

Bill 70 of 2014

Gender Identity, Gender Expression and Sex Characteristics Act

An Act for the recognition and registration of the gender of a person and to regulate the effects of such a change, as well as the recognition and protection of the sex characteristics of a person.

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Sub-article 1 of Article 3 of the Bill grants citizens and habitual residents of Malta the right to:

Recognition according to their gender;

For the free development of the person according to the persons chosen gender;

Treatment according to their gender, and the right to have documents that reflect their chosen gender;

To integrity and physical autonomy

In a democratic society, the vast majority would not harbour a problem with these rights.

On closer reading of the bill, serious complications and lacunae become clearly apparent.

The bill aims to provide a simplified procedure for persons requesting a change on official identification documents, consisting of a declaratory act drawn up by public deed in front of a notary. The notary is legally bound to explain to the person requesting change of his or her gender, the legal implications of the act, and is also legally bound to make the person declare that he has indeed understood the implications.

This of course raises several issues, which the legislator has clearly overseen:

1. The bill specifies that change of gender need not necessarily be done together with, or after surgical procedures, medical or psychological, hormonal or any other treatment.  
This means that situations will arise where a person's anatomy, and physical appearance will not correspond with official documents. Since persons who have changed their gender are entitled to equal treatment, what will happen in public toilets, and or public changing rooms and or public showers in such circumstances?
2. The person of indeterminate sex envisaged by the law, is not a biological hermaphrodite, but a minor whose gender has not been registered, or who is unsure of the gender he or she wishes to choose;
3. A deed is deemed public, because it is accessible to all, and a notary, and officials of the Notarial Archives, are legally bound to provide a copy of any public deed if so requested. However the law runs diametrically counter to what is already established under Chapter 55 of the Laws of Malta. Under Article 6 (4) the declaratory acts by public deed are to be kept confidential, and rectified birth certificates will not be accessible to the public. Furthermore, the rest of society is not only at a disadvantage with regards to this category of people, but are being discriminated against;
4. Both registries are termed 'PUBLIC', because the public has the right to access acts of civil status and searches as to assets and liabilities of others;
5. The law does not distinguish between the two Public Registries: i.e the Public Registry where one registers births, deaths, and other acts of civil status, and the

Public Registry, where public deeds, hypothecs, and other acts relating to assets and liabilities are enrolled.

6. How will the rest of society (like eg. Creditors) be protected against persons who have changed their gender when it comes to searches of assets and liabilities on the person? How will continuity be established with the change of name and gender? How will the link between the previous gender and name of an individual and the new ones be maintained? It has to be borne in mind that current practise is for searches in the public registry are conducted on the basis of one's particulars, and not on identity card number basis.
7. What will happen if a person decides to change gender in the period between committing an offence and being charged in front of the courts? When particulars on a charge do not correspond to the person accused, the charge will be deemed null and void.
8. Professionals across the board are not being made aware of the magnitude of consequences of the law as proposed, which will change life as we know it.
9. The law facilitates change of name and gender for whoever feels the need to do so, while the rest of the population, which constitutes the most absolute majority, who does not have any gender identity issues and who require to change their name or surname, still have to go through cumbersome and expensive legal proceedings. This is nothing less than blatant discrimination.
10. Positive discrimination, in favour of one category of persons over another, is still discriminatory. It is to be seen as regressive and despicable.

Sub article 2 of Article 3 stipulates that rights, relationships and obligations arising out of filiation or marriage will not be effected with change of gender. Here again, this article gives rise to various lacunae.

According to the Marriage Act, marriage is for heterosexual couples. Same sex bonds are termed 'civil unions'. Is this sub article intended to mean that there will be same sex marriages? Or will it mean that a marriage may be transformed into a civil union? Since the grounds for annulment are stipulated in the Marriage Act, will it be amended to cater for instances where one of the spouses changes gender, in order that the other spouse may file for an annulment?

