

THE RIGHTS OF TRANSGENDER PERSONS BILL, 2014

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**Bill No. XLIX of 2014**

THE RIGHTS OF TRANSGENDER PERSONS BILL, 2014

A

BILL

*to provide for the formulation and implementation of a comprehensive national policy for ensuring overall development of the transgender persons and for their welfare to be undertaken by the State and for matters connected therewith and incidental thereto.*

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5           **1.** (1) This Act may be called the Rights of Transgender Persons Act, 2014. 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; Definition.
- 10           (a) 'abuse' includes verbal and physical abuse;
- (b) 'appropriate government' means;
- (i) In relation to an establishment of the Central Government, or an  
                  establishment, wholly or substantially owned or financed by that Government,

or a Cantonment Board constituted under the Cantonments Act, 1924, or a Union Territory without legislature, or the provider of a service which pertains to List 1 in Schedule VII of the Constitution, the Central Government; 2 of 1924.

(ii) In all other cases, the State Government or, as the case may be, the Government of a Union Territory with legislature. 5

(b) 'barrier' means any factor including attitudinal, cultural, economic, institutional, political, religious, social or structural factors which hampers the full and effective participation, of transgender person in society;

(c) 'discrimination' means any distinction, exclusion or restriction on the basis of gender identity and expression which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination, including denial of reasonable accommodation; 10

(d) 'establishment' means and includes; 15

(i) Departments and Ministries of Government;

(ii) Local authorities and authorities or bodies owned, controlled or aided by the Central or State Government;

(iii) Any statutory or non-statutory body created, owned, financially or administratively controlled or aided by the Central or State Government or any such body performing public or civic functions and includes Government Companies as defined in Section 617 of the Companies Act, 1956; 20

(iv) Any company, firm, cooperative or other society, association, trust, agency, institution, organization, union, industry, supplier of goods or services, factory or other non-statutory body which is not covered under clause (a) to (c) and provides services as defined in clause (r) section 2; 25

(e) 'exclusive transgender rights court' means a court notified under section 47 of this Act; 30

(f) 'exploitation' means using a transgender person to one's own advantage to which one is not otherwise entitled, or to the latter's disadvantage, to which such latter person is not otherwise liable;

(g) 'higher education' means a course of education which can be pursued after completing twelve years of school education; 35

(h) 'human rights' shall have the meaning assigned to it in Clause (d) of Section 2 of the Protection of Human Rights Act, 1993; 10 of 1994.

(i) 'inclusive education' means a system of education wherein all students learn together, most or all of the time;

(j) 'institution' means an institution for the reception, care, protection, education, training, rehabilitation or any other service of transgender persons; 40

(k) 'local authority' means a municipality, a Cantonment Board, a Panchayat or any other authority, established under an Act of Parliament, or a State Legislature to administer the civic affairs of any habitation as defined in or under such Act;

(l) 'National Commission' means the National Commission for Transgender Persons constituted under Section 26 of this Act.

(m) 'prescribed' means prescribed by rules made under this Act;

5 (n) 'public building' means a building, irrespective of ownership, which is used and accessed by the public at large; and includes its entrance, exit, parking space, footpath and other appurtenant lands;

(o) 'reasonable accommodation' means an accommodation needed to ensure transgender persons the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

10 (p) 'registered organization' means an association transgender persons, or a voluntary, non-governmental or charitable organization or trust, society, non-profit company working for transgender persons, duly registered under an Act of Parliament or a State Legislature;

15 (q) 'rehabilitation' refers to a process aimed at enabling transgender persons to attain and maintain maximum independence, full physical, sensory, intellectual psychiatric, social and vocational ability, and inclusion and participation in all aspects of life

20 (r) 'services' means services provided by members of any profession or trade, or provided by any Government, local authority or establishment and includes services relating to banking and finance; education; health; insurance; rehabilitation; entertainment recreation and hospitality; transport or travel; and telecommunications;

(s) 'State Commission' means a State Commission for Transgender Persons constituted under Section 38 this Act.

25 (t) '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.

(u) 'violence' means causing physical or mental harm or injury.

30 **3.** The appropriate Government and local authorities shall, subject to the provisions of this Act and any other law for the time being in force, take the following necessary steps to secure for transgender persons:—

Guiding Principles.

