

**THE RIGHTS OF TRANSGENDER PERSONS BILL 2015 -**  
**Comments/Suggestions**

4 January 2016

**Comments and suggestions** – In pursuance of notification of Ministry of Social Justice and Empowerment seeking comments/suggestions, Queer Campus Delhi, after deliberating and discussing with its members is sending its own set of comments and suggestions after perusing through The Rights of Transgender Persons Bill 2015, drafted and published by the Ministry of Social Justice and Empowerment. Queer Campus Delhi is a youth-led student support collective striving towards creating ‘safe space’ for LGBTIAQ students to express their gender identity and sexual orientation without fear and bring about inclusive approach towards these students in the university spaces. It also addresses issues that LGBTIAQ students face in the University and Colleges across Delhi.

**IDENTITY**

Chapter II of *Transgender Persons Bill, 2015* (hereinafter, TG Bill, 2015), deals with transgender identity. *Section 2 (s)* of the definition clause defines ‘transgender person’ as–

*“a person, whose gender does not match with the gender assigned to that person at birth and includes trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormone therapy or laser therapy etc.), gender-queers and a number of socio-cultural identities such as — kinnars, hijras, aravanis, jogtas etc. A transgender person should have the option to choose either ‘man’, ‘woman’ or ‘transgender’ as well as have the right to choose any of the options independent of surgery/ hormones.”*

Queer Campus urges to address the issues of intersex persons (persons born with indeterminate sex/ genitals) *inter-alia* providing an option for intersex children to have an option of ‘choosing to avoid gender’ or leaving the gender blank until they are capable of self-determination of gender identity and make necessary decision including the surgery if required as is followed in the case of Germany.<sup>1</sup>

Queer Campus is also concerned about the second clause where the process of certification is concerned. The Second Clause of Chapter II provides –

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<sup>1</sup> <http://www.bbc.com/news/world-europe-24767225> - Accessed on 4th January 2016

*“2. Certificate that a person is a transgender person should be issued by a state level authority duly designated or constituted by respective the State/UT on the lines of Tamil Nadu Aravanis Welfare Board, on the recommendation of a District level Screening Committee headed by the Collector/District Magistrate and comprising District Social Welfare Officer, psychologist, psychiatrist, a social worker and two representatives of transgender community and such other person or official as the State Govt/UT Administration deems appropriate.”*

Queer Campus suggests that the simple model followed in Argentina where a self-declaration by a person concerned person would be the best model, which was also deliberated by the expert committee.<sup>2</sup> Queer Campus strongly believes that the panel headed by district Magistrate, constituting psychologist/psychiatrist could be an issue especially taking into account of improper training and knowledge of psychologists and psychiatrists in specific to transgender issues in India. We have many cases where young persons identifying themselves as transgender were taken to psychologists//psychiatrists and made to undergo treatment including electric shock treatment. It's a fact that many psychologists/psychiatrists do advertise that they could cure a person who claims to be of the gender opposite to that of the one assigned at birth. Further, availability of well-trained psychiatrists and psychologists to deal with transgender issues would be an issue in remote districts of the country.

It is also suggested by certain transgender persons at Queer Campus that those who identify themselves as transgender but does not belong to any of the social groups such as *Hijras, Kothis, Aravanis, Jogtas etc* could be further prejudiced by the transgender persons belonging to these social groups, who would also constitute the Screening Committee. It's well known that these social groups operate on an economic model where *Chelas* pay a mandatory sum of money to *Gurus* and persons not belonging to such social groups could face prejudice and bias.

The principle of 'self-determination' is one of the core principles on which the Supreme Court in NALSA judgement recognised 'third gender'. The Transgender Persons Bill is predicated upon this principle of 'self-determination' and hence a bureaucratic process such as screening committee would go against this basic tenet, which, the welfare legislation like TG Bill stands upon. We suggest that a simple process such as self-affidavit or self-endorsement of gender identity submitted via a proper channel (e.g., similar to the process in Argentina or the UID or Aadhaar in India – in which the person can self-declare as 'transgender') should be followed.

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<sup>2</sup> Report of the Expert Committee on the Issues relating to Transgender Persons, Chapter Four, pg. 33 - <http://socialjustice.nic.in/pdf/chapter4.pdf> - Accessed on 4th January 2016

## EDUCATION

Chapter IV deals with welfare measures in education for transgender persons. *Section 15* provides that Government and local authorities shall ensure that all educational institutions funded or recognized by them should provide inclusive education. It also enumerates various measures such as admitting transgender students without discrimination, providing reasonable accommodation, scholarship/ entitlements, fee-waivers etc.

*Clause (vi) of Section 15* provides for the establishment of anti-discrimination cell to monitor any form of discrimination against the transgender community. Queer Campus urges that specific provisions should be provided to ensure that transgender persons are included in anti sexual harassment policies of universities and colleges. Harassment and discrimination based on gender identity are closely linked to the perception of sexual identity. Transgender students in specific are mocked, teased, harassed, sexually assaulted and even raped not only due to their gender identity but also because of their sexual orientation associated and perceived by the others. Bullying, harassing a person by making denigrating comments on gender identity and sexual orientation is one of the major reasons for high-drop out rates of transgender students in schools, colleges and universities. Providing specific provision and mandating that all educational institutions (including private/ religious educational institutes) to have the sexual harassment policy in place would ensure that the principle of anti-discrimination would be effectively enforced in educational institutions.

