This state can be understood as a misalignment between 'biological sex' (typically understood as sexual organ and genetic characteristics) and 'gender identity'. Gender dysphoria might occur at various developmental stages, but commonly escalates with development of secondary sexual characteristics.

As per ICD-11, **Gender Incongruence** is characterised by a marked and persistent incongruence between an individual´s experienced gender and the assigned sex, which often leads to a desire to 'transition', in order to live and be accepted as a person of the experienced gender, through hormonal treatment, surgery or other health care services to make the individual´s body align, as much as desired and to the extent possible, with the experienced gender.

Multidisciplinary input can improve outcomes when treating patients with gender incongruence. In this context, a multidisciplinary team commonly includes mental healthcare providers, sexual healthcare physicians, general practitioners (GPs), endocrinologists and surgeons (Urology, Plastic Surgery, General Surgery, Obstetrics and Gynaecology).

Gender Affirmation Surgery has an important role in the treatment of gender incongruence. Various surgical options are available to transgender individuals, which include facial reconstructive surgery, vocal surgery, chest or 'top' surgery, and genital or 'bottom' surgery.

The terms **Gender Incongruence and Gender Affirmation Surgery** are preferred to the terms Gender Dysphoria and Sex Reassignment Surgery respectively and will be used henceforth in the document.

Role of Mental Health Professionals (Psychiatrists and/or Clinical Psychologist as per availability)

The primary role of the mental health professionals would include assessment for gender incongruence, as per the current diagnostic system followed by World Health organization, and certification for the same. Before endocrinology treatment, certificate from one Psychiatrist is required. Before Gender Affirmation Surgery, 2 certificates are required- 1 by a Psychiatrist and 1 by a Clinical Psychologist/Psychiatrist.

Apart from that, the mental health professional would also assess for distress and co-morbid mental and/or substance use disorders and provide management of the same.

They would also provide support or therapy, if needed, to cope with issues related to gender incongruence, including participation in integrated cross-disciplinary care and intersectoral collaboration (as required) for clients and caregivers (if appropriate). The support would be provided pre-hormonal therapy/gender assignment surgery, during the period as well as post-surgery, if need be.

Endocrine Treatment Protocol

1. Once the patient presents to the hospital, they/he/she would be referred to the departments of psychiatry/ psychology and Endocrinology.
2. The Endocrinologist would take relevant history (including history of intake of hormones or any previous surgeries), evaluate the individual and perform the necessary hormonal and biochemical investigations including metabolic profile, glucose, lipids LFT, KFT, and blood pressure. The hormones assessed would include a panel of gonadal sex steroids, gonadotropins and thyroid hormones.
3. They need to regularly meet a mental health professional during the hormonal therapy.
4. Individuals would be given hormonal therapy for a period of 1 year before planning for surgery.
5. Before initiating hormonal therapy, subjects would be explained regarding the adverse effects of hormones. They would be screened for obesity, hypertension, diabetes and dyslipidemia and treated accordingly.
6. Feminizing Therapy will include initiation of antiandrogens and estrogens (preferably estradiol valerate) or GnRH therapy (if needed). Masculinising therapy would include intramuscular testosterone therapy. During this period subjects would be monitored for adverse effects. Lipid profile and glucose would be assessed. Blood pressure and weight would be assessed at each visit.
7. Individuals would be in Endocrine follow up post surgery for long term hormonal therapy.
8. A certificate of being stable on endocrine treatment for 1 year and suitability for surgical procedure is required before Gender Affirmation Surgery

SOP for Gynecologist

All health professionals use language that upholds the principles of safety, dignity, and respect. Also, they should enquire as to how the patient wishes to be addressed as in terms of name, and pronoun. The patient may be referred to the Obstetrics and Gynecology department for the purpose of Hysterectomy and bilateral salpingectomy/salpingoopherectomy.

1. A detailed history and examination is done in the OPD along with opportunistic pap's smear screening.
2. Patient is investigated for fitness for surgery and PAC performed.
3. Ultrasound Whole abdomen and pelvis done to to rule out any abdominal and pelvic pathology.
4. Consent to be taken for risks and consequences of the surgery including irreversibility of the procedure.
5. Total Hysterectomy, salpingectomy /salpingoopherectomy performed laparoscopically or by laparotomy depending on patient's suitability.
6. Patient kept under follow up for 6weeks or longer if need be.

Patient will need lifelong hormonal therapy for bone health. They should also undergo medical screening which is appropriate for their age. Post Total hysterectomy and Bilateral salpingoopherectomy no cervical screening is needed. Lifelong monitoring is needed for evaluating hormone effectiveness and for side effects. They need to be made aware of need for active weight bearing exercise, healthy diet, calcium, and vitamin D supplementation.

Fertility Preservation in Transgenders (Female to Male)

Established method for fertility preservation includes cryopreservation of embryo and oocytes for females. Ovarian tissue cryopreservation is also a successful technique for fertility preservation and no longer experimental, however, has limited availability and is possible only after attaining puberty. Transgender patient wishing for TAH and salpingoopherectomy should be informed about the option of fertility preservation and informed decision for surgery may be taken thereafter. Fertility preservation should be as per prevailing law/ Assisted Reproductive Technology (ART) Act. Transgender and gender diverse people with a uterus who wish to carry a pregnancy should undergo preconception care and prenatal counselling regarding need to stop temporarily gender affirming hormones like testosterone, labor delivery breast feeding and postpartum support. Contraception methods for those who engage in sexual activity that can result in pregnancy should be discussed.