(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

35 (b) non-discrimination;

(c) full and effective participation and inclusion in society;

(d) respect for difference and acceptance of transgender persons as part of human diversity and humanity;

(e) equality of opportunity; and

40 (f) accessibility.

## CHAPTER II

## RIGHTS AND ENTITLEMENTS

Equality and Non-Discrimination.	<p><b>4.</b> (1) The appropriate Government shall take all necessary steps to ensure that transgender persons enjoy the right of equality guaranteed by Article 15 of the Constitution of India on an equal basis with others.</p> <p>(2) The appropriate Government shall take all necessary steps to ensure reasonable accommodation for the transgender persons.</p>	5
Transgender Children.	<p><b>5.</b> (1) The appropriate Government and local authorities shall take all necessary measures to ensure that transgender children enjoy human rights on an equal basis with other children.</p> <p>(2) The appropriate Government and local authorities shall ensure that all transgender children shall have on an equal basis with all other children a right to freely express their views on all matters affecting them; and provide them appropriate support for the exercise of the right.</p>	10
Right to Life and Personal Liberty.	<p><b>6.</b> (1) The appropriate Government shall take necessary steps to ensure that transgender persons enjoy the right to life with dignity and to personal liberty guaranteed by article 21 of the Constitution of India on an equal basis with others.</p> <p>(2) No person shall be deprived of his personal liberty only on the ground of being a transgender.</p>	15
Right to live in Community.	<p><b>7.</b> (1) All transgender persons shall have the right to live in the community with choices equal to others.</p> <p>(2) The appropriate Government and local authorities shall take appropriate measures to ensure full enjoyment of the right mentioned in sub-section (1) of section 7 by:—</p> <p style="padding-left: 40px;">(a) ensuring that transgender persons have access to a range of in-house, residential and other community support services, including assistance necessary to support living and inclusion with community; and</p> <p style="padding-left: 40px;">(b) making community services and facilities for the general population available on an equal basis to transgender persons.</p>	20 25
Right to Integrity.	<p><b>8.</b> Every transgender person has a right to respect for his or her physical and mental integrity on an equal basis with others.</p>	
Protection from torture or cruel, inhuman or degrading treatment or punishment.	<p><b>9.</b> The appropriate Government and local authorities shall take all appropriate administrative and other measures to protect persons from being subjected to torture, or cruel, inhuman or degrading treatment or punishment.</p>	30
Protection from abuse, Violence and Exploitation.	<p><b>10.</b> (1) The appropriate Government and local authorities shall take all appropriate administrative, social, educational and other measures to protect transgender persons, both within and outside the home, from all forms of abuse, violence and exploitation.</p> <p>(2) Any person, or registered organization who or which has reason to believe that an act of abuse, violence or exploitation has been, or is being, or is likely to be committed against any transgender person, may give information about it to the Executive Magistrate in whose jurisdiction such incident occurs or is likely to occur, who, on receipt of such information, shall take immediate steps to stop it or prevent its occurrence as the case may be, or pass such order as he deems fit for the protection of such transgender person including an order,—</p> <p style="padding-left: 40px;">(a) to rescue the victim by authorizing the police or any reliable organization working for transgender persons to provide for the safe custody, or rehabilitation of such transgender person, or both, as the case may be;</p>	35 40 45

(b) for providing protective custody to the transgender person if such person so desires; and

(c) to provide for maintenance to such transgender person.

(3) No civil or criminal liability shall be incurred by any person who in good faith furnishes information under sub-section (2) of section 10;

(4) Any police officer who receives a complaint or otherwise comes to know of abuse, violence or exploitation towards any transgender person shall inform the aggrieved person of:

(a) the right to apply for protection under sub-section (2) of section 10.

(b) the particulars of the nearest organization or institution working for the rehabilitation of transgender person who have been subject to abuse, violence or exploitation;

(c) the particulars of the Executive Magistrate having jurisdiction to provide assistance to aggrieved persons;

(d) the right of the transgender person to free legal services under the Legal Services Authorities Act, 1987 and any other services offered by the National Legal Services Authority or the State Legal Services Authority for the benefit of transgender persons; and

(e) the right to file a complaint under the relevant provisions of the Indian Penal Code, 1860 or any other law dealing with such crimes:

Provided that nothing in this section shall be construed to free such Police Officer of his obligation to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

(5) If the Executive Magistrate finds that the alleged act or behaviour would also be an offence under the Indian Penal Code, 1860 or under any other law imposing criminal sanctions on such acts, he may forward a complaint to that effect to the judicial or metropolitan magistrate, as the case may be, having jurisdiction in the matter, whereupon the latter shall act on it forthwith in accordance with law.

