



THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

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GOVERNMENT OF ASSAM
ORDERS BY THE GOVERNOR
SOCIAL WELFARE DEPARTMENT

NOTIFICATION

The 20th March, 2020

No. SWD.128/2019/82.- The Governor of Assam is pleased to notify the Assam State Policy for Transgenders as detailed below with immediate effect.

ASSAM STATE POLICY FOR TRANSGENDERS

1.0 INTRODUCTION:

The World Health Organization (WHO) defines Transgender as "an umbrella term for people whose gender identity and expression does not conform to the norms and expectations traditionally associated with the sex assigned to them at birth; it includes people who are transsexual, transgender or otherwise considered gender non-conforming".

1.1 Transgenders (TG) in our country are known to be confronted by a variety of social, cultural, economic and psychological issues that expose them to a high risk of isolation, discrimination and social exclusion and, consequentially, impact their basic right to a life with dignity, equality and non-discrimination on the ground of gender identity, among others.

1.2 The Transgender Policy developed for the state of Assam epitomizes the Government's attempt at an understanding of the factors responsible for the marginalization of the transgender community and its efforts to mitigate their problems by seeking to identify the causal and reinforcement factors that result in the social vulnerabilities of Transgenders living in the state. The Policy aims at delineating principles and identifying priority areas for implementing various programs for the welfare and protection of the rights of members of the transgender community. It seeks to thereby create an environment where a Transgender can live a full life with dignity; where both equality and non-discrimination on ground of gender identity and other rights are assured.

2.0 THEORETICAL PERSPECTIVE:

2.1 For the purposes of this policy, it is important to distinguish between sex and gender. Sex is assigned at birth and refers to one's biological status as either male or female. It is associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy.

2.2 Gender is primarily a social construct. It refers to the roles, behaviour, activities, and attributes that a given society considers appropriate for its male and female members.

2.3 Gender identity refers to a person's innermost and individual sense of self as male, female or a blend of both or neither that can either correspond to or not correspond to the sex assigned at birth. Gender expression is viewed as a person's presentation of his gender identity and the one that is perceived by others.

3.0 BACKGROUND:

3.1 2014 has been a watershed year in India in terms of the legal recognition of transgenders as subjects of citizenship, rights and empowerment. Firstly, the Ministry of Social Justice and Empowerment (MSJE) brought out a report on 'issues relating to transgender persons' drafted by an 'expert committee' that it had constituted after consultations with representatives from the transgender community in 2013 (*Ministry of Social Justice and Empowerment, Report of the Expert Committee on the Issues relating to Transgender Persons, 27-1-2014, <<http://socialjustice.nic.in/transgenderpersons.php>>*). Then in April, the Supreme Court delivered a judgment following a writ petition filed by NALSA (the National Legal Services Authority) and supported by transgender activists (*National Legal Services Authority v. Union of India, (2014) 5 SCC 438*). The NALSA judgment, which gained rapid media coverage and activist attention, included directives for the legal recognition of transgender persons' identities and the provision of reservations in jobs and education. The Supreme Court judgement in the case obligated the Central and State Governments to take various steps for the welfare of members of the transgender community.

3.2 The Court grounded its reasoning on the fundamental rights of equality, non-discrimination, freedom of expression and dignity.

- Equality: The Court held that non-recognition of their gender identity denied transgender persons equal protection of the law. There was a constitutional obligation upon the State to ensure such equal protection proactively.
- Non-Discrimination: Discrimination is prohibited under the Indian Constitution on a number of specified grounds, which includes "sex". The Court read the term "sex" to include "gender identity".
- Freedom of Speech and Expression: The Court interpreted the right to freedom of speech and expression as including the right to expression of one's self-identified gender, which could be expressed through dress, words, action, behavior or in any other form.
- Dignity: The Court found that since gender constituted the core of one's sense of being, as well as an integral part of a person's identity, recognition of one's gender identity lies at the heart of one's fundamental right to dignity.
- The Supreme Court issued nine directions to the Centre and State Governments to crystallise the economic, social, cultural and political rights recognised in NALSA and provide a guide for protecting the rights of transgender persons. These directions ranged from recognising the right to self-identification of gender identity, operating HIV zero-surveillance centres to framing social welfare schemes for their betterment

and increasing public awareness to integrate transgender persons into social life. Significantly, one of the directions is for "...the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments." The Supreme Court held that transgender persons are entitled to reservations in education and public employment as a socially and educationally backward class and directed the State to make provision for the same.

