

AS INTRODUCED IN THE RAJYA SABHA
ON 8TH DECEMBER, 2023

Bill No. XCII of 2022

THE CONSTITUTION (AMENDMENT) BILL, 2022

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BILL

further to amend the Constitution of India.

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 Constitution (Amendment) Act, 2022.

Short title and
Commencement.

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

2. For article 331 of the Constitution of India, the following article shall be substituted,
namely:—

Substitution of
article 331.

10 "331. Notwithstanding anything contained in article 81, the President shall, if he
is of the opinion that the transgender community is not adequately represented in the
House of the People, nominate not more than two members of that community to the
House of the People."

Representation
of transgender
community in
the House of
the People.

Substitution of
article 333.

3. For article 333 of the Constitution of India, the following article shall be substituted,
namely:—

Representation
of transgender
community in
the Legislative
Assemblies of
States.

"333. Notwithstanding anything contained in article 170, the Governor of a
State shall, if he is of the opinion that the transgender community needs representation
in the Legislative Assembly of the State and is not adequately represented therein, 5
nominate one member of that community to the Assembly."

STATEMENT OF OBJECTS AND REASONS

The transgenders face various forms of discrimination and trauma in our society. Since the colonial rule, the eunuchs have been labelled as cross-dressers, beggars and unnatural prostitutes. They are treated as outcasts right from birth. They have to beg on the streets for their living. People try to avoid them whenever they see them. We ourselves have rarely seen them employed in the public sectors. They also have to live at a separate place away from the society. Due to the social stigma and no protection to them, the Transgender Persons (Protection of Rights) Act, 2019 was recently passed by the Parliament. The Act gives recognition to the community as 'third gender' and provides protection against various forms of discrimination.

While the Act is a welcome move, and protects the community from discrimination, the transgender community has not got representation in Parliament. In the Census 2011, the transgender population was calculated to be six lakhs. Therefore, it becomes more significant for them to have a representative in the Parliament. In *National Legal Services Authority vs. Union of India and others* 1 (2014) 5 SCC 438, the Supreme Court had recognized the community to be from the economically and socially backward class. For the transgender persons, discrimination is not based on religion, it is more about what they are born with and considering their sexual practices as 'contamination' and 'filth'. The Scheduled Castes and Scheduled Tribes communities have reservation of seats, therefore there should be a similar provision for the transgender community also.

In such a scenario, if they get two seats reserved, this would help them in voicing their opinions easily because when the Transgender Person (Protection of Rights) Act, 2019 was passed, there was no one from their community who could voice their opinion or share their plight in the Parliament. Furthermore, since independence, there has not been a single transgender Member of Parliament or Member of Legislative Assembly of any State. Since the Parliament in the winter session of 2019 discontinued the reservation of two seats for the Anglo-Indians, those two seats can now be reserved for the transgenders. In the State of Odisha, Aishwarya Rutuparna Pradhan has become the first openly transgender civil servant. In order to facilitate more people to embrace their identity and to feel safe about accepting who they are, we can begin with reserving seats for them in the Parliament.

Thus, while there is a demand from the transgender community for reservation in the public sphere, the call for reservation of two seats for them in the Parliament should also be pursued. The Transgender Persons (Protection of Rights) Act, 2019 ensures protection for the transgenders in the society, and this Bill shall ensure their involvement in policies framed for their own welfare and the decisions made for the country.

Hence, this Bill.

DR. SASMIT PATRA.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to amend article 331 of the Constitution, with a view to provide representation to transgender community in the House of the People. Article 106 of the Constitution provides that the members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law.

Similarly, Clause 3 of the Bill seeks to amend article 333 of the Constitution, with a view to provide representation to transgender community in the Legislative Assemblies. Article 195 of the Constitution provides that the members of either Legislative Assembly or Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined by Legislature of the State.

The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. However, it is not possible to quantify the exact amount required from the Consolidated Fund of India at this stage.

No non-recurring expenditure is likely to be involved.

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

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331. Notwithstanding anything in article 81, the President may, if he is of the opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community of the House of the People.				Representation of the Anglo-Indian community in the House of the People.
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333. Notwithstanding anything in article 170, the Governor of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate one member of that community to the Assembly.				Representation of the Anglo-Indian community in the Legislative Assemblies of the States.
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RAJYA SABHA

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further to amend the Constitution of India.

(Dr. Sasmit Patra, M.P.)