(6) The appropriate Government shall take all appropriate measures to prevent abuse, violence and exploitation against transgender persons by, *inter alia* providing information and raising awareness on:

(a) taking cognizance of incidents of abuse, violence and exploitation;

(b) the legal remedies available against such incidents;

(c) steps to be taken for avoiding such incidents;

(d) procedure for reporting such incidents; and

(e) steps required for the rescue, protection and rehabilitation of transgender persons who have been victims of such incidents.

**11.** (1) No child who is a transgender shall be separated from his or her parents on grounds of being a transgender except on an order of competent Court, if required in the best interest of the child.

Right to Home and Family.

(2) Where the immediate family is unable to care for a transgender child, the competent Court shall make every effort to place such child within his or her extended family, or within the community in a family setting.

*Explanation*—‘Family’ means a group of people related by blood, marriage or adoption to a transgender person.

Freedom of  
Speech, etc.

**12.** The appropriate Government and local authorities shall take steps to ensure that transgender persons are able to enjoy the rights regarding freedom of speech, etc., provided by Article 19 of the Constitution of India, on an equal basis with others.

### CHAPTER III

#### EDUCATION

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Duty of  
Educational  
Institutions  
to provide  
Inclusive  
Education to  
Transgender  
Students.

**13.** The appropriate Government and local authorities shall ensure that all educational institutions funded or recognized by them, provide inclusive education, and *inter alia*,—

(i) admit transgender students without discrimination and provide them education as also opportunities for sports, recreation and leisure activities on an equal basis with other; 10

(ii) provide reasonable accommodation of the individual's requirements;

(iii) provide necessary support in environments that maximize academic and social development, consistent with the goal of full inclusion;

(iv) monitor participation, progress in terms of attainment levels, and completion of education, in respect of every transgender student. 15

Adult  
Education for  
Transgender  
Persons.

**14.** The Appropriate Government and local authorities shall ensure participation of transgender persons in adult education and continuing education programmes on an equal basis with others.

### CHAPTER IV

20

#### SKILL DEVELOPMENT & EMPLOYMENT

Vocational  
Training and  
Self-  
Employment.

**15.** (1) The appropriate Government shall formulate schemes and programmes to facilitate and support employment of transgender persons especially for their vocational training and self-employment.

(2) The appropriate Government shall institute mechanisms for provision of loans at concessional rates to transgender persons for self-employment ventures, and for marketing of their products. 25

Non-  
Discrimination  
in  
Employment.

**16.** (1) 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. 30

(2) Any transgender person, if eligible for any post which is to be filled, shall have the right to appear for selection and hold the post if selected.

### CHAPTER V

#### SOCIAL SECURITY, HEALTH, REHABILITATION & RECREATION

Social  
Security.

**17.** (1) The appropriate Government shall promulgate necessary schemes and programmes to safeguard and promote right of transgender persons to adequate standard of living and living conditions to enable them to live independently and in the community. 35

(2) the schemes under sub-section (1) of section 17 shall *inter-alia* provide:—

(a) safe and hygienic community centres with decent living conditions in terms of nutritious food, sanitation, health care and counselling; 40

(b) facilities for persons including transgender children who have no families or have been abandoned, or are without shelter or livelihood;

(c) access to safe drinking water and appropriate and accessible sanitation facilities especially in urban slums and rural areas.

(d) pension to transgender persons subject to such income ceiling as may be prescribed;

(e) unemployment allowance to unemployed transgender persons registered with special employment exchange for more than two years and who could not be placed in any gainful occupation.

**18.** (1) The appropriate Government and local authorities shall take necessary measures to provide transgender persons:—

Health case facilities.

(a) separate HIV Sero-surveillance Centres since they face several sexual health issues;

(b) sex reassignment surgery, free of cost;

(c) barrier-free access in the hospitals and other healthcare institutions and centres;

(2) To fulfil its obligation under this Section, the appropriate Governments shall make schemes and programmes with participation and involvement of transgender persons and care-givers that *inter alia* makes provision for coverage of medical expenses and therapeutic intervention by a comprehensive insurance scheme for transgender persons.