STD Clinics and Care

- There is a need to make STD clinics friendly to Gender Diverse patients
- Clinics should document gender identity and sex *assigned at birth* for all patients to improve sexual health care for transgender and gender nonbinary persons.
- Primary care providers should take a comprehensive sexual history, including a discussion of STI screening, HIV PrEP and PEP, behavioral health, and social determinants of sexual health.
- Clinicians can improve the experience of sexual health screening and counseling for transgender persons by asking for their choice of terminology or modifying language (e.g., asking patients their gender pronouns) to be used during clinic visits and history taking and examination.
- Options for fertility preservation, pregnancy potential, and contraception options should also be discussed, if indicated.
- The majority of transgender women have not undergone genital-affirmation surgery and therefore might retain a functional penis; in these instances, they might engage in insertive oral, vaginal, or anal sex as well as receptive oral or anal sex.
- Transgender women- Providers should have knowledge about the type of tissue used to construct the neovagina, which can affect future STI and HIV preventive care and screening recommendations. Transgender women who have had a vaginoplasty might engage in receptive vaginal, oral, or anal sex. Neovaginal STIs have infrequently been reported in the literature and include HSV and HPV/genital warts , *C. trachomatis N. gonorrhoeae*
- Transgender Men- The few studies of HIV prevalence among transgender men indicated that they have a lower prevalence of HIV infection than transgender women. Recent data from the STD Surveillance Network demonstrated higher prevalence of gonorrhea and chlamydia among transgender men, similar to rates reported among cisgender. Transgender men who have not chosen to undergo hysterectomy with removal of the cervix remain at risk for cervical cancer. High-risk HPV testing using a swab can be considered; self-collected swabs for high-risk HPV testing has been reported to be an acceptable option for transgender men.

Screening Recommendations

The following are screening recommendations for transgender and gender diverse persons:

- Because of the diversity of transgender persons regarding surgical gender-affirming procedures, hormone use, and their patterns of sexual behavior, providers should remain aware of symptoms consistent with common STIs and screen for asymptomatic infections on the *basis of the patient's sexual practices and anatomy.*
- Gender-based screening recommendations should be adapted on the basis of anatomy (e.g., routine screening for *trachomatis* and *N. gonorrhoeae)* as recommended for all sexually active females aged <25 years on an annual basis and should be extended to transgender men and nonbinary persons with a cervix among this age group.
- HIV screening should be discussed and offered to all transgender persons. Frequency of repeat screenings should be based on level of risk.
- For transgender persons with HIV infection who have sex with cisgender men and transgender women, **STI screening** should be conducted at least annually, including syphilis serology, HCV testing, and urogenital and extragenital NAAT for gonorrhea and chlamydia.
- Transgender women who have had vaginoplasty surgery should undergo routine STI screening for all exposed sites (e.g., oral, anal, or vaginal). The usual techniques for creating a neovagina do not result in a cervix; therefore, no rationale exists for cervical cancer screening.
- If transgender men have undergone metoidioplasty surgery with urethral lengthening and have not had a vaginectomy, assessment of genital bacterial STIs should include a cervical swab because a urine specimen will be inadequate for detecting cervical infections.
- Cervical cancer screening for transgender men and nonbinary persons with a cervix should follow current screening guidelines

<u>Requirements for Gender Affirmation Surgery</u>

Gender affirmation surgery requires considered multidisciplinary input over a minimum of 1 year. An ideal candidate for referral to a reconstructive surgeon would:

- be psychologically stable; absence of psychosis, depression, alcoholism and intellectual disability
- have a strong support network
- have a clear idea of their desired type of surgery
- have begun or planned hormonal transition. Current recommendation is a minimum of 1 year prior surgery

- have undergone optimisation of modifiable surgical risk factors, including smoking cessation (recommended six months minimum), weight management (optimal body mass index [BMI] 21–29) and diabetes stabilisation. Elevated BMI is not an absolute contraindication to surgery, but would require a careful discussion of risks and benefits with the patient.

Criteria for Gender affirming surgery

All of the following criteria to be met:

A. The individual is at least 18 years of age; **and**
B. The individual has capacity to make fully informed decisions and consent for treatment; **and**
C. The individual has been diagnosed with gender incongruence; **and**
D. For individuals without a medical contraindication or intolerance, the individual has undergone a minimum of 1 year of continuous hormonal therapy when recommended by a mental health professional and provided under the supervision of an endocrinologist/physician*; **and**
E. Stable on their gender affirming hormonal treatment regime certified by the treating Endocrinologist/Physician (which may include at least 1 year of hormone treatment or a longer period if required to achieve the desired surgical result, unless hormone therapy is medically contraindicated); and
F. Understands the effect of gender-affirming surgical intervention on reproduction and they have explored reproductive options**; and**
G. If the individual has significant medical or mental health issues present, they must be stable on treatment. If the individual is diagnosed with severe psychiatric disorders and impaired reality testing (for example, psychotic episodes, bipolar disorder etc.), an effort must be made to improve these conditions with psychotropic medications and/or psychotherapy before surgery is contemplated; **and**
H. Two referrals from qualified mental health professionals who have independently assessed the individual. Two separate letters, or one letter signed by both (for example, if practicing within the same setup) are required. The letter(s) must have been signed within 12 months of the request submission.

**Physician should be MD Medicine with adequate knowledge of the subject. This provision is kept due to the limited numbers of Endocrinologists and an Endocrinologist may not be available at all centres.*

Role of Nodal Officer/ Coordinating person

The various departments involved in the process of Gender Affirmation procedures (medical/surgical) should identify nodal officer from their respective department who will facilitate the coordination with other departments.

Role of Gender Affirmation Surgery Board

Before going for Gender Affirmation Surgery, the centers have an option to create a medical board, if required, which would comprise of a minimum of-

- 2 Mental Health Professionals (at least one Psychiatrist),
- one Endocrinologist,
- one Specialist from concerned surgery departments and
- one representative from Hospital administration (MS/AMS)

List of Gender Affirmation Surgeries

I. Gender Defining Surgeries

A. Genital Surgery (MALE TO FEMALE)-

i. Orchidectomy
ii. Modified Penile Inversion Vaginoplasty including Labioplasty, Clitoroplasty, Penectomy, Vestibuloplasty
iii. Feminizing urethroplasty
iv. Sigmoid vaginoplasty
v. Peritoneal vaginoplasty

B. Mammoplasty with implants

C. Genital Surgery (FEMALE TO MALE)-

i. Metoidioplasty and similar procedures with urethral lengthening and scrotoplasty
ii. Radial artery forearm flap and free phalloplasty
iii. Anterolateral thigh (ALT) and similar procedures
iv. Testicular prosthesis
v. Open/ Lap- Hysterectomy, salphingo- oophorectomy and vaginectomy
vi. Hysterectomy + oophorectomy + vaginectomy+ perineal procedures+
vii. urethroplasty+ clitoral transposition

