

STATEMENT BY THE KARNATAKA TRANSGENDER SAMITHI ON THE RIGHTS OF TRANSGENDER PERSONS BILL, 2014

We, the members of the Karnataka Transgender Samithi, acknowledge the efforts and welcome the move to introduce a bill to affirm the rights of transgender persons. However, we are of the opinion that the [bill in its current form](#) has certain loopholes and provisions that are not wholly favourable for the transgender community. We further opine that there have not been consultations with the transgender community at the grassroots- and district- levels. Notwithstanding the fact that this Bill brought out the struggles of the transgender community for dignity and equality in the public domain, we fear that parts of the bill are insufficient and vague, and need appropriate changes to ensure its effectiveness. A detailed section wise response to the provisions of the bill is annexed herewith as **Annexure - I**.

In order to strengthen the bill and to ensure that the concerns of the transgender community are truly reflected in it, the Samithi has the following suggestions to be made.

1. Incorporating the NALSA judgment and the recommendations of the Expert Committee on the Rights of Transgender Persons

The ruling by the Supreme Court of India in [NALSA v Union of India](#) ought to be invoked in the preamble and the spirit of the judgment should be carried out throughout the text of the bill. Further, there should be a provision in the bill that mandates the implementation of the recommendations of the [Expert Committee Report](#) *in toto* by the state governments and the central government.

2. No provision to curtail violence by the police

The bill in its current form does not address violence by police or other state authorities. This, in our humble opinion is a glaring omission in the bill. The PUCL-K reports in 2001 and 2003 as well as the [Ondede report](#) released in 2015 have extensively documented the violence faced by the transgender community from the police and other authorities.

3. No provisions pertaining to the personal sphere

There are no provisions to ensure or affirm the transgender community of their rights in the personal sphere. For instance, there are no provisions pertaining to marriage, inheritance or adoption. Provisions to ensure these become very important in light of the fact that many transpersons are disinherited as a result of their identity. Further, the NALSA judgment does affirm the right to marry and adopt and the same ought to be incorporated.

4. No provision to decriminalize sexual acts

The bill does not have provisions to affirm sexual rights of transgender persons. Section 377 of the Indian Penal Code [has been misused against transgender persons](#) for many years now. Further, sexual expression of many transpersons in through acts that could be criminalized under Section 377, this result in the transgender persons being made more vulnerable. Therefore, the bill should acknowledge the sexual rights of transgender persons.

5. Composition of the National and State Commission for Transgender Persons

The Commission, both national and state, ought to be headed by a transgender person and specifically, someone engaged with advocacy and activism at the grassroots level. Only a person who understands the complex cultural and social stigma and problems they faced would be best equipped to aid in their welfare. For this reason, the community ought to have majority representation in the Commission. This will ensure that policies are not swayed by any political factors but instead, focuses on the welfare of the community.

6. Inclusion of persons with intersex variation in the definition of 'Transgender'

The definition of transgender persons does not include persons with intersex variations. The Hon'ble Madras High Court in its 2014 decision in [Jackuline Mary v The Superintendent of Police, Karur](#) has affirmed that persons with intersex variation are also considered as transpersons. Therefore, the definition of 'transgender' in the bill ought to include persons with intersex variation as well.

7. Self Identification

The bill does not prescribe the process to be followed for self identification. There is a [process prescribed in the MSJE report](#) for identification by transpersons. However, the bill is silent on the point and should adopt the said procedure mentioned in the MSJE report or in the alternative prescribe a different process.

8. Acknowledging violence within the family

The Bill does not acknowledge family as an institution that perpetrates violence on transgender persons. There are numerous instances of violence being perpetrated by family members on transgender persons and the bill ought to provide for provision to address and remedy the same.

In light of the above, the Karnataka Transgender Samithi called for a press release and placed the following demands. A copy of the press release is annexed herewith as **Annexure - II**

DEMANDS

In light of the above, we, the members of the Karnataka Transgender Samiti, seek the following:

1. A national consultation should be organized to discuss and debate the provisions of the Transgender Rights Bill and all shortcomings should be addressed before the bill is present before the Lok sabha.
2. A delegation of members from the community shall be allowed to facilitate a consultative process to analyze the bill and the recommendations ought to be taken into consideration.
3. The recommendations of the MSJE report ought to be implemented in toto without any dilution.
4. The Commission envisaged in the bill should work with autonomous groups and should function in a decentralized way.

ANNEXURE - I

SECTION WISE RESPONSE BY THE KARNATAKA TRANSGENDER SAMITHI TO THE RIGHTS OF TRANSGENDER PERSONS BILL, 2014

Section	Suggestions/Recommendations
2. Definitions	
(b) 'appropriate government'	The definition of 'appropriate government' under the Bill as it stands is not comprehensive enough; further, a list of appropriate departments must be attached to ensure that there is accountability and it is known which department is to be held responsible. Also, a separate department must ideally be responsible as the Health Department is definitely not the ideal department.
(e) 'establishment'	Family should be included within the definition of 'establishment'
(s) 'services'	Insert 'tourism' in the definition of services
(u) 'transgender person'	The definition should also include 'intersex'
3. Guiding Principles	
<u>Chapter II: Rights and Entitlements</u>	
5. Transgender Children	Facilities for trauma faced by transgender children should also be included under the law.
11. Right to home and family	Explanation to Section 11 should be modified; the term 'family' in the explanation needs to be broadened and instead the term 'alternative family structure'/'community' should be used; the right to family is incomplete as transgenders still do not have the right to marry
<u>Chapter III: Education</u>	
13. Duty of educational institutes to provide inclusive education to transgender students	This section is vastly inadequate. (Health education should also be included, educational institutions should provide counsellors, etc.)