**19.** (1) The appropriate Government and local authorities shall undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all transgender persons.

Rehabilitation of transgenders.

(2) The service and programmes shall be designed so to begin at the earliest possible stage and to be based on a comprehensive assessment of issues faced by transgender persons.

(3) For purposes of sub-section (1) of section 19, read with sub-section (2), the appropriate Government and local authorities shall, subject to fulfilment of financial and other norms, and availability of budgetary allocation, grant financial assistance to non-governmental organizations.

(4) The appropriate Government and local authorities, while formulating rehabilitation policies, shall consult the non-governmental organizations working for the cause of transgender persons.

(5) Without prejudice to the generality of sub-section (1) of section 19, the appropriate Government shall by notification formulate schemes to provide aid to transgender persons.

**20.** (1) The appropriate Government and local authorities shall take suitable measures to promote and protect the right of all transgender persons to have a cultural life and to participate in leisure and recreational activities on an equal basis with others.

Leisure, Culture and Recreation.

(2) Without prejudice to the general obligation in sub-section (1) of section 20, such measures shall include,—

(a) Sponsoring of transgender film, theatre, music and dance festivals;

(b) establishment of a transgender history museum which chronicles and interprets the historical experiences of transgender persons;

**21.** All Government institutions of primary, secondary and higher education and all primary, secondary and higher education institutions receiving aid from the Government shall reserve two per cent of the total seats in each class or course for transgender persons:

Reservation in Primary, Secondary and Higher Educational Institutions.

Provided that transgender persons are not to be prevented from competing for seats which are not reserved for them.

**22.** Every appropriate Government shall reserve, in every establishment under them, not less than two per cent of the vacancies meant to be filled by direct recruitment, for transgender persons.

Reservation of Posts for Transgender Persons.

Incentive to employers in the Private Sector.

**23.** The appropriate Government shall, within a period of one year from the commencement of this Act, provide incentives to employers in the private sector to ensure that at least two per cent of their work force is composed of transgender persons within a period of five years from the commencement of the Act.

Special Employment Exchange.

**24. (1) The appropriate Government may, by notification, specify that the employer in every establishment shall furnish such information or return as may be prescribed in relation to vacancies appointed for transgender persons that have occurred or are about to occur in that establishment to such Special Employment Exchange as may be prescribed and the establishment shall thereupon comply with such information.**

**(2) The form in which and the intervals of time for which information or returns shall be furnished and the particulars, they shall contain shall be such as may be prescribed.**

## CHAPTER VI

### DUTIES AND RESPONSIBILITIES OF APPROPRIATE GOVERNMENT

Awareness Raising.

**25. (1)** The appropriate Government in consultation with the National or State Commission, as the case may be, shall conduct, sponsor, encourage, support or promote on a regular and continuous basis information campaigns and sensitization programmes to ensure that the rights recognized in this legislation are respected, protected and promoted.

**(2)** The campaigns shall aim at enabling both state and civil society to comprehend transgenderism as an integral part of the human condition, to recognize the capabilities and contributions of transgender persons, and to combat the stereotypes, prejudices and harmful practices which impede the participation of transgender persons on an equal basis with others;

**(3)** Without prejudice to the general awareness raising obligation in sub-section (1) of section 25, such programmes, campaigns and workshops shall *inter-alia*,—

**(a)** Promote values of inclusion, tolerance, empathy and respected for diversity;

**(b)** advance recognition of the skills, merits and abilities of transgender persons and of their contributions to the workforce, labour market and professional fee;

**(c)** Poster respect for the decisions made by transgender persons on all matters related to family life, relationships, bearing and raising children;

**(d)** Provide orientation and sensitization at the school, college, university and professional training level on the human condition of transgenderism and the rights of transgender persons; and

**(e)** Provide orientation and sensitization on transgenderism and rights of transgender persons to employers, administrators and co-workers.

## CHAPTER VII

### NATIONAL AND STATE COMMISSIONS FOR TRANSGENDER PERSONS

#### A. National Commission

Constitution of National Commission for Transgender Persons.

**26. (1) The Central government shall, by notification, constitute a body to be known as the National Commission for transgender persons to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.**

**(2) The Commission shall consist of the following Members, namely,—**

**(a)** a Chairperson, who is an eminent person with a distinguished record of service in the field of transgender rights and rehabilitation; and

**(b)** six members, of whom at least three shall be transgender persons and to be popularly acknowledged by the representatives of the transgender community and the other three members must have a distinguished record of service in the fields of rehabilitation, advocacy, law, relating to transgenders.

