

Date: October 20th 2016

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

Subject: Suggestions on Transgender Persons (Protection of Rights) Bill, 2016

Respected Madam/ Sir,

We are writing to you in reference to the recent Transgender Persons (Protection of Rights) Bill, 2016 (and the subsequent call for recommendations by the Parliamentary Standing Committee), that has moved away from the NALSA judgement (2014), Private Member's Bill by Tiruchi Silva (2014), and MSJE Bill (2015) to such an extent that we strongly believe that it will result in further discrimination and violence towards the transgender community.

While the NALSA judgement and the subsequent bills provided a ray of hope to the community, the current bill of 2016 has grossly undermined NALSA'S spirit and technicalities. Based on preliminary readings of the bill we would like to flag certain concerns. Going forward, we believe the aspects we are objecting to are non-negotiable and need to be addressed and revised urgently. Additionally, consultations across the country are already under way. Hence, for a detailed analysis, we insist that the government allow us (activists, organisations and people from the community), a minimum period of 30 days in order to produce a cohesive list of objections to the bill.

Concerns and suggestions:

1. **Definition:** The definition takes away the right of a transgender person of self-identification and is instead based on a biological determinist argument and the hegemonic notions of gender binary. Private Member Bill of Tiruchi Silva in 2014 had a far more inclusive and gender-sensitive understanding of the transgender identity that has not been opposed till date. The bill defined a transgender person as "Transgender Person' means 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." This definition was echoed in the MSJE Expert Committee Report. Such an understanding is absent from the current bill. It conflates the definition of transgender and persons with intersexed variations, who may or may not identify as transgender. This conflation is harmful for both groups. We reject this definition stated in the newly revised Bill.

2. **Inclusion of Trans persons assigned gender female at birth:** The transgender bill also lacks an explicit recognition of the trans persons who are assigned the female gender at birth. While the violence and struggles faced by trans persons assigned male at birth and those assigned female at birth are a result of class and caste-based heteropatriarchy, the visibility and mobilisation of the former is higher as compared to the latter, because of the cultural and historical recognition. The issues of trans persons assigned female at birth are also different and need to be addressed specifically by the bill as well.
3. **Screening Process:** The recent bill contains several contradictory statements. On the one hand it states that "A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity", on the other it demands that an individual make an application and go through an elaborate screening process that will determine whether the applicant is trans or not through a certificate. The bill clearly says that the certificate is needed to confer rights and also as proof of identity. This negates the very idea of self-identification of transgender persons. The idea of 'trans' is a vast spectrum that includes several identities within it. For instance, there are several individuals assigned male at birth who identify as 'woman' and not 'trans'. Such a process pushes people to identify only as 'trans'. Hence, the screening process violates a person's dignity and denies the right to choose from the multiplicity within the gender spectrum that extends far beyond the limited definition mentioned in the recent bill. It is also likely to create gate keepers and power brokers within different levels. Furthermore, in case such a screening committee comes into force, there is no provision mentioned to challenge its decision. We strongly demand the scrapping of such a discriminatory screening committee that has been repeatedly included in the NALSA judgement and in subsequent bills.
4. **Family:** The bill upholds the institution of the family as a primary unit of support, which shows how negligent the bill has been towards the everyday realities and violences faced by trans persons within the family structure. The lack of awareness shown to the violence from families to those who transgress gender norms is evident from the clauses that keep underlying the forcible separation from the family. The insertion of a clause like clause 13(1) means that this will be used against those who may help young people

get out of violent homes or families. Furthermore, Section 13 (3) states that if a family member is unable to take care of an individual, then he/she shall be sent to a rehabilitation centre. The use of the term rehabilitation itself reeks of a moralist position and moves away from a language of *rights*. We have seen violence and force that is being exerted on young persons asserting their choices around sexuality and choice of partners in the name of protection within the family. Here saying that all persons shall be rescued, protected and rehabilitated seems like a way to push people back into violent homes especially when they are dependant. "Rehabilitation" will also severely curb the freedom of expression and the freedom of movement of a trans person, and here the Bill contradicts itself again. The recent document refuses to recognise and acknowledge the importance of community structures, such as Gharanas or Hammams that have been established by the Hijra community and function as alternate family support systems. Nor does the Bill acknowledge adoptive families and families of choice by transgender persons.