D. Mastectomy

II. Gender refining surgeries/ Ancillary Procedures

A. Aesthetic procedures (MALE TO FEMALE)-

i. Forehead Feminization
ii. Feminizing rhinoplasty
iii. Cheek feminization
iv. Lip lift
v. Chin feminization
vi. Lipofilling of breast up to 5 sitting
vii. Facial bone reduction
viii. Blepharoplasty/ rejuvenation of lids

B. Lower jaw contouring- V line surgery

i. V line soft tissue jaw angle (Masseter reduction) under chin liposuction, buccal fat pad removal
ii. V line surgery (bone contouring)

C. Laser therapy# (only for facial hair removal per year)

D. Hair transplantation (small, medium and large)

E. Aesthetic Procedures (FEMALE TO MALE)

i. Pectoral implants
ii. Blepharoplasty/ rejuvenation of lids

F. Hair Transplantation (small, medium and large)

G. Beard Hair Transplant

 # Hair removal with appropriate anti androgen therapy in TG female will have inadequate effect. Hence, a Laser hair removal procedure should be advised only after adequate therapy to reduce the end organ hypersensitivity that is seen in TG female. Also the frequency of hair removal will depend on the anagen growth phase which may necessitate frequent sitting in the absence of anti-androgen therapy

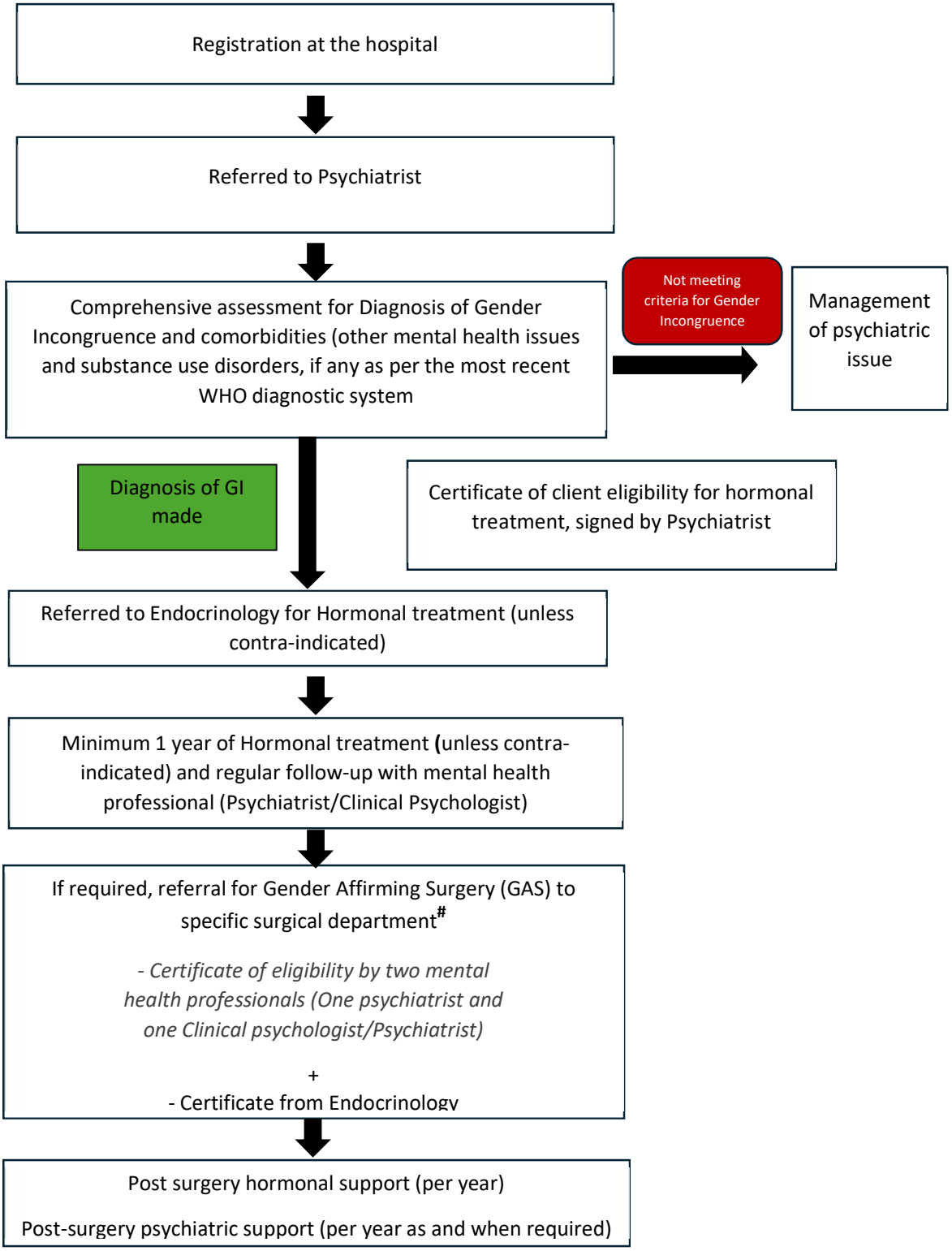
List of Endocrine/Hormonal Treatments

A. Hormone Therapy (Pre Surgical for 1 years)
B. Hormone Therapy (Post Surgical per year)

List of Mental Health Procedures

A. Assessment of Gender Incongruence including Psychological Testing (if required)
B. Psychological/Psychiatric support/therapy (Pre Surgical for 1 year)
C. Psychological/Psychiatric support/therapy (Post Surgical per year)

RECOMMENDED THERAPEUTIC FLOW



Option to create a Gender Affirmation Surgery medical board if required

SAMPLE CERTIFICTAE

{Insert logo of the Institute}

[Name of Department, Institute and Address]

Certificate of Gender Incongruence for Hormonal Treatment

This is to certify that _____ {name of client}, age _____ {years} has been under the follow-up of the Department of Psychiatry, _____ {name of hospital} since _____ {date of first registration}. Comprehensive clinical assessment confirm the diagnosis of Gender incongruence as per ICD-11 and the same has been duly documented (Ref.: _____ {File no./UHID/Identifying Number}.

