

# DRAFT

# ODISHA STATE

# TRANSGENDER PERSONS

# POLICY 2021

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## INTRODUCTION

The Constitution of India ensures equality, freedom, justice and dignity of all individuals and implicitly mandates an inclusive society for all including Transgender persons. In the recent years, there have been significant changes in perception towards transgender persons.

Odisha State Transgender Person Policy 2021 in consonance with Transgender Persons (Protection of Rights) Act, 2019 & Transgender Persons (Protection of Rights) Rules, 2020 reiterates the commitment of the State to provide equal opportunities to Transgender Persons and protection of their rights. It emphasizes on a series of interventions, namely, Education



Security, equality, freedom of expression, education, employment, health care, safety & security, housing and ageing.

The issue of Transgender Persons is cross-sectoral and demands strategic partnership across government departments, the public and private sectors, the non-governmental organizations, voluntary organizations, civil society and local communities. Department of Social Security and Empowerment of Person with Disabilities department is the nodal department to uplift the TG persons and ensure their equitable justice.

## **SITUATION OF TRANSGENDER PERSONS IN ODISHA**

The term transgender or transgender person/people/population used in this document is being used as an umbrella term to include all individuals who do not conform to rigid, binary gender constructions, and who express or present a departure from social and culturally prevalent stereotypical gender roles. It refers to all gender variant people and describes a wide range of identities and experiences including but not limited to: pre-operative, post-operative and non-operative transsexual people (who strongly identify with the gender opposite to their biological sex); male and female “cross-dressers”; and men and women regardless of sexual orientation, whose appearance or characteristics are perceived to be gender-atypical. A male-to-female transgender person is referred to as "transgender woman" and a female-to-male transgender person, as "transgender man".

**Transgender Population in Odisha:** According to the Census (2011) in Odisha, there are 20,332 transgender persons in Odisha. However, their present numbers would be much higher as they now have the courage to express their transgender identity with the Supreme Court of India, granting legal recognition to a person's self-identified gender as either male, female or third gender.

As per 2011 census, the data of Transgender Persons has been cubed in 4 categories:-

<b>Sr. No</b>	<b>State</b>	<b>Transgender Person</b>	<b>Child(0-6)</b>	<b>SC</b>	<b>ST</b>	<b>Literacy (%)</b>
1	India	4,87,803	54,854	78,811	33,293	56.07
2	Odisha	20,332	2,125	3,236	4,553	54.35

However, no accurate estimates on transgender persons are available yet except those of crude estimates. It is important to note, however, that accurate figures are unavailable due to the fact that no formal estimation of the number of transgender persons living in Odisha has been conducted till now. The SSEPD Dept. has taken initiatives to conduct a State wide survey on transgender persons, results of which are yet to come.

## **Mandates**

### **NALSA JUDGEMENT, 2014**

2014 has been a watershed year in India in terms of the legal recognition of transgender person as subjects of citizenship, rights and empowerment. The Hon'ble Supreme Court upheld the right of all persons to self-identify their gender. Further, it declared that hijras and eunuchs can legally identify as "third gender". The Court clarified that gender identity did not refer to biological characteristics but rather referred to it as "an innate perception of one's gender".

### **TRANSGENDER PERSON (PROTECTION OF RIGHTS) ACT, 2019**

The Transgender Persons (Protection of Rights) Act, 2019 was passed by Parliament on December 5, 2019. The Act aims to end discrimination against transgender persons in accessing education, employment and healthcare. It also recognises the right to self-perceived gender identity and provides for certification from a District Magistrate; in case a transgender person has or had a gender-change surgery, the law says they can obtain a certificate from the medical facility where they had the operation, and apply for a change in their certificate.

### **TRANSGENDER PERSON (PROTECTION OF RIGHTS) RULES, 2020**

Transgender Person (Protection of Rights) Rules, 2020 was enacted in 25 September, 2020. The Draft Rules specify the process by which transgender persons may apply for a Certificate of Identity and the manner in which such a certificate will be issued to them. The rules enhancing the scope of existing welfare schemes to include Transgender persons in the purview of the schemes and also to formulate new schemes for their welfare to protect their rights and interests and facilitate their access to welfare schemes and other related benefit to them.