5. **Reservations:** The MSJE Bill had a section on reservation in employment. It reads, "Those transgender persons who by birth do not belong to Scheduled Caste or Scheduled Tribe may be declared as Backward Class and be entitled to reservation under the existing ceiling of OBC category." The recent bill does not declare transgender persons as Backward Class nor does it list any clear entitlements and takes away the promise in MSJE report of affirmative action in terms of reservations. Here we ask, what about those transgenders who belong to the SC/ST category? Will they receive additional benefits and protections? The bill does not clarify these details.
6. **Implementation:** Although the Bill lays out obligations of establishments and persons, there it does not lay out redressal mechanisms. There are no clear guidelines which mention competent authorities that transgender persons may turn to or ways to seek justice while facing discrimination.
7. **Begging:** The Bill criminalises begging which will leave the already vulnerable population that depends on begging and sex work with fewer means of livelihood. Defining begging as "forced or bonded labour" as mentioned in the Bill, reflects the prejudices against the trans community. The community is not seen as a space where people get support and affirmation. In the absence of any affirmative action, this kind of attack on spaces where there is affirmation is unacceptable. The bill seems like a direct attack on the hijra family system and the right of trans people. Hence the bill, rather than protecting the rights of transgender persons, ends up curtaining their rights and harming their lives. For the above reasons we (the below signed organisations and individuals) demand an extension in the sincere hope that a revised version will eventually lead to a more inclusive and

just bill that fights violence, stigma and discrimination against the transgender community.

Sincerely,

Organizations

1. Alternative Law Forum
2. Astitva Trust - CBO
3. Balaram Dey Street Ananadam
4. CREA
5. Equations - Karnataka
6. Forum Foundation, Vadodara
7. Good As You - Bangalore
8. JEEVA NGO - Karnataka
9. Karnataka Sexual Minority Forum, Karnataka
10. Karnataka Transgender Samithi, Karnataka
11. Kerala Network of Sexworkers, Kerala
12. LABIA: A Queer Feminist LBT Collective, Mumbai
13. Lesbit- Bangalore
14. Maharashtra Tiritiya Panthi Sangatana -CBO
15. Mara Media Collective - Bangalore
16. MUSKAN, MSM and TG sex worker Sanghatana, Sangli
17. The Naz Foundation (India) Trust
18. Nazariya: A Queer Feminist Resource Group, Delhi
19. Partners for Law in Development
20. Payana - Community Managed and Run Organisation, Karnataka
21. Peoples Union of Civil Liberties - Karnataka
22. Queer Collective- TISS
23. Samakami, Meghalaya
24. Sanhati - Karnataka
25. Sappho for Equality, Kolkata
26. Sarathya - Karnataka federation of Trans CBOs, Karnataka
27. Stree Sangathan, Chhota Udaipur
28. Swabhava Trust - Bangalore
29. Swatanthra – NGO, Bangalore
30. The Equals Centre for Promotion of Social Justice
31. The Naz Foundation (India) Trust
32. Vikalp (Women's Group) - Subrung
33. Xukia, Guwahati

Individuals

1. A. Mani
2. A. Suneetha, Researcher, Hyderabad
3. Abha Bhaiya - Feminist
4. Aditi - Equations
5. Aditya Prasad, Activist and Writer, Bangalore
6. Advocate Mary Scaria
7. Ajita
8. Akansha, Mumbai
9. Akhil Kang – Lawyer
10. Akkai Padmashali - Transgender Rights Activist
11. Amalina KD, queer feminist, Delhi
12. Amba Salelkar - Advocate
13. Angarika
14. Ankur - Foram Foundation
15. Annie
16. Archana Dwivedi
17. Arundhati Dhuru
18. Ashwin Thomas - Researcher
19. Astha
20. Atharv S - Transgender Activist
21. Aatreyee Sen - Forum for Human Rights and Justice - Himachal Pradesh
22. Balaram Dey Street Ananadam
23. Bhuvana Balaji - Researcher
24. Bindu Doddahatti - Advocate
25. Chandini - Transgender Rights Activist
26. Charupriyan - Transman
27. Darshana Mitra - Advocate
28. Deepan Kannan
29. Deeptha Rao - Advocate
30. Dipakanta Mitra - Activist
31. Dr. AK Jayashree - Professor, Community Medicine, Academy of Medical Sciences -
Kannur
32. Dr. Sylvia Karpagam - Public Health Doctor
33. Ekta Mittal
34. Gautam Bhan
35. Gowthaman Ranganathan - Advocate