Section	Suggestions/Recommendations
Chapter IV: Skill Development and Employment	
15. Vocational training and self-employment	It was strongly suggested that instead of teaching skills such as candle making and so on, which do not help one sustain, skills that would help a transgender person sustain must be taught. A transgender person must be allowed to decide which skills they would be interested in and accordingly decide. They must be given opportunities of employment/self-employment in all sectors.
Chapter V: Social Security, health, rehabilitation and recreation	
17. Social Security	The main objection raised is that a pension of mere Rs.500/- is not enough to sustain any person (Especially if we consider the lack of opportunities available to Trans persons in the society). It should ideally be raised to an amount of Rs. 5000/- or more. Further, the phrase "counselling" under 17(2)(a) should be replaced with "comprehensive counselling". Also, see abovementioned comment to Sec. 5 of the Bill.
18. Healthcare facilities	With regard to sex-change operations, it is extremely important that the doctors are aware and informed of the different procedures for male-to-female and female-to-male and also, for intersex persons (if applicable). Further, SRS is not a one stop process and is a continuing procedure. Hence, the entire process ought to be free or subsidized.
19. Rehabilitation of transgenders	There is considerable harassment faced by transgender persons today, specifically those engaged in sex work. There should be counselling centres for people infected with HIV AIDS. The government should also provide for old age homes.
21. Reservation in primary, secondary and higher educational institutions	There is fear of discrimination. Another problem which arises with reservation in primary and secondary schools is that the age of the child is too young to determine

Section	Suggestions/Recommendations
	his/her identity. Hence, a non-discrimination clause should be preferred over reservation.
23. Incentive to employers in the private sector	This must be supplemented with a proper action plan to actually implement this.
<u>Chapter VII: National and State Commissions for Transgender Persons</u>	
26. Constitution of National Commission for Transgender Persons.	This Commission must be an autonomous body not under the Health Department or the Ministry responsible for Women and Children.
27. Term of office of Chairperson and members	The Chairperson must belong to the transgender community. The number of transgender people must be in majority. There must be at least four transgender persons in the Commission to ensure that the community is represented adequately.
38. Constitution of State Commission for Transgender Persons.	The same requirements as that of the National Commission. The body must consist of predominantly transgender persons and the Chairperson must be a transgender.
<u>Chapter VIII: Transgender Right Courts</u>	
46. Special transgender rights courts	The court ought to focus on criminal cases filed by transgender persons. There seems to be an emphasis on civil matters. The special court should focus on criminal matters filed by transgender persons.
<u>Chapter IX: Offences and Penalties</u>	
49. Offences by establishments.	
50. Penalty for hate speech.	The provision is unclear and the penalty too low.
51. Penalty for failure to furnish information	Unclear provision.

Section	Suggestions/Recommendations

ANNEXURE - II

PRESS RELEASE

KARNATAKA TRANSGENDER SAMITHI

Place: Bangalore

Date: 05/11/2015

Background:

In 2014, the Supreme Court of India affirmed the fundamental rights of transgender persons and acknowledged them as equal citizens in the case of *National Legal Services Authority v Union of India* (NALSA judgment). The Apex Court also accepted all the recommendations made in the Report of the Expert Committee on the Issues relating to Transgender Persons, a committee constituted under the Ministry of Social Justice and Empowerment. The Supreme Court has directed all state governments and the central government to implement all the recommendations *in toto*. Subsequently, the Rights of Transgender Persons bill, 2014 has been passed by the Rajya Sabha and is awaiting discussion in the Lok Sabha. However, there has been no consultation with the transgender community across the country with regard to the provisions of the bill.

Our Objectives:

There are many loopholes in this bill. The glaring omissions in the bill have been that there are not provisions pertaining to provision for prohibiting violence by the police and other authorities, there are no provisions pertaining to the personal sphere of transgender persons including marriage, adoption and inheritance. Further, this bill does not affirm the sexual rights of transgender persons. There is a 2% reservation provided for in the bill in primary and higher education, though this provision is well intended, prohibiting discrimination in educational institutions is paramount. Also, the definition of 'transgender' does not include persons with intersex variation. The bill does not capture all the aspects of the NALSA judgment and the MSJE report. The appointment, qualification and selection of the members of the National and State Commission for transgender persons under the act are unclear and vague. The representation of members of the transgender community in the commission is less. The process for self identification is not mentioned in the bill.

In the meantime, the transgender community in Karnataka along with the government authorities has formulated a Karnataka Transgender Policy which has not been considered seriously.

Therefore, in order to address these concerns and to plan the way forward, the members of the transgender community in Karnataka have come together to form the 'Karnataka Transgender Samithi'. The Samithi is an autonomous coalition of various organizations and individuals working on rights of transgender persons and consists of members across identities and geographical

locations in Karnataka. The Samithi has debated and discussed the bill and have come up with their recommendations.

In light of the above, the Samithi has the following demands

Demands:

1. A national consultation should be organized to discuss and debate the provisions of the Transgender Rights Bill and all shortcomings should be addressed before the bill is present before the Lok sabha.
2. A delegation of members from the community shall be allowed to facilitate a consultative process to analyze the bill and the recommendations ought to be taken into consideration.
3. The recommendations of the MSJE report ought to be implemented in toto without any dilution.
4. The Commission envisaged in the bill should work with autonomous groups and should function in a decentralized way

Karnataka Transgender Samithi. 2015.

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Online at <http://www.orinam.net/karnataka-trans-samithi-statement-on-rights-of-transpersons-bill>