

To,  
The Rajya Sabha MPs

We are writing on behalf of a collective of organisations and individuals who work with an understanding of gender, gendered violence and discrimination in this heteronormative, brahmanical and patriarchal world that we live in, and its institutions. Leading women's groups around the country invited feminist women's groups, LBT groups, and trans\* groups for a meeting on 28<sup>th</sup> and 29<sup>th</sup> September 2019 to discuss the provisions of the **Transgender Persons (Protection of Rights) Bill 2019** with a specific focus on some of the shared feminist and gendered concerns between cis-women and trans\* persons. This meeting was attended by over 60 trans\*, cis, and non-binary persons, and organisations. The participant organisations and persons are signatory to this document.

In this meeting, we discussed at length our shared understanding and perspectives on gender itself and the gendered nature of oppression. We also worked specifically on the clauses in the bill around sexual violence and rights and violations within the sphere of the family from our multiple perspectives.

Our collective discussions led to the following articulation, which we feel is essential for any law or policy making:

Our feminisms speak for not just cis-women but also for trans\* persons, gender non-conforming and non-binary persons. We believe that the same structures of gendered power affect all of us. We thus speak as transfeminists of all genders for the rights of **all** persons marginalised by the structures of power that support binary gender in our lives. Given this, we see the need for the protection of law given to cis-women thus far to be extended to all persons who are similarly marginalised while maintaining the specificities of our individual gender identities.

From our collective experience over years of work on issues of gendered violence and oppression, we wish to raise a few questions around some of the provisions of the **Transgender Persons (Protection of Rights) Bill 2019** which is currently set to be tabled in the Rajya Sabha.

We reiterate our support to the multiple protests and critiques of the Bill in its many variations that have been made and continue to be made by queer and trans\* organisations and individuals. We call upon the elected MPs to take in to account these critiques which are crucial to make laws that will be just and for the rights of trans\* persons and not work against them. We add our collective voices to these critiques and protests and call upon the lawmakers to respect and uphold the spirit of the NALSA judgement of the Supreme Court in making these provisions.

We urge you to look carefully at the documents attached that emerge from these critiques. These highlight several vital concerns that the Bill in its current form does not address adequately or misrepresents.

We join our voices with all others to reiterate that any bill should not compromise on:

- the right to self-determination of one's gender without any conditions;
- no physical/medical check to determine gender by any committee or individual;
- effective and clear provisions to deal with violence and discrimination (on par with all other citizens);
- right to state support towards health, housing, education, and livelihood;
- rights within natal families as well as rights to form families of choice;
- no criminalisation of begging;
- Strong anti discrimination provisions and protection against hate crimes that trans\* persons are regularly subjected to.

In addition, here are some specific recommendations from this meeting that emerge from our belief that trans\* and gender non-conforming persons must be treated at par with cis-women and other marginalised identities within the law:

## **Recommendation I.**

This is what the **Transgender Persons (Protection of Rights) Bill 2019** says in the chapter titled “Offences and Penalties.”

### CHAPTER VIII

#### OFFENCES AND PENALTIES

**18.** Whoever,—

(a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;

(c) forces or causes a transgender person to leave household, village or other place of residence; and

(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse,

**shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.**

#### ***Our Recommendations:***

**We propose that this chapter look into two separate sections, one for offences (other than sexual assault) and atrocities, and another for sexual assault in this manner:**

#### **Part 1. *Offences (other than sexual assault) and atrocities***

Whoever,—

a) intentionally insults or verbally abuses with intent to humiliate a transgender person in any place within public view;

b) denies right of passage or admission to a transgender person to a public place, including shops, public restaurants, cinema halls, shopping malls, hotels, and places of public entertainment;

c) subjects any transgender person to any form of economic abuse or emotional abuse,

d) performs, conducts or directs any medical procedure to be performed on a transgender person, without latter’s informed consent;

e) compels or forces a transgender person to engage in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

f) forces a transgender person to leave household, village or other place of residence

g) forcibly commits on a transgender person any act, such as removing clothes from the person, forcible tonsuring of head, forcing a person to present in clothing not of their identified gender, painting face or body or any other similar act, which is derogatory to human dignity;