Article 8 speaks about change of gender of minors. Sub article 1 states that parents exercising parental authority or tutors, may file an application before the Civil Court (voluntary jurisdiction) asking the court for a change of gender of the minor. Sub article 4 states that parents exercising parental authority or tutors of minors who did not declare the gender of the minor at birth have to declare the gender of their child before the child attains the age of 14 years. This declaration has to be made by public deed. With all due respect, we have a gender registration system that has worked very well for the past hundred years or more and the legislator is proposing that it be dismantled and replaced with an expensive and cumbersome system for the benefit of an absolute minority. While one appreciates and applauds initiatives where persons with gender identity problems are given rights of legal recourse that are expedient and inexpensive, yet this should NEVER be achieved by penalising the rest of society.

The issue of the public deed has already been addressed,

The legislator leaves declaration of gender of minor children in the hands of parents exercising parental authority or tutors, which declaration will not need to coincide with the anatomy of the child. This will most certainly lead to instances of abuse by parents/tutors who for whatever reason, favour one gender over another.

**Such a decision** represents one of the most important decision of any human being and **should only be taken by the person on attaining majority**. **Children under the age of 14** are vulnerable and immature; they will be going through adolescence, which is a very turbulent phase in life due to rapid physical and hormonal changes, and furthermore, they **are not capable of legally giving consent**.

Non registration of gender at birth will give rise to several practical anomalies. If a child is neither a he nor a she, how will the child be addressed? Will the child become an 'IT'? If the child becomes an it, like any other inanimate object, will it not automatically be regarded as having less dignity? Is this law paving the way for the legalisation of abortion?

How will teachers address pupils at school? What will happen to public, private and church schools that are intended exclusively for boys or girls schools? Will these schools be undermined as well in the best interests of an absolute minority?

What happens to children over the age of 14 but under the age of 18, whose gender is not registered? Which schools will they attend?

Will the national curriculum be changed to address this new reality? What will PSCD consist of? Will innocent children still struggling to grapple with and grasp basic concepts and harsh realities of everyday life be bombarded with complex sexual ideas and deviances, which is a waste of time energy, of dubious educational value, for the absolute majority of children who have no gender identity issues?

Will parents be able to opt out of any such teaching on sexuality during PSCD, or sex education for their children? Or will parents who feel it is inappropriate/harmful for their children to have these complex sexual issues **imposed** on them, be incarcerated for trying to protect their children? There is no logical reason why parents should not be allowed to make such a decision on behalf of their children, since parents are already allowed to opt that their children do not attend for certain lessons, like for example, religion.

Chapter 319 of the Laws of Malta, which is a source of constitutional law, and considered supreme, protects the enjoyment of the right to life, without undue interference from the state, and according to morals.

In conclusion, one cannot but refer to the play 'Antigone', written by Sophocles in circa 441BC, a play that all law students learn in their first year of the law course. Creon, the new ruler of Thebes decides to honour Eteocles with a proper burial, and leave Polyneices in public shame posthumously, by leaving his dead body unburied, prey to carrion animals, and vultures, the harshest punishment at the time. Antigone and

Ismene are sisters to the dead Polyneices and Eteocles. Antigone, defies Creon's decree, and goes out during the night and buries her brother, fully aware that she will be sentenced to death for it. She is caught, but is not fearful. The decree is unjust and goes against morals. It goes against natural law. She decides to do the right thing and afterwards, chooses honourable death, and kills herself before anyone could kill her. The play was revived after an act of resistance during Paris's occupation by the Nazis. However, the Nazis, censured Antigone upon its release. The morale of the story is that, laws may not always be just or moral. When they are unjust or immoral, citizens who have natural law and morality at heart, will have no option but to disobey and defy them, in spite of any possible consequences. Is this really what this government wants to achieve?

There is no doubt that current laws need to be amended to protect minorities, nonetheless those with gender identity issues. However, the way this bill is being proposed, seeks to achieve this at the cost of changing life as we know it, with a perverse proposition to reverse the democratic process. It is laudable that the legislator is trying to promote minority rights, but **under no circumstance can it ever be acceptable that minorities dictate terms to the majority**, especially when the majority is happy to give this particular minority their due rights. Resort to ridiculous and extreme measures, are unsolicited and absolutely unnecessary.