

Bill No. 28 of 2022

THE LGBTQIA+ PERSONS (PROTECTION OF RIGHTS) BILL, 2022

By

DR. DNV SENTHILKUMAR S, M.P.

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BILL

to provide rights to LGBTQIA+ persons to enable them to live with human dignity and for matters connected therewith.

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

1. (1) This Act may be called the LGBTQIA+ Persons (Protection of Rights) Act, 2022. Short title, extent and commencement.

(2) It extends to the whole of India.

5 (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 in the case of a State, the Government of that State and in all other cases, the Central Government;

10 (b) “asexual” means a person who lacks sexual attraction or desire for other person;

(c) “bi-sexual” means a person who is emotionally and physically oriented to people with more than one sex, gender or gender identity;

(d) “gay” means a person who is emotionally and physically oriented to the person within the same gender;

(e) “gender identity” refers to a person of internal sense of being female, male or someone outside of that gender binary which is not determined by one’s sex assigned at birth; 5

(f) “inter-sex” means a term used to describe a person who is born with differences in his sex traits or reproductive anatomy not being female or male;

(g) “LGBTQIA” means a person who is lesbian, gay, bisexual, transgender, queer, inter-sex and asexual; 10

(h) “LGBTQIA+” includes the persons who did not identify or included in LGBTQIA and have different sexual orientation and gender identities;

(i) “lesbian” means a woman who is emotionally and physically oriented towards another woman; 15

(j) “prescribed” means prescribed by the rules made under this Act;

(k) “queer” means a person having non-binary or gender-fluid identities;

(l) “sexual orientation” refers to a person who is physically or emotionally oriented towards another person; and

(m) “transgender” means a person whose expression of gender is different than his sex assigned at birth. 20

Central Government to form a National Policy for protection and welfare of rights of LGBTQIA+.

3. The Central Government, as soon as may be, but not later than six months from the date of commencement of this Act, by notification in the Official Gazette, frame a National Policy for Protection and Welfare of Rights of LGBTQIA+ persons provided under section 5 in such manner as may be prescribed. 25

Appropriate Government to implement the provisions of this Act.

4. The appropriate Government shall take effective steps to protect the rights of LGBTQIA+ persons guaranteed under section 5 in such manner as may be prescribed.

5. Notwithstanding anything contained in any other Act, rules for the time being in force or judgement, order or decree of any court, the LGBTQIA+ persons shall be entitled to,— 30

(a) right to adoption;

(b) right to guardianship;

(c) right to surrogacy;

(d) prohibition against discrimination at the workplace;

(e) prohibition against discrimination in housing; 35

(f) right to be recognised as a person belonging to LGBTQIA+ community having self-perceived identity;

(g) right to marry;

(h) right to maternity benefits;

(i) protection against sexual harassment at work place; 40

(j) right to serve in armed forces of the country; and

(k) protection against discrimination in educational institutions.

Power to remove difficulty.

6. If any difficulty arises in giving effect to the provisions of this Act, the Central Government, in concurrence with the State Governments, 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. 45

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.

7. The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Act to have Overriding effect.

5 8. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. Power to make rules.

10 (2) Every rule made 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 or both the 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.

STATEMENT OF OBJECTS AND REASONS

The first resolution passed in international forum for recognizing LGBT rights is in 2011 by United Nation Human Rights Council (UNHRC) which urged all countries to enact law which protects basic rights for LGBTQIA+ community. In India, evolution of LGBT rights from Naz Foundation vs. Govt. of NCT of Delhi (2009) to Navjet Singh Johar & Ors. vs. Union of India (2018) is remarkable feat where in later Supreme Court pronounced landmark verdict which decriminalized consensual homosexual intercourse by reading down section 377 of the Indian Penal Code, 1860 which was colonial-era law. It is against article 15 where no one should be discriminated based on sexual orientation and gender identity also. The Central Government also enacted Transgender Persons (Protection of Rights) Act, 2019. Despite this the need of the Act is that the court judgment marked a progressive beginning and it has to be accompanied with comprehensive law on equal protection of rights for LGBTQIA+ persons and lacunae in earlier laws has to be corrected. The amount of homophobia presents in society and discrimination they undergo is immense in day to life which undermines the dignity and privacy of LGBT persons.

A survey conducted by multinational research firm where it's finding is that in India totally seventeen per cent. identify themselves as non-heterosexual. With this significant amount of population there is need of separate law for protecting the rights of LGBT people because there is still many legal and social difficulties they face. As a first step we should ensure a broad legal protection and through this there should be the creation of public awareness and eliminate the stigma and notion against the LGBT persons. Two way it can be done either amending an existing personal and secular law where it strictly speak of rights of gender in binary sense and also the places where it lacks gender neutral which has to be amended for the same which includes different gender identities and sexual orientations and recognizing LGBT as also a families. The second way is there should be a formulation of new laws which focuses specifically on equally protecting the rights of LGBT persons on same footing with heterosexual, gender binary individuals.

The proposed takes the second approach because India being a diverse country where amendments in existing personal laws will not be a practical solution and there will be little change in status quo. It intends to encapsulates the right of autonomy, privacy, to determine one's sexual orientation, legalize same sex marriages which act as a hurdle in many fields such as adoption, guardianship, inheritance & succession, enjoying maternity benefits, surrogacy, dependant or act which recognizes only heterosexual couples as the family. In world as of now 31 countries legalizes same sex marriages. This act also bans conversion therapy because it makes non-heterosexual individuals feel guilty of their orientation and which affects oneself psychologically. The Indian Psychiatric Society (IPS) states "that there is no evidence to substantiate the belief that homosexuality is a mental illness or a disease and there is no evidence to prove that homosexuality is unnatural". As Justice N Anand Venkatesh said "ignorance is no justification for normalizing any form of discrimination". The universal law of Human Rights states social norms, custom, culture or traditions can never be a valid justification to suppress another individual from asserting his fundamental and constitutional rights.

The Bill, therefore, seeks to provide certain rights to LGBTQIA+ persons to enable them to live with human dignity.

Hence, this Bill.

NEW DELHI;
22 December, 2021.

DNV SENTHILKUMAR S.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 8 of the Bill empowers the Central Government make rules for carrying out the purposes of this Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

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(Shri DNV Senthilkumar S, M.P.)