

Honorable Shri Venkaiah Naidu,  
Vice-President, Republic of India,  
Chairperson, Rajya Sabha  
December 19, 2018

**Sub: Oppose Transgender Persons (Protection of Rights) Bill, 2018 and Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018**

**STOP CRIMINALISING BODIES AND LIVES**

We, the undersigned transpersons, sex workers, activists, academics, and allies in Karnataka, work on various forms of extreme exploitation and with the transgender community and sex workers (including but not limited to transgender sex workers). We express grave concerns with the regressive Transgender Persons (Protection of Rights) Bill and the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018. Both bills are pending consideration before the Rajya Sabha now. We request the **Honorable Speaker to not introduce the Transgender Bill and Trafficking Bill in the Rajya Sabha and to please refer these Bills to a Select Committee of the Rajya Sabha.**

Recently in August 2018, the Delhi High Court in Harsh Mander and ors. vs. UoI has observed that the approach of criminalising begging was not a solution to addressing the problem. “The State simply cannot fail to do its duty to provide a decent life to its citizens and **add insult to injury by arresting, detaining and, if necessary imprisoning persons who beg in search for essentials of bare survival**”. Both the Bills (Transgender Bill and Trafficking Bill 2018) are fundamentally motivated by a criminalizing impulse. Issues which have to be seen within the lens of development are sought to be dealt with by criminal law. The state instead of taking on welfarist / developmentalist functions chooses to focus on incarcerating the poor.

Further, in September 2018, a five judge bench of the Supreme Court in Navtej Singh Johar and ors. vs. UoI categorically held that “History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries. The members of this community were compelled to live a life full of fear of reprisal and persecution... **The LGBT persons deserve to live a life unshackled from the shadow of being ‘unapprehended felons’.**”

**Transgender Bill**

**1. Bill does not address concerns or demands of the community**

It may be noted that on the same issue, in 2016, Rajya Sabha passed the comparatively more progressive Private Member's Bill drafted by Tiruchi Siva, DMK member of the Rajya Sabha, which had been drawn up in consultation with the community, and which has since then been pending before the Lok Sabha, whereas the current version of the bill, including the amendments that were passed in the Lok Sabha, have come about without any consultation with the community and thus do not reflect the demands of the community at all.

## **2. Bill is a retrograde step from previous iterations of transgender persons' rights**

While Tiruchi Siva's bill had several progressive positions such as reservation, employment and education opportunities, right to self determination of gender identity, special courts, in line with the NALSA judgment, a Transgender Rights Commission and more; the Government of India Bill which was passed in the Lok Sabha should be more appropriately retitled the **Transgender Persons (Violation of Rights) Bill**, since it violates more rights than it protects. The current version of the bill does not address accountability measures, within the state and its functionaries, police violence, violence from natal families, etc.

## **3. Bill is inadequate for the protection of transgender persons**

The version of the Bill passed on December 17th upholds **criminalization of trans people** for traditional sources of income, such as begging, while denying any opportunities in education, employment, healthcare, etc. via reservation. It upholds **lighter consequences and penalties for discrimination** and assault on trans people compared to cisgender people. It violates the **constitutional rights of transgender persons to live where we please**, stating that even as adults with the right to free movement and association, we must either stay with our parents or approach a court.

## **4. Bill is in violation of the Fundamental Rights of transgender persons**

The present Bill is in stark violation of the fundamental rights of transgender persons enshrined in the Constitution as equal citizens, judgment of the Apex Court in NALSA vs UoI in 2014 and has also **disregarded most recommendations of the Parliamentary Standing Committee**. It has been passed despite quite a few Parliamentarians raising serious concerns about fundamental flaws and seeking deferral of the Bill, pending broad based community consultations.

**In light of this, we demand that the Transgender Bill not be introduced in the Rajya Sabha and to refer the Bill to a Select Committee.**

## **Trafficking Bill**

There are several problems with the Bill, which we list below. We believe that elected representatives of the people must have adequate opportunity to consider all the evidence before them including from the marginalised communities of sex workers, bonded labourers, contract workers, domestic workers, construction workers, transgender persons, inter-state, intra-state and international migrant workers before the said Bill is passed by the Rajya Sabha.

