

Date: November 4th, 2016

To,
Director
Standing Committee on Social Justice and Empowerment
Lok Sabha Secretariat
Parliament House
New Delhi

Subject: Addendum to Letter "*Suggestions on Transgender Persons (Protection of Rights) Bill, 2016*"

Addendum to Letter from LBT groups, individuals, and allies to the Standing Committee of the Ministry of Social Justice and Empowerment

We are writing in continuation to our letter dated October 20th (*Subject: 'Suggestions on Transgender Persons (Protection of Rights) Bill, 2016'*). We the undersigned met on November 1st to discuss and examine the bill with groups and individuals across the country. On looking at the bill more closely, we are confirmed in our opinion that this bill needs to be redrafted after a process of extensive deliberation and in depth consultations with the transgender and intersex communities before it can be considered as sufficiently addressing the needs of the communities it is intended to benefit. We say this for the following reasons:

1. **Regarding the begging clause:** The begging clause in the 2016 Bill is highly discriminatory and criminalizes persons who are already vulnerable. We cannot accept such provisions.
2. **Process of arriving at the language and content of the bill:** The Private Member's Bill of 2014 contained clauses and language that came very close to meeting the needs of the community, but the government did not pass it to the Lok Sabha, saying that it was in the process of drafting a separate bill along similar lines. The MSJE Bill of 2015 reflected the content of the 2014 bill and called for responses from stakeholders. Recommendations were accordingly sent in by transgender and intersex individuals, groups, and organizations as well as allies. We see none of these recommendations reflected in the revised bill of 2016. Conversely, the clauses that were originally contained in the 2014 and 2015 bills, and should have been retained, have also been removed.

3. **Definition of Transgender in the Bill:** NALSA, Private Member 2014, and MSJE 2015 maintained a consistency of definition for transgender persons, while the 2016 Bill is completely different from these documents and the definition it uses does *not* align with our identities and lived realities. There is also no explicit mention of transgender and gender non-conforming persons who were assigned gender female at birth. A nuanced understanding of gender identity needs to be the crux of the bill.
4. **Conflation of Transgender with Intersex:** In 2015, the bill was framed as the “Rights of Transgender Persons” and there was no conflation between the understanding of the terms “transgender” and “intersex.” We find that both these identities have been clumped together in the 2016 Bill without a clear understanding of each separately.
5. **Naming of the bill:** We further recommend a renaming of this bill to “The Intersex and Transgender Rights Bill.” While doing this, the Bill should clearly give two separate definitions, one for transgender persons and one for persons with intersex variations, and in each clause of the bill, there should be an understanding of how that particular clause affects different communities of transgender persons and persons with intersex variations.
6. **Regarding persons with intersex variations:** In addition, there should be a separate chapter on persons with intersex variations, which none of the previous bills have. In particular, there is urgent need to make sure that so-called corrective surgeries and corrective procedures by medical doctors on intersex infants/children are not allowed by law. The other issues related to persons with intersex persons and communities have to be understood through face-to-face consultations so that their concerns are included in this bill.
7. **Regarding the provision for a screening committee:** The NALSA judgement underlined the need for self-identification. A screening committee should not be required for self-determination of gender identity, which is a basic right of every citizen. Validity of this self-identification is also required for redressal of violation of rights accorded by this law. The notion of self-identification should be retained in the bill.
8. **Regarding legal documentation processes:** The process to assert one’s self identification via documents and identity cards should be simple, uniform across country, and as accessible as possible. We find different states are instituting different processes and people are currently finding it very hard to navigate these systems. It is necessary to make the procedures accessible in remote parts of the country, and also for people who have limited resources.

9. **Affirmative Action for access to education, employment, and other benefits:** We definitely think that there is a need for affirmative action in terms of special schemes and reservations for access to education, social security, employment, pension, and other such benefits for transgender persons and persons with intersex variations. Many of these have been spelt out in the MSJE Expert Committee report of 2014 and were reflected in the Private Member's Bill of 2014. We insist that these be spelt out in greater detail in the 2016 Bill.
10. **Special status as OBC, Socially Backward Classes (SBC) / Economically Backward Classes (EBC):** SBC/EBC status has been spoken about in the NALSA judgement, the MSJE Expert Committee report, and in the Private Member's Bill of 2014 and, yet, is absent in the 2016 Bill. Since the transgender community is diverse, there have to be clear rules laid out for who is eligible for these schemes and the process of screening for access to these. It is imperative that these decisions are made in complete consultation with the transgender and intersex communities.
11. **Dalit transpersons:** The bill does not address the particular case of Dalit transgender persons. Will they receive additional benefits and protections as they are multiply marginalized? How would these benefits be categorized? It needs to be clarified in consultation with the Dalit transgender community as the main stakeholders.
12. **Transgender / gender-nonconforming children:** The 2014 and 2015 Bill did address some specific issues of transgender/gender non-conforming children. However, in the 2016 Bill, there is absolutely no recognition of the special needs of these children. For example, there is ample evidence of the violence from natal families and the pressures put on the transgender/gender-nonconforming child to conform to the gender they are assigned at birth. There needs to be serious thought and discussion on the measures that need to be taken to address these situations, and to ensure violence free environments for all children.
13. **Clause regarding the natal family:** Further, this bill criminalizes the adult transgender person and makes it compulsory for them to stay with their natal family; any outside support to escape from violence perpetrated by the natal family is, in effect, being penalized. This same natal family later becomes the social and financial responsibility of the trans person and stands to inherit their property in the event of their death despite the lack of support for the person's own needs. The transgender person's chosen family is delegitimized and not given space or protection. There is also no recognition of adoption, custody of children from prior marriages, or partnership rights and of Hijra