***shall be punishable with imprisonment for a term, which shall not less be than six months, but which may extend to two years, and with fine.***

***Provided that where the offender is a public servant, such person shall be liable to imprisonment, ranging from two years to five years, and with fine.***

## Part 2: **Sexual Assault**

- Trans\* and gender non-conforming persons must be included as survivors of violence with a right to redressal under existing laws against sexual violence, like Sections 375, 354, as well as other laws on sexual harassment, stalking, etc;
- The punishment for these crimes against trans\* and gender non-conforming persons must also be at par with those laid out for crimes against 'women' in Section 376;
- Procedural and evidentiary safeguards and protections available to cis women should also be made available to trans\* and gender non-conforming persons, taking into account their experiences and lived realities.

***These provisions must be worked out in consultation with trans\*, gender non-conforming and non-binary persons and groups.***

## **Recommendation II.**

### **Rights vis-a-vis families and the right to form families**

Our recommendations are around existing family laws and natal families as well as the right of all persons to be able to form families of their choosing.

The family is an institution where the gender roles are well defined and laws reflect some of these notions of gender practice at the level of the family even today. All our family laws clearly identify a person by their gender. It could be in terms of differential inheritance for sons and daughters, or it could be different clauses as reason for divorce for husband and wife, or it could be ability or inability to be declared guardian of the child.

When there are such clear differences based on the gender of the person concerned, there is much that needs to be addressed as trans\* and gender non-conforming persons get recognition in the law, thereby recognising individual's movement from assigned gender to other gender identities. There is need to make ***the laws around inheritance, adoption, marriage, divorce*** and succession cognisant and workable with these realities of trans\* and gender non-conforming persons and their intimates.

There is also an urgent need to ***recognise and deal with natal family violence*** on children and adult trans\* persons who do not conform to the family's ideas of gender. Protection from this violence and right to safe residence is crucial.

For many trans\* and gender non-conforming persons, natal families (by birth or adoption) may not really be the people we want to leave our property, earnings or loans to; we may not see them as taking over care functions in times of debility and disability; we may not see them as deciding for us at times of medical incapacity and so on. Instead we may want to appoint person/s who we think can take care of our material, medical and other needs during our lifetime and after death.

Thus there is a parallel need to look into the ***recognition of chosen relationships and families*** and the rights a person might choose to confer on them and not on the natal family.

We reject the Bill's emphasis on the hold of the natal family on the trans person's life and demand that the above concerns be made part of its ambit.

**As stated, besides these two specific recommendations from the meeting, we also express our vociferous support to the submissions already made by the trans\*, LBT, gender non-binary and non-conforming individuals and groups.**

**We make this submission to you with the expectation that our concerns and objections will be considered sincerely and the current Bill will not be given your valued vote.**

As transfeminists who believe in gender justice for all, we demand that **the BILL BE SENT TO A SELECT COMMITTEE OF THE PARLIAMENT for further consideration and consultations with the community as well as those experienced in working with issues related to gender.**

## Signed

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9	Ammu Abraham	Forum Against Oppression of Women, Mumbai
10	Amritananda Chakraborty	Advocate, Delhi
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12	Avdhesh Gupta	Vanangana, Uttar Pradesh
13	Ayeesha Rai	National Network of Sex Workers (NNSW)
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21	Hameeda Khatoon	SBT, Lucknow
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23	Ishani	Sahiyar (Stree Sangathan), Vadodara
24	Jamal Siddiqui	Transmen Collective, Delhi
25	Jaya Sharma	
26	Jaya Velankar	Director, Jagori, Delhi
27	Jenny	WSS, Centre for Equity Studies, Delhi
28	K. Satyavati	Bhumika Women's Collective, Hyderabad
29	Kakali Bhattacharjee	Swayam, Kolkata
30	Kavita/Kai	Transcommunity, Delhi
31	Lata Singh	CWS/SSS, Delhi
32	Madhu Bhushan	Gamana Mahila Samuha, Bangalore
33	Malobika	Sappho for Equality
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38	Naseema. V	Sahayatrika, Kerala
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40	Philip C. Philip	Human Rights Law Network, Delhi
41	Poonam Kathuria	SWATI, Ahmedabad
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51	Ritwik Dutta	Transmen Collective, New Delhi
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