The assessment reveals patient's desire to live and be accepted as a Male/Female, including the need to transition to the desired gender. They/he/she has been living sometimes/mostly/all the time in their desired gender role.

Patient has been provided with necessary and relevant information to enable them/him/her to understand that their/his/her environment will be different after hormonal treatment. They/he/she are fully aware of the effects, risks and consequences of such treatment at a physical, emotional and social level and have the capacity to make informed healthcare decisions. There is no evidence of any external coercion on their/his/her decision.

In my clinical opinion, _____ {Name of client} meets the requirement for hormonal treatment and is psychologically ready for the same.

Signature: Date: _____ Place: _____

Name of the Psychiatrist: _____

Designation: _____

Department/Institute: _____

_____

Registration No.: _____

SAMPLE CERTIFICTAE

{Insert logo of the Institute}

[Name of Department, Institute and Address]

Certificate of Gender Incongruence for Gender-affirming Surgery (GAS)

With regard to desire of _____ {name of client}, age _____ {years}, to undergo Gender-affirming surgery, it is certified that they/he/she has been under the follow-up of the Department of Psychiatry, _____ {name of hospital} since _____ {date of first registration}.

Comprehensive clinical assessment confirm the diagnosis of Gender incongruence as per ICD-11 and the same has been duly documented (Ref.: _____ {File no./UHID/Identifying Number}.

The assessment reveals patient's desire to live and be accepted as a Male/Female, including the need to transition to the desired gender. They/he/she has been living sometimes/mostly/all the time in their desired gender role.

They/he/she have undergone _____ {months} of Hormonal Therapy under the care of _____ {Name of treating Endocrinologist} in Department of Endocrinology, _____ _____ {Name of Institute}.

The patient has been provided with necessary and relevant information to enable them/him/her to understand that their/his/her environment will be different post-surgery. They/he/she are fully aware of the effects, risks and consequences of such treatment at a physical, emotional and social financial level and have the capacity to make informed healthcare decisions. There is no evidence of any external coercion on their/his/her decision.

In my clinical opinion, _____ {Name of client} meets the requirement for Gender affirming surgery and is psychologically ready for the same.

Signature: Date: _____ Name of the Psychiatrist: _____ Designation: _____ Department/Institute: _____ _____ _____ Registration No.: _____	Signature: Date: _____ Name of the Clinical Psychologist/ Psychiatrist: _____ Designation: _____ Department/Institute: _____ _____ _____ Registration No.: _____

(The certificate may be combined or separate for the two mental health professionals.)

SAMPLE CERTIFICTAE

{Insert logo of the Institute}

[Name of Department, Institute and Address]

Certificate of Hormonal treatment

This is to certify that _____ {name of client}, age _____ {years} has been under the follow-up of the Department of Endocrinology, _____ {name of hospital} since _____ {date of first registration}.

The patient has received maculinising / feminising hormones for a period of one year strating from _____ to _____. Patient's current hormonal profile and physical changes are in consonance with regular hormonal treatment for a period of one year. Patient has also also undergone psychological evaluation during this period. Patient wishes to continue with the desired gender and Gender Affirmation Surgery for the same. Patient is cleared for Gender Affirmation surgery from Endocrine viewpoint.

Signature: Date: _____ Place: _____

Name of the Endocrinologist: _____

Designation: _____

Department/Institute: _____

_____

Registration No.: _____

Sub- committees involved in formulating the SOP

Dte. GHS

1. Dr. Atul Goel, DGHS
2. Dr. Amita Bali, DDG (P)
3. Dr. Bhavuk Garg, Associate Professor Psychiatry, LHMC

Psychiatry & Clinical Psychology

1. Dr. Pratap Sharan, Head of Department Psychiatry, AIIMS New Delhi
2. Dr. Mina Chandra, Head of Department Psychiatry, RMLH
3. Dr. Shiv Prasad, Head of Department Psychiatry, LHMC
4. Dr. Pankaj Verma, Head of Department Psychiatry, VMMC/SJH
5. Dr. Swati Kedia Gupta, Assistant Professor, Cl. Psychology, AIIMS New Delhi
6. Ms. Satyam, Assistant Professor, Cl. Psychology, RMLH.

Urology

1. Dr. Hemant Goyal, Head of Department, RMLH
2. Dr. Abhishek Johari, Assistant Professor VMMC/SJH
3. Dr. Sridhar P, Assistant Professor AIIMS Delhi

Obstetrics & Gynaecology

1. Dr. Reena, Head of Department, LHMC
2. Dr. Ashok Kumar, Head of Department, RMLH.
3. Dr. Bindu Bajaj, Head of Department, VMMC/SJH

Plastic Surgery

1. Dr. Sameek Bhattacharya, Head of Department, RMLH
2. Dr. Sujata Sarabhai, Head of Department, VMMC/SJH
3. Dr. Manish Singhal, Head of Department, AIIMS

General Surgery

1. Dr. Shivani B Paruthy, Head of Department, VMMC/SJH.
2. Dr. Sunil Chumber, Head of Department, AIIMS, New Delhi

Endocrinology

1. Dr. Krishna Biswas, Head of Department, VMMC/SJH
2. Dr. Rajesh Khadgawat, Professor, AIIMS Delhi
3. Dr. Bindu Kulshreshtha, Head of Department, RMLH

Dermatology

1. Dr. Vibhu Mendiratta, Head of Department, LHMC
2. Dr. Kabir Sardana, Head of Department, RMLH
3. Dr. Sanchita Karmalkar, Head of Department, VMMC/SJH

ANNEXURE P-12

AS INTRODUCED IN LOK SABHA

Bill No. 79 of 2026

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT BILL, 2026

A

BILL

to amend the Transgender Persons (*Protection of Rights*) *Act*, 2019.

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

Short title and commencement.

1. (*1*) This Act may be called the Transgender Persons (Protection of Rights) Amendment Act, 2026.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 2.

40 of 2019.