**(3) The Chairperson and the Members shall be appointed by the Central Government on the recommendation of a Selection Committee with such composition as may be prescribed.**

**(4) The Headmistress of the National Commission should be at such place as the Central Government by notification, specify.**

- 5           **27.** The Chairperson and a Member of the National Commission shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty five years, whichever is earlier and shall be eligible for reappointment for another term of three years. Term of office of Chairperson and members.
- 28.** (1) The Chairperson or any Member may, by notice in writing under his hand addressed to the President, resign his office. Resignation and Removal of Chairperson.
- (2) Subject to the provisions of sub-section (3) of Section 28, the Chairperson or any Member shall only be removed from his office by order of the President on the ground of proven misbehaviour or incapacity has, on an inquiry held in accordance with the procedure, prescribed under this Act.
- 15           (3) Notwithstanding anything in sub-section (2) of Section 28, the President may, by order, remove from office the Chairperson or any Member, if the Chairperson or such Member, as the case may be:—
- (a) is adjudged an insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; or Member to act as Chairperson or to Discharge his Functions in Certain Circumstances.
- 20           (c) is convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude.
- 29.** (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.
- 25           (2) If the Chairperson is unable to discharge his functions, owing to absence on leave or otherwise, one of the Member, as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.
- 30           **30. The salaries and allowances payable to and other terms and conditions of service of, the Chairperson and the Members shall be such as may be prescribed:** Terms and Conditions of Service of Chairperson and Members.
- Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a member shall be varied to his disadvantage after his appointment.**
- 35           **31.** No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission. Vacancies, etc., not to Invalidate the Proceedings of the Commission.
- 32.** (1) The Commission shall meet at such time and place as the Chairperson may think fit. Procedure to be Regulated by the Commission.
- 40           (2) Subject to the provisions of this Act and the rules made thereunder, the Commission shall have the power to lay down, by regulations, its own procedure.
- (3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorised by the Chairperson in this behalf.

Officers and  
Other Staff  
of the  
Commission.

**33.** (1) The Central Government shall make available to the Commission an officer of the rank of an Additional Secretary to the Government of India who shall be the Secretary to the Commission.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative and technical officers and staff, as it may consider necessary. 5

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) of section 33 shall be such as may be prescribed.

Functions of  
the  
Commission.

**34.** The Commission shall perform all or any of the following functions, namely:—

(a) identify, *suo-moto*, or on a representation received, provisions of any laws, policies, programmes and procedures, which are inconsistent with this Act, and recommend necessary corrective steps; 10

(b) review and coordinate the activities of all Departments of Government and other Governmental and non-Governmental Organizations which are dealing with matters concerning transgender persons; 15

(c) inquire, *suo-moto* or on a complaint by an affected transgender person or any person or organization on his behalf, with respect to deprivation of his rights and safeguards in respect of matters for which the Central Government is the appropriate Government and take the up the matter with the appropriate authorities for corrective action, as necessary; 20

(d) intervene in any proceeding involving any allegation of violation of the rights of transgender persons pending before a court with the approval of such court;

(e) review the safeguards provided by or under this Act or any law for the time being in force for the protection of rights of transgender persons and review the factors that inhibit the enjoyment of rights of transgender persons and recommend appropriate remedial measures; 25

(f) study treaties and other international instruments on the rights of transgender persons and make recommendations for their effective implementation;

(g) undertake and promote research in the field of the rights of transgender persons; 30

(h) promote awareness of the rights of transgender persons and promote awareness of the safeguards available for their protection;

(i) monitor implementation of the provisions of this Act and of schemes, programmes, etc., meant for transgender persons;

(j) monitor utilization of funds disbursed by the Central Government for the benefit of transgender persons; and 35

(k) such other functions as the Central Government may assign.

Action by  
Appropriate  
Authorities  
on the  
Commission's  
Recommendations  
made  
after Enquiry.

**35.** Whenever the Commission makes a recommendation to an authority in pursuance of clause (c) of Section 34, that authority shall take necessary action on it, and inform the Commission of the action taken within three months from the date of receipt of the recommendation: 40

Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the Commission within the above period of three months, and shall also inform the aggrieved person.

