

The Rights of Transgender Persons Bill, 2014	The Transgender Persons (Protection of Rights) Bill, 2018	Comments
Introduced through the Rajya Sabha.	Introduced through the Lok Sabha.	
Preamble: provided for the formulation and implementation of a comprehensive national policy for ensuring overall development of transgender persons and for their welfare to be undertaken by the State.	Preamble: provided for the protection of rights of transgender persons and their welfare.	Marked shift from a comprehensive, State involved preambular clause to a general protection and welfare scheme, that does not involve overall development of the beneficiary.
Section 2(a): provides for the definition of abuse (verbal and physical abuse).	Physical abuse, sexual abuse, verbal and emotional abuse and economic abuse included as an offence under Section 19.	More comprehensive types of abuse included in the 2018 Bill.
Section 2(b): the "appropriate government" would be the central government in relation to an establishment of/wholly/substantially funded by the Centre, a cantonment board, a union territory without a legislature and those providing services in List I of Schedule VII of the Constitution. In other matters, given to the state government/ government of a union territory with a legislature.	Section 2(a): In relation to/any establishment, wholly or substantially financed by the central/state Governments, the respective government is the "appropriate government". Local authorities falling within the purview of the State Government.	Similar definitions of the appropriate government have been given.
Section 2(b): defines a "barrier" which hampers the full and effective participation of transgender persons in society, such as attitudinal, cultural, economic, institutional, political, religious, social or structural factors.	N/A	Specific protection against certain types of social exclusion not guaranteed in the 2018 Bill.
Section 2(c): defines "discrimination" as 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.	Section 3: sets out prohibited grounds of "discrimination" as the denial, or discontinuation of, or unfair treatment in: educational establishments and services, employment or occupation, the denial of or termination from employment or occupation, healthcare services, access to or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public, the right of movement, the denial or discontinuation of the right to reside, purchase, rent, or otherwise occupy any property, the opportunity to stand for or hold public or private office or in Government or private establishment in whose care or custody a transgender person may be.	2014 Bill defines what would constitute discrimination, whereas the 2018 Bill lists prohibited acts that would amount to discrimination.
Section 2(d): defines an "establishment" as inclusive of government ministries/departments, local authorities or bodies owned/controlled/aided by the Centre or State, any statutory or non-statutory body created/ owned/ financially/administratively controlled or aided, including a body performing public/civic duties including a government company. A wide ambit of non-statutory bodies including trusts, agencies, firms, etc. are included.	Section 2(b): Any statutory or non-statutory body created/owned/financially/administratively controlled or aided by the central or state governments and includes government companies, companies, body corporates, firms etc.	Narrow ambit of establishments in the 2018 Bill, as it does not include government ministries or departments, organization, union, industry, supplier of goods or services, factory or other non-statutory bodies that provides services such as banking, health, insurance, and more.
Explanation to Section 11: "Family" means a group of people related by blood, marriage or adoption to a transgender person.	Section 2(c): defines "family" as a group of people related by blood or marriage or by adoption made in accordance with law.	Both definitions are similar but do not account for "families" outside of the normative set up, such as the garu-chela system.
Section 2(e): defines an "exclusive transgender rights court" as established under the Bill.	N/A	Separate judicial mechanism not provided for in the 2014 Bill.
Section 2(f): defines "exploitation" as using a transgender person to one's own advantage or the transgender person's disadvantage where the one is not entitled/liable.	N/A	2018 Bill does not formally define and recognise "exploitation, resulting in narrower protection.
Section 2(g): defines "higher education" as a course of education which can be pursued after completing twelve years of school education.	N/A	The levels of education that will be assured have not been made clear in the 2018 Bill.
Section 2(h): defines "human rights" as protected in the Protection of Human Rights Act, 1993.	N/A	Broader ambit of human rights not given recognition in the 2018 Bill.
Section 2(i): "inclusive education" means a system of education wherein all students learn together, most or all of the time.	Section 2(d): "inclusive education" means a system of education wherein transgender students learn together with other students without fear of discrimination, neglect, harassment or intimidation and the system of teaching and learning is suitably adapted to meet the learning needs of such students.	Inclusive education includes atmospheric pressures and non-conducive environments detrimental to education in the 2018 Bill.