families/gharanas, which are presently a source of support and care for many transgender persons.

14. **Violence:** Specific targeted violence is perpetrated against transgender persons and persons with intersex variations by a variety of actors and institutions, including the natal family and the state. There is no mention of this violence, or how it will be addressed. Targeted violence can take multiple forms – verbal, emotional, physical and sexual. The bill needs to explicitly recognize that sexual violence in such contexts is highly prevalent and is part of this targeted violence and hence needs to be included in any clauses on violence and discrimination.

15. **Implementation Committee:** The Tiruchi Siva Bill speaks of a National Commission for Transpersons, which is responsible to make policies and laws, as well as investigate complaints. This commission should be decentralized to ensure there is balanced representation as well as reflection of regional concerns. It should have adequate representation from within various trans and intersex communities. As the Tiruchi Siva Bill states, this committee should be instrumental in both creating and implementing policies.

For all the above reasons and the ones that we have stated earlier in our earlier letter (also attached), this bill cannot be passed in this form under any circumstances. We insist that the standing committee conduct face-to-face meetings with stakeholders spread over all regions of the country to fully understand the shortcomings of the proposed bill. For now, we urge the standing committee to send the bill in its current form back to the drafting board.

Sincerely,

Organisations:

1. CREA, Delhi
2. Critical Action – Centre in Movement (CACIM)
3. LABIA – A Queer Feminist LBT Collective, Mumbai
4. LesBiT, Bengaluru
5. MARG, Delhi
6. Nazariya: A Queer Feminist Resource Group, Delhi
7. Nirangal, Chennai
8. Pratyay Gender Trust, Kolkata
9. Sahayatrika, Kerala
10. Sappho for Equality, Kolkata
11. Vikalp Women's Group, Vadodara
12. XUKIA, Guwahati

Individuals:

1. Aahana Mekhal, Sahayatrika, Kerala
2. Aarav Singh, CACIM, Delhi
3. Abhisikta, LABIA – A Queer Feminist LBT Collective, Mumbai
4. Akanksha, Mumbai
5. Amalina KD, Delhi
6. Anindya Hajra, Pratyay Gender Trust, Kolkata
7. Aryan Pasha, MARG
8. Asha Achuthan, LABIA – A Queer Feminist LBT Collective, Mumbai/ Sappho for Equality, Kolkata
9. Astha, Bangalore
10. Avimannyu, Sappho for Equality, Kolkata
11. Barsa, Kerala
12. Brandt D'Mello, Mumbai
13. Chayanika Shah, LABIA – A Queer Feminist LBT Collective, Mumbai
14. Chinju Ashwathi, Sahayatrika, Kerala
15. Christy Raj, Bangalore
16. Deepa Vasidevan, Kerala/Goa
17. Ditilekha, Xukia, Guwahati
18. Ketki Ranade, LABIA – A Queer Feminist LBT Collective, Mumbai
19. Kiran, Solidarity Foundation Bangalore Fellow, Bangalore
20. Malobika, Sappho for Equality, Kolkata
21. Maya Sharma, Vikalp Women's Group, Vadodara
22. Pramada Menon, Delhi
23. Poushali, Sappho for Equality, Kolkata
24. Provat, Sappho, Kolkata
25. Pushpa Azad, CACIM, Delhi
26. Raj Merchant, LABIA – A Queer Feminist LBT Collective, Mumbai
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34. Sonu Niranjan, Bangalore
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36. Sunil Mohan, Bangalore
37. Sunita Kujur, CREA, Delhi
38. Sutanuka, Sappho for Equality, Kolkata
39. Svati Shah, Delhi
40. Tanmay, Jan Jagran Shakti Sangathan, Bihar/LABIA – A Queer Feminist LBT Collective,
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