5 of 1908. 36. (1) The Commission shall, for the purpose of discharging its functions under the Act, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 and in particular in respect of the following matters, namely,—

Powers of the Commission.

- 5 (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) reinvesting for any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents; or
- 10 (f) any other matter which may be prescribed.

(2) The Commission may, while investigating a complaint, make written requests so furnish information question people, review documents or visit the premises to determine upon the nature of violation or non-compliance of regulations.

15 (3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code 1860 and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973

45 of 1860.  
2 of 1974.

20 37. (1) The National Commission shall submit an annual report to the Central Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report.

Annual and Special Reports of the Commission.

25 (2) The Central Government shall cause the annual and special reports of the Commission to be laid before each House of Parliament, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission, and the reasons for non-acceptance of the recommendations, if any.

*B. State Commission*

30 38. (1) Every State Government may constitute a body to be known as the State Commission (name of the State) for transgender persons to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.

Constitution of State Commission for Transgender Persons.

(2) The State Commission shall, with effect from such date as the State Government may by notification specify, consist of—

- (a) a Chairperson who is an eminent person with a distinguished record of service in the field of transgender rights; and
- 35 (b) six members, of whom at least three shall be transgender person and to be popularly acknowledged by the representatives of the transgender community and the other three members must have a distinguished record of service in the field of rehabilitation, advocacy, law, relating to transgenders.

(3) The Chairperson and the Members shall be appointed by the State Government on the recommendation of Selection Committee with such composition as may be prescribed.

40 (4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

45 (5) A State Commission may inquire *suo-moto* or on a complaint by an affected transgender person or any person or organization on his behalf, with respect to deprivation of his rights and safeguards in respect of matters for which the State Government is the appropriate government.

Resignation and Removal of Chairperson and Members.	<p><b>39.</b> (1) The Chairperson or any Member may, by notice in writing under his hand addressed to the Governor resign his office.</p> <p>(2) Subject to the provisions of sub-section (3) of section 39, the Chairperson or any Member shall only be removed from his office by order of the Governor on the ground of proved misbehaviour or incapacity has, on inquiry held in accordance with the procedure prescribed under this Act.</p> <p>(3) Notwithstanding anything in sub-section (2) of section 39 the Governor may, by under, remove from office the Chairperson or any Member, if the Chairperson or such Member, as the case may be—</p> <p style="padding-left: 40px;">(a) is adjudged an insolvent; or</p> <p style="padding-left: 40px;">(b) engages during his term of office in any paid employment outside the duties of his office; or</p> <p style="padding-left: 40px;">(c) is convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude.</p>	<p>5</p> <p>10</p>
Term of Office of Chairperson and Members.	<p><b>40.</b> The Chairperson and Members of the State Commission shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment for another term of three years.</p>	<p>15</p>
Member to act as Chairperson or to Discharge his Functions in Certain Circumstances.	<p><b>41.</b> (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of the death, resignation or otherwise, the Governor may, by notification authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.</p> <p>(2) If the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, one of the Member as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.</p>	<p>20</p> <p>25</p>
Terms and Conditions of Service of Chairpersons and Members.	<p><b>42.</b> The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and the Members shall be such as may be prescribed:</p> <p>Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.</p>	<p>30</p>
Officers and other staff of the Commission.	<p><b>43.</b> (1) The State Government shall make available to the Commission an officer of the rank of the Secretary to the State Government who shall be the Secretary to the Commission.</p> <p>(2) Subject to such rules as may be made by the State Government in this behalf, the Commission may appoint such other administrative and technical officers and staff as it may consider necessary.</p> <p>(3) The salaries, allowances and conditions of service of the officers and other appointed under sub-section (2) of section 43, shall be such as may be prescribed.</p>	<p>35</p>
Annual and Special Reports of State Commission.	<p><b>44.</b> (1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.</p> <p>(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature, where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any.</p>	<p>40</p> <p>45</p>

45. The provisions of section 26, 27, 29 30, 32 and 34 shall apply, mutatis mutandis to a State Commission and shall have effect, subject to the following Modifications, namely,—

Application of certain provisions relating to National Commission to State Commissions.

(a) reference to "commission" clause be construed as references to "State Commission"; and

5 (b) in section 34, clause (8) shall be omitted.