3.3 The Transgender Persons (Protection of Rights) Bill, 2018 was passed in the Lok Sabha on 17th December 2018. The Bill (Bill No. 210-C of 2016) addressed the definition of Transgenders through what is considered a more sensitive and dignified approach than what was originally used in the earlier version of the Bill and went on to define a Transgender as follows:

"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.

4.0 TRANSGENDERS IN ASSAM- AN OVERVIEW:

4.1 **Population of Transgenders In Assam** – The first time an attempt was made to collect state-wise figures of the Transgender population in India was during the Census 2011 operation. The Census of India web portal admits this in the following way: *"Indian Census has never recognized third gender i.e. Transgender while collecting census data for years. But in 2011, data of Transgenders were collected with details related to their employment, Literacy and Caste. In India, total population of transgender is around 4.88 Lakh as per 2011 census. The data of Transgender has been clubbed (sic) inside "Males" in the primary data released by Census Department. For educational purpose, separate data of Transgender has been curved (sic) out from that.*

State	Transgenders	Child(0-6)	SC	ST	Literacy
Assam	11,374	1,348	774	1,223	53.69%

4.2 It is not known how authentic these statistics are. It is likely that the collection of statistically credible data in respect of this group may have been affected because of reasons of neglect and exclusion and also because of reluctance on the part of the community to reveal themselves to statistical authorities for fear of being stigmatised. The reasons for probable under-reporting can range from the construct of the questionnaire through the capacity and training of the enumerators to seek answers that may to the socio-psychological constructs. When such statistics are not adequately captured in the official estimates any policy being contemplated for the welfare of these people need to triangulate other possible sources of information or at least estimates available on the number and circumstances of this community. It is therefore important to capture data relating to the Transgender population in Assam through a survey to be conducted by a professional agency with the help of members of the community spread across the state.

4.3 Until 2012, the members of the transgender community in Assam seldom raised their voice in favour of their basic human rights and were apprehensive of disclosing their gender identity for fear of facing hatred and social humiliation both in family and in society. But in the year 2012, the Division bench of Hon'ble Bombay High Court made a landmark judgment on

Sex Reassignment Surgery (WP (L)1092 of 2012, BHC) supporting and protecting Swati Bidhan Baruah's right to undergo such surgery. This case got brought into focus the rights of Transgenders to undergo Sex Reassignment Surgery (SRS) and paved the way for Transgenders in Assam as well as in India to take steps towards actualizing their gender.

5.0 KEY ISSUES AFFECTING THE TRANSGENDER COMMUNITY THAT NECESSITATE THE FORMULATION OF A TRANSGENDER POLICY:

Transgenders in Assam face various issues that affect their over-all well-being and progress in society. Some of the issues that affect the rights of the Transgender community of Assam are: (Inputs of Swati Bidhan Baruah, a lawyer and Transgender Activist are acknowledged in this regard)

5.1 Access to Education, Economic Opportunities, Public Services and Employment:

- The academic environment in institutions is vitiated on account of negligence, discrimination and humiliation of TGs by classmates and teachers. There is therefore no motivation for TGs to pursue learning in these circumstances.
- There is a lack of family support for members willing to pursue academics.
- No educational quota or reservation or separate classes is available for TGs.
- Most of the TGs are denied access to health infrastructure and emergency treatment in government hospitals.
- TG community members are known to have been denied jobs on account of their choice of clothing and on account of their behavioural traits.
- There is no reservation for TGs in employment in the government sector. Nor are skill development programs available exclusively for them.
- Poverty affects community members in a big way. A huge portion of the TG community members have monthly income of Rs. 500 to Rs 1500. Good income comes in *Badhai* during marriage season.
- TG community members are usually not welcome to live amongst regular neighbourhoods. As a result, they are often constrained to establish their own settlements outside of regular communities and forced to live in conditions that are often not conducive to their growth and personality development.
- No TG specific health schemes are available to cater to the requirement of SRS for those who seek to undergo such surgery.