2. In section 2 of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as the principal Act),—

(*i*) for clause (*a*), the following clause shall be substituted, namely:—

'(*a*) "appropriate Government" means—

(*i*) in relation to the Central Government or any establishment wholly or substantially financed by that Government, the Central Government;

(*ii*) in relation to a State Government or any establishment wholly or substantially financed by that Government, or any local authority within a State, the State Government;

(*iii*) in relation to a Union territory or any establishment wholly or substantially financed by the Central Government in that Union territory, the Administrator thereof appointed under article 239 of the Constitution or such authority as may be specified by the Central Government;';

(*ii*) after clause (*a*), the following clause shall be inserted, namely:—

'(*aa*) "authority" means a medical board, headed by a Chief Medical Officer or a Deputy Chief Medical Officer, as may be appointed by the Central Government, State Government or Union territory Administration;';

(*iii*) clause (*i*) shall be omitted;

(*iv*) for clause (*k*), the following clause shall be substituted, namely:—

'(*k*) "transgender person" means—

(*i*) a person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*, or eunuch, or a person with intersex variations specified below or a person who, at birth, has a congenital variation in one or more of the following sex characteristics as compared to male or female development:—

(*a*) primary sexual characteristics;

(*b*) external genitalia;

(*c*) chromosomal patterns;

(*d*) gonadal development;

(*e*) endogenous hormone production or response, or such other medical conditions; or

(*ii*) any person or child who has been, by force, allurement, inducement, deceit or undue influence, either with or without consent, compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise:

Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.'.

Amendment of section 4.

3. In section 4 of the principal Act, sub-section (*2*) shall be omitted.

Amendment of section 6.

4. In section 6 of the principal Act,—

(*a*) in sub-section (*1*), for the words "District Magistrate", the words "District Magistrate, after examining the recommendation of the authority and, if he considers either necessary or desirable, after taking the assistance of other medical experts" shall be substituted;

(*b*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) The person who has been issued a certificate of identity under sub-section (*1*) and is so declared as a transgender person within the definition under this Act shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person.".

Amendment of section 7.

5. In section 7 of the principal Act,—

(*a*) in sub-section (*1*), for the words "such person may", the words "such person shall" shall be substituted;

(*b*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) The medical institution in which the person who has undergone surgery to change gender, either as male or female, shall furnish the details of such person to the concerned District Magistrate and the authority in such form and manner as may be prescribed.";

(*c*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) A person referred to in sub-section (*1*) shall also make an application to the District Magistrate who shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.";

(*d*) sub-section (*3*) and the proviso shall be omitted.

Amendment of section 16.

6. In section 16 of the principal Act, in sub-section (*2*), for clause (*f*), the following clause shall be substituted, namely:—

"(*f*) representatives of the State Governments and Union territories Administration, by rotation, one each from North, South, East, West and North-East regions, not below the rank of Director in the concerned Ministry or Department, to be nominated by the Central Government, Members, *ex officio*;".

Substitution of new section for section 18.

7. For section 18 of the principal Act, the following section shall be substituted, namely:—

Offences and penalties.

"18. Whoever,—

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

(*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, 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;

(*c*) forces or causes a transgender person to leave household, village or other place of residence, 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;

(*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;

(*e*) kidnaps or abducts any adult person and causes—

(*i*) grievous hurt to such person, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or

(*ii*) permanent or severe injury to the body or bodily functions of such person,

with the intent of, or in the course of, compelling such person to assume, adopt, or outwardly present a transgender identity against the will or consent of such person, whether by force, allurement, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than two lakh rupees;

(*f*) kidnaps or abducts any child and causes—

(*i*) grievous hurt to such child, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or

(*ii*) permanent or severe injury to the body or bodily functions of such child,

with the intent of, or in the course of, compelling such child to assume, adopt, or outwardly present a transgender identity, whether by force, allurement, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees;

(*g*) by force, threat, coercion, allurement, deception, inducement, or undue influence—

(*i*) compels any person, whether or not such person is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person against the will of such person; and

(*ii*) employs, uses, or causes such person to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting,

shall be punishable with rigorous imprisonment for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine which shall not be less than one lakh rupees; and

(*h*) by force, threat, coercion, allurement, deception, inducement, undue influence or otherwise—

(*i*) compels any child, whether or not such child is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person; and

(*ii*) employs, uses, or causes such child to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting,

shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to fourteen years, and shall also be liable to fine which shall not be less than three lakh rupees.".

Amendment of section 22.

8. In section 22 of the principal Act, in sub-section (*2*),—

(*a*) in clause (*c*), after the word, brackets and figure "sub-section (*1*)", the words, brackets, figure and letter "and the form and manner of details to be furnished by the medical institution under sub-section (*1A*)," shall be inserted;

(*b*) in clause (*d*), the word "revised" shall be omitted.

STATEMENT OF OBJECTS AND REASONS

It is the legislative policy to recognise a specific class of transgender persons, who face social issues and to create a regime for their protection. The legislative policy was and is intended to protect only those who face severe social exclusion due to biological reasons for no fault of their own and no choice of their own.

2. Over the course of time, during the implementation of this enactment, certain doubts and difficulties have arisen and are likely to arise with regard to the expanse of the definition of transgender persons and how the identification of such persons is to be done under the existing definition. This is critical to the implementation of the Act, as it is of prime importance that the enactment is utilised and works towards only those who are in actual need of such protection.

3. The intent, object and purpose of the Act is and was to protect a specified class of persons socially and culturally known as transgender people who face societal discrimination of an extreme and oppressive nature. The purpose was and is not to protect each and every class of persons with various gender identities, self-perceived sex/gender identities or gender fluidities.

4. The existing vague definition of the expression "transgender person" not only makes it impossible to identify the genuine oppressed persons to whom the benefits of the Act are intended to reach, but also makes the operation and enforcement of several provisions under penal, civil and personal laws unworkable. Such a vague and broad definition of the expression "transgender person" is found to have created complex issues in the working of statutory enactments, as this vague definition is not compatible with several statutory provisions of several enactments enacted both by the Parliament and the State Legislatures. Any enactment conferring rights, privileges and protections cannot have a definition clause whereby the status entitling such rights, privileges and protections can be acquired.

5. It is therefore imperative to give a precise definition for proper and definitive identification and protection of transgender persons to whom the benefits of the Act must reach. The protection and benefits that are provided under the Act are vast in nature, and therefore, care has to be taken that such identification cannot be extended on the basis of any acquirable characteristics or personal choice or claimed self-perceived identity of an individual.