CHAPTER VIII

TRANSGENDER RIGHTS COURTS

46. For the purpose of speedy disposal of suits of a civil nature which may be filed by on behalf of transgender persons regarding infringement of their rights as a transgender person, under this or any other law for the time being in force, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification in the official gazette, specify for each sub-division, a court to be a Special Transgender Rights Court for the hearing and disposal of such suits and criminal cases, as prescribed.

Special Transgender Rights Courts.

47. Notwithstanding anything contained in Section 46, the State Government, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette:—

Exclusive transgender rights Courts.

(i) may establish for each district, and

(ii) shall establish for each city with a population of 10 lakh or more as per the last Census, a court as an exclusive Transgender Rights Court, and such court shall hear and dispose of only suits of the type mentioned in Section 46.

48. Where a district has one or more exclusive Transgender Rights Courts established under Section 47, their jurisdiction *vis-a-vis* that of Special Transgender Rights Courts specified under Section 46, shall be such as the State Government may, by notification in the official Gazette, specify.

Jurisdiction of transgender rights courts.

CHAPTER IX

OFFENCES & PENALTIES

49. (1) Where any offence under this Act has been committed by an establishment, every person who, at the time the offence was committed, was the appointed head or was directly in charge of, and was responsible to the establishment for the conduct of its business, as well as the establishment, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly:

Offences by Establishments.

Provided that nothing contained in sub-section (1) of Section 49, shall render any such person liable to any punishment provided in this Act, if he proved that the offence was committed without his knowledge or that all due diligence was exercised to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) of section 49, Where an offence under this Act has been committed by an establishment and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any other officer of the establishment, such person shall also deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

50. Whoever voluntarily or knowingly commits or abets the offence by words, either spoken or written, or by signs or by visible representations or otherwise, shall be punished with imprisonment for a term which may extend to one year and with fine.

Penalty for Hate Speech.

Penalty for Failure to Furnish Information. **51.** Whoever fails to produce any book, account or other document or to furnish any statement, information or particulars which, under this Act or any order, regulation or direction made or given thereunder, he is duty bound to produce or furnish or to answer any question put in pursuance of the provisions of this Act or of any order, regulation or direction made or given thereunder, shall be punishable with fine which may extend to rupees twenty-five thousand in respect of each offence, and in case of continued failure or refusal, with further fine which may extend to rupees one thousand for each day, of continued failure or refusal after the date of original order imposing punishment of fine. 5

## CHAPTER X

### MISCELLANEOUS

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Central Government to provide funds. **52.** The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide adequate funds, from time to time, for carrying out the purposes of this Act.

Act to be in Addition to and not in derogation of any other law. **53.** The provisions of this Act or the rules made there under shall be in addition and not in derogation of any other legislation, rules, orders or instructions which provides any entitlement or benefit to transgender persons. 15

Action taken in good faith. **54.** No suit prosecution or other legal proceeding shall lie against any person for anything which is done in good faith or intended to be done under this Act or any rule there made under.

Power to remove difficulties. **55.** (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: 20

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. 25

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power of appropriate Government to make rules. **56.** (1) Subject to the Other Provisions of this Act, the appropriate Government may, by notification, make rules for carrying out the provisions of this Act.

(2) Prior to the formation of the rules, the appropriate Government shall make available the draft of the rules in accessible formats to the members of the public and invite their suggestions and objections to the same. 30

(3) Every rule made by the Central Government under this Act 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 of 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. 35 40

(4) Every rule made by the State Government under this section 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.

Powers of National Commission to make Regulations. **57.** (1) The National Commission may with the previous approval of Central Government, by notification make regulations consistent with this Act and the rules for the effective implementation of the purposes of this Act, in respect of the matters to any of the entries enumerated in List I and List III in the Seventh Schedule to the Constitution. 45

(2) Without prejudice to the generality of sub-section (1) of section 57, the National Commission shall make regulations relating to the,—

(a) establishment of such committees as may be required for the efficient performances of its functions;

5 (b) composition, membership, qualification, terms and conditions of appointment, removal, tenure, meetings, quorum and resignation of the Committees, formed by the National Commission;

(c) rules of procedure for transaction of business;

10 (d) rules of procedure for convening meetings of Chairpersons of State Commissions;

(e) form in which and the time at which the meetings to be called;

(f) manner in which and the time at which meetings of National Commission to be convened ; and

(g) any other matter incidental or ancillary for the enforcement of this Act.

