

Bill No. 26 of 2024

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS)
AMENDMENT BILL, 2024

By

DR. SHASHI THAROOR, M.P.

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BILL

to amend the Transgender Persons (Protection of Rights) Act, 2019.

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

1. (1) This Act may be called the Transgender Persons (Protection of Rights) Amendment Act, 2024.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

40 of 2019.

2. After section 8 of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as the principal Act), the following section shall be inserted, namely:—

Insertion of new section 8A.

Reservation in
Employment.

“**8A.** (1) Every Government establishment shall reserve at least one per cent. of the total vacancies for transgender persons in each category including General, the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes, meant to be filled by direct recruitment in such manner as may be prescribed:

Provided that if sufficient number of transgender persons are not available, such unfilled vacancies shall be filled by male or female candidates belonging to the same category in such manner as may be prescribed. 5

(2) For the purpose of direct recruitment of transgender persons under sub-section (1), there shall be a separate column of “Others” along with the male and female categories in the Gender Section of the application form for all such posts.”. 10

Insertion of new
section 13A.

3. After section 13 of the principal Act, the following section shall be inserted, namely:–

Reservation
in Educational
Institutions.

“**13A.** Every educational institution funded or recognised by the appropriate Government including preschool, primary, secondary and higher education and universities (including a technical, trade, or vocational school) shall reserve at least of one per cent. of the total seats in each class or course for the transgender persons in such manner as may be prescribed.”. 15

STATEMENT OF OBJECTS AND REASONS

For centuries, the transgender community has been ostracized across the world leading to denial of basic human rights that cisgender individuals enjoy. This extreme social exclusion has translated to increased marginalisation and limited access to opportunities.

Offering a glimmer of hope, the Hon'ble Supreme Court of India passed a landmark judgement on the April 15, 2014 which acknowledged the rampant discrimination faced by the transgender community and recognised their constitutional rights to equality, liberty and dignity. As a means to uplift the trans people, the Court further directed the Central and State Governments to take proactive steps towards the advancement of their community. This included *extending "all kinds of reservation in cases of admission in educational institution and for public appointments"* as the community is *"entitled to reservation in the matter of appointment, as envisaged under Article 16(4) of the Constitution"*.

In 2021, the Central Government had moved a Cabinet note proposing to add transgender persons to the list of Other Backward Classes (OBCs). Although created with the right intentions of addressing the plight of the transgender community, the proposed legislation amounts to vertical reservation for the community which fails to account for the intersection between caste identities and the diverse notion of gender.

Such an arrangement results in certain caste groups left with entrenched discrimination and stigma on both these accounts. According to a study conducted by the Centre for Law and Policy Research on the experience of intersectionality, Dalit transgender persons faced the most violence in school and were especially vulnerable to sexual violence at work with 33 per cent. reporting sexual assault and harassment at work. They also faced harassment in their interactions with police officials: 23 per cent. of Dalit transgender persons were forcibly denuded or stripped by the police and 19 per cent. were sexually assaulted when they approached the police seeking assistance. It extended to matters pertaining to accessing public transport and public spaces as well such as parks (50 per cent.), police stations (46 per cent.) and Government hospitals (43 per cent.). Furthermore, 56 per cent. of Dalit transgender respondents were forced to engage in sexual activity to access shelter, food or gain employment.

In the state of Karnataka, horizontal reservation has been implemented for transgender persons in the state civil services across all caste categories by providing 1 per cent. separate reservation for transgender persons within each 'vertical' SC/ST/OBC/General category. This adequately tries to redress the discrimination received by the community of complex social and economic dimensions.

A policy of horizontal reservation recognises the intersectionality of caste, class and gender and the nuances of discrimination, creating an environment that is inclusive and allows every individual of the transgender community to thrive in every space of society

Hence this Bill.

NEW DELHI;
June 18, 2024.

SHASHI THAROOR

ANNEXURE

[EXTRACTS FROM THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019]
(ACT NO. 40 OF 2019)

Obligation of appropriate Government.

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8. (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.

Obligation of educational institutions to provide inclusive education to transgender persons.

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13. 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.
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to amend the Transgender Persons (Protection of Rights) Act, 2019.

(Dr. Shashi Tharoor, M.P.)