6. The Bill also contains provisions for designation of an authority and provisions providing the relevant authorities the option to seek expert advice if required. The Bill also seek to empower the transgender persons to make consequential changes in official documents. The Bill further provides for a change in the constitution of the National Council ensuring that persons, not below the rank of Director, form a part of the same as representatives of the State Governments and Union territories administration, by rotation, one each from North, South, East, West and North-East regions.

7. The Transgender Persons (Protection of Rights) Act, 2019 prohibits discrimination and abuse against transgender persons but its penal provision under section 18, as presently enacted, addresses only general wrongs and criminal offences and prescribes a maximum of two years' imprisonment. It does not adequately address offences of exceptional gravity that have been documented in practice. The abduction of adults and children, the infliction of reversible or irreversible bodily harm upon them through mutilation, emasculation, castration, hormone therapies / other similar therapies or chemical alteration, and their forced assumption of a transgender identity, frequently as a prelude to economic and other forms of exploitation including but not limited to begging or servitude has been observed. While scattered provisions of the Bharatiya Nyaya Sanhita, 2023 and the Juvenile Justice (Care and Protection of Children) Act, 2015 address individual

elements of these wrongs, no existing provision treats this conjunction of abduction, permanent bodily harm, and forced identity as a unified penal approach.

8. The Bill, therefore, also proposes to substitute section 18 of the principal Act, creating specific offences with graded punishments that reflect the gravity of the harm, the irreversibility of the injury, and the particular vulnerability of child victims. The proposed provisions operate cumulatively with the general criminal law and give legislative expression to the constitutional guarantees that every person's bodily integrity is inviolable, that no person may be subjected to forced labour or traffic in human beings.

9. The Bill seeks to achieve the above objectives.

NEW DELHI;

The 12*th March*, 2026. DR. VIRENDRA KUMAR.

FINANCIAL MEMORANDUM

The Transgender Persons (Protection of Rights) Amendment Bill, 2026, if enacted, is not likely to involve any expenditure of recurring or non-recurring nature from and out of the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to insert sub-section (*1A*) in section 7 of the Transgender Persons (Protection of Rights) Act, 2019. The aforesaid sub-section of the said section empowers the appropriate Government to make rules to provide for the form and manner of details of a person who has undergone surgery to change gender, either male or female, to be furnished by the medical institutions.

The matters in respect of which rules may be made and notification issued are matters of procedure and administrative detail, and it is not practicable to provide for them in the proposed legislation itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

(40 OF 2019)

* * * * *

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "appropriate Government" means,—

(*i*) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government;

(*ii*) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, the State Government;

* * * * *

(*i*) "person with intersex variations" means a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body;

* * * * *

(*k*) "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*.

* * * * *

CHAPTER III

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

Recognition of identity of transgender person.

4. (*1*) * * * * *

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

* * * * *

Issue of certificate of identity.

6. (*1*) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.

* * * * *

Change in gender.

7. (*1*) After the issue of a certificate under sub-section (*1*) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.

(*2*) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, 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 a certificate of identity under section 6 or a revised certificate under sub-section (*2*) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:

Provided that such change in gender and the issue of revised certificate under sub-section (*2*) shall not affect the rights and entitlements of such person under this Act.

* * * * *

CHAPTER VII

NATIONAL COUNCIL FOR TRANGENDER PERSONS

National Council for Transgender Persons.

16. (*1*) * * * * *

(*2*) The National Council shall consist of—

* * * * *

(*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*;

* * * * *

CHAPTER VIII

OFFENCES AND PENALTIES

Offences and penalties.

18. Whoever,—

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

(*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 household, village or other place of residence; and

(*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.

* * * * *

Power of appropriate Government to make rules.

22. (*1*) * * * * *

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

* * * * *

(*c*) the form and manner in which an application shall be made under sub-section (*1*) of section 7;

(*d*) the form, period and manner for issuing revised certificate under sub-section (*2*) of section 7;

* * * * *

LOK SABHA

A

BILL

to amend the Transgender Persons (Protection of Rights) Act, 2019.

(*Dr. Virendra Kumar, Minister of Social Justice and Empowerment*)

ANNEXURE P-13

रजिस्ट्री सं॰ डी॰ एल॰—(एन)04/0007/2003—26 REGISTERED NO. DL—(N)04/0007/2003—26

भारत का राजपत्र
The Gazette of India

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 30*th March,* 2026/*Chaitra* 9, 1948 (*Saka*)

The following Act of Parliament received the assent of the President on the 30th March, 2026 and is hereby published for general information:—

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026

(No. 3 of 2026)

[30th March, 2026]

An Act to amend the Transgender Persons (Protection of Rights) Act, 2019.

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

Short title and commencement.

1. (1) This Act may be called the Transgender Persons (Protection of Rights) Amendment Act, 2026.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 2.

40 of 2019.

2. In section 2 of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as the principal Act),—

(*i*) for clause (a), the following clause shall be substituted, namely::—

'(*a*) "appropriate Government" means—

(*i*) in relation to the Central Government or any establishment wholly or substantially financed by that Government, the Central Government;

(*ii*) in relation to a State Government or any establishment wholly or substantially financed by that Government, or any local authority within a State, the State Government;

(*iii*) in relation to a Union territory or any establishment wholly or substantially financed by the Central Government in that Union territory, the Administrator thereof appointed under article 239 of the Constitution or such authority as may be specified by the Central Government;';

(*ii*) after clause (*a*), the following clause shall be inserted, namely:—

'(*aa*) "authority" means a medical board, headed by a Chief Medical Officer or a Deputy Chief Medical Officer, as may be appointed by the Central Government, State Government or Union territory Administration;';

(*iii*) clause (*i*) shall be omitted;

(*iv*) for clause (*k*), the following clause shall be substituted, namely:—

'(*k*) "transgender person" means—

(*i*) a person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*, or eunuch, or a person with intersex variations specified below or a person who, at birth, has a congenital variation in one or more of the following sex characteristics as compared to male or female development:—

(*a*) primary sexual characteristics;

(*b*) external genitalia;

(*c*) chromosomal patterns;

(*d*) gonadal development;

(*e*) endogenous hormone production or response, or such other medical conditions; or

(*ii*) any person or child who has been, by force, allurement, inducement, deceit or undue influence, either with or without consent, compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise:

Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.'.