15 (3) Prior to be finalization of the regulations, the National Commission shall make available the draft rules in accessible formats to the members of the public and invite their suggestions and objections to the same.

20 **58.** (1) The State Commission shall have the power to issue regulations with the Previous approval of state governments, which are in conformity with the Act and the Rules for the effective implementation of the purposes of this Act, in respect of the matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:

Power of the State Commission to make Regulations.

25 Provided that where any regulation has already been issued in any such matter pertaining to List III by the National Commission, such regulations shall prevail over the regulations of the State Commission pertaining to the said matter.

(2) Without prejudice to the generality of sub-section (1) of Section 58, the State Commission shall make regulations relating to the,—

(a) establishment of such Committees as may be required for the efficient performance of its functions;

30 (b) composition, membership, qualifications, terms and conditions of appointment, removal, tenure, meetings, quorum and resignation of the Committees formed by the State Commission; and

(c) any other matter incidental or ancillary for the enforcement of this Act.

35 (3) Prior to the finalization of the regulations, the State Commission shall make available the draft rules in accessible formats to the members of the public and invite their suggestions and objections to the same.

## STATEMENT OF OBJECTS AND REASONS

Despite some recent progressive measures by the Government, India's transgender community continues to face a plethora of problems. Transgender persons are sidelined and treated as untouchables. The denial of social justice leads to the denial of economic and political justice. They suffer from poor access to education, healthcare, legal aid, employment and lack of social acceptance. Measures towards sensitization of school administrations, curbing of stigma, discrimination and violence against transgender persons are also mostly absent. They are discriminated against in access to medical services and most hospitals lack adequate skills or provisions to meet their special health needs. The State should seriously address the problems being faced by transgenders such as fear, shame, gender, dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any assistance for Sex Reassignment Surgery for declaring one's gender.

Article 17 of the International Covenant on Civil and Political Rights, 1966 states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation and everyone has the right to protection of law against such interference or attacks. Legal safeguards to prevent human rights violations of the transgender community and institutional mechanisms to address their specific concerns have to be put in place. Without protection of human rights, there can be no democracy or justification for democracy. We need to have proactive participation of transgender persons in all democratic spaces and systems, including participation in policies framed for their welfare. It must be noted that historically, *Hijra* or transgender persons had played a prominent role in the Indian society. With the onset of colonial rules from the 18th century onwards, the situation had changed drastically.

During the British rule, a legislation was enacted to supervise the deeds of *Hijras* or transgender community, called the Criminal Tribes Act, 1871, which deemed the entire community of *Hijra* persons as innately 'criminal' and 'addicted to the systematic commission of non-bailable offences'. State should take measures to regain their respect and place in the society which they once enjoyed in our cultural and social life. Undoing centuries of discrimination that the transgender community has faced, will require targeted interventions by the State.

Hence this Bill.

TIRUCHI SIVA

## FINANCIAL MEMORANDUM

Clause 24 of the Bill provides for the establishment of Special Employment Exchange. Clause 26 of the Bill provides for the establishment of the National Commission for Transgender persons. Clause 30 provides for remuneration and facilities to the Chairperson, Vice-Chairperson and members and Clause 33(3) provides for remuneration and other facilities to officers and other staff of the National Commission. Clause 38 of the Bill provides for the establishment of the State Commissions for Transgender Persons. Clause 42 provides for remuneration and facilities to the Chairperson, Vice-Chairperson and members and Clause 43(3) provides remuneration and facilities to officers and other staff of the State Commission. Clause 46 of the Bill provides for establishment of Special Transgender Rights Courts and Clause 47 provides for the establishment of Exclusive Transgender Rights Courts. Clause 52 makes it obligatory for the Central Government to provide adequate funds to the Authority for the purposes of the Bill.

The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. It is not possible at present to quantify the funds that may involve but it is estimated that a sum of rupees five hundred crores may involve as recurring expenditure per annum.

Non-recurring expenditure to the tune of rupees one hundred core may also involve for creating assets and infrastructure.

#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 56 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. Clauses 57 and 58 give the National Commission and State Commission respectively the power to make rules relating to their functioning. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

RAJYA SABHA

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**BILL**

to provide for the formulation and implementation of a comprehensive national policy for ensuring overall development of the transgender persons and for their welfare to be undertaken by the State and for matters connected therewith and incidental thereto.

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*(Shri Tiruchi Siva, M.P.)*