Section 2(j): "institution" means an institution for the reception, care, protection, education, training, rehabilitation or any other service of transgender persons.	Section 2(e): "institution" means an institution, whether public or private, for the reception, care, protection, education, training, or any other service of transgender persons.	Private institutions utilised for implementing the benefits of the 2018 Bill, marking the privatisation of State responsibility.

Section 2(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.	Section 2(f): "local authority" means the municipal corporation or municipality or Panchayat or any other local body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction.	Definitions have been provided along similar lines.
Section 2(l): defines the "national commission" established under the Bill.	Section 2(g): defines the "national council" established under the Bill.	Nature of the established authority different, where the council's functions are recommendatory in nature.
Section 2(n): defines a "public building" as 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.	N/A	Specific places from which a transgender person must not be excluded are not mentioned in the 2018 Bill.
Section 2(o): defines "reasonable accommodation" as an accommodation needed to ensure transgender persons the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.	N/A	Guarantee of equitable accommodation on a reasonable basis not provided for in the 2018 Bill, therefore sidestepping international human rights standards.
Section 2(p): defines a "registered organisation" an association of 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.	N/A	Greater participation of the transgender community envisaged in the 2014 Bill.
Section 2(q): defines the paradigm of "rehabilitation" as 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.	N/A	The type of rehabilitation that must be undertaken has not been specified in the 2018 Bill.
Section 2(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.	N/A	The entitlements of transgender persons to various types of services, including those provided by private entities, not mentioned in the 2018 Bill.
Section 2(s): "State Commission" means a State Commission for Transgender Persons constituted under the Bill.	N/A	National Level Council given primacy of authority in the 2018 Bill.
N/A	Section 2(l) "person with intersex variations" means a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body	Intersex persons excluded from the protections of the 2014 Bill, while in the 2018 Bill they has been separately defined as well as included within the definition of "transgender persons". However, their specific issues have not been dealt with in the 2018 Bill.
Section 2(t): "transgender person" means a person, whose sense of gender does not match with the gender assigned to that person at birth and includes trans-men and transwomen (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.	Section 2(k): "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, gender queer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.	2014 Bill grants autonomy to the individual to decide their "sense" of gender without having to prove their identity. This is distinct from the provisions of the 2018 Bill that require a person to appear before a screening committee to identify as a transgender person.
Section 2(u): "violence" means causing physical or mental harm or injury.	N/A	Violence has not been specifically included in the 2018 Bill, while forms of abuse have been included.

<p>Section 3: provides guiding principles to the appropriate governments to secure: (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; (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 (f) accessibility</p>	<p>Section 9: the appropriate government shall take steps or measures to secure full and effective participation/societal inclusion, protect their rights and access to welfare schemes, non-stigmatising and non-discriminatory transgender sensitive schemes, rescue/protect and rehabilitate, and promote and protect the right to participate in cultural and recreational activities.</p>	<p>The 2014 Bill lays down guiding principles for any action undertaken by the State to secure the rights of transgender persons, but does not specify how these principles will be translated into action. The 2018 Bill recognises these rights in the nature of an obligation to bring about welfare measures.</p>
<p>N/A</p>	<p>Section 4: All transgender persons shall have the right to be recognised as such, with the right to self-perceived gender identity (subject to provisions) and Section 5: provides for an application to be made to the district magistrate for an identity certificate. The recognition of a transgender as such is, per Section 6: to be directed to the District Screening Committee (comprising a chief medical officer, district social welfare officer, psychologist/psychiatrist, transgender community representative, and a nominated officer of the appropriate government) who shall issue the certificate per Section 7. Section 8: provides for the change in gender after such issue of a certificate, to be directed to the district magistrate after the surgery with the certificate of the chief medical officer or medial superintendent, with the power also to change the same in official documents.</p>	<p>The provision for a screening committee that violates the rights of individual autonomy and dignity has been provided for in the 2018 Bill, defeating the right to self-identify one's gender. The 2018 Bill however allows for a transgender person to change their gender and have the same recognised by the State after the sex reassignment surgery. The 2014 Bill, although recognises the right to self-identify through one's "sense" of gender, does not provide a mechanism for identification.</p>