### **NATIONAL COUNCIL FOR TRANSGENDER PERSONS**

In exercise of the powers conferred by section 16 of the Transgender

Persons (Protection of Rights) Act, 2019 (40 of 2019), the Central Government has constituted a National Council for Transgender Persons vide notification dated 21st August, 2020. The Union Minister of Social Justice & Empowerment will be Chairperson (ex-officio) and Union Minister of State for Social Justice & Empowerment will be Vice-Chairperson (ex-officio).

## **NATIONAL PORTAL FOR TRANSGENDER PERSONS**

This National Portal for Transgender Persons has been developed within 2 months of Notification of Transgender Persons (Protection of Rights) Rules, 2020 on 25 September 2020.

This highly useful Portal would help a transgender person in applying for a Certificate and Identity card digitally from anywhere in the country.

The most important benefit is that it helps the transgender person to get the I-Card without any physical interface and without having to visit any office.

Through the Portal, they can monitor the status of their application that ensures transparency in the process. The issuing authorities are also under strict timelines to process the applications and issue certificates and identity cards without any necessary delays. Link <https://transgender.dosje.gov.in/>

## **SWEEKRUTI SCHEME**

The Social Security and Empowerment of Persons with Disabilities (SSEPD) Department, Government of Odisha recognizes that Transgender Persons are valuable human resource for the society and seeks to create an environment that provides them equal opportunities, protection of their rights and full participation in society. As part of an integrated initiative for Transgender Equality & Justice the Department has launched this new umbrella scheme “SWEEKRUTI” in the FY 2016-17, to be operated in a mission mode with manifold objectives.

The main objectives of the scheme are to create an enabling environment for transgender persons, ensure their participation and social integration, strengthen the implementation of various schemes and facilities, and promote measures for employment and socio-educational services for transgender persons.

## **GOALS & OBJECTIVES**

### **GOALS**

The Odisha State Policy for Transgender Persons 2021 recognizes that the transgender persons face undeniable hardships and barriers in their everyday life and have to navigate multiple problems in order to survive and thrive. This policy therefore aims to ensure that transgender persons are able to live fulfilling lives complete with dignity and rights in an inclusive society. This demands the Government to take several immediate actions that would lead to long lasting solutions beginning with eliminating barriers to gender equality by honoring their legal right to a self-defined gender identity; providing access to quality and affordable health care; ensuring education and necessary skilling thereby increasing their employability; putting an end to stigma and discrimination in schools, educational institutions, the workplace, and other areas of public life; and creating systems of support at the community, village, municipal and state levels to meet the social and psychological needs of transgender people. Crucial to all these solutions and for ending discrimination, exclusion and violence against the transgender persons is the need to educate government officials at all levels and the general public in the accurate knowledge of transgender identities and issues leading to greater acceptance and assimilation in society. The Government will ensure gender mainstreaming in all its policies across Departments and adopt a multi-sectoral approach involving government institutions, non-governmental organizations and public and private entities. The necessary institutional capacity will be developed for its effective execution.

## **OBJECTIVES**

In response to the situation of the Transgender people in Odisha and in compliance to the mandate outlined by the Supreme Court of India in the Judgment of the National Legal Services Authority vs. Union of India and Others (2014) and Transgender Persons (Protection of Rights), Act, 2019 and Central Rules thereof, the Government of Odisha realizing the inadequacy of the progress made so far, issues this policy for the transgender people in the state. This policy covers all categories of transgender persons, including but not limited to female to male Transgender, male to female Transgender and Inter-sex people.

This policy emphasizes the rights of Transgender persons to self identify as man, woman or transgender.

The major objectives of the policy are:

1. To ensure dignity and protection of the rights of the Transgender persons in the State by integrating within Government policy & to include the

transgender category in all Government policies, documents and decisions & in procuring identity documents such as voter ID, passport, PAN card, Aadhar Card, ration card, education certificates and in all Government records.