Amendment of section 4.

3. In section 4 of the principal Act, sub-section (*2*) shall be omitted.

Amendment of section 6.

4. In section 6 of the principal Act,—

(*a*) in sub-section (*1*), for the words "District Magistrate", the words "District Magistrate, after examining the recommendation of the authority and, if he considers either necessary or desirable, after taking the assistance of other medical experts" shall be substituted;

(*b*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) The person who has been issued a certificate of identity under sub-section (*1*) and is so declared as a transgender person within the definition under this Act shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person.".

Amendment of section 7.

5. In section 7 of the principal Act,—

(*a*) in sub-section (*1*), for the words "such person may", the words "such person shall" shall be substituted;

(*b*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) The medical institution in which the person who has undergone surgery to change gender, either as male or female, shall furnish the details of such person to the concerned District Magistrate and the authority in such form and manner as may be prescribed.";

(*c*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) A person referred to in sub-section (*1*) shall also make an application to the District Magistrate who shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.";

(*d*) sub-section (*3*) and the proviso shall be omitted.

Amendment of section 16.

6. In section 16 of the principal Act, in sub-section (*2*), for clause (*f*), the following clause shall be substituted, namely:—

"(*f*) representatives of the State Governments and Union territories Administration, by rotation, one each from North, South, East, West and North-East regions, not below the rank of Director in the concerned Ministry or Department, to be nominated by the Central Government, Members, *ex officio*;".

Substitution of new section for section 18.

7. For section 18 of the principal Act, the following section shall be substituted, namely:—

Offences and penalties.

"18. Whoever,—

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

(*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, 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;

(*c*) forces or causes a transgender person to leave household, village or other place of residence, 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;

(*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;

(*e*) kidnaps or abducts any adult person and causes—

(*i*) grievous hurt to such person, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or

(*ii*) permanent or severe injury to the body or bodily functions of such person,

with the intent of, or in the course of, compelling such person to assume, adopt, or outwardly present a transgender identity against the will or consent of such person, whether by force, allurement, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than two lakh rupees;

(*f*) kidnaps or abducts any child and causes—

(*i*) grievous hurt to such child, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or

(*ii*) permanent or severe injury to the body or bodily functions of such child,

with the intent of, or in the course of, compelling such child to assume, adopt, or outwardly present a transgender identity, whether by force, allurement, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees;

(*g*) by force, threat, coercion, allurement, deception, inducement, or undue influence—

(*i*) compels any person, whether or not such person is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person against the will of such person; and

(*ii*) employs, uses, or causes such person to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting,

shall be punishable with rigorous imprisonment for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine which shall not be less than one lakh rupees; and

(*h*) by force, threat, coercion, allurement, deception, inducement, undue influence or otherwise—

(*i*) compels any child, whether or not such child is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person; and

(*ii*) employs, uses, or causes such child to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting,

shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to fourteen years, and shall also be liable to fine which shall not be less than three lakh rupees.".

Amendment of section 22.

8. In section 22 of the principal Act, in sub-section (*2*),—

(*a*) in clause (*c*), after the word, brackets and figure "sub-section (*1*)", the words, brackets, figure and letter "and the form and manner of details to be furnished by the medical institution under sub-section (*1A*)," shall be inserted;

(*b*) in clause (*d*), the word "revised" shall be omitted.

DR. RAJIV MANI,
Secretary to the Govt. of India.

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

I.A. NO. _____OF 2026

WRIT PETITION (CIVIL) NO. OF 2026

IN THE MATTER OF:

DR. AKKAI PADMASHALI AND ORS. …PETITIONERS

VERSUS

UNION OF INDIA AND ORS. …RESPONDENTS

APPLICATION PRAYING FOR AD INTERIM AND EX-PARTE STAY

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF
THE SUPREME COURT OF INDIA

THE HUMBLE PETITION
OF THE PETITIONER
ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. The Applicants have filed the captioned Writ Petition under Article 32 of the Constitution of India as members of the transgender community in India challenging the constitutional validity of the Transgender Persons (Protection of Rights) Amendment Act, 2026 **("The impugned Act")** which makes sweeping changes to the Transgender Persons (Protection of Rights) Act, 2019 **("The 2019 Act" or "the TG Act")** for being violative of the fundamental rights to dignity, autonomy and privacy

guaranteed under Articles 14, 15 (1), 16, 19 and 21 of the Constitution of India and for being in complete contravention of this Hon'ble Court's judgement in ***National Legal Services Authority (NALSA) v. Union of India*** in as much as it takes away the right to self-identification, mandates certification from state-appointed medical boards and introduces new criminal offences.

2. That the contents of the Writ Petition are not being repeated here for the sake of brevity and may be read as part and parcel of this Application.

3. That the Applicants are members of the transgender and genderqueer community having gender identities of transwoman, intersex person, transman, hijra/transwoman, *"panthi satla kothi"* ('Pant-shirt transgender') and a genderqueer person. The Applicants represent the diversity of transgender identities that are impacted by the introduction of the Amendment Act, 2026 and will lose and stand to lose the protections, rights and entitlements accrued to them under the 2019 Act.

4. In March 2026, without any prior consultation or public engagement, The Transgender Persons (Protection of Rights) Amendment Bill, 2026 ("The 2026 Amendment Bill") was introduced in the Lok Sabha on 13.03.2026 and passed on 24.03.2026 and subsequently passed by the Rajya Sabha on 25.03.2026. It received the Hon'ble President's assent on 30.03.2026 and was published in the Gazette on the same day as the Transgender Persons (Protection of Rights) Amendment Act 2026.

5. The Amendment Act has completely changed the definition of 'transgender persons' under section 2(k) of the TG Act 2019, to include only persons having socio-cultural

identities of *hijra, kinnar, arvani* and *jogta*, and intersex persons, and excluding all other persons including transgender men, transgender women, persons who do not identify with the gender assigned at birth, genderqueer persons. all other trans persons who do not belong to these socio-cultural groups, thus completely leaving the Petitioners out of the purview of 'transgender persons' under the TG Act 2019 and from the coverage of the law. Further, the Amendment Act deletes Section 4(2) of the 2019 Act vide section 3 of the impugned Amending Act that removes a clause clarifying that transgender persons have the right to self-perceived identity.