## **1. Bill's Unclear Relationship with Existing Laws**

The Bill is redundant as Sections 370 and 370A of the IPC already penalize trafficking and exploitation of trafficked victims for sexual exploitation, respectively. The relationship of the Bill with several laws such as the Immoral Traffic Prevention Act, laws on bonded labour, contract labour, inter-state migrant work, Juvenile Justice Act, is unclear and this may complicate, even paralyse enforcement of the Bill. The relationship of the Bill with proposed labour law reforms is unclear. Key definitions are missing including of forced labour.

## **2. Bill is a Draconian Criminal Law**

Several provisions of the Bill go against fundamental principles of criminal justice and the Indian Constitution. The Bill has an illogical gradation of offences; new offences unrelated to trafficking (Section 41(2)); vaguely worded offences with disproportionate sentencing; reversals of burden of proof; high levels of punishment and lack of clear sentencing policy; weak punishment for employers; violation of right to property and provisions relating to bail which presume guilt rather than innocence. The Bill vests excessive powers in the police (e.g. under section 16(1) Police can rescue and remove ‘any person’ from any place or premises); and creates several layers of bureaucratic institutions with no accountability.

## **3. Bill Uses Failed Approach of Institutionalized Rehabilitation**

Recent incidents of sexual abuse of women and girls in various state and NGO-run ‘protection’ homes should compel the Government to rethink the policy of institutionalized rehabilitation. Instead, the Government is accepting it uncritically in the Bill by empowering Magistrates to pass orders for detaining adult victims in ‘protection’ or ‘rehabilitation’ homes, without a hearing. Unlike ITPA which specifies a time-period for interim (21 days) and final (1-3yrs) custody, the Bill stipulates a ‘reasonable’ period - to be determined by the Magistrate. No review or appeal against such orders is provided for. While persons accused of any crime have the right to be produced before Court, to meet and correspond with their family and have legal representation, victims of trafficking are being denied these rights, ostensibly for their ‘protection’.

## **4. Bill Categorically Targets Marginalised Communities**

The Bill contains several vague and overbroad provisions. The Bill targets marginalized groups such as sex workers and transgender persons. Although the Minister has clarified that the Bill will not apply to voluntary sex workers, this must be built into the Bill itself and not in delegated legislation. Marginalized groups such as bonded labourers, forced labourers, inter-state migrant labourers and migrant workers working in Gulf countries risk losing benefits and support services under existing laws due to the confusion that so many co-existing laws will create in the minds of the police.

The Bill has punitive provisions against economic actors could freeze entire sectors of formal and informal economy causing further job losses and undermining PM’s flagship programmes such as Ease of Doing Business, Make in India and Skill India.

The Bill lacks consultation with trade unions and labour groups. The Bill furthers the criminalisation of the transgender community by providing a staggering 10 years of imprisonment for organised begging, which it calls a form of aggravated trafficking that goes beyond punishments for trafficking for forms of forced labour. Further, it criminalizes the administration of hormones and other medicines, failing to distinguish between coercion and assistance in accessing gender affirming hormone therapy.

It does not distinguish between voluntary sex work and delineate it from trafficking. Above all, it violates the agency of people in sex work or begging to decide if they are trafficked or voluntarily choosing these forms of work.

## **5. Bill is Against International Legal Norms**

The Bill is against international human rights norms; the UN Special Rapporteurs on Trafficking and on Contemporary Forms of Slavery have expressed grave concern with the

Bill. They note: “Its focus on addressing trafficking from a criminal law perspective is not sufficiently complemented by a human-rights based and victim-centred approach, and this risks further harming already vulnerable individuals.”

Although our MWCD claims that they are in compliance with the 2002 OHCHR Recommended Principles and Guidelines on Human Trafficking and Human Rights, the Bill continues to deviate from the OHCHR Guidelines.

In light of the above, we demand that the Honorable Speaker not introduce the Trafficking Bill in Rajya Sabha and **refer the Trafficking Bill to a Select Committee.**

Millions of marginalised Indian citizens are looking to you, Sir, and our democratically elected representatives to protect our rights and ensure justice.