2. For their greater acceptance and assimilation the Government shall undertake appropriate public awareness and education programmes to eliminate prejudice and discriminatory attitudes or behaviors against the transgender people & to create an environment that provides them with dignity, independence, equal opportunities, protects their rights and enables their full participation in society by equipping government officials with accurate knowledge on transgender identities and issues.

3. To facilitate access to social security, health care, food, drinking water, housing, shelter, public transport, sanitation and other welfare services to transgender persons, especially to the economically poor and socially marginalized sections among them by creating necessary support mechanisms and systems in all Government Departments and public offices including local self-governing bodies.

4. To ensure and promote the protection of transgender persons from harassment, abuse and violence by creating a conducive, safe and secure environment for them in their homes, localities and public places such as hospitals, offices, police stations and prisons.

5. To facilitate access to justice, the transgender persons seeking redress against discrimination and violence shall be provided free legal aid. Similarly, laws with regard to sexual harassment, sexual abuse, domestic violence and all gender related laws will be made Transgender inclusive.

6. To ensure that the institutional staff of short-stay homes, orphanages, adoption centres and other child protection agencies are sensitized to the needs of gender non-conforming children.

7. To promote equal rights to land and home ownership and inheritance without discrimination on the basis of sexual orientation or gender identity.

8. Transgender Helpline with trained counsellors will be created for responding and managing incidents of violence, abuse and other inhuman treatments.

9. To protect the right of the gender non-conforming child to be nurtured and protected in a family environment, the Government shall take action against

parents who desert or evict them. At the same time the Government shall support such parents to take care of the specific needs of the transgender child through financial assistance, counseling and health services.

8. To develop the capacity of Anganwadi workers and staff of ICDS, ICPS, DCPOs and other frontline child service providers to be responsive to the needs of the transgender children.

10. To facilitate inclusion of elderly transgender persons unable to maintain themselves under different social security schemes such as income security, housing, health and protection.

11. To promote the employability of the transgender persons in the public and private sectors facilitate their education and required training or coaching through scholarships & to promote self-employment or to increase their present incomes provide skill development training, grants and loans to make their enterprises profitable.

12. Educational institutions should adopt Transgender inclusive policies for their institutions to address issues of marginalization, segregation, discrimination and harassment faced by students with different gender identities and sexual orientations.

13. To take measures to include transgender persons in Health Insurance Schemes of the Government & to establish separate Sero-surveillance Centres to address sexual health issues faced by transgender persons

14. To encourage research and periodic surveys on issues of concern to the transgender people to generate valuable evidence and information for policy formulation and effective intervention.

## **STRATEGIC INTERVENTIONS**

The State Policy for Transgender Persons, Odisha aims to provide strategic direction and guidance to the Government and its Departments on the welfare initiatives concerning transgender persons.

### **1. ACCESSIBILITY**

- a. The State will ensure all Government Departments and public authorities to extend a non-discriminatory treatment to TG Persons;
- b. The State will provide buffer-free access to education, public transport, health, social security, and other services;

- c. The State will make the necessary provisions to include Government agencies, including Local Self Governments managing public places will ensure equal access to TG community;
- d. The State will make provisions to provide safe space for purchase, rent of property for self or for office purpose;
- e. In order to ensure equal access to all services, include TG Persons as a third gender in all application forms for services, employment, and other benefits.

## 2. **FREEDOM OF EXPRESSION**

- a. The State understands the problems of Transgender person in addressing expression, the state will take steps to eradicate discrimination and violence faced by TG people;
- b. The State will take steps to prevent TG person from being punished or harassed for cross-dressing and their gender-specific behavior;
- c. The State will encourage TG cultural activities through: Providing opportunities for enhancing their artistic skills as well as facilitate their participation in state and other festivals to perform.

