

## PRESS NOTE: FOR IMMEDIATE RELEASE

**Date: November 26, 2019**

**Place: New Delhi**

**CONTACT:** Bittu (8179542651) Jamal (9582179566) Ray (8920530571)

### **Members of the transgender, intersex and gender non confirming communities assembled at Jantar Mantar to voice their outrage and protest against the passage of the Transgender Persons Bill, 2019 by the Rajya Sabha.**

On November 20th, 2019, paradoxically on the same day as the Transgender Day of Remembrance, when we gathered in Delhi to remember and mourn the transgender persons who have lost their lives to transphobia, the Rajya Sabha began debating the Government of India's Transgender persons (Protection of Rights) bill which would make our lives even more difficult than it currently is. Ever since that day we have been protesting in Jantar Mantar, against this bill, protesting in the thousands on the 24th of November.

The bill was passed on Constitution Day, the 26th of November - again somewhat ironic given that the bill violates the constitutional rights of tran persons by restricting our freedom of movement and residence to familial spaces and rehabilitation homes; it is discriminatory because it upholds much lighter penalties for sexual assault on transgender persons compared to cisgender persons; and it violates the NALSA judgment by framing a two-step process where transgender identity is first mandatorily granted by a District Magistrate with a requirement for surgery before one can change this to a binary gender marker.

Over the past few days we members of the Transgender, Intersex and Gender Non-Conforming Communities have been waiting with baited breath, struggling to convince as many MPs as we can of the significant damage that would be done to our lives if the bill were to be passed. We saw immense support from a number of MPs in the Rajya Sabha, some of whom had been our long standing supporters and there was also support from a number of unexpected sources. We were heartened at the amendments that were filed by **Tiruchi Siva of DMK and Rajeev Gowda of the Congress** and we applaud all the members of the opposition who have been speaking in the Rajya Sabha challenging the Bill. **Derek O'Brien and Shanti Chhetri of AITC, Sasmit Patra of the BJD, Jharna Das Vaidya of the CPM, Wansuk Syiem, Ghulam Nabi Azad, Hanumanthaiah and Hussain Dalwai of the Congress Party, Vijila Satyanath of the AIADMK, Jaya Bacchan of the Samajwadi Party, Manoj Jha of the RJD, Sanjay Singh of AAP, Vandana Chavan of NCP, Binoy Viswam of CPI, P. Wilson of DMK, Amar Pattnaik of the BJD**, all presented a unified argument for not passing the bill in its current form, and instead sending the bill to a select committee for making several necessary vital amendments.

Here are some of the most harmful aspects of the 2019 version of the Bill:

1. This Bill upholds the humiliating process of submitting an application to District Magistrate for a legal recognition of one's transgender identity, and it makes getting an ID as male or female dependent on first registering as transgender, and then supplying proof of surgery. This contradicts the NALSA judgment of the Supreme Court.
2. The Bill postulates that sexual violence against trans persons will face punishment from 6 months to 2 years, in comparison with the 7 years of imprisonment for sexual violence against women. In this way, the Bill directly discriminates against the Trans, Intersex and GNC communities and strips us of dignity and equality
3. The Trans Bill 2019 denied reservations and affirmative action for trans, intersex and gender nonconforming people in employment, education, and healthcare. Its provisions around discrimination have no penalties whatsoever, making their need completely redundant. Thus between not preventing discrimination and failing to provide any affirmative action on reservations, it puts our very lives and livelihoods at stake.

4. 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, or approach the courts to live in a shelter home. Measures for “rehabilitation” are recommended in the bill. This violates our fundamental constitutional rights of free movement.
5. A comprehensive anti-atrocities, anti discrimination legislation, that upholds and ensures equal access to all civil rights and spaces of housing, employment, education and medical care for transgender persons is necessary, not this watered down and dangerous piece of legislation.

**RECOMMENDED AMENDMENTS:**

<p><b>III.5, 6. Screening committee:</b>  “5. A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person  6. If a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which the person has undergone surgery, to the District Magistrate for revised certificate..”</p>	<p><b>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.</b> 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><b>VIII. 19 (d) Low punishments for violence against trans people:</b> “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 <b>commensurate with the punishments for such acts under existing laws. Specific atrocities that transgender and intersex people face must be defined and strictly penalized</b>, 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><b>V. 13 Family and residence:</b>(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><b>This provision violates the Constitutional Rights of trans persons to freedom of residence.</b>This provision does not understand violence in familial homes and rehabilitation centers. <b>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”</b> who provide shelter, medical care, and gender-affirming inheritance and burial norms.</p>
<p><b>VI. 16. Medical care</b></p>	<p><b>Free access to gender affirming medical procedures, full insurance coverage, choice of m/f/separate wards for trans people in hospitals</b></p>
<p><b>VII. 17. National Council for Transgender persons</b></p>	<p><b>National and State Trans Rights Commissions</b> with appropriate powers, with majority trans members from a variety of gender and other identities, to tackle atrocities, grievances and welfare/benefits.</p>