5.2 Right to Dignity and Freedom from Violence

- Abusive treatment by law enforcement personnel is a common complaint by the members of transgender community and they need to be insulated from any such abuse.
- Abuse, public humiliation, derision, ridicule, marginalization and exclusion of TGs is not only limited to the street but is also experienced in government offices, hospitals, schools, railway stations and in other public places.
- The lack of societal or state support at the time of need is alarming. In case of any criminal victimization or sexual harassment, these individuals get little help/ support from government institutions. A majority of TGs do not raise complaints against violence out of fear of further victimization.
- The dignity of the TGs and their human rights are often violated inside police stations when they are forced to undress by personnel to ascertain whether they have male or female genitals.

5.3 Right to Expression

- Many of the TGs are unable to register gender identity as a matter of choice and right in the application form for an ID card or for availing other services.
- Many among the TGs do not reveal their gender identity at work due to fear of discrimination.
- Some of the TGs hide their gender identity from their families and friends for fear of being ostracised and forced to leave their homes.
- Some TGs have a sense of shame about the dissonance between their body and gender identity.
- Some TGs suffer from suicidal tendencies.
- Most of TGs have not changed physical appearance through medicines/surgery.
- Some of TGs feel a need to change their physical appearance.

6.0 STRATEGIC OBJECTIVES OF THE POLICY:

6.1 The transgender policy aims to ameliorate the suffering of transgender persons in multiple dimensions of life. Its main objectives are as follows:

- To provide access to educational facilities and incentivise learning through reservation of seats in institutions, making provision for separate boarding and lodging arrangements and through provision of scholarships to TG students etc.
- To protect transgenders against destitution by ensuring a minimum standard of living and access to existing basic services like shelter and sanitation or by creating infrastructure to cater to them;
- To insure transgenders against the negative consequences of shocks and risks along the lifecycle, such as health shocks through TG specific health schemes;
- To promote human capital accumulation and access to productive assets and income generating activities alongside other genders;
- To raise awareness in order to empower transgender persons and provide them opportunities to exercise gender equality;
- To mainstream transgender persons, who are typically excluded from public services and programs, through enforcement of rights, providing means of livelihood and inculcating mutual respect among all genders.
- To ensure non-discrimination of TGs in any form in all spheres by public authorities and to support positive discrimination to address inequities in areas of education, health and employment.
- To raise public awareness and sensitization of TG rights and to develop capacity of relevant stakeholders to enforce rights. Large scale sensitization needs to happen starting from the school level to see transgenders not as an aberration, but as an integral and productive component of societal life.

7.0 COMPONENTS OF THE STATE TRANSGENDER POLICY

7.1 IDENTIFICATION AND REGISTRATION:

7.1.1 A transgender person shall have a right to be recognised as such, in accordance with the Provisions of the *Transgender Persons (Protection of Rights) Act, 2019*.

7.1.2 A person recognised as Transgender under section 4.(1) of *Transgender Persons (Protection of Rights) Act, 2019*, shall have a right to self perceived gender identity.

7.1.3 A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person. In case of a minor child, such application shall be made by a parent or guardian of such child.

7.1.4 The District Magistrate shall issue a certificate of identity as transgender person to the applicant as under section 5 of *Transgender Persons (Protection of Rights) Act, 2019*, after following such procedure and in such form and manner to be notified later through an Office Memorandum.

7.1.5 The gender of transgender person shall be recorded in all official documents in accordance with certificate issued, which shall confer rights and be a proof of recognition of his/ her identity as transgender person.

7.1.6 After the issue of a certificate, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the Medical Institution in which that person has undergone surgery, to the District Magistrate for revised certificate.