<p>Section 4: all necessary steps shall be taken by the appropriate government 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, as also ensuring their reasonable accommodation.</p>	<p>N/A</p>	<p>Specific rights and entitlements that a transgender person may avail have not been enumerated in the 2018 Bill, such as the measures to be undertaken to provide reasonable accommodation.</p>
<p>Section 5: provides specific protection to transgender children wherein the appropriate government as well as the local authority shall take necessary measures to ensure they enjoy human rights on an equal basis with other children, including right to freely express their views on all matters affecting them; and provide them appropriate support for the exercise of the right.</p>	<p>N/A</p>	<p>State's <i>parents patriae</i> jurisdiction to ensure overall growth and development of the child not recognised in the 2018 Bill.</p>
<p>Section 6: obligation on the State to take all measures to ensure transgender persons enjoy the Right to Life and Personal Liberty enjoyed under Article 21 of the Constitution, and not be denied the same on the ground of being a transgender.</p>	<p>N/A</p>	<p>The 2018 Bill does not impose an obligation on the State to undertake active measures in protecting the Article 21 rights of transgender persons.</p>
<p>Section 7: right to live in the community with choices equal to others through the provision of various in-house residential and community support services along with accessible community services and facilities being available on an equal basis.</p>	<p>N/A</p>	<p>Right to community which is considered an inherent modicum of the Right to Life and Liberty not recognised in the 2018 Bill.</p>
<p>Section 8: Right to respect for his or her physical and mental integrity on an equal basis with others.</p>	<p>N/A</p>	<p>The respect for one's bodily and mental integrity has not been specifically provided for in the 2018 Bill, therefore narrowing down the protections granted.</p>
<p>Section 9: provision of protection from torture or cruel, inhuman or degrading treatment or punishment through administrative and other measures.</p>	<p>N/A</p>	<p>The 2018 Bill fails to impose an obligation on the State to protect the right to a cruelty/torture/humiliation free environment, which is quintessential to a life of dignity and inclusion.</p>

<p>Section 10: Appropriate governments and local authorities are required to protect transgender persons from abuse, violence and exploitation, with the power granted to the Executive Magistrate, upon the complaint from a registered organisation, to order/authorise safe custody/rehabilitation, protective custody and maintenance, and also forward the complaint to a magistrate when it comprises an offence under the IPC or other acts. Persons who provide information in good faith are exempted from liability. There is also a duty on a police officer to inform an aggrieved person of all their rights. An obligation is also cast on the government to provide information and raise awareness on several issues, including legal remedies.</p>	<p>N/A</p>	<p>An effective protection mechanism that comprises quick processes, such as the protection order from an executive magistrate, not provided for in the 2018 Bill. The regular legal/police system must be approached.</p>
<p>Section 11: protects the right to home and family by preventing separation of children and providing for the authority of the competent court to place them with the extended family or with the community in a family setting.</p>	<p>Section 13: No child shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court in the interest of such child, where every transgender person shall have the right to residence, not be excluded, and enjoy in-house facilities in a non-discriminatory manner. Where the parent or immediate family is unable to provide for the same, the competent court may place the child in a rehabilitation centre.</p>	<p>The process of inducting a transgender child within the State's machinery in a rehabilitation centre is provided for in the 2018 Bill, wherein their inclusion in the transgender community has been sidestepped.</p>
<p>Section 12: imposes a duty on the appropriate government and local authorities to take steps to ensure transgender persons enjoy their rights under Article 19 of the Constitution on an equal basis with others.</p>	<p>N/A</p>	<p>Rights such as freedom of speech and expression guaranteed under Article 19 have to be safeguarded by the Government and local authorities in the 2014 Bill.</p>