## 3. **Dignity and Life without violence**

- a. The State will strive to secure dignity of life to all TG persons through mainstreaming initiatives.
- b. Free legal aid to the TG person seeking redress against discrimination and violence;
- c. Every police station should amend forms to record and compile statistics of crime against TG person;
- d. Action against parents who desert or abuse their gender non-conforming children and against doctors who undertake any kinds of unethical conversion therapy;
- e. Laws against Sexual assault and harassment and domestic violence should be TG inclusive, and the State Government should ensure that laws against gender-based violence are made TG-friendly;
- f. The Juvenile Justice Act should also address the concerns of gender non-conforming children and therefore the Act should be suitably amended;

- g. Criminal and disciplinary action against delinquent police official in cases of violations of human rights of TG persons;
- h. Ensuring the rights of TG persons regarding marriage, partnership, live-in relationship and parenting;
- i. Provide separate toilet facilities at public places.

#### 4. **Equal Access to Education**

- a. Educational institutions/Universities will ensure provisions to address issues gender non-conforming students and TG students as well as establish an anti-discrimination cell to monitor any form of discrimination/harassment;
- b. Educational institutions/ Universities will include an option for transgender along with male and female in all forms to be prescribed;
- c. Raise awareness of the entire spectrum of student population towards the TGs, starting from the upper primary level.
- d. Facilitate goals set forth under National Education Policy 2020.
- e. All educational institutions shall have a committee which shall be accessible for transgender persons in case of any harassment or discrimination, with powers to ensure that transgender students do not have to be affected by the presence of the persons bullying them, including teachers.
- f. Every educational institution funded or recognized by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others.

#### 5. **Equal Access to Health Services**

- a. A dedicated Fund should be established for Sex Reassignment Surgery (SRS) in Government hospitals including separate HIV surveillance Centres;
- b. All Govt. hospitals should have policies on registration and admission of Transgender persons, training and sensitization of health care providers about TGs and their health issues;
- c. Directives to be issued by the Deptt of Health to all hospitals to provide health care facilities to the Transgender persons without any

- discrimination, so that they can access all hospitals without hesitation;
- d. The government will take steps to provide health facilities to transgender persons including separate HIV surveillance Centres, and sex reassignment surgeries.
  - e. Transgender persons will be included in the health Insurance;
  - f. A dedicated Fund should be established for Sex Reassignment Surgery (SRS) in Government hospitals including separate HIV surveillance Centres;
  - g. Directives to be issued by the Deptt of Health to all hospitals to provide health care facilities to the Transgender persons without any discrimination, so that they can access all hospitals without hesitation;
  - h. Proper counselling to the Transgender persons about options available in relation to gender transition along with provision for proper post-operative follow-up counselling and support to them.

## 6. **Employment Opportunity**

- a. Promote inclusion of transgender persons in existing programmes of skill training, self employment ventures, self help groups and other economic activities.
- b. Workplaces/ offices in public and private sector need to sensitize employers and employees on issues of Transgender persons;
- c. Anti-discrimination policies will be instituted and meaningfully implemented in the processes of hiring, retention, promotion and employees benefit schemes;
- d. Every establishment shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act.
- e. Workplace sexual harassment policies should be made Transgender persons inclusive.
- f. A dedicated three months paid leave should be provisioned for the Transgender persons who are going SRS or taking Hormonal Therapy.
- g. All the establishments will issue Equal Opportunity Policy for Transgender Persons and create an enabling environment.
- h. The employers would be sensitized to provide special facilities for Transgender Persons in workplace including separate toilets etc.

## **7. Right to family life**

- a. 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;
- b. Every Transgender Person shall have a right to reside in the household where parent or immediate family members reside;
- c. Every Transgender Person shall have a right not to be excluded from such household or any part thereof;
- d. Every Transgender Person shall have a right to enjoy and use the facilities of such household in a non-discriminatory manner;

## **8. Homestead land and housing**

- a. Equality on allotment of land in favour of Transgender Person for residential and commercial use in urban and rural area;
- b. The State will assess the requirement to establish Shelter Homes in different parts of the State for the exclusive use of TG persons according to the population of Transgender persons in the concerned areas;
- c. Transgender persons will be given equal opportunities for inclusion in different housing schemes including PMAY, Biju Pakka Ghar or any other central & state housing schemes;
- d. Day care centres for elders should be redesigned to accommodate the interests of Transgender persons; Capacity development of counsellors, Anganwadi workers and personnel of ICDS and ICPS and other frontline service providers to be responsive to the needs of Transgender children;
- e. Every Transgender persons will have access to sanitation facilities and safe drinking water.