Hence, Queer Campus urges to include the following definition of sexual harassment –  
***“Any person making any derogatory or denigrating comment verbally or any inappropriate behaviour physically or through gestures about a person’s gender identity or sexual orientation would amount to sexual harassment.”***

This provision should be applicable irrespective of a person identifying himself / herself themselves as transgender. This is because in many cases adolescents/ students would be confused about their exact gender identity and may not be able to articulate their gender identity in clear terms. This provision should be gender neutral and should not discriminate the perpetrator on the basis of gender. Queer Campus also urges to provide specific provisions for penalty *inter-alia* suspension of the perpetrator of sexual harassment from the University/ College.

Further provision should be made in the TG Bill, 2015 to combat sexual harassment of transgender persons at work place on the lines of the existing Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Queer Campus also urges to create awareness about transgender persons in school, medical, judicial and psychology curriculums by including chapters on transgender persons and their rights.

### **RESERVATION**

Affirmative action remains the commitment of the government in the realisation of the principle of 'equity', which is interlinked with the idea that fairness and interpersonal comparisons of social groups are balanced to create an inclusive development policy. The original Bill passed by the *Rajya Sabha* provided for separate 2 percent reservations to transgender persons in all government institutions of primary, secondary and higher education as well as in jobs.<sup>3</sup> However, the current TG Bill, 2015 drafted by Ministry of Social Justice and Empowerment has provided a diluted version of this provision virtually making the provision of reservation a mirage.

*Section 23* of the TG Bill, 2015 provides that the transgender persons who do not belong to Scheduled Caste and Scheduled Tribe should be declared as Backward Classes and be provided reservations under the existing ceiling of OBC category. This completely defeats the purpose of affirmative action for the welfare of transgender persons and to integrate and include them in the community. The literacy rates being very low in the transgender social groups such as *Hijras, Kothis, Kinnars, Aravanis, Jogta* etc. with high drop out rate, Queer Campus urges to provide separate reservation of 2 per cent as envisioned in the original Bill passed by the upper house of the Parliament.

Further, transgender persons belonging to Scheduled Caste/ Scheduled Tribe should have the option to choose either the reservation provided under SC/ST category or the 2 percent reservation provided for the transgender persons.

*Section 23* of the original Bill, Passed by the *Rajya Sabha* had provisions with regard to incentivizing the private sector to ensure 2 per cent of their workforce to comprise of transgender persons.<sup>4</sup> Queer Campus strongly opposes for deletion of this provision and seeks an explanation as to the basis of deleting this provision in the new TG Bill, 2015.

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<sup>3</sup> Section 21 and Section 22, The Rights of the Transgender Persons Bill 2014 - <http://164.100.47.4/BillsTexts/RSBillTexts/asintroduced/trangder-E.pdf> - accessed on 4th January 2016.

<sup>4</sup> Section 23, The Rights of the Transgender Persons Bill 2014 - <http://164.100.47.4/BillsTexts/RSBillTexts/asintroduced/trangder-E.pdf> - accessed on 4th January 2016.

## **HEALTH AND MEDICAL FACILITIES**

Queer Campus urges to provide hormone therapy and counselling free of along with sex reassignment surgery which is already provided free of cost in the TG Bill 2015. Further, provisions should be made for separate wards for transgender persons and should provide provisions to address sexual assault or molestation at the hospitals by the Staff. Clear provisions of penalty or punishment must be specified if any discrimination is meted out to the transgender person by the hospital staff including the doctors.

## **PENALTIES AND ENFORCEMENT**

The original Bill passed by the *Rajya Sabha* had a separate chapter on offences and penalties for persons or establishments committing the offence under the Act.<sup>5</sup> However, the new TG Bill, 2015 has deleted the chapter on offences and penalties. Queer Campus raises strong objection for the lack of enforcement provisions in the new TG Bill 2015. The penalties and the offences need to be clearly specified and should have clear provisions regarding the non- enforcement of provisions of the TG Bill and consequential penalty including imprisonment.

## **TRANSGENDER RIGHTS COURTS**

Access to justice remains one of the major hurdles for a marginalised community like the transgender community. Queer Campus strongly urges to reinstate the provision of Transgender Courts as it was present in the original Bill passed by the *Rajya Sabha*<sup>6</sup> and make provisions for ‘time bound resolution’ of the cases before these Courts.

## **NATIONAL AND STATE COMMISSIONS FOR TRANSGENDER PERSONS**

Queer Campus strongly urges to re-instate the provisions, which provided for National and State Commissions for Transgender Persons in the original Bill passed by the *Rajya Sabha*.<sup>7</sup> Queer Campus believes that a separate commission to specifically look into the issues of transgender persons is a step towards integrating transgender persons into the community. Further, the involvement of transgender persons in the State and National Commission would ensure that the issues of transgender persons are addressed effectively.

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<sup>5</sup> Chapter IX, The Rights of the Transgender Persons Bill 2014 - <http://164.100.47.4/BillsTexts/RSBillTexts/asintroduced/trangder-E.pdf> - accessed on 4th January 2016.

<sup>6</sup> Chapter VIII, *ibid*

<sup>7</sup> Chapter VII, *ibid*

## **PROPERTY, ADOPTION AND MARRIAGE RIGHTS**

Queer Campus urges to provide clear, unambiguous provisions relating to the property rights of transgender social groups such as *Hijras, Kinnars, Kohthis, Aravanis, Jogtas* etc. after a comprehensive consultation with these groups.

Marriage is closely associated with sexual rights and hence the transgender persons Bill should address this issue by reading down *Section 377* of Indian Penal Code and decriminalising consensual sexual act between two individuals in private.

Further, provisions relating to the right of the transgender person to adopt a child, inherit property, marry, divorce, maintenance and application of Domestic Violence Act should be included in the TG Bill, 2015.

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