<p>Sections 13 and 14: 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; (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. They shall also ensure participation of transgender persons in adult education and continuing education programmes on an equal basis with others.</p>	<p>Section 14: Every educational institution funded or recognised by the appropriate government shall provide inclusive education and opportunities for sports, recreation and leisure activities without discrimination on an equal basis with others.</p>	<p>The 2014 Bill imposes an obligation on the appropriate government and local authorities, whereas this obligation is shifted to the educational institutions in the 2018 Bill. Adult education has also not been included in the 2018 Bill's provisions.</p>
<p>Section 15: The appropriate Government shall formulate schemes and programmes to facilitate and support employment of transgender persons especially for their vocational training and self-employment, and shall institute mechanisms for provision of loans at concessional rates to transgender persons for self-employment ventures, and for marketing of their products.</p>	<p>Section 15: The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.</p>	<p>Monetary responsibility to uplift the economic status of the beneficiaries has been ignored in the 2018 Bill.</p>
<p>Section 16: provides for non-discrimination in employment wherein 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. Additionally, any transgender person, if eligible for any post which is being filled, shall have the right to appear for selection and hold the post if selected.</p>	<p>Section 10: 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. Section 11: establishments shall ensure compliance, with a designated compliant officer in each establishment per Section 12.</p>	<p>The right to appear for selection and have one's cause heard has not been included in the 2018 Bill. The 2014 Bill however does not provide for an internal monitoring mechanism through a compliant officer.</p>
<p>Section 17: provides for the promulgation of schemes and programmes to promote and safeguard a standard of living, along with necessary provisions such as unemployment allowance or hygienic community centres and pensions.</p>	<p>N/A</p>	<p>The duty of the government to safeguard social security along with its allied essentials such as access to water and sanitation has not been incorporated in the 2018 Bill.</p>

Section 18: the appropriate government and local authorities shall provide HIV surveillance centres, free sex reassignment surgery, barrier free access to hospitals/facilities, and coverage of medical expenses and therapeutic interventions (in consultation with the beneficiaries) in the nature of an insurance scheme.	Section 16: the appropriate government shall set up sero-surveillance centres, medical care including sex reassignment surgery (with pre & post surgery care) and hormone therapy, counselling, bring out a Health Manual on these surgeries, review medical curriculum and research, facilitate access to hospitals/facilities, and provide for medical expenses through an insurance scheme that covers various surgeries.	Free medical care/SRS has not been provided in the 2018 Bill.
Section 19: the appropriate government and local authorities shall undertake rehabilitation particularly in health, education and employment beginning in as early a stage as possible, grant financial assistance to NGOs for the same with their consultation in formulating this policy, along with providing for schemes.	Section 9(4): The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such person.	The 2014 Bill involves civil society engaged in transgender issues to participate in the Bill's mechanisms and engage in providing rehabilitation. The 2018 Bill does not have such provisions.
Section 20: the appropriate government and local authorities shall take measures to promote and protect leisure, culture and recreation, for example in the nature of sponsoring transgender films.	Section 9(5): The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities.	Leisurely activities essential to the development of a person has not been included in the 2018 Bill.
Section 21: Government/aided primary, secondary and higher education educational institutions shall provide for 2% reservation, without prejudice to the beneficiary's right to avail other seats. Section 22: Every appropriate government shall also reserve 2% of the vacancies meant to be filled by direct recruitment. Section 23: appropriate government shall incentivise the private sector to provide 2% reservation within 5 years from commencement.	N/A	Provisions for reservation to promote equitable representation have not been incorporated in the 2018 Bill. This defeats the purpose of representation of transgender persons in various facets of society, as positive discrimination has not been provided for.
Section 24: government may require information for Special Employment Exchanges.	N/A	Provisions for responsibility of inclusion in the private sector has been ignored in the 2018 Bill.
Section 25: the government shall provide for various measures including schemes/programmes/workshops to raise awareness.	N/A	The government does not have a responsibility to sensitize and raise awareness in the 2018 Bill, the lack of which severely undermines the effectiveness of inclusion of transgender persons in society/education/employment.