7.1.7 The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender.

7.1.8 The person who has been issued a certificate of identity under section 6 of the *Transgender Persons (Protection of Rights) Act, 2019* or a revised certificate under Section 7.(2) of the *Transgender Persons (Protection of Rights) Act, 2019* shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:

Provided that such change in gender and the issue of revised certificate shall not affect the rights and entitlements of such persons.

7.2 ENSURING SOCIAL AND PUBLIC SERVICES

One of the main reasons behind the plight of transgender persons is that they are excluded from many public services. In order to ensure a decent standard of living, access of Transgender people to social services needs to be improved. This policy aims to ensure that the needs of transgender persons pertaining to basic services of life are addressed. To that end, following action will be undertaken :

7.2.1 Housing:

Social exclusion of transgender persons forces them to take refuge in settlements that are secluded and often in pitiable conditions.

- Transgender shelters will gradually be built at certain locations where homeless transgender persons are able to live with dignity. These will be run by NGOs/ Gurus.
- A short-stay home will be constructed in Guwahati to serve as a temporary shelter for TGs in crisis and as a safe place for TGs to stay when they visit Guwahati only for the purpose of medical care and sex reassignment surgery.
- TGs can apply for benefits under the existing housing schemes like IAY, PMAY etc.

7.2.2 Education:

A lack of occupational and educational opportunities forces transgenders into entering the risky or contentious businesses. It is therefore imperative to ensure that transgender persons obtain adequate general and technical education. Following measures will be undertaken in this regard:

7.2.4 Employment, Livelihood and Sustenance:

The issue of providing jobs and / or livelihood opportunities to transgenders is to be seen in the light of their social exclusion and the lack of opportunity for them to obtain qualifications that are requisite for taking up jobs, be it in the private sector or in the government sector. The policy seeks to deal with this issue by focussing on building the capacity of transgenders for self employment and will consist of the following initiatives:

- Employment exchanges will register transgenders without any discrimination and these exchanges will forward names of transgenders for various government jobs along with the others.
- Vocational training will be provided to transgenders free of cost, based on their field of interest, through existing government schemes.
- Self-employment grants upto a maximum of Rs 25000 will be made available for small business entrepreneurs from the transgender community who have undergone vocational training and are willing to set up businesses.
- Material support like sewing machines upto a value of Rs 10000 per transgender will be provided to individual beneficiaries, based on assessment of the capacity and motivation of the beneficiary, who propose to use such support for income generation.
- Financial assistance in the form of monthly pension will be provided to those transgenders who are destitute or elderly, based on assessment of need.
- Ration cards will be issued to transgenders even if they are living alone or living in shelters.
- Formation of TG SHGs will be promoted and obtaining benefits by these SHGs under various income-generation schemes of the government will be facilitated.

7.2.5 Emergency/ Support Centres:

Given repeated instances of violence against transgender persons, there is a dire need to provide emergency support to transgender members of our society. Toward this end, the following actions will be taken:

- Emergency centres will be established for providing emergency relief and services, e.g. in case of violence against transgender persons, in course of time. Till such infrastructure is created, these centres will function out of available infrastructure of the Social Welfare Department.
- Counselling services will be made available in existing Social Welfare Department infrastructure in various districts free of cost to the families of transgender persons.
- Specialized social care services for victims of violence and rehabilitation services for drug abusers will also be put in place.
- A Help Desk in the office of all District Police Superintendents of Police will be set up and made available for transgenders. Massive sensitisation and awareness programmes for the public and public authorities

7.2.6 General Public Services:

Other general public services that will be provided under this policy are:

- Transgender persons will have full access to all services such as character certificate, telecom services, banking services, birth/death certificate, domicile certificate, property related services, vehicle registration, driving license, passport, legal services (including stamp paper, etc.) assets purchase, and taxation etc.

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- In case of death of a transgender whose immediate next of kin is not available, Municipal Authorities will be responsible for the funeral of transgenders as per rites specific to the religion of the transgender.
- Separate lavatory facilities for transgender persons will be made available wherever possible.

