

The Transgender Persons Bill is a violation of fundamental rights, say activists

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Trans community rejects new law

The Transgender Persons (Protection of Rights) Bill, 2019, was moved in the Rajya Sabha by Social Justice and Empowerment Minister Thawar Chand Gehlot on November 20, globally recognised as Transgender Day of Remembrance for all those murdered as a result of transphobia.

Almost a week later, on National Constitution Day on Tuesday, the Bill was passed by the Rajya Sabha after a motion to refer it to a select committee of the Upper House was rejected, completely ignoring consultations with the trans community that sought to amend the Bill. "Irony has died a million deaths today," said Aqsa Shaikh, doctor and medical college teacher, Jamia Hamdard, Delhi, and transwoman. "This Bill has been a priority for the NDA government to show that they have done something for marginalised people." Earlier, the Bill was passed by the Lok Sabha on August 5, the same day that Jammu & Kashmir's special status was revoked.

The trans community has vehemently rejected the Bill, citing several clauses that are detrimental to their fundamental rights. The biggest disappointment, perhaps, is the requisite for a screening committee to certify a person's trans status. "If we want to get a trans ID, we will have to approach a District Magistrate, which is full of cisgender people," said Grace Banu, a trans activist from Tamil Nadu. "How can someone from outside the community recognise our gender?"

[Watch | The Transgender Persons Bill explained](#)

Mridul, a transman, activist and member of LABIA, a queer feminist collective, says it is even more difficult to get legal documents to reflect a transperson's gender identity. "My birth documents had 'F' on them but I want them to be changed to 'M' because I am a man," he said. "But according to this Bill, I can't get that done unless I have had [sex reassignment] surgery. Then someone else will determine whether I can be a man."

Then there's the Bill's punishment clause, that enforces a maximum of two years imprisonment in a case of assault or gender-based violence. "Any punishment of less than three years is bailable at the police station," said Christy Nag, an MPhil student at Tata Institute of Social Sciences and a community member. "The person doesn't even have to go to court to get bail. It's a mockery of the constitution. Now the Bill has to be challenged in Supreme Court with respect to our fundamental rights."

Another problem is the enforcement of a minor's right of residence that compels any transperson below 18 to cohabit with their natal family, failing which the child will be moved to a rehabilitation home, a place to modify delinquent behaviour. "Families are the source of gruesome violence [against the trans community] and therefore, we run away," said Mridul. "According to this Bill, if anyone helps you run away, they can be criminalised too."

A community member and spokesperson for the Rajmala Welfare Society, India's Diverse Chamber, adds that the Bill strongly focuses on transwomen and hijras with little emphasis on the intersex, gender queer and even transmen. "The National Legal Services Authority versus Union of India judgement in 2014, had mentioned reservations too but the Bill today has nothing about it," said the spokesperson. "There's also no mention of equal marriage and adoption rights."

Mridul said the Bill criminalises begging without offering reservations for employment and education. "When you're trans and have run away from home, it doesn't matter if you're rich or poor. You've left behind all your social capital. They have only changed the definition of the Bill," he said. "There were so many sensible amendments...forget that they were rejected but the way that they were rejected felt like a punch to the stomach."

One thing is certain, the trans community have rejected the Bill but will continue to fight for their rights. In addition to integrating the community and empowering themselves through other means, there are efforts to take legal recourse. "The Bill violates several constitutional freedoms and it can be challenged in court," said Bittu K.R., a trans activist who works with the Telangana Hijra Transgender Samiti. "We will certainly intervene legally and keep up the discourse around these issues."

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