

PRESS NOTE: FOR IMMEDIATE RELEASE

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On July 10, 2019 the Cabinet approved a version of the Transgender Persons (Protection of Rights) Bill, 2018. The community and general public are unaware of the contents of the Bill, which is due to affect their lives seriously. **Members of the transgender, intersex and gender non confirming communities convened a press conference on Tuesday demanding that the full text of the Government of India's Transgender persons (Protection of Rights) bill that was approved by the Cabinet on July 10, 2019, be made publicly available. Input from the community should be openly sought, well advertised, and modifications should be made in the draft bill before it is presented in the Lok Sabha.**

The concern is because the GOI's previous version of the bill, which passed in the Lok Sabha but lapsed in the Rajya Sabha before the elections, contradicted the rights and protections laid out in the country's Supreme Court's NALSA verdict of 2014.

Here are some of the most harmful aspects of the 2018 version of the Bill:

1. This Bill upholds the establishment of screening committees, comprised of District Magistrate, Psychiatrists, Medical Officers, and one Trans person, which will have the power to determine whether or not an applicant qualifies as transgender. The process of "proving" one's gender in front of a committee violates multiple fundamental rights, and is utterly humiliating. The Bill also mandates "surgery" as the basis for applicants to identify with a binary gender. This requirement violates the principle of self-determination of identity for Trans, Intersex, and GNC people, and disenfranchises many who can not afford surgeries as well as those who do not desire any surgeries.
2. The Bill criminalizes begging and other forms of livelihood that many in the trans communities depend on to survive. Contrary to the stated purpose of the Bill - Protection of Trans persons' Rights - it criminalizes and discriminates against us, specifically targeting entire communities of Transwomen, Hijras, and Transfeminine people who have historically practiced begging and sex work as the primary source of income. The Trans, Intersex and GNC communities thus firmly oppose this Bill along with similarly criminalizing and discriminatory provisions of the Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill 2018. Both Bills are currently pending before the Rajya Sabha and must be withdrawn in their current form.
3. The Trans Bill 2018 also denies reservations and affirmative action for trans, intersex and gender nonconforming people in employment, education, and healthcare. Thus between criminalizing begging and sex work, and denying reservations, it puts our very lives at stake.
4. The Bill postulates that sexual violence against trans people will face punishment up to 2 years, in comparison with the 7yrs of imprisonment for sexual violence against non-trans women. In this way, the Bill directly discriminates against the Trans, Intersex and GNC communities and strips us of dignity and equality
5. The Bill requires Transgender people, to reside with their birth family - even though birth families are often the first site of violence against these individuals. If trans people are aided by other Trans community members in escaping such conditions at home, the community members can be imprisoned for up to 4 years

RECOMMENDATIONS

Problematic features of the bill	Recommended change by the community
<p>III.5, 6. Screening committee: “5. A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person 6. District Magistrate shall refer such application to the District Screening Committee to be constituted by the appropriate Government for the purpose of recognition of transgender persons”</p>	<p>Self identification in any gender should be upheld and extended to all forms of ID and educational documents, especially for runaway children; remove provision of district screening committees. Uphold NALSA vs. UOI Supreme Court Judgement direction that it is “immoral and illegal for governments to insist” on surgery or hormones for declaring gender, and the Standing Committee recommendation “that any procedure for 'identification of transgender persons' which goes beyond self-identification, and is likely to involve an element of medical, biological or mental assessment, would violate transgender persons' rights under Article 19 and 21 of the Constitution”</p>
<p>VIII. 19. (a) Criminalization of enticement to beg: “Whoever compels or entices a transgender person to indulge in the act of begging.. 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.”</p>	<p>As the Committee states “The clause is likely to be misused against the other transgender persons, in the garb of protecting them. It is an open fact that most transgender persons are harassed or booked under the begging prohibition laws, even when they are not begging or merely present at public places”. This draconian clause should be removed as it criminalizes hijras or kinnars who do traditional badhai toli and mangti given that,as the committee says, the “transgender community does not enjoy parity with other genders when it comes to alternative modes of employment”. We recommend gender based internal reservation for trans people and a strong anti-discrimination provision with penalties,for educational and employment access.</p>
<p>VIII. 19 (d) Low punishments for violence against trans people: “Whoever 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.”</p>	<p>Penalties for sexual violence upon all transgender persons should be equivalent to existing penalties for sexual violence against women, while penalties for physical, verbal, emotional and economic abuse should be similarly commensurate with the punishments for such acts under existing laws. Specific atrocities that transgender and intersex people face must be defined and strictly penalized, including forced gender conformism, hormonal treatment and/or surgeries, aversion based pseudo-psychotherapies, forced marriages, stripping, etc., as well as custodial violence, dereliction of duty by state and medical authorities, and violence in educational, residential, medical and employment. All trans people should have the right to be handled by women police as per their choice and should be held in separate cells with access to gender affirming healthcare, legal aid and education.</p>
<p>V. 13 Family and residence:(3) “Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in a rehabilitation centre”.</p>	<p>This provision violates the Constitutional Rights of trans persons to freedom of residence.This provision does not understand violence in familial homes and rehabilitation centers. The definition of family should also be expanded to legally recognize families of choice, partnership, marriage, friendship and, as per the Committee’s recommendation, “Hijra or Aravani community elders,who adopt young transgender children” who provide shelter, medical care, and gender-affirming inheritance and burial norms.</p>
<p>VI. 16. Medical care</p>	<p>Free access to gender affirming medical procedures, full insurance coverage, choice of m/f/separate wards for trans people in hospitals</p>
<p>VII. 17. National Council for Transgender persons</p>	<p>National and State Trans Rights Commissions with appropriate powers, with majority trans members from a variety of gender and other identities, to tackle atrocities, grievances and welfare/benefits.</p>