7.2.7 Awareness Campaigns:

Awareness campaigns need to be launched across the state to spread the message of tolerance and diversity, to prevent the shaming and humiliation of transgenders and to change the prejudiced mindset and attitude of people towards transgenders. As part of this endeavour, the following measures shall be taken:

- Students and teachers will be sensitised about transgender rights and students will particularly be convinced to refrain from the use of words that denigrate and demean and humiliate transgenders.
- School curriculum will be revised so as to include basic information* about transgenders as part of the sensitization initiative.
- Material for sensitising officials on the rights and privileges of transgenders will be developed and used during training of officials in administrative staff college, police academy, judicial academy etc.
- Training will be provided to law enforcement personnel, teachers and health staff etc on a humane and dignified handling of issues pertaining to transgenders.
- As part of a responsible media policy towards transgenders, print and electronic media will be requested to refrain from depicting transgenders in poor light and to assist in weaning out words from common parlance that stand to demean transgenders.
- Families of transgender persons will be sensitized about the rights of transgender persons and their responsibilities.

7.2.8 Charter of Responsibilities for Transgender Community

- A database of all transgender community leaders like Gurus and NGOs working for transgenders across the state will be separately maintained. This database will include details of the transgenders living with the Guru/ NGO and record the infrastructure available with the Guru/ NGO for using as shelter for transgenders.
- A charter of responsibilities will be formulated to bind the registered gurus and organizations providing shelter to the transgender children and taking care of these children for maintaining a minimum standard of living.
- The government will institute mechanism for regular monitoring of living arrangements of transgender persons.
- The government may, in the event of difficulty in creating government infrastructure for shelter of transgenders, provide one time grant-in-aid upto a maximum of Rs 2 lakhs for use/ upgradation of the shelters for transgenders run by NGOs/ Gurus.
- Awareness meetings will be conducted within the transgender community and Gurus about their rights and responsibilities. Awareness material will also be distributed among the members of the transgender community and the Gurus.

7.3 ADMINISTRATIVE SET UP:

7.3.1 State Level Transgender Support Unit:

- The Social Welfare Department will be the Nodal Department for the purpose of implementation of this policy.
- A Transgender Support Unit (TSU) will be established in the Directorate of Social Welfare, under the Director Social Welfare, which will oversee all issues relating to transgenders. The Unit will prepare an annual plan for the implementation of this policy and also prepare a budget based on the requirements as envisaged in the policy document.
- The Unit will formulate timelines for implementation of the Policy and submit a report to the government along with the annual plan. In doing so the Unit shall follow a hybrid approach; identifying those that can be implemented immediately and those that can be implemented over a period of time while continuing to work on both simultaneously.
- The TSU will submit plans and proposals for implementation of this Policy to the TWB for approval.
- The TSU will liaise and coordinate with all concerned departments and stakeholders for the purpose of implementation of this policy.
- The TSU will create a dynamic database of all transgenders using a software application through which a smart I-card will be generated for issue to transgenders.

7.3.2 District Level Committee

A District-level Committee will be constituted with the following members with well defined functions and responsibilities. The Committee will meet at least once in a month.

a) District Magistrate	----- Chairperson
b) District Social Welfare Officer	----- Member-Secretary
c) CEO, Zila Parishad	----- Member
d) Superintendent of Police	----- Member
e) Member Secretary, DLSA	----- Member
f) Chairperson/ Representative from Municipal Board	----- Member
g) Joint Director, Health Services	----- Member
h) District Elementary Education Officer	----- Member
i) One Psychiatrist	----- Member
j) All Child Development Project Officers	----- Members
k) District Child Protection Officer	----- Member
l) Five Representatives from TG community (to be nominated by DC)	----- Members

The Committee will perform the following functions:

- Monitor implementation of various welfare and other programmes of TGs in the districts.
- Assist the State level Transgender Welfare Board in the process of issue of I-Cards including in the receipt of applications with self declaration from members of the transgender community.
- Liaise with all government departments and agencies to ensure non-discrimination of TGs and ensure the full enjoyment of the rights of the transgenders.

