

Changes made, transgender Bill set for reintroduction

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THE TRANSGENDER Persons (Protection of Rights) Bill is set to be introduced in the ongoing session of Parliament after incorporating all but two crucial recommendations made by the Standing Committee report of July 2017.

The issues that have been kept off the Bill's purview are reservations in education and jobs for transgender persons, and recognising their right to partnership and marriage.

The revised version of the Bill, which was originally introduced in the Lok Sabha in August 2016, was approved by the Union Cabinet on Wednesday. Although no formal announcement was made by the government since the House is in session, sources in Social Justice Ministry confirmed the development.

While most progressive recommendations made by 31-member Standing Committee on Social Justice and Empowerment was included in the revised Bill, it ignores the Supreme Court directive in the landmark April 2014 NALSA judgment "to extend all kinds of reservations in cases of admission in educational institutions and for public appointments" by treating them as socially and educationally backward classes.

The committee had also pointed out this anomaly: "The Bill is silent on granting reservations to transgender persons."

Explaining the reason behind dropping the reservation issue from the Bill, a source said, "In 2014, the National Commission for Backward Classes had also advised the ministry that all transgender persons who do not belong to Schedule Castes or Scheduled Tribes should be included in the central OBC

list so that they can get benefit of 27 per cent OBC quota. However, this move led to protests from several OBC groups, which did not want their share of quota to shrink."

Noting that transgender persons "remain at the risk of criminalisation under Section 377", the House panel had also said, "The Bill does not refer to important civil rights like marriage and divorce, adoption, etc., which are critical to transgender persons' lives and reality, wherein many are engaged in marriage-like relations, without any legal recognition from the State."

Ministry officials said this was left out since the Supreme Court is dealing with the matter of Section 377.

One key revision made to the Bill in keeping with the panel's suggestions is a change in its definition of transgender persons, which earlier was "neither wholly female nor wholly

male." Found to be offensive by the panel and by trans-persons, it has now been changed to "a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-women", irrespective of whether the person has undergone sex reassignment surgery or hormone therapy etc. It also recognises all sociocultural identities such as hijra, kinnar, aravani, jogta, as well as people with inter-sex variations.

In keeping with the panel's recommendations, the revised Bill defines the term "discrimination" as per the Yogyakarta Principles on International Human Rights Law with regards to sexual orientation and gender identity. It provides a redress mechanism against discrimination. It also provides for punishment of up to two-year imprisonment for crimes against transgender persons based on the severity of offence.