Section 26: Central government shall establish the National Commission for Transgender Persons, Section 27: with a term of 3 years, Section 34: which shall identify inconsistent laws, coordinate, inquire into complaints, intervene in court proceedings with approval, review the safeguards provided by or under this Act, study treaties and other international instruments to recommend implementation, research, promote awareness, review safeguards, monitor implementation and utilisation of funds, or other functions. Section 35: the appropriate authority shall take necessary action upon the Commission's recommendations and inform it of the same within 3 months, or convey non-acceptance within the same period. Section 36: it shall have the powers of a civil court, Section 37: provide annual report submissions to the government.	Section 17: the central government shall constitute the National Council for Transgender Persons with 9 governmental members, Section 18: which shall advise the government in policy formulation, monitor the impact, review and coordinate activities redress grievances and perform such other functions.	The 2014 Bill sets up a Commission with a wider ambit of function, along with the taking up of complaints with judicial powers. The 2018 Bill's authority participates in more of an advisory character.
Sections 38-45: provide for the State Commissions.	N/A	State machineries that monitor the implementation of provisions not set up in the 2018 Bill, thereby granting the Centre exclusive control.
Sections 46-48: sets up transgender rights courts for speedy disposal of suits of a civil nature.	N/A	Separate judicial mechanism not set up to provide for speedy disposal of civil cases in the 2018 Bill, which thus leaves it to the current judicial setup that might not be able to provide speedy remedies.

Section 49: head/in-charge of an establishment or an officer with whose consent/connivance/neglect an offence was committed, shall all be held guilty for committing an offence under the Bill. Section 50: provides for punishment of 1 year with fine for committing/abetting hate speech under the Bill. Section 51: failure to furnish information shall be punishable with Rs.25,000 for each offence.	Section 19: whoever - compels/entices a transgender person to beg, denies the right of passage/access to a public place, forces the person to leave the house-hold/village/residence, and harms or injures or endangers the life, safety, health, or well-being, whether mental or physical, of a transgender person, or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse - shall be punished for a minimum of 6 months, extendable to 2 years with fine.	Separate, distinct offences are provided for within the 2018 Bill. However, it criminalises traditionally cultural activities such as begging and sex-work. Furthermore, the quantum of punishment for offences such as sexual abuse has been significantly reduced to a minimum of 6 months imprisonment which is in violation of a transgender person's equal protection before the law. The 2014 Bill is unclear on the persons who will be liable to be punished, the demarcation of acts/omissions that will comprise offences, and the punishments for the same.
Section 52: the central government shall provide funds for carrying out the purposes of the Bill.	Section 20: the central government shall credit funds to the National Council to carry out the purposes of the Bill.	Both Bills have provisions for funding from the central government.
Section 53: Bill not to be in derogation of other laws.	Section 21: Bill not to be in derogation of other laws.	Both Bills are to be complementary in nature to existing legislations.
Section 54: no prosecution/suit for action taken in good faith.	Section 22: no prosecution/suit for action taken in good faith.	Both Bills protect actions taken in good faith.
Section 55: power to remove difficulties within 2 years.	Section 24: power to remove difficulties within 2 years.	
Section 56: provides the power of the appropriate government to make rules, and for the draft of the same to be available to the public for objections/comments, and for the rule to be laid before the Houses of Parliament for 30 days and defeatable/modifiable by a resolution of both houses - same provision for the State Governments.	Section 23: provides that the appropriate government may frame and lay the rules before the Houses of Parliament for a period of 30 days, subject to the modification/resolution defeating the provisions/rules by both houses.	The provision of engaging with civil society and the members of the public/beneficiaries to critically examine and suggest modification to the rules by providing for a draft being released to the public, has not provided for in the 2018 Bill. Such a provision has been incorporated in the 2014 Bill.
Section 57: the National Commission may make regulations on certain subjects with the prior approval of the Central Government. The same applies to the State Commissions per Section 58.	N/A	Greater participation of the Bill's institutional machineries envisaged in the 2014 Bill.