## **9. Food Security**

- a. Scheme on Provision of Food - Ration Cards under Public Distribution System will be issued to the TGs depending on economic criteria to provide food at free/subsidized cost.

## **10. Facilitation in Transportation**

- a. Transport depos/stations to have harassment-free zones for transgender persons;

- b. Initiatives will be taken to prevent harassment of TG persons in Public transport.

#### **11. Special Schemes for Welfare of Transgender Persons**

- a. Frame and implement different welfare schemes for the beneficitation of Transgender Persons in the State;
- b. Initiatives will be taken by the State for retentions of Transgender Persons within the family and community.

#### **11. Social Security & Inclusion**

- a. Transgender Persons would be included in different existing social security schemes run by State and Central Govt. such as pension schemes such as NSAP/MBPY, MNEREGA, NULM, NRLM, and other welfare schemes.
- b. Promote special facilities of washrooms/restrooms etc in all public places for Transgender Persons.

#### **12. Offences & Penalties**

Whoever,

(a) compels or entices a transgender person to indulge in the act of forced or bonded labor other than any compulsory service for public purposes imposed by Government;

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;

(c) forces or causes a transgender person to leave household, village or other place of residence; and

(d) 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 punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.

#### **12. State Level Transgender Welfare Board:**

- a. Government will set up a Transgender Welfare Board to facilitate mainstreaming of transgender Persons in the State and oversee the issues concerning Transgender Persons and addressing their needs in a coordinated approach;
- b. The board will be provided all necessary support for infrastructure and human resources to take up different activities.

13. **Helpline for Transgender Persons:**

- a. The State Government will take initiatives for setting up of a helpline and call centre to assist the Transgender Persons in distress or in need of assistance;

### **Policy Implementation Arrangements**

Department of Social Security and Empowerment of Persons with Disabilities is the nodal agency to coordinate all inter-departmental coordination and convergence regarding the policy objectives of the Odisha Transgender Policy 2021.

State Level Transgender Welfare Board and a District Protection Cell are to be established by the Government of Odisha. The Welfare Board will monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of Transgender Persons.

The State Government will set up Transgender Protection Cell to monitor cases of offences against transgender persons and to ensure timely registration, investigation and prosecution of such offences under Director General of Police.

The Department of Social Security and Empowerment of Persons with Disabilities will decide the priorities for implementation depending on the budgetary allocation, and need of the transgender population. State Government will promote participation of non Govt. Stakeholders such as CBOs/ NGOs/Institutions in welfare of Transgender Persons with special focus on institutions created by Transgender Persons.

State Government will develop short term and long term implementation frame work ranging from one year to five years for successful implementation of the policy depending upon availability of resources. The implementation framework will include an integrated mechanism of monitoring and evaluation. It will identify and anticipate probable challenges; analyze capacities and capabilities for appropriate response by the implementing

agencies; and determine the best course of action from the available alternatives to achieve policy goals. The framework will actively engage various stakeholders and ensure a trained and dedicated cadre of social security officers for effective delivery of services.

### **Monitoring and Evaluation of State Transgender Person Policy**

The State Government will develop evaluation and monitoring mechanism for evaluation of programmes and policies concerning Transgender Persons as well as status of inclusion of TG Persons in existing schemes and services.

The State Government will develop a charter of Reference containing the type of outcome and output indicators associated with each of the four key dimensions, namely Right to Equality, Right to Dignity and a Life without Violence, Right to Freedom of Expression and Right to Equal Voice and Participation in Development.

District Social Security Officers at District level will monitor the implementation of the programmes.