36. Gurukiran Kamath - Activist
37. Ishani Cordeiro - Women's Rights Lawyer
38. Jaya Sagade
39. Kalpalatha - Teacher - Hyderabad
40. Kamayani Bali Mahabal, feminist and human rights activist
41. Kanaka Murthy - Sculptor Bangalore
42. Kavita - Activist
43. Kavita Krishnan - Secretary AIPWA
44. Kiran Shaheen
45. Kishore Govinda - Scientist St Johns Research Institute
46. L Ramakrishnan
47. Lata Singh
48. Laxmi Narayan Tripathi - Transgender Activist
49. Lekha Adavi - Activist
50. Mallu - Transgender Rights Activist
51. Manish Gautam - Project Assistant IISc
52. Meena Saraswati Seshu, Sangram, Sangli.
53. Meet Tara Dnyaneshwar, Mumbai
54. Midhun - Transman
55. Moulee, Chennai
56. Mr. K. Ramalingeshwarara Rao, Manager, -WINS, Tirupati
57. Mridul Dudeja, Transman and activist
58. Ms. R. Meera, Founder Secretary - WOMEN'S INITIATIVES (WINS), Tirupati
59. N Jayaram - Journalist Bangalore
60. Narayana Murthy
61. Neha Gupta, Communications Officer
62. Niruj Mohan - Astronomer
63. Noor Enayat, New Delhi
64. OP Ravindran - Dalit Rights Activists
65. Padma Deosthali, CEHAT
66. Pawan Dhall – Queer Activist
67. Pushpa Achanta- (WSS-Karnataka)
68. Rachana Johri AUD
69. Radhika Raj - Researcher
70. Rajeshwari - Transgender Rights Activist
71. Rakshita - Transgender Rights Activist
72. Ranjitha - Transgender Rights Activist
73. Rekha Raj - Dalit Feminist

74. Richa Minocha - Jan Abhiyan Sanstha, Himachal Pradesh
75. Ritambhara Mehta
76. SapAna Mhatre - GenderQueer Person
77. Saptak Narula - Mathematician - Delhi
78. Savitha - Transgender Rights Activist
79. Seema Srivastava
80. Shakun Doundiyakhed - Womens Rights Activist
81. Shambhavi Madhan
82. Shambhavi Madhan - Queer Feminist
83. Shravanti Dasari - Researcher
84. Shreekanth Kannan – Transman
85. Shruti Arora
86. Siddarth Narrain
87. Sonu Niranjana - Transman and Activist - Bangalore
88. Soumyashree Bharghava - Transgender Rights Activist
89. Suma - Transgender Rights Activist
90. Sumathi
91. Sumitra - Actor and Transgender Rights Activist
92. Sunil
93. Sunil Gupta - Artist
94. Swati Sheshadri - Activist
95. Tanmay, Jan Jagran Shakti Sangathan, Bihar
96. Tanushree - Transgender Rights Activist
97. Uma (Umesh.P) Individual, Transgender Rights Activist, Bangalore
98. Uma V Chandru - WSS
99. Umesh P – Activist
100. Vani Subramaniam
101. Veena Shivalingaiah - Transgender Rights Activist and Politician
102. Vinay Chandran - Counselor - Sahaya Helpline
103. Vinay Sreenivasa - Member Bruhat Bengaluru Beedi Vyaparigala Sanghatanegala Okkoota
104. Virginia Saldanha - Activist, Mumbai
105. Yogesh - MPhil Scholar