India: Transgender Bill Raises Rights Concerns

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(New York, July 23, 2019) – A proposed law to protect the rights of transgender people in India falls short of the country's human rights obligations, Human Rights Watch said today.
The LCE593719&SDGTransgender Persons (Protection of Rights) Bill, 2019, introduced in parliament on July 19, 2019, is unclear on a transgender person's right to self-identify, which India's Supreme Court recognized in a landmark judgment in 2014.

The Transgender Persons Bill lays out a broad and inclusive definition of "transgender persons" and a clear distinction between identity-based recognition rights and the medical procedures some transgender people might want. However, even though the bill says that a transgender person "shall have a right to self-perceived gender identity," its language could be interpreted to mean transgender people are required to have certain surgeries before legally changing their gender.

"The Transgender Persons Bill should be a remarkable achievement for a long-persecuted community, but the current draft fails on the fundamental right to self-identify," said Meenakshi Ganguly, South Asia director at Human Rights Watch. "It's crucial that the law be in line with the Supreme Court's historic ruling on transgender rights."

In recent years in India, considerable progress has been made to protect the rights of transgender people, Human Rights Watch said. In 2014, the Supreme Court in LCE593719&SDG*NALSA v. India* ruled that transgender people should be recognized as a third gender and enjoy all fundamental rights, while also being entitled to specific benefits in education and employment. In 2018, in a historic decision upholding privacy and nondiscrimination of LGBT persons, the Supreme Court struck down the colonial-era LCE593719&SDGsodomy law that criminalized consensual same-sex relations.

However, the government's proposed law to protect the rights of transgender people would not provide full protection and recognition, Human Rights Watch said.

The bill appears to mandate a two-step process for legal gender recognition. First, it requires a trans person to apply for a "transgender certificate." This can be done on the basis of a person's self-declared identity. Then, a certificate holder can apply for a "change in gender certificate," which signals to authorities to change their legal gender to male or female. This second step appears to require surgery and then documentation by a medical authority confirming it.

The bill empowers the district magistrate to judge the "correctness" of the application and decide whether to issue the change in gender certificate but does not give guidelines on how this decision should be made. The bill is also silent on whether a trans person who holds a male or female gender certificate will have access to government welfare schemes and programs meant for transgender people.

Besides seemingly violating the Supreme Court ruling, these provisions are also contrary to international standards for legal gender recognition. International standards and best practices – including those of multiple LCE593719&SDGUnited Nations agencies, the LCE593719&SDGWorld Medical Association, and the LCE593719&SDGWorld Professional Association for Transgender Health – call for separation of legal and medical processes of gender reassignment for transgender people. This includes the removal of evaluations of applicants for legal gender recognition by panels of psychologists, physicians, or other experts. Self-declared identity should form the basis for access to all social security measures, benefits, and entitlements.

The UN Office of the High Commissioner for Human Rights in 2015 LCE593719&SDGrecommended that states begin immediately "[i]ssuing legal identity documents, upon request, that reflect preferred gender, eliminating abusive preconditions, such as sterilization, forced treatment and divorce." A 2015 LCE593719&SDGreportpublished by the World Health Organization and the Asia-Pacific Transgender Network recommended that governments "[t]ake all necessary legislative, administrative, and other measures to fully recognize each person's self-defined gender identity, with no medical requirements or discrimination on any grounds."

The mention of intersex persons in the Indian bill is an important inclusion, but the bill should be renamed the Rights of Transgender and Intersex Persons Bill and include explicit protections for intersex people in line with India's international human rights obligations.

LCE593719&SDG"Intersex" refers to the estimated 1.7 percent of the global population born with bodily

traits that do not fit conventional expectations of female or male. Their sex characteristics – such as chromosomes, gonads, or genitals – differ from social expectations. Historically, many intersex people – often in infancy – are forced to undergo irreversible surgical procedures to make their bodies conform to gender norms.

The bill should require the informed consent of intersex individuals before non-emergency surgical procedures are conducted and prohibit medically unnecessary procedures on children. Intersex persons should be issued legal identity documents that reflect their preferred gender and the government should ensure that intersex persons and organizations are consulted with regard to laws and policies that have an impact on their rights.

In addition, the bill should be revised to emphasize LCE593719&SDGtraining teachers to help them adopt inclusive teaching methods to ensure these children are not harassed or discriminated against by staff or other children.

“Transgender people in India should be able to live with dignity and nondiscrimination, and have equal access to education, employment, and health services.” Ganguly said. “To enact a law that meets international standards, it’s critical that parliament fully bring transgender people into the conversation.”

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