6. It also amends Section 7 of the 2019 Act by now requiring that anyone who undergoes surgery to change their gender is obliged to apply to change their gender to a binary marker (male or female), and the medical institution performing such surgery is obliged to report it to the District Magistrate.

7. Finally, the Amendment Act introduces new penal offences that are extremely broad and vague encompassing anyone who (i) kidnaps someone (ii) causes grievous hurt by procedures like emasculation, castration, surgery or hormonal therapy (iii) with an intent of 'compelling such person to assume, adopt, or outwardly present a transgender identity against the will or consent of such person, whether by force, allurement, deceit, undue influence or otherwise' with punishment up to life imprisonment. These sections are extremely broad and vague and therefore would be used to criminalize the Petitioners, including members of the hijra community, transgender community networks, kinship networks, supportive parents, medical workers providing gender-affirming care or social organisations and workers who support transgender persons.

8. The Applicants, who are transmen, transwomen and genderqueer persons were all falling under the definition of 'transgender persons' under the TG Act 2019 as they are persons who do not identify with the gender assigned to them at birth, transmen, transwomen, or genderqueer persons, who are not from the socio-cultural identities, and many of whom also had the Certificates of Identity as transgender persons issued to them under the TG Act 2019, and now are completely erased from the protective umbrella of the 2019 Act and are left essentially unrecognised by the law threatening to permanently impact their access to healthcare, education, employment and livelihood as all these aspects remained contingent on documentation provided by way of certification under the 2019 Act. In other cases, even for the Applicant who is from the hijra community, and other Applicants, the newly introduced penalties threaten and create a chilling effect on their community and alternate family structures such as *gharanas*. The Applicants would not be able to get their gender identity legally recognised and obtain documentation and stand to have their access to safe healthcare and medical facilities completely disrupted. All Applicants are impacted by the mandatory medical board certification. Once covered under the 2019 Act, they are now completely without any of their fundamental rights to their self-determined gender identity, legal recognition as transgender persons under the 2019 Act despite having the TG cards issued to them, and also unable to get protection from discrimination in employment, education or access to healthcare.

9. **THAT** the Applicants have a strong prima facie case as the impugned Act 2026 is in direct contravention of the judgement of this Hon'ble Court in **NALSA** which is settled law not being challenged since it was passed in as much as it takes away the right to self-identification.

10. **THAT** the implementation of this Act during the pendency of the petition will cause irreparable injury to the Petitioners who are transgender persons who were covered under the law, and seeking identity documents.

11. **THAT** if the impugned Act is not stayed, access to safe and accessible healthcare for transgender and gender minorities will come to a complete halt denying them of their constitutional right to health and putting their safety and wellbeing at risk.

12. **THAT** if the impugned Act is not stayed then the Petitioners undergoing gender affirming treatments including counselling, hormone replacement therapy and gender affirming surgical procedures will be put to grave danger as abrupt discontinuation of their treatment by medical practitioners on the pretext of the amendment will pose a risk to their health and trigger a public health emergency in the country.

13. **THAT** if the impugned Act is not stayed there will be irreversible harm caused to the Petitioners in as much as undergoing intrusive medical treatment will result in a loss of dignity that cannot be compensated for post-facto.

14. **THAT** the impugned Act creates a chilling effect on fundamental rights specifically with the ambiguity created by the proviso to Section 2(k) having retrospective effect threatens to put entire sections of the gender minority community including trans men and trans women (excluding socio cultural identities), self-identifying non-binary individuals such as the Applicants to be derecognised by the law resulting in losing access to healthcare, education and employment opportunities that are all contingent upon the valid identity certificates issued under the 2019 Act.

15.THAT the balance of convenience lies in favour of the Applicants. Suspending the operation of the 2026 Amendment Act will merely restore the status quo of the 2019 Act under which Rules have been framed and systems operationalised. Whereas under the impugned Amendment ambiguity will continue as medical boards have not yet been constituted rendering the Petitioners in a limbo, suspending their entrenched fundamental rights and coverage of the law, and causing severe damage on the ground.

16. That it is therefore in the interest of justice that the impugned Act be stayed during the pendency of the captioned Writ Petition as if the impugned Act is not stayed, grave irreparable loss will be caused to the Applicants, and will amount to a violation of their fundamental rights.

17. That no harm will be caused to the Respondents if the impugned Act is stayed.

PRAYER

WHEREFORE, in light of the foregoing, it is most respectfully prayed that this Hon'ble Court may be pleased to:

(A) Allow the present Application and Grant ad interim ex-parte stay on the effect and operation of the Transgender Persons (Protection of Rights) Amendment Act, 2026 specifically Sections 2(ii), 2(iii), 2(iv), 3, 4(a), 4(b), 5, 7 and 8 that introduce amendments by way of addition of Section 2(aa), omit Section 2(i), modify Section 2(k), add a proviso to Section 2(k), omit Section 4(2), modify Sections 6, 7, 18 and 22 of the Transgender Persons (Protection of Rights) Act, 2019; and/or

(B) Pass any such orders/further orders as this Hon'ble Court may deem fit and proper in the interest of justice

AND FOR THIS ACT OF KINDNESS, THE APPLICANT AS IS DUTY BOUND SHALL EVER PRAY.

Filed by:

Rohit Kumar-I

Advocate-on-Record for the Petitioners

Code: 3594

Drawn on: 10.04.2026

Filed on: 15.04.2026

Place: New Delhi

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WRIT PETITION (CIVIL) NO. OF 2026

IN THE MATTER OF:

DR. AKKAI PADMASHALI AND ORS. …PETITIONERS

VERSUS

UNION OF INDIA AND ORS. …RESPONDENTS

FILING MEMO

SL No.	Particulars	Copies	Court fee
1.	Synopsis and List of Dates		
2.	Writ Petition with Affidavit		
3.	Application seeking ad interim and ex-parte stay		
4.	Vakalatnama		
Total			

Dated: 15.04.2026

Filed By:

ROHIT KUMAR-I

Advocate on Record

For the Petitioners

Code: 3594