- Set up and monitor TG support and Crisis Intervention Centres on the model of Rape and Crisis intervention centres. The centre should undertake counselling programmes and mental health issues that disproportionately affect the TG communities. The centre should also function as an information centre and support centre for TG persons. In case of any typical case, the District Level Transgender Welfare Committee shall refer the matter to the State Level Transgender Welfare Board.
- Organize awareness campaigns to sensitize the general public and public officials about the rights and privileges of transgenders
- Submit formal proposals for taking up schemes within the Policy framework to the TSU for consideration.

7.3.3 Transgender Welfare Board

A Transgender Welfare Board will be constituted, comprising the following members, to monitor and oversee the implementation of the schemes adopted for Transgender community in Assam. The Board will be registered under the Societies Registration Act.

- | | |
|---|-----------------------------|
| a) Hon'ble Minister, Social Welfare Department Assam | ---- Chairperson |
| b) Senior most Secretary to the Govt of Assam. Social Welfare Deptt. | -- Vice-Chairperson |
| | Associate Vice -Chairperson |
| c) Transgender Activist/ Representative of TG community-- | ----- Member-Secretary |
| d) Director, Social Welfare Department, Assam | ----- Member |
| e) Secretary, Department of Home & Political | ----- Member |
| f) Secretary, Department of Finance | ----- Member |
| g) Secretary, Department of Health & Family Welfare | ----- Member |
| h) Secretary, Personnel Department | ----- Member |
| i) Secretary, W P T & B.C Department | ----- Member |
| j) Secretary, Education (Secondary) Department | ----- Member |
| k) Secretary, Education (Higher) Department | ----- Member |
| l) Secretary, P & R D Department | ----- Member |
| m) Secretary, Urban Development Department | ----- Member |
| n) Secretary, Judicial Department | ----- Member |
| o) Commissioner of police Guwahati City | ----- Members |
| p) Five Representatives from TG community
(to be nominated by Chairperson with focus on regional representation) | |

The Transgender Welfare Board will perform the following functions:

- The TG Welfare Board will monitor and oversee the implementation of the TG Policy and review the work of the TSU. TSU activities need to be evaluated periodically with involvement of TG communities at the grassroots level to ensure that the activities are needs-based, needy TG people are benefited, and implementation of schemes is timely
- The Board will suggest policy and institutional reforms that enable access to socio-economic development schemes for the poor TGs and other at risk TG groups.
- It will ensure convergence of existing schemes across departments for a more targeted and focused approach towards ensuring the well-being of the TG community.
- Issue guidelines as necessary to ensure equality and equity of TGs.

- Ensure that sufficient and quality development projects programmes and schemes are formulated and adequate funds are allocated for effective implementation of TG Policy.
- TWB will use multiple channels such as newspaper television, and brochures to inform the TG communities about the schemes available under various government departments, and how to access and use those schemes
- Gender identity cards to a TG person will be issued by the TSU on approval by the TWB.
- Ensure that the Gender I cards are acceptable to all authorities for use in all official documents, for changing details in documents and to avail access to all eligible schemes and benefits by persuading the government to issue instructions to all concerned in this regard.
- The TWB will approve the plans and proposals received from the TSU for implementation of this Policy.
- TGB will periodically conduct needs assessment regionally by involving Community Based Organizations (CBOs) and NGOs working with TGs to understand the needs, issues, concerns, and local context of TG communities. Based on findings, fresh needs-based schemes can be formulated.
- The TWB will consider all matters referred to it either by the District -level Committee or by the TSU and petitions received from TGs and issue suitable instructions
- The tenure of non-official members will be three years.
- The TWB will meet at least once every three months.
- Remuneration, travelling and daily allowance, as admissible and finalized by the Social Welfare Department, will be paid to non-official members for attending the meetings of the TWB.

JISHNU BARUA,

Additional Chief Secretary to the Government of Assam,
Social Welfare Department, Assam.